

**Ruling: State Bar can't compel lawyers to fund campaigns /5**



# CAROLINA JOURNAL

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

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## Review Blasts Price Earmark Waste

Fears surface that CSSP may have 'squandered' funds

By DAVID N. BASS  
Associate Editor

A program funded with millions of dollars from an earmark obtained by North Carolina U.S. Rep. David Price has been criticized in a UNC-Chapel Hill review for having a poorly defined mission, a spotty record on personnel matters, and a history of misappropriating funds to irrelevant activities.



U.S. Rep. David Price (D-N.C.)

Price, a Chapel Hill Democrat, announced four years ago that he had secured a \$5 million federal earmark for the Citizen-Soldier Support Program, an obscure UNC-CH program meant to help veterans returning from Iraq and Afghanistan. Congress has

CARRBORO



The Citizen-Soldier Support Program is run out of this office in Carrboro. (CJ photo by David N. Bass)

appropriated \$9.8 million in federal defense dollars to the program since 2005.

The funds, Price said when announcing the earmark, would allow the program to expand statewide and provide "critical support" for military members and their families "at a time when it's desperately needed."

But there appears to be scant expertise among permanent staffers at the CSSP in military and behavioral health

issues, and some of the program's five full-time employees appear to have leftist political leanings. Until this year, no staff member appears to have had experience in the armed services, either.

The CSSP earmark, one of hundreds in defense appropriations in 2005, might have gone unnoticed. But criticisms — ranging from accusations of poor management, inordinately high salaries and expense accounts, and pricey payments to out-of-state consultants — have dogged the program, thrusting it into the public eye.

Many of those worries culminated in a recent internal UNC-CH review.

In addition to evidence described in the university's review, public records obtained by *Carolina Journal* raise questions about the cost-effectiveness of the program. Documents show that a majority of CSSP's full-time employees take home six-figure salaries, and some have wracked up extensive traveling expenses. Yet the program has a dubious record of accomplishments over the past three years.

Until recently, two of the program's top managers lived in other states and only showed up in North

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## State Continues Alcoa Dams Takeover Bid

By DON CARRINGTON  
Executive Editor

RALEIGH

Gov. Beverly Perdue is still hoping the state can gain control of Alcoa's Yadkin River dams and hydroelectric facilities, even though legislation facilitating the takeover failed to pass the recent session of the General Assembly. Perdue spokeswoman Chrissy Pearson told *Carolina Journal* that Perdue will continue to pursue the takeover with the assistance of the N.C. Attorney General's Office.



State Sen. Fletcher Hartsell (R-Cabarrus)

Perdue supports the creation of a new state agency to manage the Yadkin Project, a hydroelectric plant comprised of four dams and reser-

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## Town-Hall Anger Could Affect Health-Care Vote

Most N.C. members of Congress avoid meetings with voters

By DAVID N. BASS  
Associate Editor

RALEIGH

North Carolina's congressional delegation might have hoped to get some down time during the August recess. What they ended up getting was something else.

Lawmakers left Washington for a month-long break without voting on the Obama administration's health-care reform package, punting the issue



Citizens protest President Obama's health care plan in Raleigh recently. (CJ photo by David N. Bass)

to the fall. But elected officials quickly discovered that voters weren't about to let them take a vacation.

Experts say that town-hall protests during August could affect how lawmakers vote on the final health-

care proposal, particularly among those in swing districts who could face tough re-election campaigns.

"Members, especially moderate to more conservative Democrats, are going to take a second look and be a lot more careful about what they do if they should have to vote on the floor on a health-care related bill," said Andy Taylor, a political science professor at N.C. State University.

As the late summer heat settled in, North Carolinians packed school gyms, public libraries, and college auditoriums to have their say on the controversial plan that would expand the federal government's control over health-care policy. Recent polling sug-

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## UNC Review Criticizes Price's CSSP Earmark

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Carolina periodically. That arrangement laid the groundwork for rumors that CSSP "may have squandered a substantial portion of its funding on overpaid, under-supervised staffers," according to the UNC review.

CSSP officials requested that CJ direct any questions about the administration of the program to UNC attorneys and public-information officers.

CSSP has already burned through much of the nearly \$10 million it has received since 2005, leaving about \$2.5 million for the 2010 fiscal year.

UNC leaders who oversee the program are quick to acknowledge that changes need to be made, but they are also quick to defend its continued funding. And Price, whose district stretches from Raleigh to northern Orange County, is standing by CSSP as well.

"As this audit reveals, there have been some significant problems in the administration of the program," Price said in a statement e-mailed to CJ, "but my understanding is that UNC has taken concrete steps to address these issues and has adjusted the CSSP model to ensure it is meeting the needs of our soldiers."

### An 'ill-defined' mission

Although hosted by the Odum Institute for Research in Social Science at UNC-Chapel Hill, CSSP's offices are located on the second floor of a mini-mall in downtown Carrboro, located southeast of Chapel Hill.

The program is designed to help "soldiers and their families by engaging and connecting military and community service systems," according to its Web site. That's a mission UNC officials called "ambitious and ill-defined."

During the last two years, CSSP has helped to create behavioral health curricula, participated in behavioral health seminars, and worked with the U.S. Army JAG and others to assist military families with legal issues. CSSP is also developing online training tutorials for behavioral health specialists.

The UNC review, however, concluded that the program has suffered from rapidly changing objectives, has diverged from its main goals on occasion, and has produced few concrete plans for the future.

"In general, we believe that the CSSP is vulnerable to the accusation that it spends too much money on administrative overhead and low-priority, 'nice-to-do' activities and not enough time on activities directly relevant to its mission," the review says.

UNC officials also found that CSSP has had a strained relationship with military leaders, particularly those in the Army National Guard. The program initially enjoyed "substantial funding, goodwill, and cooperation



The office for the Citizen-Soldier Support Program is in this mini-mall in Carrboro. (CJ photo by David N. Bass)

from key collaborators and Congressional leaders, as well as from UNC administration," but "much of this goodwill began to erode," the review says.

### High salaries, consultant fees

One of the reasons is the perception that CSSP overpays its employees. The program has 12 staff members — five full-time, seven part-time — whose salaries are drawn from federal funds.

CSSP's director and deputy director earn \$129,600 and \$120,000 per year, respectively, while one of its three program managers takes home as much as \$141,606 annually. The other two program managers each earn around \$75,000 a year.

The review suggested that CSSP "take a long, hard look at the salaries it pays to its staff and the fees it pays to its vendors and contractors." The review found one case "in which a staff member was paid approximately twice what other UNC employees would typically receive for similar work, and several other cases in which salaries were substantially higher than those for comparable employees on campus."

UNC officials also fingered travel reimbursements and consultant fees as potential problems. Susan Kerner-Hoeg, who joined the program as director of military relations in 2006, is a full-time employee but lives in the Washington, D.C., area, partly to help attract investment from officials at the U.S. Department of Defense.

Kerner-Hoeg visits the Carrboro offices, on average, two or three times a month, according to Peter Leousis, deputy director of the Odum Institute and the official responsible for CSSP. She is reimbursed for miles traveled between her home and Carrboro.

The university has reimbursed her about \$10,239 over the last three years for a rental car that she uses around town. Records show that she incurred \$14,491.93 in total travel expenses during her first nine months on the job.

An internal UNC-CH audit released in June found that CSSP's travel reimbursements were appropriate based on Kerner-Hoeg's arrangement to work from her home in Virginia.

Questions have also arisen regarding CSSP's contract with a Kansas-based consultant, Kent Peterson, who was paid \$150 an hour for "strategic thinking and action" that included "developing and disseminating" the program's bi-monthly electronic newsletter.

CSSP agreed to pay Peterson \$340,500 for his services, including a \$25,000 travel retainer. The university paid around \$215,000 of that total between August 2007 and February 2009.

During that time, Peterson was considered director of community relations. The UNC-CH called his management role "not appropriate" given his out-of-state status.

UNC-CH officials responsible for oversight of the program say the fees were in line with federal standards, but admit that CSSP is now moving away from the consultant.

"I think there was value [in the work], but I'm not qualified to say whether we got \$150 an hour or not. It's really a judgment call," said Neil Caudle, communications director for UNC-Chapel Hill.

### Experience, political leanings

Information culled from public records and social networking Web sites suggests that some of CSSP's employees lack experience in military or behavioral health issues, and many have leftist political leanings.

Bob Goodale, who joined the program in 2007, is a former Harris Teeter CEO and served as deputy secretary of the N.C. Commerce Department in the Hunt administration. He is listed as a program manager for mental health on CSSP's Web site.

In 1955, Goodale received a bachelor's degree with a concentration in dairy science from Iowa State University, and two decades later a master's degree in business administration. His only military-related experience appears to be a stint in the U.S. Army after he completed his bachelor's degree.

Similarly, CSSP's newest program manager, Brenna Burch, ap-

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# Town-Hall Anger Could Affect Health-Care Vote after Recess

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gests that the meetings, at least in part, have contributed to shifting public perceptions on the issue.

A Rasmussen Reports survey in mid-August showed that 42 percent of U.S. voters favor Obama's proposal, down eight points from late June. An August Gallup poll suggests the town halls have had an effect. It found a plurality of Americans have grown more sympathetic to the protesters' views after learning about the town halls, though nearly half of the respondents hadn't been moved at all, saying either their position on health-care reform hasn't changed or they had no opinion.

As the health-care debate has intensified, President Obama's popularity has also taken a hit. A Zogby poll released Aug. 21 reported the lowest disapproval rating for the president since he took office in January, with 45 percent of likely voters approving of his job performance and 51 percent disapproving.

Taylor said that voters are having second thoughts about parts of Obama's agenda.

"Rather than being a breath of fresh air and a change, now people are focusing in on where the president wants to take us, and there are some disconcerting signs, especially for a lot of independents," he said.

## Town-hall heat

Much of the state's congressional delegation shied away from public forums during the August recess; those who didn't often faced a bevy of hostile questions.

First District Rep. G.K. Butterfield, a Democrat and one of the president's staunchest health-care allies



Protestors gather near the office of U.S. Rep. Brad Miller (D-N.C.) in Raleigh on Aug. 7 to show their displeasure with Miller's refusal to hold a town meeting with constituents during the August Congressional recess. (CJ photo by David N. Bass)

in North Carolina, was interrupted multiple times by protesters during a town hall Aug. 11 at a middle school in Rocky Mount.

Reps. David Price, D-4th, and Bob Etheridge, D-2nd, attended town hall events in Durham and Lillington, respectively, sponsored by the State Employees Association of North Carolina, the state's affiliate of the Service Employees International Union, which favors Obama's plan.

Spokesman Don Owens told *Carolina Journal* that Etheridge didn't schedule regular town halls because he was "worried" about the nature of the public input. Owens said "three or four people can dominate the time" of a one-hour public forum with their questions, and Etheridge wants to make sure constituents who have con-

cerns about getting the services they're entitled to don't get "lost in policy discussions."

The same week that he attended the union-sponsored event, Price held a private question-and-answer session in a ritzy north Raleigh retirement community. Residents grilled Price on whether he would forgo his own insurance policy in favor of Obama's public option, and whether the plan would ration care for the elderly.

"There is nothing wrong with good, vigorous debate. There is something wrong with shouting each other down and with excluding anybody from the debate," Price told residents, alluding to the controversy over lawmakers refusing to meet with constituents at public events.

Thirteenth District Democrat Brad Miller declined to hold public town halls after he said his office received a death threat over the health-care bill. The move prompted hundreds of protesters to gather Aug. 7 outside Miller's downtown Raleigh office to voice opposition to his stance on the issue.

The Capitol Police investigated the threat but decided not to prosecute the individual who made it, according to Miller's spokeswoman, LuAnn Canipe.

The delegation's newest member, 8th District Democrat Larry Kissell, held a town hall meeting with Republican Sen. Richard Burr mid-month that was "marked by civility," reported *The Charlotte Observer*. Burr's colleague in the Senate, Democrat Kay Hagan, avoided public forums.

Others, including Reps. Virginia Foxx, R-5th, and Heath Shuler, D-11th, opted to hold teleconference-style town halls requiring constituents to phone in questions.

Rep. Patrick McHenry, R-10th, was one of the most active lawmakers

during the August recess, conducting a town-hall meeting in each of the 10 Western North Carolina counties he represents. Brock McCleary, McHenry's spokesman, said the constituents who attended McHenry's first town hall of the recess were "not hostile, but not soft."

Rep. Sue Myrick, who represents the 9th District stretching from Charlotte to the South Carolina border, held three public forums during the last week of August.

## Election implications

It's understandable that politicians would try to avoid hostile crowds in their home districts, said Duke University political science professor Mike Munger.

"But it makes me wonder if the [Democrats] from our state actually have doubts about the real value of [the Obama administration's] program, since they are not willing to defend it publicly," he said.

Taylor said the town-hall protests could help Republicans recruit candidates and raise money for next year, although he cautioned that grass-roots ferment may not translate into Republican victories.

Still, he said, the intensity of the protests could impact more moderate lawmakers. "They are not only ideologically not comfortable with some of [the health-care legislation], but they're also from swing districts," he said.

Shuler, a member of the Blue Dog Coalition of self-styled moderate and conservative Democrats, represents a conservative-leaning district in Western North Carolina. He has said that he opposes the health-care bill passed by the House Energy and Commerce Committee July 31.

Another Blue Dog, Rep. Mike McIntyre, D-7th, has come out against the plan as well. CJ

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# State Continues Efforts to Take Over Alcoa's Yadkin River Dams

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voirs located along a 38-mile section of the Yadkin River in Davidson, Davie, Montgomery, Rowan, and Stanly counties. Alcoa operates the project under a license from the Federal Energy Regulatory Commission (FERC). The previous 50-year license was issued in 1958 and Alcoa started the relicensing process in 2002, but the expired license has not been renewed.

Perdue and other takeover supporters, including the Stanly County Commission, believe the state would be a better steward of the water resources, the environment, and the electrical power. Perdue's strategy relies on convincing the federal government to deny a new license to Alcoa. The federal government would then assume control of the project, letting the state acquire the hydroelectric facilities from the federal government.

Administrative challenges are buying time for Alcoa's opponents, including prominent state legislators. If FERC has not issued Alcoa a new license by May, the 2010 session of the General Assembly will almost certainly revive the takeover attempt that stalled in August.

The reservoirs in the Yadkin Project, named High Rock, Tuckertown, Badin, and Falls, lie within 38,000 acres of real estate owned by Alcoa Power Generating Inc., a subsidiary of Pittsburgh-based Alcoa. Alcoa bought the land and constructed the hydroelectric dams to supply power to its aluminum smelting plant in Badin, a small Stanly County town east of Albemarle. Aluminum production started in 1917 and continued until 2002, when the company shut down most of the operation. All production stopped in 2007.

The hydro facilities continue to generate up to 210 megawatts of electricity that Alcoa wholesales to other



Narrows Dam is one of four Alcoa-owned dams in the Yadkin River that Gov. Beverly Perdue wants the state to take over. (CJ photo by Don Carrington)

power companies.

FERC would likely have issued a new license to Alcoa had Gov. Mike Easley not intervened in April 2008. Citing concerns of some local governments in the region, Easley asked FERC to delay issuing a new license until those concerns were addressed. Easley left office in January, but Perdue, his successor, also asked FERC to delay a new license. A legal brief filed by an attorney representing Perdue stated that she "intends to vigorously oppose" a new license for Alcoa.

Alcoa's local representative Gene Ellis is frustrated with efforts to thwart the relicensing process. "We began the relicensing process in 2002. When we did that we cast a very broad net to try to bring in as many people with an interest in how the project was operating as we possibly could," he told *CJ* during an interview at his office in Badin. Hoping to resolve any issues as-

sociated with a new license, Ellis said Alcoa chose to pursue voluntarily a relicensing settlement agreement that addressed local concerns. A formal agreement supported by 23 major stakeholder groups was submitted to FERC in May 2007.

## General Assembly acts

State Sen. Fletcher Hartsell, R-Cabarrus, sponsored a bill establishing the Yadkin River Trust, a new public agency that would control the project if the state could acquire it from Alcoa. In early May, by a 44-4 vote, the Senate passed Hartsell's bill, but it was never considered by the full House. A House committee approved an alternate bill incorporating key components of the original Senate version, leaving the issue dormant for now.

Hartsell and other takeover advocates will likely try to revive legislative efforts when the General Assem-

bly reconvenes next May.

Alcoa does not want to surrender the project, but even if forced to, the company says the state would have to pay fair-market value, estimated by the company at more than \$500 million.

Faison Hicks, a lawyer with the attorney general's office involved with Perdue's effort, acknowledged that even if the state can take over the project, there is no way to know how much it will cost.

The Fiscal Note attached to Hartsell's bill "anticipates that the cost of acquiring the Yadkin Project would fall somewhere within the range of \$24.2 million to over \$500 million, with the most likely estimate being something closer to the estimated market value of \$176 million," based on the tax valuation of the property.

## Administrative hearings

FERC spokeswoman Celeste Miller told *CJ* that the commission is still reviewing Alcoa's application, but the main unresolved issue is a Water Quality Certificate from the state of North Carolina. The Department of Environment and Natural Resources' Division of Water Quality issued a certificate earlier this year, but then revoked it because the state made a procedural error regarding a required legal notice.

Subsequently, Stanly County and Yadkin River Keeper Dean Naujoks, Inc., have filed administrative challenges to Alcoa's water quality permit. Those challenges are now under the jurisdiction of the state Office of Administrative Hearings.

An OAH administrative law judge has ordered all parties to participate in mediation on or before December 14, 2009. If the parties cannot resolve all issues, the judge will hear the issues the week of Feb. 22, 2010. *CJ*

# UNC Review Fears Price's Earmark 'Squandering' Tax Money

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parently has no military or behavioral health credentials, nor direct experience with either topic.

She has a master's degree in public administration and an undergraduate degree in English, according to her Facebook page, and past experience as an information specialist for M.C. Dean, Inc., and fiscal analyst in the N.C. General Assembly. She is listed as a program manager for knowledge and community outreach on CSSP's Web site.

Burch also appears to have strong political leanings. "I would love to see Glenn Beck's a-- get shipped to a [forward operating base] in [Afghanistan]. Common sense, my a--," she wrote

in an update on her Twitter account dated Aug. 19 [emphasis in original].

Beck is a conservative radio and television host and author of the book *Common Sense*, which advocates for limited government.

In another Twitter update posted the same day, Burch calls the conservative-leaning cable news network Fox News a "horses--t" organization.

Facebook pages for Barbara Hall, who works as a community outreach program manager for CSSP, and Leousis list support for President Barack Obama. Hall is registered as unaffiliated and Leousis as a Democrat.

William Abb, a retired Army lieutenant colonel who joined CSSP

in April, appears to be the lone full-time staffer with extensive military experience. He and Goodale are the only registered Republicans who work for the program full time.

## Details redacted

The UNC-CH provided a heavily redacted version of its internal report on CSSP to *CJ*, citing an exemption in the state's public records law that prohibits release of personnel information. In telephone interviews and e-mail correspondence, officials declined to comment on alleged wrongdoing by employees.

"Without the lawyer here, I'm not sure how much we can say about that

because we cross a line into confidential personnel information that we're not allowed to divulge," Caudle said.

UNC-Chapel Hill plans to continue housing and supporting CSSP, says Tony Waldrop, vice chancellor for research and economic development at the university and head of the internal review committee. He pointed to an implementation plan developed by CSSP that aims to correct problems identified by his office.

