

Wos talks optimistically about Medicaid expansion/2



CAROLINA JOURNAL

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

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November 2014 Vol. 23 No. 11

STATEWIDE EDITION

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Hagan-Nominated USDA Official Scrubs Docs

‘Proprietary info’ about JDC company ‘redacted’ from file

By DON CARRINGTON
Executive Editor

A copy of the U.S. Department of Agriculture’s file on a 2011 \$50,000 solar energy grant to JDC Manufacturing was missing key documents that would clarify the roles of various family members of U.S. Sen.



Randall Gore

Kay Hagan. Hagan family members own JDC Manufacturing, along with a solar company that claimed to have performed work on the project. *Carolina Journal* requested access to the USDA file. The head of North Carolina’s USDA Rural Development office, Randall Gore, is the custodian of the information in the solar grant file. He was recommended for the position (which is a political appointment) by Hagan not long af-



The Hagan family sought and received a \$50,000 grant from the USDA to help fund a second set of solar panels atop this building they own in Reidsville, N.C. The first set of solar panels also was funded by federal dollars. (CJ photo by Don Carrington)

ter she took office in 2009. Gore and Hagan live in Greensboro. President Obama nominated Gore, and the Senate confirmed him.

According to the application, signed by JDC’s co-owner and Kay Hagan’s husband, Charles “Chip” Hagan, among the missing documents should be a “Copy of all estimates to calculate total project cost or Turn-Key Quote.” Those documents had to be included with the application before the

USDA would consider awarding the grant, but they were missing from the file the USDA provided to CJ.

The missing documents — which also could include invoices, purchase orders, and work records — might explain the involvement of businesses owned by Chip Hagan, the Hagans’ son Tilden, son-in-law William Stewart, and possibly other family mem-

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Stimulus file shows significant Hagan family involvement

By DON CARRINGTON
Executive Editor

Sen. Kay Hagan, D-N.C., and her representatives have maintained that Solarlyne/Green State Power, a company co-owned by Sen. Hagan’s husband Chip and son Tilden, did minimal work on solar installations funded by a stimulus grant for Plastic Revolutions at JDC Manufacturing in Reidsville. JDC is co-owned by Chip Hagan, and Chip is an officer at Plastic Revolutions.

The solar installation project was one phase of a series of energy upgrades at the JDC building for which JDC received \$250,644 in federal stimulus funding. The grant, awarded in 2011, was managed by the State Energy Office, which now is part of the N.C. Department of Environment and Natural Resources.

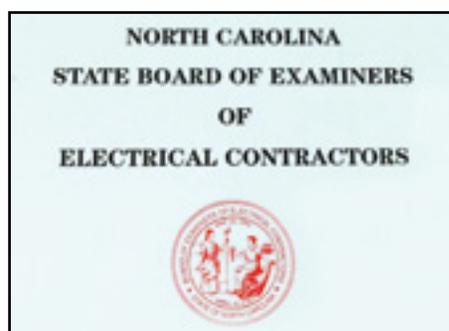
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Hagan Contractor Applications Raise Questions

Senator’s husband claims son worked 76 hours per week

By DON CARRINGTON
Executive Editor

U.S. Sen. Kay Hagan’s husband Charles “Chip” Hagan, a Greensboro attorney, certified to the North Carolina licensing board for electrical contractors that their son Tilden Hagan worked 3,500 hours installing electrical wiring and equipment over a period of 324 days in 2012 — requiring Tilden to work consecutive 76-hour weeks over that period.



Carolina Journal calculated the hours by comparing claims the Hagans made on applications Tilden Hagan filed for North Carolina contracting licenses in the “limited” and “unlimited” categories. On both applications, only one person attested to Tilden’s experience as an electrical installer: Chip Hagan, Tilden’s father. On the applica-

tion for an unlimited license, a second person attested to Tilden’s experience: William Stewart, Tilden’s brother-in-law.

The executive director of the state board that issues electrical contracting licenses told *CJ* the board is obliged to investigate credible information challenging any license application, though he would not comment specifically on the Hagan applications.

Possessing an unlimited license affords Tilden the ability to manage projects of a greater scope and monetary value than he could perform with a limited license. The experience requirements for an unlimited license are greater, but the licensing board allows

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Carolina Journal is a monthly journal
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government and public policy
issues in North Carolina.

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Wos Optimistic About Medicaid Expansion in N.C.

By DAN WAY
Associate Editor

RALEIGH

State Secretary of Health and Human Services Aldona Wos has been crisscrossing the state with an optimistic message that she is preparing to recommend that Gov. Pat McCrory expand Medicaid under Obamacare.

But at a mid-October meeting of the Joint Legislative Oversight Committee, two key lawmakers who monitor Wos' agency made clear their reservations about expanding the government health insurance program for the poor and disabled. Given Medicaid's checkered history, and lingering problems resolving years of mismanagement and budget overruns, they said the belief that Medicaid is ready to accept more participants is a Pollyannaish view.

Wos has told several media outlets that the foundation is in place for a more efficient and more effective Medicaid system, and that she will ask McCrory to expand Medicaid in the near term. McCrory has said through a spokesman that he is confident in Wos, and she will advise him when the time is right to expand. But if that happens, the governor will have to convince skeptical legislators.

"I will say that the original rejection of the Medicaid expansion by the General Assembly required that any plan for expansion had to come through the General Assembly, and not through an executive decision, and I don't feel that we're in any position right now to consider expansion under the Affordable Care Act," said state Sen. Ralph Hise, R-Mitchell.

"We've had a lot of trouble in the last year enrolling the 120,000 additional applications that have come in," said Hise, who is co-chairman of the Senate Appropriations Committee on Health and Human Services, and co-chairman of the Joint Legislative Oversight Committee on Health and Human Services.

Trouble enrolling

"You start trying to think what would happen to our state and our system if 600,000 additional individuals were approved for Medicaid in one year. We have no ability to handle any of that type of enrollment growth to even consider it on a practical level even if it weren't a huge cost to the state," Hise said.

"I don't think anyone on the budget side's prepared to bring in the additional cost that expansion would do," he said.

"I think Sen. Hise summed it up. We haven't had any discussions with them up to this point about any type of expansion," said state Rep. Justin Burr, R-Stanly. He co-chairs the Joint Legislative Oversight Committee on Health and Human Services with Hise, and is vice chairman of the House Health and Human Services Committee.

"There's still quite a number of members concerned about moving in that direction as our folks are cleaning up the existing program, and continuing to try to make sure we've got real [budget] numbers," Burr said. Gaining a comfort level with the budget numbers and moving forward with more accurate budget forecasting is "where our focus is right now," Burr said.

According to an editorial in *The Charlotte Observer*, Wos praised other states that have expanded Medicaid, and told its editorial board members there is a "clever" solution to fears the guarantee of federal funding for expansion are likely to be broken. If the feds fail to hold up their end of the

funding bargain, the state would simply pull out.

'Hotel California' clause

But national health policy experts say there is a "Hotel California" clause in the law covering Medicaid expansion. The Supreme Court ruled that states cannot be forced to add to their Medicaid rolls, but language in the act forbids them from withdrawing from the program once they choose to sign on.

"I'm not sure under the Umstead Act that we have the legal standing to take it away" once a Medicaid program or service has been provided to a particular population, Hise said. "You'd get sued, and it would end up being all state dollars if you discontinued it."

"It's hard to unring the bell, and that would basically be what you would be doing," Burr said. "Taking an entitlement away after you've given it is a near impossible thing to do."

Wos did not broach the subject of expanding Medicaid at the meeting. But on the agenda were updates and concerns about how much progress has been made fixing the agency.



Spending higher than previous year

Rudy Dimmling, acting director of finance in the Division of Medical Assistance, under which Medicaid operates, said spending in the first two months of fiscal year 2015 already was \$325 million higher than the comparable months in 2014.

That sparked the following exchange with Hise:

HISE: "Right now we spent total dollars \$325 million more than we did in the first two months of last year. That would be about \$107 million in state dollars. The entire annual increase we anticipated was about \$143 million in the budget for the entire year in overspending."

"If you forecast those numbers out annually, we're sitting over a \$680 million state shortfall that's coming out if this trend continues, and isn't attributable to other factors."

DIMMLING: "You can't extrapolate it that way. ... We are tracking very, very closely. We are confident that our end-of-year results will be within budget, so it's important to see how this works out seasonally. ... I understand your concern."

HISE: "Having done this for three years, in October we're always in great shape. We hear we're running a \$40 million surplus, we're running an \$80 million surplus. By December that tends to evaporate. By January and February it turns into a deficit, and then the big numbers come. And that has been the historical trends we've had for three or four years."

State Rep. Marilyn Avila, R-Wake, and Sen. Tommy Tucker, R-Union, also pushed Dimmling on the higher spending right out of the fiscal year gate.

'Should we trust you?'

"Should we trust you with these [numbers]?" Tucker asked. He said state Rep. Nelson Dollar, R-Wake, "was staunch in the budget negotiations" that the financial situation would improve in Medicaid. As a result, House and Senate budget negotiators compromised by putting just \$180 million in contingency reserves.

While expressing confidence in the agency's forecasts, Dimmling added a caveat. "There are certain outliers that you can't predict," such as what might happen during flu season, or with the healthcare.gov enrollment for Obamacare, Dimmling said. But based on trends now being monitored, "We are confident that we will come in within budget."

Analysts: Moves to Force Donor Disclosure Would Chill Free Speech

BY DAN WAY
Associate Editor

DENVER, Colo.

They are 45 of the most consequential words in America's founding documents, but the First Amendment to the U.S. Constitution is coming under repeated attack from liberal advocacy groups, regulatory agencies, and elected officials on both sides of the political aisle, according to an array of policy experts.

John Tillman, CEO of the Illinois Policy Institute, said the left is using intimidation and harassment such as the IRS scandal to "fundamentally change" American democracy, freedoms of speech and association, and the right to dissent, by intimidating those who donate to conservative think tanks, right-of-center causes, and Republican politicians.

Tillman was among several panelists at the State Policy Network's 22nd annual meeting who warned about the escalating movement to erode protections guaranteed by the First Amendment.

'Nothing short of authoritarian'

"This almost sounds like hyperbole, and maybe a black helicopter or two, but it is nothing short of what authoritarian regimes do," Tillman said. "They begin to try to control the media, and they begin to try to control the levers of dissent."

Americans are not well-informed on this subject, and liberals are "relentlessly indoctrinating the public that free speech is OK [within] limits, and ... Washington shall decide what those limits will be," Tillman said.

Research conducted by Dee Allsop, CEO of Heart+Mind Strategies, found that most Americans are pas-

sionate about the importance of free speech. On his research scale, any issue that scores in the mid-50s or higher is considered important to the public. Free speech scored 73.

That said, "Only one in four Americans feel that it's under threat" and needs protective push-back, Allsop said. Moreover, only one in three Americans follow the policy debate about free-speech issues, according to his research. What news they hear mostly involves stories about events such as protests at abortion clinics.

Donations as speech

Public support of speech in the form of monetary donations to organizations and politicians is much weaker, Allsop said. He added there is a "very strong disposition" for a change in laws that would "require public disclosure of donations, and to place limits on the amount of money that can be donated." Given that trend, he said, "This is not something that I would like to see put up to the people" for a vote.

He notes that two of three Americans "wrongly believe that you can make an anonymous donation to a political candidate," and that misperception shapes opinion about all anonymous giving.

"If [censors] are able to take away our megaphone, if they are able to take away donor privacy, if they are able then to silence our dissent and our promotion of liberty, the very essence of liberty will be at risk," Tillman said.

Often the goal is to force conservative advocacy and nonprofit organizations to disclose their private donor lists so that those individuals can be targeted for public ridicule or government investigation, the panelists agreed.

Liberal organizations have outflanked conservative groups with sophisticated social media campaigns and bloggers who ignite campaigns to regulate speech as issues arise. They are aided in their efforts by liberal mainstream media, said Rod Lowman. He is president and CEO of the Lowman Group, a strategic marketing and management research firm that has researched the trend.

The free-speech assault is taking place despite a 1958 Supreme Court ruling in *Alabama v. NAACP* in which state officials attempted to force the NAACP to disclose its list of members.

The Supreme Court ruled that contributors "are constitutionally protected from disclosure," Lowman said. The key passage in the decision was "immunity from state scrutiny of membership lists is constitutionally protected to ensure the ability to associate freely with others."

Regulations will 'chill' speech

Speech regulators "want names of individual donors, which will chill free speech to the point if donors don't stop donating, they'll be harassed into not donating," said Matthew Nese, head of legislative and policy outreach at the Center for Competitive Politics.

It is instructive that anonymous donors accounted for only 4.3 percent of spending in the 2012 election cycle, Nese said. As of Sept. 18, the percentage for the 2014 cycle had fallen to 3.9 percent, "but yet [anonymous donations are] talked about as a scourge on democracy."

Those seeking to limit free speech offer varying types of legislation in the states, he said. Some bills would require 501(c)4 advocacy groups and 501(c)6 trade associations to disclose the identities of donors in ways never done before, and some 501(c)3 non-

profit corporations could be sucked into those attempts.

There are bills that attempt to reclassify the nature of 501(c)4 and 501(c)6 corporations as a form of political action committee, forcing them to register as a political organization and release their donor lists.

And still other bills would require disclosure of the "original donor" of advertising. Because donor contributions are comingled in a large pool of funds, in many cases it would be impossible to determine which donation paid for an individual advertisement, so organizations would have to identify every donor, Nese said.

Michael Quinn Sullivan, president of Empower Texans, a conservative fiscal watchdog organization, said his group learned firsthand about a vindictive government.

"The real threat is not coming from Washington, D.C. The real threat to your organization is not [former revenue commissioner] Lois Lerner and the IRS" or other federal regulators, "but the real threat is the little agencies and commissions that exist in your states," Sullivan said.

Lawmakers "get a little frustrated, and they start siccing those little obscure agencies on you, as happened to my organization," Sullivan said. "Those are the agencies that are coming after you."

Legislative scorecards

His organization created a legislative scorecard to rate the spending records of Texas lawmakers. The scorecard revealed that some self-styled conservative lawmakers were not prudent fiscal stewards.

"They have come after us in a variety of ways. They've been after us with lawsuits. They've been after us with agency rules" that are little more than laws written by regulators, Sullivan said.

Texas is the "reddest of the red states, yet our state Senate passed legislation in our past session that would require all nonprofit groups to disclose the names of their donors" based on the mere suspicion they might be conducting political activity, Sullivan said.

A coalition of Democrats and Republicans approved the measure and sent it to Gov. Rick Perry. Perry vetoed it, "saying that it infringed on the freedom of association" and would have "a chilling effect on the freedom of speech."

Texas Speaker of the House Joe Straus recently said legislation is needed to "define who is a legitimate journalist, that it is the responsibility of state government to make sure that acceptable people are speaking on public policy issues," Sullivan said.

"This is a big issue that's going to get bigger," Lowman said. *CJ*



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State Briefs

JLF: Economic news good

The latest federal employment report delivers excellent news for North Carolina. That's the assessment from the John Locke Foundation's chairman, who notes that state employers added 14,000 new jobs in September. That means a net employment gain of 108,500 over the past year.

"That's a year-over-year growth rate of 2.7 percent, far higher than the national average of 1.9 percent, the Southeast average of 1.9 percent, and the growth rates of all our neighboring states," said JLF Chairman John Hood.

North Carolina's official unemployment rate for September was 6.7 percent, according to the U.S. Bureau of Labor Statistics. The national unemployment rate for September 2014 is 5.9 percent.

Hood's analysis is based on the U.S. Bureau of Labor Statistics' establishment survey of employers. He notes that other September data reported from a household survey don't paint as good a picture.

While the unemployment rate dipped to 6.7 percent, both the employment and labor force counts also dipped. From September 2013 to September 2014, the household survey shows a drop of 49,000 in unemployment and an employment gain of 18,000. "That trend is wildly out of sync with the more-reliable jobs count from the establishment survey, which shows an employment gain nearly 10 times as big over the past year and has a much larger sample size in North Carolina and other states," Hood said.

"Since the enactment of the new Republican-led legislature's first budget, tax, and regulatory policies in mid-2011, North Carolina has added some 252,700 net new jobs," Hood said. "That employment gain from June 2011 to September 2014 amounts to a growth rate of 6.5 percent. Again, this is higher than the national (5.8 percent) and regional (4.8 percent) averages."

Other economic measures confirm the trend, Hood said. "From 2011 to 2013, North Carolina's gross domestic product grew by an annual rate of 2.4 percent in inflation-adjusted terms, higher than the national (2.2 percent) and regional (1.8 percent) averages," he said. "During the same period, per-capita incomes rose 2.9 percent in North Carolina, 2.8 percent in the nation as a whole, and 2.3 percent in the Southeast as a whole." *CJ*

Bankruptcy Hasn't Put HOT Lane Off Track

By BARRY SMITH
Associate Editor

RALEIGH

Officials from both state government and companies that have aligned to work on a planned High Occupancy and Toll lane project on Interstate 77 near Charlotte say a recent bankruptcy filing by the lead company in the project should not affect its ability to obtain financing for the HOT lanes in North Carolina.

"We're moving forward," said Jen Thompson, a spokeswoman for the N.C. Department of Transportation, regarding the HOT lanes on a 26-mile stretch of I-77 from Charlotte to Lake Norman.

Cintra, which is based in Spain, and Australian-based Macquarie Group Ltd. recently entered a bankruptcy filing relating to the work on the Indiana Toll Road. The bankruptcy process is intended to help the companies reorganize their \$6 billion debt for the Indiana project.

Earlier this year, Cintra was awarded the contract for a public-private partnership agreement on the I-77 project. NCDOT continues to expect a "financial close," which would mean that Cintra had locked up all of its financing, by the end of the year.

"Each of Cintra's projects is wholly independent, with an isolated, nonrecourse financial structure that ensures that the performance of one project never impacts the operations of another concession in which Cintra invests," said Jean Leier, a spokeswoman for I-77 Mobility Partners, which serves as a consortium for companies designing, building, operating, and maintaining the express lanes project.

"The debt restructuring taking place in Indiana has no bearing on any of the other 26 highway projects in which Cintra is invested worldwide, including the I-77 Express Lanes project here in North Carolina," Leier said.

Bob Poole, director of transportation studies at the Reason Foundation, noted that Cintra is a global company with a number of toll road projects in operation and under construction around the world.

"I see no significant impact on their ability to do the I-77 project," Poole said.

Poole noted that databases show Cintra and its parent company, Ferrovial, with \$73.5 billion in projects under active management worldwide.

The proposed HOT project on I-77 would run from the Brookshire Freeway interchange in Charlotte (Exit 11) to the N.C. 150 interchange (Exit 36) in Iredell County.

It would take existing High Occupancy Vehicle lanes in each direction and combine them with a newly constructed lane each way. The two new lanes in each direction would be converted to HOT lanes.

Buses, motorcycles, and cars with at least three occupants could travel toll-free in the HOT lanes. Cars with one or two occupants could travel in the HOT lanes if the motorists pay a toll.



Toll rates would vary based on the time of day and day of the week — higher during peak traffic hours, and lower when there is less traffic. The flexible tolls would be designed to keep traffic flowing freely in the HOT lanes. Officials have yet to determine the toll rates.

DOT has no plan to use tolling booths. Instead, drivers in the HOT lanes who are expected to pay tolls could obtain transponders, mounted on vehicle windshields, that identify a car's usage of the HOT lanes and charge the user electronically. Transponders are in use on many toll roads in the United States, including the Triangle Expressway in the Research Triangle, and developers of smart-phone applications are working on apps that would allow users to deploy their phones as transponders.

People using the HOT lanes without a transponder would receive notice of tolls they owe. Cameras would photograph the license plates of vehicles without transponders, and the owners of those vehicles would be billed.

The remaining general-purpose lanes on I-77 will remain open, toll-free, to motorists.

The price tag of the I-77 project is \$655 million. North Carolina taxpayers will chip in \$88 million of that bill. DOT officials say that Cintra plans to put in \$230 million of its own money to finance the remaining portion.

Plans call for construction on the project to start in the spring or summer of 2015, with construction essentially completed by 2018.

