

Doctors say
red tape is
costing con-
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millions/2



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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Impact of Film Industry on N.C. Jobs Unclear

N.C. Commerce units give three different movie-job estimates

By DON CARRINGTON
Executive Editor

RALEIGH

At an early March meeting in Charlotte of the N.C. Governor's Conference on Tourism, state Commerce Secretary Sharon Decker admitted that a 25 percent refundable tax credit for the film industry, scheduled to expire in January, may be in trouble.

"It's an issue that is [of] great concern to us because the film industry is very important to North Carolina," Decker said, according to the *Charlotte Business Journal*. "It is an industry that has impacted both our cities and our small communities."

New legislation may be drafted to preserve incentives for filmmakers, but it's not clear how many jobs the film industry provides in North Carolina, and whether offering tax credits is a net economic benefit to the state or simply a drain on the treasury.



The EUE Screen Gems Studios in Wilmington are billed as the largest studio east of California. (Wilmington Regional Film Commission photo)

As for jobs, the numbers for 2013 are not available, but for calendar year 2012, at least three different numbers are claimed, depending on the unit of the Department of Commerce you ask: 792 jobs, 2,004 jobs, or 4,100 jobs.

In addition to the Commerce numbers, the N.C. Department of Revenue's annual reports claim that 36 film projects employed 17,730 people for the fiscal year ending June 30, 2012; and 39 film projects employed 14,002 people for the fiscal year ending June 30, 2011.

Department of Revenue spokesman Trevor Johnson told *Carolina Journal* that the 17,730 count came from a department total of the number of individual paychecks from all projects that claimed a tax credit.

The number of employees almost certainly is lower than the number of paychecks issued, because the count reflects payments made to individuals for each project that employed them. Each paycheck is considered a "job." For example, one member of a camera crew who received a paycheck for five

separate projects in a given year would count as five people employed.

In addition, a paid assignment lasting only one day — a movie extra, for example — would be counted as one employed person.

The 25 percent refundable tax credit for qualified production-related expenditures cost taxpayers \$77 million for tax year 2012.

One company that took advantage of the tax credit was Safe Haven Productions LLC, which was established to produce the movie "Safe Haven," released in 2013. Filming took place in Alleghany, Brunswick, New Hanover and Wake counties. The company reported to the Department of Revenue that it spent \$17,162,312 on goods and wages in North Carolina, so it was eligible for 25 percent of that amount — \$4,290,578 — as a refundable tax credit. The maximum credit per project is \$20 million, which was the credit issued to Iron Works Productions III, LLC for the movie "Iron Man 3 — Caged," also released in 2013.

It's not unusual for production companies to be created for the purpose of producing one film project and then shutting down soon after the film

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State Bar Reverses Course on Campaign Signs

Stanly County D.A. hopeful gets apology after CJ online report

By DAN WAY
Associate Editor

RALEIGH

Less than a week after Carolina Journal Online published a story exposing the North Carolina State Bar's potentially unconstitutional interference in the campaign of a Stanly County district attorney candidate, the agency issued an apology and rescinded its "informal staff opinion."

"I would like to sincerely thank you for your thorough report regard-



ing the issue raised over my campaign signs and am pleased to inform you that on March 19th at 9:30 p.m., the N.C. State Bar retracted their prior opinion," Jim Phillips, an attorney running for Stanly County district attorney, wrote in an email to *CJ*.

"I felt confident all along that my signs were appropriate, and feel even more confident that it was your article that made those in Raleigh make the appropriate conclusion," Phillips said.

Acting on a complaint, Nichole McLaughlin, the Bar's assistant ethics counsel, had demanded that Phillips change his campaign signs. She said they contained misleading language that could fool voters into believing he was the district attorney.

Phillips cited this passage from the letter he received from the State Bar announcing the dismissal of the complaint:

"The State Bar generally does not provide ethics advice in regard to political questions. We have, therefore, reconsidered the matter and believe that, in light of its political character, the issuance of an informal staff opinion was inappropriate.

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Doctors: Red Tape, Regulations Costing Millions

By DAN WAY
Associate Editor

RALEIGH

Taxpayers and patients unnecessarily pay hundreds of millions of dollars in medical costs because of arcane regulations, turf-protective hospitals, and a state regulatory agency that opposes reforms, say physicians seeking legislative relief to open more doctor-owned same-day surgery and diagnostic clinics.

"We've had a problem [for] many years" with the certificate-of-need laws that place restrictions on free-standing ambulatory surgery centers, Richard Bruch, chairman of the North Carolina Specialty Hospital Board, told a March 18 meeting of the Market Based Solutions and Elimination of Anti-Competitive Practices in Health Care Committee, a legislative task force.

Two bills were debated in last year's General Assembly following an 18-month legislative study of health reform. The bills never reached a full vote due to conflicts between doctors and hospitals about the need for competition. As a result, the task force was created.

Speaking as an individual, Bruch, an orthopedic surgeon who also is team physician for the Durham Bulls, said one of the biggest impediments to cost-saving innovations is a state agency on whose board he serves — the North Carolina State Health Coordinating Council.

He said the SHCC's goal appears to be "to protect the certificate-of-need holders and not allow for enough competition." The agency oversees the legal process required to obtain certificates of need. The CON law is intended to prevent unnecessary market duplication of equipment, facilities, and procedures that could drive up health care costs.

Existing hospitals most often have the resources and clout to obtain certificates of need, as they have the capacity to tolerate the high regulatory costs, long waiting times, paperwork, and, sometimes, lawsuits involved to navigate the CON process and build new facilities.

Having a certificate of need gives unfair advantages to hospitals to enhance off-site operations not available to new applicants, physicians say.

Medicare rules pay hospitals higher reimbursements for their small satellite centers than physician-owned surgery centers can receive, and hospitals vigorously oppose attempts by competing hospitals and single-specialty surgery and diagnostic centers to secure certificates of need.

The national trend is to move toward more ambulatory surgery centers, Bruch said, but when he asked the SHCC chairman if he foresees any change to allow more of the facilities in North Carolina, "The answer was one word. 'No.'"

Triangle Orthopaedic Associates, for which Bruch is a consultant, owns 13 physical therapy sites, seven urgent-care locations, and a specialty hospital in the Triangle. Blue Cross Blue Shield of North Carolina pays the physician-owned network 22 percent less for services than anywhere else in the Triangle, Bruch said. Patient surveys give the network a 97 percent satisfaction rate.

Sixty percent of the specialty hospital's caseload is Medicare, Medicaid, Tricare, or charity cases, Bruch said. The hospital also accepts charity patients from Lincoln Community Health Center, a federally funded community health center.

Despite that record, SHCC has said it will not allow more physician-owned specialty hospitals to open in North Carolina, Bruch said.

Bruch said Triangle Orthopaedic's ambulatory surgery centers "clearly exceeded" the annual state health plan's requirement that at least 7 percent of patients rely on Medicaid or charity care.

David French, a consultant representing the North

Carolina Orthopaedic Association, said data compiled by staff at the legislative Research Division verifies state government saved money when patients used ambulatory surgery centers.

The average cost per North Carolina Medicaid case at hospitals was \$493 in 2012, but only \$332 at ambulatory surgery centers, according to the data. The data further show the State Health Plan that insures government employees paid 63.54 percent more in 2012 than it would have paid at ambulatory surgery centers, French said.

The cumulative cost savings for Medicaid and the State Health Plan would range from \$70 million to \$147 million from 2014-20, depending on how many ambulatory surgery centers are added, French said. Those numbers do not take into account additional millions of dollars privately insured patients would save.

"Are we going to continue to perform cases at the highest-cost facility or encourage the shift to lower-cost facilities?" he asked committee members.

Nationally, there are 2.01 ambulatory surgery centers per 100,000 people compared to 1.17 in North Carolina, French said.

"If I'm a specialist and I'm getting out of medical school, would I want to go to a state that strictly limits my opportunity to own ambulatory surgery centers, or would I want to go to a state where I could have ownership?" French said.

State Rep. William Brisson, D-Bladen, said he worries that ambulatory surgery centers would cherry-pick the most lucrative surgical procedures, depriving struggling community hospitals in rural counties of a cash stream they need to survive while being required to provide less profitable services.

French said hospitals have many ways to offset money-losing services not available to privately owned, single-specialty clinics.

Most hospitals have nonprofit status and pay no property taxes, which saves hundreds of millions per year. They have access to money from foundations and grants, receive sales tax refunds of over \$300 million per year, and impose overhead charges to patients ranging from 400-1,000 percent for costs of treatments and drugs, he said.

French said legislation being advanced would bar creation of ambulatory surgery centers in counties with populations of less than 100,000 unless the local hospital approved a joint venture with them.

By entering a joint venture, "That community hospital would reverse the trend of patients leaving the county" to obtain greater health care choice at an urban hospital that then requires additional travel for follow-up care, French said. Those patients "are getting care in a fragmented way" under the current setup.

The North Carolina Radiological Society opposes changes to the certificate-of-need laws for imaging services.

David Levin, professor and chairman emeritus of the Department of Radiology at Thomas Jefferson University Hospital in Philadelphia, recited numerous studies to lawmakers indicating physician-owned centers allowing doctors to order tests for their own patients tend to order more imaging and treatment, a natural outgrowth of a need to pay for facilities and equipment, driving up health care costs.

But French countered that numerous hospitals, including a few in North Carolina, are being investigated by the U.S. Department of Justice for pressuring physicians to raise inpatient admissions and paying kickbacks to physicians.

The Federal Trade Commission and U.S. Justice Department have said that certificate-of-need laws create barriers to entry and expansion in the medical market, to the detriment of health care competition and consumers, French said. Hospital mergers and acquisitions of physician practices in North Carolina further restrict patient choice and limit competition, he said. CJ



Catawbas Say They'll Seek Land For Casinos in Both Carolinas

BY DAN WAY
Associate Editor

RALEIGH

While the Catawba Indian Nation awaits a ruling from the U.S. Department of the Interior on acquiring land in Cleveland County to build a \$340 million resort/casino, it is battling in South Carolina courts to create a similar gambling property on its border reservation in Rock Hill.

"If the tribe does have a positive ruling from the South Carolina Supreme Court, there are no plans to abandon our project in the state of North Carolina," said tribal spokeswoman Elizabeth Harris.

"The tribe maintains its right to take land into trust in North Carolina and will continue on the path of a world-class resort in Cleveland County," Harris said.

Attorneys for the tribe appeared in Columbia Jan. 22 before the South Carolina Supreme Court.

"The basis of the lawsuit is a 2005 law passed by the state called the Gambling Cruises Act," Harris said.

The act authorizes "any game of chance and includes, but is not limited to, slot machines, punchboards, video poker or blackjack machines, keno, roulette, craps, or any other gaming table-type gambling or poker, blackjack, or any other card gambling game," Harris said.

In 1993 the tribe entered into a settlement agreement with South Carolina and the federal government. In exchange for relinquishing historic claims to 144,000 acres of aboriginal lands lost through a broken treaty, the Catawbas, among other things, were granted an exclusive right "to have the same gaming as authorized within the

state," Harris said.

"Therefore, the tribe feels that we have the right to do the same on tribal lands" as is authorized by the state for gaming cruises from South Carolina ports, Harris said. "We felt that the tribe's lawyers did a wonderful job explaining these points to the Supreme Court."

Billy Wilkins, former chief judge of the U.S. Court of Appeals for the 4th District, who argued the case for the Catawbas before the Supreme Court, declined a request to comment on the case, though a spokesman said it was unclear when the justices would issue an opinion.

The 1993 federal agreement also allows the tribe to expand its 1,006-acre reservation in Rock Hill to between 3,600 and 4,200 acres in a designated federal service area that includes Cleveland and five other North Carolina border counties.

Land acquired under the agreement must be placed in federal trust. That is the process the Catawbas are pursuing with a 16-acre purchase in Kings Mountain on which the 220,000-square-foot casino, two hotels, retail, and entertainment outlets would be located.

"The Catawba Tribe's gaming application is still under review," said

Nedra Darling, a spokeswoman in the Office of Assistant Secretary of Indian Affairs in the Interior Department.

State Rep. Tim Moore, R-Cleveland, an attorney, is representing the Kings Mountain landowners who are in partnership with developers. He said his clients are not gambling companies.

"Nothing can be purchased formally until the Bureau of Indian Affairs approves ... the transfer of the

land" into federal trust, Moore said. "Our clients are working through that process with the Department of Interior."

The landowners are "very encouraged" about the federal process, Moore said. "Everything has proceeded according to schedule, and the comments I've heard thus

far have been very receptive." He has been doing title searches and preparing the deeds for the land transfer.

Much of the BIA's work is determining whether it must place the land in federal trust or if it has the discretion not to do so, Moore said.

"Our argument is that it's mandatory because it meets all of the criteria," is properly done, approved by the tribe, is within the defined service area, and the property is free and clean of liens, Moore said. "That is what I am in the process of arguing for my clients, not the policy or political arguments."

Despite opposition to the project from Gov. Pat McCrory, Attorney General Roy Cooper, Insurance Commissioner Wayne Goodwin, House Speaker Thom Tillis, Senate leader Phil Berger, and more than 100 lawmakers, Moore said his understanding is that such objections have little to do with Interior Department decision-making.

Conversely, he said, there's "a great deal of support for this project" among local governments and residents who view it as an economic development bonanza for a financially struggling area.

Harris said the Catawbas estimate the casino complex would create up to 4,000 permanent jobs and generate sorely needed revenue for a 2,900-member tribe whose average annual household income is about \$11,000 and who endure an unemployment rate of about 22 percent.

"My thoughts are that as more folks find out about the project there's less resistance and, in fact, support,"

Moore said. "The way that it's been spun up at times is that it's a South Carolina tribe coming in to take North Carolina money or something. [The Catawbas] have tribal members in both North and South Carolina. ... They were here long before a lot of our ancestors were."

Those who think they can end Indian gambling in North Carolina are destined to be disappointed, Moore said. "The horse is out of the barn on that. We have a casino already in North Carolina," he said. "In fact, the Cherokee are getting ready to build a second. ... The question is why would one federally recognized tribe be treated differently than another?"

John Rustin, president and executive director of the North Carolina Family Policy Council, said his organization opposes the casino project on social and economic grounds.

"While it may generate some revenue for the tribe, casinos, especially regional casinos like this, have been shown over and over again to cannibalize the local economy," Rustin said.

There are "substantial increases" in gambling addiction, bankruptcy, crime, domestic violence, child abuse, divorce, and suicide when there is a casino within that community, he said.

"We respect their opinion, but we would just hope they also would respect ours, and be open-minded about it, and look more at the economic impact than their personal feelings about gambling," Harris said. An entertainment establishment "can't be the ones that police everything for everybody" who may have a variety of personal weaknesses and social problems.

Rustin's opposition echoes South Carolina's position that the Catawbas' claim of a right to open a casino in that state due to the Gambling Cruises Act is specious because the gambling boats anchor only in South Carolina ports.

They go on so-called "cruises to nowhere" outside of state territorial waters before the games of chance begin, "therefore that casino-style gambling is not taking place within the state of South Carolina," Rustin said.

However, in their final petition to the Supreme Court, the Catawbas countered that the federal Johnson Act empowers the state of South Carolina "to regulate gambling within the federal territorial waters that lie beyond the state waters [the three-mile limit] just as the state has certain regulatory authority on the federal trust lands that constitute the Catawba Nation's reservation."

The state uses its power to regulate the use of certain gambling devices on the boats, and has a tax scheme "which permeates the gambling operations both during the cruise and on shore," the brief states. CJ



Cleveland County, on the South Carolina border, is the proposed location of the Catawba tribe's casino in North Carolina. (CJ graphic)

Keep Up With State Government

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State Briefs

Electricity customers in North Carolina could be forced to pick up the tab, if a utility company spends billions of dollars building a new power plant that never comes online. That's one of the key provisions of Construction Work in Progress, or CWIP, which was the subject of a March 20 public forum in Raleigh co-sponsored by the John Locke Foundation and NC WARN.

The event, titled "The Prospect of State-Mandated Consumer Financing of Power Plants," was the second of two forums on electricity issues bringing together JLF, a conservative nonprofit think tank, and NC WARN, an environmental nonprofit group.

JLF and NC WARN agreed to co-host forums publicizing two key concerns both groups share about North Carolina's electricity market. First, consumers would benefit if North Carolina state government would open up the electricity market to more competition. Second, CWIP harms consumers.

The N.C. General Assembly expanded potential use of CWIP in 2007 as part of legislation that dealt primarily with renewable energy. While forcing electric utility companies to provide a certain portion of their electricity from renewable sources, lawmakers also agreed with the companies' request to change the state's CWIP rules.

Prior to the 2007 changes, a company could seek approval for CWIP charges from the N.C. Utilities Commission under limited circumstances. After the changes, the utility could charge customers for CWIP if it could argue successfully to the Utilities Commission that the construction-related charges were "reasonable and prudent."

Under CWIP, utility companies can pass along to customers the costs of building new power plants as the companies incur the costs. If the new plants are never finished, customers still bear the construction costs. Risks associated with power-plant construction shift from utility company shareholders to electricity customers.

Utility companies defend CWIP. They say it keeps ratepayers from being hit by large rate increases when completed power plants come online.

CWIP and the absence of competitive markets both lead to higher prices for all electricity consumers, but the impact hits low- and moderate-income residential users especially hard. Energy costs eat up a larger portion of those customers' paychecks. CJ

Critics Call Medicaid Reform 'HMOs On Steroids'

By DAN WAY
Associate Editor

RALEIGH

Accountable care organizations that are the cornerstone of the state's Medicaid reform plan are "HMOs on steroids," one national expert says, and they face certain opposition in the state Senate.

"I just don't think the plan itself is bold enough," state Sen. Louis Pate, R-Wayne, co-chairman of the Senate Appropriations Committee on Health and Human Services, said March 17 after the state Department of Health and Human Services submitted its reform proposal to the General Assembly.

"We can't do anything in the short session that really approaches what we need to do," said Pate.

Pate was a member of the Medicaid Reform Advisory Group that met for several months with DHHS staff and outside consultants. The panel sought a Medicaid overhaul to curb out-of-control spending, make budgeting more predictable, and correct longstanding administrative chaos in the agency.

Multiple local ACOs

The McCrory administration wants to have multiple local ACOs, each serving a minimum of 5,000 patients, across the state. Medicaid has 1.8 million enrollees and a total federal-state budget of \$13 billion annually.

Each ACO would have primary care physicians, multiple providers from various disciplines, its own budget, a patient base assigned by the state, shared risk in budget overruns, and split savings with the state.

"For the first time ever ... the state will be paying for value, not simply for volume" of health services, said Bob Atlas, the DHHS consultant who steered the reform initiative.

"The Medicaid budget becomes significantly more predictable for the legislature. By having providers share in the up side and the down side, variances from the budget, should they occur, will partly belong to the provider community," Atlas said. "This reduces volatility in the state's budget."

According to the DHHS proposal submitted to the General Assembly, the new Medicaid delivery model is estimated to save the state \$326 million over a five-year period from 2015-20. Combined savings from state and federal sources would be \$987 million over that period.

"Even with the savings that this current plan projects to have, we are not going to get budget predictability," Pate said.

'Lose money for years to come'

"It looks to me like, based on the math I see, we're going to be losing money for years to come. That keeps us from raising teacher salaries and all of these other things that are absolutely necessary to keep our state government going," Pate said. "We need to go back and see if we can't improve the plan that's presented."

In a letter to DHHS Secretary Aldona Wos, Pate framed his objections to the new plan around a nearly \$2 billion budget shortfall over the past four years in Medicaid.

With the legislative Fiscal Research Division expecting a future 5.8 percent national growth rate in Medicaid spending, the state's Medicaid appropriation would grow by an additional \$1 billion over the next five years, Pate wrote. That figure would drop to only \$840 million after implementing the ACO initiative, Pate said.

If an ACO saves money, it would receive bonus re-

wards — similar to a refund — capped at 15 percent of its annual budget.

An ACO's financial penalties for cost overruns are capped at very low levels, requiring state taxpayers, rather than providers, to make up the difference.

Under the proposed plan, an ACO would pay a penalty of no more than 10 percent of its budget, and it wouldn't reach that level until 2020. In the first year the penalty would be limited to 5 percent of the ACO's budget. The cap would rise to 7.5 percent in years two through four.

Complicated 'discounts'

But even that does not reflect a complicated array of "discounts" built into the formula that offset the amount of the penalties the ACO must pay. ACOs that take advantage of discounts for meeting targets of patient care end up imposing even higher costs on taxpayers.

