

GOP legislators promise 'fair and legal' redistricting /2



CAROLINA JOURNAL

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

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Misleading Counting Method Inflates Rail Jobs

White House invented 'job-years' metric to help sell stimulus

BY DON CARRINGTON
Executive Editor

RALEIGH

Backers of a \$545 million, federally funded high-speed rail project in North Carolina got a valuable public-relations assist from the Obama administration in the form of a misleading counting technique that inflates potential job numbers by more than 300 percent.

Gov. Bev Perdue, N.C. Department of Transportation Secretary Gene Conti, and other supporters of the project all have claimed that the rail endeavor would create 4,800 jobs, when, in reality, the real projection is closer to 1,200 jobs.

What has not been specified in all the press releases and official announcements is that the 4,800-job figure is measured in "job-years," a metric invented by the Obama administration's transition team to sell the American public on the incoming



Obama, shown at a 2008 Raleigh campaign stop, created the "job-years" concept to help sell his stimulus program. Gov. Beverly Perdue, shown at a recent press conference, also is using it to try to gain support for a high-speed rail project. (CJ photos by Don Carrington)

president's controversial \$787 billion stimulus plan.

For instance, if a single job is created for a project with a three-year duration, this, in the Obama-Perdue method of calculating jobs, would be three jobs, not just one. This method of counting has the obvious effect of inflating job projections in the minds of voters if the difference is not spelled



out to the public when used.

The 4,800-job number has driven the debate over rail funding in North Carolina — among supportive politicians, business leaders, and newspaper editorial boards — even though the notion of "job-years" is not recognized by the federal Bureau of Labor Statistics, the North Carolina Employment Security Commission, or any other impar-

tial job-market analysts.

The Obama administration has refused to defend the concept publicly. And Perdue has been a steadfast user of the higher figure, which measures "job-years" instead of actual jobs.

In a Feb. 16, 2010, press release, Perdue claimed that the high-speed rail grant would "create or maintain as many as 4,800 private sector jobs in North Carolina over the next four years, with 1,000 of those expected this year alone as ready-to-go projects get under way."

But Perdue misstated the projections of her own Department of Transportation. In a report issued Jan. 28, 2010, NCDOT estimated the funding would "create or preserve" as many as 5,700 "job-years" in North Carolina, with annual employment peaking at 1,800 in the third year of the project. The 4,800 tally was said to have come from a "conservative estimate" by NCDOT.

Until recently, the governor appeared unfamiliar with the job-years concept. During her April 7 press conference on jobs, a Carolina Journal reporter informed her that DOT estimated the rail project would average only

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Packer Questions State's Environmental Calls

Former broadcaster critical of how DENR makes its decisions

BY DON CARRINGTON
Executive Editor

RALEIGH

Much like a basketball coach working a referee on the sidelines, all former CBS sportscaster Billy Packer wants from state environmental officials is consistency.

Packer says the N.C. Department of Environment and Natural Resources was wrong to fine him \$19,110 in 2008 for alleged soil sedimentation viola-

tions at property he owns in Alleghany County. While he was challenging DENR's actions, Packer subsequently learned that a DENR project not far from his property was causing significant sedimentation violations in a nearby trout stream.

Packer is frustrated with the process. "I want to change their system — the way inspections are done, the way that NOV's [notice of violations] are written, the way that people have to respond to NOV's," he told *Carolina Journal*.

The system, established by the General Assembly, gives DENR — an executive branch agency — judicial powers when its decisions are chal-



Billy Packer is frustrated by state environmental rules that put landowners at a disadvantage when challenging DENR decisions. (CJ photo by Don Carrington)

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GOP Promises 'Fair and Legal' Redistricting

By DAVID N. BASS
Associate Editor

Armed with new population data from the 2010 census, Republican members of the General Assembly are setting the stage for the biggest showdown of the 2011 session aside from the budget — redistricting.

Each decade, legislators are tasked with redrawing the boundaries for 120 House districts, 50 Senate districts, and 13 congressional districts. Apart from a handful of state and federal requirements, lawmakers can finagle district lines however they choose, giving the majority party enormous power.

Among the 36 states that have lawmakers draw legislative and congressional boundaries, North Carolina is the only one that shuts the governor out of the redistricting process.

It's a mission rife with partisan implications, despite promises from the GOP that the process this year will be "fair and legal."

Senate Redistricting Chairman Bob Rucho, R-Mecklenburg, issued an even bolder promise in April. Redrawn maps will gain immediate clearance from the U.S. Justice Department and, more importantly, avoid lawsuits, he said.

"My goal is to make sure that we stay out of court, put normal people in the process, and show that this can be done fair and legally without any gerrymandering," Rucho said.

Political experts say that avoiding a court fight is unlikely considering North Carolina's litigation-ridden past on redistricting. The Tar Heel State has been the subject of several high-profile court cases involving district boundaries.

Even more, some doubt that Republicans will carry as evenhanded an approach as they claim.

"Democrats have set the standard for fairness when it comes to remapping, and I fully expect Republicans to lower themselves to that standard," said John Davis, a Raleigh-based political consultant. "That standard does not include giving up the unilateral right to draw yourself an advantage for the next 10 years."

Wake, Meck grow

At press time, a joint House and Senate committee hadn't released new district maps yet, but the goal is to have them done by mid-May. A series of public hearings began in April.

In keeping with past trends, unadjusted data from the 2010 census reflect a continued migration from North Carolina's rural counties to its urban centers. Mecklenburg and Wake counties will gain legislative and congressional seats at the expense of counties in the eastern and western parts of the state.

Overall, the state grew 18.5 percent between 2000 and 2010 to more than 9.5 million residents. As a result, the ideal size of districts will shift upward, leading to some districts getting larger and some smaller.

RALEIGH

For example, the 1st Congressional District, now represented by Democrat G.K. Butterfield, is 13 percent less than its ideal population, meaning lawmakers will need to expand its boundaries to pack in more voters.

In contrast, the 4th, 9th, and 13th congressional districts are 3 percent to 16 percent more than their ideal populations. All three are in metropolitan regions.

Third minority district

One possibility for Republican map drawers is creating another "majority-minority" congressional district, a requirement under the federal Voting Rights Act that gives minorities an edge in certain districts.

North Carolina already has two such districts — the 12th stretching from Charlotte to Greensboro and the 1st in the northeastern part of the state — but creating a third could pack in Democratic voters and make other districts more competitive for



the GOP.

"The motivation here is to win by a little [in most districts] and lose by a lot [in a few districts] to maximize the number of members of your party who you can send to Washington," said Andy Taylor, a political science professor at N.C. State University. "The best way to do that is concentrate your opponents' voters and more efficiently spread your own."

Next round

Even while all eyes are focused on the current round of redistricting, some already are looking to 2020.

In mid-April, a bipartisan coalition of legislators and activists touted a bill that would take map drawing out of politicians' hands and leave it up to legislative staff, a reform that could lead to fewer judicial entanglements and more equitable elections.

"It's the first step in a journey towards a completely bipartisan and open redistricting process," said Rep. David Lewis, R-Harnett, senior chairman of the House Redistricting Committee.

The measure would authorize nonpartisan staff in the Legislative Services Office to prepare and submit redrawn districts to the General Assembly for a straight up-or-down vote. The proposal would prohibit legislators from modifying new maps, but if they vote down the plan three times in a row during a given round of redistricting, the process would revert to the current system.

Currently, 10 states use some sort of commission or other body outside the legislature to draw district lines.

Gene Nichol, a law professor and director of the University of North Carolina's Center on Poverty, Work & Opportunity, said the time might be ripe for such a change.

"No one knows with certainty right now who will be in control in two years, or four, or 10," he said, "so it's a window of opportunity. The 'ins' rarely act to eliminate their own advantage — at least if they're pretty sure they're going to remain the 'ins' for a while." CJ

Political experts say it's unlikely that a court fight can be avoided, given North Carolina's litigation-ridden redistricting history

Tea Party Activists Say They Are Alive and Well in North Carolina

By SARA BURROWS
Associate Editor

RALEIGH

Although fewer Tea Party activists took to the streets this tax season, the movement is growing and stronger than ever, supporters say.

In April 2010, tax-day Tea Parties organized more than 50 rallies across the state to protest high taxes, wasteful spending, and big government. They vowed to throw out any politician who ignored them, and, later that year, they helped elect the first Republican majority in the North Carolina House and Senate in more than a century. In April 2011, tax-day tea parties took place in only about a dozen North Carolina cities and fewer attended them.

But Tea Party leaders aren't worried. While the movement may be less visible this year, it is burgeoning behind the scenes, they say. Instead of yelling and waving signs in the streets, Tea Party activists are sitting in their home offices calling, faxing, and emailing their representatives. They are organizing and planning strategies, watching and waiting, ready to pounce on any politician who goes wobbly, and taking notes for the 2012 election. They get together for Saturday seminars and monthly dinners. They keep in close contact through email, Facebook, Twitter, and blogs.

After the 2010 elections were over, Tea Party leader Donna Yowell "wanted something else to do," so she founded a group called Feet to the Fire to hold accountable candidates she had helped win office. The list of people who subscribe to her email "blasts" has grown from 600 to 3,000 in just four months, she said.

"Just because we're not out there holding a sign does not mean we're not



Tea Party protesters gathered on April 15 in several locations around North Carolina, including this one at Governmental Plaza in Greensboro. (CJ photo by Sara Burrows)

participating in government," Yowell said. "We are not yellors and screamers. We are thought-provoking people, people of higher education."

Mark Hager, state coordinator for Tea Party Patriots, said the number of Tea Party Patriot groups in North Carolina has grown from 83 to 86 in the last month alone.

"Instead of going out in the streets and yelling and holding up signs for everyone to see once again, we're now working inside — becoming delegates to conventions, becoming precinct chairs and co-chairs, and we're having to work," Hager said. "That's the hard work. It's easier to go out in the street and yell and wave a sign."

And from what he says, it's making an impact. Hager's local Tea Party group in the Yadkin Valley met at length with state Sen. Andrew Brock, R-Davie, before the 2011 session. He said Brock listened to their concerns and adjusted to their expectations. He had to, Hager said, "because we're three times the average voting bloc in North Carolina."

Diane Ruffino, a leader in the Eastern North Carolina Tea Party, said Tea Party folks traditionally are the ones least able to get out and protest, especially during the week.

"They are the people that still believe in personal responsibility," Ruffino said. "They work, take care of their families, raise productive children, educate their children, baby-sit their grandchildren, volunteer with their churches, and are investing in an education. Come the weekend, they are exhausted."

Any spare time Tea Party activists have they spend attending courses on the Constitution, contacting their representatives, or writing letters to the editor, she said. Tea Party leaders now are focusing their energy on education rather than rallies, "which tend to preach to the choir," she said.

In response to claims from the left that the Tea Party has disappeared as a result of its "success" in the 2010 election, former Libertarian Party U.S. Senate candidate Mike Beitler said, "You ain't seen nothin' yet."

Beitler was one of several speakers at this year's tax-day Tea Party in Greensboro. He congratulated the crowd for putting a Republican majority in the North Carolina General Assembly and the U.S. House of Representatives in 2010 and then announced his goals for 2012.

"Next, we need to take back the U.S. Senate, the White House, and we need to throw Bev Perdue out of the governor's mansion," he said.

At a tax-day tea party in Morganton, North Carolina Campaign for Liberty director Adam Love gave his audience pointers on how future electoral victories could be accomplished.

The key to success, Love said, is to pay attention and to make politicians pay for ignoring the will of the majority.

"Every session of the legislature you must return pushing for your principles," he said, "and every election you must cause pain to as many politicians as possible, starting with those who claim to support your cause but who vote and act in opposition."

"Rome was not built in a day, and major policy is not passed overnight," Love added. "It may take years or a decade or more. Policy is changed one vote and one politician at a time."

At a tax-day rally outside the Capitol building in Raleigh, freshman state Rep. Glen Bradley, R-Franklin, gave the Tea Party further encouragement.

"Do not be dismayed that we are but few in number compared to the establishment who maintain business as usual," Bradley said. "Remember that the American Revolution was won by only 3 percent. It does not require a majority to prevail, but rather an irate, tireless minority keen to set brush fires in people's minds." CJ

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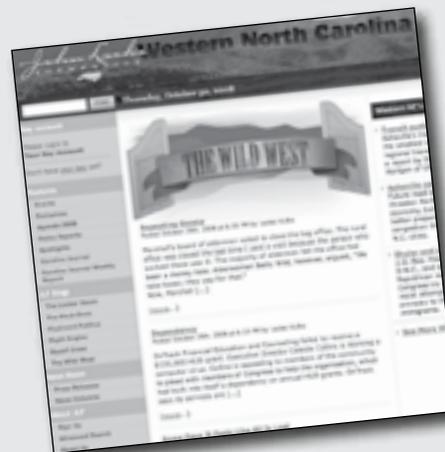
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It also features the blog The Wild West, featuring commentary on issues confronting Western N.C. residents.

State Briefs

Cooper settles with TVA

North Carolina and the Tennessee Valley Authority have reached a settlement in Attorney General Roy Cooper's pollution-control lawsuit against the multistate utility, reports the *News & Observer* of Raleigh.

The agreement requires TVA to invest between \$3 billion and \$5 billion on new pollution control measures for its coal-fired power plants in Alabama, Kentucky, and Tennessee. In addition, TVA must retire at least 18 of its 59 coal units and invest \$350 million on clean energy projects, \$11.2 million of which will go directly to North Carolina.

The settlement comes after the 4th U.S. Circuit Court of Appeals ruled against Cooper last year, determining that siding with North Carolina in the case would allow judges to apply overly vague standards to the issue.

Cooper had asked for a review by the U.S. Supreme Court before the settlement was reached.

The missing governor

Where was Gov. Bev Perdue on the afternoon of April 16, when a series of deadly storms ripped across the Tar Heel State? That depends on whom you ask.

The governor's office provided no statement for hours after tornadoes touched down midafternoon. The initial response from Communications Director Chrissy Pearson: Perdue was out of town tending to a "family obligation," and she would return to Raleigh later that evening.

In an apparent contradiction, the next report from spokesman Mark Johnson said Perdue was visiting with college buddies in Kentucky, attending a horse race, and chatting with Kentucky's Democratic governor.

Not so, said Pearson in a statement emailed to a Wilmington TV station.

"She wasn't actually at the race; state business brought her home early and she of course wanted to be here to help the state recover from the storms," Pearson said.

The *News & Observer* later contacted Johnson by cell phone. In another twist, he confirmed that Perdue had attended the races, a fact reaffirmed by Pearson.

The confusion was an embarrassment for Perdue as she heads into her 2012 re-election campaign. An Elon University poll from mid-April found that 52 percent disapprove of Perdue's job performance, compared to 38.5 percent who approve. *CJ*

Bill Would Increase Auto Dealer Protections

By KAREN McMAHAN
Contributor

RALEIGH

If you ever have wondered why you can't order a new car online straight from the factory with a few mouse clicks, blame the vehicle franchise laws present in every state.

The franchise law requires every new car purchase to be processed by a licensed, in-state dealer — a regulatory system dating from the 1950s. Senate Bill 438, sponsored by Sen. Tom Apodaca, R-Henderson, would revise the franchise law without easing many of its restrictions.

Supporters of S.B. 438 say these changes are needed to keep pace with evolving market conditions in the auto industry and improve consumer choice.

But opponents say that the reverse is true and that S.B. 438 would reinforce a vehicle sales system that protects dealer networks from new distribution channels and limits the entrance of new dealerships and the relocation of existing ones by setting geographic boundaries on retail locations.

By mandating that only franchised dealers can sell new cars, state laws prohibit manufacturers and online retailers from selling directly to consumers.

Longstanding criticism

The debate over S.B. 438 highlights a longstanding criticism of the vehicle-franchising system, which provides some protections to dealers and manufacturers that translate into higher prices in the showroom.

The franchise law gives dealers exclusive territories to market specific brands. In exchange for this exclusivity, car makers often dictate aspects of dealerships' business practices, even including the signs they must purchase, the advertising they must run, and the design of their facilities. These rules increase sticker prices with questionable benefits to consumers.

The Senate Commerce Committee was scheduled to take up S.B. 438 in late April. But the bill was pulled from the committee calendar at the last minute, possibly to allow some tweaking by the sponsors. At press time, it was unclear when the bill might be heard.

North Carolina passed its motor vehicle and manufacturing licensing law in 1955. Since then, the law has been revised regularly. One of the most significant changes was made in 1983: the relevant market area provision, a regulation setting geographic boundaries on the location of car dealers.

The RMA provision explains why, for instance, two Ford dealers are not allowed to build showrooms across the street from one another. It's against the law.



North Carolina's auto franchise law has required a middle man, a dealer, since the 1950s. (CJ file photo)

Henry Jones Jr., a lobbyist for the Alliance of Automobile Manufacturers, an advocacy group representing 12 domestic and foreign vehicle manufacturers, opposes S.B. 438. Jones told *Carolina Journal* that one provision would expand the powers of the commissioner of Motor Vehicles to resolve disputes over a dealer's rights or obligations in the franchise or a franchise-related agreement.

Existing law prevents manufacturers from discriminating against individual dealerships when they allocate vehicles for sale. But this bill goes further, Jones said, by requiring manufacturers to allocate "an adequate supply of vehicles by series, product line, and model to remain economically viable" and to base the supply on each dealer's specific allocation needs and historical selling patterns.

Proposed signage and facility requirements would make it tougher for automobile manufacturers to manage their brands and inventories. If a dealer has purchased or leased a sign in the past 10 years that displays the manufacturer's or dealer's name, a manufacturer could no longer require that dealer to purchase or lease additional signs or replace a sign.

The same would hold true for dealers that have relocated or made facility alterations costing more than \$100,000 in the past 10 years.

"We are selling a brand," Jones said, and "if a dealer has an outdated facility, signage, or marketing materials, a manufacturer should be able to provide incentives for dealers to make these changes." The commissioner would have the power to determine what is "reasonable."

Dealers' view

The North Carolina Automobile Dealers Association supports S.B. 438. John Policastro, general counsel for NCADA, told *CJ* that manufacturers benefit by having local franchised dealers control the retail marketing and distribution of new car sales.

Policastro said dealers invest millions of dollars into their inventory and facilities and shouldn't be forced

to make costly facility upgrades or relocate every few years. Also, dealers should have fair allocation of vehicles based on their historical sales data.

Cost of regulations

The franchising system raises the cost of new cars and repair services and erodes consumer choice. According to a 2009 report from the Economic Analysis Group in the Antitrust Division of the U.S. Department of Justice, "the cost of the auto distribution system in the United States has been estimated as averaging up to 30 percent of the vehicle price."

Even as competition has forced retailers and other businesses to shift their business models to cut distribution costs, maintain lean inventories, and respond to emerging consumer preferences, new auto dealers benefit from increased regulations that intervene in the private contract between auto dealers and car manufacturers.

In a 2005 John Locke Foundation Spotlight report, JLF director of legal and regulatory studies Daren Bakst said market conditions today are very different from those of the 1950s. When states first began regulating auto distribution in the 1930s, there were only five passenger-car manufacturers in the U.S., and three of them produced more than 95 percent of all passenger cars sold in the U.S. As foreign competition has increased, domestic automakers have seen their market share plummet both in the U.S. and abroad.

