

House budget faces uncertain future in Senate/2



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STATEWIDE EDITION

Heirs Finally Win Hammocks Beach Dispute

Perdue, Cooper tried to seize property without paying for it

BY DON CARRINGTON
Executive Editor

RALEIGH

A nine-year legal battle over a 289-acre Onslow County waterfront property ended in late April when Harriet Hurst Turner and her brother, John H. Hurst, won control of the land and then immediately sold it to the state of North Carolina for \$10.1 million.



Harriet Hurst Turner

While Hurst and Turner say that news stories *Carolina Journal* published about the family's struggles beginning in 2011 helped persuade others that they were entitled to the property, a significant factor in their saga appears to be the election of



John H. Hurst and his sister, Harriet Hurst Turner, ended a 9-year legal battle and ended up selling 289 acres to the state for the expansion of Hammocks Beach State Park. (CJ photo by Don Carrington)

Republican Pat McCrory as governor in 2012. Officials working under Attorney General Roy Cooper and former Gov. Beverly Perdue, both Democrats, tried to acquire the property from the Hurst heirs without paying for it.

"The state is trying to steal my clients' land," the heirs' Raleigh attorney, Charles Francis, told *CJ* in January 2011.

McCrory appointed new leadership to state agencies, including the

Department of Environment and Natural Resources, the agency that manages the state park system. DENR leaders chose to work with the Hurst heirs instead of trying to take the land without compensating them.

The property once served as a beach for African-American teachers in the days of racial segregation. It will become part of Hammocks Beach State Park, and the state will lease 27 acres to Turner for a new youth camp.

The legal dispute revolved around a 1950 deed involving Hurst and Turner's grandparents, John L. and Gertrude Hurst. The Hurst heirs argued that they had a claim to the property because Hammocks Beach Corp., the nonprofit that owned the land, had not lived up to conditions specified in the deed. In 2006, the Hurst heirs sued HBC, and in 2010 they won their lawsuit at a jury trial.

But Superior Court Judge Carl Fox overruled the jury, allowing the state to intervene and make a claim to the property. Even though the N.C. Court of Appeals reversed Fox's actions, the matter was not settled until officials in the McCrory administration worked with the Hurst heirs to negotiate a settlement.

"We can't speak to how things were done before we arrived. But once we took over the process, we were committed to doing what was right and to paying a fair value for the property," said DENR spokesman Drew Elliott. "Three appraisals were conducted, and based on those values we negotiated in good faith in a fair and open process. As a result of that open pro-

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Alcoa Prevails Over State in Yadkin River Suit

Judge rules river not navigable at time of statehood

BY DON CARRINGTON
Executive Editor

RALEIGH

Alcoa Power Generating Inc. scored a victory in federal court May 6 when U.S. District Judge Terrence Boyle ruled that the state of North Carolina failed to prove that a 45-mile segment of the Yadkin River where Alcoa operates four hydroelectric dams was navigable for commerce in 1789.

The state argued that if boats



could navigate that segment of the river before statehood, then the land under the river would have been categorized as state-owned property, and Alcoa could not claim a property right to that land.

Alcoa continues to assert that

the deeds it has to property all along the contested area are valid. But the company's attempt to renew its federal license to operate the dams would have become more complicated had the state prevailed. Alcoa has operated the dams since 1917, and its license expired in 2008. The company is operating dams under a temporary license. It began the relicensing process in 2002, but in 2008 state officials began throwing obstacles in Alcoa's way, the most recent being the state's claim in court that the river was navigable more than 200 years ago.

Democratic Govs. Mike Easley and Bev Perdue and Republican Gov. Pat McCrory each have opposed the

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House Budget Faces Uncertain Future in Senate

BY DAN WAY AND BARRY SMITH
Associate Editors

RALEIGH

An unusual coalition of 12 liberal Democrats and 11 conservative Republicans offered the only formal opposition to the \$22.2-billion General Fund budget passed around 1 a.m. May 22 by the state House of Representatives.

The spending plan, approved by a 93-23 vote, is expected to undergo dramatic changes in the Senate and received a less-than-enthusiastic response from Gov. Pat McCrory, who has tended to align more closely with the House in fiscal debates.

Also unlike recent legislative sessions featuring largely party-line votes on the state budget, House GOP leaders found 32 Democrats to support the spending plan.

McCrory proposed a \$21.5 billion General Fund budget for 2015-16, and \$22.2 billion for 2016-17. The House budget is set at \$22.2 billion the first year and \$22.4 billion the second. The chamber's plan increases spending by 6.2 percent for the biennium over the 2014-15 budget.

Asked for a reaction to the House proposal, McCrory spokesman Rick Martinez responded, "The governor stands by his budget."

"I would imagine [Senate leader Phil] Berger, and the leadership of many of our senators, want to maintain what we have accomplished with tax reform, and actually move it in the direction of less credits, less deductions and exemptions, and continue lowering the rates," said Sen. Bob Rucho, R-Mecklenburg, co-chairman of the Senate Finance Committee.

Rucho said the Senate "is more in line" with McCrory's budget, which increases spending by slightly more than 2 percent. That increase would be lower than the expected combination of population growth and inflation over the budget cycle.

Rucho objected to several instances in the House plan that used one-time funds to pay for recurring expenses, including \$40 million in annual film incentives — which was lowered from \$60 million in an earlier budget version. The Senate favored a far less ambitious \$10 million grant program approved last year.

The historic preservation tax credit, budgeted at \$8 million annually, was another problem the Mecklenburg County Republican cited. The Senate passed an alternative bill authorizing local governments to issue their own grants to rehabilitate old buildings.

"The state of North Carolina has no reason to be in that business," Rucho said.

He also is concerned that the House budget extended renewable tax credits for the solar industry for two more years. The credits were supposed to end at the end of this calendar year.

A dozen Democrats also voted against the proposal. "I cannot vote at this junction for this budget because, in my book, it is fiscally irresponsible," said Rep. Mickey Michaux, D-Durham. He cited what he considers overly optimistic revenue projections, in part, for his opposition.

The House budget keeps a promise made to teachers last year of raising beginning pay from \$33,000 to \$35,000.

It raises salaries for other teachers and most state employees by 2 percent. Some state employees — including state troopers and correctional officers — will receive higher raises.

The budget also provides \$19 million over the next two years to the Administrative Office of the Courts to provide for electronic filing in the state's district and superior courts.

DMV fees — such as driver's license, auto registration, and title fees — would go up by 30 percent, a reduction from

the 50 percent hike proposed earlier.

The House budget also provides an additional \$6.8 million for Opportunity Scholarships — vouchers for children from lower-income families to attend private schools. That would bring the total amount going to vouchers next year to \$17.6 million.

It would raise the maximum scholarship amount awarded for disability and special-needs scholarships from \$6,000 to \$8,000 per year.

It also would provide \$1 million a year over the next two years to the nonprofit Parents for Educational Freedom in North Carolina to operate a "charter accelerator" program to help establish charter schools in rural areas.

Donald Bryson, state director of Americans for Prosperity, called the budget a "reverse Robin Hood," with carve-out special items for special interests.

"Green energy companies and movie productions are benefiting from the fleecing of the average North Carolina taxpayer," Bryson said. "Instead of taking steps to control spending and widen the tax base by eliminating targeted tax credits, the state House has gone back on their word from the 2013 tax reforms."

Bryson said AFP would work with the Senate and the governor's office to "restore some fiscal sanity to the budget process."

Rep. Susi Hamilton, D-New Hanover, a vocal supporter of film incentives, was one of the Democrats praising the plan.

"Overall, this bipartisan budget signals a turn toward the policies that made North Carolina the envy of others, and is cause for us all to be optimistic," Hamilton said in a statement.

Rep. Chris Millis, R-Pender, voted against the fi-

nal proposal. "Subsidizing more expensive forms of energy production, which has no measurable environmental benefit, on the backs of our citizens is unconscionable by way of a conservative majority," said Millis, who earlier this session sponsored a measure phasing out the renewable tax credits.

Rep. Michael Speciale, R-Craven, did not vote for the budget because it is "full of stuff that shouldn't have been in there," he said, and "a lot of wheeling and dealing" occurred to gain passage.

"Republicans are just finding out that when you're in charge, and you have a lot of members, you're going to have a lot of different viewpoints," said David McLennan, a visiting professor of political science at Meredith College. He called the GOP philosophical split normal politics.

"For House Republicans it's a very bold budget, and one that's likely to not be met with open arms from the Senate side," McLennan said, suggesting protracted budget negotiations between the two chambers. "We may have a Thanksgiving session."

In K-12 education, the budget provides \$100 million next year for enrollment growth, and \$207 million in 2016-17, and an additional \$88 million annually for teacher assistants. It includes \$48.3 million and \$43.5 million, respectively, the next two years for enhanced textbook funding.

"While lawmakers made some awful decisions in other parts of the budget, the public education portion includes a number of sound, research-based recommendations," said Terry Stoops, director of research and education studies at the John Locke Foundation.

The budget includes 2 percent raises for teachers.

"I had hoped they would revisit their proposal to distribute across-the-board raises for teachers and state employees," Stoops said. "Ideally, legislators would have recommended a plan that boosted salaries for hard-to-fill positions and our state's highest-performing employees." *CJ*



Researcher: Certificate-of-Need Laws Don't Increase Charity Care

By DAN WAY
Associate Editor

RALEIGH

North Carolina hospitals argue that dismantling regulations in the state's certificate-of-need laws would impair their ability to treat indigent patients. But a scholar at George Mason University's Mercatus Center says empirical studies conclude such dire warnings are little more than a scare tactic.

"In states with certificate-of-need regulations there is zero relationship between the certificate-of-need program and increased charity care," said Christopher Koopman, a Mercatus Center research fellow.

Koopman co-authored a study, "Certificate-of-Need Laws: Implications for North Carolina," concluding that North Carolina's restrictive CON laws are responsible for 12,900 fewer hospital beds, 49 fewer hospitals offering magnetic resonance imaging services, and 67 fewer hospitals offering computed tomography scans.

He said Mercatus Center colleagues Thomas Stratmann and Jacob Russ developed the most comprehensive database available, allowing a thorough study of how CON laws affect the level of a state's charity care.

They "took all the numbers of the presence of certificate of need, the number of regulated devices and services in practice areas, whether or not charity care was a requirement, and compared all states with and without [certificates of need], and they found that the presence of certificate-of-need programs does not increase charity care," Koopman said.

Two bills under consideration by the General Assembly would alter the state's certificate-of-need laws. Rep. Marilyn Avila, R-Wake, has introduced House Bill 200, reducing the scope of the CON law. Senate Bill 702, from Sen. Tom Apodaca, R-Henderson, would abolish certificate of need entirely.

The North Carolina Hospital Association has been arguing for years that because its members are required to provide charity care, abolishing certificate-of-need programs would allow new competitors to steal away their more lucrative services sought by paying customers. The revenues they collect from those services offset the costs of caring for nonpaying patients.

But Sen. Jeff Tarte, R-Mecklenburg, a co-sponsor of S.B. 702, doubts that the hospitals believe their own rhetoric.

"I believe most of them will be just fine with no CON, and I think that they think so, too," Tarte said.

"I'm completely, 120 percent supportive of repealing CON in its entirety. No halfway point. Halfway is dangerous," Tarte said. "It's a time whose idea has come. It is ready."



While S.B. 702 sponsors have been waiting to see what happens with Avila's reform bill in the House, Tarte said he is encouraging Apodaca to push the repeal bill as soon as the budget is hammered out.

Avila is in the same position, while remaining confident there is support to pass H.B. 200.

"It's pretty much in a holding pattern until I get through with the budget," Avila said.

Meanwhile, the state Department of Health and Human Services is not commenting on pros and cons of either bill.

"It would be inappropriate to speculate on any pending legislation regarding the present certificate-of-need system," said DHHS spokeswoman Olivia James.

"It is the role of [Division of Health Service Regulation] regulators to enforce the state's current CON laws, and we will monitor for any regulatory changes that may be enacted during the legislative session," said spokesman Jim Jones.

Avila's bill would exempt ambulatory surgery centers from CON laws if they agreed to provide at least 7 percent charity care, while leaving the definition of charity care unclear. But Koopman says repeal is a better approach than demanding a set level of charity care that comes with staff and paperwork costs of enforcement.

"We have years of evidence now that the cost-control justification just doesn't work," he said, and as cost-control arguments have evaporated, CON advocates "have turned now to this charity care justification."

Most hospitals "will readily admit" that CON increases prices, some studies say by as much as 5 percent, Koopman said. "What [hospitals] say is it's worth it" to raise prices on some because it increases care for others.

"This isn't just hospitals where you're seeing this. This sort of argument goes hand-in-hand with what you're seeing with Uber and taxis," Koopman said.

"You have taxi industries, which have been protected from competition for decades, are now unresponsive to consumer demands. They're old, they're clunky, they're outdated, and they're otherwise not what someone's first choice would be if they had an option," he said.

"But they don't have an option" due to regulations that prevent would-be competitors from entering the market, he said.

"We don't know what the ideal makeup of the health care market looks like in North Carolina, or any state for that matter," Koopman said. "But it's important to note that neither do the CON regulators. It is nearly impossible for a central planner to get all of

the information necessary to decide" what is needed, where, and provided by whom.

The hospital lobby contends it supports a free market, but since the health care market is tightly regulated, repealing CON laws would help doctors open facilities that would compete directly with hospitals that must follow stricter laws and costlier regulations.

Koopman rejects the notion that one can be a free-market advocate and not champion a free-market advance.

"This is one area where a state can actually take sort of their own destiny in their hands, and make a decision for themselves that they do actually believe in having more competition, more entry, more choices, that they believe in getting more quality care to more people at the least amount of cost that they can," Koopman said.

Opponents of relaxing or repealing certificate-of-need laws raise the specter that rural hospitals might be forced to close in the face of competition.

Koopman rejects that contention, noting that Western states with "huge, wide expanses, remote cities and towns" were the first to repeal their CON laws after the federal government lifted the mandate of imposing them, because they saw it as a way to increase care to rural residents.

"Have they imploded the same way that proponents of CON are claiming that North Carolina's is going to fall apart?" he said. "I don't think anyone's really talking about a crisis of hospitals in these states that have repealed CON."

CON advocates have turned to charity arguments since control arguments have been refuted

State Briefs

The news that state revenue collections are coming in at \$400 million above projections could signal a cut in the corporate tax rate for next year.

The tax reform law passed by the General Assembly in 2013 — lowering personal income tax rates, establishing a flat tax, and reducing corporate income tax rates — included a trigger provision that would cut lower corporate tax rates even more if tax collections exceed revenue projections.

Before the tax reform legislation took effect, the state corporate income tax rate was 6.9 percent. It dropped to 6 percent on Jan. 1, 2014, and 5 percent on Jan. 1, 2015.

If tax collections continue to come in at or above the levels forecast today, the corporate income tax rate would drop to 4 percent on Jan. 1, 2016, and 3 percent the following year.

"The Consensus Revenue Forecast released [May 6] projects that revenue will be at a level that exceeds the corporate tax rate thresholds," said Melanie Jennings, a spokeswoman for the Office of State Budget and Management.

The forecast indicates that General Fund revenues are expected to grow by 6.1 percent since the 2013-14 fiscal year ended last June 30, 2.1 percent more than originally projected. That growth would trigger the corporate tax rate cuts.

The revised forecast sees General Fund revenues of \$21.4 billion in the current budget year, \$1.2 billion more than the \$20.2 billion trigger set in the 2013 tax reform law and more than the \$21 billion in the current budget.

State leaders hailed the revenue collections announcement as a validation of the 2013 tax reform.

"This surplus is the result of a growing economy, fiscally responsible budget, and tax reform that's putting more money in the pockets of North Carolinians," Gov. Pat McCrory said in a statement.

"[Far] from starving state government, tax cuts and tax reform have spurred economic growth and job creation — a turnaround that has provided our state with a surplus that will allow us to continue cutting taxes while investing in core priorities like education, infrastructure, and public safety," said Senate leader Phil Berger, R-Rockingham. CJ

—BARRY SMITH

JLF's Alternative Budget Puts Focus on Savings

\$43.6 billion plan would spend less than governor or House

By CJ STAFF

RALEIGH

North Carolina state government would boost its savings reserves and set aside more money for infrastructure, while still increasing starting teachers' pay, providing additional tax relief for families, and limiting government spending growth under recommendations in the John Locke Foundation's 2015-17 alternative General Fund budget.

JLF released its plan during the week that the N.C. House of Representatives passed its \$44.6 billion General Fund budget proposal for the two-year cycle. The Senate must pass a version of the budget, and any differences must be reconciled with the House before being sent to Gov. Pat McCrory for his signature.

The JLF plan would spend roughly \$21.5 billion for the new budget year that starts July 1. That's about \$25 million less than the governor's proposal. The JLF plan would spend \$22.1 billion for 2016-17, roughly \$100 million less than the governor proposed.

"Consistent with prior years, this alternative budget focuses on core government," said the report's lead author, Sarah Curry, JLF director of fiscal policy studies. "Under our proposal, General Fund spending grows by \$567 million over the next two fiscal years. The annual average growth rate is 1.3 percent, far below the combined rate of inflation and population growth."

Along with that modest rate of spending growth, the JLF budget proposes adding \$620 million to the state's savings reserve over the next two years. It recommends adding \$520 million to the repairs and renovations reserve.

Other major recommendations focus on core state government priorities, Curry said. "In education, this budget focuses on raising starting teacher pay to \$35,000, as the governor recommends, while also increasing funding for opportunity scholarships and grants for children with disabilities," she said. "The JLF budget offers full funding for Medicaid reform efforts, without limiting those reforms to the model endorsed by the McCrory administration."

Within major categories of state spending, JLF recommends \$11.9 billion for education in 2015-16, about \$100 million less than McCrory. While the JLF plan would spend nearly \$50 million more on community colleges, it would spend about \$92 million less than the governor's budget on the University of North Carolina system. Within K-12 education, the JLF plan recommends new local flexibility for

public school teacher salaries and school calendars.

In the second-largest category, Health and Human Services, JLF's proposal of almost \$5.3 billion in spending is about \$23 million less than McCrory's budget. The amount of money devoted to Medicaid is equal in both plans.

The JLF alternative budget would repeal the Job Development Investment Grant program and other targeted tax incentives tied to the N.C. Department of Commerce. Funding for state film and entertainment grants would end. "This budget calls on state government to stop picking economic winners and losers and competing with private-sector investors."

Among the other ideas embedded within the nearly 50-page JLF document is a new voucher system to cover indigent defense within the judicial branch of government. "This market-based solution would allow indigent defendants to select their own attorneys while simultaneously saving money and fixing a broken system that cost more than \$124 million in the last budget year."

Budget provisions in JLF's plan also include: a shift of

the NC GEAR government efficiency program to the state auditor's office, a move of the Division of Veterans Affairs to the Department of Public Safety, and an end to state subsidies for preservation of older buildings in Raleigh.

