

Legislature  
pushing  
crowdfund-  
ing solu-  
tions/2



# CAROLINA JOURNAL

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

North Carolina	2
Education	7
Local Government	10
From Page 1	14
Higher Education	17
Books & the Arts	20
Opinion	24
Parting Shot	28

March 2015 Vol. 24 No. 3

STATEWIDE EDITION

Check us out online at [carolinajournal.com](http://carolinajournal.com) and [johnlocke.org](http://johnlocke.org)

## N.C.'s Distilleries Seeking Beverage Equality

Proposed law would allow sale of spirits outside ABC system

BY BARRY SMITH  
Associate Editor

RALEIGH

Distilleries across North Carolina are hoping to follow in the footsteps of the state's growing winery and craft beer industries, but the law places distilleries at a competitive disadvantage — and they're asking the General Assembly to pass legislation allowing them to sell small quantities of spirits to visitors.

Scott Maitland, founder of Top of the Hill Restaurant and Top of the Hill Distillery in Chapel Hill, calls micro-distilling a "burgeoning industry" in North Carolina that would get a boost from the proposed law.

"We need to take a look at regulations from time to time and update them according to new opportunities or economic need," Maitland said.

The lead sponsor of Senate Bill 24, Sen. Rick Gunn, R-Alamance, calls his legislation permitting distilleries to sell



Scott Maitland, who produces TOPO brand spirits at his Top of the Hill Distillery in Chapel Hill, says state liquor laws need to adapt to new economic opportunities. (CJ photo by Don Carrington)

a single container of spirits once a year to distillery visitors "a very restrictive way to promote a new and growing business in our state" and "a logical step to give these entrepreneurs."

But there is opposition to the proposal. Local Alcoholic Beverage Control boards would lose out on revenues from those modest sales at distilleries. Some religious groups say the change

could signal the first step toward the eventual demise of state controls over the sale of all alcoholic beverages.

Maitland notes that in 1989, breweries were not allowed to sell beer directly to consumers. However, the law changed, and now they do. "North Carolina is the leading light of beer east of the Mississippi," Maitland said, adding that the change happened

because the state adopted a regulatory scheme similar to Oregon's. A July 2014 report on CNBC quoted one industry consultant saying "North Carolina is the hottest emerging state for craft beer right now."

"What I would like to do is for us to now here in 2015 do what some really smart people did in 1989 and say, hey, let's allow this to happen from craft distilling," Maitland said.

In addition to allowing the sale of spirits for off-premises consumption, S.B. 24 also would allow liquor tasting at trade shows, conventions, shopping malls, beverage festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fundraisers, and similar events approved by the state ABC commission. Currently, such liquor-tasting events can be conducted only at distilleries.

Gunn said the bill has bipartisan support, and he hopes to bring it up in the Senate Commerce Committee, which he co-chairs, in the coming weeks.

Similar bills have been introduced in previous legislative sessions. In 2013 a bill introduced by Rep. John Bell, R-Wayne, was changed in com-

Continued as "N.C.," Page 14

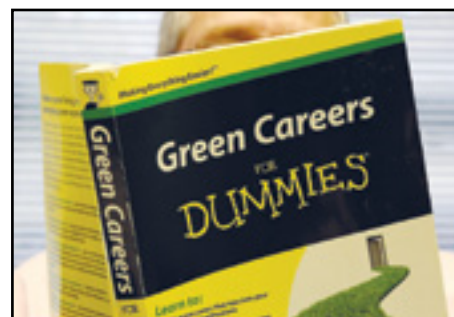
## Quietly, Government Stops Counting 'Green' Jobs

\$60 million wasted promoting 'green job' employment sector

BY DON CARRINGTON  
Executive Editor

RALEIGH

Two years ago, the federal government quietly abandoned its \$60 million effort to isolate "green jobs" from employment in other sectors of the economy, a campaign that one key congressman called little more than "propaganda designed to advance a misleading political narrative" and that a former head of the U.S.



Bureau of Labor Statistics suggested was pointless, since so-called green jobs were created by government regulations.

As a candidate for president in 2008, Barack Obama said he would create 5 million green jobs, and in 2009 the U.S. Department of Labor had developed plans to define and count

them. Officials in the N.C. Department of Commerce, using nearly \$1 million allocated by the federal government to survey companies across North Carolina, produced a report including estimates of green jobs by industry sector for 2010. A Commerce spokesman says the findings were "useful."

But the BLS programs measuring green jobs and reporting on green-job activities ended in March 2013. The agency said budget cuts resulting from the sequestration process led to end funding for the green jobs programs and its "mass layoff statistics" program.

The announcement that the two programs no longer would be funded

Continued as "Quietly," Page 15

NONPROFIT ORG.  
U.S. POSTAGE  
PAID  
RALEIGH, NC  
PERMIT NO. 1766

The John Locke Foundation  
200 W. Morgan St., #200  
Raleigh, NC 27601

# CAROLINA JOURNAL

Rick Henderson  
Managing Editor

Don Carrington  
Executive Editor

Mitch Kokai, Michael Lowrey  
Barry Smith, Dan Way  
Associate Editors

Chad Adams, Kristy Bailey  
David N. Bass, Lloyd Billingsley  
Kristen Blair, Roy Cordato  
Becki Gray, Sam A. Hieb  
Lindalyn Kakadelis, Troy Kickler  
George Leef, Karen McMahan  
Donna Martinez Karen Palasek  
Marc Rotterman, Jesse Saffron  
Terry Stoops, Andy Taylor  
Michael Walden, Hal Young  
John Calvin Young  
Contributors

Joseph Chesser, Catherine Konieczny  
Austin Pruitt, Matt Shaeffer  
Interns

Published by  
The John Locke Foundation  
200 W. Morgan St., # 200  
Raleigh, N.C. 27601  
(919) 828-3876 • Fax: 821-5117  
www.JohnLocke.org

Jon Ham  
Vice President & Publisher

Kory Swanson  
President

John Hood  
Chairman

Charles S. Carter, Charles F. Fuller  
Bill Graham, John M. Hood  
Assad Meymandi, Baker A. Mitchell Jr.,  
David Stover, J.M Bryan Taylor  
Board of Directors

Carolina Journal is  
a monthly journal of news,  
analysis, and commentary on  
state and local government  
and public policy issues in  
North Carolina.



©2015 by The John Locke Foundation  
Inc. All opinions expressed in bylined articles  
are those of the authors and do not necessarily  
reflect the views of the editors of CJ or the  
staff and board of the John Locke Foundation.  
Material published herein may be reprinted as  
long as appropriate credit is given. Submis-  
sions and letters are welcome and should be  
directed to the editor.

CJ readers wanting more information  
between monthly issues can call 919-828-  
3876 and ask for Carolina Journal Weekly  
Report, delivered each weekend by e-mail,  
or visit [CarolinaJournal.com](http://CarolinaJournal.com) for news, links,  
and exclusive content updated each weekday.  
Those interested in education, higher educa-  
tion, or local government should also ask to  
receive weekly e-letters covering these issues.

## Legislature Pushing Crowdfunding Solutions

By BARRY SMITH  
Associate Editor

RALEIGH

After a measure introduced in last year's legislative session allowing more investors to get in at the early stages of startup companies failed to become law, competing bills have been filed in the current session encouraging entrepreneurs to seek capital through options resembling kickstarter.com, gofundme.com, and other "crowdfunding" mechanisms.

The idea is to enable North Carolina entrepreneurs to raise capital from smaller North Carolina investors to start or expand their businesses without becoming entangled by many of the Securities and Exchange Commission regulations that larger corporations and professional investors must confront. Federal law allows for such exemptions from SEC regulations by small investors financing new companies.

But the competing measures take much different approaches to the level of regulation investors would face.

"What I'm going after is not just the opportunity to use the federal exemption for new startups, but for existing businesses if they want to get into a new venture," said Rep. Chris Millis, R-Pender, whose House Bill 63 takes an expansive approach to crowdfunding.

In contrast, a separate measure filed by Reps. Brian Brown, R-Pitt, and Rob Bryan, R-Mecklenburg (House Bill 14) — and a companion Senate bill introduced by Sen. Rick Gunn, R-Alamance (Senate Bill 35) — would place tighter limits on potential investors.

Brown said his bill is similar to the "JOBS Act," a crowdfunding bill filed during the last session that passed the House but did not get through the Senate. Brown said that his bill and Millis' bill were filed to begin the dialogue on how to create "the strongest and most transformative" intrastate crowdfunding legislation.

Brown's bill would place a \$2,000 limit per company on nonaccredited investors participating in the state's crowdfunding programing. A nonaccredited investor, as Millis puts it, is a "new guy off the block" who wants to make a return on his investment. The measure also would limit the amount of capital a company could raise through crowdfunding to \$1 million if the investments were made using unregistered securities that were not subjected to audits and \$2 million if the investments were audited.

Millis' bill would up the nonaccredited investor's limit per company to \$5,000, place no limit on the number of companies a nonaccredited investor could support, and set no limits on the amount of capital companies could raise through crowdfunding.

Accredited investors would have no limits in the amount of investment per company or number of companies, Millis said.

Instead of being regulated through the federal Securities and Exchange Commission, the state crowdfunding program in Millis' measure would be regulated through the N.C. Securities Commission of the N.C. Secretary of State.

Both H.B. 14 and S.B. 35 are 16 pages long, spelling out a number of regulations and disclosures required by

companies raising capital through the state crowdfunding program. The measures also include several unrelated economic development incentives, which may be one reason last year's JOBS Act stalled at session's end.

In contrast, Millis' bill is only three pages long. Millis said the longer bill was inspired by laws in several other states. He said there are flaws in the approach — primarily that the regulations are too burdensome and discourage people from using the new crowdfunding strategies.

"The reason I filed a bill that's different is we can see from other states that no one's utilizing it," Millis said. "I have a bill that has protections rather than preventions. This is going to create a market that hasn't existed before because of the federal regulations."

Millis said that his bill would allow both existing businesses and startups to use the new crowdfunding method.

"If you're an existing business, you want to get into a new market. You want to raise capital to do that, you can solicit North Carolinians to invest in your company without going through a myriad of SEC regulations," Millis said.

Investors would be notified of the process for investment, Millis said. They'd be given a disclosure brochure similar to the way

Realtors provide brochures to people buying a home.

Brown said he and Millis are working, along with U.S. Rep. Patrick McHenry, R-N.C., on the federal level, to craft the compromise bill.

Brown said they wanted to counter bad actors that will inevitably pop up.

"We do not want to allow for the bad seeds to go out and exploit nonaccredited investors to invest in something that's not a business, not an idea, not an investment," Brown said. He said he wants the final bill to have clear expectations and reporting information that will be given to the business investor.

In an analysis of the Millis and Bryan bills provided to *Carolina Journal*, Raleigh businessman and investor Tom Vass says the Millis version would do much more to aid small, growing companies.

For starters, Vass said the Millis provision placing oversight in the hands of a state agency would clarify some of the potential legal and regulatory burdens businesses would face if they were required to scrutinize individual investors.

In addition, Vass said the Bryan bill, by limiting the amount of money companies could raise through crowdfunding, serves "no constitutional public purpose" and contains numerous restraints on trade.

"We're not quite ready for prime time yet," Brown said. "I think we're very close. Our goal is to try to create some good, solid model legislation."

"[Millis] and I are working on compromise language," Brown said of the separate approaches.

Commerce Secretary John Skvarla isn't ready to comment on the two bills, spokeswoman Kim Genardo said, but "Secretary Skvarla is on record as very much supporting the concept of crowdfunding." CJ



# Expert: Confirm Eligibility Before Considering Medicaid Expansion

BY DAN WAY  
Associate Editor

RALEIGH

Before North Carolina considers Medicaid expansion, it should ensure its existing rolls are not bloated with ineligible recipients, and create a verification system to prevent adding even more unqualified beneficiaries, a national health policy analyst warns.

Josh Archambault, senior fellow at the Florida-based Foundation for Government Accountability, said his organization has determined few states have adequate safeguards to root out waste, fraud, and abuse when enrolling Medicaid recipients, or in verifying annually that recipients remain eligible for continuous coverage.

In Illinois, Archambault said, a state crackdown found hundreds of thousands of ineligible recipients still receiving tax-paid Medicaid benefits due to sloppy or nonexistent means of checking that recipients were eligible to be on the program. The state discovered it was paying Medicaid benefits to 3,000 dead people, some residents who had moved out of state, and others whose income exceeded the cutoff for qualifying.

Much of Illinois' problem resulted from its reliance on a system of passive redeterminations — an honor system under which the state asks Medicaid recipients to return a postcard if they no longer qualify for benefits, Archambault said. Those who failed or refused to return the postcards continued receiving Medicaid coverage, and the state rarely followed up. This passive system is used by the North Carolina Department of Health and Human Services and Medicaid agencies in many

other states, he said.

DHHS spokeswoman Alexandra Lefebvre said North Carolina has a number of crosschecks that provide valid, reliable information to protect the integrity of Medicaid.

Still, Archambault said, North Carolina has had "some major issues

throughout the years, so I'm going to go ahead and guess they're not the model" for annual eligibility redeterminations to confirm that a recipient's income, address, citizenship, family size, and other

criteria still meet program guidelines.

"If they're not doing a good job with administering the program that currently exists, then why should we be throwing all these other able-bodied adults into the program" through Medicaid expansion, Archambault said.

DHHS Secretary Aldona Vos has faced a multitude of spending, contracting, budgeting, computer, and other problems she inherited with the agency, which ran \$2 billion over budget during the past four years.

Vos maintains DHHS ran a \$63.6 million surplus for the 2013-14 fiscal year by deploying better monitoring and operating more efficiently. At a Feb. 11 joint meeting of House and Senate Appropriations Committees on Health and Human Services, she said

Medicaid is "on target" to meet its budgeted spending again this year.

State Sen. Louis Pate, R-Wayne, a frequent critic of the way Medicaid has been administered, said recently the state is "making some progress" under Vos.

"I think that we can show that we have some potential for having much better predictability and accountability than we've had in the past with Medicaid," Pate said.

"There's ample evidence to be suspicious of those claims even if in one

year they claim they have a surplus," Archambault said. And that does not negate the need for a concerted effort to clean up Medicaid rolls, he said.

The Foundation for Government Accountability has detailed Medicaid waste, fraud, and abuse in many states. "There's really not a great shining star of a state to point to" in scrubbing unqualified recipients, Archambault said.

They've found examples of people owning four or five luxury cars but receiving Medicaid. A New Hampshire family who owns a Christmas tree farm valued at \$1 million was on Medicaid and food stamps because that state does not verify the assets possessed by Medicaid applicants.

In Pennsylvania, lottery winners took lump sum payments and temporarily were removed from Medicaid rolls because the payment counted as income for a month. They became eligible for benefits the following month because they had no "income" despite their bulging bank accounts.

Jonathan Ingram, senior fellow at the Illinois Policy Institute and director of research at FGA, said the Illinois was rife with ineligible Medicaid recipients. He helped to work on reform legislation.

State lawmakers in 2013 forced the administration of former Gov. Pat Quinn to hire an outside contractor to implement a new eligibility review project. At one point the vendor determined the state had a 61 percent error rate in eligibility approvals.

"In the first year they actually removed about 300,000 people from the Medicaid program" who were ineligible, Ingram said. "The second year, which just ended in December, they removed almost 400,000 people."

Determining a savings figure has not been possible because the previous administration did not monitor that actively, Ingram said.

It's also difficult to determine how much has been saved by the anti-fraud provisions because Illinois recently shifted its Medicaid structure from fee-for-service, which pays doctors every time a patient visits, to managed care, in which providers receive a set fee per patient no matter how much service a patient requires.

Moreover, there were issues with Illinois' passive-determination "honor" system for Medicaid enrollees. "Shockingly, very few people sent back a postcard with information saying that they were no longer eligible for Medicaid," Ingram said.

The contractor further discovered about one in five of the passive redeterminations were not being done as often as federal law required, and some had gone five years without a review, "which is just crazy," Ingram said.

"They looked into a bunch of the case files and found that a huge percentage of them didn't have the required documentation [to be] on the program to begin with," he said.

Ingram said North Carolina Medicaid officials "absolutely" should duplicate the Illinois project. Every dollar spent on someone who is not eligible for Medicaid, he said, "is a dollar we can't spend on someone who is eligible."

"We just had a period of probably three months we suspended our [Medicaid] recertifications. We just said everyone's automatically requalified," said state Sen. Ralph Hise, R-Mitchell. "I think we may very well be looking at a system that's very ripe for fraud in North Carolina."

Lefebvre said DHHS mails passive redetermination forms annually to all 1,898,779 North Carolina Medicaid recipients.

"If there are no changes affecting the children's Medicaid eligibility, the family does not have to return the redetermination form," Lefebvre said. "The redetermination is automatically completed and eligibility is updated for another year using online verification and information currently available in the social services agency."

The online verification "pulls data and interfaces with other divisions that contain income sources, such as Social Security, employment security, child support, etc.," and an asset verification system connects with financial institutions to verify bank assets, Lefebvre said.

Using those online systems "streamlines and produces valid, reliable information, and reduces the burden on the beneficiary to provide necessary information," she said.

Error rates in eligibility and enrollment "have not been established," Lefebvre said. Instead, the state focuses on modified enrollees' reported adjusted gross income. *CJ*



## Keep Up With the General Assembly

Be sure to visit [CarolinaJournal.com](http://CarolinaJournal.com) often for the latest on what's going on during the historic 2013 session of the General Assembly. CJ writers are posting several news stories daily. And for real-time coverage of breaking events, be sure to follow us on Twitter:

CAROLINA JOURNAL: <http://www.twitter.com/CarolinaJournal>

JOHN LOCKE FOUNDATION: <http://www.twitter.com/JohnLockeNC>

## State Briefs

The state doesn't know if its investment in information technology is paying dividends because state agencies aren't tracking benefits, a new report from State Auditor Beth Wood says.

Wood, in a video statement accompanying the February report, said her office questioned whether the state was getting its money's worth in its IT investments.

"Our answer to that question is that no one can tell because state agencies are not required to keep track of the financial benefit of IT projects after they're put in place."

Agencies are not required to track the benefits once IT projects are started, and many do not, Wood said. "The few that do track benefits use inconsistent, unreliable methods," Wood added.

Wood said five separate state agencies or departments approached decision makers about nine IT projects, claiming the projects would deliver \$1.2 billion in overall benefits to the state.

"Our auditors could not determine if that estimate was true or if the state achieved any financial benefit from those projects," Wood said.

In one instance, the State Board of Elections paid SOE Software Corp. \$988,786 up front to replace the state's campaign finance IT system and received nothing in return.

In a letter responding to the audit, State Board of Elections executive director Kim Westbrook Strach said she agreed with the findings and that the money should not have been paid up front.

"I personally expressed my concerns on these matters, as well as on the pursuit of a sole source waiver, to the previous executive director and board in 2011," Strach wrote. "In the summer and fall of 2013 we attempted to remedy many of those weaknesses by renegotiating with the vendor but were, unfortunately, unable to reach an agreement with the vendor that would comply with procurement laws and policies."

The departments and agencies generally agreed with the auditor's findings and recommendations.

The auditor recommended that the state chief information officer and state budget office direct agencies to calculate and track the achieved benefits of major IT projects. CJ

— BARRY SMITH

# Chief Justice Urges Modernization of State Courts

## Martin wants better technology and more stable funding

By BARRY SMITH  
Associate Editor

**N**orth Carolina's new Chief Justice, Mark Martin, wants to modernize the state's judicial system technologically as he seeks more stable funding for the courts.

In 1996, North Carolina's state Supreme Court became the nation's first to initiate an e-filing program, allowing attorneys to file briefs and motions electronically rather than having to mail or hand-deliver paper copies to court clerks.

"Back in that session, the clerk of the U.S. Supreme Court came to Raleigh to see what we'd done," Martin said. "We were a real leader."

But over the past two decades, North Carolina hasn't kept pace. "In many states, e-filing has now extended to county courthouses," Martin said. Many North Carolina counties have not adopted that technology, he said.

Martin said electronic filing of court documents would be more convenient for citizens and promote transparency.

He said Associate Justice Barbara Jackson would chair a commission on technology in the state's courts. Martin said his preference would be to start this "virtual courthouse" with civil cases, perhaps at the district civil court level. Such an effort would allow attorneys and participants in litigation to file briefs, motions, and other documents electronically, doing away with the need to file them at a courthouse or mail documents days before a filing deadline.

"I do think now that we're trailing the 35 states [with statewide virtual filing] and the federal government. The sooner we move forward the more we'll save," Martin said. "Waiting a whole lot longer will just make [it] more difficult to catch up."

Another one of Martin's goals is to pursue adequate and sustainable funding of the state's court system.

"This is a real issue," Martin said. "It's not some make-believe issue." Martin noted, for instance, that the court system has 11 unfilled court reporter positions.

Court and judicial fees have accounted for an increasing share of the judicial system's budget over the past couple of decades. According to the N.C. Administrative Office of the Courts, in the 1997-98 fiscal year, court fees made up 36 percent of the system's budget. Fees reached a high of 57



percent in the 2011-12 fiscal year. This year, they're projected to be 54 percent.