"I believe in the goals of the program," Waldrop said, "and I think the team is working very hard right now to show how important it is and to really serve the intent that was there in the beginning." *CJ*

# Judge: Lawyers Can't be Compelled to Fund Judicial Campaigns

## Ruling called First Amendment, free speech victory

By KAREN McMAHAN  
Contributor

RALEIGH

In what many are calling a victory for First Amendment protections, Wake County Superior Court Judge Howard Manning ruled Aug. 10 that the State Bar cannot compel individual attorneys to fund the campaigns of judicial candidates for the Court of Appeals and Supreme Court by means of a special \$50 surcharge.

Instead, the State Bar must allow attorneys to designate on their annual membership renewal notices that the \$50 surcharge must be spent on a Voter Guide for judicial candidates. Fees collected from attorneys who do not make that designation "may be used for any purpose under the Campaign Fund rules and regulations."

If upheld on appeal, Manning's decision could hinder attempts by self-

described "clean government" groups to expand taxpayer financing to more campaigns. This year's General Assembly failed to enact legislation bringing public financing to municipal elections and races for attorney general, state treasurer, secretary of state, and the commissioners of agriculture and labor. Taxpayers currently finance campaigns for auditor, commissioner of insurance, superintendent of public instruction, and appellate courts.

Nearly two years ago, the North Carolina Institute for Constitutional Law (NCICL) filed a lawsuit on behalf of a group of attorneys in Mecklenburg County who had objected to paying the fee. They said the fee violated the First Amendment by compelling them to fund the campaigns of candidates they may or may not support. The attorneys had been ordered by the State Bar to pay the fee or face suspension of their law licenses,

said NCICL Senior Staff Attorney Jeanette Doran, who handled this case for the plaintiffs.

Many unions and other organizations use member dues to fund political campaigns. This case was different because the State Bar is the state agency charged with regulating attorneys. Attorneys who did not pay the \$50 fee would lose their licenses. Unlike associations where members can choose membership, attorneys must join the State Bar because they cannot practice law without a license, Doran explained in a phone interview with *Carolina Journal*.

"The ruling is a huge victory for the First Amendment and the long-standing constitutional principle that individuals cannot be compelled to make political speech. Judge Manning provides a strong analysis of why the State Bar's policy violated both the U.S. and North Carolina Constitutions, and I believe it'll withstand an appeal,"

said Doran.

"What surprised both sides was the remedy Judge Manning ordered," Doran added, "because neither side had requested it. The State Bar is a small organization, and having to revise its accounting system may place an undue administrative and financial burden on the group. The Court of Appeals may not uphold the remedy, but that's anyone's guess at this point."

While Manning's ruling did not strike down public financing of campaigns, opponents of public financing argue that his remedy may disallow the use of taxes or compulsory fees to underwrite any system of campaign finance. As editorial writer Doug Clark pointed out in the Greensboro *News & Record* blog, if lawyers could be taxed to fund judicial campaigns, it only follows that teachers, accountants, and other professionals could be forced to fund campaigns for other political offices.

Noelle Talley, North Carolina Department of Justice's public information officer, said in response to a phone call from *CJ* that the "attorneys are reviewing the ruling, but have not yet made a decision about an appeal." *CJ*

The State Bar Association has not yet made a decision to appeal



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## N.C. Briefs

## Feds target faith school

The president of a North Carolina-based Catholic college says he would rather close his school than comply with an order from the Obama administration requiring the private institution to offer contraception and abortion coverage as part of its employee health insurance plan.

"I hope it would never get this far, but if it came down to it we would close the college before we ever provided that," William Thierfelder, president of Belmont Abbey College in Belmont, told *The Washington Times* last month.

Belmont Abbey is affiliated with the Roman Catholic Church and the Order of Saint Benedict, both of which teach against contraception and abortion. In December 2007, after a faculty member discovered that Belmont Abbey's medical insurance covered oral contraceptives, abortions, vasectomies, and tubal ligations, the college changed its policy and excluded those procedures.

Eight faculty members subsequently filed a complaint with the U.S. Equal Employment Opportunity Commission claiming the new policy amounted to gender discrimination.

In March, the agency sent the college a letter saying the complaint had been dismissed. But Thierfelder has said that the commission reopened the issue last month after officials in Washington reversed the district office's initial decision.

On July 30, the Charlotte EEOC office ruled that, by denying contraceptive coverage in its employee health plan, the college had discriminated based on gender, and that it could face a lawsuit if it did not rescind the policy.

"By denying coverage, men are not affected, only women," wrote Reuben Daniels, Charlotte district director for the EEOC.

Observers say the dispute between Belmont Abbey and the federal government has implications for the health-care debate raging in Congress and in public town halls across the nation.

"As the government scope of activity increases, you end up with obvious opportunities for compulsion," said Chris Gacek, a lawyer specializing in regulatory affairs with the Family Research Council, a conservative think tank in Washington, D.C., in a recent telephone interview.

"The way we're going now at the state and federal level is to make it impossible for people to live up to their consciences. There is something fundamentally inappropriate about that," Gacek said. *CJ*

# Study: Energy Mandates Decrease Income

## Huge employment losses will occur without fee caps, Beacon Hill-JLF study says

BY COLLEEN CALVANI  
Contributor

RALEIGH

Two years after legislation was passed overhauling North Carolina's approach to renewable energy, a new study questions the economic impact of the law. What it found could have troubling implications for both employment and consumer energy costs in the state.

Session Law 2007-297, also known as Senate Bill 3, passed in August 2007. It established a new standard for the percentage of North Carolina's electric utilities' energy output that must be derived from renewable resources such as wind, solar, biomass, and some hydropower. The law mandates that 3 percent of state retail electricity sales come from renewable sources by 2012; by 2021, that number must reach 12.5 percent.

The law also could cost North Carolina millions in income and investment and thousands of jobs, concludes a study from the Beacon Hill Institute at Boston's Suffolk University. One scenario has employment falling by 13,412 jobs in 2010.

Beacon Hill teamed with the John Locke Foundation to look at the costs and benefits of North Carolina's Renewable and Energy Efficiency Portfolio Standard, or REPS. The study looked at two scenarios for implementation of the REPS: the existing one, with cost-recovery caps in place to protect consumers, and a hypothetical one in which the caps have been removed. Neither outlook was promising.

### Capping costs

To recoup the costs associated with investment in new energy sources, utilities will pass along a portion of their increased expenses to customers in the form of higher utility bills. So state legislators capped the amount that customers could be forced to pay.

Annual cost recovery fees per customer in 2008 were limited to \$10 for residential customers, \$50 for commercial, and \$500 for industrial users. If the number seems small, says Daren Bakst, legal and regulatory policy analyst at the John Locke Foundation, consider this: The fees will increase incrementally more than 250 percent over seven years.

BHI concludes that higher energy prices and job losses caused by S.B. 3 will reduce tax revenues, with state and local governments due to lose \$23.8 million in fiscal year 2008-09 and as much as \$51.7 million in fiscal year 2011-12.

But even these losses pale compared to those sustained by customers. BHI estimates that by 2021, customers will have incurred cost recovery fees of almost \$1.85 billion, with residential consumers paying "the vast majority of the fees," or \$1.6 billion of that total, the report says.

At least one utility, Progress Energy, already has stated its concern about reaching the caps in a matter of several years.

"That's why, in my opinion, there's going to be a lot of pressure to remove the caps," Bakst said.

There has been no official discussion of removing the caps, said state Sen. Charles W. Albertson, D-Duplin, the

primary sponsor of S.B. 3.

"I have not talked to anyone about (removing the caps). We took what we thought were some prudent steps to make those caps be where they should be," he said.

Removing the caps at some point "might be reasonable, might be something we need to look at," he added.

### Making adjustments

Removing the caps, however, could magnify the unintended economic effects of the legislation. Even these could be sustained if the energy savings were more substantial, Bakst noted.

"It always used to be about low-cost, reliable electricity," he said. But wind, solar, and biomass interests superseded those concerns when the General Assembly crafted S.B. 3, he added.

Traditional energy resources such as natural gas are less costly and more reliable than most renewables, Bakst said. "We have very limited wind resources here. The effect on the environment is minimal, if at all. Solar is just way too expensive, and it also has the same backup generation issue that wind has," he added. "Biomass is (even) worse" in terms of reliability and environment-friendliness.

But supporters of S.B. 3 are relying on the promise of renewable energy development in the state. The Institute for Emerging Issues at N.C. State University released a report in August 2008 detailing the promise of these green jobs, finding that North Carolina's "potential new energy economy supply chain ... (employs) just over 61,000 workers." Wind energy is the largest potential employer, the report notes, citing 32,534 jobs associated with

the wind power supply chain. Next was biomass, with nearly 21,000 jobs, and then solar, with more than 16,000 jobs.

Bakst doubts these reports take into account net job losses.

"If (green jobs) are so good, they'd exist (already)," he said. "When we take our own tax dollars to fund an industry that's producing inefficient energy and high-cost energy, that's not a good use."

He continued, "We could tax people a trillion dollars and create some really great high-paying jobs to dig holes. It would create a lot of jobs, (but) is this a good thing? ... The point is, there's an effect on other industries."

BHI estimates that the tax cuts and fees used to mitigate the costs of developing these still-infant industries will lead to a loss of 1,046 jobs by 2010, with disposable income falling by \$8.23 million that year.

If the caps were removed, which Bakst fully expects, the damage to North Carolina's economy would increase significantly, BHI reports.

"Employment would fall by 13,412 jobs in 2010, increasing to over 15,373 in 2021 as the electric bills of North Carolina's households and businesses skyrocket," the report notes.

The higher cost of living and higher unemployment would amount to a reduction in disposable income by more than \$400 million by 2010. State gross domestic product could drop by nearly \$900 million by 2010 as well.

Albertson remains optimistic about the effects of the legislation, lamenting the fact that it has not been implemented sooner.

"Some of us are disappointed that it's not moving along as far as we'd hoped, but ... it's a new process for us and one we're willing to take another look at if we need to," he said. *CJ*



# Cowell Hoping Junk Bonds Will Spur Greater Return on Pensions

By SARAH OKESON  
Contributor

**N**orth Carolina Treasurer Janet Cowell is hoping that the General Assembly's plan to add investments like junk bonds and commodities to the state pension portfolio will boost investment returns and erase what could be a \$3.3 billion hole in funding.



N.C. State Treasurer Janet Cowell

A new law, signed by Gov. Beverly Perdue in June, lets the state treasurer put up to 5 percent of the pension's assets into junk bonds and another 5 percent into inflation-resistant assets including commodities, timberland, and securities tied to the Consumer Price Index.

"It's my hope that we will at least have a fighting chance," Cowell said.

North Carolina's action is similar to those taken by other states such as California that are betting on high returns in a faltering economy.

"The higher returns are illusory," said Edward Siedle, president of Benchmark Financial Services in Ocean Ridge, Fla., which audits pension plans. "The strategy allows you to pursue the dream of higher returns. It doesn't mean you're going to get them."

Barclays Global Investors, which was paid \$10.5 million in fees last year

by the treasurer's office, projected that the state's current investments would deliver a return of 6.92 percent, falling short of its 7.25-percent target.

The Barclays report says the failure to reach the 7.25 percent target "requires an immediate contribution of \$3.3 billion" to fund the pension's retirement portfolio fully.

North Carolina has traditionally had one of the best-funded state pension plans. But Cowell said she wouldn't have asked lawmakers for more money immediately if the law hadn't passed.

"If we consistently year after year did not hit 7.25 percent, we would be asking for more taxpayer dollars," she said.

The state Teachers' and State Employees' Retirement System is already in a fix because of the recession. Pension assets dropped by 14.2 percent to \$60.2 billion during the fiscal year that ended in June.

There is no immediate danger that the retirement system, which covers more than 820,000 current and retired state employees, will be unable to pay benefits to retirees. But the shortfall has to be made up, either with higher contributions from taxpayers or better investment returns — or by reducing benefits.

The more pension fund managers assume their investments will make, the less they require in contributions

from employees or the legislature, an enticing proposition in tough financial times.

Cowell has asked the General Assembly to contribute an extra \$29 million in the new fiscal year and \$329 million more in the following year to shore up the pension fund. Those requests were based on the pension fund earning 7.25 percent from its investments, a lower target than that set by many other state pension funds.

Some lawmakers have questioned whether the 7.25 percent goal is realistic. TSERS has met this goal seven of the last 12 fiscal years. The annualized median 10-year rate of return for public plans with assets greater than \$1 billion is 2.85 percent, according to Wilshire Associates, a California consulting firm.

"It's not a good thing to change our investment strategy in such a volatile market," said state Rep. Darrell McCormick, R-Yadkin. "Maybe we should lower our expectations."

Investor Warren Buffett noted in his 2007 annual report that the annual growth rate of the stock market during the last century was 5.3 percent and questioned the assumptions by pension fund managers.

"Whatever pension-cost surprises are in store for shareholders down the road, these jolts will be surpassed many times over by those experienced by taxpayers," Buffett wrote. "Public pension promises are huge, and, in many cases, funding is woefully inadequate. Because the fuse on this time bomb is long, politicians flinch from inflicting tax pain, given that problems will only become apparent long after these officials have departed."

Susan Mangiero, the CEO of Pension Governance Inc. in Trumbull, Conn., says junk bonds may not be a good investment choice if issuers are unlikely to repay principal and interest.

"The recent market rout proves once again that best intentions do not necessarily generate anticipated outcomes," Mangiero said. "More than a few traditional investment hedges were adversely impacted by the fear and uncertainty that dominated market trades. Historical correlations provided little guidance about future performance in 2008 and early 2009."

Moreover, Mangiero added, investing in higher risk securities often means that issues such as valuation and liquidity become even more im-

portant to consider and manage.

State officials, including those in the treasurer's office, say the new asset mix is expected to be slightly less risky than its current investments. The law was endorsed by both the North Carolina Banking Association and Duke Endowment President Gene Cochrane.

"In some sense, this might allow them to act more prudently than they do now," said Deborah Lucas, a professor at Northwestern University's Kellogg School of Management. "Junk bonds are much less risky than common stocks. A bond, no matter how junky, always has less risk than the stock of the same company because it has higher priority."

North Carolina's pension fund, the ninth-largest public pension in the country, is invested more conservatively than the typical fund, which has about 70 percent stocks. TSERS has about 41 percent of its investments in stocks and about 47 percent in bonds. It has outperformed the median return for public plans with assets of more than \$1 billion in five of the last 10 fiscal years.

Cowell has the authority to decide how the money is invested, an unusual amount of power. In most other states, a retirement board or board of directors chooses how to invest.

"There's no one else in the state who has the power that the treasurer of North Carolina has," said Ardis Watkins, the legislative affairs director for the State Employees Association of North Carolina. "That's just immense power."

That discretion was an issue for Cowell's predecessor, Richard Moore, who was criticized for receiving campaign contributions from people connected to hedge funds that got business after Moore pushed for a previous change in the state's investment policy.

That change, in 2001, let the treasurer invest up to 5 percent of pension fund money in alternative investments such as hedge funds. Fees paid by the pension fund tripled after the change because hedge funds typically charge higher fees. Management fees last year were 0.33 percent of the fund's assets.

Cowell has received more than \$211,000 in campaign contributions this year and last year from people and political action committees connected to funds the state invests in. One of her contributors was Edward Dale of Barclays Capital, who contributed \$500 last year.

Cowell supports a law that would provide public financing of the treasurer's race. "I feel like it's the best way to ensure that there is equal access for all candidates," she said.

Senate Bill 20, a bill establishing such a system, died in the recently concluded session of the General Assembly.



## Visit our Western regional page

<http://western.johnlocke.org>



The John Locke Foundation has five regional Web sites spanning the state from the mountains to the sea.

The Western regional page includes news, policy reports and research of interest to people in the N.C. mountains.

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

# Dr. C.L. Gray Discusses the Advent of Post-Hippocratic Medicine

BY CJ STAFF

RALEIGH

Headlines highlight the ongoing debate over the future of American health care. But much of today's discussion involves philosophical differences that reach back to ancient Greece. That's the idea Dr. C.L. Gray, founder of the group Physicians for Reform, expressed during a presentation to the John Locke Foundation's Shaftesbury Society titled "The Coming Age of Post-Hippocratic Medicine: What History Teaches Us About the Future of American Health Care." Gray discussed themes from that presentation with Mitch Kokai for Carolina Journal Radio. (Go to <http://www.carolinajournal.com/cjradio/> to find a station near you or to learn about the weekly CJ Radio podcast.)

**Kokai:** Before we get into the meat of this interview, we probably ought to tell people, first of all, post-Hippocratic — I assume you're talking about Hippocrates. Remind us who Hippocrates was, and what he had to do with medicine.

**Gray:** Hippocrates is known as the father of medicine. He was born in ancient Greece, 460 B.C., and he really framed the way we think about medicine, and his thoughts have shaped medicine—medical care—over the last 2,500 years, so to a large degree, Western culture owes its view on medicine much to Hippocrates.

**Kokai:** Even people outside of medicine may have heard — many of them — about the Hippocratic Oath, and its role in medicine. Remind us what that is.

**Gray:** The Hippocratic Oath is an oath that used to be taken by most physicians, though largely now, most medical schools no longer use the oath. About — I think there was a survey done in the mid-'90s — out of 127 medical schools I interviewed, only three used the original Hippocratic Oath. But the Hippocratic Oath was a commitment of the physician to serve his patient above all else.

**Kokai:** In your discussion with the John Locke Foundation's Shaftesbury Society, you mention that there really is dichotomy; there's the Hippocratic way of thinking about the role of the physician, and the Platonic way, the way that Plato did. Very different. How were they different?

**Gray:** Yeah, Plato actually was born slightly after Hippocrates; Plato was born about 427 B.C. As I said earlier, Hippocrates was born about 460,

*"The role of the physician, according to Plato's thinking in his ideal state, was to assess patients on the basis of what they could contribute to culture. Patients that still had a lot left to give back to society were treated. Patients that were a burden on society were either killed or let die."*

*Dr. C.L. Gray  
Founder and President  
Physicians for Reform*



but Plato's thinking was much more in keeping with ancient Greece. The general perspective, if you read his Republic, was a physician was actually a tool of the state.

The role of the physician, according to Plato's thinking in his ideal state, was to assess patients on the basis of what they could contribute to culture. Patients that still had a lot left to give back to society were treated. Patients that were a burden on society were either killed or let die. This was dramatically opposed to the philosophy that Hippocrates introduced, where the physician was committed to the welfare of the patient.

**Kokai:** And you mentioned that the idea that Plato had — the Platonic idea — put the physician in sort of a role as a tool of the state, rather than as serving the patient.

**Gray:** Yeah, when you go back and read ancient literature, you find that, in fact, Plato very much thought that the physician was really a tool of the state to further the welfare of the state, rather than the well-being of the individual citizen.

**Kokai:** You mentioned during this presentation that these two different views — very different views — of medicine, have predominated at different times, and I guess by the title of post-Hippocratic medicine, you're saying that Plato's view seems to be in the ascendancy now.

**Gray:** Yes. As you look back through history, after the rise of Hippocratic medicine, we see that medicine followed Hippocrates' footsteps for almost two millennia. And at the end of the late 1800s, beginning of the 1900s, you see a brief resurgence of Plato's thinking, following Nietzsche, and then the rise of Nazi Germany. Then with the Geneva Convention, they specifically reinstitute Hippocratic principles, and now over the last 30, 40 years, once again, we see the rise of Plato's thinking. Is a physician really

a tool of the state, rather than serving the patient.

**Kokai:** Given those two different views, what happens next? What do we do — if we're interested in the Hippocratic view, what do we do to get that back in place?

**Gray:** One of the recent stories that I became aware of illustrates this so nicely. There is a lady in Oregon, Barbara Wagner, who had recurrent lung cancer.

She didn't qualify for Medicare or Medicaid, and didn't have private insurance, so she was part of what was called the Oregon Health Plan, which is a state run health care plan. The state denied her chemotherapy twice, instead offering to pay for palliative care, or physician assisted suicide.

