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CAROLINA JOURNAL

A MONTHLY JOURNAL OF NEWS, ANALYSIS AND OPINION FROM THE JOHN LOCKE FOUNDATION

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STATEWIDE EDITION

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Wake School Board: Don't Take Away Fines

By DAVID N. BASS
Associate Editor

RALEIGH

The Wake County Board of Education plans to go hat in hand to a judge after a school board member criticized a controversial land deal allowing imprisoned former House Speaker Jim Black to settle a criminal corruption fine.



Former Speaker Jim Black

At a school board meeting July 21, chair Kevin Hill agreed to draft a letter apologizing to Wake County Superior Court Judge Donald Stephens for remarks from school board member Ron Margiotta questioning the settlement.

The letter would clarify the

Continued as "Wake," Page 3

TEACHER PARADISE



As systems shed jobs, state funds mountain training center

By DAVID N. BASS
Associate Editor

CULLOWHEE

Most people visit Jackson County for the mountain vistas, camping, and trout fishing. Public school teachers come here for the training.

The remote county might seem an unlikely site for North Carolina's only professional development center devoted exclusively to reviving a love of learning in state educators. With easy access to the Blue Ridge Parkway, Great Smoky Mountains National Park, and Cherokee casino, visitors typically are more concerned with kicking back and relaxing than taking seminars on holistic health, pottery, or global warming.

But for the 5,000 teachers fortunate enough to attend the North Caro-

lina Center for the Advancement of Teaching each year, visiting Jackson County is more than a chance to take in some fresh mountain air — it's an opportunity to network with other teachers and attend workshops on a range of topics.

Teachers don't pay their own way, either. NCCAT picks up the tab for them to attend, including the expense of finding substitutes to handle their classrooms back home.

Yet in light of the biggest state fiscal crunch in decades, and with unprecedented teacher layoffs looming, that tab — amounting to \$7 million from the General Assembly the past three fiscal years — is raising eyebrows.

With a state budget picture worsening by the day, some observers say the legislature should prioritize edu-

cation dollars to core functions — and that NCCAT shouldn't be part of them.

"It's something we shouldn't be spending a whole lot of money on when we have shortages in the budget and are looking at raising taxes in a recessionary economy," said state Senate Minority Leader Phil Berger, an Eden Republican.

Since its creation 25 years ago, NCCAT's primary source of funding has been the state legislature. The General Assembly has allocated \$7 million to the center each of the last three fiscal years, accounting for 90 percent of its budget this year. Its funding has doubled since 2001, when its net appropriation from the general fund was \$3.6 million.

That's been money well spent,

Continued as "Teacher," Page 2

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Facilities at the North Carolina Center for the Advancement of Teaching, such as the computer center (above left) and the lobby (above right) are first-rate. (CJ photos by David N. Bass)

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Teacher Training Center a Mountain Haven

Continued from Page 1

Mary McDuffie, NCCAT's executive director, told *Carolina Journal* during an interview at her office in Cullowhee. "Teachers need the opportunity to have professional development to strengthen them, to improve their quality, to have them go back into their classroom better teachers than they were before," she said.

Not that NCCAT, created in 1985 and taxpayer-funded, is all work and no play. Located adjacent to Western Carolina University's main campus in Cullowhee, the center's rambling stone buildings and finely manicured landscaping could be mistaken for that of an upscale mountain resort. And it offers a range of amenities to match.

The grounds feature an idyllic lake, nature trails, and garden complete with covered picnic tables, benches, and fountain. A detached lodge has 48 individual living quarters and includes private bathrooms, common areas with access to outdoor patios, kitchens stocked with snacks, wireless Internet, and even a Hershey's Kiss on each teacher's pillow in the morning.

Inside the main conference center, visitors have access to a computer lab, an indoor amphitheatre, a library, a health and wellness facility, and an extensive art collection. Meals, prepared by a large culinary staff, are served in a multilevel dining room that looks out on the gently rolling Appalachian Mountains.

"Teachers really enjoy the experience, and they feel like they come out of it much stronger," McDuffie added. "What we do is not fluff. This is not something you can live without."

Want or need?

But critics argue that, in tough times, NCCAT is one of the nonessentials.

"Before we talk about laying off teachers, cutting appropriations for the classroom, and going to the taxpayer for more money, we should look for significant reductions in other areas," Berger said.

Others claim that NCCAT is ineffective in helping student performance, and that alternative strategies would yield better results.

"It's costing an arm and a leg," said Lindalyn Kakadelis, director of the conservative North Carolina Education Alliance. "I would rather do away with it and do performance pay for teachers, and I believe we would get better results."

A teacher retreat

Despite the center's reputation among some as a boondoggle, supporters say that it reenergizes teachers and makes them eager to get back into the classroom.

"We keep teachers on their toes, and as a result they're able to do better for their kids," McDuffie said.

NCCAT offers dozens of five-day seminars throughout the year, most focusing on cultural, historical, and artistic topics, such as "Everyday Healthful Living: A Whole New You," "The Healing Power of the Arts," and "Sea Level Rise: The Impact of Climate Change on the Outer Banks."

Teachers apply for the program but must get a recommendation from their principals. NCCAT decides who at-

tends the seminars but tries to prevent the same teachers from going year after year.

Workshops are split between the main Cullowhee campus and a new site just opened in the former U.S. Coast Guard Station on Ocracoke Island. The legislature funded the Ocracoke renovation over several years at a cost of \$8 million.

After taking a weeklong seminar, teachers can attend three alumni weekends conducted at hotels around the state, but they have to pay their own way. The events are more lighthearted. One focuses on the musical traditions of North Carolina, another on the music of Motown.

"It's engaging and fun, but you also learn about the history of the period — civil rights and diversity," said Renee Coward, NCCAT's director of programming.

Even though NCCAT has won praise from educators, critics say that no evidence exists linking faculty who attend with better performance in the classroom or benefits for students.

Kakadelis says no research has found that participating in NCCAT programs translates to higher student achievement. Nor does she buy statistics showing that teachers who attend are more likely to remain in the profession.

"Are those teachers we want to stay? How are their students performing?" she said.

Budget battles

By late July, budget negotiators in the House and Sen-

ate were still scrambling to overcome a \$4.6 billion deficit and reach a compromise spending plan that could raise taxes by more than \$1 billion.

The proposed budget includes across-the-board cuts to state agencies, including a 15-percent cut to NCCAT. Ask McDuffie how she plans to handle that reduction, and she winces.

"We hope that it's a palatable cut. We'll just deal with it," she said.

McDuffie and her staff have lobbied legislators in Raleigh to keep cuts to a minimum. They succeeded in getting a special provision inserted in the budget that would transfer jurisdiction over the center from the UNC system to the State Board of Education, a move prompted by concerns over cuts to universities.

Lawmakers recently introduced a bill that would allocate another \$2 million to NCCAT during the next two fiscal years, but the measure has not come up in committee.

McDuffie says she is ramping up efforts to find private sources of funding. The Wachovia Foundation and Z. Smith Reynolds Foundation have provided financial support for years, but much of that has dried up, she said.

Aside from the legislature's allocation, one of NCCAT's largest sources of revenue is still courtesy of taxpayers — the Golden LEAF Foundation, a nonprofit created in 1999 to distribute the proceeds of North Carolina's tobacco settlement.

Since 2005, Golden LEAF has contributed more than half a million dollars to NCCAT, including \$174,000 this year. The foundation is known for its support of the Global



The lodge facilities at the Teacher Advancement Center are comparable to those at private hotels in the area. (CJ photo by David N. Bass)

Continued as "Teacher," Page 3

Wake School Board Mulls Apology to Judge in Jim Black Case

Continued from Page 1

school board's support for Stephens' decision to allow Black to use real estate rather than cash to pay half of a \$1 million state criminal fine, a deal that has drawn accusations of favoritism.

Margiotta insisted that Stephens was never the target of his criticism. Instead, Margiotta wondered whether the property appraisal — arranged by Black's family — was credible.

This is not the first time the school board has been in hot water for relying on dubious appraisals. Margiotta was also upset that the entire board was neither notified about the settlement nor allowed any input on the deal before it was concluded.

Even so, Stephens delivered a tongue-lashing to school board attorney Ann Majestic after *Carolina Journal* and the *News & Observer* of Raleigh reported Margiotta's objections.

"Criticism from those receiving the gift really kind of puts a chilling effect on judges and the courts system that are working really hard for their benefit," Stephens said at Black's final sentencing hearing July 16. "It is not appreciated."

Stephens also suggested that he might stop levying fines in the future that would benefit the Wake County Public School System.

That angry retort elicited concerns from some school board members, prompting calls for an apology.

"It is very important that we clarify for our district attorney and for our judges in our communities that we are willing recipients of fines in whatever form they come," said board member Beverly Clark.

According to the superintendent's proposed budget for the 2009-



This property along Rice Road near Charlotte was given to the Wake County schools by Jim Black in lieu of \$500,000 he owed on a \$1 million fine. (CJ file photo)

10 school year, fines and forfeitures should make up about \$4.37 million, less than 0.4 percent of the school board's \$1.25 billion operating budget.

In 2008-09, Wake County schools took in \$3.85 million in fines and forfeitures; for 2007-08, it was \$3.58 million. Wake County District Attorney Colon Willoughby told *CJ* that the money typically comes from traffic fines and other small penalties.

'Stinks to high heaven'

The controversy began in June when *CJ* reported that school board attorneys and Wake County prosecutors agreed to accept two parcels of undeveloped land in Matthews to settle half of Black's fine. Black is serving a 63-month federal prison sentence after pleading guilty to federal and state corruption charges.

An appraisal and offer to pur-

chase concluded that the Matthews parcels are worth at least \$500,000, the amount Black still owed. Recent tax revaluations, however, put the tax value of the real estate around \$150,000.

The slumping real estate market prevented the Matthews Democrat from liquidating property to pay the balance of the fine in cash, Black's attorney has said.

"The whole thing stinks to high heaven," Margiotta said. "The only way we're going to figure out the property's value is when it's sold, and that could be two years from now."

Several other school board members are miffed that staff and attorneys never informed them of the settlement before it was announced.

"I just would have liked to have had the information ... because of the media, because of the uniqueness of the situation," said board member Eleanor Goettee at the meeting.

Ann Majestic, of the law firm Tharrington Smith LLP, said the board had no authority to modify the deal.

"Informing the board may have been the better choice," she said. "I grant you this was unique."

Margiotta also believes the school board should get an independent appraisal of the property.

Black's son commissioned the appraisal, which is a restricted use report generally considered less reliable than a complete appraisal. Contacted by phone, the appraiser, John Bosworth of Charlotte, said that he thought Black would use the estimate to try to sell the land, not for a settlement.

CJ has obtained a three-page copy of the appraisal, but Black's attorney has not made available a full copy, which Bosworth said is around 20 pages.

Neither the Wake County district attorney nor school board attorneys saw a full copy of the appraisal before accepting the land to settle the fine.

For years, county commissioners have butted heads with school board members over land purchases for new schools. The commission now requires the board to get independent appraisals before it buys property.

County commissioners have leverage since the school board must go to them before purchasing real estate.

In 2007, the commission chastised the board when it tried to buy land in Rolesville at \$75,000 an acre, though two appraisals estimated its worth at far less. A similar scuffle broke out over land south of Apex. The school board agreed to pay \$8.7 million for the property, but commissioners cried foul after learning that an investment company had bought the property 10 months earlier for half that amount. *CJ*

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Teacher Center a Mountain Haven

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TransPark in Kinston and the Randy Parton Theatre in Roanoke Rapids, both economic development projects criticized as pork-barrel schemes.

McDuffie says that she has always run a tight ship, and is even more committed to that goal given the state's budget hole.

Even so, she handed out 6 percent raises to her executive staff last year, double the average amount received by public school teachers. Most of those who got the pay hikes already earn six figures.

McDuffie justified the raises by saying responsibilities for top staff have doubled over the last several years while compensation has not gone up. NCCAT employs more than 100 workers between its two campuses.

"I really would have liked to

have given them 15 percent, but that was not possible," McDuffie said.

Priority shift

Educators and state employees gathered in Raleigh recently to protest salary cuts and forced furloughs mandated by Gov. Bev Perdue. Nevertheless, McDuffie says laid-off teachers aren't resentful that some of their colleagues who are still employed are getting to attend NCCAT this year.

"If there is one thing teachers understand, it's the importance of good professional development," she said.

Berger, by contrast, emphasized the need to reevaluate priorities, including NCCAT's appropriation, as the education budget tightens.

"It strikes me that you could hire an awful lot of teachers for \$7 million a year," he said. *CJ*

Highway Patrol Cracks Down Hard on Apple Cores, Other Fruit

By JIM STEGALL
Contributor

RALEIGH

So you thought you would get away with it, eh? Thought you could just toss that chewed-up apple core right out the window of your pickup as you were driving down a North Carolina highway, and no one would be the wiser. No one would know that it was you who had littered. The authorities would be baffled and helpless.

Yes, it was almost the perfect crime, but there's one thing you didn't count on. You had no idea that the North Carolina Department of Transportation would harness the awesome power of millions of mobile snitches roaming the highways to spot litterbugs like you and rat them out to The Man. You probably didn't think that the department's Office of Beautification Programs would print and distribute special fill-in-the-blank postcards to your fellow motorists, to make it easy for them to report sightings of litterbugs like you in action.

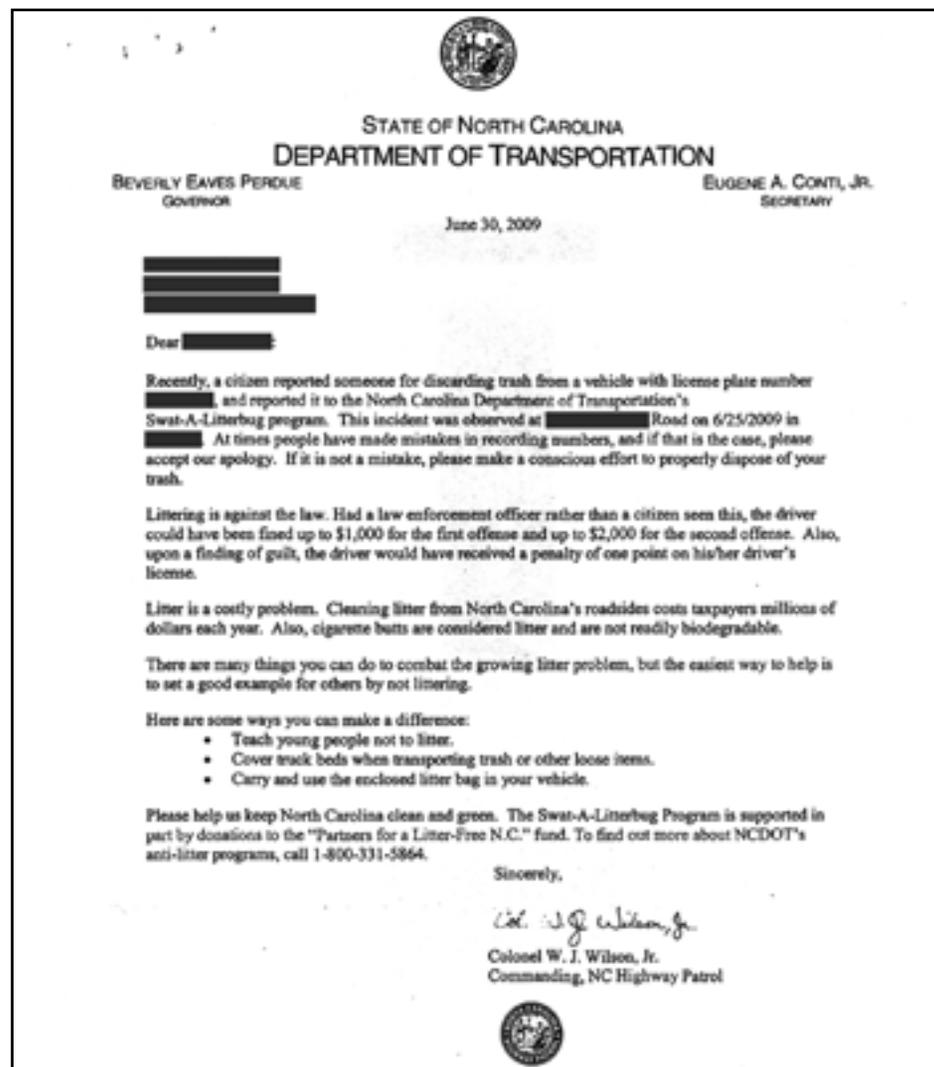
And you certainly never dreamed that same office would create a littering awareness curriculum for kindergartners, complete with a one-size-fits-most mascot costume (the "Beauty Fly"), and top it off with a jaunty anti-littering country jingle written and recorded by state Sen. Charlie Albertson, D-Duplin.

But, of course, that's exactly what the Department of Transportation did. And that is exactly why last year some 9,600 North Carolina vehicle owners received a letter informing them that the DOT was wise to their littering ways.

It's all a function of the "Swat-A-Litterbug" program, a five-year effort to stem the growing tide of refuse accumulating on North Carolina's highways and byways. The program encourages motorists to report incidents of littering by means of a pre-printed, fill-in-the-blank postcard, or on a special DOT Web page (www.ncdot.gov/~beautification), or by calling 1-877-DOT-4YOU.

No citation is issued based on these anonymous tips, but the vehicle's registered owner receives a politely worded letter informing him when and where the littering was observed, and the penalties (up to \$1,000 for a first-time offender) one could receive had a law enforcement officer observed you littering. Also included with the letter is a handy plastic trash bag the vehicle owner can carry in his car.

The letter also reminds motorists of the high cost to taxpayers of roadside litter cleanup and helpfully suggests a few things every citizen can do to reduce the problem of roadside litter (teach your kids not to litter, secure your loads, etc.). The letter closes by advising citizens to call a 1-800 number "to find out more about NCDOT's



anti-litter programs."

In a telephone interview, George Kapetanakis, the department's litter programs coordinator, pointed out that over a three-year span from 2004 to 2007, the state spent \$48 million on roadside cleanup.

"We cleaned up over 30 million pounds of litter," he said, "and that's not including items that were too big or too heavy to move."

According to Kapetanakis, most of the trash comes from "unsecured loads," trucks or trailers that are hauling things in an open bed without any kind of cover. (That's against the law, by the way). When such vehicles hit highway speeds, loose items in the bed go flying like ticker tape in a parade, unbeknownst to the drivers. But Kapetanakis adds that some of our litter problem is deliberate, meaning some people intentionally toss trash by the roadside.

As for the letter, Kapetanakis says, "The main thing is that it's educational in scope." As an educational tool it's designed to be "very passive, not in someone's face." Nevertheless, some recipients get pretty irate and use the 1-800 number to vent their anger at the department.

Kapetanakis related how one citizen was incensed that he could get a letter informing him that someone had seen a cigarette butt being tossed out of his window within three days of it happening (under state law, butts are litter, too), while other state services seem

to take forever. On the other hand, he says that some have called to thank the DOT for bringing the problem to their attention.

Of course, a program that relies on the participation of the public for its success will not be very effective if the public doesn't know about it. The DOT gets an early start spreading the word by offering elementary schools a menu

of items to use in anti-littering instruction suitable for kindergarten through third grade.

Schools are encouraged to hold "litter awareness" days, stage playground cleanups, and put up anti-litter bulletin boards. Students are offered crossword puzzles and word scrambles using litter-related terms, and may be coached to write letters to their local sheriff asking him to enforce the anti-litter laws.

To command the attention of the little ones, the DOT has adopted the "Beauty Fly," the official mascot of the North Carolina Department of Transportation Office of Beautification. The department thoughtfully provides a Beauty Fly costume (with Velcro-attached wings and headpiece) that teachers can don to deliver the anti-litter message. There's also a song — two, in fact — to drive home the point. Small children learn a "Bingo"-like song ("C-L-E-A-N Keep NC clean and green-o!").

For more sophisticated audiences, Albertson recorded "Mean About Clean," a short, catchy tune urging us to "all join hands and sing together, litter's got to go." If you don't hear it on your local country-and-western station, you can still enjoy it by logging onto the DOT's beautification Web page.

Of course, all this takes money. Kapetanakis could not say how much the Swat-A-Litterbug program costs. The Office of Beautification's staff of four does many other things beside administering the Swat-A-Litterbug program (the Adopt-a-Highway Program, for example), and, according to Kapetanakis, it's just a tiny part of the office's overall budget.