"There have been a lot of increases in those fees," Martin said. "The higher you raise those fees, the harder you make it for the middle class to access the court system."

The court system will find itself competing with other parts of state government for General Fund appropriations at a time which there are calls for increases in teacher and state employee pay, greater spending for highways, and a continuing increase in Medicaid spending and other health benefits.

Rep. Sarah Stevens, R-Surry, chairwoman of the N.C. Courts Commission and a member of a legislative oversight committee on justice and public safety, said she thinks funds will have to come from general revenues rather than increasing court fees.

"We can't nickel and dime [court users] because we don't have much more to nickel and dime about," Stevens said. She said fees are already high: \$90 for an eviction adjudicated in small claims court; \$75 for divorce; and \$190 for a traffic violation.

Continually increasing fees

makes the court system "less accessible to the general public," Stevens said. "We can't keep doing that."

Stevens continued: "It's the third branch of the government, and it should be treated with respect."

Martin has some other goals for the court system. They include:

- Promoting civics education. He's pushing to incorporate more information about the judicial system into school curriculums and enhance public understanding of the role of the courts as one of three co-equal branches of government.

- Improving the justice system's mental health resources for individuals and families. He's hoping the court system can take steps to help individuals and families address substance abuse issues before incarceration or admission to residential facilities is necessary. He also wants to evaluate establishing mental health courts within the justice system.

- Strengthening the rule of law. This includes supporting activities that promote awareness of the rule of law and its importance to the preservation of our constitutional rights and responsibilities.

Neither Martin nor Stevens could place a price tag on the technology and funding improvements. Martin is hoping to get some answers from consultants and the commission that Jackson will lead.

"Everything is in a very preliminary posture right now," Martin said. He said that initial reception from legislators has been positive.

Martin amplified Stevens' comments on the importance the judicial branch of government. "Public safety and the courts are among the most ancient functions of government," he said. CJ

**Follow  
CAROLINA JOURNAL  
on**

**LinkedIn**

<http://www.linkedin.com/company/75320>

# Officials: Checking Recipients' Medicaid Eligibility Could Be Costly

## State may have to repay feds if fraud or abuse uncovered

BY DAN WAY  
Associate Editor

RALEIGH

Replicating a cost-saving Illinois reform program could root out Medicaid fraud and abuse, but if not done properly, the state could be forced to repay the federal government for any misspent dollars it identifies, a key Senate Republican says.

"It would take some significant investment of the state in having an audit done of the system" to identify Medicaid recipients who are not eligible for the program but are receiving benefits, said Sen. Ralph Hise, R-Mitchell. He is co-chairman of the Senate Appropriations Committee on Health and Human Services and chairman of the Joint Legislative Oversight Committee on Health and Human Services.

### Large disincentive

A larger disincentive is "once you identify one of those problems, you start a clock," Hise said. The state would have to repay any misspent federal dollars within one year whether or not the state recovered any money from ineligible recipients, Hise said.

That could spell trouble for a government insurance program that routinely spends more than is budgeted. If the state uncovered \$100 million of improper payments, Hise said, \$65 million would be owed to the feds.

In Illinois, the Medicaid program has tightened its annual eligibility reviews to ensure everyone receiving



benefits qualifies for the program.

A computerized cross-check system periodically runs checks throughout the year to flag ineligible Medicaid recipients immediately.

State Rep. Jean Farmer-Butterfield, D-Wilson, was unfamiliar with the Illinois model but intrigued by its possibilities. She is a proponent of expanding Medicaid, the federal-state health insurance program for children, the poor, and disabled, under the Affordable Care Act.

### 'That's horrible'

"If people who don't qualify [improperly remain enrolled], and then there are people who need it and can't get it, that's horrible," Farmer-Butterfield said. Better to use tax dollars spent on ineligible Medicaid recipients to expand the Medicaid rolls, she said.

Hise also expressed interest in the Illinois eligibility renewal reform to limit unqualified participants from remaining enrolled, and said the North Carolina system is "very ripe for fraud."

He blamed that partly on ongoing problems with the state Department of Health and Human Services' computerized NCTracks program, a

Medicaid billing and claims system.

The department bases success "on how many times we say yes" to payments on NCTracks, Hise said. He said DHHS pays bills first, then chases information later, to verify the payments were legitimate.

"You also have the federal government coming down on us every month, saying our backlog for processing applications cannot exceed certain amounts or they make threats on the entire Medicaid system," Hise said.

That combination of pressures makes it difficult to presume "we're avoiding fraud and making sure we're not paying out funds inappropriately," Hise said.

Adopting a reform similar to that in Illinois would require approval from the federal Centers for Medicare and Medicaid, which is quick to shoot down changes if it deems they would make it more difficult for someone to receive Medicaid, he said.

Devon Herrick, senior fellow and health economist at the Dallas-based National Center for Policy Analysis, said Hise is correct in worrying that the state could be hit with federal repayment costs when scrubbing Medicaid rolls of ineligible participants.

"If it's fraud that the state couldn't catch, or wouldn't be expected to identify, that's one thing. If it's just negligence on the part of the state, I can see the state being forced to pay back some of the money," and that could be a disincentive to state reform, Herrick agreed.

### Suspicious patterns

To avoid that scenario, he said, North Carolina could do a general analysis of eligibility renewal problems and look for suspicious patterns among enrollees.

Enhanced front-end scrutiny is among measures the Naples, Fla.-based Foundation for Government Accountability is prescribing. It has been involved with the Illinois project and is working with other states on similar reform efforts.

Those states conduct "a more robust eligibility check to begin with up front ... to make sure that person in fact is eligible," and then check at regular intervals to make sure those getting benefits are eligible to do so.

This method is better than relying on a one-time retroactive audit to catch past fraud, abuse, and errors, said Josh Archambault, FGA senior fellow.

Illinois removed hundreds of thousands of ineligible enrollees in the first two years of the new system. It did so by quickly removing ineligible enrollees from the program rather than trying to collect from people who had been enrolled but weren't qualified.

Illinois saved money "by removing people who should have never been on the program or who are no longer eligible," Archambault said.

### Electronic databases

A state can enter agreements with a number of contractors that have access to automated, electronic databases that perform immediate, comprehensive checks to verify eligibility at enrollment, and flag any boost in income or assets during the year that should remove a Medicaid patient from the rolls, Archambault said.

States generally will say they do cross-checks with electronic verification in addition to the annual renewal form mailers, Archambault said. North Carolina DHHS said that is how it safeguards the Medicaid system here from waste, fraud, and abuse.

"But more often than not they'll accept somebody's self-assessment" about how many people live in their house, whether they got a job, if their income has risen above allowable maximums, or that they are the rightful person to whom the benefits are being provided, he said.

"I think in some states it's been very intentional" on the part of bureaucrats and politicians to allow Medicaid abuse to persist, Archambault said, because some want to make sure people who don't have private health coverage stay on the Medicaid rolls. Officials may avoid a comprehensive review of applicants or renewal candidates.

### 'Makes them look bad'

Bureaucrats and elected officials also may be reluctant to launch reforms because "it makes them look bad" when waste, fraud, and abuse are discovered, he added.

Farmer-Butterfield, a former DHHS employee, said the Illinois program is "something they should look at as a department" at DHHS. She said she's going to ask Secretary Aldona Wos whether they've examined the Illinois approach, "what they think of it, and whether they're considering that at all for Medicaid reform in North Carolina."

But she cautioned against rushing into such a system.

"Sometimes when you look at something and it looks like it's working, it costs more" to implement than is actually saved, Farmer-Butterfield said.

DHHS representatives did not respond to requests for comment. CJ

Carolina Journal Timeline Recent

# CAROLINA JOURNAL

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

Check us out online at [carolinajournal.com](http://carolinajournal.com) and [johnlocke.org](http://johnlocke.org)

Carolina Journal Update Page Info Liked Following

<https://www.facebook.com/jlf.carolina.journal>

LIKE US ON FACEBOOK!

# Study: N.C. CON Law Limits Medical Access, Boosts Costs

BY DAN WAY  
Associate Editor

RALEIGH

North Carolina has fewer hospital beds and MRI scanners than other states, and restrains psychiatric services because of a regulatory process that protects legacy health care providers, a new study from the Mercatus Center at George Mason University says.

According to Christopher Koopman, a Mercatus Center research fellow and co-author of "Certificate-of-Need Laws: Implications for North Carolina," the Tar Heel State regulates 25 separate medical services or devices through its certificate-of-need law — the fourth-highest number in the United States. The national average of regulated practices (among those states with CON laws) is 14.

"The easiest way to think about certificate of need is it's a permission slip to compete from the government" in a particular market, Koopman said. That approval is layered atop standard licensing and training requirements.

"These programs are all about restricting competition, and they've been done so in the name of lowering costs or increasing care to the poor," Koopman said.

"But we have quite a bit of evidence now that suggests neither of those have been achieved," he said. "What is achieved is reduced competition, and reduced choice for those seeking care in North Carolina and other states that enforce certificate-of-need programs."

The report was released as state Rep. Marilyn Avila, R-Wake, is working on certificate-of-need law reform legislation she plans to submit this session. She and state Rep. John Torbett, R-Gaston, authored CON reform bills in 2013 that failed to move out of the committee process.

In their report, Koopman and Mercatus Center scholar Thomas Stratmann, an economics professor at GMU, write that there are "serious consequences for continuing to enforce CON regulations" in North Carolina that can be assessed from 40 years of evidence involving certificate-of-need laws.

Maintaining North Carolina's certificate-of-need process "could mean approximately 12,900 fewer hospital beds, 49 fewer hospitals offering MRI services, and 67 fewer hospitals offering computed tomography scans," they wrote in their research report.

There are about 362 hospital beds per 100,000 people throughout the United States, but about 131 fewer beds per 100,000 people in North Carolina and states that regulate acute hospital beds through CON programs, according to the report.

An average of six hospitals per

500,000 residents offer MRI services across the United States, the report found. In CON states such as North Carolina, that number is lower by 2.5 per 500,000 people.

An average of nine hospitals per 500,000 people offer CT scans nationwide, but CON regulations in states such as North Carolina account for a 37 percent decrease in those services, the report said.

"Certificate of Need is a process that has undergone a lot of scrutiny over the years, and it is possible to cherry-pick data and studies to support a particular point of view," Julie Henry, vice president for communications at the North Carolina Hospital Association, said in response to the Mercatus Center study.

"The fact remains that the certificate-of-need law ensures the availability of necessary medical services for residents across North Carolina," Henry said.

"North Carolina hospitals have consistently supported modifications to the complex application process, but believe that repealing the law itself could have devastating effects for the patients and communities we serve, especially during a time of tremendous change in the health care environment," Henry said.

Koopman disagrees.

"I think for those people, particularly those policymakers that are interested in increasing affordable care for those people in the state, one of the simplest and easiest ways they can do this is to repeal these programs that ultimately stifle competition, and limit entry, and ultimately decrease the number of choices for those seeking care," Koopman said.

However, he acknowledged, repealing CON laws is politically challenging.

"I think you have very strong incumbent interests that have a stake in seeing these things continue," Koopman said. Providers that have received certificates of need are protected by the continuation of the programs, and "have a very strong incentive to protect these programs regardless of their ultimate outcome on competition and consumers."

The North Carolina Hospital Association lobbied heavily against CON reform in 2013, arguing that it would create upheaval in the regulated health care market.

"This is a problem that economists have tried to grapple with for some time now," Koopman said.

Facilities "sunk certain investments into devices or services thinking they were going to be protected by the program in the future, or they incurred costs that were related to this program," Koopman said.

"In the short term, they may ultimately lose out on some of those investments that they've made," he said. "But in the longer term, the state of North Carolina and the people of North Carolina seeking quality care will be much better off because of the repeal of this."

The federal government repealed its certificate-of-need mandate on the

states in 1987 because the cost-control promise failed to pan out, and 14 states followed suit.

"Conservatives tend to think that those are just protectionist measures to protect legacy providers. You ask your competition if you can be allowed to expand more services to compete with them. How stupid is that?" said Devon Herrick, senior fellow and health economist at the Dallas-based National Center for Policy Analysis.

"Competition is good," Herrick said. "If you build a hospital, the hospital will find any way it can to fill beds. ... But if a hospital across the

street is also competing for patients, health plans will have an easier time negotiating discounts with those hospitals," and consumers will benefit.

The most likely beneficiaries of repealing or relaxing certificate-of-need laws would be ambulatory surgery centers, freestanding radiology clinics, and the like, Herrick said.

"Certain things, it may not affect as much, but especially at the margins entrepreneurs are the ones who want to build and provide new services, and if you limit that, the big players who have been there forever have little reason to discount their services or even try to do things to attract patients," Herrick said.

In North Carolina, the CON process includes approval from the Certificate of Need Section in the state Department of Health and Human Services' North Carolina Division of Health Service Regulation. The DHHS website says:

"The fundamental premise of the CON law is that increasing health care costs may be controlled by governmental restrictions on the unnecessary duplication of medical facilities."

All new hospitals, psychiatric facilities, chemical dependency treatment facilities, nursing home facilities, adult care homes, kidney disease treatment centers, intermediate care facilities for the mentally retarded, rehabilitation facilities, home health agencies, hospices, diagnostic centers, and ambulatory surgical facilities must obtain a CON first before initiating development, the website says.

A certificate of need also is required to upgrade or expand existing health service facilities or services that exceed set capital expense limits. *CJ*



## Locke, Jefferson and the Justices:

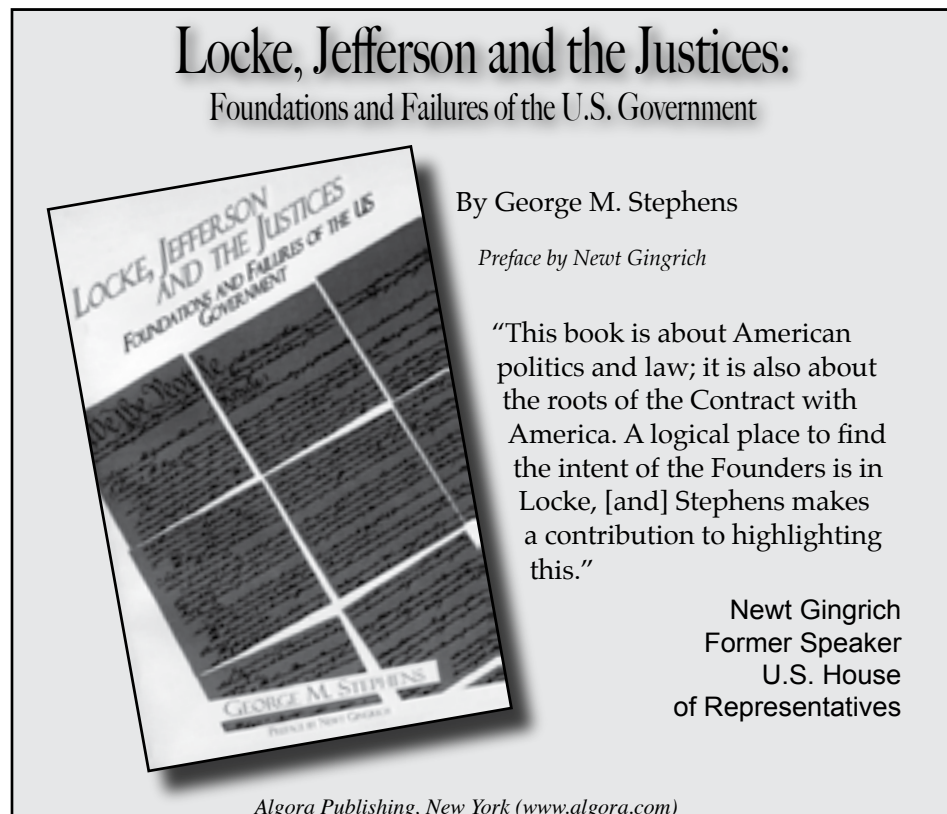
Foundations and Failures of the U.S. Government

By George M. Stephens

Preface by Newt Gingrich

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

Newt Gingrich  
Former Speaker  
U.S. House  
of Representatives



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

# Justices' Voucher Decision Expected Within Months

By BARRY SMITH  
Associate Editor

**A**ttorneys on both sides of the voucher issue made their case to the state's highest court Feb. 24, with Supreme Court justices considering a challenge to a Superior Court decision stating that the Opportunity Scholarship Program, offering tuition vouchers to low-income parents who removed their children from public schools, violated the state constitution.

The justices heard two hours of arguments — one regarding a lawsuit brought by the N.C. School Boards Association, and a second related to a separate suit filed by the N.C.

Association of Educators. Other parties joined both lawsuits.

Attorney Burton Craige, representing the teachers' group, and former Justice Bob Orr, arguing on behalf of the school boards, questioned whether spending tax money on private schools met the N.C. Constitution's "public purpose" test.

Craige said the constitution requires tax dollars spent on education to be used "exclusively for maintaining a uniform system of public schools. We ask the court to declare that exclusively means exclusively."

"To use public funds in the context of private schools, you would need extensive findings of fact about the need," Orr said. "We have this talk about failing children, but there's no requirement in this legislation that the participants who are ultimately chosen by lottery and then by the school are failing or even struggling." Orr also said that the program doesn't meet the criteria set out in the 1990s landmark *Leandro* decision, in which the N.C. Supreme Court mandated that every child have the opportunity to have a "sound, basic education."

Justice Sam Ervin IV asked attorneys if the courts had any role in monitoring the quality of education. Justice Paul Newby questioned whether the General Assembly should have leeway in public school appropriations.

Justice Robin Hudson peppered lawyers with questions regarding the lack of curriculum requirements, teacher certification, and accountability standards connected to the private schools accepting opportunity scholarships.

"This case is all about accountability," said Dick Komer, an attorney for the Institute for Justice, which is representing parents who are using the voucher program. "It is not about un-

accountable private schools. It is about an effort by the public schools, in this case, and their supporters to evade accountability. This program provides parents with additional opportunities that supplement the public school opportunity that they are provided."

Komer and other attorneys supporting the voucher program noted that public schools are not held accountable for failing to deliver a sound, basic education as the constitution requires, even though five out of six children from lower-income families fail at least one of their two required end-of-year tests in public schools.

Lauren Clemmons, an assistant attorney general representing voucher supporters, argued that opponents were interpreting the state constitution incorrectly regarding the use of tax dollars for private school vouchers.

The constitution "does not prohibit the General Assembly from using General Fund revenue ... for the scholarships at issue here," she said. Orr and Craige disputed that conclusion, saying that public funding must support only public schools.

Attorneys defending the vouchers also noted that the state provides direct taxpayer assistance to private preschools and private universities, and none of the plaintiffs argues that spending tax dollars for those purposes violates the constitution.

The Opportunity Scholarship program provides up to \$4,200 in tuition assistance to parents of K-12 students who enrolled a child in a public school the previous school year but wish to send their child to a private school. About 1,200 students participate in the program during the current school year. More than 5,000 students applied for the scholarships, requiring a lottery to decide who would receive assistance.

Even though a lower court had ruled the program unconstitutional, parents were allowed to receive scholarships for the current school year while the appeals moved forward. The N.C. Supreme Court last fall decided to bypass the N.C. Court of Appeals and offer an expedited hearing to the parties so that the issue would be settled before the start of the 2015-16 school year.

The high court also decided to allow parents to begin the process of applying for scholarships for next school year, pending a final decision by the Supreme Court. That ruling is expected within the next few months. *CJ*



## COMMENTARY

# U.S. Millennials Not Measuring Up

**I**n 2012, the Organization for Economic Cooperation and Development administered the Program For the International Assessment of Adult Competencies. The assessment evaluated literacy, numeracy, and problem solving for representative samples of adults between 16 and 65 years old in 22 participating countries. The performance of sampled adults from the United States was stunning. While they earned a problem-solving score that was slightly below average, their average score for literacy was well below the international average. The numeracy score was appalling, besting only Italy and Spain.

To better understand the PIAAC results, Educational Testing Service recently published "America's Skills Challenge: Millennials and the Future," a follow-up analysis that focused on a single demographic: millennials. Millennials are the generation of Americans born after 1980. They make up approximately 27 percent of the U.S. adult population and around one-third of the civilian noninstitutional labor force.

If our nation's economic prospects depend on the skills, abilities, and habits of younger workers entering the labor force, then a future in the hands of U.S. millennials looks bright, at least on paper. The nation's, as well as North Carolina's, average mathematics score on the SAT is significantly higher today than two decades ago. Advanced Placement participation and achievement continue to climb. Most significantly, U.S. millennials are on track to receive more formal education and credentials than any generation in American history.

Millennials may become the nation's "most educated" generation ever, but the ETS report affirms that the quantity of schooling does not always produce a quality education. Compared to their peers in other industrialized nations, few U.S. millennials have adequate reading, numeracy, and problem-solving skills. In fact, it's not even close.

ETS researchers found that only perennial bottom dwellers Spain and Italy had lower average

literacy scores on the PIAAC than U.S. millennials, and all three were among the lowest-scoring nations on the numeracy assessment. U.S. millennials also ranked last, along with the Slovak Republic, Ireland, and Poland, on the problem-solving test.

