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CAROLINA JOURNAL

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

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STATEWIDE EDITION

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Google Partner: Solar Power Dependability Zero

New Duke Energy program perpetuates misleading claims

By DON CARRINGTON
Executive Editor

RALEIGH

Solar energy has been touted by its advocates as a dependable energy source for the future, but in a document submitted to the state by a solar company affiliated with Google, the reliability of solar energy is listed as zero.

“Solar is an intermittent energy source, and therefore, the maximum dependable capacity is 0 MW,” Rutherford Farm LLC, a subsidiary of Chapel Hill-based Strata Solar, wrote in a May 2013 application to the North Carolina Utilities Commission.

Google announced in late November 2015 that it would participate in a new Duke Energy program allowing the Internet giant to buy power from the Rutherford Farms solar facility, to be located in Rutherford County, to run its new data center building located in Caldwell County, 50 miles away, near Lenoir.



Google’s sign at the entrance of its data center campus in Lenoir, which is 50 miles from the solar installation that the company says will supply some of the data center’s power. (CJ photo by Don Carrington)

But Google did not mention in its press releases that the entire Caldwell County complex will continue to receive all of its power from Duke Energy, generated with the same general mix of fuels used by other Duke customers — dominated by nuclear, coal, natural gas, and hydro.

Neither Google nor Duke will divulge just how much per month, in ad-

dition to its regular power bill, Google will pay Duke to claim ownership of any megawatt-hours generated by the solar farm.

Construction has not begun on the designated solar facility near Forest City, even though the Utilities Commission approved it two years ago.

Google is not alone in sharing incomplete or misleading information

about its efforts to use renewable energy. *Carolina Journal* has reported on claims by Amazon that it will power a data center in northern Virginia with power from a wind farm being built near Elizabeth City, N.C., scheduled to be operational in late 2016.

Amazon will continue to receive power directly from Dominion Virginia Power. As *CJ* has reported, Apple claims that its data center in Maiden, N.C., operates with power from 100 percent renewable sources, when it actually receives its power directly from Duke Energy.

The claims by Google, Apple, and Amazon are based on the concept that each is offsetting some of the megawatt-hours their data centers use with power generated by wind, solar, or other renewable sources.

But they fail to mention that since electricity generated by wind and solar is intermittent and not dependable, they could not operate their power-hungry data centers 24 hours a day on electricity from those sources and must continue to rely almost entirely on electricity produced by traditional sources such as fossil fuels and nuclear power.

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Renewables Could Cost Taxpayers \$1 Billion

‘Safe harbor’ law originally estimated at \$183.5 million

By DON CARRINGTON
Executive Editor

RALEIGH

The final batch of solar and other renewable energy projects requested under the “safe harbor” law enacted in April 2015 by the General Assembly could cost North Carolina taxpayers as much as \$937,804,785 in credits, according to aggregated figures released in late December by the North Carolina Department of Revenue.



Renewable Energy in North Carolina

Altogether, the projects represent a total of 1,641 megawatts in new renewable energy for facilities that are under construction. The state income tax credit — 35 percent of the costs of investing in new renewable energy facilities — was set to expire at the end of December, but Senate Bill 372, Renewable Energy Safe Harbor, extended

the scheduled sunset of the income tax credit by one year if developers met certain thresholds.

To get the “safe harbor” credit, the owner of a project under construction needed to apply with the Department of Revenue by Oct. 1, 2015, and pay an application fee of \$1,000 per megawatt of capacity with a minimum payment of \$5,000. The extension was intended to protect projects that had been in the planning stages.

The credits are taken in installments over five years and cannot exceed certain levels of a recipient’s overall tax liability.

In April, during the debate over S.B. 372, the legislature’s Fiscal Re-

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Experts: Make Redistricting Transparent, Nonpartisan

By DAN WAY
Associate Editor

RALEIGH

North Carolina's shifting demographics are likely to make it more difficult to predict voting patterns in future legislative district races, and that uncertainty should be an incentive for elected officials to begin work on a more transparent, nonpartisan redistricting process, academics and state lawmakers say.

Two House bills changing the current redistricting process remain alive for the short legislative session which opens in April, but they're stalled in committees. North Carolina allows the majority party in the General Assembly full control of the composition of legislative and congressional districts between each national census, so long as the districts comply with federal and state laws.

The goal of reform is to adopt a system that would prevent partisan gerrymandering, under which political leaders of the majority party design electoral maps favoring their own party.

"Certainly, perceptions of legitimacy of our democratic system are strongly affected" by gerrymandering, Mark Nance, an N.C. State University assistant professor of political science, said at a November panel discussion about gerrymandering and the prospects for electoral reform as part of the Abe Holtzman Public Policy Forum at N.C. State.

But gerrymandering has its limits, and it could backfire as race and age demographics remain in flux, population continues shifting from rural areas to urban and suburban neighborhoods, and North Carolina attracts new residents from other states and nations.

While the majority party can maximize the influence of its voters by controlling the redistricting process, "gerrymandering actually puts them in a line to fall first if there is a substantial change in the demographic makeup in the state, and I think that's what we see happening potentially in North Carolina," Nance said.

"There is a wave coming" from age shifts, he said. Rural and inner-city districts are aging, while younger people flock to suburban areas. "It's a sort of small change by 2020, but a lot of the districts, maybe even the average district, favors a 3 percent shift toward ... Democrats."

That may not affect many districts before 2020, "but certainly if that trend continues up to 2030, for example, then the impact could be quite substantial, I would argue, providing the majority party in power an incentive" to implement a more transparent and nonpartisan redistricting process after the 2020 census, Nance said.

"There seems to be pretty good evidence that North Carolina will be getting a new U.S. House district pretty soon," he said. When that happens "things get creative" in drawing new boundaries, and a nonpartisan commission approach could avoid the temptation to draw districts that are distorted heavily toward one party.

Dick Mahoney, director of the N.C. State School of Public and International Affairs, said gerrymandering is "an old cancer in the American democracy, something that shouldn't be called gerrymandering. It should actually be called electoral fraud."

"Nationally, by far and away the most egregious vio-

lators of gerrymandering, the most egregious instigators of gerrymandering, were Democrats with some fantastical devices across the country in congressional and state legislative races," said Andy Taylor, a political science professor at N.C. State.

But in the last few electoral cycles "largely as a function of their rise in state politics and their ability to take majority positions in state legislative bodies," Republicans nationally are catching up with the practice, Taylor said.

According to Common Cause North Carolina, which supports removing state lawmakers from redistricting, the current process has had profound impacts on state elections.

Almost half of the state's legislative races have been uncontested since 1992. In 2014, just 8 percent of legislative races were deemed competitive, meaning they were decided by 5 percentage points or less, according to Common Cause. There have been more than 30 court interventions in North Carolina redistricting over the past 30 years.

Taylor said redistricting court cases occur mainly across the South and were "almost exclusively brought by white Democrats against majority-minority districts," which are sometimes drawn in misshapen fashion to aid the election of a black congressman. Three such suits are active in North Carolina.

"The courts, interestingly enough, unlike the principle of race, have really deemed the partisan principle largely harmless" when redistricting is based on the dominant political party creating district boundaries to help them maintain a maximum number of seats, Taylor said.

State legislatures control redistricting in 37 states.

"In six of those states, including North Carolina, that redrawing is done by joint resolution in the legislatures, and by that we mean there is no formal role for the governor in the process," Taylor said.

"The other 13 states use some form of bipartisan commission to draw the lines at least. The role of the bipartisan commission and the state legislature in the process varies widely in these states," he said.

State Rep. Grier Martin, D-Wake, said the ongoing demographic changes are "going to create chaos and uncertainty" in projecting the makeup of future legislative districts. He is a primary sponsor of House Bill 92, which would allow nonpartisan legislative staff to conduct redistricting.

"Perhaps we can leverage the uncertainty that's coming with the demographic shifts to talk the majority party into moving forward on reform," Martin said.

"Of course a gerrymander dissolves over time. If you get to the end of the decade, people move, and you can't predict how they're going to move," said retiring House Speaker Pro Tem Paul "Skip" Stam, R-Wake, also a primary sponsor of H.B. 92.

"When you've got ideas that the people like, people will change who they vote for," and that is how parties in power get voted out, Stam said. "But we make it too hard for that to happen" using the current redistricting process.

Like Martin, he said uncertainty is the friend of redistricting reform. "When you're not sure who's going to win the next election, then when there's a critical mass to do it, you can do it," Stam said.



N.C. State professors Andy Taylor, left, and Mark Nance, right, were speakers at a November redistricting forum at N.C. State.

Report: UNC System Athletics Subsidized With Student Fees

BY KARI TRAVIS
Associate Editor

RALEIGH

While the athletic departments at UNC-Chapel Hill, N.C. State University, and Appalachian State University prepare to collect extra revenue from the college football bowl games they'll play, a recent study by *The Chronicle of Higher Education* and the Huffington Post, "Sports At Any Cost," reveals that athletic programs do more to empty UNC students' pockets than they do to beef up university bank accounts.

Ten of the UNC system's 16 universities were surveyed in the study covering 2010-14, and every one spent more than it collected in revenues — often much more. Of the 10 campuses, only UNC-Chapel Hill and N.C. State covered more than 85 percent of their athletic budgets with revenues from ticket and merchandise sales, financial donations, endowment profits, broadcasting rights, or sporting-goods contracts. UNC-Chapel Hill's athletic department required 11 percent of the budget to be covered by subsidies, while N.C. State subsidized 9 percent of its costs.

It's a pattern repeated at public universities across the nation. Revenues cover a minor share of most athletic departments' operating costs. The remaining deficits are closed with subsidies, quite often using student fees — which essentially amount to a hike in tuition, because all students must pay the fees, even if they do not attend athletic events.

UNC-Greensboro's athletics were the most heavily subsidized in the system, with 82 percent of revenues coming from subsidies and 71 percent of those subsidies covered by student fees, which are charged in addition to regular tuition, room, and board from 2010-14. In the 2014 academic year, UNC-Greensboro undergraduates picked up nearly \$9 million of the \$14.7 million athletics budget. Each of the 12,350 full-time undergraduates paid \$708.50 to subsidize sports.

Other notable subsidies include those at UNC-Charlotte, where the athletic department has subsidized \$85 million of its \$116 million total spending (or 74 percent) since 2010. Student fees comprise nearly three-fourths of those subsidies, adding up to \$64 million over the last four years.

College athletic programs continue to expand as universities use a variety of justifications for sports development, says economist Richard Vedder, director of the Center for College Affordability and Productivity. One recent example is the UNC-Charlotte 49ers football program, which was established in 2008 based in part on the

Subsidies at UNC athletic departments

Appalachian State University	53 percent subsidized, 93 percent of subsidies from student fees
East Carolina University	42 percent subsidized, 81 percent of subsidies from student fees
North Carolina A&T State University	69 percent subsidized, 70 percent of subsidies from student fees
North Carolina Central University	72 percent subsidized, 66 percent of subsidies from student fees
North Carolina State University	9 percent subsidized, 92 percent of subsidies from student fees
University of North Carolina at Asheville	74 percent subsidized, 51 percent of subsidies from student fees
University of North Carolina at Chapel Hill	11 percent subsidized, 79 percent of subsidies from student fees
University of North Carolina at Charlotte	74 percent subsidized, 74 percent of subsidies from student fees
University of North Carolina at Greensboro	82 percent subsidized, 71 percent of subsidies from student fees
University of North Carolina at Wilmington	72 percent subsidized, 81 percent of subsidies from student fees

Not Reviewed:

Elizabeth City State University
Fayetteville State University
University of North Carolina at Pembroke
Western Carolina University
Winston-Salem State University

Source: "Sports At Any Cost," *Chronicle of Higher Education* and *Huffington Post*

argument that adding Bowl Championship Series-level football would be a magnet for both donors and students.

That's a common rationale university administrators use to beef up athletics — but it's not necessarily realistic, Vedder said.

"As I read the empirical evidence on this, by and large that's not a very strong argument," Vedder said. "In most cases there is little evidence that there is an increase in the donations that sports bring in. There is no evidence at all that they bring in more money. And when they do, sometimes the ... incremental amounts of money they bring in is to support the sports program itself."

In 2014, UNC-Charlotte's athletics department received financial contributions of \$4,420,363, as well as a total endowment and investment income of \$271,738, roughly \$1 million more than in 2010, when it received \$3,276,840 in contributions, and \$317,728 in endowments and investments. But that increase in donations over the last four years may not represent any real benefit to the school, Vedder said.

"That extra [money] is going to support the operations of the athletic department," Vedder said. "So how does that help the university in a material way?"

College sports continue growing, not because they are of true value to universities, but because they are popular, Vedder said. That popularity

is driving a kind of athletic arms race, and an immediate solution looks unlikely due to peer pressure among universities, he said.

"A basic problem is that people love sports," Vedder said. "So this assumption that you can [use sports] to buy your way into donations by prominence and high reputation doesn't work. Because one thing everyone forgets is what I call the Iron Law of Sports: Every time someone wins a game, someone else loses, and not everyone can win in sports."

Andrew Zimbalist, professor of economics at Smith College, and co-author of the book *Sports, Jobs & Taxes: The Economic Impact of Sports Teams and Stadiums*, says the problem of expansion and over-spending in university athletics is one that has been escalating for more than two decades.

"What's going on now in college sports is that there has, since 1984, been a trend toward sharp inequality," Zimbalist said. "And that trend has been exacerbated in recent years by the formation of the [major] five conferences" — the Atlantic Coast, the Big 10, the Big 12, the Pac 12, and the Southeastern — so "everybody is trying to keep up with the big guys."

Only about 20 of the more than 1,000 NCAA member schools ever see any surplus in their athletic budgets, Zimbalist said, because of the unique nature of college sports in the United States.

"The structure of these depart-

ments is unlike anything we know of in the U.S. economy," Zimbalist said. "These are enterprises that are very competitive. But they don't have any stockholders. And it's a very competitive environment, so when one school upgrades [its] stadium with luxury suites, or when one school gets a new arena with a scoreboard, or when Duke decides to spend ... \$3 million [instead of] \$1 million recruiting" for its basketball program, "then UNC feels like it's got to do that."

Before UNC deals with over-spending and dependency on student fees, it first must change how it oversees the athletics operations of the university system as a whole, said former North Carolina Supreme Court Justice Bob Orr, who represented former UNC-Chapel Hill athletes in litigation claiming that the university committed academic fraud and the NCAA ignored it.

"There is not much transparency," Orr said. "I think you've got to have transparency. The public needs to know where the money's coming from. I think ... the [UNC] Board of Governors ... needs to have full access to see how these monies are being generated and spent. And then once you really understand the cash flow, you can start talking about reforming the system, whether it's in the context of eliminating student fees to fund athletics ... or actually sharing some of the profits with the people who are generating the money."

Joni Worthington, spokeswoman for the UNC Board of Governors, said that the board does offer oversight to the process of setting student fees, and that the BOG's current four-year tuition plan for 2015-19 caps increases in tuition and fees at 5 percent.

Worthington also said that proposed increases for a particular fee may be revised downward after a review by the board's members or staff, but that no review is underway at this time. Discussions of fees begin on each campus and must involve significant student input, she said.

On-campus complaints about high student fees haven't been prominent in the past because they haven't drawn much scrutiny, Zimbalist said. And while cutting student fees may not be practical for UNC right now, the schools would perform a public service by admitting the limitations of sports as a real investment in academic growth, he said.

"The point of it all is that there is no easy solution here," Zimbalist said. "You can say that your school is going to opt out, [that] you're going to stop [chasing] the Holy Grail. That's the wise thing to do. Drop down to a lower division, and play [other] colleges the way that they're supposed to be played — which is as part of the educational experience." CJ

Rucho Vows to Push More Tax Reforms in 2016 Short Session

By DAN WAY
Associate Editor

RALEIGH

North Carolina residents could receive a larger personal income tax exemption if the General Assembly's 2016 short session, which convenes in April, follows the lead of retiring state Sen. Bob Rucho, R-Mecklenburg.