Still, he feels that it's "an effective marketing tool. We're educating the people we think might be littering." CJ

Lecturing in classical liberal thought?

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About the Faculty Affiliate Network

Michael C. Munger

Faculty Affiliate Dr. Michael Munger offers an interesting economic analysis in the Liberty of Economics and Liberty blog "Classical Liberalism, Socialism, and the Coase Theorem".

Dr. Munger is a Professor of Political Science, and Department Chair, as well as a past president of the American Political Science Association. He has published widely in journals in Political Science (including the American Political Science Review, the American Journal of Political Science, and the Journal of Politics) and Economics (including the Journal of Law and Economics, the Southern Economic Journal, and Economic Inquiry). His other work includes a variety of policy manuscripts and reports, for private organizations and government agencies at the federal, state, and local levels.

Professor Munger has taught at Dartmouth College, University of Texas, and University of North Carolina (where he was director of the Institute of Public Administration Program), as well as working as a staff economist at the Federal Trade Commission during the Reagan Administration. He is a past President of the Public Choice Society, an international academic society of political scientists and economists with members in 15 countries.

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Lecturing with Mike Diney

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N.C. Anxious to Jump Onto Obama's High-Speed Rail Bandwagon

By COLLEEN CALVANI
Contributor

RALEIGH

President Barack Obama's plans to transform fundamentally the way Americans travel is gaining speed, and North Carolina wants to go along for the ride.

The president announced in April a plan to provide \$1 billion a year for the next five years, in addition to the \$8 billion in the American Recovery and Reinvestment Act of 2009, as a down payment on a nationwide network of high-speed rail lines.

The plan builds on a long-standing idea to make America more train-friendly like Europe and Japan, two places often cited as gold standards for modern mass transit. But a new John Locke Foundation report from Randal O'Toole, a senior fellow at the Cato Institute working on urban growth and transportation issues, calls into question the conventional wisdom of those systems' effectiveness.

O'Toole's report, "Why North Carolina Should Not Build High-Speed Rail," details the expense, scope, and consequences of high-speed rail development in the United States, addressing key questions about President Obama's plan. The report is available at www.johnlocke.org.

Obama's dream

The president's plan names 10 high-speed rail corridors as priorities for funding in the 8,500-mile system, though details of which states will get the money are not final. A 2001 study by the Federal Railroad Administration suggested corridors, including the California, Pacific Northwest, South Central, Gulf Coast, Chicago Hub Net-

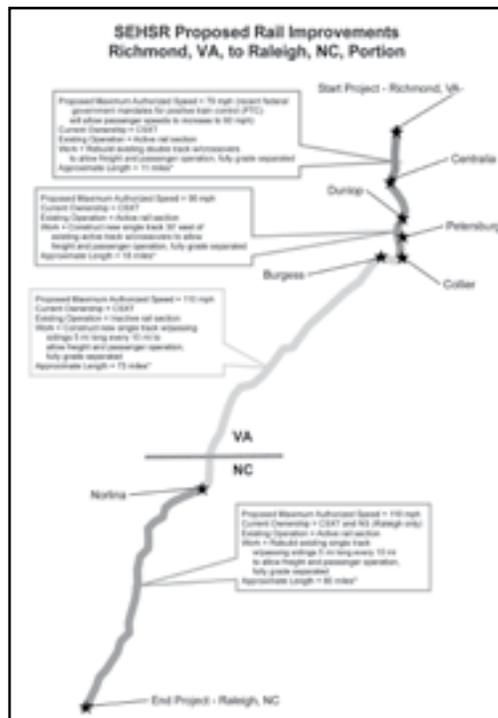
work, Florida, Keystone, Empire, Northern New England, and Southeast lines.

North Carolina is part of a Southeast High Speed Rail Corridor from Florida to Washington, D.C., with connections to the Northeast Corridor. The SEHSR (pronounced like "Caesar") has its roots in a U.S. Department of Transportation designation from 1992. The Southeast Corridor initially was designed to connect Washington, D.C., with Richmond, Raleigh, and Charlotte; since then, the SEHSR has expanded to Jacksonville, Fla., including Atlanta, Savannah, Ga., and Birmingham, Ala.

High-speed rail fits into a part of what O'Toole calls Obama's livability agenda. "Instead of using federal dollars to build highways, we spend it on high-speed rail," he said. "Our highways are going to get more congested, making it harder for people to drive."

Obama's team uses a more positive spin.

"President Obama's vision of robust, high-speed rail service offers Americans the kind of travel options



From <http://www.sehsr.org/>

that throughout our history have contributed to economic growth and enhanced quality of life," U.S. Transportation Secretary Ray LaHood said in an April announcement. "We simply can't build the economy of the future on the transportation networks of the past."

States have begun lining up for their respective portions of the network, with

federal grants expected to begin by the end of the summer.

North Carolina's role

In early July, North Carolina submitted a preapplication for high-speed rail stimulus funding. In the application, state Transportation Secretary Eugene Conti cited the extensive role railroads have played in the state's history. He detailed the state's investment of more than \$300 million (coupled with \$332 million in federal spending) in passenger rail systems over the past 20 years.

Calling the SEHSR the "natural extension" of the Northeast Corridor, Conti's description of the economic pluses of high-speed rail reads like a wish list for a state strapped for

cash. Among other benefits, he said the SEHSR will "generate more than \$700 million in new tax revenue; yield nearly 19,000 permanent full-time jobs; develop mixed-use activity centers surrounding stations; provide an alternative to congested highways; and improve air quality by reducing the emissions per passenger-mile traveled. ..."

But O'Toole says even the mildest expectations for high-speed rail belie the truth about their commercial and environmental potential.

First is the issue of cost. Building true high-speed rail corridors, which allow travel at average speeds of 140 to 150 mph, is enormously expensive. The FRA estimates that its plan will cost about \$90 billion. O'Toole, on the other hand, estimates that a system connecting major cities in 33 states would cost well over \$500 billion, with likely costs closer to \$1 trillion.

In North Carolina, trains would run at top speeds of 110 mph, with average speeds hovering closer to 85 mph. Currently, SEHSR passenger service runs at an average speed of about 47 mph. SEHSR estimates that reconstructing, upgrading, and building lines between Washington and Charlotte (not including the extensions into the rest of the Southeast) will cost about \$5 billion. "Yet the average North Carolinian will take a round trip on such trains only once every 27 years," O'Toole writes in his report.

Nor is high-speed rail as green as its advocates contend. "Passenger rail's environmental benefits are negligible and costly," O'Toole says in the report. Per mile, fuel-efficient cars and buses use significantly less energy than passenger trains do, yet admitting that is politically unpopular. CJ

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The Triangle regional page includes news, policy reports and research of interest to people in the Research Triangle area.

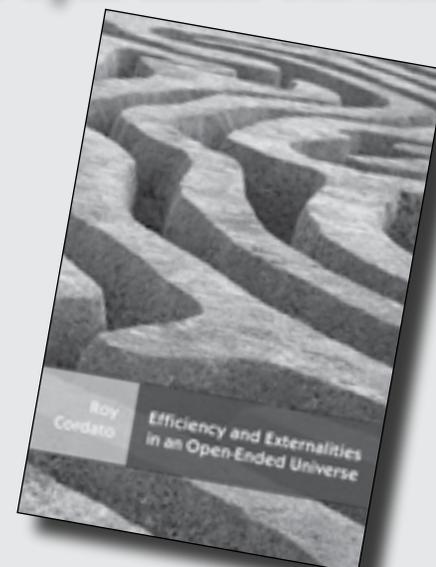
It also features the blog Right Angles, featuring commentary on issues confronting Triangle residents.

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By Roy Cordato
Vice President for Research
John Locke Foundation

Efficiency and Externalities in an Open-Ended Universe



"Cordato's book is a solid performance, demonstrating impressive mastery of both the Austrian and neoclassical literature."

Israel Kirzner
Cato Journal

N.C. Briefs

Kentucky looked at review

The N.C. Department of Revenue's policy of reviewing tax returns from large families to weed out cheating has gained the notice of tax officials in Kentucky, public records show.

According to e-mail correspondence obtained by *Carolina Journal*, a supervisor with the Kentucky Department of Revenue expressed interest in learning more about the review method, potentially for use in her own state.

"I am particularly interested in knowing what documentation was used to prove the dependents claimed were in fact legitimate dependents," wrote the official in an e-mail dated June 25, 2009. "This is a problem that has concerned many at the [Kentucky Department of Revenue] for several years. Your help would be greatly appreciated."

North Carolina's review of families with eight or more dependents has drawn criticism in recent weeks.

Revenue Department Secretary Kenneth Lay says the verification is meant to cut down on cheating, but some taxpayers feel the review unfairly targets them because of their family size.

"To us this represents a subtle but major shift from our founding American philosophy," said one parent.

JLF: Spending a Drag

North Carolina's latest unemployment numbers help expose problems associated with the federal government's stimulus plan, according to a John Locke Foundation analyst with a Ph.D. in economics. Proposed state tax hikes of nearly \$1 billion a year would make existing problems worse.

The N.C. Employment Security Commission's latest report lists the state's unemployment rate at 11 percent for June, down one-tenth of a percentage point from May's record-breaking rate of 11.1 percent. The May unemployment numbers featured the highest recorded rate since the state started keeping seasonally adjusted data, according to the ESC.

"The state's continuing struggles with unprecedented unemployment offer more proof that the federal government has done nothing to stimulate the economy," said economist Dr. Roy Cordato, JLF Vice President for Research and Resident Scholar. "In fact, increased government spending cannot stimulate the economy. Increased government spending is a drag on the economy." CJ

Critics: Internet Sales Tax Hurts Business

KAREN MCMAHAN
Contributor

RALEIGH

To close budget shortfalls, several states recently have passed or have proposed taxes on Internet sales, a move that industry analysts say adversely affects retail sales and personal income tax collections as entrepreneurs are forced out of business.

Effective June 26, shortly after North Carolina lawmakers announced they were seriously considering the state's first Internet sales tax, Amazon severed its relationship with online affiliates in North Carolina, affecting customers referred to both Amazon.com and Endless.com.

The tax would be collected on "click-through" sales from bloggers and other Web-based publishers (including Internet resellers) who list merchandise on their sites sold by Amazon. Affiliates can get a small commission when a reader uses the affiliate's Web site as a portal to Amazon.

Such sales are not now subject to state sales taxes. The company recently ended its affiliate relationships in Rhode Island after a similar law passed in June. It had vowed to do the same had Hawaii enacted a similar tax which was subsequently defeated. (At press time, the North Carolina budget had not passed, so it was unclear whether the proposed tax became law.)

"The proposed advertising-based legislation is an unconstitutional tax collection scheme, and our company should not be forced to collect and remit sales tax based on unconstitutional legislation," said Patty Smith, director of corporate communications for Amazon.com, in a written response to e-mails from *Carolina Journal*.

Unfair and unconstitutional

Taxing Internet sales appeals to state lawmakers who believe they are losing revenues from people who purchase items online from out-of-state retailers without paying state sales tax. Desperation for new revenues is driving some states to redefine "nexus" as a way to circumvent a 1992 Supreme Court ruling regarding physical presence and sales tax collection, says the Performance Marketing Alliance. The alliance is a new industry association for online marketing professionals that monitors legislation and is coordinating opposition to Internet sales taxes.

The alliance and its members argue these new laws are unfair and unconstitutional because affiliate marketers do not deliver products or services to, or even collect payments from, consumers. Instead, they refer consumers to online retailers through online ads and thus earn commissions.

Writing for the Tax Foundation in July 2005, Chris Atkins explained that in 1992, the Supreme Court ruled in *Quill Corp. v. North Dakota* that "a business had to be physically present in a state before that state could require the business to collect use tax on its behalf."

Even though the mail-order Quill Corp. had no physical presence in North Dakota, the state argued the company owed sales taxes for purchases North Dakota residents made through the company's catalogue. The court sided with Quill.

A physical presence, the court said, would mean the company operated "offices, branches, warehouses, employees, etc." in that state, Atkins explained, and merely having customers in the state would not constitute a sufficient nexus for North Dakota to "impose a sales tax collection burden on Quill Corp."

The justification for charging sales or use taxes from retailers is that brick-and-mortar operations require local public services, including roads, police protection, and sanitation. Out-of-state consumers don't utilize those local services and theoretically should not be taxed for them.

Atkins added that the court based its decision partly on the "crushing burden" that a remote retailer would have in complying with literally thousands of different sales and use tax jurisdictions, a burden that would "severely restrict interstate commerce."

On its Web site, the alliance says the incomes of thousands of small businesses and entrepreneurs in the U.S. are "being devastated" as a result of tax collection laws that "discriminate against online affiliate marketing." The group also claims that state legislators misunderstand the nexus issue.

The alliance reports that the American Booksellers Association has been one of strongest lobbyists for this new "advertising-based tax legislation" by successfully convincing lawmakers that local small businesses are closing because they can't compete with online retailers that do not change state sales taxes.

Merchants and affiliates are already feeling the impact. Rather than dealing with the added expense of collecting state sales taxes, the alliance estimates "more than 200 merchants terminated their affiliate programs in New York" after the state passed an Internet sales tax in July 2008.

Why oppose the tax?

Why don't merchants just pass on the cost of tax collection to the consumer? Smith reiterated that Amazon.com doesn't "feel it's right to comply with unconstitutional legislation."

Setting aside the constitutional issue, the alliance says many online merchants can't afford to pay for the cost of collecting sales tax because it cuts too deeply into their margins. Ending these programs means many affiliates are losing their livelihoods.

Grass-roots campaigns organized by the alliance and others have defeated attempts to pass advertising-based tax laws in Connecticut, Maryland, Minnesota, Tennessee, and, most recently, Hawaii.

Four other states had considered but never formalized this type of legislative effort.

After Amazon severed its affiliate relationship with Hawaii, that state failed to pass the legislation. Asked why the company is continuing its affiliate relationships in New York after it passed similar legislation, Smith replied: "We were astonished last year when, without precedent, New York chose to enact such a clearly unconstitutional law, and we decided to maintain the associates program in (New York) while challenging the constitutionality of the statute. Pending final resolution of the legal case, we plan to maintain this course. But with our existing litigation in (New York), we need not take the same approach in any other state."

Amazon's letter to its North Carolina affiliates in June assured them the company "would certainly be happy to reopen our Associates program to North Carolina residents" should North Carolina fail to pass this tax collection scheme.

At a time retailers are going out of business and unemployment has reached highs not seen since the late 1970s' era of stagflation in some states, including North Carolina, merchants and affiliates are fighting legislation they feel will exacerbate unemployment and further reduce revenues as a result of lower retail sales and lost wages. CJ



North Carolina Congressmen Explain Votes on Cap and Trade

By KAREN McMAHAN
Contributor

RALEIGH

One of the centerpieces of the Obama administration's agenda is H.R. 2998, the so-called cap-and-trade legislation, which passed the House of Representatives June 26 by a narrow 219-212 margin.

Supporters believe that the bill's objective — slashing greenhouse gas emissions by 83 percent below 2005 levels by 2050 — can spur energy independence, cut pollution, and create green jobs, all at a minimal cost, pegged by President Obama at about a postage stamp a day for the average American household.

Rep. G.K. Butterfield, a Democrat representing North Carolina's 1st Congressional District, voted for the bill. Spokesman Ken Willis told *Carolina Journal* Butterfield "feels there is empirical evidence that humans affect global climate change and the cost of inaction would be higher socially, financially, and environmentally than would taking action." Willis added that "the bill will have a net positive economic effect on low-income Americans, because 60 percent of greenhouse gas allowances will be used to offset the higher cost of energy."

Critics, however, say the bill is in fact a national energy tax that will transfer trillions of dollars from consumers to big business over time, and control American lifestyles and behaviors in unprecedented ways while having a negligible impact on global climate change.

Take the bill's provisions dealing with housing policies. The bill creates and empowers a complex new web of

departments, agencies, commissions, advisory boards, and oversight groups at both the federal and state level, many of which will be led by administrators appointed by the president.

Among its many mandates, this sweeping legislation sets national energy-efficiency and renewable standards for utilities and creates national energy labeling and building codes for real estate. By 2012, new homes would have to be 30-percent more energy efficient than the law now requires, and the regulations would mandate homes built in 2016 and later to be 50-percent more energy-efficient than they are now. The model for these new codes comes from California, which economists blame for helping drive up the cost of homes beyond sustainable levels.

(The original legislation would have required homeowners to retrofit existing homes to the new standards when offering them for sale. But that mandate was removed as part of a 300-page "manager's amendment" added to the bill hours before it reached the House floor.)

Government-imposed energy-efficiency standards will become part of the mortgage underwriting process,

with special lending consideration given to "very low-, low-, and moderate-income families" by means of "lower debt-to-income ratio qualification standards."

For the first time ever, the secretaries of Energy, Education, and Agriculture, along with the administrator of the Environmental Protection Agency, will be empowered to "develop and recommend model mortgage products and underwriting guidelines" that

incorporate "energy-efficiency upgrades and location efficiencies in new mortgage loan transactions."

Under the location-efficient mortgage standard, a borrower's income for mortgage qualification

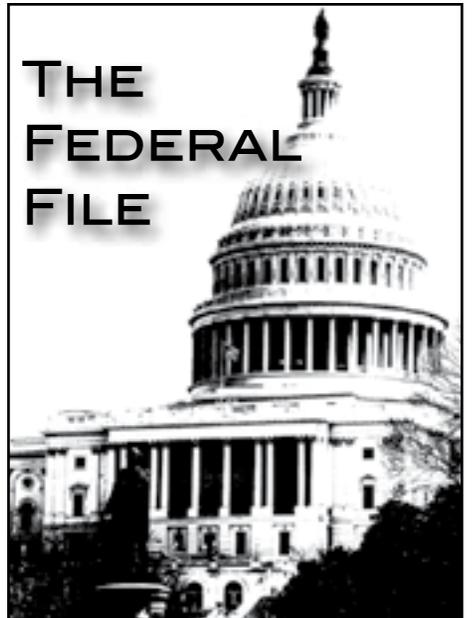
purposes can be adjusted up or down depending on whether the home for which the loan is to be made will "result in decreased transportation costs for the household." If not, the property owner will pay more.

Real estate appraisal standards will be revised to include national energy-efficiency regulations. New programs will be created to train, certify, and license appraisers who must consider any renewable energy sources, energy efficiency, or energy-conserving improvements or features of the property being appraised.

Moreover, to meet Smart Grid peak energy reduction goals, Americans will pay much higher energy rates if they use common household products and appliances during the hours of the day that energy consumption is highest. Utilities will be allowed to recoup costs for complying with the standards and can differentiate rates based on "time of use."

For consumers with plug-in electric drive vehicles, the Federal Energy Regulatory Commission will be authorized to create technology that individually tracks vehicle location, linking that information with the consumer's electric utility account for automatic billing of electricity usage.

In a phone interview, Ben Lieberman, senior policy analyst in energy and the environment at The Heritage Foundation's Roe Institute for Economic Policy Studies, said "this bill will inflict economic harm, and believers of global climate change know they have to do serious economic harm to



make people change their behavior."

Americans will pay thousands more each year in higher energy, housing, transportation, and food costs, and "those most affected will be poorer Americans who spend a greater percentage of their income on housing and energy," Lieberman said.

"Poor people are going to pay a lot more for electricity," said billionaire investor Warren Buffett in a recent interview with CNBC. The longtime donor to Democratic Party candidates and causes is one of the few high-profile Democrats opposing the bill.

The speed at which this bill passed left little time for debate. The bill took up more than 1,000 pages before the 300-page "manager's amendment" was added at the last minute.

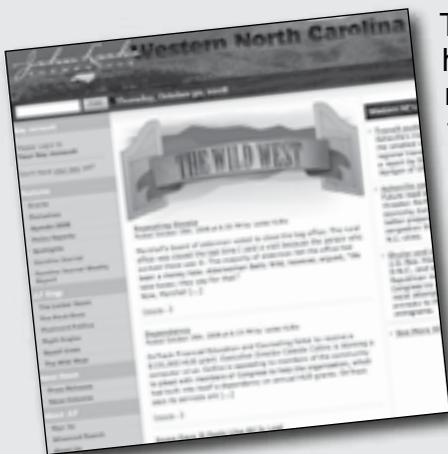
All five Republicans and two of the eight Democrats from North Carolina's delegation to the House of Representatives voted against the bill. Democrats voting no were Reps. Mike McIntyre and Larry Kissell, representing the 7th and 8th Districts, respectively.