But how do the highest-scoring U.S. millennials compare to their international peers? In other words, how do our best compare to their best? According to ETS, the highest-performing Americans still scored lower than their counterparts in all but seven participating countries. Perhaps the most startling finding was that U.S. millennials who earned a bachelor's degree had scores that were similar to high school graduates in three of the top-performing countries — Japan, Finland, and the Netherlands.

Liberals likely will claim that the poor performance of U.S. millennials is a product of dwindling resources for public schools and universities. But the United States spends more per student on public primary, secondary, and postsecondary schooling than nearly any other industrialized nation. According to the latest international data available, the average expenditure across all levels of education in the United States was \$15,300 per student, over \$6,000 per student more than the international average and \$4,700 per student more than top-performer Japan. Finland and the Netherlands spent an average of \$10,900 and \$11,700 per student, respectively.

As a nation, the most critical course of action is to recommit to instructional and institutional practices that raise student achievement, strengthen accountability, and meet the needs of individual students and families. Over the last five years, a number of states, including North Carolina, have implemented laws and policies that have begun to move our schools in the right direction. No less than the economic well-being of our state and our nation depends on it. *CJ*

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



**TERRY STOOPS**

# Critics: Charter Accountability Bill Would Hinder Operations

By DAN WAY  
Associate Editor

RALEIGH

House Minority Leader Larry Hall's bill imposing new financial accountability measures on charter schools is regulatory overkill that would hinder the schools' operation, critics warn.

But one Republican lawmaker on a key education committee said he would evaluate House Bill 96 with an open mind.

"I do think it's natural that we spend a lot of time looking at charter school applicants on their pedagogy, curriculum, and academic plan. From what I've been aware of, I'm not so sure we look at their finances as closely as we should," said state Rep. Craig Horn, R-Union, a chairman of the House Education K-12 Committee.

## 'Good, hard look'

"I recognize the need for a good, hard look at accountability in charter schools," Horn said. He expects the bill to be heard in his committee. "I'll be anxious to not only read the bill but hear the testimony on it. ... I'll be looking forward to a healthy debate."

Horn said he would be "very cautious" to ensure that any accountability standards are "reasonable and in line" with goals to create a school atmosphere responding to education needs with a sound alternative to traditional public schools.

"There are those folks who apply accountability measures for ensuring success, there are those that apply accountability measures for the purpose of ensuring failure," Horn said.

While he supports charter schools, Horn also wants to avoid future problems such as what occurred in some Charlotte-area charters that closed during the school term, leaving students in the lurch.

Hall, a Durham Democrat, did not respond to requests for comment about House Bill 96, but wrote on his website he wants to thwart "reckless mismanagement" of charter schools with bad financial records and to increase transparency and accountability.

## Deceptive enrollment

Hall's interest was piqued by the state's forced closure in 2013 of financially ailing Kinston Charter Academy, which became the subject of a state audit exposing deceptive enrollment practices and financial mismanagement.

"I'm a big believer that if we're spending state money, taxpayer money, we need to know who is getting it, and whether the taxpayer is getting value, and the children are getting value for the money that's being spent," Hall has said.

His bill would require charter schools to maintain a name and con-

tact registry listing all school officers and individuals authorized to keep or spend funds. They also must provide insurance and file a bond with the State Board of Education.

The bill further mandates charter schools' written charters requiring listed individuals "to be held personally and individually liable for debts incurred by the charter school," and for payment of outstanding bills and debts "upon the voluntary or involuntary closure of a charter school."

Any debt would be submitted to the state Department of Revenue for collection, but also allow "an alternative means of collection" from the dissolved charter school's officers and finance-related employees.

## Maintain database

If passed, the legislation would require the Office of Charter Schools at the Department of Public Instruction to maintain a database of those individuals, and prohibit their future employment in charter schools until the debt is paid off.

"The bill looks like a solution in search of a problem," said Eddie Goodall, executive director of the North Carolina Charter Schools Association.

He said the prospective database would be added to a requirement for charter schools to do criminal background checks of employees, a regulation traditional schools do not have. "It's just overreach," Goodall said.

Charter schools recognize their reputation is at stake when one of them flounders, "so we would be happy to work with the State Board [of Education] and Rep. Hall to look at what's broken before we try fixes that have potentially grave unintended consequences," Goodall said.

"If we're trying to prevent charters from opening, the bill might work" by saddling cash-strapped startups with more costs and heavier regulatory burdens, Goodall said.

## Bonding requirement

"Many current charter school operators support a bonding requirement. But first-time applicants, particularly those in low-wealth areas, may find it to be an obstacle that is difficult to overcome," said Terry Stoops, director of research and education studies at the John Locke Foundation.

He said Democratic legislators in Florida have proposed legislation in recent years that would require charter schools to obtain a surety bond, citing many of the same concerns voiced by Hall, but have not persuaded the leg-

islature, controlled by Republicans, to go along.

"I suspect that that will be the case in North Carolina as well," Stoops said. Nor does he believe most lawmakers will back the "naughty list" database.

"A 'naughty list' has already been established for charter school employees convicted of a crime involving the misappropriation of school funds. It's called a criminal record," Stoops said.

"Rather than reflexively imposing additional regulations to charter schools when one or two fail, elected officials should consider how and why mismanaged schools obtained state approval in the first place," Stoops said. "After all, the purpose of the application process is to ensure that incompetent or careless applicants do not receive a charter."

## Tighten controls

Goodall agrees, saying the state

first should explore how a small number of charters have gotten into operating difficulties, fix policy issues with professional guidance, and tighten controls where necessary before seeking statutory remedies.

He said Hall appears to be under a misconception that the state is responsible for charter school debt, and the media got that wrong in the closure case at StudentFirst Academy in Charlotte last April. The state gives charters a per-pupil allotment but has no other monetary obligation to charters, he said.

The first step to address fiscal issues would be to open dialogue with DPI's Business and Services Division and the State Board of Education to identify sources of financial problems and develop solutions, he said.

Greater school enrollment vigilance and tighter accountability from DPI and its Office of Charter Schools are necessary, Goodall said. That should thwart the problem faced by charter schools such as Concrete Roses STEM Academy in Charlotte, which closed last September just weeks after starting its very first school year. Enrollment was only 126 students, rather than the projected 560. *CJ*



*www.JohnLocke.org*

## YOUR HOME ON THE WEB FOR NORTH CAROLINA PUBLIC POLICY

Creating your own personal **Key Account** at *www.JohnLocke.org* is a great starting place for tracking the critical public policy issues facing North Carolina.

Each day, your **Key Account** searches a comprehensive database of JLF reports, briefing papers, news articles, press releases, and events notices to display timely information about the issues of your choice. It's an excellent tool for those drafting legislation, researching policy issues, preparing news stories, planning political or lobbying campaigns, or seeking information with which to be an informed voter and citizen.

Visit *www.JohnLocke.org* and create your personalized **Key Account** today!



# Appeals Court Ordered to Expedite Alamance Records Lawsuit

BY DAN WAY  
Associate Editor

**T**he North Carolina Court of Appeals has been ordered to expedite review of a lawsuit involving a newspaper's request to see records detailing the firing of the superintendent of the Alamance-Burlington Board of Education, a dispute invoking a precedent set when the media exposed misdeeds in the N.C. State University men's basketball program under the late coach Jim Valvano.

The state Supreme Court on Jan. 28 assigned emergency status to the case, slashing the Appeals Court's timetable for bringing the case to court from roughly nine months to a few weeks — marking the first time the emergency-status provision of the open records law has been sought or granted.

The *Times-News* of Burlington sued the school board to obtain minutes from closed meetings at which the board voted 4-0 to fire former superintendent Lillie Cox before she resigned. Cox was awarded more than \$200,000 in severance. The school board has provided only partial minutes.

The newspaper lost the first round in Alamance County Superior Court. In its appeal to the Court of Appeals, the *Times-News* argues that by dismissing the suit the trial court created a new exemption to the statutes that imperils public access to public business.

If the school board loses the case, it would be responsible for paying the newspaper's legal fees and could face other monetary penalties.

The newspaper filed its brief to the Court of Appeals soon after the

Supreme Court's order. The school board has a few more days to respond, and then the appeals court must hear the case on the first available calendar date after the school board's response is filed.

The lawsuit tests a prior Supreme Court ruling stating that public records laws must be interpreted broadly, not restrictively, to ensure the public knows what the government is doing.

The North Carolina Association of Broadcasters and the North Carolina Press Association filed a friend-of-the-

court brief supporting the *Times-News*, citing the case's potential statewide impact for the public's right to know.

Just six months after receiving a three-year extension of her \$200,000 annual contract, the school board terminated Cox. The separation occurred "about the time the board's lawyers concluded an investigation of improprieties, at enormous taxpayer expense," the lawsuit claims.

"It was an issue that created a lot of discussion in our community," *Times-News* Executive Editor Madison Taylor said.

"Because it created so many questions, and because there seemed to be a gap in the way information was being released, we felt it was important

to pursue the case" to prevent erosion of public records law and court precedents, Taylor said.

"The records that they are seeking — as they described them, in fact — are not public records. They're personnel records, which are not available

for disclosure under the Public Records Act. There's a specific exception for personnel records. So that's the essence of the case," said Debra Stagner, an attorney with the Raleigh-based Tharrington Smith law firm representing the school board.

"We believe the board complied fully with the law," Stagner said. "In the trial court, Judge Inman agreed with us and dismissed the case," Stagner said of former Wake County Superior Court Judge Lucy Inman, who was elected to the Court of Appeals in November.

John Bussian, the newspaper's Raleigh-based attorney, called the school board's secrecy in withholding information about Cox's departure "a serious violation of the public records act."

Should such official conduct not be challenged, "The Alamance-Burlington school board and all other public school boards across the state would be free to hide the reasons for terminating a public school superintendent or other high-ranking official, and paying hundreds of thousands of public dollars to do it," Bussian said.

A hearing on the complaint was set for Dec. 15 before an Alamance County judge, and the newspaper's lawyers scheduled depositions of three school board members.

But the school board filed a motion to dismiss. That matter was transferred to Inman, a Wake County judge, and heard Dec. 3 in Raleigh. She dismissed the suit before it ever came to a hearing without even reading the disputed minutes, according to court filings.

Bussian and fellow media attorney Mark Prak of Raleigh unsuccessfully petitioned the state Court of Appeals to hear the case on an expedited, emergency basis. The media attorneys then appealed immediately to the state Supreme Court, based on a statutory provision that mandates expedited handling of public records fights.

The Supreme Court returned the case to the Court of Appeals and ordered expedited review. However, the

Supreme Court did not grant Bussian and Prak's request that it take the case directly, as the justices did in the 1992 *News and Observer v. Poole* case related to the investigation of Valvano's N.C. State basketball program.

The Poole Commission was appointed by UNC system President C.D. Spangler to investigate allegations of wrongdoing in the N.C. State basketball program. Chancellor Bruce Poulton and Valvano lost their jobs in the aftermath.

The commission argued it didn't have to release the records because they involved investigations by the State Bureau of Investigation, which are exempt from disclosure under public records law. The newspaper's lawyers argued that once the records were handed over to the Poole Commission, they became public records.

In a 7-0 decision, the Supreme Court sided with the newspaper. The court ruled that minutes of official business must be kept and may be withheld from public inspection so long as the need for secrecy exists. Once the investigation concluded, the justices ruled, there was no need to keep the records sealed.

Bussian and Prak argue that same principle applies to the Alamance-Burlington school board case. An investigation was conducted, a final report was prepared, and the school board discussed it at one or more closed-door meetings.

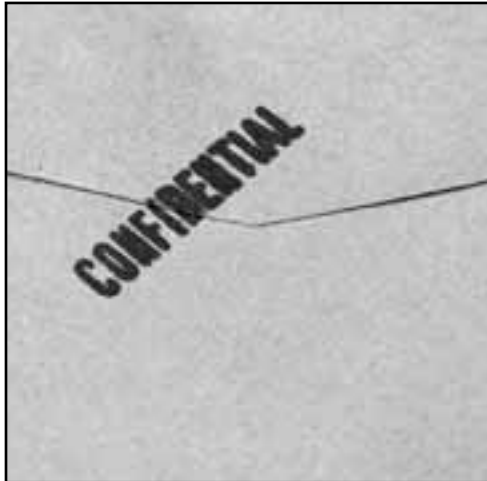
Stagner disagrees. She reads the Supreme Court decision to say the Poole Commission could release the records because N.C. State (rather than the Poole Commission) was Valvano's employer, and once the Poole Commission had the documents, they no longer were protected by the exemption covering personnel records.

By contrast, the school board's defense "has been based on the fact that these documents are personnel records within the possession of the Board of Education," which was Cox's employer, Stagner said, "so it's a distinguishable case."

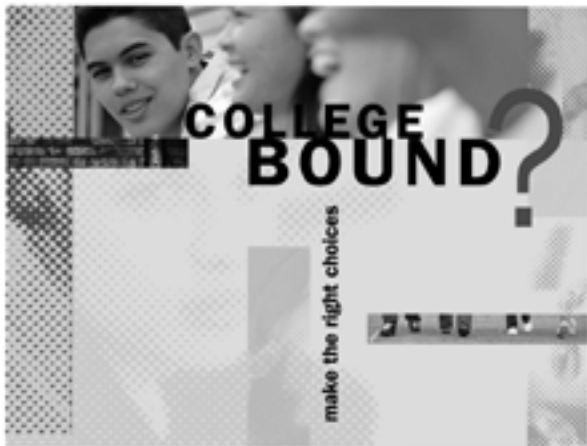
The Alamance-Burlington case has similarities to a successful open records challenge in 2010 waged by Bussian and Prak. The State Employees Association of North Carolina sued state Treasurer Richard Moore to obtain performance and other records involving state pension fund investments.

A trial court dismissed the case, and the Court of Appeals upheld the decision.

But in *SEANC v. Moore*, the Supreme Court made clear that North Carolina's public records law is supposed to be read liberally to afford access, and exceptions are to be construed narrowly, Bussian said. *CJ*



If you know high school students considering college . . .



then "College Bound? Make the Right Choices" is for you!

Should they go?

How will they pay?

What will they study—or will they party?

 The John William  
POPE CENTER  
FOR HIGHER EDUCATION POLICY

To receive a free copy, call  
919.828.1400 or email  
shaw@popecenter.org

Visit the Pope Center online at [popecenter.org](http://popecenter.org) for additional reports and studies

## Town and County

## Southport Marina for sale

The N.C. State Ports Authority hopes to sell property that's not critical to its core mission of operating deepwater ports in Wilmington and Morehead City. One now on the market is the Southport Marina, reports the *Wilmington Star-News*.

"We're looking at property that the ports currently own and making an assessment as to whether they're underutilized or could be better utilized by another party," said Tom Adams, chairman of the authority's board of directors.

It's not the first time the state has considered the Southport Marina, which has been under state control since the 1960s. About a decade ago, the state leased the facility to Cary-based Preston Development. The company has said that it might be interested in buying the marina. If another party purchases the marina, it would be expected to honor the lease agreement with Preston.

Southport Mayor Robert Howard said the community would welcome a sale, as it would place an asset valued at \$11.75 million on the town's property tax rolls.

Proceeds from the sales likely would be used for port improvements in Wilmington and Morehead City.

## N.C. 12 mediation

The longstanding dispute between the N.C. Department of Transportation and the Southern Environmental Law Center over replacing the Bonner Bridge on North Carolina's Outer Banks may be coming to an end. The *Raleigh News & Observer* reports that the two sides have requested a mediator to help resolve their dispute.

The Bonner Bridge carries N.C. 12 over Oregon Inlet, making it a critical link between Hatteras Island and the mainland. The bridge was built in 1963 and designed to last 30 years. The state wants to build a replacement bridge that would span 2.8 miles. The environmental group contends that a longer — and far more costly — bridge is necessary, one that would bypass Pea Island, the island at the southern end of the existing bridge.

A federal appeals court ruling last August that wasn't a complete victory for either side prompted talks of reaching a compromise. *CJ*

## Ruling Could Mean Millions for Affected Landowners

By BARRY SMITH  
Associate Editor

RALEIGH

The N.C. Court of Appeals ruled on Feb. 17 that filings under the state's Map Act amounted to the taking of property, a decision that could entitle affected landowners to hundreds of millions of dollars for property that has been locked up by transportation planners.

"I would say this is several hundreds of millions of dollars [of] obligation that [state and local governments] incurred long ago but ignored," said Matthew Bryant, an attorney representing a number of clients in lawsuits against the N.C. Department of Transportation.

The unanimous decision by the three-judge Court of Appeals panel affects property owners in Forsyth County. But similar lawsuits and Map Act filings have been made in Guilford, Wake, Cleveland, Cumberland, and Pender counties. Bryant estimates that as many as 1,500 property owners may be affected.

The Map Act allows NCDOT, local governments, or other governmental entities to prevent building permits from being issued on property listed in highway corridors.

Chief Judge Linda McGee, writing for the court, said when a corridor map is recorded under the Map Act, the properties on the map eventually will be taken to build a road.

"We conclude that the Map Act empowers NCDOT with the right to exercise the state's power of eminent domain and take private property of property owners affected by, and properly noticed of, a transportation corridor map that was recorded in accordance with the procedures set forth in [state law]," McGee wrote. That power, "when exercised, requires the payment of just compensation," she continued.

Attorneys for NCDOT argued unsuccessfully that tying up property under the Map Act did not constitute use of eminent domain but instead was an exercise of the state's police powers, which would not require governments to compensate landowners.

"When you impose on people to benefit society, that's eminent domain," Bryant said. "This is not policing people, this is an eminent domain action, and they used the words foreshadowing condemnation."

The appeals court sent the case back to a lower court for trial to determine the just compensation for the property.

Since the ruling was unanimous, the N.C. Supreme Court is not required to take the case if NCDOT appeals.

"We're a long way away from owners getting paid," Bryant said. "But we're a lot further along than we were five years ago."

Noelle Talley, a spokeswoman with the Department of Justice, said attorneys are still reviewing the ruling



and consulting with the Department of Transportation. "No decision has been made yet on next steps," Talley said.

Mike Charbonneau, a spokesman for NCDOT, had a similar response. "Our legal team is currently reviewing the ruling this week by the North Carolina Court of Appeals as it pertains to the Map Act," Charbonneau said. "Until that detailed review is complete, NCDOT does not have any additional comment about the ruling or possible implications."

Bryant was elated for his clients, whose land has been in limbo for more than a decade, after the Court of Appeals ruling came down.

"These owners are not rich, not overly sophisticated; they're your average citizen," Bryant said. "They're your mother, your father, your grandmother, your grandfather. It's a bold thing to tell them that you're going to have to sue the state of North Carolina. That's daunting. They should be commended for being as brave as they are. I just carried the freight for them."

Gene Boyce, a retired Wake County attorney whose clients successfully have sued the state over the taxation of retirement benefits, concurred with the ruling. "The opinion was so strong on private property rights," Boyce said.

Boyce, who owns property in northern Wake County that has been placed in limbo because of a proposed

high-speed rail system, said that he'd like to see changes made to state law to cover situations such as his. He plans to meet with legislators to do just that.

"I want to bring them up to date," Boyce said. "I want the legislators to know what the DOT is really doing."

A March 2014 John Locke Foundation report (<http://www.johnlocke.org/research/show/spotlights/302>) by Tyler Younts, at the time JLF's legal policy analyst, concluded that the Map Act virtually freezes property development within proposed road corridors by blocking building permit and subdivision applications for up to three years. North Carolina is one of only 13 states with Map Act statutes.

Other states with comparable statutes give property owners more options. Some allow landowners to demand immediate acquisition of their property or release from an official map. Others limit the length of time an official corridor map can block building on or subdivision of the land, with the limits ranging from 80 to 365 days.

The JLF report concludes that the Map Act either should be repealed or the time period for delaying building permits should be shortened to between 80 and 120 days.

NCDOT representatives have said many of the effects on property owners result from the state's open process of planning for roads, and not necessarily from the Map Act itself. Once the state publicly acknowledges that a parcel of property is in a future highway corridor could lower its value or make it difficult to sell.

McGee was joined in her opinion by Judges Wanda Bryant and Donna Stroud. *CJ*

## Keep Up With the General Assembly

Be sure to visit [CarolinaJournal.com](http://CarolinaJournal.com) often for the latest on what's going on during the historic 2013 session of the General Assembly. *CJ* writers are posting several news stories daily. And for real-time coverage of breaking events, be sure to follow us on Twitter:

CAROLINA JOURNAL: <http://www.twitter.com/CarolinaJournal>

JOHN LOCKE FOUNDATION: <http://www.twitter.com/JohnLockeNC>

# Proposed Greensboro Council Changes Stir Up Hornet's Nest

By MICHAEL LOWREY  
Associate Editor

**S**en. Trudy Wade, R-Guilford, has introduced a bill that would change the composition of Greensboro City Council. The measure has generated a negative reaction, reports the *Greensboro News & Record*.

Currently, Greensboro City Council has nine members: five members elected from districts, three members elected at large, and a mayor with voting rights elected at large. All members serve two-year terms.

Under Wade's proposal, the council would shrink, with seven members elected from districts and a mayor elected at large. The mayor no longer

would vote on items before council but instead would have a veto. Terms of office would increase to four years. Wade's bill also would set the boundaries for the seven districts. The proposed lines would put four sitting council members into one of the new districts.