The I-77 project is not without controversy. A group called Widen I-77 has formed to oppose the HOT lane project, arguing instead that a general-purpose lane should be added in each direction.

The project became an issue in the recent U.S. Senate campaign. Both Democratic and Tea Party-related groups have chided state House Speaker Thom Tillis, the Republican U.S. Senate nominee, for supporting the project. *CJ*

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Audit: Rural Center Still Holding On To Federal Pass-Through Funds

By DAN WAY
Associate Editor

RALEIGH

The North Carolina Rural Economic Development Center returned more than \$100 million in state-appropriated grant funds to the state as ordered, but it did not relinquish \$22.3 million in federal pass-through funds that statutorily belong to the state, the State Auditor's Office concluded.

The audit, released Oct. 13, further determined that it was impossible to verify interest earnings on some funds because they were comingled in a revenue pool with money that did not bear interest, and records were not kept well enough to distinguish how much came from paid interest and how much was from other revenue sources.

Second audit

This is the second audit requested by lawmakers of the beleaguered Rural Center. It was spurred by the first audit, released in July 2013.

In the first audit, State Auditor Beth Wood told the Joint Legislative Program Evaluation Oversight Committee that the Rural Center held interest funds that would be difficult for



The N.C. Rural Economic Development Center, located at 4021 Carya Drive in Raleigh, did not relinquish \$22.3 million in funds, says a state audit. (CJ file photo)

the state to recover because they were in a private bank. The agency failed to monitor grants to ensure they met obligations, had lax reporting standards, and provided excessive compensation to its president, Billy Ray Hall, according to that audit.

Hall resigned after that earlier audit was released, and the General

Assembly eliminated the Rural Center from the 2013-14 budget. A division was created in the Department of Commerce to promote and oversee rural economic development, and in October 2013 the Rural Center and Commerce Department signed a contract outlining the return of money to the state.

Any funds remain?

The Program Evaluation Oversight Committee then asked the auditor's office to determine, among other things, if any funds remained at the Rural Center, to verify the Rural Center's contention it still maintained \$11.6 million in interest earnings, and to determine whether the Rural Center ever performed a full compliance audit of state grant funds.

"The Rural Center never had a compliance audit on state-appropriated grant funds," according to the current audit.

While local governments are required by law to perform audits on state grant funds "to determine an organization's compliance with specific state program and grant requirements [on a] program-by-program level," no such requirement exists for nonprofit entities that receive state grants, the audit stated.

According to the audit, the U.S. Treasury Department allocated \$46.6 million to the state Commerce Department as part of the Small Business Credit Initiative program created by the Small Business Jobs Act of 2010. The intent of the act was to provide "critical resources to help small businesses" create jobs and stimulate economic recovery.

The Commerce Department contracted with the Rural Center to administer three initiatives:

- Capital Access Program: \$8,261,319
- Loan Participation Program: \$27,800,000
- Funds for Funds Program: \$10,000,000

The audit concluded that \$22.3 million of that total remained in the possession of the Rural Center. That money and any interest earned on the funds must be used specifically for the state's Small Business Credit Initiative programs.

If the Commerce Department cancels its contract with the Rural Center to administer those programs, the state has three options for handling the leftover money, according to the audit.

It could create and administer the SBCI programs in-house within a state agency, or contract with another entity to administer the SBCI program. Both of those options would require approval from the U.S. Treasury Department. As an alternative, the state could return any remaining funds still held by the Rural Center to the Treasury Department.

"We're not sure how that will play out, obviously. The legislature asked us to go in and look at this. It is up to them now to decide what they would like to do with the information," said Bill Holmes, a spokesman for Wood.

In another issue, "auditors were not able to verify that the Rural Center held approximately \$11.6 million

in interest earnings as of October 31, 2013, because the Rural Center comingled interest earnings with non-interest earnings such as administrative receipts and donations," the audit stated.

State statutes outline guidelines that governments

must follow on how interest earned on state appropriations should be treated, but such rules did not exist prior to July 1 this year for nonprofit entities receiving state appropriations.

The Rural Center kept detailed records on the Clean Waters Partners program to enable verification of \$11.3 million in interest earned and \$2.7 million of interest spent.

"But due to a lack of detailed accounting records for interest earned on non-CWP funds, auditors could not verify that the Rural Center spent \$7 million or had a balance of \$3 million remaining from interest earned on non-CWP funds as of October 31, 2013," the audit stated. *CJ*

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The Meck Deck is the JLF's blog in Charlotte. Jeff Taylor blogs on this site and has made it a must-read for anyone interested in issues in the Queen City: <http://charlotte.johnlocke.org/blog/>



Piedmont Publius is the JLF's blog in the Triad. Greensboro blogger and writer Sam A. Hieb mans the controls to keeps citizens updated on issues in the Triad: <http://triad.johnlocke.org/blog/>



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/>

Supreme Court Ruling Keeps New N.C. Election Law in Effect

By BARRY SMITH
Associate Editor

RALEIGH

North Carolina's 2014 general election took place under the election laws enacted last year by the General Assembly as the result of an Oct. 8 ruling from the U.S. Supreme Court.

A majority of the justices agreed to halt an Oct. 1 order from the 4th U.S. Circuit of Appeals that would have blocked two aspects of the North Carolina law from taking effect in the 2014 election cycle: a ban on voter registration during the early voting period, and a provision invalidating ballots cast by voters in a precinct where they do not live. The stay ended voter registration for the 2014 election on Oct. 17, and registered voters who voted on Nov. 4 were required to cast their ballots in their home precincts.

Other provisions of the law were not affected by the appeals court ruling, including the requirement that in 2016 voters present a state-approved identity card. However, the law did require elections officials to remind voters of the upcoming requirement when they went to the polls during early voting and in November.

The 2013 law has been challenged by a number of parties, including the N.C. State Conference of the NAACP and the ACLU of North Carolina. Both the plaintiffs and the state have agreed on an expedited review process, with a trial on the merits of the law scheduled for next year.

Republican Gov. Pat McCrory, who signed the bill into law last year, praised the high court's ruling.

"I am pleased that the U.S. Supreme Court has ensured this popular

and common-sense bill will apply to the upcoming election," McCrory said in a statement. "We respect the legal process and thank the Supreme Court justices for protecting the integrity of our elections."

The two top Republican legislative leaders, House Speaker Thom Tillis and Senate President Pro Tem Phil Berger, issued a joint statement also lauding the decision.

"Today, in bipartisan fashion, our nation's highest court affirmed North Carolina's election reform law by allowing it to move forward for next month's elections," Tillis and Berger said. "The court's ruling restores the clarity and certainty to the election process that has been in place since the May primary and was disrupted at the 11th hour. These common-sense reforms will help support voter integrity in North Carolina while protecting every citizen's constitutional right to vote."

The Rev. William Barber, president of the state NAACP, decried the high court's stay. "We are disappointed with the Supreme Court's ruling today," Barber said in a statement. "Tens of thousands of North Carolina voters, especially African-American voters, have relied

on same-day registration, as well as the counting of ballots that were cast out of precinct, for years. As the appeals court correctly concluded, eliminating these measures will cause irreparable harm of denying citizens their right to vote in the November election — a right that, once lost, can never be recovered."

Barber said his organization would continue to work to make sure every vote is counted "despite the barriers posed by the Supreme Court's ruling."

The ACLU also criticized the decision.

"Thousands of North Carolinians will be left out of the upcoming election," said

Dale Ho, director of the organization's Voting Rights Project, in a statement. "More than 20,000 North Carolina voters used same-day registration in the last midterm election. While this order is not a final ruling on the merits, it does allow a law that undermines voter participation to be in effect as this case makes its way through the courts."

The three-judge panel of the 4th Circuit ruled 2-1 to overturn a ruling in which federal District Court Judge Thomas Schroeder declined to block implementation of the new law. The two judges in the Appeals Court ma-

majority are Judge James Wynn, who hails from North Carolina, and Judge Henry Floyd from South Carolina. Judge Diana Gribbon Motz of Maryland dissented.

Wynn and Floyd were appointed to the appeals court by President Obama. Motz was appointed by President Clinton.

Wynn, writing for the majority, said the court should consider the "totality of the circumstances" in reviewing the law.

"The election laws in North Carolina prior to House Bill 589's enactment encouraged participation by qualified voters," Wynn wrote. "But the challenged House Bill 589 provisions stripped them away. The public interest thus weighs heavily in the plaintiffs' favor."

House Bill 589 is the law passed in 2013 by the General Assembly.

In her dissent, Motz noted the brief time between the majority's order and this year's election. She said that though she shares the majority's concerns about the new law, those concerns do not establish that the plaintiffs have shown a clear likelihood of success on the merits, a requirement for getting an emergency stay — or halt — to the law being enforced.

The appeals court's 2-1 decision sent the State Board of Elections scurrying to find ways to implement the ruling as defendants in the election law lawsuit appealed the order to the Supreme Court.

The Supreme Court decision is a ruling on preliminary motions and not a decision on the merits of the lawsuit itself. It is unclear if more than five justices supported the unsigned order, but it had two dissenters, associate justices Ruth Bader Ginsburg and Sonia Sotomayor. CJ



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NCGA Will Consider Regulating Ride-Sharing Uber and Lyft

BY BARRY SMITH
Associate Editor

RALEIGH

As early as mid-November, a state legislative oversight committee may look into whether state regulations need to be updated as passengers increasingly arrange rides using a smart-phone application rather than a phone call to a taxi service. Uber and Lyft are two companies that are meshing technology and transportation to offer ride-sharing services.

Their presence in a number of North Carolina cities — Uber, for example, operates in Charlotte, Raleigh, Chapel Hill, Durham, Winston-Salem, Greensboro, Wilmington, and Fayetteville — has prompted a response from municipal regulators along with taxi companies that compete for the same riders.

Charlotte shelved efforts to regulate ride-sharing services after learning of the General Assembly's plans to consider statewide rules.

"I think they're looking for some kind of guidance," said Sen. Bob Rucho, R-Mecklenburg, co-chairman of the legislative Revenue Laws Study Committee. The committee's next scheduled meeting is Nov. 18.

"There should be some consistency with the rules if it's dealing with the safety of the public," Rucho said. That could mean bringing ride-sharing and tech-based businesses in under current rules, or it could mean getting rid of some of the taxi regulations, he said.

Taylor Bennett, a spokesman for Uber, said the company doesn't oppose regulation but thinks some of the longstanding regulations governing taxis should not apply to ride-sharing businesses.

"Forcing decades-old ordinances



onto modern technology is like fitting a square peg into a round hole," Bennett said. He said the legislature is right to explore rules for ride-sharing technology rather than merely forcing old regulations onto the new service.

Bennett said Uber's entry into new markets provides business oppor-

tunities for entrepreneurs and drivers, and new options for passengers.

Patrick Ballantine, a former state senator who was the GOP nominee for governor in 2004, is a registered lobbyist for Taxi Taxi, a taxicab firm operating in Raleigh. He said the company is not pushing for unreasonable regulations on Uber and Lyft. He said safety is a legitimate concern of the state.

"These people aren't delivering pizzas, they're delivering grandma," Ballantine said. "It does seem incongruous to have hundreds of pages of regulations on taxis and zero on digital-dispatch companies that provide the same service."

Ballantine, who said Taxi Taxi recently purchased 100 Toyota Pri-

uses totaling \$3 million in the Raleigh area, has suggested that ride-sharing services be required to display a "For Hire" license plate on cars that pick up passengers. Those plates vary in cost, based on body style and the county where they are registered. The lowest cost is \$78.

Bennett notes that Uber's drivers are independent contractors rather than employees and that the cars they use to transport passengers are personal vehicles. "Some [drivers] are working two hours a week in between trips to the grocery store," Bennett said. "Some are working full time."

He said every driver who "partners" with Uber undergoes rigorous background checks. "Those background checks are local, multistate, as well as federal." He said the checks go back seven years.

Cars must be mid- to full-size, have four doors, and be a 2005 or later model. All drivers are required to carry personal liability insurance. In addition, Uber offers a \$1.5 million commercial liability policy, which covers driving partners while they're logged into the Uber app on their way to pick up fares and while they are transporting passengers, Bennett said.

Uber also has contingency coverage for drivers who are logged in awaiting passengers they have not picked up, Bennett said.

Passengers can sign up for Uber by downloading the app, filling out a profile, and leaving a credit card number. When a passenger has requested a ride, and a driver has agreed to provide it, the passenger is given information about the driver and the car, including the name of the driver and a photograph.

"It's all GPS-tracked," Bennett said. Passengers can follow the car on a map until it reaches the pickup point. The payment is made electronically and is recorded only after the ride is completed. No cash changes hands, and Bennett said no tipping is allowed.

Bennett said drivers operate as independent, small business owners. Uber receives 20 percent of every fare, and drivers get the remaining 80 percent. *CJ*

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COMMENTARY

The K-12 Roots Of the UNC Scandal

Kenneth Wainstein's report, "Investigation of Irregular Classes in the Department of African and Afro-American Studies at the University of North Carolina at Chapel Hill," detailed a long history of academic fraud at North Carolina's flagship public university.

More than 3,100 students, nearly half of them student-athletes, received (often favorable) grades in Afro-American Studies courses that required no attendance, no meaningful faculty participation, and no consistent standards for student work. Although many nonathletes enrolled in these courses, they were designed to boost the grade point averages of student-athletes, preserving their NCAA eligibility.

Understandably, much of the reaction to the report has focused on ways that faculty and staff enabled students to circumvent the university's academic requirements. According to Wainstein, faculty and staff conspired to do this because they "felt sympathy for underprepared students who struggled with the demanding Chapel Hill curriculum." But we should be equally outraged that high schools granted diplomas to students who appeared to be functionally illiterate. Calling them "underprepared" is an understatement. Calling them high school graduates is a travesty.

First, it is necessary to acknowledge that none of the 3,100 students has been identified. As such, it is impossible to identify the high schools that awarded diplomas to them. According to the university's institutional research office, nearly 70 percent of incoming UNC-Chapel Hill undergraduates graduated from a North Carolina public school. Another 14 percent graduated from a public school in another state. In other words, this is likely a public and private school problem in North Carolina and beyond.

Regardless of the type or location of schools, the Wainstein report summarizes research and writing deficiencies that are common in middle and high school classrooms — excessive outside assistance, adoption of informal writing styles, and cut-and-paste essays. These are learned, harm-

ful, and often-accepted behaviors aided by complicit parents, negligent teachers, peer pressure, and easy access to online resources.

One problem, which often begins in middle school, is that struggling students receive inordinate assistance from a parent, tutor, or teacher. By the time these students reach college, they are required to complete research and writing projects on their own, a skill we should expect any college-bound student to possess.

Yet, one Chapel Hill tutor recounted that a number of students she encountered simply "could not write a paper on their own." Another tutor agreed, saying "players were so woefully underprepared that they could not draft a paper without assistance." In some cases, tutors or academic counselors simply wrote or edited significant portions of student-athletes' essays. Of course, these students were more than happy to allow them to do so.

In addition, it appeared to be an accepted practice for UNC-Chapel Hill students and student-athletes to submit essays that, according to the Wainstein report, "were largely 'cut and paste' jobs that simply copied text from publicly available sources." Unfortunately, middle and high school students knowingly submit essays full of passages that plagiarize various online sources. It is a pervasive problem. A 2013 Pew survey of 2,500 middle and high school teachers found 68 percent agreeing that "digital tools make students more likely to take shortcuts and not put effort into their writing."

The fact that students arrived at Chapel Hill with few writing or research skills does not excuse the systematic fraud perpetrated by university faculty and staff. But it does call into question the value of a high school diploma. A high school diploma should signify students' attainment of the skills and knowledge that undergird the roles and responsibilities of adulthood. Perhaps the problem is that many consider college to be a respite from adulthood, rather than its initiation. CJ

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



**TERRY
STOOPS**

N.C. School Voucher Case In Hands of Supreme Court

By BARRY SMITH
Associate Editor

RALEIGH

The N.C. Supreme Court will decide the constitutionality of the state's fledgling Opportunity Scholarship Program, bypassing the Court of Appeals.

The Supreme Court on Oct. 10 issued an order stating it would take the case on its own initiative. Briefs already submitted to the Court of Appeals will be accepted by the Supreme Court, along with any briefs yet to be filed.

The court's action pleased people on both sides of the issue.

"I think it's in everybody's interest to get it resolved as quickly as possible," said Dick Komer, a senior attorney for the Institute for Justice, a public-interest law firm representing parents of children in the education voucher program.

"The decision by the N.C. Supreme Court to take this appeal directly and bypass the Court of Appeals reflects the importance of the constitutional issues involved," said Bob Orr, a former N.C. Supreme Court justice who is representing the N.C. School Boards Association, which opposes the vouchers, in the lawsuit. "It allows for an expedited final decision on the constitutionality of the voucher program and serves the public's interest in doing so."

The N.C. Association of Educators filed a separate lawsuit challenging opportunity scholarships.

In 2013, the General Assembly passed and Gov. Pat McCrory signed into law a bill creating the Opportunity Scholarship Program, which provides up to \$4,200 for children who come from lower-income families to use for tuition at a private school.

At an initial hearing in February before Superior Court Robert Hobgood, the plaintiffs contended that the scholarships violate a provision of the state constitution saying the state's school fund "shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools." Plaintiffs attorney Burton Craige emphasized the word "exclusively" when he asked Hobgood to allow the case to go forward.

In August, when most schools in

the state were preparing to open for the 2014-15 academic year, Hobgood ruled that the Opportunity Scholarship Program violated the N.C. Constitution. He issued an order barring the distribution of any of the money for the vouchers.

Hobgood said providing taxpayer money for the scholarships without curriculum standards or teacher certification requirements "does not accomplish a public purpose." He added that the program ran afoul of the state's landmark Leandro decision, which requires the state to provide every child

with the opportunity to have a "sound, basic education."

Even so, about 1,900 would-be recipients of the vouchers enrolled in private schools anyway, with some parents saying they

had faith that the money eventually would be released to help them pay for their children's education. The Court of Appeals did that last month, allowing the money already set aside by the state to be spent.

Komer noted that it's not unprecedented for a state Supreme Court to accept a case without first going through an appeals court. A decade-and-a-half ago, Arizona's top court took up that state's voucher program without it even going to a trial court, he said.

"Everything about this case has been a bit unusual," Komer said. "State supreme courts generally exist to be the final word on these cases."

When Orr was on the N.C. Supreme Court in the early 2000s, the Supreme Court took up GOP challenges to the legislative redistricting maps passed in 2001 without that case going to the Court of Appeals.

"We look forward to presenting our arguments to the court in support of the trial court's ruling that the legislation and appropriation of the public's tax dollars through the voucher law violates the N.C. Constitution," Orr said.

Rep. Paul "Skip" Stam, R-Wake, who sponsored the voucher legislation, said he was pleased with the most recent development.

"We remain confident the Opportunity Scholarship Program will be permitted to expand, allowing more parents to send their children to the school of their choice," Stam said. CJ



Common Core Commission Reviewing Curriculum Standards

BY BARRY SMITH
Associate Editor

RALEIGH

The 11-member Academic Standards Review Commission has begun the task of sifting through the state's public school requirements to see which ones need to be modified and which ones don't.

The commission was mandated by the 2014 General Assembly, which charged its members to examine the Common Core State Standards Initiative, adopted by the state in 2010.

So far, no decisions have been made regarding what academic standards will be used in the state's public schools. The first meeting was organizational. During the second meeting, held in October, staff members from the Department of Public Instruction gave the commission an overview of the current Common Core standards for English and language arts.

"We wanted everybody to begin the process on an equal playing field," said Jeannie Metcalf, who co-chairs the commission. Metcalf has been on the Forsyth County Board of Education for 20 years and chairs that school system's curriculum committee.

"We want to spend a period of time on gathering facts and discovery," said Andre Peek, the commission's other co-chair. Peek, who recently retired as a business executive at IBM, is chairman of the N.C. Business Committee for Educa-

tion, which is an education partnership group featuring representatives from government, businesses, and schools. Peek hails from Wake County.