So that one example really sets off alarms in my thinking, that once again, the state is gaining control of medicine. And when state controls medicine, and controls health care dollars, the physician is obligated to serve the state, rather than serving the patient.

**Kokai:** So we need to change that system if we'd like the physician to serve the patient.

**Gray:** Certainly if we the people can get together to regain control of medicine, I think that is, by far, the better path for us to follow.

**Kokai:** You mentioned three different types of reform during your presentation; what are those?

**Gray:** Essentially, my nonprofit is advocating three basic reforms; insurance reforms, tax reform, and tort reform. The basic idea behind this is to give patients control over their health-care dollars, rather than the state control over health care dollars.

Whoever controls the healthcare dollar controls healthcare decision making. In brief, insurance reform would level the playing field, and let every citizen buy a form of insurance, advocating some individual policies.

We can also encourage low-cost, high-deductible policies, combined with a health savings account.

That health savings account would fund the initial health care expenses of that unmet deductible.

Second is the tax reform, and what we need to do there is implement for the several million Americans who simply cannot afford their own private policy, is use tax credits to help them buy private insurance, and fund health savings account, so once again, they're in control of their own health care dollar.

The last piece is tort reform. We spend somewhere between 100 and 150 billion dollars a year in defense of medicine. With federal level tort reform, we can free physicians to use common sense; if we put patients back in charge of their health care dollar, they will ask for the medical care that's needed, but pass on the unnecessary medical care that sometimes is asked for, under a third party system.

**Kokai:** Some people will hear this and say, "Okay, Plato, Hippocrates, why should I care?" Why is it important that we shift the debate back toward the Hippocratic model?

**Gray:** Well, I've been in private practice for about 10 years, and my dedication, and what I've worked for, is to serve the patient.

What I fear now, with the rise of government-run health care — it depends on — or really doesn't matter what name you put on it — when the government is controlling the health care dollar, I end up serving the state.

And physicians working with patients, working with businesses, can once again get a handle on the cost of health care, and once again put the patient back at the center of American health care.

**Kokai:** If people want to learn more about Physicians for Reform, is there a Web site they can go to?

**Gray:** They can go to [www.physiciansforreform.org](http://www.physiciansforreform.org), and get more information there. CJ



# New Science Safety Regulations Aim to Make Classrooms Safer

## Critics say extra cost of compliance will hurt schools

BY KAREN WELSH  
Contributor

RALEIGH

There could be a batch of mad scientists unable to teach in their classrooms starting in July, with the General Assembly's approval of House Bill 42.

The bill, recently signed into law by Gov. Beverly Purdue, requires stringent training of science teachers, heightened safety practices, and personal protective gear in science classes and laboratories in all of the state's public middle and high schools.

The new measure also declared "no local board of education shall apply for a certificate of occupancy for any new middle or high school building until the plans for the science laboratory areas of the building have been reviewed and approved to meet accepted safety standards for school science laboratories and related preparation rooms and stock rooms."

Backers of the bill say the state has been lax in applying safety guidelines to science instruction and the handling of potentially dangerous materials in classrooms. But critics worry about the costs the new rules would impose on school districts' capital budgets. There are also concerns over a perceived lack of specificity in the guidelines.

Although H.B. 42 is a "watered-down version of the first bill introduced," Rep. Ray Rapp, D-Madison, said he continued to support the legislation because safety features are often overlooked in science classrooms.

Now that the law is passed, Rapp said specific, uniform requirements will be developed among the State Board of Education, the Department of Public Instruction, and the university system. The new guidelines will apply to science classrooms across the state.

"We are being upfront here," Rapp said. "What we've got to do is provide an environment that is as safe as it is practical."

Linda Stroud, a certified educator with Science and Safety Consulting Services in Raleigh and a former

public-school chemistry teacher with 18 years of experience, said the stricter measures are long overdue.

Stroud said untrained teachers often don't know the difference between mercury and silver, let alone understand how to deal with an emergency situation when students are present.

She also said untrained teachers often do not know how chemicals can degrade over time and produce a potentially life-threatening scenario in the classroom.

"Many of the chemicals used in chemistry are housed in storerooms that are unventilated," Stroud said. "There are no temperature controls. In the summertime, in the South, the chemicals sit in a closed-off room and get hot, hot, hotter. As a result, they break down, and it's almost impossible to know what they are anymore or what reaction will occur when they are mixed together."

In contrast, Terry Stoops, education policy analyst at the John Locke Foundation, says the costs to meet the new standards would hit school districts hard.

"What do they want to achieve here?" Stoops asked. "Things like this add up to big money."

Baker Mitchell, founder of Charter Day School in Leland and Columbus Charter School in Whiteville, said valuable time is wasting before the law goes into effect next summer.

"I've got no comment because I don't understand the bill," he said. "It's too vague. Who's setting the standards, and what labs [would] it apply to? Nothing in the bill is defined. There's no specificity stated in the bill, and they need to nail down the standards."

Mitchell said he's not against supporting normal safety standards in science rooms and laboratories, but he feels anything above and beyond those basic standards would be extremely costly for public schools around the state.

"I hope they are reasonable and rational," he stressed. "Let's hope it's not out of kilter."

Meantime, Stroud said she hopes the State Board of Education fully embraces and supports the new law.

"Right now, money is the problem," she said. "Unfortunately, a tough economic climate can put science safety on the back burner." CJ

**Some fear the State Board will formulate unreasonable guidelines**

COMMENTARY

## Rethinking the Achievement Gap

In recent years, policies seeking to narrow the entrenched achievement gap between black and white students have proliferated. Such efforts to rectify a widespread educational injustice are unequivocally important. But are they working?

Yes and no. Newly released data from the National Center for Education Statistics indicate we have made some notable strides toward racial parity, nationally and in selected states. However, we have miles still to go, especially in North Carolina.

First, the good news: Nationwide in 2007, math scores for black and white fourth- and eighth-graders on the National Assessment of Educational Progress were higher than at any other point during the 1990s; fourth-grade reading scores also reached their peak. The black-white achievement gap shrunk in math in both fourth and eighth grades, and in fourth-grade reading.

Despite these successes, black students across the country still lag a minimum of 26 points (on NAEP's 500-point scale) behind white students in both reading and math. In North Carolina, this gap is generally larger. According to the 2007 NAEP data, our state's only discernible progress has been in fourth-grade math: the achievement gap has narrowed by three points since 1992. In eighth-grade math, the gap has diminished by just one point since the early 1990s.

In reading, North Carolina has made virtually no progress. The fourth-grade achievement gap is just as it was in 1992. In eighth-grade reading, racial disparities have worsened: the achievement gap has widened by four points, and is the largest it has been since 1998.

But these data do not tell the whole story. In 82 schools in 19 states, the Knowledge is Power Program (KIPP), an unusually effective national network of public charter schools, is blasting away at the achievement gap. These schools, serving mostly poor minority students, live out the KIPP credo, "de-

mography does not define destiny."

KIPP successes are hard-won: students usually attend school weekdays from 7:30 a.m. until 5 p.m., every other Saturday, and three weeks in the summertime. Teachers offer after-hours homework help via cell phone. Parents, students, and teachers sign a "learning pledge," promising to do whatever is needed to help kids learn.

North Carolina is home to three KIPP charter schools; two in Northampton County — Gaston College Preparatory (grades 5-8) and KIPP Pride High — share the same charter. A second KIPP middle school opened in Charlotte in 2007.

Results at Gaston College Preparatory (GCP), now in its ninth year, defy conventional wisdom. The student body is 84 percent black and 64 percent low-income. In 2008, sixth-graders who entered GCP as fifth-graders raised their national percentile rankings on the Stanford Achievement Test by 39 points in math and 22 points in reading.

This is no flash in the pan. Last spring KIPP Pride High graduated its first class of seniors; all 48 of them are headed to college this fall.

Principal Christine Barford attributes GCP's success to one key ingredient: "the people." "Parents commit a lot by sending their children here," she says. "A lot of faith and hard work has gone into the past eight years."

Students, says Barford, are taught by "incredibly passionate teachers" who "believe that all children can learn." This conviction that any child can succeed in the classroom is so fundamental that KIPP leaders screen prospective teachers for it "above all else." Notes Barford, "Without that, we won't get very far."

But with it, oh, what they can do. KIPP's teachers and leaders aren't just narrowing the achievement gap. They're obliterating it. It's time the rest of us paid attention. CJ



**KRISTEN BLAIR**

*Kristen Blair is a North Carolina Education Alliance Fellow.*

# Deal Put Onus of Increased Class Sizes on Local School Boards

## Gov. Perdue had said she would not accept fewer teachers

By JIM STEGALL  
Contributor

RALEIGH

**A** last-minute, face-saving deal on class size allowed Gov. Beverly Perdue to shift blame for the loss of teaching positions in this year's budget from Raleigh down to local school boards and superintendents. The deal, however, created headaches for administrators trying to figure out how many teachers they really could afford to hire mere days before the school began.

Despite the governor's appeals to school superintendents to save teacher jobs, fewer teachers will be employed this year, and classrooms will be more crowded.

In response to an unprecedented revenue shortfall this spring, legislative leaders initially planned to raise class size by two students per class this year and by one more the next. That plan drew the ire of Perdue, who had declared that she would not support a budget that cut teacher positions.

Faced with the governor's complaints, legislative leaders dropped references to class size and instead simply cut \$225 million from the public schools budget, the amount it would have cost to keep class size the same as last year. Each district was assigned a share of the cut in proportion to its student population. Wake County Schools, the state's largest school district, lost more than \$20.6 million in the deal, while tiny Tyrrell County Schools had to cut only \$91,000.

School districts were given wide latitude to deal with the cutbacks, the only stipulation being that class size in kindergarten through third grade (currently 18 students per teacher) could not be increased. But with nearly all other allotments of state funds to public schools already slashed, superintendents found that the only way to cover the discretionary reduction was to raise class sizes and eliminate teacher positions.

Administrators immediately grasped the political implications of the deal. Before the final votes on the budget had been cast, Executive Director Bill McNeal of the North Carolina Association of School Administrators said the maneuver was "merely passing the buck on a very difficult decision. All this will do is make the local board of education and the superintendent become the bad guys in deciding which jobs to cut."

But Perdue insisted that by us-



**Instead of cutting teachers, the legislature cut the amount of money it would have taken to keep class sizes the same as last year. (CJ file photo)**

ing federal stimulus dollars, school districts should be able to manage the cuts without reducing teaching positions. On Aug. 14, she sent a letter to all 115 local superintendents listing each district's share of federal money available from the stimulus bill, and strongly urging superintendents to use those funds to save teaching positions.

However, the federal money she referenced in her letter can be used only in "Title I" (high-poverty) schools, for assisting disabled students, or for specified purposes such as technology. Federal "maintenance of effort" rules also prevent the shifting of local or state dollars out of those schools and budget areas for use elsewhere. All other federal stimulus funds already had been included in the state budget in other allotments, most of which are still funded below the previous year's levels.

Nevertheless, the governor publicly had been adamant that no teacher jobs should be lost. At an Aug. 5 news conference, she said, "In my mind, it's going to be really hard for somebody to explain to me why they've had to cut teaching positions." While the governor has no authority over local school superintendents, she has let them know that she will be watching very closely how each district handles its cuts.

The impact of the discretionary reduction in the districts was felt immediately. As budget negotiations took shape in late spring, Charlotte-Mecklenburg Schools Superintendent Peter Gorman was one of the most aggressive in slashing teaching positions in anticipation of severe cutbacks. But the \$20.6 million his district lost in the discretionary cut was actually less than he had planned for, and on Aug. 12 he announced that CMS would hire 286

more teachers. Still, average class size in Charlotte-Mecklenburg schools is higher this year.

What's more, the teachers being hired aren't necessarily the same ones let go earlier in the year. Gorman told his principals to focus on hiring the best teachers available. "What's in the best interest of the kids ... is bringing back the finest people we can, and that may be someone new," he said.

Wake County Schools took a similar approach, releasing nearly 1,500 teachers at the end of last school year and hiring back more than 900 in mid-August. Superintendent Del Burns notes that despite Perdue's admonitions, "Class sizes will be larger."

Winston-Salem Forsyth County

Schools superintendent Donald Martin says that class size in grades four through 12 in his district must go up also. But unlike some superintendents, he's not too worried about who gets blamed for it. "If the legislature had done the cutting (by mandating class-size increases), we would have needed the same kind of local flexibility as we do now to rearrange our budgets."

While superintendents handle the cuts, the North Carolina Association of Educators is spinning the loss of teaching positions as a legislative success story.

On the association's Web site, NCAE president Sherri Strickland echoes Perdue's arguments, telling members that the "NCAE Stimulus Team" is meeting with superintendents around the state to show them how to use stimulus dollars to save teachers' jobs.

In its Aug. 7 "Daily Political Briefing," the union claims success in saving 200 teacher positions in Forsyth County, but mentions neither the 1,100 positions that were eliminated earlier that year, nor the overall increase in class size that has resulted in fewer teaching positions.

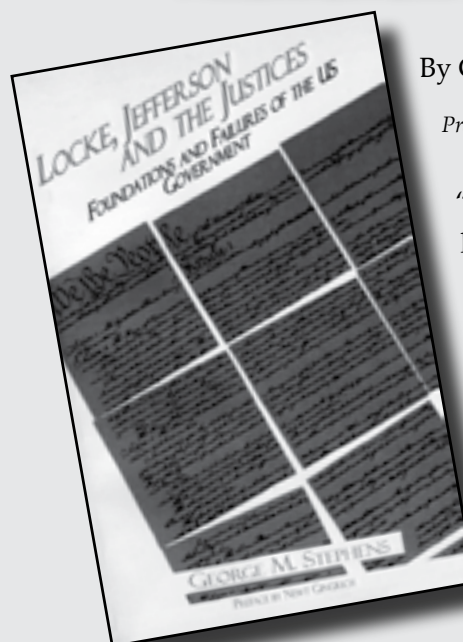
Martin acknowledges meeting with NCAE representatives about teaching positions, but his version of the meeting differed somewhat from the one touted by NCAE.

According to Martin, he told NCAE representative Rodney Ellis that federal rules regarding the stimulus funds won't allow him to save every job. "Since every school cannot become a Title I school," he said, "it would have been impossible for us to return nearly \$8 million without increasing class sizes." CJ

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

By George M. Stephens

Preface by Newt Gingrich



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

Newt Gingrich  
Former Speaker  
U.S. House  
of Representatives

Algora Publishing, New York ([www.algora.com](http://www.algora.com))

# Guilford Cracks Down on Athletics After Improper Recruiting

By SAM A. HIEB  
Contributor

GREENSBORO

The Guilford County Board of Education is attempting to crack down on athletics violations in the wake of a scandal involving one of its high schools.

Allegations of improper recruiting surfaced at Northern Guilford High School in April, just after Northern won the state 3-A boys' basketball title. Principal Joe Yeager and Athletics Director Derrell Force resigned soon thereafter, and the board fired head custodian Louis Lawson, whose son Jacob was a focus of the recruiting allegations.

Though no official reason was given for Louis Lawson's dismissal, local media reported allegations that he was given the custodian's job so that Jacob could play basketball for Northern Guilford.

GCS' investigation didn't explicitly address recruiting, but it did reveal that 12 athletes were ineligible in a variety of sports, including varsity basketball. GCS turned its findings over to the North Carolina High School Athletic Association, which stripped Northern of its basketball title, while other sports teams were forced to forfeit games in which ineligible players were used. And though GCS officially found no wrongdoing on the part of basketball coach Stan Kowalewski, his contract was not renewed for the upcoming school year.

As a result, the school system is attempting to put in place rules designed to discourage athletes from gaming the system. At a recent meeting, board member Nancy Routh shared the first reading of a policy the



The principal, athletics director, and head custodian of Northern Guilford High School resigned last spring after allegations of improper recruiting surfaced. (CJ photo by Sam A. Hieb)

board is expected to approve at a later meeting.

The policy featured two main points, both of which generated considerable discussion. The first established a tougher grade-point average for athletes. The policy proposed that freshmen have a 1.5 GPA, while upperclassmen have a 2.0 GPA in order to participate in athletics.

"If we truly want to support the concept that our athletic programs are supplementary to our academic programs, and that we expect students to be students first and athletes second, and that we set the expectation for complying with the rules, then this will be a benefit," Routh said. "Maintaining a 2.0 average is reasonable."

But confusion centered on whether or not the 2.0 GPA should be weighted, giving more credit for

tougher courses, or unweighted. Some board members argued that allowing for the weighted grade-point average would encourage more athletes to take advanced-placement courses.

Board member Kris Cooke argued that setting grade-point average requirements only for sports participation would be unfair to athletes.

"If we're going to do it to athletics, then how can we not do it to other extracurricular activities (such as band?" Cooke asked.

A motion proposed by board member Amos Quick was adopted, gradually increasing the standards by establishing a 1.5 weighted GPA requirement starting in January 2010 and then raising it to a 2.0 for the 2010-11 school year.

The proposed 365-day waiting period for transfers was also at issue. Under it, students who transfer from

their regular school to take advantage of a program offered at another must wait 365 days to participate in athletics at the new school unless the board authorizes the transfer; with the board's approval, the waiting period will be waived.

Still, the question remains whether the policy will address parents who falsify residency documents, letting a child attend a particular school to participate in athletics.

That issue was highlighted in a recent Greensboro *News & Record* article in which a parent (who was not identified) said she did not regret breaking eligibility rules.

"I don't apologize for doing what's best for our son," she said. "They say what we did was wrong. We didn't do (anything) selfish or hurt anybody, so where's the problem?" the parent told the *News & Record*.

Quick wondered if the new policy went too far and asked how the board could counter such attitudes among parents.

"Are we overreacting to one school [Northern Guilford], given that we haven't had a history of this problem?" Quick asked. "This looks very punitive for the young people. I don't care if they're 6-foot-5 and 282 pounds. They're still kids, and they can still be manipulated by adults."

Guilford County Schools Athletic Director Leigh Hebbard replied, "There are a lot of people who think this is necessary, and there are other people who think students should be able to transfer for whatever reason they desire. I think this is a first step to address it," Hebbard added, noting, "I don't know that there's anything we can do to stop it altogether." CJ

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*Budget woes threaten options*

# Community College Changes Affect High-Schoolers

By HAL YOUNG  
Contributor

RALEIGH

**P**olitics makes strange bedfellows. It also makes for some strange policy.

While political leaders are calling for greater participation in community colleges, the budget recently enacted by the General Assembly has actually reduced access to longstanding programs allowing many high school students to begin college work early.

With the state's 11 percent unemployment rate driving adult students back to the classroom, high-schoolers are finding fewer opportunities to build their own resumes at local community colleges.

The community college system is no stranger to high school students. The "Learn and Earn" Early College program replacing the traditional high school curriculum was introduced five years ago.

But two well-established programs — the Huskins Act and dual enrollment — also give high school students a tuition-free path to college credit. And those were in the budgetary cross-hairs this year as the General Assembly scrambled to find savings.

Under the Huskins Act, community college instructors can be hired to teach full classes of high school students. School districts, career development centers, and other organizations have used this option to provide college coursework for interested students. Some courses have been taught even in churches.