Wade defended the changes, saying she modeled the mayoral veto provision after the structure used in Charlotte, where a nonvoting mayor can stay above the fray and build consensus.

"If we want to be like other metropolitan cities, we should be structured like other metropolitan cities," Wade said.

The response to Wade's proposal was generally negative from Greensboro politicians, with remarks by Councilman Zack Matheny being typical.

"I wish this city, this region, and this state, which I think is the best in the world, would focus on what we need to focus on," Matheny said.

"This isn't it."

## Charlotte ethics rules

The city of Charlotte is working to rewrite its ethics laws in the wake of Mayor Patrick Cannon's arrest on federal public corruption charges. The changes, though, may not go as far as some would have hoped for, reports *The Charlotte Observer*.

Under the proposal, the financial disclosure form elected officials fill out would be expanded to include any property they lease to or from the city, and any property they have sold to or bought from the city. Elected officials also would be required to disclose their stock holdings in companies doing business with the city.

The proposed policy also would limit gifts and meals that elected officials could receive.

"This is about transparency," said Council member David Howard, who is overseeing the rewrite.

Howard acknowledges, though, that the new measures aren't — and can't — prevent a city official from taking bribes.

"Nothing that we can do would have stopped somebody from doing wrong. There is no policy that's going to do that."

The new policy does not, however, require lobbyists to register and report their interactions with city officials. Charlotte is the largest city in the country without such a registration requirement.

"The main benefit of registration is transparency," said Robert Wechsler of the nonprofit organization cityethics.org. "It lets the public know about the extent of lobbying and who is doing it."

## Raleigh water rates

Raleigh residents have reduced water consumption to such an extent that the city soon will have to raise its rates to compensate. Those rate increases may continue for some years to come, reports the *Raleigh News & Observer*.

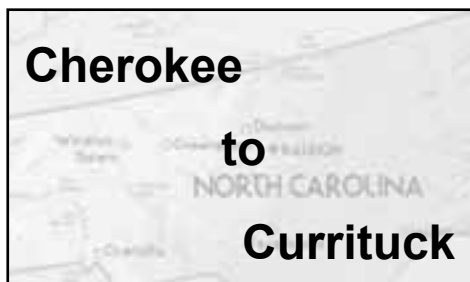
From 2007 through 2009, Raleigh faced a severe drought and strongly urged customers to restrict water consumption. The measures worked so well that the typical Raleigh resident now uses 37 percent less water than in 2007.

The flip side of that is that residents also now pay about twice as much per gallon as they did in 2007. An additional 7 percent rate hike is likely to kick in later this year, with additional rate hikes possible through 2019. If enacted, rates would be increased by about 25 percent by 2019.

"The reality is that if ... you ask your customers to buy less of your product, and you want to stay whole, you're going to have to raise rates," said John Carman, public utilities director for Raleigh.

Several factors are influencing the rate hike. Much of the cost of operating a water system is fixed — it does not change with the amount of water used.

"We have to run the plants 24/7, 365, regardless of whether customers are using a lot of water or a little water," noted Robert Massengill, assistant utilities director.



## COMMENTARY

# Charlotte's Chiquita Slip-Up

**T**he common complaint about economic incentives is that they amount to having the government pick winners and losers. That's certainly true. However, as recent events in Charlotte show, another problem with incentives is that government handouts can go to winners and losers.

In 2011, state, Mecklenburg County, and Charlotte officials went bananas over the possibility of getting Chiquita Brands to move to Charlotte. No, this didn't involve turning large portions of the Queen City into a banana plantation, but rather in attracting Chiquita's corporate headquarters from that other Queen City, Cincinnati. To help seal the deal, state and local governments offered up to \$22 million in incentives over 10 years.

Chiquita's stay in Charlotte lasted nowhere near a decade. The company was bought out in January by a Brazilian firm and promptly announced that it will leave town by the end of the year. The move will cost Charlotte 320 high-paying jobs. Under its agreement with the state, county, and city, Chiquita will repay all incentives it has received to date.

"You can't expect loyalty from any company if you're paying them to move," *The Charlotte Observer* quoted Mecklenburg County commissioner Bill James as saying. "Government was basically prostituting themselves to get them here. ... Nobody falls in love with a prostitute."

James is correct that there's no reason to expect loyalty from a business that came to your town because you threw the most money at it. But his criticism misses the real reason Chiquita left. Chiquita's executives did not spend 2014 looking to move a mere four years after shifting their corporate headquarters.

No, Chiquita's problems were more basic: Though an iconic brand, it had long been an underperforming business. For example, the company posted a net loss of \$18 million for the third quarter of 2014, results hailed by company officials as "the strongest in the last five years for this period." Ouch.

Ultimately, like many underperforming companies, Chiquita was sold. Chiquita's preferred merger partner would have been Fyffes, another banana company based in Ireland. Instead, Cutrale-Safra bought Chiquita for \$1.3 billion. We also have learned that Chiquita was considering a merger as far back as 2011, at the same time it agreed to take North Carolina money to move its headquarters to Charlotte.

The state, the county, and the city made a basic mistake as well: not performing due diligence, not realizing that Chiquita was a sick company, and failing to understand that this sort of forced relocation was almost certain to happen down the road.

Unsurprisingly, economic development officials defend the use of incentives in general and the ones offered Chiquita in particular.

"The incentives tend to be very good business deals, very modest frankly compared to others," said Bob Morgan, the Charlotte Chamber CEO, to the *Observer*. "They're a win-win for the public sector as well as the company. There's risk in any business deal. You mitigate against those risks with clawbacks."

Wrong. Giving public money to loser corporations imposes real costs, even if clawback provisions let government get its money back eventually. The first, obviously, is that incentive money could have been used for other purposes, including reducing taxes. Incentives allow companies to divert the money from government coffers for free for years.

Also, by publicly awarding millions in incentives to a company, state government is effectively becoming the company's champion. There's a psychological cost when public officials invest their faith in a company that either fails to deliver or packs up and leaves.

So there are many losers when government makes poor choices in offering incentives to businesses, even if clawbacks are part of the deal.

Michael Lowrey is an associate editor of Carolina Journal.



**MICHAEL LOWREY**

# Upcoming FCC Ruling Could Overturn State Broadband Law

By SAM A. HIEB  
Contributor

RALEIGH

North Carolina is bracing for a decision by Federal Communications Commission officials that could overturn the state law placing limits on municipal broadband, potentially saddling local taxpayers with new debt they would not be required to approve.

The decision is expected to be handed down at the FCC's Feb. 26 public meeting, after this edition goes to press. Chairman Tom Wheeler circulated the draft decision to his fellow commissioners earlier in response to petitions from the cities of Wilson, N.C., and Chattanooga, Tenn., requesting that the FCC overturn laws in their respective states.

While circulating the draft decision, Wheeler expressed his support for the cities' petitions.

"I recommend approval by the commission so that these two forward-thinking cities can serve the many citizens clamoring for a better broadband future," Wheeler said in a statement.

The move to overturn state laws restricting municipal broadband also has received support from President Obama, who said in a January speech that "all of us — including the FCC, which is responsible for regulating this area — should do everything we can to push back those old laws."

Twenty-one states have a patchwork of laws restricting public broadband in one form or another. Tennessee's law, for example, allows Chattanooga's Electric Power Board Fiber Optics network to offer broadband services only in areas where the city already offers power; Florida's law places extra taxes on municipal communications services; California's law states that the authority for a municipal government to provide broadband services expires if a private company steps in to offer the service.

North Carolina's law, passed in 2011, subjects approval of funding sources for new municipal broadband



Government and private Internet service providers anxiously await an FCC ruling that could have critical implications for consumers.

services to a public vote and limits Wilson's Greenlight network from offering broadband services outside Wilson County.

Wilson borrowed \$28 million to launch Greenlight using Certificates of Participation, which do not require a public vote.

Such a funding source for broadband bothered Rep. Marilyn Avila, R-Wake, a primary sponsor of the 2011 law.

"They didn't ask their citizens if they wanted to pay for it, if they saw it as a core service," Avila told reporters following final approval of the bill. "We have a lot of people in these cities whose voices have been muted. They do have a voice in the elections, but by then it's too late. They're committed to COPs for 15 to 20 years, and there's nothing they can do to get out of it."

Wilson officials are "cautiously optimistic" that the FCC will rule in their favor so they can expand into surrounding counties where infrastructure is already in place.

"We have no specific insight, so we can't say with certainty what will happen, so it's just a wait and see. Hopefully, the FCC will decide what the best course of action is, and then we'll go from there," Will Aycok, Greenlight's general manager, told *Carolina Journal*.

At issue is whether cities can keep pace in a volatile and fast-paced industry such as telecommunications. If they can't, core services could suf-

fer if the city has to raid other departments to keep broadband afloat.

Several reports doubt cities can keep pace.

A 2009 John Locke Foundation report said Wilson city officials were "irresponsibly risking taxpayers' money" because Greenlight's fiber optic network "will be obsolete before it's finished."

Meanwhile, a 2014 report by New York Law School's Advanced Communications Law and Policy Institute on government-owned networks defended state laws restricting public broadband.

"States, which maintain ultimate responsibility for the financial health of the cities and towns in their borders, have strong interests in overseeing the process by which government-owned-network proposals are vetted and approved. Well-established legal precedent supports such a close relationship between states and their political subdivisions," co-authors Charles Davidson and Michael Santorelli write in the executive summary.

The report notes that neither Chattanooga's nor Wilson's systems are financial disasters.

Indeed, Chattanooga's EPB Fiber recently showed a profit, with revenues of \$80.7 million and operating expenses of \$26.1 million, while Wilson's Greenlight system is breaking even, with revenues and operating expenses each totaling \$11.4 million.

Despite that positive news, the

report still calls into question Greenlight's long-term ability to support itself financially given the debt load.

"Greenlight's financing model was not approved by a referendum. It was, as discussed above, initiated by a City Council vote. In addition, the use of COPs has done little to mitigate the risk for taxpayers," the report states.

At least one FCC commissioner is troubled by the prospect of a federal agency pre-empting state laws.

On the FCC's official blog, Commissioner Michael O'Rielly wrote, "upon review, it is clear that many of the limitations or restrictions appear to be justified practices by state governments. ..."

"Beyond the extensive rhetoric and absent congressional direction, nullifying state-enacted taxpayer protections to further a political goal sends the commission down an extremely troubling path," O'Rielly concluded.

Not surprisingly, North Carolina legislators who supported the broadband bill are troubled by the prospect of the FCC overturning state law.

In a phone interview, Rep. Mike Hager, R-Rutherford, the House majority leader, said FCC action overturning N.C. law would be an "egregious decision by the federal government."

"I'm a big fan of the 10th Amendment," Hager said. "This is something that we've decided as a state. If the FCC decides to do this, we'll have to take another look at it and decide what we can do to ensure that municipalities aren't unfairly competing with cable companies using taxpayer dollars."

As for the possibility of legal action should the FCC overturn the broadband law, Hager said that any legal challenge would have to be decided by the General Assembly's leadership, Senate President Pro Tem Phil Berger and House Speaker Tim Moore.

More likely, however, is new legislation further restricting municipal broadband.

"We're a legislative body," Hager said. "That's what we do." CJ

## FIRST IN FREEDOM

*Transforming Ideas into Consequences for North Carolina*

In *First in Freedom* the John Locke Foundation's president and research staff apply the timeless ideas of 20th-century conservative thinkers to such 21st-century challenges as economic stagnation, tax and regulatory burdens, and educational mediocrity. To get your copy, go to [JohnLockeStore.com](http://JohnLockeStore.com). Cost: \$10.

The John Locke Foundation, 200 W. Morgan St. Suite 200, Raleigh, NC, 27601  
919-828-3876 • [JohnLocke.org](http://JohnLocke.org) • [CarolinaJournal.com](http://CarolinaJournal.com) • [info@johnlocke.org](mailto:info@johnlocke.org)



# Court: Exclusionary Rule Not Applicable to Driver's Licenses

By MICHAEL LOWREY  
Associate Editor

RALEIGH

Charges against Mount Airy resident Myra Combs of driving while impaired were dismissed after a judge ruled that the traffic stop in which she was arrested violated her constitutional rights.

Even so, the Division of Motor Vehicles suspended her driver's license, an action that in February was ruled as proper by the state's second-highest court.

The court's decision rested on its interpretation that the "exclusionary rule" — which disallows evidence presented in a criminal case if police obtain it illegally — may not apply in civil actions such as revoking a driver's license.

On Jan. 6, 2013, the Mount Airy Police Department received a call from a motorist describing a blue Ford Explorer that was weaving across the lanes of U.S. Highway 52 North. Officer David Grubbs went to intercept the vehicle. Spotting a matching Explorer, Grubbs and another officer followed the vehicle for some distance. They did not observe the driver of the Explorer being reckless. At most, the vehicle may have made a "slight cross of the center" line of a side street that had no painted center line. Grubbs continued to follow the vehicle until it pulled into a driveway. Only then did Grubbs initiate a traffic stop.

The driver was Combs. Her eyes were bloodshot, she smelled of alcohol, and she failed several field sobriety tests. Grubbs asked Combs to take a breath test on the spot, but she refused. Grubbs then arrested her and took her to the police department

building, where she again refused to take a breath test. Combs was charged with driving while impaired.

At trial, a district court judge determined that Grubbs lacked probable cause to pull Combs over, violating her Fourth Amendment rights against unreasonable search and seizure. He ordered all evidence obtained from the stop excluded. The state then dismissed the DWI case.

## Administrative action

That did not end the matter. DMV notified Combs it was revoking her driver's license based on her failure to submit to a breath test. Combs requested a hearing, arguing that the department couldn't pull her license as the result of actions taking place during an unconstitutional traffic stop. A DMV hearing officer did not accept this line of reasoning, and on appeal a Superior Court judge ordered DMV to reinstate Combs' license, citing the exclusionary rule. DMV then brought the matter before the N.C. Court of Appeals.



"DMV argues that the trial court erred in reversing the final agency decision because the agency record plainly contains sufficient evidence to support the findings of fact," wrote Judge Richard Dietz for the appeals court. "We agree." The court upheld the one-year suspension of Combs' license.

In an administrative action such as this, a Superior Court judge acts like an appellate court, determining whether there is sufficient evidence to support the factual determinations made by the agency and whether the conclusions of law reached are supported by those facts. In this case, Superior Court Judge Todd Burke simply held that there was "insufficient evidence in the record to support the Findings of Fact."

The appeals court construed this to mean that because all evidence had been excluded from the traffic stop,

Grubb thus lacked cause to believe that Combs had refused a breath test.

"This argument is precluded by our case law," wrote Dietz in reinstat-

ing Combs' driving ban.

"This court has held that whether an officer had 'reasonable and articulable suspicion for the initial stop is not an issue to be reviewed' in a license revocation hearing.

"Thus, the exclusionary rule, which the district court applied in Combs' criminal case, is inapplicable here. Indeed, this court repeatedly has rejected attempts to invoke the exclusionary rule in a license revocation proceeding."

The Court of Appeals first held in the 1997 case of *Quick v. N.C. Division of Motor Vehicles*, that "[w]hen determining whether revocation of petitioner's license was proper, we are not concerned with the admissibility or suppression of evidence. The question of the legality of his arrest [is] simply not relevant to any issue presented in the hearing to determine whether [the respondent's] license was properly revoked."

Dietz noted that the issue has divided courts in other states. The highest courts in Connecticut, Kansas, Maine, Missouri, North Dakota, and Pennsylvania have held that the exclusionary rule should not apply in such circumstances, while the top courts in Minnesota, Oregon, and Vermont reached the opposite conclusion.

"Our Supreme Court has not yet addressed this issue, but, as explained above, this court has. Because one panel of this court cannot overturn another, if the application of the exclusionary rule to these civil proceedings warrants further consideration, it must be done in our Supreme Court," he wrote.

The case is *Combs v. Robertson* (14-709).

CJ



## Help us keep our presses rolling



Publishing a newspaper is an expensive proposition. Just ask the many daily newspapers that are having trouble making ends meet these days.

It takes a large team of editors, reporters, photographers and copy editors to bring you the aggressive investigative reporting you have become accustomed to seeing in Carolina Journal each month.

Putting their work on newsprint and then delivering it to more than 100,000 readers each month puts a sizeable dent in the John Locke Foundation's budget.

That's why we're asking you to help defray those costs with a donation. Just send a check to: Carolina Journal Fund, John Locke Foundation, 200 W. Morgan St., Suite 200, Raleigh, NC 27601.

We thank you for your support.

John Locke Foundation | 200 W. Morgan St., Raleigh, NC 27601 | 919-828-3876

## Keep Up With State Government

Be sure to visit **CarolinaJournal.com** often for the latest on what's going on in state government. CJ writers are posting several news stories daily. And for real-time coverage of breaking events, be sure to follow us on Twitter (addresses below).

CAROLINA JOURNAL: <http://www.twitter.com/CarolinaJournal>

JOHN LOCKE FOUNDATION: <http://www.twitter.com/JohnLockeNC>

# N.C. Distillery Supporters Say They Are Pursuing Beverage Equality

Continued from Page 1

mittee. It called for a study of liquor sales at microdistilleries. It passed the House but was not taken up in the Senate.

S.B. 24 faces opposition from the N.C. Association of ABC Boards and from the Christian Action League of North Carolina.

John Carr, a lobbyist for the N.C. Association of ABC Boards, which represents local ABC boards across the state, said the change would disrupt the current liquor delivery system.

"We have a control system for the sale of spirituous liquors that's worked well over the years," Carr said. "The ABC stores are not inconveniently located near those facilities. We carry those products in our stores."

Carr said that while initially there would be a one-bottle limit placed on sales, he questioned what might come later.

"It's one bottle now, what does it become next year?" Carr asked.

The Rev. Mark Creech, executive director of the Christian Action League of North Carolina, echoed those sentiments.

"It's sort of like a chip in the windshield of your car, but then you see the crack spread across the windshield," Creech said. "Every time a compromise is made, it always results in an additional compromise. It never fails."

Creech said if the bill became law, it would be the first time that liquor would be sold legally outside the state's ABC store system, setting a dangerous precedent.

"The Christian Action League is a strong supporter of control," Creech said. "That's what the 'C' in ABC stands for."

Creech said that such a change



A bill being considered in the N.C. General Assembly would for the first time in history allow the sale of distilled spirits to individual customers outside of the state's Alcoholic Beverage Control system. (CJ photos by Don Carrington)

also would circumvent the state's three-tier system of alcohol control, under which alcoholic beverages are shipped from the manufacturer to a distributor, which then sells to retailers. And he noted it would run awry of local liquor referendums, since no ballot has provided for the sale of liquor at distilleries.

Supporters of the change, however, say it wouldn't lead to an eventual demise of the state's regulatory system. They argue that it resembles changes that have worked for the sale of other alcoholic beverages in the past. And they say it's necessary to help spur the interest in microdistilleries.

Colin Crossman, proprietor of King's Daughters Inn in Durham and the Mayton Inn in Cary, which is expected to open later this year, said he is waiting to see how the legislation progresses before deciding whether to open his own microdistillery.

"Having a microdistillery, microbrewery, and wineries supports the restaurant and other hospitality industries directly," Crossman said. "If you can do some of these things on the distillery side, you can make it much more interesting for people to come to your bar."

Maitland said North Carolina already has 14 distilleries, and about six more have applied for licenses. "There are nine more distilleries waiting to see if S.B. 24 will pass," he said. "If it does, they will apply for their license."

"Distilleries, just like breweries before them, are bringing energy back to communities," Maitland said.

Maitland said that of the 17 states that control the wholesale or retail distribution of spirits (or wine) through a state government agency, only four —

North Carolina, Alabama, Mississippi, and Idaho — do not allow distilleries to sell an item.

"I was not born a North Carolinian; I got here as fast as I could," Maitland said. "I don't like being compared to Alabama and Mississippi."

Maitland said he has support for the change from the state's restaurant and lodging industry, along with the state ABC commissioner. In addition, he said the state's agriculture industry is backing it because it would provide a market for farmers who grow soft red winter wheat. *CJ*



Colin Crossman, who owns two inns in the Triangle, is waiting to see what happens legislatively before deciding to open a distillery.



The N.C. Association of ABC Boards and the Christian Action League of North Carolina oppose a bill to allow the sale of distilled spirits outside state stores.

# Quietly, Government Stops, Will Not Resume, Counting 'Green' Jobs

Continued from Page 1

drew little media attention. "There were intense discussions about what to pick [as a result of sequestration], and BLS management decided these were the programs to cut," BLS public affairs director Megan Kindelan told *Carolina Journal*. BLS has no plans to revive the green jobs program, suggesting the agency found little value in the process despite fanfare surrounding the emergence of a "green economy."

BLS was charged with defining and counting green jobs through the Energy Independence and Security Act of 2007, passed by the Democratic-led U.S. Congress and signed into law in December 2007 by President George W. Bush.

After Obama became president, the Labor Department allocated \$8 million to BLS and \$48 million to individual states to count green jobs. The N.C. Department of Commerce received \$946,000.

The BLS green jobs program included: data on employment by industry and occupation for businesses that produce green goods and services; data on the occupations and wages of jobs related to green technologies and practices; and green career information publications.