The next step is to bring in the DPI staff this month to review the current Common Core standards for math. That meeting will be held Nov. 17.

After that, the commission is likely to review other potential standards.

"There's been talk about looking at what

other states have done when they made changes," Metcalf said, referring to those states that have decided to repeal Common Core standards. Metcalf said looking at the old standards, which North Carolina used before adopting the Common Core standards, is another option.

"We'll probably have a couple of other standards," Peek said. "Then we'll begin to construct a set of trial recommendations." After the commission gets feedback from those suggestions, it is likely to "go through another phase of modifications and refinements," Peek said.

Peek said he can see the commission sponsoring public meetings around the state to give more people a chance to participate.

State Sen. Jerry Tillman, R-Randolph, who helped author the education standards bill last summer, said that the commission will be given enough time to do the job properly.

"I know it's not something that they can snap their fingers and do overnight," Tillman said. "What I want to be absolutely sure of is that they

don't just do a rehash of Common Core standards and call them North Carolina standards."

Tillman noted that the legislation approved by the General Assembly and signed into law by Gov. Pat McCrory would allow the commission to adopt some Common Core standards if they felt those standards were appropriate and sufficiently rigorous.

The Common Core math standards had been the most controversial, Tillman said.

"They're just not appropriate for young children," Tillman said. "There's a lot of work that needs to be done to make them age- and grade-appropriate."

Meanwhile, math standards at the high school level also need work, Tillman said. "What I have heard from math experts and teachers is that they are not rigorous enough in the upper grades," Tillman said.

Tillman said he hasn't heard many complaints about the English and language arts standards.

Both co-chairs say they're passionate about their work on the commission and believe a lot of North Carolinians are passionate about the issue, too.

"I'm a grandmother of nine who is very concerned about my grandchildren having the best education we can provide in North Carolina," Metcalf said.

"This is a subject people care about," Peek said. "It's encouraging to know that we have engaged in a work effort that people care about."

Both Metcalf and Peek note that the legislation sets December 2015 as the deadline for the commission to complete its work.

Metcalf said she wasn't sure if that would give the State Board of Education time to implement changes by the 2016-17 school year. If standards change drastically, time will be needed to train educators how to teach under the new standards, she said. *CJ*



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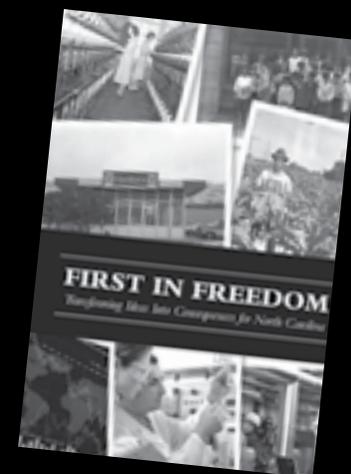
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Town and County

Charlotte airport control

A Superior Court judge has ruled that the city of Charlotte can continue to run Charlotte Douglas International Airport for now. Both city officials and a legislator who wanted to have a regional authority run the facility claim the decision was a victory for their sides, reports *The Charlotte Observer*.

Last year, the General Assembly passed legislation shifting control but not ownership of the airport from the city to a newly established regional commission. Charlotte immediately went to court to challenge the new law.

Judge Robert Ervin ruled that the General Assembly had the authority to create a regional airport commission but that the city should continue to operate it until the Federal Aviation Administration certifies the commission to run the airport.

"We have consistently stated from the beginning of this conflict that the attempted transfer was both unnecessary and poorly designed," said Charlotte city attorney Bob Hagemann.

Sen. Bob Rucho, R-Mecklenburg, who supports the regional commission, praised the ruling as it reduces the number of obstacles to the board running the airport.

Cheaper gas

Drivers in the Triad and the Triangle saved \$18 million this summer thanks to the adoption of new gasoline standards for the two regions. Travelers can expect to save even more money in 2015, and there's the possibility that Charlotte-area drivers might enjoy lower prices as well, reports the *Raleigh News & Observer*.

For many years, the U.S. Environmental Protection Agency has required the gasoline sold in Charlotte, the Triad, and the Triangle to have a special formula reducing the level of volatile organic compounds, which contribute to smog.

N.C. Department of Environment and Natural Resources scientists, using data from recent years, demonstrated to the EPA earlier this year that this special summer blend of gasoline had insignificant impacts on air quality in the Triad and Triangle. As a result, the EPA eliminated the mandate for its use.

Smog readings are somewhat higher in Charlotte than in the Triangle or Triad. But DENR officials are optimistic that the EPA may end the use of special summer fuels in the Queen City in 2015 as well. *CJ*

Durham County Shreds Gun Registry Records

By DAN WAY
Associate Editor

RALEIGH

Durham County officials in early October destroyed gun registration documents stemming from a Jim Crow-era statute, ending months of legal uncertainty over ownership of the materials and threats of legal action had the records been preserved.

"I am pleased that we have closed that chapter of Durham's history," said state Sen. Mike Woodard, D-Durham, who successfully sponsored repeal legislation in this year's short legislative session ending the practice of forcing gun owners to register their firearms. Durham had the only gun registry in North Carolina.

"The gun registry records were destroyed this morning," Woodard said Oct. 6. "The clerk [of courts] and the Sheriff's Office got together this morning, and took them out, and shredded them."

Woodard maintained all along that his repeal bill was intended to result in destruction of the gun registry, and said he would introduce a bill in the upcoming long session specifically mandating disposal of the records if the issue was not resolved.

"We met two weeks ago to administratively make it happen," Woodard said.

"I convened a meeting with the clerk, the sheriff, the county manager, and their respective counsel, and at that meeting we came up with the path that we needed to go to clear up ownership, and who's going to take action," he said.

Destruction of the gun registry, first implemented in 1935, is "absolutely" a victory for gun owners' Second Amendment and privacy rights, said Paul Valone, president of the nonprofit gun rights organization Grass Roots North Carolina. "It is, I'm quite certain, a direct response to the certified letter we sent them" about the state's pre-emption law.

Valone was unaware of the county's action to shred records until notified by *Carolina Journal*.

Once the gun registration statute was repealed, it became "very clear that a unit of local government may not regulate or register firearms in any manner, and that's precisely what they're doing" by maintaining the registry, Valone said. "So essentially what we said was either they destroy the records, or we destroy the records, or else we will sue you."

The demand letter, sent Sept. 23, stated:

"Given that state experts have already determined that the handgun registrations have no historic or archival value; given that no agent of Durham County or the City of Durham can legally utilize the registrations for any reason; given that, absent a statute authorizing their retention, the registrations are a violation of the privacy of Durham County residents; and given the liability to Durham County of the Clerk's Office continuing to regulate the registrations in

clear violation of state law — there is no reasonable course of action but to destroy these registrations."

Valone's organization had offered to pay a commercial vendor to shred the documents and recycle the waste paper.

"We were there to assist and observe the clerk," Durham County Sheriff's Office spokesman Brian Jones said of the records shredding.

The Sheriff's Office had been receiving complaints and inquiries from Durham residents, mostly those whose gun registrations were kept on file, to determine what would be done with the records, Jones said.

Reaction on the Sheriff's Office Facebook page supported the registry destruction, garnering nearly 80 "likes" within a few hours.

"This is a good thing for all N.C. residents. My two are in there somewhere. The others, I never registered anyway," Richard Dean wrote on the Facebook post.

"A registry does nothing to prevent people from acquiring black-market firearms. Also, not having a registry makes it ever-so-slightly more difficult for government to confiscate firearms from law-abiding citizens," wrote Jameson Lopp.

"The death of another Jim Crow law is always a good thing," wrote Sean Sorrentino.

Durham County Clerk of Courts Archie Smith, a licensed attorney since 1976 who described lawsuits as his "bread and butter," said the Grass Roots North Carolina threat of litigation "had nothing to do" with the decision to shred the records. "It was simply a matter of they had passed their time."

Reaching that determination was straightforward, Smith said.

"The Administrative Office of the Courts had no interest in them because they weren't state files. They were strictly something for Durham County. The State Department of History and Archives said they had no interest in keeping them and preserving them. The county attorney for Durham disclaimed any interest on behalf of the county in them," Smith said.

"So as the clerk of court, if none of the legal entities for whom I'm charged with maintaining and keeping records have any interest in these records, and there is no owner of them, no one wanted them ... retention of them was pointless," he said.

Hand-feeding the documents into the shredder took about three hours. The confetti-like remnants filled several large plastic bags.

"The sheriff and I fed the first few through, and then some folks up here in the clerks' office fed them through," Smith said.

Smith acknowledged the hullabaloo created by the situation was unusual for his office, which only occasionally deals with interesting or newsworthy events.

"Our work is critical, but plain vanilla," he said. "A horrific day up here is when somebody gets a paper cut." *CJ*



Shredding records from Durham County's gun registry took several hours and filled the garbage bags shown above. (Photo courtesy Durham County Sheriffs Office Facebook page)

Revelations Rekindle Long-Running Concerns in Indian Trail

BY DAN WAY
Associate Editor

RALEIGH

A former Indian Trail town planner testified under oath in September that in the early 2000s, town leaders ordered him to commit illegal acts in approving developers' plans. The revelation has rekindled long-running concerns about government corruption in the Union County municipality.

For years, town watchdogs and former elected officials have contended that former town manager John Munn, now deceased, improperly received \$400,000 in pay beyond his part-time, \$45,000 annual salary, and that former mayor Sandy Moore also received extra compensation to which she was not entitled.

Town Council has routinely denied public records requests related to those issues.

Critics now say former town planner Lee Bailey's sworn testimony corroborates what they have claimed all along — developers pull the strings of town government, and town officials skirt the law to accommodate them.

"The town's agenda is a partnership with these developers. It has been for years," said former mayor John Quinn, who defeated Moore in 2007 and served until 2011.

"This obsession of urbanizing Indian Trail was just curious to me. Somebody had to be benefiting from it because the residents weren't happy" with the rapid growth, rising crime, and lax enforcement of building and planning codes under Munn's 10-year tenure that ended with his firing in December 2005, Quinn said.

Bailey "claims that he was directed by the mayor to engage in ille-

gal activity" to approve development plans, said attorney Steve Smith, who deposed Bailey in September.

Smith represents the Bonterra Village subdivision homeowners association against the developers, R.D. Harrell Company, in a \$1.5 million lawsuit alleging shoddy construction of roads and stormwater systems, substandard repairs, and noncompliance with planning guidelines.

A settlement was reached in October.

"Absolutely not, that's ridiculous," Moore, the former mayor, said of Bailey's allegations. "I have no idea" why he would say that.

"I certainly hope" all development projects during her tenure were done according to code and legal standards, Moore said.

Smith said Bailey, who was dismissed in 2005 by Munn, "was clear in his deposition that none of those [unlawful] activities were related to Bonterra." He was unable to press Bailey about the alleged illegal acts during the deposition, he said, because the plans for Bonterra were approved in 2001 before Bailey started working for the town.

Moreover, Bailey signed a non-disclosure agreement with the town. Indian Trail gave him a partial waiver of that agreement to discuss Bonterra matters only.

"I think it's highly unusual for a planning director to have a confidentiality agreement," Smith said.

"I can't answer that," Moore said when asked about the nondisclosure agreement. "I think that's probably part of personnel records that are part of North Carolina law."

Smith asked Town Council on Sept. 23 for the partial waiver. Some council members unsuccessfully attempted to rescind the entire speech ban "because they didn't see the utility

in continuing to keep these secrets from the public," Smith said.

During the deposition, town attorney Keith Merritt said he represented both Bailey and the town.

"I think that's extremely, extremely unusual" for a town-paid attorney to

be at a deposition in a case in which the town is not a party, Smith said.

"The town was there to protect its own interests. They were not there to protect Lee Bailey's interests, I guarantee you that," Smith said.

When he tried to ask Bailey questions beyond the scope of the confidentiality waiver, Merritt "objected on the basis of privilege, and directed the witness not to respond," Smith said.

Smith said Bailey testified that when he was town planner "he was uncomfortable because certain developers had unusual access to the mayor and to John Munn."

Smith said developers got plan approvals for areas that "would not make monetary sense [unless] they had control over the local politicians who could direct sewer and water to those areas."

As mayor, Quinn had testy relations with the council as he investigated Munn's salary and other town politics. He has tried unsuccessfully to get a local or state law enforcement agency to investigate Indian Trail.

"Why doesn't anybody care?" he asked after Bailey testified about the town's alleged illegal activities. "He said it under oath."

Quinn provided *Carolina Journal* with an audio recording made several years ago in which Bailey made statements similar to those in the deposition.

"I wasn't rubber-stamping all the plans and letting things ride," Bailey said on the recording. While there were threats and attempts by Munn and Moore to bully him, "There's no smoking gun" in which he was threatened with "any bad acts."

Quinn asked if the actions Bailey was asked to perform were criminal in nature.

"Probably," Bailey responded. "But you know, at this point I have no

interest in going back and creating [inaudible]. John's passed away, and Sandy's no longer mayor, so what would it accomplish?"

Jonathon Baer has been attempting for years without success to get information about Munn's salary overpayments and public documents of other town business.

Baer believes there is a "culture of corruption" that leads to "the attitude that the only way to get information or the only way to have any kind of transparency is for the citizens to sue the government, and that is preposterous."

He said Bailey received compensation with the confidentiality agreement.

"When you put two and two together, it looks like hush money," Baer said. Quinn called it a suspicious "golden parachute" laced with several months' pay.

Former councilwoman Mercedes Cass said Munn was fired because "there were a lot of crooked things going on." He threatened to sue council members individually if they withheld payments he said he earned.

No formal contract could be found to show Munn's salary was only \$45,000 for 25 hours of work per week. Council members ultimately declared Munn was owed the hundreds of thousands of dollars, citing accounting errors as the reason the payments didn't appear earlier.

Cass said Moore received overpayments as mayor of \$200 monthly, approved by Munn but not authorized by the council.

Former state representative and senator Fern Shubert briefly succeeded Munn as town manager.

"There was a whole bunch wrong with that picture" involving Munn's pay, she said.

When his attorney threatened council members, "I begged them not to pay him that money" because there was no record of it ever being authorized, Shubert said.

She signed an agreement with the council to be paid the same amount Munn received, she said. The council did not pay her the higher amount when it was discovered how much Munn had paid himself.

Both Shubert and Cass said Munn's pay was the source of heated discussions in closed meetings, records of which remain sealed despite state laws requiring them to be made public.

Smith said when he first started talking to Indian Trail residents, he had an initial impression they were "conspiracy theorists."

"At first blush it sounds kind of fantastic and incredible, but the more you get into it, the more you see what these people are telling you is true, and it's very suspicious," he said. CJ



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COMMENTARY

Uber, Lyft Seek Fare Deal

Regulation stifles innovation, resulting in poor-quality products at higher prices for consumers. And removing long-established regulations takes a massive effort, usually driven by obvious massive benefits that an emerging new industry offers. That's the difficult situation riding-sharing services Uber and Lyft are facing today as they attempt to provide an alternative to existing taxicabs.

While the concept of private individuals using their own cars to transport passengers for money may seem like a new concept, it's not. It first happened a century ago, as the mass production of the automobile suddenly saw an estimated 62,000 "jitneys" — slang of the time for a nickel, the typical streetcar fare — operate in 175 cities across the country. Jitneys didn't last long, though, as they effectively were regulated out of existence across the country by 1918, in large part to protect the better politically connected streetcar industry.

Since then, taxicab companies have faced regulations, usually from local governments, with the usual result protecting existing cab companies from competition. Where the absurdity of such regulation reaches its zenith is at many cities' airports. The situation at Charlotte Douglas International Airport is typical.

In 2011, the Charlotte City Council approved a special set of regulations on cabs operating at the airport. The justification was that the cabs running in the Queen City weren't nice enough and would give visitors a poor perception of the city.

The solution: Upgrade a limited number of cabs to a nicer standard, with special markings showing they are allowed to pick up fares at the airport. Only a limited number of companies — three to be exact — were permitted to operate cabs that could pick up passengers at the airport.

This is madness.

These limits let the city pick winners and losers — the companies allowed to operate at the airport make a lot of money, those

that aren't have a huge disadvantage compared with the favored companies. Not surprising, the winning cab companies are generous political donors. Patrick Cannon, who in 2013 was elected mayor of Charlotte, received 10 percent of his total campaign contributions from the taxicab companies selected to operate from the airport.

There been allegations that now-former mayor and convicted felon Cannon, who soon will begin serving a 44-month sentence on public corruption charges, may

have tried to shake down cab companies wanting to get in on the airport action. Even if the charges aren't true, the current arrangement simply encourages corruption. Still, plenty of politicians and bureaucrats have no problem with the status quo, as it gives them power over marketplace transactions.

And forcing locals to rely on cabs that visitors might find too decrepit

doesn't send an encouraging signal about the general quality of taxi service in city.

Not surprising, Uber and Lyft have done very well since coming to Charlotte. These services let passengers book rides using a smart-phone app. The drivers are independent contractors using their own vehicles. Drivers share their fares with the service.

"What they've done in the past five to six months is scary," said Obaid Khan, co-owner of Charlotte-based Diamond Cab, to *The Charlotte Observer*. "They've set their rates so low small companies like us can't compete with them."

Khan wants to see Uber and Lyft regulated more strictly or have regulations loosened on cab companies.

The General Assembly is working on new regulations for ride-sharing companies. The best outcome would be a framework allowing ride-sharing companies to serve the customers who value that alternative while liberating taxi companies from excessive, costly regulations through which the government often picks winners and losers. CJ

Michael Lowrey is an associate editor of Carolina Journal.



**MICHAEL
LOWREY**

G'boro to Let Citizens In On Some Budgeting Decisions

By MICHAEL LOWREY
Associate Editor

RALEIGH

Greensboro City Council has voted to allow citizens to decide how a portion of the city's budget is spent. The city would be the first in the South to approve so-called "participatory budgeting," reports the *Greensboro News & Record*.

Under the plan, Greensboro would spend \$200,000 for a consultant to develop guidelines for the program. Proponents hope private foundations will cover half the expense. Then in the 2016-17 fiscal year, Greensboro would set aside \$500,000 for five special projects — one \$100,000 project in each of the city's five voting districts — to be selected by voters from a number of options.

"The people of Greensboro are eager to get involved," Spoma Jovanovic, an assistant professor of communications at UNC-Greensboro and proponent of the plan, said to city council. "This is probably the best mechanism I've seen in a long time that can make that happen."

A number of city council member were critical of the proposal, which passed by a slender 5-4 margin.

"There are some of us who think that it is fairly bizarre that we should give a firm in New York \$200,000 to tell us how to spend \$500,000," said council member Zack Matheny.

"I think a vote for [participatory budgeting] is actually a vote against democracy," Matheny said. "It's taking away part of my job that I was elected to do."

Fayetteville PWC sues city

The Fayetteville Public Works Commission has sued the city of Fayetteville, contending that the city is attempting to exert too much influence over its operations and finances, reports the *Fayetteville Observer*.

Most North Carolina municipal public water and sewer systems operate under the direct control of their municipal government boards. The Fayetteville Public Works Commission is one of two water and sewer systems in North Carolina — the other is in Greenville — granted autonomy by state law. In Fayetteville's case, city council appoints PWC commissioners and sets their salaries and must approve PWC's budget.

Under City Manager Ted Voorhees, Fayetteville has in the past two

years moved more aggressively to shift costs to PWC while subjecting the water and sewer authority to budget and hiring constraints that apply to other city departments. PWC commissioners believed that the city was exceeding its authority when it decided to phase out

payments to extend sewer lines to newly annexed areas and transferred money and personnel from PWC to other city departments.

"We are certainly sorry to have gotten

to this point, but we feel like we have an obligation to the ratepayers and to the citizens of this community to do our job as commissioners," said PWC board chairman Mike Lallier.

Voorhees, for his part, contends that the city has done nothing wrong.

"It is regrettable that the commission views its role as superseding that of the duly elected City Council," wrote Voorhees in an email to council members. "This suggests to me that the council is on the right path in requiring greater transparency and accountability from the PWC."