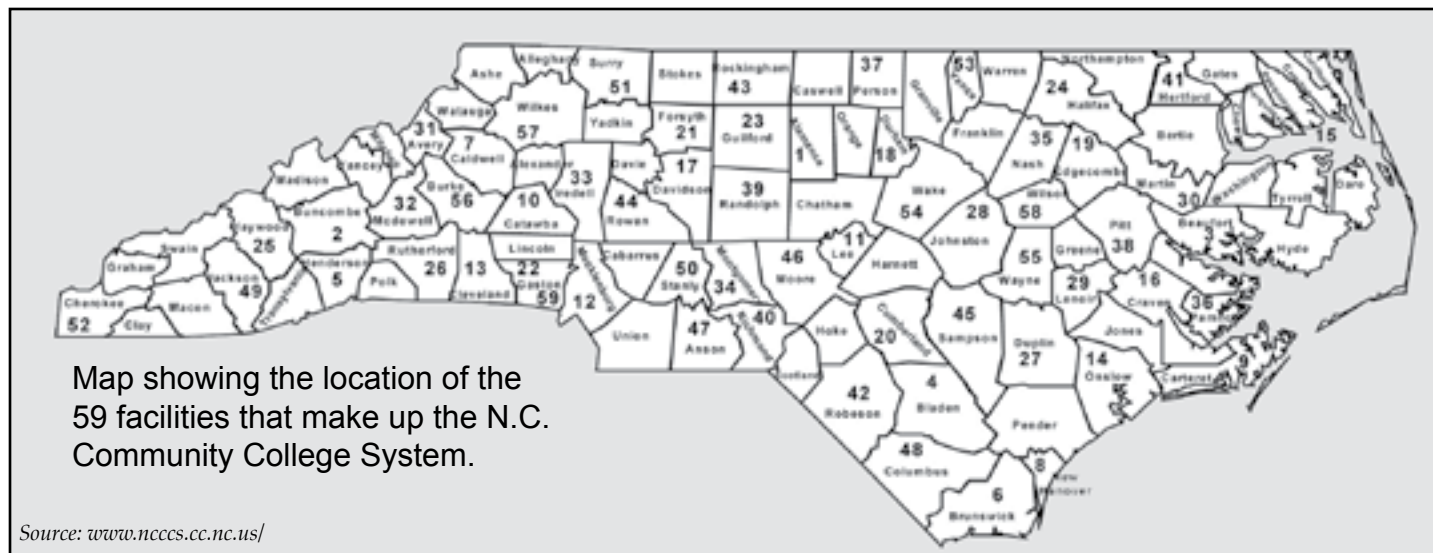
## Flexible option

A more flexible option, though, is the dual enrollment policy. It allows individual students to sign up for classroom seats left unoccupied by traditional community college students.

The program is open to high school students from both public and nonpublic schools, and has been very popular among homeschoolers who may not have access to programs like International Baccalaureate and Advanced Placement.

Availability varies from campus to campus and from one semester to the next, but since dual enrollment classes can be counted for both high school and college credit, some students have managed to nearly finish associate degrees by the time they graduate high school.

The latter program looks like a good deal for all involved. Once enough traditional students sign up to schedule the classroom and instructor, filling the empty seats with dual enrollment students presents little expense for the college. Instructors teach fuller classrooms and high schoolers get a head start on college coursework



Map showing the location of the 59 facilities that make up the N.C. Community College System.

Source: [www.ncccs.cc.nc.us/](http://www.ncccs.cc.nc.us/)

at no charge.

It's not that simple, though. Kenyon Briggs, executive vice president of the N.C. Community College System, explained that the colleges receive state and federal subsidies based on their number of "full time equivalents" (FTE), a ratio that calculates how many full-load, full-time students could be accommodated by the instructional hours delivered. The formula does not distinguish between a paid-tuition adult learner and a no-charge dual enrollment student.

That's why Huskins and dual enrollment found themselves in the budgetary cross-hairs this year. Briggs said that each FTE nets a community college about \$3,600 per "student" in state funding, and last year there were more than 21,000 students in these programs. Legislators also noticed that public school students involved were being funded twice, once at their high school, then again as part of the community college enrollment.

## Funding found

At one point it looked like both programs would be canceled altogether, but in the final budget, the General Assembly specified funding would continue for math, science, and technology courses. Briggs said a "disproportionate number" of dual-enrolled students were taking liberal arts courses, including English literature, foreign languages, sociology, or psychology. Legislators decided that high schools were already providing these classes, but upper-level math and science were not universally available.

Even that concession took some lobbying. North Carolinians for Home Education, the state homeschool organization, contacted members in June and July and encourage them to e-mail their representatives and remind them how much money homeschoolers already save the state, suggesting that dual enrollment was a minimal cost compared to the benefits to both the students and the colleges.

## Still a limited supply

High school students faced a tough year finding available space at community colleges even before state funding grew tight. When the economy turns down, displaced workers typically enroll in continuing education classes to boost their job qualifications. Briggs said last year's sharp increase in traditional students is continuing, and colleges are raising class size and adjusting schedules to compensate. The system grew by 15,000 FTEs last year and shows no sign of stopping for 2009-10.

There are now more than 800,000 students taking community college classes, he said, and colleges are struggling to accommodate even as the state required them to return 5 percent of next year's budget. Briggs said many campuses are reaching a physical limit of how many students will fit into their facilities.

"We're packed," said Sandra Crosmun, a chemistry instructor at Fayetteville Technical Community College. Crosmun said her freshman chemistry class is nearly full, and while some science courses are limited by the size of lab facilities, she said both her lab sections are full as well. She said her colleagues are reporting crowded classes as fall semester gets underway.

"People are transferring from other schools because they can't afford them," Crosmun said. The community college tuition of \$50 per credit hour is less than half the rate of nearby four-year colleges including Fayetteville State University and N.C. State University.

"We are the first stop and the last hope for many of our students," Briggs said. "We appreciate the difficult position the legislature is in and the challenge Gov. Perdue had to make the budget work ... [but] we will keep serving every student we can." *CJ*

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It also features the blog Squall Lines, featuring commentary on issues confronting coastal N.C. residents.

# UNC System Avoids Fiscal Austerity — Again

By JAY SCHALIN  
Contributor

RALEIGH

Despite lots of rhetoric about impending cuts to the University of North Carolina budget, the university system's ambitious plans remained largely on track.

In recent years, with the state's economy booming and the legislature emptying its stockpiles of reserves, the General Assembly permitted the university system to implement many new programs. But this year, with the severe downturn, the expectations were that even the most liberal legislators would have to drop their plans for government expansion and focus on fiscal austerity. Officials of all perspectives commented on how deep and painful such reductions were likely to be.

Yet it appears there was not quite the academic bloodletting that had been anticipated. While the final state appropriation of approximately \$2.706 billion to the university system for operating expenses for 2009-10 is roughly 10.6 percent lower than this fiscal year's projected budget of \$3.026 billion, it is actually \$23.6 million (0.9 percent) more than the budget approved by the legislature for fiscal year 2008-09. (UNC also gets revenue from tuition and private gifts.)

One reason the cuts were not greater is \$137 million provided by the Education Stabilization Fund of the American Recovery and Reinvestment Act — the so-called "stimulus package." Another is a larger-than-expected increase in tuition — by the lesser amount of \$200 or 8 percent for all students, graduate and undergraduate, in 2010-11. This will replace approximately \$34.8 million in state funding.

UNC system president Erskine Bowles said before the 2009 legislative session began that keeping UNC accessible to students was his first priority, and the new budget complied with his wish. It does little to limit UNC's overall enrollment growth, which will be fully funded for both 2009-10 (an additional \$44.2 million) and 2010-11 (an additional \$97.6 million).

And while the EARN scholarship program, added in 2007-08, is being phased out (saving \$16.2 million in 2010-11), the state's university-based need scholarship program received a \$23 million boost for 2009-10 (only \$11 million will continue in following years).

The increase in need-based scholarships was in part balanced by the elimination of smaller scholarship programs and tuition waiver programs that were initiated in the last few years. Most were targeted to a small population or to a specific need, such as the Future Teachers Scholarship-Loan program (\$1.3 million), which began in 2005 and was intended to attract more students to careers in teaching science, mathematics, and special education.

Other scholarships eliminated were: the UNC tuition waiver program for School of Science and Mathematics graduates (the dollars saved were unspecified), the senior citizens' tuition waiver (\$300,000), which permitted

seniors to attend university classes for free, and a \$447,000 annual program of scholarships to the private medical schools at Duke and Wake Forest universities.

The university's role in economic development continues to expand. This year, the legislature increased the annual allotment for UNC activities at the North Carolina Research Campus at Kannapolis by \$3 million to \$22.5 million. According to the General Assembly's "Joint Conference Committee Report" on this year's budget, seven UNC schools are involved in research at the campus "to break new



ground in health and science discoveries and help attract new employers and jobs to the state."

The legislature also gave \$5 million to N.C. State's College of Engineering. Some of this money will likely go for research for electric vehicles in the school's Advanced Transportation Energy Center. N.C. A&T's and UNC-Greensboro's newly created Joint School of Nanoscience and Nanoeengineering is getting an additional \$1 million for startup costs this year. And Elizabeth City State University's new School of Aviation is getting an extra \$300,000.

The UNC School of the Arts is not only getting \$2 million over the next two years to upgrade its filmmaking school, but is also getting another \$1 million added to its annual appropriation because it doesn't raise enough money on its own to support all student services. (UNC-Asheville is also getting \$1 million more for the same reason.)

Many important decisions were pushed back to the campuses, such as the fate of hundreds of academic and research centers and institutes. However, the entire system has to cut only \$12 million for these programs in 2009-10, so it is likely that many of them will simply receive slight across-the-board reductions.

And many other decisions were delayed for at least another year. "Big UNC" remains firmly on its expansionary course — the economic downturn so far appears to be little more than a temporary speed bump. CJ

## Campus Briefs

- Students at Campbell University created a college libertarians group that met for the first time on Aug. 25. The group included students and members of the Buies Creek community, where the university is located. Campbell University already hosts a group called the Adam Smith Club, whose purpose is to "promote the principles of individual liberty, responsibility, free market economy, and limited government." The College Libertarians will be more overtly political, helping libertarian candidates for public office, in addition to promoting libertarian principles.

- At many UNC schools, enrollment is breaking records. It's unclear whether the surge is due to difficult economic conditions — or despite them. At UNC-Greensboro, where tuition is relatively affordable, fall enrollment is projected at nearly 23,000, a new record for the school. The rapidly increasing enrollment has left UNCG with a new challenge — finding a place to house the incoming students. The situation is similar at North Carolina Central University, where this fall's freshman class is almost two-thirds larger than a year ago, forcing some upperclassmen to be housed in a nearby hotel. N.C. Central has admitted 3,527 students in its freshman class, up from 2,188 in the fall of 2008.

- North Carolina State University has received a five-year, \$700,000 grant from the John W. Pope Foundation to support teaching and research activities on issues relating to public policy, politics, economics, and law. The funding is an extension of a previous grant from the Pope Foundation and will continue to fund the university's "Economic, Legal and Political Foundations of Free Societies" project — which includes a lecture series, undergraduate courses, and research grants for students and faculty. The grant will also continue to support the student organization, the Society for Politics, Economics, and the Law (SPEL). The grant provides new funding for visiting scholars, project enrichment materials, and administrative support. The grant was awarded jointly to the Department of Economics in N.C. State's College of Management and the Department of Political Science in the university's College of Humanities and Social Sciences. CJ

Compiled by Jenna Ashley Robinson, campus outreach coordinator for the John W. Pope Center for Higher Education Policy in Raleigh.

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Jay Schalin is a senior writer with the John W. Pope Center for Higher Education Policy ([popecenter.org](http://popecenter.org)).

## COMMENTARY

## A September Letter To College Students

Parents, please pass this article on to your children who are just entering college. Additional information can be found at: [www.popecenter.org/students/current](http://www.popecenter.org/students/current).

It's September, and the college year is in full swing. What are you doing to make this experience more than just a four-year party?

If you are serious about college, you should have two goals in mind. First, you should prepare yourself for future employment — both your first job, and later ones as you build a career — by getting good grades, working in your field, and learning specific skills.

But second, you should strive to become an educated person, with an understanding of literature, history, and the sciences. College should fulfill your curiosity and satisfy your need for intellectual stimulation. Avoid the temptation to just “get by.” This country needs people with a solid education, an understanding of the past, and critical thinking skills — and you will be rewarded personally as well.

Here are a few guidelines to help you achieve both job and personal goals:

- Study something you love. You're more likely to succeed if learning is fun. For many jobs, any major will do, as long as you keep your GPA high enough. Employers look for a degree because it proves that you are intelligent and willing to learn. Even medical schools accept students from almost any science background; a pre-med degree is not required. Future lawyers can study economics, English, political science, or even math.

There are exceptions, of course; if you want to be an architect, engineer, accountant, or teacher, you have to take the courses that will prepare you to sit for state-regulated tests. The same goes in many of the hard sciences. But no matter what you choose, studying a subject that you love will make school an enjoyable experience.

- Select general education courses wisely. Broad requirements, such as “six credit hours in the social sciences,” can be fulfilled by serious courses such as macroeconomics or

American government, or by cotton candy — like “Leisure Behavior, Health and Wellness” or “Social Deviance.” Choose the serious ones.

In his study, “How Solid Is the Core,” George Leef suggests that students take at least two semesters of English composition, an introductory literature course, a course in Western history or Western civilization (preferably both), a U.S. history course, four semesters of foreign language, and a rigorous science course. I would add a course on logic and an introductory economics course.



JENNA  
ASHLEY  
ROBINSON

- Choose the best courses, whether electives or in your major. Study course descriptions. Ask upperclassmen to recommend courses. Research faculty at [ratemyprofessor.com](http://ratemyprofessor.com).

- Learn to write. No matter which major you choose, writing will be important. You'll have to write papers for classes, answer essay questions on tests, and communicate with professors. Later,

even if you accept a job in the sciences, writing will be important for communicating with colleagues and publishing your work. Take courses in composition. Ask your professors if they'll look at rough drafts of your work before you turn it in.

- Get an internship. Working while in college makes you more disciplined. And having a part-time job in your field will prepare you for a career after college and make it easier to get a job once you have graduated.

- Do independent research. The best way to do this is to complete an honors thesis in your department. If an honors thesis isn't an option, a course in research methods will suffice. Learning research methods — other than Google and Wikipedia — prepares you to find your own knowledge once you leave school.

You're going to devote four years of your life and a good deal of money to get through college, so it's wise to make it a rich intellectual experience. CJ

Jenna Ashley Robinson is the campus outreach coordinator for the John W. Pope Center for Higher Education Policy in Raleigh ([popecenter.org](http://popecenter.org)).

## Donor 'Strings' Prompt Finding Of Inefficiencies at UNC-CH

BY JAY SCHALIN  
Contributor

RALEIGH

It came as no surprise this summer when a team of private consultants discovered that UNC-Chapel Hill is overloaded with bureaucracy and inefficiency. It was a bit of a surprise, however, that the consultants were on the campus in the first place.

The project started when an anonymous donor attached some unusual strings to a gift to the university — insisting on a comprehensive investigation of the business practices of the campus conducted by Bain & Co., a Boston-based business consulting firm, and only by Bain.

The anonymity of the donor and the idea of outsiders from private industry poking their noses into campus affairs brought an outcry by some members of the UNC-Chapel Hill community. But Chancellor Holden Thorp supported Bain. Many chancellors might be hesitant to open up their campus operations to such intense scrutiny by those outside the education establishment, but Thorp welcomed it.

UNC's return on the donor's investment is likely to be large, and its successful implementation might signal a trend toward seeking alternative perspectives from the corporate world. UNC system president Erskine Bowles already has used outside consultants — when he took over as president, he brought in accounting giant Ernst & Young to review some systemwide practices.

Private industry focuses on the bottom line and therefore looks to lower costs wherever possible. Public entities like state universities, on the other hand, tend to grow without restraint unless there are deliberate efforts to stem the bureaucracy's advance. UNC-Chapel Hill is no exception — from 2004 to 2008, the university's administration costs grew 70 percent faster than instructional costs (6.6 percent growth vs. 3.9 percent).

The final report from Bain was released at the UNC-Chapel Hill Board of Trustees meeting on July 23. Much of it deals with ways to improve efficiency by centralizing and combining functions that have become fragmented and are now wasteful and redundant. At the least, tens of millions of dollars in inefficiencies have been uncovered, at a time when every dollar counts. Indeed, the university already had cut 10 percent from its projected operat-

ing budget for the 2009-10 school year — roughly \$60 million — without any input from Bain. Thorp said that job losses so far have been roughly 86 positions.

Some of the more egregious inefficiencies uncovered by Bain have been widely publicized: the university's organization chart is 10 layers deep in some areas, and more than half the supervisors have fewer than four subordinates.

Not all of Bain's recommendations will become policy, and not all of the proposed savings can be realized. Thorp has charged Joe Templeton, former chair of the chemistry department, to lead a campus task force to explore which proposals to adopt.

One area where big savings are projected is the procurement of goods and services — as much as \$40 million to \$45 million per year (the school made \$431 million in purchases in the 2008-09 school year). Currently, many departments and other small units perform their own purchasing on a small scale. If the procurement function for many such groups were combined, they could buy in bulk at more favorable prices from preferred vendors.

Some potential savings require initial investments. For instance, Bain says UNC-Chapel Hill's power plant operation can save \$700,000 to \$1 million annually in coal purchases by getting bigger deliveries at one time. However, this will require an initial investment of \$3 million to \$4 million to upgrade the facilities to handle the bigger shipments.

Reducing consumption of energy by 18 percent by 2015 could result in annual savings of \$10 million to \$15 million. This would require an enormous investment in upgrading laboratories and control systems — between \$100 million and \$150 million. But the school already has begun cutting back on air conditioning and encouraging workers to turn out lights.

Another problem uncovered by Bain is that many processes are not fully automated, so that employees continue to use paper documents instead of capturing data electronically. In other cases, processes have evolved in an unwieldy fashion so that employees must “work around” previous fixes to problems. CJ

Jay Schalin is a senior writer with the John W. Pope Center for Higher Education Policy in Raleigh ([popecenter.org](http://popecenter.org)).



Opinion

# Can States Calculate Their 'Productivity' in Higher Education?

A new report entitled "The dreaded 'P' word" published by the Lumina Foundation amasses a huge amount of statistical data in an effort to help states figure out if their public higher education systems are high or low in productivity. Author Patrick Kelly writes that his findings "clearly point to the reality that some [states] perform better than others with the resources they have."

Kelly also writes that his analysis "refutes the argument that more funding always leads to better performance."

With the second statement, I'm in complete agreement. It can't be said often enough that there's no automatic benefit to pouring more tax dollars into public higher education. The opposite is actually more likely; as Professor Richard Vedder showed in his book *Going Broke by Degree*, states that spend more on higher education actually reduce their economic growth.

But what about the first statement? If policymakers analyze data the right way, will they know how to change their higher education systems? I'm very skeptical.

Before getting into the specifics of this study, there is something we should keep in mind about statistics: They are often used as an excuse for government action when no action is called for. That point was driven home to me many years ago when I read

about the man who served as financial secretary of Hong Kong in the days when it was a British colony, Sir John Cowperthwaite.

He was once asked why the government in Hong Kong didn't collect economic statistics. He replied that they would serve no useful purpose and would simply encourage politicians back in Britain to think they could do something to improve on the laissez-faire policies he followed.

Kelly has gone to great lengths to come up with statistical measures of state higher education performance. It wasn't easy. "The most difficult barrier to conducting productivity analyses in postsecondary education," he writes, "is the lack of available data on the institutional costs of producing college degrees."

Let's stop right there.

Colleges and universities, much less systems of them, do not produce degrees, certificates, or any other sort of educational credential. Individual students *earn* them. This isn't just semantic quibbling. It makes a great deal of difference whether you think of higher education as a producer of credentials, or as a market in which people can shop for educational services they want. The former en-



courages the kind of thinking that plagued the Soviet economy ("Comrades, we must meet or exceed our production goals!"), whereas the latter encourages businesslike thinking ("How do

we make our services as appealing as possible?").

Think I'm exaggerating about the central planning mind-set that educational statistics encourage?