"During the short session, one of my goals would be to increase the zero bracket, which is the standard deduction, and that could be from \$15,500 to \$17,500," said Rucho, who has announced the current legislative session, which includes the 2016 short session, will be his last. "That is treating every income level the same in the sense that that same \$17,500 would be state tax-free, but it is extremely beneficial to the middle class."

The General Assembly raised the exemption for 2016 from \$15,000 to \$15,500 for a married couple filing jointly, and from \$7,500 to \$7,750 for single taxpayers.

Allowing workers to keep more of their earnings by increasing the standard deduction "would be very beneficial" for the middle class, and blunt the "unfounded criticisms of the liberals telling us we're doing this just for the rich," Rucho said.

Rucho is optimistic that North Carolina will continue moving away from taxing income and toward a consumption-based tax system.

As part of that shift, the General Assembly approved new sales taxes on a variety of repair and installation services that will take effect March 1, and the personal income tax rate is scheduled to drop from 5.75 percent to 5.499 percent in 2017.

"It's a slow process moving from an income tax-based revenue stream to a consumption-based sales tax on goods and services," Rucho said.

The income tax is "detrimental to investment, savings, and entrepreneurship, and economic growth overall," he said.

A consumption tax is "fairest because you only pay tax on what you spend," Rucho said. "Any type of spending you do is your choice, not [the] government's choice." With an income tax, the government decides how much money it will take in taxes, Rucho said.

"Consumption taxes make much more sense for economic growth" than income taxes, said Roy Cordato, vice president for research and resident scholar at the John Locke Foundation. "There's a different way to go to accomplish the same goal" Rucho seeks.

Cordato was instrumental in developing a consumption-based system known as the Unlimited Savings Account Tax plan, or USA Tax.

That plan would maintain the framework of the income tax system, but remove from the tax base all sav-

ings, investment, and capital gains, so that only purchases, or consumption, would be taxed. Cordato said that model avoids sales tax pitfalls.

"A purely sales tax-based system will require high rates, which will encourage people to buy items both from out of state and online," Cordato said.

There are "lots of political problems associated with expanding the sales tax base to professionals like doctors, accountants, lawyers, and so on," Cordato said. "They've got 1,000 special-interest battles to fight if they keep" adding more taxpayers to the sales tax base.

Business-to-business sales would have to be removed from the sales tax base, or else a consumption system based on sales tax would be "riddled with problems of double taxation," Cordato said.

Still, Rucho said tax reforms implemented under Republican leadership since 2013 are paying off. The state had a \$445 million surplus at the end of the 2014-15 budget year, and was \$70 million ahead of tax revenue projections from July through October of the 2015-16 budget year.

"That is good and bad," Rucho said. "The fact that the economy is doing what we expected it to do is good. The fact that there are members of the General Assembly that believe that every dollar should be spent, that's something that's going to be a battle."

Achieving budget surpluses and continuing to move toward a consumption-based tax system "is going to require fiscal discipline," Rucho said.

While some lawmakers may chafe at voting to expand sales taxes on services, Rucho said there would be "a commensurate reduction" of the personal income tax, "so it's not like there's a tax increase."

"We have gotten good, ongoing dialogue with the General Assembly about tax policy in general, and with Sen. Rucho's office in particular," said State Budget Director Lee Roberts. "But it would be premature to talk about any particular proposal."

While he praised Rucho for being "as knowledgeable and thoughtful about tax policy as anyone in the General Assembly," Roberts said raising the standard deduction is not as simple as it might sound.

"You can't opine on one aspect of tax reform without understanding how it fits into the broader whole,"

Roberts said. "There are a lot of merits to raising the standard deduction, but there's a process associated with that, too. So we need to look at tax reform in the short session as a whole and see what makes sense."

He said the McCrory administration supports decreasing dependence on income taxes, "and you've seen significant progress in that regard already." It makes sense to move away from income taxes because they are more volatile, and more likely to be affected by ups and downs in the economy, he said.

Senate Minority Leader Dan Blue, D-Wake, and House Minority Leader Larry Hall, D-Durham, did not respond to requests for comment.

"There are a lot of economists that believe a consumption-based system is far better for economic growth. There's some political downside to taking that approach, but overall I think it's something that the state ought to explore," said Brandon Arnold, executive vice president of the National Taxpayers Union.

"It's difficult sometimes to raise sales taxes, which is often the way people go about it, but I think it's a plausible way of increasing growth," Arnold said.

House Rules Committee Chairman David Lewis, R-Harnett, said the General Assembly is moving toward taxing consumption rather than income.

He said the one area of caution "is to make sure that we do not disproportionately hurt the lower-income earners." The way to do that is by expanding the standard deduction and ensuring that those who earn less than certain incomes would pay no taxes.

"We believe that what someone truly consumes is what should be taxed," Lewis said.

Savings, investments, education expenses, and charitable giving would not be taxed in his preferred version of a consumption tax, which he called "a logical step" as the economy becomes more reliant on a service-based society.

"I just believe it's the will of the Senate and the House Republican caucuses to get to the point where hard work and advancing yourself in life is not penalized" by taking taxes on earned income, Lewis said.

Savings and investment are "an important part of building a strong society," Lewis said. Consumption "is the true way to tax to least inhibit people from wanting to advance up the income spectrum." CJ



Sen. Bob Rucho

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Dog Boarding Facilities in Tug of War With State Legislators

BY BARRY SMITH
Associate Editor

RALEIGH

Heidi Ganahl, founder of the Camp Bow Wow boarding centers and day camps for dogs, says North Carolina's regulations on pet boarding facilities aren't consistent with those elsewhere, and often appear to be arbitrary and not aligned with the need to protect the safety of animals or staff.

Camp Bow Wow, based in Broomfield, Colo., has more than 130 locations in the United States and Canada. Ganahl says North Carolina isn't the only state with vague or unusual regulations. But she called the Tar Heel State's particularly arbitrary. One of the most common variances among states is the staffing ratio required at Camp Bow Wow locations.

Nationally, Camp Bow Wow maintains a ratio of one employee for every 25 dogs on the premises, Ganahl said. But some states, including North Carolina, require a much lower ratio.

"Colorado is 1-to-15; North Carolina is 1-to-10," Ganahl said. She said in some states, regulators have not commissioned or cited studies showing why certain regulations are required. They just say they have "a feeling" what the right ratio is.

Ganahl was the keynote speaker at the Dec. 9 leadership luncheon hosted by the N.C. FreeEnterprise Foundation.

Dr. Patricia Norris, a veterinarian who heads the Animal Welfare Section in the N.C. Department of Agriculture and Consumer Services, said the ratio is not arbitrary.

"The reason behind this, dogs are pack animals," Norris said. If a large number of dogs are together in one place and two of them start to scuffle, many of the remaining dogs may want



The Colorado-based chain has more than 130 locations in the U.S. and Canada.

to join the fray, she said.

"If the staff can intervene effectively, then no animals are harmed and no staff is harmed," Norris said, adding that a minor scuffle doesn't become a major fight.

Norris said that the 1-10 ratio at boarding facilities applies only in common areas where more than four dogs are together and can interact. The ratio does not apply to boarding areas where dogs are kept separately and can't interact with others.

"I'm a veterinarian, and the thought of 25 animals loose with only one person, that would make me extremely uncomfortable," Norris said.

The rule says, "If more than four dogs are housed in a common area or enclosure, then there must be at least one person supervising each 10 dogs housed within each enclosure or common area."

James Daniel, who owns two

Camp Bow Wow franchises in the Charlotte area, said the state's rules are vague and should be revised.

"We have dogs that are there for day care, and we have dogs that are there for boarding," Daniel said.

He said terms in the rules, such as "enclosure," aren't adequately defined.

"I think the rules themselves are a little bit ambiguous," Daniel said. "I think that's a problem we run into based upon different inspectors who apply the rules differently."

Daniel said that Camp Bow Wow has procedures in place to identify dogs that play well with others, and separate them from those that don't. He also said the camp's staff is trained to handle problems that might crop up.

When owners bring dogs for an initial visit, the canines are evaluated for temperament — whether they'll fit in well in an open environment or whether they have aggressive tendencies, Daniel said.

"We train our employees to try to monitor the dogs," Daniel said. "The last thing we want the employees to do is put their hands in the middle of a dog fight."

Daniel said the camp can operate safely with a ratio higher than 1-to-10. He hopes the rule will be changed so that North Carolina will come in line with the rest of the country, he said.

Staff ratios aren't the only regulations that businesses such as Camp Bow Wow have to worry about.



A pet owner picks up her two dogs from the Camp Bow Wow boarding center near Charlotte. Dog day camp owners say arbitrary state regulations make it difficult for them to operate. (CJ photo by Barry Smith)

Ganahl said that in New Jersey, regulators have qualms with camps that place artificial grass such as AstroTurf in some of the pet exercise areas. Ganahl said that regulators weren't sure if workers could clean the surface properly or thoroughly.

Ganahl said her camps use a specific product to clean the turf that's safe for the dogs and environmentally friendly.

"This isn't based on any research or good data," Ganahl said of the regulators' objections. "Why they care so much about AstroTurf in doggie day care facilities, I don't know." CJ

North Carolina requires one worker per every 10 dogs, more than most states

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Direct Care Could Expand to Cover State Workers, Medicaid

BY DAN WAY
Associate Editor

RALEIGH

A growing health care alternative in North Carolina that shuns insurance for services provided by physicians at a set price could be incorporated into the state's insurance program for government employees, along with Medicaid — the federal/state health insurance plan for the poor, aged, and disabled.

Dr. Brian Forrest, who in 2002 made his Apex medical practice a pioneer for direct primary care in the United States, said state legislation is needed before direct primary care could be expanded to include state employees or Medicaid patients. He warned that laws would have to be drafted carefully to prevent unintended consequences that could be devastating to this emerging alternative to insurance-led systems.

"We are starting to get some folks interested in doing this in partnership with things like the State Health Plan and Medicaid," Forrest said. Direct primary care physicians operate in 46 states. They provide a defined set of high-level primary care and prevention services. The median fee per patient is \$70 monthly.

If government insurance plans were interested in adding direct primary care as an option for members or patients, Forrest said, the General Assembly probably would have to pass legislation requesting a waiver from federal authorities, Forrest said.

He said legislation could be necessary "in the next year or so. We'll be all over it, making sure we get the best bill we can."

Until then, "It's perfectly legal to practice the way that 15 of 16 practices are operating now" in North Carolina, Forrest said. "We've enjoyed 14 years regulation-free, and it's gone really great."

In some states, insurance depart-

ment officials have classified direct primary care as insurance rather than a medical practice.

They say direct primary care's concept of offering services at set prices (in some cases, with no limit on the number of office visits) requires physicians to assume risk, making it insurance. At that point, the states regulate the practice under their insurance codes.

Jay Keese, executive director of the national Direct Primary Care Coalition, said 13 states have avoided those regulations by passing bills explicitly stating that direct primary care is not insurance. He recommends other states follow suit, even if their current insurance commissioners are sympathetic to the model.

"We don't think the take-it-to-the-bank approach is very good," Keese said, because a subsequent commissioner may interpret the situation differently.

"I have not heard any discussions about this in the General Assembly," said state Rep. Donny Lambeth, R-Forsyth. He is chairman of both the House Health Committee and the Joint Legislative Oversight Committee on Medicaid and NC Health Choice.

"We're not aware of any legislative attempts along these lines," said Kerry Hall, spokeswoman at the state Department of Insurance.

Hall said Commissioner Wayne Goodwin "is always receptive to exploring any possible ideas that would benefit North Carolinians. The department would be glad to be at the table for discussions involving all the appropriate stakeholders."

Lambeth expects direct primary

care "certainly [to] play a role in the future of the health care delivery system," but would not dominate the industry.

"This is an easier and more efficient model that reduces cost," allowing the primary care doctor to pass savings to patients while avoiding insurance paperwork and delays in payments, Lambeth said. He explored it as an option while he was chief operating officer of Wake Forest Baptist Medical Center.

Forrest said there are "lots of variations" in direct primary care, but offering unlimited services usually gets the attention of insurance companies and regulators.

"You are basically assuming risk because you're saying that for a set fee every month you're seeing people as much as they need to be seen, do as many things as you need to do, in an unlimited fashion," he said.

In North Carolina, 15 of 16 direct primary care practices charge a small office visit or other fees in addition to the monthly retainer, avoiding the unlimited service trigger. The attorney general's office reviewed and approved that model as differing from insurance, Forrest said.

He and Keese "have worked on a lot of this legislation in other states," Forrest said.

He agrees that a law declaring direct primary care a medical service potentially could allow the concept to expand in North Carolina. But poorly enacted legislation could damage the industry.

"The down side is that there have been states where the legislation has actually been bad," Forrest said. "The

wrong people got involved, you had too many special interests that tried to tag on, and next thing you know it actually made it harder."

He said direct primary care in West Virginia is now under the control of the insurance department instead of the state medical board because legislation went awry.

Direct primary care practices are "not allowed to advertise or anything else. So you've kind of got more government regulation and intrusion in states where it was done poorly," Forrest said.

In North Carolina, Forrest said, direct primary care physicians are not required to provide extensive details of their practices' activities to state regulators. "In some of the states that have passed legislation, you have to submit an annual report either to the department of insurance or the department of commerce."

While some insurers initially felt threatened and opposed direct primary care in North Carolina, they have backed off, Forrest said, because "it actually saves them money."

For example, he said, his Apex office has about 2,000 state employees as patients.

"Of those 2,000 state employees who have Blue Cross and Blue Shield insurance, Blue Cross and Blue Shield hasn't gotten a bill in 12 years. They're saving 100 percent," adding that data show direct primary care patients stay healthier and are more likely to avoid emergency room visits and hospital stays, Forrest said.

Some of "the more forward-thinking" insurance companies are starting to explore plans to include direct primary care and pay their patients' monthly fees, Forrest said. One will launch in January. Though he said it was premature for him to discuss this specific plan in detail, he said the fixed-premium plan would allow participants to avoid Obamacare's penalty for not purchasing insurance. *CJ*

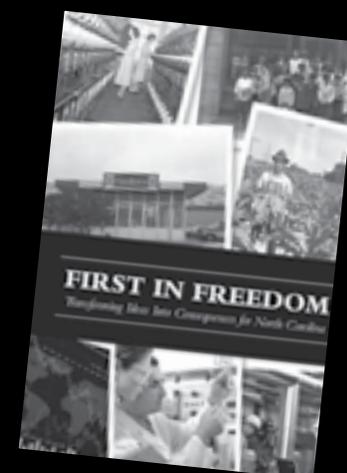
No bills in the legislative pipeline that would allow expansion of direct primary care

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Governor Urges Parents, Children to Discuss Underage Drinking

BY BARRY SMITH
Associate Editor

RALEIGH

Gov. Pat McCrory pleaded with parents across North Carolina to talk to their children about underage consumption of alcohol.

"This is an issue that we've got to tackle at the kitchen table and at the point of sale," McCrory said during a Dec. 1 press conference.

McCrory was joined by former Lt. Gov. Jim Gardner, chairman of the ABC Commission; neuroscientist Bill Wilson from Duke University; and Kelly Langston, president of the North Carolina PTA.

McCrory made a "call to action" for parents to engage their children in discussions about drinking during the holiday season "when alcohol and underage drinking are more prevalent."

McCrory said the state is setting up programs at universities in the state to counter the "right of passage" of underage drinking.

"The problem is a lot of people aren't recovering from that right of passage," McCrory said.

Wilson said he studies the effects of drugs, including alcohol, on the adolescent brain.

"The adolescent brain is far less sensitive to the sedative effects of drugs," Wilson said. "When you're an



Kelly Langston, president of the North Carolina PTA, addresses a Dec. 1 press conference about underage drinking. To her left are Gov. Pat McCrory, ABC Chairman Jim Gardner, and Duke University researcher Bill Wilson. (CJ photo by Barry Smith)

adolescent, you can stay awake to get intoxicated beyond all measure that an adult could stay awake to get intoxicated."

Wilson said differing brain chemistry may allow adolescents to stay awake and somewhat functional as they get more intoxicated, unlike the sedative effect alcohol has on the central nervous systems of adults.