Pate said the cost-sharing formula is too lax.

"We've got to get the providers engaged in trying to save money," and that could be accomplished by placing more accountability on them, he said. He stopped short of saying he favors full capitation, in which an ACO would have to pay all its losses but also keep all savings.

DHHS says it will implement the monitoring and evaluation system tied to ACOs with existing staff and resources.

Piling another layer of bureaucracy on a department that Gov. McCrory has said already may be "too large to succeed" remains a concern, Pate said.

"We've been criticized for not taking on more Medicaid patients. We can't take care of the ones we've got," he said.

ACOs are a new delivery method and gained popularity after the Obama administration urged their use in the Medicare program.

'HMOs on steroids'

"There are those who refer to Accountable Care Organizations as HMOs on steroids," said Devon Herrick, a health economist at the Dallas-based National Center for Policy Analysis.

"It hasn't even been successfully tried in Medicare populations to any degree, much less Medicaid populations," Herrick said.

"If they're really serious, the legislature would only have a couple of pilot projects" that enroll patient populations of similar size and health status, then compare them, he said. "You would compare which is less expensive, and then you would roll out the one that actually works."

About three-quarters of the nation's Medicaid patients are in managed care networks, a competitive bidding delivery system in which costs usually are fully capitated, meaning the plan managers assume all risk and receive all savings.

Since most states are moving in that direction, Herrick expressed surprise that North Carolina backed off an earlier plan to use the managed care model.

Most ACOs are organized and driven by hospitals, Herrick said. The North Carolina Hospital Association has eagerly embraced North Carolina's plan.

"If the provider community is embracing accountable care, it sounds to me like they know they can manipulate that system more than if they have to compete on price under full capitation," Herrick said.

"The political process sometimes helps you to avoid these hard choices," Herrick said. "It sounds to me like it's probably a giveaway to the hospitals." CJ



Lawmakers Hear Dire Assessments of Obamacare's Impacts

By DAN WAY
Associate Editor

RALEIGH

State lawmakers were presented March 18 with a litany of potential horror stories related to the federal Affordable Care Act. At its worst, Obamacare would sock North Carolina with thousands of job losses, double-digit insurance premium increases, deep Medicare cuts to help pay for the health reform, and insolvent hospitals and medical facilities.

Chris Conover, a professor at Duke University's Center for Health Policy and Inequalities Research, offered this grim assessment to the General Assembly's Joint Study Committee on the Affordable Care Act and Implementation Issues.

\$116 million

And Conover was not alone. Mona Moon, executive administrator of the State Health Plan for Teachers and State Employees, said the plan would incur \$116 million in Obamacare compliance costs by 2017. The ever-evolving law could tag taxpayers with additional costs for state agencies, school systems, community colleges, and universities, Moon said.

Mark Fleming, vice president of government affairs for Blue Cross Blue Shield of North Carolina, said the insurance giant already sees "troubling trends," including a mix of patients that has been sicker than expected and a program infrastructure that remains a work in progress long after its launch.

Fleming warned of the potential for higher insurance premiums for all North Carolinians as a result.

The cascade of negative testimony caused some Democratic committee members to roll their eyes. Some

walked out early on Conover's harsh evaluation, and Sen. Floyd McKissick, D-Durham, issued an almost plaintive request.

"Is it intended that we will have someone speak and provide us information who actually believes the Affordable Care Act is a good idea?" he said. "Or are we only going to hear from those who are in opposition to the Affordable Care Act?"

State Rep. Verla Insko, D-Orange, expressed surprise at Conover's contention that the state's economy would shrink by 90,000 full-time equivalent jobs, and 300,000 full-time equivalent positions would shift to part-time, as employers try to avoid the employer mandate to pay for insurance for full-time workers and other Obamacare-related costs.

"I don't know that there's any reason why the Affordable Care Act would cause a reduction in the number of employees unless we had robots doing some of the work," Insko said.

She also insisted that higher taxes could be an economic stimulus because of multiplier effects of government spending, and that some of the nation's most robust economies are in high-tax states.

'Real financial problem'

"Unless we face these problems with objectivity and without emotion we're quick going down the road that

could lead us to a real financial problem," said Sen. Ronald Rabin, R-Harnett. "An economic Armageddon."

Citing a variety of studies and his own research, Conover provided numerous bad-case scenarios under Obamacare.

"Nearly all families will face at least some higher taxes under the ACA," he said. "There are at least four losers for every winner under the ACA" once all components are implemented.

Even if the law worked perfectly, it would reduce the number of uninsured by only 25 percent, he said. Of the 1.5 million North Carolinians who have no health insurance, Conover expects no more than 200,000 to be insured by the end of 2014 and 400,000 by the end of 2016.

"Relatively minor improvements" in benefits under Obamacare "are more than offset by the sizeable cuts in Medicare ... to bankroll 40 percent of the ACA's costs," Conover said. Continued Medicare cuts in doctor payments "will be devastating" to seniors' access to health care, according to Medicare's actuaries, he said.

"Very deep cuts" in Medicaid Disproportionate Share payments to hospitals are planned atop a 75 percent cut in Medicare DSH payments, Conover said. Those payments cover the cost for the uncompensated care of uninsured people.

Medicaid is prohibited by statute from paying more than Medicare for hospital services, so Medicare cuts will drive payment rates for both Medicaid and Medicare to well below the levels that are paid by private insurers, Conover said.

15 percent in the red

The Medicare actuary predicts that 15 percent of health facilities will be operating in the red by 2020 as a result.

"As these facilities are shuttered or start shedding money-losing services such as emergency rooms, this obviously is going to have adverse effects on access to care for the community at large, not just for seniors," Conover said.

A quarter of North Carolina doctors do not accept Medicaid patients now due to low reimbursement rates.

"The ACA has put Medicare on a path to soon be paying less than Medicaid does for doctor services," Conover said. "We can only imagine what's going to happen to access to care to se-

niors when Medicare's payment rates are less than half of the Medicaid levels."

He said "a significant chunk" of Medicare savings comes from slashing Medicare Advantage plans by \$200 billion over the next decade.

That will amount to \$13,000 per enrollee in Part C plans and translate into premium increases ranging from \$65 to \$145 per month for seniors in those plans, who are disproportionately low-income minorities, Conover said. About half of Part C participants will lose that coverage by 2017, he said.

While President Obama promised a \$2,500 annual premium savings to the average family under Obamacare, the Medicare actuaries say the law will increase health care spending by more than \$600 billion in its first dozen years.

"This amounts to more than \$7,500 for a typical family of four over that period. About 100 million Americans, including 2 [million] to 3 million North Carolinians, are going to see their premiums go up as a consequence of the ACA," Conover said. Some individual policyholders already received double-digit increases.

'Young invincibles'

To balance the costs of covering older, sicker people, Obamacare architects said the plan needed young, healthy adults age 18-34 to account for 38 percent of all sign-ups. But only 25 percent of those enrolled have been the "young invincibles."

As fewer young people than needed sign up this year, insurers will have to increase premiums for 2015 to make up the difference.

"This will simply aggravate the existing problems by making exchange plans even more of a worse deal for young people than they already are," Conover said.

Obamacare authors set aside funds to cover a lag in young exchange participants. But not enough, Conover said. "It now appears the various funds may be billions of dollars in the hole, leading to concerns in Washington about health insurance company bailouts," he said.

Moon said Obamacare would cost the State Health Plan \$116 million over a seven-year period ending in 2017, or about 2 percent of the plan's costs. But that figure does not include the cost of covering newly eligible plan participants, "which could add significantly to this number," Moon said. "That might take that 2 percent up to 5 or 6 percent."

While the State Health Plan could raise premiums to adjust for those costs, she said, "The cost of compliance for state and local employing units whose work forces include large numbers of newly eligible employees may be significant." CJ



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Professor: Effect of Election Law Changes on Turnout Uncertain

By BARRY SMITH
Associate Editor

RALEIGH — An analysis by a UNC School of Government professor suggests that there's no clear-cut answer over whether changes in laws regulating voter registration and extending the time people are allowed to vote have affected turnout in recent decades.

Michael Crowell, professor of public law and government at the School of Government, also hints that the effects of a couple of the changes enacted last year by the North Carolina General Assembly tend to wipe each other out. The changes Crowell mentioned were the early voting period, which was shortened by the General Assembly last year, and the elimination of same-day voter registration, which allowed unregistered state residents to register during the early voting period and cast ballots that same day.

Neutralizing effects

"When done together, early voting and same-day registration neutralize each other," Crowell posted in a blog. "And, as one might expect, factors other than election laws have more to do with how many people vote."

Before last year's legislation passed the General Assembly, North Carolina voters could cast their ballots at one-stop sites 17 days before election day, with early voting ending on the Saturday before Election Day. The new law shrinks the early voting time period by one week, still allowing for 10 early voting days.

Crowell said that North Carolina data on elections seem to be consistent with a University of Wisconsin report showing that "early voting decreases voter turnout when implemented by

itself."

He suggested two principal reasons for lower turnout. "It reduces the buzz around election day," Crowell said, noting that limiting the vote to a single date may increase social pressures on casual voters to "do their civic duty" and show up at the polls. Early voting periods reduce the urgency to cast ballots.

"Secondly, it affects how political campaigns operate," he said. Crowell relayed a recent conversation with a campaign consultant who told him that he had a certain budget to spend on campaign advertising. If he waited to spend the money after the end of the early voting period, he would have missed much of his targeted audience.

The consultant "wasn't going to spend a lot of money right before Election Day, because half the people he's interested in reaching have already voted at that time," Crowell said.

'Diluted effort'

Hans von Spakovsky, a senior legal fellow at the Heritage Institute, offered a similar theory explaining why early voting tends to decrease overall voter turnout, citing get-out-the-vote and marketing efforts by candidates.

"If [candidates] have to spread that effort out over weeks, if not a month or two, the intensity of that effort is diluted and not as effective," von Spakovsky said.

Von Spakovsky said the people who vote early are the same people who otherwise would vote on Election Day if they didn't have the early voting option.

Early voting's effects

Crowell agreed. "It may be that early voting, for the most part, simply makes it easier for people who would have gone to the polls anyway," he said.

Crowell noted that same-day registration does seem to increase voter turnout slightly. "It just seems to make logical sense, some people seem to wait 'til the last minute [to register]," Crowell said. He noted that about 100,000 people used same-day registration during early voting to register during the two most recent presidential elections, in 2008 and 2012. That option ended with the 2013 legislation.

Crowell's review noted a number of changes to North Carolina's election laws over the past three-plus decades — allowing voter registration at driver's license offices, allowing political parties to invite unaffiliated voters into their primaries, registration by mail, no-excuse absentee voting, and online registration.

It also pointed out the obvious — turnout tends to be significantly higher during presidential election years than off years.

"Turnout increased in presiden-

tial years after 2000," Crowell wrote. "In 2004, turnout moved up to 54.9 percent of voting age population even though the Bush-Kerry contest was not close [in North Carolina]." Bush won North Carolina by 56 percent to 44 percent.

"Then in 2008, the turnout jumped to 62.9 percent as Obama defeated McCain by only 14,000 votes in North Carolina (49.7 percent to 49.4), and in 2012 it was still at 61.8 percent as Romney edged Obama (50.4 percent to 48.4)," Crowell wrote.

Crowell went on to discuss those two elections: "Were the increases simply the result of the dynamics of those two particular elections, or did changes in the law have some effect? The explanation for those two elections may be Barack Obama."

No big changes

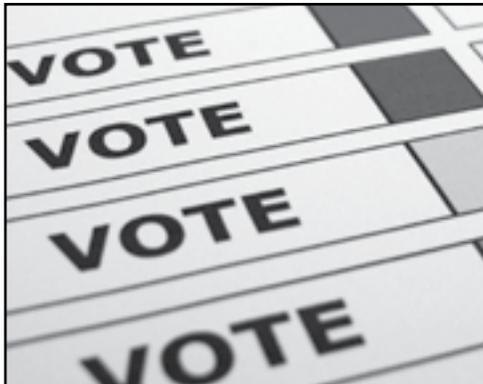
An August 2013 column by John Locke Foundation President John Hood, written several weeks after the General Assembly passed the sweeping election law changes, suggested that people across the political spectrum shouldn't expect big voting changes.

Hood's analysis looked at a more contentious part of the new election law, requiring voters to produce a state-approved identification document at the polls, along with some of the other changes.

Crowell's analysis didn't address the voter ID requirement.

While certain parts of the new law take effect with the 2014 elections — such as the end of same-day registration and a shorter early voting period — the photo ID requirement doesn't take effect until the 2016 elections.

Crowell's review can be found at <http://bit.ly/1dn4WZO>. CJ



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Not All School Boards Back NCSBA Voucher Lawsuit

BY BARRY SMITH
Associate Editor

Some members of local school boards are questioning the decision by the state school boards association to join a legal battle over vouchers for students from lower-income families.

They also question whether the organization should be using membership dues, which come from local tax dollars, to finance the lawsuit.

Leanne Winner, director of government relations for the N.C. School Boards Association, said that the organization rarely takes legal action unless the concern is of direct interest to school boards across the state. She added that the association's view is when a local school board sends its dollars to the statewide organization, the membership dues no longer should be considered public funding.

"We don't believe it's taxpayer money," Winner said, likening the situation to a school board writing a check to Duke Energy to pay its power bill. "When it leaves that public entity, it is no longer public money," she said.

Winner added that Duke Energy is not a state entity. Nor is the N.C. School Boards Association. "We're a nonprofit 501(c)(3) [corporation]," she said.

Lisa Baldwin, a member of the Buncombe County Board of Education, disagreed. "These are dollars that come from our county commissioners that have no strings attached," Baldwin said. "They could have been spent in the classroom. Instead, they're spent on a frivolous lawsuit that could help disadvantaged children."

Winner said filing a lawsuit isn't something that the state association takes lightly. Nor does it do it often.

"As an organization, when we see laws that are not constitutional in our belief, we challenge it," Winner said. Winner pointed out another time the organization took legal action several years ago, when the General Assembly passed a law requiring children to have an eye exam before enrolling in kindergarten.

"If we believe something is unconstitutional and will be a detriment to educate children through the public schools, we feel that we have a duty to challenge it," Winner said.

Winner said that 71 of the 115 local school boards in North Carolina — 62 percent — initially adopted reso-

lutions supporting the initiation of a lawsuit against the vouchers, which supporters call Opportunity Scholarships. An additional school board later adopted a similar resolution, she said.

Winner said the organization's board of directors had a lengthy discussion about the lawsuit and approved it unanimously.

Last year, the General Assembly approved the Opportunity Scholarship, or voucher, program, which would allow up to 2,400 children from lower-income families who attended public schools the previous school year to receive vouchers from the state to attend private schools. Parents could use the \$4,200 scholarships at any private school they chose.

The school boards association and the N.C. Association of Educators have filed separate lawsuits challenging the constitutionality of the Opportu-

nity Scholarships.

A Wake County Superior Court judge has issued a preliminary injunction prohibiting the administration of the Opportunity Scholarships until the case goes to trial. Parents who are intervening defendants in the lawsuit have appealed the injunction to the N.C. Court of Appeals. The appeals court thus far has refused to thwart the lower court's order.

Tammy Covil, a member of the New Hanover County Board of Education, also disagreed with the state association's action.

"For the most part, our board members are supportive of choice options for parents," Covil said. "We're not the least bit intimidated by competition."

Covil said she believes that a lot of local school boards fear competition from private schools and therefore oppose the vouchers. Covil said that if public schools aren't meeting a child's needs, then parents should have other options.

Baldwin said the lawsuit, if successful, could hurt economically disadvantaged children in Buncombe County.

"It's hurting these children of the working poor who could benefit from this scholarship," Baldwin said.

Baldwin said that only 26.1 percent of Buncombe County's children from economically disadvantaged families are proficient in math and reading in grades three through eight, and that the vouchers would give those students additional options. CJ



COMMENTARY

Time to Ditch The Money Myth

In his book *Education Myths*, University of Arkansas professor Jay Greene pointed out that the myth of inadequately funded schools "is simultaneously the most widely held idea about education in America and the one that is most directly at odds with the available evidence."

Greene reviewed the available research on the issue and concluded that a lack of resources was "not one of the major problems affecting our schools' performance."

More recently, in "State Education Trends:

Academic Performance and Spending over the Past 40 Years," Andrew Coulson of the Cato Institute adjusted education spending for inflation and adjusted state average SAT scores for participation rates and student demographics.

He found that most states had massive increases in public school spending but relatively no change in student outcomes.

North Carolina was no different. Despite doubling our state's inflation-adjusted per pupil expenditure between 1972 and 2012, there was very little change in North Carolina's adjusted SAT scores over time.

Given the ample empirical evidence that higher funding does not drive better outcomes, why is the inadequately funded school myth so pervasive?

First, appeals to increase funding often garner broad support because most taxpayers do not realize how much money we spend on public schools. According to the 2013 *Education Next* poll, the typical respondent estimated that their public schools spent an average of between \$6,000 and \$6,700 per student. In North Carolina, for example, the state's public schools spent an average of \$8,500 per student last year. Including average spending for buildings and other capital costs, the total per student expenditure in our state exceeds \$9,100.

Similarly, respondents to the *Education Next* poll, with the exception of teachers, estimated that the average teacher salary was between \$26,000 and \$36,400. In contrast, the N.C. Department of Public Instruction estimated that the average teacher salary was \$45,355 last year, a figure that does

not include more than \$14,000 in Social Security, retirement, and health insurance benefits provided to each full-time teacher in the state.

Second, the mainstream media, unions, and education advocacy groups spend a great deal of resources prolonging and escalating the money myth. It makes sense for them to lament that our public schools are destitute because the myth attracts customers, members, and donors. In other words, they profit from it.

Finally, some believe it is easier to throw money at the problem rather than confront the complexities of improving our massive and diverse system of public schools. This is an understandable, albeit a counterproductive, response.

Interestingly, the antidote to the money myth comes from the Left. After all, conservatives and libertarians are

not the only ones acknowledging there is no consistent relationship between school funding and student achievement.

Ulrich Boser, a senior fellow at the liberal Center for American Progress, published a groundbreaking report in 2011, "Return on Educational Investment: A District-by-District Evaluation of U.S. Educational Productivity." Like Greene and Coulson, Boser observed that decades of funding increases for public schools failed to produce long-term innovation or progress on measures of student performance.

He concluded that public school systems needed to stop thinking of inputs and outcomes separately. Rather, public schools should embrace the concept that unifies them, namely educational productivity or what some have called "bang for the buck."

U.S. Secretary of Education Arne Duncan correctly observed that the education establishment views educational productivity as a "grinding, eat-your-broccoli exercise." That is why elected officials, and the citizens electing them, must ensure that public schools use taxpayer money in the most productive way possible. CJ

Terry Stoops is director of research and education studies at the John Locke Foundation.



TERRY STOOPS

State Leaders Vow to Ease, Streamline Standardized Testing

By DAN WAY
Associate Editor

RALEIGH

Teachers finding their schedules packed with testing would get relief with education reforms promised by Gov. Pat McCrory and top Republican lawmakers, who say students would benefit from a streamlined list of required state and local exams.

A \$200 million proposal to hike teacher pay without increasing taxes grabbed the headlines at a Feb. 10 joint announcement by McCrory, Lt. Gov. Dan Forest, House Speaker Thom Tillis, and Senate leader Phil Berger. But a plan to cull the crammed testing schedule also was unveiled.

The multipart reform "removes the burden of excessive testing and mandates from our classrooms so our teachers can do what they are trained to do — teach," said Forest, an ex-officio member of the State Board of Education.

"It's an important reform, but it also is one that has to be driven by the people who actually do the work," said Elic Senter, instructional advocacy manager for the North Carolina Association of Educators, a statewide teachers lobbying organization.

"We hear from our members with regularity that there is an overabundance of student assessment that is required by the state and federal government," Senter said.

"Cumulatively, it ranges by school system between two and three weeks of testing, if you added it all together, and you ran it as an eight-hour school day," Senter said.

"It's a good chunk of the school year," Senter said, with earlier grades losing the most class instructional time to mandated assessments.

"Pre-K and elementary school are your strongest and most formative years. If the support is not there, and the time spent with the students is not there, that's where you see issues later on, and there's boatloads of research that show that on a pretty clear basis,"

Senter said.

