

**Legislature to hold special session on Medicaid/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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## McCrory Signs Bill Repealing Common Core

State Board to adopt best standards, maybe some Common Core

By BARRY SMITH  
Associate Editor

RALEIGH

Gov. Pat McCrory on July 22 signed into law Senate Bill 812, legislation rewriting the educational standards in the state's public schools and, as supporters argue, leading to the replacement of federally inspired Common Core State Standards with standards appropriate for North Carolina students.



Gov. Pat McCrory

McCrory, in a statement released when he signed the bill, argued that S.B. 812 "does not change any of North Carolina's educational standards."

The new law replaces Common Core standards. It sets up an 11-member advisory academic standards com-



The Common Core curriculum has been controversial from the start, with passionate adherents on both sides. Opponents claim it was developed in secret and pushed full-blown on the states. Proponents say the nation needs federally mandated common education standards.

mission to recommend rigorous and age-appropriate standards for North Carolina schools. The bill would not prevent the adoption of individual Common Core standards if the commission deemed them appropriate.

The final law was similar to a Senate version of the bill passed by that chamber earlier in the legislative session. The original House version of the bill would have established a commission with two fewer members. And

it would have banned all Common Core standards.

Common Core State Standards are curriculum and instructional standards in English language arts and mathematics for students in kindergarten through 12th grade. The National Governors Association, the Council of Chief State School Officers, and Achieve Inc. developed them.

The Bill and Melinda Gates Foundation has funded much of the project.

Although the federal government did not develop the standards, Washington has helped pay for Common Core tests. The U.S. Department of Education has meshed Common Core standards within the Obama administration's Race to the Top program.

S.B. 812 "does initiate a much-needed, comprehensive and thorough review of standards," McCrory said.

Continued as "McCrory," Page 14

## Elections Board Looking at Wray Spending

Investigation focuses on Democrat's fuel-purchase claims

By DON CARRINGTON  
Executive Editor

RALEIGH

Responding to a State Board of Elections investigation looking into the possible use of campaign funds for personal benefit, state Rep. Michael Wray, D-Northampton, has submitted a document to the board that is at odds with public statements he has made about his campaign fund spending.



The document — a spreadsheet intended to provide additional information about his campaign spending — attempts to match fuel and meal purchases he made from July 2011 to June 2013 with campaign or legislative activities. Over that period, his campaign reports listed 427 fuel purchases amounting to more than \$28,000,

along with \$17,700 for meals and other spending.

Wray paid for these expenses from his campaign account, even though he filed for and collected the per diem reimbursement every state lawmaker is entitled to receive covering many of the same expenses.

The board's probe of Wray includes several additional years of campaign spending.

The elections board "required that Wray provide details regarding documented meals, mileage, and lodging expenditures which were not properly provided in the campaign's disclosures," said the board's spokesman, Josh Lawson, to *Carolina Journal*.

Continued as "Board," Page 15

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## General Assembly to Hold Special Medicaid Session

By DAN WAY  
Associate Editor

RALEIGH

Medicaid reform will have to wait until fall, as the two chambers of the General Assembly were unable to agree on structural changes in the health insurance program for the poor, disabled, and elderly before lawmakers took a lengthy recess.

The state Senate on July 24 voted to shift Medicaid from the current fee-for-service model to one paying providers a set per-member-per month fee, moving Medicaid from the Department of Health and Human Services to a new department, and allowing hospital- and physician-led accountable care organizations to bid against insurance-based managed-care organizations for regional contracts. The health plans would pick up any costs exceeding their budgets.

The House, however, refused to agree to the Senate changes, voting 106-0 July 30 to reject the Senate rewrite of House Bill 1181. After the two chambers agreed on an updated \$21.3 billion General Fund budget plan for the current fiscal year, lawmakers said they would return in the fall to deal with Medicaid reform.

Under the Senate's model, a new Department of Medical Benefits would have opened its doors in September to begin assuming Medicaid responsibilities from DHHS. By July 1, 2016, if the DMB had received approval from federal regulators, it would become the state's Medicaid agency. And by July 2018, all Medicaid plans in the state, both provider-led and managed care, would assume full risk for any cost overruns.

### Mirrors McCrory's plan

The version of H.B. 1181 that passed the House mirrors Gov. Pat McCrory's vision of ACO, provider-led plans. That bill contains far fewer details than the Senate's version.

Florida Medicaid director Justin Senior is not surprised that some North Carolina doctors and hospitals object to the Senate's Medicaid plan. The Sunshine State experienced provider pushback while implementing a similar plan that this year is expected to save taxpayers \$600 million.

"Change is difficult for providers to get used to," Senior said. "They have a certain way of doing business in terms of the way that they bill, and how they provide services. It is set up in accordance with the incentive structure of the fee-for-service system, and they're comfortable with it."

Fee-for-service systems pay health providers for every patient visit and service delivered. Under that model, North Carolina taxpayers footed \$2 billion in budget overruns the past four years.

Like other critics of the Senate's plan, Rep. Marilyn Avila, R-Wake, a primary sponsor of the House plan, said it was impractical to expect the two chambers to agree on a reform package in the waning days of the session.

"I still think we need to sit down and go item by item" over the plans to determine what is best for the state, taxpayers, and Medicaid recipients, Avila said.

### Florida's plan a model

The Senate plan draws heavily from Florida's reform model, which started as a five-county pilot project in 2006 and is now in its second year of statewide rollout. Senior said 54 of Florida's 67 counties are now on board; the rest were slated to enroll Aug. 1.

This year's results, compared to a benchmark year, show Florida saved about 5.1 percent on its per-member-per-month payments, or "about \$600 million," Senior said.

Florida allows provider-led and managed-care entities to compete for five-year contracts in a defined region. Providers rendered price concessions and "significant-

ly enhanced benefit packages," Senior said. "They started offering services that had never been offered before in the former Medicaid program."

That was particularly true for adult services such as dental, expanded outpatient benefits, and expanded physician services.

"Overall, the plans have committed to increasing provider reimbursement rates for physicians significantly after two full years of operation," Senior said. That is the opposite of what critics of the North Carolina Senate plan have said would happen to provider rates under managed care.

In an environment where patients can choose among competing options, plans must attract good doctors and nurses, offer innovative service packages, and do quality work. Plans that fail to meet health quality outcomes and patient satisfaction standards could be assessed damages or lose their contracts.

Senior said Florida encountered two types of physicians when the state moved to competitive bidding and plans capping annual per-patient payments.

"There were some providers who really pushed back hard, that were ambivalent about the new system, didn't like it," he said.

A second group of practices "have embraced the system, [and] have done very well," Senior said. Pediatric Associates of Broward County is just one example of a practice that has done

so well that it is expected to expand statewide.

Gregory Griggs, executive vice president of the North Carolina Academy of Family Physicians, is among critics of the Senate plan. His group backs the House version.

"Any cost savings they achieve are going to be taken out of state and not reinvested in North Carolina," he said of managed-care organizations. "If you look at the quality metrics that other states have put forward, the Medicaid HMOs fall well behind what Community Care of North Carolina does."

### CCNC vs. managed care

But critics of the nonprofit CCNC, which administers Medicaid for North Carolina under contract, say federal data demonstrate that CCNC does more poorly than managed care on a number of measures, and Kaiser Family Foundation reporting lists North Carolina's Medicaid costs under CCNC among the highest in the nation.

Some states, including Louisiana and Georgia, embraced the CCNC model but shelved it after failing to achieve savings or improved health outcomes.

Jeff Myers, president and CEO of Washington, D.C.-based Medicaid Health Plans of America, argues that critics of managed care are wrong to portray managed-care entities as greedy, out-of-state corporations seeking to siphon profits from North Carolina.

"I can't think of a state that has a significant population that is covered by a capitated risk plan where our members don't have a significant investment in that state of people that have jobs paying taxes, and facilities where those individuals work," Myers said. Large managed-care plans typically employ between 500 and 700 people in a state.

"Even nonprofits still have to derive some form of profit to continue to run. Doctors have to do that, too, or they would close up their facilities. Hospitals have to do it, or they would close their facilities," Myers said. "Everyone is making a margin because that is how business works, and that's the way our economy is designed."

Although critics rail against corporate managed-care plans, the state is not powerless to prevent or punish abuses, including the authority to terminate contracts, Myers said.

CJ



# Walker Over Berger in 6th Congressional District GOP Runoff

BY BARRY SMITH  
Associate Editor

RALEIGH

Greensboro minister Mark Walker stunned Rockingham County District Attorney Phil Berger Jr. in the July 15 runoff for the 6th Congressional District Republican nomination.

Walker defeated Berger, who led in the first primary, in a heated contest by a margin of 60 percent to 40 percent. Walker will face Democrat Laura Fjeld, a former UNC system official, in the November general election. The winner will take the seat being vacated by longtime GOP Rep. Howard Coble, who did not run for re-election.

Walker was aided by higher-than-expected turnout in the runoff elections. The *News & Record* of Greensboro reported that turnout was 6 percent in the 10-county district, far surpassing the 2 percent or 3 percent anticipated by election watchers. Walker increased his vote total by more than 70 percent, garnering nearly 19,000 votes in the runoff compared with 11,100 in the May primary. Berger's tally fell from 15,100 in May to slightly less than 13,000 in July.

In North Carolina's other congressional primary runoff, Josh Brannon defeated Gardenia Henley 66 percent to 34 percent to capture the 5th Congressional District Democratic nomination. Brannon will face veteran GOP Rep. Virginia Foxx in November.

In the only state legislative runoff, Shelly Willingham defeated Rusty Holderness in the Democratic runoff for the 23rd House District, which includes Edgecombe and Martin counties. Willingham garnered 52 percent of the vote to Holderness' 48 percent.

Willingham, who faces no GOP

opposition in November, is the likely winner of the seat, barring a write-in campaign.

Berger, son of state Senate leader Phil Berger Sr., built a huge lead in fundraising over Walker, reporting more than \$460,000 during the election cycle to Walker's \$315,000. Berger also outspent Walker in advertising by a 6-1 margin. But Walker focused on grassroots campaigning, including the use of phone banks, yard signs, and door-to-door canvassing of the district, which paid off.

Immigration became a key issue in the district following the June defeat of U.S. House Majority Leader Eric Cantor, R-Va., by university professor Dave Brat, who chided Cantor for his support of immigration reform.

Following Cantor's loss, both Berger and Walker tried to convince GOP runoff voters that they were strongly opposed to "amnesty" for illegal immigrants. Walker, who thanked voters in the 6th District for nominating him, said the margin of victory surprised him.

"We wouldn't be very truthful if we told you we expected to win with 60 percent," Walker said on election night.

He said he could not identify a point when the tide turned to his favor.

"I think it was just a message over 14 months," Walker said. "We continued to build people before politics."

Walker said he plans to stay fo-

cused on his message as he goes into the general election campaign. "Do you want to send to Washington somebody who believes in bigger government, or do you want to send somebody to Washington who believes in limited government?" Walker asked regarding Fjeld.

In a statement, state Democratic Party chairman Randy Voller said, "We

are excited about electing Laura Fjeld to represent the citizens of her district. Laura Fjeld understands the importance of small businesses and buying local. As our congresswoman, she will fight to preserve local control and be a partner with local county and municipal gov-

ernments to improve the quality of life for all citizens of the 6th Congressional District."

Two areas of the state had primary runoffs for district attorney.

In District 10 — Wake County — John Bryant defeated Jeff Cruden 64 percent to 36 percent to win the GOP nomination. Bryant will face Democrat Lorrin Freeman in the November general election.

In District 25, which includes Burke, Caldwell, and Catawba counties, David Learner defeated Jay Gaither Jr. 62 percent to 38 percent to win the Republican nomination. Learner has no Democratic opposition in November.

Primary runoffs for sheriff were held in four counties, including Beaufort County, where there were runoffs

in both the Republican and Democratic primaries. Ernie Coleman won the GOP primary and will face Democratic runoff winner Al Whitney in the November general election.

Landric Reid won the Democratic runoff primary for sheriff in Anson County.

Curtis Lambert won the GOP runoff for sheriff in Jackson County.

Charles Blackwood won the Democratic primary runoff for sheriff in Orange County.

In county commissioner races:

- Faye Lacey won the GOP primary runoff in Avery County.

- David Allen won the District 3 GOP primary runoff in Randolph County.

- Berlester Campbell won the District 2 Democratic primary runoff in Robeson County.

- Stony Rushing won the GOP primary runoff for an at-large seat in Union County.

Three clerk of court GOP runoffs were held July 15. Kim Richards Sigmon won in Catawba County. Jim Mixson won in Iredell County. Steve Owens won in Rutherford County.

Lee King won the Republican register of deeds runoff in Henderson County.

In Cleveland County, Tott Griffin won the Democratic runoff for coroner.

Josh Lawson, a spokesman for the State Board of Elections, said more than 105,000 North Carolinians cast ballots to decide 19 runoff contests across 37 counties. For the first time since 2006, no statewide race required a second primary.

"Turnout was higher than any second primary over the past decade," Lawson said. CJ



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## State Briefs

## Democrat dark money

Billionaire Jim Simons, a major contributor to Democratic political candidates, funds, and causes, has come under fire from federal investigators, a move that has not gone unnoticed by the North Carolina Republican Party.

The Washington Free Beacon website reported that at a Senate committee hearing July 22 on the "Abuse of Structured Financial Products," senators from both parties blasted Renaissance Technologies, a hedge fund run by Simons, that has used creative accounting methods to shield itself from more than \$6 billion in federal taxes.

Bloomberg.com reported that the Internal Revenue Service is challenging a "particularly aggressive" technique used by Simons, which led to Renaissance skirting hundreds of millions of dollars in taxes owed by Simons and other investors. Simons' estimated net worth is \$15 billion.

One group that has benefited from Simons' largess is the Senate Majority PAC, a group founded by Senate Majority Leader Harry Reid that works to elect Democrats to the Senate. The Washington Free Beacon report said that on one day in March, Simons gave \$2 million to the Senate Majority PAC and \$1 million to the House Majority PAC. Citing CQ Roll Call, the Free Beacon said that Simons has donated nearly \$13 million to Democratic candidates, committees, and interest groups since 2008.

Will Allison, a spokesman for the state Republican Party, lashed out at Democratic U.S. Sen. Kay Hagan, whose GOP opponent in November, House Speaker Thom Tillis, has been the target of attacks by the Senate Majority PAC. The campaign watchdog group OpenSecrets.org reports that as of July 22, the Senate Majority PAC has spent more than \$5 million attacking Tillis and more than \$1.4 million backing Hagan.

"The reality is that Senate Majority PAC is run by Harry Reid and relies on huge donations from people like James Simons, anti-Second Amendment billionaire Michael Bloomberg, and radical left-wing billionaire Tom Steyer so they can deceive North Carolinians by airing false attack ads against Thom Tillis," Allison said.

Hagan's campaign office did not respond to a request for a comment on the Simons investigation or the Republican assertion. *CJ*

## Report: N.C. Pension May Be Underfunded

By DAN WAY  
Associate Editor

RALEIGH

A recent study concluded that North Carolina's \$87 billion state pension fund is the second-best performing plan in the nation, even though new government-mandated accounting methods show it might be underfunded by more than \$15 billion instead of operating in the black, as official state figures claim.

"It is good news" for the state in terms of taxpayer liability and as a recruitment tool to lure business and industry, said Aloysius Hogan, a senior fellow at the Washington, D.C.-based Competitive Enterprise Institute.

"Your pension funding is solid."

Robert Sarvis, a lawyer, software engineer, economist, and Libertarian candidate for Virginia governor in 2013, conducted the meta study, "Understanding Public Pension Debt, a State-by-State Comparison," for CEI. It amalgamated six separate studies to compile state rankings.

However, Hogan cautioned, \$15 billion "is nothing to sneeze at," and "having to pay these pensions means taxpayers are going to be on the hook. And when you pay it you're going to have to raise the money either by cutting services or by raising taxes and revenue fees."

Government officials generally use much rosier financial predictions than the private sector. Public pension plans incorporate a "key fudge factor" in rate of return on investments. By predicting a high rate of return, based on riskier investments, a government does not have to shift as much tax money into near-term funding of the system.

If risky investments tank, higher return projections may not pan out. And because the state officials overseeing the pensions reduced their cash allocations to pursue riskier investments, the pension plans are left underfunded.

The independent, quasi-private Government Accounting Standards Board establishes investment regulations and guidelines for state and local governments. It has a new methodology kicking in this year, "and it does push people to take more conservative estimates" of return on investment, Hogan said.

CEI and others recommend using the 10- to 20-year Treasury bond rate of return, which ranges between

3 percent and 4 percent. That is "the safest way to go, and less risk for your pension obligations means less risk for businesses when they're interested in selecting a state to locate plants or operations," Hogan said.

The new accounting procedures are an improvement but do not go "nearly far enough because the stricter standards will apply only if you are less than 80 percent funded," Hogan said. Therefore, North Carolina would not have to use that methodology.

The six studies looked at pension underfunding as a percentage of a state's gross domestic product — a measurement of the market value of all goods and services produced.

According to North Carolina's officially reported figures, the state pension plan has \$1.1 billion in assets above its payout liabilities.

But a study by James Naughton of Northwestern University, and Reining Petacchi and Joseph Weber, both of Massachusetts Institute of Technology, arrived at very different results using a 20-year average from 1990-2009.

When re-estimating the plan using fair market value based on Treasury rates, it showed North Carolina's pension plan was \$15 billion in the hole, representing 5.4 percent of the state's GDP.

CEI did not evaluate the varying methodologies and time periods of the six studies, instead averaging the composite results. The CEI results showed North Carolina's state pension underfunded at 0.9 percent of state GDP.

That means North Carolina ranked "the second most responsible state in the union in terms of funding their public pension debt," the same position at which the Census Bureau ranked North Carolina in its study, Hogan said.

"North Carolina has one of the best-funded state pension plans under any reasonable measure because with only one exception in 75 years, the General Assembly has fully funded the retirement system each year," said Schorr Johnson, a spokesman for state Treasurer Janet Cowell.

"For the purpose of calculating the annual required contribution rate necessary to ensure the current and future financial health of the North Carolina Retirement Systems, the Board of Trustees consistently follows the advice of our actuaries," Johnson said.

"The North Carolina Retirement Systems assumes a 7.25 percent rate of return on investments, the fourth lowest among state plans," he said. "This rate is consistent with the median expected return over the next 20 years from a recent asset-liability modeling study."

"We're fine with the standards that we have right now," said Mitch Leonard, a spokesman for the State Employees Association of North Carolina, a major contributor to the state pension plan. He believes that using the new accounting methods would continue to show North Carolina is among the best-funded plans in the country.

"The other [states'] funds are not as well-funded because they don't meet the standards they need to meet as far as the employer contribution or the employee contribution," Leonard said.

In the CEI report, Sarvis said one of the problems with state pension funds is that they are defined-benefit, rather than the defined-contribution plans that most private corporations use.

Under a defined-benefit plan, "the amount of benefits to be paid out to future retirees is fixed by a formula and legally guaranteed, so public pension programs that are underfunded may require further infusions of cash, lest they become insolvent," Sarvis

wrote.

A defined-contribution plan allocates a set amount of money to employees to invest as they see fit to best meet their needs.

"There are a lot of legislators who would support a defined-contribution plan," Leonard said. "We want to stay with the defined-benefit concept because at the end of the road it's better for the employee."

Before the long session in 2015 a House committee "will at least get a hard look" at an optional retirement system that would allow employees to choose between defined-contribution or defined-benefit plans, Leonard said.