"For that reason, I describe alcohol as the perfect-storm drug for kids," Wilson said. "They're not sedated. They're very intoxicated, and they have all the capacity to get into serious

trouble that may lead to injury, or in fact death, as the governor said."

Langston said the North Carolina PTA is taking the message to parents across the state.

"Parents are an effective weapon against underage drinking," Langston said. "But we have to speak up." She said kids want to hear from parents and children genuinely seek their parents' help.

"It's important that we start the conversation early with our children when topics are less difficult," Langston said. "Talking with our children

should be an ongoing process, a natural progression as the conversations become more difficult and the issues more real."

After the press conference, Langston was asked about the job parents have in teaching responsible drinking to their children even though it's illegal for children to drink alcohol until they're 21.

Langston reiterated that it's important to talk things out.

"Start talking with their kids early, about everything, even when they roll their eyes, even when they say, 'I know,'" Langston said. "They're going to make mistakes, but you've got to hope that some of what you say — some of your beliefs — are going to stay with them. And I truly believe that if you talk often and your kids know what you believe and what you value, that's going to carry. Even when they make that mistake, they're going to call you when they make that mistake."

The state's effort at combating underage drinking, called "Talk it Out," is one year old. The campaign has produced an advertisement showing parents repeatedly delaying a discussion with their child about underage drinking. The ad ends with the grieving parents walking into their child's bedroom after his death. *CJ*

JLF: Single-Year Expensing Would Improve N.C. Tax Code

BY CJ STAFF

RALEIGH

North Carolina lawmakers should take aim at the state's current system of depreciation, as they look for more ways to improve the tax code. A John Locke Foundation Spotlight report recommends replacing state depreciation schedules with single-year "expensing."

"Using a system of depreciation for writing off asset costs distorts investment decisions," said report author Roy Cordato, JLF vice president for research and resident scholar. "It creates a bias against making investments in 'longer-lived' capital and businesses that require such investment. It creates a bias in favor of 'shorter-lived' capital investments and industries that rely more heavily on these kinds of investments."

In contrast, a system based on "expensing" allows businesses to deduct the full cost of a capital asset from business taxes in the year the purchase is made, Cordato said. "Expensing eliminates the bias tied to depreciation by treating all asset investments equally," he said. "It would ensure that the tax value of all such investments is equal to the full cost of making the investment."

There's another benefit, Cordato

adds. "Ultimately, it would put North Carolina in a good position for making and attracting new investments by lowering the cost for almost all capital investments."

The switch from depreciation to expensing would fit well with the "positive" and "dramatic" restructuring of North Carolina's tax code under way since 2013, Cordato said. Lowering and flattening the personal and corporate income tax rates have "created a more efficient and fair tax code."

Now lawmakers ought to focus on getting the income tax base right, Cordato said. "Going forward, the primary task of tax reform should be to eliminate the bias that exists against saving, investment, and entrepreneurship," he said. "The current tax code penalizes saving and investment by double taxing interest, dividends, and capital gains."

Alongside this focus on the tax base, the state should re-examine the way it treats business investments in capital equipment and real property, Cordato said. "This is where the switch from depreciation to expensing comes into play."

It's universally recognized that business expenses tied to producing goods and services for sale should be deductible from taxation, Cordato

said. But the federal government and most states permit deductions linked to land, office equipment, machinery, buildings, and other assets only over a period of time and at specified rates.

This approach, called depreciation or amortization, is based on the presumed durability of the investment. A "longer-lived" asset has a longer depreciation period, such as 27.5 years for investment in land for an apartment complex versus five years for an office computer.

"While this approach might seem to make sense, it has several serious defects from an economic perspective," Cordato said. "First, a piece of equipment's useful life has more to do with market conditions and alternative technology than the equipment's physical characteristics."

A "deeper and more systemic problem" is the distortion of investment decisions, Cordato adds. "The bias against 'longer-lived' capital and in favor of 'shorter-lived' capital creates problems even if the write-off period is consistent with the asset's true economic lifespan."

Under a system of depreciation, the value of a tax deduction turns out to be less than the full cost of the capital asset, Cordato said. "This is because a dollar is worth more to someone now

than at any time in the future," he said. "This is why lenders charge interest and borrowers agree to pay interest."

Under immediate expensing, a construction company that buys a \$100,000 bulldozer can write off the full \$100,000 from this year's pretax income. "That means the full cost gets deducted," Cordato said. "On the other hand, a six-year depreciation period means the total value of the deduction will be less than the full cost of the investment. The longer the depreciation period, the less the deduction will be worth."

"Depreciation creates an incentive for substituting, where possible, shorter-lived assets for longer-lived assets," he added. "This is true for decisions within individual companies. It's also true for those making decisions about the kind of businesses to invest in. There's a bias against investment in companies requiring use of more longer-lived assets."

Scrapping depreciation for expensing would require North Carolina to break away, or "decouple," from the federal tax code. But that would not make tax filing at the state level any more complicated for N.C. businesses, Cordato said. *CJ*

State Urged to Drop 'Tier' System for Development Grants

Committee also rejects changes in retiree health plan

BY BARRY SMITH
Associate Editor

RALEIGH

Saying the current plan is antiquated, a legislative agency in December recommended that the state scrap its three-tiered system for awarding economic development grants.

"The economic development tier system, which was designed to award tax incentives, has outlived its purpose," said Sara Nienow, senior program evaluator at the General Assembly's Program Evaluation Division, to a meeting of the Joint Legislative Program Evaluation Oversight Committee. "Measurement at the county level fails to identify struggling communities located within prosperous counties."

Nienow urged lawmakers to form a commission and develop a new strategy to identify and assist distressed communities as a replacement for the tier system. She recommended an end to the tier system for economic development programs by July 1, 2018.

Some other state agencies and programs use the tier system for prioritizing state funds. Those include the Farmland Preservation Trust Fund, spay and neuter programs, state wastewater reserves and drinking water programs, public safety system grant programs, oral health programs, and low-income housing tax credit programs.

Nienow recommended that the

state stop using the tier system for those programs by July 1, 2017.

The N.C. Commerce Department currently breaks the state's 100 counties into three tiers, with Tier 1 being the most distressed economically and Tier 3 being the least distressed. The ranking primarily takes into account a county's average unemployment rate, median household income, percentage growth in population, and assessed property value per capita.

Sen. Don Davis, D-Greene, said the system doesn't account for low-income communities that may be located in a wealthier county.

"There are those pockets of distressed communities that may not necessarily be part of a distressed county," Davis said. "We can call it many things, but I really believe at the end of the day we need to address this and be more strategic in how we help communities in North Carolina succeed."

Davis pointed to Pitt County, in eastern North Carolina, as an example.

"When you go to Bethel, N.C., and then compare that to Greenville in Pitt County, those are truly at different economic levels," Davis said. "I think this is something that we really need to give attention to on making sure that economic resources truly have the intended benefit and on our most economically distressed communities in the state."

In her presentation, Nienow noted a similar effect in two Iredell County cities.

Mooresville, in the southern part of Iredell County near Mecklenburg County, is faring better economically than Statesville, which is located further north in Iredell County, Nienow said.

Nienow's recommendation got a positive reception from the committee, which instructed the staff to draft legislation to implement the recommendations.

However, Rep. Nelson Dollar, R-Wake, cautioned against moving too swiftly.

"I do think in terms of the dates that are recommended for action, I would just think that as some of this moves forward, we should determine what it is we're going to replace the system with before we do away with it," Dollar said.

Jeff DeBellis, director of economic and policy analysis at the Department of Commerce, also discussed potential complications if counties were separated into subgroups. He said in some cases, the amount of data is so small that it's difficult to gauge.

DeBellis said his department is recommending cooperation among counties where a low-income community may be near the border of a more affluent county.

"We know that distress crosses county lines," DeBellis said.

DeBellis also suggested that instead of the General Assembly establishing a new commission to replace the tier system, that lawmakers ask the Commerce Department to do it.

"We believe that the Department of Commerce is equipped to be able to handle this in a more expedient fashion," DeBellis said. "We have a team of policy analysts and economists to help support it."



Sara Nienow

State Health Plan

The committee also rejected a proposal to move remaining state retirees to the Medicare Advantage health plan beginning Jan. 1, 2017.

The move was aimed at making a dent in the state's \$25.5 billion unfunded liability in the state retiree health plan, which covers retired state employees and teachers. The unfunded liability is the amount of money the state currently owes retirees but does not have cash to cover. Fiscal analysts suggest that the move could save the state's taxpayers up to \$64 million annually.

Mona Moon, executive director of the State Health Plan, said that while her office would carry out legislative mandates, she had some reservations about the original proposal.

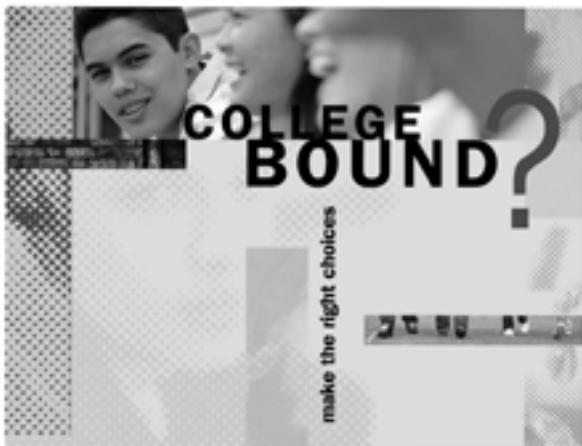
"Our board of trustees at this time would prefer that the state not legislate auto-enrollment," Moon said. She said that the trustees would like to see flexibility for retirees.

Sen. Fletcher Hartsell, R-Cabarrus, instead convinced the committee to draft legislation setting up a joint legislative committee that would study the options for state retirees to choose other coverage within the State Health Plan if they were receiving ongoing services or treatments (one example cited is chiropractic care) that are not covered under Medicare Advantage.

Hartsell said the original proposal had led to confusion among retirees, who weren't clear how much mandating a shift to Medicare Advantage would affect their health care coverage.

The proposal needs the approval of the General Assembly, which will reconvene April 25 for its short session. CJ

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Both Sides Declare Victory in Ruling on Closed Meetings

BY DAN WAY
Associate Editor

RALEIGH

A Superior Court judge ordered the Alamance-Burlington Board of Education to release previously undisclosed information about the circumstances surrounding the departure of a school superintendent in what media lawyer John Bussian said was “a big deal” for the public’s right to know.

Even so, former school board president Tony Rose disagrees with Bussian’s interpretation of Superior Court Judge Michael O’Foghludha’s ruling. The case surrounds a conflict between public-records laws requiring disclosure of some information from closed meetings of government bodies and the confidentiality of government employees’ personnel records.

“There is nothing in this case that they have won,” Rose said. He likened the newspaper’s claims of victory to former Iraqi dictator Saddam Hussein’s information minister. Known as “Baghdad Bob,” he claimed Iraq was winning the war against the U.S. “while buildings were blowing up around him.”

Rose said at issue in the case was whether employee information remains perpetually confidential after an employee leaves and whether the school board acted lawfully.

“The judges have agreed with our stance all along that this is confidential,” Rose said. “I can’t comprehend why the newspaper is reporting this as a victory on their side.”

Citing the state’s open-records laws, the *Burlington Times-News* sued the school board to force the release of closed meeting minutes involving discussions about former school superintendent Lillie Cox. Cox resigned her

position under what the newspaper believed were unusual circumstances.

O’Foghludha reviewed in private more than 40 pages of minutes taken in school board closed sessions. He ruled the bulk of them would remain secret because they involved confidential personnel details exempt from disclosure.

But on Dec. 7, O’Foghludha directed the school board to disclose a very narrow section of the minutes regarding policy issues related to Cox’s May 2014 resignation and more than \$200,000 in severance.

“I give him high marks” in rendering a decision in favor of the public’s right to know, Bussian said. “The moments for the press in these battles against the government are so rare.”

“The board is very pleased with the court’s ruling and has decided not to appeal the court’s decision to order the release of one single paragraph,” said Adam Mitchell, a lawyer for Tharrington Smith, the Raleigh law firm that represented the school board.

“After carefully reviewing 45 single-spaced pages of minutes, Judge O’Foghludha stated in court yesterday that 99 percent of the minutes were properly redacted in compliance with the law. From the outset, the board’s only interest in this case has been to follow the law,” Mitchell said.

Before O’Foghludha got the case, Superior Court Judge Lucy Inman dismissed the newspaper’s lawsuit without holding a hearing or reviewing minutes of the school board’s closed

session to determine if they contained information subject to public viewing.

Bussian, representing the *Times-News*, went to the Court of Appeals, which refused to take the case. He appealed to the state Supreme Court, which assigned emergency status to the suit under the state’s open-records laws and ordered the Court of Appeals to expedite its handling of the case.

A three-judge panel of the Appeals Court heard the case in April and ordered the trial court to review the minutes to determine if the board sealed any information that should have been disclosed.

Bussian said O’Foghludha “pored over them against all the phony arguments the school board was making — ‘They’re personnel records, they’re protected by attorney-client privilege,’ everything eight ways to Sunday — so that nobody got to see anything about the three meetings where they decide in closed session to terminate the superintendent ... and then paid her 200-grand-plus to leave.”

He said the judge ordered only a single paragraph to be disclosed because it sums up “the policy considerations of why the superintendent [was] fired.”

“The fact that a trial judge under order from a unanimous Court of Appeals ordered the school board to open up a paragraph ... pretty much tells the whole story, from what the judge was suggesting at the bench today, is a huge victory for public access,” Bussian said.

The case demonstrates “how woefully inadequate the current North Carolina public-records law is when it comes to personnel records ... and how little we’re allowed to see here,” Bussian said.

Rose downplayed the signifi-

cance of the paragraph but said the board could not release it until the judge signs an order.

He said the paragraph at issue involves a legal discussion the board had after board member Steve Van Pelt said he would not attend a closed meeting because he believed it was being held improperly. Rose said Van Pelt misinterpreted school board policy and Robert’s Rules of Order in how to vote on a superintendent’s termination.

Cox’s departure “was never a termination,” but a resignation, Rose said. “We never fired her” and complied with the law.

Cox was subject to a performance review in August 2013, “almost 10 months before this event went down,” and the contract extension decision was not unanimous, he said. Cox was given “a one-year procedural extension.”

The paragraph O’Foghludha ordered released involves the board asking its attorney for legal guidance and the attorney explaining why Van Pelt was incorrect, Rose said. He believes that falls under attorney-client privilege, but the board is not fighting its release.

“The *Times-News* wanted particular information, and the court said, ‘You can’t have it,’ and that’s where the story ends,” Rose said. “As a conservative taxpayer, I understand the groundswell of people who want to know. I get it. ... I probably would be saying the same thing” in their situation.

But the school board is “obligated to protect” confidential information, Rose said. “We just do not have the ability to release this type of information to the public. In fact, it would be illegal for us to do,” and could open the school district to a lawsuit. *CJ*



John Bussian

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G'boro Council OKs Plan Raising Cost of Greensboro Arts Center

BY SAM A. HIEB
Contributor

GREENSBORO
No steel girders have been raised on the site of Greensboro's new downtown performing arts center, even though the cost of it already has.

In December the City Council agreed to take on more bond debt to close the \$10 million budget gap on the projected cost of building the Steven Tanger Center for the Performing Arts, named for the project's highest private donor.

The original cost estimate for the Tanger Center was \$65 million, with the city contributing \$30 million in bond debt and the remaining \$35 million coming from private donations raised by the nonprofit organization Community Foundation of Greater Greensboro.

The city will serve as project manager and approve all construction and professional service contracts, funding the first \$18.5 million in construction and equipment costs.

The city long has desired a new midsize performing arts center to replace the 57-year-old War Memorial Auditorium, which is part of the Greensboro Coliseum complex.

But voters twice rejected bond referendums — in 2006 and 2008 — to renovate War Memorial.

City leaders believe the Tanger Center will continue Greensboro's downtown revitalization on the northern end of Elm Street. That belief was legitimized in the eyes of many when high-powered developer Roy Carroll announced plans to build a hotel and a mixed-use development just a couple of blocks away, across the street from New Bridge Bank Park.