Homesharing site a concern

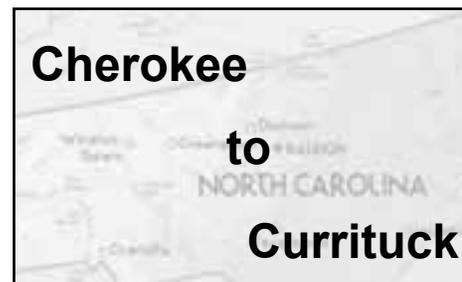
Doug Erickson recently decided to list his C.W. Worth House Bed and Breakfast on the Airbnb.com website. Erickson described the move to the *Wilmington Star-News* as a way for his business to compete. The move marks something of a change of direction for Erickson, notes the newspaper, as he's spent the past two years asking local officials to monitor more closely the properties listed on Airbnb and other home-sharing websites.

Erickson's specific concern is that homeowners may be renting out properties without following the same regulations he's subject to, such as obtaining a business license, being subject to county health department inspections, and collecting and remitting room occupancy tax.

Airbnb's website states that it "assumes no responsibility for a host's compliance with any agreements with or duties to third parties, applicable laws, rules, and regulations."

Roger Kelley, tax administrator for New Hanover County, agrees that home-sharing websites are a potential concern but difficult for his department to monitor adequately.

"Naturally we want every dollar we can get," Kelley said. "And it's not fair to everybody that's paying it, so yeah, I'd like to see that better enforced. But again, what's the answer? Manpower." CJ



Court Fails to Draw Line Over Blood Draws in DWI Cases

By MICHAEL LOWREY
Associate Editor

RALEIGH

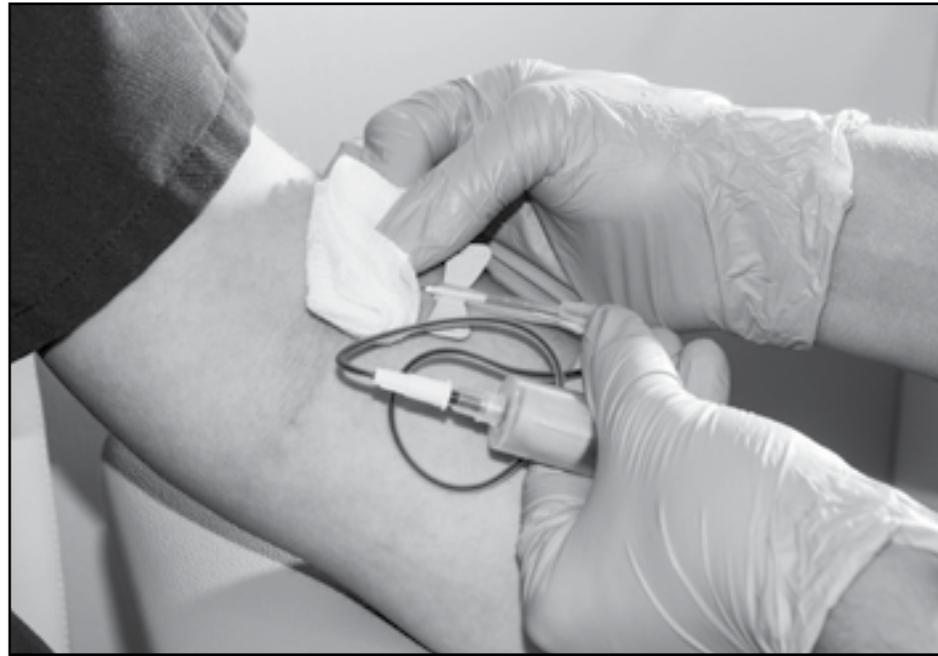
Drunks don't always make the most cooperative suspects. But it's not clear how aggressively police can pursue evidence, such as blood samples, when they apprehend a suspect who's suspected of driving while intoxicated. And a recent ruling by the state Court of Appeals hasn't settled the matter.

On Dec. 28, 2010, Chatham County Sheriff's Deputy Justin Fyle responded to a call reporting suspicious activity. Fyle found Ronald McCrary apparently sleeping in a red Isuzu Trooper parked poorly in a driveway of another person's home. When Fyle opened the car's door, he noticed a nearly empty bottle of vodka. McCrary smelled of alcohol, had red and glassy eyes, and couldn't stand up to perform field sobriety tests. Fyle arrested McCrary for driving while impaired.

Soon afterward, McCrary began complaining of chest pains and demanded to be taken to the hospital. Emergency medical services personnel were called. At that point, Fyle stated his plan was either to bring McCrary into the sheriff's office for processing if he were cleared by EMS personnel or to obtain a blood sample without a warrant if McCrary were transported to the hospital.

Fyle's sergeant ordered McCrary to be taken to the hospital, where his "belligerent conduct accelerated." McCrary also refused to provide a blood sample; one was taken without his consent.

McCrary eventually was convicted of driving while impaired and com-



municating threats. He was sentenced to consecutive 120-day prison terms on the charges.

Drawing blood is a search

At trial and again before the N.C. Court of Appeals, McCrary argued that the results of the blood sample should be suppressed.

Federal and state courts have recognized that taking blood from someone amounts to a search under both the U.S. and North Carolina constitutions. Searches conducted without a properly issued warrant are unreasonable unless conducted with probable cause and under exigent circumstances. And last year, the U.S. Supreme Court in a case called *Missouri v. McNeely* held that "in drunk-driving investigations, the natural dissipation of alcohol in

the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant." In *McNeely*, an officer drove a suspect to a hospital to obtain a blood sample without first obtaining a warrant after *McNeely* said he would refuse a breath test.

The question before the appeals court was whether the circumstances in McCrary's case rose to the level of an exigency. Two of the three judges on the Court of Appeals' panel held that it might, although a trial court needed to make that determination.

"We find this case to be more similar to *State v. Granger* than to *McNeely*," wrote Judge Donna Stroud for the court.

In *Granger*, the Court of Appeals held that exigent circumstances existed when a DWI suspect required hospital

care and no other officer was available to stay with him while the officer left to obtain a warrant.

The appeals court held that the trial judge should have made specific findings of fact about whether a magistrate had been available and how much time it would have required to obtain a warrant.

Judge Ann Marie Calabria dissented from the majority holding, finding that Fyle overstepped his authority and it was not necessary to ask a trial court to look for more facts.

"In the instant case, the trial court's unchallenged findings demonstrate that Deputy Fyle's actions fall squarely within the ambit of the example articulated by *McNeely*."

The key to Calabria was that Fyle had decided to obtain a blood sample well before any exigent circumstances may have developed at the hospital.

"Deputy Fyle simply ignored our Supreme Court's long-established directive that 'a search warrant must be issued before a blood sample can be obtained,'" she wrote.

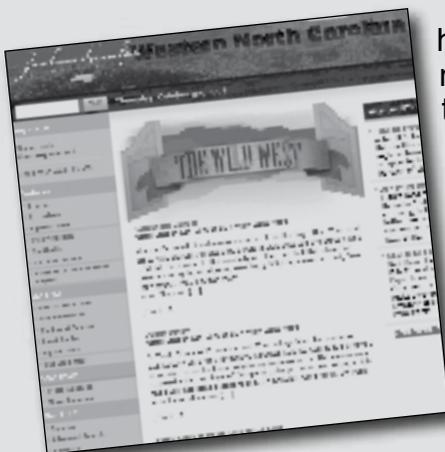
"He then sought to impermissibly benefit from his failure to seek a warrant by asserting that an exigency existed at the moment the blood draw was to occur. At this point, it was far too late for Deputy Fyle to consider, for the first time, whether a warrant could reasonably be obtained."

N.C. Court of Appeals rulings are binding interpretations of state law unless overruled by a higher court. Because of Calabria's dissent, the state Supreme Court is required to hear the case should McCrary appeal.

The case is *State v. McCrary*, (13-1059). CJ

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Hagan-Nominated USDA Official Scrubs Solar Grant Documents

Continued from Page 1

bers in the installation of solar panels at the JDC building in Reidsville.

When asked about the omitted documents, Gore said in an email, "Please note that the information you have requested is part of the proprietary information that has been redacted." When *CJ* followed up, asking if the redactions were made by JDC Manufacturing or the USDA, Gore did not respond.

Policy: Notify grant recipient

Earlier, Gore had told *CJ* that it was his office's policy to notify the grant recipient that an inquiry had been made and give the recipient an opportunity to object to a review of all or portions of the grant records.

From the initial reporting in late September by the Politico.com news service on a stimulus grant, Hagan and various family representatives have insisted that the family businesses did not profit from an earlier \$250,644 stimulus grant JDC received. Moreover, Hagan representatives have said a separate company founded by Chip and Tilden — Solar-dyne/Green State Power — received "no funding, public or private," spokeswoman Caitlin Legacki said to WRAL-TV.

Costs, documents in question

CJ reported that the company informed state officials that the budget for the stimulus-funded project had been revised downward by more than \$114,000 and that the savings would be applied to the company's share of the project. After *CJ*'s reports, company representatives contacted WRAL and *The News & Observer* with documents allegedly showing that the project in fact cost much more than the final budget filed with the state claimed. The documents presented to other media outlets are not part of the file at the State Energy Office, and JDC will not



The solar panels paid for with two federal grants were installed atop a Hagan-owned building in Reidsville, N.C., which houses Plastic Revolutions, a Hagan-owned company. (CJ photo by Don Carrington)

provide them to *CJ*.

The redacted contents of the USDA file may include invoices and other documents that could determine whether the additional invoices JDC provided to the other media outlets referred to spending that took place as part of the second, USDA-funded phase of the project, rather than the first, stimulus-funded phase of the project.

JDC is a Reidsville-based real estate business co-owned by Chip Hagan and his brothers John and David. JDC was awarded the USDA grant a few months after JDC gained approval for a \$250,644 federal stimulus grant to install new light fixtures, new furnaces, and solar panels at JDC's building.

Second phase

The USDA helped pay for what appears to be the second phase of the solar project. Green State Power's website claims the company was involved in the installation of a 53 kW solar panel array and an additional 58 kW solar panel array on the building for Plastic Revolutions, a recycling business also owned by the Hagans that leases space in the JDC facility.

The USDA file includes the appli-

cation for the grant, documents spelling out the evaluation process used by the agency to approve the grant, and a request for funding for JDC. But — unlike the file of documents provided to *CJ* and other media outlets for JDC's stimulus grant, it does not include invoices, timesheets, or work orders for the project.

State Energy Office

The stimulus grant was managed by the State Energy Office, which received funding from the U.S. Department of Energy. At the time the grant was awarded, the State Energy Office was part of the N.C. Department of Commerce. It now is part of the Department of Environment and Natural Resources.

The Hagan family's solar company was originally formed in August 2010 as Solar-dyne, and Chip changed the name to Green State Power in May 2012.

CJ initially reported that Solar-dyne performed both phases of the solar installation primarily based on claims made on the company's website. After reviewing the project file at the State Energy Office, it appears that the claims made on the company's

website were exaggerated or misleading. Even so, William Stewart performed some work on the project, and Tilden Hagan had a significant role in the project. (See related story, page 1.)

The file on a separate \$250,644 stimulus grant to the Hagan family was made available to reporters and contained detailed information on costs and actual expenses incurred by JDC Manufacturing.

Grant boosts net worth

Unlike the energy upgrades financed in part by the stimulus grant, which were intended to cut energy costs by \$100,000 a year for Plastic Revolutions and reduce carbon emissions produced at the building, the USDA file shows the \$50,000 federal grant for the second solar panel project was intended to subsidize a project that would boost JDC's net worth.

"This is a partnership involved in investment activities. JDC Manufacturing is investing in and installing a Solar PV System to produce green power to sell to the local utility company," the application says.

The \$50,000 grant came through the USDA's Rural Energy for America Program administered by the Rural Development office in Raleigh. It was used to pay for additional solar panels on the JDC building in Reidsville. Chip Hagan completed the grant request and submitted it to North Carolina USDA officials on June 13, 2011. USDA area specialist Lynn Straughan approved the grant the same day. Gore signed off on the project July 11, 2011.

According to the grant application, the total cost of the solar system would be \$200,000, and JDC Manufacturing would provide \$150,000 of the project's costs.

The grant application did not mention the previous stimulus grant and the solar panels that had been installed on the building. *CJ*

Stimulus Grant File Shows Substantial Hagan Family Involvement

Continued from Page 1

Attorneys for the Hagan campaign committee say JDC Manufacturing never paid Solar-dyne/Green State Power, citing a story published Oct. 17 and updated Oct. 18 in *The News & Observer*, saying records provided by the company don't show any payments to Solar-dyne/Green State Power.

However, a Carolina Journal examination of the JDC Manufacturing grant file at DENR revealed that Tilden Hagan and William Stewart, Sen. Hagan's son-in-law, had significant involvement in the project. Records from the stimulus file show direct payments

to Tilden and Stewart of \$12,785. They may have additional compensation that was not reflected in the public records. Moreover, Stewart now is listed as a manager of Green State Power.

Some examples of their activities follow:

- On Nov. 18, 2010, groSolar, a Vermont-based solar equipment supplier, invoiced Tilden Hagan of Solar-dyne at 408 Coolidge St., Chapel Hill, N.C., for 216 solar panels and other equipment totaling \$137,916. The address is Tilden Hagan's home. The invoice stated the products were to be shipped to John Hagan at Solar-dyne located at 1704 Barnes St. in Reidsville

(the location of the JDC building).

- On Dec. 1, 2010, Tilden Hagan, on behalf of JDC Manufacturing issued a purchase order to Solar Electric Distributor of Denver, Colo., for numerous items totaling \$12,502.64. He listed his contact information as Tilden@Solar-dynenc.com.

- On Dec. 7, 2010, groSolar invoiced Tilden Hagan of Solar-dyne in Chapel Hill for another order totaling \$22,927. Items were to be shipped to Solar-dyne at the JDC building in Reidsville.

- On Dec. 8, 2010, Tilden Hagan on behalf of JDC Manufacturing issued a purchase order to Sunbelt Trans-

former in South Carolina for \$7,695 for equipment.

- For the week ending Dec. 11, 2010, contractor Circuitmakers Inc. paid Tilden Hagan \$420 for his services as an electrician.

- On Dec. 14, 2010, groSolar invoiced Tilden Hagan of Solar-dyne in Chapel Hill for another order totaling \$100.54. Items were to be shipped to Solar-dyne at the JDC building in Reidsville.

- On Dec. 17, 2010, Tilden Hagan from tilden@solar-dynenc.com contacted John Hagan: "I'm bringing with

Continued as "Stimulus," Page 15

Hagan Electrical Contractor License Applications Raise Questions

Continued from Page 1

applicants to use personal recommendations from people claiming to be supervisors without requiring any documentation to back up those claims.

Both Chip and Tilden Hagan claimed the work took place at Solar-dyne, the solar energy company that was recognized formally in August 2010 by the state's Corporations Division in the office of the secretary of state. Initially, Chip and Tilden listed themselves as managers. Chip changed the name of the company to Green State Power in 2012, later adding son-in-law Stewart as a third manager.

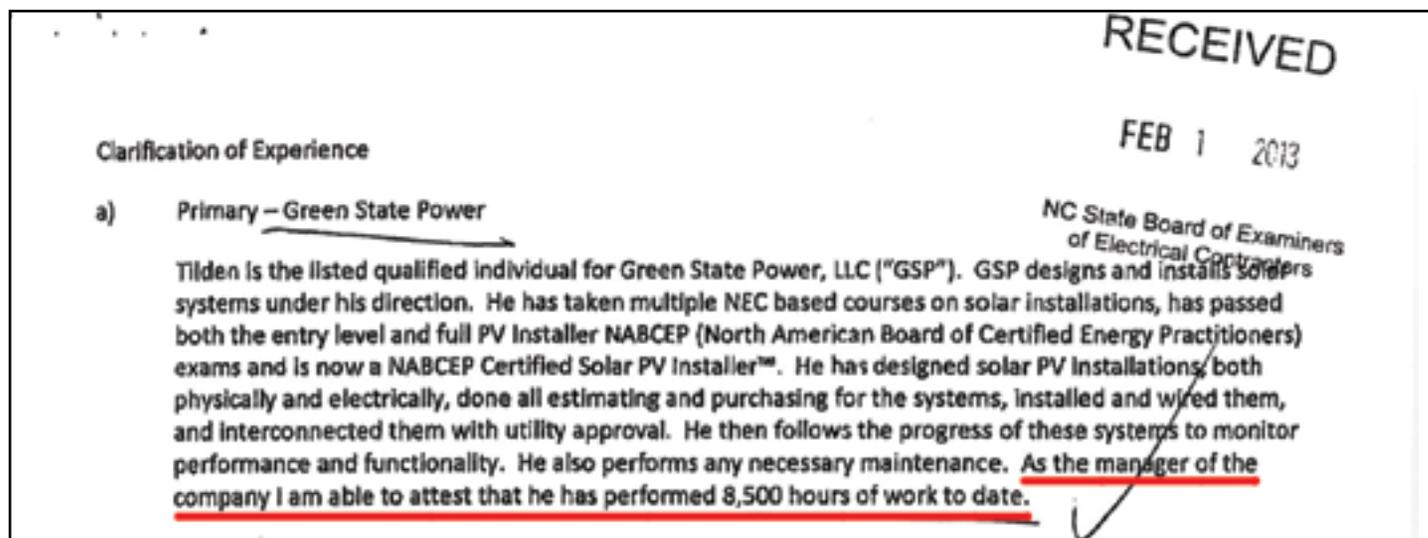
As part of Tilden's application for a limited license, on Jan. 25, 2012, Chip Hagan certified to the board that he was his son's manager at Solar-dyne, and that Tilden had worked 5,000 hours. Less than 11 months later, Dec. 13, 2012, as Tilden applied for an unlimited license, Chip Hagan stated, "As the manager of the company I am able to attest that he has performed 8,500 hours of work to date."

Working an additional 3,500 hours 46 weeks would have required Tilden to work consecutive 76-hour weeks in electrical installation.

Neither Chip nor Tilden Hagan has responded to emails or phone messages from *CJ* seeking information about the experience they claimed on the two license applications.

While Tilden's father claimed to be his supervisor on one form, his brother-in-law William Stewart claimed to be Tilden's supervisor on another. Stewart is married to Tilden Hagan's sister.

On a form titled, "Supervise and Direct Statement," listing himself as president of Green State Power, Stewart stated, "This is to certify that I have known Charles Tilden Hagan IV for approximately 20 years; that I am knowledgeable of his/her electrical experi-



In Tilden Hagan's application for his electrical contractor's license, his father, Charles "Chip" Hagan, Sen. Kay Hagan's husband, attests to his son's work experience at the family solar company.

ence; and that in my opinion he/she does have the ability to satisfactorily supervise and direct all electrical wiring or electrical installation work done by an electrical contracting business in the UNLIMITED classification."

The North Carolina State Board of Examiners of Electrical Contractors is the licensing and regulatory agency for N.C. electricians. Applicants seeking a limited, intermediate, unlimited, or special license must complete an application and take an exam. The application relies heavily on primary work experience, and that experience needs to be certified by the applicant's employers. The applications are public information.

CJ reviewed Tilden Hagan's applications with the board's executive director, Tim Norman. Norman said he has an obligation to investigate all complaints as well as credible information that may involve a license application. He said he could not comment on Tilden Hagan's applications.

An unlimited license requires a minimum of seven years experience, including five years of primary experience in electrical installation. Some

credit is allowed for other activities. A limited license requires a minimum of four years experience including two years of primary experience in electrical installation. One year is equivalent to 2,000 hours. Those with a limited license were restricted to contracts of less than \$40,000. That threshold was recently changed to \$50,000.

On Sept. 17, 2011, one year after the Hagan family launched their solar energy company, Tilden Hagan signed his initial application for the limited classification electrical contractor license. He stated that he had been employed at Solar-dyne since February 2009, a period of two years and eight months, and listed his current position as president. Chip Hagan completed the "Employer Statement Form" claiming Tilden Hagan had worked 4,000 hours as an electrician. Chip Hagan signed the form as the manager of Solar-dyne.

Tilden Hagan's work experience caught the attention of a reviewer at the licensing board. A handwritten note on the application reads, "Need clarification on experience."

