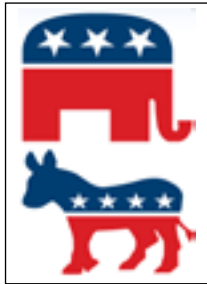


House votes
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CAROLINA JOURNAL

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

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May 2015 Vol. 24 No. 5

STATEWIDE EDITION

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Island Awash in Title Questions, Irregularities

Politically connected men acquired island with title problems

By DON CARRINGTON
Executive Editor

RALEIGH

When two politically connected men began building new houses in 2013 on an island Dare County resident Bill Boykin purchased in 1997, Boykin concluded the chain of events leading up to the construction didn't pass the smell test.

He had lost the island in a 2006 divorce settlement, but he became convinced that ownership of the island at the time he lost it was unclear, that the state's claim to own part of it is questionable, and that currently there are "clouds on the title."

The two men who built the houses — former Dare County Commissioner Michael Johnson and politically active Manteo businessman R.V. Owens III, a former member of the UNC Board of Governors and nephew of longtime Democratic Senate leader Marc Basnight — acquired the island from a convicted felon and registered



Bill Boykin of Dare County believes he may still own a portion of an island he bought in 1997, later lost in a divorce settlement, and which ended up in the hands of the state and two politically connected men who built houses on the property. (CJ photo by Don Carrington)

sex offender who had acquired the island from Boykin's ex-wife.

The tale of the island's muddled ownership began in 1996 when a friend from Greensboro offered to sell Boykin the Dare County island for \$5,000. Even after learning the state of North Carolina claimed partial ownership, in January 1997 Boykin completed the purchase.

The good times he later had with his sons on the island — known as "Island L" on state maps — came to an end when he lost control of it after the divorce proceeding.

He now thinks neither Johnson, Owens, nor the state of North Carolina had clear title to the property (known in real estate terminology as "clouds on the title") and that he still may own

a significant portion of the island.

Johnson and Owens acquired the island from Jeffrey Rose, a convicted felon and registered sex offender. Rose acquired the island from Boykin's ex-wife two years after she received it.

Meantime, the state of North Carolina has claimed ownership of a large portion of the island, even though property records show the state's only official claim to the property is a boundary line agreement negotiated with Rose's attorney before the island was transferred to Johnson and Owens.

Boykin, 60, lived in Greensboro before moving to Dare County in 1998. He has been in the landscaping business since 1978.

In real estate transactions, the term "cloud on title" refers to irregularities in the chain of ownership. It can involve unpaid taxes, improperly written deeds, incorrect surveys, or missing owners.

A cloud makes it hard for a property owner to convey a clear title to another party. Parties to transactions involving clouds can resolve the matter through quitclaim deeds or other legal documents, but if they cannot agree, one party often ends up going to court

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Federal Justices Toss Districts Back to State

By BARRY SMITH
Associate Editor

RALEIGH

Halfway through the decade for which the state's congressional and legislative district maps were created, the U.S. Supreme Court has bounced them back to the N.C. Supreme Court.

The nation's high court didn't overturn North Carolina's maps, drawn in 2011 by the Republican-controlled General Assembly. Instead, it told North Carolina's top court to reconsider the case in light of an earlier ruling from the justices on Alabama's redistricting maps.

GOP legislative leaders called the U.S. Supreme Court's action nothing more than a procedural move.



"Since 2011, every court that has issued an opinion and the Obama Justice Department have reached the same conclusion — North Carolina's redistricting maps are constitutional," said Rep. David Lewis, R-Harnett, and Sen. Bob Rucho, R-Mecklenburg, in a joint statement. The two chaired their respective chambers' redistrict-

ing committees when the maps were drawn four years ago.

"Today's procedural ruling is not unexpected, and we are confident that our state Supreme Court will once again arrive at the same result and the U.S. Supreme Court will affirm its decision," Lewis and Rucho said in the statement.

North Carolina Democratic leaders took a different view. State Democratic Party Chairwoman Patsy Keever used the action to ask for donations to the party. "This will give us more competitive legislative races and will allow us to elect more Democrats to the legislature," she said in an email.

Two leaders of the state's Main

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Raleigh, N.C. 27601
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Carolina Journal is
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analysis, and commentary on
state and local government and
public policy issues in
North Carolina.



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Bill Would Require Judicial 'Retention' Elections

By BARRY SMITH
Associate Editor

RALEIGH

The state House on April 21 narrowly approved a bill that would require appellate judges to win retention elections to hold their seats.

If House Bill 222 becomes law, it would apply to the chief justice and other justices on the N.C. Supreme Court as well as all judges on the N.C. Court of Appeals. A separate measure restoring partisan elections for judges passed the House and was awaiting Senate action at press time.

H.B. 222 passed by a 60-57 vote even though several lawmakers questioned the need for the change and House Speaker Pro Tem Paul "Skip" Stam, R-Wake, issued a memo challenging the constitutionality of the proposed statute.

Under the legislation, appellate judges would continue to take office initially by winning a two-candidate election. To serve a second or subsequent term, however, a "retention" election would be held at the end of the term, with voters being asked to decide if the judge deserves an additional term.

Any judge receiving 50 percent or more "yes" votes would win another eight-year term. Those not receiving majority approval would leave office. The governor then would appoint a replacement to serve until the next general election, where he or she could win a full term in a two-candidate election. Retention elections would apply only to judges who have been elected, not to those who were appointed to the bench by the governor.

The process for replacing judges who were defeated in a retention election would be the same as that for judges who retire, resign, die in office, or are removed during their terms.

"For those folks that actually have been elected — have been duly elected in a race — at the end of their term, they would be subjected to a retention election," Rep. Robert Bryan, R-Mecklenburg, explained to his colleagues on the House floor. "It would just be an approval. Basically do you want to retain Joe Smith as a Supreme Court justice? It would be a yes or no to retain that person."

According to Ballotpedia, 18 states require at least some judges to win retention elections to keep their seats. Among them, Illinois and Pennsylvania have electoral systems similar to that proposed in H.B. 222. Illinois adopted retention elections in 1964, and 29 judges have lost retention elections. Pennsylvania adopted its system in 2013.

Rep. Grier Martin, D-Wake, offered support for the move. "This isn't a complete solution, but it is a good step forward," Martin said.



Legislation to require retention elections would affect justices on the N.C. Supreme Court, such as Chief Justice Mark Martin (shown above speaking at a John Locke Foundation event), as well as judges on the N.C. Court of Appeals. (CJ photo by Don Carrington)

His effort to amend the bill to reinstate the public campaign finance fund for appellate judicial candidates was ruled out of order.

Rep. Michael Speciale, R-Craven, didn't like the proposed change. "There's nothing wrong with the system that we have," Speciale said. "Please vote this thing down."

Rep. Marilyn Avila, R-Wake, agreed with Speciale. "I personally don't see any reason why we need to go through this convoluted method," Avila said. "Taking the power of the voters to make that decision is not the way to go."

Stam chaired the debate on the House floor but did not discuss the bill at that time. The memo he distributed asserts that the bill unconstitutionally expands the meaning of the word "election" in the N.C. Constitution to include a retention election. It notes that the word "election" is used numerous times in the Constitution, and if the General Assembly could expand the definition to include retention elections for appellate judicial races, couldn't it do the same for other elections, such as those for governor or the legislature.

The memo also asserts that the change would violate the constitution by disqualifying people other than incumbents for running for those appellate court seats.

At press time, the full Senate had taken no action on the bill.

House Bill 8, sponsored by Rep. Bert Jones, R-Rockingham, would restore partisan judicial elections statewide. In 1996, the state began shifting judicial elections to nonpartisan

contests. At the time, Republicans had begun winning judicial elections with regularity even though Democrats greatly outnumbered Republicans in voter registration. State Democratic Party leaders championed the shift to nonpartisan elections in hopes of blunting the GOP's successes.

In committee, Jones said voters are asking for more information about judicial candidates, and adding a partisan label would provide additional context.

"The main question that I hear from citizens — tell me something about the judges," Jones said. "Both of the political parties are out there stumping for their candidates, giving out their information at the polls."

"Give the people more information," Jones continued. "Let's

just be transparent about it, folks."

Rep. Pricey Harrison, D-Guilford, said judicial elections should remain nonpartisan.

"I think the public's perception out there is that judges shouldn't be pigeonholed into one party or the other," Harrison said. "I feel like the public out there is actually interested in less partisanship in elections. I know I am."

In 1996, the state removed the partisan designation from elections for Superior Court judges. In 2001, the General Assembly approved a law making District Court elections nonpartisan. Beginning in 2004, elections for appellate court judgeships became nonpartisan.

The N.C. judiciary
is the target of
legislative interest
in the current
session

House Votes to Move N.C.'s 2016 Presidential Primary to March 8

Amendment to create governor/lt. governor tickets failed

By BARRY SMITH
Associate Editor

RALEIGH

The state House approved a bill on April 22 that would shift next year's North Carolina presidential preference primary from late February to March 8. That same day, the chamber nixed a proposed amendment to the N.C. Constitution that would have required a party's candidates for governor and lieutenant governor to run as a team on general election ballots.

House Bill 457, the presidential primary move, is aimed at averting likely penalties to the state's delegations to the 2016 Republican and Democratic national conventions if the balloting were held before March 1.

Both major parties want to limit the front-loading of presidential primaries and caucuses. Any state scheduling primaries or caucuses before



March 1 must get the approval of both national parties to have their full slate of nominating delegates seated at the respective conventions. States that held early nominating elections without approval would see their delegations reduced significantly — perhaps by more than 80 percent. Four states have permission to hold primaries or caucuses before March 1: Iowa, New Hampshire, Nevada, and South Caro-

lina.

"This change is made to comply with the rules of the two major political parties," Rep. David Lewis, R-Harnett, told the House before the vote.

The bill has bipartisan support. Earlier that day, during a review by the House Elections Committee, Rep. Mickey Michaux, D-Durham, endorsed the bill.

"You [Republicans] are going to lose some delegates if this thing stays the way it is, and we [Democrats] are going to lose some, too," Michaux said. "I don't see that we have much of a choice."

Traditionally, North Carolina has held its presidential preference primary in May, along with primaries for statewide and local offices. In 2013, the General Assembly passed a bill moving the presidential preference primary to the first Tuesday after South Carolina holds its presidential preference primary.

That shift is likely to place the presidential primary on Feb. 23, 2016. However, the Republican National Committee has said it would reduce the North Carolina delegation from 72 to 12 if the state's primary occurs before March 1, 2016.

Lewis said that lawmakers moved up the state's presidential primary because nominees typically have been chosen by May.

"It makes sure we can be as relevant as we can be," Lewis said of H.B. 457.

The bill passed the House 111-1 and moves to the Senate. Previously, Sen. Bob Rucho, R-Mecklenburg, had said he didn't think the move was necessary, since the current law would not interrupt the order of state presidential primaries and caucuses.

"We never purposefully interfered with the rotation that they had — Iowa, New Hampshire, Nevada, and South Carolina," Rucho said. He said the RNC's choice of March 1 as the earliest date that states outside the "first

four" could hold primaries without penalty was "arbitrary."

Rucho said he hopes he and Senate President Pro Tem Phil Berger, R-Rockingham, can discuss the primary date with RNC members and persuade them to drop any threatened penalties.

"To disenfranchise our voters and take away the momentum would be less than beneficial," Rucho said.

Even so, Lewis said on April 22 he had communications from both major parties indicating they would have no problem with a March 8 North Carolina primary.

The separation of the presidential preference primary from other state and local primaries would add an additional cost for local elections boards. Based on the cost of the second primary in 2012, local boards estimate the cost for the separate presidential primary to be \$2.9 million.

Josh Lawson, a spokesman for the State Board of Elections, also noted that the 2013 election law includes requirements that local elections boards offer the same access to early voting in the 2016 presidential primary as they did in 2012. Rucho said it was the General Assembly's intent for local election boards to do just that.

Supporters of House Bill 344, the gubernatorial team ticket measure, were not able to muster the three-fifths majority required to place the proposed amendment before voters. Only 60 voted in favor of the measure, with 58 opposing it.

It would have stipulated that, beginning in 2020, party nominees for governor and lieutenant governor run as a team in the general election. Had the measure been approved by the General Assembly, it would have been on the ballot for ratification in 2018.

"It just makes sense that the lieutenant governor should be of the same party as the governor," said Rep. Bert Jones, R-Rockingham, who sponsored the bill. Jones said that of the 43 states with lieutenant governors, 25 of them run as a team with the nominee for governor in the state's general election. Making sure the governor and lieutenant governor are from the same party would make for a smooth transition in case the governor leaves office, he said.

Michaux, however, said the change wasn't necessary. "We've lived well with what we have right now," Michaux said.

Rep. Larry Pittman, R-Cabarrus, said the state's founders were wise not to have the two top executive branch officers elected jointly.

"North Carolina has been, in the past, a state that was reluctant to trust too much power to government," Pittman said. "They were wise enough to give us an independent lieutenant governor by not giving us a team ticket." CJ

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THE WILD WEST

The Wild West is the JLF's blog in Western North Carolina. Asheville's Leslee Kulba blogs in this site, designed to keep track of issues in the mountains of N.C.: <http://western.johnlocke.org/blog/>

State Briefs

North Carolinians' tax burden ranked 19th nationally, placing the state's Tax Freedom Day on April 16, according to the nonpartisan Tax Foundation in Washington, D.C.

Tax Freedom Day is the theoretical date that the average taxpayer has earned enough to satisfy his federal, state, and local tax obligations for the year. North Carolina's 2015 Tax Freedom Day of April 16 arrived eight days earlier than the U.S. Tax Freedom Day, April 24.

The national tax bill this year adds up to \$3.3 trillion in federal taxes and \$1.5 trillion in state and local taxes. The final tally comes to \$4.8 trillion, 31.1 percent of the nation's total income — more than Americans are expected to spend on food, clothing, and housing.

"Arguments can be made that the tax bill is too high or too low, but in order to have an honest discussion, it's important for taxpayers to understand cost of government," said Tax Foundation Economist Kyle Pomerleau. "Tax Freedom Day helps people relate to that cost."

Tax Freedom Day was created in the 1940s by Florida businessman Dallas Hostetler as a measure of federal, state, and local tax burdens. Since 1971, the Tax Foundation has compiled and published the information.

Variations in federal, state, and local tax burdens result in each state reaching its Tax Freedom Day at a different time.

North Carolina's Tax Freedom Day comes two days later than last year, but reasons for the shift are harder to discern. While national Tax Freedom Day statistics are comparable from year to year, accurate state-by-state comparisons aren't possible, Pomerleau said, as states may not report data identically across multiple agencies from one year to the next.

The first states celebrating tax freedom this year were Louisiana and Mississippi on April 2 and April 4, respectively. On May 13, Connecticut and New Jersey residents will be the last to pay their tax bills.

Among North Carolina's neighbors, Tennessee and South Carolina paid their tax bills on April 9 and April 12, while next-door residents Georgia and Virginia achieved tax freedom on April 15 and April 27.

If the nation's total tax bill also accounted for current federal borrowing — which represents future taxes owed — Tax Freedom Day would arrive 14 days later, on May 8. CJ

— KARI TRAVIS

Bond Proposals Could Mean Voting Early and Often

By BARRY SMITH
Associate Editor

RALEIGH

The McCrory administration will ask North Carolina voters to approve transportation and infrastructure bonds at a time that citizens in most (but not all) cities will elect mayors and council members. Holding the referendums this November also would ask voters statewide to cast ballots as many as five times over roughly one year.

"Within a 12-month period you'd have a statewide bond, a statewide presidential preference primary, you'd have a May primary, you'd potentially have a runoff primary, and then you'd have the general election," said Josh Lawson, a spokesman for the State Board of Elections.

The law now in effect for the 2016 primaries breaks tradition. The state's presidential preference primary would be decoupled from primaries for statewide and local offices. The House has passed a bill moving that presidential preference primary to March 8, with the other primaries occurring in May. (See story on page 3.)

Also, about one-third of the state's voting precincts, primarily rural, would have to gear up for voters in an election officials had not anticipated.

"The state overall has about 2,700 precincts," Lawson said. "About 1,000 of them do not have an election presently scheduled for them on Nov. 3."

Moreover, eight counties currently have no elections scheduled for November.

A handful of municipalities and at least one county school board have scheduled October elections, with potential runoff dates in November.

In April, state Transportation Secretary Tony Tata told the North Carolina Chamber's Transportation and Infrastructure Summit that the McCrory administration would push for the transportation bond in November 2015. He also said the governor wants another bond referendum, for state and higher education buildings and repairs, on the ballot. Each referendum is expected to authorize between \$1.2 billion and \$1.4 billion in borrowing.

Rep. John Torbett, R-Gaston, co-chairman of the House Transportation Committee, supports a November 2015 transportation bond referendum.

"The longer we wait, the worse things get," Torbett said. "We owe, first and foremost, the citizens who [deserve] the best that we can possibly give to them. Right now I've heard that beyond deserving, they're demanding that we get our infrastructure back on line."

David McLennan, visiting professor in the Political Science Department at Meredith College, noted that the governor may want to hold the referendum this fall rather than in 2016 for strategic reasons.

"It's going to be a low turnout election if it is on the ballot this fall," McLennan said. "There'll be some places outside the cities where it will be the only thing on the ballot, [which] may help it pass."

McLennan suggested turnout may be 10 percent or lower this fall.

The House has passed legislation in each of the past two sessions that would allow referendums like the one favored by the governor to be held only on primary or general election days in even-numbered years, when voter turnout

is expected to be the highest. Both measures died in the Senate.

McLennan said turnout may be higher than usual if a lot of campaigning takes place supporting or opposing the bonds. He added that it's far from certain the bonds would pass.

"It could be a risk for Gov. McCrory," McLennan said of putting the measure before voters in a low-turnout environment. "[If] it goes down to defeat in 2015, that would make him appear weaker going into 2016" and his re-election campaign.

Meantime, it may be more difficult to get voters to focus on a bond referendum in 2016, with contests for president, U.S. senator, and governor on the ballot, along with congressional, legislative, and other state and local races.

Andy Taylor, assistant professor of political science at N.C. State University, said he doubts the governor is trying to influence the outcome of the bond referendum by scheduling it this November rather than waiting until next year.

"The governor seems to think that we need to move relatively quickly on these kind of projects, that they are important to the economy and can't really wait," Taylor said, agreeing

with Torbett. "Pushing the bond back to even the primary or November 2016, that may be too late."

Taylor said that McCrory has talked a lot about wanting to get these highway projects under construction immediately. "Waiting another year or waiting another six months undermines this argument," Taylor said.

Torbett acknowledged that having referendums this fall would be a change for rural voters. "It would be one reason to go vote, as we should always go do."

Tata told the N.C. Chamber that he hoped an early bond referendum would allow the DOT to take advantage of lower interest rates. "All the indications are that interest rates won't stay where they are," Tata said.

He said projects already have been identified.

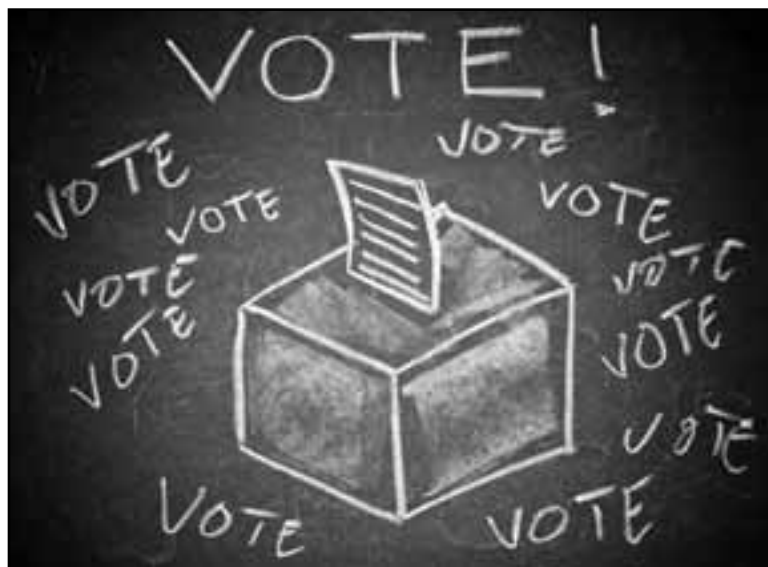
"There are about 30 projects in this transportation bond," Tata said. "And then we also have a prioritized way of ranking unpaved roads." Tata said there are about 270 unpaved roads in the state, mostly in the western and eastern parts of the state.