An artist's conception of the Steven Tanger Center for the Performing Arts, which will replace Greensboro's War Memorial Auditorium.

But it quickly became clear that such a transformative project would not come cheap. Once the site was determined, the city began purchasing parcels of land at a cost of \$11.4 million. The site has been cleared, but construction has not begun, with an opening date set for late 2017 or early 2018.

As explained to the council at its Dec. 8 meeting, Coliseum director Matt Brown — who also will oversee the construction and operation of the Tanger Center — said the ultimate goal is a high quality venue with excellent sight lines and sound quality that will attract repeat visitors.

Brown insists that the center's stage, sound system, and seating will be state of the art. The sound system in particular must be high-quality, he said, due to the variety of performances the center will host — one night a Broadway show, the next night the Greensboro Symphony.

"I'm certain that every seat in that venue will be a great seat and everyone will walk out realizing the value," Brown said.

With that in mind, a good chunk

of funding to close the budget will come from ticket fees. A \$1 ticket surcharge already exists, but that initially was targeted for a "sustainability" fund to help local arts organizations.

Those funds are now being "repurposed," which would raise \$3.75 million. Arts organizations now will receive \$120,000 annually out of the center's sponsorship revenues.

Making the new allocation a set amount rather than relying on fluctuating ticket sales is a positive for the arts organizations, Brown told the council.

"I think the uncertainty of not knowing what they were getting has been vetted by the fact that they know they're getting \$120,000," he said.

On top of the "repurposed" \$1 ticket fee, Brown wants to boost the total ticket fee to \$4. An additional \$3.5 million would come from added private donations, another \$2.1 million from boosting the number of VIP parking spaces, and another \$4.4 million from reducing construction costs without compromising sight lines or sound quality.

No one representing Greens-

boro's thriving arts community spoke for or against the new plan. In fact, there were no public speakers at all — for or against — the plan to reduce the budget gap.

Two council members — Tony Wilkins and Marikay Abuzuaiter — pressed Brown about the plan.

Wilkins expressed concern about ticket prices, given the \$4 ticket fee. If ticket prices are too high, Wilkins reasoned, people will not buy them, thus reducing funds generated by the fees.

"If these don't materialize, where does the funding come from?" Wilkins asked. "Do you see a scenario where we would have to go to the general fund?"

Brown noted that the successful Durham Performing Arts Center already had a \$3 ticket fee and more than likely would raise it to \$4 in the next year.

Brown also assured the council that 150 dates per year at the Tanger Center was a "conservative estimate," considering the fact that the outdated War Memorial Auditorium drew 116 dates in its final year.

"We're always very conservative in our estimates, and I've believed in 150 dates from the get-go," Brown said.

The plan passed 7-2, with Wilkins and Abuzuaiter voting "no." But based on council comments, it was clear the votes were there to approve the new debt. The majority believes the center can be a success and possibly lure companies providing jobs, without placing the burden on taxpayers.

"I don't think you can ever say we've eliminated taxpayer exposure, but we've minimized it," said Mayor Nancy Vaughan. "We have a phenomenal opportunity to do this with very little risk." CJ

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Legal Policy Analyst Jon Guze's weekly newsletter, **Legal Update**, focuses on legal, constitutional, and public safety policy issues affecting North Carolinians.

Facebook Sex Offender Ban Constitutional, Say Justices

By MICHAEL LOWREY
Contributor

In an October decision, the state's highest court reinstated a ban on registered sex offenders using certain social media websites, finding that the ban as written does not violate the free speech protections in the First Amendment.

Lester Gerald Packingham was convicted of taking indecent liberties with a child in 2006 and was required to register as a sex offender. Two years later, the state passed a law banning sex offenders

from using Internet social media sites on which minors could create profiles. To enforce this law, the Durham Police Department examined profiles on Facebook and MySpace and found one created by Packingham.

At trial, a Superior Court judge rejected Packingham's claim that the law was unconstitutional. After being convicted by a jury, Packingham received a suspended prison sentence and was placed on probation for a year. He appealed.

The N.C. Court of Appeals overturned Packingham's conviction, finding that the law was unconstitutional, as it "is not narrowly tailored, is vague, and fails to target the 'evil' it is intended to rectify" because it "arbitrarily burdens all registered sex offenders by preventing a wide range of communication and expressive activity unrelated to achieving its purported goal."

On appeal, the N.C. Supreme Court took the case, and in September 2014 held oral arguments.

A key question before the high court was whether Packingham's use of Facebook amounted to conduct or speech.

"First Amendment protection of speech is extended to conduct only when the conduct in question 'is inherently expressive,'" explained Justice Robert Edmunds, writing for the court.

"In contrast, a regulation that governs conduct while imposing only an incidental burden upon speech 'must be evaluated in terms of [its] general effect.' An incidental burden on speech is permissible 'so long as the neutral regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.'

Edmunds concluded that using social media sites amounted to conduct, not speech.

"The essential purpose of [the law] is to limit conduct, specifically the ability of registered sex offenders to access certain carefully defined Web sites. This limitation on conduct only incidentally burdens the ability of registered sex offenders to engage in speech after accessing those Web sites that fall within the statute's reach. Thus we conclude that [the statute] is a regulation of conduct."

The Court of Appeals also concluded that the law was overly restrictive. Four of the N.C. Supreme Court's seven members did not agree.

"While we acknowledge that defendant has identified some areas in which the statute could have been drafted even more narrowly, we conclude that the statute is sufficiently narrowly drawn," wrote Edmunds.

"In his brief and argument to this Court, defendant lists numerous well-known websites that he contends he could not access legally. In considering those and other similar sites, we find that even where defendant is correct, the Web offers numerous alternatives that provide the same or similar services that defendant could access without violating [state law]."

Edmunds noted that Packingham and other registered sex offenders could share pictures using Shutterfly and post their resumes on Glassdoor, as those sites required users to be at least 18 years of age.

The majority rejected Packingham's claim that the statute was too vague, finding that under any reasonable interpretation of the statute, it applied to Facebook, which is the site Packingham was convicted of using.

Justices Robin Hudson and Cheri Beasley dissented.

"This statute completely bars registered sex offenders from communicating with others through many widely utilized commercial networking sites. Therefore, in my view, it primarily targets expressive activity usually protected by the First Amendment," Hudson wrote.

Hudson in particular found the majority's reliance on a 1968 U.S. Supreme Court case about the express conduct in burning a draft card to be mistaken. Instead, Hudson said she would analyze the law using the U.S. Supreme Court's traditional free-speech jurisprudence.

The case is *State v. Packingham*, (366PA13). CJ



COMMENTARY

Hot Air Envelops Hurricanes

There's a storm building over the Triangle. When this cyclone hits is uncertain, but landfall should be expected. What's at issue is whether Raleigh retains its only top-level professional sports team, the Carolina Hurricanes. A lot of public money may be involved, too.

Hockey traditionally is associated with cold climates. The National Hockey League in recent years has embraced a strategy of locating franchises in milder locations; the idea is to grow the sport's U.S. footprint and its television contract revenue. Raleigh fits nicely with that business plan.

At its core, this strategy depends on the old concept of "build it and they will come." And in the real world, they, meaning paying customers, haven't always come in sufficient numbers in nontraditional markets.

That was the case in Atlanta, where the NHL added the expansion Thrashers franchise in 1999. The team lost a lot of money in Georgia and relocated under new ownership in 2011 to Winnipeg, Manitoba.

The Carolina Hurricanes face a similar problem. *Forbes* estimates that the Hurricanes have lost money each of the past nine seasons, including a \$11.7 million operating loss for the 2014-15 season.

The Hurricanes ranked next to last in the NHL in attendance last year, selling an average of 12,594 seats for each home date. Things have gotten worse this season, with the Canes drawing only about 11,000 fans a game through November, by far the lowest attendance in the league. By comparison, the median NHL team sells more than 18,000 seats per game, at a higher average ticket price than the Hurricanes.

Part of the problem is that the Hurricanes have been dreadful for nearly a decade now, making the playoffs in only one of the past nine seasons — 2009. That's hard to do in a league in which a majority of teams — 16 of 30 — makes the playoffs each year.

Even with a better on-ice

product, there's little to suggest that the Triangle is fertile ground for a top-tier professional hockey team. In 2006-07, the year after the Hurricanes won the Stanley Cup and when the team should have been its most popular, the Hurricanes ranked only 15th in attendance. It was the only time the team has been in the top half of the NHL in attendance since their 1997 arrival in North Carolina.

Now the Hurricanes are for sale. And this is when things start to get interesting. Team owner Peter Karmanos and the NHL want the Hurricanes to stay in Raleigh, but something may have to give.

Maybe a buyer will step forward who really likes hockey, really likes Raleigh, and is willing to absorb a multimillion-dollar operating loss each year. Karmanos has been looking for more than a year and has found no one.

There are definitely people with money who would buy the Hurricanes and move them to a colder location where the locals love hockey and the team could make money.

There's also an alternative in between those two extremes. A future owner may come hat in hand seeking a large amount of public money for a new facility to keep the Canes in Raleigh.

That's the way the game is played these days in all but the largest markets, even by local ownership groups. It's what the Carolina Panthers did in Charlotte three years ago, asking Charlotte to pay for stadium upgrades even though the team owns the stadium. And given its size as a hockey market, Raleigh really doesn't have much leverage if faced with the threat of pay or see team move.

Such a situation would create a whirlwind of public debate. But at this stage, it looks like a pretty predictable gale. CJ

Michael Lowrey is a contributor to Carolina Journal.



MICHAEL LOWREY



Google Partner: Solar Power Dependability Is Zero

Continued from Page 1

Solar farms operate on average at about 25 percent of capacity. For example, a 40-megawatt solar array would produce an annual average output of 10 megawatts. On some sunny days, for several hours it may produce 40 megawatts. At night it will produce 0 megawatts.

CJ also has reported that the environmental group Greenpeace, which says in its mission statement it “is openly opposed to nuclear, coal, and natural gas as sources for electricity generation,” has stated that negative publicity the group has generated about the high energy use of data centers has embarrassed these companies into starting or expanding their use of renewable offset programs and other “clean” energy plans.

The program

In April 2013 Google released a policy paper outlining a way to allow “a broad range of companies like Google to buy large amounts of renewable power directly from electric utilities.”

Google convinced Duke to develop a program, and in November 2013 Duke formally asked the Utilities Commission to approve a “green source” pilot program. The commission approved the program the following month. Google will be the first customer of the program, called Green Source Rider.

The program is available for a customer’s new electricity demands from the Duke system after June 30, 2012. The matching renewable energy source has to have been placed in service on or after Jan. 1, 2007.

“This is the first time that we’re purchasing solar power in enough volume to power one of our data centers, and it takes us another step towards our goal to eventually power 100 percent of our operations with renewable energy,” the company posted on Google Green Blog in late November when the agreement with Duke was announced.

Through this program Google will continue to pay Duke under its existing monthly rate schedule, but extra charges will be added to cover the higher marginal cost of the solar energy.

While some of the extra fees are specified in the approved Green Source Rider details, the exact amount Duke will add to Google’s electric bill for the more expensive solar energy from the Lenoir campus is not public information.

Duke spokesman Randy Wheelless told CJ that the agreement between Duke and Google is a private business contract and the details will not be made public. A Google representative



Google’s data center campus in Lenoir, showing the new addition at right which Google says will run on solar power generated 50 miles away. (CJ photo by Don Carrington)

also told CJ the company would not share the details of its power consumption at the Lenoir complex nor the details of its agreement with Duke.

Wheelless also told CJ that a lot of interest has been expressed in the Green Source Rider program, and he expects more agreements in the future with companies that want to support renewable energy projects.

The solar facility

Rutherford Farm LLC submitted an “Application for a Certificate of Public Convenience and Necessity and Registration as a new Renewable Facility” to the North Carolina Utilities Commission in May 2013. The facility will be located on Ferry Road, five miles south of Forest City.

“The maximum gross power production capacity of the Facility will be 74.8 MW, and the projected maximum net power production capacity is 74.426 MW. Solar is an intermittent energy source, and therefore, the maximum dependable capacity is 0 MW,” according to the application.

The application stated the electricity generated will be sold to Duke Energy, but the projected annual sales are “filed under seal” because “it con-

stitutes confidential and proprietary information.” The commission approved the project in March 2014.

In April 2015, an attorney for Rutherford Farm filed papers with the commission placing the project under the ownership of a new entity named Cypress Creek Renewables, a California-based company.

In August 2015, Duke filed with the Utilities Commission a copy of its power purchase agreement with Rutherford Farm, but the details are not available to the public.

“The agreement represents months of negotiation with the QF [qualifying facility]. Public disclosure would impair DEC’s [Duke Energy Carolinas’] ability to negotiate future purchased power agreements on favorable terms because future sellers would know what rates, terms, and conditions DEC is willing to accept and would begin their negotiations from that point,” the transmittal letter stated.

The size of the project has been reduced from 74 MW to 61 MW, according to Google.

CJ contacted Cypress Creek Renewables representative Michael Cohen, seeking more information about

the status of the solar facility. Cohen confirmed that construction has not started and asked that CJ submit questions by email.

CJ asked Cohen to confirm the megawatt capacity of the facility along with the expected start and finish dates. CJ also asked if the Dec. 31, 2015, expiration of the state’s 35 percent income tax credit for renewable energy projects would affect the future of this project. At press time, Cohen had not responded.

Google’s Lenoir data center

Google’s data center in Lenoir became operational in 2007. A third building is nearing completion. In early December when CJ visited the site, it appeared that Google was operating or testing two backup diesel generators at the new building.

Google officials will not reveal the estimated electrical demand in megawatts, the annual megawatt hours the new building will consume, or the capacity of the diesel generators connected to each building.

Facebook sour on N.C.?

While Duke’s new program meets the approval of Google, the program may not be enough for Facebook, a company that has a major data center in Forest City.

Covering the December Paris climate change summit for the *Raleigh News & Observer* and other publications, Justin Catanoso, director of journalism at Wake Forest University, reported that Facebook’s sustainability chief, Bill Weihl, stated during a panel presentation that his company would be unlikely to expand in North Carolina “because of new legislative policies that back away from support for renewables,” Catanoso wrote.

Catanoso cited the expiring tax credit for renewable energy as one of the state’s “legislative policies.”

“We are only considering states with strong policies and a determination to produce renewable energy,” Weihl said.

An aerial photo taken by CJ on Dec. 8, the date Catanoso’s article was published, indicates construction at the location started recently. An employee of the Forest City building inspections office told CJ that Facebook applied for a building permit in October but site preparation work had started.

CJ sought clarification from Facebook’s media office. A spokesman said the company has broken ground for the expansion in Forest City, and the project should be complete in 18 months. When asked about Weihl’s comments in Paris, he said the company had no comment on those reported remarks. CJ



Aerial photo showing where Facebook’s expansion has begun (cleared area) at its data center campus in Forest City. (CJ photo by Don Carrington)

Renewables 'Safe Harbor' Could Cost Taxpayers \$1 Billion

Continued from Page 1

search Division estimated that the safe-harbor provision would cost state taxpayers \$183.5 million in tax credits over five years.

Instead, Revenue received 201 applications for the tax credit and collected \$1,918,735 in application fees. When the John Locke Foundation reported Dec. 3 on the unexpectedly large volume of applications (the initial number cited was 199), Betsy McCorkle, chief lobbyist for the N.C. Sustainable Energy Association, wrote on Twitter, "based on the min application fee of \$5K, that's nearly \$1M to NC Treasury," a tweet that was shared by others affiliated with the renewable energy industry.

But after an earlier version of this story was posted at Carolina Journal Online, McCorkle asked for a correction on Twitter, writing: "I said nothing about the application fees being a net positive for taxpayers."

The Revenue report, provided to *Carolina Journal* by spokesman Trevor Johnson, projects a major hit to state revenues. The \$938 million figure "represents the highest possible credit allocation if every project application submitted is realized [in] full," Johnson wrote. "This figure likely includes projects which will be finished prior to the existing sunset date, but applied as protection against potential unforeseen project delays."