In February and March of 2012, *Carolina Journal* reported on the challenges of defining and tracking green jobs. For the year 2010, the BLS survey concluded that North Carolina employment in the production of green goods and services was 77,498; meanwhile a Commerce survey found that "171,950 North Carolinians work in the green economy." The federal government funded both surveys. *CJ* found similar discrepancies in other states.

*CJ* pointed out the national and state efforts were repetitive because they were based on the existing BLS programs of counting jobs by industry and occupation. The "green" label added a third dimension to job-counting that proved to be confusing because state and federal agencies had different definitions for green jobs.

For instance, in a June 2012 congressional hearing, U.S. Rep. Mo Brooks, R-Ala., questioned Obama's science adviser John Holdren, about the classification of green jobs. Brooks told Holdren that a senior Labor Department official previously testified to Congress that the following occupations were green jobs: "College professors teaching environmental courses, school bus drivers regardless if the bus is hybrid or alternative, workers who fuel school buses, employees at bicycle shops, antique dealers because they sell recycled goods, Salvation Army employees, people who sell rare books and manuscripts because the items are used and recycled."

Holdren conceded that the defi-



Under a federal law passed in 2007, the Bureau of Labor Statistics was charged with tracking "green" jobs, such as those associated with solar energy, and allocated more than \$50 million for the task, including nearly \$1 million for North Carolina. (*CJ* photo by Don Carrington)

nition was "overly broad."

According to the state's definition, the top green occupations in North Carolina in 2010 included: janitors and cleaners, except maids and housekeeping cleaners; retail salespersons; highway maintenance workers, construction workers, heating and air conditioning mechanics and installers; food preparation and serving workers, including fast food; and automotive service technicians and mechanics.

## Critics of methodology

Bloomberg News mentioned the demise of the BLS program in a March 2013 story about federal budget cuts. Bloomberg asked Rep. Darrell Issa, R-Calif., then chairman of the House Oversight and Government Reform Committee, about the program. "This was never a real report, but rather propaganda designed to advance a misleading political narrative. From its inception it was an abuse of taxpayer dollars, and it's unfortunate it took the sequester to make the administration realize it," Issa told Bloomberg.

John Berlau, a senior fellow at the Competitive Enterprise Institute in Washington, D.C., was also no fan

of the effort to count green jobs. "It is inherently subjective because there is no standard definition of what a green job is. When an employment survey starts from the premise that some jobs are better than others, it is propaganda," he told Bloomberg. In an interview, Berlau told *CJ*, "It is clear that there has been no lasting damage to the economy [from ending the BLS counting program]. Let's go further and eliminate more so-called green job programs," he said.

In a 2013 article for *Forbes* Opinion titled "Goodbye To Green Jobs, You Won't Be Missed," Keith Hall, who was commissioner of BLS from 2008-12, noted that many of the jobs considered to be green were created because of government regulation. "Every person employed to deal with regulatory compliance — directly or indirectly — is unavailable to provide other goods and services of real value," he wrote.

## N.C. Commerce report

N.C. Commerce Department spokesman Graham Wilson told *CJ* that the state would not spend any more time trying to count green jobs even though the state's previous work

was useful. "The study served its purpose when there was a focus on the green economy. It was useful to analyze the green sector of N.C.'s economy and provide customers with information that could be used for multiple purposes. We think customers who are interested in the green economy might still find it useful since it is the most recent information we have," he said.

## Green careers

Carol McClelland's book *Green Careers for Dummies* was published in 2010, before the BLS green job reports were released. The book was targeted at readers hoping to "find a green career that taps into your passions and qualifications; immerse yourself in your green target industry; play to your strengths in the green career arena; and harness the Web to launch your green job search."

"As the green economy matures and more companies implement sustainability initiatives, it's likely we'll come to a time when all jobs have a green component to them," she stated in the book.

*CJ* asked her about the end of the BLS program. "Measuring green jobs is a difficult thing. It is like a different overlay [to the existing job classifications]," she said.

McClelland expressed no concerns about the demise of the BLS program. "We still have a difficult time defining 'sustainability' as well. We are still finding our way here. The green overlay is a mind-set that is spreading," she said. *CJ*

Janitors, retail sales employees, and highway maintenance workers included in 'green' jobs category

# Roy: Best to Let Consumers Control Their Own Health Dollars

By CJ STAFF

RALEIGH

Conservatives have spent much time in recent years talking about repealing and replacing the Affordable Care Act, otherwise known as Obamacare. Avik Roy, senior fellow at the Manhattan Institute and opinion editor at *Forbes*, has a different idea. Roy issued a report in 2014 titled "Transcending Obamacare." During a recent trip to North Carolina, Roy shared themes from that report in a discussion with Mitch Kokai for Carolina Journal Radio. (Head to <http://www.carolinajournal.com/cjrudio/> to find a station near you or to learn about the weekly CJ Radio podcast.)

**Kokai:** Why transcending?

**Roy:** I took that from a speech that Ronald Reagan gave in 1981, at Notre Dame, where he said, "We're not going to defeat communism. We're going to transcend communism." And his point was what we've been doing this whole time during the Cold War was containment. Right? Just hope we can prevent the Soviets from taking over the world, and just root for them to fail and maybe try to sabotage things on the margins.

But instead, Reagan's argument was if we actually focus on our own economy and make our own economy grow at such a clip that the communists can't keep up, we'll transcend communism. We'll leave it behind.

And so my argument is, instead of focusing on repealing Obamacare, we have to look at the entire health care system and all the ways in which the government has been messing it up, and say, let's liberate as much as we can of the entire health care system and let the private sector innovate and let consumers innovate.

Let consumers control their own health dollars. And if we do that, we can actually show that consumers controlling their own money can do a much better job of taking care of their own health care than the government can.

**Kokai:** And your plan doesn't necessarily require repeal of Obamacare?

**Roy:** Yes, that's a key point. So it can work as a repeal-and-replace plan; you repeal Obamacare and replace it with a framework that I've described. Or you can take the existing *Gemisch* of the health care system as it is and try to change various parts of it to end up with the same place.

The end result would be the same, but without formally repealing the entirety of the ACA. You'd still be repealing big chunks of it. For example, in my plan I repeal almost all the tax increases in Obamacare. I repeal the individual mandate in Obamacare. I repeal the Medicaid expansion in

*"The government takeover of the health care system happened in 1965 when LBJ passed the Great Society. And what Obamacare does is add, build upon the existing edifice of the Great Society. And so if we really want to have a more market-oriented health care system ...we've got to tackle the Great Society part."*

Avik Roy  
Senior Fellow  
Manhattan Institute



Obamacare.

So there is quite a bit that is repealed, but I don't necessarily require repealing the whole law. You can take certain parts, and most importantly, the part in which people get tax credits to shop for their own private insurance plans, and use that as a jumping-off point for reforming the entire entitlement system in a way that would actually put all these programs — Medicare, Medicaid, the VA, the whole mess — in a fiscally sustainable path.

**Kokai:** Your plan is designed to address some issues that even Obamacare supporters want to see.

**Roy:** Yes, so I think one of the things that both on the left and the right there's been some confusion about, in my view, is the conflation of universal coverage and single-payer, government-run health care. We tend to think of both of those as synonyms. Right? Universal coverage means government-run health care that's going to blow our budget even more into debt than it already is.

But actually certain countries, particularly Switzerland and Singapore, have shown that if you actually use consumer-driven, patient-centered health care, give again people control of their own dollars through [health savings accounts] — the kinds of things that Ben Carson talks about when Ben Carson says, "You know, we should just take Obamacare, chuck it, and give everyone an HSA and let them build on that through the course of their life." Effectively, that's what Singapore already does.

And if we could gradually, just gradually migrate our system in that direction, I think we'll see that same powerful response. There'll be more innovation, more cost-effectiveness, and more affordability in the health care system than we have today.

**Kokai:** You mentioned a couple

of noteworthy countries that combine universal health coverage and much lower costs.

**Roy:** Yes. So Switzerland spends 45 percent of what the United States spends in terms of government spending on health care. Singapore spends about one-fifth of what we spend in terms of government spending on health. There's something that people don't realize. Before Obamacare, U.S. government spending on health care was the third highest in the world per capita, meaning we like to think we had this free-market health care system and then Obamacare came around and it was this government takeover. It's not like that.

The government takeover of the health care system happened in 1965 when LBJ passed the Great Society. And what Obamacare does is add, build upon the existing edifice of the Great Society. And so if we really want to have a more market-oriented health care system, a more free and liberated health care system, we've got to tackle the Great Society part much more than actually Obamacare, because it's about 85 percent of the problem.

Obamacare is about 15 percent of the problem. But we tend to forget about it because it's 50 years old.

**Kokai:** You've developed a 20,000-word, nearly 70-page plan. What's the key goal?

**Roy:** I firmly believed, again, in looking at countries like Switzerland and Singapore as models, that we could cover more people than Obamacare but spend a lot less money. And so those were really the core components of what I wanted to do. I wanted to say let's figure out a way, using market-based exchanges — giving people those tax credits to buy the health insurance plans that people actually want to buy instead of the ones the government is forcing them to buy.

Give people the choice, but use those tax credits that Obamacare contains as a model for how to buy insurance, and then just say, "Let's give it to everybody. Let's let the people on Medicaid have those tax credits. Let's let the people on Medicare have those tax credits."

**Kokai:** Obamacare relies on expansion of Medicaid. What do you think about that?

**Roy:** I wrote a whole book called *How Medicaid Fails the Poor* that goes through all the data of how the Medicaid program fails to achieve health outcomes that are better than those for people who have no insurance at all. And I think that's one of the things that you hear the left say all the time: "Well, we have to expand Medicaid because there's all these people who are going to die if they don't get Medicaid."

Well, there is no evidence, zero evidence to suggest that Medicaid will actually save lives. What it does do is spend a lot of taxpayer money on a program that doesn't work for the people it's intended to benefit.

So what we could do instead is, again, take the money that we spend on Medicaid and instead give that to the patients. Give that to the enrollees, to say, "You know what? We're going to give you high-deductible insurance plus a subsidy for a health savings account, and use that health savings account to buy a concierge physician, say, or whatever you need to really manage your chronic diseases, your high cholesterol, your high blood pressure."

Most Medicaid patients, yeah, OK. It's paid for if they get a stroke or if they have a heart attack or whatever. But getting a doctor to actually see them on a regular basis is impossible because most doctors don't take Medicaid because it doesn't pay very well. CJ



# Officials Seek to Improve Teacher Prep in Ed Schools

BY JESSE SAFFRON  
Contributor

**I**n recent years, teacher shortages, along with high attrition rates in rural areas and in fields such as secondary math and science have prompted state officials to look to the UNC system for more teachers.

But while most of the system's previous efforts were aimed solely at adding more teachers to the pipeline (via the system's 15 schools of education), recent criticism of teacher preparation quality has added a new dynamic to policy debates.

For example, according to a report released last summer by the National Council on Teacher Quality (published in *U.S. News & World Report*), many education programs lack rigorous curricula, accept academically weak students, and fail to mentor teacher candidates adequately.

The report's authors called the entire teacher preparation field an "industry of mediocrity" and gave less than 7 percent of the 1,612 programs they analyzed a top designation (and only three of 47 reviewed UNC programs received that designation).

Teacher quality was the central theme of an education summit held in January by the UNC system's Board of Governors at the SAS campus in Cary. A blue-ribbon group of politicians (including Gov. Pat McCrory), education school deans, university chancellors, and teachers from around the state heard recommendations from the board's Subcommittee on Teacher and School Leader Quality.

Interwoven in discussions was the recognition of a startling fact: Total enrollment in UNC's undergraduate and graduate education programs has plummeted by 27 percent over the last five years. One reason for the enrollment decline is the legislature's 2013 decision to eliminate bonuses for teachers earning advanced degrees (those degrees tend to be in education). The governor and legislature supported the elimination of the pay bumps then because many studies suggest that advanced degrees don't enhance teacher quality. (Students enrolled in master's programs before the 2013 decision were "grandfathered" into the old pay increase, however.)

To help increase enrollment numbers, the new proposal would provide a pay differential for teachers with advanced degrees in their field — but not

for advanced degrees in education. An English teacher who earns a master's in English would receive a pay bump under the proposed plan, for example. The subcommittee also wants to establish a merit-based public-private scholarship "targeted to attract the very best prospective candidates who are preparing to teach in North Carolina's highest-need licensure areas."

Another recommendation seeks to establish an "educator quality dashboard" — a Web-based tool aggregating important information from each UNC education school. Set to launch in May, the online database will provide enrollment data, education school students' academic profiles (their high school grade point averages, SAT scores, and their cumulative college GPAs compared to those of noneducation majors), and a breakdown of the counties and K-12 schools where graduates from a given program end up teaching.

The teacher quality subcommittee also proposes that teacher candidates receive rigorous "clinical training" — that is, practical teaching experience that combines content mastery with significant in-class preparation. (In its 2014 review of teacher preparation programs, the National Council on Teacher Quality found that only 5 percent of programs across the country provide satisfactory clinical experiences for teacher candidates.)

Admissions selectivity also was addressed at the summit. James Cibulka, head of the Council for the Accreditation of Educator Preparation, the national accrediting body for education schools, said that by 2016 CAEP will require education schools to accept only those students scoring in the top 50 percent on norm-referenced tests — ACT, SAT, GRE, or a state-based equivalent comparing test-takers' scores to those of others who have taken the same test. By 2020, applicants will have to score in the top 33 percent.

The UNC system's Board of Governors is expected to approve the recommendations outlined at the education summit and will begin working with system officials and the legislature to implement them. Right now, there is no estimate of the cost of these changes. *CJ*

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

**UNC's education program enrollment has plummeted 27 percent in five years**

## COMMENTARY

# Fed Rules Even Harvard Can't Take

**O**ne of the salient features of the Obama administration has been its willingness to toss aside the rule of law when it seeks a result that leftist interest groups desire. Over the last two years, that impulse has manifested itself in the brazen demands by the U.S. Department of Education that colleges and universities abide by its regulations concerning sexual assault.

The notion that America's campuses are gripped by an epidemic of sexual assault and tolerate a "rape culture" has never had any basis in fact. It is, however, a meme popular with the feminist left. Efforts at boosting it, like the infamous *Rolling Stone* article about a fictitious rape at the University of Virginia, have flopped disastrously.

Nevertheless, the Department of Education's Office for Civil Rights has been on a national crusade to compel colleges and universities to follow its blatantly one-sided rules for the adjudication of sexual harassment and assault complaints. The rules make it extraordinarily difficult for the accused student to defend himself.

This proved too much to swallow for a group of 28 Harvard Law School professors. They signed an open letter in October, stating that the rules are "inconsistent with many of the most basic principles we teach." Such as?

For starters, there's "the absence of any adequate opportunity to confront witnesses and present a defense." That's essential to the rule of law in America, but either the OCR bureaucrats aren't familiar with that concept, or they're convinced that finding young men guilty and punishing them is more important than fair procedures.

My guess is that it's the latter. Upholding the rule of law is merely an abstraction. To the mandarins in the Department of Education, it's far more important to push the agenda of the feminist left.

Here's the deeper question: Why should federal bureaucrats have any say in this at all?

Does the Constitution provide that the executive branch is authorized to tell colleges and universities how to handle student discipline cases? No — no more than it gives the executive branch authority to decide what courses will be required for graduation. Education (at all levels) was among the great number of matters that the Founders thought should be left up to the states or the people under the 10th Amendment.

No part of the federal government has the power to control colleges and universities, yet the Department of Education thinks it does.

The way the bossy federal camel got its nose under a tent illegitimately was by offering dollars, then pulling the inevitable strings attached to them. If a college or university takes any federal funds, it must obey federal regulations.

Almost every school gets snared by admitting students who cover some of their expenses with federal grants or student loans.

Again, there's no constitutional authority for the federal government to give or lend money to students, but once the practice started, no one stopped it. Now federal bureaucrats have the leverage to force schools to obey them. Schools that refuse to obey will lose federal funding.

A very small number of institutions, wishing to maintain independence from federal bureaucrats, have done what they had to; they've rejected federal money completely. Hillsdale College in Michigan is one. The school runs its own student loan system, thereby remaining free of the busybodies in Washington.

Washington overwhelmingly gets its way because most schools are so hooked on government funds that they meekly obey regulators who have the power to shut off the supply.

This isn't how America was supposed to work. *CJ*

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



**GEORGE LEEF**

## Campus Briefs

State Board of Community Colleges member James Woody is deeply concerned that the board lacks vitality and fails to debate issues related to North Carolina's two-year colleges adequately.

Woody, who is retired from Burlington-based Chandler Concrete, has been on the board for about 25 years and is a former chairman. He claims that recently, he is so often the only member who opens his mouth that he thinks "some people sort of cringe" when he asks questions.



James  
Woody

At the board's Jan. 16 meeting, Woody called out his fellow members for submissiveness. "I'm saying right now that rubber-stamping is coming back. And I'm encouraging each board member to get involved."

In an interview with the Pope Center after the meeting, Woody expanded on his frustration at the failure of the board to grapple with important issues.

"I wanted so bad to ask a question to the board members: Why are you on this board? Is it just because somebody says, 'We need somebody to fill in a spot?' Or is it just simply because it's going to look good in your obituary or on the tombstone, that you served at this particular job?"

The biggest problem, Woody said, is that a lot of information fails to reach the board — and that board members don't insist on getting it. Woody said that members "take for granted that we have asked all the questions and got all the answers, but we haven't."

According to Woody, even when board members do get information during their individual committee meetings — which feature a mix of board members and community college system staff — that information often never makes it to the full board.

It is the norm for committees to approve the vast majority of agenda items, and in turn, the state board tends to approve most items that come before it.

Woody said that new board members should receive "intense training" in how to do their jobs and what their legal responsibilities are. CJ

Compiled by Harry Painter, a reporter for the John W. Pope Center for Higher Education Policy.

# Professor Tells UNC Audience 'Civility' a Racist Term

By JESSE SAFFRON  
Contributor

RALEIGH

More than 100 students, faculty members, administrators, and others packed a lecture hall at UNC-Chapel Hill on Feb. 12 to hear controversial indigenous studies professor Steven Salaita — who has become a celebrity of sorts — speak about academic freedom and censorship.

Last summer, the University of Illinois at Urbana-Champaign rescinded a job offer to Salaita at the university's American Indian Studies program after he posted a series of inflammatory anti-Israel tweets. Since then, Salaita — who left a tenured position as an English professor at Virginia Tech to pursue the job in Illinois — has embarked on a national speaking tour attacking the university; received support from high-profile organizations such as the American Association of University Professors; and filed a lawsuit in federal court naming upper-level University of Illinois officials (and unidentified university donors) as defendants, claiming his free-speech rights had been violated.

Salaita has become a poster child for those promoting expansive definitions of academic freedom.

While most of the Chapel Hill audience cheered at various points during Salaita's speech, one audience member voiced strong dissent. During the public comment period, a man describing himself as a Jewish UNC employee referred to one of Salaita's tweets, which stated, "At this point, if [Israeli Prime Minister Benjamin] Netanyahu appeared on TV with a necklace made from the teeth of Palestinian children, would anybody be surprised?" The audience member called that tweet and others "vile" and said he was ashamed that Salaita had been invited to talk.

Salaita responded: "I don't disagree that there is something vile in those tweets, [but] I suggest [that you read them] in the context of the type of murderous, vile behavior that I was criticizing. Israel is often mythologized as something divine and special in opposition to its reality as a political entity which is that of a violent, murderous colonial regime."

Earlier in his speech, Salaita claimed that those who refer to his tweets as "uncivil" are perpetuating deep-seated "colonial" racism. According to the professor, the word "civility," as it has been used in the context of post-16th-century North American civilization, "sets up a hierarchy that distinguishes between those who are capable of entering into modernity and those who are incapable of entering into such a passage." Salaita said that University of Illinois administrators were unaware of those New World,



Professor Steven Salaita speaking at the University of Chicago. (Via YouTube)

"racist" connotations. "They thought 'civility' was [an] innocuous word."

In an interview following his talk, Salaita said that in his view the only legitimate reason for firing a professor at a public university, short of being convicted of committing a violent crime, would be if that professor engaged in "hate speech," which he defines as speech that "targets an entire class of people for repression."

Salaita was asked to elaborate on a claim — made earlier in his talk — that higher education is becoming "corporatized." He responded by saying that state governments have slashed higher education funding in recent years, which has led some universities to seek "outside" funding — funding which he says often comes with strings attached.

Salaita argues in his federal lawsuit that university administrators, fac-

ing financial pressure from "wealthy university donors," fired him (in fact, his hiring never received final approval from the university's board of trustees) because his speech challenged "the prevailing norm."