Kelly writes that states should think about "creat(ing) and sustain(ing) an economy that can retain the graduates they produce." Why? People will go where they find the best employment, and state borders have nothing to do with that. Indiana "produces" more engineers than employers in the state need, but that doesn't mean that politicians need to do anything to attract more companies that employ engineers.

Nor do states have to do

something if they have a large proportion of what Kelly calls "undereducated adults." If an individual thinks he would benefit from more education, he has no shortage of opportunities to obtain it.

For the sake of argument, let's take the report's statistics seriously.

How productive is North Carolina's higher education system?

Measuring the graduation rate per 100 full-time equivalent students enrolled, North Carolina is at 21, which is somewhat below the national average of 23. (Colorado is tops at 30.) That statistic will probably lead to demands that UNC schools need to "improve" and get more students through to their degrees.

I'd look at it differently. If a somewhat higher percentage of students who enroll in college in North Carolina than in Colorado later decide that completing the degree isn't the best thing to do, what does it matter?

On another measure, the percentage of degrees awarded in scientific, math, and engineering fields, North Carolina looks quite "productive," with 13.1 percent versus the national average of 11.8 percent. Florida is last with just 8.2 percent. Since those fields tend to be in high demand and generally pay well, we might cheer.

Don't bother. Again, high numbers aren't necessarily better than low ones. (Tops, by the way, is South Dakota.)

State higher education leaders should be thinking of improving efficiency, but these statistics don't help. They should be asking questions like, "Are we spending more than necessary on administrative staff?" "Are professors doing too much research and not enough teaching?" That businesslike approach will serve students and taxpayers best. CJ

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



GEORGE LEEF

Colleges don't produce degrees or credentials. Individual students earn them.

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## Town and County

## Mecklenburg auditors

Mecklenburg County plans to hire additional internal auditors after the discovery of financial irregularities in the county's Department of Social Services. *The Charlotte Observer* also reports that the county will likely change who sits on its audit review committee as a result of the situation at DSS.

The county is still trying to fully understand the extent of problems at DSS. The issue came to light earlier this year when the department could not account for \$162,000 meant to buy Christmas presents for needy children.

Mecklenburg currently has only five internal auditors, enough staff to review each department's spending only once every six years. Ideally, spending should be reviewed every three years. DSS was last subjected to a full audit in 1996. The county's audit review committee recommended that at least three additional auditors be hired.

At least one county commissioner thinks that isn't enough.

"I have worked with companies with 5,000 employees and the audit department was whale of a lot bigger than five or eight," said County Commissioner Bill James, an accountant.

## Asheville nuisance court

Asheville has decided to fund a nuisance court, a special court for repeat offenders who commit misdemeanors that undermine the quality of life in the city's downtown. Those convicted by the court will be sentenced to community service, reports the *Asheville Citizen-Times*.

Typically those arrested for crimes such as panhandling, prostitution, or graffiti vandalism plead guilty and are sentenced to the time they already served — typically two or three days — in the county jail. Those convicted by the nuisance court would instead receive sentences of 20 to 60 days, which would be suspended upon condition that they perform community service to clean up downtown Asheville.

"We have about 25 to 30 people who are responsible for about 80 percent of these problems," said Buncombe County District Attorney Ron Moore.

"I'm hoping that instead of a culture of people getting drunk and acting foolish downtown, we'll be able to modify that behavior, and Asheville will be known as the place where you don't want to do that." CJ

## Annexations Continue as Reform on Hold

By HAL YOUNG  
Contributor

With the end of the legislative session, the debate over forced annexation sleeps at the General Assembly. But it marches onward outside of Raleigh.

In Nash County, a cluster of 13 subdivisions is fighting to keep from being absorbed by the city of Rocky Mount. Charlene Moore, the acting chair of Oak Level Communities Against Forced Annexation, says her organization has tried everything from incorporation to a lawsuit to head off the city's encroachment.

"What they're doing is wrong," she said. "I don't care what you call it. Forced annexation is wrong."

The city's annexation plan includes 1,732 acres divided among five separate areas. The largest, 1,383 acres encompassing 667 homes and about 1,700 residents, extends from Interstate 95 corridor westward to the edge of Nashville, just crossing U.S. Highway 64 on the north.

"All it is is a tax grab," Moore said. The mostly residential property in the area has a tax valuation of more than \$96 million. She said the move would increase residents' property tax by 53 percent; the city expects to collect \$714,904 in property tax alone if the annexation goes through.

Residents say their proposed annexation offers little in return. Homes in the area had to put in wells and septic systems to meet occupancy requirements for the county, Moore said — "some of them less than three months ago" — and they are satisfied with the volunteer fire department they support and their own efforts cleaning and lighting the subdivision streets.

If Oak Level becomes part of Rocky Mount, Moore said, all their financial support for the now-rural community would be funneled to the city. Services that remain for their unincorporated neighbors, such as the volunteer fire department, would be severely impacted. "Where will they be then?" she asked.

The battle over Oak Level is the latest pitting city governments hungry for new tax revenues against residents and business owners situated outside municipal boundaries. Grass-roots pressure from local and statewide property-rights groups pushed legislators to consider changing the annexation process. But the only measure to emerge from the General Assembly, House Bill 524, passed in July, is a "compromise" that pleases neither property owners nor city officials.

Annexation reform got a boost from the N.C. Supreme Court's 2006 ruling in *Nolan v. Village of Marvin*. Daren Bakst, legal and regulatory policy analyst for the John Locke Foundation, said the decision defined a clear expectation that involuntary annexations must provide meaningful services to the annexed property. He said cities and towns have stretched that to the limit.

RALEIGH

"Cities will annex areas with no need of services," he said, "as if providing a single new police officer when the area already had excellent police services" would satisfy the Nolan requirements.

"H.B. 524," Bakst said, "did more harm than good. It doesn't do anything toward reform."

Genuine reform, he said, would ensure that meaningful services are provided, a third party — ideally the county commission — has oversight of the proposed annexation, and residents of the area have a vote in the matter.

"The vote provision in H.B. 524 is a joke," Bakst said. Landowners' groups want to subject any attempt by a city to annex property forcibly to a vote by the people being annexed. H.B. 524 allows a vote, but the process would make it difficult if not impossible for residents who don't want to be annexed from blocking the move.

Under the bill, those objecting to a proposed annexation could call for a referendum. But to get it on the ballot, they would have to collect signatures from 15 percent of the residents in both the area being annexed and the city requesting the annexation. Voters from the entire area would then vote on the proposal.

"The voting provision is unfair to citizens in the annexed area," said Allison Fowler, legislative director for the N.C. State Grange. "They have to convince urban voters to oppose the annexation? To say there's a vote in this bill is disingenuous."

Fowler said the Grange would back a reform bill "to put power in the people's hands," but this isn't it.

On the other hand, the N.C. League of Municipalities is "disappointed" that the voting procedure was included in the bill at all. The measure was added in committee and defied efforts to remove it before passage in the House.

This image from the Oak Level Community Against Forced Annexation Web site (<http://olcafa.org/>) makes clear where the group stands.



The League's director of public affairs, Margot Christensen, pointed to an Aug. 14 legislative bulletin stating, "The addition of the referendum provision made the bill unfair and unworkable, setting a path that would effectively eliminate the use of annexation as a tool to manage growth and provide urban services in an orderly manner."

Despite the League's warning, Bakst is not optimistic about the eventual fate of the bill. "The hope is that somehow the bill will be fixed [in 2010], but the North Carolina Senate is notoriously unhelpful" on property rights issues, he said.

Oak Level's Charlene Moore said her group took as many as 30 people to the General Assembly for every meeting that addressed annexation. "We went on every trip to Raleigh we could go," she said. "One week we went four times when they kept postponing the meeting."

Like Bakst, she said the present bill wouldn't fix anything. "There is absolutely nothing in it that will help anyone at all," Moore said. She is looking forward to an October court date for her organization's lawsuit against Rocky Mount. CJ



# 'Just a Pinch' Could Land A Big Fine in Hillsborough

By DONNA MARTINEZ  
Contributor

HILLSBOROUGH

Town commissioners are set to consider a broad ban on the use of tobacco products in town-owned parks that could propel the Orange County town to the front lines of an expanding war against tobacco use. If the ordinance expected to be discussed Sept. 14 is approved as originally drafted, Hillsborough would ban the use of smokeless tobacco in its five parks, as well as tobacco products that are lit and burned.

Town Attorney Robert Hornik confirmed the regulation town board members discussed in July specifically addresses the prohibition of products commonly known as spit or chewing tobacco. A policy analyst who follows the anti-smoking movement puts the proposed regulation in "very-hard-to-justify territory."

According to Hornik, the July draft of Hillsborough's ordinance reads in part: "All designated parks owned by the Town of Hillsborough are tobacco-free zones. No person within a park boundary may possess a lighted tobacco product including but not limited to cigarette, cigar, or pipe. No person may make use of a smokeless tobacco product while within the park boundary."

Hornik said the ordinance is still a work in progress, but he wouldn't say what changes might be made or whether the ban on smokeless products would be retained or purged. He plans to talk with other town staffers before deciding on language that will be presented to the board in September.

"I know that there were at least one or two members of the board who felt as if smokeless tobacco ought to be presented also," Hornik said. "What they're going to decide to do, I don't know." The board can approve the ordinance as presented, reject it, or ask staff to modify it.

Thomas Firey, managing editor of the Cato Institute's *Regulation* magazine, described the prospect of banning the use of spit tobacco as "even more remarkable" than the push to eliminate smoking in parks. "This would definitely be moving into new, fresh territory."

Firey said he can understand

someone might not like the aesthetics of spit tobacco, or that a person might want to change someone else's behavior. It's another thing altogether, he emphasized, when elected officials use the power of government to impose their own preferences on personal behavior.

Hillsborough Mayor Pro Tem Michael Gering opposes a ban on smokeless tobacco, even though he supports a ban on cigarettes and other smoked tobacco products. He's concerned about the proximity of smoke to children playing in the parks and the costs associated with cleaning up butts.

He draws the line, however, at regulating activities he simply doesn't like.

"I don't like to see people chewing and spitting, but that's just the sort of disagreeable behavior you see all kinds of people doing,"

Gering said. "I mentioned cell phone etiquette [at the July meeting] as the sort of thing that is a personal annoyance with me, but that doesn't justify legislating against it."

Town Commissioner Brian Lowen is mulling the smokeless issue even though Gering told *CJ* that Lowen defended the idea when commissioners discussed it in July. Lowen works in the medical field and believes smokeless products are as unhealthy as cigarettes. Still, he wonders how town officials would enforce a ban. "We aren't going to go up and give a mouth test to see if [park visitors are] chewing gum or something," Lowen said.

If Hillsborough officials adopt a smokeless tobacco ban on park grounds, state law won't stand in their way, reports Elisabeth Constandy of the Tobacco Prevention and Control Branch of the North Carolina Division of Public Health. Although the state's tobacco laws only reference "smoking" in their language, "there are no laws in place that restrict local governments' authority to regulate smokeless products," Constandy wrote in an e-mail.

On Jan. 2, North Carolina's newest tobacco law will ban smoking in restaurants and bars. Constandy said the law also expands local governments' authority, giving them power to regulate tobacco use on all municipal exterior grounds, whether they own and operate the property, or own it and lease or rent it to someone else. *CJ*



COMMENTARY

## Legislature Bats .500

When it comes to local governance issues, the General Assembly batted .500 this past session. If this were baseball, that would be an astounding average. It's not baseball, however, and the General Assembly let an opportunity to enact much-needed reform pass by.

The legislature whiffed on an opportunity to require local governments to pay (in most cases) the reasonable legal expenses of parties who were illegally denied access to public records. Currently, recovery of legal expenses depends on a judge's discretion, and all too often those who have to sue to obtain public records only recover a portion of their legal expenses.

Open government disputes are often seen as institutional clashes between local governments and the news media, especially newspapers. And to a degree that's true. The news media certainly believe themselves to be the guardians of the public interest, a point they trumpet whenever possible. And that mission does extend to fighting for access to documents that some local governments would rather the media, and by extension the public, not see.

The print news media as we've known it over recent decades is dying, however. Costs are up, while circulation, and thus advertising revenues, are down. So if you're looking to newspapers to keep fighting the good fight to disclose public records — and sometimes eating the legal costs along the way — you could well be disappointed in the future.

It's never been true, though, that all public records disputes involve newspapers. The right to access records belongs to every member of the public, not just news organizations. Oak Island, for example, in July admitted to violating the state's public records law. The case involves a builder who contends a condominium project lost money because the town changed its maximum height rules after construction had begun. The town refused to turn over all documents until it was sued.

The decline of newspapers

doesn't mean that the public's interest in public records will decline. It's just that those interested will typically have fewer resources at their disposal to force local governments to follow the law. This makes it all the more critical for the General Assembly to assure recovery of legal costs.

### Ethics policies and training

What the General Assembly did, instead, was require elected local government officials to attend ethics training and local government agencies to adopt a written ethics policy. Both are steps in the right direction, though neither will by itself assure good government.

It's certainly true that ethics training is unlikely to provide an ethical compass to someone who lacks it. North Carolina does have an abundance of elected governments — 100 counties, 540-plus municipalities, 115 school districts, and a host of sanitary districts. Between them, these agencies have thousands of elected officials. It would be nice to think each official comes to office with a working knowledge of local government ethics and how to avoid conflicts of interest.

That expectation would also be completely unrealistic. Thus it's reasonable to require two hours of ethics training each term within a year of an official's election or appointment. Training should reduce the level of questionable actions that result from ignorance of the law.

Likewise, adopting an ethics policy that addresses issues like "the need to obey all applicable laws regarding official actions taken as a board member" and "the need to uphold the integrity and independence of the board member's office" would, in an ideal world, be unnecessary.

In the real world, spelling out expectations and setting standards of behavior encourage ethical conduct and make it easier to hold officials accountable. And that's not a bad thing. *CJ*



MICHAEL LOWREY

Michael Lowrey is an associate editor of Carolina Journal.

## Local Innovation Bulletin Board

## Detroit's Failure

Detroit has been called the most liberal city in the United States. It's also an economic basket case, and there may be a connection, writes Jarrett Skorup for the Mackinac Center for Public Policy.

In 1950, Detroit had the highest per capita income of any American city. Today it has the second lowest, ahead of only Cleveland.

"Could it be pure coincidence that the decline occurred over the same period in which union power, the city government bureaucracy, taxes, and business regulations all multiplied?" asks Skorup.

"While correlation is not causation, it is striking that the decline in per capita income is exactly what classical economists predict would occur when wage controls are imposed and taxes are increased."

Among the "progressive" public policies that Detroit has embraced are a "living wage" ordinance that requires above-market wages for public employees and private contractors; powerful unions that defend exceptional pay, benefits, and job protection; and a tax system that aggressively redistributes wealth.

These policies have not produced prosperity. Far from it. Detroit has the highest unemployment rate of any large U.S. city.

The quality of public services leaves much to be desired. Detroit's spending per public school pupil is in the 91st percentile in Michigan, yet students perform at only the 3rd percentile.

"Detroit, remember, was going to be the 'Model City' of Lyndon Johnson's Great Society, the shining example of what the 'fairness' of the welfare state can produce," said Tom Bray, former editorial page editor for *The Detroit News*.

"Billions of dollars later, Detroit instead has become the model of everything that can go wrong when you hook people on the idea of something for nothing — a once-middle-class city of nearly 2 million that is now a poverty-stricken city of less than 900,000."

### Austin energy audits

Austin, Texas, has become the third city in the nation to require that homeowners hire a firm to conduct an energy audit before selling their house. This places an additional burden on homeowners in a housing market that's already depressed,

says the Heartland Institute.

An energy audit provides a detailed analysis of such items as a home's heating systems, cooling systems, draftiness, and insulation. Audits typically cost \$200 to \$300. The other cities that require energy audits are San Francisco and Berkeley, Calif.

"It may not seem like much, but in a tough economy I think the city council is shooting homeowners in the foot. It's going to make it more costly and difficult to sell a home," said Sterling Burnett, a senior fellow at the National Center for Policy Analysis, of the requirement.

Homeowners or homebuyers who are truly interested in energy efficiency already have the option of seeking out such information if they choose. The city's action extends that to all homes that are for sale, regardless of whether the information would be useful to the buyer or seller.

The requirement also creates a conflict of interest, as those conducting the audits often also market energy-saving upgrades or repairs to homeowners.

### Fighting congestion

Traffic congestion was down in 2007, the first time the situation for drivers has improved in 16 years. While that's good news, Americans still spend too much time stuck in traffic jams. A drastic change in policy is needed, says *The Economist*.

The reduction in congestion can be attributed to two factors: rising gasoline prices and, more recently, a slumping economy. Those conditions may not last. And despite congestion dropping in 2007, Americans still spent 4.2 billion extra hours and wasted an extra 2.8 billion gallons of gasoline sitting in traffic jams. The cost of congestion was estimated at \$87.2 billion in 2007, more than double the cost in 1997.

While Congress is talking about building more roads, the degree new construction will alleviate the problem is uncertain.

"In the long term, road (congestion) pricing is surely the answer," says *The Economist*.

"Society bears the costs of pollution and wasted time. Road pricing is controversial — a plan to introduce it in Manhattan was scuttled last year. But if Americans don't want to be stuck in their cars, they had better get a move on." CJ

## Monroe Finds Self in Middle Of Union County Gas Dispute

By MICHAEL LOWREY  
Associate Editor

RALEIGH

Two natural gas companies are arguing about the limits of their territorial jurisdiction. Caught in the middle of the case is the Union County city of Monroe, reports *The Charlotte Observer*.

Ordinarily, natural gas companies have territories assigned by the state. Piedmont Natural Gas' service area includes Union County. PSNC Energy, meanwhile, operates in Iredell and Cabarrus counties.

A number of North Carolina cities and towns operate electric utilities. Monroe, which serves about 10,000 customers, is one of eight municipalities that also provide natural gas. That's what's at the heart of the disagreement between the two companies.

The city traditionally has resold natural gas that it obtains from Piedmont. Monroe has, however, entered into an agreement for PSNC Energy to supply the city. The agreement requires the construction of a 43-mile, \$25 million pipeline from Iredell County to Monroe. The city expects to save \$200,000 a year once the pipeline is complete and \$2.5 million a year when the costs of building the pipeline have been recouped. Municipal customers will initially see rates drop by about \$18 a year.

Monroe's existing deal with Piedmont expires in March.

Piedmont opposes the pipeline, claiming it will allow PSNC Energy to sell natural gas in Union County, violating franchise rights awarded by the state.

"I've been here 19 years, and that's the first time I've seen anything like that in natural gas," said Bill Gilmore, assistant director of the N.C. Utilities Commission's natural gas division.

### Guilford incentive scheme

Guilford County seems poised to pass a landmark new economic incentive policy. Whether it's legal or not is uncertain, reports the *Greensboro News & Record*.

Under a proposal advanced by Steve Arnold, vice chairman of the Guilford Board of Commissioners, the county would refund the property tax due on any increased property tax valuation for three years. Certain conditions apply, including that qualifying businesses must not be in an area zoned residential. A company would

not have to add jobs to qualify for tax refunds, which would start in the fiscal year beginning July 1, 2010.

It remains to be seen if the policy, if adopted, will pass legal muster. State law prohibits localities from offering tax abatements, local property tax breaks for specific groups.

"Legally, what a jurisdiction needs to be careful about is doing something that closely mimics tax abatement," said Jonathan Morgan, assistant professor of government at the UNC

School of Government.

"A safer way to go would be to provide a grant as an economic development incentive grant and not treat it as a rebate in taxes."

Morgan said the policy would be especially legally problematic if tax breaks went to companies that would have expanded anyway.

While Arnold's proposal is believed to enjoy the support of a majority of the Guilford county commission, not all commissioners support the idea.