In a written statement to *CJ*, Kissell said he "voted against the cap-and-trade legislation because it was not right for our district. . . . Our unemployment numbers are in double digits and our families are struggling to put food on the table. Now is not the time to raise energy prices on our struggling families and our hardworking farmers." McIntyre's office did not respond to requests for comment.

Phil Feagan, spokesman for 4th District Rep. David Price, said the congressman "closely reviewed the bill," but did not read it before voting. "Usually, reading a bill from start to finish is not helpful," Feagan said. "The congressman relied on cost estimates provided by the Congressional Budget Office, and the bill provides many offsets for consumers to lower the impact of this legislation on poorer Americans. He stands behind his vote." *CJ*

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Smith: Taxpayer-Funded Political Campaigns Not a Good Idea

BY CJ STAFF

RALEIGH

Some people equate the concept of “clean elections” with taxpayer funding of election campaigns. That equation is wrong, according to Bradley Smith, professor of law at Capital University, chairman of the Center for Competitive Politics, and former chairman of the Federal Election Commission. Smith discussed taxpayer-funded election campaigns with Mitch Kokai for Carolina Journal Radio. (Go to <http://www.carolina-journal.com/cjradio/> to find a station near you or to learn about the weekly CJ Radio podcast.)

Kokai: North Carolina obviously has a history with this idea of what is called here “voter-owned elections,” or the idea of cleaning up elections by having taxpayers pay for some of these campaigns. Is that a good idea?

Smith: I don’t think it is. I think the fact that it is not a good idea can be illustrated by the fact that the people supporting it will not call it what it is. That is, they will never go around and say, “Are you in favor of taxpayer funding of political campaigns?” Instead they call it “clean elections,” as if somebody is going to be opposed to clean elections. Or they call it “voter-owned elections,” an odd term that I don’t know quite what it means. The elections are (not) voter-owned. Nor does it have to do with the elections; it has to do with campaigns. They are talking about taking tax dollars and using them to fund candidates that you disagree with so they can run negative ads. ... That to me is campaigning, not elections, and I’m not sure that it has much to do with clean government.

Kokai: So why do people like this idea so much?

Smith: First, of course, it sounds good. You put a good label on it. Second, Americans are concerned about corruption in politics. It is a legitimate concern to have. The Founders were concerned about corruption in politics. That is one of the reasons why I think they chose to put in the First Amendment to make sure that corruption could be revealed, that newspapers could publish, that people could criticize the government, and they didn’t want the government involved in that. ...

People are naturally suspicious of their politicians. That is not a bad thing, either. Our country was founded on people being suspicious of government, suspicious of politicians. But it may become a bad thing when we allow ourselves to think that it is abnormal, that we ought to love our politicians and trust everything they say and

The Founders were concerned about corruption in politics. That is one of the reasons why I think they chose to put in the First Amendment to make sure that corruption could be revealed, that newspapers could publish, that people could criticize the government, and they didn’t want the government involved in that.

Bradley Smith
Center for Competitive Politics



(to think) that ... if we only gave them the authority to regulate campaigns for office, all of a sudden for that brief period they would become angels and they would pass nice, fair legislation that would keep them from being corrupt again in the future.

You know, I think the Founders’ idea — my idea — is quite the opposite. It is that you don’t trust these guys to rig the election system. I think most systems of tax financing of campaigns, in fact, tend to protect incumbents.

Kokai: Do you get the sense that some of the people who support this idea, they just don’t like seeing all of these campaign ads and say, “Oh, you know, if we had the government paying for this” — not thinking that it is us paying for it through our tax dollars — “that we just wouldn’t see all of these wacky campaign ads, and we could be done with it”?

Smith: I think that is definitely true. Certainly that is one of the appeals they make to average citizens. Many of them don’t like seeing a lot of ads. And it is kind of interesting because under the First Amendment you can’t try to restrict the amount of political speech. When this is kind of pointed out or when the reformers are pressed on the issue, they say, “Oh no, we are not trying to limit speech. We are not trying to limit the amount spent. We just want to get the corrupt special interests out of it.” And yet almost immediately after that they go back to complaining about the total amounts of money that are spent.

In fact, we really don’t spend very much money on politics ... based on what we spend for yogurt or potato chips or, you know, buying (or) renting videos. It is not very much money compared to many other countries. As a percentage of GDP, it is not that much money. ... This is a big country, and it is those communications that ... educate people about campaigns and elections.

Kokai: What are some of the

negative consequences of this taxpayer funding of elections that the average person just doesn’t think about?

Smith: Well, I mean, one thing the average person just doesn’t think about is that when we are talking about having the taxpayer fund the campaigns, that means we are talking about your tax dollars paying for negative ads attacking things that you believe in. We are talking about you paying for the campaigns of politicians you really dislike. ...

Many of the programs have been found to have anti-competitive effects over time. ... Campaigning becomes more and more complex. Things that people used to do, you can no longer do. You can no longer just get together with a bunch of neighbors, print up some yard signs or some leaflets or start an e-mail list and start campaigning. That violates the law. You can no longer just have the candidate drop by your house and have a little coffee klatch and pass the hat. All these laws help to professionalize politics. They

reward those who can hire the best lawyers, the best accountants, the best consultants. So I think they have negative effects in a lot of ways.

Kokai: I suspect that most people who support this think that if we have these voter-owned or taxpayer-funded elections, that you are going to end up with better people in office. What do we actually end up with?

Smith: [S]tudies in the two states that have had these elections for a decade — Arizona and Maine — have not shown much change. They have not shown much change in the type of people in the legislature, except there are fewer women.

They have not shown much change in the way those legislators behave once they are elected. You know, Republicans still vote pro-business. Democrats still vote pro-labor. ... So I think in the end people who think that this is going to make major changes in government are just setting themselves up for disappointment. CJ

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Classroom Teacher Group Gives N.C. Teachers Nonunion Option

By KAREN McMAHAN
Contributor

Historically, North Carolina classroom teachers have had only two statewide professional organizations providing advocacy, workplace protection, and professional development — the North Carolina Association of Educators (NCAE) and the Professional Educators of North Carolina (PENC).

But that changed recently when the Classroom Teachers Association of North Carolina partnered with the Association of American Educators, the nation's largest nonunion professional teacher association, to provide an alternative for teachers who feel the NCAE and PENC are too focused on issues completely unrelated to education.

While PENC started out as a more conservative alternative to NCAE, which is affiliated with the National Education Association, educators say that PENC's priorities have drifted over time, making the organization virtually indistinguishable from NCAE.

"Teachers are being told that PENC and teachers' unions, like the NCAE, are lobbying for their interests," said Judy Kidd, president of the CTANC, in a recent phone interview, "but they're not. Instead, these groups are pushing a federal or national agenda."

An example of misplaced priorities, Kidd said, is that the NEA endorsed gay marriage. "That's so off-base from the classroom and has nothing to do with education."

Teachers join professional organizations, Kidd explained, because they need a voice in education issues, but they don't want their dues going to causes they neither support nor feel advance the education profession and classroom instruction.

On its Web site (www.ctanc.net), the Classroom Teachers Association of North Carolina promotes itself as the organization "where teachers help teachers by improving education through an active voice." CTANC offers the same insurance coverage as other professional teacher organizations, but it does so at one-third the cost. Kidd explained that's an important benefit because teachers need employment rights and professional liability insurance to provide them with legal protection.

What makes the CTANC so important is "there's not another teacher professional organization in North Carolina that is setting itself apart from the NEA," Kidd said. "Our organiza-

tion's priorities are on education issues, particularly ones that affect North Carolina teachers and students."

"Unlike teachers' unions, we don't support any political agenda and our dues are not given to political action committees," Kidd added. "State teachers' unions give two-thirds of their dues to political action committees and to the national organization with which they are affiliated, like the NEA."

The NEA overwhelmingly supports Democratic candidates and Democratic Party issues. In the 2008 cycle, according to OpenSecrets.org, of the \$2,539,305 the NEA and its affiliates gave to support political candidates, 90 percent went to Democrats and only 9 percent to Republicans. Another \$2,314,900 went almost exclusively to Democratic political action committees.

A recent press release from the American Association of Educators, CTANC's national partner, criticized the NEA's pledge at its national convention of at least \$500,000

toward a "coalition of liberal groups calling for a universal health care system," saying it is further evidence of the NEA's "intent to focus on issues well outside of improving education in America."

"Most schools of education have initiated teachers into thinking the NEA and state unions are the only game in town, so one of our efforts will be to counter that trend by working with the schools of education to help students see they have another choice," said Kidd.

Policy and legislative trends over the past few years are giving teachers less time to teach, Kidd said, "and our organization has already played a key role in either defeating or postponing legislation in North Carolina that would reduce their productivity and classroom instruction time."

For example, this past legislative session, CTANC led opposition to an amendment to House Bill 804 that would have increased the number of personal education plans teachers had to write or update for students at risk of academic failure.

Another trend has been to lengthen the school year by changing the start and end dates, which hurts teachers because they have to recertify every five years.

"Often the only time teachers can take (certification) classes are in the summers," Kidd said. "But we were successful in getting the state legislature to add five teacher workdays to the school calendar in S. 191." CJ



COMMENTARY

The Charter School Question

Charter schools are public schools, funded by taxpayers and subject to many of the same accountability and regulatory requirements as district schools. What makes charter schools unique is that they operate under the supervision of a board of directors, rather than a school board. In addition, charter schools often employ innovative instructional methods and curricula and have greater flexibility in hiring and compensating personnel. Unlike district schools, when a charter school is not properly serving its families, it closes.

The performance of these public schools was the subject of a recent report by the Center for Research on Education Outcomes (CREDO) at Stanford University, which evaluated charter school performance in 15 states and the District of Columbia. Overall, nearly two-thirds of charter schools assessed in the study had math gains that were at or above their district school counterparts.

State-by-state analyses yielded wide variations in charter school performance. The CREDO evaluation of North Carolina's charter schools showed mixed results.

On the positive side, the researchers found that charter school students from families living below the poverty line did better in reading than their district public school peers. On the negative side, black charter school students did worse in math than their peers in district schools. On all other measures, the performance of North Carolina charter students was no different than their district school peers.

Opponents of charter schools argue that the study showed that charter schools are low-quality schools. Their response was predictable — demands for stronger government oversight of (or closing) charter schools and strict limitations on their expansion. Seldom do opponents recommend such draconian measures for district schools or even acknowledge the double standard. Apparently, all public schools are equal, but some public schools are more equal than others.

Interestingly, charter opponents ignored Stanford University researchers' compelling explanation for North Carolina's results. They

found evidence that "the presence of caps puts significant downward pressure on student results." Put simply, states that limit the number of charter schools had lower growth than those without caps. Moreover, when a state reaches the upper limit of its cap, as North Carolina has, the downward pressure increased. Should North Carolina eliminate its cap of 100 charter schools, student achievement could improve by .04 standard deviations, a rather significant lift.

Still, a handful of powerful and well-funded special interest groups, led by the North Carolina Association of Educators (NCAE), collude with the State Board of Education, Gov. Bev Perdue, and the Democratic majority in the General Assembly to block attempts to raise North Carolina's cap.

Perhaps surprisingly, President Obama and U.S. Secretary of Education Arne Duncan oppose arbitrary, state-imposed charter school caps.

Indeed, Duncan recently said, "States that do not have public charter laws or put artificial caps on the growth of charter schools will jeopardize their applications" for part of the Race to the Top Fund, a \$4.35 billion program targeting innovative public schools.

Perdue and her allies hope that the federal government will look the other way. They believe that North Carolina can acquire millions of dollars from the Race to the Top Fund through the strength of the state's other programs, like virtual schools. Your guess is as good as mine.

The real victims of the cap are the thousands of children who remain on charter school wait lists. Adding insult to injury, the state's political establishment does not reflect the views of most North Carolinians regarding the cap. A June 2008 poll by the Civitas Institute found that nearly two-thirds of likely voters surveyed want more charter schools in North Carolina. The citizens of our state want and deserve more public school options. Our elected officials must raise the cap on charter schools. CJ

Terry Stoops is an education policy analyst at the John Locke Foundation.



TERRY STOOPS

N.C.'s Charter School Cap Could Affect Education, Stimulus Grants

One of Obama's stimulus-related initiatives calls for more charters

BY COLLEEN CALVANI
Contributor

RALEIGH

When Gov. Beverly Perdue was elected last November, champions of school choice steeled themselves for a long four years. "I don't support removing the cap on charter schools," Perdue told *Carolina Journal* in December, reiterating her support for phasing out underperforming charter schools before new ones are brought online.

But now, seven months into Perdue's tenure, charter school supporters are finding new cause for hope.

In May, the state House passed House Bill 856, a move to modify charter school law by raising the cap on the number of charter schools by six, to no more than 106 schools statewide. The bill reads: "The State Board shall authorize no more than five charter schools per year in one local school administrative unit ... (with) priority (given) to applications for schools that will be located within local school administrative units that have no charter schools."

New hope for bill

At press time, the bill sat in committee in the Senate, where it was likely to die at the end of the session. Still, there had been reasons to believe the Senate could have reconsidered the issue. A study released in mid-June determined that charter school students in North Carolina "perform significantly better than their traditional public school peers" in reading, even though their math skills seem to lag significantly. Released by Stanford University's Center for Research on Education Outcomes, or CREDO, the study looked at thousands of charter schools across the country.

Some of the results may not be surprising to watchers of public education: As *CJ* reported in December, charter schools tend to be at the extremes of performance, while traditional public schools tend to cluster in the middle. Indeed, the CREDO study found that nationwide, 17 percent of charter schools reported academic gains that were significantly better than traditional public schools; 37 percent displayed gains that were worse than those in their counterparts.

In North Carolina, reading gains on state achievement tests outshined the poor gains in math. However, the significant differences in performance in reading and math between charter



school students and those in traditional public schools were mitigated over the next few years, as students settled into the charter schools. By their fourth year in charter schools, North Carolina students reported substantial gains in both math and reading.

Perhaps most interesting, however, is what the CREDO study found regarding the impact of state policy on students' individual performances. "States with caps limiting the number of charter schools reported significantly lower academic results than states without caps limiting charter growth," the study reported.

Cap trap

The issue of removing the cap is timely in another ways, as well. At least one of President Obama's stimulus-related education initiatives has come down on the side of unlimited charter schools, to a point. The Race to the Top Fund is part of what the Department of Education calls the "largest one-time investment in K-12 public school reform," with \$4.35 billion in grants up for grabs. North Carolina is seeking a large chunk of that money.

But as the details of the grants become clearer, North Carolina will have to come to terms with its heavy-handed charter school law, which may put it at a disadvantage compared with the nearly 15 other states without numeric limits on their charter schools. Obama's Secretary of Education Arne Duncan said in June that "states that ... put artificial caps on the growth of charter schools will jeopardize their application."

In January, a Blue Ribbon Commission on charter schools, an ad hoc committee made up of state Board of Education members and Office of Charter Schools director Jack Moyer, among others, recommended to the legislature that the number of charter schools be raised to 106. The idea of a cap remained, Moyer said.

"The cap is a huge debate, whether it should go up or shouldn't go up. My personal opinion is ... quality is more important than quantity," Moyer said, reflecting a sentiment Duncan

shared in June.

"I don't think ... you can say more is better. (Charter schools) need to be monitored, there are governance issues, accountability issues. All those things need to be looked at."

Accountability

Supporters of a cap, or at least those who aren't against having one, often cite charter schools' accountability as a significant obstacle to free market public education.

"I believe that charter schools have huge accountability (considerations). They've requested a charter saying they can make a difference in a specific way based upon a curriculum they've designed," Moyer said.

"I believe they should be accountable for what they say they will do. If they're not doing it as well as or better than the traditional public schools in the area, then there are really no reasons to put (funds) in the charter schools" instead of traditional public schools, he continued.

Still, without saying what limit he thinks is ideal, Moyer admitted that more charter schools would be better. "But again," he added, "we need to improve the schools that are here."

A political game

It's not all about accountability, says state Sen. Eddie Goodall, R-Union. Goodall is convinced the Democratic majority in the Senate will thwart any attempts to expand charter schools. Goodall has either introduced or co-sponsored a number of bills in the Senate related to charter schools this year, including one to remove the cap on the number of charter schools, to no avail.

This could explain why Goodall is cynical about the General Assembly's approach to education; he says it is all about "parties and power and loyalty to people who are giving (politicians) campaign contributions." He continued, "It doesn't look any better to me now than it did in 2005 when I arrived at the Senate."

But Goodall knows firsthand some of the challenges that face charter schools; he was a cofounder of a charter school in Union County. He urges people not to compare charter schools to traditional public schools, saying it's not a fair game.

"An individual charter school is competing against the world," not just the other public school down the road, he said.

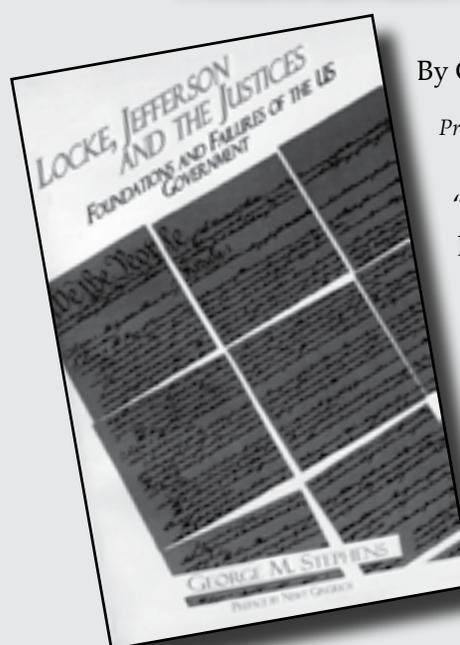
And that's the whole point. The unique nature of each school is "what makes the concept more dynamic," Goodall added.

Goodall sees no significant change on the horizon until Raleigh's party leadership changes, but says he remains hopeful that the number of charter schools will continue to increase incrementally. *CJ*

Locke, Jefferson and the Justices: Foundations and Failures of the U.S. Government

By George M. Stephens

Preface by Newt Gingrich



"This book is about American politics and law; it is also about the roots of the Contract with America. A logical place to find the intent of the Founders is in Locke, [and] Stephens makes a contribution to highlighting this."

Newt Gingrich
Former Speaker
U.S. House
of Representatives

Algora Publishing, New York (www.algora.com)

Survey Details Spending Gap Between Public, Private Education

Savings on salaries, overhead give indy schools an advantage

By HAL YOUNG
Contributor

RALEIGH

How much does it cost to educate a child?

If you look only at North Carolina's per pupil spending for public schools, the answer is \$9,370 per year. On the other hand, a groundbreaking survey by the John Locke Foundation found that tuition at private high schools averages \$5,916 a year, while middle-school and elementary grades cost even less. If scores on the SAT are an indication, nonpublic schools give a lot more bang for the buck than their public counterparts — especially since the costs are borne by parents and school donors rather than taxpayers.

The study, "Building A Case For School Choice: Initial Results From A Survey of North Carolina's Private Schools," was headed by JLF's education policy analyst, Terry Stoops. The survey of 117 private schools, both religious and independent, sought to gather data not available from either the state's Division of Non-Public Education or the two private school organizations, the N.C. Association of Independent Schools and the N.C. Christian Schools Association.

The wide disparity in teacher pay between public and private schools makes up much of the cost differential. The Department of Public Instruction reports the average public school

teacher pay is \$47,633 per year. The JLF study found that private school teachers averaged \$26,137, roughly 45 percent less.

Linda Nelson, the executive director of NCAIS, takes issue with the amount cited in the report. While North Carolina's independent schools likely pay less than the national average of \$49,524, she said, they still pay significantly more than \$26,137. Her organization does not collect data on individual schools, encouraging them instead to submit statistical information to the National Association of Independent Schools' "Stats-On-Line" program.

The real difference in pay is found at religious schools. Dr. Joe Haas, Nelson's counterpart at NCCSA, said the JLF estimate was probably too high for the Christian schools, "so there's actually a greater disparity than it appears." The lowest pay among the survey respondents was \$2,500 per year, and Haas said one school in his association requires teachers to provide their own funding like missionaries — "and they have no trouble finding teachers," he said.