Members responding to an NCAE survey issued last fall about teaching time issues said between pre-assessments, post-assessments, and formative assessments, teachers lack the necessary time to prepare, collaborate, and teach material, "and this spring has been particularly bogged down with Read to Achieve added in," Senter said.

Read to Achieve was a 2012 initiative of the General Assembly designed to end social promotion and ensure every child can read by third grade.

"The question is not, 'Do public school students spend too much time taking tests?' Rather, we should be asking, 'Do tests administered by public schools accurately measure the performance of students and teachers?'" said Terry Stoops, director of research and education studies at the John Locke Foundation.

"If Republican leaders are serious about reforming the state's accountability system, they should require the N.C. State Board of Education to adopt an independent, field-tested, and credible national test of student performance," Stoops said.

"Poor-quality, state-developed tests are the major reason why teachers object to including them in their performance evaluation," Stoops said. "Given the state's record of developing and administering shoddy tests, teachers have a valid point."

"We have No Child Left Behind, we have Race to the Top, and all those mandates including testing, plus the General Assembly has tests that they want us to implement for other purposes," said State Board of Education Chairman Bill Cobey.

"So we have to look at the whole body of testing and see where can we pare down," Cobey said.

One example of streamlining has been with the end-of-course "common exams" that have been administered at the same time teachers were giving final exams. "We've made a step that these common exams will be the final exam and will count at least 20 percent of the student's final grade, so we've done some combining. But I don't know the perfect answer, and I don't think anybody does," Cobey said.

A longstanding complaint about requiring large numbers of tests, and then basing teacher evaluations on how well students perform on those tests, is that teachers are put in a position to teach to the exclusion of

other important classroom work and material.

"It depends on what tests you're suggesting," Cobey said, acknowledging that Read to Achieve might fit that category.

"Certainly, [an] unintended consequence of Read to Achieve [was] way more testing, and individual testing as it related to implementation of [student reading] portfolios. But it should have been clear to everybody that it was the teachers' decision as to whether to use the portfolio" or other measurements, Cobey said.

Most local school systems were implementing the portfolios for every student, not just those at risk of failing the reading mandate, Cobey said. That required completion of multiple standards and many tests that had to be administered one-on-one with the teacher and the student.

Tillis said ongoing discussions with educators show dissatisfaction

with the volume of rules coming from Raleigh, and lawmakers are looking for ways to increase teacher satisfaction that don't require money.

"I think you will see some work on that in the short session," Tillis said. The session begins May 14.

Some reforms could be as simple as amending budget provisions to allow more flexibility in spending categories.

Others could be reviewing the number of tests, "dozens approaching 100," required by local districts, the state, and federal governments, Tillis said.

"Do these make sense?" he said. "Lighten the burden on the teachers who are really overwhelmed with the number of tests they have to administer to be compliant with one program or another."

Some tests are tied to grants, making it more difficult to eliminate them, he said.

However, Tillis said, "There's a clear opportunity to take some off the table if they don't think it's adding value, and it's taking the teacher away from classroom time, and what he or she thinks is in the best interests of the students."

"There's a balance that has to be struck as far as testing is concerned," Berger said.

"If you don't measure, you really don't know where kids are," Berger said. "The problem we have is it seems the effort to measure always seems to be overdone. What we want to do is find ways to ameliorate those types of situations."

He said the North Carolina Teacher Evaluation Process holds great promise.

It provides feedback and measurements on student progress and performance during the course of an academic year.

"What we're seeing in many respects is growth, when you can measure it, goes back to the quality of the teacher who is involved," Berger said. CJ

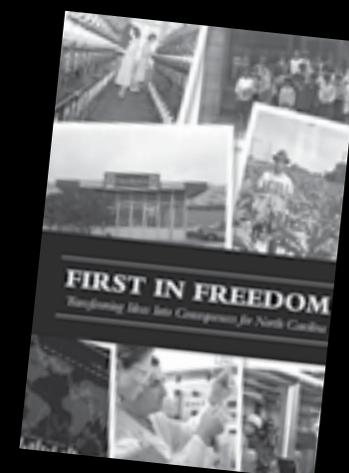


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Court of Appeals Next Stop For Lawsuit Against School Vouchers

Backers wonder why teacher group OKs disability vouchers

BY BARRY SMITH
Associate Editor

RALEIGH

Parents of students hoping to use an Opportunity Scholarship to attend a private school in the fall will have to wait for further action from the courts before they learn whether their children must attend public schools for another year.

And even though the General Assembly last year passed a statute, closely resembling the Opportunity Scholarships, allowing disabled students to move from public schools to private schools, no lawsuit has been filed to prevent those students from using vouchers.

The Opportunity Scholarships, or vouchers, would provide as much as \$4,200 in scholarships for children from lower-income families to offset the cost of attending private schools. To be eligible in the first year, the children receiving the vouchers must have been enrolled in a public school the previous year and qualify for free- or reduced-price lunches.

The N.C. Court of Appeals denied a motion by parents of children seeking Opportunity Scholarships that would have delayed a temporary injunction from Superior Court Judge Robert Hobgood. Hobgood's order halted the administrative efforts by the state to award those scholarships.

The Institute for Justice, which is representing two parents who want to



send their children to private schools, had asked the Court of Appeals for a temporary delay — or, in legal terms, a “stay” — of Hobgood's order.

In denying that motion, the Court of Appeals said that it would further consider efforts to appeal the motion when the plaintiffs in the Opportunity Scholarships cases — the N.C. Association of Educators and the N.C. School Boards Association — have filed their response to another motion filed by the parents. Those responses were due in court March 31, after this issue went to press.

Opportunity Scholarship supporters have noted what appears to be hypocrisy by the teachers group and the school board association, which did not challenge the disability scholarships. The disability voucher program provides up to \$6,000 a year for children with disabilities to attend private schools.

Bob Orr, an attorney representing the plaintiffs in the Opportunity Scholarships lawsuit, said he has not studied the legislation implementing the disability voucher program, and said

he doesn't know what effect the Opportunity Scholarships lawsuit would have on the disability scholarships law.

“It's not an issue that any of the plaintiffs have raised,” Orr said. “It's hard to predict if there would be any effect at all.”

Dick Komer, an Institute for Justice attorney representing two parents in the Opportunity Scholarships case, said the two programs are structurally similar and difficult to distinguish legally.

“But whereas students who do not have disabilities have no individual legal rights to challenge their districts for providing an inadequate public education, the federal Individuals with Disabilities Education Act provides administrative and judicial remedies for students with disabilities, which makes challenges to scholarship programs much less likely,” Komer said.

Komer initially asked Hobgood to put his own order on ice, a requirement for parties planning to appeal an order such as this one to the Court of Appeals. Komer noted that it would

take some time to award scholarships for the 2014-15 school year, the first year the voucher law allowed the scholarships to be available.

“In the alternative, parents request this court to stay its preliminary injunction for a short while until a lottery can be conducted and a list of scholarship recipients can be determined,” Komer wrote.

The request noted that at least 4,700 children had applied for the scholarships. However, there are only 2,400 scholarships available for the 2014-15 school year. A partial delay in the order would allow a lottery to select the parents who would qualify for the scholarships, Komer said.

The lawsuit by the NCAE and the school boards association claims that the N.C. Constitution doesn't allow tax dollars to be spent for private education.

In February, Hobgood issued an order preventing implementation of the new voucher law, including such administrative efforts as processing applications and holding a lottery to determine which children would receive the Opportunity Scholarships.

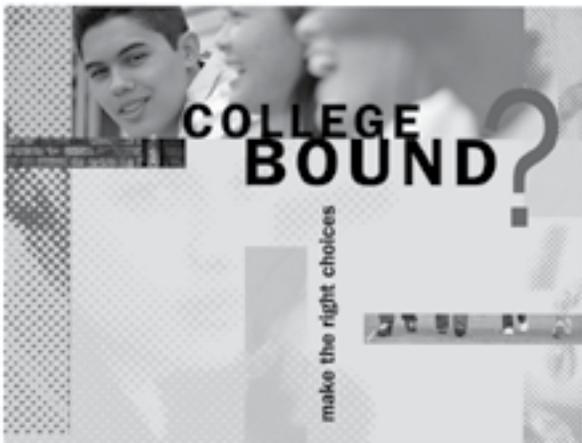
The plaintiffs argued against any delay in Hobgood's order.

“When it granted plaintiff's motion for preliminary injunction, the court considered and rejected the arguments now advanced by interveners,” the plaintiffs' brief says. “Nothing has changed between then and now that would justify staying the court's order.”

Before Hobgood issued his latest order, Komer said he didn't expect the judge to place his preliminary injunction on hold.

“I think that's got a pretty low likelihood of success,” Komer said at the time. *CJ*

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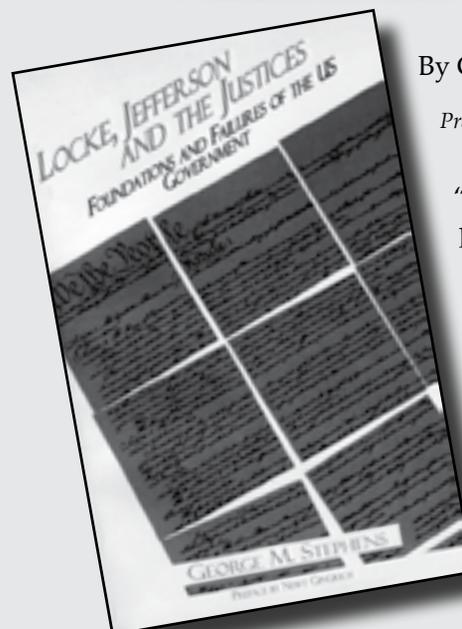
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Locke, Jefferson and the Justices:

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

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Town and County

CLT airport solar panels

The city of Charlotte has canceled plans for an ambitious solar energy farm at Charlotte Douglas International Airport. *The Charlotte Observer* reports the city axed the plan, which was announced in November, after discovering it was impractical.

The airport considered contracting with a private company to put solar panels on 128 acres of airport property, including space between the airport's existing runways, on top of the parking decks, and over surface parking lots. The resulting energy would then be sold to Duke Energy.

However, the airport is studying whether to build another runway.

"I could end up having to tear [the solar panels] right back out" to make room for construction, said deputy interim aviation director Jack Christine.

"That just doesn't make fiscal sense."

Putting solar panels on top of the parking lots was scuttled for a couple of reasons. The airport's parking decks were financed with tax-exempt bonds. Selling solar power is a taxable activity, and doing so could violate the bonds' terms and conditions.

Also, placing solar panels on parking lots would require building canopies over the parking spaces to mount the panels. It would be much cheaper to locate the panels on vacant land.

New I-26 Connector

A proposed route change may place the long-debated widening of Interstate 26 through Asheville on the front burner, reports the *Asheville Citizen-Times*. The most recent plan is less expensive, making it more likely to get state funding.

The project has languished for more than 20 years, due to its high cost and a lack of agreement over where the rerouted freeway should run.

The \$230 million price tag for the new route is \$30 million less than the I-26 Connector proposal that previously had been considered. One reason for the delay in agreeing on a plan has been that some activists had hoped to use a portion of Bowen Bridge to allow better bicycle and pedestrian access to downtown from West Asheville. A separate project increasing that access may be part of any final deal. *CJ*

G'boro Council Backs Downtown Arts Center

By SAM A. HIEB
Contributor

GREENSBORO

By a 6-3 vote, the Greensboro City Council approved a memorandum of understanding with a local nonprofit that paves the way for a new \$65 million downtown performing arts center.

Council members Tony Wilkins, Marikay Abuzuaiter, and Sharon Hightower voted "no."

Debate grew heated when Wilkins repeatedly questioned ongoing costs to the taxpayers over the years.

"This is a blank check," Wilkins said. "You can call it whatever you want, but it's a blank check. We need to tell citizens that."

According to the memorandum of understanding, the city will provide \$30 million toward the project while the nonprofit Community Foundation of Greater Greensboro will provide \$35 million through private donations.

The Community Foundation will take out a loan to cover its share of the cost while it secures the donations. When questions about covering any fundraising shortfalls arose during debate, Community Foundation president Walker Sanders assured the council "the bank will not look to the city should there be donor default."

The memorandum of understanding states the city "will serve as project manager to oversee the design and construction" of the performing arts center, which is officially named the Steven Tanger Center for the Performing Arts, after the president and CEO of Tanger Factory Outlet Centers, the largest individual donor to the project.

The Community Foundation, meanwhile, will create a "donor building committee" that will work with the city on the design and construction of the venue.

The memorandum also states the donor building committee "shall have approval rights over the design contracts, the final design of the Tanger Center, the construction budget, and all material changes made during the course of construction to the previously approved final design and/or construction budget."

The city and the Community Foundation will form another nonprofit "that will have overall responsibility for overseeing the success" of the performing arts center.

While the performing arts center will be managed on a day-to-day basis by Greensboro Coliseum director Matt Brown, the proposed nonprofit will be managed by a board of directors comprising four representatives from the city: the mayor, the city manager, and two City Council members.

Private donors will have four



seats on the board of directors, and last but not least there will be five at-large members "who will be selected jointly" by city and private donor representatives.

The memorandum also states the city "will retain all revenue generated by the Tanger Center ... and will be responsible for all expenses incurred in operating the Tanger Center."

Also stated in the memorandum is the imposition of a \$1 ticket surcharge on all events in order to create an "arts stabilization fund" to be allocated annually by the nonprofit Arts Greensboro. The stabilization fund will "exclusively provide direct financial assistance to local professional arts organizations."

The new performing arts center will replace War Memorial Auditorium, which is part of the Greensboro Coliseum complex.

War Memorial has fallen into disrepair over the years, and voters twice have rejected bond referendums to renovate the 57-year-old venue.

City leaders say Greensboro needs a venue seating between 2,000

and 3,000 as a buffer between the 20,000-seat coliseum and smaller venues such as the 1,000-seat Carolina Theatre.

But cost to the taxpayers over the years is a real issue, one that City Council members who support the performing arts center concede.

"It's a risk, but it's a calculated risk," Greensboro Mayor Nancy Vaughan told *Carolina Journal*. "Can we say we're definitely not going to lose money? No."

The John Locke Foundation has studied tax-financed entertainment venues for years. In its 2014 City-County Guide, JLF director of regulatory studies Jon Sanders urges public officials to "resist using taxpayer funds to subsidize private ventures, especially vanity projects. ... Put simply, if it was a viable project, some entrepreneurs would have recognized the opportunity well before elected officials whose expertise lies elsewhere."

Instead of serving to revitalize the local economy, such "vanity projects" instead become an "unnecessary weight slowing it down."

The performing arts center is another in a long line of incentivized projects in downtown Greensboro.

Earlier this year the City Council approved a \$1.95 million incentive for a proposed downtown luxury hotel. And late last year the previous council approved a \$1.5 million forgivable loan for the International Civil Rights Museum.

Vaughan told *CJ* she believes such investments not only will help keep young professionals in Greensboro but also will attract job creators.

"Corporations look at the center city to see if it's thriving," she said. *CJ*

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The John Locke Foundation has five regional Web sites spanning the state from the mountains to the sea.

The Triad regional page includes news, policy reports and research of interest to people in the Greensboro, Winston-Salem, High Point area.

It also features the blog Piedmont Publius, featuring commentary on issues confronting Triad residents.

Court: Local Zoning Officers Must Transmit Appeals to BOAs

Case involved marina on Lake Gaston in Warren County

BY MICHAEL LOWREY
Associate Editor

RALEIGH

In a March decision, the state's second-highest court considered the circumstances that require a local government zoning officer to forward an appeal of a zoning decision by neighboring property owners for consideration by a board of adjustment.

Morningstar Marinas operates a full-service marina on Lake Gaston in Warren County. Across the cove from Morningstar's operation, East Oaks, LLC owns land, including separate portions zoned for commercial and residential uses. The commercially zoned parcel features a boat storage facility. East Oaks wanted to build 36 townhouses on the residentially zoned property as well as a drive connecting the two parcels, so that boats could be brought from the storage facility and launched from a boat dock on the residential side.

Morningstar objected to East Oaks' proposal, claiming that both the townhouses and the connector between the parcels would violate the county's zoning rules. Before the issue got to the Warren County Board of Adjustment, Ken Krulik, the county's planning and zoning administrator, ruled that the townhouses were permitted on the residential property. His ruling did not address the drive between the parcels.

An initial round of litigation resulted in a consent decree allowing East Oaks to proceed with its site plan including the drive. But Morningstar was not a party to the consent decree. In response, it sought a court order compelling Krulik to rule whether the drive violated the county's zoning scheme. The county's response included a letter by Krulik stating that the drive was an easement, and the county doesn't regulate easements.

Morningstar then attempted to appeal Krulik's determination about the drive to the board of adjustment,

but the county's attorney said that would not happen. The company went to court again and convinced Superior Court Judge Robert Hobgood to issue a writ compelling the board to hear Morningstar's appeal. That didn't end the matter, though, as the county asked the Court of Appeals to review Hobgood's order.

The issue before the appeals court was whether Morningstar had a legal right to request a writ of mandamus, which would compel the board to perform a specific duty imposed by law — in this case, the board would have to rule whether the drive violated

county zoning. For its part, the county argued that Morningstar didn't have a "clear legal right" to the writ as it lacked the legal standing necessary to challenge East Oaks' zoning.

The court of appeals did not agree with the county.

"[B]ecause we believe that Mr. Krulik had a statutory duty to transmit Morningstar's appeal to the BOA and that the existence — or nonexistence — of standing is a legal determination that must be made by the BOA, we affirm the trial court's order issuing a writ of mandamus compelling respondents to place the appeal on the BOA's agenda," wrote Judge Mark Davis for the appeals court.

State law allows property owners the right to appeal zoning decisions only under limited circumstances. Those that fail to meet the thresholds set in law do not have the legal standing to contest the decision. To gain

standing, landowners must demonstrate that a proposed land use would reduce their property values; the legal term is "special damages."

Davis noted that state law does not give zoning administrators the power to determine whether someone is a "person aggrieved" for standing purposes. State law does, however, mandate that zoning administrators send appeals to county boards of adjustment if they are filed in a timely manner.

Judge Rick Elmore dissented from the majority, basing his view on the case of *Smith v. Forsyth County Board of Adjustment*.

"I read *Smith* as suggesting that the Zoning Officer is vested with authority to refuse to transmit an appeal to the BOA if the appealing party's application is devoid of any allegations of special damages, namely a decrease in property value," he wrote.

"Simply put, to fall under the purview of [the state law allowing appeals], Morningstar must have shown that it was aggrieved, which it could have done by alleging special damages. ... However, Morningstar neglected to do so. Without alleging special damages, Morningstar is not 'aggrieved' ... and it had no standing to appeal. Thus, Mr. Krulik was not compelled to place Morningstar's appeal on the BOA's agenda."

Court of Appeals rulings are binding interpretations of state law unless overruled by the N.C. Supreme Court. Because of Elmore's dissent, the high court is required to hear the case if Warren County challenges the appeals court's determination.

The case is *Morningstar Marinas/Eaton Ferry, LLC v. Warren County*, (13-458). CJ



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W-S, Forsyth Approach Cell Phone Towers Differently

BY MICHAEL LOWREY
Associate Editor

RALEIGH

Forsyth County has approved new guidelines for the placement of cell phone towers. The move has upset some residents, as the county's rules are less stringent than those adopted a month earlier by Winston-Salem, says the *Winston-Salem Journal*.

Both county and city regulations allow cell phone towers in residential areas, but setback and approval provisions differ a lot. For example, cell phone towers in unincorporated portions of the county must be 40 feet from a public street, while in the city the setback requirement is equal to the height of the tower. In Winston-Salem, the city council must approve cell phone tower placements while the county's appointed Board of Adjustment has the authority to handle approvals.

The approval process in particular proved to be controversial, with two of the county commission's seven members arguing that the county was passing the buck by letting an appoint-

ed board approve cell tower placements.

"You're telling the residents of the county that they can throw up a pole anywhere in their community, and you duck and dodge," said commissioner Walter Marshall.

"It's poor public policy," said Carolyn Highsmith, vice president of the New South Community Coalition, who also opposes putting the Board of Adjustment in charge.

Commissioner Gloria Whisenhunt rejected such arguments, noting that living in unincorporated portions of the county, which are less densely populated, is different than living in the city.

"That's why there's a county government and a city government, because we're so different," she said.

Chapel Hill zoning

Chapel Hill may change how it zones certain commercial properties, reports *The News & Observer* of Raleigh. The move comes in response to a property tax base that's skewed toward residential

properties and as the town faces significant needs in coming years.