"If you offered two plans, then that would mean less money would go to the defined-benefit plan. In the long run, that could cause benefit reductions," Leonard said. "It could hurt the folks who were depending on that who are already retired." *CJ*



N.C. Treasurer  
Janet Cowell



# Amendment Would Allow Felony Defendants to Waive Jury Trials

By BARRY SMITH  
Associate Editor

**V**oters in November will be able to decide on a proposed constitutional amendment giving North Carolinians charged with a felony the option of waiving a jury trial and allowing a Superior Court judge to render a verdict.

Currently, the N.C. Constitution states that, in felony cases, "No person shall be convicted of any crime but by the unanimous verdict of a jury in open court." Unlike many other states, the N.C. Constitution does not provide the option of a bench trial for felony defendants who prefer that alternative.

The proposed change would allow defendants in nondeath-penalty felony cases to request in writing, or state in open court, that they waive their right to a jury trial. A trial judge would have to grant consent for the request.

While the amendment passed the state House, 104-1, and the Senate, 44-0, some criminal defense attorneys have expressed concerns about the effect the change might have on indigent defendants or others who may not be able to afford expensive legal help.

## Sec. 24. (For proposed constitutional amendment – see note) Right of jury trial in criminal cases.

No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

## Sec. 24. (Contingent upon approval by voters at 2014 general election – see note) Right of jury trial in criminal cases.

No person shall be convicted of any crime but by the unanimous verdict of a jury in open court, except that a person accused of any criminal offense for which the State is not seeking a sentence of death in superior court may, in writing or on the record in the court and with the consent of the trial judge, waive jury trial, subject to procedures prescribed by the General Assembly. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo. (2013-300, s. 1.)

The proposal was sponsored by former state Sen. Pete Brunstetter, R-Forsyth. Lori Kroll, who was Brunstetter's legislative general counsel, said the N.C. Conference of District Attorneys approached Brunstetter and her with recommendations to increase efficiency in North Carolina's superior courtrooms. They came up with the idea of allowing defendants to waive jury trials.

Rep. Leo Daughtry, R-Johnston, who is an attorney, thinks the change is a good idea.

"Sometimes I feel that I'd be better off waiving a jury and letting a judge hear it if the issues are very complex," Daughtry said. "Sometimes

it's hard to explain to a 12-person jury when a judge would pick it up automatically."

Daughtry said the intricacies of an insider trading case could be difficult for a defense attorney to explain to a 12-member jury, but much easier for a judge to comprehend.

"If I had made a million when [a company] went public, I would be worried that the jury may conclude that I was guilty," Daughtry said.

Eric Rowell, an attorney in Charlotte who was a prosecutor in South Carolina, said he's concerned that if the amendment passes, the least advantaged might be the most hurt by the change.

"My primary concern is the potential for abuse," Rowell said.

Rowell notes that people waive their legal rights all the time. "They waive their right to silence; they waive their Miranda rights; they waive their right to not have their vehicle

searched," Rowell said.

"I think it's legitimate to ask what are the potential costs if this passes," Rowell said. "My concern is not with people who can afford private counsel and can afford the best legal advice. My concern is the people who may take advantage of this waiver may be the people who do so not in their best interest."

Dick Taylor, CEO of the N.C. Advocates for Justice, a trial lawyer's group, said criminal defense lawyers who are members of the group were reluctant to agree with anything that would erode the right to a trial by jury. But since the option was the defendant's, they chose not to oppose the change. The group also decided not to oppose the amendment since it would

not apply in capital cases.

The original bill allowed the defendant to waive a jury trial in any felony case. However, that was changed in committee to exclude death penalty cases.

Kroll said

that the judge would be responsible for making sure a defendant truly preferred not going before a jury.

"The judge has to believe the defendant is knowingly and voluntarily waiving his right to a trial by jury," Kroll said. "Then it's up to the judge."

If the amendment is ratified Nov. 4 by voters, it will take effect Dec. 1 and apply to criminal offenses arraigned in Superior Court on or after that date. *CJ*

Some are concerned about the effect on indigent defendants



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# O'care Exchange Subsidies Likely to Be Decided by Supreme Court

BY DAN WAY  
Associate Editor

**T**he U.S. Court of Appeals for the D.C. Circuit on July 22 ruled 2-1 that the federal government cannot tax employers in order to provide health insurance subsidies in North Carolina and 35 other states that refused to establish Obamacare exchanges, potentially threatening the national health reform.

That same day, the U.S. 4th Circuit Court of Appeals in Richmond unanimously upheld the subsidies, rejecting similar arguments by plaintiffs in another case. Both lawsuits charged the Internal Revenue Service with rewriting the law in 2012 illegally.

Because of the split in the circuit court decisions, legal observers believe the U.S. Supreme Court ultimately will decide the issue, which affects some 5 million people who bought taxpayer-subsidized insurance policies on the federal exchange.

## 'One's right, one's wrong'

"One's right and one's wrong, that's really the gist of it," said Sam Kazman, general counsel of the Washington, D.C.-based Competitive Enterprise Institute, of the decisions. Kazman coordinated the plaintiffs' arguments in the *Halbig v. Burwell* case before the D.C. Circuit and also worked on the *King v. Burwell* case before the 4th Circuit.

Kazman said he was pleased with the *Halbig* decision. It reversed an IRS ruling that subsidies could be paid on federal exchanges, even though the wording of the Patient Protection and Affordable Care Act — the formal title of Obamacare — limited the payment of subsidies to insurance policies sold on the 14 exchanges set up and operated by individual states.

"It's a victory not just with respect to Obamacare but really, more importantly, with respect to the whole notion of the rule of law, because you had IRS here pretty much rewriting some provisions of the Obamacare statute," Kazman said of the ruling by the D.C. Circuit.

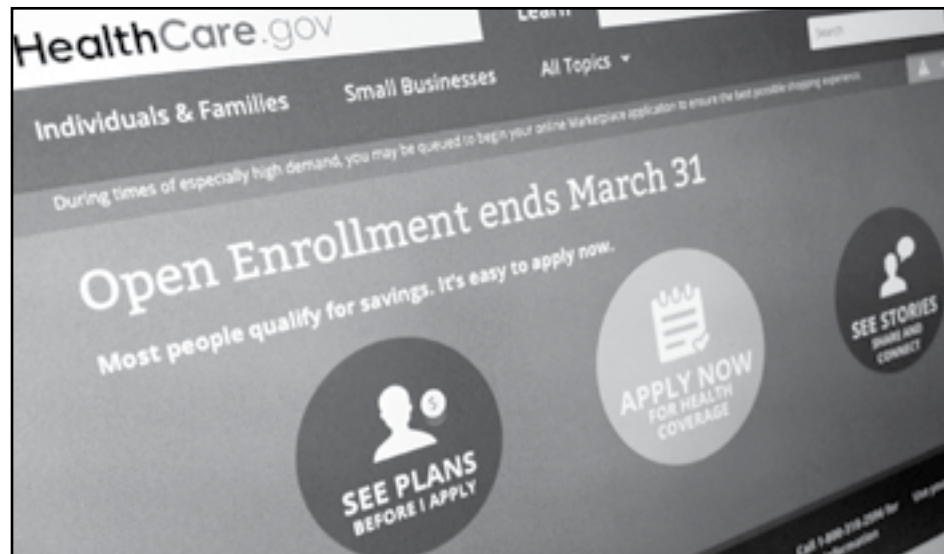
"That's bad enough in the normal course of things," he said.

## Rewriting versus implementing

"But when you have an administration that is as set on expanding its regulatory power as this one is, then the danger of an agency rewriting the law instead of just implementing it really gets much, much larger," Kazman said. "For that reason, it was at least as important as for whatever impact it has on Obamacare."

He expects the D.C. Circuit to issue a stay barring the government from collecting subsidies, though at press time there was still no word of that action. But, he noted, the White

RALEIGH



House already announced "the subsidies would remain in effect until there's a definitive, final ruling."

In *King*, the 4th Circuit unanimously upheld the IRS Obamacare rewrite in an opinion announced a few hours after the *Halbig* decision. Two other pending federal lawsuits challenge the IRS ruling that subsidies can be issued on the federal exchange.

## 'Not surprised'

Kazman said he was not surprised by the 4th Circuit outcome. During oral arguments, the judges asked tough questions of the plaintiffs, indicating they were leaning toward the government's position.

If upheld, *Halbig* "has the potential to jeopardize subsidies for hundreds of thousands of North Carolinians. Without access to affordable coverage, these families and individuals may go without the health care they need," said North Carolina Insurance Commissioner Wayne Goodwin.

"I am frustrated by the lack of state control in this matter, but my staff and I will monitor this issue closely as it plays out in the courts, and we will continue to support and advise the people of North Carolina the best that we can under the law," Goodwin said.

"Nothing is changing for Blue Cross Blue Shield of North Carolina customers right now," said company spokesman Lew Borman. The insurance giant is one of two insurers providing coverage plans on North Carolina's federal exchange.

"We will be following the issue very closely, and it will likely be many months before the issue is settled," Borman said. "In the meantime, we will continue to support our customers and will keep them informed of any future developments."

## Expansive view

In the *King* ruling, the judges took a more expansive view of the IRS rule than the *Halbig* majority.

"Having examined the plain language and context of the most relevant statutory sections, the context and

structure of related provisions, and the legislative history of the act, we are unable to say definitively that Congress limited the premium tax credits to individuals living in states with state-run exchanges," said the opinion, written by Judge Roger Gregory.

"With only 16 state-run exchanges currently in place, the economic framework supporting the act would crumble if the credits were unavailable on federal exchanges," the ruling said.

In *Halbig*, the majority opinion written by Judge Thomas Griffith relied more heavily on the judicial philosophy defending the plain meaning of text. In this case, they said, the "conclusive evidence" is that the law clearly made subsidies available only on state exchanges.

"Our ruling will likely have significant consequences both for the millions of individuals receiving tax credits through federal exchanges and for health insurance markets more broadly," the opinion stated.

"But, high as those stakes are, the principle of legislative supremacy that

guides us is higher still. Within constitutional limits, Congress is supreme in matters of policy," the decision said. A limited judicial role in that arena "serves democratic interests by ensuring that policy is made by elected, politically accountable representatives, not by appointed, life-tenured judges," the decision said.

## 'Tough decision'

The *Halbig* ruling "was a tough decision by some principled judges to make because all the pressures" are not to undermine a law that's in effect and to just say, "Who are we as judges to stand in the way of a president who was re-elected?" said Thomas Miller, a senior fellow at the American Enterprise Institute.

The *Halbig* judges listened to arguments, looked at the way the law was written, and decided "we're not supposed to be another legislature which fixes the problems that other people created," Miller said.

Federal attorneys are seeking review of the *Halbig* ruling from the full slate of D.C. Circuit judges. With or without that review, the case could end up in the Supreme Court, whose next term opens in October.

The reasoning used by the *Halbig* judges got some support on July 25 when a video surfaced of Jonathan Gruber, the key architect of the Affordable Care Act, saying specifically that the bill was written to allow only state-run exchanges to be eligible for subsidies, in an effort to force states to create exchanges.

Gruber claimed he had mis-spoken, but several hours later an audio recording surfaced with him saying the same thing, this time from a prepared text. CJ

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# JLF: State Lawmakers Should Get Rid of New E-Cigarette Tax

BY CJ STAFF

RALEIGH

North Carolina lawmakers should “make history” by becoming the first legislative body to repeal a state tax targeting electronic cigarettes. John Locke Foundation researchers make that recommendation in a new Spotlight report.

A vote to scrap the tax would mark an about-face for the N.C. General Assembly, which voted in May to make North Carolina just the second state in the nation to adopt an add-on e-cigarette tax, following Minnesota’s lead. Eighteen other states have considered and rejected similar taxes.

“No matter how you slice it, the e-cigarette tax is bad tax policy,” said report co-author Sarah Curry, JLF director of fiscal policy studies. “It runs counter to basic principles of economic efficiency and individual liberty. It hurts small businesses. Plus the legislative process that produced the tax lacked transparency. It’s time to reverse course.”

The new law is scheduled to take effect June 1, 2015. It would add 5 cents of tax on each milliliter of “consumable product,” meaning the liquid solution, or e-liquid, that’s used in e-cigarettes. Until the law takes effect, e-cigarettes will continue to be subject to state and local sales taxes.

“The current North Carolina tax policy with respect to the sale of e-cigarettes gets it right,” said report co-author Roy Cordato, JLF vice president for research and resident scholar. “They are taxed at the same state and local sales-tax rates that apply to other consumer goods throughout the economy.”

The new tax violates the first principle of efficient taxation, Cordato said. “That principle is neutrality —



that is, the government should extract the money it needs from taxpayers without distorting their freely made decisions,” he said. “All excise taxes, including this e-cigarette tax, distort decision making by penalizing some consumer choices relative to others. As a matter of pure economics, it is not appropriate for the government to tax some goods and services more heavily than others.”

Beyond economic theory, the report examines the potential impact on businesses that sell e-cigarettes in North Carolina.

“More than 80 small e-cigarette businesses operate in North Carolina, and small businesses dominate the market, at least for now,” Curry said. “The e-cigarette tax stands to hurt those small businesses, in addition to potentially tens of thousands of other retailers and wholesalers, because it classifies an e-cigarette vapor product as a tobacco product and will therefore

require a tobacco license to sell, distribute, and import e-cigarette products.”

In addition to an increased regulatory burden, the new tax will increase the product’s cost. The new tax also provides an unfair advantage to large companies that already deal with tobacco-related rules and licenses, Curry said.

“Small businesses will be forced to increase spending on lawyers and accountants to comply with new licensing and reporting requirements,” she said. “These extra costs could cause some existing e-cigarette businesses in North Carolina to shut down, to the benefit of big competitors.”

Speaking of big competitors, Winston-Salem-based R.J. Reynolds Tobacco Company requested the new tax in the first place, Curry said. “While not currently in the e-cigarette market, R.J. Reynolds is expected to be a big, if not the biggest, player in the near future,” she said. “RJR argued that the Minnesota tax was too high and asked North

Carolina legislators to set an example for other states proposing taxes on e-cigarettes. In other words, imposition of this tax is primarily about yielding to pressure from special interests.”

Curry and Cordato take aim at the process used to approve the new tax. Legislators inserted it in a 48-page law originally dubbed “Omnibus Tax Law Changes.” “The point of this brand new tax has little to do with the overall purpose of the omnibus legislation, and the only way to vote against the e-cigarette tax was to vote against the entire bill, which most people believed to be necessary,” Curry said.

Lawmakers interested in an aboveboard legislative process would have pulled the e-cigarette tax from the omnibus tax bill, debated it separately, and voted on it as freestanding legislation, she said. “The citizens of North Carolina deserve transparency in the lawmaking process, and they did not receive it in this case.”

The report documents 18 other states’ rejection of e-cigarette tax proposals over the past two years, including New York’s rejection of the idea two years in a row.

Curry and Cordato also note a minimal potential impact for North Carolina’s nearly \$21 billion General Fund budget. “The new tax is expected to raise only \$5 million, which is almost meaningless in the context of the overall budget picture,” Curry said.

North Carolina should forgo that money and instead adopt a better policy, Curry said. “The N.C. General Assembly should recognize its mistake and come clean with the citizens of the state, who clearly deserve better,” she said. “Lawmakers can do this by making history and becoming the first state in the country to repeal an e-cigarette tax.”

CJ

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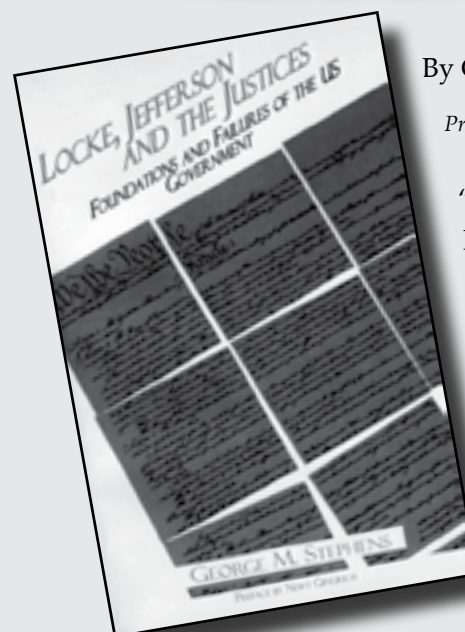
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## Locke, Jefferson and the Justices: Foundations and Failures of the U.S. Government

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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## COMMENTARY

*Slowing the Summer Slide*

For many students, summer is synonymous with sunning and snoozing. Summer is also the season of learning loss. Aptly (and alliteratively) dubbed “summer slide,” this seasonal skills drop-off adds up to one month of lost learning. For some students, the downward slope is especially steep, influencing educational attainment years later.

What’s the best predictor of summer learning, or its lack? The family pocketbook reigns as summer sovereign. Children with affluent parents access a smorgasbord of enrichment options: travel, camps, or lessons. Lower-income students face fewer choices.

So significant is summer learning loss for these kids that it accounts for much of the growing socio-economic achievement gap by ninth grade. That’s the finding of long-running research from Johns Hopkins University sociologist Karl Alexander and colleagues.

During the school year, students across the economic spectrum actually make similar learning gains, Alexander has found. Summer ushers in more languid learning for all, but low-income students are hit hardest. Cumulative seasonal losses are largely responsible for the difference between poor and affluent kids in college-preparatory class placements or four-year college attendance.

“Calendar reform”—converting some traditional schools to year-round schedules—has been touted as a way to mitigate summer slide. In February U.S. Sen. Mark Kirk, R-Ill., introduced legislation to pilot year-round schools in some low-income districts nationwide.

In North Carolina, school districts have increased year-round schooling to boost performance or accommodate growth. The Wake County Public School System operates 50 year-round elementary and middle schools. Other systems statewide offer year-round options, albeit on a smaller scale.

Year-round schooling isn’t desirable for every family, so parents always should get to choose. Currently Wake County’s school

system assigns students to a base school (either traditional or year-round). Parents may apply to a “calendar option” on the opposite schedule of the base school. Placement is not guaranteed, however.

Do year-round schools deliver? Some studies reveal modest academic benefits; others do not. According to sociologist Paul Von Hippel’s research, year-round students learn more than traditional-school students during the summer, but less during the rest of the year. However, year-round

schooling is linked with higher reading scores for low-income students.

Public-private partnerships, such as those supporting summer bridge programs for disadvantaged kids, are promising. The nonprofit Breakthrough Collaborative (which won an award from Johns Hopkins) coordinates intensive, six-week summer sessions for low-income

middle schoolers in 27 cities. Students attend programs during three consecutive summers and receive follow-up guidance in high school. Results are impressive.

For all students, the least expensive summer pastime—reading books from the public library—also is among the most enriching. Placing books “in the hands of children,” according to New York State Librarian Bernard Margolis, “is the best antidote for the ‘summer slide’ in children’s reading achievement.”

My mother would agree. The daughter of a widow who worked as a telephone operator, my mother spent long summer days at the public library with books as companions—and transports, even, to another world. She went on to become a high school English teacher (later, earning a doctorate from Georgetown University). A devoted proponent of summer reading, she required me to read up to 500 pages a week in the summertime.

Many summers (and pages) later, I can recall the opening lines to her favorite Emily Dickinson poem: “There is no frigate like a book to take us lands away.” The comparison serves us still. *CJ*

*Kristen Blair is a Chapel Hill-based education writer.*



**KRISTEN  
BLAIR**

# Final Budget Deal Includes Large Raise for Teachers

By BARRY SMITH  
Associate Editor

RALEIGH

Senate and House leaders on July 29 rolled out the outline of their \$21.3 billion General Fund budget, including an average 7 percent pay increase for teachers.