The teachers in Christian schools, he said, "have a greater calling than just teaching the three R's, (also) developing character and morals to live by. That calling to the ministry side of it is what keeps people involved in Christian schools." He said it is very rare for church staff to receive additional sal-

ary for involvement in schools sponsored by their church.

There are other areas where the public schools have significant expenses the private schools don't, such as student transportation. The state's fleet of 14,063 buses is the most visible part of \$420.7 million spent annually on transportation, a cost of \$517 per pupil for the 54 percent of public school students who utilize it. While some independent schools offer student pickups — for an additional fee — Christian schools generally ended the practice long ago.

Nutrition is another area.

Some 810,000 students, or 56 percent, take part in public school nutrition programs — including breakfast and lunch — which are subsidized partially by the U.S. Department of Agriculture. Private schools of both types offer a variety of options depending on the school, but none of them receive tax dollars to keep their kitchens going.

Haas pointed out another significant cost — the administrative overhead of public school districts and DPI itself. The JLF survey found only 15 percent of responding schools were part of a larger administrative unit, such as a Catholic diocese, that might roughly correspond to the central office in a countywide school system. The average private school of 198 students typically had only eight nonteaching staff members, a ratio of less than one per 25 students; the public schools, in-

cluding DPI and the central offices in each local educational agency, employ one for every 16 students.

At the end of the process, the nonpublic schools' low costs offer evidence to counter the notion that greater funding is the answer to public education's difficulties. According to the College Board, publisher of the Advanced Placement and SAT exams, private schools in North Carolina are outperforming their publicly funded counterparts on college entrance tests. In 2008, students in the state's public schools averaged a combined score of 1482 on the three-part, 2400-point SAT; the exam is normed to place the national average close to 1500.

Students in the state's "religiously affiliated" schools, however, scored 1589 — 7.2 percent higher than their counterparts in public schools. Students at independent schools performed even better, averaging 1699 points, or 14.6 percent higher than the public school average.

College acceptance rates confirm this. The JLF study found that 90 percent of nonpublic school students were accepted into college. NCAIS's Nelson thinks that number is conservative. "I believe college acceptance rates at our member schools approach 100 percent," she said.

The question remaining is whether the state will, or should, take steps to fund this effective, lower-cost alternative. Nor is everyone in private education eager to receive taxpayer assistance if it were available. While 87.5 percent of private schools say they would support tuition vouchers in general, up to 84 percent would not enroll voucher-bearing students if additional state regulations were tied to the funding. *CJ*

The disparity in pay is greatest between private religious and public schools

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Millions required to maintain solvency

Times Getting Tough For Public-Employee Pensions

By SARAH OKESON
Contributor

CHARLOTTE

North Carolina has been among a handful of states to fund its pension program fully for public school teachers and state workers in recent years, but it will have to pay millions more this year and for years to come because of the recession and the downturn in financial markets.

To keep the Teachers' and State Employees' Retirement System fully funded, state Treasurer Janet Cowell asked the General Assembly to contribute an extra \$29 million in the new fiscal year and \$329 million more in the following year.

Projections show state and local agencies may have to boost the percentage of employee pay that they contribute to TSERS almost fivefold, from 3.36 percent in the 2008-09 fiscal year to 15.82 percent by 2015. The biggest previous state contribution was 10.03 percent in the 1980s.

"The good news is we lost less than almost everyone else," said Deputy State Treasurer Michael Williamson.

The pension fund's assets dropped last year by almost 20 percent to \$60 billion. In comparison, the median public pension fund loss was about 25 percent, according to Wilshire Associates, a California consulting firm.

North Carolina's fund, the ninth-largest public pension fund in the country, is invested in a mix of stocks, bonds, real estate, and other investments.

The soundness of a pension plan can be evaluated by looking at the value of its assets divided by the value of its liabilities. Pension analysts recommend a ratio of 80 percent or better.

The scores can vary depending on what method is used to value the assets and liabilities.

Public pensions traditionally look at the value of assets over time, usually five years, which allows investment losses and gains to be phased in when markets fluctuate. Standard & Poor's, which has named North Carolina's pension fund the second strongest in the nation for the past three years, has looked at the funding ratio this way. Under this actuarial method, North Carolina's funding ratio for 2008 is estimated at 100.

J.P. Aubry, a research associate at the Center for Retirement Research at Boston College, said using actuarial values lets states avoid "jerked around" the state budget from year to year based on market spikes.

"It protects plans from large fluctuations in contributions and protects taxpayers from large fluctuations," Aubry said.

But some economists say phasing in investment losses and gains over time, known as "smoothing," distorts the value of pension assets and liabilities. They say market-based values should be used. This method would put the funding ratio for North Carolina for 2008 at an estimated 82 percent, still considered a good score.

A study last year by the U.S. Government Accountability Office, using the actuarial method, found that 58 percent of 65 large public pension plans were at that 80-percent level or higher in 2006, a decline from 2000 when 90 percent of the plans met that target. *Forbes* magazine, also using actuarial values, estimated that only Oregon was above the 80-percent level for 2008, but it used a higher figure for market losses than North Carolina's pension plan actually suffered.

More than 820,000 people are covered by the pension fund, including teachers, state employees, firefighters, police officers, and other public workers.

Employees automatically contribute 6 percent of their pay to the pension system.

The state makes additional payments to the retirement portion of the pension plan if its actuarial funding falls below 100 percent.

For years the state's contributions have been modest because of high investment earnings. In 2003, the state didn't contribute at all, and in 2004 the state contributed an extra 0.22 percent of employee pay.

North Carolina's contribution has been low compared to public pensions in other states, reports the Public Fund Survey of 101 public retirement systems sponsored by the National Association of State Retirement Administrators and the National Council on Teacher Retirement.

The State Employees Association of North Carolina has criticized the state for contributing such a small



made the required contributions. "Our position has always been to make contributions that match what the actuary says is needed to fund the system," he said.

The investment patterns of state and local government pensions are similar to private pensions, but public pensions generally provide more generous benefits, according to the Center for Retirement Research. Both had about 70 percent of total assets invested in equities in 2006.

Another advantage public employees receive is that TSERS, like most public pensions, are defined-benefit plans. They guarantee set payments to retirees no matter how sound the pension's funding ratio may be.

By contrast, the vast majority of private retirement programs are defined-contribution plans, including 401(k)s, with benefits that vary based on how well workers' investments have performed in the marketplace.

North Carolina's pension plan is fairly conservative with about 41 percent of its investments in stocks and about 47 percent in bonds.

Real estate accounts for another 6 percent of the investments, and alternative investments such as limited partnerships account for about 6 percent of the portfolio.

Under state law, alternative investments are supposed to make up no more than 5 percent of the retirement system's assets.

That limit was exceeded because plunging stock market prices boosted the relative value of alternative investments in the portfolio. *CJ*

Teachers, state employees, firefighters, police officers, and other public workers are covered by N.C. pensions

percentage of pay. Ardis Watkins, the association's legislative affairs director, said the state had matched or exceeded the employee contribution until the administration of previous State Treasurer Richard Moore. She said the state pension plan didn't have a buffer against the economic downturn.

"They were digging a hole that the General Assembly was going to have to fill with general fund money," she said. "That was just a very bad planning decision."

But Williamson said the state has

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New Research From Pope Center Says Lack Of Incentives Prevents Efficiency in Higher Ed

BY GEORGE LEEF
Contributor

If a doctor is going to cure a disease, he first has to have a sound diagnosis. In that spirit, Robert E. Martin has written a paper for the Pope Center, "The Revenue-to-Cost Spiral in Higher Education," that analyzes the cost disease of the higher education system.

An emeritus professor of economics and longtime observer and analyst of higher education, Martin finds the cause of rising costs to be built into the incentives facing decisionmakers.

To put it bluntly, since college leaders have nothing to gain by controlling costs and improving efficiency, they don't.

In Martin's own words, there is "a perverse irony" in higher education: "Higher revenues induce higher costs, and those higher costs are used to justify future calls for more revenue."

One of the most discussed problems in the corporate world is the "principal/agent problem." That is the tendency of business managers to act in ways that are personally beneficial but harm the interests of the stockholders. That leads to some waste and inefficiency in business.

But the problem is much more severe, Martin shows, in higher education. While the "stakeholders" in a business usually can get accurate information about the spending of executives, it's far more difficult for the "stakeholders" in higher education (taxpayers, trustees, alumni) to obtain similar information about administrators.

The system for controlling and

disciplining the managers in higher education is very weak, so they can get away with a lot of self-interested behavior. A major example is that they spend money on things that do nothing to improve educational efficiency but aim at enhancing institutional reputation.

In the business world, there is a universal test for good management:

To achieve profit, managers search for ways of making the product or service better and for ways to produce it more efficiently by eliminating unnecessary costs. Most colleges and universities, however, are non-profit institutions. Educational quality is almost impossible to gauge, and cutting costs, far from benefiting administrators, can actually make them worse off.

That is because institutional reputation overwhelmingly depends on spending. It shouldn't, but it does. The more a college or university spends on its faculty, library, buildings, and amenities, the more prestigious it becomes in the beauty pageant known as the *U.S. News & World Report* annual rankings. Saving money and improving efficiency count for nothing in the *U.S. News* scheme.

Analyzing his situation rationally, therefore, a higher education leader will devote far more time to fundraising than to cost control. In fact, the

characteristic that nearly all college presidents have in common today is that they're accomplished fundraisers. They're good at persuading alumni to write big checks and at persuading legislators to appropriate more money for them. And they never forget about the most obvious source of additional revenue, tuition.

The problem is that almost every college and university is engaged in the same quest — more prestige. Because it's impossible for everyone to gain in prestige, the ongoing battle means that there is no resting point. However much a school is currently spending, that is just the baseline in its constant race to

"keep up with the Joneses."

Martin therefore concludes, "There is thus a neverending spiral effect between revenues and cost." Given the current structure of our non-profit higher education system, we have a black hole that cannot be filled.

Martin proceeds to draw out a couple of detrimental implications from his analysis.

One is that college reputation, the object of all that spending, is both hard to gain and hard to lose. That means that schools that have a strong reputation can coast. Money keeps pouring in even when an elite university allows its standards to slide and its curriculum to be dominated by narrow, trendy, and politicized courses.

Another implication is that colleges are extremely hard to reform. Businesses quickly shift resources from areas of low demand to areas of high demand, but colleges rarely do. Internal politics make it hard and painful to take resources from shrinking programs and give them to expanding ones. Administrators prefer to avoid controversy because it might damage reputation, and so they finance shifts in student preferences by raising additional revenue.

Martin advocates objective measures of productivity and cost control, greater financial transparency, and governance reform to weaken if not defeat the revenue-to-cost spiral.

In his view, change won't come from inside the education establishment. It will have to come from outside forces. *CJ*

George Leef is the director of research at the John W. Pope Center for Higher Education Policy in Raleigh (popecenter.org).

Campus Briefs

Community colleges are in the news because of a federal push to enroll more students in postsecondary education and because the weak economy is making community colleges, with their low tuition, especially attractive. In North Carolina, Erskine Bowles, president of the University of North Carolina, and Hannah Gage, chairman of the UNC Board of Governors, have stressed the importance of community colleges both as stand-alone providers of education and as part of a student's "seamless" transition to UNC four-year schools.

The community college system already plays a large role in North Carolina. More than 809,000 students were enrolled at the 58 colleges during the 2006-07 academic school year, 95 percent of whom were in-state residents. However, not all community colleges are ready to tackle increased enrollments or a more demanding student body.

The North Carolina Community College System's 20th annual report on community college performance, "2009 Critical Success Factors," released in early July, found that most schools are meeting suggested performance standards across five categories: student success, workforce development, "diverse populations' learning needs," resources, and technology. However, a closer look reveals that the bar is low.

For example, in order to meet the 80 percent standard for one of eight core indicators, "progress of basic skills students," most students simply can be "progressing" at the same skill level rather than completing a level or being moved to a higher level. In another category, "Curriculum Student Retention, Graduation & Transfer," the "standard" is set at 65 percent.

The other six core indicators of student success are: passing rates on licensure/certification exams, performance of college transfer students, passing rates in developmental courses, success rate of developmental students in subsequent college-level courses, student satisfaction, and client satisfaction with customized training (small business centers). The full report can be found at <http://www.ncccs.cc.nc.us/>. *CJ*

Jenna Ashley Robinson is the campus outreach coordinator for the John W. Pope Center for Higher Education Policy in Raleigh (popecenter.org).

Since colleges have nothing to gain by controlling costs and improving efficiency, they don't

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COMMENTARY

A Yellow Light for Online Education

By many accounts, online education is the wave of the future. For example, in June the Department of Education issued a laudatory study concluding that online education is more effective than face-to-face learning.

The enthusiasm may be justified, but my experience (and my friends' experience) taking online courses at UNC-Chapel Hill makes me wonder. In my view, the content is too easy, the online discussions are pretty much worthless, and the professors are rarely around.

I have taken two online courses, in criminology and Latin American geography, along with one "hybrid" course. (The hybrid was a math course that combined once-a-week class sessions with online reading and assignments.)

In all three courses the demands were well below the standards of other courses at Carolina. In the criminology course, assigned reading might reach 50 to 75 pages a week; many classroom courses require that for each day of class. Taking that course, I rarely even read the assigned pages.

My weekly routine was the following: I would begin working an hour or so before the assignment was due. I would read the questions, consult the textbook's index, quickly scan the bits I needed to read, and write down the applicable information. I would e-mail the answers to the professor a few minutes before the deadline and receive an A.

In a traditional class, professors demand much more of their students and help them absorb the material by asking questions, giving pop quizzes, and putting students into groups. In my experience with online classes, no similar tools existed, and students slacked off.

A distinctive feature of many online courses is the discussion forum. This is a virtual exchange in which a professor poses a question and the students respond by offering comments over the course of a week or so. But what started out in my Latin American geography course as a medium of thoughtful conversation quickly turned into a

soapbox for students. Mostly, they attacked U.S. "exploitation" of the region, the "perils of globalization," and the like. These conversations were hardly the constructive venues they were designed to be, especially since the professor didn't intervene.

It was apparently easy for online professors to shirk their responsibilities. A friend of mine, a public policy major, had a problem contacting the professor. The professor did call him once to approve the thesis of his term paper, but no other phone calls were returned,

no e-mails replied to, and no grades posted by the professor for the entire semester. He did not hear from the professor for months.

I had a similar experience with my hybrid course. I was a freshman, still dependent on the regimentation of high school and lacking the self-discipline essential for online courses. But compounding this prob-

lem was the fact that the face-to-face portion was almost nonexistent. We were supposed to meet in a class with the professor on Fridays. But Fridays are often holidays, and the professor canceled class a lot. I don't think we met more than 10 times—slightly more than half of the scheduled classes.

I did have favorable experiences with online learning — but not the way that most people would expect. My Economics 101 and Astronomy 101 were large, introductory classes — traditional courses that met several times per week. Yet the professors incorporated online quizzes, activities, and, periodically, even live discussions. That is, unlike my online courses, these classes actually had live chats with the professor.

Online education has the potential to enhance education. But my experience at UNC-Chapel Hill suggests that it has a long way to go before it finds its proper place in a quality education. CJ

David J. Koon is a research associate at the John W. Pope Center for Higher Education Policy in Raleigh (popecenter.org).



DAVID J.
KOON

For-Profit College Advocates Finding Their Model a Hard Sell

By JANE S. SHAW
Contributor

RALEIGH

When Mark Pelesh speaks to legislators on behalf of his for-profit education company, Corinthian Colleges, he is often surprised at their resistance to the underlying concept. Many are "skeptical if not completely hostile to the idea that for-profit and education belong in the same sentence," he said.

Speaking at a July workshop for state legislators in Atlanta, Pelesh sounded frustrated. He can't understand how influential people can fail to see that companies like his are fulfilling the mission of access that traditional schools claim to be following, but do not.

Pelesh is an executive vice president of Corinthian, a publicly traded company that has 85,000 students and reaches a racially diverse population of working adults, many of whom have low incomes. The students' completion rate is 60 to 70 percent, and the placement rate for its graduates is 80 percent. Community colleges, he said, have completion rates of about 25 percent.

Yet skeptics disparage Corinthian's role in helping these students improve their lives; they treat for-profit schools as if they are fraudulent diploma mills.

Pelesh was one of three speakers at a workshop at the annual meeting of ALEC (American Legislative Exchange Council). ALEC is a membership organization composed of conservative state legislators and private-sector businesses and nonprofits. At this session, moderated by Vicky Murray of the Pacific Research Institute, the speakers also included Randy Best of Higher Ed Holdings and economist Richard Vedder.

Their aim was to reduce the hostility to for-profits — and win some friends.

Pelesh gave an overview of Corinthian, one of the largest for-profit colleges in the country. (It also has campuses in Canada). Corinthian provides mostly short-term (one- to two-year) degrees in health care, trades, transportation, criminal justice, and business. Four percent of its programs are bachelor's degree programs.

Its schools (Everest Institute and

Everest College are the best-known brand names) are accredited by national organizations such as the Accrediting Council for Independent Schools and Colleges (ACISC). Because they started as accreditors of "commercial" programs, rather than traditional four-year colleges, these national accreditors lack the tony reputation held by regional accreditors, such as the Southern Association of Colleges and Universities (SACS). Yet Pelesh pointed out that national accreditors set mini-

state quantitative standards — the regional accreditors do not — and they have advisory committees composed of employers, who can judge the value of student learning.

Randy Best is a longtime entrepreneur who

heads Higher Ed Holdings (HEH). His company works primarily with traditional universities, including Lamar University and Arkansas State. Using online technology, the company provides the schools' reach to "high-need, underserved markets." Best says he is providing access to schools that would have turned down many of these students because they don't have enough space — or else would never have received an application from them.

As Best sees it, many state universities have abandoned their mission of outreach in favor of becoming as exclusive as possible; they view their self-erected barriers to education as "virtues." In addition, they have moved toward research at the expense of teaching.

Panelist Richard Vedder did not mince words during his speech. He lambasted traditional academia for stagnating while the for-profit sector flourishes. He accused nonprofit and state universities of being "highly inefficient" and "quasi-monopolists" and called their leadership "affluent, arrogant, and elitist."

Vedder is an economics professor at Ohio University and author of a book on higher education, *Going Broke by Degree*. He has championed for-profits in the past. To Vedder, the secret of for-profits' success is their "enormous incentives to provide services at the lowest possible cost for any given level of quality." CJ

Jane S. Shaw is the president of the John W. Pope Center for Higher Education Policy in Raleigh (popecenter.org).

Advocates of a
for-profit model
see traditional
higher education
as inefficient

Opinion

Ward Churchill Decision Raises Questions of Academic Integrity

The Ward Churchill case is the most talked-about case involving a college professor in many years. What it boils down to is whether a professor's academic freedom to say whatever he thinks trumps a university's interest in upholding standards of academic integrity.

In his recent decision denying Churchill's demand for reinstatement at the University of Colorado, Judge Larry Naves ruled that the university is entitled to keep someone it has found to be an academic fraud off its faculty. I believe that his decision is the appropriate resolution of the supposed conflict between academic freedom and academic integrity.

The facts of the case are pretty well known, but I'll state them briefly.

Churchill, head of Colorado's ethnic studies department, wrote an essay following the 9/11 attacks in which he made the incendiary claim that the people killed in the World Trade Center deserved their fate because they were "little Eichmanns"—a reference to Nazi officer Adolf Eichmann, who was responsible for sending many thousands of Jews to death camps.

Few people paid any attention to that essay until 2005, when Churchill was invited to speak at Hamilton Col-

lege. Curious about his background, some Hamilton conservatives uncovered the essay and began publicizing it. The college canceled his talk, but the wildfire over Churchill's comments was inextinguishable. Many Coloradans called for Churchill's immediate firing, but the university would not do so, stating that his essay was protected by academic freedom.

The university also announced, however, that it would investigate Churchill's academic record. If the investigation revealed academic misconduct, he could be penalized or fired for that.

Was that investigation just a "fishing expedition" looking for any possible grounds to fire the unpopular professor for speaking his mind? No. In fact, there had been allegations of plagiarism and fraud against Churchill years before, but the university had done nothing about them. Suddenly under intense pressure, it convened a panel of scholars to do what it should have done years before: thoroughly examine Churchill's record.

