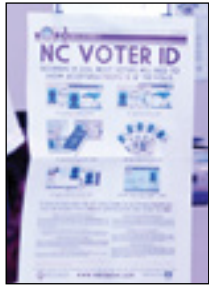


**Officials:  
Long lines  
not fault of  
voter ID leg-  
islation/3**



# CAROLINA JOURNAL

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

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April 2016 Vol. 25 No. 4

STATEWIDE EDITION

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## Randolph Megasite Not Ready for Prime Time

Land not purchased;  
power lines may take  
years to complete

By DON CARRINGTON  
Executive Editor

RALEIGH

The 1,400-acre Greensboro-Randolph Megasite appears to be several years away from being a suitable location for the automotive plant or other large manufacturing facility it was designed to attract, based on conversations with government, business, and community officials and a review of public documents and financial statements.

Moreover, *Carolina Journal* has learned that Duke Energy has not begun a study determining how to provide power to the site, the North Carolina Railroad Company does not have enough money to buy land needed for the location, no single private or government entity appears to be in charge of the project, and two newly elected members of the Randolph County Board of Commissioners are skeptical of the endeavor, which could jeopardize the county's backing for the speculative industrial site.



The North Carolina Railroad has said it would buy 19 parcels of land, making up 862 acres of the megasite, but it does not have enough funds to make the purchase. (CJ photo by Don Carrington)

The property, located along U.S. 421 west of Liberty in Randolph County, now is under the control of three entities: Randolph County, NCRR, and the Greensboro-Randolph Megasite Foundation Inc.

The three entities have approved a document titled "Greensboro-Randolph Megasite Project Agreement," laying out the responsibilities and duties of the organizations. The agreement states that all decisions need to be unanimous — making the political changes on the Randolph County commission a problem for the megasite's viability.

Since it has promised to provide water and sewer services to the site, the city of Greensboro is in effect a fourth partner, even though the city is not a signatory to the agreement. According to the agreement, the goal is to recruit

a "high-yield project" that would employ a minimum of 1,750 workers.

The agreement states that Randolph County has purchased 425 of the 1,400 acres for the location. The Megasite Foundation has purchased 43 acres and plans to purchase another 70 acres. The NCRR announced Jan. 5 it would acquire the remaining 862 acres by purchasing 19 separate parcels.

Even with a signed agreement, the project has significant hurdles to overcome before it can be presented to any large employer.

### No money, no land

NCRR is a unique operation because it is a private company with all the stock owned by the state of North Carolina. The governor and legislative leaders appoint the 13 members of the board of directors.

NCRR owns and manages a 317-mile rail corridor connecting Morehead City to Charlotte. Its primary income comes from leasing its tracks to Norfolk Southern Railway.

As *CJ* reported in March, NCRR's involvement in the megasite appeared to be outside its core mission and

Continued as "Randolph," Page 12

## State Bar Fights Complaint Involving Cooper

Attorney Gene Boyce  
alleges professional  
misconduct by AG

By DON CARRINGTON  
Executive Editor

RALEIGH

The North Carolina State Bar, the state agency that regulates attorneys, has asked a judge to dismiss Raleigh attorney Gene Boyce's complaint asking the State Bar to address allegations of professional misconduct by Attorney General Roy Cooper.

Boyce's complaint said that as an attorney he has an obligation to report



the professional misconduct of other attorneys to the State Bar. According to the complaint — filed in January in Wake County Superior Court — Boyce has notified the State Bar on multiple occasions about Cooper's alleged misconduct, but the State Bar has not responded. Boyce also argued that the State Bar has a conflict of interest in the matter because Cooper serves as the attorney for the State Bar.

On March 14, the State Bar filed a motion to dismiss Boyce's complaint. Boyce subsequently filed a response outlining reasons his complaint should be heard in court.

Boyce has asked the court for a declaratory judgment forcing the State Bar to acknowledge Boyce's claims of Cooper's misconduct; declaring that the State Bar has a conflict of interest in the matter; and referring the dispute to an alternative agency for investigation, findings of fact, and discipline if appropriate.

The dispute began in 2000, when Cooper was the Democratic Party's nominee for attorney general and his main opponent was Republican Dan

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(919) 828-3876 • Fax: 821-5117  
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a monthly journal of news,  
analysis, and commentary on  
state and local government  
and public policy issues in  
North Carolina.



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## McCrory-Cooper Battle Set for November Election

### Competitive Council of State races expected; congressional primaries await court ruling

By CJ STAFF

The state will get its marquee gubernatorial race matchup in November after incumbent Republican Gov. Pat McCrory and Democratic Attorney General Roy Cooper easily won their respective primaries.

In the state's race for U.S. Senate, incumbent GOP Sen. Richard Burr handily fought off three primary challengers. He'll face former Democratic state Rep. Deborah Ross of Wake County, who beat three party rivals of her own, and Libertarian Sean Haugh in the Nov. 8 general election.

McCrory defeated former state Rep. Robert Brawley, R-Iredell, 81 percent to 11 percent. Charles Kenneth Moss got 8 percent.

Cooper beat Durham attorney Ken Spaulding by a 69 percent to 31 percent margin. Libertarian Lon Cecil will also be in the gubernatorial race against McCrory and Cooper.

Burr fought off Dr. Greg Brannon, who also unsuccessfully challenged Thom Tillis for the GOP U.S. Senate nomination two years ago. Burr received 62 percent to Brannon's 25 percent. Paul Wright finished third with 8 percent. Larry Holmquist had 5 percent.

In the Democratic race, Ross garnered 62 percent. Spring Lake Mayor Chris Rey came in second with 17 percent. Durham businessman Kevin Griffin finished third with 12 percent. Army veteran Ernest Reeves of Greenville had 9 percent.

The \$2 billion Connect NC bonds also were approved by a 66 percent to 34 percent vote.

Former state Rep. Linda Coleman, D-Wake, won the right to a rematch with incumbent GOP Lt. Gov. Dan Forest. Coleman led the Democratic primary field with 51 percent. Holly Jones had 29 percent, Robert Earl Wilson had 10 percent, and Ronald Newton had 10 percent. Forest and Coleman will also face Libertarian J.J. Summerell on the Nov. 8 ballot.

Other incumbent Council of State candidates also fared well.

Republican Agriculture Commissioner Steve Troxler bested primary rival Andy Stevens, 69 percent to 31 percent. Troxler will face Democrat Walter Smith in the November general election.

Democratic Superintendent of Public Instruction June Atkinson defeated Henry Pankey, 80 percent to 20 percent. She'll face Republican Mark Johnson in November. Johnson won the GOP primary with 53 percent of the vote. Rosemary Stein came in second with 33 percent, ahead of Wesley Sills with 14 percent.

Two state senators won their respective parties' nominations to replace Cooper as attorney general. Sen. Buck Newton, R-Wilson, defeated Forsyth County District Attorney Jim O'Neill, 55 percent to 45 percent. Sen. Josh Stein, D-Wake, won over Marcus Williams in the Democratic primary, 53 percent to 47 percent.

Republican Mike Causey won the GOP primary for insurance commissioner. Causey got 41 percent of the vote,

Joe McLaughlin had 33 percent, and Ron Pierce, 26 percent. Causey will battle incumbent Democrat Wayne Goodwin in the November general election.

Former Raleigh Mayor Charles Meeker secured a victory in the Democratic primary for labor commissioner. He prevailed over Greensboro activist Mazie Ferguson, 57 percent to 43 percent, and will face incumbent Republican Cherie Berry in the general election.

Republican Michael LaPaglia defeated primary rival A.J. Daoud, 61 percent to 39 percent. He'll face incumbent Democrat Elaine Marshall in the general election.

In the Democratic primary for state treasurer, Dan Blue III defeated Ron Elmer, 59 percent to 41 percent. In November, Blue will face Republican Dale Folwell, a former state representative and former head of the Division of Employment Security. The treasurer's seat will be open because Democratic incumbent Janet Cowell chose not to seek reelection.

### General Assembly races

Two incumbents were knocked off by primary challengers in the House. Democrat Amos Quick defeated incumbent Ralph Johnson in House District 58, and Republican incumbent George Robinson lost in House District 87 to challenger Destin Hall. Quick and Hall effectively won the seats because they have no opposition in the general election.

Sixteen other primary winners — two in the Senate and 14 in the House — also effectively were elected to the seat they were seeking because they have no opponents in the general election, barring a write-in candidate or an independent challenger. They were:

- Incumbent Senate Republicans Joyce Krawiec in District 31 and Tommy Tucker in District 35.

- Incumbent House Republicans Jamie Boles in District 52, Lee Zachary in District 73, Harry Warren in District 77, and John Fraley in District 95.

- Incumbent House Democrats Larry Bell in District 21, William Brisson in District 22, Jean Farmer-Butterfield in District 24, Michael Wray in District 27, Rosa Gill in District 33, Charles Graham in District 47, and Kelly Alexander in District 107.

- Three open House seats were filled by primary winners because no one from the opposing party filed for the seat: Republican

Holly Grange in House District 20, Democrat Terry Garrison in House District 32, and Democrat John Autry in House District 100.

- In House District 67, one of the most closely watched and hotly contested races, incumbent Republican Justin Burr narrowly edged challenger Lane Burriss by 254 votes to advance to the general election. Burr had a public falling out with House Speaker Tim Moore, R-Cleveland, but was endorsed by House Majority Leader Mike Hager, R-Rutherford.

- Two Mecklenburg County House candidates had the closest races, requiring recounts. Incumbent GOP Rep. Charles Jeter defeated challenger Tom Davis by just 35 votes in District 92. And Democratic House candidate Rochelle Rivas, who in November will face incumbent Republican Bill Brawley in the 103rd District, had the narrowest victory, defeating Noah Lieberman by 13 votes.