The plan does not eliminate teacher assistant positions, protecting a priority of Gov. Pat McCrory. It also provides state employees \$1,000 annual pay increases plus added benefits averaging roughly \$240. Most state employees also will receive five bonus vacation days.

Senate President Pro Tem Phil Berger, R-Rockingham, said the budget was the culmination of three years of work following the 2010 elections, when Republicans took over the General Assembly and put the “state back on solid financial footing.”

“Responsible budgeting decisions and pro-growth economic policies have also enabled legislative Republicans to offer at this time the largest teacher pay increase in state history,” Berger said.

House Speaker Thom Tillis, R-Mecklenburg, agreed that the groundwork for this year’s teacher pay increase was laid in 2011.

“The way that we got to the point we are today is because of difficult decisions we had to make in 2011 to get the fiscal house in order,” Tillis said. “Now we’re in a position to provide these historic pay increases, to provide pay increases to state employees and teachers, to fulfill a promise we made to the educators back in February.”

Legislative leaders note that the \$282 million price tag for the teacher pay increase is the largest dollar amount in state history, although earlier legislative sessions have provided salary increases that were larger in percentage terms.

The 7 percent pay raise averages \$3,500 per teacher, Berger said. He said the increase would move North Carolina teachers from 46th in the nation to 32nd in average teacher pay.

The Senate originally had proposed an 11 percent increase for teachers who gave up tenure. The House proposed a 5 percent pay increase with no tenure strings attached. In the end, teachers were not required to surrender tenure to get the 7 percent raise.

Superintendents would continue to have broad flexibility in spending, Berger said.

Tillis said the budget boosts starting pay for teachers. Over the next two

years, pay for first-year teachers would rise from \$30,000 to \$35,000. Berger said setting the base pay higher gives future legislative sessions the opportunity to modify teacher compensation further.

“We now have a platform that we can build on to do things such as master’s supplements, such as paying teachers additional amounts for teaching in hard-to-staff areas or in hard-to-staff schools,” Berger said. “Those are things that will come in the next session and the next session.”

Budget writers also made room for film incentives in the 2014-15 spending plan, but not for historic preservation tax credits.

The budget includes a \$10 million film grant program that would replace the film production tax credit, which expires Dec. 31. The tax credit for renovating historic structures also

was left out of the final budget. “It’s inconsistent with the principles of tax reform,” Tillis said, noting that investors are able to make a return on their investment.

Berger also said the budget makes room for a new \$20 million “closing” or job catalyst fund if the

General Assembly approves Senate-backed legislation creating and expanding incentive programs for business recruitment.

Other provisions in the budget agreement include:

- A pay increase for state troopers ranging between 5 percent and 6 percent.

- An additional \$800,000 for Opportunity Scholarships, allowing children from low-income families to attend private school. The new funding is added to the \$10 million approved last year. The extra money will help more children attend private school than originally planned.

- Converting the current 37-step teacher pay system into a six-step schedule.

- An across-the-board, \$500 pay raise for public school teaching assistants.

- Preserving current Medicaid eligibility levels. The Senate proposal originally would have made some disabled patients ineligible for Medicaid.

- Maintaining current funding levels for the state’s university system.

- Reducing Medicaid spending by \$135 million through payment cuts to providers.

At press time, the budget plan had not passed either chamber and had not been signed by McCrory. *CJ*





# Report: Charters Give Students, Taxpayers More Bang For Buck

By DAN WAY  
Associate Editor

**A** new national study concludes that charter schools in North Carolina and other states uniformly outperform traditional public schools, and have a significantly better return on investment for taxpayers.

One finding of the report refutes critics who have claimed North Carolina charters cherry-pick the best students from district schools. To the contrary, the report concludes that charter schools serve higher levels of minority, low-income, and special-needs students than their traditional public school counterparts.

## 'A descriptive look'

"Our main intention was to simply provide a sort of descriptive look at what charter school productivity was like just because no one has ever done this at a national scale," said Albert Cheng, one of the authors of "The Productivity of Charter Schools," who researched the report for the School Choice Demonstration Project at the University of Arkansas.

"Our report isn't really a study of absolute achievement levels, but how much bang do you get for your buck," Cheng said. "Charter schools are operating more effectively and getting a greater return on investment" for taxpayers despite funding inequities that favor traditional public schools.

The study includes 21 states and the District of Columbia. It is based on numbers from the 2010-11 school year. There are two measures of productivity in the report showing charter schools generated better results than the traditional public schools for the

amount of money spent.

One is a cost-effectiveness study based on student scores in the National Assessment of Educational Progress. The researchers devised a value measurement showing how many NAEP points were earned for every \$1,000 invested in per-pupil spending.

The other is a return-on-investment component, which arrives at an estimate of students' lifetime earnings potential based on gains in student achievement.

"We find that while charter schools in some states have uneven performance, the average charter in this study outperforms [traditional public schools] on both the cost effectiveness and the ROI measures, overall and for each of the states and the District of Columbia," the report said.

National cost-effectiveness numbers show that charter school students scored 17 points higher on average in math on the weighted NAEP assessment results than traditional public school students, or 40 percent better in productivity. Charter school students scored 16 points higher in weighted reading assessments, or 41 percent better.

In North Carolina, NAEP-weighted results for cost-effectiveness showed that charter schools outscored traditional public schools by 14 points per every \$1,000 invested in both math and reading. That means charters outperformed traditional public schools by 26.38 percent in math, and 27.25

percent in reading.

Terry Stoops, director of research and education studies at the John Locke Foundation, characterized that as "a pretty significant spread."

Charter schools in all states delivered a greater aggregate return on investment than traditional public schools by a weighted average of 3 percent for a student with one year of charter school education, and 19 percent if half of the K-12 years were spent in a charter school. In North Carolina, the return on investment was 1.31 percent higher for one year, and 9.2 percent higher for 6.5 years.

"This is a significant study mainly because there's

a lot of criticisms, especially during the time the data were taken from, that North Carolina's charter schools were underperforming, that they weren't performing as well as traditional public schools" when direct student-to-student performance measurements were used, Stoops said.

"This asks a different question. It's not just how the kids are performing, it's how much money are we putting in and what are we getting out, and that's a very different question than just comparing student performance," he said.

## Complementary reports

The University of Arkansas study complements another recent research report from the liberal Center for American Progress ranking individual school districts' return on investment, Stoops said.

At the time the University of Arkansas study was done, North Carolina spent \$9,999 per-pupil at traditional public schools and \$8,277 for charter school students. A separate University of Arkansas study released in April, "Charter School Funding: Inequity Expands," awarded North Carolina a D for that funding disparity.

"Our research can't prove that charter schools, if they were to get more money, would maintain their level of productivity. It's not a slam-dunk case where the implication of this report is to fund charters at a greater level," Cheng said.

"But definitely there's considerations of equity and efficiency in terms of how we manage and steward public dollars," Cheng said. "These are salient issues, and we hope to bring both sets of values into discussions of public funding and public policy."

Richard Vinroot, a lawyer, former

Charlotte mayor, and one of the founders of the Sugar Creek Charter School, said there is "a dramatic, growing gap" between the two education sectors in North Carolina.

Vinroot has been lobbying lawmakers for several years for more charter school funding and believes this latest report bolsters the case. In 2003 the funding differential between charters and traditional schools was just 8 percent. It widened to 17 percent by the time of the study.

"This report's analysis shows not only that charter schools are outperforming school systems, but in fact charter schools have more free and reduced-price lunch students — that means poor people, probably — and more special-education children, and more minorities than they do in the [traditional] school system," Vinroot said.

## 'Better job for less money'

"So we're doing a better job for less money with a more difficult population, bottom line," Vinroot said. "I hope it means that finally this legislature will begin to understand they need to be fairer to charter schools."

According to the study, 48.9 percent of North Carolina charter school students were from low-income families eligible for free lunch programs compared to 47.2 percent of traditional public school students. There were 56.8 percent of charter school students eligible for free or reduced-price lunch programs compared to 53.9 percent of traditional school students.

North Carolina charter school student demographics include 8.5 percent in special-education programs compared to 7.5 percent in traditional public schools.

Sugar Creek Charter School's student population comprises more than 90 percent poor, black children, Vinroot said.

"Almost 90 percent are at grade level compared to maybe 30 or 40 percent of their peers in the [Charlotte-Mecklenburg] school system here, and across the state, and we're doing it with 70 percent per dollar. And we're doing it in an old, worn-out Kmart building, so I know it can be done," Vinroot said.

He said he is "very, very disgusted" with accusations that charter schools filter for only the top-performing students.

"We've got 500 kids waiting on the doorstep trying to get into our school that has about 1,000 students in it now, because the parents understand we've done a better job," Vinroot said.

Senate Education Committee members Gladys Robinson, D-Guilford, Angela Bryant, D-Nash, and Don Davis, D-Greene, and House Education Committee vice chairwoman Tricia Cotnam, D-Mecklenburg, who are frequent critics of charter schools, did not respond to requests for comment. *CJ*



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

## Town and County

## Asheville airport runway

Asheville Regional Airport is set to begin one of the most significant projects in its history, reports the *Asheville Citizen-Times*. The airport will relocate its runway, build a new taxiway, and open significantly more land for development.

The airport currently has a single 8,001-foot runway, with a taxiway including the airport's passenger terminal and general aviation operations. The distance between the runway and taxiway doesn't meet current safety standards, though the airport can continue using them as is indefinitely. The area west of the runway is undeveloped.

The runway is due for resurfacing, but the airport instead will relocate it. Work will begin soon on a temporary runway well west of the existing runway. When that is complete, the existing runway will be closed and rebuilt. Completion of that work will allow the temporary runway to be repurposed as a taxiway, giving the airport taxiways, which meet current separation standards, on both sides of its new sole runway.

The western taxiway would open land for development for aviation-related enterprises. The entire projected is estimated to cost \$64 million.

## Updating noise maps

For the first time since 1998, Charlotte Douglas International Airport is updating its noise maps. The updated maps likely will require some homeowners to choose either being bought out or having their houses insulated against noise, reports *The Charlotte Observer*.

The areas exposed to the most noise are under the paths aircraft use when landing or taking off. The closer to the airport, the higher the noise level.

To qualify for sound insulation, a structure must be exposed to an average of at least 65 decibels of noise, with aircraft noise between 10 p.m. and 6 a.m. being scored 10 decibels higher due to the time of day. Houses, schools, churches, nursing homes, hospitals, and other similar uses are eligible for soundproofing if they're above the threshold.

Using previous noise maps, the airport has insulated about 1,000 houses plus six churches and three schools. The airport also has purchased about 400 properties in the highest-noise areas. *CJ*

## Critics Say Raleigh's Plastic Bag Tax a Loser

By DAN WAY  
Associate Editor

RALEIGH

Opponents say a tax on plastic bags being explored by the Raleigh City Council would be "extraordinarily regressive," could cost consumers \$1.8 million annually, would not help the environment, and may be unconstitutional.

"We're just of the belief that \$1.8 million should be spent on groceries and not telling people how to carry their groceries home," said Mark Daniels. "I'm not of the opinion that we should have government dictate what is better for a consumer."

Daniels is chairman of the American Progressive Bag Alliance representing the national plastic bag industry, and senior vice president of sustainability at Hilex Poly, the nation's largest manufacturer and closed-loop recycler of plastic retail carry-out bags. He said the Raleigh market compares to Washington, D.C., which in 2013 collected roughly \$2 million in plastic bag taxes.

Andy Ellen, president and general counsel of the North Carolina Retail Merchants Association, said the state constitution prohibits local government from regulating commerce or trade, and bars the state from regulating commerce or trade on a local level. Nor is there statutory taxing authority from the General Assembly to impose the fee.

## Council asked to consider

Raleigh City Councilman Bonner Gaylord raised the possibility of a nickel or dime tax on plastic bags in a June 18 query to the city manager's office. Gaylord asked whether a "rational nexus" existed to charge a nickel or dime per bag to raise money for stream cleanup.

"The council hasn't asked us to take any action on this," said Dan Howe, assistant city manager. "Mr. Gaylord asked for some information on where this is taking place, and how it works, and we provided that information, and that's pretty much where it's sitting right now."

In the city's email response to Gaylord's query, Howe said the Solid Waste Services Department has discussed the matter.

## Waste impact minor

"A Raleigh grocery bag tax is an example of misguided policy. They're thinking about taxing a product that contributes less than one-half of 1 percent of the municipal waste stream, and that's according to the Environmental Protection Agency" and a variety of other scientific studies around the country, Daniels said.

One reason the volume of plastic bag litter is low is high levels of reuse and recycling, Daniels said. More than 1 billion pounds of plastic bags and polyethylene film have been recycled in 11 of the past 12 years, making it "the fastest growing recycling infrastructure in the U.S."

He said his company, Hilex Poly, spends tens of millions of dollars a year reprocessing the product, and studies show 70 percent of plastic bags are reused "for hundreds of reasons" by nine out of 10 Americans.

According to the website A Bag's Life, which publishes a plastic bag recycling site locator, there are 85 drop-off sites within 10 miles of downtown Raleigh, and 197 within 25 miles.

## Environmental and economic impacts

Daniels said plastic bags have a smaller carbon footprint than paper bags. About 95 percent of the 600 million to 700 million reusable bags shipped into the country every

year come from China. Plastic bags are made from ethane, a natural gas waste product that is converted to polyethylene. Reusable bags are made from oil-based plastic polypropylene, which is not recyclable.

A 2007 "life-cycle analysis" comparing the overall costs of recycled plastic bags with paper bags using 30 percent recycled materials found — per 1,000 units — manufacturing paper bags required nearly four times more energy, produced double the greenhouse-gas emissions, resulted in five times more materials in the municipal waste stream, and used 17 times more fresh water.

Then there are health concerns about food-borne illnesses transmitted by reusable bags resulting from meat juice leaks or other food particles that remain in unwashed bags.

Researchers from the University of Arizona and Loma Linda University in 2010 found bacteria contamination in nearly all the reusable bags they studied. Half contained coliform bacteria, and 12 percent contained E. coli. In 2010 a girls soccer team in Oregon was sickened in a norovirus outbreak linked to a reusable bag.

## 'Garbage patch' refuted

Daniels also said myths about the environmental impact of plastic bags abound. As an example, Daniels cited Andres Cozar, a research scientist at the University of Cadiz, Spain, who originated the theory that there were 1 million tons of plastics swirling around the world's oceans. Cozar and a team of scientists embarked on

a global research mission to document the pollution.

Their studies found only 7,000 tons, yet environmentalists continue to cite the million-ton "garbage patch" theory refuted by Cozar's own research.

Daniels also pointed out that the Karen Beasley Sea Turtle Rescue and Rehabilitation Center on Topsail Island, which since 1996 has maintained an index of sick and injured turtles, has not documented a case of a turtle being injured by a plastic bag.

The risk to sea turtles and other marine life was cited to justify passing North Carolina's only plastic bag ban, in the Outer Banks counties of Currituck, Dare, and Hyde. The ban took effect in 2010. Merchants there are required to use paper bags made of recycled material and must give a nickel credit to shoppers bringing in their own reusable bags.

"We think that the bag ban on the Outer Banks has been a total, utter failure," Ellen said.

## Impact on businesses

A study by the N.C. Department of Environment and Natural Resources "has shown no decline in plastic bags found on the beaches or in that area, but what you have seen is a tremendous increase in costs to the retailers, which ultimately get passed on to the consumers," Ellen said. Those include higher costs for paper versus plastic bags.

Merchants also had to update cash register software at their own expense to account for the reusable bag rebate, and chain stores must adjust their bookkeeping systems to account for differences unique to their Outer Banks stores, Ellen said. One retailer paid more than \$40,000 to adjust its computer software while issuing only two reusable bag credits the first year.

Retail Merchants Association surveys of members on the Outer Banks found "less than 3 percent or 4 percent of the transactions actually involved someone bringing in a reusable bag to a grocery store, even after all the publicity and hype," Ellen said. And visitors continue to bring plastic bags from elsewhere. *CJ*



# Raleigh Wants to Limit Advertising On Vehicles in Front of Businesses

By MICHAEL LOWREY  
Associate Editor

**T**he city of Raleigh may place limits on the use of signs on vehicles to advertise local businesses, a proposal that has drawn heated opposition from business owners.

Many small companies attract attention from potential customers by parking a car or truck painted with corporate logos and other advertising materials on a nearby street. While such vehicles occasionally are used for deliveries or other purposes, they primarily serve as a form of marketing.

The Raleigh Planning Commission would end this practice with proposed regulations that would

require such vehicles to park behind buildings or, if that's not possible, they "must be located as close to the primary entrance to the building as the site allows" and at least 100 feet from the street.

"If you have a vehicle with signage on it, and it's parked purely to attract attention, then that would be a sign, and that would be prohibited," said commission member Rodney Swink to WRAL-TV.

The proposal wouldn't apply to businesses with large fleets of trucks or small companies that use their vehicles on a daily basis.

Bob King, owner of Seaboard Ace Hardware, disagreed with the proposed new rule. During special events, his company uses a brightly painted classic car to help customers find his store, which has no sign visible from the street.

"It is a major part of the way we do business," he said to the *Raleigh News & Observer*. "A lot of us small merchants, our vehicle is one of our main ways of advertising."

## Asheville tennis center

By all accounts, Asheville's Aston Park Tennis Center offers facilities comparable to those in many country clubs. But the center is running up losses that are not appreciated by city taxpayers, reports the *Asheville Citizen-Times*.

Aston Park has 12 clay tennis courts, which are more comfortable to play on than asphalt courts, and rare at public tennis facilities. The *Citizen-Times* reports that only two other municipal tennis centers in the state offer clay courts.

"It's one of the top half-dozen [tennis] venues in North Carolina, and the fact that it's public on top of that is very cool," said Chris Barcklow, president of the Asheville Tennis Association.

Clay courts are rare in part because they are expensive to maintain. Despite charging a fee to play at Aston Park, the facility loses \$120,000 to \$150,000 in operations annually.

"The amount of subsidy on a per-user basis at Aston Park is significantly greater, at least in my experience, than

anything else we do" in city government, said Vice Mayor Marc Hunt.

Hunt notes that the city provides a subsidy of about \$13 each time a player steps onto the court.

The city is considering options to reduce losses at the facility. They include increasing the fees charged to use the tennis center — current fees are \$160 a year for city residents or \$200 for those living outside the city, with discounts for seniors — reducing maintenance, or having a private company run the center.

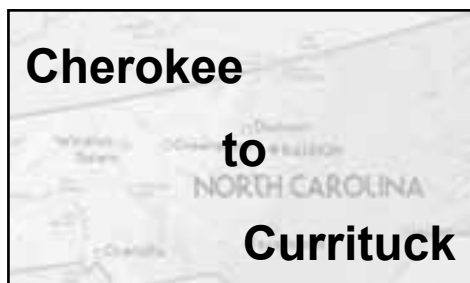
## Wilmington derelict houses

Wilmington officials are looking to target decaying and abandoned houses in the city more actively. While the city once made a priority of enforcing minimum housing standards, a change in policy and budget cuts during the Great Recession have resulted in a degradation of the city's housing stock, reports the *Wilmington Star-News*.

The city first targeted derelict houses in the late 1990s, forming a team of code enforcement and police officers, issuing notices of violations. Violators had to attend a hearing, during which the city would issue an order requiring that a house be repaired within three to six months or torn down. The city averaged about six tear-downs a year over that period.

In 2005, things changed, as the city gave property owners two years to make repairs if they worked with the city. Selling the property would add two years to the timetable, which could leave decaying houses in disrepair for much longer if the properties were flipped. And staffing at the housing team was reduced due to budget cuts.