The panel reported numerous instances of plagiarism, fabrication, distortion—a pattern and practice of academic fraud. After much deliberation as to the proper course, the Board of Regents voted to fire Churchill in July 2007. He filed a lawsuit, seeking



to get his job as chairman of the university's ethnic studies department back.

The six-person jury found that his political views were a "substantial factor" in his firing,

which was therefore wrongful, but it awarded him only a dollar in damages. Judge Naves then had to decide on the remedy in the case. He refused to grant Churchill's demand that he be reinstated on the Colorado faculty, stating that it was up to the university to determine its standards and that a court shouldn't interfere by forcing it to accept a professor it had decided was unfit.

Churchill's lawyer has promised to appeal, but until we have an appellate court's opinion, what should we make of the case?

A major fault line in the case is whether the reason the university undertook its investigation made its action illegitimate. To Churchill defenders such as Cary Nelson, president of the American Association of University Professors (AAUP), the fact that the investigation was triggered by the hostility to his "little Eichmanns" essay meant that he was being punished for his opinions, thus an assault on academic freedom.

Nelson is suggesting an analogy to criminal law's "exclusionary rule," which prevents evidence obtained from an illegal search or seizure

from being introduced in court. The purpose of that rule is to dissuade police from trampling over the Fourth Amendment. There's much to be said for that, but only in the field of criminal law. Americans have a constitutional right not to have their homes searched without a warrant, but no constitutional right not to have their academic veracity investigated.

The mere fact that an investigation was undertaken with a questionable motive—disagreement with the professor's views—shouldn't confer immunity for academic misconduct.

In fact, there would be little investigation of a professor's academic integrity without the motivation that someone strongly disliked his views. Colorado paid no attention to complaints that Ward Churchill was committing plagiarism and misrepresenting the work of others until the storm over his "little Eichmanns" essay broke.

Universities should learn a lesson from the Churchill case: carefully investigate the work of candidates for faculty positions, and even more so those under consideration for tenure. Academic freedom is important, but a professor who is guilty of academic fraud should no more be allowed to hide behind it than the person who shouts "fire!" in a crowded theater can hide behind the First Amendment. *CJ*

George Leef is the director of research at the John W. Pope Center for Higher Education Policy in Raleigh (popecenter.org).



**GEORGE
LEEF**

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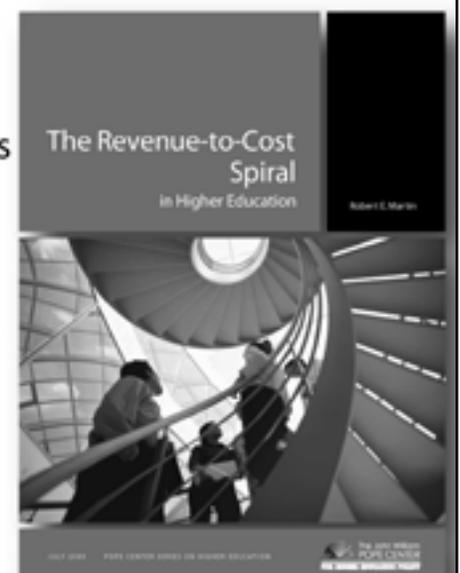
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Town and County

Charlotte overcharges

The city of Charlotte will repay building contractors \$2.6 million in business license taxes that it had collected in violation of state law. The refunds came only after a class-action lawsuit was filed against the city, reports *The Charlotte Observer*.

State law limits building contractors' privilege taxes to \$10 a year. Over the past few years, Charlotte has charged contractors much more. The city based its assessment on a percentage of gross receipts, up to a maximum of \$10,000 a year.

In January, Vision Ventures Construction filed a class-action suit against the city. The city decided to settle in May.

"We said, 'You know what, the tax office is wrong,'" said Senior Assistant City Attorney Bob Hagemann.

About 2,100 businesses will be getting refunds for excessive charges imposed by the city between July 2006 and July 2009.

Jameson Wells, Vision Ventures' attorney, said that while the Queen City isn't the only locality to overcharge contractors, the degree to which Charlotte has overcharged stands out. In other places, building contractors are billed around \$100 instead of the \$10 allowed by law.

Buncombe dispute

Though the General Assembly is considering annexation reform, that hasn't stopped municipalities from engaging in controversial plans to take in more land. One such case is in Buncombe County, reports the *Asheville Citizen-Times*.

The town of Woodfin is considering annexation of 3.5 square miles of land that's in Asheville's extraterritorial zoning jurisdiction. If approved, the annexation would increase Woodfin's land area by 38 percent. Asheville has no immediate plans to take in the area, but has adopted a resolution calling for the two municipalities to work out a growth plan.

Many residents don't want to be part of Asheville or Woodfin, though their preferences don't account for much under existing state law. The General Assembly earlier this year rejected an attempt to incorporate a portion of the land that Woodfin now wants to annex as a separate town.

"It's just a money grab," said Betty Jackson, who owns property in Woodfin's proposed annexation area. CJ

Beach Plan Bill Could Enhance Competition

By KAREN WELSH
Contributor

RALEIGH

North Carolina's woefully underfunded Beach Plan may get some relief if the state Senate doesn't stray far from the course laid out in House Bill 1305, which passed the House by an overwhelming margin in July.

North Carolina Insurance Commissioner Wayne Goodwin said the prospect of the new legislation has not only changed the minds of some companies that were planning on leaving, but several new companies are asking to do business in the state.

Eli Lehrer, a senior fellow at the Competitive Enterprise Institute in Washington, D.C., where he directs studies of insurance and credit markets, said the insurance game is always based on a gamble.

"There's no way to have total certainty," he said. "What the insurance industry is asking is absolutely impossible. It's all a matter of degrees. In general, it's a good bill. It's not perfect, but it will bring more competition to the state."

The plan, also known as the Coastal Insurance Wind Pool, reduces the maximum coverage to homeowners from \$1.5 million to \$750,000, adds surcharges, raises coastal insurance rates, and requires higher deductibles from homeowners of coastal properties should a big hurricane slam into the region. (The bill was before the Senate at press time.)

H.B. 1305 won't cure the problem, but it's a start, said Lehrer.

"The House bill is workable," he said. "It's a step in the right direction. There's a lot more that needs to be done. This is just a start."

Rick Zechini, director of government affairs for the North Carolina Association of Realtors, agrees.

"Right now, it's a really good bill," he said. "We are interested in how the bill affects the coastal, Piedmont, and mountain regions. There has to be a balance in insurance availability and insurance affordability. Trying to figure out how to meet both of those needs is tricky, and I think the bill has done a good job of striking a balance."

The beach plan was created 40 years ago to be the insurance of last resort for coastal property owners. But in 2003, the General Assembly expanded the plan by allowing it to provide cheaper policies for homeowners — coverage the insurance industry says is fiscally irresponsible.

The result: The plan faces a potential \$65 billion deficit should a catastrophic storm, such as Hurricane Katrina, pulverize the state's shoreline.

Before July, legislators largely ignored the problem, playing a game of political crapshoot with insurance companies and North Carolina homeowners.

At the time, they simply passed the bucks — billions of them — onto insurance writers in the state via assessments. If the Beach Plan ran out of money, the companies

simply would shift their losses to unwitting homeowners.

For many years, this was the price insurance companies had to pay to do business in North Carolina.

It wasn't until Farmer's Insurance decided last summer to exit North Carolina, leaving 40,000 policyholders to find replacement policies, that the government's bait-and-switch plan became apparent.

"The problem with the current system is that it's so haphazard," said Lynn Knauf, regional manager for the Property Casualty Insurers Association of America (PCI). "It's been a Catch-22. One big storm and it can be wiped out. It could cause an insurance company meltdown and a statewide insurance market crisis."

Goodwin inherited what he termed the "ticking time bomb" when he took office in January. He vowed during his campaign to defuse the problem and protect both consumers and the insurance industry.

He's kept his promise.

"Many people have come to realize we need to address this bill now," Goodwin said. "The longer we go, the more it's going to cost. In this economy we need to resolve it now for both the consumers and the industry."

"The bill provides not only certainty for the insurance industry's needs, but it also provides additional consumer protection," he added. "It is not a perfect bill, (but) it's a vast improvement over the status quo, and it's starting to move us back to the market of last resort as originally intended."

Knauf said the new legislation is long overdue.

"Finally North Carolina has gotten a wake-up call," she said. "The current system has been around 40 years, and it's finally moving in the right direction. We don't feel there is any more time to

wait. If a hurricane ever hits, we need to be ready."

Knauf said PCI would like to see some changes to the bill and have it pass through both chambers of the General Assembly this year.

Otherwise, the insurance industry will remain on the hook if a destructive storm hits the coast.

"There are things in the bill that are causing a lot of heartburn," she said. "The cap is already enormous compared to other hurricane-prone states. We're glad to see they are addressing the deductible, but we wish they would have taken it a little further."

Knauf warned the current bill won't right all the wrongs to insurance companies wanting to do business in North Carolina.

The version of H.B. 1305 passed by the House is "not going to entice insurance companies to the state," she said. "Right now, it's a Band-Aid. When insurance companies have certainty, then they can calculate how much it will cost to do business in the state."

Both Goodwin and Lehrer disagree, saying the effects of the legislation are being seen already in increased competition. CJ



New JLF Web Site Grades Government Transparency

By KAREN WELSH
Contributor

Public officials spout rhetoric about openness in government, but accountability is another matter.

Enter the John Locke Foundation Transparency Project Web site: www.nctransparency.com.

Launched on July 2, the site helps North Carolinians and other interested individuals keep tabs on local and state government entities by compiling useful information on government sites throughout the state. Agencies receive

a letter grade from A to F depending on 24 baseline criteria based on the information the government provides to the public online, said Joseph Coletti, fiscal and health care policy analyst at JLF.

The categories include bud-

gets, financial reports, contracts, capital projects, transportation improvement plans, revenue reports, health expenses, SAT and ACT scores, audits, and salaries of employees.

"More governments are starting to recognize the value of transparency," Coletti said. "They are becoming more open. They are beginning to put more things online."

In the weeks since its debut, newspapers, blogs, and agencies from around the country have taken notice.

T. Keung Hui, Wake County education reporter for *The News & Observer* in Raleigh, found the transparency site useful for a recent article.

"The Web site was good in laying out grades for all the different entities," he said. "I would potentially use it again."

Sandra Fabry, executive director of the Center for Fiscal Accountability in Washington, D.C., called the site a great resource.

"The JLF has surveyed all the information out there," she said. "And they are making it readily available to taxpayers through one portal."

Jason Kessler, a Johnston County school teacher and author of *The Jacksonian* (andrewjacksondem.com), an independent, nonpartisan political blog, said he doesn't always agree with JLF's perspective, but he has found value in the transparency project.

"It's very easy to navigate," he said. "I've used it to do a lot of research. It brings to light how government money is spent, and that's an

important thing in this economic climate."

Charles Davis, associate professor of journalism studies at Missouri School of Journalism and executive director of the National Freedom of Information Coalition, said he has found the JLF site to be a comprehensive tool in defining government transparency.

He said the methodology places nctransparency.com on the cutting edge of the transparency trend.

"I teach my students about transparency," Davis said. "I talk to government officials and people about transparency. I spend a lot of time on this

topic. In my estimation, the John Locke Foundation Transparency Project Web site is the most all-encompassing site. I don't know of one as broad as this."

Davis said the transparency project's ability to attach letter

grades to each government entity is a brilliant way to provide a realistic measurement of transparency that could push governments to compete among themselves to improve their scores.

"The Internet overcomes obstacles, and what used to be impossible isn't anymore," he said. "The Internet overcomes obstinacy among public officials. Getting an 'F' is embarrassing, but those failing marks often result in reform," Davis added. "Officials want to know how to make it better. They want to fix it."

Coletti said this has been true, as several government agencies have uploaded more information and then called JLF asking for a higher grade.

Despite the initial success, Coletti said there is room for improvement, including adding an RSS feed and connections to social media outlets such as Facebook and Twitter.

And some of the site's users offered their own suggestions. Hui said the site would have been more helpful if there had been more explanation about why an individual district, town, or agency earned the grade it received.

Fabry said it would be useful to have pertinent government contact information on each page.

Kessler said the site could be more simplified.

"The average Joe may not be able to really understand what's being reported by local governments," he said. "The categories may be difficult to understand." CJ

Observers say giving grades gives incentive to governments to do better

COMMENTARY

The Science Of the Arts

These are tough times for cultural groups. With people hurting financially, either laid off or worried about keeping their jobs, there's less disposable income to pay admission to attend high-end cultural events. People are also just less able to give to nonprofit arts groups.

That said, arts groups in Charlotte and Mecklenburg County are hurting more than most because of conscious decisions made by local government to use the arts as an economic development tool, a means of bringing tourists and businesses to the city and county.

The reason local government officials have a fondness for tourism projects is easy enough to understand: it brings in tax dollars and creates jobs without the need for local governments to provide much in the way of services.

Tourists come, spend money, and then go home. Tourists don't attend local schools. They generally don't make use of social services.

Tourism generally depends on creating rare or even unique attractions that people will travel some distance to experience. And Charlotte certainly is quite willing to use tax dollars to build attractions, with the NASCAR Hall of Fame and the National Whitewater Center being prime recent examples.

But this isn't about such run-of-the-mill, build-it-and-hope-they-come tourism schemes. Charlotte did something a bit different in 2006. It adopted a new plan for the arts in the city. An arts infrastructure master plan.

The plan was developed by the Arts & Science Council, a nonprofit agency that serves as an umbrella funding group for arts organizations in the city. But it's hardly independent. As a practical matter, it's not always been clear where the ASC ended and the human resource departments of Wachovia or Bank Of America began.

So this was certainly about satisfying the needs of the big banks then headquartered in Charlotte. Indeed, one of the new buildings in-

cluded was a 1,200-seat theater next to what would have been Wachovia's new headquarters tower.

The basic idea behind the infrastructure plan is that the city would build \$150 million worth of shiny new buildings for the arts.

The ASC made an explicit economic development argument to help justify the expenditure: The arts create jobs. And, even more bluntly, one of the main bullet points in a report by Americans for the Arts that the ASC uses to justify this bundle of arts projects is that "visitors spend more."

The money for the new spaces would in part come by shifting the costs of day-to-day facility upkeep from the city to the art group tenants.

If you presume that this construct requires strong (local) arts groups, you'd be right — and wrong. Certainly, more of the fiscal burden would fall upon them.

At the same time, it's not obvious that local arts groups were expected to fill the new buildings.

The main idea was to attract more national touring productions, which would lure more tourists and make Charlotte seem an acceptable place for bankers from San Francisco or Boston to spend part of their careers. To underscore the point, Charlotte's professional theater company went bust just as the bundle was being debated.

Then last year, the assumptions upon which this scheme was built collapsed. Wachovia got bought out. Bank of America started shedding jobs en masse. And various Charlotte arts groups had to start covering the operating costs of buildings whose purpose largely ceased to exist.

The Charlotte Observer is now conducting an ad hoc relief effort for the Charlotte Symphony Orchestra. That might not have been necessary if city leaders had focused on creating strong arts groups, not building buildings. CJ

Michael Lowrey is an associate editor of *Carolina Journal*.



MICHAEL LOWREY

Local Innovation Bulletin Board

L.A. Crime Map Lacking

New mapping technology has the potential to increase greatly public awareness of where crime happens. For that to happen, though, the information made available to the public has to be reliable, and that isn't happening in Los Angeles, reports the *Los Angeles Times*.

The newspaper discovered in July that the Los Angeles Police Department's online crime map didn't include nearly 40 percent of the crimes committed in the city between Jan. 1 and June 13. Among the incidents not included were 26 homicides, 137 rapes, and 10,766 robberies. The online undercount comes despite the crimes being counted in the LAPD's official statistics.

The undercount is the second significant problem with the mapping system. In April, a programming bug was discovered that caused thousands of incidents to be mapped to the wrong location online. As a result of the bad coding, the Los Angeles Civic Center was mistakenly being shown as highest crime location in the city.

The undercount and programming bugs can't be passed off as teething problems for an innovative new system; the LAPD first put the crime maps online in March 2006.

"The community is not being accurately informed," said Jason Insalaco, a blogger who noticed that only about half the crimes reported by the media as happening in his former neighborhood were showing up on the crime map.

"They are being misled and lulled into a false sense of security."

Insalaco originally wrote about the underreporting in April; the LAPD dismissed the claim until the *Times* reported the story.

Congestion pricing urged

About a third of U.S. CO2 emissions come from the transportation sector, with 60 percent of that being from personal automobiles. One way to reduce these emissions is to reduce the amount of time people spend stuck in traffic jams by adopting congestion pricing, suggest Iain Murray and H. Sterling Burnett in a new policy report for the National Center for Policy Analysis.

The Texas Transportation Institute estimates that congestion cost residents of the country's 437 urban areas \$78.2 billion in 2005 in wasted fuel and time. This includes some 2.9 billion gallons of fuel.

Congestion pricing is a market-based mechanism to discourage people from driving during peak times when traffic is especially bad. The idea is to charge higher fees for road usage during rush hours and lower tolls during off-peak periods.

"It is estimated that as many as 25 percent of drivers during rush hour are on discretionary trips," write Murray and Burnett.

"Congestion pricing should encourage drivers to shift their discretionary trips to off-peak periods."

Several major cities worldwide have used forms of congestion pricing successfully. New York City area bridges and tunnels saw a 7 percent reduction in travel times during the morning rush hour and a 4 percent reduction during the afternoon peak since variable tolls based upon the time of day have been adopted.

Coyotes on the move?

Several major professional sports teams across the country are struggling to attract fans while playing in publicly financed stadiums and arenas. One such team is the National Hockey League's Phoenix Coyotes, which recently filed for Chapter 11 bankruptcy protection. How the bankruptcy plays out, including whether the team is allowed to get out of its arena lease and relocate, could serve as a model for other floundering teams.

The Coyotes came to Phoenix in 1996 from Winnipeg, Manitoba. The relocation has not been a success, with the team having lost \$300 million since then. The team may lose another \$40 million this year, reports the *Phoenix Business Journal*.

Canadian businessman Jim Balsillie has bid \$213 million for the team and wants to move it to hockey-obsessed Hamilton, Ontario. Glendale, the Phoenix suburb where the team current plays its games, is working with the NHL on a counterproposal to keep the team in place. Included in it are substantial additional public subsidies for the franchise. No one is quite sure how much Glendale is offering; one estimate places the new public money as high as \$20 million per year.

"When taxpayers are footing the bill, they have a right to know where the money is going and what their elected officials are doing," says Goldwater Institute attorney Carrie Ann Sitren. The institute is suing the city to force it to disclose what it has offered the team. *CJ*

The Clock Doesn't Run Out On Parking Tickets, Court Says

By MICHAEL LOWREY
Associate Editor

RALEIGH

The N.C. Court of Appeals has overturned a lower court ruling that a one-year statute of limitations applied to collecting parking ticket fines.

Attorney Kevin Morse racked up 80 Greensboro parking tickets between March 2004 and February 2007. Morse didn't pay the tickets, and the city finally took him to small claims court to collect on Feb. 16, 2007. District Court Judge Margaret L. Sharpe threw the tickets out in January 2008, finding that a one-year statute of limitations applied.

Greensboro challenged the judge's determination before the state's second highest court. The Court of Appeals sided with the city, noting that the one-year limit applied only to fines considered to be punitive in nature. Under state law, parking tickets are a civil penalty.

In addition, the appeals court held that the doctrine of *nullum tempus occurrit regi* — "time does not run against the king" — applies, that there is no statute of limitations on governmental functions. This common law concept dates to medieval England, based on the view that the crown should not suffer because its officers failed to pursue legal claims.

The N.C. Supreme Court has held that the doctrine still applies. The state and its political subdivisions are exempted from statutes of limitation if the function is governmental and the law does not state that the statute of limitations applies to the government.

The Court of Appeals had held previously that parking fines and late fees are a governmental function, so it follows that collecting fines is also a governmental function.

Chapel Hill parking

The town of Chapel Hill has changed its parking policies, waiving the first parking ticket in its downtown area. The policy is an attempt to attract more customers downtown, reports the *Raleigh News & Observer*.

"Parking is an issue in Chapel Hill, and folks would let us know," said Meg McGurk, assistant director of the Chapel Hill Downtown Partnership. "We do get e-mails, phone calls, and letters about complaints."