In 1990, General Motors' share of U.S. new car sales was 36 percent, but that number had fallen to 19.1 percent by May 2008, according to *Automotive News*. In the first quarter of 2008, Toyota took the global sales lead from General Motors.

Until recently, it was very difficult for local dealerships to receive a franchise from more than one manufacturer, limiting a dealership's ability to market a variety of cars to customers. Now, many dealers carry automobiles from several domestic and foreign manufacturers, making it difficult to justify laws giving individual dealerships exclusive geographic territories.

"Government should not be in the business of restricting economic freedom and creating special business privileges," said Bakst.

Bakst also said a sharp reduction in the number of franchised new car dealers gives an advantage to those who remain in business. In 1956, there were approximately 40,000 franchised dealers nationwide. In 2009, National Automobile Dealers Association data showed the number of new car dealers had fallen to 18,458.

According to NADA data, there were 600 new-vehicle dealerships in North Carolina in 2009, generating \$13.7 billion in new-vehicle sales and 13.3 percent of the state's total retail sales. *CJ*

Rural Center Grant Could Put Sanford Company Out of Business

Town officials seek tax funds to benefit Canadian company

BY KRISTY BAILEY
Contributor

RALEIGH

At a time when the General Assembly is scrambling to cover a budget deficit estimated at between \$1.9 billion and \$2.5 billion, the Perdue administration believes it has enough spare cash on hand to consider giving Canadian steel supplier Allied Crawford nearly a half-million-dollar incentive to locate in Sanford, just nine miles down the road from a homegrown steel fabricator and service center.

Allied promises to create about 40 jobs in Lee County, where unemployment was 12.1 percent in February. But the move potentially could shutter Sanford Steel & Pipe Corp., which never has accepted government funding in its 60 years of business.

Local firm self-reliant

"We never sought it, and we don't agree with it," said Steel & Pipe President Brian McRae of the proposed incentive. "Free enterprise is free enterprise. We need \$500,000 worth of equipment right now. [The economic downturn] has been terrible, but we have managed to hang in there. The downturn in housing was the biggest thing to hit us on the service center. You just about have to give a job away to get the work."

Allied Crawford is one of nearly



The home page of the N.C. Rural Economic Development Center, commonly called The Rural Center, which is considering giving a Canadian company a half-million dollars, while a local firm that manufactures the same products never has asked for any tax money.

100 companies to receive some sort of economic incentive from Gov. Bev Perdue's administration over the past two years. During that time, the state has spent about \$2 billion to lure businesses to the state, according to the governor's website. That figure includes another \$28.3 million the state provided for a Caterpillar manufacturing facility in Lee County. The company is expected to create 325 jobs by 2014.

Meantime, the payoff from the state's economic incentive strategy has been negligible at best. In March, the state reported an unemployment rate (seasonally adjusted) of 9.7 percent — 0.9 percentage points above the national average of 8.8 percent, according to the federal Bureau of Labor Statistics.

Tax-funded incentive

What is unusual about this proposed incentive is that Allied's gain could come at a cost to a going concern.

Tax-funded incentives typically are targeted to lure a company that doesn't have any existing local competitor. In this case, however, the handout from the state could put a local company out of business.

The odd nature of this arrangement initially worked to Steel & Pipe's advantage. Lee County officials in January nixed a plan to provide \$90,000 in incentives for the Canadian rival. The county had planned to kick in \$51,000 in tax breaks; Sanford officials had considered an additional \$37,000 in unspecified incentives.

Lee County Commissioner Linda Shook later told *The Sanford Herald* that the deal was shot down because it would have given Allied Crawford an unfair advantage over Sanford Steel & Pipe.

In early February, Allied Crawford Chief Executive Officer Gary Stern blasted local officials, saying he would take his \$3.5 million investment elsewhere. "As of today, I said I'm not spending any more time on it," Stern said.

Then on Feb. 16, the Sanford City Council voted 3-2 to support and endorse Allied Crawford's application for a \$480,000 grant from the North Carolina Rural Economic Development Center, under the Building Reuse and Restoration Grant program. The city submitted an application to the Rural Center to assist Allied Crawford with renovations on the Redman Homes Building at 548 Harvey Faulk Road in Sanford. City officials agreed to provide a 3 percent match, as required by the Rural Center. The total project cost for retooling the vacant 122,000-square-foot building, built in 1997, is estimated at \$4.1 million.

Poses a threat

McRae, who told *CJ* that Steel & Pipe survived the mid-April tornadoes with no damage, believes that Allied's proposed expansion would pose a considerable threat to Steel & Pipe's

service center. Steel & Pipe buys steel in bulk from mills, breaks it down, and sells it off in pieces. In February, McRae said Steel & Pipe started getting requests for letters of credit from Allied Crawford. "They've got a guy calling on our customers who we normally service," McRae says. Some 71 percent of Steel & Pipe's revenue comes from the service center, he says.

McRae's family didn't build the company with its own hands, but might as well have. Steel & Pipe began operations as a steel service center in 1961 with a 70-foot by 60-foot runway. McRae's father, Larry, went to work for Steel & Pipe as a warehouse manager in 1966. Over the years, the company gradually expanded its operations to the 11 acres it now rests on north of Sanford.

The elder McRae was named president of the company in 1983. After founder James King died from cancer in 1986, Larry McRae became majority owner. Brian joined the company as its controller in 1993 after graduating from East Carolina University with a degree in finance. He was named president of Steel & Pipe in 2009.

Shrinking workforce

At its height in 1999, Steel & Pipe employed 57 workers. The company's work force gradually began shrinking during the post-Sept. 11, 2001 recession. In 2003, steel prices rocketed and have never corrected, says McRae. In late 2007, the recession crippled the construction industry. Today, Sanford Steel & Pipe employs 32 people.

"If they come here and receive \$500,000, and we lose one job — that's not right," McRae says. "All we want is a level playing field."

Founded in 1996, Allied Crawford has eight facilities in the Southeastern U.S. and employs approximately 181 workers companywide. The terms of the grant require Allied to create the promised jobs within 18 months of undertaking the project and to retain those jobs for a minimum of six months.

No comment

The Rural Center announced March 1 that it had awarded 46 grants totaling \$5.4 million to create jobs and promote economic development in rural counties. The center says the grants will create or retain 1,400 jobs.

Bob Huets, director of the Lee County Economic Development Corporation, who orchestrated the initial incentives deal with Lee County commissioners during a closed-session meeting in January, told *Carolina Journal* in mid-April that the EDC "is still working with that project."

"We don't like to talk about those projects until they land," Huets said. "We don't have any comments." *CJ*

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COMMENTARY

Are Schools Safe From Sexual Violence?

Are schools safe from the threat of sexual violence? Many are. But some are riddled with risk. Figures presented recently to the State Board of Education show a 68 percent jump last year in the number of sexual assaults in K-12 schools; sexual offenses spiked 69 percent.

Nationwide, federal data reveal 800 rapes or attempted rapes and 3,800 incidents of sexual battery in public high schools in 2007-08. "The statistics on sexual violence are both deeply troubling and a call to action for the nation," noted Russlynn Ali, assistant secretary for civil rights at the U.S. Department of Education, citing these and other numbers.

They are troubling. And we must act, but how? On April 4, Ali's office at the Education Department released new federal guidelines on sexual misconduct for schools. Its intrusiveness notwithstanding, the move was welcomed widely — though some acknowledged its chutzpah: *TIME*'s Katy Steinmetz called it "an unprecedented extension of the federal government's reach into schools."

Outlined in a 19-page letter to school districts and post-secondary institutions, the guidelines affirmed sexual violence and other forms of sexual harassment as discrimination prohibited by Title IX legislation. Passed in 1972, Title IX forbids sex discrimination in federally funded educational programs.

All K-12 schools, colleges, and universities, public or private, receiving federal dollars are subject to Title IX.

What are the new rules? Regardless of whether a student files a complaint, schools that know or "reasonably should know" about possible harassment must investigate; this may include off-campus incidents. Even if a criminal investigation is under way, or yields insufficient evidence to warrant criminal charges, schools must conduct independent investigations.

All schools must apply the "preponderance of the evidence" standard in investigations; culpability is determined when "it is more likely than not" that harassment

occurred. Schools must jettison the more stringent "clear-and-convincing" standard of proof many currently use.

Practically speaking, what does the "preponderance" standard mean? Schools need establish just over a 50 percent certainty of a student's guilt. Peter Lake, director of Stetson University's Center for Excellence in Higher Education Law and Policy, says, "Any slight tip of the evidence over the midpoint, which is technically less than 51 percent, is enough to tip it in favor of a 'You did it.'"

This federally mandated standard of proof is worrisome and concerns legal experts. The Education Department "is legislating through administrative fiat, in a way that is arbitrary and capricious," Hans Bader, a former Education Department attorney, wrote recently.

Prepare for the floodgates to open on sexual harassment findings. Colleges, says Lake, are "going to be handing out scarlet letters like crazy. I think one of the implicit messages of the new regs is that [the feds] kind of expect you to come up with more perpetrators that are prosecuted because we know they're out there." A fight over due process is inevitable, Lake adds: "I can just guarantee you there's going to be a showdown in the Supreme Court and the circuits over this very quickly."

Make no mistake: Sexual violence is unconscionable. We must bring those who perpetrate it to justice. And schools must do their part to keep campuses safe. But an activist Education Department that oversteps its authority is no remedy.

Will these regulations protect girls? It's doubtful. What they will do is foster an educational climate that is litigious and hostile to boys. And they will do nothing to address the disquieting, pervasive root causes of sexual violence: among them, dysfunctional and abusive families, and an increasingly violent and sexualized culture that objectifies young girls and exalts risky sexual behavior. *CJ*

Kristen Blair is a North Carolina Education Alliance Fellow.



KRISTEN BLAIR

GOP Budget Plan Would Close Plush 'Club Ed' Training Center

By DAVID N. BASS
Associate Editor

RALEIGH

A teacher training center criticized as a boondoggle would have to close its doors under spending cuts proposed by a Republican-led House subcommittee.

A professional development center with campuses in the mountains and on the Outer Banks, the North Carolina Center for the Advancement of Teaching commands \$6.1 million annually in state funding. If the GOP-initiated cuts go through, that allotment would be diverted to help fill a state budget gap estimated between \$1.9 billion and \$2.5 billion.

The GOP proposal goes far beyond Gov. Bev Perdue's recommended reduction. In her proposed budget, the governor suggested a 10 percent cutback for NCCAT and the elimination of eight positions.

The brainchild of former Gov. Jim Hunt, NCCAT offers dozens of five-day seminars throughout the year, most focusing on cultural, historical, and artistic topics, including global warming, holistic health, and pottery. Each year, the centers, sort of a "Club Ed," serve 5,000 public school teachers lucky enough to attend.

The center has drawn criticism for its lavish accommodations in lean budget times. Even so, NCCAT president Elaine Franklin said in a prepared statement that cutting the center from the budget would do significant harm to public school teachers and students.

"Given the kinds of drastic changes that teachers will face in the coming years, the professional development NCCAT provides will become even more critically important," Franklin said.

Mountain haven

As *Carolina Journal* reported in 2009, the Jackson County location includes all the bells and whistles of a mountain getaway.

Located adjacent to Western Carolina University's main campus in Cullowhee, the center's rambling stone buildings and finely manicured landscaping could be mistaken for that of an upscale mountain resort. And it

offers a range of amenities to match.

The grounds feature an idyllic lake, nature trails, and garden complete with covered picnic tables, benches, and fountain. A detached lodge has 48 individual living quarters and includes private bathrooms, common areas with access to outdoor patios, kitchens stocked with snacks, wireless Internet, and even a Hershey's Kiss on each teacher's pillow in the morning.

Inside the main conference center, visitors have access to a computer lab, indoor amphitheater, a library, a health and wellness facility, and an extensive art collection. Meals, prepared by a large culinary staff, are served in a multilevel dining room that looks out

on the gently rolling Appalachian Mountains.

In addition to the mountain destination, NCCAT recently opened a new campus in the former U.S. Coast Guard Station on Ocracoke Island. The legislature funded the Ocracoke renovation over several years at a cost of \$8 million.

Enticing teachers

According to an NCCAT press release, teachers frustrated with their jobs have decided to stick it out after attending seminars at the retreat. In one case, a teacher already had picked up an application from Target but decided against it after her week at NCCAT.

"We need good teachers in the classroom, not behind the checkout counter," said Franklin, who took NCCAT's helm in March after the previous executive director retired.

If its state appropriation is nixed, NCCAT would need to expand significantly its fundraising operation from other sources, including private donors. The group's development foundation raised \$674,812 during the 2008 tax year, according to the organization's IRS Form 990.

NCCAT spokeswoman Elizabeth Gillespie said it is in the process of searching for a development director and trying to nail down appropriate grants.

At press time, the House had not wrapped up its budget for the 2011-13 biennium. *CJ*



NCCAT recently opened this coastal location to augment its mountain retreat in Jackson County. (CJ photo by David N. Bass)

CMS Merit-Pay Proposal Has Critics on All Sides of the Debate

By KAREN WELSH
Contributor

After taking heat from both expected and unexpected quarters, House Bill 546, a measure giving Charlotte-Mecklenburg Schools the freedom to set up a merit-pay system for teachers, was modified to address some of those concerns.

The bill would authorize CMS to implement a pilot program to “develop and implement alternative salary plans for instructional personnel and school administrators designed to improve student performance and increase teacher effectiveness by financially rewarding instructional personnel and school administrators through a performance-based compensation system.”

The legislation, drafted by CMS Superintendent Peter Gorman and his staff, has alarmed teacher advocacy groups who typically oppose any sort of differential pay proposals. But it also has generated criticism from some supporters of merit pay, as they say the plan would leave too much power in the hands of district administrators and would not require the approval of teachers (as state law now requires) before it’s implemented.

The bill’s sponsor, Rep. Ruth Samuelson, R-Mecklenburg, responded to the challenges by removing some specific mandates from the proposal in the House Education Committee. Gorman also acknowledged to the committee that he and the district need to do a better job working with teachers, parents, and the larger community. Even so, the latest version — which on April 26 passed the Education Committee 25-17, largely along party lines — has failed to allay all of the critics’

concerns.

Judy Kidd, president of the North Carolina Classroom Teachers Association, said the performance-pay plan would suppress teachers, ultimately silencing their voices in the decision-making process, as they have been blocked from voting for the plan. She also said the more than 50 additional tests tied to the performance-pay plan are flawed.

“There are many questions where there are no correct answers,” she said. “They are developmentally inappropriate. It’s an exorbitant amount of instructional time lost taking tests. It’s crazy. Even with 44 administrators looking at the tests, there were so many errors. It shouldn’t have happened.”

Terry Stoops, director of education studies at the John Locke Foundation, called the extra testing strategy “ludicrous.”

“It sounds like [the tests] were thrown together at the last minute,” Stoops said. “It’s one week of testing that takes away from valuable classroom instruction.”

Pam Grundy, co-founder of Mecklenburg Acts, a grass-roots coalition of concerned parents and community



The bill would authorize a pilot program to craft alternative salary plans

members, agreed. “The scores from these tests are inaccurate,” she said. “We are unimpressed by them. ... [Teaching to the test] discourages the very best teachers. They are not going to be able to operate under the system and will leave CMS because they are not happy to teach to the test. The noncreative and noninnovative

teachers are probably the ones who will hang on.”

Kidd said Gorman has been scapegoating classroom teachers. “It’s really easy to say we’ve got a lot of ineffective teachers when it’s really an ineffective administration, which

he has doubled since he became superintendent,” she said. “CMS is so top-heavy, and he refuses to cut them and put the money in the classrooms where it belongs. The money is not filtering into the classroom.”

Grundy said the real problem at CMS is a top-heavy administration that won’t back up the principals when they want to fire a bad teacher. Instead, they make it difficult to fire them.

“Like many, I am very concerned about CMS’ inability, perhaps unwillingness, to persuade parents, teachers, and the public that their performance-

pay program warrants their support,” Stoops said. “Specifically, the district administrators have done little to change the perception that it is another force-fed, top-down initiative concocted by administrators who have too much time on their hands.”

Stoops added that JLF would support a pay-for-performance bill that supports several objective and subjective measures of classroom outcomes if more weight is given to the objective components.

Samuelson countered that H.B. 546 followed strict protocol and guidelines as it was authored and that she and Gorman worked with both teachers’ groups and parents when creating the bill.

“There’s been a lot of misinformation, and people should do their research,” she said. “There is no underhandedness here, no secrecy, no subterfuge. Everyone was working on this under a very public deadline. This bill was developed under the process that all bills are handled. There was no exception in this case.”

In late April, Samuelson emailed constituents, saying that she hoped the bill would pass the House before the May “crossover” deadline. In doing so, the bill would remain alive through this year’s long session and next year’s short session, affording time for additional revisions based on feedback lawmakers receive from “all parties” before it eventually reaches Gov. Bev Perdue.

Stoops said he supports this plan. “Compared with CMS representatives, Rep. Samuelson and her co-sponsors have done a far better job responding to the concerns of stakeholders,” he added. *CJ*

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Brevard Academy Uses Idyllic Setting to Enhance Learning

BY KAREN WELSH
Contributor

BREVARD
At the end of an idyllic lane, laced with ponds and chirping birds, sits Brevard Academy.

It's far from Raleigh and the political powers locked in debate over charter schools.

The 150 students located in this quiet, camplike setting amid rustic cabins, tall pine trees, and gurgling streams in Transylvania County are too busy learning to be bothered with the General Assembly's scuffle over legislation that could end the state's cap on charter schools. The student body has no idea it poses a threat to traditional public schools, and students are unaware of the tussles in Raleigh over restrictions on charters.

The school is in its 11th year of operation and is located on the 180-acre campus of the Brevard Music Center, a nationally renowned summer program for musically inclined children from all over the United States.

A melting pot

Principal Shirley Reed said the school is a melting pot of melded families and children at all levels — both academically and emotionally.

"We are a public school," she said. "We don't turn away students. It's an open door here."

She said the curriculum is both cutting-edge and arts-based. Students are taught to think outside the box and are expected to learn to excel in a competitive global market. They are taught Spanish from kindergarten, and are provided occupational therapy, music, art, physical education, speech, and other competitive courses.

Although in a quaint setting, technology is integral to the educational process. There are smart boards located in each classroom. Besides using a standard base curriculum, the school also uses the Core Knowledge Sequence Curriculum developed by E.D. Hirsch Jr.

"We still have traditional textbooks, but we integrate core knowledge," Reed said. "It's more global, more interactive and hands-on. There's more discussion, and the children are encouraged to ask questions and learn from their questions."

This has impressed Caroline Graham, a mother of five children, all of whom have attended Brevard Academy.

"There's a really good scope and sequence," she said. "I love this curriculum."

Graham said she's also appreciated that each of her five children, who range from good learners to learning disabled, have gotten what they've needed in their schooling experience.

"I love that no child falls through



Brighton McConnell, an eighth-grader at Brevard Academy, has spent his entire academic career at the school. (CJ photo by Karen Welsh)

the cracks," she said. "It's small enough that everyone is known in the school community. The teachers are all very receptive and willing to communicate. I feel very fortunate for my children to end up in this setting."