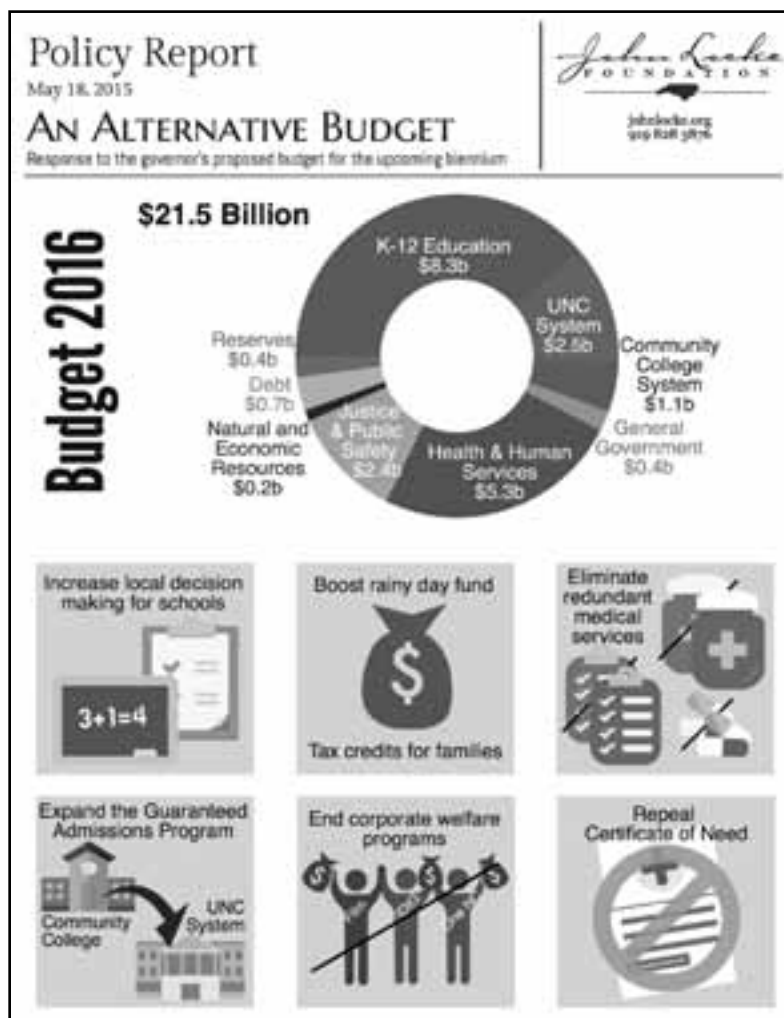
Curry points to a list of six R's of fiscal responsibility in North Carolina. "Reform entitlement programs," she said. "Require more user responsibility. Redirect spending to higher-priority uses. Revive free enterprise. Restore civil society. Reduce biases in the tax code."

The JLF budget incorporates additional tax relief for families, Curry said. "This takes the form of larger per-child tax credits and 529 education savings account deductions, along with reinstated deductions for medical expenses," she said. "These recommendations go along with the cuts in corporate and

payroll taxes already scheduled for the next two years. These changes are consistent with our long-term tax reform goal of eliminating the tax system's bias against saving and investment."

Even with an emphasis on savings and fiscal discipline, the plan adds money for state workers. "This budget funds a 1 percent cost-of-living adjustment for all state employees, as well as retirees, in addition to fully funding the actuarial contributions to the state's pensions and the state health plan," Curry said.

Curry and the JLF research division staff approached the 2015-17 budget process with a clear goal in mind. "The focus is on directing scarce resources to areas where government has a role and where revenue can be allocated most effectively," she said. "Our proposed spending and policy changes attempt to make government more transparent, more efficient, and more accountable to taxpayers." CJ



GOP Sees Retiring Unemployment Insurance Debt Early as Vindication

State paid off a debt of \$2.5 billion in only two years

By DAN WAY
Associate Editor

RALEIGH

Employers now will have “certainty about the cost of doing business in North Carolina,” Gov. Pat McCrory said May 5 in announcing that the state has paid off a \$2.5 billion unemployment insurance debt to the federal government that he inherited upon taking office in January 2013.

“Getting more North Carolinians jobs and fixing our broken unemployment system was a top priority when I entered office. Thanks to quick action and tough decisions, North Carolina’s unemployment system is more efficient, more customer-friendly, and the time needed to settle appeals has been dramatically reduced,” McCrory said.

The debt piled up when the state’s unemployment trust fund ran out of funds in February 2009, and at its highest point reached \$2.8 billion. North Carolina had to borrow from the federal government to pay regular unemployment benefits.

Senate President Pro Tem Phil Berger, R-Rockingham, said reforms in 2013 to House Bill 4, reducing the maximum weekly benefit from \$535 to \$350, and the number of weeks of eligibility from 26 to 20, have allowed the state to eliminate the debt.

“In just two short years, North Carolina has successfully paid off a massive federal debt that was threaten-



Department of Commerce Assistant Secretary Dale Folwell displays a mock credit card identical to one that was cut up during an event marking North Carolina’s payoff of a \$2.8 billion unemployment insurance debt to the federal government. (CJ photo by Dan Way)

ing our ability to keep existing jobs and making it harder to create and recruit new ones,” Berger said.

He credited Sen. Bob Rucho, R-Mecklenburg, and Rep. Julia Howard, R-Davie, for “bringing stakeholders together to find a solution to remove this tremendous burden off the backs of North Carolina businesses and create a sustainable unemployment system.”

House Speaker Tim Moore, R-Cleveland, also credited the reforms in H.B. 4 with helping the state get rid of the debt during “a tough economy.”

The Republican-led policies to pay down the debt were not without detractors. The criticism grew louder in 2013 when the federal government refused to allow the state into the federal emergency unemployment com-

pensation benefits program because North Carolina repaid its debt by reducing benefits.

As people went back to work and the state’s unemployment rate dropped, Republicans said their policies were vindicated. GOP leaders also cited academic studies showing that extending the period a jobless person can collect benefits reduces that person’s willingness to seek immediate employment.

Last year, the federal government waived the higher federal unemployment tax rates on businesses. That waiver, along with the retirement of the debt, will amount to a tax reduction to North Carolina businesses of \$280 million in 2016. The following year, businesses could get additional relief in the form of a rate cut totaling \$270 million if the state rebuilds UI reserves to \$1 billion, as is anticipated.

Not long after McCrory announced the debt payoff, the North Carolina State AFL-CIO criticized GOP leaders.

“That North Carolina will pay off its unemployment insurance debt to the federal government, as [McCrory] announced today, is a pyrrhic victory because the debt-free system — thanks to harsh benefit cuts and UI tax cuts — is no longer capable of being the stabilizing force both workers and employers need,” the union said in an email release.

“Lawmakers should take action this session to reverse the draconian cuts they made to benefits and eligibility in the 2013 session,” said MaryBe McMillan, state AFL-CIO secretary-treasurer.

Dale Folwell, assistant secretary of employment security at the Department of Commerce, dismisses such criticism.

“When you look at the benefit costs of House Bill 4 up to this point, about half of it is borne by businesses paying higher [federal unemployment] taxes, and about half of it was borne by claimants who received less money,” Folwell said.

“In addition to the waiver we received last year, and with the news of today, and where we expect the [budget] surplus to be, the real story is that over a 15-month period this will result in over \$700 million worth of tax savings in North Carolina,” Folwell said.

That will have a positive impact on the state’s General Fund, Folwell said businesses either would pocket and pay taxes on the savings, paying for services such as public education and roads, “or they could hire more people, which drives the unemployment rate even lower, which makes our trust fund even more solvent.”

Folwell noted that North Carolina paid off its federal unemployment debt faster than South Carolina, which owed a few hundred million dollars, Ohio (more than \$1 billion), and California (\$8 billion).

“North Carolina [unemployment] taxes were 2 ½ times higher than 42 other states” because of debt and the federal payback formula, and that was a disincentive to businesses looking to locate here, Folwell said. “Now there’s no longer a cover charge in North Carolina.”

The state also has been helped by other changes, including improvements in quality scores issued by the federal government.

“When the governor took office, not only was the debt the third highest in the United States, but our quality scores were the lowest in the whole country,” bottoming out at 12 out of 100 points, Folwell said.

“If that were equivalent to a sanitation grade [at a restaurant], which I think it is, you’d never eat there,” he said. “But people didn’t have a choice but to consume a product that had a quality grade of 12, so we’re excited about that progress.”

His department also implemented a photo ID policy requiring claimants to appear personally within four weeks of filing for benefits to prove the claim is not fraudulent.

“A photo ID is a federal requirement to get a job in the United States,” Folwell said. “Why shouldn’t it be a requirement for unemployment?”

The agency also added a week to the claims process during which the state verifies that the person in whose name a claim was filed was actually discharged. False claims had been on the rise due to identify theft and other reasons, but the changes stemmed the tide, Folwell said.

CJ

Audit: DHHS Director Spends \$1.6 Million on Friends, Perks

BY DAN WAY
Associate Editor

A withering state audit uncovered a pattern of abuses by a division director at the Department of Health and Human Services, unearthing \$1.6 million in excessive salaries and wages, rampant nepotism, failure to follow state policies, and continuing lax oversight at the agency.

State Auditor Beth Wood said she hopes exposure of the ongoing improprieties in the Office of Medicaid Management Information Systems Services finally will lead to reform.

"It's the fourth audit, and now an investigative report on basically the same division," Wood said. OMMISS handles computer systems for Medicaid and was responsible for developing the beleaguered NC Tracks system that manages Medicaid claims.

The mismanagement is "just unimaginable," Wood said. "Not in anything we've ever done across state government have we ever seen an abuse of their authority like this," Wood said.

In a 17-page response to the audit, DHHS Secretary Aldona Vos disputed most of the audit's findings.

She said most of the temporary employees cited in the audit were hired more than two years before she took over DHHS in 2013, some no longer work in the department, and others were terminated when it was learned their qualifications did not match their compensation.

"DHHS believes the attempt, in several situations in [the auditor's] draft report, to apply inapplicable standards and policies, results in a flawed analysis of some of the important and valuable findings of [the auditor's] investigators," Vos wrote.

The audit placed much of the

blame for the mayhem in OMMISS on now-retired director Angeline Sligh, the subject of a 2013 audit detailing \$237,500 in overpayments.

According to the audit, Sligh chose temporary staffing agencies outside state government, paying \$598,673 for commissions that exceeded the rates charged by the state-operated temporary staffing service. Employees collected \$234,724 in unjustified overtime, and ineligible employees received \$26,026 for holiday pay.

In all, temp workers recorded 5,841 hours of overtime "without documented justification," the audit said. Undocumented overtime had been cited in past audits.

Those employees "could not provide reasonable explanations" to justify the overtime, according to the audit. Some clocked in overtime hours making copies or nametags, answering phones, and doing "lots and lots of typing."

By going to an outside temp agency, Sligh was not constrained by state rules limiting temporary employees to 12 months of service. Some temp workers stayed with the agency for years.

The audit said Sligh's "abuse of her authority through the hiring process caused these excessive costs."

According to the audit, Sligh hired 15 people connected to her, including her daughter, ex-husband, and ex-husband's wife. Six were members of her church, and one was a son of a fellow church member. Also hired un-

der Sligh's watch were a neighbor's daughter, her hairdresser's sister, and two ex-colleagues at St. Augustine's University.

The audit said the agency paid 12 temporary employees \$807,741 "more than their qualifications justified," according to the Office of State Human Resources. In numerous instances Sligh overruled the temp agency's determination of appropriate pay scales and directed them to beef up the amounts.

As examples from July 1, 2011, to June 30, 2014, the audit noted, one manager was paid \$89.39 per hour, 78 percent more than appropriate, and \$244,420 more than justified. A business analyst should have received \$33.57 per hour but got \$70, a 109 percent increase, resulting in \$199,183 in excessive payments. A second business analyst should have been paid \$23.31 per hour, received \$36, and collect-

ed \$60,404 more than justified. A health insurance claims consultant collected \$74 hourly, or 73 percent above a justifiable level, for \$103,484 more overall.

The audit said Sligh received improperly 2,120 hours of compensatory time to which she was not entitled. The comp time allowed Sligh to save her sick time and vacation days, potentially inflating her retirement benefits that are calculated partially on those accumulated days. Vos denied the comp time bumped up Sligh's retirement pay.

The audit admonished DHHS chief information officer Joe Cooper, Sligh's supervisor, who signed off on

the comp time even though department HR officials informed him that Sligh was not entitled to the perk.

Cooper told investigators: "I don't really understand comp time. I've never seen comp time in my life."

Even though earlier audits had reported on failings at OMMISS, Vos disagreed with one finding in the current audit citing DHHS with providing inadequate oversight. Vos said hiring Cooper in 2013 showed that oversight increased.

"This is Medicaid money," Wood said of the wasteful spending. "This is your tax dollars that this person is walking away with, and everybody that she hired that was overpaid and not qualified for their salaries, or the hourly rates that they received. ... Here are people walking away with your money, and somebody let them."

The state is unlikely to recoup any of the overpayments.

"It sounds like a legal matter that would have to be handled from someone other than the Office of State Human Resources," said agency spokesman David Prickett.

Wood said it would be difficult to recover the overpayments because supervisors signed off on the pay sheets, "so therefore it's going to be hard to ask for something back that you approved."

In the same vein, she said, there is little to be done with the nepotism in hiring.

"People keep hanging their hat on the fact that [Sligh] didn't break any policies because none existed," Wood said. Just because no policies regarding nepotism and other abuses outlined in the audit have been issued statewide should not prevent individual agencies from developing them, she said. *CJ*



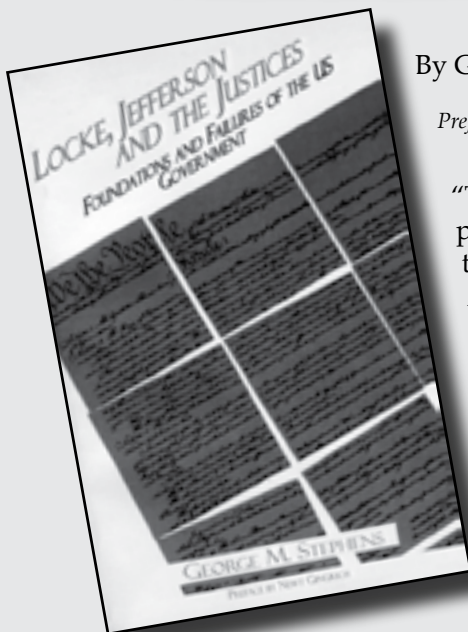
Locke, Jefferson and the Justices: Foundations and Failures of the U.S. Government

By George M. Stephens

Preface by Newt Gingrich

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

Newt Gingrich
Former Speaker
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N.C. Chamber Resurrects VMT Highway Funding Fee Idea

BY BARRY SMITH
Associate Editor

RALEIGH

The N.C. Chamber is resurrecting an idea to pay for roads that eventually could confront concerns over the growing gap between increasing highway use and dwindling fuel tax revenues.

The idea goes by a number of names, but it's most commonly known as a vehicle miles traveled or VMT fee. If fully implemented, fuel taxes would be replaced by a fee assessed on motorists for every mile they drive on public highways. There are no formal plans to impose a VMT fee, and many aspects of the concept remain unclear, including the rate and determining how the fee would be paid — at gas pumps, as part of vehicle registration, or using some sort of regular billing procedure.

Moreover, some critics of the proposal cite privacy concerns, saying electronic tracking devices may need to be installed on vehicles and monitored by government officials to count mileage accurately.

The Chamber brought up the idea at a presentation at its recent transportation forum in Durham. It has appeal to some policymakers because the 18.4-cent-per-gallon federal gas tax — combined with North Carolina's 36-cent-per-gallon state tax — produce only about half the money needed to finance the state's highway construction and maintenance needs. (According to the Tax Foundation, the average state fuel tax is 21 cents per gallon, and with federal taxes the average state gets only about one-third of its highway funding from fuel taxes.)

But as traditional cars become more fuel-efficient, hybrid vehicles gain in popularity, and highway maintenance demands continue rising, offi-

cial are scrambling to find alternative forms of financing.

"In virtually every city and county and hamlet [in North Carolina], the roads seem to be just not being repaired and kept in the same state that they used to be a couple of decades ago," said Rep. John Torbett, R-Gaston, at a recent legislative hearing.

"The reason we're looking at raising revenue is because of the unmet needs that are currently out there."

The VMT fee surfaced as a potential transportation revenue source in 2007 and 2008 when it was studied by a commission looking into the state's 21st-century transportation needs. However, the proposal never gained traction.

No state is using the VMT as a major source of income now, but a handful are studying it, and this summer Oregon is set to test the program through a pilot program involving up to 5,000 vehicles.

Daniel Findley, senior research associate at the Institute for Transportation Research and Education at N.C. State University, conducted a study of potential transportation funding sources for the N.C. Chamber and found a number of advantages to using a VMT tax as a primary source for transportation funding.

"Looking at vehicle miles, it both has the potential to generate enough yield" to keep up with the demand for highway maintenance and construction, Findley said. "It's a relatively stable measure, so as the economy

grows, typically, vehicle miles traveled increases as well."

One other advantage of the VMT approach is that it works well as a user fee. "The people who drive or benefit from [highway use] are the ones who pay for it," Findley said.

Adrian Moore, vice president of the Reason Foundation, said states will need to consider a method of replacing the gasoline tax as a means for paying for road construction and maintenance.

"We're not using less roads, but we're using less gasoline," Moore said. "It's like paying for the health care system by taxing cigarettes."

Kevin Pula, policy associate at the National Conference of State Legislatures, said 18 states have entered into small VMT pilot programs, with Oregon's being the most prominent.

"I think Oregon will really pave the way for other states," Pula said. "They're trying to prove that this can work on a large-scale basis."

Oregon will give volunteers participating in the pilot project rebates on their gasoline taxes. Participants will have options for reporting their mileage, including GPS tracking, odometer readings, and monthly self-reporting.

Moore said Oregon has addressed privacy concerns in its VMT law. He said the private telecom company Verizon will track mileage for the state. Under its contract with the state, Verizon is forbidden from collecting private information from motorists, Moore said. Motorists could sue both

the vendor and the state if Verizon violated the provision, Moore said.

"You can [implement a VMT fee] without tracking, and you can do it with protections," Moore said. He said the government already has means of tracking motorists if that's what officials want to do.

Moore noted that Oregon's program is in its infancy. "You have to start with baby steps," Moore said. "This is a big, complicated, 20-year change process."

He encourages states looking for a way to replace gasoline tax revenue with the VMT to go ahead and begin pilot programs.

"I say, study it now, try to work out the kinks," Moore said.

There are a number of them.

While the VMT fee is expected to be a stable source of revenue, it comes with collection problems and administrative headaches, Findley said.

For example, the VMT fee would collect nothing from motorists who live across the North Carolina border and come here for work, recreation, or shopping. It also wouldn't capture revenue from out-of-state tourists. Currently, they pay the gasoline tax when they fill up in North Carolina.

But the current gasoline tax system isn't perfect either, Findley said, referring to drivers traveling through the state on Interstate 95.

"People fuel up in Virginia and drive and drive, and don't fuel up until South Carolina, or vice versa," Findley said.

Moore said states that study and experiment with a VMT system now will be in a better position to implement it once the administrative problems are solved. States that wait a few years to test the program will be even further behind, he added. *CJ*



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JLF Recommends Ending Targeted Corporate Tax Incentives

By CJ STAFF

RALEIGH
North Carolina lawmakers would harm, not help, the state's economic growth if they extend and expand corporate tax incentive programs. That's the key conclusion from a John Locke Foundation Spotlight report. (See full report at <http://bit.ly/1Af2Gzp>.)

"The problem with these kinds of policies is that, even though they are promoted under the rubric of 'economic development,' there are no sound economic arguments to be made on their behalf," said Roy Cordato, JLF vice president for research and resident scholar. "In fact, economic analysis suggests that they are likely to harm consumers, investors, and entrepreneurs who are not privy to the incentives."

Cordato, a Ph.D. economist, released the report as Gov. Pat McCrory and state legislators debated proposals to continue the existing Job Development Investment Grant program in some form. The debate also extended to special tax breaks for building preservation, renewable energy, and the movie industry.