The partnership was involved in a study on how to improve the situation, with the solution that the town eventually adopted being to waive issuing a parking ticket once per year per vehicle. Instead of a ticket, the vehicles would get a note saying "Thank you for visiting downtown Chapel Hill."

The policy applies only to on-street town parking meters and does not extend to the town's parking deck or UNC-Chapel Hill campus parking.

Chapel Hill

issued 2,504 parking tickets in 2008, from which it collected \$37,560. About a third of citations were issued to first-time offenders. The town estimates that it will forgo

\$12,394 in ticket revenue in the fiscal year that began July 1 because of its new ticketing policy.

Wilmington-area cop cameras

Police have long made use of surveillance cameras to monitor activities in a particular location. Now Wilmington and Wrightsville Beach are applying for federal grants to take the concept to a whole new level, reports the *Wilmington Star-News*.

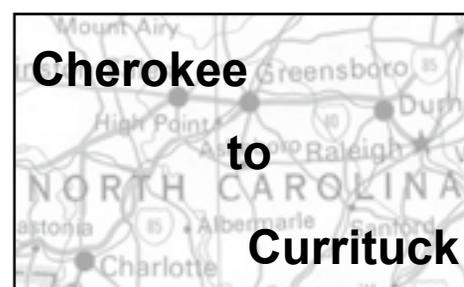
The cities are asking for federal funds to acquire cameras that would record automatically the license plate numbers of all vehicles passing over certain key bridges and at other locations. All the numbers would then be run through the National Crime Information Center, a database maintained by the FBI.

Police would be alerted if there are outstanding warrants associated with a license plate, the registered owner has a criminal history, or other criteria are met. The data also can be stored for analysis.

Jennifer Rudinger, executive director of the American Civil Liberties Union of North Carolina, told the newspaper that the system could be used to track ordinary citizens' movement.

"A lot of people might say it's Big Brother at work," said Wrightsville Beach Police Chief John Carey, who noted that recording license plate numbers is constitutional because no expectation of privacy exists.

The funds would come from the Department of Homeland Security. Communities would provide a 25 percent match for the federal funds should they be awarded grants and decide to accept. *CJ*



State Supreme Court Defends Whistleblowers in Gov't Agencies

By MICHAEL LOWREY
Associate Editor

RALEIGH

The North Carolina Supreme Court in June overturned a lower court ruling limiting the conduct protected by the state's Whistleblower Act. The ruling is significant. Had the Supreme Court let stand a December 2008 decision by the state Court of Appeals, state employees largely would have lost protections provided by the act — which protects state workers from retaliation by their employers when reporting misuse of public funds or other misconduct.

Jane Helm became the vice chancellor for business affairs at Appalachian State University in 1994. In 2004, Kenneth Peacock became the school's sixth chancellor.

According to Helm's complaint, in early May 2006 Peacock asked her to write a \$10,000 check to Michael Cash from the school's endowment fund for an option to purchase a 10.9-acre tract of land that Cash owned in Boone. Cash originally had approached university trustee James M. Deal Jr. in 2005 about the university acquiring the property. Cash and Deal, according to Helm, had a pre-existing business or personal relationship.

The option would have allowed the university to buy the property for \$475,000 on or before Sept. 1, 2006. If ASU didn't buy the land, Cash would keep the \$10,000.

Helm refused to issue a check for

the option, saying she knew the school wouldn't have the money to exercise it.

Peacock then asked her again, stating that it was OK for the university to take out the option because Cash needed the money to pay his mortgage. Helm again refused, because, as her complaint says, "paying \$10,000 to Mr. Cash under these circumstances would be an inappropriate use of state funds."

On June 2, 2006, Helm abstained from voting as the endowment committee of ASU's Board of Trustees approved the option.

Peacock met with Helm later that day. According to Helm, Peacock said that he had been uncomfortable working with her for the past year and a half. Helm asked how she could improve their working relationship; Peacock relayed that there was nothing she could do and that she was "not a team player." He then asked her to resign. Helm chose early retirement — she was 63 at the time — instead.

The university did not exercise the option to buy Cash's property.

But can she sue?

On May 31, 2007, Helm filed suit against the university and Peacock in his official capacity as ASU's chancellor, contending that she had been forced out in violation of the state's Whistleblower Act.

Superior Court Judge Mark Powell dismissed the case in August 2007, finding that even if the facts were as Helm alleged, her actions were not

protected by the Whistleblower Act.

Helm asked the Court of Appeals, the state's second highest court, to review Powell's ruling.

A three-judge panel of the appeals court sided with Powell. "Because the option was not 'worthless,' we cannot agree that its pursuit or purchase constituted a protected activity under the Whistleblower Act," Judge Rick Elmore wrote for the court.

North Carolina case law has established that options to buy or sell land have an inherent, intrinsic value regardless of the purchaser's ability to exercise the option, Elmore wrote. Even if the university did not anticipate having the funds to exercise the option, it still had value. In Elmore's view, Peacock was not misappropriating public funds, and Helm's actions were not protected by the Whistleblower Act.

Judge Ann Marie Calabria dissented from the majority, and Helm appealed.

The high court was not persuaded by Elmore's reasoning. Instead, without comment, it adopted Calabria's dissent.

"The (Court of Appeals) majority holds that as a matter of law the formation of an option contract, or the receipt of any value at all, precludes a finding that defendant Peacock violated state law, committed fraud, misappropriated state resources, committed gross mismanagement or a gross waste of public funds," Calabria wrote.

"However, contrary to the holding of the majority, a contract with a corresponding value to the state does not, by law, make that contract an appropriate use of state resources and public funds."

Calabria offered an analogy involving a hammer.

"If we were presented facts showing that the administrator had asked plaintiff to purchase a hammer from Michael Cash for \$10,000, instead of an option contract to purchase land, the majority's reasoning would still mandate a dismissal of plaintiff's Whistleblower Act claim.

In exchange for the State's \$10,000, the State would receive the legally enforceable right to possess a hammer that has some value, even though spending \$10,000 for a hammer would be a misappropriation of state

resources and a gross waste of public funds."

Likewise, Calabria wrote, though the option contract had some theoretical value, spending \$10,000 for an option that couldn't be exercised was a waste of state

funds.

"Furthermore, the majority reasoning is at odds with the intent of the Whistleblower Act, and in effect prohibits its application to employees reporting the mismanagement of public funds," Calabria wrote.

The case is *Helm v. Appalachian State University* (08-30). CJ



Helm refused to OK a check to the friend of a trustee who needed help with his mortgage

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From the Liberty Library

• As President Obama “sells” his trillion-dollar health care reform package to the American people, equivocates on Iran, and faces a rising unemployment rate, you can’t help but ask — what would the Founding Fathers do?

Author and historian Brion McClanahan knows what they would do: our Founding Fathers would look at President Obama’s actions and do the exact opposite to solve our problems and ensure America’s continued greatness.

In his new book, *The Politically Incorrect Guide to The Founding Fathers*, McClanahan proves that the Founders had a better understanding of today’s issues than our current president and Congress ever could.

Tracing the key issues of the day, McClanahan shows how the Founding Fathers dealt with them and also details the Founders’ deep faith, impeccable character, and visionary political ideals.

• Though economics as a discipline arose in Great Britain and France at the end of the 18th century, it has taken two centuries to reach the threshold of scientific rationality. Previously, intuition, opinions, and conviction enjoyed equal status in economic thought; theories were vague, often unverifiable. It is no wonder, then, that bad economic policies ravaged entire nations during the 20th century.

In *Economics Does Not Lie*, noted French journalist Guy Sorman examines the state of economic affairs today. Virtually everywhere, the public sector has given ground to privatization and market capitalism. The results have been breathtaking. Opening economies and promoting trade have helped reconstruct Eastern Europe after 1990 and lifted 800 million people out of poverty across the globe.

• Before 9/11, Americans didn’t think much about freedom or democracy in the Middle East. Now, as we are entangled in conflicts in Iraq and Afghanistan, the region’s political and social quandaries lie at the very core of our foreign policy objectives.

As Joshua Muravchik demonstrates in *The Next Founders*, there are heroic democrats and liberals in these lands of anti-democratic fanaticism, and the fight they are fighting is also our fight.

Muravchik introduces us to several anonymous patriots who have consecrated their lives to the birth of free societies in the Middle East. CJ

Movie review

Some ‘Public Enemies’ Viewers Might Feel Robbed

• “Public Enemies,” Directed by Michael Mann, Universal Pictures, Released July 1, 130 minutes.

By SAM A. HIEB
Contributor

GREENSBORO

I guess it’s just hard to succeed in putting a new spin on a legend, even if it is the likes of the infamous public enemy John Dillinger.

Michael Mann — who took a stab at recreating a legend when he produced “The Aviator,” comes back with “Public Enemies,” a look at Dillinger’s criminal exploits during the Great Depression. “Public Enemies” — the title evokes memories of the James Cagney classic “The Public Enemy” — was released at the start of the summer blockbuster season, greeted with anticipation by critics and audiences. Unfortunately, it falls short of blockbuster status. While there’s a fair amount of action, it just doesn’t blow you away.

There are a couple of similarities between “The Aviator” and “Public Enemies.” Obviously, they’re both period pieces, with major stars in the lead. In the earlier film, Leonardo DiCaprio — a great actor, but horribly miscast — starred as the eccentric millionaire Howard Hughes, while in the newer release Johnny Depp plays Dillinger with a steely deliberateness, roaming the screen in sartorial splendor and delivering his lines with an icy Midwestern twang.

Other than that, the movies are very different. Unlike “The Aviator,” “Public Enemies” is not a biopic. Dillinger sums up his life before crime in a mere two sentences as he woos lady friend Evelyn “Billie” Frechette (Marion Cotillard): “My mother died. My dad beat the hell out of me. I like baseball, movies, whiskey, good clothes, and pretty women.”

Based on Bryan Burrough’s book *Public Enemies: America’s Greatest Crime Wave and the Birth of the FBI, 1933-34*, the movie focuses exclusively on Dillinger’s notoriety as the FBI’s No. 1 “public enemy.” During that time, Dillinger robbed several banks, organized two prison breaks, and was responsible for the deaths of several police officers. Yet he was viewed by many as a latter-day Robin Hood because, as he explained to an innocent bystander during one heist, “I’m after the bank’s money, not your money.”

Hard to believe in the 21st-century era of counterterrorism, but in the 1930s the need for a federal crimefighting organization to combat the likes of Dillinger, Bonnie and Clyde, Pretty Boy Floyd, and Baby Face Nelson was a source of contention among lawmakers. One of the opening scenes shows a young J. Edgar Hoover (Billy Crudup) being grilled by a congressional committee about whether the need for the FBI outweighed the bureau’s costs to taxpayers. One lawmaker even questioned whether Hoover would spend more taxpayers’ money than the robbers were stealing.

But Hoover was a master of the media and knew exactly how to manipulate public opinion. Immediately after meeting with the congressional committee, he instructed his PR flacks to issue a press release with the proper spin, saying lawmakers were being soft on crime. Another scene shows Hoover in a heated discussion with lead investigator Melvin Purvis (Christian Bale) right before he calmly goes before newsreel cameras to tout his “Junior G-Men”

program.

Purvis was a controversial figure in his own right. His pursuit of Floyd — depicted early in the movie — was disputed for years after Purvis said he and his agents shot and killed Floyd with no help from local law enforcement. Purvis would later die from a self-inflicted gunshot wound to the head, though it never was stated officially whether the wound was an accident or suicide.

As the exploits of Dillinger and his gang grow bolder and bolder, Purvis and his agents engage them in a tense game of cat-and-mouse throughout the Midwest, with Dillinger temporarily escaping the heat (figuratively speaking) by fleeing to Miami and Tucson.

Eventually Dillinger strays back to the Midwest in pursuit of more loot, where law enforcement officers would eventually catch up with him. But Dillinger was the master of the jailbreak.

In the movie’s opening scene, we see Dillinger handcuffed in the back of a law enforcement vehicle, supposedly being transferred to the Indiana State Prison Farm. The transporting officers were disguised members of Dillinger’s gang, armed and ready for action.

Later he was captured and held in a supposedly escape-proof Indiana jail, but he broke out, threatening prison guards with a wooden gun. By driving the sheriff’s car across the Illinois border, however, Dillinger violated the National Motor Vehicle Theft Act, making him a federal criminal and formally justifying the FBI’s full-bore pursuit.

After hiding out in Michigan for a while and escaping yet another shootout with law enforcement officers, Dillinger’s weakness for Billie Frechette leads him back to Chicago.

His weakness for ladies engaging in the oldest profession, however, ultimately led to his downfall. Anna Sage (Branka Katic), madam of a brothel Dillinger frequented, contacted federal agents, offering Dillinger in exchange for favorable consideration of her immigration status. Sage was the infamous “lady in red,” who

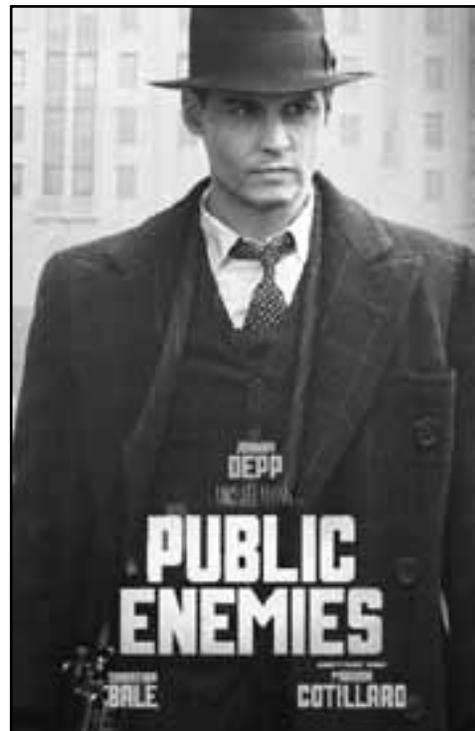
would help agents identify Dillinger as he walked out of Chicago’s Biograph Theater after watching — hard to imagine — a gangster movie. Agents pursued Dillinger down an alley before he was shot in the face and pronounced dead later that evening.

The one major difference between “The Aviator” and “Public Enemies” is the quality of direction. Martin Scorsese (“Goodfellas,” “The Departed”) directed the former, while Mann sat in the director’s chair for this project.

Mann’s directing isn’t awful — he does give the audience a feel for Depression-era America, just as they got a feel for Hughes’ heyday during the ‘30s and ‘40s. Depp, Bale, and Cotillard turn in solid performances. But the development of supporting characters is lacking — I often couldn’t tell which character was which.

Shootouts between Dillinger’s gang and law officers were confusing storms of gunfire. Plot twists were also hard to follow, so it was easier just to give up halfway through the movie and prepare for the final showdown.

All in all, “Public Enemies” is no better than average. Probably a decent DVD rental, but disappointing for those who threw down hard-earned dollars for a theater ticket. I guess sometimes a legend — no matter how notorious — can be revived only so many times. CJ



Science Czar's Writings Recall Ugly Legacy of Eugenics In N.C.

Repetition aids learning. Some things are worth repeating. We've heard those maxims before, and President Obama's director of the Office of Science and Technology, John Holdren — aka the Science Czar — has penned some disturbing words that have prompted me to repeat myself concerning the eugenics movement in 20th-century North Carolina.

In *Ecoscience* (1977), Holdren writes: "Several coercive proposals deserve discussion, mainly because some countries may ultimately have to resort to them unless current trends in birth rates are rapidly reversed by other means. Some involuntary measures could be less repressive or discriminatory, in fact, than some of the socioeconomic measures suggested." He then proceeds to explain that, in certain cases, compulsory sterilization is necessary.

Before Nazi Germany instituted forced sterilization programs, North

Carolina passed sterilization laws in 1919 and in 1929. Approximately 40 sterilizations were performed before the state Supreme Court ruled that the 1929 law was unconstitutional because it omitted an appeals process. In 1933, the Eugenics Board was created, and an appeals process was implemented.

The Eugenics Board's purpose had been to improve social welfare by preventing "undesirable" or "the feeble-minded" from having children and thereby reducing poverty and addiction and crime. During the 1960s, social workers acquired the authority to identify "undesirables" and recommend to a five-member state board that a person be sterilized.

North Carolina allowed sterilizations for three reasons: epilepsy, mental disease, and feeble-mindedness. (Feeble-mindedness was never defined concretely, and the term worked as a catchall category; approximately 71 percent of those sterilized were deemed feeble-minded.) North Carolina approved 90 percent of the petitions.

As states were decreasing the number of sterilizations in the mid-1900s, North Carolina's number increased dramatically. According to

some sources, from 1929 to 1974, the state had violated 7,600 persons. A substantial number of victims are still living. This was also the only state to include noninstitutionalized citizens. Thankfully, the state ended the Eugenics Board of North Carolina in 1974, and in 2003, the state took the eugenics law off the books.

Although consent forms were signed for all but a few sterilizations, sterilization victims, in many cases, were coerced or duped into signing the medical agreement papers or risked losing welfare benefits or being released from correctional institutions. The victims were also often misled about the treatment being reversible or sterilization's physical effects. Although more women (4,989) were sterilized than men (911), the history of the eugenics program was not inherently sexist.

One in six sterilizations left a man not only incapable of conceiving a child but also stopped him from having sexual relations.

The program was not inherently racist. During the 1930s and 1940s, approximately 79 percent of sterilizations were performed on whites (far more than half were women). More

white women (2,851) were victims than black women (2,098). And more white men (675) than black men (235). Approximately 40 Native Americans (only 1 man) were sterilized, too. After 1948, when African-Americans had greater access to welfare, the eugenics program targeted blacks more frequently, and during the 1960s it targeted black women. (During the 1960s, some women sought to be sterilized as a means to gain control over their reproductive abilities.)

Most ask about the roles race, class, and gender played in the eugenics movement. Not bad questions, yet they are secondary and overlook a valuable historical lesson. Instead, people should study the eugenics program as a whole and learn how it evolved.

Such an approach reveals that power enabled a few to act on their prejudices. It can and will allow a few to do so today — whatever their prejudices may be. Remember, feeble-mindedness was a catchall category. *CJ*

Dr. Troy Kickler is director of the North Carolina History Project (www.northcarolinahistory.org).



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KICKLER**

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Short Takes on Culture

What Can Brown Do For You?

• "Meet the Browns"
TBS
Created by Tyler Perry

Everyone has a way with words. Mr. Leroy Brown has his own unique, and often hilarious, way of manipulating the English language.

In the Tyler Perry sitcom "Meet the Browns," Leroy Brown inherits an old house in Atlanta from his father. Pop Brown has instructed Leroy to take care of the elderly, and Leroy said, "If you build they will come, just like in the Bible." Mr. Brown does just that.

When a local nursing home has a fire down the street from the Browns' home, he takes in a few residents and "Brown Meadows" officially opens. Three of Brown's guests are Miss Daisy, an aging actress who lives in the past; Colonel Cleophus Jackson, an ex-Marine; and Ms. Edna, who is still in touch with her sexuality.

In the words of Mr. Brown: "What can Brown do for you?" Brown Meadows even helps out the gorgeous and not-too-smart London Sheraton, a spoiled celebrity heiress who needs to do community service for a DUI conviction.

"Meet the Browns" is filled with a lot of laughter and even some life lessons. The residents at Mr. Brown's will make you enjoy life when you watch this sitcom. "Meet the Browns" airs at 9 p.m. Wednesdays on TBS.

— MICHAEL MOORE

• "Night at the Museum: Battle of the Smithsonian"
20th Century Fox
Produced by Shawn Levy

Have you ever plunked down \$9 to watch a newly released movie, and afterward had the insatiable urge to demand a refund from the hapless, bored teenager manning the ticket booth?

That's the feeling I got after watching "Night at the Museum: Battle of the Smithsonian," the sequel to the popular first film released in 2006.

The concept of exhibits coming to life at night was interesting enough when I watched the first movie a couple years ago, but the shtick had long lost its luster by the sequel.

Granted, it didn't help the film's chances that, like the first, it stars Ben Stiller, who I find uproariously unfunny. Nor did it help that one of the main characters was an annoying reincarnation of Amelia Earhart. (Was the first woman to fly

solo across the Atlantic really this much of a jerk?)