Under the proposal, Chapel Hill would move to a "form-based code" for its Ephesus Church Road-Fordham

Boulevard district, the second-largest business district in the town. Under form-based code, many aspects of zoning practice are standardized. For example, the proposal would allow structures of up to five stories near the street and up to seven stories in the interior of the district.

Town officials don't expect many

buildings to approach the height limits, but they say businesses will be more likely to locate in the area if they know in advance exactly what's allowed. Raleigh and Durham have adopted similar zoning schemes in recent years.

The proposal has generated mixed reviews.

"I'm really looking forward to this, because I think it's a step forward in almost every way," said resident Whit Rummel.

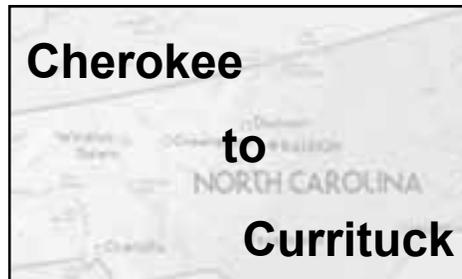
The owners of some existing business in the area question the plan, fearing that it will cause rents to increase.

"We need to look at affordable businesses," said Johnny Mariakakis, owner of Mariakakis Fine Food and Wine. "I'm talking about people who repair shoes, the AAA [car repair] place at the BP [gas station] that we're going to lose ... barber shops, a place to get a trophy made for your kids' soccer team. Please don't change Chapel Hill." CJ

Cherokee

to

Currituck



Regional Concerns Stoke Debate Over Adding Ferry Tolls

BY BARRY SMITH
Associate Editor

RALEIGH

Eastern North Carolina traffic planners are in the process of deciding whether to add tolls to ferries that operate up and down the coast, or divert money for their eventual replacements from the funding allocated in their divisional highway budget.

"I think the [metropolitan planning organizations and rural planning organizations] get the fact that some day, our ferries are going to have to be replaced," said Sen. Bill Rabon, R-Brunswick, who co-chairs a Senate Appropriations subcommittee overseeing transportation budgets.

The planning organizations are regional entities designed to set priorities for transportation spending.

"They don't want to see a big-time capital outlay like that coming at the expense of roads and bridges in the district," Rabon said.

Currently, three coastal ferries collect tolls on their routes: the Cedar Island-Ocracoke ferry; the Swan Quarter-Ocracoke ferry; and the Southport-Fort Fisher ferry.

One-way tolls for passenger cars on the Cedar Island-Ocracoke and Swan Quarter-Ocracoke ferries are \$15. One-way tolls for the Southport-Fort Fisher ferry are \$5.

In 2011, the General Assembly tried to expand tolls to cover more ferry routes. Some proposals called for tolling all ferry routes, while others

limited the routes that would be covered.

The 2013 General Assembly gave local planning advisory organizations a say in whether tolls would be charged or increased. Instead of requiring ferry tolls, local planning organizations hold a public hearing and then decide whether to charge them. A locality choosing not to set tolls for ferry routes would have to pay to replace the ferry from its share of the divisional highway budget in the Highway Trust Fund.

Those local officials who do not collect tolls, said Tim Hass, a spokesman for the Ferry Division, are "requiring ferry replacements [to] compete with roads, bridges, and other projects." Replacing a ferry can range from \$12 million to \$20 million, depending on its size.

"We wanted to allow the locals to make the decisions," said Sen. Kathy Harrington, R-Gaston, who also co-chairs the Senate Appropriations subcommittee on transportation. "They wanted to be a part of the conversation."

Harrington continued, "Transportation is user-fee-based. We wanted to move toward that model for the ferries."

Harrington continued, "Transportation is user-fee-based. We wanted to move toward that model for the ferries."

Hass said the local organizations have held their public hearings and are in the process of making their recommendations. He said the Down East RPO had abstained from recommending whether to initiate tolls on the Minnesott Beach-Cherry Branch ferry, and asked the General Assembly to make that decision.

Trace Cooper, mayor of Atlantic Beach and chairman of the Down East RPO, said the organization decided not to toll the Minnesott Beach-Cherry Branch ferry, so ferry replacement costs would come out of the highway division allotments.

"The RPO decided not to put any tolls on that ferry and are essentially asking the General Assembly to revisit the idea of tolling ferries in a much larger concept," Cooper said.

Cooper said that the group believed the General Assembly was targeting eastern North Carolina unfairly by tolling ferries, when highways in other parts of the state don't have tolls. "The ferries are our bridges; they are our roads," Cooper said.

Instead, lawmakers should take a look at transportation funding needs statewide, Cooper said, noting that

revenues are not projected to cover future transportation demands.

Rabon said planners in the southeastern part of the state have recommended increasing the one-way toll for the Southport-Fort Fisher ferry from \$5 to \$7, while keeping the local ferry commuter pass at \$150 a year.

The action could increase the revenues collected from tourists, while allowing commuters who use the ferry regularly to see no increase in their out-of-pocket costs.

Rep. John Torbett, R-Gaston, who co-chairs the House Appropriations subcommittee on transportation, said he originally liked the idea of leaving the decision regarding tolls on ferries in the hands of local planning organizations.

"I thought it was going to be the answer," Torbett said. Now he believes that some adjustment is in order.

"Why should people in eastern North Carolina be subject to a ferry toll, when the people in western North Carolina are not having to pay extra for bridges being replaced?" Torbett asked.

The law, included as a provision in the budget passed last summer by the General Assembly, says that the Board of Transportation shall adopt a ferry toll after receiving a resolution requesting one from the planning organization.

Once that happens, the Department of Transportation is required to begin collecting tolls "as soon as is feasible," within no longer than 180 days. CJ



JLF: Map Act Creates Problems for Property Owners

By CJ STAFF

RALEIGH

North Carolina maintains one of the nation's most restrictive versions of the Map Act, which can freeze property development within proposed road corridors for years. A new John Locke Foundation Spotlight report documents one Forsyth County case in which Map Act restrictions have limited private property's use for 17 years.

The report calls for repeal or extensive revision of North Carolina's Map Act. Revisions could include new time limits and clearer rules for governments acquiring property. The changes would offer greater protection of citizens' constitutional property rights.

"Without exception, every other map act state offers more protection to property owners than North Carolina does," said report author Tyler Younts, JLF legal policy analyst. "The 17-year ordeal of the Winston-Salem Northern Beltway project offers a stark example of how this law can cause major problems for hundreds of property owners."

North Carolina is one of only 13 states with a map act. "Nearly three-fourths of the states are able to manage their highway corridor preservation programs without restricting private property through use of a map act," Younts said.

In this state, the Map Act allows the N.C. Department of Transportation, local governments, or other governing bodies to file with the local register of deeds an official "transportation corridor" map. That map lists all properties located within the planned road corridor.

"As long as work on a required environmental impact statement starts within a year, there is no statutory time limit on an official map," Younts said. "Once established, the map can block building permit and subdivision applications involving affected properties for up to three years."

After that three-year wait, the government must act on the application, acquire the targeted property, or release the property from the corridor, Younts said. "But that doesn't mean an end to delays," he said. "Each subsequent permit can be delayed for an additional three-year period. Aside from severely limiting owners' ability to use, enjoy, and improve their properties, the restrictions can render properties unmarketable to prospective buyers."

In cases involving N.C. DOT, property owners can apply for "advanced acquisition," which would permit state purchase of the affected property even when a road construction project is hampered by a lack of fund-

ing or legal challenges, Younts said.

"To qualify, the property owner must have a financial or medical hardship," he said. "Many property owners complain that hardship acquisitions are made by DOT in a selective, even discriminatory, arbitrary, or irrational manner."

The poster child for Map Act reform is the 34-mile, multi-lane Winston-Salem Northern Beltway project. Its transportation corridor map has been in place since 1997, Younts said. The N.C. Supreme Court heard arguments late last year in a lawsuit connected to that project.

"After years of delays linked to environmental lawsuits and lack of construction funding, eight property owners brought suit to demand that DOT acquire their properties," he said. "Northern Beltway plaintiffs complain that their properties are devalued and are practically impossible to sell at reasonable returns with the corridor map clouding their chain of title. They also contend that

DOT inexplicably granted hardship applications only to select property owners such as a large church and a junkyard."

While the Forsyth County case stands out, the Map Act now affects 24 projects in 18 North Carolina counties, Younts said. "The issue affects hundreds, if not thousands, of property owners across the state."

Even among the minority of states that apply map act laws, North Carolina's statute stands out in limiting protections for property owners, Younts said. "The three-year limit for permit delays is much longer than limits employed in any other state. Eleven map act states limit permit delays to no more than one year. In Tennessee, the limit is just 80 days."

Courts have ruled in prior cases that delays and property restrictions can create constitutional violations, Younts said. "Those violations can occur after delays as short as 2.5 years, or up to 14 years, depending on the case and the jurisdiction," he said. "By any objective measure, 17 years under a map, such as the case with the Northern Beltway plaintiffs, is clearly out of bounds."

North Carolina should protect its citizens' constitutional property rights, Younts said. "In order to accomplish this goal, the state should repeal the Map Act," he said. "If repeal is not possible, then lawmakers should set a reasonable time limit on building permit delays between 80 and 120 days."

"They also should establish a reasonable limit, perhaps between one and three years, on the length of time an official map can encumber a property," Younts added. CJ



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The Western regional page includes news, policy reports and research of interest to people in the N.C. mountains.

It also features the blog The Wild West, featuring commentary on issues confronting Western N.C. residents.

The screenshot shows a website interface with a header that says 'Western North Carolina' and a main content area featuring a blog post titled 'THE WILD WEST'. The text is somewhat blurry but the layout is clear.

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The John Locke Foundation has five regional Web sites spanning the state from the mountains to the sea.

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

The screenshot shows a website interface with a header that says 'TRIANGLE' and a main content area featuring a blog post titled 'RIGHT ANGLES'. The text is somewhat blurry but the layout is clear.

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Impact of Film Industry on Jobs in North Carolina Hard to Measure

Continued from Page 1

is released.

Refundable tax credits are applied to a business's tax liability, and any excess is refunded back to the business as a payment from the Department of Revenue.

The tax credit originally was 15 percent. It first applied to tax year 2007. The General Assembly increased it to 25 percent for tax year 2011. The entire program is set to expire Jan. 1, unless the General Assembly renews it in this year's short session, set to open May 14.

Advocates of the program claim it is necessary to compete with other states as a location for film production. They maintain the economic benefits far outweigh the costs. Critics generally claim the program is unfair to other businesses and there are no net benefits to the state's economy.

Job count sources

The job counts are produced from a number of sources. The Bureau of Labor Statistics team in the Labor and Economic Analysis Division, or LEAD, is responsible for the federal government's job counting programs in North Carolina. The average annual employment in motion picture and video production from the BLS Quarterly Census of Employment and Wages is 792 jobs for the year 2012. (See table)

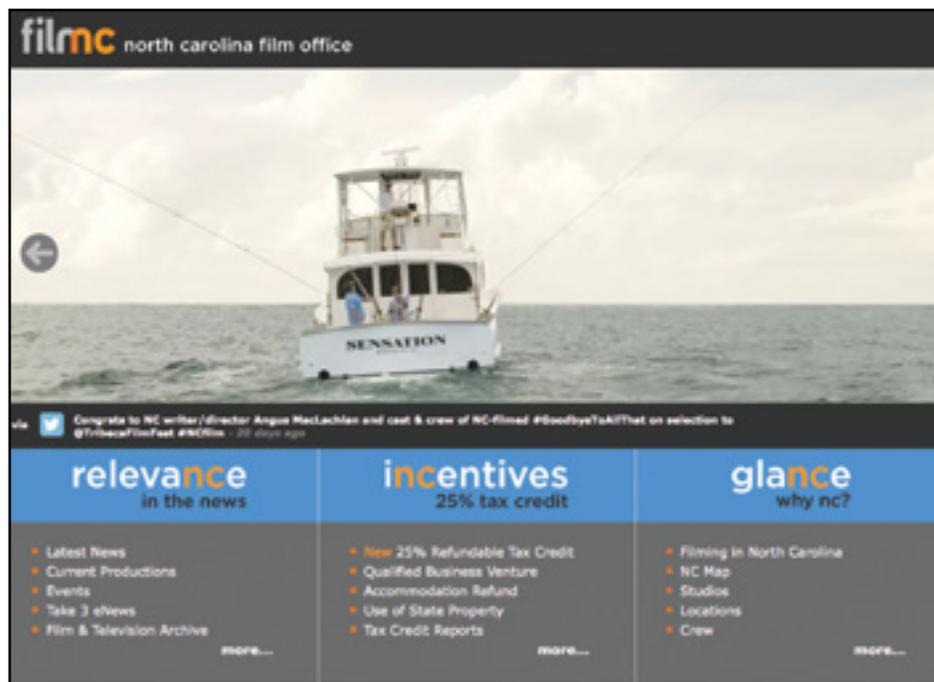
The Market Analysis & Strategy Team, a separate unit of LEAD, produced a PowerPoint presentation on the impact of film incentives for the NC Economic Development Board. The presentation stated that there were 2,004 direct jobs in the film industry in 2012.

The North Carolina Film Office, also located in the Commerce Department, is responsible for assisting companies that want to make films in the state. A December 2012 press release prepared in conjunction with Gov. Beverly Perdue stated, "Year-end projections show productions had a direct in-state spending in excess of \$376 million and created more than 4,100 well-paying crew positions for the state's highly skilled work force."

As stated earlier, the Department of Revenue arrives at its job count based on the number of paychecks issued by companies that claim a tax credit.

Bureau of Labor Statistics

The QCEW program is the nation's key program for the entire job counting system. It essentially counts the paychecks each business issues. It includes all businesses that are covered by the state's unemployment insurance system. Payroll data on each employee should match the data each employer reports to the Internal Revenue Service and the North Carolina



The North Carolina Film Office touts its 25 percent tax credit front and center on its website, <http://ncfilm.com>.

Department of Revenue. Commerce employees are responsible for assigning a North American Industry Classification System code for each business. The code for Motion Picture and Video Production is NA-ICS 512110.

BLS and LEAD publish the data. For calendar year 2012, the QCEW average annual employment in Motion Picture and Video Production was 792 jobs. Monthly figures are not published, but the 792 count would be an average over all 12 months of the calendar year.

BLS counts for the broader category of Motion Picture and Video Industries reports 2012 total statewide employment at 4,076 jobs, but 3,073 of them are jobs at movie theaters — such as ticket sellers or concession servers — unrelated to movie production.

A presentation prepared last fall by Jeff DeBellis, director of market analysis and strategy in LEAD, concluded that 2,004 direct jobs were created by the film industry in 2012 — more than double the BLS count. Even with the higher job numbers, the report concluded that incentives for the film industry led to a \$62 million net loss to the state budget for calendar year 2012.

The numbers were included in a 22-page PowerPoint presentation titled "Impact of North Carolina's Film Incentives." The presentation is not available through any Commerce Department website, but you can see it here (<http://bit.ly/1jKEvvw>).

CJ asked why the report did not mention the BLS numbers. In an email, Commerce spokeswoman Kim Genardo replied: "The BLS data may be

somewhat low because it includes just those businesses coded in the industry. It might not include workers from employers in other industries that may have been involved in film production

more tangentially — such as contract workers employed by a staffing agency or carpenters from a construction firm. Those employees could be listed in the BLS data under another industry like a temporary staffing agency or construction firm. Our modeling would likely cover that employment since it's based on total spending and thus be a bit higher."

Neither she nor DeBellis would provide the precise calculations used to expand the BLS number.

North Carolina Film Office

In June 2009, Ernst & Young, an international accounting and consulting firm, prepared a study for NC Film and the regional film commissions. The study, titled "Economic and Fiscal Impacts of the North Carolina Film Credit Program," looked at the impacts of raising the tax credits from 15 percent to 25 percent.

The study included a table showing the BLS job counts from 2001-07, but noted the following: "While data published by the BLS does not fully capture the contribution of film production activities on the North Carolina labor force due to the industry's large number of contract employees (not included in the BLS figures) ... it provides a useful starting point from which to evaluate trends" in North Carolina.

The report said increasing the credit to 25 percent "would create an estimated 1,301 direct film production jobs in 2010 and 1,561 jobs in 2011." While the tax credit increase became available for expenditures in 2011, the BLS numbers barely have moved, remaining below 1,000.

CJ could find no mention of the BLS employment numbers on the NC Film website. NC Film uses a much higher number of "4,100 well-paying crew positions for the state's highly skilled work force" for year 2012. NC Film Director Aaron Syrett told CJ that the BLS numbers do not cover all the employment in the industry. "We get numbers directly from the production companies," he said.

'N.C. State study'

Rob Handfield, a professor of supply chain management at N.C. State University, is preparing a film industry study that is funded by the Wilmington Regional Film Commission. Handfield's study is not sanctioned by N.C. State, even though some have referred to it as the "N.C. State Study."

Handfield released some of his findings Nov. 8 in a two-page letter on university stationery to Wilmington Film Commission Director Johnny Griffin.

"Obviously, the major fiscal impact of the film incentive non-renewal is the direct loss of income tax revenue to the state, as a large majority of the 3,500-4,000 highly compensated and skilled workers will be forced to move to another state to pursue their careers," Handfield stated.

Referring to film industry employment, the letter stated, "State data reports that over 4,000 individuals were paid for work in Southeastern North Carolina."

CJ contacted Handfield to discuss his employment estimates. "We have not released the study," he replied by email. "I cannot provide any responses yet." CJ

Commerce claims of movie jobs range from less than 800 to more than 4,000

North Carolinians employed in motion picture and video production, 2001-2012

Year	No. of Employees
2001	1252
2002	995
2003	929
2004	850
2005	673
2006	632
2007	693
2008	772
2009	747
2010	767
2011	821
2012	792

Source: Bureau of Labor Statistics
<http://data.bls.gov/>

State Bar Reverses Course On Required Campaign Sign Wording

Continued from Page 1

"That being the case, please be advised that the advice issued by Ms. McLaughlin to you is hereby withdrawn and should not be relied upon. We regret any confusion or inconvenience occasioned by our well-intentioned and entirely apolitical attempt to offer assistance in this matter."

Before the Bar reversed course, critics said it had circumvented the State Board of Elections, may have trampled Phillips' constitutional rights, and possibly contradicted a prior U.S. Supreme Court ruling.

Bar: Use 'vote for'

The Bar warned Phillips, a registered Republican running for district attorney in a newly created judicial district, that his campaign signs violated Rules of Professional Conduct governing attorneys because the placards didn't include wording such as "vote for" or "for."

Like campaign signs posted by a host of candidates, including Supreme Court hopeful Sam Ervin IV and Court of Appeals candidate Lisa Inman, both Democrats, Phillips' signs displayed only his name and the position for which he is running.

Karmen Mock, Phillips' wife, who is helping with his campaign, said Bar officials cited Rule 7.1, which prohibits attorneys from making misleading representations to prospective clients.

Rather than engage in a protracted and costly legal fight before the May 6 primary, Phillips chose to spend campaign funds revising his signs.

Carolina Journal interviewed several attorneys licensed in North Carolina with election law expertise who said the Bar's findings stifled Phillips' First Amendment rights, but none



Critics say the State Bar, before reversing course, circumvented the State Board of Elections, may have trampled a candidate's constitutional rights, and possibly contradicted a U.S. Supreme Court ruling. (CJ file photo)

would criticize the agency publicly.

Other attorneys who aren't based in the state were less reticent. "The claim that it is deceptive defies common sense," said Hans von Spakovsky, manager of the Election Law Reform Initiative and senior fellow at The Heritage Foundation.

"The Bar's position interferes with the authority of election officials, who are responsible for enforcing state campaign rules. It is also a potential violation of the candidate's First Amendment rights," von Spakovsky said.

"I think the ability of bar associations to limit candidate political speech was curtailed by the [U.S.] Supreme Court in *Republican Party of Minnesota v. White* in 2002," von Spakovsky said.

The court sided with an attorney whose political speech had been restricted by the Minnesota Supreme Court's so-called "announce rule." The rule banned attorneys seeking judicial office from announcing their positions

on disputed legal and political issues.

Ilya Shapiro, senior fellow in constitutional studies at the Cato Institute, agreed that there are constitutional concerns about the North Carolina Bar regulating the political speech of a candidate for elective office.