To qualify, projects with a total size of less than



A worker assembles a frame for solar panels at a Duke Energy project near Elizabeth City. (CJ photo by Don Carrington)

65 megawatts must have completed 80 percent of their expenditures and physical construction before Jan. 1. Projects 65 megawatts and larger must be at least 50 percent complete before Jan. 1.

To receive the credit, before March 1, proj-

ect owners must provide written certification that the conditions were met and include a report from an independent engineer licensed in North Carolina and a separate report from a certified public accountant licensed in North Carolina. CJ

Lawsuit Seeks to Overturn Judicial Retention Contests

By BARRY SMITH
Associate Editor

RALEIGH

An attorney and two Wake County voters have filed a lawsuit challenging the state's new law calling for retention referendums for justices of the N.C. Supreme Court, claiming that the referendum, passed this year by the General Assembly, does not meet the definition of an elec-

tion specified in the state constitution.

The attorney, Sabra Faires, who is registered unaffiliated, unsuccessfully ran in 2014 for a seat on the N.C. Court of Appeals. She has been an assistant secretary in the N.C. Department of Revenue, worked on the staffs of both the Democratic and Republican parties in the General Assembly, and worked in the Office of Administrative Hearings and the Rules Review Commis-

sion.

The two Wake County voters are Bennett Little Cotton and Diane Lahti. Both are registered Democrats.

The complaint challenging the new law's constitutionality states that Faires would like to file as a candidate for the Supreme Court seat currently held by Justice Bob Edmunds, but cannot do so because of the new law.

Edmunds has filed for another eight-year term on the state's highest court. That notice triggers a retention referendum. Based on the new law, he will be the only candidate eligible to run. Edmunds is a Republican, although elections for judicial races are held on a nonpartisan basis.

Under the new law, incumbent Supreme Court justices who have won their seats in an election and whose terms are ending can file a notice of intent with the State Board of Elections to seek another term, triggering the retention process.

The 2016 general election ballot for the Supreme Court seat simply will list Edmunds' name and ask voters to vote "for" or "against" him. If a majority of those casting ballots votes for Edmunds, he would win another term. If a majority votes against him, he would leave the court at the end of the year, and the governor would appoint a successor. A competitive election for a justice to serve a full eight-year term would occur at the next general election — in this case, November 2018.

The complaint says that a reten-

tion referendum does not meet the constitutional muster for an election and violates the state constitution.

"The [N.C.] Constitution requires an election in which opposing candidates may run for the office," the complaint says. A referendum listing only one candidate fails that test, the complaint adds.

Rep. Leo Daughtry, R-Johnston, one of the sponsors of the new law, says the new law does pass the constitutional test.

"There's a case in Tennessee that's right on point, that says it's an election," Daughtry said. "The court in Tennessee said that a retention election is an election."

The lawsuit also says that Faires meets the constitutional qualifications to seek the office, but the new law adds an unconstitutional qualification, allowing only an incumbent to run in a retention referendum.

Daughtry disagrees.

"She is not being shut out," Daughtry said of Faires. "She has to wait her turn."

The complaint also says that the new law denies the voters the right to vote on justices for the N.C. Supreme Court.

Daughtry said he favored retention elections because they should remove some politics from the process of choosing judges.

"If you have a lot of politics in the judiciary, I think justice suffers," Daughtry said. CJ

Faculty Protesters Disrupt UNC Board of Governors Meeting

Demonstrators call for reversal of Spellings hiring

BY KARI TRAVIS
Associate Editor

CHAPEL HILL

Protesters calling for the termination of UNC President-Elect Margaret Spellings disrupted the Dec. 11 meeting of the UNC Board of Governors, raising the prospect of disciplinary action for faculty members who — some board members suggested — may have violated the university's rules of conduct and decorum.

The meeting, which included a farewell speech from outgoing UNC President Tom Ross, the election of board Vice Chairman Lou Bissette to the post of chairman, and the appointment of interim President Junius Gonzales — who will serve until March 2016, when Spellings assumes the presidency — saw several UNC professors loudly interrupt the proceedings to demand the immediate termination of Spellings' appointment. Spellings, former U.S. secretary of education and current president of the George W. Bush Presidential Center in Dallas, did not attend the meeting.

"I think she represents everything that is wrong with the direction that higher education is headed from the profiteering of student debt, to the corporatization of higher education," protester Michael Behrent, an associate professor of history at Appalachian State University, told *Carolina Journal*.

Behrent joined several other faculty members, including Altha Cravey,



Altha Cravey, a geography professor at UNC-Chapel Hill, reads from a list of demands after interrupting the Dec. 11 meeting of the UNC Board of Governors. (CJ photo by Kari Travis)

an associate professor of geography at UNC-Chapel Hill, inside the meeting room to shout a list of demands before the board during the roll call. Several dozen protesters held signs and chanted slogans outside the Friday Center, where the meeting occurred.

"[Spellings] sees students as customers," Cravey said. "After she left the secretary [of education] position, she was involved in the for-profit industry. [There are] many other ways in which she's pushing to make less regulations on for-profit [efforts] so that she can make more money and benefit herself from these kinds of relationships."

Following the physical — but peaceful — removal of protesters from the meeting, the board addressed the situation, saying they had no problem with protesters, but those who interrupted public proceedings could not be tolerated.

"I don't believe that the public likes it when people come in and dis-

rupt our meetings," said board member Steven Long. "Free speech does not mean that you disrupt the meeting. And I believe that we should take some disciplinary action against faculty members who violate the law and disrupt public meetings."

Board member Marty Kotis supported Long's proposal, noting that time spent in board meetings is paid for by students and taxpayers alike, and that every minute of disruption is costly — and less productive than discussion.

"In the interest of this responsibility, it's important to look at the resources, and look at the time of people in this room, and the things that they do otherwise. Being disrupted and having to wait for chanting to [fade] is wasting money. So I would ask also that we enforce the statute and that we should take some sort of action."

Bissette said in a press conference following the meeting that he does not

think disciplinary action is the best way to deal with faculty members who participated in the protest.

"There ought to be a way that we could get together and address these concerns without having to do it in such a fashion and such a conflict," Bissette said. "We would love to have faculty show up to meetings as long as they don't disrupt our proceedings. ... They're so important to our whole system. [We] don't want to meet in conflict with the faculty. We want to work with them."

Faculty members say they were not consulted during UNC's presidential search process, a strong grievance, said Behrent, Cravey, and several other faculty protesters. Their list of demands not only requires the firing of Spellings, but also calls for more collaboration and transparency in UNC governance.

Bissette said that — though he has not been contacted directly by any of the protesters regarding these grievances — the demand for more transparency is very important to the board.

"I can tell you that our board has indicated to me they want to err on the side of more openness," Bissette told *CJ*. "And so we intend to do that. We haven't really sat down and formulated exactly how that will be, but I can tell you that from now on we're going to sit down and look at things in that manner."

That effort started with an educational presentation on open meetings law Dec. 10 from staff members at the UNC School of Government, which helped clarify legal terms and use for board members, Bissette added.

"I think it's a huge starting point," Behrent said of the board's strategy. *CJ*

Carolina Journal Connects the Dots

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Alamance May Try Letting Public Schools Act Like Charter Schools

BY KARI TRAVIS
Associate Editor

RALEIGH

The State Board of Education will consider again in February a proposal enabling failing traditional public schools to apply for an exemption easing some state regulations so they can operate more like charter schools.

The Policy for the Reform of Continually Low-Performing Schools, last heard Dec. 3 by the SBOE, resulted from a discussion between state Superintendent of Public Instruction June Atkinson and Alamance-Burlington School Superintendent Bill Harrison regarding whether two failing schools in the Alamance district, Eastlawn Elementary and Hawk River Elementary, might take advantage of the exemption established in 2010 under Senate Bill 704.

The legislation outlines four options for rehabilitating a failing public school. One option allows charter school exemptions as part of a “restart model.”

Harrison, the former SBOE chairman, said that — though his district is looking at all options, and no decisions for school rehabilitation have been made — the restart program is a real consideration.

“[Our system] is looking for ways to help schools where we recognize that students need more time to master grade-level content,” Harrison said. “We are looking for how we can provide that, given the current inflexibility of the school calendar law.”

If the waivers for the Alamance schools are approved, they would be the first in the state to take advantage of the charter exemptions.

“The legislation [in question]

required that the State Board of Education adopt policies to facilitate any school that would like to use that model,” Atkinson said. “So when Alamance-Burlington asked about the process, we recognized that we didn’t have State Board of Education policies in place. And so, consequently, that’s why we have brought to the State Board of Education a policy proposal.”

Atkinson said the Department of Public Instruction is creating an application public schools must submit to the state board before charter school waivers could be granted. The application will be completed in January and presented to the board alongside the policy text in February.

Though the policy allows public schools to act like charters, there remains a clear difference between traditional charters and restart schools, Atkinson said.

“Charter schools have boards independent from a local board of education,” Atkinson said. “And with this restart model, the local board of education maintains accountability and responsibility [of the restart school]. I think that’s the major difference.”

Some details of the statute remain unclear for schools hoping to enter a restart program, Atkinson said.

“There would ... be some flexibility with funding for restart schools,” Atkinson said. “And this is one example of us walking down a road that we have not walked before. Our traditional charter schools receive the same

amount of funding from [the] state [level], and even though they receive the same amount of funding [that] a regular school does, they have more flexibility in spending.”

One example is career and technical education funding, which must be spent by traditional schools based on rules dictated by the state. Charter schools, on the other hand, are allowed to spend the money as they see fit. It’s this type of charter flexibility that may now also apply to restart schools, Atkinson said.

Failing public schools are likely to find the restart program more appealing than becoming independent charter schools, mostly due to efficiency, said Gregg Sindors, senior education policy analyst for Rep. Paul “Skip” Stam, R-Wake.

“I think from a district perspective, they prefer the flexibility that comes with not having to go through the approval process of [establishing] a nonprofit board, and they would prefer to maintain control,” Sindors said.

Independent charter school operators in North Carolina don’t see the restart program as competition, said Lee Teague, spokesman for the North Carolina Public Charter Schools Association. Teague also wondered why these developments took so long.

“This law’s been on the books for five years,” Teague said. “Why is it now that one school [district] is looking to do a test case? [But] our message is ... if this will help you improve your schools, more power to you.”

Such improvement is unlikely for “continually low-performing schools” that qualify for the restart program, since those schools will remain under the control of the school board that allowed them to fail in the first place, said Baker Mitchell, founder and president of Roger Bacon Academy, which operates several charter schools in southeastern North Carolina.

“In general, well-trained teachers using proven curricula with help from knowledgeable coaches are the agents for positive change,” Mitchell said. “No policy or ‘model’ ever educated a child. A low-performing traditional district school restarting as a quasi-charter school will just result in a low-performing quasi-charter school so long as the same local board remains in control. Changing the name over the door will not improve the students’ education.”

“Until control at the top by the local districts breeding these low-performing schools is changed, no substantive improvement will occur for the children trapped in these failed schools,” Mitchell continued.

The restart program advances school choice for North Carolinians, however, said Sindors, who hopes other low-performing schools will follow the Alamance district’s lead and consider the opportunity.

“We have to make sure that there are avenues where charters and traditional public schools can collaborate and share ideas and services,” Sindors said. “I think this can help do it, but I still think we have a long way to go to make sure that collaboration is happening. We don’t want to create an ‘us versus them’ environment. We want to create a collaborative environment. And that’s not something you should have to legislate.”

CJ



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Opinion

Viewpoint Diversity is the Real Campus Issue That Needs Addressing

The tumultuous, racially charged demonstrations that rocked American campuses this fall show few signs of abating. In fact, they're spreading across the country because student activists have been emboldened by their "successes."

For example, at the University of Missouri, the president and chancellor resigned amid protests (even the football team threatened to go on strike) regarding allegations of racism on campus and the administration's refusal to address them. In response, the UM system announced the creation of a chief diversity, inclusion, and equity officer and various diversity initiatives.



JESSE SAFFRON

Common threads running throughout the campus upheavals include attacks on principles of free speech and the willingness of school officials to mollify students and cede control to leftist protesters. Given higher education's track record, however, both developments are unsurprising.

Universities long have preached the gospel of social justice through politicized degree programs, course work, and university policies. For years, there has been a proliferation of gender, black, and gay studies programs and a host of other partisan "studies" fields. Meanwhile, universities have ramped up multiculturalism

"training" for students, professors, and administrators.

The campuses also have treated students as customers to be appeased at all costs to keep the money flowing. The mind-set born of the combination of political correctness and consumerism has brought about policies that attempt to "protect" students' emotional well-being — usually at the expense of scholarly debate and the open exchange of ideas. Schools have disinclined campus speakers who offend the sensibilities of left-leaning students. They've given credence to illiberal concepts such as "trigger warnings" and "safe spaces."

The initial result has been the debasement of campus discourse, increased cultural and racial division, and diminished academic standards. But we are witnessing an even more disturbing trend: Much of academia is being turned on its head, with the least knowledgeable and least mature members of the academic community assuming command based on their emotions.

Protests started by individual campus events and by events outside academia have coalesced into a powerful national movement. Actual authorities cravenly submit to their demands, and one is tempted to think of such historical anti-intellectual movements as the Cultural Revolution in China under Mao Zedong or



the Italian monk Savonarola's "bonfires of the vanities."

Under the banners of "racial equality" and "solidarity," some of the protesters — who have aligned with the Black Lives Matter

movement and other nonacademic liberal causes — have shunned civil debate entirely. At Dartmouth College, protesters stormed a library, shouting racial epithets at white students trying to study.

At Yale University, a student screamed at a school official whose wife (also a Yale employee) had had the temerity to suggest that administrators should not regulate "offensive" Halloween costumes worn by students.

More problematic than these and related incidents, however, has been universities' timid responses. Out of fear of public shaming and protest, school officials have caved to this new movement's politically correct thought police. As mentioned above, some have resigned, and others have promised to spend millions on diversity and racial sensitivity programs.

But perspective is important. The truculent protesters on campus represent a very small fraction of the total student population. And while some agree with those protesters and their tactics, many others do not. There are signs that students want administrators to restore civility and reopen the

marketplace of ideas on campus.

So it's time for university leaders to stop allowing a small minority of militant activists to control university policies and campus dialogue. Rather than kowtow to the fringe and waste resources on diversity initiatives and cultural re-education programs, which have abysmal track records, universities should use recent events as a broader opportunity to learn.

In the coming months, instead of fear, university leaders should show "solidarity" around the First Amendment, intellectual vitality, and real diversity — viewpoint diversity, which is sorely lacking on many campuses. They can remind students that coercion and the stifling of opposing views — no matter how offensive they may be — hurt one's cause and social progress itself. The Black Lives Matter movement and other movements in the broader culture are free to behave as they wish; on college campuses, however, higher standards must be maintained and cherished.

In the end, this is a struggle to restore the spirit of higher education. Administrators, particularly at public universities, should think long and hard about their proper role and the trajectory of campus culture. Unfortunately, for many, it seems too difficult a task. After all, they created the university according to their beliefs, and the protesters are their intellectual progeny. *CJ*

Jesse Saffron is a senior writer for the John W. Pope Center for Higher Education Policy.

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COMMENTARY

Erasing the Past Won't Improve the Future

The rise of the Black Lives Matter movement in 2013, along with the massacre of nine black churchgoers last summer in Charleston, S.C., created racial hysteria and gave rise to an anti-intellectual movement that has now extended to American campuses. Its promoters want to purge society — and our universities — of historical relics and symbols that they say glorify white supremacy and perpetuate racism.

Ridding campuses of such controversial monuments may satisfy the emotionalism of these politically correct times, but it also will provide a false sense of closure to a complex chapter in our country's history.

The history of race relations in America, particularly in the South, is grim. Slavery, Ku Klux Klan terrorism, and the Jim Crow era, for example, were instances of systematic injustice with tragic lingering effects. But viewed in a different light, that history underscores our social progress and the factors that led to it.