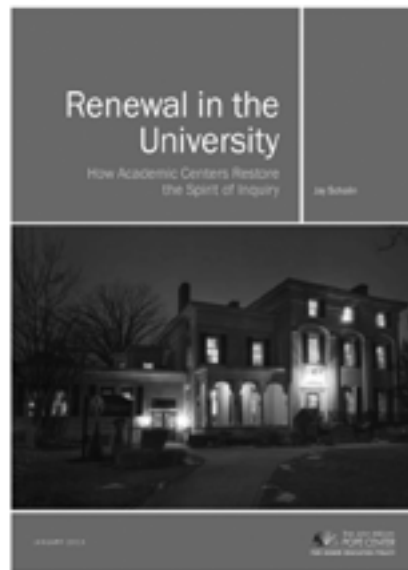
In a sharply worded response to Salaita's lawsuit, the University of Illinois called his claims "meritless." The university contends that its Committee on Academic Freedom and Tenure concluded that donor influence was not a factor in the university's decision, and that Salaita had demonstrated, through his tweets, that he lacks "professional fitness to serve on the faculty." The next hearing in the lawsuit Salaita filed is scheduled for mid-April.

In early February, the issues of donor influence and academic freedom came up at Guilford College in Greensboro, again involving Salaita. He had been scheduled to deliver a speech at the college's Frank Family Science Center, but the event was moved to a campus library after a member of the Frank family — donors to the center — asked college president Jane Fernandes to make the change. While the college acted on the request, Fernandes said later, "If another suitable location had not been available, the lecture would have been held in [the Frank Center]."

UNC-Chapel Hill's event, titled "Uncivil Rites: Academic Freedom and the Silencing of Speech," was sponsored by the departments of Asian studies, romance studies, anthropology, and sociology (which offers a "social and economic justice" minor), as well as Students for Justice in Palestine and Faculty for Palestine. CJ

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

## Academic Centers Restore the Spirit of Inquiry in Our Universities



Jay Schalin writes about privately funded academic centers that serve and promote knowledge and perspectives that have been disappearing from higher education.

To receive a free copy, call  
919.828.1400 or email  
info@popecenter.org.

The John William  
POPE CENTER  
FOR HIGHER EDUCATION POLICY

Visit the Pope Center online at popecenter.org for additional reports and studies

## Opinion

# What I've Learned About Higher Education While at the Pope Center

I am retiring as president of the John W. Pope Center and am pleased to announce that Jenna Robinson, formerly director of outreach for the Pope Center, is our new president.

As I conclude my tenure, I would like to share some of the things I have learned about higher education during the past seven years. From the day I read my colleague George Leef's paper on the "overselling" of higher education, to our recent Washington, D.C., conference on Jay Schalin's report on academic centers, I have constantly expanded my understanding.



**JANE SHAW**

## What's good about higher education

The United States has more colleges, and especially more private colleges, than any other country — more than 2,500 four-year schools and many more two-year colleges. The schools themselves are diverse. We have private nonprofits, public universities, and profit-making schools; our schools have different emphases ("great books," engineering, religion, etc.) and different traditions, sports teams, extracurricular activities, and geographical settings.

Students have choices. And most schools still include good teaching faculty, who are indeed at the heart of education.

A serious student who attends

almost any college or university in this country can obtain a good education if he or she knows how to go about it — and wants to do so.

## What's bad about higher education

Unfortunately, it isn't easy for students, especially 18-year-olds, to take advantage of this wealth of resources. There are many obstacles.

- At most schools, a freshman quickly discovers the closed-minded nature of academia. Not only do 62.7 percent of faculty describe themselves as far left or liberal, but multiculturalism, relativism, and "social justice" permeate classrooms and residence halls. This politically correct world discourages analytical thinking and undermines learning.

- Costs of education are way out of line, rising at three times inflation — with tuition rising as well. About two-thirds of all students incur debt. (Their average debt is over \$28,000, and that figure has been creeping upward.) Loans keep young people from moving out of their parents' home, from getting mortgages, and otherwise becoming adults.

- The level and quality of learning is not what it ought to be. Rigor is often missing, except in math and some sciences.

- Too many high school graduates feel they must go to college, but those who lack interest or prepara-



tion subvert the educational process. They have brought about Murray Sperber's famous faculty/student nonaggression pact, in which professors give acceptable grades in return

for students leaving them alone to do their research.

## What the Pope Center is doing about it

The cure must come from the outside because our colleges and universities are too embedded in protective rules and habits such as tenure and faculty governance.

The Pope Center is one source of change. It offers criticism, positive proposals, and cooperation with faculty, trustees, administrators, and legislators to promote better policies.

We have had some successes, including greater scrutiny of budgets, expansion of the number and nature of speakers on campus, and a new look at universities' core curricula. But we have a long way to go. Let me review some of the major recommendations we have made in recent years.

For trustees, governors, and university administration:

- Restore a coherent core curriculum
- Start academic transparency by posting detailed course descriptions online
- Improve schools of education by focusing on educational content,

not just "method"

For local governments:

- Shift some funding from public universities to community colleges
- Demand financial transparency

- Re-examine assumptions that public "investment" in universities always promotes economic growth

- Bring in Western Governors University to provide online education for working adults

For the federal government:

- Refocus Pell grants on low-income students

- Revamp accreditation, a cartel that perpetuates the status quo and political correctness

- End the income-based repayment plan, which distorts students' choices

For the public:

- Recognize that not everyone has to go to college
- Don't blindly accept the claims of "budget cuts," which are often cuts from anticipated increases

For alumni:

- Don't give money to your school if it violates your standards
- Read the Pope Center website to find out whether it does

Let me conclude with a thank you to all the donors and supporters who are helping the Pope Center, and especially to the John W. Pope Foundation, which has generously supported us from the start. CJ

*Jane Shaw is vice chairman of the John W. Pope Center's board of directors.*

## The Pope Center Explores the General Education Program at..

# NC STATE UNIVERSITY

Jay Schalin also makes recommendations for an improved General Education program.

Read the newest Pope Center Series report, "General Education at NC State," to discover the findings.

To receive your free copy, call 919.828.1400 or email [info@popecenter.org](mailto:info@popecenter.org).



Visit the Pope Center online at [popecenter.org](http://popecenter.org) for additional reports and studies

## The General Education Program at UNC-CH: What It's Really Like



THE UNIVERSITY  
of NORTH CAROLINA  
at CHAPEL HILL

Jay Schalin makes recommendations for an improved General Education in the newest Pope Center report, "General Education at UNC-Chapel Hill."

To receive your free copy, call 919.828.1400 or email [info@popecenter.org](mailto:info@popecenter.org).



Visit the Pope Center online at [popecenter.org](http://popecenter.org) for additional reports and studies

## From the Liberty Library

• In *Popular Economics*, Forbes editor John Tamny uses entertaining stories from sports, movies, popular culture, and famous businesses to demonstrate the basic principles of economics. The Rolling Stones, the Dallas Cowboys, and Paris Hilton become examples of good and bad tax policy. "The Godfather," "Gone With the Wind," and "The Sopranos" reveal the downside of antitrust regulation, while the Michigan Wolverines' 2007 football loss to Appalachian State University explains why regulations often fail to achieve their intended purpose. *Popular Economics* is an everyman's guide to how money works. Learn more at [www.regnery.com](http://www.regnery.com).

• When the United States government passed the Bill of Rights in 1791, its uncompromising protection of speech and of the press were unlike anything the world had ever seen before. But by 1798, President John Adams and the Federalists in control of Congress passed an extreme piece of legislation that made criticism of the government and its leaders a crime punishable by heavy fines and jail time. In *Liberty's First Crisis*, writer Charles Slack tells the story of the 1798 Sedition Act, the crucial moment when high ideals met real-world politics and the country's future hung in the balance. *Liberty's First Crisis* vividly unfolds these pivotal events in the early life of the republic, as the Founding Fathers struggled to define America off the page and preserve the freedoms they had fought so hard to create. More at [www.groveatlantic.com](http://www.groveatlantic.com).

• After the Constitutional Convention, Benjamin Franklin was asked, "Well, Doctor, what have we got — a republic or a monarchy?" Franklin's response: "A republic — if you can keep it." In *A Republic No More*, Jay Cost argues: We couldn't keep it. Our Constitution established an elaborate system of checks and balances that separates power among the branches of government, and places them in conflict with one another. But we have overloaded our government with more power than it can handle. The result is the triumph of special interests over the common interest. We know this as political corruption. The contours of public policy depend not so much on the common good, but rather the push-and-pull of the various interest groups encamped in Washington, D.C. For more, visit [www.encounterbooks.com](http://www.encounterbooks.com). CJ

## Book review

## Rubio Warns of 'Third Obama Term' if Hillary Elected

• Marco Rubio, *American Dreams: Restoring Economic Opportunity for Everyone*, Sentinel, 2014, 212 pages, \$27.95.

By LLOYD BILLINGSLEY  
Contributor

RALEIGH

At the outset of *American Dreams*, Marco Rubio pays tribute to his grandfather, Pedro Victor Garcia, but he's clearly looking ahead to 2016 and the prospects of a Hillary Clinton presidency. In his view, she has "proven herself wedded to the policies and programs of the past" and her presidency "will be about spending more money on a broken system" and "raising taxes to pay for government." In fact, according to the Republican U.S. senator from Florida, the election of Hillary Clinton "would be nothing more than a third Obama term," and Rubio cites primary sources.

According to Obama and Clinton, those who work hard and achieve success should not be proud of themselves but thankful to government. "If you've got a business, you didn't build that," said President Obama. And as Hillary echoes, "Don't let anyone tell you it's businesses and corporations that create jobs." Both believe that government knows best on education, health care, and the economy, now in sad shape due to what Rubio calls "command-and-control liberalism."

Taking a cue from Ronald Reagan, Rubio asks readers, "Are you better off than you were five years ago?" and he supplies the answer: "By every measure Americans [are] worse off today than before Obama took office." So Rubio sees a defining moment for conservatives, who must "step forward with our own solution and not simply rail against the expansion of the state." And Rubio outlines his solution in some detail.

He wants to lower the corporate tax rate, now the "highest of any advanced economy in the world" at nearly 40 percent, and as he sees it an impediment to investment. He would trim the "hidden tax" of federal regulation, estimated by some as more than 60 percent higher than the unhidden kind of tax.

Rubio would eliminate the payroll tax on workers when they reach retirement age, which he says would have little or no effect on Social Security revenues. And he wants to "make it easier for American workers to save more and work longer." The Florida senator stresses the importance of family, decrying the tax code that penalizes marriage by saddling couples with taxes more onerous than would face two otherwise identical singles. He would "allow parents to keep more of their own money and make their own choices, rather than have government spend more of our own money and make choices for us." The senator wants two tax brackets instead of seven and a \$2,500 tax credit for each child under 16.

Rubio sees Obamacare, including its bailout for insurance companies, as "the single largest impediment to job creation." He would convert the tax preference for em-

ployer-sponsored health care into a tax credit for individual Americans.

The Florida Republican criticizes New York Mayor Bill de Blasio for declaring "open season" on charter schools and Obama for curtailing the D.C. Opportunity Scholarship Program. Rubio supports "empowering parents with more choices," but readers of *American Dreams* do not get the impression that the author sees school choice as the civil rights issue of our time.

Marco Rubio, son of Cuban immigrants, wants to move away from a family-based immigration system toward a merit- and skill-based approach, with a guest worker plan for seasonal agricultural workers. Amnesty for 12 million illegal immigrants he calls "unrealistic and quite frankly irresponsible." In Rubio's plan, criminals and those of short duration in the country would have to leave. Other illegals

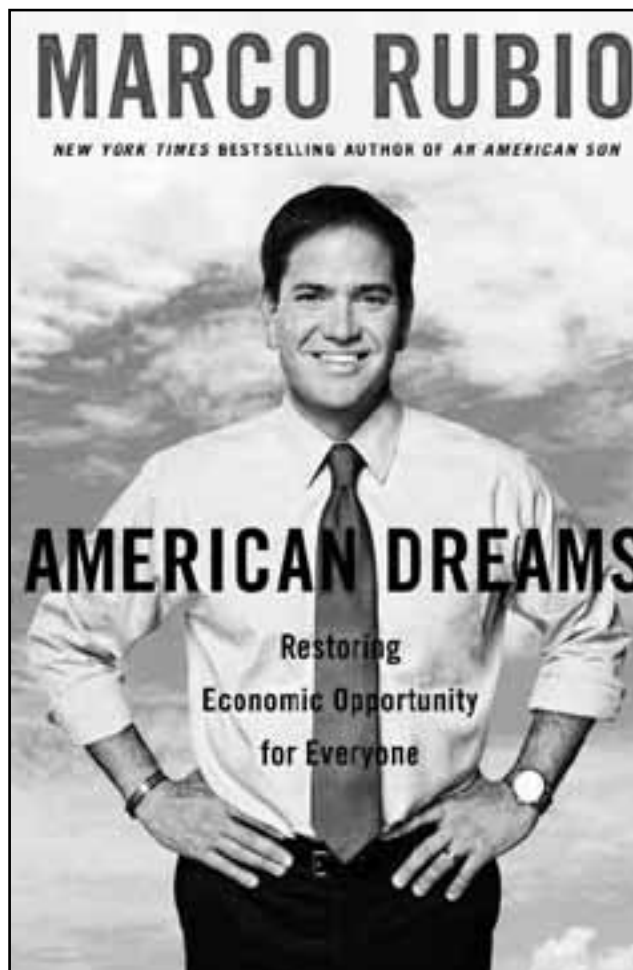
would have to come forward, register, apply for a temporary visa, and remain ineligible for welfare while maintaining status as a temporary resident for a decade. Then they could apply for permanent residency "the way anyone else would."

*American Dreams* covers little on foreign policy, but Rubio puts plenty of distance between himself and the Obama-Clinton squad. Rubio decries "the State Department cover-up of Benghazi" but does not set forth a detailed plan to deal with what French Prime Minister Manuel Valls calls "radical Islam." More recently, when Obama announced plans to begin normalizing relations with Cuba, Rubio called the administration's foreign policy "not just naive, but willfully ignorant of the way the world truly works."

Rubio remains more comfortable on the domestic front, while seeing some troubling trends on his own side. "Some conservatives," he writes, "want to keep the ideas of yesterday and just spend less on them, as if programs that aren't working will somehow

be made to function if only their budgets are cut." That assumes "some conservatives" want to leave all these programs in place. Rubio tags 92 overlapping and duplicative federal programs that spent \$15 billion in the "War on Poverty," by his count \$799 billion in 2012 alone. But *American Dreams* is short on specifics of what federal programs and agencies should be eliminated at the earliest convenience.

Obama, a rigid leftist whom Rubio kindly calls an "old-fashioned big government liberal," has created new entitlements and federal agencies during a time of recession. Rubio doubtless is right that a Hillary Clinton presidency would be an Obama third term and "a death blow to the American dream," in terms of economic opportunity, but such an "old ideas" presidency may be more likely than the kind Sen. Rubio wants. And it may be another American dream that his plan could be achieved without deep and permanent reductions in the size of government. Readers of *American Dreams* might recall that even Ronald Reagan failed to eliminate the federal Department of Education, a payoff to teacher unions for their support of Jimmy Carter in 1976. CJ



# North Carolina Played Crucial Role at Civil War's Conclusion

As I get older I understand certain sayings. One is "How time flies!" Recently, when I contemplated this year, the final year of the Civil War Sesquicentennial, "How time flies!" was my first thought. Only a couple of months remain.

During the horrid conflict (1861-65), when brother sometimes fought brother, approximately 750,000 lives were lost. Some scholars contend that one-sixth of the Confederate dead hailed from the Old North State.

Unlike today, soldiers from the same county comprised regimental companies. As a result some communities — North and South — lost a great percentage of their male population. Many soldiers returned home alive yet without an arm, leg, or several limbs. Other veterans suffered from what doctors later called "shell shock" during World War I and what we now call post-traumatic stress disorder.

In 1865, North Carolina was a

primary Union target. Battles and military maneuvers had occurred before that year, to be sure. The battles of Roanoke Island, New Bern, Plymouth, and constant guerrilla warfare in the mountains are several examples.

During the war, Wilmington was a main harbor for blockade runners. Fort Fisher had ensured that the port town remained in Confederate hands and that the Cape Fear River remained open to trade. In mid-January 1865, the garrison endured heavy bombardments, and eventually the Union occupied the last bastion of Confederate waterways.

Union sights were set next on Goldsboro, a railroad hub connecting eastern North Carolina towns. While headquarters for this operation were moved to New Bern, Gen. William Sherman's troops advanced through South Carolina and waged total war. By March 7, Sherman's entire army was in the state.

On the way to Goldsboro, Union soldiers, under Gen. Jacob Cox's command, were stopped near Kinston at Wyse Fork; Confederates had burned bridges across Southwest Creek. On March 8-10, the Battle of Wyse Fork

ensued, and Kinston fell four days later. The Confederates, however, had delayed the Union advance for 10 days.

Sherman's army advanced in two wings. Newly appointed Confederate Army commander Gen. Joseph Johnston planned with subordinates to crush one wing before Sherman's army reunited.

On March 10, "Kilpatrick's shirt-tail skedaddle" — a cavalry engagement — occurred at Monroe's Crossroads. Casualty reports are contradictory, but under Gen. Wade Hampton's leadership, Confederates almost captured Kilpatrick and controlled road access that allowed them to join Gen. William Hardee's army.

On March 11, Sherman occupied Fayetteville and abandoned some 20,000-30,000 white and black refugees, calling them "dead weight." Sherman then directed a general to "destroy all railroad property, all shops, factories, tanneries, &c., and all mills, save one water-mill of sufficient capacity to grind meal for the people of Fayetteville." And he ordered the arsenal destroyed.

Heavy fighting occurred in mid-March. At the Battle of Averasboro

(March 16), Confederates delayed the Union advance and allowed time for Hardee's men to reunite with Johnston's command. The last major battle of the Civil War occurred at Bentonville on March 19-21. A decimated, patched-together, and unpaid Confederate army almost defeated a much larger foe. Sherman, however, maintained the field.

Meantime, Union Gen. George Stoneman led a total war effort in the mountains.

Sherman's men were in Raleigh by April 13, four days after Robert E. Lee surrendered to Ulysses S. Grant. Even so, President Jefferson Davis maintained a will to fight. Johnston, however, convinced Davis that it was best for his war-weary men to surrender.

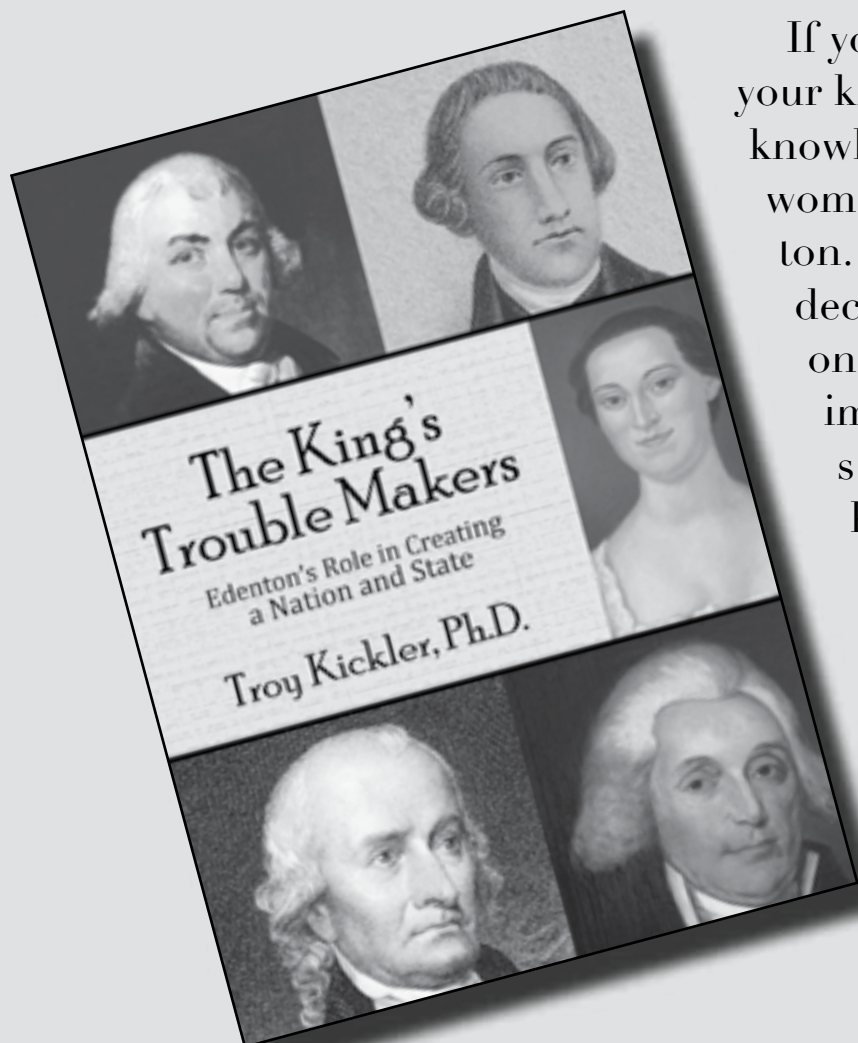
On April 17, 18, and 26, Johnston and Sherman negotiated terms at Bennett's farmhouse (in modern day Durham). There, Johnston secured better terms of surrender for his men than Lee did at Appomattox. Although a few mountain skirmishes occurred later in April and May, the war in North Carolina had ended. CJ

*Troy Kickler is director of the North Carolina History Project ([northcarolinahistory.org](http://northcarolinahistory.org)).*



**TROY  
KICKLER**

## BOOKS BY JOHN LOCKE FOUNDATION AUTHORS



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

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

Go to [northcarolinahistory.org](http://northcarolinahistory.org) for more information.