"If you want to give people a tax break, then lower the tax rate and lower it on everybody," said Commissioner Paul Gibson.

### Boarding house rules

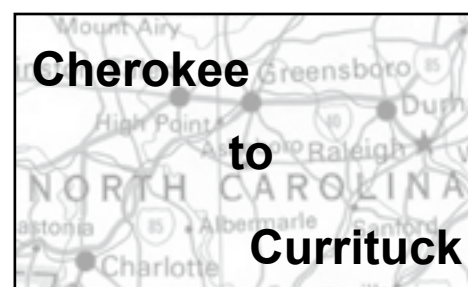
Winston-Salem is in the early stages of implementing tough new rules on rooming houses in the city. The policy eventually would force rooming houses to operate without room locks, reports the *Winston-Salem Journal*.

In 2007, the city passed a regulation requiring rooming house owners to register the properties with the city by Jan. 1, 2009. In addition, all rooming houses must be brought into compliance with zoning standards by Jan. 1, 2012.

That's a particular issue for rooming houses located in areas zoned for single-family houses. Owners must either be granted a zoning variance by city council or no longer operate as a rooming house as defined by the ordinance.

The city got a preview of what that will involve recently. The city rejected the rooming house registration of a house that Jim Crawford had moved onto Westdale Avenue, which is zoned for single-family houses, in 2007. The city gave Crawford 30 days to stop operating the building as a rooming house.

As a practical matter, complying means removing the keyed locks on residents' individual rooms. CJ



# Suing City Water Systems Depends on 'Foreseeability' of Problem

## Court rules Apex should have anticipated trouble

BY MICHAEL LOWREY  
Associate Editor

RALEIGH

Much of the water North Carolinians use is provided by water systems owned and operated by local governments. If something goes wrong, to what degree can these water systems be held accountable? The answer, highlighted in a new opinion by the state's second highest court, depends on what degree the situation was foreseeable.

On June 24, 2004, Milton and Teresa Fussell closed on a house and adjacent empty lot in Apex. Soon after, the house was badly damaged by running water. The Fussells claim that the flooding happened because of the actions of Thomas Cooper, the property's listing agent, and the town of Apex.

In their lawsuit, the Fussells contend that the previous owners had rented the place and that the tenant,

Mary Lois Woodson, had refused to move out. Cooper had guaranteed that she would be out before closing. But she hadn't left, and the Fussells didn't know it. On June 25, at Woodson's request, Cooper called the town requesting that the water be turned on again.

A town employee came to the property. He knocked on the doors and got no response. He then turned on the water, observed the meter was running, indicating water being used, and left. No one was home, but the faucet in an upstairs bathtub was open with the tub drain plugged. The water ran for several days, causing substantial damage.

In August 2006, the Fussells sued Cooper, his realty company, an insurance company, and the town of Apex. Four months later, Superior Court Judge Donald W. Stephens dismissed the case against the town before it came to trial. The Fussells challenged the dismissal before the N.C. Court of Appeals.

### What's foreseeable?

Ordinarily, state law makes it extremely difficult to sue a locality for negligence. In a 1966 decision, *Mosseller v. City of Asheville*, the N.C. Supreme Court created an exception when it held that municipalities that sell wa-

ter can be held liable just like a privately owned water company. There's a catch, though: Municipalities can be held responsible only for damages that were reasonably foreseeable to the city.

Thus the question for the appeals court was to what degree the damages suffered by the Fussells could have been reasonably foreseen by Apex.

"We hold that these allegations sufficiently state a negligence claim because it was reasonably foreseeable that leaving the water running in an unoccupied house could result in property damage," wrote Appeals Court Judge Martha Geer for the majority, reversing the lower court and allowing the claim against the town to come to trial.

The appeals court held the facts were most like those in *Graham v. N.C. Butane Gas Co.*, in which the N.C. Supreme Court held a natural gas company must "use reasonable care to prevent the escape of gas" in its customers' buildings. The case involved a natural gas delivery to a home. The deliveryman noted that gas was escaping from the house's range. Rather than shut off the gas, he continued to refill the storage tank before going inside to relight the pilot and deal with the leak.

There was an explosion and the house burned.

"We cannot hold, at the motion to dismiss stage, that it would be unforeseeable to the Town employee that leaving water flowing in an unoccupied house could cause property damage," wrote Geer.

The Court of Appeals noted that the Texas Court of Civil Appeals reached a similar conclusion in *City of Denton v. Gray*, a 1973 case with facts much like those in the Fussells' situation.

The appeals court did reject the Fussells' claim that the town was liable for failing to ensure that Cooper was authorized to have the water turned on. The town, Geer wrote, had no reason to think Cooper didn't have authority and was under no obligation to establish his authority.

Judge Wanda Bryant dissented, arguing that the majority's reliance on the Texas opinion was misplaced. The water department in that case had a policy of requiring that someone be home or that the building be unlocked to ensure that no faucets were open when water service was resumed. No evidence was presented that Apex had such a policy.

"[T]here is no evidence that the Town of Apex has established a custom that requires someone to be home, or an employee to check the home to ensure that no spigots were left running, or to turn off the water if the water meter is running when the water supply is being turned on," wrote Bryant.

Because of Bryant's dissent, the N.C. Supreme Court must take the case if Apex appeals.

The case is *Fussell v. N.C. Farm Bureau, et al.*, (08-597). CJ



# E.A. MORRIS

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## From the Liberty Library

• When Barack Obama launched his presidency, he pledged to “build a more hopeful America.” But in the first six months of his term, Obama has indulged in a breathtaking campaign of nepotism, self-dealing, back-scratching, corporate lobbying, government favors, entrenched incumbency, and hypocrisy.

So argues best-selling author and investigative reporter Michelle Malkin in her devastating exposé of the Obama administration, *Culture of Corruption*.

In the book, Malkin shows how Obama has hand-picked a team that will do his dirty work for him and exposes dozens of corrupt dealings — all of which the liberal media would rather keep hidden.

From power broker Rahm Emanuel, to pay-to-play tainted Michelle Obama and Joe Biden, Obama’s Cabinet is all about increased government power and very little about helping Americans get ahead. More at [www.regnery.com](http://www.regnery.com).

• During the 40 or so years that preceded Hugo Chavez’s seizing of power, Venezuela had the most stable democracy in Latin America. Thanks to its immense oil revenues, Venezuela enjoyed the fastest-growing economy and the highest standard of living in the region. After Chavez seized power in 1999, however, everything changed. Yet somehow the vast majority of contemporary references to Venezuela are laudatory.

In *Hugo Chavez: The Revolutionary Has No Clothes*, A.C. Clark corrects the prevalent warped take on Hugo Chavez and the “Bolivarian Revolution” in Venezuela and skewers those grotesquely admiring portraits of Chavez painted by panegyrists from Noam Chomsky to Sean Penn. Learn more at [www.encounterbooks.com](http://www.encounterbooks.com).

• In preparation for the 40th anniversary of Woodstock, liberals are rolling out the old lie that free sex, drugs, and rock ‘n’ roll define the ‘60s.

Jonathan Leaf’s new book, *The Politically Incorrect Guide to The Sixties*, shatters the myth that the 1960s were full of drug-loving hippies and revolutionary student radicals.

Contrasting the ‘60s’ wild reputation with the conservative reality, Leaf shows how the 1960s were actually dominated by Brooks Brothers and Broadway musicals — not bell bottoms and Bob Dylan. More at [www.regnery.com](http://www.regnery.com). CJ

## Book review

# Gingrich: GOP Needs to Reach Out to the Center

• Newt Gingrich, *Real Change: The Fight for America’s Future*, Washington, DC: Regnery Publishing, 2009, 326 pages.

BY HAL YOUNG  
Contributor

In the parallel worlds of journalism and politics, you occasionally encounter the term “overtaken by events.” Occupying both worlds as he does, former House Speaker Newt Gingrich found himself awash in developments that called for a short-cycle revision of his book, *Real Change: From the World That Fails to the World That Works*, published in January 2008.

When he completed the original in October 2007, he says, “I was convinced the Republican Party was off track and the Democratic left had learned nothing about reality. That said, I didn’t anticipate the collapse of conservative fiscal policies and the explosion of government intervention and unrestrained spending, which began with the \$180 billion ‘stimulus’ package in spring 2008.”

So just 17 months after *Real Change* came out, Gingrich has offered a paperback edition with a new subtitle, *The Fight for America’s Future*. The cover advises this is “REVISED AND UPDATED, ‘The Obama Edition,’” and it includes discussion of this administration’s actions dating to late spring 2009. Certainly, “Hope and Change” is proving to be no more than “Hope” as it unfolds in Congress, but Gingrich doesn’t pull any punches toward the Democratic left or the Republican right.

Gingrich says the consultant-driven, scorched-earth campaigning of recent years which focuses on “mobilizing the base” has exhausted voters who are not permanently angry and anti-government. Most Americans, Gingrich believes, support good government and limited government, and Republicans’ failure to propose broad solutions and big ideas to that majority — rather than focusing on the radical base — has cost them elections. Bush v. Kerry in 2004 could have been a blowout like Nixon v. McGovern in 1972, if the GOP had reached out more to the center.

Part of this comes from the faulty “red state/blue state” political model. Gingrich cites polls showing broad agreement with conservative positions on such issues as the threat of terrorism, school prayer, Social Security reform, and offshore drilling. He says the reality is not a 50/50 division, but more of a 85/15, with the center-right outnumbering the “fringe left.”

Ironically enough, though Barack Obama’s personal sympathies seem to reflect the 15 percent, his 2008 presidential campaign demonstrated how successfully to reach deep into the political center with broad-stroke ideas and rhetoric — even while pushing bad ideas.

Obama is discovering the difference between campaigning and governing, a lesson usually lost on both sides

of the aisle. Gingrich says it’s also a lesson neither party is inclined to learn. Democrats won’t do it because it would harm their power base of unions and bureaucrats. Republicans, he said, are so burned out from the task of reining in government growth they have no energy to create constructive solutions for real and legitimate problems. This further isolates the GOP from influencing the center band of voters who may be willing to swing right as well as left.

What’s more, Republicans have grown comfortable being marginalized that way. When President Clinton’s miscalculations in 1994 handed the GOP a majority in the House, many Republicans considered that as mission accomplished, rather than “a first step to creating a governing majority.” Gingrich quotes Democrat-turned-Republican Sen. Phil Gramm’s astonished observation that it’s much easier to live in the minority. The majority party has to take the initiative, write and manage legislation, and push bills through the process. Minority parties simply vote “No.” Where’s the progress in that?

“The current system of self-reinforcing power will never be reformed from within, but this should not lead to despair,” Gingrich says. “Thomas Jefferson wrote that ‘whenever any form of government becomes destructive to those ends, it is the right of the people to alter or abolish it, and to institute new government. ...’” Popular revolts have happened before, and they can happen again, he writes, identifying eight major shifts in American government, ranging from Independence and the Constitution to the rise of Jacksonian democracy, the growth of Progressivism, and the Reagan Revolution.

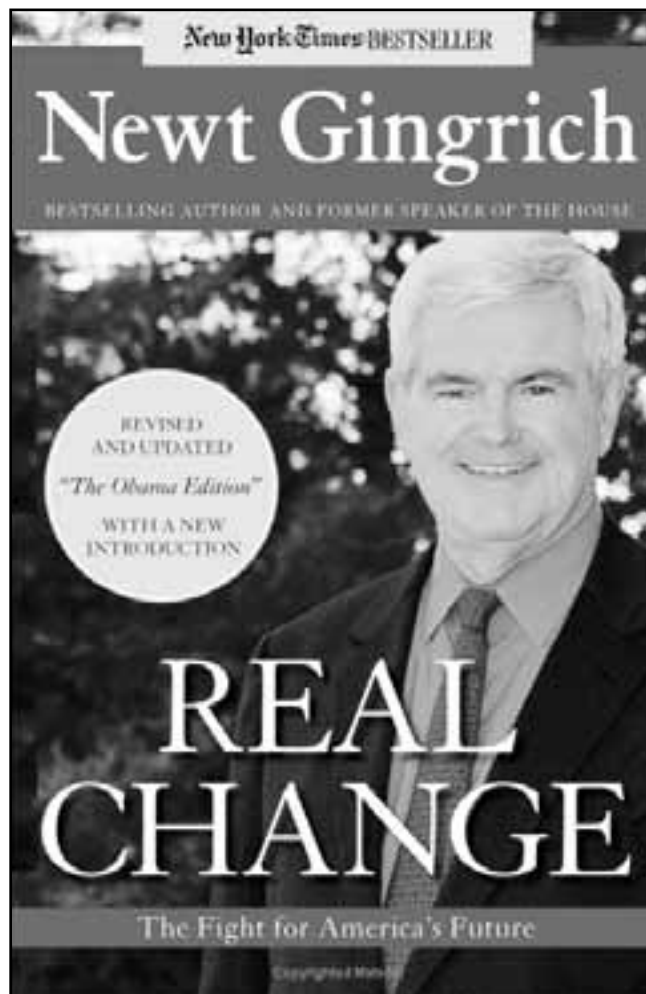
The American people must demand a government that acts based on evidence and common sense, two things present government will not consider. He doesn’t say whether Democrats or Republicans would be more adept at implementing such a process, but he is certain that the people will need to elect reform-minded representa-

tives from the White House down to the local school board if real change is going to take place.

He sees nothing strange in Ronald Reagan reading Hayek, Friedman, and Hazlitt as preparation to talk with General Electric’s factory workers. Familiarity with sound economic principles made the Great Communicator “a tremendous educator,” Gingrich says, and we need to be educating ourselves and each other on these same principles today. Adopting the Democrats’ terms of debate will not change anything.

Overall, the book has the same feisty tone we hear from Gingrich on talk shows. If anyone picked up Reagan’s mantle as “The Happy Warrior,” it’s Newt. Of course, that was part of the problem — it wasn’t George Bush advancing conservatism in 1988.

Arguably, the absence of a successor to Reagan’s good-but-limited, government-of-solutions agenda led directly to the disappointments of every subsequent administration, including Obama’s. Bad policy is a bipartisan problem. CJ



# Imagine Our Current Politicians Matching 'Tweets' With Founders

How might our modern-day, national politicians fare debating our Founding Fathers? To be honest, I cannot imagine many contemporary political figures — Republican or Democrat — matching wits with most Federalists or Anti-Federalists. Scheduling such an intellectual match seems unfair — and possibly unkind, especially for today's politicians, who deem their intellects larger than and superior to those of their contemporaries and constituents ... and even their ancestors. Consider this analogy:



**TROY KICKLER**

Imagine throwing an average, 200-pound man in a boxing ring with a top contender in the professional welterweight division (141-147 lbs). The experienced gambler would bet his house and his mother's and grandmother's (and more) on the welterweight. The match is only an illusion

of competitiveness. Although today's politicians, via "progress," use such methods as Twitter and Facebook to put forth their arguments rapidly to a wide audience, an expanding array of technological advancements do not foster better logic or reason or encourage a discussion relying on first principles.

Compare almost any contemporary politician with Luther Martin, an Anti-Federalist from Maryland. Federalists charged Martin with being sodden and lacking graceful oratory (both charges were fairly accurate). In particular, Federalists criticized Martin for incorporating slang into his speeches and recorded that his language was "too low" — that is, his speech was unfit for a gentleman's ears. His dialect also offended many Federalists. He said, for instance, "cotch" rather than "caught" and "sot down" instead of "sat down." Oh, and he earned a reputation for uttering long-winded, desultory speeches.

But many of his speeches have a clarity that is missing in The Federalist Papers (when taken collectively), and the rambling orator from Maryland more than likely would outsmart

many politicians of today. Replying to criticisms that whenever he spoke at the Constitutional Convention, delegates were yawning, slumbering, and snoring, Martin replied: "If my rising to speak had such a somnific influence on the Convention . . . I have no doubt the time will come, should this system [the Constitution] be adopted, when my countrymen will ardently wish I had never left the Convention, but remained there to the last, daily administering to my associate the salutary opiate. Happy, thrice happy, would it have been for my country, if the whole of that time had been devoted to sleep, or been a blank in our lives, rather than employed in forging its chains."

Although there were accomplished statesmen on either side of the aisle, it was a common tactic among the Federalists to attack Anti-Federalists' intellectual capacities. During the first ratification debate in North Carolina (1788), James Iredell, a leading Federalist and one of the first justices on the U.S. Supreme Court, suggested that Anti-Federalist Timothy Bloodworth was uneducated, unread, and uninformed.

Of course, his comments were stated in a veiled way — a way that he undoubtedly believed went above the New Hanover County farmer's head while remaining clear to the more distinguished members. (At one time we've all been involved, as the giver, recipient, or spectator of this type of humor.)

Bloodworth was no Demosthenes, nor was he genteel or an exemplar of the early-American autodidact. But he argued not only about a proposal's details but also about first principles. He questioned ramming a plan through without a detailed explanation.

A budding curmudgeon I may be, but the self-styled sophisticates in today's political arena amuse me. Many times they cast themselves as superior intellects who know what's best for all, with arguments suggesting that change is inherently good. Well, newer isn't always better. And in the case of politicians, they don't make 'em like they used to. *CJ*

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

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## Short Takes on Culture

**Potter Film Faithful to Book**

• "Harry Potter and the Half-Blood Prince"  
Warner Bros.  
Directed by David Yates

Since *Harry Potter and the Half-Blood Prince* is one of my favorite books in the Potter series, I was both apprehensive and hopeful when I finally got to see it on the big screen.

In his sixth year, Harry is busier than ever. He's Quidditch Captain; his old potions book, previously owned by the half-blood prince, contains mysterious instructions and unknown spells; he begins to learn more about Lord Voldemort's dark past; and, like any other 16-year-old, he's navigating new relationships — both his own and his friends'.

On the whole, director David Yates edited the story well, and screenwriter Steve Kloves' screenplay packed a lot of J.K. Rowling's original dialogue into each scene. As amusing as it would have been to see Professor Dumbledore meet the Dursleys, or to hear Luna Lovegood comment on Quidditch, those scenes would have done little to advance the movie's plot.

I would have liked to see more of Voldemort's shady history, but I'm hoping it'll show up somewhere in *Deathly Hallows*, which will be stretched into two movies.

Films almost never live up to the books on which they're based, and "Half-Blood Prince" was no exception. But I still loved it. It was funny, quick-paced, and faithful to the spirit of the book. I can't wait for the next installment.

— JENNA ASHLEY  
ROBINSON

• "For Love or Country: The Arturo Sandoval Story"  
HBO Films  
Directed by Joseph Sargent

As the opening credits roll, viewers see three hoodlums painting graffiti on a wall in Havana. The wall is adorned with a Cuban flag and a picture of Che where the star should be. Their graffiti says "socialist murder."

Any movie that starts like this has to be great.

"For Love or Country" is the true story of Cuban jazz trumpeter Arturo Sandoval and his life in Castro's Cuba. Sandoval, played by Andy Garcia, struggles against the regime that has branded his style of jazz counterrevolutionary. His life is complicated further when he falls in love with a government employee who is a true believer in Castro's

revolution.

This movie has it all: Castro's secret police, a communist minister of culture stifling artistic creativity, elderly Cubans who have been beaten down by the regime, defectors who lie to their families to protect them, a State Department official who is clueless about the reality in Cuba, and, best of all, great music, much of it played by Sandoval.

For me, this movie vies with "The Lives of Others" as the best depiction of repression in a communist regime. This movie slams home the way Castro's regime and all communist regimes attempt to destroy the human soul. I could go on and on, but to say more would ruin the full impact of the movie. For more movies on liberty visit [www.LibertyFlix.com](http://www.LibertyFlix.com).