On Jan. 25, 2012, Chip Hagan

prepared a "Clarification of Experience" statement certifying that Tilden had then accumulated 5,000 hours of primary work experience. "As the manager of the company I am able to attest that he has done so for two and a half years and performed 5,000 hours of work to date," he wrote.

After Tilden Hagan passed his exam in May 2012, the board granted him a limited category electrical contractor license. He applied to take the exam for an unlimited contractor license Nov. 27. On Dec. 13, Chip stated that Tilden had accumulated 8,500 hours of experience. Tilden was issued his unlimited contractor license June 5, 2013.

But there are other issues raised by the information contained in Tilden Hagan's first application.

Tilden Hagan's work experience at Solar-dyne coincides with his stated time as a medical school student. His LinkedIn page states he was enrolled in the UNC School of Medicine in Chapel Hill from January 2009 to August 2011 — essentially the same time period he claimed to have worked 4,000 hours at Solar-dyne. *CJ*

Stimulus Grant File Shows Substantial Hagan Family Involvement

Continued from Page 14

me tomorrow the Power Purchase Agreement (PPA) from Duke which I've signed but when I return it to Duke I need to include the check for \$28,901.59 from JDC Manufacturing. Let me know if it would be best for me to leave it somewhere at the plant or if my Dad can write a check from JDC. It needs to go out on Monday so we can be sure they'll start their side of the construction as soon as possible to be done before year end."

- For the week ending Dec. 18, 2010, contractor Circuitmakers Inc. paid Tilden Hagan \$360 for his services as an electrician.

- On Dec. 21, 2010, groSolar in-

voiced Tilden Hagan of Solar-dyne in Chapel Hill for another order totaling \$449.39. Items were to be shipped to Solar-dyne at the JDC building in Reidsville.

- For the week ending Dec. 24, 2010, contractor Circuitmakers Inc. paid William Stewart \$400 for his services as a general laborer.

- For the week ending Dec. 31, 2010, subcontractor William Stewart paid himself \$525 and a laborer under his supervision \$435 for services as general laborers on the JDC project.

- On Dec. 31, 2010, William Stewart invoiced Plastic Revolutions a total of \$2,772.50, itemized as \$1,325 for 53 hours at \$25 an hour for him, and

\$1447.50 for 96.5 hours at \$15 an hour for the general labor of unspecified workers he apparently supervised.

- On Jan. 31, 2011, Plastic Revolutions billed JDC Manufacturing \$12,677.90 for the solar project. Included in that total was \$2,772.50 to William Stewart for contracting services. Plastic Revolutions and JDC are owned by the Hagan family.

- On Jan 11, 2011, Circuitmakers Inc. invoiced Plastic Revolutions for \$3,405 for the labor of Tilden Hagan and \$1,620 for the labor of William Stewart.

- For the week ending Jan. 15, 2011, contractor Circuitmakers Inc. paid Tilden Hagan \$90 for his services

as an electrician.

- On Feb. 3, 2011, William Stewart invoiced Plastic Revolutions \$1,867.99 for labor and materials on the JDC project.

- On May 2, 2011, the N.C. Department of Commerce sent a site visit report to JDC Manufacturing grantee representatives John Hagan and Tilden Hagan. The report stated that the project was closed.

- On July 19, 2011, N.C. Department of Commerce official Starlett Hodge emailed program manager Nichele Parker following up with Tilden Hagan at tilden@solar-dynenc.com and others that a JDC site visit was planned for July 27. *CJ*

Shibley: Disturbing That Censorship Calls Coming from Students

By CJ STAFF

RALEIGH

Stroll through a college campus, and you expect to hear debate about a range of good, bad, and even crazy ideas. Too many colleges place limits on debate or restrict the free exchange of ideas to small, out-of-the-way sections of campus. Robert Shibley, senior vice president of the Foundation for Individual Rights in Education, recently discussed higher education free-speech restrictions with Mitch Kokai for Carolina Journal Radio. (Head to <http://www.carolina-journal.com/cjradio/> to find a station near you or to learn about the weekly CJ Radio podcast.)

Kokai: You recently wrote a column for *The Washington Post*. People in North Carolina may have seen it in other publications here, and you started off saying that the last Sept. 17 was a pretty bad day for the Constitution on our campuses. How so?

Shibley: Well, not just one, but two different students were told that they were not allowed to exercise their constitutional rights, there on Constitution Day, one at Modesto Junior College in California, where a student and Army veteran named Robert Van Tuinen wanted to pass out copies of the Constitution on campus and was told by the campus security that he couldn't. Then he had a run-in that's almost impossible to believe — thankfully, it's on video — with the administrator, who told him that he wouldn't be able to do it today, and he had to sign up ahead of time, and maybe in a few days or maybe next month he could come back and pass out Constitutions on his campus. And that he had to stay inside a tiny free-speech zone that is less than 1 percent of the campus — a little concrete stage in the middle of the quad that he wasn't supposed to leave.

Kokai: That was just one example, and there was another?

Shibley: That was one example. The other was a student at Citrus College in California, so these are both California cases. Vincenzo Sinapi-Riddle, he goes by Vinnie, wanted to ... collect petition signatures protesting NSA domestic surveillance, and was told that he could not do that outside their tiny, free-speech zone at Citrus, which is, to give them credit, slightly more than 1 percent of the college campus. And so, Robert Van Tuinen already has brought the suit and settled it with the help of FIRE, and now Vinnie has brought suit against his college, again with the help of FIRE, and on the same day as we launched three other cases in our effort, the Stand Up For Speech [Litigation Project], that we are trying to finally bring an end to speech codes at public colleges and universi-

"[An] ongoing problem is the sad fact that campuses do tend to discriminate, for the most part, against conservative and Christian students and libertarian students to a lesser extent, but still significant on campus, simply because of political differences."

*Robert Shibley
Senior Vice President
Foundation for Individual Rights in Education*



ties across America.

Kokai: Now, you mentioned these two cases and three other suits, so this is not just happening in California, not just isolated instances, but happening in a lot of different places. What is that sort of general trend that you're seeing?

Shibley: ... The main trend that you can rely on is this campus authoritarianism, and even a kind of totalitarianism, ... that every single thing you do on campus has to be regulated in some way. So when we're talking about students who are passing out, you know, small pamphlets, being told that they can't do that, they're not blocking anybody's traffic, nobody's complaining about them — or getting petition signatures.

In a couple of the other cases, they were wearing T-shirts that annoyed administrators. You know, it doesn't matter — it seems like no activity, no matter how small, is too small to escape the notice of campus administrators. And that's a part of the function of administrative bloat.

The other ongoing problem is the sad fact that campuses do tend to discriminate, for the most part, against conservative and Christian students and libertarian students to a lesser extent, but still significant on campus, simply because of political differences. And while it's certainly not confined to people who you might perceive as being on the right, they certainly do bear the brunt of it, particularly with pro-life speech or other kinds of controversial issues.

Kokai: Most of us who are listening today don't spend much time on college campuses these days, but why should this concern everyone?

Shibley: Unfortunately, what we're seeing is that this attitude, this jaundiced attitude, this cramped attitude toward free speech that is be-

ing inculcated on campus, not just through, you know, what professors might be teaching, but really just through the idea that you're living in this authoritarian sort of Orwellian universe — you get used to these kinds of restrictions on speech. You start to think they're normal. You start to think they're good, and you're being told they're good in many cases and that good people would want to silence offensive opinions. And those people are leaving campus, and they're taking that attitude off campus with them, and it's starting to crimp the idea of free speech in this country.

You know, America is unique in our respect for free speech. But, unfortunately, it's becoming less so with each passing year. We saw the "disinvitation season" phenomenon this year with Condoleezza Rice, with Ayaan Hirsi Ali, with [International Monetary Fund] head Christine Lagarde — all of whom either backed out or [were] uninvited from giving speeches, simply because the universities didn't want the controversy or disagreed with them, or they wanted to give in to people who were demanding that they be silenced.

Kokai: It's very much a concern. All of the examples we've been talking about so far have been in other states. Some people might hear this and say, "Too bad for them, but things are fine here in North Carolina." Are things fine in North Carolina?

Shibley: I think when it comes to the free speech, they are a little bit better than average. I think part of that is because of the historical significance of the UNC-Chapel Hill speaker ban, from decades ago, as sort of ... North Carolina got an early lesson on: How do we want to regulate who's able to speak on campus? So North Carolina had an early lesson that was thankfully decided in favor of free speech there. And so I think there's a legacy of that.

Also, North Carolina's universities, thankfully, their speech codes are generally less severe than those in many other states. I think Illinois is one of the worst. North Carolina is doing pretty well. Virginia is among the best when it comes to respecting free speech on campus.

And North Carolina also has — not a free-speech issue, but they have the right to counsel on college campuses. And so, ... administrators know now that if you are dragged in front of a campus tribunal for something like this, you're going to have an attorney with you, or you may have an attorney with you who can make the argument, saying, "Hey, you know what? The First Amendment prohibits what you're trying to do here." So it's an important safeguard, too.

So we're lucky to live in North Carolina for that reason. There's a lot of improvement that can take place and that should take place, and that's something I want to work on as a North Carolinian here.

Kokai: Our time is running short, but when you look over the recent history of these types of cases, are things about the same as they had been in recent years, or are they getting worse or maybe even getting a little better?

Shibley: The disturbing thing that we're seeing is an increasing amount of the demands for censorship are coming from students, rather than faculty or administrators. And it's sad to see students have been miseducated in the K-12 system, and they're taking that with them to the college system, which is also not educating them properly, to teach them the value of free speech. That said, you know, six years ago, 79 percent of public colleges had laughably unconstitutional speech codes. Now it's down to 58 percent, so that's a big improvement, but it should be zero. The law requires that it be zero, so that's why we've launched our lawsuit effort. CJ

UNC's 'Low Productivity' Programs Hard to End

BY JESSE SAFFRON
Contributor

The 1971 law reorganizing the University of North Carolina declared that the UNC system should "encourage an economical use of the state's resources" to further the state's constitutional mission of providing public higher education.

In that spirit, the system's Board of Governors assigned mission statements to system universities setting boundaries on the types of academic programs that can be implemented on individual campuses.

Today, the 16 universities in the UNC system offer roughly 1,000 bachelor's, 700 master's, and 200 doctoral degree programs.

North Carolina law states that the board "shall review the productivity of academic degree programs every two years" and "withdraw approval" of any program appearing "unproductive, excessively costly, or unnecessarily duplicative."

The latest systemwide study, conducted by the system's General Administration, appeared in 2013. A key measurement is "productivity," which means that a program is "producing" an adequate (and presumably cost-effective) number of graduates each year.

A bachelor's program is considered to be "low productive" if 1) it has awarded fewer than 20 degrees in the previous two years; 2) upper division (juniors and seniors) enrollment is less than 26 students; and 3) fewer than 11 degrees have been conferred in the most recent year. For master's and doctoral programs, those numbers change, but the focus is still on degrees awarded and enrollment.

Once a program is rated as "low productive," it is not automatically removed. Several factors are weighed to determine whether to keep the degree or not. They include whether a program is "central to the [university's] institutional mission," fills a "high societal need," or provides "access and opportunity for underrepresented groups."

In the latest review, 247 UNC system programs (undergraduate and graduate) were flagged as low-producing, but 200 of those were retained because the universities either had "plans to increase enrollment" or because the programs were related to the "core mission" of their respective

university.

This summer, the Pope Center conducted its own analysis to find degrees within the UNC system that are "low productive." We used the standards for productivity established by the University of Georgia, which are somewhat more stringent than UNC's.

The University of Georgia, under Chancellor Hank Huckaby, has made a concerted effort to reduce unnecessary programs. In 2010 and 2011, the University System of Georgia approved 71 programs and discontinued only 12. But after Huckaby, former director of the state's budget office, became chancellor, 576 programs across the system were terminated, and only 99 have been added. (Many of the 576 programs were inactive, so there were no faculty layoffs or cost savings.)

In our study, we focused on undergraduate programs in 2012-13. We found that if Georgia's standards had been applied to the UNC system, 210 programs would be flagged, compared to the 129 undergraduate programs discovered by UNC in its latest review.

But does closing down degree programs save money? That is far from certain at this point.

For example, at a Board of Governors meeting earlier this year, Appalachian State University requested approval to eliminate eight programs due to low enrollment. When asked if that would save money, Suzanne Ortega, at the time the senior vice president for academic affairs at the UNC's General Administration, said the faculty and resources would be "redeployed."

I asked Appalachian State officials the same question. Susan McCracken, the school's director of external affairs, replied, "resources that were previously allocated to eliminated or merged programs will be reviewed and prioritized for the most efficient and practical use as determined by the chancellor and provost."

So, while the Board of Governors has the authority to terminate low-producing programs, the de facto decision making comes from General Administration and the universities. They can use a variety of justifications for continuing a struggling degree program, and the evidence suggests that they may be doing just that. *CJ*

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



COMMENTARY

Loan Repayments And Bad Incentives

Federal student aid programs demonstrate a point economists often make: Government policies almost always have undesirable consequences that weren't anticipated.

At the time they were begun, during President Johnson's "Great Society" years and shortly thereafter, hardly anyone forecast that they would result in huge increases in the cost of going to college. Decades later, it's evident they have.

Now that college is far more expensive and many students are borrowing huge sums to afford their degrees, politicians are tinkering with the system to solve the "student debt crisis."

Two programs meant to ease the burden on students are Income-Based Repayment and Public Service Loan Forgiveness. These programs are expanding rapidly, adding to the ever-accumulating federal debt.

The idea behind IBR is that since some students have a financial struggle with their payments because of their low earnings after college, their repayment schedule should vary with their income. IBR caps repayments at 10 percent of discretionary income, and after 20 years of payments any remaining balance is forgiven. (That is to say, taxpayers cover the loss.)

But IBR is just a minnow compared with the barracuda of PSLF, which lets students who go to work in "public service" jobs repay their loans for only 10 years before the balance is wiped out. Because many of the jobs that qualify for PSLF require postgraduate education, the debts that the taxpayers must eat are far higher.

People who learn how to game this system can get much of their education, especially graduate degrees, at little or no cost to themselves. Furthermore, the government jobs that qualify them for Uncle Sam's generosity pay quite well. The net effect is to transfer money from taxpayers to well-off individuals and the institutions where they received their credentials.

Consider someone who earns

a law degree, then gets a job as a lawyer (for any unit of government or nonprofit entity) and earns the median wage for lawyers his age. After borrowing about \$54,000, all further debt will be covered by taxpayers, so there is no reason to economize, use one's own resources, or work to offset some of the cost.

While some people argue for "reforming" these loan repayment programs and minimizing the bad incentives, it would be better to eliminate them entirely.

IBR should be eliminated because it encourages Americans to ignore the poor cost-benefit ratio for many college programs. Lending large amounts of money to students with the understanding, "If you have trouble paying it back, don't worry because we will adjust to your ability to pay," encourages bad decisionmaking.

That's what IBR does for the decision young Americans make about college. They're encouraged to adopt a breezy "Hey, why not give it a shot?" attitude instead of thinking responsibly about the balance of costs and benefits.

PSLF should be eliminated because the government should not favor people who take jobs in "public service" (which covers 25 percent of all employment) rather than jobs in the for-profit sector. Nonprofit work is neither underpaid nor more virtuous than for-profit employment.

If banks had to lend money to new businesses under similar terms — "Don't worry about profitability, because we'll lower your payments if you aren't doing well" — you can see what would happen. We would have lots of ill-conceived new companies wastefully absorbing capital and resources.

Until we get government out of the student loan business entirely, the best policy would be for all students to be treated the same: required to pay back the full cost of their borrowing. *CJ*

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



GEORGE LEEF

Campus Briefs

At UNC-Chapel Hill's First Amendment Day celebration in late September, keynote speaker Greg Lukianoff, president of the Foundation for Individual Rights in Education, presented some alarming findings: The demographic group most hostile to free speech is not baby boomers or other generations, but millennials, those 18 to 30 years old.

One of the panels that day, "Speech that Hurts and the First Amendment," suggested Lukianoff's right. At least for some college students, freedom of speech takes a backseat to sensitivity.

That panel featured three students and longtime First Amendment attorney Hugh Stevens. It drew a crowd of about 70 students and professors.

Much of the panelists' discussion related to "trigger warnings." Those are warnings that precede a reading assignment, class discussion, or campus event. They are designed to protect students from experiencing traumatic reactions to the content.

All three student panelists said that such warnings, which gained publicity at California universities earlier this year and have spread to other schools, are necessary on college campuses.

As the discussion progressed, it became apparent that the students were more passionate about "social justice" and supporting an offended campus constituency than championing free speech.

"I am a fan of the First Amendment, but I do step in when the speech is hurtful," said Destiny Planter, vice president of UNC's Black Student Movement.

A few students in the audience, as well as student panelist Wilson Hood, wanted to know if anything could be done to protect "people on campus who are sensitive to violent pictures and words," or if there are legal remedies for offended parties.

Hugh Stevens, the attorney, did offer a remedy — more exercise of the First Amendment, not less. He told the students to respond to "offensive" or "disagreeable" ideas with, for example, peaceful counterprotests and boycotts: "[Use your] First Amendment rights to challenge the legitimacy of what was said or done." CJ

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

UNC Board Members Vent on Oversight Concerns

By DAN WAY
Associate Editor

RALEIGH

Reform-minded members of the UNC Board of Governors say they are taking necessary steps to control spending at the UNC System's 16 campuses, and are more active in policy decisions, reversing past boards' rubber-stamp votes.

But some of the 32 members say UNC General Administration and college chancellors are reluctant to provide board members information. New internal policies frustrate requests for information and block discussion of important topics at meetings, they say.

"I doubt that," Board of Governors Chairman John Fennebresque said when told that some board members expressed unease, calling the issues "old news."

"I'm in pretty constant touch with all of them," he said. "They do quite frequently tell me 'You're doing this wrong, let's do it this way.' I generally listen to them."

He said there always will be issues when 32 people deal with a \$9.3 billion enterprise.

"We know there are things we need to do better. We know there are things that need to be fixed. But at the end of the day, we have a very good system," Fennebresque said.

"I feel like John Fennebresque is taking a strong lead as our new chairman. I'm pleased with the direction he's taking us," said board member Bob Rippey of Wilmington.

But board member Marty Kotis of Summerville, appointed in 2013, is less supportive.

Fennebresque appointed new committee chairmen. Kotis says they back the university's administration more than they do the interests of taxpayers and student advocates. Fennebresque switched Kotis from the Budget and Finance Committee to the Personnel and Tenure Committee, and Kotis says that may have happened because Kotis was asking tough questions about the system's budget.

"One of the things that we're not doing is we're not providing oversight on the full \$9.3 billion budget," concentrating instead only on the \$2.6 billion in state allocations, Kotis said.

"We do look at the overall revenue picture," Fennebresque countered.

"There's some very heated discussions going on in public and in private" among board members involving governance and educational philosophy, and along political fault lines, said Rippey. He was among 16 board members, 14 of them Republicans, appointed in 2013 by the General Assembly.

Rippey said he wants to scrutinize a wide array of major issues, and he believes Fennebresque shares his concerns.

"I think the board's really starting to take some leadership role on some of this instead of depending on General Administration for all the answers," Rippey said. "A year ago I didn't feel so good."

Steve Long of Raleigh, appointed in 2013, believes Fennebresque is "doing a great job. He's got a very collegial board. We all get along with each other. There's a lot of good humor and willingness to work together, and with the staff, and with President [Tom] Ross."

But like several board members who spoke with *Carolina Journal*, Long is concerned about the board's inability to provide full financial oversight of the UNC System.

"The main frustration I have is in the lack of transparency in budgeting," Long said.

"Chancellors should be given a significant amount of authority because they are the CEOs of their campuses, and

we should think twice before we interfere with their operations," Long said.

"But the Board of Governors is primarily responsible for setting their budget, and I do not believe we have sufficient information to do that" because the information is not broken down into categories by individual campuses, Long said.

UNC-Greensboro is an exception. It posts its budget information on its website, he said.