Previously, the McCrory administration had indicated that the governor would not seek voter approval of the transportation bonds. In a "fact sheet" sent out by McCrory's office when he released his budget in March, the administration said it would seek funding for the transportation undertakings through a "revenue bond," which borrows against anticipated future revenues to the state but does not require voter approval. General obligation bonds, which pledge the taxing power of the state, do require voter approval.

Tata said that originally the administration was considering issuing a revenue bond.

"There are pros and cons from a credit rating standpoint and from a political standpoint, I think, on doing the general obligation versus the revenue bond," Tata said.

Among the items identified in the fact sheet for the buildings and infrastructure bond are facilities for the National Guard, community colleges, and other agencies to help create economic development opportunities. CJ



Report: Restrictions on Nurse Roles Costing North Carolina Billions

By DAN WAY
Associate Editor

RALEIGH

North Carolina could save as much as \$4.3 billion while easing, if not eliminating, a looming doctor shortage by updating statutes that restrict the operations of high-level nurses, a Duke researcher says.

Companion bills were introduced in the House and Senate relaxing outdated restrictions that limit the functions performed by advanced practice registered nurses — nurse practitioners, certified registered nurse anesthetists, certified nurse midwives, and clinical nurse specialists.

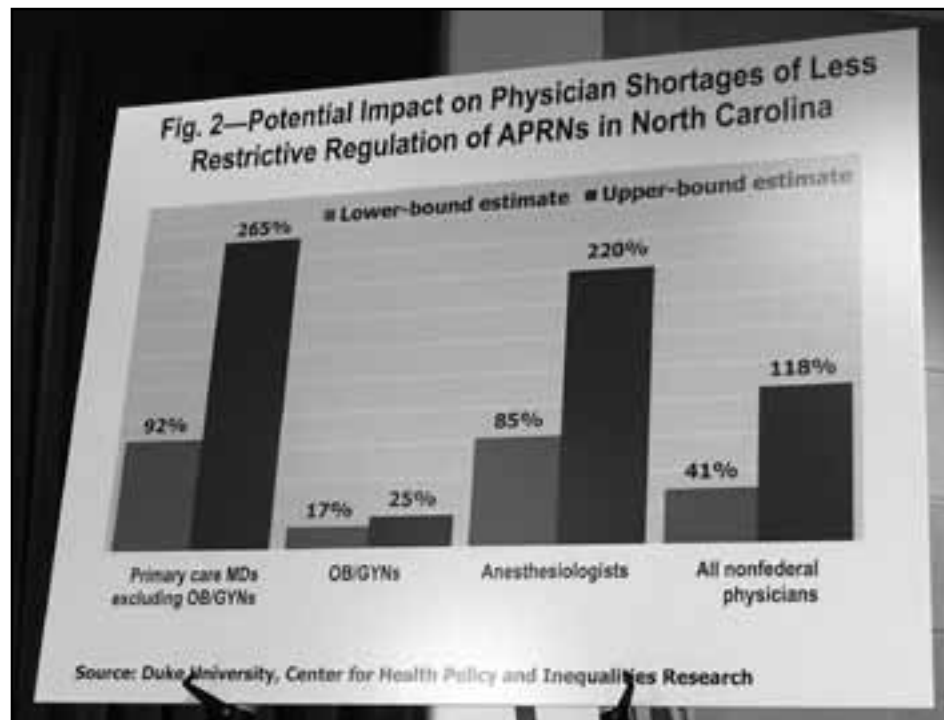
A report by Duke University research scholar Chris Conover and doctoral student Robert Richards notes that those nurses with those certifications offer patient care in a broad range of settings, including practices in offices and clinics as well as inpatient and outpatient hospitals.

“Various studies have indicated that expanded use of advanced practice nurses under less restrictive regulation would produce annual health system savings of anywhere from 0.63 percent to 6.2 percent,” Conover said during an April 22 news conference.

“In North Carolina, annual [health care] spending, we estimate, was \$69 billion in 2012. So these numbers translate into annual savings of anywhere from \$443 million to \$4.3 billion. That’s a lot of money. That amounts to \$44 to \$437 per North Carolinian,” Conover said. He expects the savings to be closer to the high end of the range.

Savings largely would be due to advanced practice nurses earning about 40 to 50 percent of what physicians make, and training at lower cost.

If Obamacare “or something



Bills have been offered in the N.C. General Assembly to relax what critics say are outdated restrictions that limit the function of registered nurses. (CJ photo by Dan Way)

similar” is fully implemented by 2020, the demand for medical care in North Carolina will rise 3.1 percent if Medicaid is not expanded, and will jump by 5.7 percent if Medicaid is expanded, Conover said.

Less restrictive regulation of APRNs would result in a net increase of 1,744 full-time-equivalent advanced practice nurses, he said. That would reduce the expected shortage of primary care physicians resulting from anticipated Obamacare-related early retirements and flight from the profession “by at least 92 percent,” excluding OB-GYNs.

“The expected increase in nurse midwives alone would reduce the expected shortage of OB-GYNs by 17 percent,” Conover said. But depending on their area of specialization, the

expanded use of APRNs could “completely eradicate the shortage of OB-GYNs.”

At least 85 percent of the expected shortage of anesthesiologists, and possibly the entire shortage, could be eliminated by expanded use of certified registered nurse anesthetists, Conover said.

“The state’s outdated regulations include red tape in the form of ‘physician supervision’ business contracts that do not require physicians to actually care for patients or even step foot in the APRN’s practice,” Chris Cowperthwaite, a spokesman for the North Carolina Nurses Association, said the day after the news conference.

“These contracts are often very costly — especially for APRNs who don’t work within hospital systems,” Cowperthwaite said. Senate Bill 695 and House Bill 807 “would bring North Carolina in line with other states that have already modernized health care by letting APRNs practice without these costly and unnecessary requirements.”

He said the bills do not expand the scope of services that advanced practice nurses can provide. But because APRNs must practice under contract with a supervising physician, these nurses might have to stop seeing patients if their supervising physician moves out of state or dissolves the business relationship for any other reason.

The other “substantive change” in the proposed legislation would put all APRN regulation solely under the Board of Nursing. North Carolina is one of only four states that regulate nurse practitioners through both a nursing board and a medical board, Cowperthwaite said.

Robert Seligson, CEO of the North Carolina Medical Society, said the physician organization opposes

the bills.

“Repealing the physician supervision requirement for nurse practitioners would be a mistake and a step backward,” Seligson said.

“Nothing in today’s law limits a nurse practitioner’s range of services,” Seligson said. “But if supervision is gone, then limits will be needed to ensure patient safety. That will seriously limit the usefulness of nurse practitioners in our system and force us into a one-size-fits-all approach to nurse practitioner regulation.”

Conover counters that “the quality-of-care literature” shows no difference in terms of clinical metrics such as patient outcomes and mortality. But it does show that patient satisfaction is higher when care is delivered by nurses rather than doctors.

“When you have a monopoly on a system, you tend to fight things that make changes to that monopoly,” bill sponsor Sen. Ralph Hise, R-Mitchell, said at the news conference. He said Medical Society opposition is “duplicious” because doctors “hand over a lot of their work and practice” to advanced practice nurses on a daily basis.

Entrenched interests “want to keep their control ... even though they’re creating systems that are failing communities” such as in the mountain regions of Western North Carolina that he represents, Hise said.

“We’re looking to remove some of those regulatory burdens with highly trained medical jobs, medical jobs that will serve in our rural communities, but it will also save millions of dollars,” Hise said.

While Western Carolina University, Appalachian State University, and Mars Hill University have opened nursing programs or are in the process of doing so, more faculty members are needed to expand community college nursing programs, he said.

“Every day we’re hearing the problems we have with health care in North Carolina. We’ve got a crisis here and a crisis there. We don’t have access. We don’t have full service. We can’t take care of everybody,” said Rep. Marilyn Avila, R-Wake, sponsor of the House bill.

“And some of those problems unfortunately lay at the feet of legislators because of statutes we have in place that are outdated because of changes in technology, changes in education, in professions across the board,” Avila said. “We’ve put in a lot of restrictions that today don’t really help us.”

The nursing profession is an example in which more autonomy is merited, she said.

“You’ve got nurses now with master’s [degrees] and Ph.D.’s,” Avila said. “I don’t know of a profession right off the bat that has changed so dramatically” in the past 50 years. CJ

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Experts: Medicaid Reform More Important Than Expansion

BY DAN WAY
Associate Editor

RALEIGH

Combining aspects of competing House and Senate Medicaid reform proposals could give patients more choices while remaining accountable to taxpayers, said a panel of experts at an April 13 briefing for policymakers and industry officials.

The experts added that those reforms could take place in isolation from the debate over expanding Medicaid under the Affordable Care Act.

"Don't think you have to link Medicaid reform with Medicaid expansion [under Obamacare]. Medicaid expansion is fraught with its own problems," said Christie Herrera, a health policy expert at the Florida-based Foundation for Government Accountability, a think tank studying health care issues.

"If the legislature does not want to do expansion, that does not diminish the need to reform Medicaid because the cost growth and the quality of the program" must be addressed immediately, said Alan Levine, CEO of Mountain States Health Alliance, a 14-hospital system in northeast Tennessee.

"It's the worst thing to do an expansion when you have a program that's already a runaway train in terms of costs," said Levine, who devised Medicaid reform plans in Florida and Louisiana.

The John Locke Foundation sponsored the Medicaid reform panel at which Herrera, Levine, and Kansas Lt. Gov. Jeff Colyer spoke to legislators, insurance company officials, and health care providers.

Florida, Kansas, and Louisiana have added elements of competition to their Medicaid systems, saving hundreds of millions of dollars. None has expanded Medicaid under Obamacare.

North Carolina reform has stalled because the governor and members of the two legislative chambers cannot agree on a model for delivering services.

The House and the McCrory administration support an Accountable Care Organization model, placing hospital- and physician-driven networks in charge of Medicaid.

The Senate prefers Managed Care Organizations generally run by large insurance companies, with hospital-led ACOs and doctor-created networks as part of the mix. The Senate also has called for Medicaid to be pulled from the state Department of Health and Human Services and placed under an independent, appointed authority.

"We had the same growing pains in Kansas" while crafting KanCare, said Colyer, a pediatric plastic surgeon and former Kansas legislator. KanCare is expected to save taxpayers \$1 billion



Lt. Gov. Jeff Colyer of Kansas speaks at the John Locke Foundation-sponsored Medicaid reform panel on April 13.

over several years even though the state's Medicaid population is about one-quarter the size of North Carolina's.

"Try to think about it as an entire state, and an entire ecosystem, and then if an ACO wants to compete against MCOs, then you can do something. Don't let them carve out pieces of all the best parts" for one type of system, Colyer said.

Levine agreed that competition should be part of any reform. Florida offers up to 14 plan options to Medicaid recipients, and Louisiana chose five plan administrators from among 14 bidders. Both states have saved hundreds of millions of dollars while expanding patient choice.

He said ACOs and MCOs should operate on a level playing field and given "the opportunity to prove if they can do it. If they can't, the system will evolve, the market will work," and those not able to meet financial and healthy-outcomes goals would be weeded out.

However, he opposes the Senate pitch for an independent Medicaid authority.

"I do think that creating a separate organization creates more bureaucracy. You want the governor to be held accountable for managing the program through the person that he or she appoints," Levine said.

"Kansas had problems with its health policy authority. In fact one of the first things Gov. [Sam] Brownback did after taking office [in 2011] was to dismantle the health policy authority because it had ran amuck," Herrera said. Oklahoma's Medicaid authority also "has its share of problems."

"North Carolina, like many states, can't afford to wait to reform Medicaid," Herrera said. "In the last decade your Medicaid spending has nearly doubled," enrollment is growing four times faster than the population, and North Carolina spends more on Medicaid than any other state in the region and the national average.

"You spend 50 percent more than

Florida spends on Medicaid ... but your value for your dollar really isn't that great," Herrera said, noting that more than half of the health outcomes North Carolina Medicaid tracks have been declining since 2008.

"When you unleash the power of the private sector, you are able to create Medicaid plans that tailor themselves not to the needs of the bureaucrats, but to the needs of the Medicaid patients themselves," Herrera said.

Aside from MCOs and ACOs, Florida has specialty plans for foster care, HIV/AIDS, and severe mental health needs.

"The more Medicaid plans that you have in your reform, the more you have leverage over them. When you have fewer plans, the more they have leverage over you as the lawmaker," Herrera said.

Kansas' Medicaid spending was growing by 10 percent a year before KanCare was created. KanCare's three insurer-led programs were not allowed to cut provider rates, drop Medicaid recipients, or reduce services. They also were required to contain costs and focus on improving outcomes for the most costly patients, Colyer said.

In North Carolina, hospitals, physicians, and professional organizations adamantly oppose MCOs. Gov. Pat

McCrory and Department of Health and Human Services Secretary Aldona Wos want to let providers create their own networks under the ACO model.

Conversely, in Kansas, hospitals and doctors supported the coordinated care reforms. In Florida, the hospitals were on board with change, but doctors took longer to convince for fear their rates would be cut.

Ironically, Levine said, the managed-care Medicaid programs were able to pay higher rates than ACO models, and participating doctors could negotiate rates rather than the government-set rates of ACOs.

"Over time the hospital provider networks found they couldn't achieve the same savings as the MCOs," so they developed relationships to split services, Levine said.

North Carolina has great hospitals, "but just because you're a great hospital doesn't mean you're a great insurance company. You have to invest a lot of capital and

a lot of human resources into creating something that the market has already created" at a cost of billions of dollars, Levine said.

"I promise you," he said, "good providers, good hospitals, and doctors that work together with the payers, they find ways to be very successful in that model." CJ

Panel advised that Medicaid should not be expanded when it's "already a runaway train in terms of cost"

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Report: Proposed Department For State IT Makes Sense

JLF says veterans' issues deserve more legislative oversight

By CJ STAFF

RALEIGH

Gov. Pat McCrory's proposal to establish a new state government department for information technology makes sense. But lawmakers should revisit a similar proposal for a department targeting veterans affairs. Those are two key findings from a new John Locke Foundation Spotlight report.

"A new Department of Information Technology would address the root cause of North Carolina's IT challenges by defining one source of accountability and authority to accelerate change, reduce costs, and more effectively manage IT resources," said report author Sarah Curry, JLF director of fiscal policy studies. "On the other hand, it's not clear that the benefits of creating a new Department of Military and Veterans Affairs would outweigh the costs."

McCrory included both new departments in his recommended N.C. budget for 2015-17. As Curry develops her own state budget proposals for release this spring, she has focused attention on the merits of these two proposed cabinet-level changes.

"Whenever a government official suggests creating a new department or agency, one must weigh the cost of creating the department, including the addition of new bureaucracies, with the potential benefits," she said. "Some

areas may need to be consolidated into a department for budgetary savings or government efficiency, while others may benefit from minor organizational changes."

The case for an IT department is strong, Curry said. "Efforts to consolidate or coordinate the state's information processing resources have been discussed since 1983, when the first state Computer Commission was created."

Restructuring state IT services now should improve citizen satisfaction, increase efficiency, reduce complexity, and improve the state's ability to attract, retain, and reward IT talent, Curry said.

"A coordinated and centralized effort might also save the state money," she said. "It has been estimated that states that move to a unified structure have saved an estimated 10 percent to 20 percent of their initial operating budget over five years."

A unified department would create aggregate buying power for contracts, identify ideas that can work across agencies, and improve IT security statewide, Curry said. "There would be no need for a major shift in state government employees or a new work location," she added. "All current cabinet agency IT professionals would work for the new department, with minimal reductions in staff levels

possible through attrition and re-evaluation of open positions."

In contrast, Curry recommends that legislators not create a new department targeting the military and veterans. Instead, a new Division of Military and Veterans Affairs within the existing Department of Public Safety should achieve the same goals as a new department, she said.

"Veterans programs have been housed within the Department of Administration for nearly the last half-century," Curry said. "There have been few systemic problems with the core functions or mission of the many programs that serve

veterans and their families. While it has been documented that the state can achieve efficiencies through some of the veterans' programs, there is no compelling reason to create the new agency."

The new division could consolidate the programs identified in the governor's budget proposal, including existing Veterans Affairs services, the State Veterans Home Program, Joint Land Use Study, and Base Relocation and Closure programs. "That division ought to be housed within Public Safety, where it would be closer to the National Guard and a Veterans Specialty Court pilot project," Curry said.

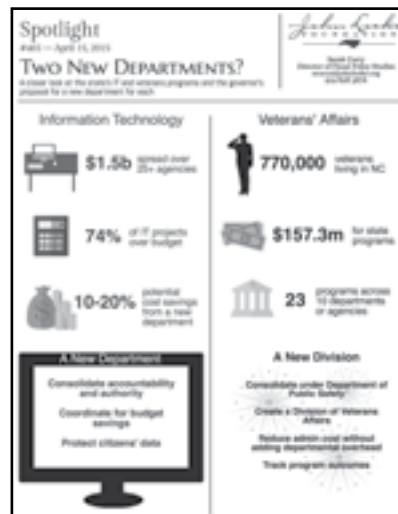
Curry recommends establishing

a branch within the new division to track and improve services for veterans and their families.

"Of 23 existing state-sponsored or -supported programs targeting veterans, at a cost of more than \$157 million, few track outcomes for veterans," Curry said. "By implementing performance measures and tracking outcome data, the state can better determine the extent to which these programs improve the lives of veterans and their families. It also would be easier to determine if any programs need to be reformed or consolidated."

The report also spells out an expanded role for the General Assembly. "Establish the Joint Legislative Military and Veterans Affairs Oversight Committee," Curry said. "Even with a new division, some programs targeting veterans would continue to be housed in other parts of state government. The new oversight committee would monitor measured outcomes from veterans programs and serve as the enforcing entity to hold agencies accountable. This committee also could explore the possibility of moving more of the state's veterans' programs into the new division."

Lawmakers should approach creation of any new cabinet-level state department with caution, Curry said. "Each new department comes with administrative costs, such as executive management positions from the cabinet secretary to a chief operating officer, chief finance officer, legislative liaison, public information officer, and human resources director," she said. "If the benefits of creating that new department outweigh those costs, lawmakers should proceed with the proposal. If not, they should consider alternatives." CJ



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Lawmakers Trying to Put an End to Diversion of Highway Funds

\$250 million shifted to state General Fund every year

BY BARRY SMITH
Associate Editor

RALEIGH

State lawmakers are making efforts to free more money for highway construction and maintenance by paying for driver's education and state troopers out of General Fund revenues rather than depleting the state's highway funds.

"Every year, we're faced with this same off-loading of transportation dollars into the General Fund," said Rep. John Torbett, R-Gaston, who chairs the House Transportation Committee and is vice chairman of the House Finance Committee.

The General Fund pays for most state government programs, including public schools, higher education, prisons, and human services programs. Most highway programs are financed by either the Highway Fund or the Highway Trust Fund, which get their revenues from gasoline taxes, highway use taxes, auto sales taxes, and vehicle registration fees.

Between \$250 million to \$260 million annually, however, is diverted from those highway funds to pay for the Highway Patrol and driver's education, Torbett said. Driver's ed accounts for \$26 million of the total.