"We have a really large backlog," said chief code enforcement officer Williane Carr. CJ



## COMMENTARY

# W-S Speech Ordinance Grants Notable Exemption

**O**n June 26, in *McCullen v. Coakley*, the U.S. Supreme Court struck down unanimously a Massachusetts law requiring pro-life activists to stay outside a 35-foot "buffer zone" around abortion clinics. Although the outcome of this landmark First Amendment ruling was unanimous, the justices were deeply divided in their legal reasoning.

One key dispute involved an exception in the law: Massachusetts prohibited pro-life protesters, and most other people, from speaking inside the buffer zone. But the state permitted abortion clinic employees within the zone to speak freely. Four of the nine justices believed that this exception doomed the law without

any further analysis. The majority disagreed and ruled that a more detailed First Amendment analysis still was necessary.

Residents of Winston-Salem recently became subject to a speech-restrictive law with an exception

like the one in *McCullen*, although the city's exception is rooted in business cronyism, not political viewpoints. The new ordinance, which took effect July 1, requires door-to-door salesmen in

Winston-Salem to obtain a license and a city-issued ID before making sales pitches to city residents. The law applies to all forms of commercial sales except one — it exempts newspaper salesmen.

There are, of course, obvious reasons why Winston-Salem's print newspapers, struggling to maintain their subscriber base in the digital age, would want an exemption from this ordinance and the resulting registration fees. And there are obvious reasons why politicians in the city might want to give preferential treatment to the newspapers that report on them to the public.

But that is little comfort to other salesmen — of, say, encyclopedias, or cable TV, or anything else — who must comply with sales laws from which the newspapers are exempt.

In light of *McCullen* and other

recent cases, this preferential treatment raises serious constitutional concerns. But whether it is constitutional or not, it is certainly bad policy. One of the greatest benefits of free speech is the competition that is created through the open exchange of information and beliefs. Scholars call this the "marketplace of ideas."

It works like any other free market. Just as competition among businesses benefits consumers, competition among differing viewpoints benefits the public discourse — it helps society separate the strong ideas from the weak ones. And as in any other marketplace, we should be wary of government intervention in the marketplace of ideas.

Supreme Court Justice John Paul Stevens aptly summed up this concern in an opinion years ago: "The First Amendment directs us to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good."

To be fair, favoring the speech of certain salesmen over others may seem far removed from censoring one side or another in an important public debate. But in a robust democracy like ours, there is

little risk of our freedoms disappearing overnight. Instead, the greatest threat to our liberty is the slow erosion of our rights, in steps so small that we barely notice.

For this reason, we should be critical of any laws that favor one group of speakers over another — no matter how remote or insignificant that favoritism might appear. Because, if society becomes accustomed to our government playing favorites among speakers, we may soon find politicians and bureaucrats tilting the debate on issues far more important than which salesmen are allowed to knock at our doors. CJ

*Richard Dietz is a partner at Kilpatrick Townsend & Stockton LLP. His practice focuses on appeals and constitutional law. He is also a 2014 E.A. Morris Leadership Fellow.*



**RICHARD DIETZ**

**We should be critical of any laws that favor one group of speakers over another**

# Counties Using Schools as Justification For Sales Tax Hikes

BY SAM A. HIEB  
Contributor

GREENSBORO

It's an election year, and counties once again can't resist the urge to put a quarter-cent sales tax hike on the November ballot, hoping to reap the rewards of millions in extra revenue, all with the consent of taxpayers.

Guilford, and possibly Wake and Rockingham, would join Bladen, Mecklenburg, Richmond, and Brunswick counties with "local-option sales tax referendums" on the ballot. Each measure would hike the current tax rate by 0.25 percent.

## Bill would quash referendum

But a bill in the General Assembly could quash Mecklenburg's referendum and put a dent in Wake's ability to join a regional transit plan.

Brunswick County voters rejected a tax hike measure on the May primary ballot, with only 40 percent backing it, but in Davidson County a rate increase passed by a 56-44 margin.

The saying goes "you don't get what you don't ask for," but odds are taxpayers will say no. At least that's been the pattern of sales tax referendums since 2007, according to a tally kept by the N.C. Association of County Commissioners.

In 2008, 34 counties placed the quarter-cent sales tax hike on the ballot. Three passed. Guilford was one of the counties that did not approve the tax hike. The Board of Commissioners put it on the ballot again in 2010, with the same result.

In 2012, eight counties — including Guilford's neighbor Alamance County — placed quarter-cent sales tax hikes on the November ballot. Of

those, only two passed — in Edgecombe and Greene counties.

In 2013, two counties placed sales tax hikes on the off-year election ballot. Harnett County voters approved the measure, while Yadkin County voters rejected it.

The General Assembly may have gummed up the works for tax-hike supporters in the state's two largest counties, Wake and Mecklenburg. The state Senate passed a bill capping local sales tax levies at 2.5 percent, which is Mecklenburg's current rate. If the House — which passed a different version of the bill — goes along with the Senate's version, and Gov. Pat McCrory signs the measure into law, Mecklenburg would have to cancel its sales tax referendum.

## Triangle transit issue

Meantime, in Wake County, at press time commissioners had not decided whether to ask voters for a quarter-cent hike on top of the current 2 percent rate. Even if the commission puts the 0.25 percent raise on the November ballot, the tax cap bill could preclude Wake from joining Orange and Durham counties in creating a regional transit system, heavily reliant on fixed rail, because the county would have to impose a half-cent dedicated sales tax to join the regional system.

The tax-cap measure was in a House-Senate conference committee at press time. Like Wake, Guilford's sales tax rate is 2 percent (the state rate is 4.75 percent), so the pending law would not affect Guilford's quarter-cent sales tax referendum.

Local officials believe they have a new angle to persuade voters this time around, by claiming that revenues from the sales tax hike would be dedicated to K-12 public education.

The plan worked in Davidson County, where 56 percent voted in favor of the tax increase in a low-turnout election —

slightly fewer than 16,000 votes were cast in a county with a population of 163,000.

Davidson plans to use the estimated \$2.3 million annually to finance the construction of a new high school. In Rockingham, the \$1.5 million annual revenue would help bridge a budget gap in debt service on new school construction.

In Guilford, schools Superintendent Mo Green told the Board of Education, "there are certainly many, many needs for our district."

## Wish list for extra revenue

At the board's July 8 meeting, Green presented his wish list for the extra revenue, which included funds

to restore classroom teachers, instructional supplies and materials, tutoring services, textbooks, and technology.

In a phone interview, school board chairman Alan Duncan told *Carolina Journal* he was confident not only that the sales tax hike would pass, but that the additional funding actually would go to the schools.

"I'm hearing from a large number of constituents who say they would be very supportive," Duncan said. "I have a high level of confidence it will be directed toward schools, as commissioners stated that during their vote."

In Rockingham, county commissioners were set for a vote to place the sales tax hike on the ballot back in July, but instead voted 4-1 to table the issue until mid-August.

News reports on the sales tax hikes in local newspapers may ignore the fact that state statute does not bind counties legally to abide by their statements of intent.

## Support of 'boondoggles'

"The law does not compel the county commission to use the additional sales tax revenue for public education," said Terry Stoops, director of research and education studies at the John Locke Foundation. "In the future, it can be used to support any boondoggle, corporate giveaway, or vanity project deemed worthy by the county commission."

Moreover, according to the NCACC, a "board of county commissioners is not obligated to levy the tax even if the majority of those voting in a referendum vote in support of a levy," which is a possibility should a board change its mind or the composition of its membership after an election. *CJ*



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# Audit: Former Tarboro Manager Made Excessive Purchases

BY BARRY SMITH  
Associate Editor

RALEIGH

State Auditor Beth Wood said an audit pointing out hundreds of thousands of dollars in misspending by top Tarboro officials should serve as a call for governing boards across North Carolina to ratchet up their oversight of public funds.

"It's a huge message to cities and councils, that their board members, their commissioners, their city council members are watching their operations," Wood said. "These are the things that council members should have their arms around."

On July 22, Wood's office issued an investigative audit finding numerous violations and irregularities centered on former Tarboro town manager Sam Noble.

The investigative audit found that, over a six-year period, Noble made nearly \$366,000 in purchases that exceeded the scope of his duties and that he obtained more than \$87,000 for universal life insurance premiums without approval from the Tarboro Town Council.

The audit chides Noble for failing to comply with the town's purchasing policies. The report says that many of the items purchased appeared not to relate to his job as a town administrator.

Among reimbursements Noble received were \$15,405 for items purchased at the Apple Store, \$19,665 for purchases at Boater's World, \$8,316 for items from Dick's Sporting Goods, \$11,071 for Best Buy, and \$8,533 for items purchased at Bass Pro Shops. Items purchased included shirts, coolers, gun holsters, life vests, flashlights, helmets, wetsuits, marine equipment, knives, and jackets.

He also purchased police equipment, including handguns, that were not necessary for his duties. "A former police chief said there was no reason the former town manager needed all the police equipment and clothing," the report says.

According to the audit report, Noble said he liked to accompany police officers on assignments and needed the same supplies. However, the town manager's job description says his duties were to "observe departmental activities to assess operational efficiency," not to participate as a police officer, the report says.

The report says Noble would charge purchases to other city departments. "For example, he purchased \$394 of boating supplies from Boater's World and charged it to the Electric Department, although interviews with Electric Department employees revealed that the department did not have a boat," the report says. As a result of those purchases, one former department head told auditors that he had to check his department's account

before making any purchases because Noble often would deplete the department's funds.

The report also questions nearly \$85,000 in reimbursements for 455 trips that may not have been necessary and \$7,000 in questionable reimbursements for 289 meals at restaurants in Tarboro over the period.

A former department head told auditors that while Noble possessed a town credit card, he preferred to use his personal credit card so he could accumulate rewards points.

Noble retired as town manager Dec. 31, 2010, but continued to work for the town on an interim basis until July 31, 2011.

The audit also found that a former accounting clerk, who left her job voluntarily, may have violated state law by obtaining more than \$30,000 in unemployment benefits that she was not eligible to receive.

In addition, the audit reported that the current mayor, Rick Page, who was the former Electric Department director, received almost \$28,000 in reimbursements for his ex-wife's health insurance and that the council failed to oversee town operations to ensure accountability.

In an interview with *Carolina Journal*, Page said that further investigations are under way, and he didn't think it was appropriate to comment on the report until those measures were completed.

Page said he thought there was some misunderstanding about the allegations in the report and did not want to comment.

Page provided a three-paragraph letter to Wood's office saying the town accepts the auditor's recommendations. Attached to his response were details on how the town planned to respond to the investigation, which included incorporating some of the recommendations into the town's policies.

The audit recommends that the council seek legal counsel regarding repayment of the inappropriately spent funds and regularly review the town manager's performance, including an analysis of his expenses. It also asks the Division of Employment Security to determine whether the clerk violated state law by obtaining improper unemployment benefits. It also said the town should require Page to repay misrepresented reimbursements for his ex-wife's health insurance.

The audit's findings have been referred to the State Bureau of Investigation, the Internal Revenue Service, the N.C. Department of Revenue, and the Division of Employment Security for appropriate legal action.

Wood insisted that town councils, boards of commissioners, and school boards must take an active role in overseeing their professional staffs' performance.

"If you've got no oversight over that, then things get a bit lackadaisical, lazy," Wood said.

Wood said the council initially conducted its own audit into questionable purchases by Noble, apparently after he retired. She said the council wasn't satisfied with the earlier audit and reached out to her office. *CJ*

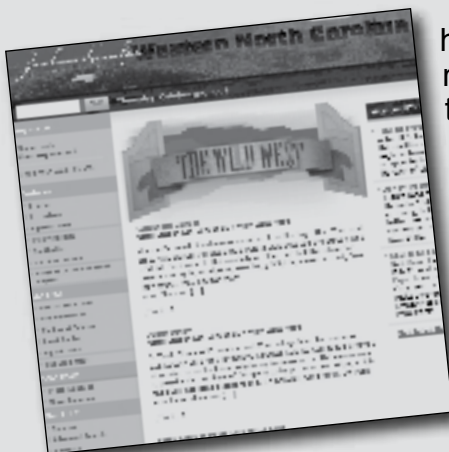


Former Tarboro town manager Sam Noble

Audit found more than \$366,000 in purchases that 'exceeded scope of his duties'

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# McCrory Signs Legislation Repealing Common Core Standards

Continued from Page 1

"No standards will change without the approval of the State Board of Education. I especially look forward to the recommendations that will address testing issues so we can measure what matters most for our teachers, parents, and students."

Rep. Craig Horn, R-Union, who sponsored the House version of the bill, said he went along with those Senate provisions because of the support it had received from the business community and the education community.

"The goal was to keep the bill as short as we could, to give the commission the flexibility to seek out the best standards in the nation," Horn said. "We didn't want to take anything off the table."

That includes some Common Core standards, if the commission feels they're the best for North Carolina. "OK, if they're good standards, we

want them," Horn said.

Sen. Jerry Tillman, R-Randolph, said it didn't make sense to rule out totally every Common Core standard. "If you say you can't take a single standard and you take one, then you've broken the law," Tillman said.

Both Tillman and Horn said that the new standards would have North Carolina fingerprints on them.

"They'll be North Carolina standards," Tillman said. "We're repealing the Common Core, then it will be up to the standards commission to pick the best plan for North Carolina."

Once the commission recommends the standards, they will go to the State Board of Education for approval.

Earlier this year, both the NC Chamber and McCrory had voiced support for Common Core. But Lew Ebert, president of the NC Chamber, issued a statement supporting the new law.

"The North Carolina Chamber is encouraged that our state will maintain higher standards that will be revised to best meet the unique needs of our students as they prepare for college, career, and life," Ebert said. "This is a significant step toward a reasonable approach to make standards higher, and it brings greater predictability and certainty for the education and the business communities as we work together to assert North Carolina as a leader in high academic standards and work force development."

Horn said that the final plan included principles sought by House members, including making it clear that Common Core standards would be replaced with state-specific standards, and that North Carolina's academic standards would not be undermined. He added that the House wanted to make sure that the standards commission included parents, principals, superintendents, and other

education experts.

Forty-five states have adopted the Common Core standards. North Carolina was one of the earlier states to adopt them. The State Board of Education adopted them in June 2010.

Part of the reasoning behind North Carolina's original push to adopt Common Core standards was to improve the state's chances to receive a grant from the Race to the Top program.

Common Core standards have become controversial among some education leaders, elected officials, and parent groups, suggesting that some standards aren't rigorous enough. Others have argued that the math standards aren't age-appropriate in lower grades. Others have claimed that adopting Common Core standards would cede some of the state's autonomy to the federal government.

Oklahoma, South Carolina, and Indiana all have enacted laws repealing Common Core standards. CJ

# Appeals Court: Police Cannot Continue Traffic Stops Indefinitely

By MICHAEL LOWREY  
Associate Editor

RALEIGH

In a significant ruling involving the Fourth Amendment to the U.S. Constitution, North Carolina's second-highest court has limited the instances in which a police dog can be called in to perform a drug sniff in traffic stop cases.

The N.C. Court of Appeals ruled that police officers making a traffic stop who have completed their initial investigation and found nothing wrong cannot extend the stop

without the driver's consent unless the officers have a "reasonable and articulable suspicion of criminal activity."

Shortly before midnight on May 28, 2012, officer Jordan Payne of the Winston-Salem Police Department spotted Anthony Cottrell driving a Dodge Intrepid with its headlights off. Payne pulled the car over and asked Cottrell for his driver's license and registration.

Cottrell did not smell of alcohol or have glassy eyes, was not sweating or fidgeting, and did not make any contradictory statements. The officer ran Cottrell's documents and determined they were valid. Payne also checked Cottrell's criminal history and learned that he had a history of "drug charges and various felonies."

As the officer was returning Cockrell's documents, he smelled a strange odor coming from the car. Payne believed the odor was a "cover scent" used to mask the smell of marijuana. Cottrell denied that, claiming it was body oil and showed the officer a small glass bottle with some liquid in it and a roll-on dispenser.

The officer then asked Cottrell for consent to search his car. Cockrell said no. Payne then told Cottrell that he would call for a drug-detection dog to sniff his car. Cottrell said he just wanted to

go home. When Payne insisted that he was going to call for a drug dog, Cottrell consented to a search of his car. Payne found in the glove compartment a handgun and a powdery substance later determined to be cocaine. Payne also found in Cottrell's sock a small plastic bag containing marijuana.

Cottrell was charged with possession of a firearm by a felon, cocaine and marijuana possession, and being a habitual felon. At trial, he moved to suppress the results of the search. After a Superior Court judge ruled against him, Cottrell pleaded guilty to the charges and received a prison sentence of between 76 months and 104 months.

On appeal, Cottrell renewed his challenge to the search, claiming again that it violated the Fourth Amend-

ment's prohibition on unreasonable searches and seizures, saying the officer had no good reason to continue detaining him once the purpose of the traffic stop was completed.

The Court of Appeals agreed.

"We hold that once Officer Payne told defendant to keep his music down, the officer had completely addressed the original purpose for the stop. Defendant had turned on his headlights, he had been warned about his music, his license and registration were valid, and he had no outstand-

ing warrants," wrote Judge Martha Geer for the appeals court. She said Payne needed "defendant's consent or 'grounds which provide a reasonable and articulable suspicion in order to justify further delay' before" he could question Cottrell further.

The appeals court also rejected the state's contention that Cottrell consented to the search.

The court awarded Cottrell a new trial and excluded as evidence the drugs and gun Payne found.

The case is *State v. Cottrell*, (13-721). CJ



# Board of Elections Investigating Wray Spending on Gas Mileage

Continued from Page 1

"Publicly filed disclosures indicate expenses in excess of \$65,000 for mileage, \$40,000 for meals, and \$5,700 for lodging paid by the campaign since 2006. We are seeking clarification regarding numerous line-items within each category. Our investigation remains ongoing."

The campaign spending became an issue in September 2013 when a *Raleigh News & Observer* story showed spending from Wray's political campaign account on motor fuel appeared excessive.

Carolina Journal Online in June reported a separate financial issue regarding unpaid taxes. That report revealed that Wray, who is the deputy minority leader in the state House of Representatives, owed more than \$100,000 in past-due federal, state, and local taxes, according to public records. Wray paid his past-due taxes after he learned that *CJ* was planning a story on his situation.

Wray serves as his own campaign treasurer. Wray has refused to speak with *CJ* about his tax issues or spending from his campaign account.

## Wray spreadsheet

The *N&O* story led the elections board staff to ask Wray for more documentation of his travels. On Dec. 27, the board received a spreadsheet from Wray listing the campaign and official activities associated with his purchases using campaign funds. The spreadsheet is labeled "miscellaneous correspondence" and is posted on the board's campaign finance website, along with Wray's other reports.

The spreadsheet covers the period from January 2011 through mid-September 2013.

## Excerpt from Michael Wray's Reported Campaign Mileage and Fuel

Date	Purpose	Miles	Fuel Purchase
08/02/13	Jackson-Sheriff Vincent Retirement Luncheon	38.0	\$90.00
08/04/13			\$58.00
08/08/13	Caucus event	184.4	
08/12/13			\$90.00
08/16/13			\$94.80
08/19/13	RR Convocation	10.0	
08/19/13	Enfield Town	64.0	
08/12/13	Weldon Convocations	13.8	
08/21/13			\$99.75
08/21/13			\$75.75
08/22/13			\$84.70
Total		310.2	\$593.00
Omitted*			\$140.00
<b>Grand Total</b>			<b>\$733.00</b>

\* Spreadsheet omitted two \$70 fuel purchases in Durham on 08/07/13 and 08/10/13 that were claimed on the campaign finance report.