"There is a doctrine in constitutional law that says government can't make you choose between your rights," Shapiro said.

'An overreach'

As a quasi-governmental agency that licenses and disciplines attorneys, the Bar's rules might have forced Phillips to choose between his First Amendment political speech freedoms and his ability to practice law.

"I think this is an overreach by the Bar officials. I think that the chance of someone being misled by such a sign is essentially nil," and that "indeed there is some sort of pretext," Shapiro said.

Rule 7.1 is "a pretty standard sort of ethical rule" that appears in bar guides around the country. Phillips' campaign signs do not violate the rule's intent, he said.

Shapiro said the Bar's actions compare to the *Susan B. Anthony List v. Driehaus* lawsuit in which the U.S. Supreme Court is scheduled to hear arguments in the coming weeks.

In that case, former U.S. Rep. Steve Driehaus sued the pro-life nonprofit Susan B. Anthony List, saying its planned advertising attacks against him for voting to pass the Affordable Care Act falsely accused him of supporting federal funding for abortions.

The Ohio Elections Commission blocked the ads, and Susan B. Anthony List sued on First Amendment grounds, saying the state law unconstitutionally criminalized political speech.

"That chilled their speech of not being able to advertise until after the election," Shapiro said. The matter with the North Carolina Bar "seems very similar" in chilling political speech, he said.

"Once this is resolved, [Phillips] could file suit against the Bar just to get a declaratory judgment to say you can't enforce Rule 7.1 in this manner," Shapiro said.

"I'm sure there would be lawyers willing to take this case pro bono [for no fee] to get a judgment in advance [of the next election] to stop the Bar from behaving in this manner," he said.

Ironically, Phillips in 2012 represented for no fee attorney John Nance, a district court judge candidate, and won on similar grounds.

"A grievance was filed with the state Bar against me saying that I was materially misleading the public into making them believe I was already a district court judge," Nance said.

Words too small

"What the sign said was 'For District Court judge vote for John R. Nance,'" Nance said. The complaint was based on the words "for" and "vote for" being smaller than the other words on his signs.

Nance lost the election in what was then a district encompassing Richmond, Anson, and Stanly counties. He is running this year for District Court judge in the stand-alone Stanly County judicial district created last year by the General Assembly. Nance plans to use the same signs this year.

Nance said he enlisted Phillips' help in getting the grievance dismissed because he had known Phillips for years.

"Lo and behold, guess what? He's got a complaint filed against him" this election cycle, Nance said. "It's ludicrous. ... It does get frustrating when you see the nit-pickiest things."

Mock said the State Board of Elections first contacted them over car magnet campaign signs affixed to her husband's personal vehicle. The elections board ruled the magnets were mobile signs and, by rule, had to contain wording showing that they were paid for by the Phillips campaign.

After that matter was resolved, Phillips received a phone call from Anson County attorney Fred Poisson, who said as a courtesy he was informing Phillips that the Bar would be making inquiries about his campaign signs. He encouraged Phillips to contact Bar counsel McLaughlin, Mock said.

Mock said Poisson is a supporter and former employer of her husband's primary opponent, Terry Clodfelter.

Elections records show Clodfelter was registered and voted in Anson County as a Democrat from May 1994 through November 2012.

Clodfelter changed his party affiliation to Republican in June 2013, days after the General Assembly created the stand-alone Stanly County district, and switched his address to his Stanly County lake house.

The tax bill for the lake house lists Clodfelter at an Anson County address. CJ

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Smith: Positive Aspects of Business, Capitalism Too Often Ignored

By CJ STAFF

RALEIGH

Some businesses would rather avoid competition and prefer instead to rely on government help in the form of special incentives, regulations, or other anti-competitive policies. Fred Smith has spent his career fighting that approach to business. Smith is founder and chairman of the Competitive Enterprise Institute and directs CEI's Center for Advancing Capitalism. He discussed his work with Mitch Kokai for Carolina Journal Radio. (Head to <http://www.carolina-journal.com/cjradio/> to find a station near you or to learn about the weekly CJ Radio podcast.)

Kokai: You wrote a column ... that has the headline, "We're in a Cultural War between the Forces of Economic Dynamism and Stasis." So this sounds like it's a really big deal, these businesses that don't want to rely on capitalism.

Smith: I think we recognize just like in biology: There's kind of the beautiful old trees of the past, and there's the saplings of the future, many of which are going to die, but tomorrow's forest will be those saplings. Economies are mixtures of what goes on within what's called the production possibility frontier, what we already know how to do, and there you can get some efficiencies, you can get some mergers, you can get some emulation — very important, obviously, for today, but the future depends on opening those paths to the future, recognizing the creative destruction that Joseph Schumpeter talked about, which blows holes in the production frontier, moves a whole economy dramatically out in ways nobody foresaw before.

We need that freedom, and too often the forces of the past, the forces of stasis, create barriers or don't oppose barriers to those paths to the future. Wayne Crews on our staff has always said that you don't need to teach the grass to grow; just move the rocks off the lawn. Entrepreneurial talent is everywhere in the world. And everywhere the entrepreneurial talent is kept down by the rocks of political bureaucracy.

Kokai: Many of us who are not entrepreneurs by nature would see the entrepreneurial spirit in action and say, "Wait a minute, this is just too hard to take." Why is this something that we have to take and say, "Look, entrepreneurs, do what you do because this is beneficial"?

Smith: Creative destruction is the core of that question because every act of change does some damage to the existing world. The automobile put out of business the buggy makers. The Internet has threatened the whole journalism world we grew up in. ...

"To wait until the bureaucrats understand what's going on means we'll have a stagnant society forever. Holding innovation down to bureaucracy speed is a recipe for disaster, for no future at all. And whether we care about that for ourselves or not, we should care about it for the people of the world, many of whom, one-third of whom, are still locked in a-dollar-a-day poverty."

Fred Smith
Founder
Competitive Enterprise Institute



We see the wreckage in the past of the change, but we fail to understand the incredible future that is opened up by that way.

Over the last — well, mankind over the last 10,000 or 30,000 years almost always lived in a stagnant world. Some improvements, but the improvements were critically eaten away by population growth and so on. It's only when we found ways to unleash the entrepreneurial spirit — the Industrial Revolution — that mankind began to live better and better and better and better.

And yet those very forces of change have made us complacent to some extent. Well, life isn't so bad. Maybe we ought to slow down a little bit.

Well, individually, perfectly fine: Many of us slow down as we get older. We retire and so forth, and many of us take occupations that a wealthy society can afford. Not economically remunerative, but wonderful jobs we like to see. The public policy world is very much like that as we both know.

But the challenge is to keep those forces of stasis from trying to say, "Change is too disruptive. Let's only have it when we decide it's safe." Because that misses the whole point. Entrepreneurs themselves aren't sure what the hell they're doing. They certainly don't know what in the world they're going to bring about.

Bill Gates, when he was inventing his products, actually thought computers only needed 32,000 pieces of memory. Who in the name of God would ever need more than that? Well, if Gates didn't understand that, it's obvious no one else did, too. Everyone thought they were going to have 100 computers in the whole United States. And Apple came along and realized that aesthetics could be merged with the technology, and now it would be ... almost like a painting in a room. All of those changes which now we reckon, "Well, of course now, obviously any-

one could see that." Nobody saw it coming, including the entrepreneurs themselves.

To wait until the bureaucrats understand what's going on means we'll have a stagnant society forever. Holding innovation down to bureaucracy speed is a recipe for disaster, for no future at all. And whether we care about that for ourselves or not, we should care about it for the people of the world, many of whom, one-third of whom, are still locked in a-dollar-a-day poverty. Only innovation can bring about the wealth and knowledge to bring those people to our standard of living.

Kokai: Does it help when making this case to point to something like a smartphone and say, "Hey, 20, 25 years ago, no one would have even known that something like this could exist," and if we block change and entrepreneurship now, the great things like the smartphone of the future won't come about?

Smith: You can try it, but it's amazing how difficult it is to get people to accept that. "Well, wait a minute. Everybody knows about smartphones." Just like everybody knew about cars and everybody — at one time — knew about railroads. We take for granted what already exists. The future seems so uncertain, so risky, so dangerous. What are the smartphones that maybe 20, 30 years from now we'll need?

Again, Wayne Crews points out, ... one of the phrases we've gone through a lot is, "Most of the wealth the world would need in 30 years hasn't even been envisioned yet." It's not only we don't have it yet, we don't even know what it is going to come from. We know possibly nanotechnology could be a wonderful breakthrough area, 3-D printing could be incredibly amazing, totally specializing and decentralizing production for many, many products in our society.

Cell biology with a possibility of decoding the reasons why cancers [exist].

All of those areas are incredibly interesting paths to the future, just beginning to be explored, just beginning to be trod upon. And every one of them is threatened by [Food and Drug Administration] regulation, by [Environmental Protection Agency] regulation, by local opposition, by the forces of stasis. We always have to recognize that change is disruptive, but stagnation is deadly.

Kokai: What is the first step that we ought to take now to get back toward the path of supporting more dynamism and not letting stasis become too much of a force?

Smith: I think one thing we have to do is to recognize that narratives are important. We have to tell stories about the heroism. There's been a tendency over the last century, really, or more, to tell negative stories about business. We talk about the wealth these people earn themselves. We don't talk about the wealth they earned for societies.

We don't talk about the equality that became possible when the cellphone made it possible for handicapped people to live, or the computer, much more meaningful lives. We don't talk about the technologies that made it possible for Africa to bypass the whole landline world of telephone because they could never have afforded that. And now that world, that whole continent, is beginning to be in contact with the greatest knowledge in the world. With Google they have more access to knowledge than a person studying at Harvard Library did 50 years ago.

All of that is the story about how innovation, how dynamism, doesn't only make us richer and freer, it also makes the world a more stable, resilient place because we're continuously able to move away from the shortages of today to the infinite resource of the mind tomorrow. CJ

UNC Student Health Fee: Not Just For Medicine

By JENNA ASHLEY ROBINSON
Contributor

RALEIGH

In April, the UNC Board of Governors Committee on Budget and Finance will vote on UNC-Chapel Hill's health services fee. The committee began to scrutinize the \$436 fee assessed yearly to students after learning that UNC-Chapel Hill is spending some of it on projects that may have little to do with delivering health care.

The fee has paid staffers at Interactive Theatre Carolina, which, according to a UNC Chapel Hill website, "uses scripted and improvisational performances to promote discussions about health, wellness, and social justice." The fee also covers the salary of a "strategic planner for diversity initiatives," and it helped sponsor "Orgasm? Yes, Please!" a campus event that provides a "fun, educational look at sexual health, relationships, and pleasure!"

The health services fee, which brings in more than \$12 million in revenues to UNC-Chapel Hill, is intended to finance medical services for students, including the operation of student health centers. But recently, the student health center has been showing signs of costly mission creep.

Using the health center allows students to save \$20 per visit because they aren't charged the co-pay they would be charged off-campus. However, students have to pay the full \$436 health services fee for the privilege.

In addition to the health fee, students are required to purchase health insurance. Since 2010, UNC has had a "hard waiver" policy: Students must purchase the UNC plan unless they submit proof that they already have insurance (if they're covered by their parents' health plan, for instance). Sold by Blue Cross Blue Shield of North Carolina, the Student Blue plan costs \$1,376 per year.

The Student Blue plan covers everything from checkups to substance abuse counseling and has been changing to comply with the Affordable Care Act. In ACA terms, it's "Gold" coverage for a "Bronze" price. This is because the pool of people who are covered is young and healthy. While the \$1,376 figure is more than the \$549 to \$679 range quoted by insurers when a systemwide plan first was considered

in 2009, the cost is competitive with other policies. The university's large number of students gives it considerable negotiating power.

So, with all students on "Gold" health care plans, why do they need to pay health fees?

Before the ACA was passed, health centers worked in a complementary way with health insurance. Centers were available, usually at no charge, for walk-in visits, checkups, and women's health issues. Insurance was required for more expensive health problems, and students could (and did) go to other offices for those.

Today, however, the different kinds of services are not so clear-cut. Indeed, some services — like primary care and women's health visits at some schools — appear to be paid for twice. For example, UNC-Chapel Hill's Campus Health Services

website reports that students' annual fees support "unlimited provider visits in the Primary Care Clinics," while a list of Student Blue benefits includes "100 percent coverage for preventive care at Student Health Center and in-network providers."

UNC-Chapel Hill's is clearly a "Cadillac" health center — not surprising considering that it receives both hefty fees and insurance payments. The service employs seven primary care doctors, eight psychologists, six social workers, 11 athletic trainers, and dozens of additional doctors, nurses, and staff. Students have access to walk-in therapy sessions, after-hours urgent care, and the full range of women's health services. It even offers nutrition counseling, tailored nutrition plans from registered dietitians, and access to "sexperts" who provide sex health counseling.

At a time when tuition and fees have been increasing almost continually, it's important for students to get the most bang for their health care buck. At UNC-Chapel Hill, and perhaps several other schools in the system, students are paying for more health care than they need, and the university uses some of that money for boutique services and spending that's unrelated to basic health care. CJ

Jenna Ashley Robinson is director of outreach for the John W. Pope Center for Higher Education Policy.

UNC health fee recently has shown signs of costly mission creep

COMMENTARY

University President As Reformer

Public universities are on the brink of change. Students pay \$22,000 on average to attend public universities while fearing that they won't get jobs, parents wonder what their children are learning, legislatures are less sympathetic than in the past, and online alternatives are competing.

What should university presidents do? Mitch Daniels, who recently completed his first year as president of Purdue University, may have some answers. The former Indiana governor is known for efficiency, has a background in business, and headed the Office of Management and Budget under George W. Bush.

He already made news by announcing that his employment contract bases 30 percent of his compensation on meeting performance objectives. It was his idea, and he is using that approach with top administrators as well.

In January Daniels wrote an open letter to the "people of Purdue" assessing his progress and laying out future plans. The letter shows how one leading figure faces a changing environment. But is he doing enough?

Daniels takes the challenges to universities seriously. "The doomsday predictions may well be misguided or premature," he writes. "But history is littered with extinct institutions, businesses, or entire industries that dallied in arrogant denial as the bases of their past success were undermined and washed away."

Thus, one of his major innovations is to offer two \$500,000 prizes. One will go to the first department or program at Purdue to create a three-year degree — enabling students to finish school at a lower cost. The other is for the first competency-based degree. Instead of earning credits, students will pass tests showing that they have mastered a subject or skill and then move on to the next stage. This, too, could speed up graduation.

Daniels has frozen tuition for two years and expects to extend that to three. He has cut the cost of the student meal plan by 5 percent and reduced co-op internship fees by 56 percent. To keep tuition from rising, Daniels has taken cost-cutting measures like collective

purchasing and selling off under-used vehicles.

He also promises to make "the swiftest possible transformation of the typical course to some version of the 'flipped' classroom." Under this approach, pioneered by Salman Kahn of Kahn Academy, students hear the professor's lecture online at home and then spend class time doing problems or interacting with the professor.

Daniels also has an unusual idea for measuring student learning. Purdue and the Gallup Organization have announced a new "national index of university effectiveness." Using surveys of alumni, this project will measure graduates' "readiness for increasing levels of leadership in their chosen fields, and their overall fulfillment in life." Of course, to what extent a university should get credit for "fulfillment in life" is a big question.

My biggest concern with Daniels as a role model for other presidents is that he thinks that bigger is better. Daniels wants Purdue to have more engineering students, more engineering faculty, more research grants, more research teams, and more research buildings.

That may be good for Purdue, but such costly expansion of state-owned universities may be a mistake for the nation as a whole.

Second, rather than recruiting only highly qualified students for admission, he wants to improve Purdue's 70.7 percent graduation rate by boosting mentoring programs, "learning communities," and early-warning systems of a student's academic slippage. There is a place for those programs, but how much should a university coddle students who shouldn't be there?

And while Daniels' letter praised the faculty's cooperation, he didn't say much about issues that directly affect faculty — course loads, curriculum (including expanding and reducing programs), tenure, and pay.

I'll be watching to see how things go. CJ

Jane Shaw is president of the John W. Pope Center for Higher Education Policy.



JANE SHAW

Campus Briefs

In a March 10 article for the John W. Pope Center for Higher Education Policy, authors Jenna Ashley Robinson and Jay Schalin highlighted an ongoing budget battle between Art Pope, North Carolina's budget director, and the UNC system's Board of Governors.

Pope had sent a strongly worded memo to the board, stating that its request for a 4.6 percent increase in the university system's 2014-15 operating budget was "not realistic."

The governor's office and the legislature, which will approve state agency budgets later this summer, had asked the UNC system to come up with an operating budget that was no more than 2 percent higher than the current one.

The budget director wrote that, while UNC system president Thomas Ross had told him the system's statutory duty is to provide the governor's office and legislature with a list of its "needs," the statute actually "requires the Board of Governors to submit a 'budget' not 'needs.'"

Art Pope is son of the late John William Pope, who was a member of the UNC-Chapel Hill Board of Trustees for whom the John W. Pope Center for Higher Education Policy is named.

"We welcome tough questions about how the university proposes to spend public dollars," said Peter Hans, chairman of the UNC system's Board of Governors.

Some UNC system officials have claimed that previous years' budget cuts "threaten academic quality." But other legislative priorities, like increasing K-12 teachers' salaries, Medicaid funding, and state employee salaries, are likely to take precedence over additional increases in public higher education funding.

Pope's memo also noted that enrollment at UNC system campuses "is down from what already has been budgeted" and that "the state has not had an 11 percent revenue increase in the last 20 years, even with a variety of enacted tax increases."

It appears that the UNC system will have to adapt to changing circumstances that demand greater efficiency rather than pressing for more money. *CJ*

Compiled by Jesse Saffron, a writer and Web designer at the John W. Pope Center for Higher Education Policy.



WSSU Grading Scandal Embroils Administration

By HARRY PAINTER
Contributor

RALEIGH

A hearing at Winston-Salem State University to investigate a professor's alleged misconduct raised more questions about the administration than it answered about the professor.

On Feb. 21, the Faculty Hearing Committee on Discharge and Non-reappointment held a public but little-publicized hearing on the case of Olethia Davis, the former coordinator of political science in the Social Sciences Department.

Davis has been suspended from teaching since last May, when she also was told that she might be fired. She had been charged with "misrepresentation and falsification of credentials" because she wrote the word "book" on her curriculum vitae next to a description of her 1991 doctoral dissertation for Louisiana State University.

The proceedings, however, were connected with a scandal in which professors complained about the administration changing some grades they had assigned.

The Pope Center published an article in July by a former Winston-Salem State employee stating that two professors had told her the grades they had given students had been changed without their permission. The author of that piece was Shira Hedgepeth, the university's former director of academic technology, who was fired in 2011. Hedgepeth said the historically black university had fired her because she was white, and the federal Equal Employment Opportunity Commission found there was reason to believe that race was a factor in her firing.

While Davis disputed the charges against her, she questioned Provost Brenda Allen's motives even more vigorously. She did not charge Allen with retaliation but based a sizable portion of her defense on the suspicious timing of events.

Allen testified that she was struck not only by Davis' use of the word "book" on her CV, but also the claim that the Louisiana State University Press published the supposed book. Davis responded that she never used the word 'press' on her CV — instead, she always writes that her dissertation was published at Louisiana State's Hill Memorial Library.

Louisiana State's library does have copies of her dissertation, "A Multivariate Analysis of Voter Turnout

in Louisiana Contested Nonpartisan Judicial Elections, 1981-1988," categorized both as a "microform" and as a "book."

Davis made allegations about the administration that were even more disturbing than the administration simply switching B's to A's, as Hedgepeth has charged. Davis testified that the administration awarded A grades to students who were not doing any work and failing her class.

As Davis explained, in the fall of 2012, she was teaching POS 4369 — constitutional law, a course that fulfilled a requirement for political science majors.

The course began with 17 students, but by the end of the semester, most of them were failing the course (two were sophomores who dropped the course). She testified that on Nov. 20, the administration moved failing students into an "independent study" section, POS 4330, a course that was

supposed to have started Aug. 30.

Davis testified that several of the students reassigned to POS 4330 passed with A grades — and some graduated that fall — for what amounted to a one-week semester, as the Thanksgiving break fell during this period.

Meanwhile, the three students who remained in POS 4369 "were the students who were doing the work" and earned their good grades, according to Davis.

When the Pope Center asked Allen about Davis' allegations regarding

her constitutional law course, public relations director Nancy Young responded, saying, "Students were given the opportunity to withdraw."