## Book review

# Ryskind Destroys Romantic Notions of a 'Noble' Blacklisted Ten

• Allan Ryskind, *Hollywood Traitors: Blacklisted Screenwriters, Agents of Stalin, Allies of Hitler*, Regnery, 2015, 506 pages, \$29.99.

By LLOYD BILLINGSLEY  
Contributor

THE HOUSE COMMITTEE ON UN-American Activities, headed by Sen. Joseph McCarthy, came to Hollywood in 1947 and persecuted 10 of the most important figures in the American movie industry.

That's the official story contemporary readers may have heard, endlessly repeated in books, articles, and documentaries with "Inquisition" and "McCarthyism" in the title. Trouble is, as the late espionage expert Herbert Romerstein noted, the official story is wrong on all points. Senators are not part of House committees, and McCarthy did not become alarmist about Communism until 1950, three years after the first HCUA hearings on Hollywood.

And the famous "Hollywood 10" were far from the most important figures in the movie industry. As Billy Wilder quipped, only a few of them were even talented. The rest were just unfriendly, as *Hollywood Traitors* author Allan Ryskind, editor-at-large for *Human Events*, knows full well.

Ryskind grew up in Hollywood, son of screenwriter Morrie Ryskind, a member of the Motion Picture Alliance for the Preservation of American Ideals, the only openly anti-communist group in town at a time when the Communist Party practically ran the place. Allan Ryskind knows more about this than many readers will want to learn, but *Hollywood Traitors* is strong on its central theme. The blacklisted screen-

writers were not, as often portrayed, misguided liberals and noble patriots, persecuted by evil right-wingers. They were all Communist Party members and servile Stalinists who did what they were told. When Stalin struck his alliance with Adolf Hitler in 1939, all American Communists went along with the party line, and the Hollywood troops served with great zeal.

A primary example is Dalton Trumbo, wealthy screenwriter of "Kitty Foyle," "Thirty Seconds Over Tokyo," "Exodus," and other films. He wrote *The Remarkable Andrew*, a novel, during the Nazi-Soviet Pact, when Stalin and Hitler were allies. The book urges the United States not to aid Hitler's victims, particularly Great Britain.

Ryskind has probed the Trumbo papers at the Wisconsin Historical Society and found an unproduced script called "An American Story," which supports the Stalinist North Korean regime of Kim Il Sung. In Trumbo's vision, the conflict was North Korea's war of independence.

This came at a time when many in Hollywood had left the Communist Party. Another figure who stayed in was John Howard Lawson, one of The 10, and the party's straw boss in the talent guilds. Ryskind was brave enough to tackle Lawson's "Theory and Technique of Playwriting." The idea here is that Marxists were better writers, and art had to be a weapon in the class struggle, otherwise it was just so much bourgeois decadence.

Writers who thought otherwise

faced an inquisition at the hands of Communist Party enforcers. As Ryskind shows, that was the fate of Albert Maltz, screenwriter for "This Gun for Hire," "Pride of the Marines," "Two Mules for Sister Sara," and other films, and possibly the most talented of the Hollywood 10. Stalinist party bosses forced Maltz to write a humiliating retraction of an article in which he had praised Trotskyist writer James Farrell, and to the end of his days Maltz defended his retraction. You can't make up this stuff, but don't look for it in the movies.

Alvah Bessie, screenwriter for "Northern Pursuit" and "Objective Burma!" was probably the least talented of the Hollywood 10. His claim to fame was fighting in Spain with the Abraham Lincoln Brigade, a Stalinist militia organized by the Communist Party. Ryskind provides background on this 1930s conflict, but for further reading see *Between the Bullet and the Lie*, by Cecil Eby, and *Homage to Catalonia*, by George Orwell.

Ryskind's vast cast of characters jostles with luminaries such as Arthur Miller and Lillian Hellman, but the author does not neglect the lower echelons. He is quite familiar with Hollywood players such as Abe Polonsky, Paul Jarrico, Jules Dassin, Norma Barzman, Waldo Salt, and others. For the most part, they remained loyal to the Communist cause long after others had bailed. Readers might ask themselves: If these people were so wrong on something so basic, why listen to them on anything else?

Readers will welcome the material on Elia Kazan, one of the most talented directors of all time, whose "On the Waterfront" reflects his struggle with the Communist Party and Stalinism. As Marlon Brando put it in the film, he was glad what he done to them. So was Roy Brewer, the Hollywood union boss who teamed with Ronald Reagan to drive the Communist Party out of town.

The book includes a photo section and a helpful filmography, but Communist Party influence in movie content, as Ryskind shows, was "relatively small stuff." Even so, the Stalinist legacy remains to this day. The American movie industry still hails the Hollywood 10 as heroes and pays homage to loathsome regimes such as Fidel Castro's Cuba.

*Hollywood Traitors* also provides valuable background on the broader role of the left in American history. The author charts organizations such as the League of American Writers and the American Peace Mobilization, and introduces important Cold War figures such as Jacques Duclos.

Ryskind has been around long enough to recall that left-wing Florida U.S. Sen. Claude Pepper became known as "Red" Pepper, and that Sen. Glen Taylor of Idaho served as running mate to Henry Wallace on the pro-Soviet Progressive Party ticket in 1948. Students of the Cold War and Hollywood politics will prize it the most, but everybody can learn something from *Hollywood Traitors*. CJ

Lloyd Billingsley is the author of *Hollywood Party: Stalinist Adventures in the American Movie Industry*.



## Share your CJ

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

Thanks.



## Help us keep our presses rolling



Publishing a newspaper is an expensive proposition. Just ask the many daily newspapers that are having trouble making ends meet these days.

It takes a large team of editors, reporters, photographers and copy editors to bring you the aggressive investigative reporting you have become accustomed to seeing in *Carolina Journal* each month.

Putting their work on newsprint and then delivering it to more than 100,000 readers each month puts a sizeable dent in the John Locke Foundation's budget.

That's why we're asking you to help defray those costs with a donation. Just send a check to: *Carolina Journal Fund, John Locke Foundation, 200 W. Morgan St., Suite 200, Raleigh, NC 27601.*

We thank you for your support.

Book Review

# Kelly Offers Stirring Account of the Founders' War for Independence

• Jack Kelly, *Band of Giants: The Amateur Soldiers Who Won America's Independence*, Macmillan, 2014, 288 pages, \$27.

By RAY NOTHSTINE  
Contributor

RALEIGH  
Lord Acton, the 19th-century English baron and historian, summed up the American Revolution by saying, "No people was so free as the insurgents, no government less oppressive than the government which they overthrew." New Hampshire native and revolutionary war veteran Henry Dearborn put the Revolution's success another way: "We had something more at stake than fighting for six pence per day."

This high view of liberty in the American colonies turned many farmers, merchants, blacksmiths, and tailors into professional soldiers by the war's end. In his new book, *Band of Giants: The Amateur Soldiers Who Won America's Independence*, author Jack Kelly offers a concise overview of the key figures who overcame some of the greatest military odds in history. Kelly's fast-paced narrative account covers the crucial engagements as well as the flaws and extraordinary ingenuity of America's first soldiers.

Forgotten by many today is Daniel Morgan, but his wrath toward the British is anything but forgettable. Sentenced to 499 lashes for punching a British officer during the French and Indian War, Morgan survived the ordeal and later "stormed and raged" and "broke into tears of angry frustration" upon surrendering at the Battle of Quebec in 1775. Morgan was released in a prisoner exchange and rejoined George Washington in 1777.

Morgan's men, the original American military snipers, were expert backwoods marksmen famous for picking off British officers. His decisive leadership in victory at the Battle of Cowpens in South Carolina is studied by strategists and tacticians today.

Nathanael Greene started the war as a private, but by the end of the revolution he was Washington's most trusted general and was responsible for liberating the Southern colonies after a string of failures in the region by other commanders. "We fight, get beaten, rise, and fight again," declared the youthful Greene. Greensboro, N.C. and Greenville, S.C., are just a few of the places named after the Rhode Island native.

Greene's friend Henry Knox, another amateur soldier, collected and studied his own military library, helping vault him to an American military legend. Knox gained fame for orchestrating the impressive movement of 60 tons of cannons from upstate New York across 300 miles of ice-covered mountains and rivers to Boston. This masterly feat of engineering resulted in a hurried withdrawal by the British. Knox was beside Washington for almost every engagement and later served as the nation's first secretary of war during the Virginian's presidency.

Many familiar names served in the revolution, like founding father

Alexander Hamilton and future president James Monroe. For most of them, Washington admitted their military leadership came from "some knowledge of men and books" and sheer "enterprising genius."

One of the biggest obstacles for Washington and other leaders of the Continental Army was the lack of supplies, rations, and pay for the soldiers. When the Prussian Friedrich von Steuben showed up in 1778 to lend his aid to the army at Valley Forge, he admitted, "No European army could have been kept together under such dreadful conditions." The author notes how the French "chuckled, when an amateur American officer, not thinking of soldiering as a permanent profession, asked his French counterpart

'what his trade was in his own country?'" The French too had to marvel at how men so underfed and underpaid marched so well and showed steely resolve under fire. One French chaplain admired Washington's ingenuity, saying, "He never has more resources than when he seems to have no more."

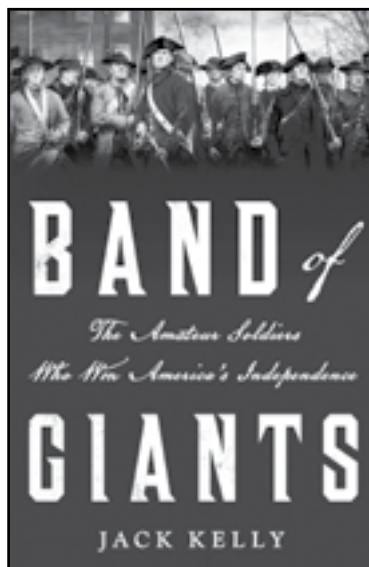
When the American General Richard Montgomery died at the Battle of Quebec, the author says the Irish-born general "became a symbol of the sacrifice that was required to win liberty." Montgomery's widow Janet pointed out a common thread among the American leaders who fought for

independence. While many may not have been as well-educated or trained as their European counterparts, they carried with them into battle an abundance of virtue and moral education. Janet Montgomery later corresponded with many of the children named after her late husband, writing them letters to encourage them to live up to his virtue.

In studying the men who fought and led America's Revolution, it is clear those in leadership had a deep awareness of virtue and the necessity of a moral education. One could argue there is a dearth of these characteristics today, especially when it comes to America's elite receiving a similar education. The Founders were extremely familiar with Cincinnatus and Cicero and conscious of the fact that power comes with enormous responsibility.

The American historian and biographer James Thomas Flexner noted of Washington's character, "In all history few men who possessed unassailable power have used that power so gently and self-effacingly for what their best instincts told them was the welfare of their neighbors and all mankind." Upon learning that Washington would give up his power voluntarily after the war, King George III remarked, "If he does that, he will be the greatest man in the world."

Kelly has succeeded in producing a comprehensive and readable account of the central characters who took up arms against their masters to secure America's liberty. While it is not a masterpiece like David Hackett Fischer's *Washington's Crossing* or Paul Revere's *Ride*, it is impressive in its description as Kelly retells one of the greatest stories in American history. CJ



## BOOKS AUTHORED BY JLF STAFFERS



By John Hood  
President of the  
John Locke Foundation

### Selling the Dream Why Advertising is Good Business



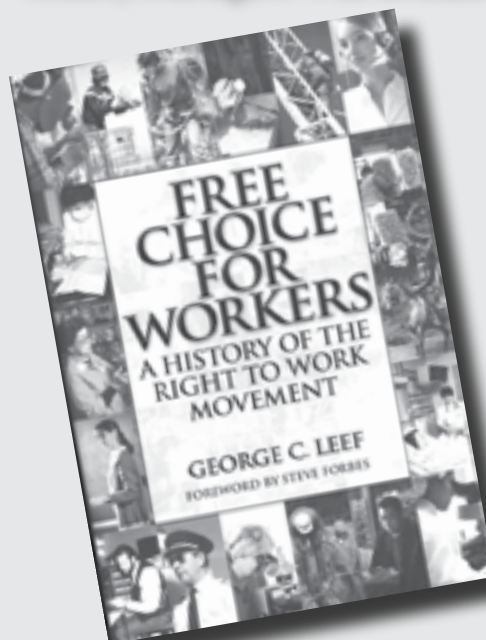
"[Selling the Dream] provides a fascinating look into the world of advertising and beyond ... Highly recommended."

Choice  
April 2006

[www.praeger.com](http://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  
Capital Research Center

(Call Jameson Books, 1-800-426-1357, to order)

## COMMENTARY

## Another Way to Fight Eminent Domain Abuse

The N.C. House of Representatives has approved a proposal to amend the state constitution by adding the following language:

“Private property shall not be taken by eminent domain except for a public use. Just compensation shall be paid and shall be determined by a jury at the request of either party.”

This proposed amendment is much too weak to protect North Carolina property owners from eminent domain abuse.

It adds very little to the Fifth Amendment’s Takings Clause (“nor shall private property be taken for public use without just compensation”), which we already know — thanks to the Supreme Court’s 2005 decision in *Kelo v. City of New London* — can be interpreted in ways making it ineffectual.

The most egregious instances of eminent domain abuse occur when property is taken from one private owner — typically an impecunious and politically weak homeowner — and given to a different private owner — typically a wealthy and politically well-connected property developer.

When the Supreme Court held, in *Kelo*, that the U.S. Constitution does not protect the poor and the weak from this kind of abusive “private transferee” taking, many states stipulated in their state constitutions that eminent domain could not be used for economic development. Several members of the state House have been trying for years to do the same thing in North Carolina, including Rep. Larry Pittman, R-Cabarrus, this year. It would be a shame if their diligence failed to produce a really effective amendment.

Given that private transferee takings are such a big part of the problem, it is tempting to think that the proposed amendment could be strengthened by adding a suitably narrow definition of “public use,” and because the most characteristic use of eminent domain has been to obtain land for things like roads and government buildings, it is tempting to think that a good definition

of “public use” might be “use by a public agency.”

But that will not work. Since colonial times, eminent domain also has been used to obtain land for use by private agencies: for millponds used by privately owned gristmills in the 18th century, for rights-of-way used by privately owned railroads in the 19th century, and for easements used by privately owned utilities in the 20th.

Few reformers want to prohibit these kinds of private uses. However, coming up with a coherent, abstract definition of “public use” that permits acceptable private uses while forbidding unacceptable ones has proven difficult.

Fortunately, there is another option. The proposed amendment could include the stipulation that “the question of whether a taking complies with the public use

requirement is one that must be decided in a court of law and not something that can be determined by a legislative body or administrative agency.”

For over 70 years, the Supreme Court generally has applied greater scrutiny regarding the specifically named rights that are singled out in the Bill of Rights. For some reason, the court did not in *Kelo*, even though it can be argued that those who wrote and ratified the Constitution regarded the right to own property as the most fundamental right of all.

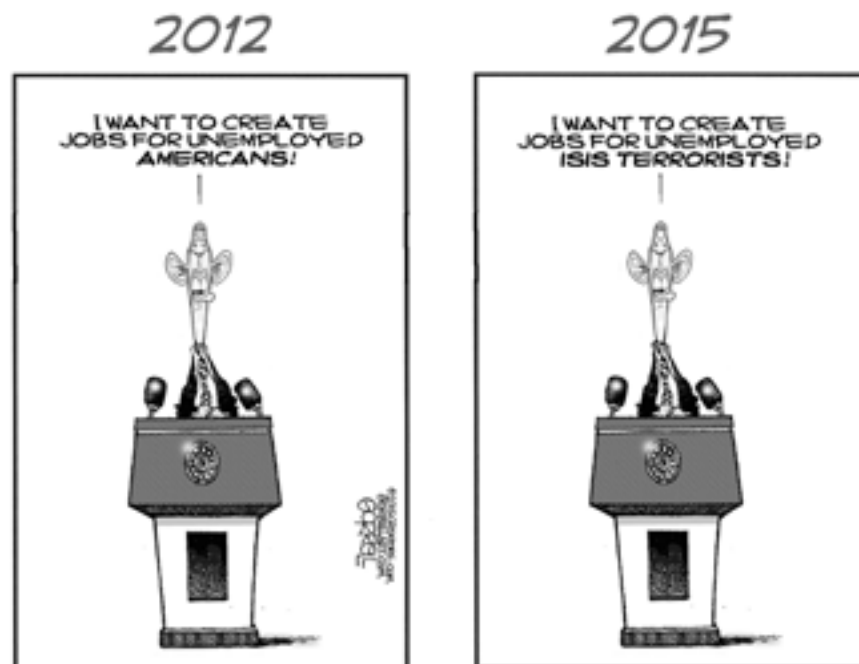
There is no reason the courts of North Carolina should follow the federal justices’ example. Requiring the courts to make public use determinations on a case-by-case basis would ensure that they do not, and it also would do a lot to protect North Carolina property owners from eminent domain abuse.

Any judge in North Carolina who wants to be re-elected will think long and hard before authorizing transfers from private homeowners to private developers simply because the latter claim to be able to generate more tax revenue or faster economic growth. CJ

Jon Guze is director of legal studies for the John Locke Foundation.



**JON  
GUZE**



## EDITORIAL

## With Medicaid, Patience Is a Virtue

Gov. Pat McCrory is taking heat from mainstream media outlets, liberal advocacy groups, and health care providers because he has refused to sign on to an expansion of Medicaid under the Affordable Care Act, and the promised federal money accompanying that move.

Hang in there, governor. We think your patience will be rewarded.

Much can and possibly will change about the contours of Obamacare over the coming months, making any move now to embrace new regulations and spending commitments for Medicaid — the government health insurance program for the poor, disabled, and children — not only premature but probably unwise.

McCrory has acknowledged as much in recent media interviews. He has noted that the U.S. Supreme Court in early March will hear oral arguments in a lawsuit challenging the legality of providing tax subsidies to Obamacare enrollees who reside in states (including North Carolina) that use the federal exchange to enroll patients. If the justices rule that the subsidies are not permitted (as the law clearly states), Obamacare recipients in North Carolina and roughly three dozen other states would lose their subsidies. The ruling may require an overhaul of Obamacare, including the provisions covering Medicaid.

The court is likely to issue its ruling at the end of June, in the closing days of the General Assembly’s long session and much too late to revamp Medicaid (if it’s needed) this year. The time between legislative sessions will allow policymakers to evaluate the court’s actions and decide the best

response. Patience will be rewarded.

The governor also has pointed out that he has little interest in embracing the federal government’s “off the shelf” template for Medicaid expansion, since the provisions are not tailored for the unique circumstances patients, physicians, and medical facilities face in North Carolina. Washington regulators have offered waivers to a few states, allowing some flexibility in how they design Medicaid for the people who can sign up for the program under the new rules, but it’s unclear whether the feds will live up to their promise not to interfere with state-based variations.

Indiana agreed recently to expand Medicaid after conservative Republican Gov. Mike Pence won assurances that the Hoosier State could design its own program with little federal interference. Within a year or so, we’ll have a better idea if Washington has gone along. If so, perhaps North Carolina can establish a Medicaid plan under our control. If not, there’s no reason to surrender more power to the feds. Patience will be rewarded.

Finally, there’s the upcoming presidential election campaign. The 45th president may be a Democrat who sees Obamacare as the logical next step to a single-payer, government-run health care system, or a Republican who sees a mandate to replace all or part of the law with free-market medicine. A decision to expand Medicaid now may seem foolish in hindsight if federal health policy takes a dramatic shift in less than two years.

So stay the course, governor. Your patience should be rewarded. CJ



## EDITORIALS

# 2016 and the Economy

*If it's a referendum on prosperity, let it be*

Governors make lots of decisions. So when they stand for re-election, there is a host of potential issues for their challengers to use against them. That said, the health of the economy tends to dominate these races. Incumbents say it is getting better. Challengers say that's a mirage, or that the economic growth isn't being widely shared.

Ever since North Carolina governors gained the option of succeeding themselves, each re-election campaign has followed this script. In 1980, Republican nominee Bev Lake challenged the economic stewardship of incumbent Gov. Jim Hunt, blaming him and his fellow Democrats for hurting traditional industries such as textiles and tobacco.

In 1988, Democratic nominee Bob Jordan, the lieutenant governor, discounted the state's high job-creation rate and low unemployment rate since incumbent Republican Gov. Jim Martin took office in 1985 by pointing to the slower growth experienced by some communities outside the Interstate 85 corridor.

In 1996, Jim Hunt's Republican challenger, Robin Hayes, talked down the economy. Eight years later Democratic Gov. Mike Easley faced Republican Patrick Ballantine, who sought to attract conservative Democrats in the east to his banner by emphasizing regional disparities in economic growth.

There's one other common element to all these races. Each challenger lost, badly.

The exception proves the rule. During the Great Recession, North Carolina as a whole had a bigger-than-average downturn followed by a worse-than-average recovery. Fairly or not, North Carolinians blamed incumbent Gov. Bev Perdue. Her approval ratings plummeted shortly after taking office in 2009. She didn't even bother seeking re-election in 2012.