Rippey would like to see every campus budget online. The large universities are most averse to providing budget details, and UNC General Administration is more resistant than campuses, he said.

A new board policy Fennebresque implemented requires either his authorization or approval from committee chairmen to seek additional information not in the board's meeting packets. Fennebresque said he has denied only one request.

But Long said the policy has created concern among some board members.

"It was an outgrowth of a desire to be sensitive to the demands placed on staff by the board, but it may be that the board needs a staff person [dedicated] to handle all these research requests" as a better alternative, Long said.

"I think it is a little frustrating for us to have to go that way," Rippey said of the new policy.

"I have not yet found it to be an impediment to getting information. I know that other people have ... and have not gotten that information, and have not been happy about that," said W.G. Champion "Champ" Mitchell of New Bern, appointed in 2013.

Some board members contend most of the time in board meetings is spent hearing presentations, chairmen, and committee reports, and there is insufficient time to discuss agenda items. "There's a lot less inclination to just go along than there once was," and that creates the need for more open discussion on new items not on the agenda, or to discuss matters that are bothering members, Mitchell said.

Kotis opposes the inability to bring up new business at meetings because it can thwart timely handling of emerging issues.

It has not been uncommon for board members to receive 500 to 900 pages of materials less than a week before meetings, Kotis said. Though he crunches time to read it all, he said not all board members can, and he's raised that concern at eight board meetings.

"I would be surprised if many people think that now. I think the General Administration understands that we need information quickly. They get us information quickly," Fennebresque said. When asked, he said he was not certain how many days before a meeting board members receive their packets.

If a board member wants additional information after reviewing the contents of a meeting packet, the necessity of getting approval from committee chairmen, combined with slow responses from university and General Administration staffs, can dash the attempt, Kotis said.

"A lot of times they're giving you the answer during the meeting, so it just doesn't lend itself to a whole lot of oversight," Kotis said.

At one meeting involving budget and finance issues, board members received their packet at 7 p.m. the previous day. The Budget and Finance Committee chairman rejected Kotis' request for additional spreadsheet information available to staff supplementing the chart members were provided, he said.

"So now I'm stuck with having to do a Freedom of Information Act request" to get public information from his own board, Kotis said. CJ

Some feel
administrative
staff blocks
discussion of
important topics

Opinion

Avoid Fearmongering, Politicization on Campus Sexual Assault

The national hysteria over sexual assault on college campuses is approaching a frightening crescendo. Cheered on by feminist groups, left-leaning political activists, and rape victim advocates, politicians and campus officials are rushing to “do something” about this “crisis,” even if that means ignoring data that undermine their claims and trampling students’ due process rights.

UNC-Chapel Hill has joined the crusade. The university recently adopted policies closely mirroring California’s controversial “Yes Means Yes” law, signed in late September by



JESSE SAFFRON

Gov. Jerry Brown. That law requires students at state-funded universities to obtain “affirmative, conscious, and voluntary agreement” — a clause often shortened to “affirmative consent” — before and during a sexual activity.

At UNC-Chapel Hill, the new standard states that consent “requires an outward demonstration, through understandable words or actions, that conveys a clear willingness to engage in sexual contact.” The policy stresses that consent is “not to be inferred from silence, passivity, or a lack of resistance, and relying on nonverbal communication alone may result in a violation of this policy.”

Like the California law, UNC-

Chapel Hill’s policy imposes an extremely vague and unrealistic standard that is out of step with the way our culture views and engages in sexual activity. Under the new rules, for example, hugging could be construed as “sexual contact.” Without first receiving a definitive “yes, you can hug me” from his or her partner, an individual could be charged with sexual assault.

Furthermore, the standard states that consent “is not to be inferred from an existing or previous dating or sexual relationship.” If a couple gets in a verbal fight and emotions flare, one ill-considered call to the campus police could set in motion the destruction of the educational and career prospects of the accused.

Students attending universities with the new standard may have much more than vague policy language to worry about. That’s because their due process rights are under attack.

At UNC-Chapel Hill, as Brooklyn College professor K.C. Johnson noted in an article for *Minding the Campus*, the administration can “brand a student a rapist even if both [an investigator] and [a] three-person panel independently determine that the accused student is not in any way culpable,” an absurdity that Johnson calls “triple jeopardy.”

Equally troublesome is that



investigators don’t have to share evidence with the accused before a hearing, meaning that the presentation of “exculpatory material” is thwarted. And the accused’s lawyer can’t cross-examine

the accuser at hearings; he or she can only “submit questions to the hearing chair, which can ask the question, modify it, or refuse to ask it.”

Many of the aforementioned policy changes are the result of escalating pressure from the federal government, which has seen a surge in complaints relating to universities’ botched sexual assault investigations.

In August of this year, the U.S. Department of Education released the names of 76 universities that allegedly had “mishandled” sexual assault cases and shirked federal laws. Obviously, no university wants to be on that list or under the federal microscope. If an institution can take pre-emptive measures to avoid public disgrace and elude the government’s tangled web of rigmarole, that’s what it will do.

A major reason for the sexual assault mania is the dissemination of a doubtful statistic, trotted out repeatedly by the Obama administration, federal bureaucrats, and reform advocates. It’s that one in five women is sexually assaulted while enrolled in college.

It turns out, however, that the “one in five” ratio may not be repre-

sentative of college campuses collectively, and that its use as a basis for policies affecting one of the most intimate of human activities is dubious at best.

Criminology professor James Alan Fox and sociology professor Richard Moran explained in a *USA Today* op-ed that the assault rate parroted by pundits and politicians comes from a 2007 survey of just two four-year universities, and it “might not accurately reflect our nation’s colleges overall.”

Fox and Moran also pointed out that the survey had a substantial “nonresponse rate,” meaning that victims were more likely to respond to the questionnaire. “Moreover,” they wrote, “the definition of sexual assault used in this and other studies was too broad. ... By lumping uninvited advances and alcohol/drug-influenced encounters together with forcible rape, the problem can appear more severe than it really is.”

My criticism of “affirmative consent” is not meant to downplay the darkness and tragedy of sexual assault and rape. Nor am I denying that there have been instances of underreporting and rape cover-ups on campus. But the accused as well as accusers would be better off with policies and procedures based on sound data and the “innocent until proven guilty” standard rather than fearmongering and hyperpoliticization. *CJ*

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

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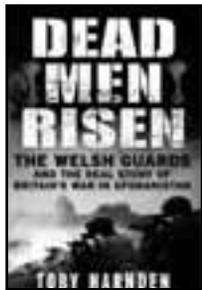
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Dead Men Risen, winner of the prestigious Orwell Prize for Books, is the epic story of a beleaguered British battle group fighting desperately to prevent the Taliban from seizing Afghanistan's Helmand province just as the U.S. Marines arrive to take over. Toby Harnden weaves the experiences of the soldiers, their historical forebears, and the flawed NATO strategy into a masterly narrative. No other book about modern conflict succeeds on so many levels. *Dead Men Risen* is essential for anyone who wants to understand the reality of the Afghan war for the U.S and its allies. Visit www.regnery.com.



- While America's influence around the world recedes — in its military and diplomatic power, in its political leverage, in its economic might, and perhaps most dangerously, in the power and appeal of its ideas — Russia and China have seen their influence increase. Moscow and Beijing are playing the game for keeps — while America, pledged to “leading from behind,” no longer does much leading at all. In their book *A New Cold War*, Douglas Schoen and Melik Kaylan systematically chronicle the growing threat from the Russian-Chinese Axis, and they argue that only a rebirth of American leadership in the world can counter the corrosive impact of this anti-democratic alliance, which soon may threaten the peace and security of the world. More at www.encounterbooks.com.

- By the publisher of the prestigious *Grant's Interest Rate Observer*, *The Forgotten Depression — 1921: The Crash That Cured Itself* is an account of the deep economic slump of 1920–21 that proposes, with respect to federal intervention, “less is more.” This is a free-market rejoinder to the Keynesian stimulus applied by Presidents Bush and Obama to the 2007–09 recession, in whose aftereffects, James Grant asserts, the nation still toils. Grant tells the story of America's last governmentally untreated depression; relatively brief and self-correcting, it gave way to the Roaring '20s. In 1920–21, Woodrow Wilson and Warren Harding met a deep economic slump by seeming to ignore it, implementing policies that most 21st-century economists would call backward. See more at www.simondschuster.com. CJ

Book review

Folsoms Recount Government Business Disasters

• Burton Folsom and Anita Folsom, *Uncle Sam Can't Count: A History of Failed Government Investments, from Beaver Pelts to Green Energy*, Broadside Books, 2014, 239 pages, \$26.99.

By GEORGE LEEF
Contributor

THE day after the 2010 midterm elections, the federal government quietly announced the bankruptcy of Solyndra, a “green energy” company that had been touted by President Obama as a leader in the kind of innovation that would help the planet to “heal.”

Solyndra was founded by a big supporter of the president, and early in 2009 the company had received a \$535 million loan from the government. In less than two years, the taxpayers were stuck with the loss.

Solyndra is a recent instance of the almost invariably foolish combination of government and business, but few Americans have any idea about our long history of such “partnerships.” As authors Burton and Anita Folsom show in this wonderful book, we have been making that mistake since our earliest days as a nation.

Throughout the book, the stories the Folsoms tell are fascinating but at the same time maddening, since they leave you thinking, “How could the politicians have been so stupid?”

Let's start with the beaver pelts. George Washington had led the war for independence from Britain, but he nevertheless adhered to British mercantilistic concepts, under which the government established and supported business enterprises for the supposed national good.

In 1795, with his backing, Congress passed an appropriation of \$50,000 to create a number of trading posts in the Northwest Territories. The purpose was to counter British influence among the Indians by purchasing furs from them and selling goods to them.

There were private traders doing exactly that, but Washington and the Federalists who controlled Congress thought them inadequate for the national purpose. They were certain that the government must get involved.

Although these posts were expected at least to break even, they lost money, and the subsidies had to be increased steadily.

In 1808, John Jacob Astor, a German immigrant, went into the trading business. With his own money at stake and possessing a much sharper mind for business than the government functionaries running the competing posts, Astor earned good profits.

The man in charge of the government's operations, Thomas McKenney, turned to politics instead of figuring out how to compete against Astor. He wheedled more money from Congress and also sought high licensing fees for all his competitors. He even tried to get Congress to ban his free-market rivals. McKenney was the prototype of what the Folsoms call a “political entrepreneur” — eager to “win” through political influence rather than by doing a better job of satisfying consumers.

Finally, in 1822, Sen. Thomas Hart Benton managed

to get a bill passed that ended the subsidies and closed the government posts, after 27 years of waste.

Another fascinating story the authors tell is that of our early steamship industry. Here, the central character is another famous business magnate, Cornelius Vanderbilt.

In his youth, Vanderbilt worked for Thomas Gibbons, who broke the Hudson River steamboat monopoly given to Robert Fulton by New York. Soon Vanderbilt was in business on his own, rapidly improving the steamboat, lowering fares, and improving customer service.

Vanderbilt was so successful that the cartel he competed against, the Hudson Steamboat Association, offered to buy him out for \$100,000, provided that he would not run boats for 10 years. He took the deal, but it did the cartel little good. It raised prices after Vanderbilt left, but other entrepreneurs quickly entered the market and undercut its prices.

With the capital from the River Association, Vanderbilt went into the business of trans-Atlantic shipping. The British were already there, Parliament having given Samuel Cunard a large subsidy for passenger and mail service. Shortly thereafter, the U.S. government followed suit, subsidizing Edward Collins to compete with Cunard.

How could Vanderbilt survive against such subsidized and earlier-established rivals? By innovation and superior efficiency, that's how.

When Vanderbilt's lower fares put Collins into financial trouble, naturally he looked to politics for salvation. He pleaded for bigger subsidies and got them. But while Vanderbilt kept working to lower his costs, Collins squandered money building huge, luxurious ships that lost money in competition.

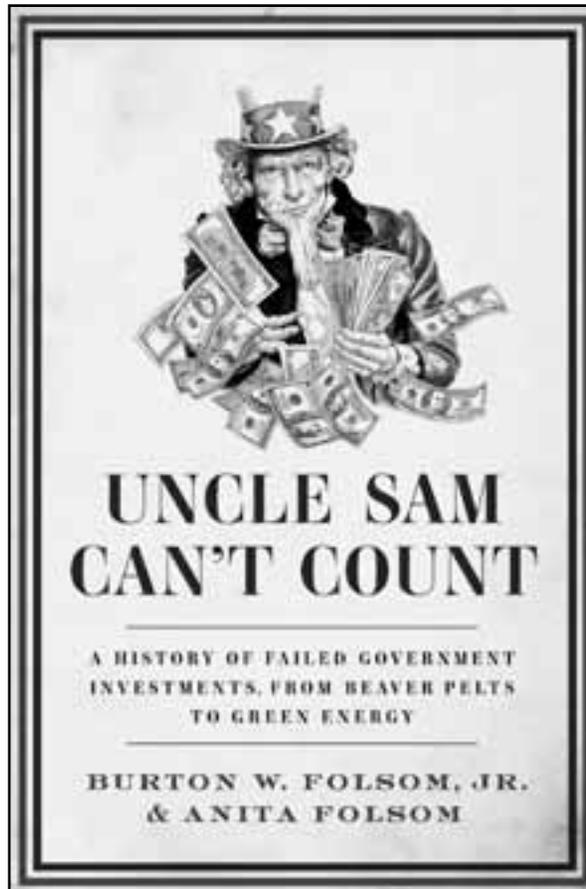
Economic sense finally prevailed when President Franklin Pierce vetoed the Collins subsidy in 1855. Vanderbilt continued to improve steamship travel and, amazingly, created the first canal across Central America so that ships wouldn't have to sail around the tip of South America to reach California. That canal went across Nicaragua in 1854.

Why we had to wait until 1914 for the completion of the Panama Canal rather than benefiting from Vanderbilt's canal completed 60 years earlier is a fascinating story, but you'll have to read the book to find out about it.

Among the other illuminating stories about our failed governmental forays into business the book covers are the canals and railroads built in Michigan by its “boy governor” Stevens Mason, the subsidized waste and corruption of the transcontinental railroads built after the Civil War (with the notable exception of J.J. Hill's sound and unsubsidized Great Northern), and the government's support for Samuel Langley, who flopped in competition with the Wright brothers to build the first airplane.

Government should stick to its few proper tasks, which don't include business operations. If you doubt that, you really must read this book. CJ

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



Ebola Outbreak Recalls Memories of Flu Pandemic of 1918

The recent outbreak of the Ebola virus in West Africa and the few recent infections in the United States have alarmed many Americans. Considering how modern transportation and technology have made the wide world into a smaller place, Americans should be concerned. The Ebola crisis, although different, reminded me of the Flu Pandemic that spread across the globe in 1918.

There have been flu epidemics throughout history, but the one in 1918 was different. Although many Americans died from the 1890 flu virus, many survivors lived long enough to endure the 1918 pandemic. The latter was decimating. Some researchers estimate that the airborne virus killed between 20 million and 40 million people across the globe in an age of modern transportation. (The exact number of worldwide deaths is difficult to know.) In the United States approximately 24 million caught the Spanish Influenza, as it was called, and in roughly six months approxi-



**TROY
KICKLER**

mately 600,000 died.

However, few history textbooks — I checked those on my office bookshelves — include even a mention of the devastating 1918 pandemic, a virus that killed more people than those who died during World War I, one of the most destructive conflicts in modern warfare. Some textbooks entirely overlooked the flu pandemic. A few others had only a couple of sentences describing the pandemic, combining it and thereby equating the decimating virus with events such as the 1919 Black Sox scandal to prove that Americans lived through troubling and controversial times in 1918 and 1919. One textbook did have a lengthy section — approximately one page along with an informative graph on a subsequent page relaying the horrific effects of the pandemic.

Why the reticence regarding what one historian has called America's "forgotten pandemic"? For one, many who lived through the nightmare wanted to forget the tragedy. Many knowledgeable first hand ob-

servers, notably doctors, did not write memoirs of the experience. Second, the horrid pandemic occurred while Western Civilization almost committed cultural suicide in World War I. In other words, it was one of many in a series of unfortunate events. Third,

some scholars have speculated that the Spanish Influenza of 1918 is not discussed in depth because no great leader died from contracting the flu. (The first two are more plausible reasons.)

Another reason is that the flu pandemic of 1918 still baffles scientists. Unlike other flu viruses that preyed on those younger than 5, the elderly, and the ill, the 1918 flu attacked 20- to 40-year-olds. The outbreak occurred first in military camps, and many soldiers, in their physical prime, died in the United States while preparing to fight the Central Powers in Europe.

The victims died approximately five days after contracting the aggressive flu virus. Descriptions of the victims' final days reveal a horrific end as the poor soul, with a gradually venous and discolored face, regressed from

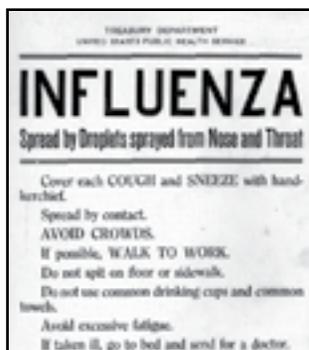
deliberate, heavy breathing, to gasping, and then essentially to drowning in his or her own fluids.

The first known case in America happened in Fort Riley, Kan., and a couple of months later, reports revealed that the influenza was infecting Europe. As the U.S. armed forces were deployed to Europe and as European forces traveled to and fro across the continent, the virus spread rapidly. (Some commanders, such as General Erich von Lundendorff, contended that the pandemic weakened the final German offensive in 1918.)

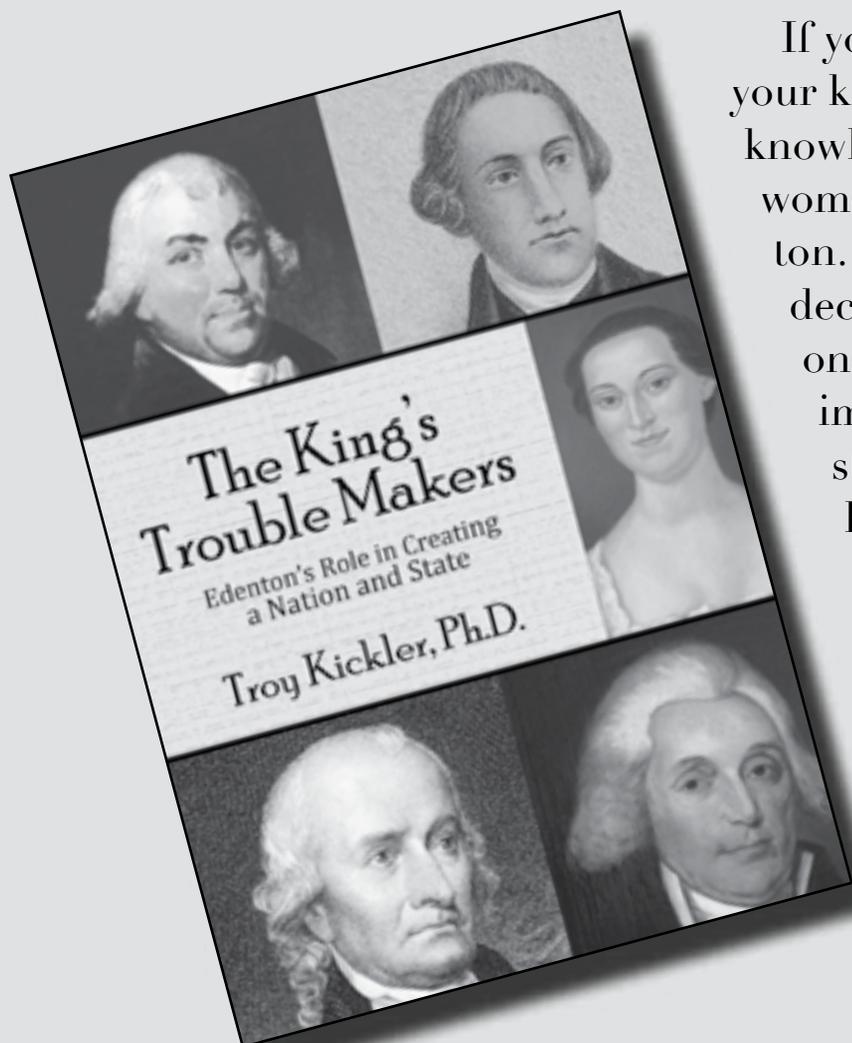
Meanwhile, in the United States, hopeful preventive measures were implemented — soldiers gargled with alcohol, hospital staff hung sheets between beds, and some municipalities passed ordinances requiring residents to wear gauze masks when in public places or using public transportation. The flu virus disappeared almost as quickly as it arrived, and the disappearance also baffles researchers.