# Officials: Voter ID Law Did Not Cause Long Waits at Polls

By DAN WAY  
Associate Editor

RALEIGH

State Board of Elections officials say charges that North Carolina's new voter ID requirement led to long wait times at the polls and unnecessary confusion that harmed voters are off target.

The law, requiring voters to present a state-authorized photo identification document at the polls, went into effect for the first time in the March 15 primary elections. Critics have condemned the requirement as a misguided policy that would lead to voter suppression while claiming changes in early voting times were designed to diminish minority and Democratic votes.

State officials rebut those contentions with the turnout results and early voting numbers.

"More voters participated in Tuesday's election than in any prior primary. Early voting was also a huge success, surpassing 2008 and 2012," said Josh Lawson, the elections board's general counsel. A total of 2.3 million voters cast primary ballots — 35.3 percent of registered voters.

"With more than 2,700 precincts across the state, data we have so far indicates our efforts surrounding voter ID were successful," Lawson said, while acknowledging that issues required the issuance of provisional ballots.

"Current data also indicates that two-thirds of those who voted provisional ballots did so for reasons unrelated to photo ID," Lawson said. That included a number of voters attempting to vote for candidates in several parties or casting ballots in a party primary for which they were not reg-

istered, he said.

While some voters did have to wait longer than usual at some sites, Lawson said he could not determine whether that was caused by large numbers of voters flooding the polls at specific times or shortly before the voting places closed.

Lawson said there is no objective way to compare North Carolina's new voter ID requirement to the behavior in states that have made a similar change. State requirements differ, so it would be difficult to establish a uniform measurement, he said.

The Advancement Project, a civil rights organization, issued a news release March 16 acknowledging that early turnout surpassed recent records, but saying voters had fewer days to cast a ballot because a 2013 election reform law reduced the early voting period from 17 days to 10.

The organization blamed congested polling sites that caused some voters in Wake County, Durham, and Winston-Salem to wait hours in line Tuesday on the shortened voting period.

"We are seeing in North Carolina

the exact type of electoral chaos that happens when politicians manipulate the voting system for their own gain," said the Rev. William Barber, president of the North Carolina State Conference of the NAACP. "The right to vote

should be constitutional, not confusing."

A March 2 press release from the elections board stated that a record number of early voting sites would be available, and the election law encouraged local election boards to have those sites open longer hours.

The Advancement Project represents the NC NAACP and individual

plaintiffs in a lawsuit to overturn the election reforms. That lawsuit, pending in federal court, challenges other elements of the law in addition to the voter ID provision.

Those include eliminating same-day registration, banning the counting of ballots cast out of precinct, and cutting out a program allowing 16- and 17-year-olds to register before they are eligible to vote.

"The confusion faced by voters attempting to cast a ballot — in large part due to misinformation from poll

workers — is exactly why we call this a monster voter suppression law: It affects each step of the voting process, making it harder and more confusing along the way," said Penda Hair of the Advancement Project.

Bob Hall, executive director of the progressive organization Democracy NC, also criticized the new law, citing information collected by 700 volunteers in key precincts in 40 counties.

He issued a news release claiming that poll workers at sites across the state seemed to lack training, were overworked, and enforced the voter ID law in a disparate manner. Some voters were refused a provisional ballot when problems surfaced, he said, predicting worse issues in the general election.

"The complaints documented during the primary show the senseless bureaucratic burden of the new ID requirement, as well as the urgent need for greater investment in poll-worker training, equipment, and a modernized election system," Hall said.

Lawson pushed back against those claims.

"For three years, the State Board has educated and assisted voters to prepare the state for voter ID. That effort was funded at about \$1 million a year, and included mailings to every household, poll worker training, television ads, and targeted assistance to voters," Lawson said.

"While we are carefully reviewing ways to shorten wait times, we are proud of the work counties did to ensure voters' voices were heard at the polls" and will continue seeking ways to improve the process during the June 7 congressional primary election and the Nov. 8 general election, Lawson said.



## Carolina Journal/Connects the Dots

**Gov. Easley Got Pricey Lot at Bargain Price**

Waterfront lot located in gated community on Bogue Sound

By DON CARRENGTON

**Questions Persist on Mary Easley's Initial Hiring**

Hiring coincides with real estate deal and trustee reappointment

By Don Carrengton

**Taxpayers Fund Easley Coastal Trips**

Majority of aircraft trips included leg to where Easleys own two homes

By DON CARRENGTON

**Clues Point to Undisclosed Air Service for Governor**

Flights provided amount to \$200K a year, source says

By Don Carrengton

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# Experts: Anonymous Speech Was Essential to Nation's Founding

## Maintaining the privacy of donors part of that history

BY DAN WAY  
Associate Editor

RALEIGH

The Founding Fathers might have been unable to create the foundations of a new American nation had they operated in today's climate of federal government harassment and intrusion into citizen privacy, a constitutional lawyer says.

"I don't think it's a stretch to say our Constitution probably never would have been ratified had it not been for private political speech," said Jon Riches, director of national litigation for the Arizona-based Goldwater Institute.

Private political speech guaranteed by the Constitution is under assault by government regulators, activist judges, and media demanding greater disclosure of donors and members of private and nonprofit organizations, Riches said during a March 4 panel discussion at the Civitas Institute's Conservative Leadership Conference in Cary.

"The ratification of our Constitution was debated primarily through a series of anonymous papers called the Federalist Papers. They were all published under the pen name Publius," Riches said.

The anonymity shielded James Madison, Alexander Hamilton, and John Jay from publishing under their own names, a condition they sought because regional rivalries and personalities, particularly Hamilton's, might have led readers to focus on the authors rather than the arguments they were making, Riches said.

"Despite the fact that political giving or anonymous political speech has been essential in our democracy since its founding, we are seeing throughout our country donor disclosure mandates at all levels: federal, state and local," Riches said.

"We're seeing it come through legislators. We're seeing it go through the ballot box. We're seeing rogue regulators including attorneys general in both New York and California demanding the names of donors to nonprofit groups," Riches said.

Private donors are often disparaged publicly for providing "dark money" for political activities by businesses, unions, and nonprofit groups, even though many of these groups are not required to disclose the identities of their donors, Riches said.

Riches challenged the notion that such privacy was nefarious, ask-



Lawson Bader, at right, former president of the Competitive Enterprise Institute, answers a question at a March 4 panel on donor privacy at the Conservative Leadership Conference. He was joined by investment adviser Ted Hicks, center, and attorney Jon Riches, left. (CJ photo by Dan Way)

ing instead, "are we talking about you and your neighbor contributing to the causes you believe in by providing your money and your time?"

Depending on where the line is drawn, so-called dark money practitioners could include the ACLU, the local church, or a soup kitchen.

"In fact, some of these donor disclosure mandates are so broad that they're sweeping in the activities of what are called 501(c)3 organizations," Riches said. "There's a million 501(c)3 nonprofit organizations. They include schools, churches, hospitals, art centers, public radio stations, research and education foundations, legal aid clinics."

*Carolina Journal's* parent organization, the John Locke Foundation, is a 501(c)3 nonprofit.

Riches said the escalating trend should concern Americans for several reasons.

"Public disclosure of information for political participation or charitable activity subjects speakers to harassment and retaliation, and privacy is one barrier to prevent this," as has been long recognized by the U.S. Supreme Court, he said.

Forcing groups to disclose their contributors shifts the spotlight of public discourse from the message to the messenger, Riches said.

That allows retaliation against speakers who disagree with authorities, he said, including regulations that can make it difficult to determine what speech is allowed and what is not.

"As a result, people just refuse to speak, or there [is] less political speech," which is the antithesis of what the Founders intended for the country, Riches said.

Riches said the media frequently rely on privacy to perform their mission. Reporters use anonymous sources — the Deep Throat whistleblower of Watergate wasn't identified until 40 years after President Nixon resigned. Editorials are published

anonymously, as are many commentary and op-ed pieces.

"Imagine the outrage if there was a law tomorrow that prohibited anonymous bylines in newspapers, and a law that said, by the way, *Wall Street Journal* and *New York Times*, give us a list of all of your subscribers, including their address. The outrage would be swift, it

would be severe, and it would be justified," Riches said.

"These donor disclosure mandates are exactly that and in fact in some ways even more dangerous," he said. But there are other ways to stifle political dissent.

To comply with the labyrinth of campaign finance rules and regulations, one study estimated, it would require \$9,000 in up-front legal fees and \$2,800 in ongoing compliance costs for someone in a rural area to run one message on federal environmental policy, Riches said.

"Rather than assume those costs, rather than risk jail for engaging in political speech, most average citizens simply won't speak. And of course the whole point of the First Amendment was to preclude that outcome," Riches said.

"Be wary of a transparency argument" when the government comes after donor disclosure lists, said Lawson Bader, former president of the Competitive Enterprise institute, which is being sued by Pennsylvania State University climatologist Michael Mann. Mann said the organization defamed him by calling his climate science work fraudulent.

Transparency is not inherently wrong, but it has been used as an excuse for political manipulation in "an attempt to get at the privacy of our own supporters themselves," Bader said. Charities are highly regulated institutions with numerous disclosure mandates, and that should satisfy the call for donor lists to be made public. CJ

Forcing groups to disclose their contributors shifts the spotlight of public discourse from message to messenger, and facilitates retaliation by government

# 'Right to Try' Advocates Push Patient Medical Freedom

BY BARRY SMITH  
Associate Editor

RALEIGH  
Advocates of North Carolina's new "Right to Try" law — and similar ones in other states — are raising awareness of the law, which allows terminally ill patients who have exhausted other procedures the opportunity to try new drugs that have gone through part but not all of the Food and Drug Administration's approval process.