Lynn Williams, whose grandson attends the school, agreed. "It feels to me that the teachers here have more time to teach and to be involved in the lives of the students," she said. "There's much less politics and paperwork."

Katie Campbell serves as the Spanish teacher and provides remediation in language arts and math. She thought Brevard Academy wasn't a "real" school when she came to teach from Virginia. However, she quickly realized the joys of molding a curriculum and collaborating with other teachers to produce a quality learning experience for her students.

"I love this school," she said. "I love this environment. Kids love this environment. The teachers enjoy working together. The setting is very different. We incorporate a lot of the grades. Older kids are allowed to come in with the younger kids. It's very interactive."

Physical activity

The students also are encouraged to be active physically. They hike on spacious wooded pathways to traverse from class to class. Sometimes there's snow, other times flowers are blooming. Local animals dodge in and out of the landscape, and the birds flutter on branches above.

Williams said the expansive campus creates a unique awareness of the environment. "There are so many changes here from day to day and season to season," she said. "Sometimes it is foggy, or the geese are hanging out in the pond. The mountains and topography are amazing and incorporated

into the learning experience."

Eighth-grader Brighton McConnell has spent his entire school career at Brevard Academy. He said the 180-acre facility makes all the difference in the learning environment. That, coupled with a strong character education program that stresses respect and honesty, has made the school a place to thrive.

"It all helps me become more respectful," he said. "And the teachers will use real-life examples when we mess up. They will help us understand why we did it in the first place."

Removing the cap

It's the real-life success of the public charter school system that keeps Jim Stegall, lobbyist for the North Carolina Alliance for Public Charter Schools,

pushing to remove the cap on charter schools throughout the state. Stegall said it was quite a moment when the Rep. Marcus Brandon, D-Guilford, lone House Democrat who supported Senate Bill 8, the legislation ending the 100-school-cap on charter schools, spoke on the House floor.

"[Brandon] had promised his constituents that he was going to do whatever it took to get a charter school in his district and he kept his promise," Stegall said. "When he got up to speak it was as quiet as a graveyard. Then, one by one, his [Democratic] colleagues began to interrupt him and pepper him with questions. House Minority Leader Joe Hackney even wagged his finger at him."

Hackney's criticism

Orange County Democrat Hackney challenged Brandon: "You wait and see what the dropout rate is when the cream of the crop is drained off into charter schools and the rest of them are left there, in traditional public schools," Hackney said.

"That is flat out lying," Stegall said. "Charter schools are public schools. They have to accept anyone and everyone [who] shows up if space is available."

Stegall said charter school proponents simply want a bill that would be in the best interests of the students and parents and require the State Board of Education to be reasonable and play fair.

At press time, S.B. 8 was in a conference committee where differences between the House and Senate versions would be reconciled before a final version is sent to Gov. Bev Perdue. *CJ*

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Bill Establishing Specialized Regional High Schools Moves Forward

By KAREN McMAHAN
Contributor

At first, Senate Bill 125 would have established the North Carolina School of Agriscience and Biotechnology. This regional public high school would have served students in Chowan, Hyde, Tyrrell, and Washington counties.

But after questions arose about the need for such a specialized public school, the bill's primary sponsor, Sen. Harry Brown, R-Onslow, rewrote it, allowing any group of two or more local school boards to join and build regional schools intended to "foster, encourage, and promote the development of knowledge and skills in career clusters of critical importance to the region."

Even with the changes, critics say current state-funded programs, including NC Learn and Earn and the North Carolina Virtual Public School, satisfy the potential demand that any specialized regional school might supply. Moreover, nothing in state law prohibits local school districts from setting up cooperative endeavors like the ones in S.B. 125; the concern is that these regional schools might demand operating or capital funding from the state to keep their doors open.

The bill's primary sponsors are Brown and Sens. Fletcher Hartsell, R-Cabarrus, and Bob Atwater, D-Chatham. The idea for the agriscience/biotech school originated from a report by the JOBS (Joining Our Businesses and Schools) Commission, chaired by Lt. Gov. Walter Dalton.

In July 2010, Session Law 2010-41 authorized the Education Cabinet to "set as a priority an increase in the number of students earning post-secondary credentials in the fields of science, technology, engineering, and

mathematics [STEM] to reduce the gap between needed credentialed workers and available jobs in those fields by 2015."

Terry Stoops, director of education studies for John Locke Foundation, said "now is the worst time for lawmakers to invest in another school, especially when it's unnecessary." He cited NC Learn and Earn and the virtual public school, which now allow students to earn college credits online while they are still in high school.

NC Learn and Earn lets qualified public high school students take free online college-credit courses in the areas of science, technology, and mathematics through the Learn and Earn Online program. Even qualified students in nonpublic high schools can participate by paying some of the costs of fees and textbooks.

Students enrolled in Learn and Earn, either online or in early-college high schools, graduate with both a high school diploma and up to two years of transferable college credits or an associate's degree. One of the program's stated aims is to attract minorities, students from low-income families, and those whose parents never attended college.

NCVPS offers traditional courses, like accounting, business, and foreign languages, along with several honors courses in STEM disciplines, such as anatomy and physiology, biology, calculus, and earth science. As part of the federal Race to the Top initiative, NCVPS is getting funding to create a

new virtual STEM course model to address the needs of students "at risk of failure in math and science."

There does not, however, appear to be a strong interest among students in existing high school courses in biotechnology and agriscience. "Last year, only 352 high school students statewide completed Biotechnology and Agriscience I, and a mere 102 completed Level II," said Stoops.

Brown told *Carolina Journal* he saw the original "bill as a way to help low-wealth students by breaking down county-line barriers so education leaders can come together to create regional schools." Brown added that Jones County and many other low-income

counties do not have local money to supplement state funding for schools to support special programs. Even so, Brown did not address fully the question of why this legislation was needed when other state programs were available.

Stoops continues to question the need for this legislation. "There's nothing stopping counties now from creating a regional school. They can agree to allow students to move freely to a school in another county if they decide it's needed," he said.

As currently drafted, S.B. 125 does not include appropriations for any regional school. Instead, the bill would direct the State Board of Education to allocate an amount of money equal to the average per pupil allocation for average daily membership (ADM) from each of the four counties

for each child who attends it. Even though the bill does not include appropriations, Stoops says if it passes, backers are likely to come back next year and ask for money to fund any schools this bill would create.

Jay Schalin, a higher education analyst for the Pope Center for Higher Education Policy, told *CJ* that this bill is premised on a flawed assumption, namely a shortage of STEM graduates.

Last August, Schalin wrote about this issue shortly after the passage of Session Law 2010-41, citing data from employment experts in scientific, engineering, and technology disciplines that there's a glut of scientific workers. Many scores of thousands of graduate students and post-doctoral workers in chemistry, for example, are not advancing in their careers but instead are stuck in low-paid, temporary positions.

Schalin also cited Vivek Wadhwa, director of research at the Center for Entrepreneurship and Research Commercialization at Duke University and founder of two software firms, who said in 2006 that "fears of the U.S. losing its competitive edge to China and India for a lack of engineering graduates were greatly exaggerated." Sources also said the oversupply of young scientists and engineers dates back to the early 1970s.

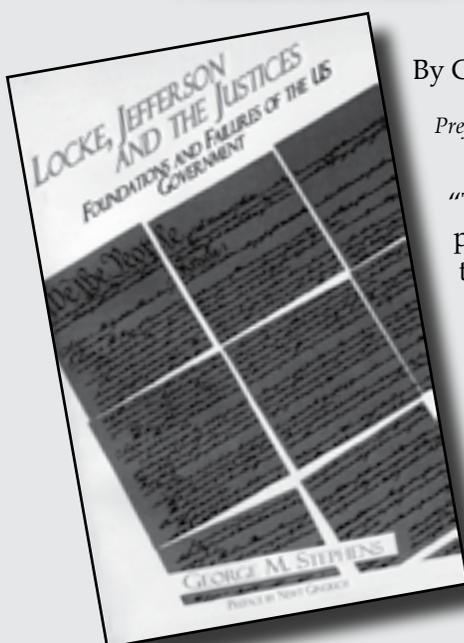
Lawmakers are ignoring other macroeconomic trends when they arbitrarily decide that a discipline or set of disciplines is the next "hot" career field. Schalin asked, "Who's to say that biotechnology and agriscience aren't the next glut of jobs?"

S.B. 125 passed the Senate Commerce Committee April 26. At press time, the bill was before the Senate Committee on Pensions & Retirement & Aging. *CJ*

Backers seek to establish a biotech/agriscience specialty high school

Locke, Jefferson and the Justices:

Foundations and Failures of the U.S. Government



By George M. Stephens

Preface by Newt Gingrich

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

Newt Gingrich
Former Speaker
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Town and County

Fontana Dam dispute

Graham County is suing Swain County over revenues tied to the Fontana Dam and Fontana Lake, reports the *Asheville Citizen-Times*.

The Fontana Dam is the tallest concrete dam east of the Rockies. It was built in the 1940s by the Tennessee Valley Authority. The dam, and the lake it creates, lie in both Graham and Swain counties, and the TVA owns significant acreage in both counties.

The TVA is a federal agency, and it pays no property taxes on the dam. Instead, Congress has specified that the TVA make yearly payment-in-lieu-of-taxes. Graham County contends that the N.C. Department of Revenue has made an error in how it calculates the PILT payments each county receives, claiming that Swain gets too large a share of the funds, while Graham gets too little.

It's highly unusual for one North Carolina county to sue another, though Graham and Swain counties do have a history of disagreement.

Wilmington water rates

The Cape Fear Public Utility Authority is raising its rates and changing how it bills for water. The move comes in part to generate additional revenue to meet debt service payments, reports the *Wilmington Star-News*.

The utility has had to invest heavily in recent years in its infrastructure, which has resulted in increasingly large debt service payments. Water consumption by existing customers, meanwhile, has decreased, and few new homes are being built. As a result, CFPUA has been forced to raise rates, with two rate increases in 2010 in addition to the rate increase CFPUA's board approved in April.

CFPUA's board did approve a change in how it bills for water. The utility charges higher rates as usage increases, with rates in three usage blocks. The amount of water needed to fall into the highest segment was increased, from 18,000 gallons bimonthly to 24,000 gallons.

To encourage use, the authority also changed how it bills for water used for irrigation. Water drawn from special irrigation meters will be billed in the lowest price block.

The move comes in response to homeowners and others putting in irrigation wells after CFPUA's previous rate increases. CJ

Haywood Saves With Private Trash Service

BY KAREN WELSH
Contributor

Rusting and outdated equipment and rising costs — including salaries and health care for workers — have mounded up higher than the trash at Haywood County's White Oak Landfill. County officials are ready to put a lid on wasteful problems and take them out.

County recycling and solid waste management director Stephen King said county services need to be improved, and this time the local government, which has run the landfill since 1993, is not able to pick up the slack. "Just like every aspect of government, our funding is getting cut, and the cost of business is going up," he said. "Right now we are an inefficient system. We need to streamline our services without costing our residents any more than possible."

King said the landfill has a footprint that can accommodate 30 or more years of additional refuse. Haywood County's Solid Waste Committee Chairman David Francis said the department recently went through an intensive audit process and looked at all the operations and potential cost savings.

"The problem is for the past 10 years the operation has been underfunded," he said. "We got to the point where we had to seriously address our problems and make sure everything was in compliance."

After a thorough review of the waste disposal operation, Francis and King proposed hiring a private company to handle trash. The county commission reviewed bids from three companies and chose Santek Environmental Services, a Tennessee-based company with operations in eight states. Santek offered the only bid saving the county money — and Haywood County expects to save \$1 million in the first year alone. Moreover, the county can focus on its recycling operations, which generate revenues for local government.

"It's a positive step for cost savings," Francis said. "It's a good deal for the county. They have been in the landfill business for 20 years, and landfills are their sole business. They know what they are doing."

Michael Sanera, director of research and local government studies at the John Locke Foundation, said the privatization of county services is a positive step forward as long as the process is transparent and uses a competitive bidding process. "We advocate competitive outsourcing," he said. "It addresses budget shortfalls. It's a fabulous arrangement. If it's done correctly, it's going to save a lot of money."

Francis said new rules and regulations for landfills added to skyrocketing costs. "It costs more to protect the environment and the residents of the land," he said. "We've had to monitor groundwater and air. We want everyone to be safe. The bottom line is we want to do whatever it takes to make that happen."

King said the county didn't have the money to keep

up with equipment maintenance and replacement. Machinery should be rotated or replaced every five years. But most of the county's equipment was more than 15 years old. He also said the county hasn't had a proper transfer station, and a corroded trash baler has meant huge inefficiencies in loading the trash from the station to the landfill.

"Our trucks are big," he said. "They can carry 17 to 18 tons, but we can only load 7 to 8 tons with the use of our Bobcat. We would have liked to replace the baler, but it was going to cost \$2 million, and we simply couldn't afford it."

As if that weren't enough, the scales and wash station need updating. There are also safety concerns for those working in and around the aging equipment.

Cheryl Dunson, executive vice president of marketing at Santek, said when the company contracts for a landfill, it usually runs everything and provides the means to close a landfill once it has reached capacity. Santek customizes

a plan for each operation. "It's a valuable partnership with local government, and it's our blueprint for business," she added.

Government entities often are unequipped to run an efficient system, Dunson said. "We come on their terms, and they still own the landfill," she said. "Also, we run the entire operation totally in-house. There are no more third-party contracts. It saves a lot of money in the



Haywood officials said their landfill operation was an "inefficient system" and too expensive for taxpayers. (Photo provided by Haywood County)

long run."

As the landfill grows in volume, Dunson said, Santek will assume responsibility for everything inside the gates. The company will make a profit by contracting with other communities to bring their refuse to the landfill.

King said handing over trash collection to a private company will let him expand the county's thriving recycling program, which actually generates revenue. The program includes aluminum cans, batteries, magazines and newspapers, plastic bottles and jugs, steel cans, glass bottles, and used electronics.

"Seventy percent of all trash is recyclable material," he said. "American companies are begging for these materials. There are businesses competing for commodities. Every day people are throwing away someone's opportunity to work. It has a direct effect."

King said ramping up recycling efforts will extend the life of the landfill.

"We encourage recycling," he said. "Currently our county is recycling at 10 to 11 percent of our volume. We take our raw, unprocessed material and sell it to a company in Greenville, S.C. It's a money-maker. Benefits are received from this. Landfilling is a cost. We're going to keep the recycling aspect and build on it."

The county also received a \$1 million grant at the beginning of the year for the infrastructure to convert the methane gas produced by rotting trash to create energy to heat buildings. CJ

Court: Attorney-Client Privilege Extends to Groups, Third Parties

By MICHAEL LOWREY
Associate Editor

RALEIGH

In the American system of justice, conversations between a lawyer and a client are considered privileged. The contents cannot be disclosed without the client's consent. Can attorney-client privilege also cover a third party, such as a benevolent association or advocacy group? The answer, according to North Carolina's highest court, is "yes."

A unanimous N.C. Supreme Court ruled that extending attorney-client privilege to advocacy groups and other membership organizations offers important protections to individuals and the associations. Otherwise, the groups would not be able to provide assistance in confidence, hindering their ability to protect the interests of their members.

Timothy Foxx was a police officer for the town of Fletcher. In October 2006 he told his superiors of a fellow officer's misconduct and was demoted and then suspended. Foxx contacted the Southern States Police Benevolent Association, of which he was a member, for assistance. Among the services the SSPBA provides its members is help in grievance and disciplinary matters, including assistance from SSPBA staff, aid in securing counsel, and payment of legal and court costs.

Lawyers and staff of the SSPBA and its North Carolina affiliate, the North Carolina Police Benevolent Association, helped Foxx file a grievance against the town. The SSPBA also referred Foxx to Shannon Lovins, an Asheville attorney, and paid a portion (the first \$100 per hour) of Lovins' fees.

After the town fired Foxx, Lovins helped Foxx in administrative appeals and filed a federal lawsuit against Fletcher and several town officials, including its police chief, Langdon Raymond. The federal lawsuit was unsuccessful and was dismissed in December 2008.

That, however, did not end the matter. Raymond had sued the SSPBA, NCPBA, and John Midgette, the executive director of the NCPBA, in state court, contending they had committed the torts of maintenance and champerty — that is, they stood to gain from

Foxx's federal lawsuit, for which they provided support. Raymond sought to have the defendants turn over documents about their relationships with Foxx and Lovins to help prove his claims.

In response, the SSPBA asserted that an attorney-client privilege existed, potentially blocking the release of materials Raymond sought. Superior Court Judge Mark Powell held that the "asserted attorney-client privilege is overruled and has been waived" but certified the issue for immediate appeal. The N.C. Court of Appeals affirmed Powell's rulings on other grounds in a short, unpublished decision.

The N.C. Supreme Court agreed to hear an appeal, and the high court overturned the lower court rulings. "We hold that a tripartite attorney-client relationship exists here, and as such certain communications between them are privileged," wrote Justice Paul Newby for the court.

Traditionally, an attorney-client privilege exists between two parties, a lawyer and the client he or she represents. Courts have recognized, though, that tripartite attorney-client relationships can exist, most typically when an insurance company hires an attorney

to represent one of its insured against a claim. The key, Newby noted, is that "the interests of both the insured and the insurer in prevailing against the plaintiff's claim are closely aligned."

The same concept applies in this case, the high court held.

"The SSPBA has a goal of protecting and promoting the livelihood of its members, and it was advancing its purpose by assisting with the employment dispute at Foxx's request." The high court also noted the broader importance of attorney-client privilege involving organizations like the SSPBA.

"Without such a relationship confidential statements made by individuals seeking assistance from advocacy organizations would be unprotected and discoverable in litigation," Newby added.

The case is *Raymond v. N.C. Police Benevolent Association, Inc.* (230PA10-1). CJ



Court: A tripartite relationship can exist

COMMENTARY

The Great Train Boondoggle

Let me see if I understand this correctly. The federal government — after taking money from federal taxpayers and creating more money out of thin air — has given North Carolina \$461 million for rail improvements between Raleigh and Charlotte that will cut 13 minutes off of the current 3-hour, 12-minute travel time. That's \$35.5 million per minute. And some believe there is no rational reason to oppose this rail spending.

At least some state lawmakers see that the idea makes no sense. They've sponsored House Bill 422. It would reject the federal money for an overly expensive, unnecessary project.

If the cost-per-minute-saved ratio is not enough to convince you that North Carolina should reject this rail funding, let's examine some other numbers that rail enthusiasts tend to ignore. First, there's the \$1.4 trillion federal deficit this year and similar deficits for many more years. When the General Assembly, governor and so-called leaders in Raleigh and Charlotte support yet another federal spending project, they are failing to recognize the country's debt crisis, and they are contributing to it by eagerly accepting more federal "free money." Governors in Florida, Indiana, and Ohio have gotten the message and are acting responsibly by turning down federal rail money.

Rail backers also seem unconcerned about Amtrak's operating losses. For example, Amtrak's Sunset Limited (New Orleans to Los Angeles) loses \$462 per passenger, and the Coast Starlight (Los Angeles to Seattle) loses \$136 per passenger. During the 2000s, Amtrak's annual deficit was around \$1 billion, and the 2009 federal stimulus package pumped an additional \$1.3 billion into Amtrak. Can anyone provide a rational argument for the case that it will be different this time?