Source: Spreadsheet submitted by Michael Wray to the N.C. Board of Elections

A *CJ* review of the spreadsheet and other information from Wray's campaign finance report has found that many of Wray's fuel purchases far exceeded the number of miles he claimed to have driven.

On July 28, *CJ* sent the following question to Wray via email: "Did you ever use your campaign fund to purchase fuel for vehicles normally driven by any of your family members?"

Wray was asked to call or email his answer but never responded.

The fuel instead may have been for personal use or purchased for other people, possibly family members. Wray has purchased four specialty license plates for House members. Three of the plates are displayed on cars driven by his family members.

Examples from three recent years reveal several unusual periods of gas purchases and vehicle use.

In 2013:

- From Aug. 2-22, the spreadsheet shows eight fuel purchases totaling \$593, but only 310 miles of driving for allowable activities. His campaign finance report shows two additional \$70 fuel purchases on August 7 and 10 in Durham that were not reported on the spreadsheet.

- On July 15, a Monday, the spreadsheet shows a fuel purchase of \$55 and a round trip from his home in Gaston to Raleigh of 184.4 miles for the Democratic Rural Caucus. On his campaign report for the same day he reported purchasing \$55 in fuel in Norlina — a Warren County town 20 miles from Henderson. His campaign report shows an additional \$95 fuel purchase in Nags Head the same day.

- On May 15, the spreadsheet shows he made a 184.4-mile round trip between his home in Gaston and Raleigh. It also shows he made a similar trip the following day. His campaign finance report shows that he spent \$67 May 15 for lodging at a Raleigh hotel, even though his spreadsheet says he traveled between Gaston and Raleigh both days.

In 2012:

- From Nov. 14-25, the spreadsheet shows nine fuel purchases of \$649, but only 216 miles of driving for allowable activities.

In 2011:

- From Sept. 19-23, the spreadsheet shows four fuel purchases totaling \$263, but reported only 148 miles of driving for allowable activities.

- From Aug. 10-15, the spreadsheet shows five fuel purchases totaling \$331, yet reported only 166 miles of

driving for allowable activities.

- From Jan. 22-25, the spreadsheet shows five fuel purchases totaling \$320 while reporting only 95 miles of driving for allowable activities.

*CJ* compared the reports Wray submitted with legislative expense reimbursement rules, the Internal Revenue Service Code, and campaign finance guidelines.

## Expenses for legislators

The General Assembly sets the salary for each legislator and expense reimbursement guidelines. Current rates were set Jan. 1, 1995.

Legislators receive an annual salary of \$13,951, paid monthly, and a monthly expense allowance of \$559. Both amounts are taxable as income. The top four leaders in each chamber receive larger salaries and expense allowances. Even though Wray is the deputy minority leader in the House, he is paid the same salary and expense allowances as regular legislators.

Legislators also receive a subsistence payment of \$104 each day the General Assembly is in session — \$728 weekly, even though the General Assembly rarely meets Fridays, Saturdays, or Sundays. The per diem is intended to cover food and lodging. The \$728 is tax-free if the legislator lives more than 50 miles away from the state Capitol building. Those living 50 miles or less from the Capitol must

treat the per diem as taxable income, because those legislators are not expected to incur lodging expenses.

In addition, each member is reimbursed for one round trip per week from his or her home to Raleigh at a rate of 29 cents per mile. The

federal mileage reimbursement rate for 2014 is 56 cents.

Expense guidelines for legislators were last changed in 1995

## Campaign finance guidelines

North Carolina campaign finance laws state that candidates and officeholders must limit campaign fund expenditures to specific purposes. Generally, the spending must result from expenses related to campaigning for public office by the candidate or candidate's campaign committee. In addition, expenses related to official duties of holding public office are allowed.

Candidates also may donate their campaign funds to charities or other political campaigns.

A random review of campaign reports by *CJ* revealed that other legislators bought fuel with campaign funds during legislative sessions when they also were receiving mileage reimbursements as well as during times the legislature was not in session. *CJ*

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# Rose: Capitalism Not Perfect, But It's the Best System Out There

BY CJ STAFF

RALEIGH

Critics often label capitalism as unfair. They say a system based on free markets and limited government control leads to wide disparities among the rich and poor. David Rose, professor of economics at the University of Missouri at St. Louis, challenges that argument. Rose discussed the fairness of capitalism with a John Locke Foundation audience earlier this year. He also spoke 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:** Starting with the very basic question, the title of your lecture, "Is capitalism unfair?"

**Rose:** I don't believe that it's fundamentally unfair. Now, let's dispense with some obvious things. If you have a capitalistic society, and people are engaged in business as we normally think of in a capitalistic society, will there be some people who are behaving in shabby ways and producing unfair outcomes? Absolutely, that's going to happen.

But that's going to happen no matter what kind of society you're talking about. It's a mistake to say that because bad things happen in a capitalistic type of environment, that it's caused by capitalism. Just as it would be unfair to say that all the bad things that happened in the Soviet Union, say circa 1970, is all because of communism or socialism.

That's not fair. Some of that is just because of power-hungry people taking advantage of it. So let's just wipe away that. Of course, some things about capitalism are unfair, but that's really confusing the ultimate paradigm with what's going on within it.

Now, the real question in this, is capitalism inherently unfair? Is it the kind of thing that's going to produce that [unfairness]? And I think that many people tend to think that capitalism is inherently unfair because they equate fairness with equality.

So if you treat equality and fairness as being one and the same, and then you observe unequal outcomes, you're going to say, "Oh, well, whatever produced those unequal outcomes is unfair." And there's no question that capitalism does not produce equal outcomes. Some people make a whole lot more money than others. Some people end up with a great deal more wealth than others.

So I think that ... that's where the problem comes in. If you equate fairness with equal outcomes, then you're going to correctly conclude that capi-

*"Societies that are capitalist, and have been capitalist for a long time, find that even their poorest people in their societies get plenty to eat, their kids get free education, they get health care, and so on and so forth. I think that's where if you're really worried about the people that need to be worried about, capitalism does a better job taking care of those people."*

David Rose  
Professor of economics  
University of Missouri at St. Louis



talism is unfair, but it's because you have an incorrect premise.

**Kokai:** If we set aside that premise, that fairness would mean equal outcomes for all, why is capitalism something that we should look at in a more favorable view than those who say, "Oh, it's unfair, so we need to get rid of it"?

**Rose:** Well, when we worry about things like fairness, what are we worried about most? Are we worried that the 10th-richest person on the planet doesn't feel bad compared to the first-richest on the planet? We're not worried about that. That's not what we're worried about on fairness or equality.

What we're worried about when we're worried about fairness and equality is we're worried about people at the bottom who have so little that they suffer serious meaningful deprivation — true misery. They actually do go hungry from time to time. They actually are cold and wet. They actually might have a broken arm and not have it set for three days. OK? Now that — that's why we worry about fairness. We don't worry about Bill Gates being sore about George Soros having more money than him.

What does that have to do with your question? Well, any system that dramatically reduces the number of people who suffer genuine, absolute material deprivation — [they are] hungry, don't get enough clean water, can't get a simple antibiotic when they're suffering from a sinus infection — being in a situation where keeping them to a minimum or minimizing the amount of time they're in that situa-

tion, that's a good system.

Capitalism is the best system on the planet that we know of. I am open-minded to new systems, but of the ones we know of, capitalism is the one that gives the most people the greatest chance to stay out of that zone of genuine material deprivation.

Societies that are capitalist, and have been capitalist for a long time, find that even their poorest people in their societies get plenty to eat, their kids get free education, they get health care, and so on and so forth. I think that's where if you're really worried about the people that need to be worried about, capitalism does a better job taking care of those people.

**Kokai:** Is it safe to say that by opening the doors through capitalism to people making lots of money, that we have greater opportunities to help those who are at the low end because of all that money that's flowing to the people who are making a lot of money?

**Rose:** Yeah. I mean, there are positive things for people at the lower rungs going on in several directions. First of all, you can't give away money you don't have. And a system that allows people to make a lot of money produces a surplus that they can then use to, literally, directly help poor people in a way that we normally think of.

Now, that's important. But I don't think that's anywhere near as important as the less-direct approach or less-direct effect, I should say, which is that in a capitalistic society, the economy is growing rapidly. People have very strong incentives to come up with new and better ways to do things. So total output per person rises more rapidly

than under any other kind of system.

What that means, then, is that people who are able to capture a lot of those rents are very highly talented people. They have skills that are highly sought after. Those people don't want to make that money and then bury it in their backyard. They want to buy stuff. They want to go places. They want to do things. Well, all of those things increase the demand for labor of people who do things like run hotels or own restaurants and so on and so forth.

And, you know, if you go back 50 years, 100 hundred years, many of these jobs would've been pretty unpleasant kind of jobs. But today, they're really not. And as long as a person is paid really well to wait tables or paid really well to be a cook in a nice restaurant, or paid really well to work behind a desk at a fancy hotel — these are not bad jobs. And people can have a good life doing the kinds of things that, you know, depends upon each person's personality, but some people are very personal and like those sorts of things.

... I don't want to get into what's best for people, but my point simply is that the kinds of things that the people who make a lot of money in a capitalist system, that they want to do, they're willing to pay other people to do it, and as other people — poorer people — get more money, their willingness to do these things goes down, which means you have to pay them ever more.

Which is one reason why if you go to a place like the United States and walk around in a poor neighborhood, you don't see a lot of agony. Many people are actually having a good time, doing things they want to do. I'm not making light of poor people, even in America, but my point is they are not to be confused with poor people in truly impoverished countries. CJ



# N.C. Officials Optimistic About 'Reverse Transfer'

By HARRY PAINTER  
Contributor

Ever since 2006, when Margaret Spellings, then the U.S. secretary of education, issued a report stressing the need for higher graduation rates at colleges and universities, there has been pressure on universities to award more diplomas.

The reason is not surprising: Nationally, only about 56 percent of students receive bachelor's degrees in six years; the three-year rate for a community college degree is 29 percent. These numbers reflect both a genuine problem for students and an embarrassment for universities.

Reacting to the federal pressure, schools have taken action, from raising minimum admissions standards (better students are more likely to finish) to seeking out and bringing back dropouts (some dropouts need only a few credits to complete a degree).

Reaction to these policies has been mixed. While the University of North Carolina minimum admissions policy has been effective in keeping out poorly prepared students, it also has resulted in declining enrollment at the state's less-selective colleges. And bringing back dropouts, as UNC-Charlotte has attempted to do, can be expensive.

One new program has received little negative publicity — although it has attracted little attention. "Reverse transfer" aims to help students who start at a community college, move on to a four-year college, but then drop out — having gained neither an associate degree nor a bachelor's degree.

The basic idea is that two- and four-year colleges will collaborate, awarding associate degrees to former community college students who have accumulated sufficient credit to earn them.

North Carolina has been part of a pilot "reverse transfer" project. In 2012, a group of private foundations put together nearly \$6.4 million to be used in 13 states for a two-year program called "Credit When It's Due." USA Funds gave North Carolina \$450,000.

The Lumina Foundation, one of the sponsoring foundations, expects this program to result in 2,094 new associate degree recipients in North Carolina — even with only 15 of the state's 58 community colleges and eight of the 16 UNC schools participating. Eventually, the plan is for all institutions to participate, at which point the number

of new degrees is projected to reach 4,400 — but that also assumes that USA Funds will continue to provide financing.

To qualify for an associate degree through this process, a student must have completed at least 25 percent of his or her coursework at the community college. Kate Henz, the UNC General Administration's associate vice president of academic policy, planning, and analysis, is optimistic about the program.

Henz told the Pope Center that more than 3,000 student records have been sent for evaluations to determine if they qualify for associate degrees, although she could not predict how many would receive them. A key aspect of the program is making students aware that they qualify, and many students are not aware that reverse transfer is an option.

"We're setting up a process for the long term," she said. UNC's General Administration has even hired a director of reverse transfer, Michelle Blackwell.

So far, the only serious problem with reverse transfer occurred in Indiana. There, Indiana University and Ivy Tech Community College reached a stumbling block. Indiana officials were concerned that Ivy Tech would receive credit for graduating students who completed most of their degrees at the four-year school.

The project has caught the eye of two Democratic U.S. senators: North Carolina's Kay Hagan and Iowa's Tom Harkin, who see it as a potential addition to the Higher Education Act, which is up for reauthorization this year. They have sponsored Senate Bill 2506, which would have the federal government provide tax-funded grants to "identify and reach out to students" that have earned a combination of community college and university credits.

Hagan and Harkin have promoted their bill by saying that 15 states have reverse transfer programs, but they don't explain how a federal role would enhance the process, or how the public would benefit from it.

Many higher education issues, from student loans to Pell grants, face a divided Congress. And this one could, too, if the price gets too high. CJ

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



## COMMENTARY

# What To Do With Law Schools?

Not so long ago, law school was a growth industry, with new schools being created and enrollments going ever higher. What a turnaround there has been over the last 10 years.

Enrollments of first-year students are back where they were 40 years ago. According to the Law School Admissions Council, in 2004, more than 100,000 students applied for law school, but in 2013, just 59,000 did.

Some law schools have had to lay off faculty and administrators. Four independent schools recently had their bonds downgraded to "junk" status.

The federal government has helped to keep law school enrollments from falling even more. As a *Wall Street Journal* editorial noted, the "Pay As You Earn" program that was expanded in 2011 "has been a slow-motion bailout for law schools." Students who graduate with heavy debts will be able to escape from paying much of it back provided that they go to work for government or for a "public interest" law firm.

Unfortunately, law schools are not free to make many changes that would be helpful, both for law students and for the clients they eventually will serve. That is because the accreditation standards imposed by the American Bar Association require them to operate in costly and inefficient ways.

Arguably the most vociferous critic of the ABA's law school mandates is Larry Velvel, dean of the Massachusetts School of Law. In his short but impassioned book *The Gathering Peasants' Revolt in American Legal Education*, he showed that law schools could train future lawyers at much lower cost if only the ABA would let them.

Specifically, the ABA rules "are focused on inputs that aggrandize faculty desires. These include rules limiting the hours of teaching, limiting overall workloads, demanding large, full-time faculties, and a requirement that most students be taught by full-time, tenured professors housed in plush facilities."

It's as if the hotel industry could mandate that all hotels must have king-size beds, Jacuzzi tubs, the plushiest of carpeting, and state-of-the-art TVs, all justified by the twin considerations of ensuring quality and protecting the consumer.

The ABA's power comes from laws in most states that prevent people who have not graduated from an ABA-accredited law school from taking the bar exam.

Those needlessly high costs must be paid by students, who often incur heavy debts while taking lots of courses they never will put to any use. The ABA also mandates that law school programs take three years to complete, which means that students must take many courses they don't need in order to get enough credits.

People who can't afford the high costs and heavy debt load are unlikely to consider law school and a career as an attorney. That has a far greater impact on minority students.

Further, students who survive law school often are so burdened with debt that they can't afford low-fee clients.

The change that would have the greatest effect would be to free legal education from the self-interested clutches of the ABA. Its accreditation standards prevent innovation and competition that would lower costs, reduce time commitments, and improve learning outcomes.

Those changes won't come from the ABA itself. They will occur only if states repeal the laws that give the ABA its stranglehold on legal education by allowing anyone to attempt the bar exam, no matter where or how he has studied. Only then could we get robust competition among existing schools and an open field for new forms of legal education.

I hesitate to call anything a panacea, but allowing a free market in legal education comes close. CJ



GEORGE LEEF

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

## Campus Briefs

Campbell University, a private Baptist institution located 45 miles south of Research Triangle Park in Buies Creek, has grown significantly in recent years. In 2009, Campbell moved its law school to a renovated 110,000-square-foot building in downtown Raleigh to connect students to the state capital's legal hub. It also created graduate degrees in physician assistant studies and public health, as well as a school of osteopathic medicine that opened in 2013.

"We are moving upward and into a very prestigious class of institutions of higher education," said Mark Hammond, Campbell's vice president for academic affairs and provost, in a recent interview with the Pope Center.

Now, in another effort to move into that "prestigious class," Campbell's board of trustees has approved a proposal to add an undergraduate engineering program. If approved by accreditors, it would become the seventh stand-alone engineering program (and just the second private program) in the state. The others are at Duke University, East Carolina University, N.C. A&T State University, N.C. State University, UNC-Charlotte, and Western Carolina University.

The university says that students seeking a private school with an engineering program and a Christian heritage have limited options and that Campbell can fill that demand. Officials highlight the relatively low unemployment rate for engineers (in 2012, just 3.4 percent nationally) and say that some engineering departments in North Carolina don't have enough seats and end up enrolling fewer than 20 percent of qualified applicants.

Campbell is confident that it can carve out a special place in North Carolina's highly competitive engineering marketplace. But it is difficult to predict how higher education institutions will evolve, and employment rates and demand for high-skilled workers vary widely across professions, time, and geographic regions. A recent report from Georgetown University revealed that the unemployment rate for recent engineering graduates is 7.5 percent.

Campus officials and prospective Campbell engineering students will need to be prepared for the fickle environment they'll face. *CJ*

*Jesse Saffron is a writer and editor for the John W. Pope Center for Higher Education Policy.*

# Tiny Martin Community College Has Big Problems

By HARRY PAINTER  
Contributor

RALEIGH

An anonymous complaint and student petition to oust the president of Martin Community College sparked a mini-eruption at the close of June.

The complaint, a 10-page email titled "The Crisis State of Martin Community College," made the news in Greenville — the nearest major city to the college's home of Williamston in Martin County — and was picked up by the *Raleigh News & Observer* and national education website Inside Higher Ed. Scott Ralls, president of the community college system, informed board members of the problem at July's meeting of the State Board of Community Colleges.

While there are 58 community colleges in the state, rarely has an internal conflict of this extent from one of the smallest campuses in the system received such public notice. The allegations are lengthy, specific, and anonymous, and Ralls insists they must be resolved. Martin's president, Ann Britt, has been in that role since 2000, but the complaint aims to end her time in office.

The email, dated June 16, lists scores of accusations against Britt, the board of trustees, and various staff members of the college. They range from mismanagement of funds and contract fraud to employee intimidation and racial discrimination — the NAACP since has held an open meeting with students. The email also complains of lesser charges, such as Britt's poor communication and the deleterious effects of her age (she is 76).

The email includes a letter from the Student Government Association to the board of trustees, also anonymous, in which the writer claims that more than 80 percent of the student body signed a petition to the "Board of Directors" asking them not to renew Britt's contract. WNCT News reported that "more than 50 percent" signed.

In an interview with the Pope Center, Martin Community College board chair Jackie Gillam said that only 60 students (not 60 percent) from a student body of about 1,500 signed the petition, and some of them were "ineligible" because they were continuing education students not represented by SGA.

However, Gillam was unable to provide a copy of the petition, and the president's office did not respond to several attempts to be reached for comment. Britt told WNCT that she could not comment on the allegations until she had spoken with a lawyer.

Ralls said in a statement that he has been "in conversations" with Britt and the Martin trustees. Gillam told WNCT, "We have already begun the process of having an investigation into these allegations by external authorities including the Office of the State Auditors [sic]."

The auditor's office will have its work cut out for it. The "crisis" letter included a 41-point, three-page document of "State Auditor Information." On the subject, Gillam emphasized in her interview with the Pope Center that Martin passed its regular audit with flying colors.

"Not only did we receive a clean audit, they specifically said that, 'We don't have any suggestions to make, nor have we found any findings.'"

The "State Auditor Information" document, however, alleged that "\$356,782 worth of equipment was improperly stored. Mold developed to such a degree the equipment was hauled away and thrown out (for a fee of \$7,000)."

Earlier this month, college maintenance supervisor John Roberts corroborated the \$350,000 number with evidence provided to WNCT.