Let's hope another "forgotten pandemic," of any sort, does not attack the United States or anywhere else on the planet. CJ

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



BOOKS BY JOHN LOCKE FOUNDATION AUTHORS



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

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

Go to northcarolinahistory.org for more information.

Book review

Gilder Says Free-Market Theory Ignores Altruism of Entrepreneurs

• George Gilder, *Knowledge And Power: The Information Theory of Capitalism and How It Is Revolutionizing Our World*, Regnery, 2013, 350 pages, \$27.95.

By MITCH KOKAI
Associate Editor

RALEIGH
George Gilder doesn't quote the Bard, but one could picture him as Hamlet to his reader's Horatio, pointing out: "There are more things in heaven and Earth ... than are dreamt of in your philosophy."

That famous line of Shakespeare's came to mind on several occasions during this reader's journey through Gilder's latest book. More than 30 years after his classic *Wealth And Poverty* helped provide the intellectual firepower supporting the growth of supply-side economics, *Knowledge And Power* arrives to challenge fundamental concepts of economic thought.

Gilder is no supporter of big, intrusive government or central planning, and fans of free markets will find plenty to cheer. But Gilder also takes on well-established notions of economic thought that guide many thinkers on the political right.

A key observation to which Gilder returns repeatedly is the absence from traditional economic models of an adequate measure of the entrepreneur. "At the heart of capitalistic growth," he writes, "is not the mechanistic *homo economicus* but conscious, willful, often altruistic, inventive man. Although a marketplace may work mechanically, an economy is in no sense a great machine.

"The market provides only the perfunctory denouement of a tempestuous drama, dominated by the

incalculable creativity of entrepreneurs, making purposeful gifts without predetermined returns, launching enterprise into the always unknown future," Gilder continues. "The market is the conduit, not the content; the low-entropy carrier, not the high-entropy message. Capitalism begins not with exchange but with giving, not with determinist rationality but with creation and surprisal."

If the references to "entropy" and "surprisal" sound confusing, be prepared to spend much of your reading time wrestling with Gilder's arguments. He urges economic thinkers to adopt the concepts of information theory. And while Gilder devotes significant space to that theory, including a glossary of key terms, this reader realized at the end of the book that both the theory and its application to economic phenomena remain somewhat unclear.

That's not Gilder's fault. This reader needs to spend more time reviewing key chapters and exploring other texts on information theory before assessing with confidence the merits and demerits of the author's case.

One consequence of Gilder's presentation of information theory is clear: An overly active government creates too much "noise," defined in Gilder's glossary as "Any influence of the conduit on the content; an undesired disturbance in a communications channel." In other words, too much government chokes off the knowledge

that leads to economic growth.

Take, for instance, items and services government provides at no direct cost. "Perhaps the most obvious rule of public policy is that people will abuse any free good," Gilder writes. "Evoking unbounded demand while choking off supply, free goods and free services destroy information and lead to corrupt decision-making.

"In the perverse feedback loops of free goods, free health care comes to mean hypochondria and needless illness caused by needless exams and treatments, queues for an ever-expanding political portfolio of mediocre services, and — at the end of the line — euthanasia under government bureaucracy," he adds. "Free drugs lead to widespread addiction to existing medications and an end to medical

innovation. Free money, manifested in the zero-interest-rate policy of the Federal Reserve, diverts the wealth of savers to favored governments and crony capitalists while creating shortages for everyone else."

Similarly shrewd pronouncements abound in Gilder's work — even in his endnotes. Among notes linked to a chapter on "The Fecklessness of Efficiency," Gilder reminds us about the importance of "loss" in a system of profit and loss. "Vital to capitalist profits are falsifiability; the possibility of bankruptcy. The raptorial revels of bankers with government moneys and guarantees are indefensible by any

valid theory of capitalism."

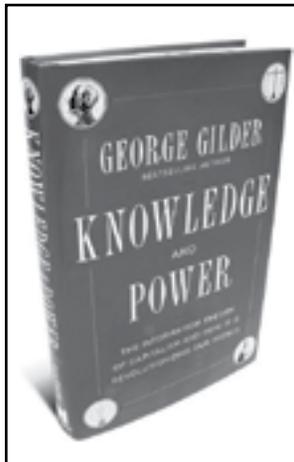
Later, while referencing environmentalists' opposition to fossil fuels, Gilder cites "the first critique of environmentalism to demonstrate that the 'green' movement is the world's chief threat to the environment because it squanders precious land to obviate use of abundant subterranean resources extractable with little or no permanent damage to the environment."

One of Gilder's greatest contributions involves a rebuttal of popular arguments suggesting that capitalism depends on greed and selfishness. His final chapter asserts at the outset: "Capitalism begins with giving." How so? "It is not the exchange that elicits the goods and generates the increase in their value; it is the initial gift that evokes the desire to reciprocate, and which thus induces exchange."

"The circle of giving (the profits of the economy) will grow as long as the gifts are consistently valued more by the receivers than by the givers," Gilder adds. "In deciding what new goods to assemble or create, therefore, the givers or investors must be willing to focus on others' needs more than on their own. The difference between the value of an item to the giver and its value to the recipient is the profit. Profit is thus an index of the altruism of an investment."

The "genius" of capitalism results from the way in which it allows those successful givers to continue making decisions about when, where, and how to give — without government dictates. CJ

Mitch Kokai is an associate editor of Carolina Journal.



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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

Obama Insider Envisions Community Organizing in Islamic World

• Vali Nasr, *The Dispensable Nation: American Foreign Policy in Retreat*, Anchor Books, 2013, 300 pages, \$19.00.

BY LLOYD BILLINGSLEY
Contributor

RALEIGH
The *Dispensable Nation* failed to make much of a media splash last year, a shame because the book packs material relevant for 2016 and beyond. The initial low profile was partly by design.

"I didn't want the book used as a bludgeon," explains Nasr, dean of the Paul H. Nitze School of Advanced International Studies at Johns Hopkins University. That is, he didn't want the "American Right" and Republicans to use the book against his former boss, Barack Obama.

When the Right was belittling Obama's background as a community organizer, Nasr explains, "I thought to myself that the Middle East could use a little community organizing." And that "is why I joined the administration." But as senior adviser to Ambassador Richard Holbrooke, special representative for Afghanistan and Pakistan, Nasr was in for a surprise. He found "truly disturbing" the president's habit of "funneling major foreign policy decisions through a small cabal of relatively inexperienced White House advisers whose turf was strictly politics." Further, "the primary concern of these advisers was how any action in Afghanistan or the Middle East would play on the nightly news, or which talking point it would give the Republicans in the relentless war they were waging against the president."

The author says Obama gets "high marks on foreign policy" from

the public because his "principal aim is not to make strategic decisions but satisfy public opinion." Likewise, any praise for his "successful handling of foreign policy," whatever that means, had less to do with accomplishments "than with how American actions in that region of the world were reshaped to accommodate partisan political concerns in a way unimaginable a few decades ago." Maybe that is the transformation of America the president wanted all along.

Nasr also has some fascinating observations about former Secretary of State Hillary Clinton, an "incredibly dedicated and talented" person who wants to be president. Hillary proved she was a "team player," but Obama's inner circle "remained concerned with her popularity and approval ratings, and feared that she could overshadow the president." Even so, "when things seemed to be falling apart, the administration finally turned to Hillary because they knew she was the only person who could save the situation, and she did that time and again." Many readers will wonder what situations the author has in mind.

The Dispensable Nation contains nothing on the Sept. 11, 2012, terrorist attack in Benghazi, which Clinton claimed was part of a protest over a video. Interestingly enough, Nasr told *The New York Times* that he held off on releasing his book before the November 2012 elections, lest he "meddle" in the political debate. Presumably the

introduction of facts to the debate is unacceptable in scholarly circles.

Obama, meanwhile, wants to lead from behind, but Vali Nasr wants the United States to be, as Bill Clinton said, "the indispensable nation," the world leader by default, solving problems everywhere. Readers will not be convinced this is a great idea.

Nasr goes into detail on America's "frenemies" with their warring Sunni and Shiite factions. When these frenemies are disposed toward America, the reason is usually money.

In the decade after 9/11, the author notes, Pakistan got \$20.7 billion in assistance from the United States. But Pakistan's finance minister, Hinna Rabbani Khar, tells Richard Holbrooke most of the money gets spent in Washington, and that of every dollar maybe 10 cents gets to Pakistan. So the aid accomplishes nothing.

In similar style, an Arab foreign minister tells Holbrooke, "You can pay to end this war. One billion dollars." And this was the discount price.

In Afghanistan, "yes, there was waste and graft and millions were embezzled." But of course, Nasr explains, it is "still a tribal society" where such things were seen as a duty to the community. And after all, "that sort of corruption is not alien to politics."

Egypt, the author says, "would have to open its economy, shrink its bloated and corrupt public sector, reform its laws and financial regulations," and also "promote privatiza-

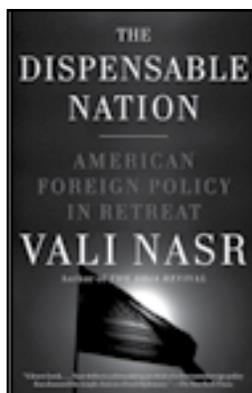
tion, trade, and direct foreign investment." It has escaped the author's notice that the United States also has a bloated and corrupt public sector, as well as an overregulated economy in need of privatization. What kind of example is that?

In Saudi Arabia, "jacked-up entitlement spending has poured oil on the troubled waters," but this can't last. No word whether the creation of new entitlements like Obamacare, and jacked-up spending on the others, will make the United States a shining star for the region. No matter, because "we still have all the ingredients for global leadership," and Nasr is even talking about a Marshall Plan for the Middle East. "We have done it in the past," he says, "and we can do it again." But Nasr gives readers reason to be skeptical.

The Arab Spring "is not a rising liberal order but an ascendant Islamist one," and the Taliban "will win Afghanistan again." And what about the prospect of nuclear weapons in Iran? Why, the Ayatollah Khamenei has declared nuclear weapons a "great sin." So no worries.

On the other hand, Nasr is more upbeat about the United States escaping dependence on Middle East oil. "The Right's solution is to find more oil at home," he says, "and this might well work." Readers and presidential candidates may well agree. Better to drill here, get our own house in order, and let the Middle East fund its own community organizing. CJ

Lloyd Billingsley is author of *Hollywood Party: Stalinist Adventures in the American Movie Industry*, *Exceptional Depravity: Dan Who Likes Dark and Double Murder in Davis, California*, both now available for Kindle on Amazon.



BOOKS AUTHORED BY JLF STAFFERS



By John Hood
President of the
John Locke Foundation

Selling the Dream

Why Advertising is Good Business



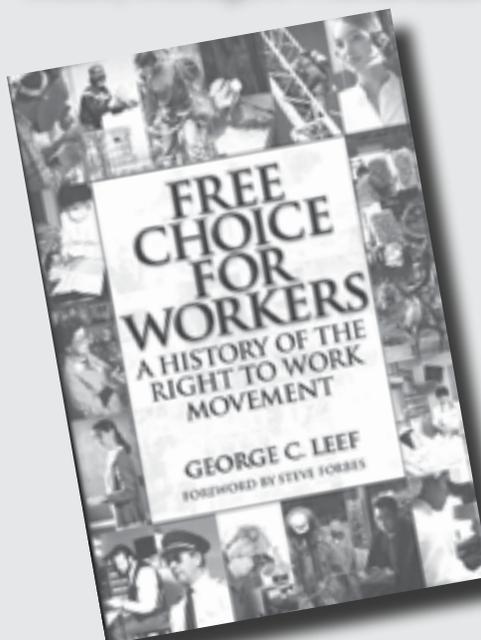
"[Selling the Dream] provides a fascinating look into the world of advertising and beyond ... Highly recommended."

Choice
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Free Choice for Workers:

A History of the Right to Work Movement



By George C. Leef
Director of Research at the John W.
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COMMENTARY

Don't Let Technicality Deny Eugenics Victims

As the first checks compensating the survivors of North Carolina's forced-sterilization program reach the victims, a key deadline may pass with very few of the others qualifying. That isn't good news.

From an Associated Press report, it seems as if victims may be disqualified for compensation owing to a legal technicality — that they were sterilized on orders by county, not state, authorities.

"As of Sept. 30, the N.C. Industrial Commission had approved 213 claims for compensation of the 731 claims reviewed, or about 30 percent," the AP reports. "Major reasons for denials ... include missing paperwork and a determination someone wasn't sterilized on orders of the Eugenics Board of North Carolina but on orders issued at the county level, said Graham Wilson, spokesman for the state Commerce Department. That department oversees the industrial commission tasked with approving claims."

That's the way the statute was written. The budget bill of 2013, which included the compensation, defines a "qualified recipient" as "an individual who was asexualized involuntarily or sterilized involuntarily under the authority of the Eugenics Board of North Carolina in accordance with Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937."

But if ever there were an instance of violating the spirit of a law by abiding by the strict letter of the law, it is here. Counties get their authority from the state. A much broader reading of the statute is morally warranted.

Involuntary sterilization — the AP noted that some victims were "as young as 10 and chosen because they were promiscuous or did not get along with their schoolmates" — was a serious harm inflicted by the state against its citizens. Providing some remedy, however late, to actual victims should not hinge on whether the hideous government order originated from the state eugenics board directly or from county officials operating under their wrongheaded example.

Not that much is improved

by disqualification for "missing paperwork." While there should be some benchmarks for establishing proof of victimhood, it would seem reasonable to expect that a person having the same name as a recorded sterilization victim, having some evidence to show himself as being that victim, and being in fact sterilized would be enough.

North Carolina's forced-sterilization program spanned five decades, from 1929 to 1977. It was

steeped in the eugenics fascination promoted by "Progressives" who sought to further human evolution by preventing "undesirables" from reproducing, leaving reproduction to "desirable" members of society.

If that sounds like something out of Nazi Germany, it was. But while the Nazis' eugenics exposed its

true nature and made it ultimately untenable, eugenics was embraced throughout the United States as well. North Carolina was joined by 30 other states with eugenics programs.

North Carolina's forced-sterilization program actually began before the Nazis', and it lasted longer — in fact, over three-fourths of the approximately 7,600 victims were sterilized after 1945. As my former John Locke Foundation colleague Daren Bakst showed, North Carolina's eugenics program represented a complete failure by all three branches of government to protect its citizens:

- Approved by the legislature
- Implemented by the executive branch
- Deemed constitutional by the judiciary

With its forced-sterilization program, the state of North Carolina was obviously and morally in the wrong. So it was right and proper for the General Assembly finally to address that wrong by establishing this compensation program.

It would be a shame — not to mention shabby and inexplicably petty — to deny the clear intent of the program through an overly rigid interpretation of the statute. CJ

Jon Sanders is director of regulatory studies for the John Locke Foundation.



JON SANDERS

CONSTITUTION
GOREL



EDITORIAL

The Wages Of Government

The question — "Who should set the minimum wage?" — and its constant companion — "How high should it be?" — became staples at political debates during the recent election season, in part, because Democratic pollsters have found significant public support for a measure pushed by President Obama to raise the federal minimum to \$10.10 an hour from the current \$7.25 — and Democrats were desperate for an issue to boost their candidates' flagging popularity.

And while it may be difficult to believe an ideological debate remains over the impact of mandating higher wages on employers, the assumption that government must set the minimum afflicts even some conservatives and libertarians. We heard several candidates from the right side of the political spectrum suggest state government should set the minimum wage and others say that the wage floor should rise alongside inflation or other price indexes.

The fact is, wages and other forms of compensation are set by market forces. But government policies can disrupt those market signals, standing in between businesses willing to hire and workers hoping to be hired.

Employment is a voluntary arrangement between an employer and an employee, who agree to exchange compensation (wages, benefits, education, security/tenure) for "work" (labor, skill, knowledge, expertise). The exchange occurs when both parties agree that the other side is offering a bargain. If the worker demands higher compensation than the employer is willing to pay, or the employer offers

wages and benefits that do not satisfy the worker's demands, there's no deal. No one is hired. The wage paid is zero.

Government can prevent these voluntary transactions from taking place. The market may set compensation levels, but when governments force those levels higher than an applicant or current jobholder justifies, then the applicant will not be hired and the current worker will see his hours cut or his job eliminated.

Set a minimum wage too high, and workers with low skills and little job experience may never get their first job, and current employees with modest talents may be laid off.

Moreover, wages are hardly the only form of compensation. Obamacare promises to become a new tax on hiring. Under the law's employer mandate, companies will be forced to provide a government-approved package of health insurance to all workers who put in more than 30 hours weekly. The mandate will reduce employment, as fewer people without jobs will get work and many (especially at the lower end of the wage scale) who do have jobs will see their hours cut and take-home pay reduced.

In February, the Congressional Budget Office projected that, by 2024, the employer mandate will reduce the number of hours worked annually by the equivalent of 2.5 million full-time employees. Those are real people who will lose take-home pay if they can get jobs at all.

The bottom line: Markets set wages and compensation levels, but government policies often determine who (if anyone) gets hired. CJ

EDITORIALS

Borrow When It Saves

Withhold judgment until we see the details

Fiscal conservatives tend to look askance at large issuances of public debt. In this sentiment, they are in good company. "I go on the principle that a public debt is a public curse," wrote James Madison, "and in a Republican government a greater curse than any other."

To advise against a large accumulation of public debt suggests using debt only for large-scale projects with high costs in the short run and high returns in the long run. Which brings us to Gov. Pat McCrory's recent recommendation that the state issue \$1 billion in bonds to finance a package of transportation improvements across the state.



James Madison

North Carolina traditionally has been a low-debt state. Over the decades, state and local policymakers devoted substantial sums to capital needs on a pay-as-you-go basis while using bonded debt as a supplement. Around the turn of the 21st century, that began to change. In 1998, the total cost of servicing the state's debt was \$166 million, or about \$22 per resident. By 2013, debt service had risen to \$843 million, or \$91 per resident. Counties and municipalities loaded up on more debt at the same time.

But other states' balance sheets have fared worse, and state Treasurer Janet Cowell has noted that North Carolina has the capacity to add \$570 million in General Fund debt and \$805 million in Highway Fund debt without triggering scrutiny by bond-rating agencies.

Everything else being equal, borrowing is costlier than paying as you go. And every dollar spent on servicing an infrastructure debt is a dollar that can't be spent on something North Carolinians might value more, such as teacher salaries, community-college training, or tax relief.

McCrory has yet to formalize the list of projects he'd fund with a \$1 billion bond or explain how it would be financed. Conservatives should withhold judgment until he does so. For example, if he proposed to fund light-rail schemes or low-traffic road projects with gas-tax hikes, *Carolina Journal* would say no to the deal.

If he proposed to fund high-priority roads by ending the annual transfer of Highway Fund revenues to nonhighway functions, we might well say yes.

The details matter. Let's see them. *CJ*

Good News on Taxes

N.C. rates have become more competitive

Except when complaining that North Carolina isn't giving enough targeted tax incentives to Hollywood studios, solar-panel manufacturers, and commercial real-estate developers, liberals contend that cutting taxes on business has no effect on business starts, corporate relocation, or job creation.

They are mistaken. Fortunately for North Carolina's economy, lawmakers are ignoring their mistaken views.

Until this year, our state's corporate income tax rate was 6.9 percent. When added to the federal tax rate, which works out to 32.8 percent when adjusted for deductibility, that put North Carolina at a serious disadvantage compared to locations in Europe (where combined corporate rates average 26 percent) and Asia (28 percent). Admittedly, corporations typically don't pay the published tax rate, due to various exclusions and exemptions.