— MICHAEL SANERA

• *The Rebellion of Ronald Reagan: A History of the End of the Cold War*  
By James Mann  
Viking Adult

Books about Ronald Reagan tend either to heap a great deal of praise on our 40th president or to blast him. *The Rebellion of Ronald Reagan: A History of the End of the Cold War* praises Reagan, but not for the reasons one might expect.

In the book, James Mann dispenses with the myth that the president was an amiable dunce who just happened to hold this nation's highest elected office as the Soviet Union started to crumble.

On the other hand, Mann rejects the notion that Reagan's first-term military buildup and bellicose language paved the way for American victory over the Soviets.

Instead, Mann credits Reagan's ability during his second term to gauge just how different Mikhail Gorbachev was from previous Kremlin commanders. Mann contends that Reagan's support of Gorbachev enabled the latter man to put domestic policies in place that hastened the Soviet Union's collapse.

I don't find Mann's overall thesis convincing; he does too little to counter the argument that Reagan's history of anti-communism and first-term defense priorities pushed the Soviet Union to elevate a change agent like Gorbachev.

Still, Mann treats his subject fairly and offers interesting insights.

— MITCH KOKAI CJ

## Book review

**No Compromise with Rockwell**

• Llewellyn Rockwell, *The Left, The Right & The State*, Auburn, Ala.: Ludwig von Mises Institute, 2008, 534 pages, \$25.00

BY GEORGE LEEF  
Contributor

RALEIGH

Want to read a libertarian book that doesn't compromise, but instead always gives you pure, high-potency, and strictly principled analysis of America's sorry condition? If so, then you should acquire *The Left, The Right & The State*, a collection of 103 essays by Llewellyn Rockwell. These essays span the last 18 years and cover most of the current economic and philosophical issues that confront us.

The title refers to the broad outline of the book, organized in sections dealing with government (the state), the ways the left uses it to pursue its goals, and the ways the right also does that. Rockwell, president of the Ludwig von Mises Institute, argues forcefully that our liberty and property are endangered equally by left-wing and right-wing statism. As he puts it, "The left has a laundry list and the right does too. Both represent a grave threat to the only political position that is truly beneficial to the world and its inhabitants: liberty."

Precisely. The great virtue of the book is how Rockwell shows that when people on the political right point to "liberal" increases of government power and say, "They're attacking freedom!" they are correct — but equally so when those on the political left point to "conservative" increases of government power and say the same thing. The problem Rockwell illuminates is that both camps are blind to the damage done by their own impulses to expand the power of the state. A massive, unrestrained government is a bull in a china shop that inevitably damages everything.

Rockwell has sharp words for both the left and the right on the ways they have been lured by the Siren Song of government to abandon principles they formerly held. On the right, he

shows that pro-family advocates have been drawn into the big government orbit with such nonlibertarian policies as school vouchers.

The left also gets many "trips to the woodshed" over issues like its abandonment of free speech in favor of restrictive campus speech codes. And what has become of the old leftist commitment to civil liberties? Today it's little more than a fading memory, with leftist politicians jumping on the bandwagon for the war on drugs, the war on illegal immigration, expansive government eminent domain powers, and so forth. The omnipotent state now tramples all over the rights of "the little guy." The left used to care, but now prefers to turn a blind eye.

After several hundred pages of razor-edged attacks on the waste, folly, and outright evils of "liberal" and "conservative" statism, Rockwell gets to the crucial question: What do we do? Examining and then rejecting various

suggested courses, he argues that libertarians must work to cultivate sound ideas. It's not possible to make progress against our greedy, intrusive, authoritarian government so long as most Americans accept the false idea that government action is the key to progress and prosperity.

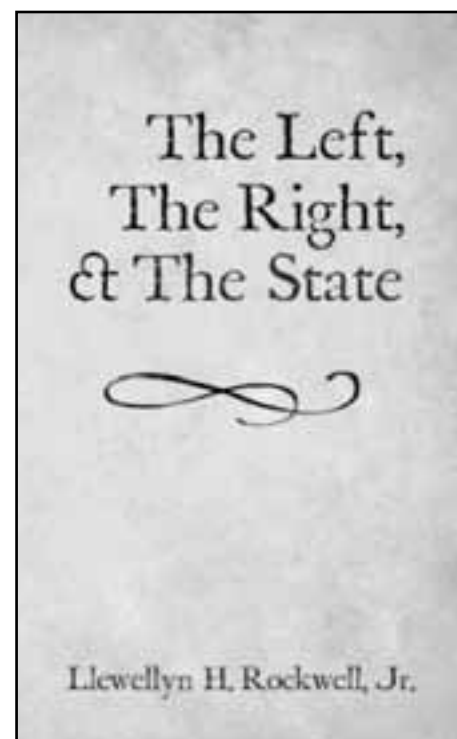
For example, since most Americans believe that economic recessions are a natural part of the free market and we need government action to

"stimulate the economy" when it turns sick, it's inevitable that politicians will support massive federal spending to cure it. Libertarians need to explain the truth about economic cycles to the public.

Similarly, most Americans believe that we must have public education or else suffer from widespread illiteracy. Instead, the market for education works and would deliver far better results at less cost if it were allowed to function.

Indeed — cultivate sound ideas. Reading Rockwell's book will help you do exactly that. CJ

George Leef ([georgeleef@aol.com](mailto:georgeleef@aol.com)) is book review editor of *The Freeman*.



# Larry Tye's *Satchel* an Entertaining but Occasionally Bumpy Ride

• Larry Tye, *Satchel: The Life and Times of an American Legend*, New York: Random House, 2009, 392 pages. \$26.

BY RICK HENDERSON  
Managing Editor

RALEIGH

In 1944, *Washington Post* sportswriter Shirley Povich asserted that Leroy "Satchel" Paige was the highest-paid player in baseball. Through the early 1940s, only Yankee Clipper Joe DiMaggio earned more money than the lanky, black fireballer. Even so, as Larry Tye points out in his informative biography *Satchel*, Paige "had to work year-round to earn his keep while most white stars took the winter off."

If you're a fan of our national pastime, *Satchel* is a must-read. Even if you aren't, the book chronicles the life of an American original surviving the injustices of Jim Crow.

Paige made his big-league debut with the Cleveland Indians 61 years ago at the age of 42 — and would hurl his final frames with the Oakland A's as a 59-year-old in 1965. The first Negro League player to be elected to the Baseball Hall of Fame, Paige towered over black baseball during the Great Depression and the war years much as Babe Ruth's outsized personality and unmatched talent made him the face of the Major Leagues in the Roaring Twenties. Paige was also an armchair philosopher, whose "Six Rules for Staying Young" — which were most likely invented by the *Collier's* magazine writer who published them in 1953 — wound up on bulletin boards across America.

While Jackie Robinson and Larry Doby broke baseball's modern-day color barrier in 1947, Tye argues that Paige may have been their equal as a trailblazer for civil rights.

Details of Paige's life are sketchy,

so Tye relies on news accounts and interviews with more than 200 family members, former teammates, and opponents. The book is filled with Paige's fantastic exploits, but if there's a flaw, it's that the pace is sometimes rushed. At times Tye spills the information on the pages, providing little narrative or context.

Leroy Paige was born in Mobile, Ala., probably in 1906, the seventh of 12 children. Leroy said he earned his nickname by lugging suitcases for tips, but a boyhood friend said Paige got the label because he stole some of the bags and was fast enough to escape.

At age 12, he landed in the Alabama Reform School for Juvenile Negro Lawbreakers.

There, the tall, gangly Satchel developed his considerable baseball skills. His right arm was a cannon. Though radar guns weren't around, white Major Leaguers who faced young Paige in exhibitions believe his fastball may have topped 100 mph.

When *Satchel* was released from the reform school in 1923, he helped support his family by hustling a few bucks at pickup games. By 1926, he had signed a professional contract for \$250 a month with the Birmingham team in the Negro Southern League.

And that began a two-decade career as baseball's first free agent. *Satchel* had no problem walking away from a contract — for a week or a couple of

months — if he had a better deal. He was such a dynamic and marketable performer that the owners he stood up often came back begging, offering *Satchel* even more money.

Paige had a big appetite for suits, cars, guns, fishing gear, and women, and was constantly scrambling for cash. He spent the 1930s and early 1940s in the Negro Leagues and barnstorming for teams in North Dakota, California, Colorado, Cuba, the Dominican Republic, and Mexico.

*Satchel* was also a master showman with a windmill windup who told hitters what he would throw and where ... and still get them out. He would display his pinpoint accuracy by placing a matchbook on a stick at home plate and knocking it off from the mound.

By 1935, in the heart of the Depression, he left the Negro League's Pittsburgh Crawfords to pitch a full season in ... Bismarck, N.D. The Bismarck club was integrated, stocked with top black players, and owner Neil Churchill paid *Satchel* \$500 a month, provided decent housing, and gave him rifles, clothes, and even a convertible.

Tye calls the Bismarck experience a "defining chapter" for baseball and civil rights. "More than a decade before

Branch Rickey signed Jackie Robinson to the Brooklyn Dodgers, the club from North Dakota offered Major League executives proof that integrated baseball could put money in their pockets."

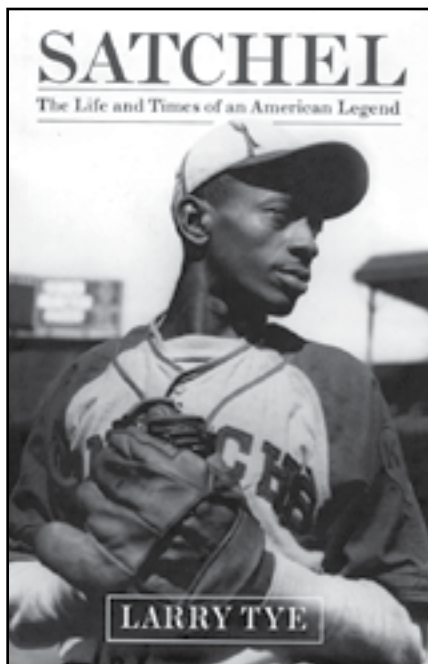
Fast-forward to the late 1940s. Cleveland owner Bill Veeck signed *Satchel* in 1948, a year after Robinson and Doby were called up. Privately, Paige and other black veterans resented the 26-year-old Robinson, who attended UCLA, played in the Negro Leagues only one season, and had not endured the indignities of Jim Crow, entertaining crowds in cities where the players could not rent hotel rooms or eat in restaurants.

Meantime, Robinson considered the Negro Leagues a disgrace and Paige little more than a minstrel-show entertainer.

In recounting this story, Tye drops the ball. We're never introduced to Robinson or Doby before they reach the majors. We hear nothing about the political activists who pushed Major League owners to sign the more-polished youngsters over their rough-edged elders. We have no idea how Negro Leaguers interacted with Robinson, who was Paige's teammate at Kansas City, and — according to Tye — regarded by teammates as an above-average player at best.

*Satchel* could have benefited greatly from a deeper explanation of those relationships.

Baseball historian and statistical guru Bill James ranks Paige No. 17 on his list of the 100 greatest baseball players of all time. And yet most Americans scarcely heard of Paige until he was in the twilight of his career. For a fascinating view of an elite athlete living through a tumultuous era, Larry Tye's *Satchel* takes you for an entertaining, though occasionally bumpy, ride. *CJ*



## BOOKS AUTHORED BY JLF STAFFERS



By John Hood  
President of the  
John Locke Foundation

### Selling the Dream Why Advertising is Good Business

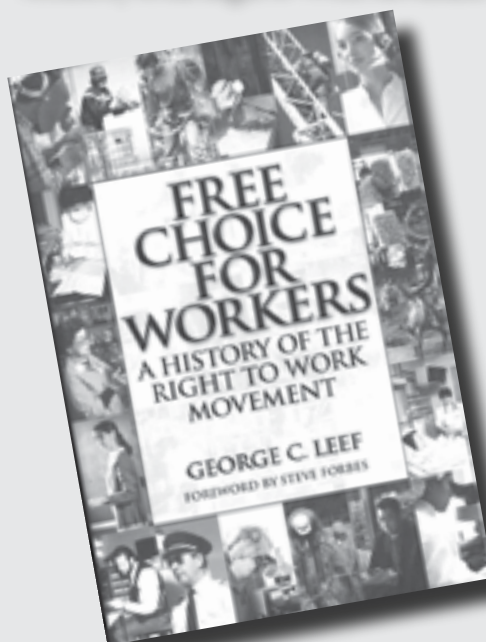


"[Selling the Dream] provides a fascinating look into the world of advertising and beyond ... Highly recommended."

Choice  
April 2006

[www.praeger.com](http://www.praeger.com)

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



By George C. Leef  
Vice President for Research at the  
John William Pope Center for Higher  
Education Policy

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Robert Huberty  
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## COMMENTARY

## Consumer-Driven Health Care

Why not base health care reform on policies that work? Consumer-driven health care has a proven ability to reduce costs while maintaining or improving patient care. Studies have found that people with consumer-driven plans are more likely than those with more traditional insurance to listen to their doctors, purchase generic medications, improve their health habits, and use online tools to find quality and cost information on doctors.

Patients with consumer-driven health plans become their own advocates. They're not second-guessed by someone from an insurance company, a government agency, or an independent commission of experts. Instead of fighting insurance company red tape, people can choose to pay more for branded medicine. They can, and often do, ask for the generic alternative.

For all their promise, though, consumer-driven health plans are just a first step toward a fully functioning health-care market. Americans pay on average just 13 percent of health costs from their own pockets. Government and insurance companies pay the rest, so they make many of the decisions about care, too. Among those not enrolled in Medicare, Medicaid, TriCare, or one of the other government programs, most have their insurance chosen for them by their employers.

Five other reforms, none of which would require 1,000 pages of legislation, are also needed.

- Tax equity: Eliminate the tax penalty for not getting insurance through an employer. Tax credits or exemptions are one way to achieve this. Congress could also expand health savings accounts so individuals can put more money in the accounts and use them for all their health expenses, including insurance premiums.

Tax equity alone, over time, can go a long way to accomplishing the goals of lowering costs and expanding access.

- Fewer mandates: Allow consumers to purchase only the insurance benefits they want, not the ones they don't. Many mandated

types of coverage now imposed by state governments would be offered anyway, but other mandates add costs with no benefit. At least a fifth of people without health insurance can afford it but choose not to purchase it. The reason many give is that it is too expensive. States should reduce the number of mandates they impose, which in North Carolina include marriage therapists and pastoral counseling.

- Interstate purchases: Allow consumers to purchase insurance from any state in the country. Someone like me purchasing the lowest

cost insurance option in St. Louis could save \$504 a year in premiums over the lowest cost insurance in Cary. Purchasing insurance in St. Louis for an entire family like mine could save \$1,320 a year. The coverage might not be exactly the same, and doctors in North Carolina would be out-of-network, but the potential savings are hard to ignore.

- More providers:

Allow providers to do what they are trained to do without arbitrary limits, such as scope-of-practice regulations within state licensing, and certificates of need for capital investment.

- Tort reform: Allow prices to signal quality. Doctors with stellar records may charge more and provide patients large monetary guarantees against harm resulting from their mistakes. Less-skilled doctors or those with less experience may be willing to provide care at a lower price. Such an arrangement could develop, though, only if insurance companies and government agencies got out of the price-setting business.

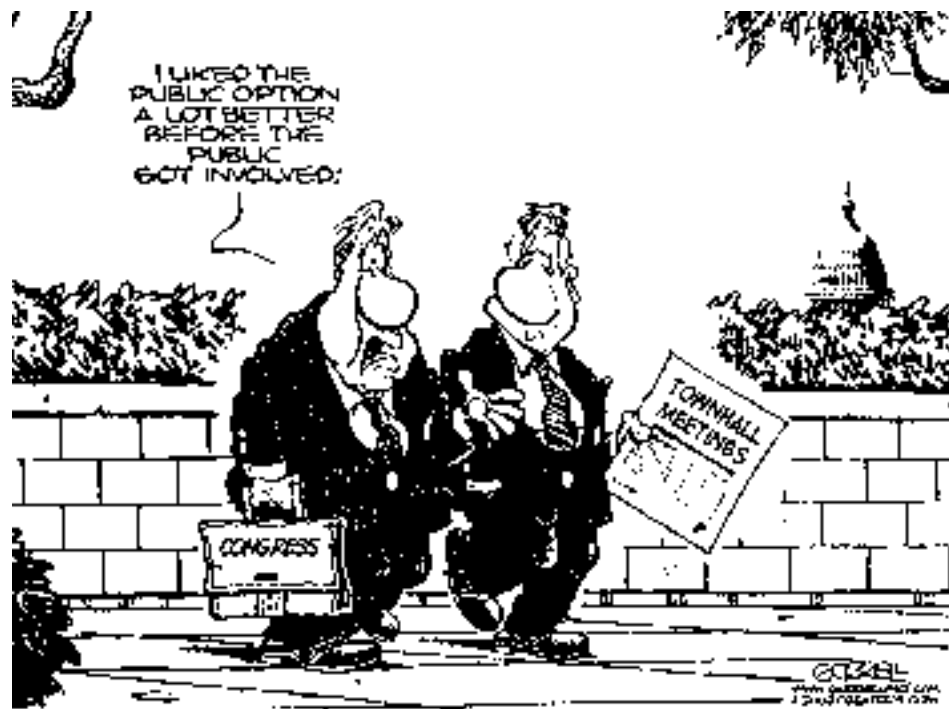
Companies and individuals already have the ability to reform health care on their own. Some small changes, none of which would require anywhere near 1,000 pages of legislation, could have transformative effects while recognizing that no person or group of people has all the answers for everyone.

CJ

*Joseph D. Coletti is fiscal and health care policy analyst at the John Locke Foundation.*



**JOSEPH COLETTI**



## EDITORIAL

## N.C. Needs The Initiative

The close of the 2009 session of the General Assembly should be Exhibit One in the case to bring citizen initiatives to North Carolina.

Even with a Democrat-dominated General Assembly and a Democratic governor, the state budget was nearly six weeks late, and the final package of spending and tax increases was a mishmash of political favors rather than coherent policy.

Of the states that started their fiscal years July 1, only Pennsylvania and Connecticut hadn't completed their budgets when Gov. Beverly Perdue signed ours.

The budget meltdown was hardly surprising. North Carolina lacks the institutional incentives (or disincentives) that punish lawmakers when they fail to govern responsibly. The price paid by politicians who don't do their jobs is negligible.

Incumbents continue getting re-elected. Districts aren't competitive. Legislative sessions last forever — and the longer the session, the more mischief lawmakers create. On Page 27 of this issue, Andy Taylor explains how North Carolina's entrenched and entitled political establishment erodes the confidence and vitality of our state and the people.

The remedy? North Carolina needs the initiative, a direct check on public officials who put their own interests above the public good. Citizens in 24 other states can pass laws and amend their state constitutions directly by demonstrating grass-roots support for their causes (collecting signatures from a percentage of registered voters) and then enacting measures at the ballot box.

North Carolina should join their ranks. Initiatives impose discipline on

politicians who refuse to be responsible policymakers.

A handful of initiatives could make a huge difference in a short time. Term limits on all state and local officials would prevent politicians from galvanizing power in a single office. A requirement for the legislature to reach a supermajority before passing a budget (or better, raising taxes) would force lawmakers to occasionally say no to spending lobbies. A line-item veto would allow the governor, who represents the entire state, to trim local pork from budgets. A strict limit on the length of legislative sessions would push lawmakers to do their jobs and go home.

These institutional reforms give a fighting chance to citizens who don't want to spend every waking moment keeping tabs on government. To be sure, having an initiative process in place does not guarantee good government. Take California. Please.

The Golden State may also be the exception that proves the rule. Giving North Carolina access to the initiative may not guarantee sensible government policies, but it's a necessary first step.

Amending the state constitution to create an initiative process would require the General Assembly's approval. Politicians aren't likely to voluntarily surrender power.