"Support for tax and spending subsidies to attract business to North Carolina is based on what is quite likely the oldest and most common economic fallacy ever invoked, namely that the only economic effects that count are those that are obvious and visible," Cordato said.

The report offers a hypothetical example of using incentives to lure an auto manufacturing plant from Ohio to North Carolina. The highly visible move would generate positive media coverage. Incentive supporters would consider any jobs tied to the plant as a positive economic benefit.

This approach is flawed, Cordato explains. "By examining only the economic effects of what can be seen and

then counting all of those impacts as benefits, rather than trying to differentiate benefits from costs, there can be no downside to these subsidy programs," he said. "This assumes that labor and other resources being used by the subsidized company would otherwise lay idle. There is no consideration that what is being subsidized is actually displacing economic activity that would otherwise be occurring."

In other words, incentives supporters ignore the saying "There's no free lunch," Cordato said. "That saying is based on the bedrock economic principle of scarcity, which tells us that if there is an increase in the use of resources, either monetary or physical, in the direction of some uses, there has to be a reduction in other uses."

This economic truth plays out in several ways when it comes to corporate tax incentives, Cordato explains. "Corporate subsidy programs to attract some businesses unfairly crowd out the business and economic activities of others," he said. "And this occurs regardless of the form that the subsidies take, whether through direct payments or various kinds of tax breaks."

One way in which incentives lead to "crowding out" involves state government revenues, Cordato said. "Assuming that the overall size of the state budget remains the same, taxes for existing businesses, consumers, and income earners generally will have to be higher to make up for direct incentive payments or lost revenue," he said. "The N.C. Department of Revenue

says well over \$400 million was allocated in corporate incentives for 2014. This money has to come out of the pockets of North Carolinians generally."

"Activity throughout the economy — spending, investing, and entrepreneurship — is curtailed," Cordato added. "That puts a dent in economic growth.

There is a coercive wealth transfer from existing taxpayers to all business entities that received incentives."

Incentive supporters never account for the wealth transfer, Cordato said. "They never make the case that subsidized economic ventures are more valuable to the state's economy, and therefore to the state's coffers, than the spending, investment, and entrepreneurship that would have occurred if that money had never been transferred."

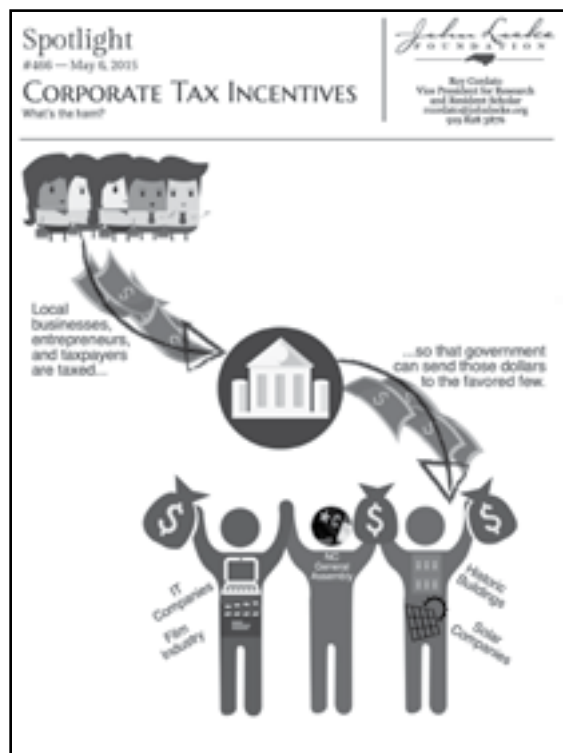
Another form of "crowding out" involves access to resources such as labor, land, and building supplies, Cordato said. "Added demand for these resources that results from state-funded special privileges to some and not to others drives up their prices," he said. "That means higher costs for all businesses that are seeking access to these resources."

"So there is a wealth transfer to the favored business not only from taxpayers generally but especially from existing businesses that will reduce their investments because of higher costs," Cordato added. "Subsidized businesses crowd out, to some degree, existing businesses in the competition for resources. This is why incentive programs implicitly pick both winners and losers."

Cordato disagrees with policymakers who lament Volvo's recent decision not to locate a new plant in North Carolina. "When the state 'loses' a bid for a company to which it is making a large subsidy offer, it is actually a win for home-based and homegrown companies that will have greater and lower-cost access to resources."

Those who believe otherwise are effectively supporting "state-based central planning," Cordato said. "Economic incentives are an attempt by politicians to direct resources that are not their own to investments that they believe will be better for the economy than those that would be chosen if the actual resource owners were left to their own judgments."

Politicians and bureaucrats end up making "economically arbitrary decisions," Cordato said. "They transfer control over resource use from the more efficient setting of private-sector resource owners and entrepreneurs to the less efficient public sector," he said. "This is why incentives-based economic policies are harmful to economic growth." CJ



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Education Researcher: Remedial Education Bill Intervenes Too Late

BY DAN WAY
Associate Editor

RALEIGH

A Senate bill aimed at reducing the need for remedial education courses at community colleges would intervene too late in a high school student's career to have a broad impact on college performance, says a scholar based at Appalachian State University.

The plan would disperse responsibilities for "coaching up" unprepared students while failing to address other factors that are linked to poor college performance by some high school graduates, says Hunter Boylan, who heads a research center that focuses on developing college students who aren't prepared for the rigors of higher education, and who directs the National Center for Developmental Education.

Boylan says Senate Bill 561, which passed the Senate in April by a 48-0 vote, and which allows high-school seniors to use a curriculum developed by the colleges while letting them do their catch-up work at their high schools, is bad policy.

"They have drastically oversimplified the issue of students who need remediation. First of all, students don't just suddenly appear in their junior year underprepared. If they're underprepared, this is something that is cumulative, that started between first grade and 10th grade, and has continued," Boylan said.

But state Sen. Chad Barefoot, R-Wake, a primary sponsor of the bill, said the issue can't be ignored, as 41 percent of recent high school graduates had to take remedial math and 36 percent had to take remedial reading and English when they enrolled in community colleges.

"In the 2013-14 school year the

state did not meet ACT benchmarks in English, math, reading, science, or writing. Research also shows that students who enter the college underprepared and required remediation are much less likely to graduate, and many frequently do not enroll in a college credit-bearing class," Barefoot said during Senate Education Committee debate on April 28.

"In today's work force the skills gap is growing, not shrinking. It is more important than ever that when our students graduate from high school they are proficient in math and reading," Barefoot said.

The bill directs the State Board of Community Colleges to work with the State Board of Education to develop a program allowing high school seniors with low ACT scores to replace their required fourth-year math, English, and reading courses with remedial classes.

Currently, remedial classes are given at community colleges, and students do not earn college credit for completing them. Students taking the proposed courses in high school would earn college credit, Barefoot said.

A similar program in Tennessee called Tennessee SAILS (Seamless Alignment and Integrated Learning Support) has been under way for a couple of years, and "has resulted in 70 percent of the high school graduates now being ready to enter the community college and start with degree-earning courses," Barefoot said.

"Are we logistically doing it right?" Sen. Josh Stein, D-Wake, asked

Barefoot. "Should it be the State Board of Community Colleges coming into the public schools, or the public schools soliciting the community colleges?"

Barefoot said high school teachers will be teaching the remedial modules, and the community colleges will oversee it. The bill "doesn't specifically describe that relationship," but directs the community colleges and schools to work that out.

"Who receives the [daily enrollment] money, the public school, the community college, both?" asked Sen. Fletcher Hartsell, R-Cabarrus.

"Because the teachers are employed by the public

schools, that money will go to the schools. Now the question that you may have or I may have is who's going to pay the community colleges to oversee this," said Senate Education Committee Chairman Jerry Tillman, R-Randolph.

The bill directs the State Board of Community Colleges and State Board of Education to report in January to the Joint Legislative Education Oversight Committee with recommendations to those unresolved issues, Barefoot said.

"We are supportive of this legislation. We are proud of the fact that we've been able to make a lot of collective progress on remediation in recent years, but we think this will help us take an important step forward," said Scott Ralls, president of the community college system. "We have more to do."

"We certainly support the bill. We've been working with the com-

munity college on this issue now for a couple of years," said Rebecca Garland, deputy state superintendent of the Department of Public Instruction. "We do not want to continue to send students that are not prepared."

Boylan, who serves on the advisory board of Columbia University's Community College Research Center, told *Carolina Journal* "our research does not support, nor do we recommend, the elimination of remedial courses. ... We need to take what we have and improve it" at the community college level.

It costs less to perform remediation at community colleges because the adjunct professors teaching those classes are paid significantly less than high school teachers, Boylan said.

"The legislature has made a decision inadvertently that ultimately will cost them more money in an effort to control costs," while piling new duties on overworked teachers, Boylan said.

Rather than imposing a wholesale conversion of remedial courses, "the smart thing to do would be to field-test it with a small number of high schools and community colleges," and proceed based on outcomes, Boylan said.

"I think we're treating students as a kind of monolithic entity here, like the only thing that counts is how much math they know, or how much English," Boylan said.

"In fact they're much more complex than simply somebody who doesn't understand advanced math," he said. "They're also people who are adults with child-rearing responsibilities, who are trying to make ends meet, who are dealing with family crises, who are dealing with health issues, who are dealing with their own emotional and psychological issues, and this bill doesn't do anything about that." *CJ*



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COMMENTARY

Class of 2015 Ready to Launch

Students nationwide are reveling in the pomp and pageantry of high school's most joyous rite of passage: graduation. The class of 2015, resplendent in cap and gown, silky tassels, and school colors, is poised for launch. After the cap toss, kisses from grandma, and photo ops fade to black, where will these graduates go? Will they become captains of academia and industry? Or will they buckle under the strain of college coursework and a mercurial marketplace?

If trends hold, two-thirds of students striding across stages this spring will head to college campuses this fall. Once dorm-room decoration is done and classroom rigors have begun, some will flourish, finding passion and purpose. Others may falter. In recent years, less than 20 percent of North Carolina high schoolers have met or exceeded all four "college readiness benchmarks" on the ACT college admissions exam in English, math, reading, and science.

Why are many missing the mark? In 2012 North Carolina joined a growing number of states in requiring all public school juniors to take the ACT, college-bound or not. Scores understandably have declined as the testing pool has diversified and expanded beyond college aspirants. Still, results from multiple earlier years underscore our imperative. High school curricula must become more rigorous, rich, and relevant.

What about the financial forecast? Stories of students consigned to indentured servitude to pay off college debt — or worse, of those who default on their loans — are widespread. And no wonder. At numerous private colleges, annual tuition and other expenses exceed \$60,000. Debt is an albatross encumbering many, even students receiving grant-based aid or attending comparably affordable public universities. According to the Project on Student Debt, 61 percent of North Carolinians graduate from four-year public and private colleges with debt, owing an average of \$24,319.

Is college worth it? While not for everyone, college nonetheless confers an indisputable employment and earnings edge. According to a 2015 report from Georgetown University's Center on Education and the Workforce, the unemployment rate for recent high school graduates is more than double that of recent college graduates. And the earnings gap has widened: "The overall wage advantage of college over high school has held up and even increased slightly as the earnings of both college and high school workers have fallen over the recession," notes the report.

Seniors have heard the job talk with each passing year, and it has affected their expectations. A Gallup survey conducted this fall of more than 800,000 students in grades five-12 in 48 states, including North Carolina, found high school seniors were the least optimistic of any age group about their future job prospects.

It's time to nurture hope. Hope is, in fact, a more "robust" predictor of success in college than high school grade point averages or even ACT and SAT scores, Gallup reports. And while data are useful for understanding perceptions and trends, they are but part of the story. The personal and particular remain. They comprise the rest and best of the story, and the students will do the telling themselves.

I write this as a parent, not a dispassionate observer. My son is a member of the class of 2015. As he grasps his high school diploma, I won't ponder surveys or work force trends. I'll remember the first day of kindergarten, middle school dances, late-night homework sessions, those unending college applications, and the irrepressible excitement of a college dream fulfilled.

And I'll be proud, so proud.

To all of the other parents out there, and to the class of 2015, I have this to say: Well done. Anything is possible. *CJ*

Kristen Blair is a Chapel Hill-based education writer.



**KRISTEN
BLAIR**

Charter Closing Fund Raises Concerns of Accountability

BY BARRY SMITH
Associate Editor

RALEIGH

A charter-school advocacy group has raised concerns about a 10-month-old law that they say places an undue financial hardship on some charter schools. At the same time, other charter supporters say the law offers some assurance that charter operators are financially accountable to taxpayers.

At an early May press conference, Eddie Goodall, executive director of the N.C. Public Charter Schools Association, said the problem lies with a provision stuck into the budget bill that became law last summer. That provision requires charter schools to maintain a \$50,000 reserve to pay off final expenses in the event the school closes.

Schools are allowed to have the money in an escrow account, or through a letter of credit, a bond, or a deed of trust.

The provision is similar to one found in a bill filed last year by Rep. Rick Glazier, D-Cumberland. Last year's measure would have required charter schools to have the \$50,000 reserve in cash. The budget included a provision adding options other than a cash escrow to meet the reserve requirement.

"It's saying put up your personal resources to guarantee that we'll have \$50,000 to do something with if you go out of business," Goodall said during a May 7 press conference at the Legislative Building. Goodall said the mandate isn't necessary to protect taxpayers in case a school closes and has unpaid debts.

Goodall is a former Republican state senator from Union County. Marcus Brandon, a former Democratic state representative from Guilford County and executive director of CarolinaCAN (the North Carolina Campaign for Achievement Now), also had qualms with the requirement.

"Most of the cases where you've seen charter schools close down, that \$50,000 wouldn't have helped them one way or the other," Brandon said.

Brandon said the requirement could hurt urban charter schools, whose operators often have less capital than suburban charter holders. "We don't have \$50,000 that we can just go pick up," Brandon said.

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

"The dissolution fee is the latest in a long line of state regulations that penalize small, community-based charter schools," Stoops said. "We should not



Former state Rep. Marcus Brandon (at podium) and former Sen. Eddie Goodall (at right) express concerns about a reserve requirement for charter school operators at a May 7 press conference. (CJ photo by Barry Smith)

maintain a system that allows charter management companies and well-heeled charter boards to maintain an advantage over less-connected applicants. Rather, the state should level the playing field."

Goodall noted that all charter school advocates aren't on the same page on the issue.

Debbie Clary, a former Republican state senator from Cleveland County and lobbying and membership services director for the N.C. Alliance for Public Charter Schools, said the alliance supports responsibility and accountability in the charter schools.

"We felt very strongly that this is a piece of accountability," Clary said. "We don't want to see charter schools close without some responsibility back to the taxpayers and the teachers of the school."

Clary said that the charter schools' boards of directors need to understand their fiduciary responsibility.

"If an operator of a charter school can't put a \$50,000 letter of credit or bond, then we have a problem," Clary said. "Then that board had better wake up to that problem and pay better attention to their finances."

Alexis Schauss, director of school business for the state's Public School Fund, said the reserve would help pay final expenses when a charter school closes.

"There is a concern that when they close, the retirement fund is often left with a liability of unpaid bills, and teachers are unpaid," Schauss said. "Some schools close very cleanly. Others don't and teachers are left unpaid."

Goodall agreed that charter schools should be accountable. But he said there are ways to accomplish that goal other than requiring the \$50,000 school closure fund.

He urged state officials who oversee charter schools to be more assertive in determining debts that charters may have run up. *CJ*

Senate Puts House-Passed Education Reform Bill in Deep Freeze

BY DAN WAY
Associate Editor

Two of the state's most powerful lawmakers are perplexed that their education reform bill passed unanimously in the House but immediately was assigned to the Senate's Ways and Means Committee, a graveyard for legislation.

"We were kind of surprised because of that. It was a 117-0 vote," said Gregg Sinderson, spokesman for Rep. Paul "Skip" Stam, R-Wake, one of the primary sponsors of House Bill 587, the School Flexibility Act.

Stam is House speaker pro tem, the second-highest-ranking post in the chamber. Rep. Donny Lambeth, R-Forsyth, chairman of the House Appropriations Committee, also is a primary sponsor of the bill.

Among other things, the bill authorizes organizations such as the North Carolina School Boards Association to conduct professional development workshops in each region of the state to discuss school reform models.

Particular emphasis would be placed on converting some traditional schools into facilities operated similar to charter schools, with the local board of education still in control of the school.

The bill directs the state Department of Public Instruction to provide information and materials for workshops to inform school superintendents of budget and spending flexibility they desire but might not know they already possess.

It further directs the State Board of Education to report to the Joint Legislative Oversight Committee on Education by Nov. 15 with recommendations on how to improve the teacher licensing process, including changes to

the existing lateral entry process.

"We were disappointed to see it get assigned to Ways and Means. We were hoping it went to Rules, and we could have conversations, and we're still hopeful those conversations can exist," Sinderson said.

"I think it's on us now to go across to the Senate and explain what our intentions were," Sinderson said.

"But we're still hopeful that we can move portions of that bill through either provisions in the budget or getting the Senate to move [H.B.] 587."

Sen. Andrew Brock, R-Davie, vice chairman of the Ways and Means Committee, referred questions about the bill to committee chairman Tom Apodaca, R-Henderson. Apodaca did not return repeated requests for information.

Spokesmen in their offices said Ways and Means is where bills are placed that the Senate has no intention of passing.

Senate leader Phil Berger, R-Rockingham, did not respond to requests for comment.

During House Education Committee debate April 28, Lambeth said school districts "may make applications to the State Board of Education converting existing schools to charter schools." The bill states that it "provides local school administrative units with flexibility similar to charter

schools with the local board of education maintaining control of the board."

Joel Medley, director of the North Carolina Office of Charter Schools at DPI, explained how the new schools would be structured.

Medley said current law authorizes a "restart model" to operate "with the same exemptions from statutes and rules as a charter school ... or under the management of an educational management organization that has been selected through a rigorous review process."

Employees of the school would remain employed by the local school district and maintain job protections in place under existing law.

Katherine Joyce, executive director of the North Carolina Association of School Administrators, did not respond to requests for comment.

Lambeth, who served as chairman of the Forsyth County Board of Education for 18 years, said during that time he noticed "a lot of angst about the flexibility that charter schools had, and [traditional] public schools didn't seem to have."

Last session he introduced a bill creating a pilot program allowing school districts to authorize and operate charter schools.

"It was a 50-page bill. It was very complicated, and because it was so complicated it didn't go anywhere," Lambeth said after the April 28 committee meeting.

So he and Stam met to retool the measure, responding to local superintendents' complaints that they need more operational flexibility.

In meeting with school administrators, lawyers, and state educational staff, they discovered that superintendents had more flexibility than they realized.

H.B. 587 authorizes a series of regional workshops to bring those areas to light.

"My goal is to simply make it as easy as possible for them, as we're trying to make the charter school movement easy from a regulatory standpoint, so let's cut through some of the regulation," Lambeth said.

Lambeth said restrictive teacher

licensing rules erect a barrier to qualified individuals and handcuff school administrators when hiring. He used as an example a Broadway professional with 20 years of theater experience being barred from teaching high school drama.

"And so what they're asking for is some flexibility that would allow them to hire for those hard-to-fill positions ... especially if the person is qualified, that they can come in and give them that flexibility on some special license" in addition to existing lateral-entry opportunities, Lambeth said.

Rodney Ellis, president of the North Carolina Association of Educators, would not comment on the possibility of using an emergency teaching license or other alternative licensure for classroom instructors.