Take higher education. Once reserved for wealthy white males, it's now open to all qualified males and females from all income brackets. Meritocracy thrives where once it did not. This is not to say that all is well in terms of race relations on campus. But it is hard to take seriously middle- and upper-middle-class students, attending the best colleges in the world, who claim that statues are oppressing them.

Over the summer, according to *Inside Higher Ed*, students at the University of North Carolina at Chapel Hill, the University of Texas at Austin, Winthrop University, and Clemson University vandalized statues and paintings "linked to racist figures or ideas from the Confederate or Jim Crow days of the South." Officials at UT-Austin eventually removed a statue of Jefferson Davis, president of the Confederacy.

In October and November, students from the College of William and Mary and the University of Missouri placed sticky notes with labels such as "rapist" and "racist" on statues of Thomas Jef-

erson and called for their removal. "Removing Jefferson's statue alone will not eliminate the racial problems we face in America today, but it will help cure the emotional and psychological strain of history," said the Missouri student who organized a petition to remove the statue.

To be sure, that urge to seek emotional resolution by extirpating the past is a powerful natural tendency for those who feel downtrodden. One of the first things the people of Eastern Europe did when the Iron Curtain fell was to bring statues of Communist tyrants such as Lenin, Stalin, and Ceausescu crashing to the ground.

Yet, the situation on American campuses is far different. Those who destroyed the statues of Lenin suffered directly from the Communist regime — they had family members hauled off to die in the Gulag or may have spent time there themselves. Their own freedom, particularly of expression, was restricted greatly.

But the students at Chapel Hill and Missouri are attending the top public universities in their states, quite often at others' expense. And their voices are not silenced; instead, every time one opens his or her mouth, it seems that a dozen media microphones rush to capture every word.

Considerable time has elapsed since the great majority of racial injustices, and many black families have prospered in this country. For instance, the key leader of the Black Lives Matters protests at the University of Missouri, Jonathan Butler, is a graduate student and son of a millionaire.

Universities must avoid the anti-intellectual hysteria that is growing on the very campuses where preserving the past and open inquiry should most be upheld as ideals. That entails defending history, warts and all, even when individuals take offense and refuse to recognize its value. CJ

Jesse Saffron is a senior writer for the John W. Pope Center for Higher Education Policy.



JESSE SAFFRON

COMMENTARY

Conservative Reforms Needed in Halifax

In recent years, advocates on the left and right have advanced reforms designed to improve low-performing public schools in North Carolina. Their proposals represent two fundamentally different visions of the role of government.

On one side, liberals argue that the state, with help from the courts, should reconstitute school districts, boost resources, and ensure schools are racially and socio-economically diverse. On the other side, conservatives believe that legislative efforts to strengthen accountability, increase educational options, and enhance local control are more promising than throwing more money and mandates at the problem.

The recent history of the state's most beleaguered public school district, the Halifax County Schools, suggests that liberal approaches have failed to provide the education that families deserve.

In 2009, Superior Court Judge Howard Manning, who monitors student performance in low-income districts as part of the *Leandro* court case, declared that the Halifax County Schools were committing "academic genocide" by failing to provide students a "sound basic education" as guaranteed by the state constitution. Moreover, Manning threatened to subject Halifax schools to state control.

But the court did not order the state to initiate a takeover. Instead, the N.C. Department of Public Instruction intensified its turnaround efforts, directing additional resources and support to teachers, administrators, and staff. Despite the ongoing assistance, little progress had been made.

Six years after Manning's warning, academic achievement continues to flounder. Just over one-third of the district's third-graders read at grade level, compared to a statewide average of 60 percent. Only one in five Halifax eighth-graders are proficient in reading, while over half of North Carolina students meet this mark.

The abysmal performance of students, coupled with the appalling behavior of some school district leaders, prompted the State Board of Education to intervene in the budgetary and personnel affairs of the Halifax County Schools. Some believe that the courts and/or the state should go even further. Attorneys from the UNC Cen-

ter for Civil Rights recently asked the courts to force the Halifax County Board of Commissioners to merge Halifax County Schools with the other two school districts in the county, Roanoke City Schools and Weldon City Schools. The plaintiffs argue that merging the districts would produce academic benefits, operational efficiencies, racial balance, and a precedent for legal challenges to districts in other states. But there is little empirical evidence that merged districts produce the kinds of academic, budgetary, and demographic outcomes envisioned by UNC lawyers.

On the other hand, advocacy groups claim that low-performing districts simply do not have resources necessary to boost student performance. Yet, Halifax County Schools has one of the highest per-student expenditures in the state. The district spent nearly \$11,800 per student last year, which was \$3,000 more than North Carolina's statewide student average. These expenditures have allowed the district to maintain lower-than-average class sizes and own more Internet-connected digital learning devices than students enrolled.

Others say that school improvement is not possible until state and federal government programs alleviate poverty. But demographics are not destiny. Nearby Gaston College Preparatory, a charter school where nearly 75 percent of students qualify for the federal government's free- or reduced-price school lunch program, spends an estimated \$2,000 per student less than Halifax County Schools but produces considerably higher test scores than most schools in the region.

Indeed, the success of Gaston Prep suggests that expanding school choice is one way to improve the quality of schooling for students in Halifax County. At minimum, the district should collaborate with successful charter schools and adopt policies and practices that have been successful in those schools. Allowing an "achievement school district" to coordinate one or more school improvement initiatives is another idea well worth exploring. CJ

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



TERRY STOOPS

Regulator Dispute Made N.C. Literally a Battleground State

The last two columns in this space have described how North Carolina has, over time, developed a reputation as a battleground state. Tar Heels may be surprised

to learn, however, that North Carolinians, with opposing opinions, once unfortunately settled their political debate on an actual battleground — the 1771 Battle of Alamance.

The Regulator Rebellion lasted from 1768-71.

(There had been prior distrust of the royal government, but it intensified after the 1759 Enfield Riots.) Opposition increased exponentially in the late 1760s. Many started to consider the North Carolina royal government as duplicitous.

Hailing mainly from the Piedmont, Regulators criticized what they deemed excessive legal fees and increasingly intrusive government meddling in private matters. They also criticized what they considered political corruption and cronyism. The royal government and many eastern

North Carolinians (including some future American founders), however, thought differently.

A particular complaint regarded the construction of Tryon Palace, one of the largest and most ornate buildings in colonial North Carolina. Many Regulators threatened not to pay any taxes to fund its construction, a project that lasted almost four years. Although not ostentatious by modern standards, many Piedmont farmers — who typically lived in one- or two-room dwellings — considered Tryon Palace to be lavish.

The noted evangelist Rev. Shubal Stearns of Randolph County and other Baptists from the Sandy Creek Association (founded in the 1750s) took umbrage with the colonial government. Their religious and political views fostered a defiance of government establishment. They petitioned the royal government to stick to its legitimate functions. Sheriff Edmund Fanning labeled their actions as an insurrection. The association, therefore, disbanded to avoid charges of treason.

The Regulators formed in 1768, and many chose not to pay taxes. As a result, property, including horses, was seized, and farmers' livelihoods were threatened. They then took targeted action, in particular making a

local sheriff ride a horse backward in Hillsborough, hoping to shame those they considered unlawful government officials. Fanning, however, intensified the situation by labeling them "rebels" and "insurgents."

In 1770, Regulators assembled once again in Hillsborough — this time to disrupt the court and bring attention to their demands. In March, Regulators, armed with clubs and whips, packed the courthouse and asked to be jury members. The court ignored their requests.

Outside the courtroom, frustrated Regulators attacked a lawyer and then re-entered the courthouse, seized Fanning, and beat him, too. Both men eventually escaped but were soon found.

Under duress, both made agreements with Regulators, and Judge Richardson Henderson agreed to continue holding court the next day — and then the judge fled town. As a result, agitated Regulators targeted Fanning. They ran him out of town, plundered his home, marched with his effigy through Hillsborough, and destroyed a church bell he had donated.

The political (and some historians argue religious) conflict ended on a Piedmont field. Earlier in 1771,

the Assembly passed a Riot Bill. The act made assemblies — defined as 10 or more people — unlawful if they refused to disperse within an hour after the bill was read to them. Law enforcement agents were not held accountable if they injured or even killed rioters while dispersing them, and the bill allowed for the establishment of emergency courts and the declaration of rioters as outlaws.

The Riot Bill was invoked before the Battle of Alamance occurred. There, Piedmont farmers clashed with North Carolina militia, mainly comprising eastern North Carolinians. Although the Regulators outnumbered the militia, they were outgunned and outmaneuvered. After two hours, Regulators fled the field, and Royal Governor William Tryon and the militia settled the political dispute.

Shortly afterward, six Regulators were hanged as an example, and amnesty was offered to all who pledged an oath of allegiance.

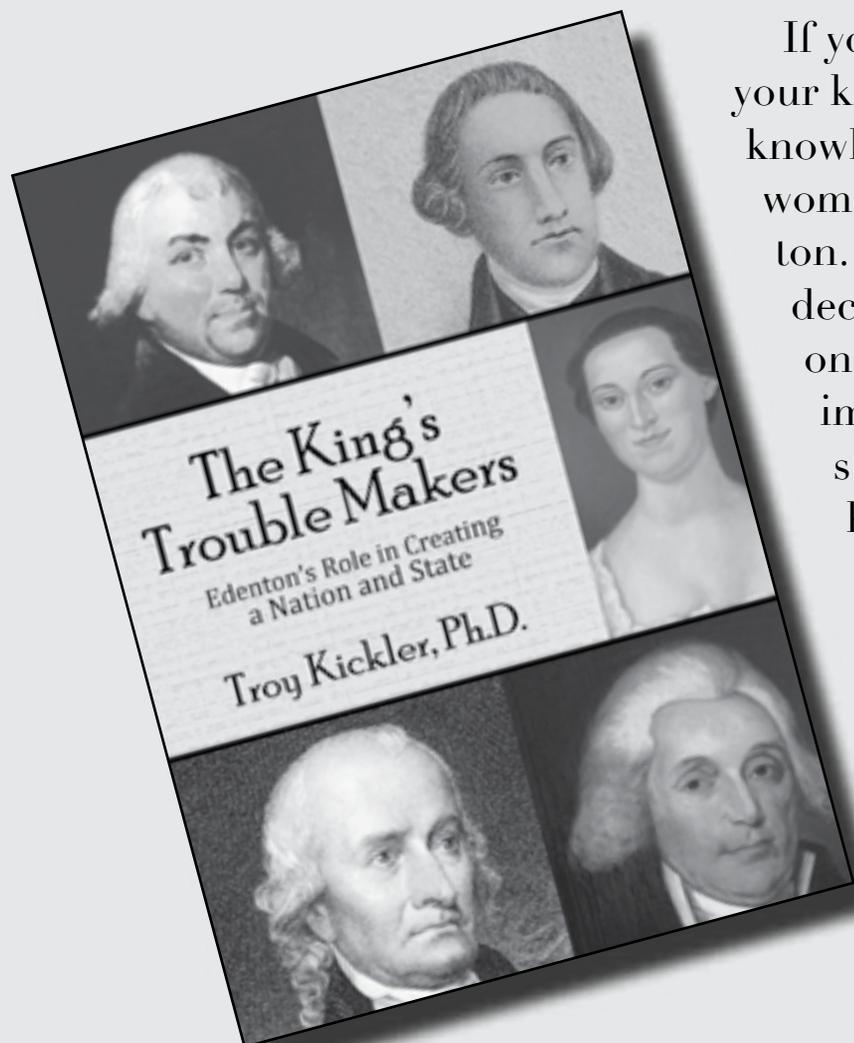
Although current political debates in North Carolina can be heated, the Old North State, thankfully, is not literally a battleground state. *CJ*

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



**TROY
KICKLER**

BOOKS BY JOHN LOCKE FOUNDATION AUTHORS



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

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

Go to northcarolinahistory.org for more information.

Barnes: Jack Kemp's Supply-Side Philosophy Helped Change America

BY CJ STAFF

RALEIGH

Two decades have passed since Jack Kemp earned national headlines as the Republican vice presidential candidate in 1996, but his political legacy continues. A new book labels Kemp “the bleeding-heart conservative who changed America.” Co-author Fred Barnes is executive editor of *The Weekly Standard* and political commentator for Fox News. Barnes discussed Kemp’s role in American political history with Mitch Kokai for Carolina Journal Radio. (Head to <http://www.carolinajournal.com/cjradio/> to find a station near you or to learn about the weekly CJ Radio podcast.)

Kokai: Why did you decide, along with Morton Kondracke, your co-writer, that Jack Kemp deserved to have this biography at this time?

Barnes: Well, as we say in the first line of the book, Mitch, Jack Kemp was the most important politician in the 20th century in America who wasn’t president. And Mort wanted to hedge on that a little, and so there’s a subordinate clause that also says “at least he was the most influential Republican.” So, in any case, Kemp was a member of the House, who in the 1970s was not in a major committee, was certainly not a committee chairman, was not in the Republican leadership, and yet, built up a movement behind supply-side economics and these sweeping and deep tax cuts that he then steered Reagan toward. ...

In the House, they were known as the Kemp-Roth tax cuts, named after Kemp and Delaware Sen. Bill Roth. Reagan grabbed onto them, at Kemp’s urging, in his 1980 campaign, and then, when elected, proposed them to Congress. They were in a slightly trimmed-down form, 25 percent rather than 30 percent, across the board.

They were enacted, and what resulted? More than two decades of economic boom. None of this 2 percent growth that we are now told is the new normal, which I don’t believe. But, in any case, this was 4, 5, and 6 percent growth. Not entirely that, but certainly in the early years of the Reagan administration, after the tax cuts went into effect.

One of the things I certainly think, and I think my co-author Mort Kondracke agrees, that what we need now is a new attack on the economy by supply-side economics — in providing incentives for people to invest and start companies and work and save and so on. All the great things that happened in the 1980s and the 1990s, in particular, thanks to Jack Kemp and Ronald Reagan.

Kokai: Now, some people in our

“[Jack Kemp] didn’t think that African-Americans should be Democrats. He thought they were natural Republicans, which they had been, of course, after the Civil War for a long, long time. But they had become so strongly Democratic, and he wanted to change that.”

*Fred Barnes
Co-Author of*

*Jack Kemp: The Bleeding-Heart
Conservative Who Changed America*



audience will know exactly what we are talking about when we are talking about supply-side tax cuts, but for those who know the words but really don’t know what they mean, what are we talking about?

Barnes: When we are talking about supply-side tax cuts, we are talking about a particular kind. Ronald Reagan had always been for tax cuts of various kinds, and so he was not a difficult person to be convinced that these supply-side tax cuts were important. And what they do is they cut the individual income tax rates across the board, at every level.

When they were first enacted, the top rate was 70 percent. It came down to 50 percent. And then in tax reform, also based on supply-side economics, the top rate went from 50 percent down to 28 percent. This was in 1986.

Cutting the individual rates, not ... special tax credits for this and that, but sweeping cuts across the board on individual income tax rates, the theory was they would provide incentives to people to invest and grow the economy and hire people and job creation and so on. The great thing about these supply-side tax cuts and the only reason we are talking about them today, Mitch, is because they worked.

Kokai: Before politics, he was a pro football star.

Barnes: He was a great pro football star. You know, the thing that saved him after being cut from five different National Football League teams was the beginning of the American Football League. ... He retired in 1969 and, lo and behold, he was in Buffalo, N.Y., where he played for the Buffalo Bills, was asked by Republicans there to run for Congress, an open House seat, and he won in 1970.

[He] got to Congress and de-

cid, “Gee, what do I need to focus on?” By then, the Rust Belt was becoming the Rust Belt, particularly in Buffalo, where factories were closing and the population was shrinking and the economy was narrowing. And so he landed on the idea of a couple of tax cuts that went nowhere. A job creation act, and so on, that went nowhere in Congress.

Remember, he was a backbencher. He was a nobody — except he did have two things. He had pretty good name ID because he had been a pro football player and a pretty good one, a quarterback, and he was a really dynamic figure and a great speaker. He finally in 1976 and ’77 became convinced that the supply-side tax cuts were the ones that would truly help the economy across the board. And that led to what we were talking about earlier.