"North Carolina is a Right to Try state," one of 26 across the nation, said Christina Sandefur, executive vice president of the Goldwater Institute in Phoenix, Ariz., during a March 28 presentation to the John Locke Foundation's Shaftesbury Society. "The problem is, we need to get the word out."

The advocates hope that as more people learn about the Right to Try option, more states will adopt it. Lacking that option, families like Diego Morris' in Phoenix, have had to uproot themselves to get life-saving drugs.

When Diego was 11, he was diagnosed with osteosarcoma, or a bone tumor, in his left leg.

"Fortunately, we had two very close friends who are physicians," said Diego's mother, Paulina. The doctors worked with the family to research the disease and optional treatments. They learned there was a drug available to help prevent recurrence of the cancer, but it was not available in the United States.

After undergoing 10 weeks of chemotherapy in Phoenix and having surgery at St. Jude Children's Research Hospital in Memphis, Tenn., doctors found that the chemotherapy treatment had killed only 50 percent of the tumor. Diego's prognosis wasn't good.



**Christina Sandefur, executive vice president of the Goldwater Institute in Phoenix, Ariz., discusses the 'Right to Try' law enacted in North Carolina and 25 other states at the John Locke Foundation office in Raleigh. (CJ photo by Don Carrington)**

"It tends to come back in the lungs," Paulina Morris said.

Diego concluded his treatment in 2012, two years before Arizona approved its Right to Try law. While the FDA allows a "compassionate use" exemption of unapproved drugs for people with life-threatening illnesses, the family learned that they wouldn't be able to start using the new drug in time to save Diego's life, because treatment with the new drug, Mifamurtide, or MTP, needed to coincide with post-surgical chemotherapy.

The family communicated with physicians in Israel, Italy, and England, Paulina Morris said. They went to Mexico City to talk to physicians there who'd used the new drug. They consulted with their congressional office, the drug company, and the FDA.

"We explored every single option and then decided we needed to go to London," she said. They chose London because extended family members lived there and there would be no language barrier.

The family spent nine months in London while Diego received drug treatments and chemotherapy. Morris said her husband maintained his job in Phoenix to support the family and pay for the medication. He commuted back and forth to be with the family.

"We had plenty of trips to the emergency room," Morris said. "It was horrible for me not to have my husband there and horrible for Diego not to have his father there."

Diego, who is now 15, is doing fine, Morris said. The family must make four trips a year to St. Jude in Memphis, in part to have the prosthetic in his leg adjusted.

Since concluding his treatment, Diego has become an advocate for Right to Try laws. He served as honorary chairman of the Right to Try petition initiative in Arizona, and he's told his story to a U.S. Senate committee looking into connecting patients to new treatments.

Paulina Morris also is involved in efforts to get Right to Try laws passed. "We were blessed that we were able to take off and go to another country," she said. But she knows others are not as fortunate.

"We have to change the system here in the United States," she said.

Spreading the word about Right to Try will save lives, Sandefur said. Patients suffering from terminal illnesses should ask their doctors if they are eligible to take advantage of the new law.

Last year, the N.C. General As-

sembly passed and Gov. Pat McCrory signed into law the state's Right to Try bill. The new law passed the House and Senate unanimously and took effect Oct. 1.

The law allows terminally ill patients under certain conditions access to a new drug, biological product, or device that has completed Phase 1 of the FDA's clinical trials but has yet to gain final approval.

According to the FDA's website, Phase 1 studies determine a drug's most frequent side effects, and how the body processes and discharges the drug. The emphasis in Phase 1 is on safety. Later phases focus on effectiveness and how the drug works with different populations, different diseases, and in combination with other drugs.

Under the new law, drug or device manufacturers are allowed but not required to make products that have completed Phase 1 available to patients. Companies making good-faith efforts to comply with the Right to Try law are shielded from liability claims.

To be eligible for such a drug, a terminally ill patient must have tried or considered all other treatment options currently approved by the FDA. The patient's treating physician must recommend the drug and attest that the patient meets all applicable criteria.

In addition, the patient is required to give "informed consent," acknowledging that he or she believes all currently approved treatments are unlikely to prolong the patient's life and acknowledging the risks involved.

"What we really need to do is change hearts and minds," Sandefur said. "When you're fighting for your life, you shouldn't have to fight the government, too." CJ

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By John Hood  
*Chairman of the  
John Locke Foundation*

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# N.C. Lottery Chief Gets Tough Questions From Lawmakers

## Legislators concerned that share of lottery revenue for education has shown a decline

BY BARRY SMITH  
Associate Editor

RALEIGH

Legislative critics chided state lottery officials for trimming back the percentage of proceeds going to education and emphasizing the long-term jackpot payout over the one-time cash payout that many winners receive.

"If this were not a government-run operation, it would be shut down by the Federal Trade Commission," Rep. Paul "Skip" Stam, R-Wake, said, referring to the Powerball advertisements that display the long-term annuity payout.

Alice Garland, executive director of the North Carolina Education Lottery, told a March 10 joint legislative oversight committee meeting that the lottery office reports both the cash payout figure and the larger long-term jackpot payout.

"We cannot control what the media chooses to report," Garland said.

However, Rep. Nelson Dollar, R-Wake, said that billboards generally show only the larger jackpot figure.

"People play more when they do see this huge number," Dollar said. "They get it in their head that, 'Hey, I can be a billionaire.' Well, you're not going to be a billionaire."

Rep. Pat Hurley, R-Randolph,

lamented the declining percentage of lottery sales actually paying for education programs.

Garland told the oversight committee that 26 percent of sales now go to education.

"I know it's not going away; I'm living with it," Hurley said of the lottery. "However, I think it needs to be used for education."

"Percentages do matter," Hurley continued.

Garland said a larger share of lottery receipts are going to pay for lottery prizes in an attempt to encourage more sales.

"The prizes that we pay is the product that we sell," Garland said.

"That's what we're in the business to do. They're not going to purchase our games if they do not feel like they have a decent chance to win something."

Garland said that the focus of the lottery officials is the dollars that are returned to the state for education.

"Every year, we have returned more dollars than the previous year," Garland said.

According to the N.C. Education Lottery Web page, the amount of lot-

tery proceeds going for educational purposes has increased, from \$315.56 million in the 2006-07 fiscal year to \$521.2 million in the 2014-15 fiscal year. Currently, 62.4 percent of lottery sales goes toward prizes.

After March 10 meeting, Jon Sanders, director of regulatory studies at the John Locke Foundation, also criticized the decreasing proportion of lottery proceeds going to education.

"At first, 35 percent of lottery proceeds went to education funding," Sanders said. "By 2013, only 28 percent did. Now barely one-quarter of lottery proceeds actually go to education funding."

Sanders also questioned the wisdom of es-

tablishing a state-run lottery.

"The lottery thrives off economic distress, as the most reliable predictors of lottery sales are poverty, unemployment, and property tax rates," Sanders said. "Now it seems we have to treat it like the unwelcome guest we're too polite to usher out the door, so we're scrambling to find some other ways of making it tolerable. I wonder if state leaders would have made this gamble years ago if they knew then what we know now."



Alice Garland, executive director of the North Carolina Education Lottery, heard several criticisms from legislators at a March 10 joint legislative oversight committee meeting.

Garland also revived a long-standing argument over the size of the lottery's advertising budget. Currently, it cannot exceed 1 percent of the lottery's budget, but Garland is asking for a boost to at least 1.25 percent, allowing the lottery to market games year-round and pitch more games.

She showed committee members what she called a "very positive" television commercial used by the New York lottery showing school-age children singing to convenience store customers, thanking them for buying tickets.

The ad did not sit well with the committee. Opponents have refused to allow children to be used as "props" in N.C. lottery ads. Dollar called the New York commercial "absolutely disturbing" and "absolutely dangerous."

Rep. Jason Saine, R-Lincoln, who co-chairs the legislative oversight committee, said he understands that some people, including legislators, would like to do away with the lottery. But he doesn't see that happening anytime soon.

"There are varying opinions on the lottery," Saine said. "There are some that want to end the lottery. So instead of ending it in a quick fashion, death by a thousand cuts [through regulations] would be a legislative strategy, possibly."

During much of the meeting, responding to a request from the committee, Garland offered a presentation on games and strategies used in other state lotteries.

Garland said that some states offer Keno games. Others offer an "iLottery," she said, allowing lottery games to be played online, including on tablets, laptops, and smartphones. CJ

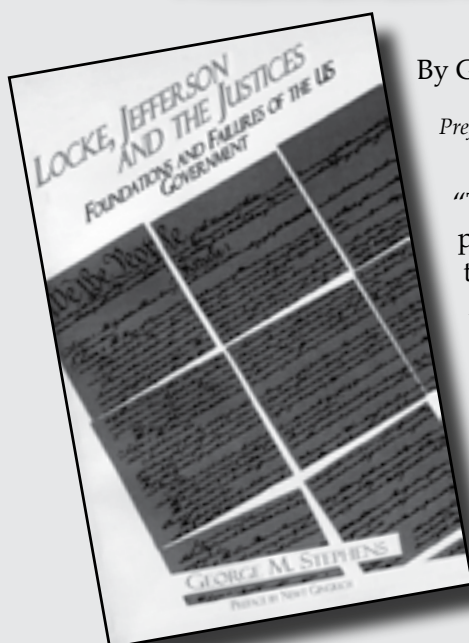
## Locke, Jefferson and the Justices: Foundations and Failures of the U.S. Government

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



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# Obama's Clean Power Plan Rules Called Costly and Ineffective

## Administration still to pursue the plan despite higher costs

BY DAN WAY  
Associate Editor

**D**uring his March 11 campaign stop in Raleigh, Democratic presidential hopeful U.S. Sen. Bernie Sanders, D-Vt., warned of planetary devastation from climate change unless the world shifts from fossil fuel-based energy to renewable forms of power.