Lambeth hopes the legislation would calm a "general undercurrent" among traditional public schools that they are unfairly hamstrung by regulations while charter schools have more options.

"Given some history now that the charter schools have, the public schools could learn from some [innovations] the charter schools have actually implemented," he said. He believes giving charter schools greater freedom for innovation and creativity created a natural friction with traditional schools.

"The purpose of this bill is to relax some of that tension, and to try to create an environment where the public schools actually welcome the charter schools as an option to be able to ultimately transform public schools as well," Lambeth said.

Another area addressed by the bill is budgeting. It directs the state workshops to inform school officials of ways to implement "differentiated pay and other initiatives to improve student achievement," he said.

And while superintendents may be unaware of the flexibility they have to spend portions of their state-allocated money, Lambeth eventually would like to expand that discretion.

Ultimately, he would like to see "more of a block grant concept, where the state's willing to invest \$8,000 per student. Here's your allocation this year. You get to do with it what you want," Lambeth said. "They know the needs better than the state."

At the same time, local school boards and superintendents would assume greater accountability because they are making more decisions and would not be able to blame the General Assembly for bad policies or unwise spending, he said. *CJ*



Members of the Senate's leadership reluctant to discuss the issue

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Fayetteville's Satellite Annexations Capture NCGA's Attention

By MICHAEL LOWREY
Associate Editor

RALEIGH

State law currently prohibits municipalities from involuntarily annexing property owners into a city or town. Municipalities can, however, annex "extraterritorial" property if the owner requests it, and may make the extension of water service to a property contingent on such a "voluntary" annexation request. The General Assembly is now considering whether to allow this practice to continue, says the *Fayetteville Observer*.

Several years ago, Fayetteville annexed two small subdivisions in the unincorporated Vander community off N.C. 24 east of the city, in an area that is otherwise rural. These were "satellite" annexations, as Fayetteville's border was two miles away. The developers were required to request annexation of the neighborhoods as a condition of receiving water service from Fayetteville's Public Works Commission.

Residents of the neighborhoods don't receive the same level of services as those living within the city limits.

"The No. 1 thing is I'm paying city taxes, and I don't get any city services, except for trash," said Robert Harris, who lives in the Baywood Point subdivision.

Fayetteville, for example, has a highly rated professional fire department, but because of the remoteness

of subdivisions, the city contracts with a local volunteer fire department to serve the subdivisions.

Sen. Wesley Meredith, R-Cumberland, was one of the developers of Baywood Point and wishes that it was still in the county.

"I wish it would have been handled differently," said Meredith of Fayetteville's decision to require annexation as a condition for obtaining water service.

Downtown Greensboro Inc.

Many cities have economic development agencies aimed at promoting downtown areas. Greensboro is among those cities, though as the *Greensboro News & Record* reports, that soon may change.

Downtown Greensboro Inc. traditionally has been charged with economic development activities specific to Greensboro's downtown. The agency has been in turmoil and is seeking its third chief executive officer in two years. The city also has determined that it can perform many of DGI's functions more efficiently in house, including the agency's Clean & Green program, which employs a team that

collects trash and cleans the area.

This has left DGI to focus mainly on attracting businesses, and critics say it has been difficult to measure DGI's effectiveness.

"Just about everything DGI does could be considered economic development," said Cindy Hayworth, DGI's interim head. "You could ask 10 people what their defini-

tion of economic development is, and you would probably get 10 different answers."

The lack of an identifiable return to the nearly \$1 million that DGI gets from the city has caused some council members to question why the group should continue to be funded.

"Ever since I've been on council it's been one controversy after another with DGI," said Councilman Tony Wilkins.

"I can't point to one thing they've done in the last year that would justify the money we give them."

Charlotte airport control

Oversight of Charlotte Douglas International Airport remains a controversy in the Queen City. The current debate is whether the city of Charlotte

is trying to undermine the work of a board created by the General Assembly to run the airport, writes *The Charlotte Observer*.

In 2013, the legislature created a 13-member authority to run the airport, with seven members appointed by the city of Charlotte. Mecklenburg County and each of the five N.C. counties bordering Mecklenburg name a single member.

In a May letter to Gov. Pat McCrory, Senate President Pro Tem Phil Berger, and House Speaker Tim Moore, three county-appointed board members contended that the city was undermining the commission.

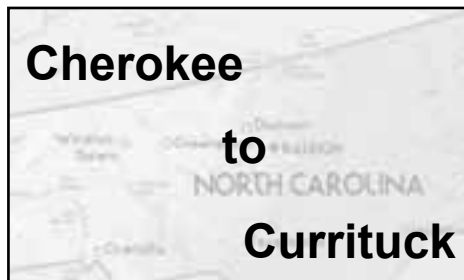
"The commission, in its present form, is just not working," wrote Felix Sabates, Muriel Sheubrooks, and Ken Walker.

"It appears that the city's appointees have decided to put the political wishes of the city officials who appointed them over their duties to the commission."

The city owns the airport and contends that it should run it as well.

Richard Stolz, the commission chair and a city appointee, denied that there's a conspiracy to undermine the board.

"This entire process is flawed," said Stolz. "It's kind of like we were given the keys to the car, but we don't have a license to drive it." CJ



Senate Bill 456 Would Restore Local Funding for Charter Schools

By BARRY SMITH
Associate Editor

RALEIGH

The Senate took a step toward returning local funding to charter schools that was sidetracked when lawmakers changed the spending formula years ago.

Senate Bill 456, which could add about \$11 million to charter schools statewide, passed the Senate by a 35-14 margin and was in the House Rules Committee at press time.

The funding formula was modified when Democrats ran the General Assembly under what is known as the "Hackney/Nesbitt amendment," after its champions, former House Speaker Joe Hackney, D-Orange, and Senate Minority Leader Martin Nesbitt, D-Buncombe. Republicans made a resumption of the funding a priority at the opening of the 2015 legislative session.

"It's going to be a lot more money," said Sen. Jerry Tillman, R-Randolph, sponsor of the bill. He said the bill undoes a previous law allowing local school systems to shield certain local expenses — such as reimbursements, fees, sales tax refunds, and trust funds — from calculations for charter schools.

"The money now has to go with the kids," Tillman said, commenting on requiring per-pupil local money following kids who attend charter schools. "Where the kid goes, the money goes," Tillman said.

Tillman said that the \$11 million statewide



would amount to \$8 to \$10 per student at each charter school.

Charter schools are public schools that operate with fewer regulations than traditional public schools. They have their own boards of directors and operate independently of local school boards. While

they get operating expense money from state and local governments, they don't get local capital expense money to construct or renovate schools that traditional schools receive.

Three organizations supporting charter schools — the N.C. Alliance for Public Charter Schools, Parents for Educational Freedom in North Carolina, and the North Carolina Public Charter Schools Association — have pushed for the restored funding and set up a website — fairpublicfundingnc.org — to promote their cause.

The funding provision was rolled into a broad charter school modifications bill sponsored by Tillman.

Other modifications include allowing members of a school's board of directors to reside outside the state if a majority of the board resides in North Carolina; increasing the minimum size for most charter schools from 65 students to 80 students; setting guidelines for renewing charters at established schools; requiring that charter schools adopt policies preventing nepotism; and requiring the State Board of Education to adopt rules providing for fast track replication of "high-quality charter schools."

Sen. Josh Stein, D-Wake, said he wants to get a better understanding of the allocation of local sales tax revenues called for in the bill. "I want to make sure that we're not automatically advancing charter schools and expanding them when they don't have a financial base from which to expand," Stein said. CJ

Appeals Court Rules on Privacy of Info on Stolen GPS

By MICHAEL LOWREY
Associate Editor

RALEIGH

In April, the state's second-highest court again confronted the issue of warrantless searches and seizures by police.

In this instance, the court ruled that police needed a search warrant before information on a GPS device held by a suspect would be admissible as evidence in court. It also was asked to determine if a suspect has an expectation of privacy regarding stolen property in his possession.

On April 2, 2012, Charlotte-Mecklenburg Police Department motorcycle officers Aaron Skipper and Todd Watson were patrolling Charlotte's Villa Heights neighborhood. They spotted a man walking on the sidewalk who was dirty looking and wearing torn clothing, with, according to court documents, "unusually bulging pants pockets." The documents said the man "could have passed for one of the homeless common to the area."

The man told officers his name was Kenneth Clyburn and provided his date of birth. Clyburn said he was walking around the corner to his mother's house. Clyburn continued walking, but when he turned in a different direction, the officers stopped him again. Skipper asked Clyburn what he had in his pocket. Clyburn produced a cell phone and a pair of binoculars.

Skipper then asked to search Clyburn, who consented. The officer found a crack pipe in Clyburn's waistband and placed him under arrest. A search of Clyburn's pockets produced a box cutter, several small shards of auto glass, and a Garmin GPS attached to a car charger.

Without asking Clyburn whether



they could examine the GPS, the officers pressed its "home" button, which gave an address in Blowing Rock. A search of the GPS' address history also revealed an address several blocks away. The Charlotte-Mecklenburg Police Department went to the address and found a car with a broken window and a Garmin user manual on the front seat. The homeowner wasn't aware that his car had been vandalized and identified the GPS the officers had taken from Clyburn as his.

Clyburn was charged with felony breaking and entering a motor vehicle, misdemeanor larceny, possession of drug paraphernalia, and being a habitual felon. Superior Court Judge Robert Bell held, however, that evidence from the search of the GPS was inadmissible at trial. The state appealed this determination.

The first issue before the Court

of Appeals was whether the officers could search through the information held by the GPS after they arrested Clyburn. The appeals court held that they could not.

"We hold that the United States Supreme Court's recent decision in *Riley v. California* applies to the search of the digital data stored on a GPS device, and affirm the trial court's conclusion that the search incident to arrest exception does not apply in this case," wrote Judge Martha Geer for the appeals court.

Riley was the landmark 2014 decision in which the federal justices held that the prohibition on unreasonable searches in the Fourth Amendment to the U.S. Constitution requires police to obtain a warrant before they can go through the information stored on a suspect's cell phone after arrest.

But does a suspect have any right

to keep private information on a stolen device? The state argued that Clyburn's Fourth Amendment rights weren't violated because the GPS didn't belong to him. Clyburn contended that was not the issue because the GPS device was on his person.

The appeals court came down in the middle, finding that Clyburn had consented to the search, but in certain limited circumstances, Fourth Amendment protections may extend to searches of stolen property.

"Consequently, the question remains whether defendant had a reasonable expectation of privacy with respect to the GPS," wrote Geer.

"With respect to searches of stolen property that do not fall under the umbrella of a defendant's reasonable expectation of privacy in his home or person, the case law suggests that a defendant may nevertheless challenge the search if he can show at the suppression hearing that he acquired the stolen property innocently and did not know that the item was stolen."

Clyburn had claimed that he didn't know the GPS was stolen and that he bought it from someone he didn't know. Since Clyburn's suppression hearing did not determine whether he purchased the GPS or stole it, the appeals court ordered a new hearing to address the issue.

Court of Appeals rulings are binding interpretations of state law unless overruled by a higher court. Because the three-judge panel of the appeals court issued a unanimous ruling, the N.C. Supreme Court is not required to hear the case should either side challenge it.

The case is *State v. Clyburn* (13-1445). CJ

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Heirs Finally Win Dispute With State Over Hammocks Beach

Continued from Page 1

cess we were able to obtain the property under the agreement that includes a fair price and allows the former owners to retain a part of the property for their camp plans."

As for the role of Cooper's office in the Hammocks Beach dispute, spokeswoman Noelle Talley told *CJ*, "Attorneys with our office provide legal services as requested to carry out the policy decisions made by their clients. You may wish to speak with DENR more about this, as attorneys with our office were not involved in the final settlement."

History

The history of the property revolved around a special relationship that began a century ago between John L. Hurst, a hunting guide and son of a slave, and Dr. William Sharpe, a wealthy New York surgeon and avid duck hunter. Sharpe used Hurst as his hunting guide during his frequent visits to North Carolina. Sharpe was so fond of the area he decided to purchase his own hunting land.

In 1917, Sharpe purchased 4,600 acres of land near Swansboro, known as "The Hammocks," and hired Hurst to manage the property. He also hired Hurst's wife, Gertrude, a local schoolteacher, as a housekeeper and cook. Sharpe and his wife, Josephine, became close friends with the Hurst family. Sharpe's Onslow County estate, including marshland, eventually grew to approximately 10,000 acres.

Sharpe intended to give the property to the Hursts when he died, but instead they persuaded Sharpe to donate it to the North Carolina Teachers Association, which at the time was the employee association for black teachers. The teachers association established the Hammocks Beach Corp. to manage the property for the use and benefit of its members, effectively establishing a segregated resort complex. Sharpe deeded the property to the corporation in 1950.

The deed and an agreement between the Sharpes, the Hursts, and the corporation provided that if it became impossible or impractical for HBC to manage the property as originally planned, the corporation could transfer the property to the North Carolina State Board of Education to manage the property as specified in the agreement. The deed also stated that if the Board of Education rejected the property, then it would go to the heirs of the Sharpe and Hurst families.

In 1961, HBC donated Bear Island to the state, and it became the major portion of Hammocks Beach State Park. Passage of the federal Civil Rights Act of 1964 ended racial segregation, making it impossible for HBC to operate the remaining land as prescribed in the 1950 deed. HBC



This tract of land in Onslow County, the subject of a legal battle between Hurst heirs and the state, will become part of Hammocks Beach State Park. (CJ photo by Don Carrington)

struggled to generate revenue, leasing portions of the property to the Future Farmers of America, the 4-H, and other groups, but was unable to maintain the property and its buildings.

The legal battle

In 1986, HBC filed a lawsuit against the Sharpe and Hurst heirs, the State Board of Education, and the attorney general. The corporation declared that the terms of the trust made it difficult to develop the property. The trust prohibited the mortgaging or sale of any property and also allowed the Sharpe and Hurst heirs almost unlimited access to the property.

In 1987, the parties signed a consent agreement allowing HBC more leeway to develop the land. The Sharpe family surrendered any future interest in the property, and the Board of Education declared it had no interest in becoming a successor trustee. Then-Attorney General Lacy Thornburg and his chief deputy, Andrew Vanore, also signed the agreement. The Hurst heirs did not relinquish their right to acquire the land in the future if they chose.

In 2006, Hurst heirs John Henry Hurst and his sister, Harriett Hurst Turner filed a lawsuit against HBC, claiming it had failed to administer properly the trust established to meet the wishes of Sharpe and their grandparents. The Hurst heirs sought a judgment returning the remaining 289 acres

to them. Their attorney also included the Board of Education and Attorney General Roy Cooper as defendants to clarify that the board had no interest in the property. The next year, Cooper's office and the board filed a motion asking to be dismissed from the lawsuit, stating, "The Consent Judgment expunged any interest that the State Board of Education may have in the Trust." Superior Court Judge Allen Baddour granted the motion.

In October 2010, the Hursts won their jury trial, but Fox immediately allowed the State Board of Education to stake a new claim to the property. He issued a judgment removing HBC as trustee, contingent on the formal appointment of the Board of Education as trustee to

administer the trust. If the board refused the appointment, then the property would be distributed according to the terms of the 1950 deed. Since the board had rejected the property in 1987 and 2007, the Hurst heirs believed they finally had gained control of the property.

They had not. The next month, after a closed-door presentation to the Board of Education by Special Deputy Attorney General Thomas Ziko, the board approved a resolution accepting appointment as trustee, and the legal battle continued. The plan was for the board to secure the land and turn it over to DENR to expand the Hammocks Beach park.

The Hurst heirs appealed Fox's decision to the N.C. Court of Appeals, and in 2012 the appeals court ruled for the heirs. In 2013, Cooper's attorneys asked the N.C. Supreme Court to review the Court of Appeals decision. The Supreme Court agreed to hear the case, but before the case was heard, the new leadership at DENR and the Hurst heirs worked out the plan that was finalized in April.

"This has been my longest and perhaps most strenuous court battle in 26 years as a trial lawyer," said attorney Francis in a press release. "This was a nearly nine-year litigation that took perseverance and staying power. At every turn there was a new obstacle to getting Harriet and John the compensation they deserved for their family's land and legacy. ... I am pleased we succeeded in defending their property rights and Harriet's dream for a camp," he said.

"The result is a vindication of the rights of property owners against the condemnation power of the state. But it also preserves a rare natural wonderland at the coast for future generations, while honoring the hopes and aspirations of a generation past," Francis said.

"Even though it was an ugly battle, I decided to not retain animosity toward anyone," Turner told *CJ*. "There were times we were extremely frustrated with the changing conditions thrown at us by HBC and the state. It was costly in time and money, and took a toll on my health. I am grateful to God, my family, my friends, and our legal team," she said.

"To me it was a great learning experience. I had to learn to be patient. I learned a lot about people," John Hurst told *CJ*. "We won a nine-day jury trial and then Judge Fox said he was going to ignore the jury and give the state another chance to take over the property. I put it in God's hands from the beginning," he said. "Your first article was outstanding. If someone did not know the whole story, they would have taken the state's side," he said.

Turner and Hurst credit Bill Holman, state director of The Conservation Fund, for providing significant help in reaching an agreement with the state. Holman served as DENR secretary in 1999-2000. The total price was \$10.1 million, with the state paying \$6.9 million and the Conservation Fund covering the balance. The state will repay the Conservation Fund's contribution over the next few years.

Both Turner and Hurst also credit state Sen. Harry Brown, R-Onslow, with helping bring the parties together. "I was involved at the tail end of this. It was important to come up with a fair price. I don't think anyone from Onslow County thought the state should get it for free," Brown told *CJ*. "The Hursts have been very cordial in working on this," he said. *CJ*

The legal battle, which began in 1986, was prolonged by state officials who wanted the land

Alcoa Prevails Over State in Yadkin River Dam Ownership Suit

Continued from Page 1

relicensing. They wanted the state to take over the dams and operate the hydroelectric facilities.

The state initiated the legal action in North Carolina Superior Court in August 2013, but the following month Alcoa's request moving the case to federal court was granted.

The state listed the N.C. Department of Administration as the designated owner of the land, and attorneys from Attorney General Roy Cooper's Department of Justice represented the department.

Cooper's office did not respond to questions about the ruling. Administration Department legal counsel Bill Peaslee told *Carolina Journal*, "The state is considering all of its options."

"We're pleased that the judge recognized that the Yadkin River was not navigable at the time of statehood," said Ray Barham, Alcoa's relicensing manager. "We hope this will bring us closer to finally resolving this issue," he said. Barham added that Alcoa "spent what was needed to defend our property rights. However, we would have much rather invested that money to attract new jobs to the Badin Business Park or improve water quality in the Yadkin River," he said.

CJ also asked Barham if he was aware of any other methods the state might use to stall the relicensing process. "We don't see why the state would want to continue trying to stop us from generating clean, renewable energy on the land we've owned for the past 100 years," he said.

Alcoa has the support of several state legislators. "It started with Gov. Easley, continues by Perdue and McCrory. The state's foolish lawsuit to take the property," tweeted Sen. Andrew Brock, R-Davie, after Boyle's ruling.

Rep. Justin Burr, R-Stanly, speculated that Volvo's recent decision to open an automobile factory in South Carolina rather than North Carolina might be related to the state's treatment of Alcoa. "What automaker would want to locate here when they see N.C.'s treatment of one of its global partners," Burr tweeted.

The project

Known as the Yadkin Project, the hydroelectric plant comprises four hydroelectric dams and reservoirs located along a 45-mile section of the Yadkin River in Davidson, Davie, Montgomery, Rowan, and Stanly counties.