Those who withdrew, she said, received W marks for the original course. Young said she could not answer whether or not the administration added courses mid-semester, as Davis stated, citing the need to protect student privacy.

Allen later said in an email to the Pope Center, "grade disputes and the like are the purview of the faculty, chairs, and deans." Moreover, she said, she "cannot comment on the specifics of any student, faculty, or staff issue. Suffice it to say that UNC policy obligated me to respond to the issues I presented [during the hearing]."

The Family Education Rights and Privacy Act does protect the privacy of individual education records, but does not appear to prevent a public university from disclosing information about the general practice of transferring students from one course to another.

At a March 21, 2014, board meeting, the university considered a new independent study policy. For example, the proposed policy would require "at a minimum, three deliverables (papers, projects, exams, productions, etc.) that will be graded." Had such a requirement been in place in the fall of 2012, the administration might not have been able to pass students who allegedly attended an independent study course for only one week.

Should the hearing committee decide in the administration's favor, Davis faces termination of employment. *CJ*

Harry Painter is a reporter at the John W. Pope Center for Higher Education Policy.



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Opinion

The 'Party School' Quandary: A 'Fun' Image Brings In Students

Much has been written about the phenomenon of the party school — a college or university that has a reputation as a place where a large share of the student body is more interested in having a good time than learning. For example, Craig Brandon's book *The Five Year Party* advised parents to avoid the booze-soaked atmosphere of those schools.

Now there is a new book on this subject, *Party School: Crime, Campus, and Community*, by sociology professor Karen Weiss. She's writing about one school in particular, but she makes a weak attempt at hiding its identity, calling it "Party University."

But there are numerous clues. It takes just a minute surfing the Internet to discover that it's West Virginia University, where Weiss is a faculty member.

The book's big point is that a large percentage of American college students have little interest in learning while they're on campus; studying might mean missing out on some fun. Weiss writes, "For many students today, going to college is simply what young people do. With no particular ambition or plan of study, college is where young people go after high school to postpone adult responsibility and 'party' for four years."

While the higher ed establish-

ment continues to propound the image of students diligently absorbing knowledge, this contrary view that a lot of students are just in college for unhealthy, adolescence-prolonging fun is like a cold reality shower.

Party schools are those where a high percentage of the students devote much of their time to partying, which means heavy drinking and/or drug use. At West Virginia, Weiss states, about 25 percent of the students are "light partiers" who usually drink less than five drinks per night no more than once per week; 40 percent are "heavy partiers" who usually have five to eight drinks and go out two to three nights per week; and 14 percent are "extreme partiers" who consume nine or more drinks each time they "party," which they do four or more nights in a typical week.

The heavy and extreme partiers actually see their activity as a kind of competitive sport, to show how much they can put away and how wild they can get. Of course, there are serious, adverse consequences from that behavior. Obviously, these students often do very poorly in their coursework, but they also are apt to suffer injuries, illnesses, and legal troubles as a result of their behavior.



But all such consequences are brushed away, Weiss writes, because the partiers say that such things "are a normal part of college life."

In fact, they regard themselves

as having a "right" to party and bitterly resent other students and community residents who complain about their loudness and rowdy behavior. Weiss observes that the partiers

"are often so assured in their 'right to party' that they are disrespectful

toward police, indignant toward persons who complain, and unconcerned about how their behaviors affect others who live and work in the college community."

The West Virginia campus is so dominated by the party culture that

students who are not partiers are "marginalized." When the detrimental effects of party behavior on them are brought up (including the way the university's reputation is damaged by the partiers), the partiers turn the blame around and say that the non-partiers should have gone to some other school.

One aspect of the party culture that I wish Weiss had explored further is the academic work that the heavy and extreme partiers do (or don't do). She informs us that very few of them

major in demanding fields such as engineering or health sciences. Most major in a social science or a subject matter that requires little academic discipline.

Weiss explores the responses of administrators at party schools to the problem and finds them to be ineffectual. At some schools, officials have tried to encourage alternative forms of recreation or socializing that are alcohol-free, but they are ignored by students who are convinced that it's impossible to have fun without getting drunk.

She suggests that the weak responses to partying are due to the fact that a party reputation helps to bring in students. "The image of the fun-loving party school as a marketing tool that lures students to enroll may help to explain why administrators at PU and other party schools appear rather ambivalent about their reputations," she writes.

Partying has long been a feature of American college life, but it might begin tapering off. Employers have found out that college degrees don't necessarily betoken much knowledge or reliability. They're looking for better indicators that don't require graduation from college. As that movement continues, before long the mere possession of a generic degree from any school, especially a "party school," may be fruitless.

Party schools will recede in a future world where people are less inclined to spend limited educational dollars on campus fun. CJ

George Leef is director of research at the John W. Pope Center for Higher Education Policy.



GEORGE LEEF



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From the Liberty Library

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• Over the last century, global poverty largely has been viewed as a technical problem that requires merely the right “expert” solutions. Yet all too often, experts recommend solutions that fix immediate problems without addressing the systemic political factors that created them in the first place. Further, they produce an accidental collusion with “benevolent autocrats,” leaving dictators with yet more power to violate the rights of the poor. In *The Tyranny of Experts*, economist William Easterly, best-selling author of *The White Man’s Burden*, traces the history of the fight against global poverty, showing not only how these tactics have trampled the individual freedom of the world’s poor, but also how doing so has suppressed a vital debate about an alternative approach to solving poverty: freedom. Learn more at www.basic-books.com.

• Perhaps no other president’s name is invoked by politicians as much as Ronald Reagan’s. Every election, as presidential hopefuls jockey for the Republican nomination, each one claims to be a “Reagan conservative.” But are these candidates truly carrying the mantle of Ronald Reagan, or are they abusing the memory of our great president? What did Ronald Reagan really believe? In *11 Principles of a Reagan Conservative*, biographer Paul Kengor analyzes Ronald Reagan’s speeches and actions to paint a full, accurate picture of his beliefs. The answers to some of these questions may surprise conservatives and liberals alike. For more information, visit www.beaufortbooks.com. CJ

Book review

An Enlightening Biography of Jefferson’s Biographer

• William C. Hyland Jr., *Long Journey With Mr. Jefferson: The Life of Dumas Malone*, Potomac Books, 2013, 328 pages, \$34.95.

BY RAY NOTHSTINE
Contributor

Historian Dumas Malone is well-known to those who study Thomas Jefferson. His six-volume biography of the author of the Declaration of Independence spanned four decades. Malone, who often was told to stay clear of penning a lengthy Jefferson biography because of the complexity of the man, finds a biographer of his own in William Hyland Jr.’s *Long Journey with Mr. Jefferson*.

Malone was born in 1892 in Coldwater, Miss. Hyland notes that, in many ways, the America Malone grew up in resembled Jefferson’s America more than our contemporary scene. Besides a short stint in the Marine Corps, which remained a proud and treasured experience for Malone, academia was his lifelong mission.

Malone was a member of the faculty in history at Yale University, Columbia University, and the University of Virginia. He served as editor of the *Dictionary of American Biography*, but it is *Jefferson and His Time* that secured his notoriety. Malone “wanted to bridge the gap between the scholar and the public with his Jefferson biography,” declared Hyland. It was because of Malone’s writing on Jefferson that he was awarded the Pulitzer Prize in 1975 and Presidential Medal of Freedom in 1983.

A traditionalist in his field, Malone eschewed the rise of historians who psychoanalyzed the figures they studied. He believed these historians often valued ideology over accuracy. In a 1981 interview, Malone noted:

I don’t object to anybody using any tool that will help us arrive at a better understanding of people. The trouble about psychoanalysis as applied to figures of the distant past is that there were practically no materials to work with. Where are your materials when you’re dealing with people like Jefferson or George Washington or John Adams? You haven’t gotten them on the couch, you can’t question them. So I’m a little skeptical of [psychoanalysis’s] value in dealing with the characters of the distant past.

It was the Jefferson-Sally Hemings controversy that consumed a great deal of Malone’s time as he came to the defense of Jefferson’s reputation against the allegation of the lifelong affair with his slave. He called the charges “bad history,” and wrote that Fawn M. Brodie’s *Thomas Jefferson: An Intimate Life* is “psycho-history” and “largely a work of imagination.”

Brodie’s biography works largely from secondary sources and Freudian psychoanalysis to bolster the Jefferson-Hemings relationship. Hyland notes that, “Malone’s supporters depicted Brodie as a woman obsessed with sex and as a marginal historian who made a ‘scholarly specialty

of oddballs.’ Brodie supporters, in contrast, depicted Malone as a hagiographer and a conservative defender of the national self-image.”

Malone was enlisted to fight CBS in the mid-1970s, when the television network sought to depict the Jefferson-Hemings affair in a miniseries. CBS ultimately dropped the project, and Malone grew tired of having to lend his name continually in defense of Jefferson. Malone later would admit that it was possible Jefferson carried on an affair with his slave, but it never could be proven. Malone always believed it was much more likely that one of Jefferson’s nephews or his brother Randolph — whom one historian called a “half-wit” — had been involved with Hemings. DNA results eventually would prove that Sally’s offspring came from the Jefferson family lineage, but that failed to prove that Thomas Jefferson fathered any of her children.

Malone also bristled at historians and biographers who tried to cast moral judgments on characters outside of the time they resided. He preferred the more traditional standard of judging a figure by his times and contemporaries.

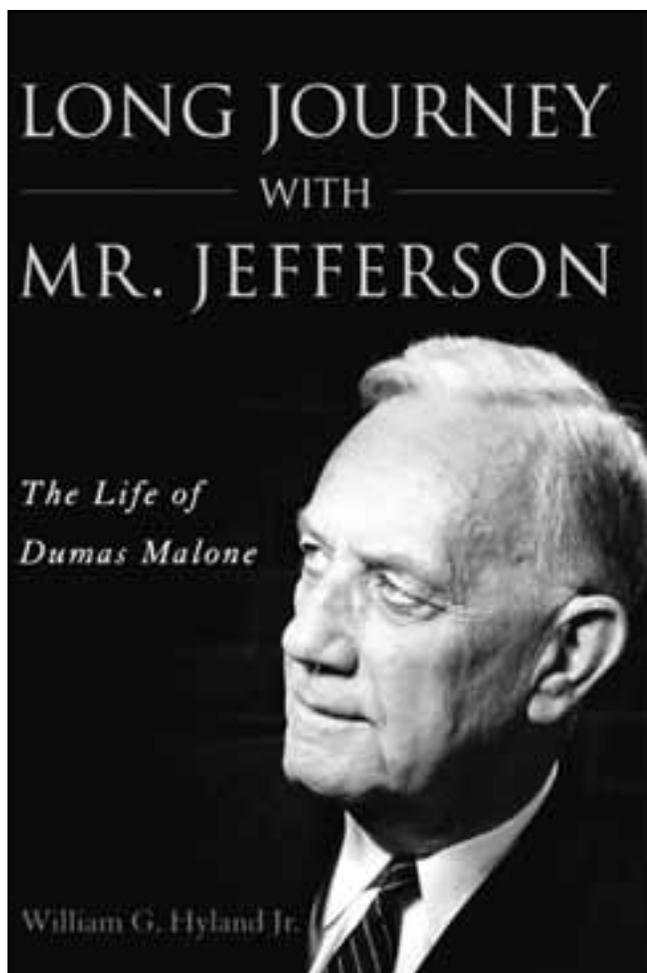
In the last few decades of his life, Malone suffered severely from macular degeneration. With the help of a magnifying machine for reading and his graduate assistant and secretary, he raced to finish his final Jefferson volume, published in 1981, *The Sage of Monticello*. “To all who cherish freedom and abhor tyranny in any form,” Malone wrote in the final volume, Jefferson “is an abiding symbol of the hope that springs eternal.” The historian C. Van Woodward noted it was “a masterly achievement of scholarship” and “a monumental triumph.”

“I must confess that after years of association with Thomas Jefferson, George Washington, John Adams, and other giants of our early history, I am relatively indifferent to contemporary celebrities,” declared Malone. In the six volumes over four decades, Malone would note of studying Jefferson’s diverse interests and mind: “To live with him intimately is a liberal education.”

Columnist George Will named Thomas Jefferson the “Person of the Millennium.” Jefferson “is what a free person looks like, confident, serene, rational, disciplined, temperate, tolerant, curious,” added Will. Jefferson “expresses the American ideal.”

It may stand out to some that as the attention span becomes shorter for many Americans, they read books less often and become more ignorant of their own history, Malone spent decades studying a single figure and his times. Even more so, Jefferson was not an easy man to study and one Malone called “perennially challenging” and an “inexhaustible subject.” Still, we owe a great debt to Malone, who helps all of us to understand Jefferson, who wisely told us, “the inherent and inalienable rights of man” never change. CJ

Ray Nothstine is managing editor of Religion & Liberty at the Acton Institute in Grand Rapids, Mich.



Spanish Exploration of North Carolina Preceded Lost Colony

Before the expeditions funded by Sir Walter Raleigh landed on the Outer Banks in the mid-1580s, other European explorers traveled across modern-day North Carolina, claiming land in what they called the New World. In the mid-1500s, the Spanish were winning the race for land among European nations.

Early Spanish explorers included Luis Vasquez de Al-lyon, whom some historians claim sailed the Cape Fear River in 1526; Hernando de Soto, who in 1540 traversed the southern Appalachian mountains; and Juan Pardo, who led two expeditions from Santa Elena (near modern-day Beaufort, S.C.) into the Catawba Valley and then into the mountains of western North Carolina and eastern Tennessee.

During his first expedition, Pardo searched primarily for food for the Santa Elena settlement. The second expedition's mission was to find a

road to Zacatecas, Mexico (a location of Spanish silver mines), and to claim land for Spain.

The first expedition lasted from Dec. 1, 1566, to March 7, 1567. Pardo and 125 men traveled northward from Santa Elena to find Indian towns with food. After trudging through the swampland of northeastern South Carolina and traveling across North Carolina, Pardo stopped at Yssa (near present-day Lincolnton) and then later at Joara, an Indian town and major economic hub, near modern-day Morganton. Nearby, the Spanish explorer and his men constructed Fort San Juan.

Sgt. Hernando Moyano de Morales and 30 men garrisoned the fort while Pardo returned to Santa Elena. On his return, he traveled along the Catawba River and passed the town of Quinahaqui (near Catawba) and then across land to Guatari (near Salisbury). Through an interpreter, Pardo informed Indians that they were Spanish subjects and left five men, including his chaplain, to evangelize the Indians.

According to anthropologist/historian Charles Hudson and as evidenced by the second expedition,

Pardo more than likely ordered Indians to build houses for Spanish troops and to store corn exclusively for Spanish forces.

Meanwhile, Moyano and his men near Fort San Juan searched for minerals, and according to a Spanish soldier, a small detachment helped a rival tribe defeat the Chiscas. The fighting was grisly. From Joara, Moyano later went westward and waged more fights. (According to historians, Moyano's foray was the only aggressive action taken in Pardo's expeditions.) Moyano and his men eventually ended up in eastern Tennessee.

Pardo had returned to Santa Elena from his first expedition by March 7, 1567. Impressed with Pardo's good reports, Adm. Pedro Menendez ordered a second expedition. On Sept. 1, 1567, Pardo led between 90 and 120 men westward into the Catawba Valley and the mountains of North Carolina — and this time into Tennessee — searching for a road to Zacatecas.

Before returning to Joara, Pardo met with Guatari Mico and Orata Chiquini — two female caciques (chiefs) — at Guatari. After a short stay in the commercial town, Pardo headed for the mountains to assist Moyano. The

Spaniard stopped at Taco (near Asheville) and at Cauchi (near Marshall) before traveling into eastern Tennessee, where he found Moyano and his men penned in a fort but unhurt.

After locating Moyano and returning across the mountains, Pardo received a report from a friendly Indian and avoided a surprise attack by redirecting his troops and returning to Santa Elena. On their return, Pardo and his men built two more forts.

The second expedition ended March 2, 1568, when the Spaniards arrived at Santa Elena. Pardo never found a road to Zacatecas, but he did establish rapport with Indian chiefs, built and garrisoned forts, and located crystal deposits — all without losing a man; Moyano's detachment had suffered casualties, however.

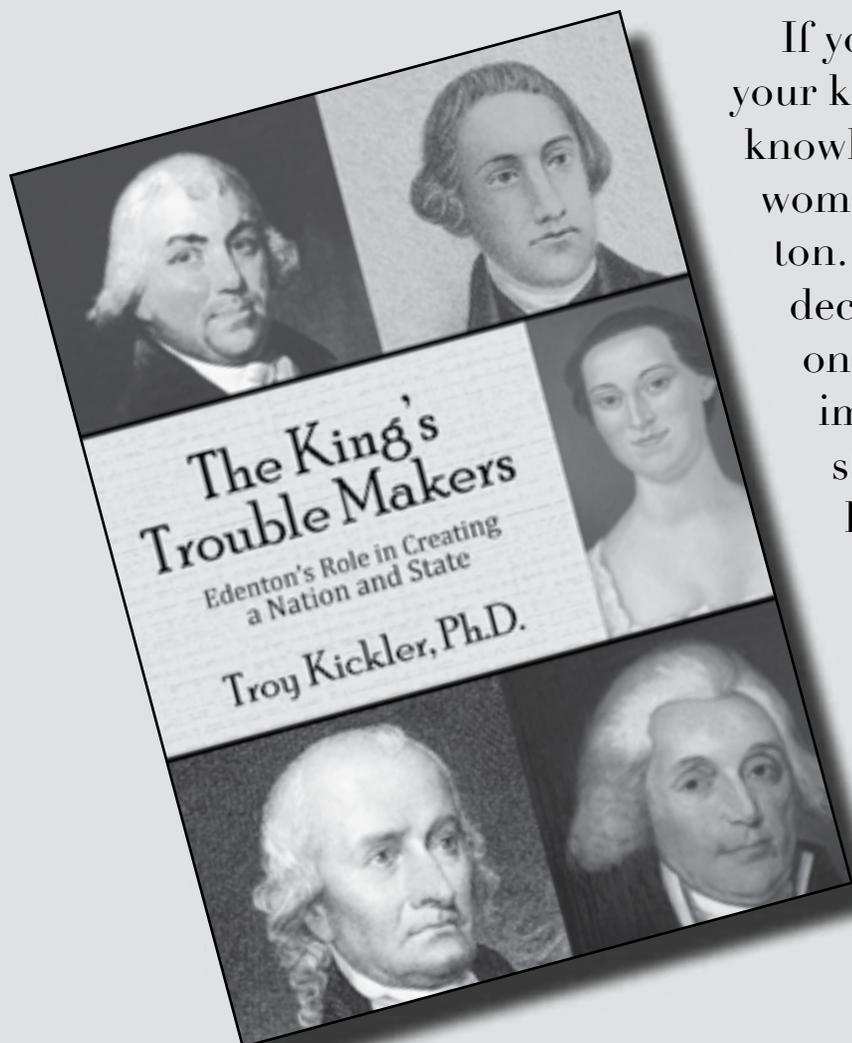
Even so, Pardo did not help settle La Florida for Spain, for the forts were too far inland, and the various chiefs ignored the demands of the Spanish soldiers who remained behind. Scholars believe the forts eventually were abandoned. CJ

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



**TROY
KICKLER**

BOOKS BY JOHN LOCKE FOUNDATION AUTHORS



If you don't know about Edenton, North Carolina, your knowledge of U.S. history is incomplete and your knowledge of North Carolina insufficient. Organized women's political activity in America was born in Edenton. The concept of judicial review — that courts can declare legislative acts unconstitutional — was championed here. Ideas for a national navy and defense were implemented here. Many passages of the N.C. Constitution (1776) and the U.S. Constitution originated here. Leading proponents of the U.S. Constitution (a.k.a. Federalists) lived in this small place, and so did nationally known jurists and politicians.

Dr. Troy Kickler, founding director of the North Carolina History Project, brings Edenton, its people, and its actions into proper and full focus in his book, *The King's Trouble Makers*.

Go to northcarolinahistory.org for more information.

Book review

Grim Tale of Life in Infamous Hanoi Hilton Yields Leadership Lessons

• Lee Ellis, *Leading With Honor: Leadership Lessons from the Hanoi Hilton*, FreedomStar Media, 2012, 233 pages, \$18.95.