Meanwhile, U.S. Environmental Protection Agency chief Gina McCarthy has said her agency would continue advancing the Obama administration's Clean Power Plan — requiring states to impose costly emission-reducing regulatory programs — even though the U.S. Supreme Court issued a stay halting the plan after North Carolina and more than two dozen other states sued to stop it.

"We are pleased the Supreme Court recognizes that the federal power plan will dramatically increase North Carolina's electricity rates with little, if any, environmental benefit," N.C. Gov. Pat McCrory said in a written release when the stay was issued. "We will continue to fight the Obama administration's illegal attempts to take over North Carolina's power system."

Jillian Melchior, who studies environmental regulatory issues at the Colorado-based Steamboat Institute, said the Left is "doing something that is deeply unscientific" by claiming the science is settled on man-caused global warming.

"We are adopting environmental regulations that are symbolic at best, that are rooted in dubious science, rooted in alarmism, and don't actually have a practical effect" on global temperatures, Melchior said.

Scientific studies of the impact of the Clean Power Plan show temperatures will decline "0.02 [degrees] Fahrenheit by 2100," Melchior said. "This is not going to make a difference for climate change."

That would reduce sea level rise by "the equivalent of two sheets of paper," Melchior said.

The United States accounts for only 5 percent of global carbon-dioxide emissions. If America got rid of its cars, completely shut off electricity, and "goes back to the Dark Ages" in energy use, the global temperature would drop just 0.15 degrees, Melchior said.

Melchior offered her comments on March 4 at the Civitas Institute's Conservative Leadership Conference in Cary.



Environmental regulatory analyst Jillian Melchior discusses the impacts of the federal Clean Power Plan at a recent presentation in Cary. (CJ photo by Dan Way)

One private-sector study estimates the energy regulations would cost consumers as much as \$39 billion annually, she said. Consumers in most states will see double-digit hikes in electricity bills, and the poor would be harmed the most.

She cited studies showing energy now consumes about a third of the pre-tax incomes of families earning \$30,000 a year or less. Black families spend about 50 percent more of their take-home pay on energy than their white counterparts do. Latino families spend about 10 percent more than white families.

She said a National Energy Assistance Directors Association study concluded that to pay higher power bills, between 20 and 25 percent of low-income families would give up medical or dental care, 25 percent would give up food for a day or more, and one of five households reported a family member becoming ill because the family could not afford to heat its home during cold weather or cool it "during extreme heat."

Obama says the Clean Power Plan will inspire other countries to lower their carbon emissions and called the Paris Climate Conference a resounding success.

But Melchior pointed out that other countries are not bound by restrictions in the Paris accord, and it

has no enforcement mechanism. The United States and China also have committed to a pact under which the U.S. would reduce carbon emissions by 32 percent between now and 2030, but China made no promise to restrict its emissions until 2030, at which point it would stop increasing them.

"That's another way of saying they're going to keep growing for the next 15 years as we cut back fairly severely," Melchior said.

China approved 155 new coal power plants "in the last year alone," which will produce the equivalent of 40 percent of U.S. energy capacity, said Melchior. "They're growing fast. They're getting dirty fast."

Meanwhile, U.S. air quality is at its cleanest levels of the past 20 years because of greater use of natural gas, not renewable power, Melchior said. "Nonetheless, the EPA wants to put a preference on renewable energy" and use the Clean Power Plan to shut down coal- and possibly natural gas-fueled power plants.

With the growth of hydraulic fracturing processes, "We now produce more oil than Saudi Arabia. We now produce more natural gas than Russia," Melchior said. That gives the U.S. "a huge foreign policy advantage," a manufacturing boom, and cheaper food and consumer goods.

Even so, the Obama administra-

tion's expansion of regulations on fossil fuels has made renewable energy seem inexpensive by comparison, Melchior said.

"We know about the subsidizing of green enterprises and how many of them are politically connected," she said, noting that without taxpayer subsidies, "many of them right off the bat go bust."

The Obama administration is confident it will prevail in the lawsuit brought by North Carolina and other states challenging the emissions rules. "The Clean Power Plan is based on a strong legal and technical foundation, gives states the time and flexibility they need to develop tailored, cost-effective plans to reduce their emissions, and will deliver better air quality, improved public health, clean energy investment and jobs across the country, and major progress in our efforts to confront the risks posed by climate change," said White House Press Secretary Josh Earnest.

Business leaders see the Supreme Court's intervention as a sign the regulations will not stand. "The Supreme Court's stay of this rule, and the D.C. Circuit [Court of Appeals]' order to hear the case quickly will ensure that America will not be forced to make costly and irreversible implementation decisions based upon an unprecedented regulation until judicial review is complete," U.S. Chamber of Commerce president and CEO Thomas Donohue said in a statement.

Arguments before the D.C. Circuit are set for June 2. CJ

Studies show that  
'clean energy'  
efforts cost  
families billions  
each year

# Celebration Muted as Obamacare Reaches Sixth Anniversary

Balky providers, rising costs, people ignoring mandate dent rosy scenarios

BY DAN WAY  
Associate Editor

RALEIGH

Amid glowing promises of cost-cutting and expanded health care for all, on March 23, 2010, President Obama signed into law his signature Affordable Care Act.

Since then, Blue Cross and Blue Shield of North Carolina, the state's largest provider of individual coverage on the federal health exchange, suffered \$405 million in losses in 2014 and 2015, and state Insurance Commissioner Wayne Goodwin has warned that insurers could pull out of the state's individual insurance market because of the unsustainable costs.

With that backdrop, some analysts believe the nation should focus less on trying to insure everyone and consider other policy priorities to improve health care.

"Freeing up the supply side is the key," economist Tyler Cowen, a *New York Times* columnist and director of the Mercatus Center at George Mason University, said during a March 22 presentation at the John Locke Foundation.

"I really would focus health care energies on freeing up the capacity for innovation, and having more freedom of entry ... sort of fighting a dog-eat-dog war over health care coverage," Cowen said.

The connection between having health insurance and healthy living "is actually a pretty tenuous one," Cowen said. The Amish don't buy much health insurance, yet have a longer life expectancy than the typical American, he said.

Cowen believes lifestyle, heredity, diet, and environment have far greater influence on health than having health insurance. Dealing with those factors would provide a better return on investment than insuring everyone, he said.

By blending private- and public-sector health care, costs will remain high and rising, he said.

"What we need is a system with real price competition and transparency," Cowen said. "Educated consumers should know and care what a procedure costs, and people should realize that not everything can be attained."

But because Americans desire every treatment and procedure available, Cowen expects health care costs eventually will reach 40 percent of gross



President Obama, Vice President Biden, and White House staff were all smiles on the day the Affordable Health Care Act, popularly known as Obamacare, was passed in 2010. (White House photo)

domestic product, with diminishing returns in terms of life expectancy. "It's our whole basic system of public-private crony capitalism, noncompetitive, nontransparent, screwed up at every level of government health care."

Devon Herrick, senior fellow at the Dallas-based National Center for Policy Analysis, called the Affordable Care Act "a badly flawed piece of legislation" as Obamacare plans would be a bad deal for most people.

"The regulations and mandated benefits are so expensive that proponents knew the program would collapse without an individual mandate" requiring uninsured people to buy plans or pay a tax, Herrick said.

"Despite the mandate, the exchange system is suffering adverse selection. Premiums have risen to the extent that only those who qualify for subsidies enroll in the plans. More than 80 percent of those enrolled get premium subsidies," Herrick said.

Even with subsidies, the policies are a bad deal for many enrollees. While estimates vary, about 25 percent of enrollees drop out by the end of the year, and, on average, patients remain enrolled between eight and nine months on an exchange plan, he said.

To reduce premiums, many people opt for deductibles so high they are essentially paying for all their medical needs out of pocket.

"I believe the exchanges will become less stable and ultimately fail," Herrick said. "At some point the pre-

miums will rise so high that the exchange system will essentially become a high risk pool for moderate-income people who qualify for subsidies."

In an online forum March 22 discussing the Obamacare anniversary, Mercatus Center researcher Brian Blase, who worked on the health care law as a congressional staffer, said enrollment has lagged far behind projections from national health policy organizations when the law passed. The average estimate, he said, was that 24 million people would get coverage.

When open enrollment for 2016 closed Feb. 15, only 12.7 million people were enrolled. Based on 2014 and 2015 experience, only 11 million are likely to qualify, and that number is likely to dwindle to about 10 million enrolled by the end of the year, Blase said.

A half-million people were removed from exchange plans in 2015 because they couldn't verify their residence or citizenship. By the end of the year, only 8.78 million were enrolled.

A significant number of people game the system by entering through special enrollment periods, falsely claiming they had a life-qualifying event such as loss of employer insurance or an addition to the family, Blase said. They get services they need, then drop off the rolls.

Others take advantage of a provision in the law allowing individuals to be on an exchange plan for 90 days without paying a premium, he said. Many exchange enrollees pay premi-

ums the first nine months, run up their bills, and then don't pay the final three months of premiums.

The increase in exchange enrollment from 2015 to 2016 was just 10 percent, "a pretty convincing sign that the individual mandate is not working as intended," Blase said. Young, healthy people are not buying insurance on the exchange at projected numbers because deductibles and premiums are set high to cover the costs of older, sicker enrollees.