They never passed the House, but once he had a famous meeting at Los Angeles International Airport in January of 1980, the Kemp people and the Reagan people — but particularly Kemp and Reagan — after that, Reagan agreed, and the rest is history.

Kokai: I have to ask you: We often hear “bleeding-heart” used with “liberal.” Your title calls him a bleeding-heart conservative. Why?

Barnes: The reason is, you know, Kemp always talked about, “We need to make the Republican party broader. We need to bring it back to being the party of Abraham Lincoln.” This was a constant comment of his. And he really tried to do that.

He thought that conservative principles and conservative ideas would work as well in a prosperous suburb and would work just that well in a poor community in a city, and wanted to take tax cuts and enterprise zones and school choice and all these things to African-American neighbor-

hoods and Hispanic neighborhoods.

He really pressed for other Republicans to follow him and to go into these neighborhoods and campaign there. He didn’t think that African-Americans should be Democrats. He thought they were natural Republicans, which they had been, of course, after the Civil War for a long, long time. But they had become so strongly Democratic, and he wanted to change that. He wanted Hispanics and other immigrants to be Republicans because he thought that that’s where they belonged, that the conservative ideas were the ones [that] actually would serve them the best.

Kokai: ... One way in which Jack Kemp’s legacy lives on is his influence on people like the new speaker of the U.S. House.

Barnes: Indeed. Paul Ryan was an acolyte. He worked for Jack Kemp. It was one of his first jobs in Washington, after graduating from college. He worked at what is a now defunct think tank called Empower America. I’ve talked to Paul Ryan about this many times, and he said it was the most thrilling job he could possibly have. All these famous conservative economists [came] to see Jack Kemp, whether it was Milton Friedman, Martin Feldstein, Murray Weidenbaum, or all these great economists, Alan Greenspan.

He just said he learned so much at Kemp’s footsteps and as a supply-side acolyte of Kemp. The other thing about Kemp that he reflects is that Kemp never spoke ill, personally, of anybody. Paul Ryan doesn’t, either. He may disagree on issues and principles with Democrats and liberals, but he never attacks them personally. That’s one of the reasons why he is so highly thought of.

COMMENTARY

Elections And A Kind Heart

I was catching up with my favorite 8-year-old recently, and the conversation turned, as so many do these days, to the election. No, not the U.S. presidential election, or the governor's race, or the 170 General Assembly seats that will be selected in 2016. There had been a student council election at her charter school, and she had some interesting thoughts to share.

My granddaughter was nominated to represent her third-grade class in the council. She lost, explaining, "I think the only person who voted for me was me." Her classmate Penelope won the seat. How? "People liked her. She has a kind heart."

My granddaughter went on to tell me who was elected president and the different officers of the student council. Some candidates she supported won; some didn't. When I asked her why she supported one candidate, she said she knew the guy's sister. She supported another because he seemed like a nice person — "he must have a kind heart," she speculated. And she supported a third because she liked the candidate's speech and her posters were colorful. All in all, she seemed satisfied with the election results and is optimistic of new leadership at her school.

She was disappointed that she didn't win, but she did like that everyone who voted got a rainbow sticker. She showed me hers with a smile.

With five more years to go at this school, she plans to run again. This was her first election, and she learned a lot. She'll do things differently next time. She'll explain better how to be the best representative for her class. She won't be mean to anyone, and she'll make sure they all know she has a kind heart.

Her campaign platform? She'll work to make her class the top class in the school. She'll make them safer by getting additional supplies in the first-aid kit. And she'll get them everything on their wish list.

I came away from this conversation with insight about our upcoming elections. We want our leaders to have kind hearts; safety is an important issue; advertising

works; and personal connections matter. Some people will promise anything to get elected. The right to vote makes us feel good. Good candidates are essential for good outcomes.

Well-informed candidates are better candidates. In this upcoming election, North Carolina's candidates face tough challenges and difficult questions. What does a responsible state budget look like? What is fair taxation? What is the

best way to encourage economic growth and job creation? Are property rights secure? How do we ensure every child gets a good education and has every opportunity to succeed? How are long-term transportation and infrastructure needs best addressed? Can North Carolina be First in Freedom?

Running for office can be overwhelming. Where can candidates go for the best ideas to tackle these tough questions? As we've done every election cycle since 2008, the John Locke Foundation will provide candidates information about public policy, educational forums, and workshops — incumbents, first-timers, or anyone who may be interested in running later.

We offer solutions and ideas based on facts and steeped in data. But we also understand public policy is more than numbers, graphs, and charts, that real people and real families are affected.

Whether it's the entrepreneur worried about regulations, a student looking for the education that best fits his needs, or the taxpayer expecting accountability and fiscal responsibility — we have the ideas to ensure North Carolinians have the freedom to pursue their dreams. We understand that having a kind heart means unleashing every individual's potential. And kind hearts, as my favorite 8-year-old observed, is what we want our leaders to have.

If you're interested in our candidate education forums, give me a call at (919) 828-3876. CJ

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



BECKI GRAY



EDITORIAL

Redistricting Reform Should Be Priority

By the time you read this, either hundreds of candidates will be running a 10-week sprint toward the state's March 15 primary, or hundreds of elected officials and attorneys will be scrambling to redraw congressional and legislative districts and determine how to start the filing process from scratch.

It should be the former. The state Supreme Court on Dec. 17 issued a well-reasoned opinion concluding that the districts drawn by the 2011 General Assembly complied with the state and federal constitutions — the fourth time those maps have survived a legal challenge.

But the left-leaning plaintiffs suing the state — led by the state's Democratic Party and its chapter of the NAACP — aren't done. They vowed to file yet another appeal to the U.S. Supreme Court, asking the federal justices to invalidate the districts, forcing lawmakers to go back to the drawing board, possibly requiring primary elections sometime this summer.

If the federal justices entertain the appeal, state taxpayers should prepare to cough up millions more dollars — in legal fees defending the current districts, and more if the General Assembly has to draw new maps, defend them in court, and schedule new candidate filing periods and primary elections.

Whatever the outcome, the perpetual court fights over legislative districts should elevate one issue to the top of the 2016 legislative session's agenda: independent redistricting reform.

In 2015, the state House considered two bills that would take map

drawing out of the hands of legislators. One would have legislative staff, after the 2020 census, set district maps and subject them to an up-or-down legislative vote. The other would establish, after the 2030 census, an independent commission to present three sets of maps to the legislature for approval. In both instances, the districts must be contiguous, must include equal numbers of residents, and should not divide cities or counties when possible.

So long as those and a few other rules requiring impartiality are followed, it doesn't really matter whether a commission or legislative staffers draw the lines.

Both House bills are stuck in committee, and that's where they're likely to stay, even though more than half the members of the House have co-sponsored one of them (House Bill 92). Several key senators continue to insist that no bill passing the House will move through the Senate — which is no surprise, since few politicians in the majority party want to surrender power.

But we maintain what may be a naïve hope that a spirit of public service could prevail. The two top combatants in the debate, House Speaker Pro Tem Paul "Skip" Stam, R-Wake (a lead sponsor of H.B. 92), and Sen. Bob Rucho, R-Mecklenburg, who chairs the Senate Redistricting Committee, and sees no need for reforms, are retiring after this year's session.

Rucho and his Senate allies could leave a legacy to make North Carolinians of all partisan persuasions proud, and allow independent redistricting — at a minimum — to get a fair debate. CJ

EDITORIALS

Budget News

The numbers were so good, liberals ignored them

A year ago, the sky was falling in North Carolina — fiscally speaking. During the latter part of 2014, liberal editorialists and Democratic operatives repeatedly predicted that the state budget would experience revenue shortfalls by the end of the fiscal year in June 2015. Some said the resulting budget deficits would be \$300 million to \$400 million. Others pegged the potential gap at well over \$1 billion. They blamed Gov. Pat McCrory and the GOP-controlled General Assembly for cutting taxes too much.

As we now know, the Left's predictions were wildly, ridiculously off the mark. General Fund revenues for the 2014-15 fiscal year exceeded expectations by some \$446 million. Combined with unspent funds reverting to the state treasury, this created a budget surplus of more than \$860 million.

Why were North Carolina liberals so very wrong about taxes and the state budget? The immediate problem was that they extrapolated what would happen over the course of a year from data collected for only the first few months of the year. The larger problem was that, in our view, they simply wanted to see doom and gloom. They thought the dramatic tax cuts and other conservative policies

enacted by Republicans in Raleigh were bad ideas, destined to fail, and jumped to conclusions.

Here we are in the late fall of 2015, with the same preliminary data available for the 2015-16 fiscal year. Through October, General Fund revenues are running nearly \$400 million above what they were this time last year.

Where are all the front-page stories and triumphant editorials about how the state is on track to run a comfortable budget surplus for 2015-16? They haven't happened. We suspect that good news is simply less useful to

the Left.

Of course, it really is too early to declare victory or defeat. While it is quite possible that North Carolina will run another budget surplus, no one should count on it.

Fortunately, we don't have to. Thanks to the fiscal discipline of the past five years, the state has built up some \$1.5 billion in rainy-day reserves, contingency funds, and other cash accounts.

Fiscal discipline may not be exciting. But it's a welcome respite from the recent past — unless, of course, what you really want is some bad news to clobber state Republicans with. *CJ*



Income Data

Underlying trends may not be obvious

Over the past 12 months, North Carolina has experienced faster income growth than the rest of the country, regardless of whether the measure is average income per person or median income by household.

But this bit of good news comes after years of falling short. Since the turn of the 21st century, average annual income growth in North Carolina has averaged 2.5 percent, below the national average of 3 percent. During the 1980s and 1990s, we usually outperformed the national and regional averages.

Changes in state-by-state income statistics are not always what they appear to be. Unless you consider such factors as population flows and household formation, you can be misled by the official income statistics.

For example, consider a Mexican laborer who immigrates north (legally

or illegally) to find work. If he takes a job in North Carolina harvesting produce, his income will be modest by state standards, slightly pulling down the state average. But he will himself likely experience a very large increase in his income. That's why he came to North Carolina.

Similarly, because people in their 20s and 30s tend to earn less than people in their 40s and 50s, an inflow of young people can be both a sign of economic vitality and a factor pulling down the area's average or median incomes, at least in the short run.

At the end of the 20th century, young Americans as well as immigrants were making up an increasing share of our population inflow compared to the 1970s, 1980s, and early 1990s.

The personal incomes of these new North Carolinians were rising. But their arrival pulled down the state's average. *CJ*

COMMENTARY

Activists Oppose Free Speech

However complicated you want to try to make it, the concept of free speech does not contain the right to shut other people up. Unfortunately, an entire movement of political activists right now not only disagrees with my assertion but also seeks to keep me from saying it, in a variety of contexts.

For example, say I was not arguing this in a column but was instead attending a public forum at a University of North Carolina campus. If I was standing in line at the microphone, waiting my turn with other participants to address the audience, there are plenty of students and professors who would feel entitled to shout me down.

Don't believe me? I have evidence. Recently, a small group of students disrupted a public forum at UNC-Chapel Hill and, ignoring the moderator and other students waiting to speak, issued a list of absurd demands. Something similar also happened at a meeting of the UNC Board of Governors, where a group of professors began shouting demands that included the ouster of incoming system president Margaret Spellings.

There's another setting in

which political activists might seek to limit my freedom of speech. Say that I sought to express myself by creating a company to publish a book or produce a documentary on the First Amendment. Let's

further say that my work included criticism of a politician for his or her stance on the First Amendment. If I sought to release my work while the politician was seeking election, many activists would think it proper for the federal government to prevent me from doing so.

This is the very subject of the *Citizens United* case. During the 2008 Democratic primaries, a conservative group named Citizens United wanted to release a film critical of Hillary Clinton and advertise its release on television. A federal law said it couldn't. After the fact, the U.S. Supreme Court struck down that law. Ever since, liberal politicians and activists have fumed

about the decision. They promise to amend the free speech clause of the First Amendment to reinstate the original restriction.

Finally, let's say that I contributed money to an existing group producing materials advocating free speech, including content to be released during election campaigns. While I would not be speaking, the free-speech clause of the Constitution does not specify how political expression may be conducted. We are free to band together with other like-minded individuals and pool our resources to reach a larger audience with a common message.

Again, however, plenty of activists think there is no such right — they say the individual right to speak, publish, or broadcast disappears when individuals join together in corporations or other groups. They are quite unhinged on the subject, as they insist that because corporations are inanimate contractual relationships, they have no constitutional rights.

Even my 7-year-old stepdaughter understands when I say that her school put on a wonderful Christmas play, I don't mean the building stood up on mechanical legs and began singing "Away In

a Manger." I mean that the teachers and students in the school put on the play. To say Citizens United, the NAACP, or the Catholic Church exercises free-speech rights says the human beings

who form, sustain, and operate these organizations are exercising these rights.

Interestingly, few of these zealots have tried to argue that media outlets such as newspapers lack freedom of expression. They don't deny that editors have the authority to choose which letters or columns to run on editorial pages, or that the First Amendment applies to newspapers owned by corporations.

I suppose I should stop speaking now. I don't want to give them any ideas. *CJ*

John Hood is chairman of the John Locke Foundation.



JOHN HOOD

People don't lose First Amendment protections simply because they join with others

MEDIA MANGLE

Ochs' Dictum Now A Quaint Relic

There's a disturbing trend among mainstream news outlets these days. Call it "airbrushing history" or putting inconvenient news or facts "down the memory hole." Whatever you call it, it's a long way from the notion of delivering the news "without fear or favor."

That last phrase, "without fear or favor," came originally from the lips of Adolph Ochs, the founder of *The New York Times*.

That notion, that a newspaper should print the news, the truth, no matter who it offends, who it hurts, who it embarrasses, or who it angers, seems quaint and outmoded in today's media environment.

It's ironic that the paper that has most enthusiastically jettisoned Ochs' dictum happens to be *The New York Times* itself. Uncle Adolph can't be happy, looking down from that great newsroom in the sky.

This trend is not limited to the *Times*. We've all seen ABC, CBS, or *The Washington Post* do a poll, and when the results are not rosy for Democrats or the left, somehow the poll, or the embarrassing parts of it, never get reported. If you want to see many examples, go to MRC.org. You'll be amazed.

Sometimes it's not a poll, but what a news medium's very own reporters already have reported that get the airbrushes out and the lid taken off the memory hole. *The New York Times* had to take such action on Dec. 17.

Times reporters Peter Baker and Gardiner Harris wrote about President Obama's meeting with opinion columnists, in which he addressed the terror climate after the San Bernardino attacks. Here's a paragraph from their original story:

In his meeting with the columnists, Mr. Obama indicated that he did not see enough cable television to fully appreciate the anxiety after the attacks in Paris and San Bernardino, and made clear that he plans to step up his public arguments.

This was an amazing admission by a president, that he was so out of touch with the American people that he didn't appreciate their apprehension about the growing terrorism problem. Very quickly, the paragraph was expunged from the story.

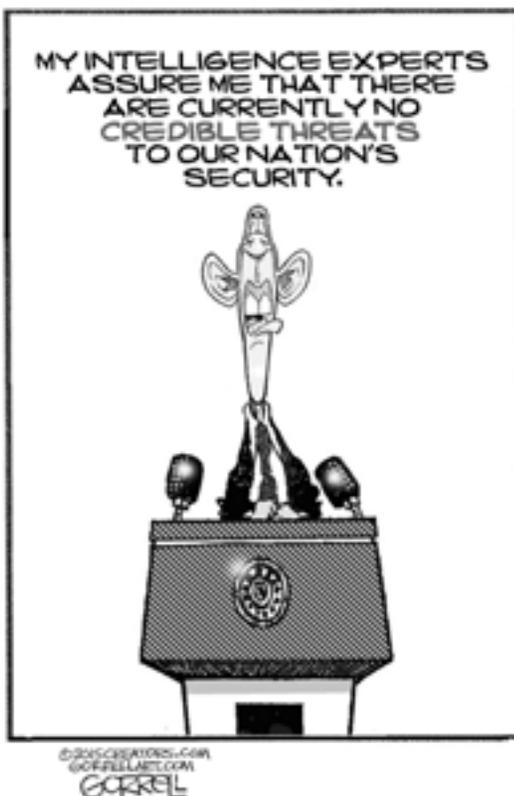
As social media exploded, a *Times* spokesman said the paragraph was deleted for space reasons for the print edition. But many social media observers noted that the *Times* didn't just delete the paragraph above, but added two more, which made the added material twice as long as the original excised paragraph. So much for the space argument.