BY LLOYD BILLINGSLEY
Contributor

RALEIGH
Navy Lt. Porter Halyburton was a white pilot who hailed from segregated North Carolina. His Communist captors put him in a cell with Maj. Fred Cherry, a black American pilot from segregated Virginia, hoping to exploit racial strife back in the USA. Instead, for six months Halyburton “completely attended to Cherry’s every need.” Lee Ellis tells that story and many others in *Leading With Honor: Leadership Lessons from the Hanoi Hilton*, a place he knew well.

In November 1967, Ellis was shot down on a mission to destroy the guns that protected the Quang Khe ferry that supplied the Ho Chi Minh Trail. Ellis was taken to the Hoa Lao prison, which American prisoners of war dubbed the Hanoi Hilton. The author provides detailed drawings and descriptions of the place, and offers a stunning and illuminating study for the many Americans who know little or nothing about North Vietnam and its systematic torture of American POWs.

The North Vietnamese tortured more than 95 percent of American POWs, including eight who were tortured to death. A full 40 percent of POWs remained in solitary confinement for more than six months, 20 percent for more than a year, 10 percent for more than two years, and several for more than four years. Pilot Ernie Brace spent five years in a cage in

Laos and North Vietnam, where one of the regime’s favorite tortures was the “Pretzel.”

“After the prisoner’s legs were tied together,” Ellis writes, “his arms were laced tightly behind his back until the elbows touched and the shoulders were virtually pulled out of joint. Then the torturer would push the bound arms up and over the head, while applying pressure with a knee to the victim’s back. During the torture, the circulation is cut off and the limbs to go sleep but the joint pain continues to increase as the ligaments and muscles tear. When the ropes are finally removed, circulation surges back into the ‘dead’ limbs, causing excruciating pain.” *Leading With Honor* includes a sketch of the practice by POW Mike McGrath.

The Vietnamese Communists also strapped Ken Fisher to a stool in leg irons and kept him awake for 21 days. Others were kept awake more than two weeks then beaten. The North Vietnamese also used handcuffs that could be ratcheted down tighter and tighter until they cut off circulation, even cut into the muscle and, on some men, “deep enough to expose bone.”

But all the torture wasn’t physical. The captors piped in propaganda, and, Ellis explains, “the afternoon broadcasts were especially disheartening because they featured Americans spouting words that could have been written for them in Moscow and Hanoi.” American Tom Hayden “was a

regular speaker,” later joined by his wife, “film star Jane Fonda.” For this pair, the American POWs were war criminals and their reports of torture were lies.

Ellis explains how POWs communicated with a tap code used by prisoners in the Soviet gulag and mentioned in Arthur Koestler’s *Darkness at Noon*. They memorized literature, music, and languages. Navy Lt. Denver Key taught a class in differential calculus, writing problems on the floor with a piece of brick. Ellis spent 10 hours a day imagining the operation of a 40-acre farm. Lt. Dan Glenn designed a home and made a scale model of the place. Charley Plum was well on his way to making a radio when his captors intervened.

The POWs joked and laughed, even though beatings and torture could easily follow.

Ellis draws leadership lessons from the ordeal and challenges the notion that most Vietnam veterans are “societal failures.” On the contrary, Ellis’ fellow captives learned their lessons well.

“In the POW camps they chose courage over compromise, commitment over comfort, and pain over shame,” Ellis writes. “Their character, refined in the fires of captivity, propelled them to success in a wide range of endeavors.” From Ellis’ POW group came 16 generals, six admirals, two U.S. ambassadors, two college presidents, two U.S. senators, one U.S. representative, several state legislators and assorted doctors, attorneys, corpo-

rate CEOs, and diplomatic officials.

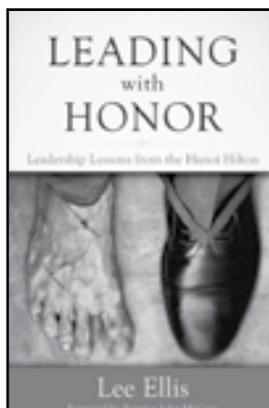
Some readers may wonder what happened to those who subjected American POWs to beatings, death by torture, and years of solitary confinement. Ellis leaves that theme unexplored, but by all indications the torturers have never been called to account. Neither have Hayden and Fonda, who were not “anti-war activists,” but propagandists for the North Vietnamese regime.

Fonda even partied it up with a North Vietnamese anti-aircraft squad. But unlike “Axis Sally,” Mildred Gillars, who served jail time for broadcasting Nazi propaganda, “Hanoi Jane” suffered not at all. Fonda’s money and prestige helped Hayden, whose propaganda broadcasts so disheartened American POWs, gain public office in California.

The war in Vietnam continued after the United States pulled out in 1973, and in 1975 South Vietnam fell to the Communists. Hayden and Fonda celebrated the victory and remained uncritical of a Stalinist regime more repressive than its Soviet sponsors.

Leading With Honor deserves a wide readership, particularly in Washington, D.C., where “leading from behind” is in vogue, and where the Vietnam Memorial bears the names of more than 58,000 Americans who gave their lives there.

Beyond the leadership and history lessons from that conflict, Lee Ellis guides readers to many valuable resources. They include James Hirsch’s *Two Souls Indivisible: The Friendship that Saved Two Lives in Vietnam*, the story of Fred Cherry from Virginia and Porter Halyburton from North Carolina. CJ



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Finished reading all the great articles in this month’s *Carolina Journal*? Don’t just throw it in the recycling bin, pass it along to a friend or neighbor, and ask them to do the same.

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Book Review

Authors: Why Bad Ideas Become Law, How Some Get Repealed

• Wayne Leighton and Edward Lopez, *Madmen, Intellectuals, and Academic Scribblers: The Economic Engine of Political Change*, Stanford Economics and Finance, 2013, 209 pages, \$29.95.

BY GEORGE LEEF
Contributor

RALEIGH

Have you ever wondered why democracies so often generate public policies that are wasteful and unjust? Have you asked why such policies persist over long periods of time, even when they're known to be harmful and better policies exist? And if you've pondered those questions, do you want to understand why, on occasion, bad policies get repealed, while most of them remain untouchable?

Congratulations. If you have entertained those questions, or now see that they are worth entertaining, this is a book you must read.

In *Madmen, Intellectuals, and Academic Scribblers*, economics professors Wayne Leighton (of Universidad Francisco Marroquin) and Edward Lopez (of Western Carolina University) take readers on an intellectual journey in search of the answers. The authors explain the connection between ideas, the "products" of the academic scribblers of their title, and the political actions that turn them into laws — and occasionally into ex-laws.

Starting with the first question above: Why do democracies often produce bad policies? The authors find the key to the explanation in what might seem a surprising place, namely John Maynard Keynes' famous book, *The General Theory of Employment, Interest, and Money*. No, not the book's macro-

economic nonsense and its advocacy of government countercyclical fiscal policy, but instead a line Keynes tossed in at the very end of the book, on how "madmen in authority" usually take their guidance, unwittingly, from "academic scribblers" in the past.

Leighton and Lopez state the point this way: "The ideas of academic scribblers might originate in ivory towers, but they become concrete and influential as they work their way down to shape what broader circles of people believe. Madmen in authority might speak to the masses in everyday language, but whether they know it or not, the depth of their message was penned by some bygone academic."

Keynes himself was one of those academic scribblers. So was Karl Marx. But their ideas would have merely gathered dust in seldom-read books if it weren't for intellectuals.

Here, Keynes' great antagonist, F.A. Hayek, enters the narrative. He explained that the ideas produced by scholars (not all of whom should be denigrated by calling them "scribblers") are ineffectual unless they are popularized and disseminated by intellectuals, whom he referred to as "secondhand dealers in ideas." Intellectuals sort through the ideas of scholars and spread those they like and try to squelch those they don't.

One of the biggest of those academic ideas of the past century was the belief that markets often fail —

they supposedly lead to unsatisfactory results for society because they underproduce social goods (such as education) and overproduce social bads (such as smoking). Government, however, can step in to correct those failures, argued many academics, beginning with British economist A. C. Pigou.

As intellectuals spread the idea that markets were defective but could be fixed by wise government policies, that gave politicians an opening to enact a great many policies that sounded good but in fact were harmful and unjust.

Why so many policies turn out to be harmful and unjust was explained by economists who had come up with a very different set of ideas from those of the interventionists — the Public Choice school. The authors give their readers a detailed account of the rise of a

small number of economists who explored how government really works, not how academic scribblers thought it should work.

Even if we acknowledge that the results of free markets aren't always ideal, what about the possibility that government action will make things worse? What if we drop the assumption that the political process is geared to advance "the public interest" and assume instead that politicians will pursue whatever they think is in their own interest?

Public Choice not only explains

why we have so many bad policies, but also answers the authors' second question — why do they persist?

The answer is that some group of people gains from whatever the government does. Interest groups ally themselves with powerful politicians to obtain benefits they could not have gotten through voluntary means. The gains to the members of the interest group are large, while the costs are widely dispersed throughout society.

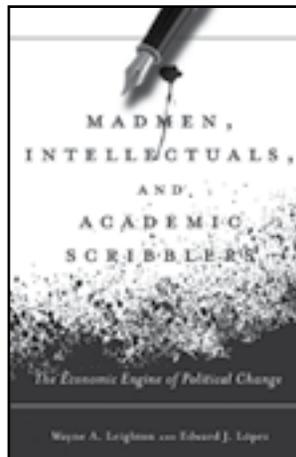
Furthermore, there is an asymmetry of knowledge at work: The beneficiaries know about the policy that favors them and how to work the system to keep it going, while the people who are harmed by it often are unaware of its existence.

Thus, we see why bad policies endure. Once in place, the interest groups that gain from them work the political system to maintain them.

This brings us to the third question — why are bad policies sometimes overturned? Leighton and Lopez explain that, on occasion, idea entrepreneurs are able to exploit "loose spots" in the nexus of ideas to effect change. They give several examples to show how that has happened, including airline deregulation, the change in federal policy on the electromagnetic spectrum (allowing auctions), and welfare reform.

Readers will learn much about the history of economic thought from this engaging, brightly written book, and also why it's so rare that bad policies get repealed. I strongly recommend it. CJ

George Leef is director of research at the John W. Pope Center for Higher Education Policy



BOOKS AUTHORED BY JLF STAFFERS



By John Hood
President of the
John Locke Foundation

Selling the Dream
Why Advertising is Good Business

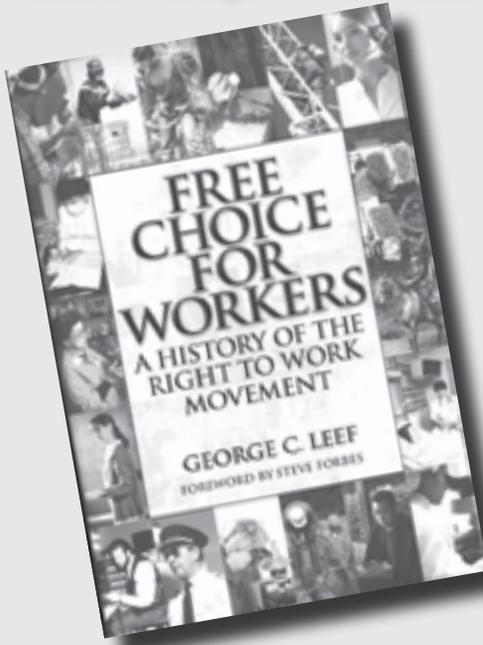


"[Selling the Dream] provides a fascinating look into the world of advertising and beyond ... Highly recommended."

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COMMENTARY

Overtime Rule Shows Ignorance

President Obama has announced that, through executive order, he will be changing the rules regarding which employees must be given overtime pay for working more than 40 hours per week. Under current regulations, all hourly employees who work more than 40 hours must be paid “time-and-a-half” for overtime hours. In addition to that, salaried workers who are paid less than \$455 per week also must be paid for overtime hours.

With the stroke of a pen, the president is changing this, and as of January 2015 the \$455 threshold will be raised. While the new threshold has not yet been determined, news reports suggest that it will be somewhere between \$550 and \$970 per week.

So what might be the impact of such a change on affected workers? Contrary to the president’s claims, it is likely to be negative. First, it should be noted that, for salaried workers in low-level managerial positions — those who are most likely to be affected by this change — the way to move up in a company is by increasing your productivity per dollar of compensation. There are essentially two ways of doing this. The first is by being more productive within the confines of a 40-hour work week, and the second is by working longer hours.

For workers affected by this rule change, the possibility of doing the latter, i.e., making yourself more productive by working more hours, is eliminated. In fact, with this rule change, an employer is incentivized not even to allow an employee to demonstrate his willingness to be more productive in this way. By implication, in the future salaried employees working for less than the weekly pay threshold probably would see fewer and smaller pay raises.

The only way an employee can climb the economic ladder is by making himself or herself more

productive and demonstrating that increased productivity to an employer. What Obama’s new regulations do is cut off an important avenue for advancement within a company and within the labor market more generally for those who are at the beginning of their careers and at the bottom end of the economic ladder. These are workers whose main career goal is, in all probability, economic advancement.

Economic analysis would suggest that there is another negative

impact for the affected populations. We should expect that entry-level starting salaries for low-level managerial positions will be reduced. This is because the affected workers will be hired with a different set of expectations regarding their level of output for the company.

At the present time, compensation levels include the expectation that, if need be, workers will

put in more than 40 hours a week without additional compensation. In other words, if expected productivity per dollar of compensation is reduced, then simple economic analysis would suggest that salaries also will be reduced. So while

lower-wage salaried workers will receive overtime pay for work beyond 40 hours in a week, it is likely that base salaries will be reduced to offset this.

As with his advocacy for increasing

the minimum wage, Obama demonstrates that he is either ignorant of economics or willing to take advantage of the ignorance of the electorate to advance his political and ideological goals. Both of these policies will hurt those they are presumably meant to help.

On the other hand, if the president’s true goal is to increase state control over labor market decisions, then clearly, with the implementation of these policies, his mission will be accomplished. *CJ*

Roy Cordato is vice president for research and resident scholar at the John Locke Foundation.



**ROY
CORDATO**

Obama rule takes away opportunity for workers to increase their productivity



EDITORIAL

Glitz, Glamour, And Giveaways

North Carolina’s 25 percent tax credit for film production is due to expire Jan. 1, and it may not be renewed, notwithstanding a massive push by state Commerce Secretary Sharon Decker and the industry’s other star-struck allies in economic development and tourism.

Good. The credit is an egregious form of corporate welfare. It needs to be eliminated, as it drains the state treasury, distorts the tax code and investment decisions, and fails to boost overall economic activity or employment.

The credit reduces the tax burden of a production firm by 25 percent of “qualified, production-related expenditures.” In plain English, a company filming part of a movie or a TV show in North Carolina gets reimbursed for 25 percent of its costs. Since the credit is refundable, if the company owes no taxes, it gets a check for the full credit amount from the state Department of Revenue.

This happens frequently, as production companies — such as Iron Works Productions III, LLC, which was created in North Carolina solely to film parts of the third movie in the Iron Man series — often are formed to do a single project and shut their doors not long after release. This guarantees that most if not all of the profits wind up with the parent studio conglomerate and are not subjected to North Carolina taxes.

In fact, using information from a Commerce Department presentation, John Locke Foundation director of regulatory studies Jon Sanders determined that North Carolina taxpayers

got back 19.4 cents for every dollar we spent luring film productions to the state.

Think of the credit as an Earned Income Tax Credit for Hollywood fat cats.

But wait. There’s more. The film credit creates few full-time jobs in the state. In this edition, *Carolina Journal’s* Don Carrington reports the number of film production jobs in 2012 in the state ranged from 792 to 2,004 to 4,100 — according to different divisions of the Commerce Department.

Commerce may not get its numbers straight, but Revenue attributed 17,730 jobs to film production in the fiscal year ending June 30, 2012. But that figure doesn’t say what you might think. It’s a count of the number of paychecks that were issued by production companies rather than the number of people who claimed employment in film production. The count includes extras who may have worked one day on a single shoot, and camera crews who worked a week or two each on a half-dozen different productions.

The film credit suffers from all the perversities and cronyism that accompany targeted tax credits. It subsidizes economic activities that take place in North Carolina only because the production companies are receiving what amounts to bribes from the state. Moreover, the burden for replacing the lost tax revenue is shifted to every other business that does not operate in the film industry.

The film credit offers few residual benefits to North Carolina and too many costs. Time to wrap this production. *CJ*

EDITORIALS

Revised Job Data

N.C. picture brightens with more work to do

In late February, some 44,000 discouraged North Carolina workers suddenly disappeared. Relax. What happened was that the U.S. Bureau of Labor Statistics released its long-awaited revision of five years of household-employment data for North Carolina and the rest of the country.

For months, critics of North Carolina's decision to exit the unemployment insurance extended benefits program last July have cited household-survey data to pummel Gov. Pat McCrory and the Republican-led legislature. Ignoring warnings about the preliminary nature of the data, and the statistical insignificance of many findings because of the survey's small sample size, these critics claimed that some 111,000 people had left North Carolina's labor force in 2013, dwarfing the scant 13,000 unemployed workers who had obtained jobs during the year.

But the revised BLS numbers show something very different. North Carolina's labor force declined last year by 67,000, not 111,000. For the last six months of 2013, the period after extended benefits ended, the number of employed North Carolinians rose by about 27,000 while the labor force declined by 39,000. Furthermore, because labor-force participation is trending downward for the nation as

a whole, it would be silly to attribute North Carolina's entire decline to the end of extended UI benefits.

Due to the margin of error, for the last six months of 2013, all that can be said with high confidence from the household-survey data is that the number of unemployed North Carolinians fell by about 65,000.

During the same six-month period, North Carolina employers added about 60,000 net new jobs, according to the broader BLS survey of employers — also revised recently. Economists typically put more stock in the employer survey because of its far-larger sample size. The survey data also are adjusted periodically to comport with actual payrolls reported to the federal government.

According to this data set, North Carolina added 86,000 net new jobs in 2013 — more than two-thirds of them after July 2013 — which was a faster rate of growth than the national average and the state's largest annual job gain since the Great Recession.

All sides of the political debate agree that significant economic challenges remain, even as we disagree about the best way of responding to them. One way to foster meaningful dialogue, however, would be to stop hyping preliminary data and drawing statistically invalid conclusions from them. *CJ*

Midterm Elections

History says GOP should lose seats

If North Carolina Democrats were to gain some legislative seats this year, pundits probably would spill gobs of ink — or at least fill gobs of pixels — with elaborate explanations of how the party began to recover its footing in a state it once dominated.

Based on North Carolina's modern political history, however, Republicans should lose seats in 2014. Since Republican Jim Holshouser's breakout victory in the 1972 gubernatorial race, every newly elected governor has seen his or her party lose legislative seats in the next midterm election.

Holshouser's Republicans went from winning 50 legislative seats in 1972 to holding only 10 seats after the party's 1974 Watergate-era debacle. In 1976, Jim Hunt reclaimed the governor's office for the Democrats. Two years later, Republicans doubled their legislative delegation to 20 seats. In

1984 Jim Martin reclaimed the governor's office for the Republicans, and it took a massive statewide effort by Martin to hold the loss to two seats each in the House and Senate in 1986.

Hunt returned to office in 1992. The next midterm, the "Republican Revolution" of 1994, produced a net gain of 39 GOP seats. The pattern continued, as Democratic Gov. Mike Easley saw his party lose nine seats in 2002, and Democratic Gov. Bev Perdue saw her party lose 27 seats in 2010 — including control of both chambers.

North Carolinians have elected new governors on six occasions since 1972. Each time, their parties have lost an average of 33 legislative seats in the next midterm. This year, we'll probably see something of a replay of 1986: a loss of a few seats here or there, in districts where Republicans did better than expected in 2012. *CJ*

COMMENTARY

N.C. Doesn't Pay More For Less

When politicians admit they don't know something, I respect them more.

Admitted ignorance is a sign of maturity, a willingness to learn. It can be remedied with facts. What really does grave damage is when politicians think they know something and act on it — even when what they "know" is false, misleading, or incomplete. That's how tax money is squandered, government power is abused, and problems are allowed to fester.

A common example in state politics involves transportation finance. Here are two undeniable facts: North Carolina has one of the nation's highest excise taxes on motor fuels, and many North Carolina roads are congested, inadequate, and in poor repair. From these facts, politicians, commentators, and activists across the spectrum have formed a variety of spurious conclusions about the funding, management, and oversight of the Department of Transportation.

The conclusions are based on incomplete information. You see, states differ widely in how they finance and manage transportation programs. You have to take these differences into account when making apples-to-apples comparisons of tax rates. You also have to consider that gas taxes aren't the only way governments finance transportation.