The reservoirs, named High Rock, Tuckertown, Badin, and Falls, lie within 38,000 acres of real estate owned by Alcoa Power Generating Inc., a subsidiary of Pittsburgh-based Alcoa. The company bought the land and constructed the hydroelectric dams to supply power to its aluminum



The Falls Dam area is in the segment of the Yadkin River that the state claimed was a navigable river in 1789. (CJ photo by Don Carrington)

smelting plant in Badin, a small Stanly County town east of Albemarle. Aluminum production started in 1917 and continued until 2002, when the company shut down most of the operation. All production stopped in 2007.

The hydro facilities continue to generate up to 210 megawatts of electricity that Alcoa sells on the wholesale market to other power companies. Alcoa operates the project under a license from the federal government.

The most recent 50-year license was issued in 1958, and Alcoa started the relicensing process in 2002. The Federal Energy Regulatory Commission routinely renewed licenses and probably would have issued a new license to Alcoa if Gov. Mike Easley had

not taken the unusual move in April 2008 of intervening in the relicensing process.

Citing water quality concerns by some local governments in the region, Easley asked FERC to delay issuing a new license until those concerns were addressed. Easley's action came after Bill Ross, his secretary of environment and natural resources, had signed off on the relicensing agreement.

Easley left office in January 2009, but his successor Perdue also asked FERC to delay a new license. A legal brief filed in 2009 by an attorney representing Perdue stated that she "intends to vigorously oppose" a new license for Alcoa.

Alcoa Relicensing Timeline | Key Events

September 2002: Alcoa begins the relicensing process with a series of public meetings.

April 2006: Alcoa files its license application with the Federal Energy Regulatory Commission.

April 2008: FERC staff issues a Final Environmental Impact Statement for the Yadkin Project after two years of study. It recommends renewing Alcoa's license for the Yadkin Project. The original 1958 license expires. The Yadkin Project begins operating under a series of one-year licenses that are automatically renewed.

July 2008: Gov. Mike Easley signs into law a bill authorizing a study of water issues along the Yadkin River by the Environmental Review Commission. No study is ever completed.

April 2009: Gov. Bev Perdue files with FERC a motion to intervene in the relicensing of the Yadkin Project. The motion, made more than six years after the relicensing process started, is granted.

August 2013: Gov. Pat McCrory's Department of Administration files a lawsuit against Alcoa in N.C. Superior Court claiming the state owns the riverbed beneath the dams along the Yadkin River. The case was later moved to U.S. District Court.

April 2015: A trial begins in U.S. District Court in Elizabeth City. The key issue: whether the relevant section of the Yadkin River was navigable for commerce at the time of North Carolina's statehood. A finding that the river was navigable would give the state special ownership rights.

May 2015: U.S. District Judge Terrence Boyle issues a ruling that states that "all of the evidence suggests that the Relevant Segment was never, at any point in history, navigated for commerce in its entirety, nor could it have been."

Boyle's reasons

Both the state and Alcoa stipulated that the "relevant segment" for purposes of the navigability issue was a 45-river-mile segment that included all four dams, Boyle ruled. Prior to the construction of the dams, the river's most turbulent point was a three-mile section that now includes the Falls and Narrows dams. "Given the turbulence of the Falls and Narrows, it is perhaps unsurprising that absolutely no evidence was presented in support of the navigation of this portion," Boyle wrote.

"Pole boats and flats would have had difficulty navigating shallow, steep, swift-moving rocky rivers," Boyle wrote, citing testimony from a marine archaeologist testifying for Alcoa.

Boyle noted that historic records for navigating that section of the river were minimal and there were no accounts of anyone navigating the entire section. He also noted that the U.S. Army Corps of Engineers considered plans to make the river navigable, but abandoned the idea because it would be cost-prohibitive.

"Given that the stipulated segment includes the Falls and Narrows, and that the state conceded both portions had to be portaged, the court is compelled to conclude that the relevant segment, in its entirety, was not navigable in fact at statehood," he wrote.

In addition, Boyle noted that the Yadkin-Pee Dee River Basin is less treacherous the further east and south it travels below the Narrows. "It seems likely therefore that the segment of the Pee Dee on which Duke Energy operates the Blewett and Tillery hydroelectric plants is more susceptible to navigation than the relevant segment. The court is not aware, however, of any claim by the state to the title of the historical riverbed underlying those projects," he wrote.

"For the foregoing reasons, the court finds that the state had failed to meet its burden to prove that the relevant segment, as stipulated by the parties, was navigable for commerce at statehood," he concluded.

Water quality permit

Alcoa's next step in the relicensing process is to acquire a water quality certificate from the state under Section 401 of the federal Clean Water Act.

"We appealed the denial of our 401 water quality permit and expect a ruling soon. If the Administrative Law Judge rules in our favor, we expect the N.C. Division of Water Resources to act quickly to issue a 401 water quality certificate for the Yadkin Project that is consistent with the draft that was prepared in 2013. Our application had previously been determined to be complete, and the hearing officer had recommended issuing certification," said Barham. CJ

Smith: Consumer Protection Bureau Not in Interest of Consumers

By CJ STAFF

RALEIGH

Regulators in Washington, D.C., believe the federal government needs to play an active role in protecting American consumers' finances. Adam Smith believes the regulators' efforts lead to negative unintended consequences. Smith, assistant professor of economics and director of the Center for Free Market Studies at Johnson & Wales University, recently shared his concerns during a conversation 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: I understand that this ... really emanates from some of the work that you're seeing of this relatively new group called the Consumer Financial Protection Bureau. First of all, remind us: What is this group, and what is it up to?

Smith: This group came out of the Dodd-Frank reform bill and was one of the more appealing to populist beliefs about what caused the financial crisis — that it was consumers getting harmed by banks, and that they needed an agency that would look solely after their interests.

So it was a very popular part of the Dodd-Frank reform bill, and because of it coming out of the crisis, once it emerged, it immediately, you know, sunk its teeth into the market and has become something of a powerful player in Washington.

Kokai: Now I would imagine that most people who haven't really studied this would think, "Well, consumer financial protection, that makes sense." Some say [it is] good for the government to be involved, but you raised some concerns about the way this group has gone about its work.

Smith: The problem is, is that what they report to do is, of course, work in consumers' interest. And there are occasional forays into the market that I think that's true, when they're hunting out fraud, for example, or if they're making sure that contracts are being abided by, by the banks and so forth. I think that's all well and good.

Where the agency has gone awry, I think — and I should say this is the majority of their work — is where they label certain credit practices as bad, period. You know, these are bad credit practices.

Kokai: So it's not just the person being a bad actor, but the practice itself is bad?

Smith: The practice itself is flawed and should be removed from the market altogether, despite what consumers think. Because the real se-

"[A]n assumption with this agency is that consumers are essentially children, and they don't know any better. And so certain credit practices are inherently bad and will exploit them, and need to be removed from the marketplace. But, of course, they're not offering any alternative to those credit instruments."

Adam Smith
Director of Free Market Studies
Johnson & Wales University



cret behind the agency — or maybe not so secret, but at least, what I see as an economist — is they are coming from a school of thought called behavioral economics. And behavioral economics is all about consumers not being so intelligent about their decisions.

And so an assumption with this agency is that consumers are essentially children, and they don't know any better. And so certain credit practices are inherently bad and will exploit them, and need to be removed from the marketplace.

But, of course, they're not offering any alternative to those credit instruments. They're just saying these are bad, and, you know, getting rid of them will make everything better in this market environment.

Kokai: Now, you mentioned behavioral economics. For those in our audience who are not particularly familiar with the term, they might know the book, *Nudge*. ... What is the impact of behavioral economics on this approach? Is this having a negative impact on what this group ought to be doing?

Smith: It's hard to disassociate the two, because [Massachusetts Sen.] Elizabeth Warren, who was obviously the champion of the agency, wrote a strongly argued and very important paper that basically set up the agency, and the paper was filled with behavioral analysis.

See, what behavioral economics has done is it's questioned the traditional assumption of economics that we are, for the most part, rational in our decision making. And where they've, I think, made some great contributions is showing, yeah, there are certain patterns that people have where we aren't completely rational, OK?

We all know that we're not always rational and so forth, but the problem is, is that you're finding certain, you know, quirks that humans have, and

then immediately assuming that you can use that information to tailor policy ... toward the marketplace.

But it doesn't all quite fit together, and what pops out of that is not the kinds of careful analysis of human behavior that the academics are performing. It's more just another excuse for very heavy-handed regulation, that ends up not looking at all like its source material.

Kokai: One of the other concerns I've heard about behavioral economics is it basically, as we said from the book title, nudges or steers people toward certain conclusions, things that they will do, and someone, somewhere, has to be the one who decides: Where are we going to steer them? Where are we going to nudge them? [This] is definitely, completely different from what the market would come up with, isn't it?

Smith: Correct, so not only are they deciding what's best for all consumers — something that I think even [Richard] Thaler and [Cass] Sunstein, the authors of *Nudge*, would disagree with — but usually these nudges become shove-like very quickly. So, for example, when you say this credit practice is bad, so we eliminate it, that's not a nudge. We're not nudging people away from a bad credit practice.

And the few times, I should say, that they have employed nudges, consumers have surprised them. One example is they said that, well, consumers are overusing overdraft protection, so what we're going to do is we're going to require every customer to opt in to overdraft protection, which they felt would clearly reduce the number of people who used the service.

Turned out [that] wasn't true. Everyone opted back into overdraft protection, especially the people who were using it the most before. Again, obviously, they think it's a valuable service.

Kokai: Now, moving forward, we have this Consumer Financial Protection Bureau, for good or ill. What should they be doing, rather than having this behavioral economics analysis guiding their acts?

Smith: I don't think, as I was saying before, given the link between the two, I don't think you can break them apart. I think it is what it is. I would say, though, that — *The Wall Street Journal* just wrote a piece on this, it's a long shot — but it's possible that the agency could be constrained in a way that it really always should've been, but, unfortunately, because of the environment surrounding the financial crisis, didn't happen. And that is, having a bipartisan commission that oversees the agency's policies and so forth, and, most importantly, having control over their budget.

Right now, Washington has absolutely no control over this agency's budget. It's housed within the Federal Reserve and cannot be touched.

Kokai: Do you have a sense ... that something will be done? Is there enough of an outcry against this, or is this something that's going to be a hard sell for the politicians to change?

Smith: Right now, it's deeply partisan, but the Republicans at least have sense enough to know that this is not a good thing, and that what these people are doing is not in the interest of consumers. And so, there does seem to be a lot of momentum against it from that side.

On the other hand, Democrats are very favorable of the agency and don't want to see its powers curtailed. On the other hand, how important is that to the Democrats? I feel like there's an opportunity for them to kind of trade up for a larger issue in this case, whereas Republicans, I think, would have a nice victory on their shoulders if they could get that passed. CJ

UNC-Chapel Hill Expands On-Campus Diversity Efforts

By HARRY PAINTER
Contributor

RALEIGH

The promotion of diversity has taken center stage at today's universities. Expanding diversity — which usually is defined as promoting the viewpoints of racial, religious, and sexual minority groups — is accepted by most administrators as crucial to a university's success. More and more campuses are adopting diversity requirements and training, and creating entire departments to achieve diversity and inclusivity on campus.

The University of North Carolina at Chapel Hill is no exception. UNC-Chapel Hill's mission statement calls for teaching a "diverse community" of students. It houses a multitude of on-campus resources, such as the Carolina Women's Center; the Lesbian, Gay, Bisexual, Transgender, and Queer Center; and the Office of Diversity and Multicultural Affairs.

In March, it launched a series of "Carolina Conversations" to provide a platform for students to discuss controversial topics relating to diversity, especially race relations. The university also was recently sued for its policy allowing racial preferences in admissions.

Alongside those efforts, UNC-Chapel Hill is pushing for additional diversity initiatives. On April 14, the 50-member Provost Committee on Inclusive Excellence and Diversity, comprising employees, faculty members, and students, hosted a presentation titled "Exploring the Institutional Diversity Framework at Carolina."

In her keynote address, higher education diversity expert Daryl Smith, a retired professor of education and psychology at Claremont Graduate University, recommended a path forward for the Chapel Hill campus, drawing from her 2009 book *Diversity's Promise for Higher Education: Making it Work*.

Smith opened her speech by imploring the audience to continue conversations stemming from recent national and local events, such as the Ferguson, Mo., shooting of Michael Brown, and the police beating of University of Virginia student Martese Johnson.

Smith called on universities to erase disparities in graduation rates among different genders, races, and classes. She said that diversity must be "part of the core indicators of success" of a university, as opposed to a parallel effort. "We don't have time for parallel," she said.

She continued, "What fuels my impatience is that too much of what we are discussing today has been discussed for 40 years."

Smith argued that faculty and staff members should be hired and fired on the basis of their understanding of diversity, an idea first proposed

in her book, in which she wrote, "We are now at a time when we must understand that diversity, like technology, is central to higher education. Will institutions be credible or viable if diversity is not fundamental? I believe not."

She told the audience that, like technological proficiency, competence

in issues of diversity "has to be a condition of employment."

The committee demonstrated that it already is implementing Smith's goals of institutionalizing diversity throughout the campus community. After Smith's keynote, PCIED speakers touted their plan, heavily influenced by Smith's book, to achieve inclusion.

Some suggestions from the plan:

- Ensure every department or "unit" has a diversity page on its website.
- Ensure each unit has a "diversity liaison."
- Spread the message of inclusive excellence to the community through email and social media.
- Encourage Chancellor Carol Folt to discuss diversity regularly with her cabinet and the Board of Trustees.
- Add personnel to collect data on and assess diversity.
- "Require enhanced diversity learning experiences and requirements" through course work, "experiential learning," and reflection, and expand requirements at graduate and professional schools.
- Train faculty and graduate teaching assistants to discuss diversity in class.

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



COMMENTARY

'Bias Incident Reporting' Or Speech Code?

For months, the hottest topic on American college campuses has been the outbreak of hostility to free speech. Leftist students, faculty, and administrators have been in a tizzy over "harmful" speech.

At Oberlin College, for example, some students wanted to prevent philosophy professor Christina Hoff Sommers from speaking because they call her a "rape denier." Of course, she doesn't deny that rapes do occur, but maintains that they are far less frequent on our campuses than the standard feminist zealot wants you to believe. She also dissents from the idea that we must abandon the rule of law in cases where rape or sexual assault is alleged.

To disagree with leftist dogmas, or say anything that possibly could upset a student in a "protected" group, is to engage in "hate speech" or a "microaggression." Those on campus who are so eager to silence opponents, or just show that they have enough clout to make anyone who displeases them suffer, have used their control over campus speech police to the maximum.

That control often has been exercised through speech codes, but in case after case those codes have been struck down as First Amendment violations. Very recently, the speech code at Dixie State University in Utah was dropped when the Foundation for Individual Rights in Education told the administration that it could not legally prevent students from publishing and distributing material that "mocked" public officials.

But what if a university could clamp down on speech (or conduct) that a student regards as demeaning without having a de facto code?

Voila! The University of Colorado has instituted a new program that might work to suppress speech that the tender (or militant) left doesn't want. It is

called "Bias Incident Reporting." As writer Samantha Audia relates in a recent *College Fix* article, the campaign encourages students "to report any 'bias' they come across to campus authorities, who collect details including offenders' name, birthdays, genders — even Social Security numbers — along with a description of the 'incident.'"

Exactly what will count as "bias" is up to campus officials. While they claim that they have no intention of curtailing free speech and only want to stop racial slurs and demeaning acts, it is hard to imagine that they will turn away complaints by students who say they've been hurt ("triggered" is the preferred term) by speech.

We know that college officials are under great pressure to take every allegation of sexual assault very seriously, lest they be accused of rape denial or blaming the victim. Those officials are not likely to tell students who file complaints of "bias incidents" that they're making much ado about nothing. Dismissing complaints by women or "underrepresented" minorities is dangerous to college

administrators who want to avoid trouble and keep their jobs.

Instead, the bias officers will investigate all complaints, and that will become an ordeal for the accused. To

avoid those investigations, students will start to hold back from saying what they want to say the way they want to say it.

Colorado's Bias Incident Reporting system will become a wet blanket thrown over free speech on campus. Eventually, it probably will be challenged on First Amendment grounds, but even if it falls, look for the people on campus who really believe that speech should be controlled rather than free to come up with something else. CJ

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



GEORGE LEEF

For administrators, dismissing complaints of bias can be dangerous

Campus Briefs

How many times have we heard that higher education is an economic driver? That graduates will make \$1 million more than high school graduates, on average? That North Carolina must spend an ever-increasing amount on higher education to maintain such results?

These arguments were repeated at a recent event co-sponsored by Higher Ed Works and the Harvard Club at Research Triangle Park. But these claims are not borne out by UNC's performance. Although many individual students greatly benefit from college, too many students in the UNC system learn very little. Many end up worse off:

- At four UNC institutions, more than half of the students still have not graduated after six years.
- The average four-year graduation rate across the system is just 40.4 percent.
- At six UNC institutions, more than 10 percent of recent graduates have defaulted on student debt.
- Students who major in many niche fields — including women's studies, African-American studies, environmental studies, and drama — still make less than \$30,000 five years after graduation.

- And nationally, the \$1 million college premium has been debunked multiple times, yet still gets repeated by college boosters.

- Moreover, students are learning less than we would like. In *Academically Adrift*, sociologists Richard Arum and Josipa Roksa show that nearly half of university students show little to no academic progress by their sophomore year.

Despite flaws in their overarching message, panelists made several important points: Tuition has been rising too fast; for many students, starting at a community college is a great foot in the door to higher education; financial aid should be tied to success; and technology offers many opportunities for transformation and efficiencies in higher education going forward. Also promising are efforts toward introducing competency-based education in the state. CJ

Compiled by Jenna Ashley Robinson, president of the John W. Pope Center for Higher Education Policy.



Commencement Speaker Choices Raise Questions

By HARRY PAINTER
Contributor

Commencement season is an often-controversial time. Last year was conspicuous for its wave of politically motivated disinvitations, with students trying, sometimes with success, to get their universities to rescind invitations to commencement speakers such as anti-Islamist writer and activist Ayaan Hirsi Ali and former U.S. Secretary of State Condoleezza Rice.

This year started out with a more pragmatic controversy. In April, the University of Houston reluctantly admitted it is paying actor Matthew McConaughey \$135,000 to speak at May's commencement ceremony, which the actor says will be donated to his foundation, *Just Keep Livin'*, which places fitness and wellness programs in public schools throughout the nation.

Still, this raises important questions: At what point does the graduation ritual become too extravagant? Could college funds be put to better use than attracting celebrity speakers to say a few inspiring words to the graduating class? After all, most commencement speakers are paid nothing.

The conventional knowledge is that colleges have powerful incentives to invite bigger and better speakers. Supposedly the invitations help market the campuses to potential students, faculty members, and even the media by building buzz around a college's brand. Also, they may have the potential to attract donations.

But picking the wrong speaker could cost donations as well, and it's not always easy to tell which speakers those will be. The marketing argument may be plausible for small private schools, but is questionable for subsidized public colleges, which exist to fill a state's need, not to increase it.

Bills in New Jersey and Illinois have proposed banning public universities from using public funds to pay for commencement speakers. That would solve the problem of expending tax dollars on speakers, a practice that becomes more contentious when taxpayers and students are expected to welcome controversial speakers to campuses.

One highly controversial pick for commencement speaker this year was Common, a rapper and actor, who was given two very different receptions by two different schools. First, his scheduled appearance was canceled unceremoniously in March by the administration of Kean University in New Jersey, just hours after the announcement. The reason was that a police union complained that one of his songs takes the side of Joanne Chesimard, a former Black Panther who was convicted of killing a New Jersey State Trooper.