Aside from those objections, there is the absurdity factor. I'm more than willing to suspend disbelief for fantasy-style films, especially those geared toward a pre-adolescent audience. But "Night at the Museum" gets downright ridiculous — the worst offense being the brute question of how all the mess caused by these exhibits magically gets cleaned up come morning, leaving no one to suspect that anything has gone awry.

Younger kids will enjoy the movie, but anyone over 6 years old need not bother.

— DAVID N. BASS

• "Defiance"
Paramount Vantage
Directed by Edward Zwick

If Daniel Craig wanted to play counter to his James Bond persona, "Defiance" was about as good a vehicle as any he could have found.

Sure there's lots of shooting and killing, but in this case Craig, who plays Jewish underground hero Tuvia Bielski, is often a reluctant fighter and leader.

His brother Zus, played by Liev Schreiber, who steals the screen whenever he's on it, is the one who is aggressive, the one who wants to kill as many Nazis as possible. To that end he joins the Red Army and leaves Tuvia alone in charge of a few hundred refugees who are hiding in the Belarussian forest from Nazis bent on their extermination.

This is a true story, according to the publicity, and I won't presume to try to parse fiction from fact in director Edward Zwick's portrayal. I will say that it is a satisfying movie in that it's clear who the good guys are and who the bad guys are.

As I watched several hundred people living in forest camps that they built from scratch, I wondered how the Nazis could be so inept as to not be able to find them.

Well, it turns out they did find their first camp, but the group apparently survived the Nazis for the next couple of years in their second camp. I use "survived" advisedly since they jumped from the Nazi frying pan into the Soviet Communist fire.

"Defiance" is definitely worth a rental, if only to see Jews take up guns and decide to kill a bunch of Nazis rather than go meekly to the camps.

— JON HAM CJ

Book review

Taylor Pins the Economic Blame

• John B. Taylor, *Getting off Track: How Government Actions and Interventions Caused, Prolonged, and Worsened the Financial Crisis*, Palo Alto, Calif.: Hoover Institution Press, 76 pages, 2009.

BY CAITLIN MCLEAN
Contributor

RALEIGH

In response to the financial crisis that shook the world economy, U.S. government officials have proposed a plethora of interventions, most notably a \$787 billion stimulus package designed to kick-start the economy. Recently there has been talk of passing yet another stimulus bill. In his book *Getting off Track: How Government Actions and Interventions Caused, Prolonged, and Worsened the Financial Crisis*, John B. Taylor illustrates why this might not be terribly prudent, and in fact, could very well cause more harm than good.

In a book only slightly longer than its title, Taylor presents a step-by-step analysis of the first year and a half of the crisis, from August 2007 through the fall of 2008, deftly poking holes in the all-too-prevalent notion that government action is the panacea for economic woes. Policymakers "should rethink the idea that frequent and large government actions and interventions are the only answer to our current economic problems," Taylor warns.

Taylor, a Hoover Institution fellow and Stanford University economist, is best known for his work on monetary policy. In the early 1990s this work was formalized into what is now known as the "Taylor Rule," a guiding principle for when and how central banks should set short-term interest rates. The rule states that the Fed should raise interest rates when inflation increases and lower them when GDP declines, but perhaps more important, it specifically details how much interest rates should change. Perhaps not surprisingly, the rule features prominently in Taylor's book and is the basis for explaining what caused the financial crisis in the first place, as well as why there were no serious recessions from the early 1980s to 2007.

Termed the "Great Moderation," this two-decade-long period of relative economic stability is credited to an adherence to "a set of sound market principles with minimal deviations and interventions." Taylor contrasts this with

the period from 2001-2006, when he says the Fed's unusually low interest rates accelerated and exacerbated the housing boom and inevitable bust.

Taylor does not, however, lay blame for the financial crisis solely on the Fed. He further points out the folly behind government policies designed to increase homeownership.

Though well-intentioned, these policies increased the amount of lending (including interest-only and subprime mortgages) going to people who could not repay the loans. Many of these risky mortgages were bundled into securities, and the government encouraged agencies like Fannie Mae and Freddie Mac to buy them. This soon led to what Taylor refers to as the "Queen of Spades" problem, where these risky securities are like the unlucky queen in the game of Hearts: no one knows where they are, and no one wants to be stuck with them. It is this risk that is at the heart of the financial crisis.

Unfortunately, Taylor notes, most monetary officials assumed that the financial crisis was primarily a liquidity problem, and acted by aggressively slashing interest rates and injecting cash into the economy. Because these remedies did not address the underlying problem,

they did not produce the quick turnaround expected, but they did contribute to a sharp depreciation of the dollar and the danger of inflation.

These misguided attempts were compounded by the government's sporadic interference in the financial industry. Washington intervened with Bear Stearns and AIG, but not Lehman Brothers, and offered scant justification for this ambivalence. Haphazard government intervention only increased uncertainty within the financial industry and prolonged the crisis.

In other words, the free market cannot justifiably be held responsible for the continuing recession. In a typically straightforward manner, Taylor's title says it all: Government action threw the economy off track.

As the recession continues, and additional government intervention is demanded, Taylor's book has become increasingly salient. Policymakers, as well as anyone interested in knowing how the economy tanked, should spend an afternoon with this quick read.



Powell's *Emancipations* Shows Timelessness of Arguments for Liberty

• Jim Powell, *Greatest Emancipations: How the West Abolished Slavery*, New York: Palgrave Macmillan, 2008, 255 pages, \$26.95.

BY GEORGE LEEF
Contributor

From the beginning of human history until the 18th century, slavery was an accepted fact of life in most of the world. It hardly was ever questioned, and there were no mass movements calling for its abolition.

That finally changed as a result of the success of capitalism. Once people no longer had to labor unceasingly just to satisfy their basic needs, some turned their attention to the suffering of others — prisoners, children in orphanages, animals, and especially slaves. They began criticizing the cruelty of slavery and formed organizations dedicated to ending it.

Historian Jim Powell's latest book deals with the most momentous of all humanitarian movements, that to abolish slavery. He gives us a fascinating, detailed investigation of the anti-slavery campaigns in Britain, the United States, Brazil, Cuba, Haiti, and the Belgian Congo. We meet courageous heroes and unspeakable villains. Powell digs into the arguments, plans, and tactics of pro- and anti-slavery forces. A focal point of the book is the relative efficacy of nonviolent and violent methods of rooting out slavery, and probably the most controversial aspect of *Greatest Emancipations* will be Powell's conclusion that nonviolence is better.

The first problem that slavery's opponents faced was the absence of a clear reason why people should rise

up against it. Slavery had the approval of both law and religion. Slaveholders had persuaded many that economic prosperity depended on it, and some of their political allies pushed the idea that slavery was necessary for national defense. (One of the wonderful contributions of the book is how it illustrates the timelessness of arguments against liberty: today we often hear similar claims that the economy will deteriorate or the nation's defenses will crumble unless the government continues some authoritarian policy.)

So how could abolitionists get any traction with the deck stacked against them? They advanced the idea of universal human rights. That concept had begun to take hold in 17th-century England, and opponents of slavery logically extended it to cover the terrible violation of rights entailed by slavery. Great abolitionists such as Thomas Paine, William Wilberforce, and William Lloyd Garrison won people to their side by arguing that slavery was inconsistent with a coherent theo-

ry of individual rights, no matter what the church or the law might say.

Of the six historical cases Powell examines, half involved warfare (the U.S., Haiti, and Cuba), and half were mostly peaceful (England, Brazil, and the Congo). What the abolitionists accomplished in the latter instances

was to turn public opinion so strongly against slavery that support for it collapsed. Englishmen, Brazilians, and Belgians worked tirelessly and often at great personal risk to tell people the truth about slavery. Powell tells the stories of those heroic individuals with gusto.

We learn, for example, about Granville Sharp, a British lawyer who brought a lawsuit on behalf of a slave who had escaped but was recaptured. His suit led to a ruling in 1772 in which the judge stated that "no master was ever allowed here to take a slave by force to be sold abroad because he deserted from his service, or for any other reason whatever." That decision didn't end slavery — at the time there were about 15,000 slaves in England — but it set the law on a course that led to later decisions against the legality of owning slaves.

We learn about Joaquim Nabuco, a Brazilian who used his magnificent

speaking skills to rouse the people against slavery in his country. He organized and spoke at anti-slavery rallies around the country. When challenged by pro-slavery advocates who said that ending it would mean economic devastation, he replied, "I fear that the destruction of slavery would affect property as much as I fear that the ending of piracy would destroy commerce."

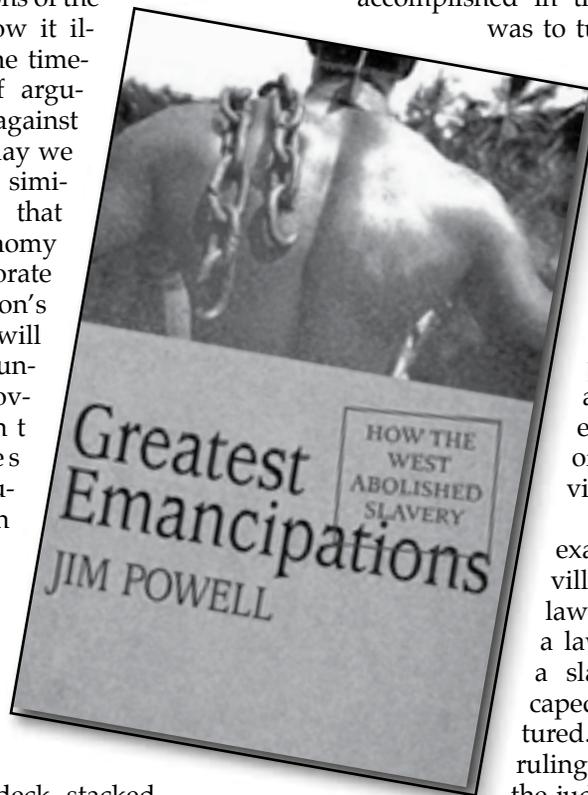
There are many more stories like those. They remind us that it is possible to stop evil laws and practices if individuals with the right convictions devote themselves to the cause.

Powell's examination of the abolitionist campaign in the United States and the Civil War will be of utmost interest to readers. Inevitably, we come to the question: Would it have been better if, instead of an enormously destructive war to end slavery, abolitionists had continued with their nonviolent methods?

Powell thinks so. He maintains that slavery would have ended in the southern states in time, without the enormous death and destruction of the Civil War and also without the later re-cremations against freed blacks that made the postwar era, as another writer puts it, "slavery by another name."

Slavery is based on violence, and Powell argues that it could not persist for long without assistance from government, such as our notorious Fugitive Slave Law. Instead of having the state employ violence to abolish slavery, Powell shows that the vastly better course was for abolitionists to work to get it to stop supporting slavery. CJ

George Leef (georgeleef@aol.com) is book review editor of *The Freeman*.



BOOKS AUTHORED BY JLF STAFFERS



By John Hood
President of the
John Locke Foundation

Selling the Dream Why Advertising is Good Business

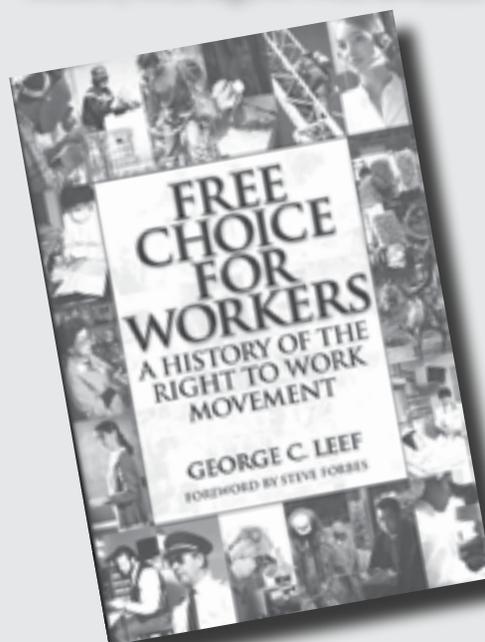


"[Selling the Dream] provides a fascinating look into the world of advertising and beyond ... Highly recommended."

Choice
April 2006

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Free Choice for Workers: A History of the Right to Work Movement



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COMMENTARY

The State and Alcoa's Lazarus Legislation

The controversy surrounding the relicensing of four hydroelectric dams owned by Alcoa Power Generating Inc. in Stanly County isn't over. In late July, Senate Bill 967 appeared dead when the House Committee on Water Resources and Infrastructure rejected a motion to advance the bill through the other relevant committees and then to the House floor.

But like Lazarus, the legislation — a top priority for Gov. Bev Perdue — could rise from the grave. S.B. 967 would enable a newly created Yadkin River Trust to operate the dams should the federal government refuse to give Alcoa a new 50-year license for the projects.

The debate so far has focused on property rights. Can or should the state of North Carolina take over a 94-year-old private business that never has received government subsidies and is the largest taxpayer in its home county? And how can the state afford to pay the \$500 million Alcoa says it will demand to surrender its hydropower operations?

These are important issues and worth serious consideration. Fewer have asked whether a takeover of the Alcoa project is the proper role of government. And what would taxpayers get in the bargain?

The trust would have more powers than a regulated utility (think Duke Energy or Piedmont Natural Gas) but would face much less oversight from the public.

A seven-member board of directors, appointed by the governor to four-year terms, would determine the policies of the trust. A simple majority (four votes) would ratify any decisions. The board would appoint an executive director, who could hire a staff. All employees would be exempt from the State Personnel Act. The executive director would execute the policies of the trust.

Proponents of the takeover have said the state would not be

in the hydroelectric business. This is not true. The trust could establish, finance, purchase, construct, operate and regulate hydroelectric facilities on the Yadkin River and manufacture, produce, and generate hydroelectric power using the waters of the Yadkin River.

Further, the trust could sell power to utilities both within and outside North Carolina. It also could set rates, participate in any organized power scales market, and charge and collect fees for the power that it generates. It could buy, build, and operate any facilities necessary to generate hydroelectric power. It would have the authority to seek enforcement of environmental laws and contributions for cleanup costs.

And to cap it all off, the trust and its activities would not be subject to review from the North Carolina Utilities Commission.

The trust could lease, purchase, acquire, own, hold, use, encumber, sell, transfer, or dispose of any

property; borrow money or apply for grants from public and private sources; and enter into agreements with the state, local governments, and other entities of North Carolina and other states.

S.B. 967 passed the Senate 44-4 in May, and at press time it was possible the House leadership could either restart the bill in committee or bypass committees entirely by bringing the bill directly to the floor for a vote before the General Assembly adjourned.

At stake is the Federal Energy Regulatory Commission's 50-year operating license, 38,000 acres along the Yadkin River worth \$176 million, and four hydroelectric stations, dams, and reservoirs that generate about \$8 million in annual profits. All owned, operated, and built by Alcoa.

Who will control them now — or better yet, who should? CJ

Becki Gray is vice president for outreach at the John Locke Foundation.



BECKI GRAY

The Yadkin River Trust would have substantial power and face minimal oversight



EDITORIAL

Welfare for Politicians On Hold, for Now

It's hard to find much good news from the recent session of the General Assembly. Taxes? Going up. Expanding charter schools and other types of educational choice? Maybe next year. Annexation reform that protects property owners from rapacious city governments? Not happening.

That said, we can report one positive development from the 2009 legislative session: The ceaseless campaign to expand public financing of political races has stalled, at least for now. Attempts by the General Assembly to force taxpayers to underwrite both municipal elections and additional Council of State campaigns foundered.

Legislators should have balked at expanding this taxpayer dole after a 2008 U.S. Supreme Court decision, *Davis v. FEC*, challenged the legality of public-financing schemes that impose spending caps on candidates.

The *Davis* decision struck down a provision in the McCain-Feingold law that punished congressional candidates who spent too much, saying those limits violate the First Amendment. It was widely reported at the time that the ruling placed at risk state-level public-financing regimes (including North Carolina's) that capped campaign spending.

Even so, "clean election" legislation in this year's session would have compounded the problem by moving more political campaigns onto shaky constitutional ground.

The big one, House Bill 120 — creating spending limits for and taxpayer financing of municipal elections — passed the state House and was moving through the Senate

before being shelved in early June. H.B. 120 was mothballed, in part, after a phone and e-mail campaign led by Americans for Prosperity bombarded undecided legislators with feedback from constituents.

Meantime, Senate Bill 966, bringing public financing to five additional Council of State offices, never got out of committee. (Currently, the races for state auditor, superintendent of public instruction, and insurance commissioner, along with appellate judicial campaigns, are publicly financed.)

The plot to provide welfare to more politicians remains on hold — until next session, anyway.

Campaign contributions and spending are communication — political speech protected by the First Amendment. People donate to political parties, campaigns, and issue groups so they can defend causes they support or attack ones they oppose.

H.B. 120 would have forced residents to underwrite the aspirations of both candidates they opposed and (even worse) contenders for public office who did not represent them.

For instance, if you lived in City Council District 1, your tax dollars might flow to candidates in City Council District 4 — not to mention every other jurisdiction in your town with a candidate participating in a misnamed "voter-owned" election.

Talk about taxation without representation.

The General Assembly isn't likely to scrap current public-financing laws — though it should. So the least we can ask legislators is to call a halt to new programs that stifle freedom of speech in the Tar Heel State. CJ

EDITORIALS

High-Speed Rail

No prospect of benefits outweighing costs

With the myriad problems facing North Carolina households, businesses, and governments, how can anyone seriously believe that the best use of up to \$1.3 billion in new infrastructure funds would be to speed up passenger rail service?

It sounds silly, but the Obama administration and like-minded North Carolina officials aren't kidding. They think the state should grab the money, upgrade some 400 miles of Amtrak service, and then spend another \$25 million or so in tax money every year to subsidize its operations.

The popular term "high-speed rail" doesn't accurately describe the proposed new service. When advocates talk about high-speed rail, they conjure up the prospect of bullet trains zooming from city to city, as in parts of Europe or Japan.

In reality, according to a new John Locke Foundation report by Randal O'Toole, the proposed Amtrak upgrades in North Carolina would increase the maximum speed to 110 mph, with average speeds likely to range between 55 and 75 mph.

In his paper, O'Toole lists the usual talking points in favor of higher-speed passenger rail — and proceeds to dismantle each one of them with cold, hard facts. For example:

- **Energy efficiency.** Rail travel is only slightly more efficient than air service and is about on par with automobiles, when measured correctly as a cost per passenger mile traveled. The new rail service will have negligible effects on energy use, carbon emissions, and air quality, according to any reasonable reading of the data.

- **Traffic congestion.** Even in the parts of Europe and Japan where true bullet trains run, rail has still declined as a share of total travel. Based on U.S. housing data and consumption patterns, it is unlikely the new service will divert much traffic from our highways. Indeed, O'Toole estimates that the average North Carolinian would use the new Amtrak service only once every 27 years.

- **Economic impact.** Obviously, spending billions of dollars to build or upgrade train tracks will employ people, including some North Carolinians. But borrowing or taxing to finance the rail system will cause even more people to lose their jobs, as resources are transferred from higher-value investment to Amtrak service.

The Perdue administration and the North Carolina Department of Transportation are going to pursue these "high-speed rail" dollars despite any real prospect of the benefits exceeding the costs. CJ

Theory vs. Practice

Alternative energy attractive in the abstract

It is said that "theory may raise your hopes, but practice raises your income." When it comes to so-called alternative energy, some of the theorists have managed to raise their incomes — but only by using political power to rip off taxpayers and ratepayers.

The theory behind the alternative-energy movement is that a combination of energy conservation, wind, solar, and other "green" technologies can quickly, reliably, and economically reduce consumption of fossil fuels.

Little of this makes any practical sense. Households and businesses already have a strong incentive to conserve: the price of energy. If they deem the costs of specific conservation projects as higher than the expected benefits, no government regulation can change the basic math involved. For large-scale conservation to occur, energy prices will have to rise and stay high for a long time. That's not something that conservation advo-

cates like to admit.

As for the energy alternatives themselves, expectations of their practicality range from fanciful to ludicrous. Roughly 90 percent of our energy comes from fossil fuels (mainly coal and natural gas). Even huge increases in solar and wind generation, for example, still would leave them as only tiny fractions of total power generation.

The only technology that can be scaled up immediately to replace fossil fuels is nuclear power, an environmentally friendly option that is nevertheless opposed by most self-styled friends of the environment.