Last year, 12 of 23 federal health insurance cooperatives collapsed after incurring losses that were too high to sustain, Blase said.

Most estimates are that between 15 million and 20 million people are insured through Obamacare. Blase said many of them are enrolled in Medicaid — which provides substandard coverage — rather than private insurance.

A study last year from economists at Dartmouth, Harvard, and MIT concluded that Medicaid enrollees receive only 20 to 40 cents of benefit for each dollar that Medicaid spends on their behalf.

"I think that study is pretty strong evidence that a lot of the benefits of the coverage expansion are not worth the cost," Blase said. Costs for patients enrolled under Medicaid expansion are higher than the government projected, probably because states receive reimbursement for 100 percent of their care and have no incentives to spend conservatively, he said. CJ



# Senate Democrat Walkout Caps Fiery NCGA 'Bathroom' Session

By BARRY SMITH  
Associate Editor

RALEIGH

The General Assembly's first special session in more than three decades convened by lawmakers rather than the governor ended in dramatic fashion: Senate Democrats walked out of the chamber moments before their GOP colleagues voted unanimously to reverse a Charlotte ordinance allowing transgendered people to use the public restrooms they choose.

Almost immediately after receiving the bill from the General Assembly, Republican Gov. Pat McCrory signed the measure, which also established a statewide nondiscrimination law for public accommodations. The Charlotte ordinance was set to take effect April 1, more than three weeks before the General Assembly's scheduled short session will convene. Advocates on both sides of the the legislation were quick to score political points during heated debate.

The new state legislation requires single-sex, multiple-occupancy bathrooms and locker rooms in public schools and public agencies, and requires students to use the facilities based on their "biological sex," or the sex listed on a birth certificate. Lead sponsor Rep. Dan Bishop, R-Mecklenburg, said someone who has sex-reassignment surgery can amend a birth certificate to reflect the new sex status.

The legislation also would override any local ordinances related to discrimination practices. It prohibits localities from requiring private contractors to abide by regulations other than those required by state law. Supporters of the bill emphasized that private businesses would be free to set



**State Sen. Buck Newton, R-Wilson, explains the measure overturning Charlotte's so-called "bathroom" ordinance on March 23 before a Senate committee. (CJ photo by Kari Travis)**

their own policies regarding access to their bathrooms.

The March 23 session was convened by Lt. Gov. Dan Forest in his capacity of Senate president and House Speaker Tim Moore, R-Cleveland, after two-thirds of the members of each body requested it. This was the first legislative special session since 1981 that was not called by the governor.

The Democratic exodus was underscored when the Senate reading clerk called the roll. When each Democratic senator's name was called, there was a moment of silence. Republicans responded with an "aye" when their name was called.

Normally, roll call votes are taken electronically. Democratic senators complained that they'd been left out of the process of drafting the legislation.

The Democratic walkout resulted

in the Senate passing the measure by a unanimous 32-0 vote.

In contrast, 11 House Democrats joined 71 Republicans in voting for the measure. It passed that chamber, 82-26.

Senate leader Phil Berger, R-Rockingham, chided his Democratic colleagues and linked them to Democratic Attorney General Roy Cooper, the party's nominee for governor.

"Senate Democrats followed the lead of Roy Cooper and refused to make protecting the safety of our children a priority," Berger said. "We're not sure if their rhetoric was stronger than their convictions or if they expected to be embarrassed by a majority of Senate Democrats joining Senate Republicans in voting for common sense. But either way, running out and ducking this vote is a serious breach of their duty to their constituents."

McCrory's re-election committee released a video of a statement offered in committee by Senate Minority Leader Dan Blue of Wake County making what the governor's campaign team said was the Republicans' case: Cooper could have prevented a special session by challenging the ordinance in court.

"If the city of Charlotte had no authority to do this, it would have taken 15 minutes to get a temporary restraining order, 10 days to get a preliminary injunction, and if it was so clear, then a couple of weeks later to get a permanent injunction ... without scaring the bejesus out of the citizens of this state," Blue said.

As lawmakers and the governor discussed the prospect of a special session, Cooper said he saw no need for the General Assembly to overturn Charlotte's ordinance, instead suggesting that lawmakers had more pressing matters at hand. He released a video on the day of the session condemning the legislative action.

"North Carolina is better than this," Cooper says in his video. "Discrimination is wrong, period. That North Carolina is putting discrimination into the law is shameful." He said that such action could end up costing the state economically. Cooper also criticized McCrory for his stance on the issue.

"The governor lit the match and stood aside while the fire blew out of control," Cooper said.

Cooper's stance wasn't lost on Sen. Buck Newton, R-Wilson, the Republican nominee for attorney general.

"The radical left-wing groups and the liberal politicians like our attorney general are afraid to stand up to the political correctness model and fight for common sense," Newton said during a Senate committee meeting. "They refuse to take action to protect the safety and the privacy of women and children."

Opponents of the bill argued that the proposed new law was unneces-

sary and was based on unfounded fear.

"Let's drill down and get to what the intent of this particular legislation is," said Rep. Rodney Moore, D-Mecklenburg. "This is really not about bathrooms. This is about fear."

Moore said that similar ordinances have been passed in more than 200 cities across the nation. He said, to his knowledge, there have been "not catastrophic incidents of assaults, of rapes or anything." He said the argument that the legislation had to do with public safety doesn't pan out.

Rep. Tricia Cotham, D-Mecklenburg, and a candidate for the 12th Congressional District seat, said the General Assembly shouldn't meddle in Charlotte's affairs.

"This is to advance some political careers and tarnish some other political careers in an election year," Cotham said. "We must be a state that is inclusive and welcomes everyone in North Carolina."

Bishop said the city of Charlotte did not have the authority to enact the ordinance.

"The power of localities in North Carolina comes from delegation by the General Assembly," Bishop said. "In the case of the Charlotte ordinance passed in February, they exercised a power that had never been delegated to the city of Charlotte, or any locality, except for a few in their charter, but not Charlotte."

Rep. Paul "Skip" Stam, R-Wake, called the legislation a "common-sense bill" ensuring the status quo in the state.

"It protects privacy," Stam said. "It also clarifies what units of local government can do on a couple of disputed issues." Stam said that the state needed a consistent law statewide so that businesses that want to grow or expand don't have to have different rules in different places.

During public comment periods, people on both sides of the transgender bathroom issue made impassioned pleas to lawmakers.

They included 15-year-old Skye Thompson of Greenville, who told a Senate committee that he is a transgendered male.

"I've felt bullied my whole life, and now I worry that my own state lawmakers are bullying me as well," Thompson said. He said transgendered kids are bullied on a daily basis.

Donna Eaton of Cary told the committee that she was molested as a child. "I lived in fear of finding a man in my bathroom," Eaton said. She said when she recently visited Massachusetts, a transgendered person was in the bathroom. "Seeing this man in the bathroom brought me right back to where I was years and years ago."

She said without the bill overturning the Charlotte ordinance, people with malicious intent would be allowed to masquerade as transgendered and take advantage of people. CJ

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# Raleigh Putting 'Finishing Touches' on Sidewalk Dining Rules

BY KARI TRAVIS  
Associate Editor

RALEIGH

The Raleigh Appearance Commission's recommendation for outdoor dining regulations, approved unanimously March 17 for city council review in April, could turn some of the city's previous rules upside down.

The new proposal, which addresses signage, furniture, capacity, and set-asides for sidewalk dining spaces, would eliminate stanchions except for special circumstances, said Brian O'Haver, chairman of the commission. The commission instead has proposed using medallions — markers that would be laid into the sidewalk — to delineate patio space.

Additionally, the proposal urges council members to lift the current patio capacity limit of 15 square feet per person, allowing more flexibility to manage space.

"If you meet all of your clearance requirements and you end up at 14 square feet per person instead of 15 — you've got all of your clearances, and that's the area that you have — we're suggesting that council go back and take a look and perhaps allow that," O'Haver said.

"We're saying there could be situations where you could fit more people and still meet all of the requirements, so we think they should reconsider how they calculate [that]," he continued.

The proposal also would ban



Appearance Commission Chairman Brian O'Haver discusses final details of a sidewalk dining rules recommendation that may go before the city council in April. (CJ photo by Kari Travis)

picnic tables from the Fayetteville Street corridor but allow them on other downtown streets. Tables would be regulated to two or four-person capacity, and could remain on sidewalks when bars and restaurants were not open — so long as the furniture remains accessible for public use.

"You can't take a really small chain and chain [the furniture] all up so that you can't use the tables during nonbusiness hours," O'Haver said. "[W]e're saying is that it's public space, and the argument is that these tables are for public use. They need to

be for public use regardless of who the public is."

Oversized "communal tables" that fall outside the proposal's parameters, but that are not classified as picnic tables, also might be allowed, O'Haver said.

"We want to allow [business owners] to at least have that [request] considered," he said. "Instead of putting that on city staff, we're saying that if you go above this standard bar table size [42 inches by 42 inches], but meet [some] of those dimensions, then it could still be permissible," he said.

"But it would have to go through an additional design review... and we are suggesting that the Appearance Commission provide that."

The commission's recommendation is just one in a long string of efforts to resolve an ongoing controversy surrounding private use of public sidewalks in Raleigh's downtown.

Conflict arose during May of last year when complaints about overcrowding, noise, and vibrancy along the Fayetteville Street corridor spurred the city council to take action. Initial recommendations involved stripping patio privileges only from bars and private clubs. Bar owners protested, and the city responded by proposing an alternate "pilot program" placing curfews and capacity limits on outdoor dining for both restaurants and bars.

The city council reviewed the three-month program late last year, making way for further discussion about the appearance of sidewalk furniture and stanchions. Members of the council moved that debate to the Appearance Commission for a six-week study and work session.