But Common did not miss out on graduation season altogether. He still was the keynote speaker at Winston-Salem State University, a historically black university. London Mickle, president of the staff senate at Winston-Salem State, told the Pope Center that a commencement committee, made up of representatives of different units around campus, such as the chair of the faculty senate, the senior class president, the campus police, and employees and volunteers from the registrar's office and academic affairs, chooses the speaker from a list submitted by students.

Then the committee finds out who from the list is available. The next step? "See [who] we can afford," she said.

Elsewhere in North Carolina there was a diverse group of commencement speakers, ranging from politicians and celebrities to academics and artists. High Point University has

sought a higher profile in recent years, and that shows in its recent choices. This year was no exception. High Point picked former NBC Nightly News anchor Tom Brokaw. Also hosting a high-profile celebrity was Wake Forest University, with new "Late Show" host Stephen Colbert.

Other, less controversial speakers in North Carolina included Gov. Pat McCrory and U.S. Secretary of Education Arne Duncan; the former spoke at Elizabeth City State University and Forsyth Technical Community College, and the latter at N.C. Central University.

N.C. Attorney General Roy Cooper, who is seeking the 2016 Democratic nomination for governor, delivered Elon University School of Law's address. Shaw University hosted U.S. Rep. G. K. Butterfield, the First District Democrat who also is the new chairman of the Congressional Black Caucus.

Another popular category of commencement speaker includes entrepreneurs and business leaders. The most high profile of these in North Carolina was former Hulu CEO Jason Kilar, who gave the address at his alma mater, UNC-Chapel Hill. Warren Wilson College, the Asheville-based liberal arts college, hosted New Belgium Brewing Company CEO Kim Jordan.

From the arts community, UNC-Pembroke picked Wes Moore, author of *The Other Wes Moore*. Queens University of Charlotte chose Marshall Curry, a documentary filmmaker. CJ

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



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Opinion

Colleges' Reforms Aimed at Fighting Grade Inflation Falling Short

Grade inflation is rampant on American campuses. According to a study by Stuart Rojstaczer and Christopher Healy, A's represent 43 percent of all grades awarded today — up from 15 percent in 1960. In fact, an A is now the most common grade awarded in college, and 73 percent of all grades are A's and B's.



JESSE SAFFRON

The problem is especially acute at private colleges and top public universities, particularly in the humanities and social sciences (with economics as the exception).

How, then, in the face of all this blurring of lines between good, bad, and excellent, can higher education maintain a system of meaningful measures of student performance?

A couple of approaches conceived to deal with the problem of grade inflation have gained traction in the last few decades, with varying degrees of success. One approach attempts to address grade inflation by adding grade distributions and class grade-point averages to transcripts. The other caps the percentage of A grades or mandates a specific grade distribution.

The first approach — adding grade distributions to transcripts — is intended to give students, faculty, administrators, and employers more information about an individual's relative academic standing. Such grading transparency, the thinking goes, will

make easy course schedules less attractive, encourage academic exploration on the part of students (rather than have them flock to degree programs traditionally regarded as easy), and give hiring managers and graduate school admission officers more insight into applicants' true abilities. The University of North Carolina at Chapel Hill, for example, plans to experiment with this approach, albeit a more beefed-up version.

UNC-Chapel Hill has been especially susceptible to grade inflation. In 1967, the average GPA at the North Carolina flagship was 2.49. By 2008 it had risen to 3.21, and 82 percent of all grades were A's and B's. Moreover, 40 percent of undergraduates made the Dean's List in 2008, up from 28 percent in 1995. In 2011 the university's Faculty Council approved a plan for what it calls "contextual grading." Implementation has been postponed, most likely until the fall 2015 semester, because of technical issues, along with student and faculty concerns regarding the accuracy of the contextual grading data and how such data would be used and interpreted by employers and graduate schools.

Once in place, UNC-Chapel



Hill's new-look transcripts will show a student's percentile rank in each course, his or her attempted-versus-earned credit hours, each course's average GPA, and the number of courses

in which the student was at, above, or below the median GPA. Also, professors will be able to compare their grading history with the grading histories of professors in their departments and across the university.

Although the potential benefits of contextual grading may appear obvious, the concept has drawbacks that should foster some caution on the part of university officials wishing to join the fight against "grade deflation" at UNC-Chapel Hill and other colleges.

For example, in 1998 Cornell University began a "truth in grading" policy that required median grades to be posted online. (They were supposed to be posted on transcripts, too, but that happened only recently.) Not surprisingly, students gravitated toward classes with higher median grades, thereby exacerbating the problem of grade inflation.

And Valen Johnson, in his book *Grade Inflation*, noted that in fall 1994, Dartmouth began publishing median grades and class sizes on transcripts.

Five years later, the percentage of A's awarded had risen.

The other common method for checking grade inflation is to cap the percentage of A's or to otherwise reduce average GPAs. In 2004 Princeton began restricting A grades in undergraduate courses to 35 percent. The cap achieved its intended effect, but student backlash was severe. As Princeton was reining in high grades, other elite schools were experiencing rapid grade inflation, which some Princeton students argued put them at a disadvantage in the labor market. Eventually, the cap was removed. Some had hoped that other top schools would follow Princeton's lead, but it was Princeton that conformed to its peers.

The lesson is that transcript reform is not an automatic fix. And the pressures to inflate grades are many: attracting students and boosting enrollment; appeasing graduating students seeking employment; and the desire by universities to be "feeder schools" for top-flight graduate programs. There are even "egalitarian" justifications for grade inflation that, unfortunately, some professors and administrators have fallen for.

The methods that some universities have devised to combat those pressures — capping high grades and adding more "contextual" information to transcripts — are problematic. While it may be good for universities to experiment with some of these reforms, they don't appear to be solutions to the problem of grade inflation, one that has been festering for decades.

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

An A is now the most common grade awarded in college

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From the Liberty Library

• In 2012, actress Stacey Dash posted a tweet that changed her life. Best known for playing Dionne in the 1995 teen classic “Clueless,” Dash had close friends in the upper echelons of the movie and music industries — and an Obama bumper sticker on the back of her BMW. But in 2012, sick of being disappointed by the Obama White House and growing more certain of her conservative beliefs, on Twitter Dash endorsed Mitt Romney for president. The backlash was swift and brutal. In *There Goes My Social Life*, Dash explains how she became a conservative, sharing incredible stories of her rough upbringing in South Bronx and her tumultuous Hollywood career. Learn more at www.regnery.com.

• Throughout Western history, the societies that have made the greatest contributions to the spread of freedom have created iconic works of art to celebrate their achievements. Yet despite the enduring appeal of works from the Parthenon to Michelangelo’s “David” to Picasso’s “Guernica,” histories of both art and democracy have ignored this phenomenon. Millions have admired the works of art covered in this book, but relatively few know why they were commissioned, what was happening in the culture that produced them, and what they were meant to achieve. In *David’s Sling*, Victoria Coates places into context 10 canonical works of art executed to commemorate the successes of free societies that exerted political and economic influence far beyond what might have been expected of them. More information at www.encounterbooks.com.

• In Federalist 51, James Madison explained the essential balance between civil society and governmental restraint: “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” Mark Levin’s *Plunder and Deceit* is a like-minded appeal to reason and audacity — one intended for all Americans but particularly the rising generation. Levin challenges younger Americans, asking: Will you acquiesce to a government that overwhelmingly acts without constitutional foundation — or will you stand in your own defense so that your and future generations can live in freedom? Visit www.simonandschuster.biz. CJ

Book review

Intimate Look at Chaplain Who Was Pastor to Nazis

• Tim Townsend, *Mission at Nuremberg: An American Army Chaplain and the Trial of the Nazis*, William Morrow, 2014, 388 pages, \$28.99.

BY HAL YOUNG
Contributor

In 1945, the Army gave a 52-year-old chaplain a choice: He could return home to his wife and son in St. Louis, or become the pastor of the most horrifying congregation ever assembled — 21 men who helped start a world war and oversaw the systematic enslavement and slaughter of tens of millions across Europe.

Henry Gerecke chose to be a missionary to the Nazis.

Tim Townsend’s *Mission at Nuremberg* is a history of his year-long effort to reach some of the darkest souls of modern times. The account is both disturbing and inspiring, probing the problems of evil and sin, forgiveness and redemption, and the tension between justice and vengeance. It also serves as a warning that such things can happen in civilized countries, by small steps and degrees, once they are allowed to start. “We abandoned God,” one defendant said, “and He abandoned us.”

Before the war, Gerecke (rhymes with “Cherokee”) was a Lutheran evangelist working in the slums and jails of inner city St. Louis. He had resigned from a comfortable suburban pastorate to minister in the riverfront district, and his efforts to reach the most hardened and alienated laid the groundwork for his future mission. When he volunteered for the chaplaincy, he was just reaching the maximum age for Army recruits. A photo from Fort Jackson, S.C., shows the heavyset, bespectacled 50-year-old scrambling through training in field pack and helmet.

Deployed with a hospital unit to Britain and then to occupied Munich, he made several visits to the newly liberated Dachau concentration camp. As they walked past the barbed wire, execution mounds, and cremation ovens, his assistant heard him repeating under his breath, “How could they do something like this?”

In Nuremberg, the Army was collecting high-ranking Nazis for trial. The prison commander, Col. Burton Andrus, was concerned that without spiritual counsel, the prisoners in his cells might develop — or invent — some psychological derangement that would interfere with their competency to stand trial. Gerecke’s Lutheran credentials, German language ability, and experience with prisoners brought him to Andrus’ attention. Andrus wanted Gerecke, and after heart-searching consideration, Gerecke agreed to come.

When he arrived at Nuremberg, Gerecke met the men he would be counseling, among them Hermann Göring, commander of the Luftwaffe and Hitler’s hand-picked successor; Joachim von Ribbentrop, the Nazis’ foreign minister; navy commander Adm. Karl Dönitz, author of the unrestricted warfare policy for U-boat captains; and others who had directed the Hitler Youth and concentration camps, managed the slave labor program, and wrote the racial policies that undergirded the Final Solution.

As the trials dragged on for unexpected months, Gerecke and his Roman Catholic counterpart, Fr. Sixtus

O’Connor, slowly built a pastoral relationship with the shattered top of the Nazi hierarchy, with the sure expectation that very soon, most or all of their charges would face an ignoble death.

The book offers an intimate look at the leaders who survived the fall of National Socialism. Göring, for example, is an interesting study. From the very beginning, Göring attended every meeting in the tiny chapel, sitting on the front bench and singing with gusto. He welcomed the chaplain’s frequent visits and displayed a “charming” manner to Gerecke. He even tried to talk the skeptical Alfred Rosenberg into joining him for chapel.

Yet Göring exemplified a class of quasi-religious Nazis who styled themselves as *Gottgläubige* — holding some belief in God but rejecting Jesus. The night before the executions, Göring disdained Gerecke’s counsel to pray for Christ’s forgiveness, saying Jesus was “just another smart Jew” to him. Yet his final request to the chaplain was for the Lord’s Supper — which Gerecke said he could not in good conscience administer to a self-described unbeliever. A few hours later, Göring cheated the hangman with a smuggled cyanide capsule.

Others in the group came to admit guilt for the crimes they had committed, and several seemed to experience a true conversion to Christianity. Both Ribbentrop and Gen. Wilhelm Keitel, chief of the general staff, made strong professions of faith before their executions. The general’s last words, standing on the trap door, were a simple prayer, then turning to Gerecke, “I thank you, and those who sent you, with all my heart.”

Townsend does not follow those who escaped the gallows, but records that several who went to prison continued attending chapel long after the trial and the threat of execution were past, suggesting that something more than jailhouse religion had taken root.

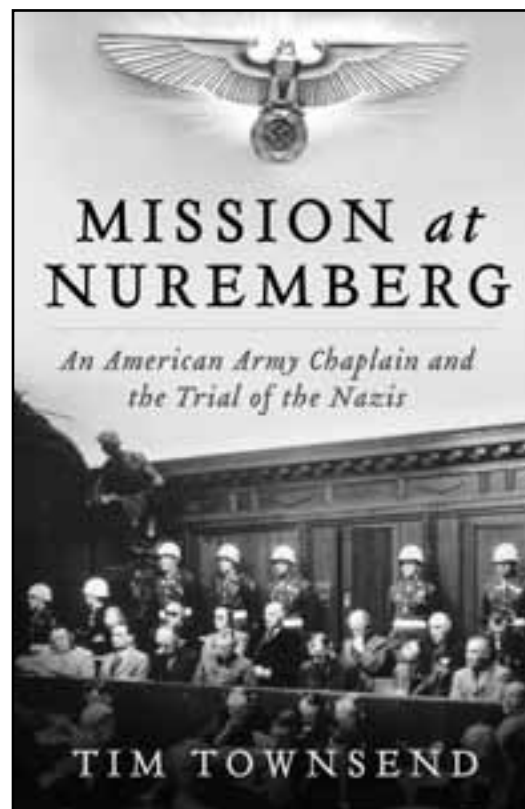
There are quirks in the book, including surprising errors such as identifying Herbert Hoover as president 10 years before he was elected. Townsend also opens the questions of evil, repentance, forgiveness, and reconciliation, comparing competing rabbinical views and some misrepresentations of Christian belief as well.

Yet the book clearly shows the success of Gerecke’s effort to separate sinners from their actions, seeking the redemption of the person and leaving the consequences of their sin to the court.

The day after the hangings, after the surviving prisoners had swept out the execution room and their colleagues’ vacant cells, Gerecke went back to his apartment and tried to rest.

He reflected on “the gross hates and cruelties which climaxed in the careers of the Nazi leaders” that had begun with “petty hates, prejudices, and compromises.” He was convinced that the 11 who died “to pay a debt to the world” were “men of intelligence and ability” who, in different circumstances, could have been “a blessing to the world instead of a curse.”

In a world where anti-Semitism, neo-fascism, and increasing threats to liberty of conscience are on the rise, it’s worth reflecting whether such things could happen again in a country of men of similar “intelligence and ability.” CJ



Founders Created Federalism to Preserve, Protect Individual Liberty

Americans often complain about executive overreach or congressional encroachment on individual liberties. Even so, many modern-day champions of limited government paradoxically and unwittingly look exclusively to Washington, D.C., for solutions.

I'm reminded of what North Carolina founder Thomas Burke penned in 1777: "The more experience I acquire, the stronger is my conviction that unlimited power cannot be safely trusted to one man or set of men on Earth."

The checks and balances system, for sure, exists to divide power in the U.S. government. But what is the recourse when it seems that all three branches of the national government — legislative, executive, and judicial — go down a path that ends at the loss of individual rights? It's time Americans remembered the often underappreciated and misunderstood federal structure of the United States.



TROY KICKLER

American federalism resulted from the experiences of the 1760s-80s. Contemporary Europeans were befuddled that Americans did not form a centralized state, such as revolutionaries did in France. Federalism, however, was not a theoretical concoction formed in the mind of some disheveled misanthrope, pondering and scribbling in a secluded and cluttered room, most likely paid for by a well-intended benefactor. The framers were no unsophisticated anti-intellectuals. Far from it. But they lived in reality.

The first three articles of the Constitution pertain to the checks and balances of the national government, and the last four articles spell out aspects of federalism. Federalism is also interwoven in the first three articles. Article 2, for example, spells out that the Electoral College elects the president.

Within American federalism, the states maintained sovereignty. Yet a general government was made more "energetic," as the founders described it, and was given sovereignty in enumerated areas. This concept of "dual sovereignty" set up a constant and purposeful tension, much like the checks and balances system does among the three branches.

In his sophisticated yet accessible *Liberty, Order, and Justice: An Introduction to the Constitutional Principles of American Government*, James McClellan delineates what he calls "the advantages of federalism."

Federalism, he writes:

- "[E]nables states or peoples who differ a good deal from one another or have different backgrounds to join together for common benefits, without some of the states or groups being required to obey unquestionably whatever the largest State or group orders." Federalism makes it possible for many different people of varied beliefs and morals to live in the same country.

- "[P]rovides that states or regions can manage their own affairs, rather than being directed by a central autocracy or bureaucracy." In other words, federalism is good for democracy, in the sense that people can participate in government and have leadership opportunities and decision-making power on different levels.

- "[E]ncourages independence and self-reliance." Even John Stuart Mill was a fan; federalism can check a centralizing state that fosters a dependent mind set.

- "[M]akes it difficult for an

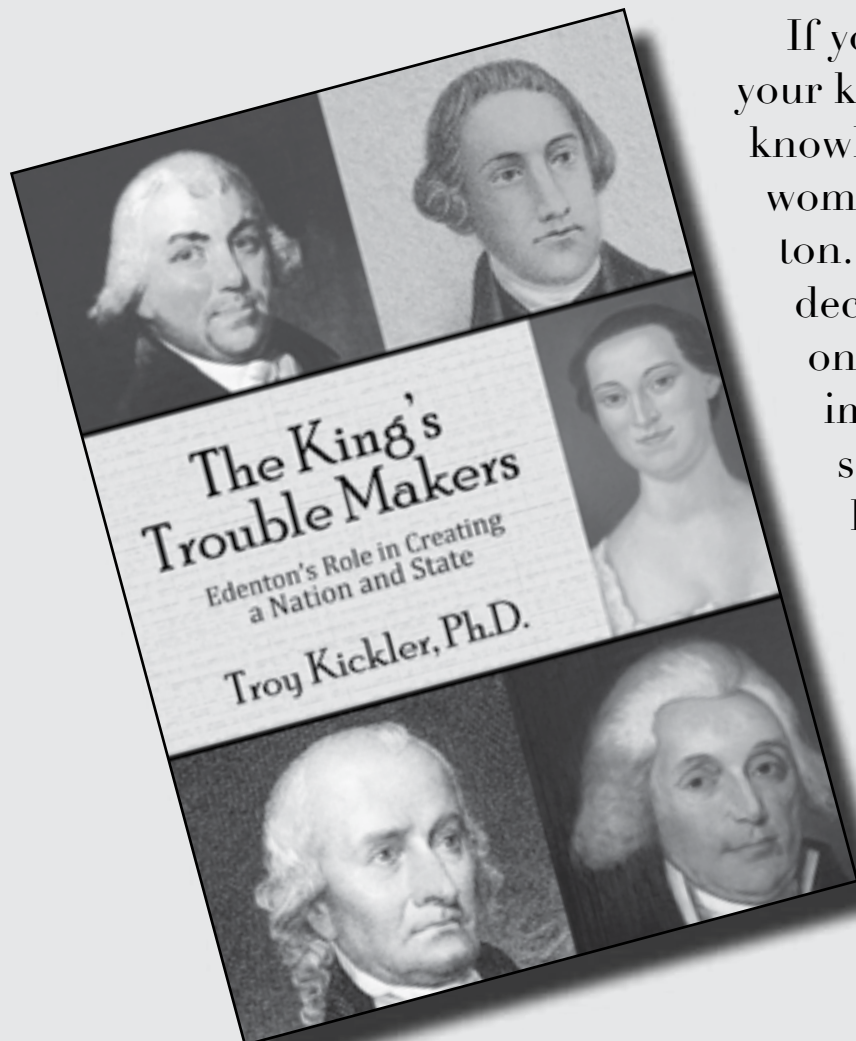
unjust dictator or fanatical political party to seize power nationally and rule the whole country arbitrarily. ... " The point prompts this question: Can totalitarianism exist where federalism prospers?