For starters, most states tax fuel and vehicles. Combining the revenue from both sources, the average motorist in North Carolina paid \$240 in gas and car taxes in 2010, the most-recent year for which all data are available. That puts the state almost exactly at the national average of \$238. If you then add in federal taxes as well as direct charges to motorists, including road and bridge tolls, North Carolina's total per-capita revenue from highway users was \$351, lower than the national average of \$390.

Next, you need to know that while many states have extensive road systems paid for by local property taxes, North Carolina doesn't. We don't have county road systems

at all. And even many roads within municipal boundaries are state-maintained, an artifact of a decision in the early 1930s to transfer funding responsibility from bankrupt local governments to the state. Similarly, an increasing number of jurisdictions compel residents to pay higher retail sales taxes to finance roads and other infrastructure.

Finally, although North Carolina has had a history of transferring gas and car taxes to non-highway uses, including mass transit and general state operations, other states have diverted funds at far higher rates. As of 2010, North Carolina spent about 12 percent of highway-user revenues for nonhighway purposes, compared to a national average of 20 percent.

So, to create a true apples-to-apples comparison of how much each state's residents pay in transportation taxes, you have to include gas taxes, car taxes, tolls, other direct charges, and the transportation share of property and sales taxes. For North Carolina, that number was \$510 in 2010. The national

average was \$657. States with higher transportation-tax burdens than North Carolina included Virginia, Florida, and Texas. Also, the quality of North Carolina's roads has improved substantially in recent years,

and is now at or above the national average according to some studies.

These are facts. By themselves, they don't establish any conclusions. For example, if you want to argue that North Carolina should build more toll roads or raise sales taxes to finance new transportation bonds, you'll have to make that argument on the merits.

My point is simply that if you thought North Carolinians paid more for transportation and got less value for it than the residents of other states do, you were mistaken, but understandably so. If you persist in making that claim now, however, you will be making a less-forgivable error. *CJ*

John Hood is president of the John Locke Foundation.



JOHN HOOD

**Facing facts,
telling the truth,
can save
states time
and money**

MEDIA MANGLE

Double Standards

On March 18, longtime Duke University health care scholar Chris Conover testified before the General Assembly's new Joint Study Committee on the Affordable Care Act and Implementation Issues. Conover's analysis of Obamacare's likely effects on health costs and economic growth in North Carolina was detailed, comprehensive, and sobering — as anyone familiar with his national work would have expected.



JOHN HOOD

The response from many liberal lawmakers and activists was more suitable to the playground than the state Capitol. They fumed, taunted, insulted, and figuratively stomped their feet in frustration. They observed conspiratorially that, in addition to his research work at Duke, Conover writes for the right-of-center American Enterprise Institute and thus couldn't be trusted to offer valid analysis of the Affordable Care Act.

Reporters covering the testimony conducted themselves no better. For example, several labeled Conover a "conservative economist" in an attempt to weaken his credibility. (His degrees are in political science and policy analysis.) Reporters paired Conover's statements, buttressed by empirical data, with immediate assertions from unnamed "supporters" of Obamacare that Conover was spreading false information.

When left-leaning scholars from Duke, N.C. State University, UNC-Chapel Hill, and other local universities testify before legislative committees, conservative lawmakers and activists don't hop up and down in fury like third-graders. Reporters don't label them "liberal professors" in an attempt to discredit their opinions.

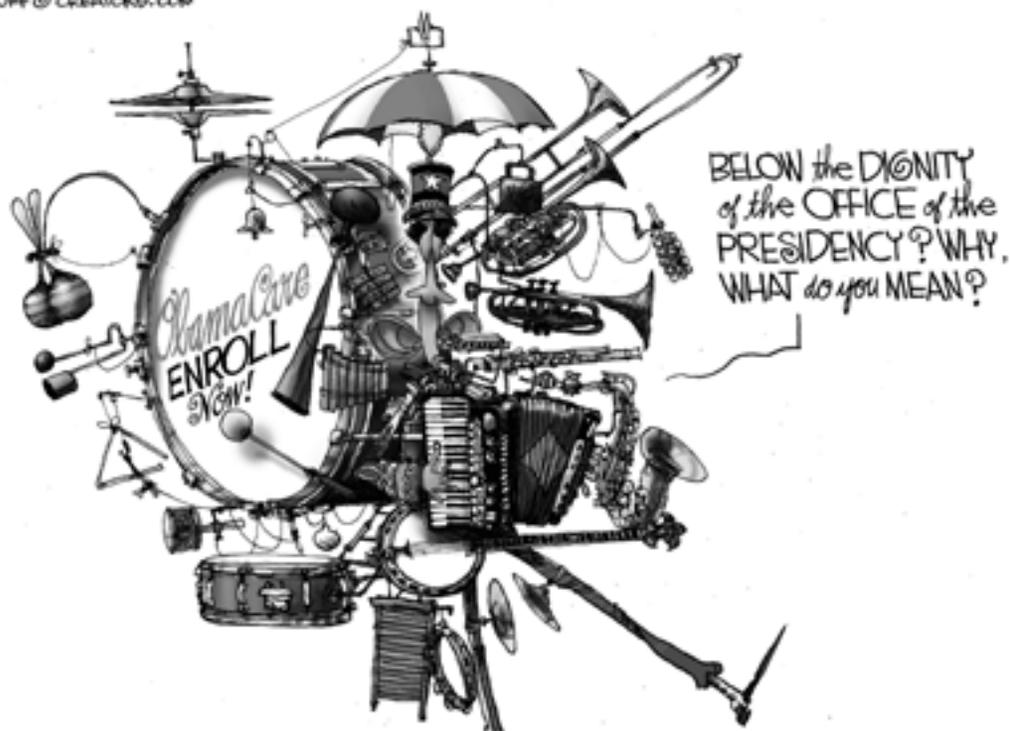
Conover doesn't need me to defend him. He is, in fact, a nationally known and respected scholar on health care policy. His experience includes directing the State of Kentucky's Center for Health Policy Development and Duke University's Health Policy Scholars Program, working at the RAND Corporation and the U.S. Congress, and teaching at Duke, the University of Kentucky, and the University of Minnesota.

If North Carolina lawmakers, activists, and reporters were unfamiliar with Conover and his work, that reflects poorly on them, not him. I assure you that most conservatives interested in health care reform have read the work of scholars who support the Affordable Care Act.

North Carolina is a big, diverse state full of different people, institutions, and ideas. Our policy debate has plenty of room for Chris Conover, liberal law professor Gene Nichol, and other scholars, analysts, and commentators across the spectrum. When lawmakers and activists act like petulant children, and when reporters let their personal biases or blinders affect their work, the conversation is narrowed, not expanded. CJ

John Hood is president of the John Locke Foundation.

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Measuring Inflation

The man's tone was forceful, with a tinge of anger. "The government is lying to us about inflation," he boldly stated. "They tell us inflation is a lot lower than it really is. And they purposely don't include products like gas and food in their calculations to fool us into thinking the economy is better."

I was giving a presentation to a civic group with time devoted to questions and answers when the man made his statement. Perhaps he was looking for an argument, but I turned his points into a lesson about the process and pitfalls of trying to calculate the nation's inflation rate.

Let me also be clear that in this case, I'm defining inflation as the prices we pay rather than measures of the money supply.

Like most government economic statistics, information about prices is based on a sample. And the government's price sample is large, covering more than 200 categories of products and services at more than 20,000 stores. Also, the government does include food and fuel prices in the survey and in the most commonly reported inflation rate.

After the government collects the individual prices, each is assigned a "weight" based on its relative importance to the average household's budget. For example, gas has a bigger weight than men's ties. A weighted average price is then calculated, and the inflation rate for a year is the percentage difference between this year's average price and last year's average price.

The government's statisticians generating the inflation rate face three big challenges. One is that the collection of products and services people purchase changes over time. New products are introduced, and others are discarded. Computers replaced typewriters, and cell phones are taking the place of landlines. Also, how and where people buy things change. Today, many more purchases are made online and at "big-box" stores than in the past. Over time, the government makes changes to keep up with the trends, but the adjustments can take time.

A second challenge arises when people change how much of a product they buy in reaction to a price change. Let's say gas prices rise. In response, most motorists will purchase fewer gallons. This means the "weight" — the relative importance of gas prices to all other prices — may change. The government has a version of the inflation rate that attempts to account for this subtle, yet important, impact.

Perhaps the biggest challenge — and the one with the most controversial solution — is how to deal with quality changes in products. For example, standard features on most new vehicles today include air conditioning, power windows, a CD player, and air bags. None of these items were on my first car — a 1956 Oldsmobile! So it would be unfair to include the cost of these features in the inflation rate for car prices between 1956 and today because they represent improvements in the quality of vehicles.

The government agrees and employs a statistical technique to remove the costs of new features so that the remaining price of the product allows an "apples-to-apples" comparison with earlier versions. It's an imperfect technique, but without it the inflation rate wouldn't mean only paying more for the same thing, but in part would mean paying more for a better thing.

In measuring the cost of owning a home — which is very complex because a home is both something we use and an investment — the government estimates the price per square foot if the home had been rented.

The government releases several inflation rates each month, differing slightly by the kinds of specific methods used to address the above issues. For 2013, the rates showed a range of between 1 percent and 1.5 percent for the annual inflation rate.

But there's a private alternative to the government numbers. MIT economists regularly collect prices from the Internet. They call this project the "Billion Prices Project," and it's become a popular "check" to the prices and inflation rates published by the federal government. For 2013, the Billion Prices Project inflation rate came in at 2 percent. CJ

Michael Walden is a Reynolds Distinguished Professor at N.C. State University.

Constitutional Change Merits Full Attention

North Carolina's state constitution has been amended more than 20 times in the past 40 years. We'll have an opportunity to do so again this November.

But unlike previous amendments to define marriage, create a state income tax, require a balanced state budget, and grant gubernatorial veto power, the amendment we'll vote on in November has not received the attention of its predecessors. Amending the constitution is serious; changes should be considered thoughtfully.

The amendment voters will decide Nov. 4 proposes "to provide that a person accused of any criminal offense in Superior Court for which the state is not seeking a sentence of death may waive the right to trial by jury and instead be tried by a judge."

As with all proposed amendments to the constitution, the General Assembly had to approve this one, and Senate Bill 399 became law as Session Law 2013-300. It received little attention. Only one member voted against it.



BECKI GRAY

The Sixth Amendment to the U.S. Constitution assures the accused in criminal trials "the right to a speedy and public trial, by an impartial jury" in federal courts; that right was extended to state courts in 1968. But in 1930, the U.S. Supreme Court held that a defendant could waive the right to a jury trial and agree to be tried by the court alone; in the 1970s, the court upheld the constitutionality of plea-bargained waivers in lieu of jury trials.

Things were simpler when the Bill of Rights was written. Today, procedures in criminal cases have grown increasingly complicated, time-consuming, and costly, from lengthy jury selection processes, to burdensome rules of evidence, to volumes of testimony by expert witnesses. Many states, including North Carolina, are looking for ways to streamline the process.

Most states allow defendants in nondeath-penalty criminal cases to waive their right to a jury trial. Despite the Founders' intent to assure defendants a review by a panel of their peers, and decades of Supreme Court decisions regarding juries, today 94 percent of U.S. criminal cases are decided through plea bargains rather than a jury verdict.

Our forefathers sought to protect individual liberty by ensuring a fair trial process, not one allowing the

crowd to control judges. Recognizing the importance of the right to a jury trial, the U.S. Supreme Court held in *Duncan v. Louisiana* (1968):

"Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. The framers of the constitutions strove to create an independent judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right to trial by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge."

A jury trial protects the integrity of our judicial system, upholds the intent of the Founders, and is a cornerstone of our democracy.

A jury trial protects citizens accused of crimes from overzealous police officers, prosecutors, and judges. The wisdom and judgment of 12 other citizens serves as a check on law enforcement and on the judicial system, to ensure protection of life, liberty, and

property as the Founders intended.

If defendants are allowed to "shop" for the best deal, manipulation of the system and corruption are much more likely than if the verdict rests with 12 independent residents of the community. Former Commissioner of Agriculture Meg Scott Phipps was found guilty of corruption charges following a jury trial and served four years in prison. A jury convicted former N.C. Rep. Thomas Wright of fraud and sentenced him to more than five years in prison. What if these powerful public officials had been able to choose a judge instead?

Has our court system changed so much since the founding of our country that jury trials are no longer needed? Or become so cumbersome that they no longer are "speedy"?

Has our court system become so complex that today's juries lack the intellect to determine guilt or innocence? Or should North Carolina reject this amendment to preserve liberty, protect the accused, and avoid corruption?

Must we sacrifice liberty for efficiency? Voters will make that decision in November. *CJ*

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

Raise Minimum Wage, Lessen Opportunities

When I took the job as a movie theater cashier, I had no idea my first excursion into the working world would deliver such valuable life lessons.

I learned it's not a good idea to work for someone who tells you to protect the cash register at all costs and hands you a baseball bat to fend off robbers. I learned burnt popcorn makes me nauseous. And I learned I didn't like working for minimum wage.

No one does.

But I had a plan to snag the concession supervisor's job. It paid a dollar an hour more for handling scheduling, reconciling cash in the till with ticket sales, and dealing with unhappy customers whose stomachs reacted to the popcorn the same way mine did. My path was clear: Take on more responsibility, and I would earn more money.

That fundamental truth applied when I was 16, and it applies today. But progressives reject this truth and

instead seek to impose a federal minimum wage hike from \$7.25 to \$10.10 per hour. Led by President Obama, progressives argue entry-level work is worth more — because they want entry-level workers to make more. That appeals to emotion, but it is terrible policy. By forcing businesses to pay a higher wage to some, government will also arbitrarily turn others into losers — ushers who won't be hired, concession supervisors who won't get a raise, and moviegoers who will pay more for popcorn.

The Congressional Budget Office analyzed the impact of a minimum wage hike to \$10.10 per hour and concluded in part: "The increased earnings for low-wage workers resulting from the higher minimum wage would total \$31 billion, by CBO's estimate."

However, those earnings would not go only to low-income families, because many low-wage workers are not members of low-income families. Just 19 percent of the \$31 billion would accrue to families with earnings below the poverty threshold, whereas 29 percent would accrue to families earning more than three times the poverty threshold, CBO estimates.

More than 500 economists — including a dozen who teach at North

Carolina public and private universities — are trying to fend off the hike. They signed a "statement to federal policy makers" and take on the notion that a wage hike tackles poverty:

"As economists, we understand the fragile nature of this recovery and the dire financial realities of the nearly 50 million Americans living in poverty. To alleviate these burdens for families and improve our local, regional, and national economies, we need a mix of solutions that encourage employment, business creation, and boost earnings rather than across-the-board mandates that raise the cost of labor."

We ultimately hurt the poor when the cost of delivering a product or service goes up with no corresponding increase in worker productivity or value. Nor do we help the poor by ignoring research that shows which economic policies positively influence economic growth and which don't. If we expect businesses to create opportunities for entry-level workers to step up to more responsibility and higher pay, we must foster economic growth.

Last fall, John Locke Foundation President John Hood surveyed two decades of scholarly work on state-level economic growth. As he explained, the results are extremely unfriendly to the Left's view, but "the results were very

friendly to the Right's theory of economic growth — negative effects of overall taxes in 63 percent of studies, 67 percent for corporate or business taxes, 69 percent for marginal income tax rates, 62 percent for sales taxes, 68 percent for regulation in some form or the other."

Still, economic policy alone can't alleviate poverty. Let's speak boldly but compassionately about the negative economic and social impact of having children out of wedlock and of failing to earn a high school diploma.

Getting these life decisions right greatly reduces the chances of living in poverty. We must also pour private resources into helping the vulnerable, including people with addictions. Those of us who champion a limited role for government must lead the efforts of private groups, charities, and churches.

When we think paying a higher minimum wage is the right path to economic security, we're just as misguided as the theater manager who thinks giving a box office cashier a baseball bat is the right path to personal safety. *CJ*

Donna Martinez co-hosts Carolina Journal Radio and blogs at "Right Angles."



DONNA MARTINEZ

Obama Orders BLS to Begin Counting Robot Jobs (a CJ parody)

BY HARTLEY WORKING
Labor Correspondent

Without the input of Congress, President Obama instructed the U.S. Department of Labor to implement a plan to count robot jobs and robot workers when calculating the nation's unemployment.

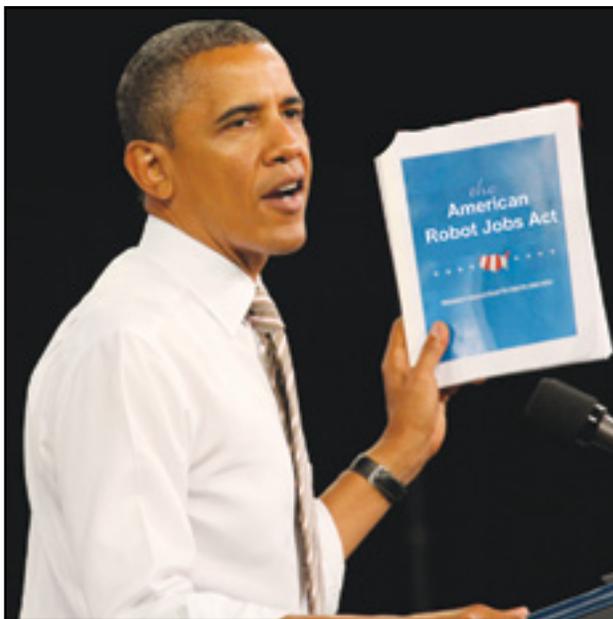
Meanwhile, he is sending proposed legislation to Congress after the fact, calling it The American Robot Jobs Act. "We didn't want anyone to think the president feels like he can just do whatever he wants with his pen and his phone," spokesman Jay Carney said.

"I believe the monthly employment report will look a lot better if we are honest about the contributions that robots make to our economy," the president said in a March 24 statement. "The emergence of robot jobs is change we can count on."

Upon the president's instruction, the Labor Department's Bureau of Labor Statistics quietly began preparing a Robot Jobs Initiative in 2010. Since then BLS has developed precise definitions for robot jobs and robot workers. It also developed the first comprehensive Robot Jobs Survey.

The survey, conducted during December 2013, revealed that the United States had 2,100,389 robot jobs, accounting for 1.5 percent of total U.S. wage and salary employment. The private sector had 2.1 million robot jobs, while the public sector had only 389 robot jobs.

A source told *Carolina Journal* that, beginning in April, robot jobs will be counted monthly. The BLS' business or establishment survey will contain questions about the number of jobs filled by robots. In ad-



President Obama recently announced that he is sending legislation to Congress to count robot jobs as real jobs, even though he already has implemented the provisions of the act. (CJ spoof photo)

dition, the BLS monthly household survey will seek to measure the employment status of robots.

The slow rate of job growth since the Great Recession for human beings provided much of the impetus for counting robot jobs, the source said.

"The unemployment rate was stuck in neutral, and we needed a new way to come up with a phony job number so the president wouldn't get blamed," the source said.

A few years ago, Obama noted that bank tellers had been replaced by ATMs. The source said Paul

Krugman, a *New York Times* columnist and one of the president's economic advisers, wondered why the federal government didn't take advantage of Obama's famous terminology, "jobs saved or created."

"From now on, any time a machine puts a human being out of work, we should consider the machine's function as a job," said a July 2013 memo from Krugman to the president that was obtained by *CJ*.

"The wonderful thing is that ATMs work 24 hours a day, seven days a week, or 168 hours a week, so that rather than the typical human 40-hour work week, each robot job can replace 4.2 human jobs," Krugman wrote in a follow-up memo. "By the time the [2014] election rolls around, we can claim millions of new jobs created — even if they're all robot jobs."

One retired BLS manager laughed when *CJ* informed her of the memos. "This is the third phony job program [Obama's] announced," she said. "None of us in the bureau took it seriously."

The first, she said, was the job-years concept, part of the Obama stimulus plans. Under this concept, every time the government subsidized one job for one year, it was called a job-year. The idea was to confuse reporters and make them believe the government subsidies created permanent employment.

"Then, he came up with 'green jobs,'" the retired BLS manager laughed. "He actually made us act as if bus drivers and air conditioning repairmen were saving the environment. It's all bogus. All I can say is, this robot jobs nonsense will keep my former colleagues fully employed until [Obama's term ends in] 2017." *CJ*



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