The document further claimed that maintenance workers moved college equipment to Bear Grass Charter School; the former chairman of the college's board also sits on the Bear Grass board. It also alleged that the controller received what amounted to a raise to perform the duties of a chief financial officer even after the

school had hired a CFO.

Gillam said that she does not know whether the college has a CFO and denied the charge that equipment was sent to Bear Grass.

"That 10-page document had very little, little to do with what actually is the truth," Gillam said. "There are little pieces that might have a grain of truth and nine grains of misrepresentation."

She underlined Britt's "superior" rating on a required yearly evaluation by the board and added, "Our board stands behind Dr. Britt."

She later released a written statement crediting Britt with reversing the college's fortunes: "I can attest that about 15 years ago, our school was on the verge of being closed by the system office. Only the fact that Dr. Britt was willing to come here and try to turn things around precluded that event."

The auditor's investigation may reveal just how much work is still needed to turn things around. *CJ*

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



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## Opinion

# UNC-Chapel Hill's Embarrassing Academic Problem Not Going Away

Three years after the revelation that UNC-Chapel Hill's African and Afro-American Studies Department offered no-show classes, the Carolina community is still grappling with academic-athletic scandals at the UNC system's flagship.

The current question is how many of UNC's recruited athletes in revenue-producing sports read so poorly that they should be in middle school, not college.

Late last year, teaching specialist Mary Willingham told various media outlets that some UNC athletes were reading at an elementary or middle-school level. Willingham analyzed data for 183 "at-risk" athletes admitted between 2004 and 2012. The athletes she studied took a battery of tests to identify potential learning disabilities.

Of those athletes, about 85 percent came from the revenue sports of football and basketball. Willingham concluded from her analysis that 60 percent, or 110 athletes, had reading scores that equated to fourth- through eighth-grade levels. Worse yet, she said, another 8 percent to 10 percent were reading below the third-grade level.

The university countered Willingham's research in an official statement, then followed up with its own

study of student-athletes' reading skills.

For that study, the university hired three outside experts to re-examine the data on at-risk athletes at the Chapel Hill campus. Those analysts stated that the initial screening test, called the SATA-Reading Vocabulary subtest, given to all 180 athletes and used by Willingham in her analysis, "should not be used to draw conclusions about student reading ability." That is because the RV assesses only a person's knowledge of vocabulary. The three experts also noted that the SATA-RV has no grading norms below 10th grade, so Willingham must have extrapolated downward to arrive at estimates for middle and elementary reading levels.

Provost James Dean gave additional details in an interview with the Pope Center. He explained that of the approximately 180 at-risk athletes, 60 were referred for further screening based in part on the SATA-RV scores. Those 60 athletes took the SATA subtest for reading comprehension (SATA-RC). Of those, he said only six showed signs of potential reading problems.

There is a huge gulf between Willingham's figure (up to 120) and the university's (six). Part of the discrepancy lies in methodology.

Willingham, testing the entire 180-student at-risk group, used some combination of SATA-RV scores (but

not the reading comprehension test), SAT scores, and personal experience. (Willingham has not specified her exact methodology.) The university, however, after identifying the 60 most at-risk

student-athletes, gave those students the SATA-Reading Comprehension test. Based on that test, it claimed that a maximum of 10 students in the sample had reading problems.

The university's outside experts, in an attempt to replicate Willingham's results, concluded that she could not have obtained her figures using SATA-RV tests alone because, they stated, a "majority of the students referenced in the public claims scored at or above college entry level on the SATA Reading Vocabulary subtest."

But even fellow UNC-Chapel Hill reading specialist Bradley Bethel, a staunch defender of the university's position and one of Willingham's biggest critics, admits that there is a problem with athlete recruitment. In an email to Chancellor Carol Folt, he stated that there have been "many student-athletes who were specially admitted whose academic preparedness is so low they cannot succeed here."

Each year, student-athletes are admitted to North Carolina's competitive sports schools under "special talents waivers." They either lack the required course prerequisites, their

grade point averages fall below the minimum admission standard, or they do not meet minimum SAT or ACT scores. Some may fail to meet all three measures.

Special admissions are particularly problematic at the system's most athletically competitive schools, N.C. State University, UNC-Chapel Hill, East Carolina University, and Appalachian State University. At Carolina, three athletes were admitted who did not take all the high school courses usually required for admission to the UNC system. Between one and four athletes (exact numbers cannot be reported due to privacy regulations) were admitted who did not meet either the minimum GPA or SAT requirements. At the big sports schools, athletes' average SAT scores and GPAs fall in the bottom quartile of all students, which makes it extremely difficult for athletes to succeed in the classroom.

Whether some athletes read below middle-school level or simply are less prepared than their peers, the outcome for them and for the university is the same: The students struggle to balance sports and classes, and the university has a strong incentive to keep those students eligible — by whatever means necessary.

Since the earliest days of college athletics, observers have known, as Harvard University President Charles Eliot declared at the turn of the last century, the fact "that cheating [is] profitable is the main evil." *CJ*

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



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## Book review

Murray's *Curmudgeon's Guide* Insightful and Irascible

• Charles Murray, *The Curmudgeon's Guide to Getting Ahead: Dos and Don'ts of Right Behavior, Tough Thinking, Clear Writing, and Living a Good Life*, Crown Business, 2014, 144 pages, \$17.95.

By DAVID N. BASS  
Contributor

Don't be fooled by Charles Murray's kindly, grandfatherly appearance. He's just as crotchety as the next crank in his early 70s, and he's published a new book to prove it: *The Curmudgeon's Guide to Getting Ahead: Dos and Don'ts of Right Behavior, Tough Thinking, Clear Writing, and Living a Good Life*.

I first encountered Murray's writings in 2012 when reviewing his excellent book *Coming Apart*, which explored the economic and social decline of whites in the United States. *The Curmudgeon's Guide* is quite different in scope and style, though the book has a similar mission: Impart uncomfortable truths to a (likely) unreceptive audience.

Murray, a sociologist and fellow at the Washington, D.C.-based American Enterprise Institute, began the book on what he calls "a lark." Using an internal website platform, he started posting advice to AEI's interns and entry-level workers — most of whom are in their 20s, members of the so-called "Millennials" — on proper dress and conduct in the workplace.

That flowered into *The Curmudgeon's Guide*, which goes well beyond workplace etiquette and delves into the niceties of proper writing, proper speaking, and proper living.

Murray's points are countercultural. A few are counterintuitive. For instance, he suggests that ambitious youngsters skip the summer internship (or, as Murray calls them, "affirmative action for the advantaged") and get a regular job instead.

Summer internships are "ridiculously oversold" and tend to "seduce" 20-somethings into accepting jobs that they won't enjoy after college simply because they have a connection. In contrast, finding a real job (ideally a service job, such as in a restaurant) teaches the average middle-class youngster much-needed humility.

Murray devotes a sizable chunk of his crotchety tome to the craft of writing. His tips on usage and style are suggestive of a bad-tempered version of Strunk and White's *The Elements of Style*. With all the fervor of a veteran copy editor, Murray reminds us never to write "general consensus" (redundant), never to confuse "affect" with "effect," and, above all, never, ever to write "which" when you should have written "that."

As a practical matter, his two most useful tidbits of advice on writing well are to, first, find writers whom you admire and imitate their style and, second, come not only to do, but to love, exhaustive research.

Murray's insights on the art of writing are useful for young people in any career, even tech fields that don't ap-

pear, at first glance, to require as many communication skills. The reason is simple: Good writing leads to good thinking. We need good thinking today more than ever.

"The process of writing is your most valuable single tool for developing better ideas," Murray writes. "The process of writing is the dominant source of intellectual creativity."

Stepping beyond advice on good writing to advice on good living, Murray has many suggestions on how young people should conduct themselves in all spheres of life, from the office to the personal realm.

He encourages youngsters to leave home (something that one-third of Millennials haven't done yet), excise the word "like" from their vocabularies, eschew tattoos and piercings, reserve strong language for a select few circumstances that demand it, never suck up to the boss, dutifully observe unwritten office dress codes, watch the movie "Groundhog Day" religiously, and reject entitlement.

On the last of these, Murray writes, "If you're at the table for more than half an hour and can't tell who the sucker is, you're it. Similarly, if you're a college graduate in your early 20s, and you look around at your peers and can't see a problem with a sense of entitlement, maybe you have a problem."

Murray encourages youngsters to take religion seriously (particularly if they've been socialized not to do so) and to consider getting married in their mid-to-late 20s rather than in their 30s.

On the first of these, Murray advises approaching the topic of religion with seriousness and intellectual rigor. "If you're waiting for a road-to-Damascus

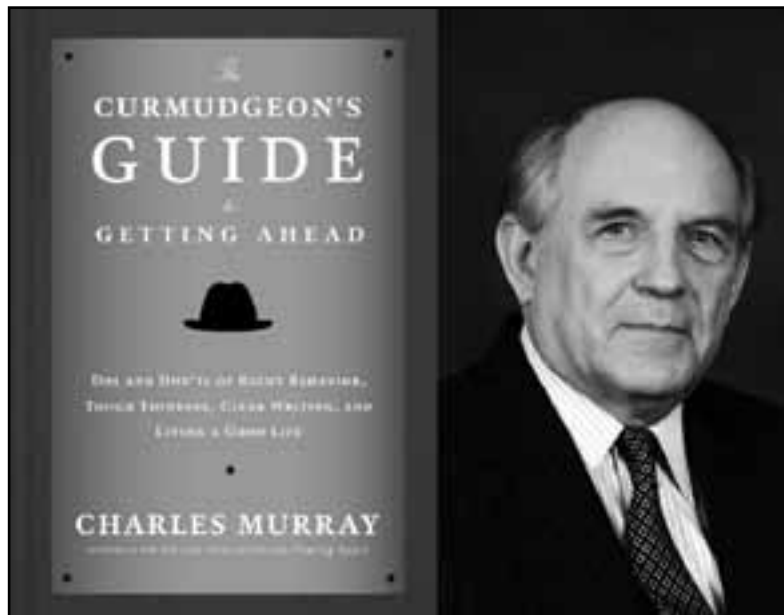
experience, you're kidding yourself," Murray writes. "Taking one of the great religions seriously, getting inside its rich body of thought, doesn't happen by sitting on beaches, watching sunsets, and waiting for enlightenment. It can easily require as much intellectual effort as a law degree."

On marriage, Murray is unafraid to argue that clichés about matrimonial bliss are true. "A good marriage is the best thing that can ever happen to you," he writes.

There is no reason to fear "startup" marriages, which he defines as those in your mid-to-late 20s, compared to "merger" marriages in your 30s. Beginning a marriage earlier in life has many advantages, one of them being that "you will each know that you wouldn't have become the person you are without the other."

Most of Murray's suggestions are spot on; the big question is whether Millennials have any interest in listening. Most will argue that behaviors seen as negative by Murray are actually good — evidence of a progressive society.

No doubt, styles and habits change from generation to generation, and nothing can stop that. But moral, right conduct remains the same. The overarching theme of *The Curmudgeon's Guide* is that young people should be more mindful of the virtues of hard work, selflessness, generosity, respect, humility, and faithfulness. One can't go wrong by following that advice. CJ



# Tar Heels Not Sharpest of Troops During Spanish-American War

You may have driven by the Camp Bryan Grimes highway marker on Hillsborough Street in Raleigh (near the YMCA and the state Republican Party headquarters). A U.S. Army camp was located there in 1898 during the Spanish-American War.

On the Capitol lawn in downtown Raleigh, a monument stands memorializing the life a Tar Heel and fallen Spanish-American War veteran: Worth Bagley. Maybe you have seen the statue, too.

Few people remember “the splendid little war,” as many Americans then called the conflict, during which hostilities lasted a mere four months. Of the nearly 5,500 Americans who died in the war, only about 7 percent (379) were killed in combat — two of them Tar Heels. Accidents, diseases, and quartermaster unpreparedness took the lives of the rest (5,083).



**TROY  
KICKLER**

Although President William McKinley asked North Carolina to provide two regiments of infantry and an artillery battery, North Carolina provided three infantry regiments named simply the First, Second, and Third Volunteer Infantry Regiments. The First was the only one deployed to Cuba; the Second disbanded after a short-lived yet infamous term of service in the states; and the Third, an African-American regiment, experienced discrimination whether stationed in eastern North Carolina or Knoxville, Tenn.

Most white war dissenters called eastern North Carolina home. As a result, Piedmont and western North Carolina residents comprised the majority of the First and Second Regiments; in the First Regiment, for example, only one company came from the eastern region.

Within a week of the president’s call for troops, the First Regiment, under the command of Col. Joseph Armfield, assembled at the ill-prepared facilities of Camp Bryan Grimes. The men did not receive paychecks or supplies in a timely manner.

Two weeks later, once properly equipped with uniforms and guns, the

regiment traveled by rail to encamp in Jacksonville, Fla. Unfortunately, the men’s train collided with another, resulting in the death of one soldier and injuries to seven others.

Once the regiment arrived safely in Jacksonville, it continued to experience food and supply problems. During the particularly rainy season of 1898, many men contracted diseases in a flooded and overcrowded camp.

Meanwhile, paycheck delays continued. Even so, the commanding officer rejected an offer from Durham tobacco tycoon Julian Carr to lend the troops their pay. The First eventually was deployed to Cuba, only to perform guard duty on the outskirts of Havana.

Mustered in May 1898 and commanded by W.H.S. Burgwyn, a former Confederate officer, the Second Regiment also performed unimpressively. At Camp Dan Russell, located at the N.C. State Fairgrounds, the ill-supplied and irregularly paid troops performed poorly in regular drills, and 27 men went AWOL.

In six weeks, half of the regiment was dispersed to other U.S. camps to perform guard duty. Soon, the regiment’s poor performance contributed

to its disbanding. Camp life probably resulted in more casualties than combat would have inflicted. Twenty men died from disease, and 55 were classified as disabled.

Republican Gov. Daniel Russell encouraged the formation of a black regiment, and North Carolina was one of only three states to form one. The Third looked forward, as historian Joseph Steelman writes, to “prove themselves worthy of the rights and obligations of citizenship.”

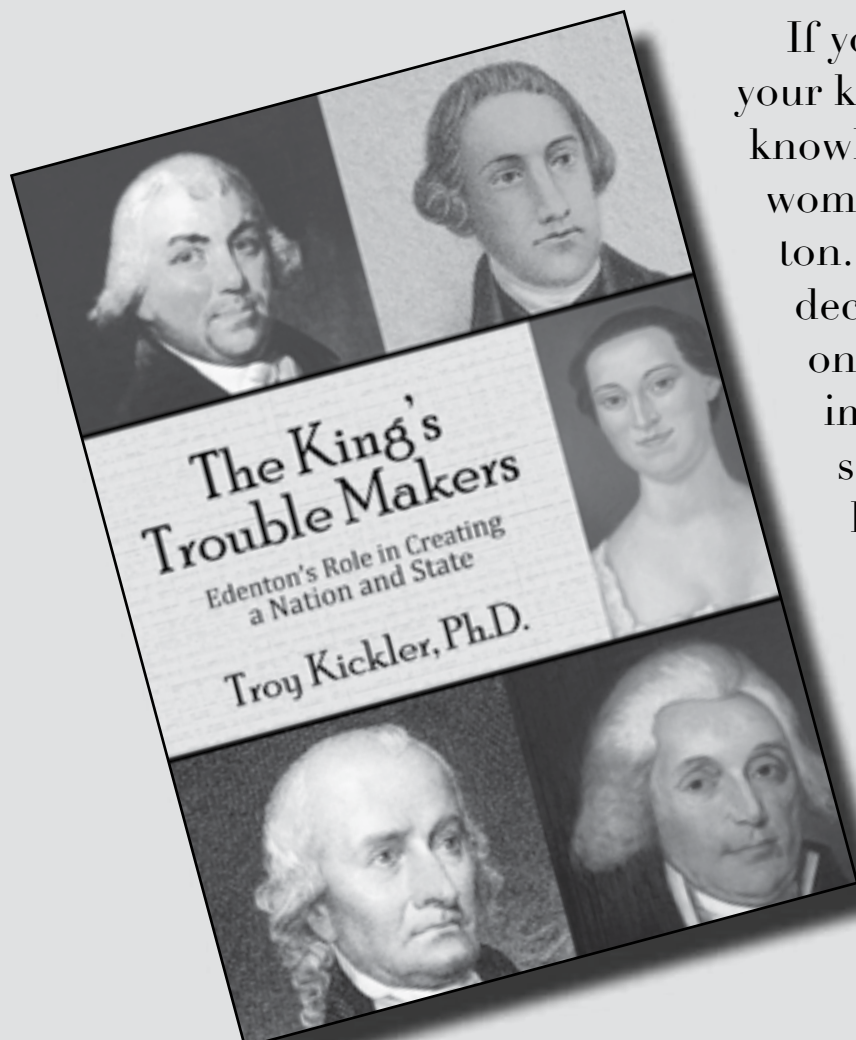
The Third was stationed first at Fort Macon in North Carolina and then in September transferred to Camp Poland in Knoxville, Tenn., where in a letter to the secretary of war, the regiment expressed a desire to engage the enemy rather than perform garrison duty.

In November, the troops were stationed in Macon, Ga. After Fusion politics had ended and an 1898 race riot had erupted in Wilmington, in February 1899 the disappointed men of the Third returned home.

For more information, see Joseph Steelman, *North Carolina’s Role in the Spanish-American War* (Raleigh, 1975). CJ

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

## 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](http://northcarolinahistory.org) for more information.

## Book review

# The 'Ruling Class' Talks Peace, But its Actions Ensure The Opposite

• Angelo M. Codevilla, *To Make and Keep Peace Among Ourselves and with All Nations*, Hoover Institution Press, 2014, 209 pages, \$24.95.

BY LLOYD BILLINGSLEY  
Contributor

RALEIGH

Readers have good reason to be wary of books touting “peace,” but they may now throw such caution to the wind. Indeed, *To Make and Keep Peace Among Ourselves and with All Nations* deserves the widest possible readership, particularly from those who aspire to national leadership.

The title derives from Abraham Lincoln, and author Angelo Codevilla, professor emeritus of international relations at Boston University, shows how the cause of peace has suffered at the hands of America’s ruling class.

The luminaries of that class “believed that Stalin was the *sine qua non* of perpetual peace through the United Nations,” and that “staying on his good side was job No. 1.” But that did not make for actual peace. Affection for the Soviet Union and communism “deformed U.S. foreign policy, caused World War II to end not in peace but in Cold War, and occasioned conflict among Americans, the consequences of which are with us yet.”

Codevilla dates the problem to the era of Woodrow Wilson, the first president to criticize the American founding. The Wilsonians spawned a progressivism featuring “a pacifism as mindless as it was frenetic and provocative,” deployed by a “united ruling class intoxicated with its own virtue and ideology.” Members of this bipartisan class “see themselves as benefac-

tors, harbingers of peace,” but “cannot imagine that others would find them insufferable.”

Codevilla makes the case against socio-economic “nation building” in which the enemies are supposedly poverty, ignorance, and disease. This default approach, as in Vietnam, “generates contempt and violence against America.” As for America’s actual enemies, the ruling class maintains a recognition problem.

For Franklin Roosevelt, the enemy remained force itself, and he maintained that stance until Dec. 29, 1940 — after the Stalin-Hitler Pact, the invasion of Poland, and the fall of France — when FDR specifically indicted “the Nazi masters of Germany.” The Rooseveltians further “debased America’s cause by identifying it with Stalin’s.” They treated the USSR’s partnership in starting the war as a nonevent, and “by using the totalitarian tactic of airbrushing to try justifying their Soviet affections, they poisoned American political life.”