In the early stages of Republican Gov. Pat McCrory's re-election campaign against likely Democratic nominee Roy Cooper, the challenger's supporters have pulled out the same dog-eared script. McCrory's "Carolina Comeback" is just a mirage, they say. His programs are failing. Rural areas are falling behind. Et cetera.

Past failure is no guarantee of future results. The Democrats' rhetorical problem, however, is that according to the Federal Reserve's Coincident Index of data on unemployment, employment, hours worked, and wages, North Carolina's economic performance in 2014 was the best in the Southeast and significantly above the national average.

That's not to say, of course, that everyone is doing equally well. But that is not a new phenomenon, or the kind of devastating political takedown that liberals seem to think it is. *CJ*

# Free Speech Threats

*Today, dominated by the Left*

Freedom of speech is one of the core values of a free society. It ought to be appreciated and protected by Americans across the political spectrum. Unfortunately, it is not. And while no party or faction is immune from the temptation to silence messages or messengers they don't like, most of the threats to free speech today come from the modern Left.

In the political sphere, the main threat to free speech comes from the Left's fulmination against the 2010 decision in *Citizens United v. Federal Elections Commission*. Blithely ignoring what the case was actually about — a private group seeking to release a film about Hillary Clinton during the 2008 presidential campaign — liberals claim that a conservative majority on the U.S. Supreme Court used *Citizens United* to allow large corporations and the wealthy to purchase public offices at the expense of the public interest.

In a recent op-ed published in the McClatchy newspapers, for example, the Rev. William Barber of the North Carolina NAACP and Bob Hall of the liberal group Democracy North Carolina argued that when the Supreme Court upheld *Citizens United's* right to release a film without requiring federal permission, "purchased speech became free speech and corporations became people."

This is incoherent, at best. Communicating a political message always requires the expenditure of funds. Publishing Barber and Hall's op-ed required an expenditure of funds by a private corporation, McClatchy. It has no more right to express its own views or pass along the view of others than any other private corporation does.

First Amendment protections are not a special grant of authority to companies that happen to be in the publishing or broadcasting business. They apply to everyone. *CJ*

## COMMENTARY

# Freedom Is The Goal

What do you people want?" I can't tell you the number of times I've been asked that by lawmakers, activists, or reporters who don't share my views. The term "you people" refers to the modern conservative movement in North Carolina, a phenomenon that still seems to puzzle older politicians and the Left.

There is, of course, no single definition of conservatism. The modern conservative movement arose from the combination — and in some cases even the collision — of several different factions and schools of thought.

Traditionalists addressed themselves to the decline of stable families and the deterioration of the culture as well as specific issues of social policy. Libertarians resisted the expansion of the welfare state and promoted tax and regulatory relief as both morally imperative and economically productive. So-called "neoconservatives" who began their political lives as progressives or socialists gravitated to the Right as they witnessed the failures of projects such as the Great Society or détente with the Soviets. More recently, reformists have sought to introduce innovation and market forces into the delivery of public services.

Many who call themselves conservatives today would identify themselves with more than one of these factions. Here in North Carolina, at least, there is widespread agreement that government in general should be smaller, focused on a few core services it does well but otherwise leaving households and businesses free to solve their problems through voluntary cooperation rather than state coercion. There is also widespread agreement that choice and competition should be built into the basic infrastructure for delivering such valuable and complex services as education and health care.

The theme, in other words, is freedom. As much as possible, North Carolinians should be free to make their own decisions. With freedom comes responsibility. To be free to decide means to accept the consequences of those decisions.

What does that value look like in practice? My colleagues at the

John Locke Foundation have a new product designed to put a number on it: the First in Freedom Index. Using dozens of measures gathered from other think tanks, government statistics, and independent reports, JLF produced scores for all 50 states in four major categories: fiscal freedom, regulatory freedom, educational freedom, and health care freedom.

Within each category, JLF also ranked North Carolina on specific measures such as overall tax system, protection of private property rights, competition in the delivery of hospital services, and parental choice in education.

According to the initial index, North Carolina ranks 23rd in overall freedom. By this measure, the freest states in the

union are Florida, Arizona, Indiana, South Dakota, and Georgia. The least-free states are New York, New Jersey, California, Kentucky, and West Virginia.

It wouldn't take much for our state to improve its freedom ranking significantly, including an embrace of measures from nonred states. Adopting purple-state Colorado's broader policies of parental choice among public schools, for example, would raise North Carolina's overall freedom ranking to 15th in the nation. Bright-blue Democratic states such as Delaware, Vermont, and Rhode Island outrank the Tar Heel State in specific categories such as state spending, regulatory freedom, and competition in health care services.

Freedom isn't just an abstraction. It is a proven solution for practical problems. Dozens of peer-reviewed studies show that states ranking higher in economic freedom tend to have more business starts, faster job growth, and healthier growth in personal incomes. Academic research also shows that choice and competition improve educational outcomes and reduce the cost of health care.

Today's conservatives want North Carolina truly to become First in Freedom. We believe that North Carolinians will be better off as a result. Feel free to disagree — but at least now you know our goal. *CJ*

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



**JOHN HOOD**

## MEDIA MANGLE

## Corrections Policy Reveals a Lot

There's nothing more revealing about a news medium than the way it deals with its own errors. Is it, to use human terms, honest, forthright, and sincerely sorry, or is it evasive, sneaky, and dishonest?

One might think that almost all news media outlets would fit into the first category, but over the years I've run into many that don't. I've known editors who felt that running a correction was a black mark on their own personal reputation, and they would refuse to run a correction, in hopes that no one would notice the original error. And if no one called to complain, they'd think, "Whew, dodged a bullet on that one."



**JON  
HAM**

But even if no one complains, many, many others will notice the error and just file it away in that part of the brain labeled Dwindling Confidence In This Paper's Credibility.

Some errors are easy to correct. Typos, misspellings, and misstated titles on public officials are some examples. But sometimes reporters and editors blow it spectacularly, and corrections shine a spotlight on these embarrassing gaffes.

I knew an editorial writer once who editorialized against a planned tool-and-die factory to be located along the Chattahoochee River in Georgia. He worried that the "dye" from the factory might foul the river. As embarrassing as that was, he dutifully corrected himself the next day. That was 43 years ago, and I still remember it, which shows you how hard it is to live down some of these errors.

On Feb. 13, *New York Times* editorial page editor Gail Collins wrote a column in which she chastized Wisconsin Gov. Scott Walker for his "war on public employees," citing cuts in "state aid to education" under Walker as being responsible for teacher layoffs.

There was only one problem: All of the cuts and policies she cited occurred before Walker took office in 2011.

Now, this is a type of error that should have the writer cringing in embarrassment, and, if they're honest, eager to set the record straight, as painful as it might be. But what did *The New York Times* and Gail Collins do? Nothing.

For six days Collins' column remained uncorrected online. As far as I can tell, it was never corrected in print. Finally, on Feb. 19, the paper appended a correction to the bottom of her column online, a correction that essentially says, "Hey, all that stuff you just read above is total hogwash."

This was a gaffe of Emily Litella proportions. The paper should have written a big "NEVER MIND" and pulled the column. Instead, with the correction at the bottom, people still are linking to it, and others are reading it not knowing that it is based on a huge error, to give the benefit of the doubt to Collins, or lie, to be less charitable.

This is no way to run a newspaper, much less one of America's "prestige" newspapers. CJ

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

DISSENT =  
HIGHEST FORM  
OF PATRIOTISM



LOCKE  
CREATORS.COM

DISSENT =  
RACISM



EPKBLISTER.COM

## Confronting Retirement

I just had a birthday. I won't give you my age, but here's a big clue: I'm now one year away from Medicare! As my generation (the "baby boomers") increasingly moves into retirement, some experts say many retirees will be disappointed. The experts say we are seeing the beginning of a "retirement crisis" that will only grow in the decades ahead.

Here's the problem in a nutshell. More people are moving into retirement, and these folks will spend more years as retired.

Therefore, the collective resources (money) needed by retirees are increasing — and will continue to increase. Yet the funds available to retirees are not keeping up. Therefore, the problem is that the gap between what is financially needed by retirees and what is financially available for retirees is widening.

Let me give you some numbers. As a result of increasing life expectancies, the average new retiree will spend 20 years in retirement, and that number is expected to rise to 22 years in a few decades. In contrast, in the 1960s the average person was retired for only 13 years. So more money will be needed by retirees to cover a longer period of their "golden years."

Yet there's a big question of where that money will come from. The support from Social Security appears to be shrinking. Before adjusting for taxes and fees, Social Security replaced 42 percent of the average 65-year-old's annual earnings in 1985; by 2030 that replacement rate is expected to fall to 36 percent. On top of this is the fact that the work force paying into Social Security is shrinking relative to the number of retirees receiving Social Security.

Less than half of workers participate in a company pension. Also, the funds individuals nearing retirement have in personal retirement accounts, like Individual Retirement Accounts and 401(k) plans, are relatively meager, averaging \$100,000 for all workers and \$13,000 for those earning under \$40,000. These funds won't go far when spread out over a 20-year retirement period.

As a result of these conditions, the Center for

Retirement Research estimates that over 50 percent of working age households today will not have enough money available at retirement to maintain their preretirement standard of living.

So what are the options? There are really four: retire later, save more, accept a lower retirement standard of living, or find additional government resources to bolster Social Security.

There are three benefits to working longer — Social Security retirement checks will be higher, saving is easier, and fewer years are needed to be financed in retirement. Plus, as the relative size of the traditional working-age population has shrunk, companies may be more willing to hire and keep older workers.

It's easy to say "save more," but often this is hard. Many households have trouble stretching their paycheck to meet all necessities, so there's just no room to save. Still, there are some budgeting techniques that can reduce spending, like buying in bulk and buying at remnant and secondhand stores. Some financial advisers also recommend that retirees who own a home should use some of their home equity for money.

Living on less and living more frugally in retirement are always options. Yet this isn't what modern retirees expect. Today's workers often look to retirement as a fun time to enjoy hobbies, play with grandchildren, and maybe travel. Retirement is a time to relish, not dread!

The last option is to bulk up Social Security by putting more money into the system so more can be paid to retirees. Interestingly, those favoring this option are not necessarily recommending increasing the payroll tax to strengthen Social Security. Instead, they want to use general tax revenues — specifically from the federal individual and corporate income taxes — to improve the financial capacity of the program.

When I discuss retirement with my students, many of them take their minds elsewhere because — for them — it's so far away. Still, I tell them it will be here before they know it, and they don't want to be disappointed! CJ

Michael Walden is a Reynolds Distinguished Professor at North Carolina State University.

# Freedom Is the Best Incentive

The role of government is to provide a fair playing field for commerce with low taxes, reasonable regulations, and a strong infrastructure. It is not the role of government to pick favorites, giving advantages to some at the expense of others. A system built on favoritism stifles economic growth, discourages investments and creativity, and interferes with a free market.

Since 1996, North Carolina has been playing the incentives game — under the guise of “economic development.” North Carolina’s home-grown and invested companies are the biggest losers. Their hard-earned tax money goes to lure out-of-state entities. Sometimes competitors get advantages that our own companies don’t, while they watch their tax bills get bigger.

Today North Carolina has more than 40 different tax and incentive giveaway programs — totaling millions of dollars. The film industry alone soaked up over \$140 million in just three years. A scathing audit in 2013 revealed numerous reporting and accountability problems in the state’s Job Development Investment Grant program. No one verified that new jobs were indeed eligible for the rewards they were receiving.



**BECKI GRAY**

How long have we heard, “We have to do it because everyone else does”? North Carolina has been a follower, and not a very good one. There are constant pleas for more money because of the last big fish that got away. Most recently, Mercedes-Benz decided to locate its U.S. headquarters in Georgia, precipitating the latest round of desperate calls from the governor for refunding JDIG. But there will always be the one we didn’t hook, and demands for “just a bit more” will continue. There never will be enough. Where will it end?

Lawmakers can end it now. They have an opportunity to make North Carolina the national leader, the model for economic development, a haven for entrepreneurs, investors, and job creators. They can build a dynamic, strong, growing, and sustainable economy. Actually, we’re well on our way.

Due to reforms in the last few years, we have lower tax rates and rank 16th in the Tax Foundation’s Business Tax Climate rankings. We have more reasonable regulations, more individualized choices for students to improve their skills and attain their goals, and low unemployment. We saw 115,000 jobs created just last

year, and we’re making wise investments in infrastructure. Our economic recovery is stronger and faster than the national average and in neighboring states. We don’t need gimmicks. The best path is the one we’re on.

If abandoning incentives entirely proves difficult, there are some measures to make them less detrimental to North Carolina’s recovering economy.

- Make them transparent and accountable. A thorough cost/benefit analysis should determine who gets what and why, and what’s expected.

- Put a sunset on every program. Revisit, re-evaluate, restructure, and eliminate as needs change.

- Consolidate. Economic incentives offer special treatment for everything from biodiesel producers to investments in recycling facilities to renewable energy. Research tells us the more taxing options available, the higher the taxes. Collapse programs, consolidate grants, and eliminate duplication. No more carve-outs for one company or one industry. We should have one program, and the test should be: What’s the payback for taxpayers? If people knew the real cost of incentives, they’d demand change.

- Remove barriers to private investment. Crowdfunding is a bet-

ter way to encourage investments in North Carolina businesses rather than compelling all taxpayers to bet on favorites picked by the government. Remove barriers and restrictions for individuals to invest their money in North Carolina’s economy. House Bill 63 offers a good starting point.

- Invest in affordable and accessible energy. Eliminate renewable energy subsidies and energy source requirements. Allow natural gas and oil exploration. Energy costs affect every element of business growth and investment. In recent years, North Carolina’s manufacturing sector has been decimated by high energy costs. Reliable, inexpensive energy will help revive that part of the economy.

- Take care of your own. As of 2007, there were 821,189 small businesses in North Carolina. With low taxes, fewer regulations, investment opportunities, strong infrastructure, and assurance of economic growth, imagine that half of these businesses will create one new job next year. That would be 410,000 new jobs.

What is the real incentive for North Carolina’s economy? Unleash the possibilities, promulgate the opportunities, and allow North Carolinians the freedom to do what they do best: invest, innovate, invent, and inspire, to grow and prosper. To again be first in freedom — that’s the incentive North Carolinians are looking for. *CJ*

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

# Judge Obama on his Policies, Not his Heart

Former New York City Mayor Rudy Giuliani started a firestorm recently. At a private dinner he stated that he believes President Obama “doesn’t love America.” He expanded on his comment — I am paraphrasing — saying that the president constantly criticizes America and apologizes for the wrongs and sins he perceives this great nation has committed.

Predictably, the mainstream media went apoplectic and interpreted Giuliani’s remarks as an assault on the president’s patriotism. This column will not comment on Giuliani’s view of Obama, but instead on the president’s record to date and the impact his policies have had on “the shining city on



**MARC ROTTERMAN**

the hill” that is the United States.

This, in my view, is fair game.

What has framed Obama’s presidency, and what he has stated numerous times, is that he wants to “fundamentally transform America.”

And make no mistake about it — during the six-and-a-half years of Obama’s tenure, he and his administration have gone about rapidly doing just that.

Not long after taking office, Obama and the Democratic Congress rammed through Obamacare, putting the federal government in charge of one-sixth of the American economy, limiting Americans’ health care choices while falsely stating, “if you like your health care plan, you can keep your health care plan.” Meanwhile, Obama unilaterally has delayed or changed parts of the Obamacare law when it suited his political needs or those of his allies — circumventing Congress and the legislative process.

Another case in point is Obama’s executive amnesty that would let

over 5 million illegal aliens stay in the United States and not be deported. He announced this “executive action” even though he had stated that he did not have the authority to deal with immigration laws administratively: “If, in fact, I could solve all these problems without passing them through Congress, I would do so. But we’re also a nation of laws.” Fortunately, a federal judge has stepped in and temporarily halted executive amnesty.

Regarding the economy, although the stock market is at record heights, a staggering 50 million people are enrolled in the Supplemental Nutritional Assistance Program, or food stamps. A record number of Americans sit on the sidelines, no longer looking for work. Young African-Americans have been hit particularly hard, with nearly one in every four black youths age 16 to 25 unemployed.

Meanwhile, the national debt is growing by leaps and bounds. America’s debt was \$10.6 trillion in

2009 when Obama took office and has increased by 70 percent during his presidency. It now stands at over \$18 trillion with no end in sight.

With respect to foreign policy and the defense of our homeland, Obama and his national security team seem to make it up as they go along. There have been so many blunders it’s hard to keep count. Just a few come to mind: the prolonged negotiations between Iran and the United States over Iran’s ability to acquire nuclear weapons; Benghazi and the collapse of Libya; Russian intervention in Crimea and Ukraine; the collapse of Yemen; and the rise of ISIS throughout Iraq, Syria, and the Middle East.

So does Obama love America? I’m sure he does.

But his policies have devastated America, both at home and abroad. *CJ*

*Marc Rotterman is a senior fellow at the John Locke Foundation and former Reagan administration appointee.*

# SEANC Lobbies for 'Cope-Level' Benefits for All Members (a *CJ* parody)

By ESSIE THETICIAN  
Personal Care Correspondent

RALEIGH

**A** State Employees Association of North Carolina spokesman has announced that even though former Executive Director Dana Cope has resigned, his alleged spending habits have spurred the organization to ask the General Assembly to give all 55,000 members of SEANC the kind of workplace benefits that Cope enjoyed.

Cope resigned in February, shortly after *The News & Observer* reported that he appeared to have used significant amounts of association funds for personal use.

Cope had been SEANC's executive director for the past 15 years. The *N&O* reported that he used organization funds to pay for flight lessons, landscaping at his Raleigh residence, a backyard swimming pool, electronics, an eyebrow wax, men's clothing, and online video games.

The SEANC spokesman, E.Z. Sinecure, told *Carolina Journal* that Cope's example has given the group's leadership some ideas. "His choices in off-the-books benefits are items that we would like to see available to all members, and we certainly could negotiate lower prices due to volume," he said.

For example, Sinecure said that Cope used SEANC funds to pay \$57 for an eyebrow wax job. "While I would like the General Assembly to include



The State Employee Association of North Carolina has taken inspiration from the kind of perks that former executive director Dana Cope allegedly gave himself. (CJ spoof photo)

eyebrow waxing in our state employee health plan, the General Assembly's Republican leadership has already told me that wouldn't fly," he said. "But we think it should be a right. A unibrow is a terrible thing."

As an alternative, Sinecure said SEANC has opened negotiations with waxing centers across the state to offer deep discounts for SEANC members. "From initial talks, I'm sure I can get employees an eyebrow job for as low as \$27 for both brows. From news reports, I think Cope paid \$57 for just one eye-

brow," he said. "I think that was what tipped off the *N&O*. Cope should have gotten both brows done for that price. After all, it wasn't his money," he said.

"If every employee got just one two-eyebrow wax job, that would generate nearly \$1.5 million for North Carolina waxing centers, and therefore would benefit the state's economy as a whole," he noted.

Sinecure said the General Assembly should also approve free flying lessons for state employees who travel frequently. Cope told the *N&O* the fly-

ing lessons were a less expensive way for him to travel to distant points in North Carolina, or even out of state, than paying for commercial air travel.

Cope always was with a flight instructor and essentially used the lessons as an informal air charter service. "This is something I think we can get through this year. If Cope's calculations are correct, the flying lesson program will pay for itself," Sinecure said.

As for landscaping and backyard pool benefits, Sinecure said, "We have a plan, but it will be significantly scaled down from what Mr. Cope arranged for himself. Our thinking is that, as a minimum, the benefits package should include one bale of pine straw and an 8-foot-diameter inflatable pool per SEANC member. Together those would cost about \$15 per employee, or about \$800,000 to cover all our members. I am confident I can get the General Assembly to go along with that," he said.

State employees work for such low pay and work such hard hours, said Sinecure, that they deserve an unusual perk such as what he termed "Cope-level benefits." "It's the least we can do, and this is working out just as Dana hoped it would."

State House Speaker Tim Moore and Senate leader Phil Berger issued a joint statement to *CJ*, stating, "This is a joke, right?" *CJ*



## We Have North Carolina Talking!

Every week, hundreds of thousands of North Carolinians watch NC SPIN for a full, all-points discussion of issues important to the state. Politics • Schools • Growth • Taxes • Health Transportation • Business • The Environment

A recent poll showed 48% of North Carolina 'influentials' — including elected officials, lobbyists, journalists, and business leaders — watch NC SPIN, with 24% saying they watched the show 'nearly every week.' Thousands of North Carolinians also visit NCSPIN.com and get the latest political news, rumors, and gossip from its weekly newsletter "Spin Cycle."

NC SPIN has been called 'the most intelligent half-hour on North Carolina TV' and is considered required viewing for those who play the political game in the Tar Heel State — whether they are in government, cover government, want to be in government, or want to have the ear of those in government.

If your company, trade association, or group has a message you want political or business leaders to hear, NC SPIN's statewide TV and radio networks are the place for you to be! Call Carolina Broadcasting (919-832-1416) for advertising information about TV or radio.



### THE NC SPIN NETWORK

#### TELEVISION

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

#### RADIO

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