I think any objective observer understands what happened: The *Times* realized after publishing it that this was too damaging to Obama to let stand, and it had to go down the memory hole. So much for "without fear or favor." CJ

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



JON
HAM



EXCEPT FOR ME.



Deciphering Unemployment Rates

Economic statistics can be confusing. I've been dealing with them as a professional economist for almost 40 years. While some say you can prove anything with statistics, I say you just have to know how to interpret the statistics correctly.

I raise this issue because an interesting statistical relationship occurred in North Carolina in 2015. After peaking at over 11 percent in early 2010, North Carolina's jobless rate steadily fell for the next five years, hitting 5.3 percent in early 2015. But then the progress suddenly reversed, with the rate rising to 5.9 percent by late summer.

Yet, over the months in 2015 that North Carolina's unemployment rate was rising, more than 40,000 people reported getting jobs. That's right, both the jobless rate and the number of employed individuals were going up at the same time.

Indeed, in the past year North Carolina has been adding jobs at a faster rate than the nation. From October 2014 to October 2015, the number of employed individuals in North Carolina rose 2.8 percent, over twice as fast as the 1.3 percent increase in employed individuals in the national economy.

It looks like these statistical trends are incompatible. But they actually aren't. The key to knowing why is to understand how the unemployment statistics are derived.

The unemployment rate is calculated as the number of people unemployed divided by the number of people in the labor force. The number of people in the labor force includes those having jobs plus those without jobs who are also actively looking for work — meaning they went on job interviews, contacted potential employers, or sent out job resumes.

The solution to the statistical puzzle of how the number of employed people and the jobless rate can both rise is this: If the number of employed people increases but the number of people in the labor force increases more, then the unemployment rate will rise.

This is exactly what happened in North Carolina in 2015. While the state's jobless rate was rising, the number of people in the labor force was jumping 90 percent faster than employment. Mathematically, this resulted in a higher official unemployment rate. Compared to the nation, North Carolina's labor force increased almost six times faster. So, puzzle solved!

Well, maybe not yet. There's still the question of why our state's labor force rose faster than the number of jobs as well as at a faster rate than for the nation.

There are two main reasons. One is that North Carolina is attracting more people from other states, and until all of them get jobs, they add to the labor force without adding to the ranks of the employed. Traditionally North Carolina has been a magnet for interstate movers (yours truly is one of those). In 2014, North Carolina's in-migration rate — which measures the relative size of the number of people moving into a state — was almost 25 percent higher than the rate of the average state.

The second reason is that an improving job market is causing jobless individuals who had stopped looking for work — and aren't counted as unemployed in the main jobless rate — to begin looking again. They will be added to the labor force, but until they get a job, they will not be added to the number of employed individuals.

My last statement may be the big question: Will these folks find work? Studies show those without a job for a long period of time have the toughest time ultimately becoming employed. The reason is these individuals often have obsolete skills — meaning they don't have the right skills for the types of jobs available.

Given the massive changes in the North Carolina economy in recent decades — including the decline in traditional industries like textiles and furniture and the increase in the ability of modern technology and machinery to replace human labor — skill obsolescence may be our biggest job challenge. CJ

Michael Walden is a Reynolds Distinguished Professor at North Carolina State University. He does not speak for the university.



MICHAEL
WALDEN

Where's the Intellectual Diversity?

I thought the response to this fall's "cultural diversity" rallies on college campuses said a great deal about the priorities of American university leaders. For the most part, administrators barely engaged protesters, instead reflexively pledging policy changes and significant resources — \$50 million in the case of some Ivy League institutions — to meet wide-ranging demands. In doing so, they revealed a continuing myopia. So long as the faculty and student body look heterogeneous, furthering intellectual diversity by promoting a wide variety of viewpoints about politics, history, literature, and the many other disciplines usually taught at college does not seem to matter.



ANDY TAYLOR

N.C. State University, where I have taught for the past 20 years, provides a modest example. It has a few stated core values, including "respect for cultural and intellectual diversity," but does not consider them equivalents. Along with others, I have raised private funds — for outside speakers, faculty and student research, and undergraduate seminars and reading groups — that have the effect of both elevating and sometimes, by bringing conservative voices and ideas to campus, variegating the intellectual

climate.

Yet whereas the university devotes significant resources to administrative units, events, and even faculty lines to fulfill its commitment to cultural diversity, beyond providing a small budget for registered student groups I'm hard-pressed to identify state-funded investment of the intellectual kind. In response to a tasteless off-campus student party this fall, Chancellor Randy Woodson has pledged to do more for diversity, including making members of possibly the most racially sensitive occupational class in America more "culturally competent."

Intellectual diversity is critically important at a public university, for many reasons. North Carolina taxpayers provide over a fourth of UNC system funding and most of its students. It is reasonable for them to expect faculty views and curricula to reflect broadly their values and understanding of what is important for a young person to know. Surveys repeatedly reveal professors to be overwhelmingly from the political left, however. And even if instructors can be unbiased in the classroom, their political attitudes drive professional interests. Liberal faculty in the social sciences and humanities have moved away from the traditional core and its comprehensive curriculum and focused intensely on matters like gender, race, and postmodernism.

The political imbalance among faculty also plays an important role in the erosion of public trust in the acad-

emy. A 2006 study from the American Association of University Professors found that 37.5 percent of Americans believed ideological bias in the classroom to be a "very serious problem." In the decade since, a UCLA survey estimates the number of professors who characterize themselves as "far left" or "liberal" has increased by about 7 percentage points. Political science colleagues complain constantly that their work does not influence public attitudes. They cannot understand why their scientific findings are ignored. It's simple, I tell them. Many people just don't believe the source is impartial.

The fixation on cultural diversity has had a chilling effect on intellectual diversity. As the fall's events demonstrated, the most vocal proponents of cultural diversity have a deep intolerance of those who do not think like they do. I am grateful not to have experienced interference in my classroom or research. Still, other conservatives, particularly those who are not senior tenured professors like me, tend to keep a low profile. Anyone with ambition to graduate with good grades or move up the faculty ranks would be foolish not to.

Intellectual diversity is validated by the research touted by the cultural diversity movement. Studies have found a demographically heterogeneous campus benefits everyone because it exposes faculty and students to an array of views generated by varied life experiences. So it turns out cultural diversity is really the means

to an end that is intellectual diversity. Given the natural richness of American society, it's a result that does not need the kind of extensive administrative engineering currently practiced by university leaders.

Intellectual diversity does not want to go to war with cultural diversity. Its proponents do not want an anodyne campus where courses, faculty, and visiting speakers are heavily regulated to ensure political balance. We have a strong commitment to both academic freedom and accountability. But we want administrators to recognize both the social biases that hurt students of certain backgrounds and the growing biases within their institutions that stunt intellectual inquiry, sterilize campus life, devalue research and diplomas, and deprive the public of the kinds of places they want to send their offspring.

More tangibly, intellectual diversity would be furthered by concerted efforts to ensure a truly meritocratic campus — such as ensuring transparent and evenly applied student admissions along with faculty hiring and promotion. It also would be assisted by adopting the University of Chicago's "Principles of Free Expression" (<http://bit.ly/1vvZe0O>) and the robust embrace of the First Amendment that comes with them. *CJ*

Andy Taylor is a Professor of Political Science at the School of International and Public Affairs at N.C. State University. He does not speak for the university.

High Stakes for the GOP

As I write this column, only a few days have passed since the San Bernardino massacre and President Obama has just addressed the nation from the Oval office.

As it happens, my wife and I are vacationing in California less than an hour away from where the terrorists struck.

As always, no one thought it could happen here.

But it has ... and it has awakened Middle America to the reality that something is not right with our country.

Clearly America is not feeling safe, and they are perplexed with the double-talk coming out of the Obama White House.

Obama's address to the nation did absolutely nothing to assuage the public's fears. Radical Islamic terrorism is on the march in the Middle East

and Europe, yet Obama can't seem to utter the phrase. By and large, only the hardcore Left now trusts Obama to keep our nation safe.

In a larger context, it's generally believed that seven years into an Obama presidency, things just aren't working. Our southern border remains porous, and the PC culture is permeating every aspect of our lives.

Our inner cities have become killing fields, and gangs and drugs are no longer just a big city problem. Obamacare is not sustainable, and 90 million folks have dropped out of the work force — and some 50 million are on food stamps.

During Obama's tenure, the national debt has doubled and the economy is underperforming.

Against this backdrop is the upcoming 2016 presidential election.

Hillary Clinton is the foegone conclusion to be the standard bearer for her party, so all the focus is on the Republican field.

Currently, the top tier in the fight for the Republican nomination is Donald Trump, Texas U.S. Sen. Ted Cruz, Florida U.S. Sen. Marco Rubio, and Dr.

Ben Carson.

Trump has been discounted and vilified by the establishment, but since July he never has relinquished the lead. The "Teflon" Don continues to defy the pundits and frustrate the donor and consultant class. He is unscripted ... but to those who support him, that is part of his appeal.

Trump personifies anti-establishment angst — as do Cruz and Carson.

The Republican base overwhelmingly rejects the establishment; just ask Jeb Bush, who is hovering at around 3 percent in the polls.

In my view, the most disciplined campaign has been that of Cruz. That is reflected in his surge nationally, in key primary states, and in his fundraising.

Since coming to Washington, Cruz has fought the establishment and worked to reform and change the system. At 44, he represents generational change. He is smart, well-versed, and a very effective campaigner.

Rubio also represents generational change.

Like Cruz he is Hispanic, very bright, and a great speaker. He

reminds many of us of the late Jack Kemp, full of optimism, ideas, and tireless energy.

His Achilles' heel may be the immigration amnesty bill he sponsored with Democratic Sen. Chuck Schumer and Republican Sens. John McCain and Lindsey Graham, a deal that was resoundingly rejected by the American public.

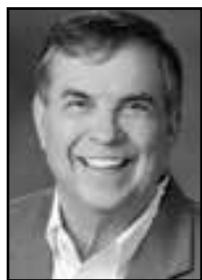
Dr. Carson is well-liked, and he is anti-Trump in tone and demeanor. However, he has been in a virtual freefall because of the perception that he is not quite up to speed on national security.

Rounding out the field are Govs. Chris Christie of New Jersey, John Kasich of Ohio, and Sen. Rand Paul. They're long shots at best.

After the Iowa caucuses and New Hampshire primary, many will drop out.

By then there will be two or three contenders. The focus will be intense, and the stakes for America will be incredibly high. *CJ*

Marc Rotterman is a senior fellow at the John Locke Foundation.



MARC ROTTERMAN

Greenpeace Uses Fuel Purchases to Create 'Denier' List (a *CJ* parody)

BY DHARMA CLOUD
Energy Correspondent

ASHEVILLE

A Buncombe County-based pilot program designed to increase voluntary support for electric cars and cleaner air has generated \$3.5 million in revenue, according to a report from the environmental group Greenpeace.

Under the program, each time motorists used a debit or credit card between Dec. 1, 2014, and Nov. 30, 2015, to purchase fuel at any Buncombe County gas station, they were given the option of adding 5 cents per gallon to the purchase price as a donation to a "green energy" fund operated by Greenpeace.

Any driver refusing to make the donation had his billing address collected from the credit card reader and placed on file. Buncombe County residents who refused the option for more than 50 percent of their transactions were placed on a "Climate Denier List" that was posted on the Greenpeace website and published in full-page ads in local newspapers, paid for using money from the green energy fund.

The addresses of nonresidents who bought fuel during the pilot program were not collected.

In recent years, Greenpeace successfully has urged large technology companies including Apple, Amazon, Google, and Facebook to operate their power-guzzling data centers with re-



Greenpeace, which has shamed large companies like Google, Apple, Amazon, and Facebook into schemes that make it look as if they're concerned about their huge energy use, now wants to do the same to individuals through a "shaming at the pump" program that will benefit users of electric cars. (CJ spoof photo)

newable energy, using reports and media campaigns to rail against the companies' reliance on "dirty" energy.

In fact, as *Carolina Journal* has reported, companies continue to purchase all their power from utilities using the so-called dirty mix of fossil fuels and nuclear power, because energy produced from wind or solar sources is not reliable 24 hours a day, and the centers could not operate if they depended on renewables for all their power.

Under the agreements pushed

by Greenpeace, the tech companies purchase renewable power from other sources, claim that they are "going green," and Greenpeace endorses the fiction.

Greenpeace spokeswoman Phoenix Magnolia told *CJ* it expanded the shaming program to motorists because they are by far the largest users of fossil fuels, and being placed on a "denier list" should embarrass drivers into backing clean energy.

"We named this the 'denier' list

because these people clearly do not believe in climate change and the consequences that will result if we do not do something about it," she said.

The money raised will pay for the location of electric-car charging stations and educational climate change kiosks in rural areas of the county, where Greenpeace says a disproportionate share of those they call deniers live.

The program was financed with a \$3.5 million grant from Greenpeace. Magnolia told *CJ* Buncombe County was selected because it was widely known as a major center for environmental activism and it was the only county in the nation that applied.

CJ contacted Floyd R. Turbo, a conservative activist in Buncombe County whose name appeared on the denier list.

"This attempt to shame me and the others on the list won't make any difference. These lefty tree-huggers just won't admit that Earth is just in a warming cycle caused by solar activity. We have more important things to worry about," he said.

Local environmentalist Jade Sunshine, however, disagreed with Turbo.

"Like, we're all on Spaceship Earth, together, man, so everyone should want to do their part to save the planet. Paying a little more at the pump to subsidize electric cars is the least the climate-change deniers can do. It won't affect me, though, because I take Uber everywhere I go." *CJ*



THE NC SPIN NETWORK

TELEVISION

- WLOS Asheville, Sunday 5 am
- WCCB Charlotte, Sunday 6:30 am
- WXLV Greensboro/Triad, Sunday 7:30 am
- Cable 7 Greenville, Sunday 10:30 am, Monday 9:30 pm, Wednesday 6:30 pm, Thursday 9:30 pm, Friday 9 pm
- WITN (7.1 & 7.2) Greenville/Washington/New Bern, Sunday 11 am
- WTBL Lenoir, Sunday 9 am, Monday 5:30 pm, Tuesday 12:30 pm
- WRAL Raleigh-Durham, Sunday 6:30 am
- WRAL-DT Raleigh-Durham, Sunday 6:30 am
- WRAZ "Fox 50" Raleigh-Durham, Sunday 8:30 am
- WGSR-TV Reidsville, Saturday 7 am, 9 am, Sunday 12 pm, 10:30 pm
- WNVN Roanoke Rapids, Sunday 10:00am
- WHIG Rocky Mount, Sunday 1:30 pm
- Cable 10 Roxboro, Sunday 6 pm
- WILM Wilmington, Sunday 5 am

RADIO

- Chapel Hill, WCHL-AM 1360, Sunday 6 pm
- Goldsboro, WGBR-AM 1150, Sunday 4 pm
- Greenville, WTIB-FM 94.3, Sunday 9:30 am
- Jacksonville, WJNC-AM 1240, Sunday 10 am
- Laurinburg, WLNC-AM 1300, Sunday 10 am
- Morehead City, WTKF-FM 107.1, Sunday 10 am
- Rocky Mount, WEED-AM 1390, Sunday, 9:30 am
- Sanford, WWGP-AM 1050, Sunday 7:30 am
- Smithfield, WTSB-AM 1090, Sunday 7:06 am
- Statesville, WAME-AM 550, Sunday 5:30 am
- Valdese, WSVM-AM 1490, Monday 6 pm
- Wanchese, WYND-FM 97.1, Sunday 7:30 am
- Wilmington, WAAV-AM 980, Sunday 5:30 pm

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