The study and review process instead took more than two months to complete.

The proposal will be reviewed by District E Council Member Bonner Gaylord, the city council's liaison to the appearance commission. With Gaylord's approval, the recommendation will be scheduled for consideration at the April 19 meeting of the city council, O'Haver said. CJ

# Boone ETJ Case Could Affect Land-Use Regulations Statewide

BY BARRY SMITH  
Associate Editor

RALEIGH

In late March, the state's highest court took up the issue of whether the N.C. General Assembly exceeded its constitutional limits in 2014 when it revoked the Town of Boone's extraterritorial zoning powers.

Lauren Clemmons of the N.C. Department of Justice and Watauga County Attorney Stacy Eggers urged the N.C. Supreme Court to reverse a lower court ruling invalidating the law.

Eggers said that the law, commonly called the Boone Act, was passed to address abuses by the Boone Town Council.

"The citizens sought a remedy of relief from a board which they cannot vote for and were simply in a situation of regulation without representation," Eggers said.

Extraterritorial zoning jurisdiction allows cities and towns to apply zoning powers in limited areas out-

side of their city or town limits. While people who live in such ETJs don't pay taxes to the municipality, their land can be regulated by the city. They also are not allowed to vote in the municipality's elections.

Eggers said because residents of the Boone ETJ had no other effective representation, members of the General Assembly were the only people with any authority who could help them.

Jim Phillips, arguing for the Town of Boone, said that the Boone Act is unconstitutional because the N.C. Constitution prohibits local acts relating to health, sanitation, and nuisances.

Local acts are bills passed by the General Assembly that affect 15 counties or fewer and do not apply statewide.

Phillips said the Boone Act, if upheld, would prevent the town from enforcing safety standards in its building code.

"The fact that the General Assembly enacts a law does not make it con-

stitutional," Phillips said.

Justice Paul Newby noted that the "state Constitution gives the General Assembly the authority to give such powers and duties to cities, counties, and towns that they deemed advisable."

Newby asked Phillips if a broad reading of the prohibition on local legislation affecting health and sanitation might "eviscerate" the General Assembly's ability to move any boundaries.

"Your honor, I don't think so," Phillips responded. He said the town is complaining about the General Assembly's action related to regulatory authority that goes to health and sanitation.

"But every change of boundaries is going to impact it," Newby said.

"Your honor, I would agree that the General Assembly has broad authority to set boundaries that are city limits and county lines," Phillips responded.

Clemmons told the court that

there is no prohibition on the General Assembly enacting a local act related to giving cities and towns extraterritorial jurisdiction.

"So we should be reasonably able to agree that there would be an opposite view that the Constitution does not restrict the General Assembly in removing territory in a local act, which is what the Boone Act does," Clemmons said "It removes territory."

Clemmons noted that municipalities other than Boone lack extraterritorial zoning powers.

The Boone Act was introduced by Sen. Dan Soucek, R-Watauga, who said that the Town of Boone was abusing its ETJ powers by regulating areas that it never intended to annex.

Last year, a three-judge Superior Court panel ruled the Boone Act unconstitutional.

The Supreme Court took no immediate action. Typically, the court issues rulings within a few months of oral arguments. CJ

# Court Says Modernist House Appropriate For Neighborhood

Raleigh controversy captured national media attention

By MICHAEL LOWREY  
Associate Editor

RALEIGH One of the best-known houses in one of Raleigh's older neighborhoods is also among its newest. In 2013, Louis Cherry and Marsha Gordon applied to build a modernist house in Raleigh's Oakwood neighborhood, where most existing houses are from the Victorian era or have similar designs. The resulting controversy generated both considerable national news coverage and considerable legal expenses as a neighbor challenged whether a modernist house was appropriate for the neighborhood. In a February ruling, the state's second-highest court sided with the owners of the new home.

Oakwood is a designated historic district. Under the rules for the district, a certificate of design appropriateness from the Raleigh Historic Development Commission is required for new construction. Before the commission, several people stated their belief that the proposed modernist structure was not at all consistent with the other houses in the area. Among those expressing displeasure was Gail Wiesner, who lives across the street from Cherry and Gordon's lot.

The commission ultimately approved the house, and Cherry and Gordon proceeded to obtain a building

permit and begin construction, facing a risk that they might be required to tear the house down if the commission's decision to issue the certificate was overturned on appeal.

And there was an appeal. Wiesner contested the commission's ruling before the Raleigh Board of Adjustment. In early 2014, the board sided with Wiesner. But Cherry and Gordon then sought judicial review of the board's determination. In a September 2014 decision, Superior Court Judge Elaine O'Neal Bushfan ruled against the board and reinstated the commission's determination that the house was appropriate for the neighborhood. Wiesner then took the next step and brought the issue before the N.C. Court of Appeals.

The key issue before both the trial court and the Appeals Court was whether Wiesner actually had the right to challenge the commission's issuance of the certificate before the Board of Adjustment. The legal term for this is "standing." Under North Carolina law, owning adjacent property does not, by itself, confer standing to challenge a land use decision. Instead,

a neighbor must demonstrate that she is an "aggrieved party" under the law and would suffer "special damages" as a result of the proposed use. State courts have defined special damages as economic damages such as a loss of property value or other adverse effects; they are distinct from those other property owners in the area would suffer as a result of the proposed land use.

The Court of Appeals rejected Wiesner's claim. "Even if she is correct in her assessment of the Cherry-Gordon house's design, respondent has failed to show that she is an 'aggrieved party' as the law defines that term, so the Superior Court's order reversing the Board's decision was correct and we affirm it," wrote Judge Donna Stroud for the Appeals Court.

Wiesner's petition to the Board of Adjustment stated that the Cherry-Gordon house would "harm the character of the neighborhood and contribute to erosion of the neighborhood's value." The Court of Appeals found that this did not rise to the level of special damages, as Wiesner's claim either was purely aesthetic or not limited to her

property. This did not end the matter, as Wiesner also alleged that she should have been allowed to supplement the record at trial with affidavits showing that she indeed would suffer special damages. The Court of Appeals was not impressed by this argument, finding the affidavits unhelpful.

As an example, in one affidavit, Wiesner complained that the modernist house had led to "gawker traffic."

Even if this were true, Stroud noted that the affidavit stated the increased "gawker" traffic had been caused by the intense media attention attracted by the battle over the house's design, not by the house itself.

"This is simply not the sort of increased traffic our prior cases have addressed as part of the basis for standing of an adjacent property owner to challenge a permit, since traffic is not generated by the usual or intended use of the Cherry-Gordon house or property itself but is generated only by the media coverage of the controversy surrounding its construction. The Cherry-Gordon house is a 2,580-square-foot single-family residence, and the record shows that it would generate exactly the same type of 'traffic' in its normal use as respondent's home or any other single-family residence of similar size."

Court of Appeals rulings are binding interpretations of state law unless overruled by the N.C. Supreme Court. Because the ruling by the three-judge panel of the Appeals Court was unanimous, the high court is not required to hear the case if Wiesner files additional challenges regarding the house's design.

The case is *Cherry, v Wiesner*, (15-155). CJ



Opponents didn't want modern home located in historic neighborhood

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# Randolph Megasite Years Away From Prime Time

Continued from Page 1

another railroad company, Norfolk Southern, owns the rail line adjacent to the site. (See <http://bit.ly/1V108vY>) NCRP President Scott Saylor told *CJ* that the board approved participation in the megasite project as part of the company's broader economic development mission.

On Jan. 5, Saylor wrote Randolph County commission chairman Darrell Frye, Megasite Foundation Chairman Jim Melvin, and Greensboro Mayor Nancy Vaughn, stating that NCRP "has reached agreements to purchase approximately 875 acres of land located within the 1,450-acre Greensboro-Randolph Megasite." While the total price was not revealed in the letter, NCRP officials confirmed to *CJ* and other news sources that NCRP would spend \$13 million, even though its annual report said that in 2014 the railroad made about \$4 million in net income, and at the end of that year it had less than \$5 million cash on hand.

Nearly three months later, NCRP has not closed on any of the 19 parcels it is expected to buy. When asked about the status of land purchases and the source of funds, NCRP Chairman Franklin Rouse wrote, "We have worked diligently with key partners to move the Greensboro-Randolph Megasite forward and assemble the land needed to attract a large-scale manufacturer to the state, and we remain committed to this effort."

"As we stated in our discussion with you in January, we are in the process of completing our due diligence on the properties within the site, with closings expected within the next few months," Rouse added. "The purchase of these properties will be funded in part through sales of legacy properties no longer used for railroad purposes."

## Changing political climate

The March 15 Republican pri-



The Greensboro-Randolph Megasite is located in the northeast corner of Randolph County, and lies between U.S. 421 on its western boundary and the Norfolk Southern Railway line on its northern boundary. (CJ graphic)

mary for two seats on the five-member Randolph County Board of Commissioners made clear that two megasite-friendly incumbents had lost their re-election bids. Randolph County is heavily Republican, and since no Democrats had filed for either seat, in December the two primary winners will join the commission.

Five days after the election, the *Greensboro News & Record* noted the significance in a story headlined, "In a dramatic shift, new Randolph commissioners create a majority of megasite

skeptics." The two new commissioners will join David Allen, "who has spent his first year on the board as its lone voice of caution" regarding the megasite, according to the *N&R*.

Kenny Kidd, an Asheboro financial adviser and former chairman of the Randolph County Republican Party, beat commissioner Phil Kemp, winning 60 percent of the vote. Accountant Maxton McDowell won a three-way race, with incumbent commissioner Arnold Lanier placing third.