Has anyone noticed that government money for trains means the politicization of rail transit? The late U.S. Sen. Robert Byrd, D-W.Va., was a great train enthusiast. So much so that he insisted that Amtrak stop

at Thurmond, W.Va., population 7, and other towns of his choosing. Do we really want a politicized train in North Carolina?

Then there is the claim that the project will produce 4,800 jobs. Economists tell us that government spends money taken out of the pockets of taxpayers less efficiently than taxpayers spend the money themselves. Thus, the \$461 million in taxes spent on this project also

would have produced jobs in the private sector when spent by families and individuals. These lost private-sector jobs are "unseen" and "unaccounted." They are thus useless to politicians who want photo ops and ribbon cuttings to boost their vote percentages.

In addition, these government "jobs" are not a benefit as portrayed by politicians. For any

thinking person, they are a cost. The Egyptian Pharaohs produced thousands of jobs by ordering the building of pyramids, but that did not benefit the workers or increase the wealth of Egypt. In the private sector, jobs are based on productivity of workers producing products that customers voluntarily buy in free markets. The labor is calculated into the cost of production of those products. Currently, we have politicians in both parties who choose to distort basic economics for their political gain.

Finally, press accounts paint the private freight companies as the bad guys. Think again. The private freight companies are trying to protect their right to use their private property in an efficient way. If nearly empty passenger trains take priority over full freight trains, the goods we all want to purchase will cost more. An agreement signed with the Department of Transportation means that prices for the average consumer are likely to increase.

How's that for some rational arguments against this "Great Train Boondoggle?" CJ

Michael Sanera is director of research and local government studies for the John Locke Foundation.



MICHAEL SANERA

Raleigh Considers Allowing Food Trucks — With Restrictions

Restaurants protest, saying trucks will increase competition

BY SARA BURROWS
Associate Editor

RALEIGH

Budding entrepreneurs have taken their culinary talents to the streets in “food trucks” in Durham, Carrboro, and all over the country, creating their own jobs and stimulating an otherwise stagnant economy.

Now they’re trying to make their debut in Raleigh, where the owners of struggling brick-and-mortar restaurants are doing all they can to keep out the competition.

Until now, food trucks effectively have been barred from downtown Raleigh, as they are not allowed to park on public streets or in private parking lots. City council is considering reversing the ban on at least the latter of those options. A text change to the city’s zoning ordinances would allow private businesses to host food trucks in their parking lots, so long as they were located at least 50 feet from any restaurant and weren’t occupying parking spaces required to fulfill the minimum parking requirement of the primary business.

Food truck operators would be required to get a zoning permit, a City of Raleigh business license, a North Carolina Sales and Use Certificate, and a Wake County Environmental Services permit. They also would need to provide evidence of a means for disposal of grease within an approved grease disposal facility.

Restaurant woes

Although the food truck rules still would be restrictive compared to those in other cities, restaurant owners expressed their adamant disapproval at a public hearing April 19.

Food trucks should stick to festivals and construction sites, said Alex Amra, owner of Tobacco Road Sports Café and Amra’s bar.

Amra said restaurant owners in downtown Raleigh pay high rent, high taxes, and have high overhead. He said he and others have invested a lot into making Glenwood South what it is and that it was unfair for food trucks to come in and “feed off of the business we’ve brought to these streets.”

“If you want to approve them, that’s cool,” Amra said. “We’ll go ahead and declare bankruptcy and buy some food trucks because they’re a lot cheaper.”

Niall Hanley, owner of Hibernian, Solas, and The Diner, reminded the council who paid the city’s bills. He



Klausie’s Pizza does a brisk business in downtown Raleigh recently; owner Michael Stenke says some business owners welcome the crowds he brings. (CJ photo by Sara Burrows)

joined Amra in claiming that he helped build Glenwood South.

“The city needs to understand that we rely on you guys to take care of us,” Hanley said. “We’ve been here a long time, and we’re paying our taxes. I have 120 employees.”

Two McDonald’s operators also voiced their displeasure. Rick Richards said he had just agreed to spend \$2 million to make his McDonald’s store on Western Boulevard “look right for Raleigh.”

“Allowing trucks of all vintages, sizes, and colors is not a very well-thought-out plan for such a classy city like Raleigh,” Richards said.

Food trucks already have hurt business at Richards’ Duke University location. Since food trucks have been allowed in Durham, his sales there have dropped by 10 percent, he said. If the trucks are allowed in Raleigh, he threatened, “I may have to lay people off, and the city will receive less taxes.”

Ed Mills owns one McDonald’s restaurant on Peace Street and one near Shaw University. Mills said he spent a fortune trying to comply with city regulations when he transformed a 150-year-old building into a McDonald’s.

“I had to have thousands and thousands of dollars worth of landscaping to beautify the location,” Mills said. “I had to meet handicap requirements, fire requirements, water requirements, and lighting requirements.”

“And now you tell me they don’t have to meet any of those regulations, but they can park a truck 50 feet away from me?” he asked the council.

Food truck wishes

Panamanian immigrant Nicole Belmo owns a food truck called Café

Prost, out of which she sells German pretzels, brats, and coffee. Pleading her case to the council, Belmo said food trucks provide jobs and build entrepreneurial spirit in a down economy, bring liveliness to city streets, and help reinvigorate struggling restaurants and businesses.

“Street food culture is thriving all over the world,” Belmo said. “In Panama you can buy whatever it is you want on the street for 50 cents or a dollar. That comes in handy for students and workers during lunch.”

Amy Davis, co-owner of Slip-pin’ Sliders, takes her gas-guzzling food truck on an 80-mile, round-trip commute every day from her home in Knightdale to either Carrboro or Durham. Davis would prefer to serve her

gourmet miniburgers in Raleigh and worries about wear and tear on her truck, “but we stay where we’re welcome,” she said.

Michael Stenke, who’s the owner, operator, head chef, mechanic, driver, and plumber at Klausie’s Pizza, said some businesses have asked him to park out front, saying his truck draws crowds. Stenke said he had a mutually beneficial relationship with Big Boss Brewing Company until two weeks ago, when the bar was “threatened by the city.”

Consumer choice

“I’m just an eater,” Raleigh resident Rob Lumas told the council. “I’ve enjoyed the food truck movement we’ve had going on, and I’ve been a little disappointed to see them driven to surrounding communities.”

Iraq War veteran and Raleigh resident Jonathan Lubecky addressed the council and the restaurant owners.

“I patronize Amras, The Diner, Solas and all of these restaurants ... but occasionally I want to go get a greasy piece of pizza out of a food truck,” Lubecky said. And in America, he argued, he should have every right to that choice.

“I find it abhorrent when people say ‘pass a law because we don’t like competition,’” Lubecky said. “That’s the antithesis of what this country was founded on, it’s not what I fought for, and it’s not what I want the city I live in to do.”

“There’s a simple solution to competition,” he added. “Build a better product.”

The city planning commission will consider the issue further and send it back to the council in the next four to six weeks for a final decision. CJ

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Davis Garage Pits W-S Businessman Against Transit Planners

BY SAM A. HIEB
Contributor

WINSTON-SALEM

Take a look around Davis Garage, and you'll see more than a few reminders of its former glory days as a rail depot.

Still visible are signs reading "Travelers Aid," "Customer Lounge," and "Chapel." Garage customers drop off their keys through the old ticket window, leaning against the same marble counter rail passengers did half a century ago. One easily imagines men in hats and wool suits hurriedly passing through the concourse on the way to do business in the Camel City.

Owner Harvey Davis proudly displays the April 15, 1926, special edition of the *Winston-Salem Journal* celebrating the opening of the new rail depot. It seems as though mainstream media was as excited about trains back then as they are today.

Today's excitement over rail is sparked by the government's desire to increase rail travel. North Carolina is slated to receive \$461 million in federal stimulus dollars designed to establish a higher-speed rail line with the hope that citizens will abandon their automobiles for the romance of the rail car.

Davis Garage, which has been in business at different locations since 1939, finds itself caught up in all that excitement. The City of Winston-Salem hopes to use a \$1.3 million federal grant to convert the garage into a modern-day "transportation hub," with the expectation that it would connect to the higher-speed rail line.

But it may be some time before the city can acquire the historic Davis Garage property, let alone bring its vision of a transportation hub to life. Davis and city officials are far apart in their assessments of a fair market value for the parcel. Nor can the two sides agree on a new location for the business, which Davis plans to keep operating. The dispute may well be settled through litigation rather than negotiation.

Ideas of a public-private mixed-use development have been bandied about, but back in September the City Council debated acquiring the property through eminent domain.

The council passed a resolution delaying any



Winston-Salem wants to use the Davis Garage building, which once was a train station, as a rail depot for a proposed high-speed rail line. The city wants to use eminent domain to obtain the structure from Harry Davis, owner of the garage. (Photo courtesy davisgarage.org)

condemnation for 30 days and entering into good-faith negotiations with Davis. The resolution passed 6-2, with council members Robert Clark and Vivian Burke voting "no."

During council debate, Clark's argument against the resolution was the garage's location, two miles from the center of downtown. There is also limited parking, which would make it difficult for commuters who might park at the depot to catch the train.

"I do not think this is the appropriate place or the appropriate building for a train station," Clark said.

Clark also expressed his reservations about using eminent domain to acquire the property. "If we take the step of taking someone's property, it should be as a last resort, not a first resort," he said.

Council member Dan Besse countered Clark's

argument. "I would take issue with the presumption that a transit center is not a legitimate occasion to use eminent domain," Besse said. "This is a public purpose. This is transportation. We would not hesitate to use eminent domain to acquire the property to build a highway interchange."

The city eventually filed for eminent domain Dec. 30. Assistant City Manager Greg Turner told *Carolina Journal* that the city is moving forward with the acquisition, but it also is waiting on another appraisal from Davis "in order to be able to consider any alternatives."

Davis told *CJ* he is seeking \$1.8 million for the property, while the city is offering \$681,000, according to the eminent domain filing.

Davis believes the city's offer is low, considering the property's location. "You can't find a piece of land like this for that price," Davis said. "They're few and far between within the city limits."

Complicating matters is Davis' battle with the city on another front. He owns a separate parcel of property on the corner of Jonestown and Stratford roads where he wants to relocate the garage, but the city planning board voted down his rezoning request.

While nearby residents protested the location of the garage, city staff also made its case based on long-range planning for the area, which calls for moderate-density residential development.

Davis said he can't understand the city's motivations in denying the rezoning, with other commercial development nearby. "I don't know what their issues are, other than they just don't want me there," he said.

The council was scheduled to hear Davis' rezoning case at its April 4 meeting, but Davis withdrew the request to allow more time to address residents' concerns before he refiles his request. At press time, no further action had been taken.

In the meantime, if an agreement on his current location cannot be worked out with the city, Davis says he will file a lawsuit.

Right now, he believes a court battle is inevitable. "I see no open doors where they want to negotiate," he said. "Fair is fair." *CJ*

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Misleading Counting Methods Inflate Rail Jobs Number

Continued from Page 1

1,200 jobs a year for the four-year duration of the project. When asked whether she was familiar with the method used for estimating the jobs, she said:

"You know, what I'm aware of on rail is that the money would help us do what we need to do in this state, and what we need to do in the country, from my perspective as somebody who's had a chance to visit other countries and see their transportation system, that we need to focus on some type of transportation possibilities other than cars and buses. If it's 1,200 or 12,000 in this economy, they are important jobs. I watched the recovery dollars for roads come into North Carolina, and I saw companies go back to work. I saw projects getting built. I'm watching the Yadkin River Bridge with great expectation. And so if the job estimates are right or wrong, the bottom line is it's jobs for our people."

A political strategy

Obama economic advisers Christina Romer and Jared Bernstein used the job-years concept in a report they released 10 days before Obama was inaugurated Jan. 20, 2009. Romer was the designated chairwoman of the president's Council of Economic Advisers, and Bernstein was chief economist for Vice President-elect Joe Biden.

President-elect Obama already had declared that his stimulus plan should save or create 3 million jobs by the end of 2010. The transition team evaluated three main types of fiscal stimulus: government spending, tax cuts, and direct aid to help states balance their budgets. Their research became the basis for the stimulus bill, which became law Feb. 17, 2009.

A May 2009 report from the Council of Economic Advisers, titled "Estimates of Job Creation from the American Recovery and Reinvestment Act of 2009," revealed more detail on how jobs would be counted based on the earlier Romer/Bernstein report.

"For some purposes, looking at the effects at a single point in time is not the most useful approach. Since the economy is likely to be operating below capacity for several years, job creation any time over the next several years is valuable. Thus a second way to look at the employment effects of the program is to estimate the number of job-years the program will create over the President's first term. A job-year means simply one job for one year."

The report estimated the amount of spending needed to create one job-year for the three different types of fiscal stimulus. They were:

- Government spending: \$92,136 per job-year,
- State fiscal relief: \$116,603 per job-year, and



The proposed high-speed rail line would run from Charlotte to Raleigh on the same route as this Amtrak train shown at Raleigh's downtown station. (CJ photo by Don Carrington.)

- Tax cuts: \$145,351 per job-year.

The Obama team's model concluded that the cheapest way to create a job-year was with direct government subsidies. The next-most costly method would come through federal assistance to state governments. Finally, the most expensive job-year-creation program would be by cutting taxes.

"In estimating the job-years created by direct government spending, agencies will be asked to use the simple rule that \$92,000 creates one job-year," the report stated.

DOT and other grant recipients are required to use the job-years concept in the grant application process, but after a project receives funding, the job-years method seems to vanish.

Why the term "job-year"? Why not "job-month" (one person holding the same job for 12 months = 12 job-months), "job-week," or "job-day"?

The executive director and other staff at the Council of Economic Advisers refused to discuss the job-years concept with *CJ*. White House Regional Media Director Hannah August also refused to take or return phone calls from *CJ*.

The architects of the job-years concept are no longer in the administration. Romer returned to her position on the University of California

economics faculty in September 2010. Bernstein left Biden's staff at the end of April to join the liberal Center for Budget and Policy Priorities.

The rail jobs estimate

Dividing the \$545 million in federal spending on a high-speed rail project by \$92,000 per job yields 5,924 total job-years for the project. But also as noted in the table below, DOT decided to use a "conservative estimate using only the construction and professional jobs," and rounded the figure down to 4,800 job-years.

The stimulus act does impose specific reporting requirements for grant recipients. Every recipient of at least \$25,000 must report quarterly to www.federalreporting.gov. The reports must include information on the use of funding and project status, and document any jobs funded with recovery dollars.

The job-years concept is dropped in the actual reporting to avoid multiple counting of the same job. A March 30 report issued by former Rep. Bob

Etheridge, director of North Carolina's Office of Economic Recovery and Investment, stated that the direct impact of the stimulus in the state was "approximately 25,000 jobs created or saved." The report also stated that as of the end of 2010, "public and private entities and individuals in North Carolina have received approximately \$16.5 billion in total ARRA impact (not including tax cuts)."

The official job counters

According to its mission statement, the Bureau of Labor Statistics within the U.S. Department of Labor is the principal federal agency responsible for "measuring labor market activity, working conditions, and price changes in the economy. Its mission is to collect, analyze, and disseminate essential economic information to support public and private decision-making. As an independent statistical agency, BLS serves its diverse user communities by providing products and services that are objective, timely, accurate, and relevant."

A *CJ* review of the information available from BLS revealed that the agency does not use the job-years concept, and the term "job-years" as used by the Obama administration does not appear in any articles in the agency publication *Monthly Labor Review*.

CJ contacted the BLS press office and explained how N.C. officials were using it to count jobs. Information specialist Stacey Standish was unable to offer any insight. "We are focused on total jobs in a month," she said.

"Our expertise is not in that area. We don't comment on other people's data."

The N.C. Employment Security Commission's Labor Market Information Division is the North Carolina contractor for some of the BLS programs, including the monthly establishment survey, the method used most to measure jobs at any point in time.

ESC spokesman Larry Parker said the seasonally adjusted non-farm employment in North Carolina was 4,177,400 in February 2008, reached a low of 3,848,800 in February 2010, and was 3,894,700 when last measured in March. The state has lost 282,700 jobs from the onset of the recession.

CJ discussed the job-years concept with Parker, but he said he couldn't comment. "We unfortunately cannot comment because that is data we do not calculate," he said. *CJ*

NCDOT and other applicants are required to use the 'job-years' metric

	NC T2.1 - 3rd Frequency	NC T2.2 - 4th Frequency	Congestion Mitigation	Total
2010	66	394	437	897
2011	132	1198	437	1767
2012	0	1800	0	1800
2013	0	1276	0	1276
	198	4668	874	5740

This chart, from a NCDOT report, estimates the number of "job-years" that would be created by the federal high-speed rail grant. Ironically, the 4,800 jobs estimate is the result of a mistaken transposition of 4,668 to 4,866, which was then rounded down to 4,800 as a "conservative estimate."

Packer Questions Environmental Calls Made by DENR

Continued from Page 1

lenged by property owners. When an administrative law judge rules against DENR after it has fined a landowner, the next appeal is not to another court but instead to the agency itself.

DENR has the power to overrule a judge when it loses. That's what happened to Packer.

"You shouldn't have the person that can overrule a judge be the boss of the man that leveled the fine," Packer told *CJ*.

Packer, who lives in Charlotte, has been fighting DENR for more than four years over the alleged violations at Olde Beau, an 840-acre residential and golf community on U.S. Highway 21 at Roaring Gap. He told *CJ* that he complied with everything DENR inspectors asked him to do when in 2005 he began building about a mile of roads in a new 80-acre section at Olde Beau.

DENR's basic argument is that Olde Beau did not follow the approved erosion control plan, and sedimentation eventually could have made its way to the headwaters of the nearby Mitchell River.

Until a year ago, Packer, who is not an attorney, represented Olde Beau at two administrative hearings. Last year, he hired Charlotte attorney Kevin Byrnes to continue his battle in Superior Court.

At an April hearing in Mecklenburg County Superior Court, a judge ordered a new administrative hearing based on new evidence submitted by Packer. The new evidence involved a troubled DENR project that resulted in significant sedimentation violations in a nearby trout stream.

Three lawyers representing DENR from Attorney General Roy Cooper's office argued that the Olde Beau and Glade Creek situations were unrelated. Packer's attorney successfully argued that DENR's treatment of one of its own programs was inconsistent with the way Olde Beau was treated.

New evidence

Just six miles from Olde Beau is a DENR stream restoration project called Glade Creek. Packer became aware of the project last fall when someone pointed out significant sedimentation and erosion problems in the project managed by DENR's Environmental Enhancement Program. In December, DENR's Land Quality Section headed by Francis M. Nevils cited the EEP program for violations at Glade Creek. Nevils is the same DENR official who has sought fines from Packer.

Both DENR sections decided the problems were due to severe cold and a "greater than 10-year storm." Fines never were issued, and the site was brought back into compliance in



During a break in Superior Court last month, Packer makes a point to his attorney Kevin Byrnes left and DENR's attorney John Payne, right. (CJ photo by Don Carrington)

March.

In an affidavit, Nevils stated that other EEP projects have received violation notices, but he never has issued a civil penalty.