Those who held the “we win, they lose” view of the Cold War, in the style of Ronald Reagan, came to be regarded as enemies of peace. By then the ruling class “had doubled down on its Wilsonian sense of intellectual-moral entitlement” and “came to regard its domestic political opponents as perhaps the principal set of persons whose backward ways must be guarded against and reformed.” In this view,

a loss of peace abroad feeds domestic strife and results in a loss of peace at home.

Communism may have been surpassed as a threat, but “our culturally, historically illiterate ruling class missed the fact that a whole civilization mobilized against America.” The 1979 seizure of the U.S. embassy in Iran

was an act of war that drew the response of a “minor irritation.” The Islamic world quickly “learned that it was now safe to export its warfare to the West in general and America in particular.”

For Barack Obama, staying on the good side of Islamic militants appears to be job one. *To Make and Keep Peace* notes that, at the United Nations, Obama condemned in equal terms Americans who insult Muslims and Muslims who burn and kill Americans. And he called for imprisonment of the man who made the anti-Muslim video that Muslim leaders saw “as good cause for anti-American violence” at Benghazi.

On the home front, the ruling class directs the organs of homeland security against “all citizens equally rather than against plausible enemies.” This fateful error, says Codevilla, “gave civil strife’s deadly spiral its first deadly turn.” The “former anti-anti-Communists were now anti-anti-Muslim,” and as during the Cold War, the entitled “progressives” blamed America’s troubles on their fellow citizens.

As the author notes, Obama

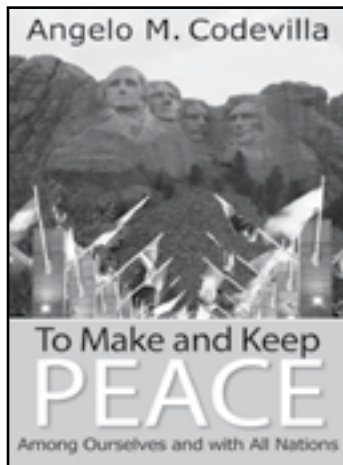
called “enemies of democracy” the very groups the IRS subjected to punitive audits. Vice President Joe Biden and Senate Majority Leader Harry Reid even called them “terrorists.” So it’s no surprise, Codevilla notes, that the “FBI infiltrates the Tea Party as it once did the Communist Party — agent of the Soviet Union that it was.”

Readers of *To Make and Keep Peace* will verify that those now in charge use every opportunity “to direct blame, distrust, and even mayhem onto those they like the least.” In these conditions Americans “must learn to trust each other less than ever, while trusting the authorities ever more, forever.”

For Angelo Codevilla, peace is the “precondition for enjoying the good things of life,” and peace must be statecraft’s objective. “Peace among ourselves and with all nations,” contends the author, “has to be won and preserved as it ever has been here and elsewhere.” Codevilla hopes for new statesmen who will secure the respect of other nations and understand that wars are to be “avoided or won quickly.”

On the other hand, he laments that “we cannot know whether America can ever live in peace again, what kind of peace we may win for ourselves, or what peace we may end up having to endure.” For their part, terrorists and tyrants seem to be getting the message that the time to act is now. So what Codevilla calls the “domestic state of siege” is unlikely to lighten up for a while, if ever.

Americans disturbed by that prospect can find further enlightenment in Codevilla’s 2010 book, *The Ruling Class: How They Corrupted America and What We Can Do About It*. CJ



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Thanks.



## Book Review

## Riley: Liberal Policies Big Obstacle to Advancement of Blacks

• Jason L. Riley, *Please Stop Helping Us — How Liberals Make it Harder for Blacks to Succeed*, Encounter Books, 2014, 184 pages, \$23.99.

BY GEORGE LEEF  
Contributor

RALEIGH

There is a great divide in American politics between those who evaluate policies based on their stated intentions and those who insist on looking at the actual results.

Overwhelmingly, liberals are in the former group. They are fond of instituting laws and programs meant to help people — especially the poor and minorities — but afterwards they don't want to bother examining the consequences. In fact, they are prone to attacking the motives of anyone who dares to suggest that their supposedly helpful laws are counterproductive.

*Wall Street Journal* writer Jason Riley has both feet planted firmly in the other camp. He looks at results, not intentions, and in his book *Please Stop Helping Us*, he argues that many liberal policies that were adopted to help blacks have proved to be a millstone around their necks. Riley, who is black, shows that affirmative action programs, progressive education theories, minimum wage laws and other labor market interferences, and other laws have retarded the economic advancement of black Americans.

He points to the inconvenient truth (inconvenient for liberals, anyway) that the gap between the average earnings of white workers and black workers had been closing rapidly in the years following World War II, when government policy remained indifferent or even hostile to black Americans.

That progress, however, slowed and then reversed after the federal government's "Great Society" programs that were intended to speed up black progress took hold. Instead of examining those policies, liberals have resorted to making implausible excuses for their failure.

Riley's big target is the idea that the best or only way for poor minority groups to succeed is by obtaining political power and then using that power to get preferential treatment through the law. Looking to the government for group advancement is a delusion that has lured blacks (and other groups) away from self-reliance and individual improvement. It has given them a powerful "civil rights industry" that pretends to work for their interests, but its fixation on government has done little other than creating dependency and a sense of victimization.

In contrast, Asians, including recent immigrants, have focused on individual efforts in education, investment, and entrepreneurship, rather than politics. As a result, there is no Chinese, Japanese, Korean, Vietnamese, etc., underclass that's mired hopelessly in poverty. There is, however, a huge and growing black underclass that has been deprived of ability and ambition thanks to the reliance on government.

One of the most damaging ways that liberal policies have hurt black progress is in education. Before it became fashionable for educators to

treat any group of students as victims deserving favored treatment, blacks knew they had to excel in school — and did. Black students from inner-city schools graduated with solid skills and found their way into good careers despite some lingering prejudice.

The trouble with black academic achievement began when white liberal educators decided that they should not hold black kids to the same rigorous standards, both in scholarship and decorum, that they applied to whites and Asians.

Riley cites the research of the late sociology professor John Ogbu, who found that academic underachievement was rampant among black students in the wealthy Cleveland suburb of Shaker Heights. Those students, who never had experienced the least bit of poverty or discrimination, knew that they would benefit from lower expectations from their teachers and also from preferential college admission policies. After all, why "act

white" and work hard when you don't have to?

Educational policies meant to help blacks have done them great harm, yet when the poor achievement of black students is discussed by black leaders and white liberals, the talk invariably turns toward making excuses. Poor results are attributed to "the legacy of slavery and Jim Crow," or to enduring poverty, or to "culturally inappropriate teaching methods" in the

schools.

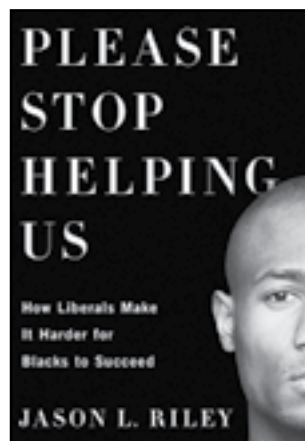
Worse still, black leaders (again allied with white liberals) oppose school reforms that would allow at least some students to escape dismal public schools for alternatives, such as private schools or charters.

Riley also hammers at liberal nostrums such as the minimum wage. With iconic politicians like the late Sen. Ted Kennedy proclaiming that the minimum wage "is one of the most effective anti-poverty programs," liberals never confront the consequences of the minimum wage. But the inescapable truth is that when the law makes it artificially more expensive to hire workers, the impact is greatest on those with the least skills and experience. They are likely either to lose their jobs or never get hired in the first place.

Defenders of the minimum wage trot out a few academic studies purporting that raising it does not discourage hiring or lead to job losses. Riley shows why those studies are erroneous, mainly because the data were collected over too short a time period for the inevitable labor market adjustments to occur.

Again, however, nearly all black leaders remain united with white liberals in demanding that the minimum wage be ratcheted up further. Do they really think they're helping? Or do they simply prefer the cozy alliance with the liberal establishment that sees more government as the solution to every problem?

*Please Stop Helping Us* throws down the gauntlet to those who proclaim their dedication to advancing the welfare of blacks and other minorities. If you really care, Riley says, get the government out of the way. CJ



## BOOKS AUTHORED BY JLF STAFFERS



By John Hood  
President of the  
John Locke Foundation

## Selling the Dream

Why Advertising is Good Business



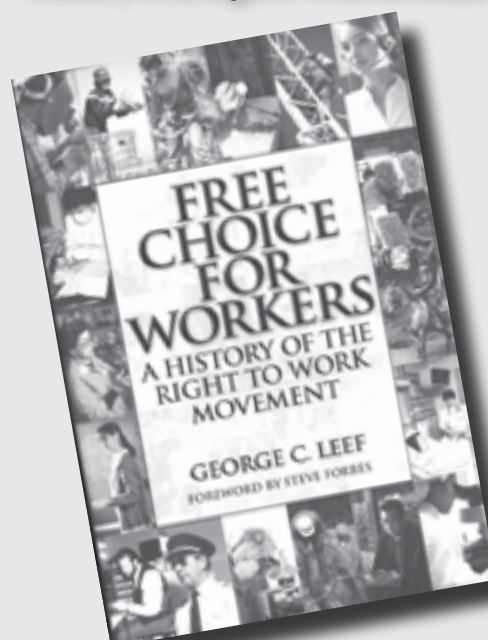
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## COMMENTARY

## Hobby Lobby's Clash of Rights

At the Bloomberg View blog, Megan McArdle recently explained why the political Left and Right view the outcome of the recent *Hobby Lobby* case so very differently.

She says there is a fundamental clash between how each side views the nature of rights. As she points out:

*Consider an argument I have now heard hundreds of times. ... "Hobby Lobby's owners have a right to their own religious views, but they don't have a right to impose them on others." ... [T]he statement itself is laudable, yet it rings strange when it's applied to this particular circumstance. How is not buying you something equivalent to "imposing" on you? ... All of us learned some version of "You have the right to your beliefs, but not to impose them on others" in civics class.*

*It's a classic negative right. And negative rights are easy to make reciprocal: You have a right to practice your religion without interference, and I have a right not to have your beliefs imposed on me. ...*

*But if I have a positive right to have birth control purchased for me, then suddenly our rights are directly opposed: You have a right not to buy birth control, and I have a right to have it bought for me, by you.*

For McArdle, this clash represents a fundamental problem facing American society, and I agree. Traditionally the "American view" has been dominated by the concept of negative rights and has seen rights, so conceived, as essential to true liberty.

Indeed, the Bill of Rights in the Constitution traditionally has been seen as a list of negative rights expressing a fundamental philosophy of "live and let live." From this perspective, a person's right to pursue happiness imposes no particular obligation on his or her fellows,

other than to respect it.

My free-speech rights do not entail an obligation on your part to buy me a bullhorn or a printing press; my right to be armed does not obligate you to purchase me a weapon; and my right to exercise my religion freely does not obligate you to pay for my Bibles or build me a church. Your only obligation with respect to each of these "negative rights" is to refrain from using force or threats of force in an

attempt to stop me from using my self and my property in exercising these rights.

The exercise of positive rights — like the right to health care, the right to a college education, or, in the *Hobby Lobby* case, the right to certain forms of contraception — imposes a positive obligation on the part of others, i.e., to turn over some portion of the fruits of their labor (income) to pay for it. This

is because positive rights typically imply the right to receive something free of charge, or at least subsidized, to the person who holds the right.

Hence the right to access contraception is not merely the negative right to go to a pharmacist and

purchase birth control pills, which no one in this case has suggested should be denied, but the positive right to receive contraceptives at the expense of someone else.

The two kinds of rights cannot coexist. The role of the state in enforcing positive rights is necessarily to use threats of violence and coercion against the recalcitrant Hobby Lobbies of the world to enforce their obligation. State action invoked to enforce positive rights inherently violates negative rights.

As positive rights come to dominate how our government and many, if not most, people in society think about rights, these kinds of clashes will become much more prevalent. CJ

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



**ROY CORDATO**

**HOBBY LOBBY** EVERYDAY



## EDITORIAL

## Money Talks, And That's OK

As the November election draws closer, be prepared for wails and moans from the Left and good-government types about the corrupting influence of campaign money in judicial elections.

In recent weeks, news stories, commentary articles, and even an editorial cartoon or two have expressed outrage that this fall's judicial races will be "tainted" by the stain of big money from ideologues trying to buy the courts. Earlier elections were clean because they were funded in part by the public. Candidates for judicial posts will be forced to beg for money on their own, compromised by fat cats on the Right and the Left. The horror!

The charges are laughable and noteworthy for their ignorance. In fact, if liberals want to blame anyone for the expanding role of money in judicial races, they should start by looking in the mirror.

More than a decade ago, the General Assembly began removing partisan affiliations from candidates on judicial ballots. The process started in 1998 at the Superior Court level and over several years moved through the trial and appellate courts. By 2002, all judicial elections in North Carolina became nonpartisan.

Democrats, who led the changes, said they wanted judicial races to become less politicized, but in fact, party labels were stripped from candidates because Republicans were gaining seats on the state bench. Republican judicial candidates were perceived to be more conservative than Democrats. To voters, that suggested Republican judges were more inclined than Democrats to issue rulings that respected the law, the Constitution, and legal

precedent; to be tougher in criminal sentencing; to respect property rights and oppose overreaching regulations; and to resist the temptation to make policies by judicial fiat rather than letting the legislative and executive branches of government do their duty.

Without party labels, judicial candidates needed to rely more on advertising and promotion to spread their message. Those who could not finance their own campaigns had to approach donors, and that's fine — and consistent with the First Amendment's encouragement of political speech.

This hasn't sat well with Democrats or the Left, who tried to offset the effects of privately financed political messages by setting up the N.C. Public Campaign Fund. This decade-old program offered taxpayer subsidies to judicial candidates who agreed to campaign contribution limits and gave them more money if their opponents didn't take public funding after they reached certain spending thresholds.

Two years ago, the U.S. Supreme Court ruled a similar "trigger scheme" in Arizona unconstitutional, saying it was an unjustifiable burden on free speech. As part of the 2013 budget debate, our General Assembly did away with the Public Campaign Fund, bringing the state in line with the Constitution but sending the Left off the rails.

Liberals have called for a return of the Public Campaign Fund or something much like it. This means they're happy to impose unconstitutional restrictions on political speech. As a result, voters would know less about judicial candidates than they should. Some bargain. CJ



## EDITORIALS

# Film Credit Claims

*Backers of incentives need a better script*

When liberals debate tax policy, it can be hard to keep track of their current positions. They keep changing.

Right now, Democratic politicians and left-wing activists are castigating Republicans in the General Assembly for proposing a reduction or elimination of North Carolina's tax credit for film and television production. Yet most of these same Democratic politicians and left-wing activists have argued that state taxes are not a significant factor in business decisions.

Are movie moguls and TV producers the only business leaders who care about their tax burdens? Are media-production jobs the only ones that state policymakers should strive to attract and retain?

Here's another consistency problem with the Left's tax claims. Last year, when Gov. Pat McCrory and the legislature enacted pro-growth tax reform, liberals complained that the measure eliminated the state's Earned Income Tax Credit. Citing its absence, they then claimed that North Carolinians of low to moderate incomes would actually experience a net tax increase from tax reform, with only wealthy taxpayers coming out ahead.

But when conservatives pointed out that the state's sales tax burden had dropped by nearly \$1 billion in

2011, which lowered the burden on low-income taxpayers far more than the disappearance of the Earned Income Tax Credit raised it, liberals denied the significance of the event. The Republican-led legislature didn't cut the state sales tax in 2011, they insisted. The lawmakers simply failed to extend a temporary sales-tax increase that had been enacted two years earlier.

That's technically correct. But by that logic, the Republicans didn't eliminate the Earned Income Tax Credit, either. It also was enacted as a time-limited measure and was set to expire in 2013. The Republicans chose not to reauthorize it.

Liberals can't have it both ways.

As for the film incentive, it is hypocritical and unpersuasive for politicians and activists to favor a special tax break for one industry while opposing general tax relief for all industries. As it happens, careful academic studies show that while states with lower overall tax burdens tend to grow faster, targeted tax credits for favored industries produce no net economic benefits.

A grant program for film production, which seems to be the direction the General Assembly is headed, is preferable to a tax credit, but both are corporate handouts that should be rejected. *CJ*

# Charter Salaries

*Disclosing just teacher pay is consistent with policy*

The Left has a difficult time grasping the concept that charter schools are public schools. The General Assembly provided clarity late in the short session by enacting Senate Bill 793. This measure defines the terms of disclosure for salaries paid to charter-school employees while leaving the contracts signed between the State Board of Education and charter operators subject to similar levels of public scrutiny required of other government contractors.

The law states that "charter school personnel records for those employees directly employed by the board of directors for the charter school" are subjected to the same public disclosure requirements faced by teachers in district-run schools. It also requires disclosure of the salaries of board members of nonprofit charter school operators.

The controversy is over the status of employees at charter schools

that are operated by for-profit businesses. Several operators balked at having any salary data disclosed. But the version of the bill that went to Gov. Pat McCrory came to a sensible conclusion: Salaries of the teachers employed by the schools are considered public information; the compensation of corporate officers and other administrative personnel who are working for the sponsoring company rather than the school is not.

Meantime, all charter school contracts, for-profit or nonprofit, are open to public scrutiny and review.

These rules are similar to those governing other state and local government contractors. If a school district picks an architecture firm to design a new school building, the firm doesn't have to disclose the salaries of the people who work at the firm.

The same rules apply to charter schools, leaving the Left to gripe about other things. *CJ*

## COMMENTARY

# Plant the Seed For Fruitful Debate

I'm told that while there is no firmly established gift tradition for a 28th anniversary, the modern practice is to signify the event with an orchid.

Well, July marked the 28th anniversary of the birth of my syndicated column on North Carolina politics and public policy. It began during my tenure as a part-time reporter for a Nash County newspaper, the *Spring Hope Enterprise*. By the end of the 1980s, the column was running in several other newspapers in eastern North Carolina as well as *Spectator* magazine, a Raleigh-based weekly. Over the ensuing years, dozens of other daily and community newspapers picked it up. My column currently appears in more than 50 newspapers a week with a combined print circulation of nearly 700,000 North Carolinians.

I traffic in words, not flora. And my skills at flower gardening are truly legendary — in the sense of being exaggerated and only distantly related to real events. So I won't commemorate the occasion with an orchid. Instead, I'll talk about planting a different kind of seed.

Over the years, I've gotten a lot of feedback from readers. Ignoring the usual ad hominem attacks, probably the most common criticism I receive is that I focus too much on statistics. "You seem to care more about numbers than you do about people," goes the typical refrain.

I certainly value statistics. Would you expect anything less from a columnist, trained in precision journalism, who runs a think tank? But I utterly reject the proposed dichotomy between a concern for numbers and a concern for people. The very reason policymakers ought to use statistical analysis to make their decisions is that it will help them serve people better. Regardless of where governments set their tax rates, they only have so much revenue to spend. Without statistics to establish priorities or identify cost-effectiveness, governments often make unwise, harmful decisions.

Moreover, debates in the absence of valid statistics consist of political partisans talking past each other — or yelling past each other — with no practical means of determining which side is correct or finding an accommodation between them.

Consider the current debate in North Carolina about education funding, which in media reports largely has consisted of anecdotes and political talking points passed off as facts.

WRAL-TV in Raleigh, for example, recently told its audience that North Carolina's education spending has been on a "decades-long slide." But that's not what the station's reporting really showed. The share of North Carolina's state

budget devoted to K-12 education is lower today than it was in 1984, to be sure, but that's not the same thing as saying that education spending has declined. What the statistic tells you is that other categories of spending — primarily Medicaid — have grown faster than education spending has.