Kidd and McDowell were out-

spoken critics of the process that led the county to invest heavily in the megasite. Kemp and Lanier were strong supporters of the megasite project.

"As a taxpayer, I could not get a straight answer about anything dealing with the megasite," Kidd said. "Randolph [County] is still the major stakeholder, and we need to be careful moving forward with this. I won with 60 percent of the vote, and I feel that

Continued as "Randolph," Page 13

## Commerce Chief Skvarla Recuses Himself from Megasite Discussions

In November, N.C. Secretary of Commerce John Skvarla joined the 13-member North Carolina Railroad Company board of directors, placing him in an unusual position. As commerce chief, he would play a significant role in crafting any incentive package offered to a large company considering the Greensboro-Randolph Megasite or North Carolina's other two megasites, located in Chatham and Edgecombe counties.

Because the NCRP board has become a partner in the Greensboro-Randolph Megasite, and agreed to spend \$13 million to buy 862 of the 1,400 acres designated for the site, Skvarla faces a potential conflict of interest.

This possible conflict should be no surprise, given the composition of the NCRP board. Legislative leaders appoint six board members, and the governor appoints the other seven. By law, one of the governor's appointments "shall be be the secretary of commerce or the secretary's designee." Skvarla



N.C. Commerce Secretary John Skvarla

became commerce secretary in January 2015.

Skvarla apparently has acknowledged the potential conflict. In an email, commerce spokeswoman Kim Genardo wrote, "The secretary has made it clear to fellow NCRP board members that he will recuse himself from any vote or discussion on this topic."

Though Skvarla was appointed to the NCRP board in November 2015, his appointment was not announced until late March. In a March 21 press release from Gov. Pat McCrory regarding appointments, Skvarla, Jake Alexander of Rowan County, and Douglas Stafford of Stanly County were named to the NCRP board, even though Skvarla had been listed as early as January as a board member on the NCRP website.

Genardo said she had "confirmed with NCRP that Secretary Skvarla was appointed in November 2015 and attended his first NCRP meeting that month. He attended NCRP's board meeting in January as well. So he has attended two board meetings, November 2015 and January 2016." On Jan. 5, the board announced its intention of buying land for the Greensboro-Randolph Megasite. *CJ*

— DON CARRINGTON

# State Bar Fights Professional Misconduct Charges Against Cooper

Continued from Page 1

Boyce, Gene's son.

Cooper won that race and has been attorney general since 2001. Cooper won the March Democratic primary for governor and will face Gov. Pat McCrory in November.

Boyce claims that during the 2000 campaign, Cooper knowingly made false statements in political ads that harmed the reputation of Boyce and his law partners. A trial court judge dismissed the lawsuit, but appellate courts ruled in Boyce's favor on several occasions, and in 2014 the matter was scheduled to go to trial.

The dispute appeared to be over in April 2014 when Cooper issued a written apology to Boyce for statements Cooper's political campaign made in the political ads. The parties signed an agreement ending the civil action, but Boyce's complaint says that Cooper's conduct is a separate issue that the State Bar must address.

Wake County Senior Resident Superior Court Judge Donald Stephens is handling the case. Boyce told *Carolina Journal* that he expects a hearing in early May.

Boyce has been practicing law since 1956. He served as assistant chief counsel to the Senate Watergate Committee, working with U.S. Sen. Sam Ervin, D-N.C., on the investigation of President Nixon's 1972 presidential



Attorney Gene Boyce, who is alleging professional misconduct against Attorney General Roy Cooper, has funded an eponymous center for advocacy at Campbell Law School. (CJ photo by Don Carrington)

campaign.

In 2015, Boyce made an \$8 million gift to Campbell Law School in Raleigh. The school has used the money to establish the G. Eugene Boyce Center for Advocacy at the school's Raleigh campus. Boyce has practitioner-in-residence status at the school, as well as office space.

## Motion to dismiss

The State Bar claimed Boyce doesn't have "a legally cognizable interest in the controversy and lacks standing to pursue his alleged claim as a matter of law."

In addition, even if Boyce had standing, the declaratory judgment he seeks was not an appropriate vehicle to compel action from a state agency.

Finally, the State Bar claimed that Boyce's lawsuit against Cooper "was fully resolved and is final. Accordingly, all questions of civil law liability related to his alleged private injury are moot."

Boyce's response, submitted March 28, said his complaint concerns the ethical duties of the State Bar and the statutory principles of "conflict of interest." He said a declaratory judgment is appropriate in this situation.

He said that as a dues-paying

member of the State Bar, he has a sincere interest in seeing the agency perform its duties, and that the State Bar encourages attorneys to report evidence of misconduct by other attorneys.

Boyce also noted, as he did in his initial complaint, that the State Bar has set a precedent in dealing with the alleged misconduct of an attorney who posed a conflict of interest for the State Bar. Faison Hicks, who is a special deputy attorney general in Cooper's office and has served as a counsel for the State Bar, signed documents claiming he had attended continuing legal education programs sponsored by the State Bar but in fact did not attend all the classes.

The State Bar lodged a grievance, claiming that Hicks engaged in dishonesty, fraud, deceit, or misrepresentation. Normally, the State Bar would handle an investigation and discipline if necessary. But because of Hicks' relationship with the State Bar, it asked the staff of the Georgia State Bar to investigate the matter, and Stephens agreed to handle any discipline. Stephens ruled that Hicks engaged in professional misconduct and issued a public reprimand.

Boyce argued that with this precedent in place, the State Bar should consider choosing independent entities to decide this dispute involving Cooper. CJ

# Randolph-Greensboro Megasite Years Away From Prime-Time Project

Continued from Page 12

it was a referendum on this issue. My opponent campaigned as a supporter of this project," he said.

"I told voters if you want someone to rubber-stamp everything that says megasite, I am not your guy. I will ask hard questions before we move forward. My opponent was the rubber-stamp for the megasite," Kidd said.

## Duke Energy

A 500 kilovolt Duke Energy transmission line crosses through the center of the megasite, but that line — an essential part of an electrical grid — is not available for the use of the megasite or any other retail customer. The Megasite Foundation's website has a map showing the location of three future Duke Energy 115 kilovolt power lines entering the property on the south side. Area residents, however, have told *CJ* that Duke representatives have informed them the power lines would run four miles and come from the north.

Duke Energy spokesman Tim Pettit would not confirm the location of the power lines, saying only, "Duke Energy is working with the local communities of the economic development megasite on a high-level strategy for

assessing transmission access to the site, including availability and timeline for completion of such infrastructure."

Pettit said Duke will proceed with a transmission line siting plan after some entity associated with the megasite pays for the study. He said it could cost several hundred thousand dollars and said those costs could not be passed along to ratepayers.

The process is lengthy and is similar to the siting of new highways. A transmission line corridor is typically at least 100 feet wide. Duke can use eminent domain to acquire transmission line easements from landowners unwilling to provide them.

Randolph County Economic Development Commission President Bonnie Renfro told *CJ*, "My understanding is that the Greensboro-Randolph Megasite Foundation will pay for the study using private funds."

## No one in charge

The actual leadership of the megasite project remains unclear. The Piedmont Triad Partnership, a regional economic development organization based in Greensboro, initially spearheaded the project. PTP began working in 2010 to identify a megasite location. Randolph County and the city of Greensboro later joined the effort. The

Department of Commerce made a \$1.7 million grant to Randolph County in 2012 to support the development and acquisition of a megasite. Randolph County turned the money over to PTP. The groups eventually settled on the current location.

David Powell, chief executive officer of PTP, resigned in January 2015. The megasite was a high priority for PTP.

In February 2015, immediately after Powell's resignation, former Greensboro Mayor Jim Melvin formed the Greensboro-Randolph Megasite Foundation with the stated purpose of acquiring land for the site — bringing an additional player to the potential management and oversight of the project.

In April 2015, PTP learned that Powell had been involved in "financial irregularities" and asked the Greensboro Police Department to investigate the matter. In January 2016, the Guilford County district attorney's office charged Powell with two felony counts each of embezzlement and obtaining property by false pretense. He was scheduled to appear in court March 28, but a judge allowed the case to be continued, and a new date has not been set.

Neither Melvin nor anyone representing the Megasite Foundation has returned or responded to repeated

emails and phone messages requesting information about the management structure of the megasite project.

The Megasite Foundation's website directs inquiries to Renfro or Greensboro Partnership President Brent Christensen. The partnership — a private organization handling economic development efforts for Greensboro and Guilford County — has not responded to questions regarding Duke Energy service to the site or the project in general.

Attorney Alan Ferguson, a founder of the Northeast Randolph Property Owners, a group established to oppose the megasite, told *CJ* he has concluded that no one is in charge. "It's also an objection our group has publicly raised for over two years. Hundreds or even thousands of surrounding residents are affected, and millions of public dollars invested, and yet there is no one really running the show," he said.

A competing site named the Chatham-Siler City Advanced Manufacturing Site, located in Chatham County, 10 miles from the Greensboro-Randolph site, has been developed with no public funds. It contains approximately 1,800 acres, and the state of North Carolina certified it in June 2014 through its NC Certified Sites program. The Chatham County site has no known opposition from local residents. CJ

# Spellings Promises Accountability, Transparency at BOG

BY KARI TRAVIS  
Associate Editor

FAYETTEVILLE

Transparency will be a top focus for the UNC system's administration in the coming year, President Margaret Spellings said March 4 during her first official presentation to the Board of Governors.

At the Fayetteville State University campus, the former U.S. secretary of education in the George W. Bush administration emphasized the importance of public trust, and assured members of the faculty and student body that their input will be valued under her leadership.