- "[A]llows states, regions, and localities to undertake reforms and experiments in political, economic, and social concerns without involving the whole country and all its resources in some project that, after all, may turn out unsatisfactorily." In a centralized state, all solutions derive from one source. Federalism indirectly encourages the creation of laboratories of innovation.

To protect individual liberty, however, concepts of federalism should exist within states and regions. In other words, local governments and regions should serve as checks on abusive state governments, and communities and neighborhoods should be a check on local governments and regions. Although it is now weaker than what the framers and ratifiers desired, American federalism still exists and can be a way to protect individual liberty. CJ

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

BOOKS BY JOHN LOCKE FOUNDATION AUTHORS



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

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

Go to northcarolinahistory.org for more information.

Book review

Schweizer Spells Out Clinton Connections to Money and Power

• Peter Schweizer, *Clinton Cash: The Untold Story of How and Why Foreign Governments and Businesses Helped Make Bill and Hillary Rich*, Harper, 2015, 243 pages, \$27.99.

BY LLOYD BILLINGSLEY
Contributor

Old-line establishment writing on America's ruling class has come to resemble the unctuous hagiography of the British royals. In contrast, Peter Schweizer's *Clinton Cash* is more along the lines of investigative journalism. The book attracted considerable attention before its publication in May, but the story is not new.

The author recalls Denise Rich, who donated \$100,000 to Hillary Clinton's Senate campaign, \$450,000 to the Clinton Library, and \$1 million to the Democratic Party. Then, on the last day of his presidency, Bill Clinton pardoned Denise's husband, Marc Rich, a billionaire fugitive. That drew widespread bipartisan condemnation and prompted columnist Maureen Dowd to call the Clintons "grifters." Bill and Hillary didn't care. Like Monica Lewinsky flipping up her skirt in the Oval Office, the pardon sent a strong signal to those abroad seeking influence in American policy. On that front, the Clintons were open for business.

Legally, foreigners cannot contribute to American campaigns, but as Schweizer notes, the most troubling thing about Washington isn't what's illegal but what isn't. Bill and Hillary Clinton, both lawyers, often take money from foreign entities in the form of donations to the Clinton Foundation or speaking fees. These turn out to be much larger than any campaign contri-

bution.

As the author lays it out, one spouse accepts money from foreign governments and businesses while the other charts American foreign policy. One conducts sensitive negotiations with foreign entities while the other collects large speaking fees from some of those same entities. And in the author's view, the scope of this activity is unprecedented in American politics.

To the Clintons' default response that this is all about charity, the author cites the late Christopher Hitchens, hardly a member of the vast right-wing conspiracy. Hitchens wondered why Third World oligarchs didn't donate their money to charities in their own countries "rather than distributing it through the offices of an outfit run by a seasoned ex-presidential influence peddler." That's how high rollers like Canadian Frank Giustra perceive Bill Clinton.

"All of my chips, almost, are on Bill Clinton," said Giustra. "He's a brand, a worldwide brand, and he can do things and ask for things that no one else can."

Schweizer charts one of Giustra's Canadian associates, Ian Telfer, who controls the Fernwood Foundation. While Hillary Clinton was secretary of state, Fernwood contributed more than \$2 million to the Clinton Foundation, which does not list Fernwood as a donor.

Telfer is also chairman of Uranium One, a Canadian company that controls a large share of U.S. uranium

assets. In 2010, Uranium One negotiated a deal to be purchased by a "private" subsidiary of Russia's state nuclear agency. As Schweizer notes, this proved troubling to a bipartisan group of congressmen, who believed that Russia could not be trusted to allocate U.S. uranium consistent with U.S. interests.

That was not the view of Hillary Clinton. The secretary of state serves on the Committee on Foreign Investment in the United States. Hillary could have blocked the deal or kicked it up to the president, forcing President Obama to make the final call, but she did neither. On Oct. 22, 2010, CFIUS approved the Russian purchase of Uranium One, transferring half of America's projected uranium production to a private company controlled by a Russian government agency.

That is the major caper in *Clinton Cash*, but the story hardly ends there. Schweizer does not neglect Clinton praise for Kazakhstan dictator Nursultan Nazarbayev right after his rigged election. Clinton favorites include Meles Zenawi from Ethiopia and Paul Kagame in Rwanda. The Clinton Foundation praised Kagame, but the United Nations accuses his militias of raping and slaying thousands of Hutus.

Dictators, spies, and warlords jostle in these pages, and the alert producer will find material for several movies. The account is a veritable directory of the rich and powerful, with their intrigues over gold, diamonds, minerals, and oil. Readers also will find

a guide to Clinton cronies such as Ira Magaziner, evangelist of Hillarycare, and now a boss at the Clinton Foundation. This outfit effectively functions as a shadow government.

The Clintons claimed they were flat broke when they left the White House. They weren't, and by Schweizer's count, in the next seven years they pulled in a cool \$109 million. The money flow accelerated when Hillary became America's chief diplomat, and the biggest payments came from countries where bribery and corruption are common. When his wife was secretary of state, Bill gave 11 speeches, each for a fee of \$500,000. Ron Fournier of the *National Journal*, also not a member of the right-wing conspiracy, tagged Hillary's State Department activity as "donor maintenance."

Schweizer, who has been featured on CBS News' "60 Minutes," notes where policy changes conform to the interests of Clinton donors. The pattern of behavior is too blatant to ignore and, the author says, "deserves legal scrutiny by those with investigative capacities that go beyond journalism."

Election to public office does not confer wisdom or morality on anyone, and winning an election does not eliminate character flaws. Political power has a way of amplifying those flaws, which do not drop by the wayside when someone leaves public office. Flaws and influence remain, and the opportunities to cash in may well increase.

As Hillary Clinton might say, "What difference does it make?" Readers of *Clinton Cash* will know the answer. CJ



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Book Review

Tamny Uses Pop References to Help Simplify Economic Theories

• John Tamny, *Popular Economics*, Regnery Publishing, 2015, 256 pages, \$27.99.

BY GEORGE LEEF
Contributor

RALEIGH

The case for laissez-faire economic policy is overwhelming, but getting people's thinking on track with it isn't easy. Many of the false notions that undergird interventionism and what Ludwig von Mises called "the anti-capitalist mentality" seem, superficially, to make sense. So how do we best attack them?

In *Popular Economics*, John Tamny, who edits RealClearMarkets.com, sets out to refute bad economic ideas and replace them with sound ones. Many books try to do that. What sets Tamny's apart is how he goes about making economics, well, popular. His subtitle is revealing: "What the Rolling Stones, 'Downton Abbey,' and LeBron James can teach you about economics."

To educate is to build a bridge from things a person knows to things he doesn't yet understand. Tamny does that brilliantly by using sports and popular culture to convey key economic truths. That's why this book is so useful for those of us who want as many Americans as possible to comprehend fundamental economic principles. On page after page, Tamny shows why laissez-faire is essential and makes interventionist ideas look absurd.

The book is divided into four main issues: taxes, regulation, trade, and money. In each, Tamny takes dead aim at the mistaken ideas that prop up big government.

On taxation, the conventional wisdom is that high taxes on businesses are necessary to make them pay "their fair share." Most people also believe that the money extracted from them goes to the government, where it is spent "for the public good."

In his first chapter, Tamny argues that taxes are merely "a price placed on work" by the government. To explain, he doesn't start with an economist, but instead with Keith Richards, the lead guitarist of the Rolling Stones. Richards states that the band decided to leave England because of the high taxes. "We didn't know if we would make it, but if we didn't try, what would we do? Sit in England, and they'd give us a penny out of every pound we earned."

Progressive taxes (in England, the United States, everywhere) are more of an impediment to people who are trying to become wealthy than to those who are already wealthy.

And what happens with all the money the government rakes in? Largely, it is squandered by politicians who want to buy popularity. Rock musicians make wiser use of money — the money they've earned — than do politicians who dip into the vast pot of tax dollars taken by force.

Tamny's next target is regulation. Aren't government officials more knowledgeable and interested in the public welfare than market partici-

pants? No, just the opposite. "Regulation does not just routinely fail; it cannot work," he writes. "What it can do, however, is weaken businesses by forcing them to pour their resources into compliance with government rules and regulations rather than let shareholders and customers profit."

Tamny reinforces his argument by relating a number of stories that

will appeal to readers, such as the role that anti-trust rules played in the demise of Blockbuster Video and the rise of Netflix.

On trade, Tamny does a superb job explaining the law of comparative advantage and how government interference with free trade inevitably makes consumers worse off. Here he refers to basketball star LeBron James, who is the world's top player, and asks readers to ponder what would happen if James decided to play another sport where he'd no doubt also be quite good, such as receiver on a pro football team.

If James did that, he'd be turning away from the talent where he has a comparative advantage over everyone else and toward a talent where he'd have a lot of competition. He'd be worse off. Once readers understand that obvious point, they'll see why governments should not get in the way of producers of any good or service

specializing in what they do best.

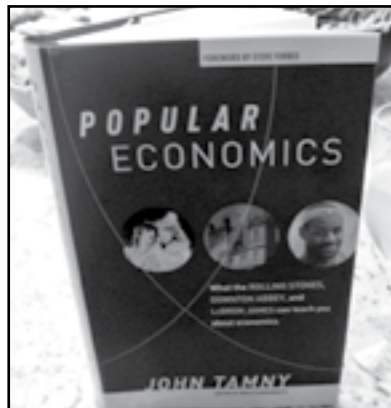
Also on the subject of trade, Tamny sweeps away the confusion that often arises when people think of one country trading with another. Countries do not trade, he explains — individuals do. "A country's economy," he reminds us, "is just a collection of individuals." That is why it is foolish to fret about trade deficits between countries.

When he turns to the subject of money, Tamny is all for restoring America to a sound monetary standard. "Just as the foot is never long or short, money should be neither strong nor weak. The foot is a standardized tool to measure things, and money should have the same constancy," he writes.

Gold once gave us that constancy, but when President Nixon decided to drop the dollar's connection to gold, that ushered in great problems for Americans. Mostly, those problems are unseen, however, such as the constant erosion of the dollar's value.

Another unseen aspect of our unstable monetary system Tamny illuminates is the waste of brainpower in currency and commodity trading markets. "Fluctuating money has led a great deal of human capital to migrate to Wall Street in order to trade the chaos," he states. It's necessary to deal with the uncertainty caused by floating exchange rates, but bright people are merely doing "facilitator work." We lose out on the productive things they otherwise would have done.

I recommend this jaunty book for everyone, but especially younger people who have been brainwashed into believing that free markets are dangerous. CJ



BOOKS AUTHORED BY JLF STAFFERS



By John Hood
Chairman of the
John Locke Foundation

Selling the Dream Why Advertising is Good Business

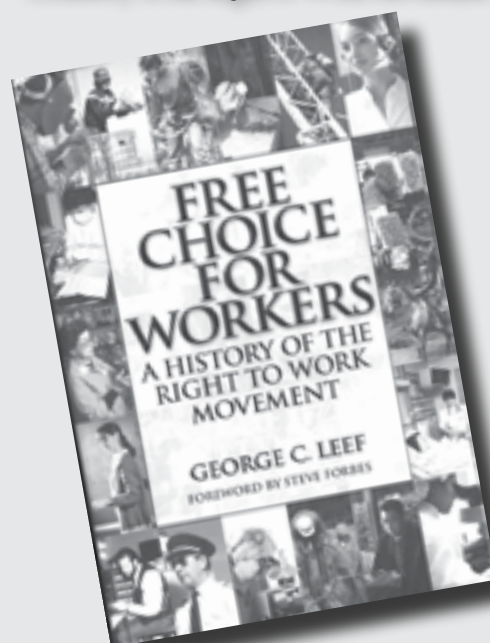


"[Selling the Dream] provides a fascinating look into the world of advertising and beyond ... Highly recommended."

Choice
April 2006

www.praeger.com

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



By George C. Leef
Director of Research at the John W.
Pope Center for Higher Education
Policy

"He writes like a buccaneer... recording episodes of bravery, treachery, commitment and vacillation."

Robert Huberty
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COMMENTARY

Obamacare Decision Will Affect N.C.

Later this month, the U.S. Supreme Court will decide whether health insurance subsidies issued under the Affordable Care Act should be distributed only to insurance companies in state-based exchanges.

If the justices rule that states like North Carolina that enroll people in Obamacare through the federal exchange would lose their tax subsidies — as plaintiffs note is the plain language of the law — the ruling could affect Medicaid recipients, too. As written in the federal health law, federal Medicaid funding relies on states creating their own exchanges.

Modern Healthcare columnists Virgil Dickson and Lisa Schencker explain how current Medicaid enrollees in federal exchange states like North Carolina could end up being on the budgetary chopping block:

The first is a section of the law that says federal Medicaid funding is contingent on a state ensuring coordination and secure communication between its Medicaid program, its Children's Health Insurance Program, and "an exchange established by the state."...

Another issue is an ACA provision known as the Maintenance of Effort. That part of the law dictates states must maintain the eligibility and enrollment policies and procedures that were in effect on March 23, 2010, until an exchange established by the state is up and operational. Since, [the Department of Health and Human Services] reportedly has allowed some reduction in eligibility in Illinois, Indiana, Louisiana, Maine, Nebraska, Ohio, Oklahoma, South Dakota, and Wisconsin. Those states have not established their own exchanges.

"If the government loses and Congress does not revise the ACA, HHS might tell the states that they have to return to their former eligibility rules or lose future federal funding for their Medicaid programs," said Jesse Witten, a partner at Drinker Biddle in Washington.

If the justices outlaw Obam-

acare subsidies in federal exchange states, a new set of lawsuits affecting the Medicaid implications of the ruling would be inevitable. In 2012, a 7-2 majority of the justices ruled Obamacare's original expansion of Medicaid coercive and unconstitutional. The court may take a similar view of an HHS order requiring states using the federal Obamacare exchange to refund all their traditional Medicaid money from Washington. (More than 75 percent of North Carolina's \$12 billion Medicaid spending comes from the federal government.)



KATHERINE RESTREPO

Yet transitioning to a state exchange not only would entrench Obamacare further, but also could result in a financial nightmare. The seed money needed to establish a state exchange is no longer available. North Carolina planned to establish its own exchange under former Gov. Beverly

Perdue, but more than \$70 million in startup grants were returned to the feds once Republicans took control of the legislature. State lawmakers also passed Senate Bill 4 into law — an act negating the decisions to create a state exchange and expand Medicaid.

In addition, state exchanges such as those in Massachusetts, Oregon, Minnesota, Vermont, Hawaii, and Rhode Island are failing or have failed to be self-sustaining, since planning and establishment grants awarded by the federal government expired at the beginning of the year.

The Washington Post reports that operating budgets are collapsing because most of the exchanges "are independent or quasi-independent entities. For most, the main source of income is fees imposed on insurers, which typically are passed on to consumers," the *Post* notes.

In addition, the *Post* says, call centers, "where operators answer questions and can sign people up," drive a lot of the costs at the exchanges. "Enrollment can be a lengthy process — and in several states, contractors are paid by the minute."

Observers from all sides of the debate will watch the Supreme Court closely as its term winds down. CJ

Katherine Restrepo is health and human services policy analyst for the John Locke Foundation.



EDITORIAL

Budget Disappointing, Not Catastrophic

The state House's \$22.2 billion General Fund budget for 2015-16, passed just before Memorial Day, is a disappointment. There, we said it.

The spending plan is not, as some conservatives contend, a harbinger of the apocalypse. Nor does it signal a return to state government's high-taxing, free-spending ways prior to conservatives' legislative takeover following the 2010 election.

But it fails to advance the conservative agenda in a number of ways, and it's encouraging to see Gov. Pat McCrory and Senate leaders react to the spending plan with skepticism, to put it mildly. Look for major changes when the Senate chamber takes up the proposal in the coming weeks.

As Dan Way and Barry Smith report in this issue of *Carolina Journal* (see Page 2), the two-year House budget, totaling \$44.6 billion, would increase spending by 6.2 percent over current levels. That's \$1.3 billion more than McCrory's proposal, which expands spending by 2.1 percent the first year of the budget cycle and 3.2 percent the second year, less than the anticipated growth in inflation and population.

We've taken issue with some aspects of McCrory's budget, but we endorse its overall focus on spending restraint and its emphasis on raising salaries for starting K-12 teachers to \$35,000 (a provision that's also in the House budget) and targeting higher pay to teachers who take on tougher class assignments and show improved performance (one that, unfortunately, the House did not include).

Moreover, the governor's plan would replenish state reserves to prepare for the next recession and

increase spending for repairs and maintenance of state infrastructure, including highways and public buildings.

The House plan would short-change those components of responsible governance.

In addition, the House would put \$120 million toward film incentives for Hollywood moguls that expired last year. An extra \$70 million extended tax credits to real-estate developers, renewable energy companies, and other special interests — a deadweight loss to state taxpayers.

On the positive side, the plan would add \$6.8 million to the Opportunity Scholarship Program, allowing more low-income children to attend private schools if traditional public schools aren't meeting their needs. A \$44 million extension of a tax credit for corporate research and development expenses — a misguided priority for the governor — was removed from the House plan.

But do not forget: North Carolina taxpayers, workers, and business owners have benefited from several years of conservative fiscal policy. An unexpected surge in state revenues will trigger new rate cuts in corporate taxes — from 5 percent to 4 percent in 2016 and 3 percent in 2017. The state's aggressive repayment of a \$2.5 billion federal unemployment insurance debt that began shortly after McCrory took office will return roughly \$560 million from the government to North Carolinians' pockets between now and the end of 2016.

And the plan that McCrory eventually signs is certain to be more fiscally sound than the one that came from the House. CJ

EDITORIALS

Misunderstanding

Common fallacies lead to bad policy

Those who advocate rational public policy, based on a thorough understanding of the principles of human action and the benefits of voluntary exchange, are bound to be disappointed much of the time.

That's not an argument against fighting for freedom. But it is an argument for realism and for keeping expectations low — so you can be surprised when policymakers resist political temptations and make good decisions.

Why do policymakers so often get things wrong? Bryan Caplan, an economist at George Mason University, released a book about eight years ago that makes a convincing case for the role of economic illiteracy. In *The Myth of the Rational Voter*, Caplan identified four systemic fallacies that impede sound policymaking by biasing the perception of everyday occurrences and problems:

- The Anti-Market Bias, which Caplan defines as “a tendency to underestimate the economic benefits of the market mechanism.” Common manifestations include assuming that prices are arbitrary, overestimating the profit margins of business, and failing to perceive how money-based transactions among strangers, entered into without any particular altruistic goal, can yield public benefits.

- The Anti-Foreign Bias, meaning “a tendency to underestimate the economic benefits of interaction with

foreigners.” Actually, this is both a fallacy in public understanding of economics and (often) a fatal flaw of human behavior.

- The Make-Work Bias, meaning “a tendency to underestimate the economic benefits of conserving labor.” Many North Carolinians truly believe that automation reduces overall employment by replacing human labor with machines. They simply haven't thought about what happens when automation reduces the real cost of producing goods, resulting in consumers having more money to spend on other goods and services that must be produced by human action.

- The Pessimistic Bias, meaning “a tendency to overestimate the severity of economic problems and underestimate the recent past, present, and future performance of the economy.” This helps to explain the recurrence of apocalyptic movements, zealous cranks endlessly predicting the end of the world, and the extreme elements of today's environmental movement.