But a campaign to bring initiatives to North Carolina could unite Democrats and Republicans at the grass-roots, bypassing the political establishment. If voters from any party vowed to elect only candidates who support the initiative process, defeating a few incumbents along the way, this essential reform could take root within a few election cycles.

CJ



EDITORIALS

# The 2009 Session

*It wasn't all bad for conservatives*

It's no secret that fiscal conservatives in North Carolina are angry. They have ample reason to be.

In Raleigh, the General Assembly has just adjourned for the year after enacting a tax increase exceeding \$1 billion (when fully implemented), including hikes in marginal rates for both the sales and income tax. And in many communities, taxpayers are being hit not just with higher state taxes but also increases in property tax.

Still, conservatives haven't lost every battle this year. Consider three recent cases in which the conservative position prevailed in 2009.

First, the Left tried to expand government financing of North Carolina political candidates. Currently, taxpayers underwrite the campaigns of candidates running for state superintendent of public instruction, state insurance commissioner, state auditor, and the appellate courts.

Bills introduced this year would have added candidates for state treasurer as well as local elective office. But the General Assembly adjourned without either bill becoming law, thank goodness.

The courts delivered an even bigger victory. The N.C. Institute for Constitutional Law represented two attorneys who objected to the current

funding system for judicial candidates. One source of revenue is an annual \$50 fee that all members of the State Bar were required to pay into the campaign fund. NCICL argued that forcing its clients to fund judicial candidates violated the attorneys' First Amendment rights.

Wake Superior Court Judge Howdy Manning said that the fee itself was permissible but that it was unconstitutional to use the fee to fund judicial campaigns against the wishes of the attorneys paying it. This is a win for those advocating political freedom of speech.

Finally, the corporate-welfare lobby tried to create yet another dubious scheme: a new Life Sciences Development Corporation empowered to make loans to pharmaceutical, medical-device, or biotechnology startups.

If the startup succeeded, private investors would have stood to make lots of money. If the startup failed, state taxpayers could have been forced to cover the loss.

The General Assembly adjourned without passing this "biotech bailout bill." So there was at least a little good news this year. Sometimes you have to take good news wherever you can find it. *CJ*

# Gamblers & Cartels

*Government monopolies bad for consumers*

There are many different ways to express the fundamental difference between advocates of liberty and advocates of big government. Two labels are pro-competition and pro-monopoly.

Look at what's happening in the gambling business in North Carolina.

Granted, some conservatives simply don't want gambling to exist at all in our state. But prohibition is neither a worthwhile nor an achievable goal.

People should be free to do whatever they want with their own money, and from the beginning of human history some people have wanted to gamble with it. That may be a foolish and risky decision, but it's generally best to mind one's own business.

For the most part now, however, the debate about gambling concerns who gets to own and operate the gambling establishments. With a few heroic exceptions on the Left, the liberals have decided that gambling is

best monopolized by the state.

First, legislative leaders banned private operation of video poker machines in North Carolina. Now, the executives of North Carolina's state lottery want to set up 550 vending machines across the state to sell lottery tickets.

It's a tidy setup. Public employees and politically favored vendors get to use government muscle to shut down their competition so they can take North Carolina gamblers to the cleaners.

State lotteries offer some of the worst odds in the gambling business because they can. If casino operators in Las Vegas or Atlantic City tried to gouge their customers the way state lotteries do, they'd quickly lose market share to their competitors.

Competition is good for consumers, particularly if powered by effective advertising. Monopolies and cartels, created and sustained by government taxes and regulations, are bad for consumers. *CJ*

COMMENTARY

# A Lobster, Not a Mobster

It seems I am a mobster. Who knew? I always thought I was more of a lobster — you know, hard shell on the outside but soft and sweet on the inside.

I am a mobster, apparently, because my colleagues and I at the John Locke Foundation are critics of ObamaCare, as are other free-market organizations, who've held public events expressing their views, at which some attendees have occasionally been impolite, a term which might also describe a threatening phone call received recently by the office of U.S. Rep. Brad Miller, whose ideological allies used the term "mobs" to describe the incident and us in the same breath. (After a police investigation of the call and caller, no charges were filed.)

If you're still with me, take a breath and brace yourself. We're not done yet with the twisting and the stretching.

I am, furthermore, a mobster because my JLF colleagues have participated in dozens of public events across North Carolina on the subject of health care reform, events that have been so well-attended and energetic that some observers have called them "shouting mobs," even though any reasonable person would describe the crowds as consisting largely of moms with strollers, senior citizens in straw hats, farmers in ball caps, bespectacled office workers on their lunch hour, and other, similarly dangerous individuals.

And I am a mobster because my colleagues and I at JLF have questioned the economics and assumptions behind ObamaCare, as have some employers and health-industry executives, which means that they must be lying and manufacturing fake public outrage, which means that JLF must be lying and manufacturing fake public outrage — you know, just whipping up the mob.

Whew.

All social movements require a variety of resources to be effective. They require organization. They require grass-roots passion. They require volunteers and donations.

They require strategy and planning. They require media outreach.

When thousands of North Carolina conservatives gather together to express their views — say, at the Tea Party rallies this spring or the health care rallies this summer — all of these resources are employed. A local activist or group of activists may express an interest in setting something up. JLF and other think tanks then respond by providing speakers, publications, and advance publicity. Activist groups such as Americans for Prosperity and FreedomWorks help to plan the events, reserve venues, and turn out their members. Lots of other local groups pitch in, too, by e-mailing alerts, sharing them on Facebook or Twitter. Dozens of volun-

teers are involved. Hundreds if not thousands of donors are involved, and such donors run the gamut from philanthropic foundations to individuals sending in \$20 checks.

If someone says that all this amounts to "fake" grass roots or "manufactured mobs," then that person is a fool or a liar. If someone says that this model is unique to modern conservatism and has not been employed dozens of times in the past by social movements across the spectrum, then that person is a fool or a liar.

Finally, if someone says that conservatives with honest and well-considered objections to ObamaCare are in some way responsible for the fact that some kook made a threatening phone call to Brad Miller's office, that person is either a fool or a liar.

And for the record, since the John Locke Foundation has itself received threatening phone calls in recent weeks in response to its stance on ObamaCare, I will state unambiguously that I do not hold the president, liberals in Congress, or liberal groups in North Carolina responsible. There are always a few kooks in any crowd. That doesn't make it a mob, or me a mobster.

Although I am partial to fedoras and Frank Sinatra. *CJ*

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



**JOHN HOOD**

## LETTER TO THE EDITOR

*CJ Misportrayed PENC*

To the Editor,

Professional Educators of North Carolina (PENC) is not the organization portrayed in the August *Carolina Journal* ("Classroom Teacher Group Gives N.C. Teachers Nonunion Option"). The article relied on statements from Judy Kidd, president of the Classroom Teachers Association of North Carolina (CTANC), and provided false and inaccurate statements about PENC. PENC, a state-based, independent, nonpartisan, grassroots organization, was likened to the North Carolina Association of Educators in its goals, philosophies, and actions. That is completely inaccurate. PENC could not be further from NCAE's labor-union philosophy, and is dedicated to improving education through cooperation, not confrontation.

Throughout its 30-year history, PENC has worked hard to earn a reputation of being a true professional organization with a transparent agenda that focuses solely on issues affecting education in North Carolina. Our public agenda makes it very clear where our priorities lie. Members and staff focus on supporting efforts to ensure sufficient funding for education, efforts to recruit and retain quality educators, and efforts to ensure classroom success. PENC also takes great pride in providing members with quality personalized care, with the goal of promoting their growth as professionals and improving the learning environment for the students they serve.

PENC is the only teachers' association in North Carolina that is not affiliated with any national level teachers' association. Furthermore, none of PENC members' dues are used to support a national affiliate. That said, PENC does support and advocate for policies at the state and federal levels that protect educators' ability to maintain professionalism and excellence in the classroom. PENC neither endorses nor contributes funds to any statewide or nationwide political campaigns or political action committees.

PENC has earned its reputation of being a true professional organization by explicitly rejecting the concept of collective bargaining in the public schools. PENC's philosophy includes the idea that teachers, as professionals, have an ethical obligation to meet the needs of each student they serve. And, it is through cooperation, not confrontation, that educational success can be attained for teachers and students in North Carolina.

The article also indicated that CTANC's professional liability insurance is one-third the cost of "other professional teacher organizations." To clarify, total PENC dues, including insurance, are \$120 a year, about one-third of what NCAE charges and thirty dollars less than what CTANC charges (\$150 a year, from CTANC website).

Readers can learn more about PENC, its mission and values by visiting [www.pencweb.org](http://www.pencweb.org).

**Jeffrey Elmore**  
President, Public Educators of N.C.  
North Wilkesboro, N.C.



## The Rich and Revenues

Several states, including North Carolina, increased income tax rates on higher-income households as a way to close their budget gaps. Supporters of taxing the rich more say it is equitable because the rich, by definition, have more income and can therefore afford to pay more taxes.

There are several arguments against this equity argument focusing on the responsibility of all citizens to fund government and the dangers to democracy when this funding is borne by a relatively small number of households. However, here I will leave these arguments for others to debate.

Instead, I want to focus on a very practical question: can taxing the rich ever backfire for public decisionmakers? That is, can jacking up tax rates on the rich actually lead to less rather than more revenue for governments?

This is not a new question. Indeed, for almost three decades it has been one of the most studied issues in public finance. With the publication of the famous "Laffer curve" in the 1970s, showing how, at some point, increases in income tax rates can lead to less, rather than more, tax revenue, economists have encouraged public officials to consider the dynamic effects of tax hikes on the rich.

These dynamic effects are easy to understand. Economics teaches us that individuals respond to incentives. Simply put, the greater the incentive to do something, the more of that "something" that will be done, and the less the incentive to do something, the less will be done.

Applied to income taxes, an increase in the income tax rate reduces the gains from earning more income. Someone will be less willing to work extra hours, or invest in a new business venture, if she keeps only 50 cents after taxes for each dollar earned rather than 60 cents.

If this reduction in work and investment effort is great enough, tax revenues can actually drop when tax rates rise. Based on much research, the

magic level at which this counterproductive result occurs seems to be a tax rate of 50 percent for income taxes.

There's another element to this tax debate that can show up during recessions. Tax structures in which higher levels of income are taxed at higher rates are called "progressive" tax systems. Again the theory is that richer households can afford to pay more, so with a progressive tax structure they not only pay more income taxes because they earn more income, but they also pay more because their tax rate is higher.

When the economy is booming, such progressive tax systems can be enormous revenue generators for governments, as the growth pushes more income into higher tax brackets. But — and here's the rub — the opposite can also occur. When recessions hit and economic growth goes in reverse, the slide in income can push more taxable dollars out of the higher tax rates and into lower ones.

Thus, governments with very progressive tax systems — that is, with high tax rates on upper-income households — can see big drops in revenues during recessions for two reasons. First, with a recession, there's simply less income to tax. And second, more of the remaining income is taxed at a lower rate as taxpayers have slipped out of the upper tax-rate brackets.

To put some numbers on the second effect, I conducted a statistical analysis in which I related the size of the budget deficit (in percentage terms) faced by states this year to the state's economic structure and to the degree to which the state had a progressive income tax system.

I found that for every percentage point increase in the state's top income tax rate, the budget deficit was higher by 1.5 percentage points. (And, for you statistical geeks, the effect was "statistically significant"!)

So while pushing up a state's top income tax rate might help close a budget gap today, it may set up the state for an even larger gap when the next recession comes around.

CJ

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



**MICHAEL WALDEN**

# This Regime Needs Some Change

Democrats are ruling North Carolina like they have been in power for 16 years — which they have if you include the brief interregnum when Republicans controlled the House in the mid-1990s. By that, I mean they are exhibiting the three key characteristics of a party that has held the reins of government for a very long time: hubris, exhaustion, and internal squabbling. Let's take a look at each of these traits separately.



**ANDY TAYLOR**

There is an air of arrogance about a regime that has governed for such an extended period. It feels invincible and cares little about the interests of others. This is particularly the case in policymaking where the minority is marginalized and public opinion matters little. The state's recent budget furnishes a good example. House and Senate Republicans were left out of the room and the public's views on taxes and spending, at least those recorded by most polls, were largely ignored.

Worse, this hubris brings about an acute sense of entitlement in some of its members. Former House Speaker Jim Black, former Agriculture

Commissioner Meg Scott Phipps, and former state legislators Mary McAllister and Thomas Wright are not inherently bad people. They just got the impression that the regular rules did not apply to them and they could help themselves to some of the money that inevitably flows through politics. After all, the voters kept returning them to office.

Then there is the exhaustion. These dominant regimes just run out of ideas. Again the state budget provides a nice illustration. To be sure, some Senate Democrats were thinking creatively about overhauling the tax system by broadening the number of services levied and lowering base income and sales rates. The final budget, however, was a mish-mash designed to win the support of a majority of legislators by appealing to their political interests. It was not coherent policy. These kinds of regimes weigh the benefits of rewarding certain constituents and punishing others, they have few genuine ideas.

In the words of Justice Louis Brandeis, the states are supposed to be "laboratories of democracy" where policy innovations are tested. Where are ours? On many issues, the literature shows North Carolina to be a laggard, not a leader. Yes, new policy ideas are not intrinsically good ones. But at the very least fresh proposals challenge the status quo and force its supporters into an intellectual, rather

than reflexive, defense.

Finally, there is the in-fighting. Again the state's budget is illustrative. Gov. Beverly Perdue issued a thinly-veiled veto threat to a version of the bill negotiated by legislative Democrats. This followed weeks of squabbling between House and Senate Democrats over the level and complexion of spending cuts and tax increases. These differences are clearly not ideological or about the future of the state. They are personal and about influence.

Moreover, the regime has been around so long that no one is in a position to dictate, or even mediate, agreements between its principals. No one and everyone run the regime. Senate President Pro-Tem Marc Basnight and Majority Leader Tony Rand are entrenched. In the House, procedures are so centralized that the Speaker, Joe Hackney, has tight control.

Armed with the veto and extensive patronage opportunities, the governor also is mighty powerful. Hackney and Perdue are relatively new to their current positions, but both are stalwarts of the regime. Hackney has been in the House for 30 years, Perdue has been around since 1986 when she was first elected to the General Assembly.

To be fair, these kinds of things happen to many regimes that outlive their sell-by date. Republicans in

Washington were rocked by lobbying and campaign finance scandals and, by the end of President George W. Bush's tenure, leaders were largely paying off supporters with tax breaks and government subsidies, not tackling critical problems in an intelligent and systematic way. The White House had lost control.

Our regime needs to go or change. We could, of course, replace it with solid Republican rule or at least Republican control of the House, Senate, or governor's mansion. Having Pat McCrory as governor would have opened up interesting debates about energy and economic development policy. Having Paul Stam as speaker would broaden the scope of the budget debate and make it a discussion of state government's mission.

Or the regime could be transformed by new leadership. There are some smart and energetic, generally young, Democrats in the General Assembly and Council of State who follow the big policy debates going on around the country and across the world. They should have a better understanding of what it means to keep the public's trust. Their promotion would at least refresh the state's politics. CJ

*Andy Taylor is Professor and Chair of Political Science in the School of Public and International Affairs at N.C. State University.*

## 'A Job Was Done'

The 2009 session of the North Carolina General Assembly closed on Aug. 11, taking 112 legislative days. There were 2,767 bills filed, with just over 600 becoming law. President Pro Tempore Marc Basnight said it best: "A job was done."

In spite of a recession and 11 percent unemployment, taxpayers got a \$1 billion tax increase and a budget that spends \$19 billion. The General Assembly will spend another \$1 billion in stimulus money courtesy of federal taxpayers.



**BECKI GRAY**

The State Health Plan got a two-year, \$675-billion bailout, including higher co-pays and deductibles for over 650,000 state employees and dependants. The budget cut 2,044 state positions, but 1,318 were already vacant.

Positive changes were made to the Beach Plan, a government-

subsidized insurance program for homeowners that had faced a \$74 billion unfunded liability. The fixes include capping insurance companies' exposure at \$1 billion, after which a 10-percent surcharge will apply to policyholders across the state; coverage is limited to houses costing \$750,000 or less. By limiting the government's role in the insurance business, the free market and competition between insurance companies should help ensure coverage and fair pricing.

The session clearly sent a mixed message to businesses. On the one hand, lawmakers raised the top income tax rate, impacting small businesses and company executives. The General Assembly raised the corporate income surtax, sales and excise taxes, and imposed new online taxes. Increasing the cost of doing business depresses job creation and economic recovery.

On the other hand, select companies got special breaks. Apple, an international computer maker with \$34 billion in revenue, convinced North Carolina lawmakers to give it a \$12.5 million annual break from state

taxes. A paper plant in Martin County will get \$9 million in tax money to upgrade its operations. A statewide smoking ban that initially would have affected every workplace instead focused on outlawing smoking in most bars and restaurants. Local governments now have the authority to pass even stricter smoking bans. A cement plant trying to start up near Wilmington got \$4.5 million in incentives at the same time environmentally concerned legislators were trying to shut the company down.

Efforts to enact meaningful annexation reform didn't pass. Cities will still be able to forcibly annex property owners, charging them taxes for services they may not want or need. A large coalition of citizens across the state will not rest until laws are changed to require a vote before property can be forcibly annexed.

A new program run by the N.C. Biotechnology Center, allowing large investors (\$100 million or more) to pool money into a venture-capital fund for loans to biotech startup companies, ran into trouble. The program would be set up as a nonprofit with

little oversight, passing out loans guaranteed with tax credits. It's just another tax-funded incentive scheme with real constitutional questions. This one didn't pass, but it will be revamped and considered later.

Efforts to take over four hydroelectric plants and 33,000 acres of land owned by Alcoa in Stanly County also failed. Federal licensing of the plants is still not final. Alcoa hopes to protect its 50-year investment, while state government is poised to intervene, condemn the property, take over the plants, and somehow pay Alcoa \$500 million or more in compensation.

Over the interim, legislators will consider tax reform, try to grab federal stimulus money, comply with renewable energy regulations, and study issues in more than 50 newly created commissions. And when they return on May 12 to finish up the 2009-10 General Assembly, there will be new bills, new laws, more efforts to grow government, and again, a job will be done. CJ

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

# Rielle Hunter and Baby Visit Edwards Beach House (a *CJ* parody)



The *National Enquirer* reported in August that former Sen. John Edwards was moving his former mistress Rielle Hunter and her infant daughter to the Wilmington area. Edwards' primary residence is his 28,000-square-foot home east of Chapel Hill, but he also owns a \$2.6 million, 2,800-square-foot home on Figure Eight Island just outside Wilmington. The *Enquirer* has led all media in breaking stories about the disgraced former presidential candidate. The *Carolina Journal* spy plane was in the Wilmington area and captured this photo of Hunter (see inset) and her child arriving at the Edwards beach home in a small boat.

(CJ spoof photo)

## E.A. MORRIS

### FELLOWSHIP FOR EMERGING LEADERS

*The E.A. Morris Fellowship is seeking principled, energetic applicants for the 2010 Fellowship class. Applications available online or at the John Locke Foundation. Application deadline is November 23, 2009. Please visit the E.A. Morris Fellowship Web site ([www.EAMorrisFellows.org](http://www.EAMorrisFellows.org)) for more information, including eligibility, program overview and application materials.*

#### **Application Timeline**

August 31, 2009	Applications available
November 23, 2009	Applications due from candidates
January 9, 2010	Notify of finalist status
February 5-6, 2010	Selection week
February 15, 2010	Notify Fellows and alternates

#### **Fellowship Dates**

March 12-14, 2010	Retreat 1- Pinehurst, NC
June 18-20, 2010	Retreat 2- Blowing Rock, NC
October 22-24, 2010	Retreat 3- Coastal NC



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