The EEP program is intended to offset environmental damage from development. A recent *News & Observer* series about the program revealed the state has "spent roughly \$140 million on work that is failing, needs significant repair, or is too far away from distressed sources of drinking water."

Dozens of projects "have not produced the expected improvements for streams and wetlands, which filter water on its way to lakes and reservoirs. Some projects have damaged water quality by dumping sediment into waterways," according to the newspaper.

DENR overruled judge

In December 2008 Nevils filed a Notice of Violation in Alleghany County Superior Court against Olde Beau, assessing a civil penalty of \$130 day for a 147-day period for a total fine of \$19,110. Packer objected and asked for the next step — a hearing in front of a state administrative law judge.

In August 2009, an administrative law judge concluded that while Packer sometimes failed to follow an approved erosion control plan, his development activities resulted in "the complete lack of any off-site sedimentation or harm to the property of any other entity, including the state," and recommended a lesser fine of \$6,615.

Assistant Secretary for the Environment Robin Smith conducted a subsequent hearing for a "Final Agency Decision." Smith overruled the administrative law judge's findings and set Packer's fine at \$14,700.

Packer said the final agency review process was hardly impartial, because Land Resources Section Chief

Nevils reports to Land Resources Division Director James D. Simmons, who reports to Smith.

Very few contested cases like Packer's end up in Superior Court. Companies or individuals unhappy with a DENR fine can take the next step of filing a petition for a review by the North Carolina Office of Administrative Hearings. Petitioners filed 247 DENR cases with the office in 2009.

The filing and actual hearing often take place in different years. There were only 31 DENR administrative law judge decisions in 2009, because most cases get settled prior to the hearing. A judge's decision at the administrative hearing is not final. The case goes back to DENR for a final ruling. Six of those, including the Olde Beau case, were appealed to Superior Court by either the state or the petitioners.

Erosion law

The North Carolina General Assembly passed a Sedimentation Pollution Control Act in 1973 to address pollution problems associated with sedimentation entering streams, lakes, and other waters.

The purpose of the act was to create a program and minimal standards to permit the continued development of the state with the least detrimental effects from pollution by sedimentation.

The act established the Sedimentation Control Commission and made

it responsible for developing the rules and regulations of a comprehensive erosion and sedimentation control program.

The governor appoints the commission members. The DENR secretary administers the program through seven regional offices.

The current rules require anyone involved in land-disturbing activity of a parcel one acre or more to develop a site-specific sedimentation control plan and have that plan approved by DENR. DENR officials routinely inspect construction sites to ensure the land-disturbing activity is in compliance with the law. They work to resolve problems and may issue an official Notice of Violation and impose fines on the violator.

When a developer objects to a NOV or fine and petitions the Office of Administrative Hearings for review, DENR classifies the situation as a contested case.

The General Assembly established the administrative law process, a rule-making and adjudicatory procedure for state agencies. The procedures "ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administration process."

But since the final decision rests with the agency, an administrative law judge's ruling may be overruled, as happened in Packer's case. *CJ*

Olde Beau Timeline

- **August 2005** — Olde Beau received approval from DENR to develop Beau's View, a new 87-acre section of the 800-acre golf course project.
- **November 2005-April 2006** — Major excavation to build roads.
- **February 2006** — DENR inspector makes visit and determines project in compliance with no potential permit violations.
- **September 2006** — New roadwork completed.
- **October 2006** — DENR inspects project and declares problems. Packer calls for a meeting.
- **November 2006** — DENR representative meets with Olde Beau managers to review problems.
- **April 2008** — DENR land quality regional engineer sends a Notice of Violation to Olde Beau calling for corrective action.
- **June-September 2008** — DENR inspectors determine through subsequent inspections that the site continued to be in violation for one or more reasons.
- **December 2008** — Land Quality Section Chief Francis Nevils filed a Notice of Violation in Alleghany County Superior Court against Olde Beau, assessing a civil penalty of \$130/day for a 147-day period, for a total of \$19,110.
- **July 2009** — *Olde Beau vs. NCDENR* hearing in Sparta in front of Administrative Law Judge Beecher Gray
- **August 2009** — Gray issues decision concluding that even though no damage occurred, Olde Beau did not always follow the approved erosion control plan. He sets the fine at \$6,615.
- **November 2009** — DENR Secretary Dee Freeman delegated the authority to Assistant Secretary for the Environment Robin W. Smith to make a final decision in the Olde Beau case.
- **March 2010** — Smith issues a Final Agency Decision overruling Gray and fines Olde Beau \$14,700, based on \$100 a day for 147 days.
- **April 2010** — Olde Beau appeals DENR ruling to Superior Court.
- **October 2010** — Packer learns of problems at DENR's Glade Creek project.
- **April 2011** — Superior Court Judge Forrest Bridges approves Olde Beau's motion for a new administrative hearing based on new evidence involving problems at DENR's Glade Creek project.

Boskin: We Need to Get Rid of 'Too Big to Fail' as a Bailout Excuse

BY CJ STAFF

RALEIGH

Ever since the United States officially climbed out of the latest recession, uncertainty has remained about the economic future. People have asked what government should do to help give the economy a boost. Those who attended this year's John W. Pope Lecture at North Carolina State University heard ideas from Michael Boskin, senior fellow at the Hoover Institution and professor of economics at Stanford University. Boskin shared some of his ideas with Mitch Kokai for Carolina Journal Radio. (Head to <http://www.carolina-journal.com/cjradio/> to find a station near you or to learn about the weekly CJ Radio podcast.)

Kokai: What do we need to do?

Boskin: On the policy front, both monetary and fiscal policy should have a more coherent exit strategy from their extreme responses to the severe financial crisis. Whether you believe they were right or wrong, they could have been improved, they should have been done somewhat differently, as I do. But right now, no one's quite sure when and where the Fed's going to exit. It's fine if they want to get some more data, but they should provide more information about how they're going to unwind their balance sheet from this extreme holding of a wide range of assets — the mortgage-backed securities and so on.

The Fed is now the largest holder of treasuries in the world, more than the Chinese and the Japanese, who are second and third. So they're going to have to not only raise interest rates as the economy improves, and simultaneously shrink their balance sheet — or in conjunction shrink their balance sheet — they need to give a little more information about how they're going to do it. They've said they know how to do it. They have the tools. But if they could provide a little more clarity on that, that would reduce some uncertainty.

Right now, there's a growing anxiety about the risk of inflation. There's a substantial inflation in commodity prices, not generally. Inflation is getting bad in the developing world, and Russia and China and India and Brazil are starting to see higher and higher inflation — not the historic banana-republic levels in Latin America — but concern for their central banks, and they're trying to cool their economies some. And people are increasingly concerned that will flow generally into inflation, as the developed economies improve, and especially with the Federal Reserve having this huge overhang of excess reserve sitting there for banks to lend. We want banks to lend, but as they

Right now, there's a growing anxiety about the risk of inflation. There's a substantial inflation in commodity prices, not generally. Inflation is getting bad in the developing world, and Russia and China and India and Brazil are starting to see higher and higher inflation. ...

*Michael Boskin
Senior Fellow
The Hoover Institution*



start to take the excess reserves the Fed has created for them by buying all these securities, they start adding that to the money supply, eventually — not immediately, but eventually — it will become inflationary.

So the Fed's got a tricky exit strategy. It's more complicated than usual, and sometimes in the past, even just the regular exit from low interest rates has beguiled the Fed. They've been too late, and we've gotten inflation. So the worst of all outcomes is we'd go through all this economic downturn, high unemployment, a horrible recession, and then wind up in a few years with bad inflation and have to go through another boom-bust cycle.

Simultaneously, on the fiscal side, we very much need to have a clear exit strategy about consolidating the budget. In my view, it should be overwhelming on the spending side, but whatever they decide, so that we know there won't be that pressure to monetize it, No. 1. Businesses will have some certainty about what their future taxes will be and so on, so they won't worry there will be large, looming tax hikes. That's one of the things that has delayed hiring: President Obama's noneconomic crisis response on things like health care and so on, which were kind of sold partly to do with the crisis, but had nothing to do with the crisis ... whether you believe that they're a good idea or not — I think that what was done was not a good idea — but they're adding a lot of costs, and firms were unsure about the regulation and the cost, and especially small businesses have delayed hiring.

So those are two big ones. On the financial regulation side, we need a lot of clarity, and we should be moving more toward things like enhanced bankruptcy, so a too-big-to-fail institution could quickly be unwound, so

you wouldn't cause a run if it got in trouble. And less on this command-and-control regulation. We, in fact, have institutionalized too-big-to-fail with [the] Dodd-Frank [financial regulations]. There's been a big increase in the concentration of assets in the largest banks. By being deemed too big to fail and having the government's backing, investors will lend them money at lower rates, so they're making it harder for smaller, well-run banks to compete in the capital market and compete against them. So we're going to have to adjust these things.

Kokai: Do the people in Washington get it? Do they understand changes need to be made?

Boskin: Well, I think it varies by person and by party, and within each party there are people who are more limited-government and larger, big-government. You know, the Republicans tend to be for more limited government than the Democrats, although there's some overlap. So what tends to happen is many people tend to be very much in favor of more limited government, balanced budgets, low taxes, and limited spending in the abstract, in general. And then when it comes to their specific program that tends to affect them, they're big-government and let other people pay for it.

And we need to unravel that and have a deep conversation. There's vast amounts of inefficiency and ineffectiveness in the federal budget, which ought to be unwound, even if we didn't have the financial crisis and the big deficit and debt. But it's especially important we do that. There's massive cross-hauling in the budget. North Carolinians pay taxes to the federal government to send money to North Carolina and other states, to

spend on things they wouldn't vote for. That doesn't make a whole bunch of sense in most instances. In some, it does, if there are multistate benefits and you need a higher order of government to intervene. We pay large amounts of money for idle cropland. We pay large amounts of funds to subsidize ethanol, which drives up food prices, and is not only harmful here, but especially in the developing world, where people spend a much higher fraction of their budget on food, and actually on balance probably harms the environment.

So we need to have a serious conversation about these things and what can be an orderly consolidation, elimination of things that aren't doing well and we don't need to do, consolidation of programs. We have something like 47 job training programs. That's a rough estimate. That may be off by a little. And there's no reason those shouldn't be consolidated and vouchered, so people who we need retraining for, who need retraining, can get something that's really commercially useful for them, in a more effective and more efficient way.

... We need the government to have one-stop-shopping solution centers. We've got 42 percent of federal civilian employees who are due to retire over the next decade, and we could let that attrition occur and replace half of them with technology and improve services, save hundreds of billions of dollars. Technology executives look at how the federal government handles its IT and say, "You could save a trillion dollars in a decade by streamlining supply centers, by consolidation, by using the advanced business analytics private firms do to identify improper payments, by moving off of immense amounts of custom code into standardized software that businesses use." CJ

Funding-Enrollment Storm Hits Randolph CC Campus

By DUKE CHESTON
Contributor

In the fall semester of 2009, North Carolina's community colleges were hit concurrently with a surge in enrollment and drop in funding so severe that Randolph Community College President Robert Shackelford dubbed it a "perfect storm."

At his central North Carolina school, enrollment increased 16 percent while state funding dropped 11 percent. This predicament led Shackelford to ask some professors to teach as many as eight classes — equivalent to 24 contact hours, or hours in front of students, per week — in a single semester. For comparison, the Southern Association of Colleges and Schools, the regional accrediting agency, suggests a limit of 15 contact hours per week.

Such drastic actions nearly had some very serious repercussions for Randolph — a potential loss of accreditation by SACS. Colleges must be accredited to receive federal financial aid.

Shackelford said Randolph has had it tough over the past three years, claiming that enrollment increased 35 percent while state funds decreased by 15 percent. But North Carolina Community College System Executive Vice President Kennon Briggs says Randolph was hardly alone.

Statewide, high unemployment from the down economy led to an extra 31,000 students enrolling in community colleges in 2009-10. It was, Briggs said, "the largest academic year enrollment growth in the system's history." Since the state (the source of two-thirds of the colleges' funding) funds the system in arrears — meaning the colleges get paid for students they teach a year after they have taught them — this surge in enrollment put an especially acute strain on community colleges.

Many other community colleges were faced with either turning away students, cutting classes, or asking teachers to teach more. Nearly all of them asked teachers to take on an extra class, Briggs said. Randolph was just the only one to get in trouble with its accrediting agency for its teaching loads.

SACS officials arrived in September 2009 for their once-a-decade

review. The independent accrediting agency does not have a codified limit on teaching loads, but officials said eight classes per semester were unacceptable. They objected because, as Shackelford put it, "when faculty teach this many hours, your education quality outcomes are sacrificed." Consequently, Randolph received a warning from SACS, pending further review.

After hiring 35 new instructors, Shackelford is hoping that SACS will accredit the college fully when it reports back in June. He also downplayed the burden on faculty during fall 2009. Eight three-hour-per week classes constituted only slightly more per semester than the usual limit of 21 weekly contact hours. "I did not receive a single complaint from a faculty member," he noted.

Moreover, a community college faculty's "job is to teach," according to Shackelford. Faculty members don't have research responsibilities as they do in the UNC system, he said. "Our faculty aren't evaluated and they don't receive tenure based on publications, grants, and research," so teaching loads are higher.

Furthermore, Shackelford pointed out, many faculty members teach multiple sections of the same class. This doesn't require as much preparation as it may appear. "If you're teaching six classes, say 18 hours," he continued, "you're probably teaching two sections of one class, two sections of another class, so you probably have three preparations, not six."

Professors still have more papers and tests to grade, he admitted. Still, the average teaching load for fall 2009 was 21 hours, within acceptable limits, and it was meant to be temporary.

Since 2009, the situation has improved, Briggs explained. The large influx of students in that year resulted in a substantial increase in funding the following year, allowing for an eased teaching load on faculty.

With enrollment growth slowed, the fall 2009 episode is unlikely to repeat in the near future. "We're still growing," said Briggs, "but clearly not at the pace we were." CJ

Duke Cheston is a reporter/writer for the John W. Pope Center for Higher Education Policy (popcenter.org).



COMMENTARY

Multiple Pathways To Careers

In 2009, President Obama announced that by 2020 the United States should lead the world with the highest percentage of college graduates. His ambitious statement fueled the idea — already popular — that "everyone" ought to go to college.

Critics rightly challenged Obama's proposal for many reasons, from its high cost to the fact that it will force unprepared students into college work.

But to be fair, the president's message was mixed with a more modest one. He urged all students to obtain at least some post-secondary education.

"So tonight, I ask every American to commit to at least one year or more of higher education or career training," he said on Feb. 24, 2009. "This can be community college or a four-year school; vocational training or an apprenticeship."

That goal is more flexible and thus more realistic. It recognizes alternative routes to a successful life.

One organization trying to help students find those alternatives is the Harvard Graduate School of Education, which recently issued a report called "Pathways to Prosperity." The authors pay obeisance to Obama's aspirations to boost the number of college graduates ("something we should all be rooting for"), but they also state bluntly that the pressure to send everybody to college, along with the disparagement of vocational education, is making life difficult for many young people.

Like Obama, the authors believe that some post-secondary education is warranted for nearly everyone. But because they include such a broad range of choices, from occupational certificates to internships and even job shadowing, they offer a fresh way of thinking about young people and their careers.

"'College for all' may be the mantra, but the hard reality is that fewer than one in three young people achieve the dream," write William C. Symonds, Robert B. Schwartz, and Ronald Ferguson, the authors. "Behaving as though four-year college is the only acceptable route to success works well for affluent students. ... But it clearly does not work well for many, espe-

cially young men." (Women earn 57 percent of all degrees.)

This is particularly sad because there are opportunities for good jobs without bachelor's degrees. According to the Georgetown Center, 27 percent of people with "post-secondary licenses or certificates" earn more than those with bachelor's degrees. Furthermore, between now and 2018, only 33 percent of all jobs will require a bachelor's degree.

The Harvard report even suggests that the "college for all" mantra has worsened prospects for students unsuited for college.

Requirements that high school students take college-prep courses have led more students to quit without even getting a high school diploma, says James Stone of the National Research Center for Career & Technical Education.

So what's to be done? The authors advocate "an American strategy" for CTE. They want educators, working with employers, to

fashion a broader range of pathways for young people, especially those unlikely to get four-year degrees. At the core is "workplace learning" — enabling high school and community college students to try out jobs and building clearer connections between programs of study and future careers.

Interestingly, we already have an "American strategy" of multiple pathways to careers. As *Washington Post* columnist Robert J. Samuelson wrote in 2006, a post-secondary "American learning system" already exists, one that partly makes up for the weaknesses of the nation's K-12 schools. Its resources include community colleges, for-profit schools, adult extension courses, job training, online courses, and even self-help books. It may be messy and uncoordinated, but it is full of "second chances" and opportunities for young people to figure out what they really want to do.

Let's hope that this report will increase interest in that "American learning system." CJ

Jane S. Shaw is president of the John W. Pope Center for Higher Education Policy (popcenter.org).



JANE SHAW

Campus Briefs

Two universities in Raleigh, both historically black private colleges, suffered damage from the tornadoes that swept the state in mid-April. Shaw University, in downtown Raleigh, canceled the rest of the spring semester due to severe damage on campus. St. Augustine's College, at the edge of downtown, resumed classes four days after the tornado hit.

At press time, neither institution had an estimate of what repairs will cost. Shaw sustained heavy damage to the student center, which houses the university's only dining hall. The inability to provide alternative dining for students was the major reason for ending the semester, according to university officials.

Other buildings were damaged as well. The roof was blown off one campus office building. Many dorm windows were shattered.

After the disaster, Shaw President Irma McLaurin released a statement assuring students that Shaw "will come through this crisis stronger and more self-assured than ever, as long as we work together as a community."

A cleanup day for Shaw was held on April 21. Students from nearby universities also participated in the effort.

St. Augustine's College suffered less damage. Many trees were uprooted, and several buildings lost shingles, but the main campus classroom and dormitory buildings were not damaged.

No students or university personnel at either campus were injured in the storm.

Maintenance crews from Peace College, a women's college also located in Raleigh, traveled to St. Augustine's to help students get back to class following the tornadoes. Peace College's campus suffered no significant damage from the storm.

N.C. State University student government is helping lead a project named Universities United: Supporting our State. The project aims to raise \$10,000 before the end of exams to help those in the N.C. State, Shaw, and St. Augustine's communities who were affected by the storms. They also are encouraging student groups to hold their own fundraising efforts.

The campuses of N.C. State and Meredith College, both several miles to the west of Shaw, suffered no damage. CJ

Jenna Ashley Robinson is outreach coordinator for the John W. Pope Center for Higher Education Policy (popecenter.org).

UNC System Cuts Could Reach 15.5 Percent

By JAY SCHALIN
Contributor

RALEIGH
The University of North Carolina system will take a funding hit this year, according to the working version of the education budget introduced by the House education appropriations subcommittee on April 12. This version will be revised many times before a final budget is achieved, but it provides the basic framework for subsequent adaptations.

Some reduction in UNC's appropriation is inevitable, because the gap between state revenues and expenditures is so large — anywhere from \$1.9 billion to \$2.4 billion. In this initial draft of the education budget, UNC was given an overall cut of \$447 million, or 15.5 percent — the highest of any state agency. (The continuation budget — what this year's higher education appropriations would be if no changes were made — is \$2.89 billion.)