Lawmakers may have a "fix" for the driver's ed component, he said, by finding another funding source to cover the costs of the program that teaches new drivers the rules of the road. One alternative Torbett suggested would be to use money the state receives from fines and forfeitures — which already goes to the state's public schools — for driver's ed.

Funding for driver's education goes to the N.C. Department of Public Instruction. State Superintendent of Public Instruction June Atkinson did not respond to a request for comment about suggestions for alternative revenue sources.

Finding other ways to pay for the Highway Patrol would be more difficult because it has a much larger price tag.

Rep. Dana Bumgardner, R-Gaston, has introduced a bill phasing out the transfer by reducing the money going from the Highway Fund to the General Fund by \$49 million a year over the next four years. Sen. Bill Rabon, R-Brunswick, has filed a similar bill in the Senate.

Rep. Nelson Dollar, R-Wake, who is senior chairman of the House Appropriations Committee, said budget writers are taking a hard look at what can be done to end the transfers.

"This is an issue that's been explored for a number of years," Dollar said.

"The funds simply aren't there to contemplate the movement of funding the Highway Patrol out of the General Fund this year," Dollar said. "We would certainly like

to be in a position to consider it. We're not there yet."

Dollar said budget writers are still exploring options that would end diversions from the Highway Fund to pay for driver's education.



"You've got other budget pressures — increased enrollment in K-12 education, increased enrollment in higher education, [and] increased enrollment in Medicaid," Dollar said. "Those are just the big-ticket items."

Dollar noted that last year, lawmakers made the transfer for driver's education nonrecurring, meaning they did not intend the annual transfer to remain a permanent part of the budgeting process.

Dollar noted that for decades, the General Assembly transferred about \$170 million annually from the Highway Trust Fund to the General Fund. He said in recent years, lawmakers have worked to end that transfer and protect the Highway Trust Fund.

The Highway Trust Fund, established in 1989, primarily pays for multilane highways and urban loops. The Highway Fund, established in 1921, is

the state's main transportation fund and finances highway construction and maintenance, along with the Highway Patrol and the Division of Motor Vehicles.

In the 1990s, the Highway Fund began supporting public transportation and rail programs.

During the most recently completed fiscal year, the state spent \$4.3 billion on transportation programs. The largest share of the money — \$2 billion or 47.3 percent — came through the Highway Fund, and \$1.1 billion or 25.5 percent was funneled through the Highway Trust Fund. The state received nearly \$2.2 billion, or 27.2 percent of its transportation budget, from the federal government.

Of the \$2 billion Highway Fund revenues, nearly \$1.4 billion came from motor fuels (gasoline) taxes, \$392 million from DMV registrations, \$123 million from licenses, and \$170 million from other sources.

The largest share Highway Fund spending was used for road maintenance — \$940 million. Another \$180 million went to bridge preservation, and \$62 million was spent on construction.

An additional \$142 million went to the Powell Bill program, which is allocated to municipalities across the state for street maintenance and construction.

The Department of Transportation spent another \$196 million on multimodal (nonhighway) transportation, including bike and pedestrian paths, rail, and aviation.

An additional \$245 million went to DMV and administration, with \$26 million going to other spending.

The Highway Trust Fund gets its revenues from a portion of the motor fuels tax, highway use (sales) tax, and title fees. The trust fund, along with federal funds, pays for multilane highways and urban loops. CJ

Millions in funds that are supposed to be used for road construction are used for purposes such as driver's education

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JLF: Voluntary Certification Should Replace Most State Licensing

Report highlights benefits of removing barriers to entry

BY CJ STAFF

RALEIGH

North Carolina could promote job creation, lower consumer prices, and boost opportunities for low-income families by replacing most of the state's occupational licensing with voluntary certification. A new John Locke Foundation Spotlight report explains why.

"North Carolina's aggressive occupational licensing faces considerable concerns about its fairness, efficiency, scope, and more," said report author Jon Sanders, JLF director of regulatory studies. "A ready answer to these concerns would be to transition most jobs currently under state regulation away from licensure and into private certification."

Sanders released his report as the state's occupational licensing system faces questions on multiple fronts. An occupational license represents government's official permission for an individual to work in a regulated area of business. (Read the report at <http://bit.ly/1DtDrbG>.)

The governor's efficiency program, the General Assembly's program evaluation team, and the state auditor have recommended changes to the existing system. Those changes range from improved oversight to consolidation and elimination of existing licensing requirements.

In February, the U.S. Supreme

Court ruled that one licensing group, the N.C. State Board of Dental Examiners, violated federal antitrust laws with restrictions on teeth-whitening services.

"The need for reform beckons, and there is a reform that addresses legitimate concerns about licensure while upholding North Carolinians' self-evident constitutional right to 'the enjoyment of the fruits of their own labor,'" Sanders said. "That reform is voluntary certification."

Voluntary certification addresses three distinct problems, Sanders said. "Certification promotes safety and quality by letting customers choose according to their needs and budgets," he said. "Second, certification promotes economic growth, especially in poor communities, by not pre-emptively pricing poor individuals out of entrepreneurship but letting them compete. Third, certification leads to more affordable services, with prices being kept lower as more businesses are able to compete for customers."

There is nothing new about private certification, Sanders said. "Market opportunities exist when consumers want to know which members of a service profession are trustworthy — and when the professionals wish to alert potential customers that they can be trusted."

Sanders cites existing private certification groups that serve more than 300,000 mechanics and more than 4,000 locksmiths. "The certification service and certified professionals work in concert to uphold each other's reputations," he said. "The certification service is also better able to adjust quickly to changing service dynamics, discard insufficient standards, and adopt new ones more reflective of the work needs."

"Their market survival depends upon getting the standards right," Sanders added. "They are not government outfits that can be removed only with a vote of state lawmakers."

More than 1,100 professions face state licensing across the 50 states, according to the report. "But only a little

over 5 percent of those professions are licensed in every state," Sanders said. "That means states are in significant disagreement over which services actually need regulation for safety and quality."

Benefits from government-run occupational licensing are dubious, Sanders said. "State licensure is usually justified as ensuring safety and quality of service work, but research findings cast much doubt on licensure's actual effectiveness regarding safety and quality."

One finding is clear from aca-

demical research into licensing, Sanders said. "The strongest, most consistent finding in the research literature is this: Licensing yields higher earnings for licensed professionals by keeping competitors out and prices for consumers high."

Occupational licensing proves especially harmful to the poor, Sanders said. "This harm is both direct and indirect," he said. "Higher prices on services burden all consumers but affect the poor the most. Costly hurdles to gaining a license keep some would-be practitioners out, especially the poorest."

Licensing also blocks many low-income people from becoming self-employed entrepreneurs, Sanders added.

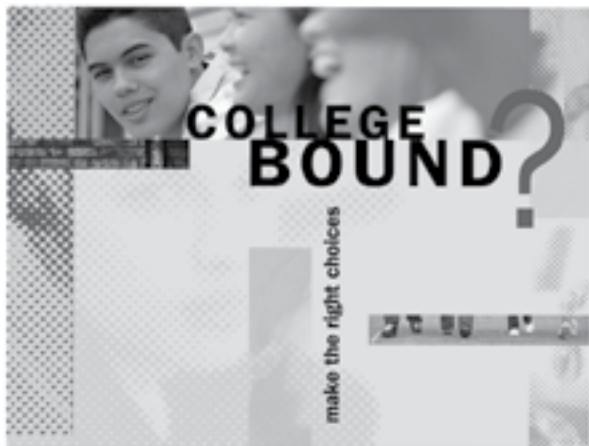
"Research spanning decades has shown that entrepreneurial activity in low-income areas causes a 'double dividend' of local job growth and economic growth in areas that need it the most," he said. "By discouraging that entrepreneurial activity, occupational licensing deals a double blow to low-income communities."

Transitioning from government-run occupational licensing to voluntary private certification makes sense for North Carolina, Sanders said. "This move would inject a great amount of freedom and choice into the market for service professionals and into the labor market as well," he said. "It would pay dividends in terms of job creation as well as help lift low-income individuals and neighborhoods."

"It would be another strong signal that North Carolina welcomes business and supports her entrepreneurial risk-takers, big or small," Sanders added. *CJ*



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COMMENTARY

Beware the Teacher Resignation Spin

The end of the school year is in sight, which means that North Carolinians will be subjected to a slew of “take this job and shove it” missives from the state’s public school teachers. As usual, the attention given to them will be overblown.

In April, for example, *USA Today* published a letter by former North Carolina teacher Deanna Lyles. She resigned in the middle of the current school year to begin work as a traveling librarian. In her widely circulated op-ed, Lyles objected to accountability, bureaucracy, and poor working conditions but not her salary and benefits. In fact, she admitted to taking a pay cut to work at the library.

Gripes about accountability, bureaucracy, and poor working conditions in North Carolina public schools are nothing new. In 2012, Kris Nielsen underscored all three in a lengthy resignation letter to the Union County Public Schools. The letter gained national attention after it appeared on a *Washington Post* blog, and Nielsen now bills himself as a “dedicated activist against corporate education reform.”

A year later, a school media specialist created ResignNC.org to document the stories of departing and unsatisfied North Carolina teachers. Similarly, an instructor for the Center for Documentary Studies at Duke University began her own tracking effort on Facebook in 2014. Neither was able to collect more than a handful of stories.

In fact, the accounts published and collected above are notable only because relatively few teachers leave the profession due to dissatisfaction with teaching or because they want to enter a new profession.

Teachers who resign for these reasons get the most attention, despite the fact that they accounted for only around 2 percent of the 96,000 teachers employed during the 2013-14 school year. Approximately 1,000 teachers resigned because they were dissatisfied with teaching. Another 734 teachers left North Carolina to teach in another state. There was a year-to-year increase in both categories, but re-

porting limitations make it impossible to determine which aspects of the teaching profession prompted teachers to change careers.

According to the annual teacher turnover report, the overall statewide turnover rate was 14.12 percent during the 2013-14 school year, a slight decrease from the previous year. Much of what the state classifies as turnover were teachers who resigned to teach in another North Carolina public school system, retired with full benefits, or resigned because of family relocation. Just under half of the nearly 13,560 teachers who left the classroom last year cited one of these three reasons for their departure.

In fact, teachers continue to find new opportunities in North Carolina schools. Over 4,000 teachers left the classroom last year but remained in education in some capacity. Most resigned to teach in another public school in North Carolina or accepted a nonteaching position in education.

Nearly 2,500 teachers retired with full or partial benefits and around the same number left the profession to address personal matters, such as family relocation, health, and child care, or to continue their education.

So, why does the media spend so much time focusing on a relatively small segment of the turnover population?

I do not believe that it is a coincidence that the publication of teacher resignation letters, op-eds, and features has appeared to increase since voters elected a Republican legislative majority in 2010. The mainstream media, liberal think tanks, and public school advocacy groups believe that the key to undermining, and eventually unseating, the majority is to depict Republicans as enemies of the traditional public school system.

What better way to do so than to encourage disgruntled teachers to air their grievances in a newspaper article, television story, website, or public forum? CJ

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



TERRY STOOPS

Bill Increasing Scholarships For Special Needs Advances

BY BARRY SMITH
Associate Editor

RALEIGH

A House education committee in late March gave its OK to House Bill 133, a measure increasing the scholarship amount available to special-needs students who attend private schools from \$3,000 per semester to \$4,000. It also approved a change allowing families receiving those scholarships to collect the money in advance rather than waiting for reimbursement.

The latter provision was intended to help low-income families who may not have enough money to pay tuition in advance, said Rep. Jonathan Jordan, R-Ashe.

Currently, parents receiving the scholarships must show that a disabled child was enrolled in or received services at a private school for 75 days. They must wait until the end of a semester for reimbursement.

Rep. Graig Meyer, D-Orange, expressed concerns about students who might receive the scholarship, enroll in a private school, and then withdraw. He proposed an amendment that would maintain the current reimbursement-waiting period. However, Rep. Paul “Skip” Stam, R-Wake, said Meyer’s amendment was unnecessary because the State Education Assistance Authority, which administers the scholarships, would write rules governing distribution of the funding.

Stam noted that in the rules the SEAA had written for the Opportunity Scholarship Program — which provides vouchers for children from lower-income families to attend private schools — are provisions allowing the state to recover money when a child receiving an opportunity scholarship withdraws from school.

Committee members hammered out a compromise amendment stipulating that the SEAA’s rules would require a proportional return of funds if a student withdrew from school before the end of a semester.

Julia Adams of The Arc of North Carolina, a nonprofit organization that provides services and lobbies for the

disabled, said she thought the bill was a step in the right direction.

“We think that it’s wonderful that it’s being raised to \$4,000 per semester and that that funding will go directly to private schools,” Adams said. “We really believe that that will help with access to the scholarship program.”

Adams also praised the provision allowing families to receive scholarship money in advance. “I think that’s very positive,” Adams said. “For a lot of people who are struggling in our state financially right now ... it’s been very difficult to be able to put up the full tuition for private schools so that

their students with disabilities could obtain an education. This will really help those families.”

Not all members of the committee were happy with the change, or the disability scholarship program.

“We’re sending public funds, public dollars to private schools,”

said Rep. Paul Luebke, D-Durham. “It’s just wrong to send public funds to private schools. But it’s also wrong to send money where there’s not a special education program at that school.”

Luebke consistently has opposed both the Opportunity Scholarship Program open to all low-income students and the scholarships for students with special needs.

The General Assembly in 2011 created a tax credit for families who had children with disabilities. The tax credit was available to offset the costs of education expenses, including tuition to private schools or expenses related to homeschooling disabled children. It was capped at \$6,000 a year.

Because many low-income families did not owe enough in taxes to take advantage of the nonrefundable tax credit, the 2013 session of the General Assembly converted the tax credit into a scholarship or grant of \$3,000 per semester. The scholarship program garnered bipartisan support in both chambers, passing the House by a vote of 90-21 and the Senate by a 36-6 margin.

The bill is in the House Appropriations Committee, where it was awaiting review at press time. CJ



Task Force on Testing Has Tough Task in Convincing Manning

BY DAN WAY
Associate Editor

RALEIGH

A State Board of Education task force is investigating scrapping longstanding end-of-grade tests for a system of interim assessments, but one judge with a years-long interest in education is not convinced it's a good idea.

At a hearing on April 8, Wake County Superior Court Judge Howard Manning spent more than 30 minutes in a scathing commentary, noting that 44 schools identified in 2006 as failing to meet state goals still do not meet it, despite spending \$1.7 billion on intervention programs since 2009.

Manning was concerned that the task force might propose measures that would run afoul of the mandates in the *Leandro* case.

In *Leandro*, the state Supreme Court ruled that every student in North Carolina has a constitutional right to the opportunity to obtain a sound, basic education.

At the opening of the hearing, "That remains an ongoing problem," Manning said. "If you were GE, or Google, or Microsoft, you wouldn't be supporting any of them. You would have closed the plant down or either fired everybody in the school and got somebody to get the job done."

The task force says its proposals are designed to provide more reliable and immediate data to identify students who need help in core subject areas.

"Essentially the current testing model is a very effective system for data collection, but it's not a very effective system of informing instruction," said the state board's vice chairman, Al "Buddy" Collins, who heads an agen-

cy task force comprising 25 volunteer community and education members, during the hearing before Manning in Wake County Superior Court.

"The difficulty we have with end-of-grade testing as presently computed is that the information's received ... after the school year is over with, with very little feedback," Collins said.

That prevents teachers from being able to know "exactly what they missed or they did not teach well on the test," Collins said. That, in turn, "has a significant limitation with respect to what teachers need on informing instruction, and with what principals need to evaluate their teachers."

Equipping teachers with a more useful assessment tool to help them improve "exponentially increases the likelihood of the child being successful," Collins said.

Manning had asked for an update about the task force's work. Collins said the task force has made no specific recommendations to the board, but it may do so within the next few weeks.

John Locke Foundation director of research and education studies Terry Stoops said he "found it curious" that Manning called a hearing partly to discuss a draft proposal, especially because there is no guarantee that the General Assembly and State Board of Education would concur with the working group's recommendations.

"Although it is not clear that Judge Manning recognizes it, North

Carolina has had a broken testing program for some time," Stoops said.

"But I do not think that its shortcomings have much to do with when and how we test. Rather, it is a matter of who manages the testing program and what they test," Stoops said.

The prospective timeline calls for making a recommendation to the Joint Legislative Education Oversight Committee in June. Changes to end-of-grade testing likely would need legislative approval.

If a program is devised "that could be executed faithfully," it could be launched as a pilot project next year, as 23 school districts have expressed interest, Collins said.

Any plan would have to comply with the state constitution (including *Leandro* mandates), state law, the federal Elementary and Secondary Education Act, and Individuals with Disabilities Act. A waiver agreement with the U.S. Department of Education to No Child Left Behind standards would have to be amended before any changes can be made, he said.

The end-of-grade test "drives all other tests in the school," Collins said.

As a result, local school districts have created a number of tests during the school year to prepare their students for the end-of-grade tests, but they are not aligned with the actual test, he said.

Still, the task force saw value in interim testing and is seeking a testing design that would fit with the ACT

test.

"One of the most effective ways of professional development is finding a teacher early, and finding a teacher's deficiencies early, and putting them in a professional learning community situation to improve that instruction," Collins said.

Interim assessments would show whether a teacher appropriately addressed the learning needs of a child, and provide data comparing a teacher's effectiveness to that of colleagues.

"That tells the principal that they need to address this concern and rectify that, and therefore taking a teacher who otherwise might continue to make mistakes in a classroom and put them on a trajectory to improve," Collins said.

Additionally, the data might show that a principal is evaluating teachers incorrectly and may not understand the data available.

Stoops said costs and time involvement "would be a major concern" with any task force recommendation.

"But even more daunting would be the task of persuading legislators and families that the reconfiguration of the testing program will boost student achievement without subjecting children to excessive testing," Stoops said.

He said the state Department of Public Instruction's management of the testing program "has been frustrating at best and disgraceful at worst."

For years, the John Locke Foundation has called for the end of state-developed tests and adoption of an independent, credible national test of student performance, he said. Manning's support for the requirement that all high school students take the ACT "suggests that he would welcome the change." *CJ*

Any changes urged by the task force likely would need legislative approval

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COMMENTARY

Why the 440th Is the Odd Unit Out

It's a decision that on its face seems very strange: The Air Force wants to stop basing transport planes at Pope Field, which is located next door to Fort Bragg, home of the Army's famed 82nd Airborne Division.

The unit in question is the 440th Airlift Wing, an Air Force Reserve unit that flies C-130H tactical transport planes. Absent congressional action, the unit soon will be inactivated.

As Sen. Thom Tillis, R-N.C., put it to the McClatchy Washington Bureau, "Why on Earth we would jeopardize the training and readiness in that context — the only place on the planet where we do that? It just doesn't make sense to me."

There is a certain perverse logic behind the Pentagon's actions — and it highlights the need for another round of Base Closure and Realignment Commission actions and a serious rethinking of the role of the Air National Guard and Air Force Reserve going forward.

Every generation of military aircraft is both more advanced and more expensive than its predecessor. The result is that we don't replace planes on a one-for-one basis, and haven't for decades. While this is especially true for fighter jets, it also applies to military cargo aircraft. And if you have fewer planes, eventually you need fewer airfields to base them.

Which speaks to the role of the Air Force Reserve and Air National Guard in 2015. The original idea behind the guard and reserve was sound enough. When established after World War II, there were plenty of experienced military pilots who wanted to continue serving their country and plenty of reasonably modern military aircraft available.

Nearly 70 years later, the Air Force is struggling to keep all of its existing reserve and National Guard units active. Not all units have their own manned planes — some

share them with regular Air Force units while others operate drones. And the Pentagon lacks authority outside of BRAC to eliminate guard and reserve units that aren't located on active-duty bases.