But to expect huge increases in alternative-energy use is itself overly optimistic. In North Carolina, solar will never amount to much, while our wind resources are primarily in the mountains and off the coast — precisely the places where local residents, regulators, and lawmakers are unlikely to allow them to be located. CJ

COMMENTARY

New Territory For N.C. Governor

North Carolina is experiencing something unprecedented in modern times: an unpopular first-term governor.

I'd have worded the statement even more forcefully — that North Carolina hasn't had a truly unpopular governor in recent memory — if you were reading this column a couple of years ago. But then came the implosion of former Gov. Mike Easley. During 2007 and 2008, Easley's political fortunes took a massive turn for the worse, thanks to revelations about a mismanaged reform initiative in mental health, his frequent practice of making personal trips on the taxpayers' dime, his disdain for the state's public records laws, and his wife's costly overseas travel and "job" at North Carolina State University.



JOHN HOOD

By the end of his second term, Mike Easley was one of the least-popular governors in the United States. The putrid aroma emanating from the Governor's Mansion was a major handicap for the Democrat seeking to replace Easley, Beverly Perdue. That she just barely won against Republican Pat McCrory in one of the most pro-Democratic election cycles in decades can be attributed in large measure to the failures of her predecessor.

But here we are in midsummer of Perdue's first year, and her approval ratings are horrendous. The continuing Easley scandals are clearly a factor, but hardly the only one.

A recent poll for *Southern Political Report* showed Perdue at 36 percent job approval and 56 percent disapproval. The Democratic firm Public Policy Polling has been polling the question for months, and the July numbers were its worst ever: 25 percent approval, 55 percent disapproval.

During times of recession and unrest, the folks in charge tend to get blamed. But Perdue has several other problems, all partially of her own making.

First, in the public eye she remains tethered to a former administration that is increasingly viewed as ineffectual and corrupt. Whether she likes it or not, Perdue is a politi-

cian of the status quo. She exemplifies it, having been in positions of prominence in the legislature for more than two decades. She was present for many of the policy decisions that have now come back to haunt the political class in Raleigh.

Despite tough talk about the budget during her first couple of months, Perdue's basic message has been, "I've been around a long time, so trust me to make the right decision." But the public hears "She's been around a long time ..." and finishes the sentence with "so we shouldn't trust her."

While most Americans slogging their way through the economic downturn are disenfranchised with politicians, having been told for years that they lived in one of

the nation's economic pacesetters, North Carolinians are coming to understand that they actually reside in one of the nation's economic basket cases.

They feel misled and swindled. They're looking for someone to blame. Perdue is handy.

Finally, the governor hasn't looked much like a leader lately. Probably in deference to House and Senate leaders, Perdue essentially went dark for a couple of months while state lawmakers fashioned their budget proposals. Then the governor suddenly kicked off a series of rallies across the state to call for a \$1.5 billion tax increase — an unpopular policy for which she had not laid the political groundwork. The events seemed slapdash, and her rhetoric was inelegant and unpersuasive.

Perdue has plenty of time to rebuild a political base for re-election in 2012. The immediate problem for her is 2010, when voters will elect the General Assembly that will draw House and Senate districts for the next decade. Right now, the economy and Mike Easley are not the only threats to continued Democratic governance in Raleigh.

Beverly Perdue's unpopularity is, too. CJ

John Hood is president of the John Locke Foundation.

EDITORIAL BRIEFS

Modernize the USPS

The U.S. Postal Service may be the next too-big thing, says *The Washington Post*. The post office needs to reinvent itself for the 21st century, but that represents a significant challenge for the government-run enterprise.

The Postal Service is on pace to lose between \$6 billion and \$12 billion this fiscal year. It's also rapidly approaching its credit limit. A number of short-term solutions have been proposed to reduce losses, including delivering mail only five days a week and trimming pensions, but these require congressional approval.

Even should Congress go along, these reforms aren't enough. The post office's problems stem from a fundamental shift away from mail to newer forms of communication. And while the Postal Service has improved customer service and attracted more package shipping business, its basic business model is still based upon growing mail volume. That's just not likely to happen.

The USPS should look abroad, where increasingly privatized postal services are embracing the future, not the past.

"They are leaner and greener than the U.S. service because they work with, not against, the Internet," notes the Post.

For example, Switzerland's Swiss Post offers address-linked online mailboxes. Customers can look at scans of their mail online and then decide whether they want to have it delivered or discarded. This reduces costs and increases efficiency.

Public Pensions at Risk

By everyone's admission, public pensions are underfunded. Unfortunately, the accounting rules under which these plans operate vastly understate their long-term deficit making the likely future cost to taxpayers much higher, writes Andrew Biggs of the American Enterprise Institute in *The Wall Street Journal*.

State and local public pensions are underfunded by around \$310 billion, using conventional public-sector accounting methods. The figure is almost certainly much higher if the riskiness of the investments is given proper consideration.

"While corporate pension funds are required by law to use low, risk-adjusted discount rates to calculate the market value of their liabilities, public employee pensions are not," notes Biggs.

University of Chicago economists Robert Novy-Marx and Joshua Rauh estimated that the pensions' deficits are closer to \$2 trillion — and that was before last year's market collapse. That works out to about \$87,000 per person covered by the pensions.

"Market valuation makes the costs of these potential tax increases explicit, while the public pension administrators' approach, which obscures the possibility that the investment returns won't achieve their goals, leaves taxpayers in the dark," says Biggs. *CJ*



What Will Recovery Look Like?

There's increasing optimism the recession will be over by the end of the year. Trends in key economic factors as well as movements in leading indicators all point to that conclusion. If accurate, we all can let out a collective "hooray" when the happy news hits.

But before our excitement gets too high, it's worthwhile to try to answer two questions: What does the end of a recession mean, and what will the recovery from the recession look like?

A recession means the economy is getting smaller. Sales, revenues, and jobs all contract. Even prices often get smaller by falling. The end of a recession means this shrinkage stops and the economy starts expanding again.

Just because the recession is over, however, doesn't mean everything returns to where it was before the recession began. It just means we've started to dig ourselves out of the hole created by the downturn.

The second — and perhaps more important — question is how long will it take for us to recover what we lost during the recession? In other words, what will be the strength of the recovery?

Economists are already debating this question, and the consensus answer seems to be "a long time." Indeed, the Federal Reserve already has talked about a two-year recovery period before the economy gets back to where it was in 2007.

The main reason cited for the slow rebound is the overhang of debt still carried by households. The tremendous loss in wealth suffered by consumers (\$14 trillion, or 22 percent of the total) over the past two years is making them scramble to limit spending and pay off debt. Economists think this financial rebalancing won't stop with the end of the recession but will continue into the recovery. The result will be a sluggish recovery driven by stingy consumers.

The bottom line is that businesses will have a better year in 2010, but nothing that will set records. Consumers will still be careful and cautious.

Although more available, credit will continue to be tight compared to prerecession standards.

One wild card will be interest rates. If interest rates rise, either as a result of the Federal Reserve trying to head off inflation or from concerns over government debt levels, consumer spending could be stymied further.

Yet, just as a recession doesn't impact every person and every business equally, the recovery won't precede with an even hand. Traditionally, businesses that sell durable products where purchases can be postponed — homes, vehicles, furniture, computers — take the biggest "hit" during a recession. Then, when the recovery comes and buyers exercise their "pent-up demand," these businesses can see a sharp upturn in sales.

The current recession has had a devastating impact on the sale of durable goods — particularly homes and vehicles. Many think sales can't get worse than they are. Therefore, any recovery — modest as it might be — should improve the sales of these long-lasting products significantly.

High-end product sales and activities dependent on discretionary income also have been battered during the last two years. Therefore, look for major improvement in the cash register rings for such items as jewelry, business clothing, and even the gaming industry. In contrast, sales at discount stores, bargain restaurants, and auto repair shops will experience diminished gains as the economy improves.

The overriding conclusion is that businesses will have to work harder for their sales even as the economy moves into a new growth phase. The financial and psychological stress created by the recession will remain with us for awhile. The "buying spree" by consumers over the last two decades may not return for years, decades, or ever!

The economic pie will expand again, but slowly. Businesses, and states, will be competing more for bigger slices than for parts of a larger pie. If North Carolina wants to grow, it will have to redouble its efforts to present sensible tax and spending policies attractive to entrepreneurial activity. *CJ*

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MICHAEL WALDEN

A Bad Summer for Tobacco

Amid the federal government's efforts to extend its reach — in health care, the environment, and financial services — you might be forgiven for not noticing that in June President Obama signed "The Family Smoking Prevention and Tobacco Control Act" into law. The bill allows the Food and Drug Administration (FDA) to regulate the manufacturing, marketing, and sale of tobacco — essentially banning most flavored cigarettes, prohibiting the use of terms like "light," restricting advertising, and forcing the use of larger and more dramatic health warning labels. It represents the culmination of a decades-long effort by liberals to control the tobacco industry.



**ANDY
TAYLOR**

There was, of course, opposition from the North Carolina congressional delegation. Republican Sen. Richard Burr was a particularly vocal opponent. From Winston-Salem, the home of R.J. Reynolds, Burr has worked hard for more than a decade to improve the FDA's regulation of food and medical products and acceler-

ate the rate at which it allows drugs to be made available to the public. Burr contends the new law will erode the agency's ability to perform these critical tasks. Burr's colleague in the Senate, Democrat Kay Hagan, was a less-prominent opponent, but joined with him to sponsor alternative legislation. Together they pushed a bill that would have allowed regulation of tobacco by a new agency in the Department of Health and Human Services.

All the state's House Republicans voted against the bill, as did three Democrats: Larry Kissell, Mike McIntyre, and Heath Shuler. But the five other House Democrats from our state voted in favor, including Bob Etheridge, a former tobacco farmer and the representative of Harnett, Johnston, Nash, and much of Sampson counties — four of the biggest producers of the crop in the state. I'm also quite confident Hagan would have toed the Democrats' line if Senate Majority Leader Harry Reid, D-Nev., really had needed her support. Instead, she was allowed by her party to cast a vote that might provide useful cover the next time she faces the electorate.

The bill's passage and the emerging cleavage among North Carolina federal lawmakers is part of a bad summer for tobacco in this state. In May, Gov. Beverly Perdue signed into

law a ban on smoking in bars and restaurants that will take effect next year. As I write, Democrats in the General Assembly are mulling a significant rise in the state's cigarette tax — Perdue herself suggested an increase as large as \$1 a pack in the spring.

This is all very revealing. Tobacco once had significant influence in the state's politics. In 1964, it accounted for two-thirds of the state's total farm revenue, and its growing and manufacturing generated 11.3 percent of gross state product. It had friends and supporters in both parties and in all offices. The state's delegation fought in unison against mandatory health warning labels and the ban on television and radio advertising signed by President Richard Nixon in 1969.

Today, tobacco's political sway has diminished dramatically. Clearly it no longer can count on support from the state's Democrats. The big-time lobbyists at the General Assembly now represent government employees, lawyers, banks, utilities, pork producers, developers, and hospitals. The media and most politicians now frame the issue as one of protecting public health, rather than supporting agriculture and the economy. Tobacco can only play defense, engaging in a strategy to stave off regulation and

more taxation.

Much of tobacco's political decline is attributable to economic issues. It now generates only 15 percent of the state's farm revenue and about 3 percent of gross state product. It employs roughly 34,000 people, a loss of 10,000 from 1996 alone. Only about 3,000 farms retain licenses to grow flue-cured tobacco after the 2004 federal buyout legislation; there were 26,000 before.

Where does North Carolina tobacco go from here? It's in retreat, to be sure. But it is not dead, at least not as an economic force. Nearly half of U.S. tobacco was grown here in 2008, and Reynolds, Lorillard, and Philip Morris continue their contribution to the state's development. Tobacco will survive, as all businesses must in today's global economy, by broadening its horizons. In 2007, \$573 million of North Carolina tobacco was shipped abroad. The number is growing. There is stiff competition, especially from the Chinese, but so long as the dollar does not get too strong and foreigners maintain their taste for the golden leaf, Tar Heel tobacco will survive. *CJ*

Andy Taylor is Professor and Chair of Political Science in the School of Public and International Affairs at N.C. State University.

Is Obama's Honeymoon Over?

The old cliché, bad policy makes bad politics, is beginning to be borne out again with the drop in President Obama's poll numbers.

As I write this column, a new Gallup poll shows Obama's job approval rating at 56 percent — down from his honeymoon high of 66 percent.

A job approval rating of 56 percent at this early stage of his presidency is still respectable by historic standards, but the drop-off in key swing states with independents is cause for alarm among the White House's inner circle.

In the 2006 and 2008 election cycles, independents had virtually voted in lockstep with the Democratic Party, resulting in the Democrats seizing the majority in the House and Senate in 2006 and the White House in 2008.

Obama and his team mistakenly — in my view — misread his election

as a mandate to institute the largest peacetime expansion of government in the history of this country.

As unemployment numbers rise and the economy continues to falter, it is becoming increasingly clear that independents are rejecting the Obama administration's expansive and wildly expensive programs.

Reality is setting in, and Obama's soaring rhetoric is not matching the results around the country in communities and at the kitchen table.

Numerous polls reflect the growing skepticism of Obama's programs. The middle class sees no tangible results (jobs), understands that there is a huge downside to all this debt, and wonders out loud how the government can create jobs — or for that matter run General Motors.

Some weeks ago on the Fox News Channel, my friend Fred Barnes of *The Weekly Standard* called this trend "Obama's persuasion gap."

While Obama tends to remain popular personally, his policies of massive spending and excessive government control are not.

Some pundits and Democratic

operatives dismiss this shift of independents away from Obama as only temporary and point out that the president is not on the ballot in 2010.

However, Republicans and conservatives believe that there is an opportunity to contrast "Obamanomics" with their vision of smaller government, real tax cuts for families and businesses ... as well as affordable and portable health care vs. a single-payer, government-run insurance program.

In this 2010 election cycle, Republicans have an opportunity to make great gains in Congress. One only has to pay attention to the grassroots tax revolt that is becoming apparent at both the tea party events and the town hall meetings at which many congressmen and senators are experiencing uncomfortable interaction with their constituents.

Anger over "cap-and-trade" legislation and excessive government is beginning to manifest itself in congressional districts around this country.

And make no mistake about it. Democrat governors or candidates for governor who are unwilling to make hard choices in regard to discretionary spending could pay a heavy price this

fall and in 2010.

Two bellwether races to watch this fall are the New Jersey and Virginia governors' campaigns. In both cases, Republicans have the early lead.

In Virginia, Republican Bob McDonnell now leads state Sen. Creigh Deeds 49 percent to 43 percent, according to Public Policy Polling, a Democratic-leaning firm. Even more significant, McDonnell leads Deeds by 21 percentage points among independents. And in the latest Rasmussen Report's telephone survey from New Jersey, Republican Chris Christie leads incumbent Gov. John Corzine 46 percent to 39 percent.

Granted, this is only July, but one senses that the "persuasion gap" is real and that there is a hunger for tangible solutions to the economic problems that confront the country.

Soaring rhetoric by Obama and nationalizing the economy are not creating jobs, nor are they moving this country forward. *CJ*

Marc Rotterman is a Senior Fellow of the John Locke Foundation and served in the Reagan administration from 1981-1984.



**MARC
ROTTERMAN**

State Kicks Off Prisoner-Transfer Incentive Program (a *CJ* parody)

BY MACON LEARY
Travel Correspondent

RALEIGH

In order to entice more visitors to North Carolina, state officials awarded \$4.2 million in financial incentives to lure convicted swindler Bernie Madoff to the Federal Correctional Facility in Butner.

"Prison tourism is a growing and competitive business," Assistant Secretary for Tourism, Marketing, and Global Branding Lynn D. Minges said at a press conference held outside the prison when Madoff arrived July 14. She explained that famous prisoners usually have a lot of friends visit, and those travelers spend money on lodging, in restaurants, and in local gift shops.

The Prisoner-Transfer Incentive Program will be funded by a state grant to be paid directly to the prison and will be used to improve recreational amenities at the facility. The money came from the Correctional Tourism Development Fund administered by the North Carolina Department of Commerce.

Minges said a study commissioned by her department concluded that landing high-profile prisoners like Madoff will be a significant boost to the state and local economy. Last year she persuaded General Assembly leaders to reserve \$25 million for the program on a trial basis.

The existence of the Correctional Tourism Development Fund remained a secret to most legislators until the Madoff arrival. Even Gov. Bev Perdue told *Carolina Journal* she was unaware of it.

Minges defended the secrecy. "There is a lot of



Assistant Secretary for Tourism, Marketing, and Global Branding Lynn D. Minges announces the new Prisoner-Transfer Incentive Program at Butner. (CJ spoof photo)

competition for high-profile prisoners, and we don't want to show our cards to other states. But after landing Madoff, we knew the word would get out, so I decided to come clean with the public," she said.

While Minges would not disclose other celebrity convicts she might pursue, snitches told *CJ* that the state was eyeing "Hollywood Madam" Heidi Fleiss, now serving time in the federal pen in Dublin, Calif.

"Landing Heidi would be a real coup," Minges said. "The hotel, makeup, personal-training, fake-tanning, and catering budgets for Entertainment Tonight and TMZ.com alone could pay for a Gold's Gym and an Olympic-size pool at Butner."

Additional documents leaked to *CJ* outlined

plans to ask for a federal stimulus grant to build a new campus on Butner designated as an extra high-security "Supermax" facility, like the corrections center in Florence, Colo., where Oklahoma City bombing conspirator Terry Nichols now resides. Hosting a Supermax lockup would allow the state to lure convicts who have star appeal on true-crime television programs.

When asked by *CJ*, Minges confirmed the plans. "We don't have to bring in the really dangerous guys, like the Unabomber (Theodore Kaczynski), or the 1993 World Trade Center plotters, to have street cred with TV programmers," Minges said. "Give us shoe-bomber Richard Reid or that hippie goatherder kid ("American Taliban" John Walker Lindh). I have it on good authority that The Biography Channel will lease 10,000 square feet in studio space and move 12 full-time employees (to Butner) if we can get at least three headline-grabbing terrorists here."

Minges decided to move aggressively when incentives offered by Georgia recently brought two attractions to the Peach State: the forthcoming Miley Cyrus movie and convicted former state House Speaker Jim Black, who recently won a transfer from a federal prison in Pennsylvania to the facility in Jesup, Ga.

"Losing Jim Black to Georgia was a real eye-opener," Minges said. "They landed him in the Jesup prison with a \$1.2 million incentive package," she said. "Georgia officials caught us off guard. Jim Black's 150 best friends will spend at least \$3 million going to visit him within the next three months. That is travel money that should have stayed in North Carolina." CJ



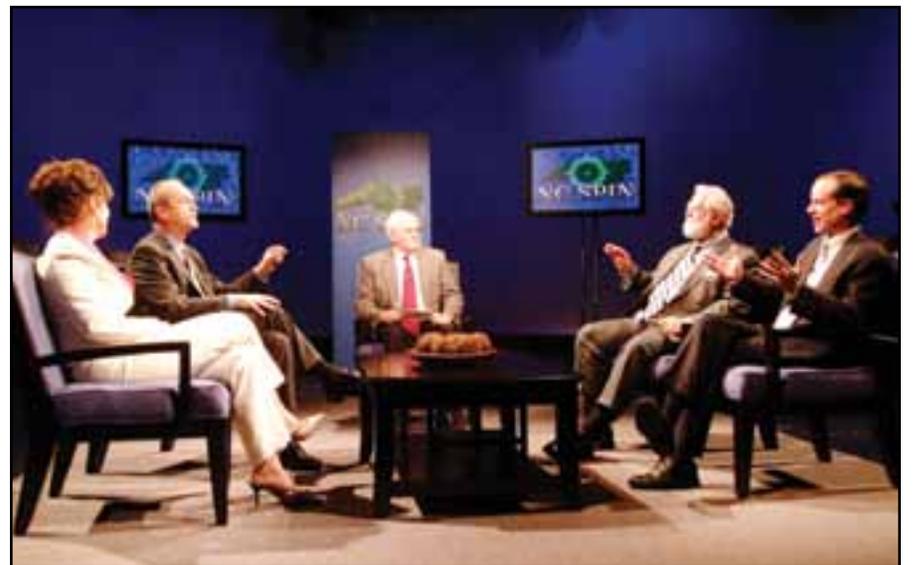
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