As can be expected, this development is not popular at UNC. At the April Board of Governors meeting, projections were unveiled showing that a 15 percent reduction would force a loss of 3,200 jobs — 1,500 of them faculty positions. System President Thomas Ross expressed dismay, stating that cuts of such magnitude "could not be absorbed without inflicting irreparable damage to our academic quality and reputation."

Yet there is some silver lining for UNC: The vast majority of cuts consist of \$469 million in "management flexibility reduction," permitting the universities to decide how to cut, rather than having specific measures imposed on the system by the General Assembly. And while the 15.5 percent cut may seem huge, House Appropriations Subcommittee Co-Chairman Hugh Blackwell, R-Burke, pointed out that the state's appropriation makes up less than one-third of the university system's entire \$8.3 billion budget.

Additionally, many faculty positions are unfilled, meaning far fewer than 1,500 professors will need to be laid off. House Majority Leader Paul Stam, R-Wake, further put the layoffs into perspective: The UNC system has an annual turnover rate of 10 percent of its 48,000-member work force, meaning that roughly 4,800 employees leave the system each year as a natural process.

The budget proposal fully funds UNC's request for \$46.8 million in enrollment growth funds (a large reason why the total cut is less than the management flexibility cut). Increasing enrollment tends to conflict with a shrinking budget: At the April Board of Governors meeting, several administrators and governors lamented that students were having trouble getting the classes they needed due to excessive enrollment in the face of two years of reductions.



Other changes include:

- An additional \$18.5 million every year for building maintenance.
- An end to the permanent \$12 million appropriation to UNC's Center for Public Television. The center gets a one-year reprieve of \$10.6 million, but will have to become self-supporting after that.
- A temporary end to a \$44 million annual appropriation to UNC Health Care for charity treatment of uninsured patients. The hospital system had managed to build up \$732 million in reserves; the temporary adjustment will continue for at least two years.

The House budget proposal also tries to get a handle on the explosive growth in financial aid. State spending on financial aid and tuition waivers for college students currently exceeds \$300 million annually. UNC need-based aid, given solely according to the family income of students, has grown much faster than enrollment, which was growing twice as fast as the population.

In this budget proposal, overall

state expenditures on the UNC need-based aid programs will fall from \$162 million to \$127 million, due to a discontinuation of \$35 million in non-recurring funds appropriations. Eligibility for financial aid will be limited to only nine semesters (one extra semester beyond four years) for each student. That will save \$301,446 in 2011-12 and approximately \$5 million in 2012-13.

Funding for financial aid has been draining the state's Escheat Fund at an unsustainable pace. In the next two years, the Escheat portion of need-based aid will decline from \$116 million this year to \$32 million, replaced by money from the state lottery and the General Fund.

The budget proposal also reduces state benefits for out-of-state students. No longer will foundations providing scholarships at state schools be charged in-state tuition and fees; they must pay the full out-of-state rate, saving the state \$6.1 million. Nonresident

graduate student remissions (which help graduate teaching or research assistants with their tuition and fees) will be reduced, an \$8.6 million gain for the state.

Another \$10.4 million will be saved via a 10 percent reduction in state aid to private school students. CJ

Jay Schalin is a senior writer at the John W. Pope Center for Higher Education Policy (popecenter.org).

The House budget tries to get a handle on the explosive growth of financial aid



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Opinion

Colleges' Graduation Rates May Tell Us Less Than We Think

Picking a college is not easy. Seventeen-year-olds and their parents receive conflicting advice on where to go, what to look for, and how to get in. In a recent report by the American Enterprise Institute, "Filling in the Blanks," Andrew Kelly and Mark Schneider contend that students and parents should pay more attention to college graduation rates.

Many colleges and universities have very low graduation rates, with only a third or fewer of the students completing their degrees within six years (for four-year institutions), while seemingly comparable schools have substantially higher rates. Kelly and Schneider want the government to require schools accepting federal student aid funds (almost all of them) to report their graduation and retention rates when communicating with potential students. They contend that it would put pressure on low-performing schools to improve.

But is a school's graduation rate necessarily a good indicator of its educational quality? And if the government requires prominent reporting of

this statistic, will that help parents and students make better decisions?

We think not.

We looked into a number of schools with consistently low graduation rates to find out why such a high percentage of their students do not complete their degrees "on schedule."

One reason is that many students have their own schedules, often complicated by family matters, financial difficulties, work obligations, and other distractions.

For example, the University of Houston-Downtown has a rate of 16 percent. Does that indicate that the university is not doing a good job? We spoke with Michael Dressman, interim vice president for academic affairs, who stated that few of the students are like those who attend prestigious schools. Most have neither good academic preparation nor strong family support. Some UH-D students succeed in progressing right through to their degrees, but for many others, "life intervenes," Dressman said.

UH-D is one of the many colleges *Washington Post* columnist Robert Samuelson was writing about when he said that America is fortunate to have a "learning system" in which people get second or third chances to succeed. Of course, schools that give those chances to a lot of students will have much lower graduation rates.

AEI's 2009 paper on the sup-

posed problem of graduation rates, "Diplomas and Dropouts," helps to make our point by showing that school graduation rates correlate very strongly with the caliber of students enrolled. Among

noncompetitive schools, the six-year graduation rate averages 34.7 percent. Move up to "competitive" schools, and the rate increases to 48.6 percent; move to the "most competitive" category, and it rises to 87.8 percent.

Put it this way: Harvard doesn't have a high graduation rate because Harvard is so exceptionally good, but because it attracts exceptionally good students. If those students went to UH-D instead, UH-D would have a high graduation rate. And vice versa.

Another institution with a low graduation rate is the University of North Carolina at Pembroke. This school in rural southeastern North Carolina has a 34 percent six-year graduation rate, according to U.S. Department of Education data.

Elizabeth Normandy, associate vice chancellor for academic affairs at the university, cites perfectly understandable reasons why the rate is low. Most UNC-P students are from the surrounding area, which is far from affluent, and a higher percentage of them face financial stress than students from more prosperous regions. "In many cases, they are working long hours to pay for college. This necessarily impedes academic progress

and affects the graduation rate, yet the measure used by IPEDS does not allow for the impact of this variable," she said.

Normandy further notes that quite a few UNC-P students don't graduate from that school because they find it expedient to transfer to another school that offers the professional program they ultimately want, such as pharmacy.

This brings us to the second question we raised above: Should the government require schools to show their graduation rates prominently on communications with applicants? Probably not.

If the government were to mandate publication of graduation rates, treating them as a vitally important piece of information, that might scare students and parents away from schools like UH-D and UNC-P, but there is no guarantee that another school with a higher graduation rate would be a better choice.

Furthermore, if the government were to place so much emphasis on graduation rates ("privileging" that information, as academics like to say), college administrators might well reach into their "bag of tricks" (as University of Illinois professor Robert Weissberg puts it) and raise graduation rates by lowering their standards.

We would find more students graduating, but with less educational benefit. That would not be a good trade. CJ

Duke Cheston is a reporter/writer and George Leef is director of research at the John W. Pope Center for Higher Education Policy (popecenter.org).



DUKE CHESTON



GEORGE LEEF



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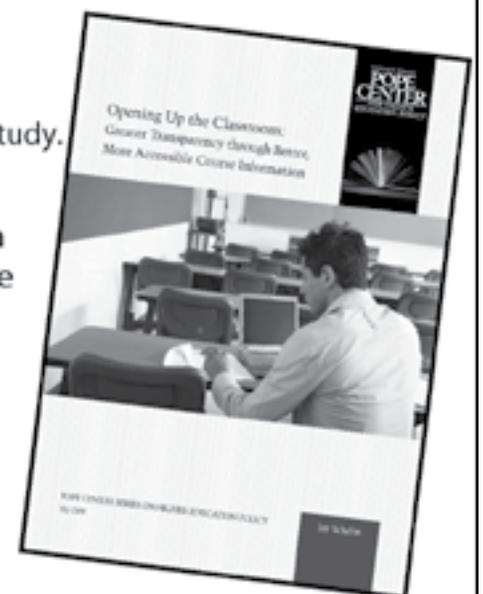
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The inherent weaknesses of democracies and their bad habit of pursuing short-term interests at the expense of long-term security play a role in fostering appeasement. But more important are the faulty ideas that people indulge, from idealized views of human nature to Utopian notions like pacifism or disarmament. More at www.encounterbooks.com.

• From Barack Obama (Harvard and Chicago) to Bill and Hillary Clinton (Yale), many of our national leaders today emerge from the rarefied air of the nation's top law schools. The ideas taught there in one generation often wind up shaping national policy in the next.

The trouble is, as Walter Olson explains in *Schools for Misrule*, our elite law schools keep churning out ideas that are catastrophically bad for America. More at www.encounterbooks.com. CJ

Movie review

'Limitless': Great Premise But Unsatisfactory Execution

• "Limitless," Directed by Neil Burger, Many Rivers Productions, 105 minutes, released March 18.

BY JOHN CALVIN YOUNG
Contributor

Who wouldn't jump at the chance to be perfect if it took no work at all? Eddie Morra (Bradley Cooper) gets just such a chance with an experimental medication, NZT, designed to allow him to use 100 percent of his brain. The skeptical writer, failing at both writing and life, leaps at the opportunity and is changed irrevocably. What will Eddie Morra do with his limitless potential? Neil Burger's glitzy action flick offers up a thought-provoking premise and a promising story, exploring themes of self-control, addiction, and personal improvement in a watchable, entertaining package.

Morra is losing his long-suffering girlfriend, Lindy (Abbie Cornish), and his book's going nowhere. He's let himself go and can't really seem to get his feet under him. All this changes when he runs into an old acquaintance who offers him a drug that can solve all his problems. Suddenly he can focus like never before, writing more in a few hours than he has in a year. When the pill's effects wear off after 24 hours, he knows he has to get more. But when his dealer friend suddenly is killed, Eddie is left with a sizable supply of NZT but no prospect of more to come.

With perfect focus, instant recall, and the ability to learn anything in a matter of hours, Eddie on NZT becomes the sort of man he's always wanted to be — a perfect version of himself. He cleans up his apartment and his life, finishes his book, learns new languages, and acquires an appreciation for art and music, all within days. With an increasing dose of NZT, he parlays a small stake into much more on the stock market, and after rashly borrowing \$100,000 from a mobster, rapidly amasses a fortune, garnering the attention of business magnate Carl Van Loon (Robert De Niro).

Eddie's NZT-fueled life is starting to come apart at the seams, however. He's won Lindy back, but his exponential doses of NZT are starting to leave him with gaps in his memory, blacking out for minutes or hours at a time. His accelerating lifestyle crests in a disturbing scene in which Eddie, high on NZT and nearly out of his mind, ends up in a hotel room with a trappy starlet picked up in a club, and she's found dead the next morning. Did Eddie kill her? He doesn't know.

He collapses before an important meeting and realizes he has to cut back to save his own sanity. But he rapidly discovers what his dealer friend never told him — those that go off NZT suffer crippling withdrawal, eventually leaving them unable to focus or think clearly at all. He has to keep taking it. And making matters worse, the mobster has discovered NZT and is putting pressure on Eddie to obtain a supply for himself. Somehow Morra must balance the de-

mands of Van Loon, the mob, a mysterious stalker, and his concerned girlfriend to find a way out while hoarding his dwindling supply.

"Limitless" is exceptionally fun to watch. Eddie's transformation is exhilarating, with a man becoming who he ought to be in a matter of days. The effects of NZT are cinematically represented with intuitive puzzles solved at a glance, glitzy montages of success and savoir-faire, and a signature "infinite" shot tunneling through the streets of New York, a city seen at speed.

The film isn't just a fun ride, however. As Eddie rides the wave of genius-level intellect, money, and fame, he quickly adapts to a jet-setting, hard-partying crowd. Sex and alcohol are frequent occurrences in Morra's new life, and he makes the most of his opportunities, even after he's back with Lindy. Eddie's conflict with the mob introduces extreme violence, with men shot, stabbed, crushed,

impaled, and tortured. In one particularly memorable scene, a man deliberately drinks a pool of another's blood. If there was ever any doubt, this is not a film for all ages, and many adults even may prefer to look elsewhere for entertainment.

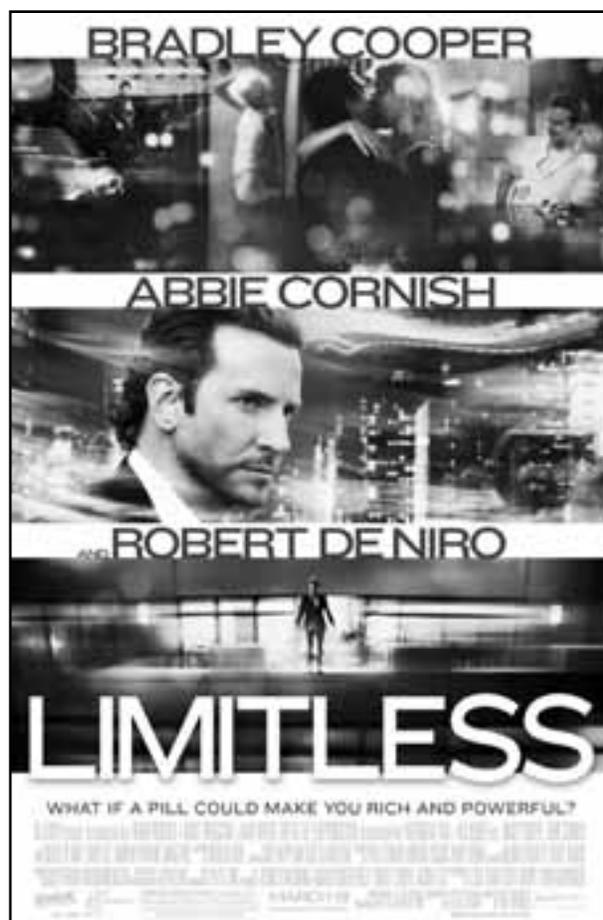
The rather mixed lesson on drugs poses difficulties. Eddie's terrible withdrawal symptoms exist as a warning on the danger of experimenting with drugs. But the dramatic demands of the plot undermine the lesson. The film makes NZT look exceedingly fun to use, and as long as Eddie continues taking a stable dose, he's a genius. The only side effects are when one tries to stop. And who wants to stop being perfect?

Spoilers ahead, next paragraph

And that's where the crucial problem of the film lies. The ending belies the main message. Eddie soon comes to regret taking NZT. But the solution, just like his initial problems, isn't in self-control and strength of character. It's in ... continuing

to take the drug. All his problems, even those of NZT's side effects, are solved magically by NZT-granted powers. The action makes the terrible shadow of the murder hanging over Eddie seem an afterthought; we never know whether Eddie is responsible for the crime, or indeed whether he committed it. And so a brilliant, NZT-aided Eddie continues until he can develop a "cleaner" version that enables him to get off the drug. If NZT becomes harmless, then why stop taking it? These serious plot holes leave one hanging and significantly hurt the overall integrity of the film.

"Limitless" showed a lot of promise, taking a thought-provoking premise and exploring it in an interesting manner. The introduction of the mob subplot brings gratuitous violence and suspense to an already over-the-top flick, though. While still entertaining, the film's numerous plot holes and loose threads are highly unsatisfactory. Despite one of the best premises I've seen in a while, the movie's confused second-act development and poor finale leave it far, far short of its potential. CJ



Hugh Williamson: Renaissance Man and N.C. Founding Father

Constitutional theorist Daniel Dreisbach writes that many Americans “made salient contributions in thought, word, and deed to the construction of America’s republican institutions.” One of them was Hugh Williamson.

But few today have heard of him. They overlook Williamson when trying to learn of the “original intent” of the Constitution. To ignore him (and founders other than the usual five or six historical figures) is an inadequate approach to understand proper originalism.

When bypassing lesser-known founders, we view the past through a distorted lens. And despite our best efforts, that view will be at best an image with a fuzzy outline that prevents us from seeing otherwise distinguishing and valuable features.

“Original intent” then mistakenly becomes nothing other than the opinions of a handful, and we ignore the role of the ratifying conventions

and the wisdom of other leading public figures in understanding the process of ratification and the federal underpinnings of our government.

An examination of Hugh Williamson and his ideas shed more light on the path to understanding “original intent.” Why? He was one of the most active delegates at the Philadelphia Constitutional Convention, and his opinions were respected across America.

Williamson, an Edenton resident, delivered more than 70 speeches at the convention and was appointed to five committees (the second most of any delegate). He had a particularly strong interest in economic questions, serving on committees to consider questions such as state debts and the slave trade.

While considering these questions of immediate import to the young republic, Williamson made a large number of smaller contributions to the Constitution. After other delegates proposed that national senators serve seven-year terms, Williamson suggested the six-year term that eventually resulted. Moreover, his comments on the procedure for trying the president after impeachment affected the outcome of that debate;

while granting the Supreme Court the power to try the president had been considered, delegates eventually deemed trial by the Senate a more desirable option.

After the convention, Williamson wrote a number of essays supporting the new Constitution. On November 8, 1787 — the time the initial essays of what would become *The Federalist Papers* were written — Williamson spoke to the people of Edenton and Chowan County, and to North Carolinians, about the reasons for ratifying the Constitution and countered arguments by Antifederalists.

This speech was later titled “Remarks on a New Form of Government,” and the next year it was republished in papers in New York, Pennsylvania, South Carolina, and Massachusetts, when the people in those states were debating the merits of the Constitution and whether it needed a Bill of Rights.

“Remarks” is, for lack of a better word, remarkable. Many of the *Federalist Papers* are so verbose and convoluted — and almost dodgy at times — that in some ways they were and remain esoteric. Williamson is more concise and straightforward. He seems to have made efforts to reach

a broader audience without dumbing down sophisticated arguments. With strategic placement of appeals, a sense of national honor, and literary flair, the former Presbyterian ministerial student, member of the American Philosophical Society, and physician emphasized the weaknesses of the Articles of Confederation and the strengths of the Constitution.

In particular, Williamson pointed out how North Carolina could benefit from ratifying the Constitution. The state was at a geographic disadvantage in regards to ports and trade, and could benefit from national trade and uniform economic practices. Being part of something bigger, in essence, could benefit individual Tar Heels and the overall North Carolina economy.

Throughout the essay, Williamson argued for securing liberty and property, and he thought that the Constitution would accomplish that. If he was wrong, Williamson writes, he hoped his political opponents would “charge those errors to the head, and not to the heart.”

CJ

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



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KICKLER**

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Short Takes on Culture

Who is John Galt?

• "Atlas Shrugged: Part 1"
Directed by Paul Johansson
Strike Productions

Americans have little enthusiasm for April 15, but the release of "Atlas Shrugged: Part 1" this year gave reason for objectivist individuals to look forward to the burdensome day.

Originally a novel written by Russian-American philosopher Ayn Rand that generated as much inspiration as controversy since its publication in 1957, the story is now reaching a broader audience via film.

Rand has been credited with developing a philosophical system which she called Objectivism. She supported laissez-faire capitalism and advocated for the protection of individual rights, both of which are main themes in *Atlas Shrugged*.

Unfortunately, the movie has received undeserving scathing reviews. Viewers unfamiliar with Rand's philosophy won't enjoy the movie as much as others who are well-versed in her thinking. The novel itself is comprised of extremely dense text and long dialogue that could be reduced easily, but that is not Rand's articulate style, and this is accurately portrayed in the film.