Nowhere is the issue of the role of the reserve and guard more important than with the C-130 fleet. The Air Force currently has 318 aircraft, only a third of them serving with the regular Air Force. The Air National Guard and Air Force Reserve operate the other two-thirds. By 2019, the Air Force would like to

reduce its C-130 transport fleet to 300 planes, with guard and reserve units retiring older C-130H aircraft.

So why is the 440th Airlift Wing the odd unit out? A recent Air Force report on C-130 basing states that "the additional \$116 million in savings generated by closing the stand-alone wing along with the wing's C-130s made closing the 440 AW the most cost-effective

way to eliminate eight excess C-130s." The report also says that the Air Force can meet training needs at Fort Bragg without a C-130 unit.

The report ignores the big picture, what in BRAC is called "military value," a numeric calculation of

how well a base performs a particular task. In the last (2005) BRAC round, Pope Field received the highest military value rating in the transport aircraft category of any base, active or reserve, that

then housed C-130s.

So even though a C-130 unit should be based in Fayetteville to serve Fort Bragg, under existing rules the Air Force must eliminate units at active duty bases first.

We need another BRAC round to ensure that military aircraft are based properly. At the same time, the roles of the Air Force Reserve and Air National Guard need to be reconsidered in an era when we just don't have enough planes for them to fly. CJ

Michael Lowrey is an associate editor of Carolina Journal.



**MICHAEL
LOWREY**

**We need another
BRAC round
to ensure that
planes are based
where needed**

Finding Funds for Fayetteville Theater Could Prove Challenge

By MICHAEL LOWREY
Associate Editor

To the surprise of local officials, Cumberland County's Crown Theatre needs to undergo extensive repairs or to be replaced. Finding the money will prove a challenge, reports the *Fayetteville Observer*.

The Civic Center Commission and Global Spectrum, which manage the Crown complex, recently hired an architect to assess the condition of the 47-year-old theater, which seats about 2,400. The report by Eric Lindstrom of sfl+a Architects identified 16 deficiencies at the facility, and estimated that it would cost between \$35 million and \$39 million to bring the facility to the standard of the Durham Performing Arts Center. The cost of a new theater was estimated at between \$58 million and \$65 million.

"We all knew the theater was in need of some repair, but I think the extent to which the architect found that it needed repair was eye-opening," said Jim Grafstrom, manager of the Crown complex, of the report.

Among the issues the report identified were that the stage, lobby, and dressing rooms were too small and there were too few concession stands and toilets. There are also a number of safety concerns with the theater's 900-seat balcony section.

The Cumberland County Commission, which has appointed a committee to examine the issue, is waiting for a recommendation from the Civic Center Commission before deciding how to proceed.

"However, the overriding question is, 'Where's the money coming from?'" noted County Commissioner Larry Lawrence.

Last Raleigh B&B to close

Raleigh's last registered bed-and-breakfast will close in June. The owners blame the city's unwillingness to crack down on residents who list room rentals over the Internet and do not abide by all local housing standards, reports the *Raleigh News & Observer*.

The Oakwood Inn, in the historic Oakwood neighborhood, has operated as a bed-and-breakfast since 1984. Gary and Doris Jurkiewicz have owned it since 2001.

Business is off sharply over the last two years. Traditionally in January, the inn rents about half its rooms. This past January, occupancy was only 22 percent. The couple blames the falling occupancy rates on the rise of

Airbnb, a room-sharing service that allows people to rent rooms and even houses to travelers. People offering rooms on Airbnb, called "hosts," typically charge less than traditional bed-and-breakfasts, in part because many do not meet the same health and safety standards as registered bed-and-breakfasts.

"We've got a lot of competition, but they don't have to play by the same rules," said Doris Jurkiewicz.

The News & Observer located nine people renting rooms near the Oakwood Inn. Airbnb typically has about 150 room offerings throughout Raleigh.

City staff members acknowledge that Airbnb hosts are subject to the same regulations as the Oakwood Inn. So far, however, the city has cited only one Airbnb host. Future enforcement is unlikely as the city is considering

legalizing the service and regulating it.

Charlotte budget

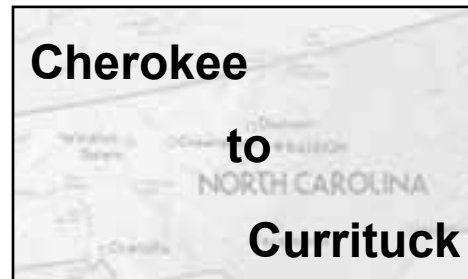
The city of Charlotte is scrambling to close a projected \$21.7 million budget gap for the fiscal year that begins July 1. One option under discussion would be to raise property taxes while eliminating a fee for garbage collection, leaving most homeowners better off, says *The Charlotte Observer*.

The Queen City's economy continues to recover from the Great Recession, and the city is gaining population, but two factors have reduced its revenues. The state eliminated a franchise tax, and many commercial properties in Charlotte have received much lower assessments after a redo of the botched 2011 Mecklenburg County property tax revaluation.

City Manager Ron Carlee has proposed eliminating a \$47-per-house fee the city charges for garbage collection. To make up the revenue, the city would raise its property tax rate by 1.5 cents per \$100 valuation. For homeowners with houses worth less than \$313,000, the move would reduce the total amount they pay in taxes and fees each year to the city. Those with houses valued at more than \$313,000 would see a net tax increase. Commercial properties don't pay the garbage fee and would owe more in property taxes. On net, Carlee's plan would bring in an additional \$4.5 million.

"How can we deal with that dilemma when we can't do different tax rates?" said Carlee.

Reaction from city council to Carlee's proposal was mixed. CJ



Appeals Court Limits Jury's Ability to Set School Funding

By MICHAEL LOWREY
Associate Editor

RALEIGH

In an April decision, the N.C. Court of Appeals overturned a jury ruling that Union County public schools had not been provided enough money by the county commission, saying that the judge had offered jurors an incorrect interpretation of the landmark *Leandro* decision that governs state and local school funding policies.

School funding can be a divisive issue, as local school boards often ask for more money than county commissioners ultimately approve. The outlays for Union County Schools in fiscal year 2013-14 wound up in Superior Court, where a jury awarded the school system over \$90 million more than it originally had requested from the county.

In an April decision, the second-highest court overturned the jury determination, holding that state law limits the amount school systems can request at trial.

On April 15, 2013, the Union County Board of Education asked the Board of Commissioners for \$86,180,152 in operating funds plus \$8,357,859 for capital expenses for the fiscal year that was to begin on July 1. The county commission ultimately approved \$82,260,408 for current expenses and \$3,000,000 for capital outlays — \$3,919,744 in operating funds and \$5,357,859 for capital outlays less than the school board had requested.

After attempts at mediation failed, the school board sued the county, contending it was underfunding the schools, thus depriving children in the district of a “sound basic education”

affirmed in the 1997 ruling by the state Supreme Court in *Leandro v. N.C.*

At trial, the school board hit the jackpot, with a jury determining that the county commission should have provided an additional \$4,973,134 in current expense funding for the 2014-15 year beyond what it had approved — plus an additional \$86,184,005 for capital expenditures.

The county commission appealed the jury verdict.

Before the N.C. Court of Appeals, the county claimed that the school board simply asked the jury to award it too much money. The appeals court agreed.

“[We] hold the trial court erred in allowing evidence outside the scope of the proposed budget for the 2013-2014 fiscal year into evidence and remand for a new trial,” wrote Judge Douglas McCullough for the Court of Appeals.

McCullough explained that state law limits the sorts of needs that a

school board can claim are unmet during trial, and that the amount of funding the school board actually asked for that year serves as a cap.

“N.C. Gen. Stat. § 115C-521(b) makes clear that plaintiff must assess the capital needs of the school system and present those needs to defendant

‘each year.’ Each year is then treated individually in the budget process. By implication, if plaintiff does not initiate the dispute resolution process in N.C. Gen. Stat. § 115C-431, it has accepted that the appropriations by defendant were sufficient for that year. Unfunded requests from prior years’ proposed budgets are not automatical-

ly carried forward and considered in subsequent years. If plaintiff wants those previously unfunded amounts considered, it must include them in the proposed budget for the 2013-2014 fiscal year,” McCullough wrote.

“Moreover, plaintiff’s argu-

ment that limiting the evidence to those amounts requested in its proposed budget would authorize legally insuf-

ficient funding presumes that plaintiff requested an amount of funds below the amount legally necessary to maintain a system of free public schools. We do not accept this presumption. While plaintiff’s proposed budget may be an estimate, it is not a blind guess, and we do not accept plaintiff’s suggestion that it underestimated the capital outlay needs of the school system by over \$80 million,” he added.

The appeals court also found that the jury had received incorrect instructions from the bench on the meaning of a “sound basic education” that the state constitution says every child is entitled to receive.

Superior Court Judge Erwin Spainhour had told the jury that, “A student who is performing below grade level ... is not obtaining a sound basic education in the subject matter being tested.” From this, jurors could have inferred that the Union County schools were underfunded if any students were performing below grade level.

McCullough stated this was an incorrect conclusion of the holding in *Leandro*.

“School funding cannot guarantee student performance; but only the opportunity for students to receive a sound basic education,” McCullough noted.

N.C. Court of Appeals opinions are binding interpretations of state law unless overruled by the N.C. Supreme Court. Because the decision by the three-judge panel of the Appeals Court was unanimous, the high court is not required to hear the case should the school board further appeal.

The case is *Union County Board Of Education v. Union County Board of Commissioners* (14-633). CJ



The Appeals Court ruled that the Superior Court misinterpreted *Leandro* decision

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Island in Pamlico Sound Awash in Title Questions, Irregularities

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to get a resolution.

Island L is approximately two miles west of the Bonner Bridge and five miles southeast of Wanchese in the Pamlico Sound. The state of North Carolina sold Island L in 1958 to James Henson for \$201, when it was described in records as a sand island of 4.3 acres. In 1959, Henson and his wife granted a deed to Baxter Caldwell and his wife, bringing them in as co-owners of the island.

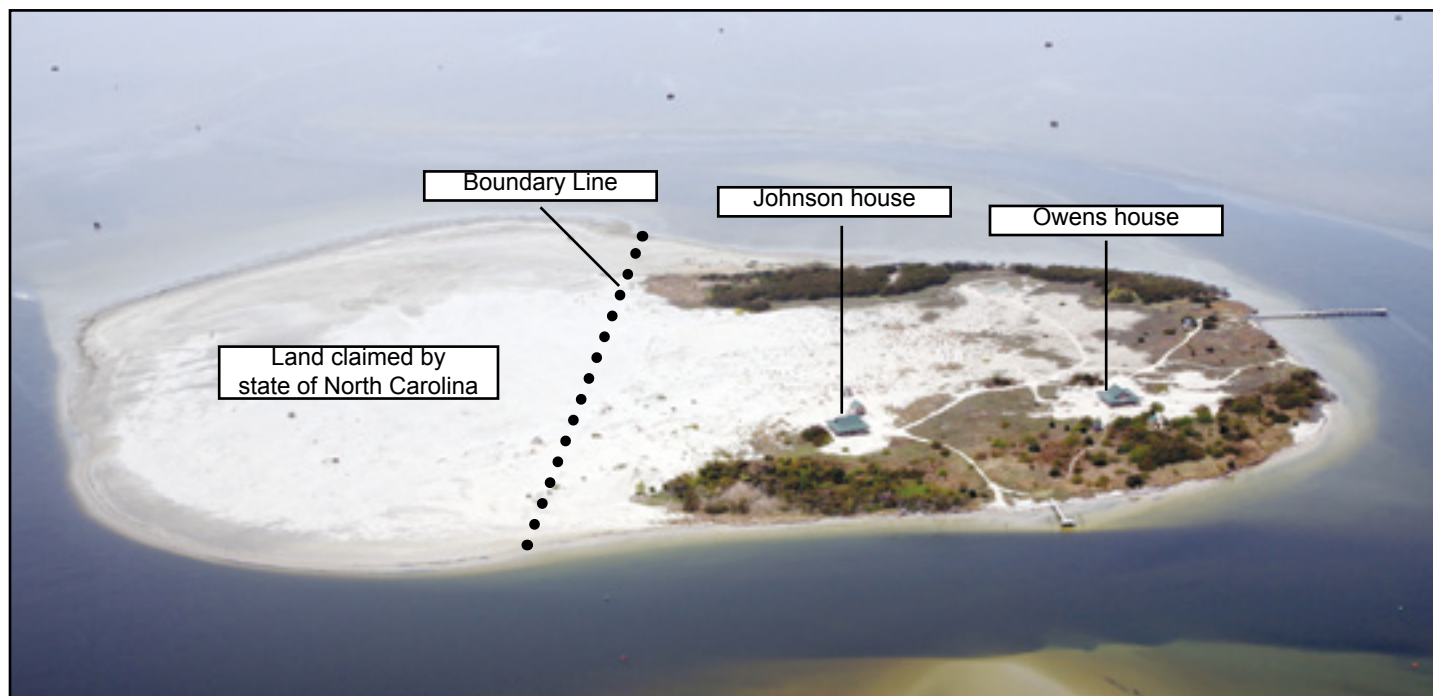
Boykin completed his purchase from the Henson and Caldwell families in January 1997. The original description of a 4.3-acre sand island still was being used, but the island had grown to 60 acres, resulting from a combination of natural sand accretion and dredged sand deposited by the U.S. Army Corps of Engineers. The state claims some of the growth was due to Island L merging with a separate small, unclaimed island to its south.

Dare County property tax records list the state as owning approximately 25 acres on the south side of the island. The records say Owens owns approximately five acres on the east side and Johnson owns the remaining 30 acres. Owens and Johnson completed construction on identical 1,600-square-foot houses on the island last year. They also have installed wells, septic tanks, docks, and generator systems to produce electricity. A fire that occurred during the time Boykin's former wife owned the island destroyed the cabin that Boykin had built.

The state's cloud

While the state claims to own 25 acres, it has not filed a deed or other legal document establishing ownership. The Dare County Tax Office's deed reference on the parcel is to a 2011 boundary line agreement signed by then-Gov. Beverly Perdue and Attorney General Roy Cooper for the state, and by Jeffrey Samuel Rose on behalf of his company, Carolina Key East Green Energy Corporation Inc. Rose acquired property on the island from Boykin's wife in 2008.

Correspondence shows that the Caldwell and Henson families thought they owned the whole island in 1996, when they began discussing a sale with Boykin. Caldwell said that for years he had calls from a government official seeking permission to deposit dredge spoils on his land. Caldwell said he gave permission each year and welcomed the growth of his small island. After years of paying property taxes on the entire island, Caldwell was upset when he learned of the state's claim.



Island L, shown in a view looking west, is located southeast of Wanchese and west of the Bonner Bridge in Pamlico Sound. State-claimed land is to the left of the dashed line. Houses built by former Dare County Commissioner Michael Johnson and Manteo businessman R.V. Owens III are indicated. (CJ photo by Don Carrington)

Two-island theory

While it is unclear how State Property Office officials learned of the pending sale to Boykin, when they did, they claimed the entire island belonged to the state. State officials eventually conceded that Caldwell and Henson owned Island L, but they said it had merged with a nearby small island that was state property. The state maintained that the island should be divided and a property line established where the two islands had merged.

Boykin offered to buy the portion claimed by the state. State officials refused to sell it, claiming state ownership was needed to protect a species of bird that nested on the property. Officials then established a boundary line splitting the island into a 35-acre northern section belonging to Boykin and a 25-acre southern section belonging to the state.

Boykin did not agree, but rather than undertaking a lengthy and costly legal battle, Boykin and his attorney accepted the boundary line established by the state. Even so, the state never has filed a legal agreement with the Dare County Register of Deeds.

A year after Boykin's attorney first contacted the State Property Office, a state official expressed some doubt about the state's claim to Island L. An Aug. 19, 1997, memo from State Property Office deputy director June Michaux to Dare County land records manager Eddie Francis noted that "the state does not have deeds on record making the public aware of its ownership of [several nearby] islands. ... The islands under state ownership are labeled A, H, I, J, K, and MN. As indicated in yellow on the enclosed spoil island sheet. Island B, C, D, G, and L, which are listed as privately owned, are being investigated for valid titles."

State law says new islands created as a result of natural or man-made activities, including dredging, belong to the state. However, natural or man-made additions to islands owned privately become the property of the private owners.

Casting further doubt on the two-island theory is a 1995 Army Corps of Engineers dredging plan listing Island L as 19.9 acres in 1977 and 57.4 acres in 1990. There was no mention of it joining a smaller island.

In addition, a separate analysis of aerial photographs by state officials stated that in 1956 Island L did not exist. In 1962 it was a new spoil island, and in 1964 it still existed as one island. In 1975 it was listed as two islands. This analysis suggests that the island then owned by Henson and Caldwell may have split in two and later rejoined.

Also, a 2008 note in the property office file stated, "in 2003 the entire island (not the 30 acres) was put in private owner's tax account." The statement was attributed to Dare County's Francis.

"In 1996, state officials insisted that the state owned part of my island, but they didn't file anything until 2011, and that was just a boundary line agreement," Boykin told *CJ*.

Chris Mears, a spokesman for the State Property Office, said the office "contends it has a clear title to the south portion of Island L." He could not explain why the state waited 14 years to formally sign a boundary line agreement.

Boykin property settlement

Boykin and his wife Langdon separated in 2000 and began a lengthy divorce proceeding and property settlement. The court awarded Bill Boykin permanent sole custody of their three boys. He also had two sons

from his first marriage. Boykin told *CJ* that he and his five sons made frequent visits to the island and the small cabin he built there.

In February 2006, District Court Judge Amber Davis ordered an interim distribution of property, giving Langdon Boykin a 4.3-acre parcel known as Island L. The judge set the value of the property as \$75,240. Boykin said he did everything possible to retain the island, but the judge ruled otherwise. The final distribution order was issued in September 2007.

As ordered, Bill Boykin signed a deed to Langdon Boykin for a 4.3-acre tract known as Island L. Langdon Boykin's attorney, Steven Michael, prepared the deed, using the same description that was recorded on the state's deed to Henson, and the deeds Henson and Caldwell recorded in the transaction with Bill Boykin. There was no notation that the island had become larger than that.

Felon acquires island

In April 2008, Langdon Boykin transferred the 4.3 acres to Jeffrey Samuel Rose, operating as Island L LLC, as a deed of gift. There is no public record of Rose paying any funds to Langdon Boykin. She died in 2013. The deed was prepared by Rose, who added the following language to the description: including "all lands that have since been added to the property by either dredged spoils or accretion including any portion of land that may have previously been part of another island and subsequently merged with the property."

Rose is not an attorney. He has a lengthy criminal record, including convictions for contributing to the delinquency of a minor, larceny, simple assault, driving while impaired, reckless driving, and taking indecent liberties

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Island in Pamlico Sound Awash in Title Questions, Irregularities

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with a child. Rose did not respond to messages from *CJ* seeking an interview regarding Island L.

Days after he acquired the property, Rose transferred it to another company he controlled, Carolina Key East Green Energy Corporation Inc.

Records show that in September 2008, attorney Daniel Khoury, representing Rose, contacted the State Property Office about purchasing the state's portion of the island or signing a boundary line agreement, but the state took no further action.

In October 2009, Rose listed the entire island for sale, asking \$1.8 million. "Own your own private island, and be one of the select few!" stated the Multiple Listing Service description. "This is a beautiful growing island in Oregon Inlet off of Nags Head. Enjoy your own white sand pristine beach, or cast your lines in some of the best fishing waters in the world. Build your dream home, or build a community."

The clouds merge

In 1992, the state Department of Administration, acting as if the state owned Island L, assigned management of the land to the Department of Environment, Health, and Natural Resources to maintain as "colonial water



Island L is located west of the Bonner Bridge and southeast of Wanchese in the Pamlico Sound. (CJ graphic)

bird nesting sites." The actual management went to the agency's Wildlife Resources Commission.

On Jan. 15, 2011, Wildlife Resources Commission executive director Gordon Meyers asked the State Property Office to establish a boundary line agreement between the state and Rose for Island L. Records indicate Khoury initiated this action.