These biases are costly and persistent. We should seek to remedy them with constant and patient public education. But we should also keep things in perspective. Human beings have created markets, benefited immensely from markets, and yet misunderstood markets since the dawn of history. It's unlikely this will stop by next Friday. *CJ*

Taxes Falling

UI debt retirement pays off

Because of tough decisions made by the General Assembly and Gov. Pat McCrory, North Carolina's payroll tax is expected to drop as much as \$550 million by 2017. The reason is that North Carolina repaid its debt to the federal government for unemployment benefits paid to jobless workers. The debt at one point approached \$3 billion.

Until such debts are repaid, employers must send a payroll tax surcharge to Washington on top of their own state payroll tax. Had North Carolina failed to retire its federal debt this year, in 2016 employers would have sent an extra \$280 million into federal coffers. Moreover, if current revenue and expenditure trends continue, North Carolina will accumulate a \$1 billion surplus in its UI account by next year. Under a state UI reform package passed in 2013, the state payroll tax in 2017 will drop by about \$270 million.

Although the 2013 reform package did require higher payroll taxes, the primary effect on the debt came from changes in benefits. North Carolina reduced the average payment to jobless workers as well as the number of weeks those payments could be received.

Many liberal activists and Democratic politicians were incensed by the 2013 reforms, calling them unfair and cruel and even predicting they would hurt the economy by depriving jobless recipients of buying power.

Liberal predictions did not come true. As North Carolina exited the UI extended benefits program and implemented the other benefit changes, the state's labor market began to improve rapidly. We've added jobs at a faster rate than the national and regional averages.

In other words, conservatives were right — pun intended. *CJ*

COMMENTARY

How McCrory Gets Judged

Pat McCrory likely will run for re-election next year as governor of North Carolina against longtime Attorney General Roy Cooper. Both men are capable candidates who will run skillful, well-funded campaigns. Given the larger political context, I see the contest as unpredictable at the moment. But there are a couple of things we can say with confidence about it.

The first is that while North Carolinians care about many issues, they are most likely to judge McCrory's performance as governor as it relates to the performance of the state's economy. So by this time next year, I'll be looking at such statistics as job gains and unemployment rates to gauge the incumbent's prospects for reelection.

Now, voters aren't fools. They know that their states aren't walled off from the rest of the country and the world. As Fordham University political scientist Jeffrey Cohen and University of Wyoming political scientist James King established in a frequently cited study in the *Journal of Politics*, voters tend to credit or blame their governors not for the absolute performance of their economies but for the relative performance. “No matter the level of unemployment in the state,” Cohen and King concluded, “when state unemployment is lower than the national average, governors are rewarded; when it is higher than the national average, governors are punished with lower approval levels.”

As of March, North Carolina's unemployment rate of 5.4 percent is lower than the national average and significantly lower than those of our neighbors Georgia (6.3 percent), South Carolina (6.7 percent), and Tennessee (6.3 percent), although not Virginia (4.8 percent). North Carolina also is outperforming the national and regional averages in job growth. Among our neighbors, only Georgia's year-to-year rate of 3.1 percent through March exceeds our 2.8 percent rate.

The second thing one can say with confidence about the 2016 gubernatorial race is that McCrory's position is unique for a North

Carolina Republican. The only other GOP governor in a position to run for re-election, Jim Martin in 1988, served with a strongly Democratic legislature. This matters because, once again, voters aren't fools. They tend to assess unified governments differently from divided ones.

That's what a study published in *Political Research Quarterly* found. Examining gubernatorial elec-

tions in 43 states, Kevin Leyden of West Virginia University and Stephen Borrelli of the University of Alabama found that the relationship between state unemployment rates and the vote totals of incumbents or their would-be partisan successors was stronger when the same party also controlled the state legislature.

What can't be said with confidence about the McCrory-Cooper race is how much the national political environment will affect it. Obviously, gubernatorial candidates would rather be on a ticket with strong presidential or senatorial nominees.

But top-of-the-ticket factors don't always prevail. Gov. Jim Hunt comfortably won re-election in 1980 despite Jimmy Carter's woes. In 2004, Gov. Mike Easley won a second term with nearly 56 percent of the vote even as President George W. Bush was re-elected with 56 percent of the vote in North Carolina.

As for the 2016 U.S. Senate race, it doesn't look at the moment like Richard Burr has drawn a strong Democratic challenger. If the race proves ho-hum, North Carolina Democrats will pour their hopes, dreams, and campaign cash into Cooper's challenge to McCrory. Similarly, if state Republicans aren't so worried about re-electing Burr, they'll be free to focus on the governor's race.

Today's polls tell us nothing other than the McCrory-Cooper contest will be highly competitive. We already knew that. Over the next several months, watch North Carolina's economic performance. It is in fact the leading gubernatorial indicator. *CJ*

John Hood is chairman of the John Locke Foundation.



JOHN HOOD

MEDIA MANGLE

We Must Value The First Amendment

There was a time when one's initiation into the fraternity of journalism included a profound indoctrination into the value of the First Amendment to the survival of our Republic.

Back in the heady post-Watergate days of the mid-'70s, editors and reporters were patting themselves on the back for saving the country, mainly due to the existence of these 45 words:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



**JON
HAM**

So, what the heck happened? Everywhere you look these days the freedoms of speech and expression are under attack, and too many of those in the journalism profession seem to be among the attackers.

Take Scott Simon of NPR, for example. As Baltimore was erupting in violence recently after the death of Freddie Gray in police custody, he tweeted this: "The live pictures from Baltimore are unsettling, & I'm not sure pictures help." Would he have said that about the violence on the Edmund Pettus Bridge in Selma, or Bull Connor's use of German shepherds and firehoses in Birmingham?

And then there's the media's reaction to the "Draw Muhammad" cartoon contest in Garland, Texas, on May 3, which resulted in two would-be jihadi murderers being killed by local cops. Think what you will of event organizer Pamela Geller and her tactics, she clearly has First Amendment protection for what she did. But many journalists didn't see it that way, even though stubborn defiance in the face of threats of violence has been, traditionally, a journalistic trait.

The *Washington Post* ran a headline, "Event organizer offers no apology after thwarted attack in Texas," blaming Geller and not the two Islamist attackers. Syndicated columnist Kathleen Parker's column was titled "Pamela Geller's abuse of free speech." Even conservative media types like Bill O'Reilly and Laura Ingraham blamed Geller for inciting Muslim violence, as if to say, "We KNOW what these people are like, so don't antagonize them."

The notion of "I disapprove of what you say, but I will defend to the death your right to say it" has given way, even among journalists, to a multicultural fetish against offending anyone who is not Western, or who is among a media-anointed "victim class."

One of the First Amendment's oft-cited values is that, by permitting offensive and unsettling speech, we teach people to be more tolerant. After all, we wouldn't need a First Amendment if all speech was inoffensive.

The corollary, that without a functioning and valued First Amendment we become less tolerant, cannot be disputed. Just look around. CJ

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

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Change Coming to N.C. Job Market

Although the job market in North Carolina has been improving for the last five years, there is still a long way to go. But the road could get longer if technological breakthroughs materialize. Specifically, over the next 40 years the number of jobs in the state actually could decline by 1.2 million. This would send the state unemployment rate to well over 25 percent.

Am I just an alarmist trying to grab headlines? Actually these calculations are based on the work of economists Carl Frey and Michael Osborne analyzing the concept of "technological unemployment." Technological unemployment simply means the replacement of jobs by technology. Historical examples are motor vehicles replacing carts pulled by livestock, word-processing programs replacing typists, and electronic calendars and voicemail replacing secretaries.

Today we are in what many have deemed the technological revolution. Technology certainly has brought us great things. However, the expectation is that as today's technology advances, technological unemployment will become broader and deeper. Especially as "smart technology" that can gather information and make decisions develops.

Frey and Osborne analyzed all jobs classified into more than 700 occupations and assigned a probability that each would be replaced by technology in coming decades. I took their results and applied them to current occupations in North Carolina.

The results were startling. Scores of occupations in our state have more than a 70 percent likelihood of disappearing. Included are occupations such as retail salespersons, cashiers, fast-food workers, and office clerks. Customer service representatives, janitors and cleaners, and auto service technicians have a moderate (30 percent to 70 percent) chance of being eliminated by technology. Those with the lowest likelihood of downsizing are jobs requiring a high level of complex decision making, like physicians, nurses, teachers, and computer software developers.



**MICHAEL
WALDEN**

I also discovered an income element to these findings. The occupations with the lowest probability of technological unemployment have the highest median salaries, while the occupations with the highest probability of technological unemployment have the lowest median salaries.

I then used Frey and Osborne's probability of technological unemployment for each occupation, together with projected growth rates in the occupation's industry and job-to-output ratios, to project the total number of jobs in North Carolina's current occupations remaining in 2050. This is where I found there would actually be 1.2 million fewer jobs in 2050 than today.

But there's reason for hope. The 1.2 million fewer jobs are for *current occupations* in North Carolina. It's likely that *new occupations* will be created in our state over the next 40 years, just as they have been in the last 100 years.

What will those new jobs be? I certainly don't have a perfect crystal ball, but I think strong arguments can be made for new occupations in several areas, including household management, repair and maintenance of new technology; data management, analysis, and logistics; efficient resource usage; global interaction; and assistance to active and independent elderly households. Each of these developing occupations follows socio-economic trends that are expected to dominate our economy in decades ahead.

This means we will have to be agile with our future education and training systems. The downsizing of some occupations and the creation of others will occur at an erratic and often imperceptible pace. Formal and informal training programs will have to respond to emerging trends and be willing to shift resources rapidly away from shrinking occupations to expanding ones. Future workers will have not only many different employers during their careers, but also many different occupations. Midcareer retraining will be common.

Technological unemployment always has occurred, but information technology is sparking a new wave that has not yet run its course. We need to be ready. CJ

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

Separation of Powers and GOP Grumbling

Although many of its liberal critics see the North Carolina Republican Party as a monolith, it was inevitable that unified GOP control of state government would not always be harmonious. We are now 2 ½ years into Republican control of both the governor's mansion and legislature, and there are clear signs of tension between Gov. Pat McCrory and the General Assembly's leadership. Most of it surrounds policy matters. There have been recent public disagreements about the budget, economic incentives, religious freedom, sales tax revenue redistribution, and the state's control of local politics.



**ANDY
TAYLOR**

Many observers attribute the friction to innate ideology and personality. Whereas McCrory is often billed as a moderate and a rather pragmatic manager of the state's economy, House Speaker Tim Moore and particularly Senate President Pro Tem Phil Berger are seen as more uncompromising, with quite expansive views of what they can attain in office.

Yet much of the chafing can be explained by our unique form of government. Born from the conflict

between the Crown's governors and colonial assemblies and adapted from the ideas of John Locke and Baron Montesquieu, designers of American constitutions, both state and federal, split the executive and legislative functions and housed them in distinct institutions. Unlike British prime ministers who sit in Parliament, our governors and presidents cannot act simultaneously as legislators, and the terms and constituencies they serve are different from those of members of Congress and state assemblies. This is our separation of powers, the central feature of North Carolina government today.

Institutional conflict largely explains the policy discord. The entire state forms McCrory's constituency, and with an eye on re-election he must try to appeal to the median North Carolinian, an individual who is indubitably to the left of the middle voter in just about all of the individual districts that Republican state legislators represent. The governor's four-year term means he approaches the legislature's biennial terms very differently than do its members. Whereas the General Assembly wishes to build a steady record of accomplishment, the governor has an incentive to backload popular policies into the year or so immediately preceding his election. This, for example, helps explain McCrory's desire to hold down spending below that proposed by supposedly

more conservative legislative leaders last year, particularly on teacher pay. He wanted budgets closer to his re-election campaign to be more "generous."

Most observers of American political history believe presidential power has expanded at the expense of Congress. Interbranch relations in North Carolina have been different. The state's constitution puts the institutions on an approximately even footing. For example, the Council of State, whose members are equivalent to Cabinet officers at the federal level, is elected independently and therefore difficult for the chief executive to harness.

At the same time our state legislature is unlike Congress, where autonomous standing committees and rank-and-file members enjoy considerable resources and procedural privileges. Power in Raleigh is concentrated in the hands of the leadership, currently Berger and Moore, who make committee assignments themselves and control the agenda and proceedings tightly. These arrangements only add to the intensity of executive-legislative competition in North Carolina.

It is clear the legal battle over who should appoint members to the Coal Ash Management Commission — the governor or legislative leaders — is a root cause of Republicans' current family dispute. Candidates of

both political parties rely heavily on a large cohort of activists to win elections, by dint of their door-knocking, phone calls, keyboard tapping, endorsements to friends and colleagues, and financial contributions. Individuals can be motivated to do this in return for one of several thousand appointed positions with boards, commissions, or agencies of state government that must be filled.

If Berger and Moore's appeal of a court ruling in March that protected the governor's appointment powers is successful, the legislative majority party will extend much of its influence over the large and critical cohort of political activists who make campaigns work. With its patronage power bolstered, state politics will become a little bit more like the national politics of the late 19th century, when powerful legislators like Sens. Roscoe Conkling of New York and Matthew Quay of Pennsylvania demanded loyalty from partisans and undermined the authority of their own Republican presidents.

Such an outcome is unlikely to assuage the tensions within the state GOP today, but it would encourage additional intraparty challenges to gubernatorial authority in the future. *CJ*

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Medicaid, Competition, and Accountability

All kinds of deals are made during the legislative session. Whether a distillery can sell unlimited amounts or only one bottle to people taking tours; whether vehicle registration fees should increase 50 percent or 30 percent or at all; whether solar subsidies should be cut off now or extended for one year or two — solutions to complicated problems often entail compromises, concessions, and a little give and take.



**BECKI
GRAY**

One of the biggest deals to expect this session is Medicaid reform. Medicaid is a health insurance program provided by the state and federal governments for low-income citizens, the disabled, and children 18 or younger. Medicaid problems are numerous and complicated, but three major concerns must be addressed — ensuring quality patient care, cost containment, and budget predictability.

It's a big deal. At stake is \$3.8

billion in state funding (17 percent of the state's General Fund budget), for a program serving almost 20 percent of North Carolina's population. (Total spending including federal funds is almost \$14 billion.) Slightly more than half of the births in North Carolina are covered by Medicaid, and it is an entitlement program that must be paid for before other needs are met. When cost overruns occur, something else, like roads, schools, or tax relief, cannot be funded.

As far back as at least 2003, cost overruns have posed budget problems for lawmakers. Of the \$1.3 billion increase in the new House budget, \$400 million is for Medicaid alone. Projected enrollment growth next year is 200,000 new recipients.

Currently, North Carolina's Medicaid program is administered by one contractor, Community Care of North Carolina. There is no competition, patients have no choice in service, and costs and utilization have increased.

Medicaid reform should begin with addressing the concerns that arise from having a single, nongovernmental entity controlling the market.

Patients should be able to choose among several plans, excessive spending should be the responsibility of the health plan administrator, and health outcomes should improve as more tax dollars are invested in the program. That's not the case right now.

Lawmakers are considering various reforms. Some suggest moving the administration of Medicaid out of the Department of Health and Human Services both to improve the program's operation and address waste, fraud, and abuse. Some suggest adopting an Accountable Care Organization model under which providers (hospitals and doctors) would administer the program and be paid for every patient service provided with any savings or cost overruns assumed mostly by taxpayers. Others prefer a managed care organization, operating much like a traditional insurance company, which would receive a flat monthly rate for each patient — allowing higher payments for patients who cost more to treat, like the elderly or those with pre-existing conditions. The MCO would have to absorb any cost overruns.

Medicaid reform negotiations to

date have seen the governor and the House leaning toward an ACO model with the Senate preferring an MCO model.

Giving patients multiple plans would ensure better quality of care and drive down costs. But the best deal may well be a hybrid model, allowing ACOs and MCOs to compete for patients. Other states are having success with a hybrid system.

The key is not so much who offers services, but whether Medicaid is patient-centered, provides comprehensive care, gives meaningful choices, caps costs, and allows plenty of competition to ensure quality and drive down costs.

With Medicaid continuing to grow at alarming rates, taxpayers deserve and expect reforms that promise real cost savings. Patients should receive quality health care. Budget overruns should not crowd out other core functions of government. Competitive bidding and competition are the way to go for real reform. *CJ*

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

Solar Lobbyist N.C.'s Fastest-Growing Occupation (a *CJ* parody)

BY SUNNY NUMBERS
Renewable Energy Correspondent

RALEIGH

The effort in the General Assembly to get rid of renewable energy standards in North Carolina has had an unexpected effect: job growth.

But the job growth has not come in areas where you might first expect to find them: solar manufacturers, installers, and repair crews.

No, the huge jump in solar-related jobs has come in the area of lobbyists, lawyers, solar engineers, and industry consultants.

According to North Carolina Department of Commerce research, these job areas skyrocketed as a percentage of solar and renewable energy-related jobs when legislative efforts began to eliminate the tax credits and subsidies for alternative energy.

"It's understandable," said a legislator who asked not to be identified. "When you see your golden goose about to take it in the shorts, you work to protect your gravy train."

Legislators noticed the jobs increase earlier than others. "Yeah," said another legislator who wished to remain anonymous, "you couldn't swing a dead cat in the legislative hallways over the last year or so without hitting an energy lawyer or lobbyist."

The research, funded by grants from the federal Bureau of Labor Sta-

Job title	No. of employees in each category					
	2013	2014	2015	2016	2017	2018
Solar lobbyist	30	60	120	240	480	960
Educational consultant	10	20	40	80	160	320
Solar attorney	20	40	80	160	320	640
Total jobs in solar sector	4000	4000	4000	4000	4000	4000
Total fastest growing	60	120	240	480	960	1920
Total minus fastest growing	3940	3880	3760	3520	3040	2080

This chart, using figures from the N.C. Department of Commerce, shows that, while solar energy industry jobs will remain stagnant over the next few years, the mix will change dramatically, with "non-productive" jobs making up almost half of the industry jobs by 2018. (*CJ* spoof statistics)

tistics and the North Carolina Solar Industry Association, anticipates the mix in overall solar industry employment in the state will change dramatically.

In 2013, according to Commerce figures, just 30 people worked as solar industry lobbyists in North Carolina. That number doubled to 60 in 2014 and doubled again to 120 in 2015. At that rate there will be 960 industry lobbyists by 2018. Solar educational consultants and solar attorneys also doubled each year from 2013 to 2015. There were only 10 educational consultants

in 2013 and 20 solar attorneys. In 2018, forecasts predict 320 consultants and 640 attorneys.

Unlike the exponential growth of those three occupations, Commerce officials say the growth of solar industry installers and designers appears to be flat and soon will start declining.

As installers become more productive, potential locations for new solar farms become harder to find, and as tax credits and other subsidies for solar installation expire, the role of "non-producing" workers in the industry

— led by lawyers and lobbyists — will rise, reports Commerce.

Analysts noted that the total jobs forecast in the solar industry will remain at about 4,000 through 2018, but the three fast-growing "nonproductive" occupations within the industry will make up half the total jobs in that year.

Solar industry advocates say solar energy has been an economic engine for North Carolina, and that only California installed more solar capacity in 2014 than North Carolina.

They also acknowledge the industry has expanded because of tax credits for investors in solar energy and government mandates requiring North Carolina to produce a larger percentage of renewable energy in coming years.

"How else could we get anyone to build a solar farm?" said one supporter of solar subsidies. "No one with any business sense would do it without taxpayers chipping in and assuming most of the risk."

The subject of solar credits and subsidies became an issue in the U.S. Senate race between then-incumbent Kay Hagan and Thom Tillis, when *Carolina Journal* reported on the solar business activities of Hagan's son and husband last fall.

"I don't see what all the fuss is about," one solar lobbyist told *CJ*. "Jobs is jobs, right?" *CJ*



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