It would be difficult to recommend the movie to someone not familiar with Rand's view on individualism, advocacy of reason, and warnings of government coercion. However, it is a thought-provoking movie, and an experience one would most likely enjoy once familiar with Rand's philosophy.

— ADAM BARRETT

• "Soul Surfer"
Directed by Sean McNamara
Sony Pictures

Inspiring. Dedicated. Passionate. Those words describe the life of now-21-year-old surfer Bethany Hamilton, both before and after a shark attack claimed her left arm when she was only 13.

Upon first hearing about the production of this movie, I wondered what Hollywood would do to a personal story filled with so much faith in God. I was pleasantly surprised.

The movie follows the story of Bethany's undying passion for surfing the waves off Hawaii, with her family providing constant encouragement. Tragedy strikes one morning in 2003 when a tiger shark attacks her and she loses her left arm. Not long after

leaving the hospital, Bethany enters a surfing competition and, devastatingly, is unable to compete.

After this setback, the young surfer receives letters of support from people across the world and decides to continue to pursue her passion of surfing, with Philippians 4:13 ("I can do all things through Christ who strengthens me") as her motivation.

The story stays true to Bethany's real life, including the undying faith that her family put in their Savior, even at a time when His plan felt uncomfortable and out of their control.

Sony Pictures, with a push from the Hamilton family, did not cut out the religious scenes, but rather made a wonderful movie that people of all faiths will enjoy.

— LAUREN UBERSEDER

• *Gourmet*
Edited by Ruth Reichl
Conde Nast Publications

As a serious foodie, I devour cooking magazines. My favorite was the iconic *Gourmet*, which, sadly, ended publication in 2009. Begun just before World War II in 1941, it was the first U.S. magazine devoted to food and wine. *Gourmet* was a wonderful blend of elegant but easy-to-prepare recipes, insightful travel writing, and cultural commentary.

I became a big fan of the magazine in its later years when it was under the direction of Ruth Reichl. Reichl, the former restaurant critic for *The New York Times* and a James Beard winner for food writing, brought a liveliness and freshness to the magazine's pages.

Contrary to its haughty name, *Gourmet* featured ways to cook well and economically, highlighting cuisines from around the world, blending insights from high-end restaurants with the wisdom of country cooks. The reporting never was pretentious and always was accessible.

Of all the food magazines I read — among them *Bon Appetite*, *Food and Wine*, *Cooks*, *Cooking Light*, *Eating Well*, and *Fine Cooking* — I always found myself cooking the recipes in *Gourmet*. There is a sense of place in *Gourmet* that is lacking in the other magazines.

If you have old copies of *Gourmet* around, keep them safe, and read with pleasure. If not, go to your local library and spend some time with issues in the stacks. Photocopy what you like, and take it home for the times you need inspiration.

— KORY SWANSON CJ

Book review

The Vision Thing With Arms Akimbo

• *Aerotropolis: The Way We'll Live Next*, by John Kasarda and Greg Lindsay, New York: Farrar, Straus & Giroux, 2011, 466 pages, \$30.

BY KORY SWANSON
Contributor

RALEIGH

A visionary leader, according to the Visionary Leader website, is "a builder of a new dawn, working with imagination, insight, and boldness." No one can claim that John Kasarda does not embrace that concept.

In his new book, with journalist Greg Lindsay, *Aerotropolis: The Way We Will Live Next*, that is precisely the way

Kasarda describes himself. Kasarda, a UNC-Chapel Hill professor of business and director of the Kenan Institute for Private Enterprise, believes passionately in his concept of the "aerotropolis," and the new dawn it will bring. Together, Kasarda and Lindsay have written a compelling, but ultimately unconvincing, book promoting a Utopian vision of globalization and explaining how the aerotropolis is key to this vision of the future.

Like Superman, standing arms akimbo, surveying his domain of truth, justice, and the American way, you get a similar image of Kasarda as he jets around the world impregnating local populations with the "aerotropolis" meme. Occasionally, he stops, arms akimbo, to survey his aerotropolis domain as it flowers under the relentless and inevitable expansion of the world economy — global city projects built from scratch that have birthed in Amsterdam, Dubai, South Korea, and China. The meme has impregnated the United States, too, with aerotropolis projects talked about in Memphis, Detroit, Winston-Salem/Greensboro, Atlanta, Denver, and Indianapolis, to name a few, offering cities the promise of plugging into airborne global trade lanes.

In a recent *Wall Street Journal* op-ed, co-author Lindsay defines the aerotropolis both narrowly and broadly:

"An aerotropolis can be narrowly defined as a city planned around its airport or, more broadly, as a city less connected to its land-bound neighbors than to its peers thousands of miles away. The ideal aerotropolis is an amalgam of made-to-order office parks, convention hotels, cargo complexes, and even factories, which in some cases line the runways. It is a

pure node in a global network whose fast-moving packets are people and goods instead of data."

The metaphor of people as fast-moving packets of data brings to mind the charge that globalization of the economy lacks a human face. But that charge does not concern Kasarda and Lindsay. They are of the school that sees the overwhelming positive effects of a global economy — both economic and moral effects. As economist Jagdish Bhagwati argues:

"Globalization ... leads not only to the creation and spread of wealth but to ethical outcomes and to better moral character among its participants."

And this is the promise of the aerotropolis, in Kasarda and Lindsay's view. No matter where the aerotropolis arises, whether in countries run by autocratic regimes or in republics and democracies, good things will come.

It is easy to get carried away with this message. Many cities, with large tracts of unused land, will be convinced the global economy cannot exist without their participation.

Still, the authors warn that not every area can become a successful aerotropolis. Witness the debacle of the Global TransPark near Kinston. And yet, North Carolina continues to dump millions of tax dollars into a site that neither can succeed nor pay its debt. The romance of helping to create a new world readily compromises rational action.

The real aerotropolis success stories are found in the Far and Middle East. Aerotropolises arise, almost overnight, under autocratic regimes that are not encumbered with local and federal government bureaucratic and financial hurdles often found in democracies; nor are such regimes required to respect property rights. China, for example, has plans to create hundreds of aerotropolises.

Kasarda and Lindsay assert that those who do not embrace the aerotropolis concept will be left behind in the global economy. The real question is whether the aerotropolis is an inevitable component of the relentless pace of globalization, as it spreads wealth and creates positive moral outcomes. The vision thing, with arms akimbo, indeed. CJ

Kory Swanson is executive vice president of the John Locke Foundation.



Movie review

Redford Directs a 'Straight-Up Telling' of Lincoln's Assassination

• "The Conspirator," Directed by Robert Redford, American Film Company, 123 minutes, released April 15.

BY SAM A. HIEB
Contributor

GREENSBORO

In recent years, there have been plenty of movies for history buffs. "Saving Private Ryan" gave viewers the World II experience (and then some); "Glory" gave them the Civil War experience; "Eight Men Out" gave them early 20th-century baseball, long before players became millionaires.

But can movies with a historical theme keep pace in the age of remakes and multiple sequels? One could argue no, given that "Scream 4" grossed \$18.6 million during its first week of release.

Evidently, Joe Ricketts doesn't think so. The former CEO of TD Ameritrade and new owner of the Chicago Cubs has ventured into the movie business with the express purpose of producing historically themed movies.

His first project, Robert Redford's "The Conspirator," opened April 15, 146 years to the day after Abraham Lincoln died from an assassin's bullet. Lincoln's assassination is central to the movie's plot.

The story of Lincoln's assassination has become the stuff of legend. A famous actor, John Wilkes Booth, sneaks into the presidential box at Ford's Theater and puts a bullet in the back of Lincoln's head. Booth then jumps from the box and yells "*Sic semper tyrannis*" ("thus always to tyrants") before fleeing on horseback to the woods of southern Maryland.

Booth eventually was shot by Union soldiers on a farm in northern



Boarding house owner Mary Surratt, played by Robin Wright, is led to the gallows for her part in the assassination of President Abraham Lincoln, in a scene from "The Conspirator." (Photo courtesy of American Film Company)

Virginia, and his conspirators were tried and hanged. Two famous photographs graphically display the conspirators hanging from the gallows, and right away one notices by her black dress that one of them was a woman.

That woman was Mary Surratt (Robin Wright), the owner of a Washington boarding house where Booth and his conspirators — including Surratt's son John — often met. A trial by military tribunal determined that Mary Surratt — at the least — had sufficient

knowledge of the plot to assassinate Lincoln. Thus, she was a "conspirator."

While "The Conspirator" effectively tells Surratt's story, it also works well on a larger level. First, it's a straight-up telling of the Lincoln assassination, from the time he was shot April 14 until Surratt was hanged July 7. The first 30 minutes are enthralling, and history buffs everywhere will no doubt relish seeing such a pivotal event played out in live action.

Redford captures the feel of the era. He depicts the panic gripping the nation as Americans realize not only that the president has been assassinated, but also that the plot extended to Vice President Andrew Johnson and Secretary of State William Seward.

Redford also takes viewers to mid-19th-century Washington, which Charles Dickens referred to as "a city of magnificent distances." Wide camera shots show an abundance of open space, complete with grazing livestock. It's hard to imagine when one visits D.C. today.

In times of crisis, government often overreacts. Confederate Gen. Robert E. Lee had surrendered only days earlier; there was reason to believe rebel forces either had not heard of the surrender or simply decided to keep on fighting.

Then there was the larger issue at hand — the continued preservation of the Union in the aftermath of a bloody four-year struggle. When Surratt's lawyer Frederick Aiken (James McAvoy) expresses concern over Surratt's

civil rights, Secretary of War Edwin Stanton (Kevin Kline) simply replies that if the Union weren't preserved, then no one's rights mattered.

Much like today's debate over trials for terrorists, considerable questions arose about Surratt's guilt or innocence and the circumstances of her trial. By using a military tribunal rather than a civilian court, public officials believed they could get the conspiracy behind them quicker.

Aiken was an inexperienced lawyer, fresh off the battlefield, handed the case by Maryland Sen. Reverdy Johnson (Tom Wilkinson.)

Aiken at first is frustrated — by both the apparent prejudice of the prosecution and Surratt's apparent disinterest in her own defense. Aiken even believed Surratt was guilty and asked to be taken off the case, a request Reverdy Johnson refused.

But as Aiken peels back the layers of the case, he questions his earlier assumption of Surratt's guilt. Yes, she confessed knowledge of the original plot to kidnap Lincoln and hold him for ransom in exchange for Confederate prisoners of war. And saloon keeper John Lloyd (Stephen Root) testified that Surratt had instructed him to hide the guns, crucial evidence that she was aware of the plot.

Even so, Aiken was convinced that there was reasonable doubt of Surratt's guilt and worked hard to obtain a writ of habeas corpus to have her tried before a civilian jury. The military jury debated the propriety of executing a woman, but Stanton — as the movie portrays it — was instrumental in influencing their decision to make an example of Surratt.

A gut-wrenching scene portrays Aiken telling Surratt and her daughter Anna (Evan Rachel Wood) that she would get a new trial, only to have a Union officer enter the cell and read the death sentence, claiming that President Johnson had suspended habeas corpus.

Redford is a well-known Hollywood liberal, and some have speculated that "The Conspirator" is a jab at modern-day terrorist detainee policies. It's possible, although the film makes it clear that Surratt's treatment and the desire for swift and brutal justice were in the name of vengeance for a president revered by modern-day liberals. With that in mind, most would conclude that Redford is focusing on a universal theme — the rights of the accused — rather than targeting contemporary policy.

Word has it that Ricketts' next movie project will focus on Paul Revere's ride. After seeing "The Conspirator," history buffs should hope for many more such projects. 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

COMMENTARY

Take Care Of Your People

Take care of your people, and they will take care of you." This philosophy guided the people-management policy for 40-plus years at Blue Bell Inc. of Greensboro. Under the leadership of Edwin A. Morris, Blue Bell became a world leader in the work and recreational clothing industry, developing and popularizing the Wrangler brand, among others. This is the Ed Morris, conservative entrepreneur and philanthropist, for whom the E.A. Morris Fellowship for Emerging Leaders is named. His views came to light during a recent retreat conducted with the E.A. Morris Fellowship Class of 2011.

In the manufacturing era of early and mid-20th-century America, industrial employees generally expected to live and work in the same community, sometimes in company-built housing. Many spent an entire working lifetime in the same company (or the same industry), often in the same town. Taking care of your people meant furnishing the means to attain the basics: food, shelter, and clothing. As a business leader, Ed Morris strove to further the competitive ends of his business, never forgetting his employees' goals and needs in the process. The success of Blue Bell, under Morris' leadership, is a testimony to the wisdom of that strategy.

But it's a vastly different world from the 1940s, or even the 1980s. Do Morris' views translate into today's leadership environment? While there is still truth in Morris' adage, it's not as clear-cut and obvious as it once was. Company-built towns are a remnant of long-past living and working norms.

Enter today's organization. The current workplace and work force contain many more highly specialized workers than in previous decades. Best practice in people management still says that you must connect your people to your business if you want the organization to succeed. Employees at every level should be able "to articulate exactly how [their] efforts feed into the broader company strategy," writes Amy Gallo in the *Harvard Business Review*.

But today the venerable adage, "Our people are our greatest asset," increasingly is called into question. Making sure every employee succeeds, though still a key part of every manager's job, raises new issues. Employees are knowledge workers, experts and specialists, not interchangeable line workers. Modern issues include quandaries about hands-on vs. more hands-off management of employees, monitoring and meaningful reviews, what to do about failures, SMART goal-setting procedures, and the sometimes tricky dynamics of the age or the

sex of employees relative to their employers.

Two trends are emerging within the context of this need to maximize both employee advancement and organization effectiveness. A number of organizations consciously are attempting to connect individual goals to broader company goals, demonstrate a "partnership" attitude in employees' goal achievement, and

to incorporate, as much as possible, employee goals and interests into organizational goals.

The other trend is the increasing use of nontraditional contract employees, often for cost-saving reasons, in these specialized roles. Faced with the daunting task of trying to develop individuals within an organization made up of autonomous skill and knowledge experts, more and more companies simply are choosing not to manage those developmental relationships. Business analyst and author Peter Drucker dubs this trend "a devil's bargain," one eliminating the most important source of a competitive edge in a knowledge economy.

Which is the better route to leadership and organizational success? One can no longer apply the truth of the straightforward "people" dictum the way Ed Morris saw it. But managers and business leaders will have to decide whether traditional or nontraditional employees — perhaps managed in untraditional ways — are liabilities or sources of competitive advantage. CJ

Dr. Karen Y. Palasek is director of the E.A. Morris Fellowship for Emerging Leaders.



**KAREN
PALASEK**



EDITORIAL

Global TransPark, Busted!

An April report by the General Assembly's Program Evaluation Division concluded, among other things, what *Carolina Journal* has asserted for years. The N.C. Global TransPark Authority near Kinston cannot support itself; the \$25 million debt it incurred from the state's Escheat Fund cannot be repaid with current revenues; and the TransPark can be offloaded, piece by piece, to other public or private entities, and off the taxpayer dole.

The report also projected that the TransPark is nearly 15 years away from generating enough private-sector "benefits" to exceed the state's investment in the authority — and that a project initially estimated to create 55,000 jobs is instead employing fewer than 400 people.

It's time to cut the cord and start bringing North Carolina's commitment to this foolhardy project to an end.

The General Assembly formed the GTP Authority in 1991 to serve as an industrial park and transportation network to handle international cargo flights. But the infrastructure needed to link the GTP with major highway and rail routes remains unfinished. "Furthermore," the report said, "overly optimistic, initial job projections make it appear as if the Authority has fallen short of its adopted mission." No kidding.

For the most part, the GTP's business model has been bribery. Deploy tax-funded economic incentives to get companies to lease space, hoping that eventually some poor sucker will be foolish enough to pay full price. Rather than generating revenues, the authority has depended on subsidies from the General Assembly,

grants from the federal government, and other sources. The authority loses \$3 million annually, generating less than \$2 million from leases and other revenues but owing between \$4 million and \$5 million in operating costs.

That's no way to run a railroad. GTP also obtained a \$25 million loan from the state's Escheat Fund — which handles unclaimed property — that cannot be repaid. Including interest, that debt is now roughly \$40 million. Last year, *CJ* reported that the authority had no plans to retire the debt; this latest legislative report confirmed our earlier findings.

So what to do? The debt to the Escheat Fund must be retired; as of now, the main options are getting more money from the General Assembly (in other words, additional taxpayer subsidies to the GTP) or selling off some of the property at the park. We urge the latter.

Moving forward, the state needs to divest fully from the TransPark. The report notes (again, confirming *CJ*'s earlier findings) that the airport could be transferred to another governmental entity at no cost to state taxpayers. Lenoir County operated the airport before the GTP was created; it should have an opportunity to reclaim the facility.

Then, as commercial leases expire over the coming decade, the Department of Transportation should begin liquidating commercial real estate at the site. Revenues from those sales should help retire the Escheat Fund debt.

The Global TransPark has been a boondoggle for two decades. The General Assembly should get it off the books before this white elephant turns 30. CJ

EDITORIALS

Lost Money & Freedom

Judicial campaigns may get a shake-up

Here's what should be the least-surprising news of the 2011 legislative session: The new Republican majority is seeking to reverse the efforts of previous Democratic legislatures to hurt Republican judicial candidates.

Several years ago, Democratic legislators yanked party labels off the ballot and set up a system to pilfer money from taxpayers to fund judicial campaigns. The real "problem" Democratic leaders saw was that GOP candidates were winning too many judicial races. The appellate courts, once the exclusive province of the Democratic legal and political establishment, were moving to the right. The state Supreme Court already had a Republican majority. The Court of Appeals seemed headed in a similar direction.

Couldn't have that. So the Democrats decided to take away both information and freedom from voters in a plan to recover or expand their majorities on the courts.

Stripping the party labels didn't make judicial races nonpartisan. Both parties always have and always will recruit candidates for the court and try to elect them. But removing the labels increased the cost of informing voters about which judges are likely to be more conservative — voters apparently prefer conservatives over

liberals when picking judges.

To increase their future advantage, Democrats embraced taxpayer funding of judicial candidates. If you run the better-funded state party, and expect more support from independent-expenditure groups on judicial elections, then imposing fundraising and expenditure limits on judicial candidates seems an attractive prospect.

But it hasn't turned out the way Democrats predicted. For one thing, Democrats apparently didn't anticipate how unpopular it would be to force North Carolinians to fund political campaigns — and how serious the legal challenge to the system would be. In March, the U.S. Supreme Court heard a challenge to Arizona's system of publicly funded elections — similar to North Carolina's — and court watchers believe the justices will strike down that law.

Now that Republicans run the General Assembly, they are going to move bills to restore party labels and end taxpayer funding of judicial elections. They have both philosophical and partisan reasons to do so.

The real question is whether Gov. Bev Perdue will use her veto pen again. Swing voters may not care much about the issue of party labels. But they detest being forced to fund the campaigns of politicians with whom they may disagree. CJ

Open Government

Better to lean toward sunshine

House Bill 87 would authorize a public referendum on a state constitutional amendment ensuring sunshine in government. Its main purpose is to make it harder for future legislatures to weaken the state's public-records and open-meetings laws by requiring three-fifths of the General Assembly rather than a simple majority to do so.