The Council of State, comprising the governor and the nine other statewide elected state officials, is charged with approving all state property mat-

ters, including buying or selling state land, leases, and agreements over boundaries. The council approved the agreement at its March 8, 2011, meeting.

On April 7, 2011, the title cloud over Rose's claim to more than 4.3 acres and the title cloud over the state's claim to 25 acres merged and became a public record when attorney Khoury recorded three documents at the Dare County Register of Deeds Office:

- At 3:47 p.m., Khoury recorded a release deed between Southern Bank

and Trust Company and Carolina Key East Green Energy Corporation Inc. specifying that the land claimed by the state of North Carolina was being released from a deed of trust that Rose had signed with the bank when he borrowed \$90,000.

- At 3:48 p.m., he recorded the boundary line agreement signed by Perdue and Cooper on behalf of the state of North Carolina and Jeffrey Rose for Carolina Key East Green Energy Corporation Inc.

- At 3:49 p.m., he recorded a deed from Carolina Key East Green Energy Corporation Inc. (Jeffrey Rose) to Going Up Elevators Inc. (R.V. Owens III) for 12.66 acres. The description references a map prepared March 27, 2011.

Khoury died in September 2011.

In December 2011, Rose sold his remaining share in the island, about 25 acres, to Michael Johnson. In December 2012, Owens and Johnson established new boundary lines to reflect those in the property tax office.

Johnson, a Republican, served as a Dare County commissioner from 2004-12. He is director of Cross Trail Outfitters, a youth ministry organization. Johnson told *CJ* that he was unaware of any title problems involving the land.

CJ made numerous attempts but was unable to reach Owens. *CJ*

Federal Justices Toss North Carolina Election Maps Back to State

Continued from Page 1

Street Democratic caucus, which seeks to bring together moderate, business-oriented Democrats, urged reform in the redistricting process and called on the N.C. Supreme Court to expedite review of the decision. "The work needs to start immediately so the legislature and the U.S. Supreme Court will have time to review so that voters can participate in new district elections for the 2016 election cycle," said Sen. Joel Ford, D-Mecklenburg, vice chairman of the caucus.

"The Supreme Court's decision adds merit to the calls of leaders from across the state to form a nonpartisan, independent redistricting commission," said Rep. Ken Goodman, D-Richmond, chairman of the caucus.

Much of the case centers on whether majority-minority districts — political districts drawn so that a majority of the voters are nonwhite — were packed with too many members of a minority race.

In the U.S. Supreme Court's *Alabama Legislative Black Caucus v. Alabama* decision earlier this year, Justice Stephen Breyer said lawmakers drawing legislative districts after the 2010 census tried to keep the percentage of minority voters in majority-minority

districts the same as they were in those drawn after the 2000 census.

Breyer said lawmakers were asking the wrong question. "They asked: 'How can we maintain present minority percentages in majority-minority districts?'" Breyer wrote. Instead, he continued, lawmakers should have asked: "To what extent must we preserve existing minority percentages in order to maintain the minority's present ability to elect the candidate of its choice?"

Justice Clarence Thomas, dissenting in the Alabama ruling, said the current problems resulted from decades of misguided actions by the U.S. Justice Department, and even the U.S. Supreme Court itself.

"In order to maintain these 'racially safe boroughs,' the states or courts must perpetually 'divide the country into electoral districts along racial lines — an enterprise of segregating the races into political homelands,'" Thomas wrote. "The assumptions underlying this practice of creating and maintaining safe minority districts — that members of a racial group must think alike and that their interests are so distinct that they must be provided a separate body of representatives — remain repugnant to any nation that strives for the ideal of a colorblind Constitution."

Thomas went on to criticize the ruling. "Worse, the majority's solution to the appellants' gerrymandering claims requires states to analyze race even more exhaustively, not less, by accounting for black voter registration and turnout statistics," he wrote. "The majority's command to analyze black voting patterns en route to adopt the 'correct' racial quota does nothing to ease the conflict between our colorblind Constitution and the 'consciously segregated districting system' the court has required in the name of equality."

Rucho said North Carolina's General Assembly used different standards than Alabama lawmakers did in establishing the state's majority-minority districts. He said comparing the two is like comparing apples to oranges.

Rucho said lawmakers conducted a racial polarization study to gauge voter sensitivity to race. "In the areas that we were required to put in majority-minority districts, there was racial polarization going on," Rucho said. "If racial polarizations are a problem, you need to remedy that problem." He said North Carolina's solution was to adopt a standard designating as majority-minority districts any district in which more than half the voters ("50 percent plus one") were members of racial mi-

norities.

Rucho also said North Carolina tried to use guidelines that blended decisions from both the U.S. Supreme Court and the N.C. Supreme Court in drawing the maps, guidelines not used by Alabama. He said he expects both the state and federal high courts to validate the maps.

"I wouldn't be surprised if it's used as a model for the rest of the country when they have to decide Voting Rights Act districts," Rucho said.

Bob Phillips, executive director of Common Cause of North Carolina, said he isn't surprised to see the case sent back to the N.C. Supreme Court for further review.

"It's another good reason why lawmakers should consider reform," Phillips said. "Here we are in the middle of a decade again and still considering litigation."

Phillips' group and other organizations, including the John Locke Foundation, have supported a proposal that would place redrawing congressional and legislative district maps into the hands of either a nonpartisan commission or the General Assembly's nonpartisan staff.

"Reform ensures that you will have a voice that is not gerrymandered into irrelevance," Phillips said. *CJ*

N.C.'s High Income Tax Hurts It in Relation to Neighbor States

By CJ STAFF

RALEIGH

Markets tend to work better than government in helping to solve problems. That's the idea economist Richard Vedder promoted to a group of North Carolina lawmakers during a recent visit to Raleigh. Vedder is a professor at Ohio University, director of the Center for College Affordability and Productivity, and an adjunct scholar at the American Enterprise Institute. Vedder compared free-market and government policies during a conversation with Mitch Kokai for Carolina Journal Radio. (Head to <http://www.carolinajournal.com/cjradio/> to find a station near you or to learn about the weekly CJ Radio podcast.)

Kokai: Markets work better than governments. How do we know this?

Vedder: Well, one way is to look at some evidence. Those people in your audience who are over the age of 40, or so, probably remember East Berlin versus West Berlin, or East Germany versus West Germany. One side of Germany, the western part of Germany, was largely governed by markets. Decisions were made by markets: interaction between demand and supply, buyers and sellers reaching mutually agreeable exchanges.

[In] the other part of Germany, governments made almost all the decisions of what to produce, how to produce it, even for whom to produce things. And they had to build a wall between the two parts, and people died trying to get from East to West. Same thing [with] North Korea versus South Korea today. Why is Cuba poorer than, say, Puerto Rico today?

So governments don't work very well because the incentive systems are not there for people to be productive, to serve consumer interest, to meet the needs of people. Quality of products is traditionally very low in the communist countries, or in countries where government plays a very large role.

[The] same thing applies with respect to regulation, another aspect of government. Regulations, in some cases, are good. Markets don't solve all the problems. It is true. A chemical company could pollute a stream, and that could cause damage to others. We need some limits on that.

But often these regulations tend to be too harsh, they tend to not pass any good cost/benefit test, and they just, simply, go too far. In some cases, they last too long.

We had regulations on airlines. We put in regulations on airlines in 1938. The idea was we want to keep the airlines from these monopolies, from charging people too much. Well, the effect was just the opposite.

"So governments don't work very well because the incentive systems are not there for people to be productive, to serve consumer interest, to meet the needs of people. Quality of products is traditionally very low in the communist countries, or in countries where government plays a very large role."

*Richard Vedder
Ohio University
American Enterprise Institute*



By 1978, when we finally got rid of the Civil Aeronautics Board, there were one or two airlines serving each city. They charged very, very high prices. There was limited service. So we got rid of this. What happened? Prices fell 40 percent over the next decade. Traffic over the next generation tripled. More people flew at lower prices, with more choices than before. I could go on and on.

Taxes — let's pick something that might be of interest to North Carolinians. North Carolina has historically had one of the highest income taxes in the nation, certainly in the South. You had a top rate, until recently, on your income tax in excess of 7 percent. The governor and the legislature saw fit to lower that and move to a flat tax with a rate below 6 percent. That was a very smart, very good move. It will have positive effects long term.

But let's compare your state with Tennessee next door. In 1990, incomes were higher, per capita, per person, in North Carolina than in Tennessee. Today, incomes are higher in Tennessee, per capita, than in North Carolina. Why is this? Are the people of Tennessee smarter and brighter than the people of North Carolina?

Kokai: They think so.

Vedder: They probably think so, but I don't believe it for a minute. I think the reason may have something to do with the fact [that] Tennessee has no income tax at all. They have the ultimate flat-rate tax: zero. And so, resources, productive resources, people who are highly productive move to Tennessee, a little more so than to North Carolina.

A lot of people move to North Carolina; don't misunderstand me. But the spirit of enterprise is a little more developed in Tennessee. There is a little more to be gained from working

hard and investing hard in Tennessee because you get to keep it all. ...

Kokai: Very interesting example: North Carolina and Tennessee. And North Carolina has also been comparing itself to its other neighbors and trying to not only lessen that tax burden, but also the regulatory overreach. If politicians in this state continue to focus on those ideas, lowering and flattening tax rates, reducing the regulatory burden, what sorts of benefits are we going to see?

Vedder: You already have a lot of population growth, so that will continue and, if anything, accelerate a little bit because the state will become more attractive to people living elsewhere and to companies living elsewhere or headquartered elsewhere. You're going to see greater productivity among your workers. I mean, this is what the evidence shows, that people in low-income-tax or no-income-tax states tend to have higher rates of economic growth.

So 20 years from now the children of people living today will be a little bit better off. A little bit better able to afford to go to good schools, including good schools like the University of North Carolina, or Duke, or Davidson, Wake Forest. And so you're going to have those kinds of things.

Kokai: Now I think some people will hear this and go, "Low taxes sound good. Regulatory overreach, we know that's bad. But this particular regulation is really important, and we need to do something about this." Or, "We need enough taxes to make sure that these government programs can continue." Do they have a case, or should they be looking at a different issue?

Vedder: Of course, you need to look regulation by regulation. Some

of them make sense. But there is a tendency for regulators and taxers to get overly exuberant. You have a Department of Insurance in this state that has — I counted them over the weekend — 257 workers, regulators in the Department of Insurance.

What on earth do they do? Why do we need them? Some states, they say, "Gee, insurance is like anything else. The markets will determine what's right. We don't need a government in here to determine rates."

You have rate determination in this state by insurance regulators, an insurance guru of some sort who, somehow, knows more than the people of North Carolina. I don't understand that. Many other states don't have this at all. Why do you have 257 people?

Kokai: In just one department?

Vedder: Yeah, instead of an invisible hand, you have 514 very visible hands. I assume each regulator has two hands. ... I think there's a lot of areas where there's been overregulation and probably overtaxation.

Kokai: ... One of the things North Carolina has focused on over the last couple of years is having more periodic review of all of these regulations. Is that a good idea?

Vedder: I think it's a good idea to stop every now and then and say, "Is it making sense what we are doing?" Some things made sense. The Civil Aeronautics Board may have made sense in 1938. I don't even doubt that. It certainly didn't make sense in 1978.

And so, every few years, you need to stop and say, "Do we need this?" And maybe what we should do is just sunset all of these regulations. That's the more efficient way of doing it. Just say, "This regulator is going out of business unless they can make a case why they need to remain." CJ

Does MFA in Costume Production At UNC Meet Course Justification?

By JESSE SAFFRON
Contributor

The main justification for a state university to have a vocational-oriented master's program is to prepare workers for the state work force, but the Master of Fine Arts in Costume Production offered at UNC-Chapel Hill doesn't seem to meet that test.

Housed in the university's department of dramatic art, the three-year program is vocational in nature and is designed to "develop the skills and attitudes needed for a professional or educational career in the costume arts."

Applicants are not required to submit Graduate Record Exam or other standardized test scores to gain admission to the costume production program, as is the case with almost all other graduate disciplines, but rather submit a résumé, a "statement of purpose," and Power-Point slides displaying a portfolio of their previous work. Once admitted, students take courses such as "Beginning Draping" and "Survey of Western Costume History."

While the MFA students are trained at UNC, it doesn't look like many of them choose to do their internships in North Carolina or stay in the state upon graduation.

In fact, a website featuring the portfolios of current students shows that all of them have chosen to spend their summers working at art festivals and for theater groups in other states. And a rundown of top alumni indicates that the majority of them have gone on to work in California, New York City, Florida, Las Vegas, and Washington, D.C. Only a few graduates mentioned having stayed in North Carolina.

The university uses such out-of-state job placements as a major selling point. "Graduates ... are employed by such diverse companies as Cirque du Soleil and the Metropolitan Opera. Many work in production shops creating costumes for Broadway, television and film, and some have launched their own businesses," stated an April 2 press release by the university's College of Arts and Sciences touting a new partnership with the newly created Museum of Science Fiction in Washington, D.C. The museum now collaborates with students and fac-

ulty in Chapel Hill's MFA program to "create high-quality replicas of iconic costumes from classic science fiction cinema. ..."

For the 2012-13 academic year, the federal government's Integrated Postsecondary Education Data System shows that UNC-Chapel Hill's average per-student state appropriation was \$17,633. And that may be a low estimate for students in the costume production program, as graduate programs tend to be more costly, especially at the state's flagship institution.

So, at a minimum, the taxpayer subsidy for the three-year program is roughly \$50,000 for each graduate. And the graduates are encouraged to leave the state to gain employment.

Costume design programs are offered at several other universities in the state (Western Carolina University, UNC-Asheville, UNC-Wilmington,

UNC-Greensboro, and the UNC School of the Arts). Of the programs with a costume emphasis, the School of the Arts' undergraduate and graduate costume design and technology programs may make the most sense, given the art school's mission and, presumably, comparative advantage in that field. But even that assumption should be examined.

North Carolina law requires the UNC system's Board of Governors to review all academic programs every two years and to "withdraw approval" if a program appears "unproductive, excessively costly, or unnecessarily duplicative." History shows, however, that many programs that should be eliminated are kept in place because university officials are permitted exceptions. In other words, once a program is in place, it's hard to get rid of it.

The front end of this process — when the Board of Governors initially approves a new program — is essential in the vetting of new degree programs. Any university proposing a new degree is supposed to show that the program relates to the "distinctiveness of the campus and the mission of the campus" and that there is sufficient "demand for the program in the locality, region, or state as a whole." CJ

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



COMMENTARY

Cheated Details UNC Academic Scandal

If you remember Watergate, you'll see how closely that debacle resembles the current scandal at UNC-Chapel Hill.

Like Watergate, the UNC scandal began with a breach of security — the security surrounding the huge UNC operation to recruit top basketball and football players who weren't able both of doing academic work and remaining eligible.

As the story unfolded, UNC officials were desperate to prevent the public from finding out anything more than the tiniest, least-damaging scraps of information.

A few people smelled a problem much deeper than just one player's questionable paper and wouldn't swallow the official "nothing to see here" line. Due to their persistence, we eventually learned a great deal that UNC officials wanted to keep secret about their deceptive and fraudulent "keep the players eligible" scheme.

Two of them were Mary Willingham, who had for years worked in UNC's Center for Student Success and Academic Counseling, trying to help academically weak students handle the work, and professor Jay Smith, who has served in UNC's history department since 1990. They have written a book about the whole affair titled *Cheated*.

It's an insider book laced with indignation about the way the university has dealt with its star players, and also the way it tried to silence critics of its eligibility system. "The addiction to athletics, and to the revenues and alleged good will that they generate, has rendered good people mute in the face of abuses they know they should not tolerate," Willingham and Smith write.

Although UNC has tried to maintain an image of running clean sports programs that provide a high-quality education to student-athletes, for decades it has recruited players who shouldn't have gotten out of high school, then ushered them through a "curriculum" consisting largely of easy courses with negligible educational value.

Moreover, the imperative of keeping players eligible led to double standards in the classroom.

Cooperative professors employed one set of requirements for regular students and a less-demanding one for football and basketball players, who were assured good grades for doing very little. The players' assigned "mentors" often helped inordinately to satisfy the slight demands on them.

Even going to class became a burden that the athletic department gladly lightened for players. Willingham and Smith observe that until the mid-1990s, the department had "classroom checkers"

monitor attendance of the players. "At some point, however, the expectation of attendance went by the wayside, at least in many lecture courses (in addition to all those independent studies in which no one had ever shown up for anything)," they write.

Independent study courses became an essential tool for keeping athlete grade

point averages high enough for eligibility. One faculty member in particular was extremely obliging: Julius Nyang'oro, chairman of the African and Afro-American Studies Department. A zealous Tar Heel fan, Nyang'oro began letting some of the athletes who needed easy, high-grade credits take "independent study" courses with him.

Enrolling star players and keeping them eligible was far more important than their educational needs. Willingham writes about students who told her that they'd never had to write anything before. Students who could barely read were taken out of a Basic Writing class and placed instead into a course known to yield easy A grades.

Athletes are familiar with the saying, "No pain, no gain." That applies as much to learning as to sports, but UNC's athletics department did all it could to keep their stars from experiencing any stress over coursework. By minimizing the academic work players had to do, the people involved helped to cheat the players out of educations they otherwise could have received. CJ

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



GEORGE
LEEF

Campus Briefs

UNC-Chapel Hill has launched Carolina Conversations, an initiative designed to provide forums for students to discuss sensitive topics. The university is doing this by sponsoring regular town-hall-style forums called My Carolina Voice, smaller gatherings called Carolina Pulse, and My Chance, a process letting students apply for funding from the school to conduct “grass-roots interactions.”

Planned discussion topics are “race, intellectual diversity, religion, identity, and culture.” So far, however, it looks as if race is the subject du jour. The university is planning activities to address the naming of campus buildings, public art, and imagery, and working with the student government to “create new processes to identify and diversify” campus speakers.

The first Carolina Pulse event took place March 23 on “Race and Current Events.” Held in the student union building, the event was a guided conversation among 100 or so people. Those included students, faculty, staff, and administrators — including Chancellor Carol Folt, Vice Chancellor Winston Crisp, and other high-level officials.

For 90 minutes, participants discussed racism in fraternities, police brutality, race relations on campus, and “microaggressions” — the accidental or minor instances of prejudice supposedly displayed by members of “privileged” groups every day.

At least one faculty or staff member participated at each table. Perhaps this was a coincidence, but it could have been intentional.

At one table, a nonstudent brought up laws requiring voters to present identification documents at the polls, even though no one had been discussing the topic. She said she was worried about the effect the laws would have on race relations, calling them “unprogressive.”

While the students changed the subject and did not get drawn into a political discussion, that incident was indicative of the feel of Carolina Conversations overall — controlled dialogue under the guise of free and open debate.

Yet if UNC-Chapel Hill has no intention of controlling the campus dialogue, it is not clear what purpose Carolina Conversations serves that students and student groups could not achieve without the presence or influence of administrators. CJ

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

UNC's Bridge Program Not Meeting Expectations

By JESSE SAFFRON
Contributor

RALEIGH

Since the 2007-08 academic year, the state of North Carolina has allotted more than \$7 million to the Academic Summer Bridge Program, which is intended to prepare academically weak students for the rigors of college.

Five schools within the University of North Carolina system participate: N.C. Central University, Fayetteville State University, UNC-Pembroke, Elizabeth City State University, and N.C. A&T State University.

The system's General Administration has issued a report claiming the bridge programs are “successfully transitioning significant numbers of underrepresented, underserved students into the universities. ...” But a close look at the data reveals that they have been far from successful at improving academic performance and graduation rates among those students.

The Summer Bridge Program urges students whose high school grade point averages and SAT scores place them in the bottom 10 percent of the first-year freshman class — called a “high-risk student population” — to enter the program. Participants must complete a for-credit, college-level English and math course over the course of a four- or five-week period the summer before their first fall semester and earn a “C” or better in both classes.