But this happens around the world, not just in the United States.

Tax rates are far from the only consideration in business decisions. Otherwise all corporations would relocate to Ireland (with a rate of 12.5 percent). Still, it is the height of folly to assume that we can afford to ignore the corporate tax burden when it is lower in every other industrialized country, as well as in many American states.

That's why Gov. Pat McCrory and the legislature decided to act. In the tax reform enacted last year, North Carolina's corporate tax rate fell to 6 percent in 2014. If state revenue targets are met, it will continue to fall by a point a year through 2017, when at 3 percent it will be half the national average and significantly below that of our neighbors.

North Carolina's reforms represent a welcome step in the right direction. *CJ*

COMMENTARY

Spending Has Diminishing Returns

One of my favorite modern historians, the late Rufus Fears at the University of Oklahoma, was fond of saying that "ideas make history." University of Chicago professor and North Carolina native Richard Weaver expressed a similar view in his famous 1948 book *Ideas Have Consequences*.

Sounds obvious, I know, but both men were challenging the orthodoxy of scholars, usually but not always Marxists, who believed that inexorable social forces determined the outcome of history. Ironically, Marxism itself was one of the most consequential ideas in human history, producing suffering and death on a massive scale.

Another powerful idea, one with revelatory rather than destructive consequences, was that of diminishing returns.

A related concept in economics, diminishing marginal utility, became influential at about the same time Marxism did, in the late 19th century. It was independently described and developed by three different economists in the 1870s: William Stanley Jevons in England, Carl Menger in Austria, and Leon Walras in Switzerland. Not coincidentally, they helped found three of the great modern traditions of economic thought: neoclassical economics, Austrian economics, and general-equilibrium theory, respectively.

What's the idea? That you can't predict the effect or value of something without first knowing how much of it is already present. In farming, for example, you get a lot of initial value out of fertilizing your fields. As you keep adding more fertilizer, however, each new increment has less of a productive effect than before. Eventually you reach a point at which additional fertilizer is actually harmful.

Marginal utility is a valuable tool for explaining things that might otherwise seem puzzling. Why can the same good be worth \$5 at one time or place and only \$1 at a different time and place? Because value is determined by circumstances. A lost traveler stumbling out of the desert will put a higher value on a drink of water than will an office worker who sits near a water fountain.

In public policy, the concept comes into play when discussing issues such as transportation and education. In the early 20th century, when the automobile was just

beginning to become a popular consumer good, state and local governments used property and gas taxes to build their first real networks of graded, dedicated, and, later, paved roadways. The economic and social benefits of this investment were massive. Next, during the 1950s, a new wave of federal, state, and local spending gave us limited-access highways (interstates) and a more extensive set of paved secondary roads. Again the benefits were substantial, albeit not quite as massive.

Today, the practical value of adding more lanes or highways to the existing road network is smaller. That's not an argument against building them. It is an argument for being choosy about which ones to build, so that the marginal benefits remain likely to exceed the marginal costs.

In education, there has also been a clearly diminishing return on tax dollars spent. During the early to mid-20th century, rising expenditures were associated with building schools where few existed, offering high school to many for the first time, equalizing opportunities across class and race, and establishing minimum standards for personnel and curriculum. Since the early 1970s, however, real, per-pupil spending on public education has risen substantially while the average performance of 17-year-olds on national math and reading exams has barely budged.

The story line is a bit different in North Carolina, where additional programs and educational expenditures during the 1970s and 1980s may explain partially the significant gains that North Carolina students made on independent reading and math exams during the 1990s. But the next wave of state reforms and spending increases, during the 1990s and part of the 2000s, did not produce a commensurate rise in achievement among the affected students.

In neither transportation nor education has North Carolina reached the end of potential improvement, of course. The point is that additional progress will have to come largely from productivity gains, not from simply spending tomorrow's money on yesterday's terms. *CJ*

John Hood is chairman of the John Locke Foundation.



JOHN HOOD

MEDIA MANGLE

*Accountability
Not a Gimmick*

Newspapers never have been hesitant to shame a public official into appropriate behavior. It's a time-honored tradition.

Have you ever noticed things like "Sen. Blowhard did not return a phone call," or "Rep. Self-Dealer did not answer an email" in news stories? Those are there not just to let the reader know that the politician could not be contacted.

They are there to let the reader know that this person, elected by you, the voter, did not see fit to answer these important questions related to his or her job as a public servant.

And there is no more important time for a politician to be open and available to the public (via the media) than during an election.

There was a time when a politician hiding during the very time they were asking for votes would make the media's antennae go up like an infield fly.

When I was managing editor of *The Herald-Sun* in Durham, we held candidate debates in our building's meeting room every election. If there were eight people running for a particular office, we made sure that there were eight microphones on the table, eight glasses of water, eight notepads, eight pens, and eight nameplates.

If one of these electoral hopefuls chose not to show up, the microphone, water, pen, notepad, and nameplate stayed there, even in their absence. That was my call, my reasoning being that if only seven showed up, and there was not an empty seat showing, the public would not understand that there was a candidate in the race in addition to the ones who showed up.

Likewise, if a candidate declined or refused to answer our election-section questionnaire, we made sure that the public knew that. We'd run a space in the section with their photo and a prominent note saying they did not choose to participate. This act alone is as valuable a bit of information for the voter as a completed questionnaire.

Newspapers, at least in the past, had no qualms about doing these things. Call it ridicule, shame, coercion, whatever. Our feeling was that these people wanting to run some level of government should be accountable to the voters, and part of that accountability should be answering questions and attending debates with opponents.

Which is why I was so surprised at the last U.S. senatorial debate when the sponsoring newspapers, *The News & Observer* and *The Charlotte Observer*, chose not to participate because of the "gimmick" that an empty chair would be used to show that Sen. Kay Hagan chose not to show up to debate Thom Tillis.

It is never a gimmick to show voters that a candidate chose not to attend a debate. There was a time when newspapers saw this kind of thing as part of their responsibility under the First Amendment. But times change, I guess. CJ

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



**JON
HAM**

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Stability and Control

Most of us focus on decisions affecting our daily lives — earning an income, spending, investing, and looking ahead to our retirement. Businesses face similar choices about production, advertising, workers, and pricing. Even public institutions have to make a wide range of management selections.

Economists call these types of choices micro-economic decisions because they deal with individual entities trying to make decisions to advance their overall objective, like happiness for a household or profits for a business.

However, we don't live in our own individual economic worlds. Our economic worlds are interconnected. Individuals earn income by working for businesses. Businesses earn income by selling to individuals and to other businesses. Governments levy taxes on individuals and businesses and provide services.

Putting these individual economic players together forms the macroeconomy. Until a century ago, economists didn't pay much attention to the macroeconomy. Then came the "Long Recession" of the 1870s, the "Great Depression" of the 1930s, and several other less serious economic downturns.

Since then, a great deal of economic brainpower has gone into analyzing the macroeconomy. One conclusion that some economists have reached is, perhaps, rather startling. It is that the macroeconomy is inherently unstable and recession-prone.

The argument is actually simple. When the economy is doing well and expanding, sales and profits increase, incomes grow, and optimism about the economy's future becomes widespread. People see nothing but blue skies ahead. Lenders feel the same way, so they lower lending standards to allow households and businesses to take on more debt.

All is well as long as the economy grows and nothing happens to disrupt the general optimism. Yet it could be something small, like an uptick in interest rates or lackluster corporate earnings — or something big, such as a foreign war or international default, that ultimately upsets the good feelings. Once the optimism is shattered, people begin

to worry. Investors sell rather than buy. Businesses delay expansion plans and cut payrolls. And — perhaps worst of all — some households and businesses find they now can't meet the payments on their debts. If lenders — like banks — aren't paid and depositors fear their money isn't safe, a "run on the banks" can set off widespread economic panic and a recession — or worse.

We saw this scenario unfold during the recent recession. Optimism about the economy and particularly the housing market fueled record-high debts in the early 2000s. But pessimism took over toward the end of the decade, and the economy experienced the housing crash, debt defaults, and the worst recession in 70 years.

We now have institutions and programs, like the Federal Reserve and federal deposit insurance, to cushion the blows of recessions. There were no bank runs during the recent recession, although there were "runs" on nonbank lenders, and the Federal Reserve had to scramble to contain them.

Still, if we know that excessive economic optimism eventually leads to unsustainable borrowing and a recessionary correction, can public policymakers impose controls to bring more stability to the economy?

This is a big, big question in economic policy circles — one that has been debated for decades. One option is for government to attempt to moderate the growth of credit during "boom times." The Federal Reserve has some tools to do this, including the ability to limit the amount of bank deposits that can be loaned as well as the interest rate charged on loans. Also, federal legislation passed in the aftermath of the recent recession has added some further restrictions on bank lending.

Of course, such controls and limits have downsides, because they restrict the ability of borrowers to obtain funds. As a result, the economy tends to grow slower than it would have without the controls. This is a common explanation of why business expansion and job growth are lagging in many parts of the economy.

So if our economy is inherently unstable, the question is how to deal with it. We're still deciding. CJ

Michael Walden is a Reynolds Distinguished Professor at N.C. State University.



**MICHAEL
WALDEN**

A Referendum on State Policy

The election of 2014 will have widespread impacts. It will determine who will control the legislative branch, directly affect policy decisions (whether to repeal, replace, or renew earlier reforms), and set the stage for the 2016 election and beyond. I am talking, of course, about the election for the North Carolina General Assembly.

So much ink, bandwidth, and money have focused on North Carolina's U.S. Senate race, but the implications of this election on state policies have been overlooked. And that's a shame.

While as the incumbent U.S. senator, Democrat Kay Hagan has had to defend President Obama's policies, Thom Tillis as the speaker of the N.C. House has had to defend the policies of the Republican-led General Assembly and GOP Gov. Pat McCrory.

Since Republicans took control of the legislative branch in 2011, they have implemented a very aggressive reform agenda. They have reformed our tax system, rolled back regulations, strengthened infrastructure, raised teacher pay, expanded school choice, and restored integrity to our elections. It has been transformational and has taken strong, bold leadership.



BECKI GRAY

The U.S. Senate race between Hagan and Tillis has become a referendum on Republican-led policies. How will the results affect further reforms in North Carolina?

Not only Tillis but also every Republican legislative candidate has had to defend the policies. Republican candidates have been attacked for raising teacher pay, reducing tax rates across the board, exploring new energy sources, and refusing to expand a broken Medicaid program. In spite of signs of a recovering economy, more people getting back to work, and more opportunities for North Carolina students to excel, the attacks have been relentless and often misleading.

I believe the policies are good for the state and its people. We are starting to see signs that they are working. But change is hard, and these changes have been difficult to accomplish. Policymakers have struggled to find a balance between being aggressive enough to make a difference and slow enough to enact deliberate change. What will it take to keep the momentum going?

Republicans currently hold 33 of the 50 state Senate seats and 77 of the 120 House seats, a veto-proof majority

in both chambers. Analysis from both sides of the aisle suggests Republicans could lose some seats (although far fewer than the 22-seat-loss average for a first-term governor's midterm election). I believe if Republicans lose no more than six seats in the House and four in the Senate, they will maintain their veto-proof majorities and can

consider it a green light from voters to continue their momentum.

If Republicans lose their veto-proof majority in either body, McCrory will gain negotiating power with the General Assembly.

The governor has largely gotten much of what he wants, but there have been some differences. Without a veto-proof majority, McCrory will become an even bigger player when there's an impasse. His policies, priorities, and approach to reforms will gain importance.

This referendum on General Assembly policies also will have a huge influence on the selection of the next speaker of the House. Will the Republican caucus choose a leader to continue an aggressive reform agenda, one committed to maintaining the momentum, or someone who wants to let the dust settle a bit?

The direction of the General Assembly depends not only on numbers

but also on the ideology of its members. Depending on the election's outcome, the body could become more conservative, especially if the Republicans pick up new seats. It is less likely it will become more liberal. If the Democratic caucus becomes more conservative, it increases the likelihood of bipartisanship and could pull the body more to the middle.

Just as this year's election has become a referendum on recent Republican leadership, the 2016 election will continue that theme. McCrory is likely to face Democratic Attorney General Roy Cooper. All legislative and Council of State seats will be up for election. And the policies of McCrory and the 2015-16 General Assembly again will be the subject of the elections.

But of course, the big showdown will be in 2020. The 2021 legislature will redraw all the congressional and legislative districts, setting the stage (unless the process changes) for control of state government in the following decade. What direction will North Carolina take?

Will it be toward limited government, free markets, and personal responsibility — or for big government, regulations, and more entitlements? Will the failed policies of 140 years be resurrected, or will the aggressive reforms of the 2010s prevail? The referendum starts Nov 4. *CJ*

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

After the Midterms, GOP Must Lead

Even before the 1980 presidential election, the Reagan campaign was planning the first 100 days of a Reagan administration. The plan was precise and goal-oriented — designed to get America moving again.

Jimmy Carter had made a mess of the economy and on the world stage. The United States had lost a great deal of respect.

To be blunt, nothing seemed to work. Americans felt less secure economically and very unsure about the country's role in the world.

America was ready for change.

Today, in the fall of 2014 — by almost every measure — a great many Americans believe once again that the United States is on the wrong track.

I suggest that the Republican Party should emulate Reagan, and immediately after the midterm elections

outline a specific agenda to jump-start our anemic economy and ensure that America is safe and secure.

Suggested priorities for the 2015 Congress:

- Unleash the American economy. Clearly, this is the weakest recovery since World War II. Our businesses and corporations are being penalized and are having a hard time competing with other major industrial nations because of our onerous 35 percent corporate tax rate. To jumpstart growth, to stimulate investment and job creation, and to make America competitive internationally, we must reduce the corporate tax rate to 25 percent.

- Secure the southern border. Fund and finish the border fence. Stop the practice of catch and release by Immigration and Customs Enforcement. Enforce the laws currently on the books. We cannot ignore the growing national security threats of ISIS and Ebola. We should welcome those legal immigrants who play by the rules and enter this country legally, and we should be stalwart in our efforts to defeat any amnesty.

- Repeal Obamacare. Simply

put, socialized government-run health care does not work. By a large majority, the American people don't like Obamacare. Millions of our citizens have seen their health insurance canceled and premiums skyrocket, many have lost their doctors, and businesses have been forced to change many of their workers to part-time status to avoid Obamacare mandates. We should expand health savings accounts and make health insurance personal, portable, and affordable.

And as we did with Bill Clinton and welfare reform, we should continue to put free-market health care legislation on Obama's desk until we get this monstrosity off the backs of the American people.

- Reform taxes. Completely overhaul our tax system. It's too complicated and too cumbersome, and the IRS is too intrusive. We need to end the massive paperwork, simplify the code, and make taxes flatter, simpler, and fairer.

- Check Obama's imperial presidency. President Obama has stated frequently that if Congress won't do what he wants, he has a pen and a

phone. Congress must check Obama and his administration when they attempt to circumvent Congress and the Constitution.

- Open the Keystone XL pipeline. The House and Senate should approve the Keystone pipeline quickly and send the measure to Obama's desk for approval. The benefits are many. In addition to making America less dependent on the Middle East for oil, it is estimated that energy from the pipeline would create some 42,000 jobs.

In 2015, a proactive legislative agenda — driven by House Speaker John Boehner and newly minted Republican Senate Majority Leader Mitch McConnell — should be viewed by our team as a fresh start for America and an opportunity to move forward.

This will pay dividends for Americans and set the tone for the 2016 presidential election. *CJ*

Marc Rotterman is a senior fellow at the John Locke Foundation and a former member of the Reagan administration (1981-84).



MARC ROTTERMAN

UNC-CH Tightens Guidelines on No-Show Classes (a *CJ* parody)

BY VERNON WORMER
Higher Education Correspondent

CHAPEL HILL

Responding to a devastating report on an 18-year academic scandal focusing on steering scholarship athletes into no-show classes, UNC-Chapel Hill Chancellor Carol Folt announced that the university would tighten restrictions on the “paper” curriculum and make the courses available to the entire student body.

Folt announced a new Division of No-Show Distance Learning that would provide course credit for any UNC student, ending the favoritism toward athletes that had tarnished the university’s reputation and threatened its accreditation from the Southern Association of Colleges and Schools’ Commission on Colleges.

“After the [association] said it might review the university’s accreditation status, I decided we had to demonstrate that our no-show classes were just as rigorous as the rest of the curriculum,” Folt said.

The new division will offer no-show courses from any academic department at the Chapel Hill campus. Its curriculum is modeled after the program run from 1993-2011 by the Department of African and Afro-American Studies.

In the program, academic advisers would steer athletes who were in danger of losing their academic eligi-



The new Division of No-Show Distance Learning at UNC-Chapel Hill has resulted in the university scrambling to find space for the many needed no-show classrooms.

bility into AFAM Studies. There, department secretary Deborah Crowder and chairman Julius Nyang’oro created independent study courses that required no professor.

The courses had a single requirement for students: Submit a research paper that automatically would receive a grade of A or B.

According to a 133-page investigative report from former U.S. Justice Department official Kenneth Wainstein, more than 3,000 scholarship athletes enrolled in the courses over the 18-year period.

Crowder, who retired from the university in 2009, became angered when fraternity and sorority students discovered the no-show courses; more

than 700 enrolled in them. She and Nyang’oro maintained the no-show program, thinking they were helping athletes who faced the pressure of keeping up with the demands of school and training for sports.

Even though scholarship athletes comprise roughly 4 percent of the student body at UNC-Chapel Hill, they took 47 percent of the no-show courses. Folt says “the Division of No-Show Distance Learning is meant to rectify that injustice.” Only nonathletes will be accepted in the new program until its participation levels reflect those of the entire student body.

In addition, she said, UNC students who did not complete degrees and can cite poor grades or other aca-

ademic difficulties as evidence can enroll in the no-show classes for free and get the credits they lack for graduation.

“We also have safeguards in place to make sure that no-show students never set foot in a classroom,” Folt added. Students who are seen anywhere on the Chapel Hill campus, or who check in on social media sites such as Foursquare from locations in Chapel Hill, would lose their eligibility.

Jazminn Jordan, a barista in Portland, Ore., told *Carolina Journal* she was six credits short of a degree in chemical engineering when she dropped out of school. “I’m so jazzed that I can get my degree while I’m working the second shift here,” she said.

Skye Simmons, a tourism rickshaw operator in San Diego, Calif., also was pleased to learn of the program. “I was struggling in a Critical Theory course my senior year in political science and had to drop the course,” he said. “[Jurgen] Habermas was kicking my butt. [Now] I’ll enroll for that course online and then see what no-show courses Carolina’s offering in the master’s program.”

Folt spoke of “great possibilities” with the online program. “We can boost our faculty’s teaching load geometrically with these no-show courses,” she said. “In fact, with all this extra work they’ll take on, I may have to go to the General Assembly and demand a raise for them.” *CJ*

E.A. MORRIS

FELLOWSHIP FOR EMERGING LEADERS

The E.A. Morris Fellowship is seeking principled, energetic applicants for the 2015 Fellowship class. Applications available online or at the John Locke Foundation. Application deadline is December 8, 2014.

Please visit the E.A. Morris Fellowship Web site (www.EAMorrisFellows.org) for more information, including eligibility, program overview and application materials.

Eligibility

- Must be between the ages of 25 and 40, must be a resident of North Carolina and a U.S. citizen
- Must be willing to complete a special project requiring leadership and innovative thinking on a local level
- Must be willing to attend all program events associated with the fellowship
- Must not be the spouse of a current or past Fellow.

Timeline

Sept. 15, 2014: Application period opens

Dec. 8, 2014: Application period closes, applications due

Jan. 5, 2015: Finalist notification & invitations to Selection Weekend

Jan. 31-Feb. 1, 2015: Hello/Goodbye Gala & Selections Weekend

March 20-22, 2015: Retreat 1 — Pinhurst, NC

June 12-14, 2015: Retreat 2 — Blowing Rock, NC

Oct. 17-19, 2015: Retreat 3 — Coastal NC



www.EAMorrisFellows.org

Contact Karen Palasek | kpalasek@johnlocke.org