While most lawmakers express support for open government in principle, some are leery of putting open-government protections into the state constitution. Some legislators want to make the measure a statute, not an amendment. While we shouldn't want North Carolina's constitution to be littered with a large number of wordy, unwieldy policy prescriptions, basic questions of individual rights and governmental procedure can be addressed properly only with constitutional language reflecting a consensus of North Carolina voters.

Open government is one of them. The sunshine amendment

wouldn't remove any of the current protections and exemptions in our open-government laws. It would make it harder to add new ones in the future — and that's the right direction to lean.

Open government doesn't require that every conversation among government officials or interaction between a government and its citizens be accessible publicly. Current law protects the ability of majority and minority parties to caucus in private to hash out issues and plan legislative strategy.

It doesn't put a microphone in every government office. And it doesn't allow automatic access to tax returns, case files, and other records that, if disclosed, would invade the privacy of North Carolinians.

While these exemptions are appropriate, they create some opportunities for abuse. In the balance between closed and open meetings, North Carolina law should tip the scales in favor of the latter. CJ

COMMENTARY

Budget Claims Beyond Belief

If there were a prize for political exaggeration, critics of the Republican state budget plan already would be preparing their acceptance speeches.

Let's begin with some numbers. North Carolina faces a projected budget gap in the coming fiscal year of up to \$2.4 billion, based on a baseline budget of about \$21 billion. Of that baseline amount, education at all levels makes up nearly 60 percent, or about \$12 billion.

Gov. Bev Perdue proposed a budget plan that allocated \$11.4 billion, or 95 percent of the baseline education budget. The education establishment wasn't happy with the number. But there were no panicky warnings about an end to educational opportunity in North Carolina.

Now the Republican majority in the North Carolina House has announced its initial budget targets for the coming fiscal year. Instead of funding education at 95 percent of the baseline amount, Republican leaders propose to fund it at 88 percent of the baseline, or \$10.6 billion.

According to Democratic lawmakers and lobbyists for schools, colleges, and universities, this GOP plan would be the educational equivalent of Armageddon.

It would "jeopardize the very future of our state," said the Senate's top Democrat, Martin Nesbitt.

It would be "beyond devastating," said the House's top Democrat, Joe Hackney.

Really? I'm not sure what lies "beyond devastating" on the map of budgetary hyperbole, but I seriously doubt that a journey of 7 percentage points would get us there.

Would the Republican plan result in some job losses among government employees? Of course. As national comparisons show, North Carolina government is over-staffed. When times were good, past legislatures and governors spent too much, hired too many, saved too little, and kept taxes too high, thus reducing the growth rate of North Carolina's private economy.

Responsible leaders deal with what is, not what might have been.

Two years ago, a Democratic governor and legislature relied on billions of dollars in "temporary"

tax hikes and federal borrowing to balance the budget. Those were short-term fixes to long-term problems. Now the bill has come due. Republicans won control of the General Assembly last fall by running against the 2009 tax increases and promising not to repeat them. And both parties in Washington seem finally to understand that bailing out state and local governments

by increasing federal borrowing is foolish and counterproductive.

If we aren't going to stick it to taxpayers or raid the federal treasury, the only other option is to cut the budget. Government must adjust to reality.

To suggest that \$10.6 billion in state funding next year represents the end of North Carolina

education as we know it is a preposterous and cynical claim. If the budget targets from the House GOP end up in the final budget, here's what still will be true:

- The University of North Carolina still will be one of the most generously funded state university systems in the United States. UNC tuitions will remain among the lowest in the country.

- North Carolina's public schools still will not be among the most generously funded in the United States — but that means only that the more than \$9,000 North Carolina will continue to spend per pupil in state, local, and federal dollars for operating and capital expenses is not as much as New Jersey or Illinois politicians are willing to spend. So what? That's still a lot of money. North Carolina taxpayers want results, not bragging rights.

Now, to be consistent, I will not claim that imposing \$800 million in higher taxes to fund Perdue's education budget rather than the Republicans' education budget would be "beyond devastating" to the state's economy.

It would, however, be unwise. The scant educational benefits are not worth the economic costs.

Let's not do it. CJ

John Hood is president of the John Locke Foundation.



**JOHN
HOOD**

EDITORIAL BRIEFS

Boom-Bust Tax Collections

Liberals often urge raising income tax rates on the rich as a means to close state budget deficits. Relying heavily upon such tax receipts is fraught with danger, as incomes of the highest earners are volatile, reports *The Wall Street Journal*.

California's budget woes highlight the problem. Before the recession, the state got nearly half its income tax revenue from the top 1 percent of earners, those whose household incomes were above \$490,000 a year. The recession hit these high earners especially hard, with their income falling twice as much as the rest of the state's population.

"We created a revenue cliff," says Brad Williams, a former economic forecaster for the state. "We built a large part of our government on the state's most unstable income group."

This revenue instability is relatively recent. California income tax receipts tracked the state's economy as a whole until about 15 years ago. In recent years, though, the share of income earned by the top 1 percent of households has increased, going from 13 percent in 1991 to 20 percent in 2008. And when times are good, the bonuses and stock-based compensation these high earners receive can lead to exceptional good times for state governments as well. The downside, however, is harsh.

"These revenues have a narcotic effect on legislatures," said Greg Torres, president of MassINC, a nonpartisan think tank. "They become numb to the trend and think the revenue picture is improving, but they don't realize the money is ephemeral."

EPA moves to regulate emissions

The Environmental Protection Agency is moving to reduce the emission of greenhouse gases by aggressive use of the Clean Air Act Amendments of 1990.

The move could undermine the U.S. economy while doing little if anything at all to reduce global greenhouse gas emissions, writes Garrett A. Vaughan in a paper for the Competitive Enterprise Institute.

The EPA is using the CAA to set minimum standards for energy efficiency, regulate carbon dioxide emissions from the use of power plants and refineries, and restrict the ability of states to issue permits for new power plants and refineries.

The agency justifies the moves by claiming that its previous enforcement efforts have been cost-effective, with the benefits outweighing the costs by a 30-to-1 margin. It also claims that the new regulations will be every bit as efficient as its previous regulatory efforts. Vaughan said those claims are bogus.

"The specter of EPA regulation served as a threat precisely because members of Congress and the administration understand well that EPA regulations actually impose costs far in excess of benefits, the EPA's official claims to the contrary notwithstanding," Vaughan said. CJ



New Reality for Property Values

One casualty of the "Great Recession" has been property values — particularly residential property values. In the decade from 1997 to 2007, government statistics show the average value of a home in North Carolina jumped almost 60 percent.

However, since 2007, that same average home's value has dropped between 10 percent and 15 percent in most regions of the state — and much more in some areas like the coast.

This turnaround is creating some major upheavals. Clearly one is in the real estate market. Prior to the Great Recession — and, indeed, for almost a century — people could count on buying a home today and selling it for more later. Homes typically rose in value 3 percent to 4 percent per year. A household could purchase a home now and sell it in five years for 15 percent to 20 percent more.

Now things are different. People who bought homes three, five, or even seven years ago can't count on selling them at a higher price. Actually, to sell they might have to accept less than they paid. For many, the residential real estate market has been turned upside down!

Many homeowners aren't willing to accept this new reality — at least at first. They will lower their sales price only grudgingly, or they will pull their home off the market if the asking price isn't met. If the seller resists setting the home's price in line with what buyers are willing to pay, the home will simply remain unsold — costing the seller both time and money.

Sellers sometimes refer to their county's official assessed value as a guide to the market price. Every few years — usually between four and eight in North Carolina — county governments put a value on homes. This value is set by using the sale prices of homes similar in size and location that have sold recently; the value should represent what a buyer would pay. These values are used by local governments in billing owners for property taxes.

However, the government-assessed values

are fixed until the next assessment is completed — again, generally between four and eight years. Therefore, values can become quickly out-of-date. The problem many home sellers now face is that, unless the assessment was done recently, the assessment value likely will be higher than the current market value of the home — that is, the price at which the home could be sold.

There's a second issue with government-assessed home values that impacts county and city governments in North Carolina. Public revenues from taxing homes (and other real property) are a major source of revenue for local governments.

When home values were rising, property tax revenues weren't rising as fast as those values. The assessed values — done in some previous year — were out-of-date. This situation led to proposals to shorten the number of years between assessments, and, in fact, some counties did shorten those periods.

But now the opposite problem exists, and it is potentially a major headache for local governments. With home values falling in most counties, local governments face the unpleasant prospect of seeing their property tax base shrinking.

If a new assessment results in lower property values, then local governments face two options. They can accept the resulting reduced property tax revenues and make adjustments in their spending — a prospect that is never easy.

Or local governments can increase the property tax rate and tax the smaller property tax base at a higher percentage and make up some or all of the revenue gap. Of course, this option could lead to significant pushback from property owners.

These choices will have to be faced as more counties conduct property reassessments in the period after real estate values have dropped.

Even if the home market stabilizes and values begin to rise, most economists think it will take between five and 10 years for the average home to recover the value lost during the Great Recession. It's a new real estate world. CJ

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**MICHAEL
WALDEN**

Voter ID: Useful, But No Panacea

One of the most interesting debates at the General Assembly this spring surrounds voter identification. It is a matter that has polarized members and aroused interest groups. For the most part, people are split along partisan lines. Republicans tend to think voter identification requirements are a good idea — the three primary sponsors of the House bill proposing to establish them are from the GOP. Democrats do not.



ANDY TAYLOR

Like most things in politics, the issue is not as simple as ardent supporters and energized opponents believe. Republicans should realize that voter fraud likely is not as prevalent as observers such as John Fund of *The Wall Street Journal* think — Fund's book, *Stealing Elections*, helped push the issue into public consciousness. Moreover, there don't seem to be good theoretical reasons why an individual might vote when he's not legally entitled to. What's in it for him? It's not like stealing an iPad from Walmart.

But, of course, even small amounts of voter fraud are extremely troubling. Unless we can be sure all

candidates receive the exact same benefits of fraud — which we can't because we're not in a position currently to catch it — some are going to be advantaged at the expense of others. When an illegal vote is cast in our simple plurality electoral system, the right of a legitimate participant who supports an opponent is taken away.

Moreover, vote fraud is only rarely the act of a "lone wolf." Election rigging is most nefarious when organized groups identify opportunities and mobilize individuals in a coordinated effort to influence the outcome illegally. They have the motivation and resources to make a difference. Traditionally, this was done by the big-city party machines. Today it is undertaken by entities like ACORN.

Opponents of voter identification should remember that proposals to require it do not alter qualifications. They constitute an effort to maintain the integrity of our democracy. In recent years, North Carolina has worked to increase access to the electoral process — including liberalizing absentee rules by permitting early voting and establishing a "one-stop" operation in which individuals can register and vote in a single transaction. These are to be commended. Unfortunately, an obvious consequence of expanded access is enhanced opportunities for fraud. Healthy elections should balance the interests of broad and legitimate participation.

Opponents also might be assuaged by research showing the effects of voter identification rules. The rules do not, several studies show, reduce aggregate turnout. This was the case in Indiana, which instituted strict requirements and then experienced a quite substantial increase in the proportion of people who voted in 2008.

Using data from 2006, political scientist Stephen Ansolabehere has demonstrated that exclusions from voting are rare when identification is the policy. In fact, compared to other election rules, any real effect voter identification requirements have on turnout is trivial. Election equipment, registration errors, and ballot design account for a greater dampening of the vote.

North Carolina has had issues with all of these. The separation of the presidential line from the straight-party line on the ballot is particularly problematic. Ballot complexity leads many citizens to believe erroneously that they have voted for president when they take advantage of the opportunity to vote straight-party. They leave the presidential line empty and therefore effectively are disenfranchised in what most believe to be the most important race of all. In recent presidential elections, around 3 percent of North Carolinians who have shown up at the polls have not voted for president — this "undervote," as

political scientists call it, is about 50 percent greater than that found in most states.

Many of the issues associated with the administration of voter identification rules are that they are unevenly applied. Work by a team of researchers led by Lonna Rae Atkinson, however, found that during the 2006 New Mexico elections, neither a poll worker's ethnicity nor his partisanship could explain the number of times he asked voters for the necessary documentation.

On balance, then, voter identification requirements are a good idea. The public likes them. An Elon University poll last month revealed that about three in four North Carolinians support a voter identification law. But, like a lot of things, the devil is in the details. We need to make sure that in the application of voter identification, we do not limit access unnecessarily. A fairly broad array of identifying documents should be allowed. Republicans must also realize that, like early voting and one-stop voting, this is going to put additional strains on election administration. As we know, regulation costs money. To make voter identification effective, some extra resources will be needed. CJ

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Redistricting and Equal Representation

One man, one vote is the principle ensuring equal representation for all. This guarantee is found in both the U.S. Constitution and the N.C. Constitution. The U.S. Supreme Court has upheld the principle numerous times. In order to ensure one man, one vote, congressional and state legislative districts are redrawn every 10 years.

The General Assembly must draw new maps before the 2012 elections. It already has begun with public hearings across the state, invitations for citizens to submit plans, and committee meetings under way. House Speaker Thom Tillis has promised maps that are "fair and legal."

At the beginning of every decade, the federal government takes a population count through the census and uses those numbers for a variety of things, including reapportioning congressional seats and redrawing legislative maps.



BECKI GRAY

According to the 2010 census, 308,745,538 people currently live in the United States. In order to ensure equal congressional representation, the population is divided into 435 House districts of equal population, apportioned among the states. North Carolina moved from the 11th most populous state to the 10th but will continue to have 13 congressional seats. (Our allocation of congressional seats has grown from seven to 13 since 1791).

Official census numbers released March 2 reveal North Carolina's current total population is 9,535,483 — an 18.5 percent increase over 2000.

The new General Assembly has conducted redistricting every 10 years since 1843. Lawmakers will divide the state into 13 congressional districts of 733,499 people each, 50 state Senate districts of 190,710 people, and 120 state House districts of 79,462 people.

The Democratic Party controlled the General Assembly for more than 100 years, and since North Carolina is the only state that gives the governor no say in redistricting, General Assembly Democrats have had a stranglehold on redistricting over that period.

Political gerrymandering has

been commonplace, as have other tactics to gain an advantage, bend the rules, or game the system. Since the 1960s, numerous lawsuits have resulted, and after the 2000 redistricting, a series of Republican-initiated lawsuits clarified the state's rules on redistricting.

First, districts must follow the Voting Rights Act of 1965. The act forbids districts that dilute minority voting strength and requires federal pre-clearance of all voting law changes. These rules apply to 40 N.C. counties. Under some circumstances, districts must encompass a majority minority population. The act will remain in effect for another two decades.

Second, to the extent possible, counties must be kept whole. Ideally, a single legislator would represent every county. Realistically, most counties have either more or less than the required population. In the last redistricting, only Lincoln County had exactly the right number of people to meet the population requirement for a whole county House district.

Third, all counties with more residents than the population requirement must be divided into two or more districts, all drawn as single-member districts. The five largest

counties — Mecklenburg (population of 919,628), Wake (900,993), Guilford (488,406), Forsyth (350,670), and Cumberland (319,431) — will be divided into several single-member districts.

Fourth, the remaining, less-populated counties will be combined into clusters of single-member districts with a goal of keeping counties whole. Counties such as Tyrell (4,251 residents), Hyde (5,391), Graham (8,327), Camden (9,732), and Jones (10,150) will be combined with other counties to reach the population benchmarks to ensure one man, one vote.

When counties are divided or combined, communities with common interests are kept together as much as possible. All areas within the district must touch or be contiguous.

And of course, each district must have the same number of residents, with no more than a 5 percent deviation. Each district must be a single-member district. This ensures one man, one vote.

The numbers are in. The rules are in place. The stakes are high. Democracy is waiting.

Let's get started. CJ

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

Judicial Choices to Get 'American Idol' Treatment (a CJ parody)

By JERRY MANDER
CJ Elections Editor

RALEIGH

A new group has proposed a bold new way to fill judicial vacancies that occur on the state's Superior Court, Court of Appeals, and Supreme Court.

The North Carolina Coalition for Viewer-Selected Judges has proposed doing away with the good-old-boy crony system of picking judges and, instead, urges a process based on the "American Idol" television show.

The coalition released the plan in response to Gov. Bev Perdue's April 5 Executive Order establishing a Judicial Nominating Commission to guide her in the filling of vacant judge positions.

While all N.C. judges are selected in regular November elections, the state constitution gives the governor the power to select replacements of all judges when a vacancy occurs for any reason.

That power has resulted in a system in which most retiring judges vacate their offices before their terms run out so that the sitting Democratic governor can appoint another Democrat, who can then run as an incumbent in the next election.

This has institutionalized Democratic control over much of the judicial branch. Perdue's new process would set up an 18-member judicial nominating commission to recruit candidates, hold public hearings, and forward three recommendations to her.

Her order does not apply to the appointment of judges of the district



Scotty McCreery's fans react as he announced on national television recently his support for viewer-selected judicial races. (CJ parody photo By Don Carrington)

courts or to the appointment of special Superior Court judges.

Members of the coalition, however, think their plan would be superior to Perdue's. "We are proposing a fully tested better way to select judges," coalition member Clay Aiken, a former "American Idol" finalist, told *Carolina Journal*.

Aiken said the "American Idol" process has proven to be the best method in the world for selecting talent. "It worked for me, and it is working for Scotty McCreery," he said. "Why can't it work for North Carolina's judicial system?"

Aiken said the coalition is a grassroots organization headquartered in Garner, with more 30,000 North Carolina members. Garner, coincidentally,

happens to be the hometown of current "American Idol" finalist Scotty McCreery.

Aiken said a large group of his and Scotty's North Carolina fans formed the coalition because it was obvious to them that the judicial replacement system is broken, and the governor's plan is not much better. "Special interests simply have too much power under her plan," he said.

Under Perdue's plan, eight of the 18 voting members would be individuals selected by special interest groups including the N.C. State Bar, the N.C. Association of Defense Attorneys, the N.C. Association of Black Lawyers, and the N.C. Association of Women Attorneys. Perdue will pick the remaining 10 members.

Aiken said Perdue's plan may look good on the surface, but it still left cronies a governor would select in charge of the process. He said the coalition plan would work like this:

If a judicial vacancy occurs, any North Carolina citizen with a law degree would be eligible to enter the "competition" for the replacement for each vacancy. Each applicant would perform a brief "judge-like pontification from the bench" in front of a three-judge panel that would eliminate the losers.

The entire process would be broadcast on UNC-TV, the state-government-supported public broadcasting network. When the pool of remaining contestants got down to 12, the viewers would decide the winner over a 12-week elimination process.

Just as on "American Idol," viewers could vote by email and by as many times as they want in the allotted time frame. UNC-TV is especially excited about the coalition's plan because it plans to sell advertising to make up for the anticipated funding cuts by the N.C. legislature.

So who selects the three-judge panel? Aiken said the initial panel would be made up of himself, former Democratic Gov. Jim Hunt, and former Republican Supreme Court Justice Bob Orr. Both Hunt and Orr told *CJ* they were honored to be selected for such an important assignment.

Aiken said the process would also give "new meaning and relevance to UNC-TV." *CJ*

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