Students live on campus and attend classes each weekday. Throughout the summer course, they receive mandatory academic counseling, guidance, and mentorship. Those support services remain available throughout the students' time at the university. State funds directed toward the programs pay for the summer coursework and student housing, as well as the intensive academic supervision.

The General Administration's legislative report points to high completion rates in the summer coursework as a sign that the students have “demonstrated the academic skills for success in college.”

It's true that such rates are high. Each summer, between 85 and 95 percent of students complete the program, meaning they earned a “C” or higher in both courses and then enrolled in fall semester classes. And some students at some of the universities appear to be performing relatively well in their summer courses. In 2013, for example, the average summer GPA of N.C. Central's cohort was 3.53.

Unfortunately, those N.C. Central students' GPAs dipped dramatically during the fall and spring semesters, when their average GPAs were 2.39 and 2.44, respectively.

Those GPAs were slightly lower than the average first-year GPA of traditional NCCU freshmen, which was 2.49 in the 2013-14 academic year. All universities participating in the program had similar results: Students receive much higher grades in their summer work (usually ranging between “C+” to “A”) than they do in subsequent semesters (ranging from “D+” to “C+”).

Because the high summer GPAs boost the Summer Bridge students' overall GPAs, however, the university system boasts that participants' cumulative GPAs are higher after the first year than those of traditional students.

The legislative report was designed to present the Summer Bridge program in the best possible light. General Administration, however, omitted and glossed over some important facts. For instance, Summer Bridge graduation rates are abysmal.

At N.C. Central, only 15 percent of the 2008 cohort graduated in four years, and only 34 percent graduated in six years. That compares to traditional students' four- and six-year graduation rates of 21 percent and 47 percent. All Summer Bridge cohorts' graduation rates, except for Fayetteville State's 2008 cohort, are lower than traditional students' rates.

In other words, the state is spending millions of dollars on a program that drives roughly 300 low-performing students each year into a four-year university, where they tend to earn poor grades, drop out, or otherwise fail to graduate within a reasonable period of time.

The General Assembly has considered another, less costly way to increase the academic performance of students who lack adequate

preparation for a four-year college: The Guaranteed Admission Program, or NC GAP, discussed in the House of Representatives during the 2013 legislative session, addressed many of the same goals.

NC GAP would have provided an incentive to students with borderline academic records to attend a community college and earn an associate degree before going to one of the system's 16 public universities. The goal of the plan — which was not ratified by the legislature — is to increase graduation rates, enhance weaker students' academic skills, and reduce costs to students and the state.

Such a program would save taxpayers the recurring funds directed to Summer Bridge and could reduce the state's overall spending per student. The state currently spends roughly \$13,500 per full-time university student on average, but only \$4,200 per full-time community college student. CJ

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



Opinion

Sustainability Movement Infuses Campuses With Fundamentalism

About 25 years ago, American higher education was swept up in the identity studies fad. A great many colleges and universities created courses, departments, degree programs, and related administrative posts in Women's Studies, African-American Studies, Latina/o Studies, Queer Studies, and others.

Now there is a new fad rampaging across the college landscape — sustainability.

For the last 10 years, this mania has been gathering momentum because, like identity studies, sustainability pushes the hot buttons for leftist academics: environmentalism, anti-capitalism, salvation through liberal activism, and the chance to hector all those wrong-thinking people.

How far the sustainability movement has spread into American higher education is the subject of a recent, deeply researched study by the National Association of Scholars, titled "Sustainability: Higher Education's New Fundamentalism."

"In less than a decade," write authors Peter Wood and Rachelle Peterson, "the campus sustainability movement has gone from a minor thread of campus activism to a master narrative of what 'liberal education' should seek to accomplish for students and for society as a whole."

The first sustainability program was established at Arizona State Uni-

versity in 2006. By 2015, 475 colleges and universities had created certificate and degree programs in the field. But exactly what is this field?

Traditionally, academic disciplines conveyed a body of knowledge to students: chemistry, biology, history, literature, foreign languages, philosophy, economics, and so on. But (and again like identity studies) there is no body of knowledge regarding "sustainability." It's just a farrago of beliefs, attitudes, and grievances centering around the general notion that humans aren't living the right way and unless we make drastic changes, we are doomed.

Wood and Peterson argue that sustainability is an "ideology that unites environmental activism, anti-capitalism, and a progressive vision of social justice."

Like a religion (hence the reference to fundamentalism), adherents of sustainability are not interested in questioning its tenets. They are asserted, including the expectation that students and school officials should take "pledges" they must adhere to. And the courses that go into the sustainability curriculum are far more like preaching than teaching.

Consider, for example the "Ethics of Eating" course at Cornell, a school that has gone head over heels for sustainability. Students are required to "either defend your eating habits or change them." It's advocacy, not intellectual study. While there's nothing wrong in trying to convince



people to become vegans, doing so has no connection with the function of an institution of higher education.

Imagine the outcry if a college sponsored a course in which students were expected to defend their religion or change it.

What other sorts of courses do students take in the sustainability curriculum? It's a hodgepodge, including "trash studies," "environmental poetry," and my favorite, "Small Spaces Studio," in which students can learn how best to live in mini-spaces. Frequently, courses link some "identity" belief with sustainability, such as that "patriarchy" is the enemy of sustainable life and therefore must be opposed.

Most often, however, courses involve the supposedly unquestionable science of global warming and impending catastrophe. There are plenty of serious questions for academic study here. Wood and Peterson write:

"Is the climate really changing? In the direction of global warming? Because of human activity? And if the answers to these questions are 'yes,' are the interventions proposed by sustainability advocates plausible responses? These are key questions, but the sustainability movement does not welcome them."

Sustainotopians (as the authors call them) don't want doubts about their creed seeping in. As the report documents, when students dare question the beliefs that undergird sustainability, they're often treated in

an uncivil, un scholarly fashion. That's what happens when true believers take charge of education; a "you're with us or you're against us" mindset shoves aside reflective inquiry and discussion.

The report also shows that the zealots behind this movement not only expect sustainability notions to suffuse the curriculum, but also want them to permeate the entire educational institution. Students constantly must be "nudged" to adopt "sustainable" habits, and administrators are expected to make the school's "carbon footprint" as small as possible. The required "green" investments can be quite costly and will make education at these colleges more expensive.

While we might be tempted to shrug off the sustainability movement as little more than well-intentioned environmental enthusiasm, Wood and Peterson argue to the contrary: "Harnessing higher education into the service of sustainability seriously undermines its purpose. ... It forces habits and disciplines based on reflection, dialogue, and careful consideration into the mold of urgent political and social advocacy."

In sum, NAS has given us a desperately needed warning about this movement. Allowing it to continue to grow means further politicization of education and "deforestation of our rich intellectual and academic environment." Presidents, trustees, and faculty members all should take heed. CJ

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



GEORGE LEEF

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Book review

Guinier Remains Wedded to Collectivism and Quotas

• Lani Guinier, *The Tyranny of the Meritocracy: Democratizing Higher Education in America*, Beacon Press, 2015, 160 pages, \$24.95.

BY LLOYD BILLINGSLEY
Contributor

As Harvard Law School professor Lani Guinier sees it, we stand at a turning point in history, in need of a cultural shift from "testocratic merit" to "democratic merit," which is "the foundation on which our national values truly ought to rest." Her main beef is with the Scholastic Assessment Test, which she sees as a "proxy for wealth" and "normed to white upper-middle-class performance."

The SAT, the author explains, is part of the status quo of "built-in biases that privilege those who are already quite advantaged," a narrow band of values that are "the production and reproduction of privilege but without obligation or shame." The SAT is supposed to pick the "best and brightest," but in her view this amounts to "nothing more than students who can perform well on the test." The boys do better in math, and that appears to disturb the author.

In *The Tyranny of the Meritocracy*, Guinier does not call for college admissions based solely on test scores and grade point average. Readers will get the feeling that the author dislikes other test scores as much as the SAT, and she clearly is uncomfortable with the whole idea of individual merit. Even so, Guinier does not explain how this supposedly tyrannical status quo allowed someone like herself to become a tenured professor of law at Harvard and the University of Pennsylvania. It may have helped that her father, Ewart Guinier, born in Panama of Jamaican parents, was chairman of Harvard's Department of Afro-American Studies.

In quest of democratic merit, Guinier wants a change "from test-oriented lectures to a collaborative atmosphere that teaches our students how to problem solve." In that cause she deploys Carnegie Mellon University professor Anita Woolley, an advocate of "collective intelligence," that is, intelligence for groups, not individuals. In this politically correct vision, individuals have only the distinction of drops of water in a clear pond, something Kenneth Minogue outlined in *Alien Powers: The Pure Theory of Ideology*.

Guinier also invokes economist Scott Page, author of *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies*. In Page's model, "diversity trumped ability." What "diversity" means is not outlined in precise detail. The default meaning is that higher education must reflect the racial and ethnic proportions of society, and if it doesn't that can be only because of discrimination, to be remedied by government action.

Likewise, how the Woolley and Page models would work in practice may not be clear to many readers, but for Guinier they show "democratic merit in action." And this democratic merit, the author says, will "positively affect our

societal institutions and governance." So the author's vision encompasses all of society, not just higher education.

"Just as obsession with competition and individualistic merit begins in the classroom, so can a more effective democracy," contends Guinier, who touts a "culture of collaboration rather than competition." Such a sweeping vision will leave readers wanting some examples. As Paul Hollander showed in *Political Pilgrims*, the favored models of this vision have been Cuba or the Soviet Union, not democracies in any sense. Alas, the only example of a working culture of collaboration cited in *The Tyranny of the Meritocracy* is the city of Chicago's community police and school boards, as noted by Archon Fung, also of Harvard. Readers may find this Chicago model unconvincing, along with Guinier's defense of affirmative action.

During the 1970s, the University of California at Davis reserved a quota of medical school slots for accredited minorities and denied admission to Allan Bakke, highly qualified but not a person of color. Bakke's successful lawsuit against UC-Davis was to remedy discrimination against himself on the basis of race, not about opposing "diversity," as Guinier has it.

The Tyranny of the Meritocracy fails to mention California's 1996 Proposition 209. The first time voters anywhere in the United States had any say in a matter of affirmative action, they duly eliminated race, ethnic, and gender preferences in education. That historic vote was certainly an example of democratic action, but it's not the sort of thing Guinier has in mind.

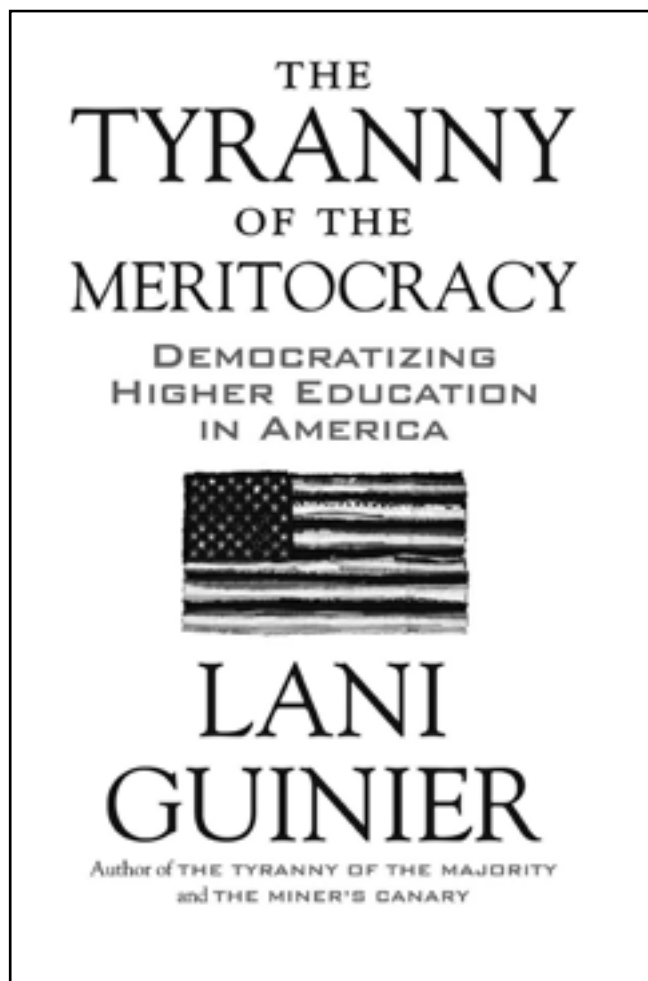
In 1993, President Clinton nominated Lani Guinier for assistant attorney general for civil rights but withdrew her name after protests over Guinier's schemes for "race-conscious districting" and support for racial preferences that got her tagged a "quota queen." For many readers, *The Tyranny of the Meritocracy* will confirm that her critics had it right. As used by Guinier,

diversity is a proxy for government racial and ethnic gerrymandering. Meanwhile, readers should be aware of another back story.

Back in the 1990s, Guinier questioned the blackness of African-American scholar Thomas Sowell, who was born in Gastonia, grew up in Harlem, and earned a bachelor's degree from Harvard, a master's from Columbia, and a Ph.D. in economics from the University of Chicago. He accomplished all this apart from any government affirmative action scheme. Sowell, author of many books and a senior fellow at the Hoover Institution, said he didn't need Guinier to tell him about being black.

In similar style, academics, parents, and students don't need Lani Guinier to pursue the reforms higher education definitely needs. On the other hand, readers of *The Tyranny of the Meritocracy* will gain insight into the politically correct mindset with its deadbolted dogmas, deceptive vocabulary, and rigidly collectivist vision. CJ

Lloyd Billingsley is author of the forthcoming *Bill of Writes*.



Hard-Living Tar Heel Charlie Poole a Pioneer in Banjo Music

Recently I was thumbing through my copy of *Scoundrels, Rogues, and Heroes of the Old North State*, an anthology of collected essays by noted historian H.G. Jones. (He wrote a weekly column from 1969-1986.) The editors Randell Jones and Caitlin Jones, unrelated to the history columnist, write that the columns were (and are) "entertaining stories about the heroes and the ne'er-dowells who make Tar Heel history so colorful." One such Tar Heel was Charlie Poole (1892-1931), a musician born in Randolph County, who grew up in nearby Alamance County.

Like many in the Piedmont during the early 1900s, Poole worked in a textile mill. He also landed various jobs in Virginia and West Virginia before returning to North Carolina, winding up in Rockingham County. From the mill-town culture, North Carolina Ramblers group was formed, and Poole's music took a professional turn while the United States fought

in World War I. Although Poole had performed in various states by 1924, Poole and his band had not yet peaked.

Taking a trip to New York City in 1925, Poole, Posey Rorrer, and Norman Woodlief recorded with Columbia Record Company. "North Carolina Ramblers" was a best-selling, prolific success, selling more than 100,000 copies, according to Jones. Biographer Clifford Kinney Rorrer points out that the typical country music recording of the time sold about 5,000 copies. In other words, "North Carolina Ramblers" was a hit; the group's fame had spread from Piedmont mill towns to Appalachia and the Southeast and later to the nation. And they were no one-hit wonders. Despite the success and popularity, though, the group disbanded in 1928.

The Ramblers name stayed with Poole as the banjoist continued performing and recording with other fiddlers and guitarists. His catalogue

of work includes "Don't Let Your Deal Go Down Blues," "Can I Sleep in Your Barn Tonight Mister," "Hesitation Blues," "White House Blues," "Sweet Sunny South," "Budded Roses," "If The River Was Whiskey," "He

Rambled," and "There'll Come a Time." With his meteoric rise to fame during the mid- to late-'20s, he recorded other best-sellers, too, on the Columbia, Paramount, and Brunswick labels. After the stock market crash in 1929, record sales

dipped, and Poole no longer was "Sittin' on Top of the World."

In 1931, though, he accepted an invitation to go to Hollywood and record a song for a movie western. Although Poole looked forward to an opportunity to revive his career, he never made the silver screen. For years, he had lived his life in fast forward, and it came to an end, a day less than two months before his 40th birthday. After a long celebratory spree, Poole succumbed to a heart attack.

Poole had played the banjo

since his early childhood. As a boy, he made his first banjo from a gourd and taught himself to play. (He later was able to buy banjos costing hundreds of dollars.) Poole had an unusual playing style that added to an uncommon Ramblers sound that incorporated ragtime and popular sounds. Poole's "three-finger style" influenced later and more popular banjoists and bluegrass and country stars.

He probably picked the banjo the only way he could possibly do so. In his younger days, he had injured his thumb and broken some knuckles playing baseball, which was both popular and competitive in mill towns across the early 20th-century South. The injury probably led to the "three-finger style" and made precision an absolute necessity.

Each June, the Charlie Poole Music Festival, held at Governor Morehead Park in Eden, across the street from the mill where Poole worked, features an evening of performances by old-time and Americana musicians and a day of banjo, guitar, fiddle, vocal, and band competitions for all ages. For details, visit charlie-poole.com. CJ

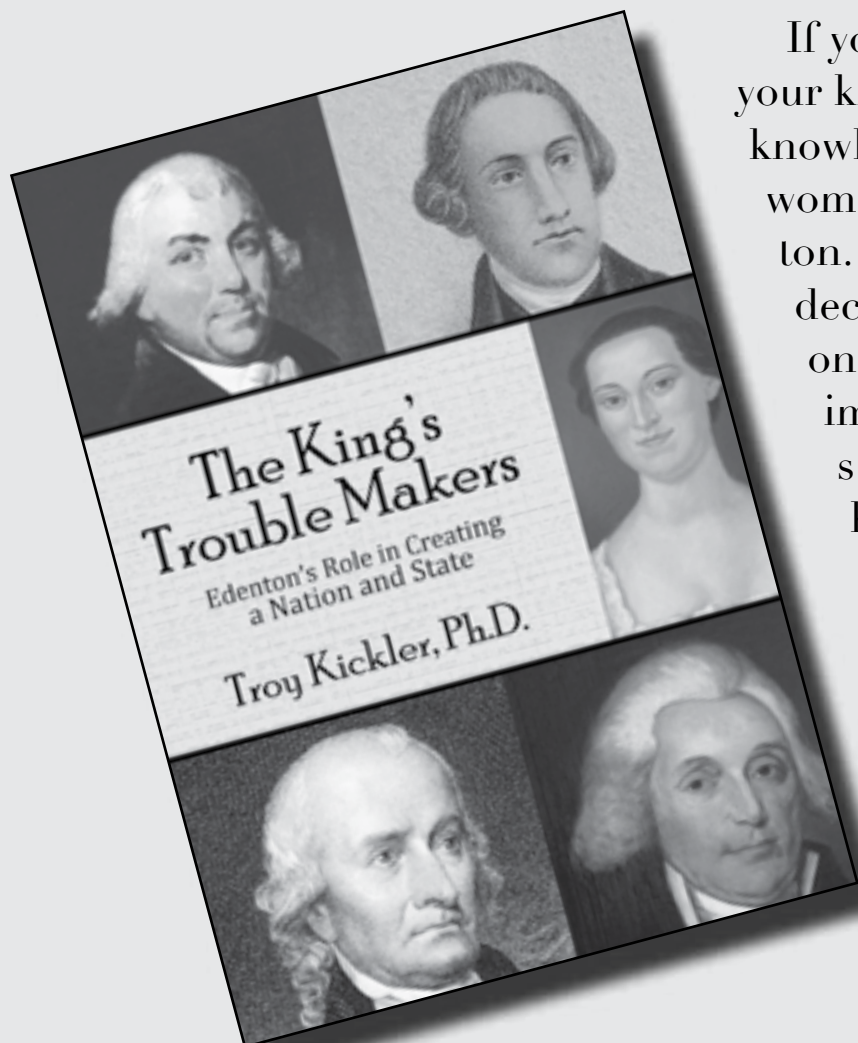
Dr. Troy Kickler is director of the North Carolina History Project (northcarolinahistory.org).