In inflation-adjusted, per-student terms, North Carolina spent about twice as much on public schools last year as it did in 1983-84. While real spending went down slightly during the Great Recession, it remains (at about \$8,630 per pupil) higher than in any year before 2004. Unless you are still enrolled, or graduated from high school within the past few years, North Carolina education is more generously funded today than it was when you were in school.

That's a fact, not an opinion. It leaves room for plenty of contrasting opinions. Perhaps we still don't spend nearly enough on education. Or perhaps the funding added over the past three decades ought to have been spent differently.

However contentious that debate might be, it might be constructive. Here's something I do know about orchids: The quality of the flowers depends on the quality of the seeds. *CJ*

*John Hood is president of the John Locke Foundation.*



**JOHN HOOD**

## MEDIA MANGLE

## Price of Access Not Always Worth It

It seems like a lifetime ago, but remember the euphoria when Baghdad fell in early 2003? Well, we all might have felt euphoric, but Eason Jordan, who was then the head of CNN news gathering, was feeling a bit guilty.

You see, Jordan had been lobbying Saddam Hussein for years to keep a CNN bureau in Baghdad. Nothing wrong with that, you might say, and you'd be right.

What was wrong with that was the price Jordan and the CNN executives paid to keep their bureau in the Iraqi capital city: They sold their journalistic souls.

On April 11, 2003, after we had taken Baghdad, conveniently, Jordan wrote a column in *The New York Times* titled "The News We Kept

to Ourselves." Jordan said many stories went unreported for fear that Iraqis who worked with CNN, or their co-workers, might be put in jeopardy of retaliation by the Iraqi secret police.

Consequently, "awful things ... could not be reported because doing so would have jeopardized the lives of Iraqis, particularly those on our Baghdad staff," Jordan wrote. In short, CNN presented a rosier view of Saddam's regime than should have been presented.

I wrote a column the next day for *The Herald-Sun* in Durham in response to Jordan's admission. In it I asked, "How many Iraqis were tortured, maimed, raped, beheaded and put in acid baths during the time CNN was soft-selling Saddam's regime to the world?"

A similar question occurs to me today as I see the news coverage coming out of Gaza in the wake of the increased hostilities between Israel and Hamas. What, I wonder, is not being reported from Gaza because Western news outlets owe their presence there to Palestinian combatants?

Already there are many examples of pro-Hamas and pro-Palestinian reporting by networks and other mainstream media outlets. And keep in mind that pro-Hamas reporting means anti-Israel reporting. CNN, MSNBC, and network reporters have been fixated on the deaths of Palestinian children, all the while ignoring the incontrovertible reality that Hamas is using children as shields, and is using hospitals and schools as storage areas for arms.

On July 28, two Western reporters working in Gaza tweeted that a poorly aimed Hamas rocket had hit one hospital and that Hamas was using another hospital as a headquarters. Those two tweets were taken down almost immediately, with no explanation. After Eason Jordan's confession, I certainly can think of one.

As I said in my column more than 10 years ago, if the price of being able to remain in a combat zone is to hide the atrocities of the people who control the area in which you are working, then your network, your newspaper, or your cable channel should think about leaving. It's just not worth it. CJ

Jon Ham is a vice president of the John Locke Foundation and publisher of Carolina Journal.



**JON  
HAM**



## A Lesson For N.C. Renewal

My wife and I recently spent a long weekend in New York City celebrating our wedding anniversary. It's amazing how time flies — it's No. 34, thank you.

New York City (or simply "The City" to native New Yorkers) conjures up many images to people. We've visited "The City" many times. (My wife was born in New York, although not in the city.) It's crowded, busy, noisy, and confusing. People can be pushy, but they also can be polite and helpful. The City never sleeps — as Sinatra said — you can find almost anything anytime.

Two things always have struck me about The City. One is how young it is. There are 20- and 30-somethings everywhere, and they're always on the move. The other is how much The City changes. Older buildings are being torn down and new ones constructed. Depressed neighborhoods get revived while others face new competition.

It is this element of change where New York City perhaps can provide lessons for other areas, including North Carolina. In particular, the transformation of many of The City's challenged neighborhoods illustrates strategies some of our urban and even rural areas might use to spark an economic revival.

On our recent trip, my wife and I took a walking tour of Brooklyn, one of the five boroughs of New York City. The western part of Brooklyn on the East River originally was lined with manufacturing buildings and firms. However, the general decline in traditional manufacturing and the replacement of water shipping with trucking sent the area into an economic depression.

Yet today the area is thriving. In the "DUMBO" (Down Under the Manhattan Bridge Overpass) neighborhood of Brooklyn, old manufacturing buildings have been refurbished into lofts, offices, small manufacturing spaces, and retail space. The area has one of the highest concentrations of tech firms in The City. The waterfront has been turned into a beautiful park with spectacular views of the Manhattan skyline.

How did this happen? Local experts say that

when the community was down on its luck and everything was going bad, struggling artists and new entrepreneurs started to give the area a second look as an alternative to the rising rents and costs of Manhattan. Once the initial newcomers thrived, word of mouth spread, and the Brooklyn economic renewal took off. Brooklyn — and specifically "DUMBO" — is now one of the trendiest and hottest neighborhoods in The City.

North Carolina certainly has communities that need reviving — both in cities and in rural areas. Are there any pointers New York City could offer?

I can think of two. First, conditions can get so bad that they are really good. I know this sounds contradictory, so here's what I mean. When land, rent, and other costs are cheap, someone with a vision can see these as an opportunity. They can see the affordable costs as a way to "buy low" before costs rise. Once the pioneers show it can be done — meaning the neighborhood can work — others will be attracted and economic conditions will improve.

So a struggling community should showcase how a business owner's dollar will stretch more in their neighborhood when compared with the high-priced alternatives. Getting a bargain can be the selling point.

The second point addresses the roles of the private sector (business) and the public sector (government). My reading of the success stories of turnaround neighborhoods is that the private sector has to take the lead, but the public sector has an important supporting role. Businesses look at the long run, so they have to be convinced their balance sheets make sense over many years before they'll invest in a community.

But once there's a critical mass of businesses that have made the investment, government can encourage further private investment by making infrastructure commitments. In Brooklyn's case, the government built parks, improved roads and sidewalks, and designated some buildings as historic sites to preserve the character and tradition of the neighborhood.

Maybe the Big Apple has some lessons about community improvement that we in the South should import. CJ

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



**MICHAEL  
WALDEN**

## Short Session an Unpleasant Fight

This session reminded me of watching my in-laws fight. It was loud, boisterous, impassioned, argumentative, at times totally unreasonable, accusatory, crazy, painful, and yet sometimes funny to watch — predictable and surprising.

It seemed to go on forever, but in the end it wasn't the longest ever (slightly more than 150 legislative days) or most harrowing (just 465 bills were considered). The lawmakers seemed a little embarrassed and even apologetic at times. They promised it wouldn't happen again, but we all know that it will.

Grateful for the principles they adhere to, appreciative of their hard work, and thankful for the end results, we close the door carefully and walk away cautiously from the 2014 short session.

It was the most transparent session in recent memory, with many negotiations that were previously conducted behind closed doors held in very public meetings. Public exchanges between the governor and legislative leaders, often making the pages

of daily newspapers or the airwaves made for high drama. And then there were protesters, hundreds of lobbyists, stakeholders, special-interest groups, and citizen coalitions egging them on, cajoling and cheering. The advantage of transparency is we get to see government work; the disadvantage is we have to watch government work. Democracy is not always pretty.

Lower taxes lead to economic growth. Economic growth leads to job creation, less dependency on government programs, and a circle of prosperity. Tax reforms put in place over the last three years are starting to work — with lower unemployment, greater job creation, and other signs of an improving North Carolina economy. Momentum is critical to recovery and long-term economic health. And that means creating jobs.

Decluttering the tax code means a simpler, fairer system and additional revenue.

A confusing, inconsistently applied business privilege tax will sunset in 2015. Despite disagreement among tax experts, a new excise tax will apply to the vapor in e-cigarettes. Unclaimed savings bonds will go into an escheats fund and be used for education.

Last year, 48 of 300 special tax breaks, exemptions, and loopholes in the tax code were eliminated. Others

are set to expire this year and next.

The loudest debate in education centered around how much to pay teachers — with a commitment to raise the base salary closer to the national average. And they were successful. But the more significant debate actually was not about how much but how. Gov. Pat McCrory advocated for performance pay based on a career pathway enabling good teachers to increase their salary based on student performance. Other measures rewarded master's degrees in advanced subject matter studies, added pay for high-demand subjects, reduced the current step schedule based on years of service rather than quality, and added performance pay to recruit, retain, and reward good teachers. Rewarding quality and holding teachers accountable for student performance are what real education reform is about and will continue in 2015.

The Department of Public Instruction balked and complained, but Common Core State Standards are out; a new standards commission will review and evaluate educational standards striving for the most rigorous in the country, ensuring only the best for North Carolina students.

School choice is thriving. Despite court challenges, low-income students will have an opportunity to attend a private school of their choice begin-

ning this fall. More than 5,500 applications were received for 2,400 available spots included in last year's budget. Charter schools continue to expand, with 26 new charter schools opening this fall, the largest one-year expansion ever.

Energy policy should focus on science, technology, and common sense, not scare tactics and alarmism. Regulations and rules were defined more clearly for hydraulic fracturing. Test drills will begin this fall, and permitting for wells and operations could be issued as early as March 2015. Energy exploration and shale gas development will lead to lower energy costs, a significant economic driver.

Coal ash cleanup will result in evaluating risks, prioritizing removal sites, allowing the Utilities Commission to determine who pays and how much, and looking to new technology and innovation for reuse as another alternative for disposal.

In the end, good things were done. Teachers got raises, government got smaller, the economy is starting to improve, more people are working, and almost everyone got a tax cut. Now if everyone can just get along. At least through the holidays. *CJ*

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



**BECKI GRAY**



**DONNA MARTINEZ**

## 'Haves' and 'Have-Nots' of Employment Tenure

After years of rejecting progressives' class warfare argument about "the haves" and the "have-nots," I'm a bit embarrassed to acknowledge they've been right all along. Not only that, I've been a "have-not" and didn't realize it.

I'm one of the hundreds of thousands of North Carolinians whose job performance and value to my employer determine whether the boss keeps me or shows me the door. There are no special protections for "have-nots." We're evaluated on the quality and quantity of what we produce, and on what our customers have to say about us.

Not so for North Carolina's "haves." It was only a few months ago that I discovered public school teachers enjoy a heaping helping of job protection pixie dust. Back in 1971, the General Assembly deemed public school teachers with four years on

the job to be immune to the accountability we "have-nots" are saddled with. That's when legislators used the power of government to bestow on teachers the muscular job protection known as "career status." Otherwise known as tenure, career status cemented teachers as the state's most powerful special-interest group.

Because of this special distinction, the No. 1 factor for a "have" in staying employed isn't performance; it's how long he or she has been on the job. After four years, "career status" kicks in and virtually guarantees that "haves" keep their jobs for as long they want them.

Are you a stellar teacher whose students are achieving? "Career status" means you keep your job. Are you a mediocre teacher who needs more training or content knowledge? "Career status" means you keep your job. Are you an ineffective teacher who should be fired? "Career status" ensures that firing you is laborious and tedious. Every member of the "haves" is the same in the eyes of the "career status" law: a permanent fixture.

What a shame, and what an obvious misrepresentation of reality.

Work a week in any industry, and you'll spot the co-workers who are top-notch and the sandbaggers who don't pull their weight. "Career status" protects the sandbagging "haves" and penalizes effective professionals whose students demonstrate measurable achievement. The very people who should be fired — ineffective dabblers whose students languish because of the teacher's inability to lead a classroom — are rewarded for their failure.

You won't find me circling the Capitol and ranting and chanting about being a "have-not." That would make for great theater, but no progress. I've chosen instead to applaud the state's legislative reformers for their courageous fight to end tenure and replace it with long-term contracts that require teachers to experience the same types of pressures we "have-nots" face daily.

Media coverage of this debate would have us believe the public is outraged at the prospect of changing how teachers are evaluated. Among those who muscle their way into lawmakers' offices with sleeping bags in tow, it clearly is. But that view is far from representative. *Education*

*Next's* 2013 PEPG Survey showed that, nationally, teachers are split on tenure, tilting in favor of it. Fifty-eight percent of teachers favored tenure, according to the survey, while 35 percent opposed it. Earlier this year, a Civitas Institute poll of North Carolina's registered voters showed a virtual tie over tenure: 45 percent saying yes and 45 percent saying no.

Then there are the parents. Just 25 percent of parents favored tenure in *Education Next's* national survey, 55 percent opposed it, and the rest neither favored nor opposed it. Why would so few parents express support for blanket job protection? Simple. They know when their kids have a "good" teacher and when their kids are stuck with a "bad" teacher. And they don't want them stuck with a bad one again.

The consequences of continuing to protect bad teachers are steep. Staggering numbers of North Carolina children are being left behind. Add them to the pot of North Carolina's "have-nots." *CJ*

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

# Tillis Targeted in Backyard Charcoal Ash Spill Attack Ad (a *CJ* parody)

By BUCK STRICKLAND  
Environmental Correspondent

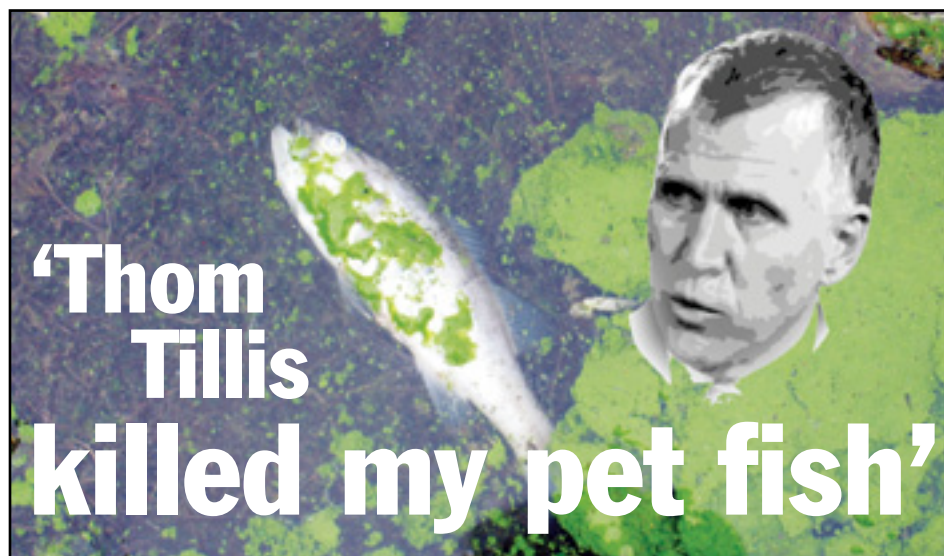
DURHAM  
Critics of misleading political ads by interest groups say a new ad by the North Carolina League of Conservation Voters has gone just too far.

The ad claims that the silence of N.C. House Speaker Thom Tillis, the Republican nominee for the U. S. Senate, on what the NCLCV calls an “environmental disaster beyond description,” shows that Tillis supports the endangering of drinking water and the pollution of ponds.

The text of the ad reads:

*Gray sludge everywhere. It happened here in Durham. Ash threatening our drinking water and our ponds. But Thom Tillis has sided with citizen polluters by ignoring this environmental disaster beyond description. Extremely high levels of toxic pyroligneous acid are entering our water supplies. Tillis' reckless silence on this disaster has let polluters off the hook, leaving the people to pay with their health. Call Speaker Tillis. Tell him to hold these polluting monsters accountable and keep our drinking and pond waters safe.*

Carolina Journal hadn't heard of the “disaster,” so it contacted NCLCV spokesperson Delta Smelt. When pressed by *CJ*, Smelt admitted that the



Above is a frame of the ad the N.C. League of Conservation Voters has produced that accuses House Speaker Thom Tillis of being unsympathetic to the death of a pet fish in a Durham koi pond. (*CJ* spoof graphic)

“environmental disaster” mentioned in the ad was the death of one koi from a pond owned by Zooey Ingelstedt, a performance artist living in Trinity Park in Durham.

Ingelstedt claims a neighbor, who was in the habit of throwing the charcoal ash from his Weber grill onto his garden, killed her koi when heavy rains caused runoff from his garden.

“As one of our most powerful legislators, Speaker Tillis has failed to use his clout to protect public health and our water from backyard charcoal ash spills,” said Smelt.

Tillis, however, said when contacted by *CJ* that he'd never heard of Zooey Ingelstedt or her dead koi. “I have no idea what the NCLCV is talking about,” he said. “I've never even heard of this so-called disaster, so how could I be expected to have a position on it?”

Smelt huffed that the koi death was the front-page story in the last edition of *The Trinity Park News*. “This was the largest fish kill in Trinity Park history. Everybody heard about it,” she said. “There was even a candlelight vigil on nearby Duke campus for the

unfortunate koi. He can't just claim ignorance and get away with it.”

The NCLCV is nonpartisan but has a political-action committee that makes contributions to political candidates that it believes are “pro-environment.”

It has run similar ads criticizing Tillis, who faces Democratic U. S. Sen. Kay Hagan in the November election, for not being tough enough on Duke Energy for the company's handling of coal ash generated from its power plants. Hagan was a featured speaker at the NCLCV's annual Green Tie Awards dinner in May.

Tillis told *CJ* he was not very concerned about backyard charcoal ash pollution. “Charcoal ash is not a significant problem. I usually throw my ashes in my garden. These ashes are pretty much dirt, anyway. They always makes next year's tomatoes more healthy,” he said.

Tillis said he thinks other forces may be at work here. “The propane industry has an interest in curbing the use of charcoal in hopes of selling more gas,” he said. “I think they're the ‘dark money’ behind this ad effort.”

The North Carolina Propane and Propane Accessories Retailers Association's government affairs director, Hank Hill, told *CJ* his organization was not involved with the ads, though Hill serves on NCLCV's board of directors. *CJ*



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TWC Shelby, Ch. 9	Sunday 9:30pm
TWC Lake Norman, Ch. 19	Sunday 9:30pm
TWC Gaston, Ch. 9	Sunday 9:30pm
TWC Richmond, Anson, Ch. 15	Sunday 9:30am
WFMY-TV G'boro, Winston-Salem	Sunday 5:30am
TWC Greensboro, Triad East, Ch. 69	Sunday 9am
TWC Winston-Salem, Ch. 65	Sunday 9am
Greenville, Cable 7	Sunday 10:30am, Mon. 9:30pm. Wed. 6:30 pm, Thur.9:30pm, Fri. 9 pm
WITN-TV, Greenville/Wash/New Bern	Sunday 11am
WTBL-TV, Lenoir	Sunday 9am, Mon. 5:30pm, Tue 12:30pm
WRAL-TV Raleigh-Durham	Sunday 6:30am
WRAL-DT Raleigh-Durham	Sunday 6:30am
WRAZ-TV “Fox 50” Raleigh-Durham	Sunday 8:30pm
WGSR-TV Reidsville	Sat. 7pm & 9am, Sun. 12pm & 10:30pm
WNVN Roanoke Rapids	Sunday 10am
WHIG Rocky Mount	Sunday 1:30pm
Roxboro Cable Ch. 10	Sunday 6pm
WILM-TV, Wilmington	Saturday 5am
TWC Wilmington Ch. 52	Sunday 9:30am
TWC Morehead City Ch. 25	Sunday 9:30am
TWC Wilmington/Jacksonville Ch 25	Sunday 9:30am
TWC Shallotte Ch. 20	Sunday 9:30am