**TROY
KICKLER**



BOOKS BY JOHN LOCKE FOUNDATION AUTHORS



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

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

Go to northcarolinahistory.org for more information.

Book review

Author of *Naked Public Square* Led an Extraordinary Life

• Randy Boyagoda, *Richard John Neuhaus: A Life in the Public Square*, Image, 2015, 459 pages, \$30.00.

BY LLOYD BILLINGSLEY
Contributor

RALEIGH
Richard John Neuhaus was variously a theologian, intellectual, activist, ecumenist, writer, editor, commentator, pundit, and pastor. Or, as he put it, “a Canadian-reared, Texas-educated, Missouri Synod Lutheran writing from black Brooklyn where I have lived almost the whole of my adult life.”

To write the definitive book on such a man is no easy task, but for the most part Randy Boyagoda pulls it off in *Richard John Neuhaus: A Life in the Public Square*. The author describes himself as a “Sri Lankan-Canadian novelist and English professor living in Toronto,” and his section on Neuhaus’ early life shows great attention to detail, supplemented with photos.

Boyagoda’s subject was the seventh child of Ella and Clemens Neuhaus, a Lutheran pastor in Pembroke, Ontario, who raised eight children on a salary of \$81 a month. In the early going Richard showed interest in the ministry, performing a dog wedding, but also revealed a mischievous side.

Some of his early life also emerges in Neuhaus’ 2002 *As I Lay Dying: A Meditation Upon Returning*, which readers will want to consult, and the subject of a C-SPAN interview with Brian Lamb. The book bears “Proustian intensity,” says Boyagoda, but it was not the work that made Neuhaus a national figure.

After an education in Nebraska and Texas, here thoroughly and

theologically documented, Neuhaus wound up at Zion Evangelical Lutheran in Detroit. By the early 1960s, he was pastor of St. John the Evangelist church in Brooklyn, a congregation of blacks and whites. He also ministered in death wards and kept his eye on escalating conflicts in Southeast Asia.

A key player with the group Clergy and Laity Concerned About Vietnam, Neuhaus became a “fast-rising activist on the American Left.” He made national news on Oct. 25, 1965, for sharp criticism of President Lyndon Johnson, and his emergence as a national religious leader in a growing anti-war movement dovetailed neatly with the civil rights cause. Neuhaus drew inspiration from Martin Luther King Jr.’s “Letter from Birmingham Jail,” and in February 1968 joined King, Ralph Abernathy, and others in the march on Washington.

As Boyagoda sees it, Neuhaus had become a leading clergyman of the American Left, “only to discover that the American Left was moving away from his clergyman concerns.” Opposition to U.S. involvement in Vietnam did not mean that Communist forces were the vanguard of peace and social justice, as some in the movement contended.

Neuhaus duly became a vocal anti-communist and natural adversary to what the author calls “liberal Christian groups like the Sojourners.” In reality, these were not liberals but strident

anti-American leftists who smeared Neuhaus as an “intellectual assassin on behalf of wealth and power.”

Full disclosure: I knew Richard John Neuhaus a bit, and when he was visiting nearby I printed up a business card for him reading, “Intellectual Assassin.” We enjoyed some laughs at the notion of the cigar-chomping captains of industry assigning a minister and Luca Brasi to attack the evangelists of “liberation theology.”

As Boyagoda notes, in keeping with his faith, Neuhaus believed the poor should be liberated. As a founding member of the Institute on Religion and Democracy, he argued that democratic pluralism was a better liberator than any Marxist dogma. He also believed that a public square shorn of religious values was a barren place.

Without those values, as he was fond of saying, there would have been no anti-slavery movement, no women’s suffrage movement, and no civil rights movement. He delighted to note that Martin Luther King Jr. was in fact a minister.

Neuhaus joked about calling his signature book *The Naked Catholic Bishops*, but Andrew Greeley had already used that one. So he called it *The Naked Public Square*, and the rest is history. As Boyagoda notes, the book got a boost from Ronald Reagan’s 1984 re-election campaign, and Neuhaus became a staple on television. In a famous “Firing Line” episode with William F. Buckley,

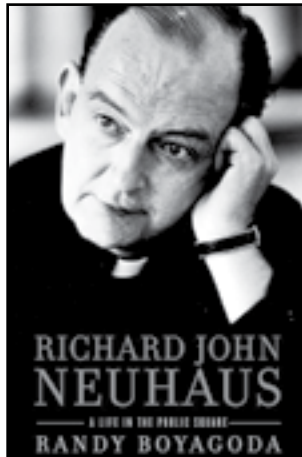
he debated the relative merits of Mother Teresa and Sister Boom Boom, a San Francisco transvestite.

The New Republic grouped Neuhaus with the menacing “theocons,” and paleoconservative Joe Sobran slammed him as a “one-man magisterium of the neoconservative crowd.” In “The Raid” chapter, Boyagoda recounts how Neuhaus and some groups on the right parted company in rather abrupt fashion. Neuhaus then launched the journal *First Things*, which maintained his influence.

In his editorial after the 9/11 attacks, he recognized a real war, not some metaphorical conflict, as some had it. “Metaphorical airplanes flown by metaphorical hijackers,” he wrote, “did not crash into metaphorical buildings leaving thousands of metaphorical corpses.”

A Roman Catholic since 1990, Neuhaus faulted Barack Obama for not disowning the Rev. Jeremiah Wright and found in the president “boilerplate leftisms of class warfare and what he depicts as a nation of black and white, of seething resentments.”

As a pastor in Brooklyn, Neuhaus had married a black-and-white couple, and every year called them on their anniversary. One year no call came, and the couple knew something was wrong. So in early 2009 they showed up in the hospital room where Neuhaus lay dying. He was unable to speak, but when the woman addressed him, “he opened his eyes and smiled. Soon thereafter he fell into a deep and final sleep.” Six years later, this great man remains someone all readers need to know. *Richard John Neuhaus* is a good place to start. CJ



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

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Book Review

Economist Highlights Misery Caused By Top 10 Policy Mistakes

• Burton Abrams, *The Terrible 10: A Century of Economic Folly*, Independent Institute, 2013, 186 pages, \$24.95.

BY GEORGE LEEF
Contributor

Most of us like lists, especially those apt to spark debate. In *The Terrible 10*, Burton Abrams gives us a list of the 10 worst government blunders of the last century. Each chapter explains why the particular program or policy created high costs with little or no offsetting benefit.

Abrams has the background to write this book. He's a professor of economics (University of Delaware) and directs the Independent Institute's illuminating MyGovCost.org website. Let's look at his terrible 10:

• **Prohibition.** This attempt to legislate morality and improve the people through coercion backfired disastrously. Abrams recounts the glowing aims of the prohibitionists, then shows that the results were the opposite: a huge increase in crime, corruption, injury, or death due to the consumption of illegally produced booze, and more.

• **Monetary policy during the Depression.** Many mistakenly believe that the Depression occurred just because of some innate instability in capitalism. What few know is that government monetary policy played a crucial role in the Depression.

Abrams shows that the Federal Reserve System, established in 1914 to help smooth business cycles and prevent panics, failed to act properly once the country started sliding into recession in 1929-30. The Fed dithered while many small banks collapsed; the na-

tion's money supply fell sharply. If the Fed hadn't blundered, we wouldn't have suffered anything like the calamity of the Depression.

• **The Hawley-Smoot Tariff.** While the government's monetary mistakes were mainly to blame for causing the Depression, other policies made it much worse, especially the Hawley-Smoot Tariff of 1930.

The standard belief at the time among Republicans was that high tariffs were good for the domestic economy. Rep. Willis Hawley and Sen. Reed Smoot concocted a protectionist trade bill that raised duties substantially on a wide array of imports. Although the bill drew opposition from business leaders (Henry Ford called it "economic stupidity") and leading economists, President Hoover believed it would ease America out of the Depression.

It backfired. Predictably, foreign nations retaliated with their own trade restrictions, causing American exports to wither. The resulting international trade war helped set the stage for World War II.

• **Social Security.** Abrams doesn't shrink from calling Social Security a "Ponzi Scheme." Early beneficiaries made out well, but the system is unsustainable.

Congresses and presidents repeatedly tried to buy votes through expanding benefits, but the program will run out of money before long, requir-

ing either huge tax increases or benefit reductions. Furthermore, Social Security has done great damage by causing people to save less than they would have otherwise.

• **Tax follies.** High marginal rates on successful people enable politicians to extract vast amounts of wealth for their policies, many of them wasteful or even counterproductive.

Abrams explains that we bear many hidden costs because of our tax system, for example the squandering of resources on lobbying for favorable tax rules and the man-hours devoted to preparing our taxes or paying experts.

• **Medicare and Medicaid.** Just as Social Security is widely regarded as a "compassionate" and necessary expansion of government, so are Medicare and Medicaid generally applauded for providing medical care for the elderly and the poor.

Abrams disagrees, arguing that both programs cause Americans to be dependent on government, to their detriment. Instead of working, saving, and making the best arrangements possible in a free market, Americans are stuck with inefficient, bureaucratized programs.

• **The Nixon-Burns political business cycle.** President Nixon wanted desperately to win re-election, but economic conditions were not rosy in 1971. Therefore, he wanted Federal Reserve chairman Arthur Burns

to adopt an easy money policy meant to boost employment quickly. Burns, however, said that such a policy would cause long-term inflation.

Nixon, however, was adamant and put unrelenting pressure on the scholarly economist. Burns finally gave in, and Nixon easily won in 1972, but Burns was proven right: America got years of high inflation combined with a sluggish economy. That led to the election of Jimmy Carter and yet more bad economic policy.

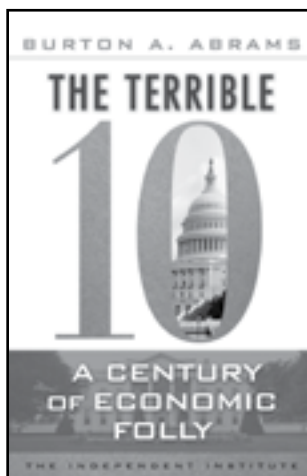
• **Environmental mismanagement.** Abrams' eighth folly is federal meddling to protect the environment.

He's not opposed to laws that stop air and water pollution, but opposes programs that impose high costs in pursuit of "green" purity. One example he examines in detail is ethanol subsidies.

• **Government failure and the Great Recession.** Abrams explains how government follies caused the housing bubble and the consequent financial crash that ruined people who took out ill-advised mortgages, wiped out many jobs, and damaged financial institutions that had invested in worthless securities.

• **Decades of deficits.** The temptation to spend money now (in ways that garner votes) and paying for it in the future is nothing new, but in recent decades, American politicians have put the pedal to the metal.

While Keynesian economists say that deficits "stimulate" the economy, Abrams responds that government borrowing crowds out more useful private uses for limited capital. He's especially critical of President Obama's huge "stimulus package" that did little short-run good in exchange for heavy future taxes. CJ



BOOKS AUTHORED BY JLF STAFFERS



By John Hood
Chairman of the
John Locke Foundation

Selling the Dream
Why Advertising is Good Business

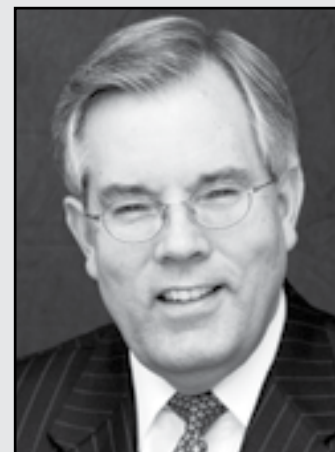
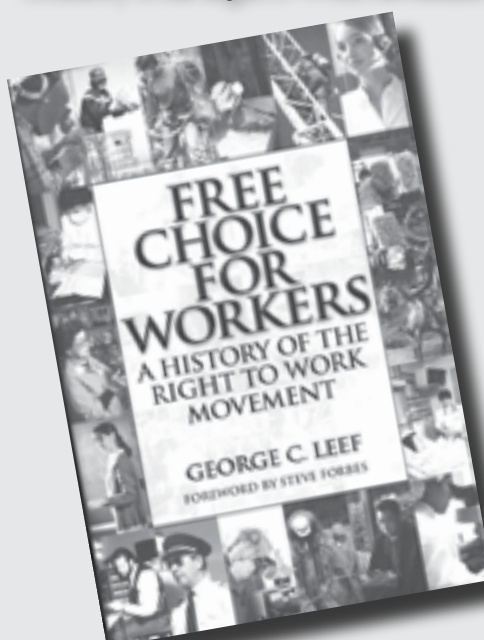
"[Selling the Dream] provides a fascinating look into the world of advertising and beyond ... Highly recommended."

Choice
April 2006

www.praeger.com

Free Choice for Workers:

A History of the Right to Work Movement



By George C. Leef
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COMMENTARY

Too Many Crimes On the Books

Because of tax reform, less burdensome regulations, and a general spirit of optimism, you have confidence that North Carolina is on the right track and this is the place to invest and start a business. You leap into the world of entrepreneurship. But you fail to file a required form on time and are convicted of a crime. Welcome to overcriminalization in North Carolina. It's making business owners into criminals every day.

Some offenses against people and property should be treated as crimes, such as murder, rape, larceny, or theft. Those actions clearly are wrong, and it's difficult to commit them unless you intend to do so. But another set of criminal laws ensnare innocent, well-meaning North Carolinians as they try to enter professions, start businesses, and exercise their rights.

Chapter 14, the criminal law section of North Carolina General Statutes, has 765 sections. Additional criminal laws are scattered throughout other sections of the statutes — drug laws in Chapter 90, motor vehicle laws in Chapter 20, and various “catch-all provisions” found elsewhere. Search “criminal” under N.C. General Statutes, and you'll get 1,304 matches. North Carolina's criminal code is larger than that in any of our neighboring states — a whopping 55 percent larger than Virginia's and 38 percent larger than South Carolina's, for instance.

Criminal offenses don't stop with the statute books. Additional criminal offenses are written into state agency regulations and enforced by unelected bureaucrats in areas including agriculture, environment, and public health. Then there are criminal penalties imposed by occupational licensing boards — boards controlled by those who currently practice professions such as hairdressing and landscape architecture and want to keep newcomers out. Violations of local ordinances also can carry criminal penalties.

There are so many crimes on the books scattered across so many jurisdictions that even the most seasoned criminal-defense lawyer is hard-pressed to say how many criminal laws we have in North

Carolina. Without any intent to break a law, honest, hard-working citizens can be charged with crimes carrying heavy penalties, social stigma, and even jail time.

While North Carolina adds new crimes to the books — lawmakers have added an average of 34 new offenses just to the criminal code every year from 2008 through 2013 — outdated, obsolete, and even unconstitutional penalties remain. So the code gets bigger. But not better.



**BECKI
GRAY**

The North Carolina General Assembly has recognized that criminalization has gone too far. The Justice Reinvestment Act of 2011, the Sentencing Commission, and the General Statutes Commission have begun amending, modernizing, and streamlining criminal law. Many misdemeanors were reclassified in the 2013 budget.

But there's more to do:

- Apply regulatory reform provisions that the General Assembly enacted in 2011 to criminal offenses, requiring a regular review of old laws. Amend or discard those that aren't needed. A cleaner criminal code will return integrity to the system and make it easier to comply.

- Create a bipartisan study commission to look at criminal penalties in administrative rules, and create a method for organizing and clarifying criminal laws so ordinary citizens can access, understand, and comply with them.

- End the practice of filing criminal charges against people who unknowingly violate rules and have no intent of doing wrong. In legal terms, create a *mens rea* provision.

It should not be a criminal offense to sell hot dogs, whiten teeth, conduct sleep studies, offer dietary advice, or fail to file a report. It's time to instill common sense into North Carolina's criminal code. Let's keep criminals who threaten public safety behind bars and stop overusing criminal penalties that undermine the integrity of our justice system and threaten everyone else's freedom. CJ

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



STATE OF THE UNION SPEECH 2017

EDITORIAL

Bond Bite Is Too Big

Interest rates are low. There are very real needs for public capital spending across North Carolina, resulting from years of inadequate facility maintenance and an ever-increasing population. At the same time, Gov. Pat McCrory and legislative leaders have exhibited admirable restraint in crafting state operating budgets, thus creating fiscal space for servicing new debts without a tax increase. And they have committed themselves to submitting major new debts for approval by North Carolina voters, rather than skirting this constitutional requirement as previous governors and legislatures have done since 2000.

These are all valid, persuasive, and fiscally conservative reasons for placing a bond package on the state-wide ballot as soon as this November. Unfortunately, there remains a valid, persuasive, and fiscally conservative reason for North Carolinians to reject the package the McCrory administration had proposed: It's simply too large.

Every dollar of debt the state incurs to build or renovate something represents more than a dollar in principal and interest over the term of the bond that can't be used for state operating expenses — including core services such as public safety and education — or left in the hands of private households and businesses to spend on their own operating and capital needs.

With that in mind, let's consider some details from the governor's roughly \$2.8 billion “Connect NC” plan. Half the debt would fund highway improvements, including \$1.32 billion for 27 high-priority projects such as beltways and bypasses

already permitted and ready to break ground plus \$50 million to pave some 113 miles of rural secondary roads.

The other half of the debt would fund more than 100 new facilities or renovations across various agencies, functions, and regions of the state. The major chunks include \$504 million for the University of North Carolina system, \$200 million for community colleges, \$200 million for the state ports at Wilmington and Morehead City, \$100 million for rail lines and other nonhighway transportation projects, \$112 million for state parks and the North Carolina Zoo in Asheboro, \$87 million for armories and infrastructure supporting military bases in the state, \$76 million for state cultural and historic sites, \$62 million for public-safety projects, and \$51 million for health and human service facilities.

There are many undeniable needs and high priorities in the list of projects Connect NC would fund. There are \$15 million worth of renovations and expansions of the state's courthouses. There are essential repairs to aging state office buildings. There is \$11 million to repair or replace roofs at historic sites and other Cultural Resources facilities across the state, a need to which any recent visitor to these locations can attest.

But many projects raise red flags. Some of these projects can wait. Some are inordinately expensive given any realistic projection of public use or benefit.

State lawmakers should boil the list down to essentials before placing them on the ballot. Right now, they're biting off more than North Carolina taxpayers can chew — and stomach. CJ

EDITORIALS

Capital = Growth

Policies should encourage investment

Although economists continue to differ widely and strenuously about what causes short-term events, few would disagree with the proposition that capital formation is a fundamental building block of long-term economic growth. But what is capital?

The concept is broader than just an accumulation of financial assets. A capital good is something created not for immediate consumption but to help us produce goods and services for future consumption. It can be a factory, a machine, a tool, a computer, or even a musical instrument.

Think broader than that, though. An industrial process or patented invention is a form of intellectual capital. A well-educated, well-trained person is a form of human capital. Whenever we forgo immediate consumption and invest our time and money to make ourselves more productive, we create capital.

Governments can affect the formation of capital in many ways. They can invest in capital goods such as roads. They can also use tax money to invest in the formation of human capital, too, with the crucial difference being that physical capital can be owned publicly but human capital is always private (in a free society, at least).

Governments also can hamper capital formation. Tax codes that fail

to distinguish immediate consumption from investment, and then levy high marginal tax rates on the latter, either can encourage taxpayers to save and invest less than they otherwise would or encourage them to do their saving and investing somewhere else.

Unless you believe in either anarchy or totalitarianism, then you must think there is a proper balance between public investment and private investment. Liberals tend to think we spend too little on government. Conservatives tend to think we spend too much on it, that we're well past the point of diminishing returns.

A recent study by two University of Arizona researchers provides additional support for the conservative view. Examining state-by-state data from 2000 to 2008, they found that private capital was two to three times more economically productive than public capital. They further discovered that more state spending on education had become a net negative — the taxes required did more harm than the additional spending did any good.

Obviously, infrastructure and education are important. This is an argument for spending more wisely on them, rather than just jacking up their cost.

CJ

Vouchers not Unusual

N.C. uses tax dollars for many private services

North Carolina routinely routes tax dollars to private service providers without controversy.

No one seriously argues that allowing private hospitals to receive Medicaid funds is a scheme designed to destroy government-owned institutions such as UNC Health Care. No one seriously argues that making state and federal financial aid available to students at private colleges and universities is a scheme designed to destroy the UNC system. And no one seriously argues that it would be better for the government to produce and distribute most food, clothing, shelter, and child care for the poor instead of using the current system, which relies primarily on cash grants, food vouchers, housing vouchers, and child care vouchers.

So why do supposedly serious people claim that school vouchers are a scheme designed to destroy public education?

Some are serious but entirely

uninformed. They can't see the similarities, say, between providing food stamps to the poor and allowing poor children to use tax-funded scholarships at private schools.

Others are serious but misinformed. They think there's something special about K-12 public education that applies to no other human service. But evidence shows that robust competition from private schools pushes public schools to do better — and at a lower cost.

In either case, school-choice proponents need only patiently and respectfully offer better information. It will prove persuasive over time.

However, a final group of critics are either too silly to be reasoned with (hard leftists) or serious but dishonest. They dislike or fear market forces or are captive of the special interests (mainly teacher unions) that thrive from the absence of competition.

No amount of information or argument will persuade them.

CJ

COMMENTARY

Budget Crisis Didn't Occur

A funny thing has happened on the way to North Carolina's great budget crisis of 2015.

Well, strictly speaking, what happened is funny if you are on the right side of the spectrum. If you are a liberal activist or Democratic politician, the emotions you may be feeling right now are frustration, disappointment, perhaps even embarrassment.

Last fall, folks on the Left began pointing to monthly reports on General Fund revenue collections from the state controller's office. The reports showed that income tax revenue, in particular, was lagging behind the state's original projections. The gap wasn't gigantic in dollars, but the percentage difference was noticeable.

It would have been wise, given the circumstances, simply to note the discrepancy and argue for prudence as the rest of the fiscal year unfolded. Because the 2014 tax year was the first one after the passage of major tax reforms in 2013, some differences between projected and actual revenue would have been unsurprising. North Carolina's recent history shows that whenever state lawmakers enact major changes in tax policy, there is a potential for error in revenue forecasting. Models for predicting the future are, inevitably, based on experience.

Relationships among variables that were stable in the past may no longer hold under new policies.

In 1989, for example, the General Assembly passed the Tax Fairness Act with bipartisan majorities. Its purpose was to update the state income tax code after years of changes in Washington, which had included lower marginal rates and the indexation of the federal code to inflation. North Carolina had never indexed its rates, deductions, and exemptions to inflation, meaning that many families of low-to-moderate incomes were paying higher tax rates than the framers of North Carolina's income tax originally had intended.

The Tax Fairness Act corrected some of the damage caused by such

"bracket creep," although North Carolina waited until the 1990s to index the tax code. The point is that according to the official revenue forecasts in 1989, the Tax Fairness Act was supposed to be revenue-neutral. It turned out not to be. By the second full year of implementation, 1991, fiscal analysts estimated that the bill actually had reduced state revenue from the baseline by around \$100 million. Some put the figure much higher, at \$300 million, the equivalent of about \$520 million today.

Those possessing a knowledge of North Carolina's fiscal history and a modicum of common sense certainly would have noted the revenue-collection gap in late 2014 but not jumped to any specific conclusions about it. Perhaps the early indications of a fiscal gap

wouldn't prove to be predictive at all for the entire 2014-15 fiscal year — because they had to do mostly with shifting the timing of tax collections, via lower withholding and quarterly tax payments, rather than a true loss of annual revenue to the state.

Unfortunately for the liberals and Democrats in question, they didn't just jump to the worst possible conclusion last year. They dove headfirst into a fetid swamp of apocalyptic rhetoric and

conspiracy theories. They predicted a 2014-15 budget gap surpassing \$1 billion. Some claimed McCrory and the GOP legislature purposefully had used a rosy scenario to justify their 2013 tax reform — and then would use the subsequent deficits to justify more budget cuts.

It turns out, however, that the issue indeed largely was one of revenue timing, not annual collections. And total General Fund revenues aren't down. They're up \$257 million over the same period in 2013-14.

The catastrophic hit here was not to the state budget. It was to the Left's credibility.

CJ

John Hood is chairman of the John Locke Foundation.



JOHN HOOD

Left's error in tax revenue predictions has left its credibility in tatters

MEDIA MANGLE

Intentionally Hurtful News Writing

It's not unusual for the media to be unintentionally insensitive. Sometimes in the rush of a deadline we write a headline or put something in a story that has effects we never predicted or anticipated.

This happened to me once years ago when I had to write a news obit about a community leader who had died right on deadline. While he was a well-known community leader who had done many good things, he also had gotten into some legal trouble about 20 years earlier.

I mentioned that particular scrape with the law pretty high up in the obituary, and, boy, did the community reaction hit like a ton of bricks. "How dare you mention something like that in a man's obituary?" was the feeling they were communicating to me, often in much harsher terms than that.

I learned a lesson then that I haven't forgotten: Sometimes the outlook of news people doesn't coincide with the outlook of the public at large. I always weighed words more carefully after that.

But there's another journalistic tendency that has become all too common these days, and that's the *intentional* use of hurtful news writing to punish someone whom the news outlet considers a political enemy. That happened recently in the pages of *Indy Week*, the left-wing Durham-based alternative weekly formerly known as *The Independent*.

On April 15 *Indy Week* reporter Jane Porter wrote about a suicide in Stanly County, but she did it not to report the suicide to her readers. Rather, she wanted to imply that State Rep. Larry Pittman, R-Cabarrus, was somehow complicit in the suicide of his son, Graham Pittman. She wrote:

Rep. Pittman has championed expanding gun owner rights in the General Assembly and during his campaigns for the District 82 House seat.

Pittman is the primary sponsor of a bill filed Tuesday—the day after his son's suicide—that would prohibit any local government employees from enforcing federal firearms laws, unless by court order. The bill, titled the Gun Rights and Privacy Act, would also repeal local prohibitions against carrying concealed weapons, and would streamline the handgun permit while traveling across state lines and "to make the purchase of a firearm more efficient."

Drawing spurious correlations is not unusual in the agenda-pushing press, but this particularly ghoulish example, published under the headline "Suicide apparent in shooting death of son of pro-gun rights N.C. Rep." was one for the books.

Maybe the sharp negative response that resulted taught Ms. Porter the same lesson I learned 25 years ago. But knowing the devolution of the left-wing media over the past 20 years, I seriously doubt it. CJ

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



**JON
HAM**

*Inflation Not Running Away — Yet*

It wasn't supposed to happen this way. After years of creating money out of thin air — a unique ability the Federal Reserve has — we were supposed to be seeing significantly higher inflation by now.

The Fed printed a lot of money to backstop the financial system and put a floor under the Great Recession. Yet it has been long recognized that a price to be paid for this action would be higher inflation down the road.

Even so, retail inflation — covering everything consumers buy — has ranged between only 1 percent and 2 percent annually for the last four years. I know some people don't trust government statistics. Yet private measures of inflation, like the "Billion Price Project" at MIT, which gathers prices from the Internet, shows annual inflation only marginally higher, at between 2 percent and 2 ½ percent.

How can this be? The late Nobel Prize-winning economist Milton Friedman described inflation as resulting from too many dollars chasing too few goods and services. As soon as Fed policymakers became convinced the recession was here, they opened up the money spigot. Since 2007, the Fed effectively has created several trillions of new dollars, certainly qualifying for Friedman's chase scene.

But it hasn't happened. Serious inflation is not here. Have the laws of economics fallen apart? Is the relationship between money and prices not what it used to be? Is there a reasonable explanation for this apparent contradiction?

Actually there is a simple explanation. Traditionally when the Fed created money, it would move that money into the economy by purchasing investments from banks. Banks would trade the investments for the new money, and then banks could use that money as the basis for making loans to businesses and consumers. The loans would create new spending and new economic activity. But if the money to loans to spending process got moving too fast, we would be in a Friedman situation and prices

eventually would jump.

This time the Fed added a new ruffle to the scenario, which — so far — has kept inflation at bay. As usual, the Fed created new money and used the funds to purchase investments from banks. Then it made an offer to the banks that most couldn't refuse. If the banks deposited the new money with the Fed, the Fed would pay them interest for doing so. The interest rate wouldn't be high, but it would be risk-free.

Banks bit at the deal. Deposits by banks at the Fed rose from a couple billion dollars to almost \$2 trillion! The policy allowed the Fed to stabilize the banking system during the financial crisis but without creating the basis for substantially higher inflation. Some analysts have called this policy "brilliant."

However, the policy has had its downsides. Rather than using the new money to make loans, banks have parked the money with the Fed. The policy may be one reason why getting a loan is still challenging and why the housing market — while better — is wobbly in many areas.

Of course, more of the money could leave the Fed and "hit the street" if banks found better lending opportunities with higher interest rates than those paid by the Fed. Still, the Fed could respond by upping its interest rate paid to banks if signs of higher inflation appeared. In fact, there are many options in the air being juggled by Federal Reserve officials.

Some say the Fed has too many goals to reconcile. Ever since the end of World War II, Congress has told the Fed to pursue two objectives simultaneously — keeping both the inflation rate low and the unemployment rate low. Some think that while this is doable in the long run, achieving both goals may not be possible over shorter periods of time.

So is inflation whipped? Not necessarily. The Fed may decide that economic growth and opportunities are still too limited, and sacrificing a little more inflation to get more and better jobs is a trade worth making. Would they be correct? CJ

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



**MICHAEL
WALDEN**

Religious Revolution at Top of the GOP

There is an interesting and little-noticed revolution going on at the elite levels of the national Republican Party. Whereas the party was led by WASPs — essentially white, Anglo-Saxon Episcopalians and Presbyterians with a few Anglicans, Methodists, and Lutherans thrown in — it is now dominated by Catholics and Protestants who belong to non-mainline denominations, particularly the Southern Baptist Convention or evangelical groups. Ostensibly unrelated to the emergence of ideological changes in the GOP's highest ranks, this religious transformation is nonetheless important.



ANDY TAYLOR

The evidence is everywhere. Look at the principal contenders for the party's 2016 presidential nomination. Of the serious candidates, only Presbyterian Sen. Rand Paul of Kentucky and Anglican Ohio Gov. John Kasich attend the same kinds of churches Republican leaders did traditionally. The rest of the group is made up of Catholics (like Gov. Chris Christie of New Jersey, Gov. Bobby Jindal of Louisiana, and Sen. Marco Rubio of Florida), Southern Baptists (Sen. Ted Cruz of Texas, Sen. Lindsey Graham of South Carolina, and former Arkansas Gov. Mike Huckabee), and evangelicals (like former Texas Gov.

Rick Perry and Gov. Scott Walker of Wisconsin). The Republican ticket in 2012 was Mormon-Catholic. All five of the current Supreme Court justices nominated by Republican presidents are Catholic. The party's congressional leaders are mainly Catholic or Southern Baptist. Even Jews, who have historically supported Democrats in overwhelming numbers, have taken a seat at the party's top table. Much of Republicans' neoconservative foreign policy, for example, is attributable to them.

Members of the old Republican dynasties like the Tafts, Rockefellers, and Bushes were mainline Protestant. Ronald Reagan was Presbyterian. Even Sen. Barry Goldwater, the man who overthrew the party establishment in 1964 claiming "extremism in the defense of liberty is no vice" was Episcopalian. In fact, if anything sums up the transformation best, it is Jeb Bush's conversion to his wife's Catholicism in 1995. Bush is surely the most patrician of the current crop of candidates.

Mainline Protestants have left an indelible mark on the party. In a country with separated church and government, they are unassociated with the state or centralized authority. The denominations traditionally have embraced others of the party's — and American — core values like individualism and capitalism. Throughout the 17th and 18th centuries, Protestantism stood for liberty against reactionary and Catholic regimes. The Protestants who went too far were evangelical. Oliver Cromwell, lord protectorate of

the short-lived English Republic in the 1650s, was a Puritan whose austere religious beliefs helped ignite a restoration of the monarchy.

Our Founders took much of their inspiration from other figures of the English Civil War, like James Harrington, and protagonists of the Glorious Revolution of 1688, like John Locke.

The French philosophers who influenced our Founders had frequent run-ins with their nation's established Catholic Church. Voltaire was openly antagonistic, and even the moderate Montesquieu believed mainstream Protestantism, not his country's Catholicism, was best-suited to republics and commercial success. All practiced a form of civil religion: a fundamental belief in God that bound a nation's citizens through habits and institutions. Edmund Burke, the vocal opponent of the French Revolution and greatly admired in conservative circles today, viewed religion similarly. Like the Founders, he thought harmonious and productive societies were unified by pervasive religious beliefs and institutions while they remained largely pluralistic and tolerant on ecclesiastical matters.

What caused this transformation? The dramatic development of the Republican Party in the South explains the prominence of Baptists in its current leadership and a more open and horizontal structure — a function of primaries and other democratizing reforms — has assisted Catholics in infiltrating its highest ranks. What does this signify? The biggest reli-

gious cleavages in American politics are no longer denominational. Al Smith and John Kennedy made the Democrats the party of Catholics, but by 2004 John Kerry, a Catholic Democrat, lost that voting bloc to a Bush. Instead Americans today derive their partisanship more from the extent to which they are religious. Although the Democrats consider themselves the diverse party, the array of religious beliefs represented at the top of the Republican Party demonstrates it has a "big tent" character as well.

The implications are not as easy to discern. It does seem as though Republican candidates will continue to take often-unyielding positions on cultural and social issues to complement their small-government and more libertarian economic views. This might hurt them with younger and some more educated voters. The prominence of Catholics will help court Hispanics, a dramatically expanding demographic that soon will play a pivotal role in national elections.

The end of WASP domination may help shed the elitist image the GOP has in some quarters. Whether it proves to be a key to the White House is a proposition that is likely to be tested next year. CJ

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Saying Goodbye to the Greatest Generation

Last Dec. 7, my wife Karen and I went to the National World War II Memorial in Washington, D.C., to be a part of the annual event to remember the attack on Pearl Harbor.

Last year the service honored 15 survivors of the Japanese attack 73 years earlier. Twelve of those survivors were from Austin, Texas, and had arrived on an honor flight. These vets were between 91 and 95 years old.

According to press stories, more than 400 people gathered on the hallowed ground between the Washington Monument and the Lincoln Memorial for this fitting tribute to some of the "Greatest Generation." It was a very emotional ceremony, with many of the veterans in wheelchairs.

Several of the World War II vets remarked that it most likely would



MARC ROTTERMAN

be their last trip to honor their fallen comrades. During the ceremony — when the national anthem was played — several struggled to stand and salute. The love and respect they showed for their country and their flag was real and inspiring.

These vets were part of the Greatest Generation that fought in the Pacific and defeated the Japanese imperial forces in places like Iwo Jima, Guadalcanal, Bataan, Midway, and Leyte Gulf, along with those who landed at Normandy on D-Day and liberated Europe from Hitler and Mussolini.

They all "did their part." There were very few slackers and little debate on the mission. Service to one's country was a given. Many enlisted the day after the Japanese attack on Pearl Harbor. They inherently understood good and evil.

And like their brothers, husbands, and in some cases fathers, America's women heard the call to arms. They served in the military, as nurses or with the Red Cross, and as spies behind enemy lines in Europe

and other places around the globe. They worked in factories helping to build planes, tanks, pontoon boats, and ships.

At home they endured rationing and shortages. This was the generation that listened and danced to Glenn Miller, Tommy Dorsey, Frank Sinatra, Benny Goodman, Artie Shaw, Count Basie, and Duke Ellington.

They grew up in the Great Depression, and they endured. In their lifetimes they saw the invention of the transistor radio, television, and the atomic bomb, along with the Internet and the cell phone.

They lived through the threat of nuclear annihilation, the Iron Curtain, the Korean War, the Cuban Missile Crisis, and Vietnam, and watched an American walk on the moon. Eventually they saw the Berlin Wall fall and the Soviet empire collapse.

These same Americans came back from the war and went to work, started families, and built the U.S. economy into the world's economic powerhouse.

More than 16 million Americans

served in the Second World War, and more than 400,000 service members died in battle. Today, according to the U.S. Department of Veterans Affairs, only about 1.7 million are still alive. Of those, on average 555 veterans of World War II pass away each day.

Those statistics don't include the women of the "Greatest Generation" who are also leaving us. We are lucky to be their sons and daughters, their grandchildren, and their great-grandchildren.

If you are fortunate enough to have a member of the Greatest Generation still with you and in your family, treasure the time you have. Talk with them, and listen carefully to their stories.

Or if you just happen to run into one of the Greatest Generation, please stop and thank them. And in your life, try to honor their sacrifice and service. CJ

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

Kluttz Proposes Tax Credits for Historic-Car Restoration (a *CJ* parody)

BY STU D. BAKER
Automotive Correspondent

RALEIGH

Even though the future of state Historic Preservation Tax Credits for buildings remains unclear, N.C. Cultural Resources Secretary Susan Kluttz announced a new plan to offer tax credits for the preservation of older American-made vehicles.

"Historic old cars are just as important as historic old buildings in the economic development vision I have for the state," she said at a press conference at the ABC Salvage Yard in Smithfield. "My plan will be known as the 20th Century Vehicle Preservation Act, and it could save thousands of vehicles from graveyards like the one you see behind me. Old cars matter," she said.

Kluttz has traveled the state discussing the need to revive state tax credits for the restoration of historic buildings. "We are facing a crisis in Raleigh because the Historic Preservation Tax Credits for buildings were ended last year," she said. "There are Republicans in the legislature who just don't support incentives for the preservation of old things."

Kluttz said that President Barack Obama's 2009 Cash for Clunkers stimulus program failed to stimulate auto sales and it seriously depleted our state's inventory of old cars. "We sent perfectly restorable vehicles to the



Carolina Journal obtained this flyer, which Cultural Resources plans to use to promote the new historic-automobile tax credit. (CJ spoof graphic)

scrap yard. That policy was a joke," she said.

"North Carolina has a rich history, and North Carolinians value that history and the people who came before us to make this state the great place that it is. This must not be lost as we grow and change. Ford Pintos, Chevrolet Vegas, AMC Gremlins, and Plymouth Valiants cannot be forgotten," she said.

"They are a tie to our past — to our ancestors who worked so hard for us so the future would be bright," she added. "We are in danger of losing the first century of American-made pas-

senger vehicles to the indifference of policymakers."

Under her plan, owners of automobiles manufactured in the United States during the 20th century would receive a refundable tax credit of at least 50 percent on all expenses associated with restoring a vehicle to something approximating original condition. The 50 percent tax credit would apply to vehicles between model years 1991 and 2000. A 60 percent credit would be available for model years between 1981 and 1990; and a 70 percent credit would be available for vehicles dated model year 1980 or older.

Kluttz issued a report titled "Economic Impact of the Older Vehicle Preservation Act" that was prepared by a team of N.C. State University professors who are not economists. The report projected that the credit would cost the state roughly \$135 million in tax revenues per year, but that the program would stimulate the overall economy to the tune of \$283 million annually.

The report also concluded that no one would restore a "historic" vehicle without a financial incentive to do so, the same reasoning used by the state to justify the tax credit on building renovations.

"I can always count on N.C. State to justify a new incentive. Those professors can be very creative with their economic modeling," she said.

Kluttz assured reporters that Gov. Pat McCrory would support the program even though she has not finalized the details. She also acknowledged that no other state has launched a similar program.

She said Obama's plan to improve relations with Cuba might also affect the used-car market in the United States.

"Those Cubans have not had any new American cars since Fidel Castro clamped down on imports in 1959. There is no telling what will happen to the supply and demand for restored American vehicles," she said. *CJ*



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