"In my tour [of the campuses], and [in] day-to-day operations, I want to see us have long and lasting partnerships — and even friendships — with all stakeholders, from students and faculty, to legislators, to civil rights and faith leaders," Spellings said.

Questions about a lack of transparency were raised last year following the abrupt firing of former President Tom Ross and the controversial hiring of Spellings as his replacement. The conflict surrounding those proceedings led to the resignation of former Board of Governors Chairman John Fennebresque and sparked an effort to educate BOG members on proper use of North Carolina's open meetings law.

The board's efforts to increase transparency started with the March 4 meeting, which included establishing live stream video of all open-session board meetings, opening public discussion forums to allow members of the public to offer suggestions to board members, and communicating expectations for decorum at all meetings, board Chairman Lou Bisette said.

UNC-Chapel Hill associate professor Altha Cravey, a Faculty Forward Network member whose protest against Spellings disrupted a board meeting last December, said the current BOG had not satisfied critics' concerns.

"I'm concerned that the UNC system is going in the wrong direction," Cravey said at a protest before the board meeting. "We've seen that in the last year. We've seen Tom Ross get fired, we've seen [academic] centers close with no citizen input, no faculty voice, no student voice — and in fact now we're seeing centers being opened that are just being funded by millionaires and that are opposed by faculty."

"[The board] does not have a public comment," Cravey continued. "They have not offered the opportunity for student voice, or for faculty voice. This is the problem ... they're actually excluding people from their decision making, as we also saw in their closed meetings when they had the [presidential] search process going."

Rowdy demonstrations at previ-



UNC system President Margaret Spellings chats with Board of Governors Chairman Lou Bisette at the March 4 board meeting in Fayetteville. (CJ photo by Kari Travis)

ous board meetings have raised concerns about violations of the state's open meetings law, Bisette said. He hopes to solve that problem by articulating guidelines in the coming days to inform attendees of the university's expectations for acceptable behavior.

"We welcome everyone to our meetings, and we invite you to this [new] format where you can make your comments to the board," Bisette said. "This has not been done in the past, but will be done in the future — so I'm hoping that we will not have the kind of disruptive behavior we've had in the past."

Spellings, who said she plans to gather input from everyone within the system, said she welcomes comment from Faculty Forward and other groups, given use of proper channels.

"We believe it's appropriate to have a public forum where all voices can be heard, where they can present to the board and me, and where we can receive those comments," Spellings told *Carolina Journal*. "Right now we don't have such a forum, and so I think that's a good first step."

In addition to ensuring more transparency within the system, Spellings also said she plans to tackle issues of access, affordability, student success, and economic impact during her first 100 days in office.

"I intend to utilize the talent of the General Administration team," Spellings said. "We must have the right people doing the right things. We must dissolve silos and encourage collaboration, transparency, and effectiveness."

Under Spellings' direction the Boston Consulting Group, a multinational business management firm, is conducting a study of all UNC operations. The firm will report to her with recommendations.

"After considering the report, I plan to act quickly to institute the changes we need to be fully effective and to accomplish our goals," Spellings said.

On March 1, her first day on the job, Spellings was greeted by student protests at six campuses around the state.

UNC-Chapel Hill's campus was the hub of the action, with a few hundred students walking out of class to assemble on the quad. The familiar chants that have erupted at meetings of the Board of Governors over the past several months were raised once again as students voiced their disapproval of Spellings' record.

"Whose university? Our university!" The crowd shouted.

Other protests occurred at Appalachian State University, N.C. A&T State University, UNC-Charlotte, UNC-Greensboro, and UNC-Wilmington.

Spellings, who was doing a radio interview during the protests, said she didn't find the demonstrations upsetting.

"It's just life in public service these days — welcome to the NFL," Spellings said during the interview. "But I hope that these folks will give me a chance and get to know me, and my work and acts will speak for themselves over time." CJ

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# UNC System Campus Free Speech Bill Readied For Short Session

## National Review's Ponnuru discusses free expression

BY DAN WAY  
Associate Editor

RALEIGH

With the General Assembly's special session over Charlotte's transgender bathroom law concluded, Lt. Gov. Dan Forest will be turning his attention to a Campus Free Expression Act meant to protect free speech on UNC system campuses, strike down restrictive speech codes, and punish those who attempt to stifle public discourse.

Forest spokesman Jamey Falkenbury said the bill would be ready to file during the first week of the regular legislative session, which opens April 25.

"Because of the bathroom ordinance, we really put this on the back burner" while lawmakers were meeting to craft a statewide nondiscrimination policy on public accommodations, Falkenbury said. "We haven't lined up sponsors yet" or determined if the legislation would be modeled after laws already passed in New Hampshire, Missouri, or Virginia.

"We're going to do one that's best reflective of what needs to happen here in North Carolina," Falkenbury said.

"I think that's fantastic. I think it's a great way to ignite a fire under the Board of Governors, and it's a great way for students to really feel protected," said Anna Beavon Gravely, North Carolina state director for Generation Opportunity, a public policy organization advocating individual liberty and entrepreneurship for people between



**National Review senior editor Ramesh Ponnuru said at a Duke University appearance that he wants "universities to remember that their mission should be to encourage robust debate in the service of pursuing truth." (CJ photo by Dan Way)**

the ages of 18 and 34.

"When you attend a public school, you shouldn't have free-speech zones. The whole thing is a free-speech zone," Gravely said.

Free speech is vital especially on a college campus because it is "a bastion of ideology, and marketplace of ideas, and that's something that should be protected," she said.

While her organization has found robust support for free speech on campuses from the Triangle to Charlotte, some administrations "are not friendly to it," Gravely said. Off-campus activists try to blunt it. "You have professors who are not friendly to it, and you have professors who have been vic-

tims" of political correctness for saying something that offended someone.

Generation Opportunity was among several organizations that sponsored a speech March 23 at Duke University by Ramesh Ponnuru, senior editor of *National Review* magazine and visiting fellow at the American Enterprise Institute, whose research areas include constitutionalism.

Ponnuru, a self-described classical liberal, gave some support to the concept of the Campus Free Expression Act during an interview with *Carolina Journal*.

"I think at public universities it may make sense to do something like that, but in general I'm more in favor of sound internal governance by these institutions," Ponnuru said.

He prefers government not dictating "what kind of policies they should have for their faculty and so forth. I don't really want them doing that at Duke, either, but I do want universities to remember that their mission should be to encourage robust debate in the service of pursuing truth."

Conservatives, libertarians, and classical liberals too often don't speak out for fear of assumptions being made about them through the lens of political correctness, he said.

"If you are refusing to speak up for that reason, how different are you from somebody who's shrinking in terror because they see something chalked on a sidewalk with which they disagree?" Ponnuru asked, referring to a recent controversy at Emory University, where students said they felt "threatened" because presidential candidate Donald Trump's name had been written in chalk on a campus sidewalk. "We all have to be willing to engage in debate, and allow other people to dis-

agree with us, and survive it, and grow up. ... The world's not a safe place, and you need to prepare yourself for that."

He said children have been "so encouraged, and rewarded, and protected, not just by the culture, but by their parents, and sort of told so much that they're special snowflakes that they can't handle disagreement." They believe they champion diversity "until they actually encounter it."

Ponnuru, of Asian Indian descent, believes the First Amendment is at risk, as evidenced by young people believing it should be illegal to say something offensive to minority groups.

He said that is "a very dangerous attitude that has to be combated because these are the people who will be voting and making laws," and that is why he is making a tour of college campuses at his own expense advocating free speech.

During his remarks to students, Ponnuru said free speech must be defended constantly. Maintaining open dialogue is a fragile achievement, and many societies don't safeguard expression to the degree the United States does.

Many university administrators side with student protesters and believe it would be wrong to resist their demands, so they support suppression of speech, he said.

The proper answer to being offended "is not to go call Mommy, or this committee, or the university administration, or the police," Ponnuru said. "You need to have a certain amount of psychological resilience in the face of disagreement."

While advocating free speech, Ponnuru told the students, "There is no ironclad principle that protects people from ever facing economic pressure because of their views."

As an example he cited the Charlotte twin brothers David and Jason Benham, former professional baseball players and later successful real estate businessmen who signed a deal for a reality series on HGTV. The cable channel pulled the plug after backlash from homosexual groups over the brothers' support for North Carolina's constitutional amendment declaring marriage between a man and woman.

"But even if tolerance is not an ironclad and universal notion, it's a valuable disposition," Ponnuru said. "It should not need saying, but unfortunately does, that in our society there are good people on both sides of debates" on burning cultural issues.

"We can't be so convinced of the rightness of all of our views that we seek to impose them rather than to propose them. We can't be so thoroughgoing in our skepticism that we refuse to protect individual rights," Ponnuru said. "It is a delicate balance. That is why free speech is a cultural as well as legally, and political achievement, and that is why it is always fragile." CJ

## Keep Up With the General Assembly

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## Opinion

# Federal 'Jungle of Red Tape' Crushing Colleges and Universities

Public and private universities in the United States are regulated to the nth degree.

Federal, state, and local higher education laws seem to multiply by the hour. Bureaucrats now dictate campus policies regarding academics, sexual assault, athletics, dining, technology, employment, campus construction, and student health, among other areas. Meanwhile, schools devote millions of dollars and valuable resources to comply with those rules — many of which confuse and do little to improve student outcomes.

Fortunately, college and political leaders are beginning to fight against those costly government intrusions. Last year, for example, the Task Force on Federal Regulation of Higher Education — formed in 2013 at the behest of a bipartisan group of U.S. senators and comprising top university officials from around the country — released a stunning indictment of what it called the “jungle of red tape” produced by the U.S. Department of Education. The report cited analysis from George Mason’s Mercatus Center showing federal higher

education mandates increased by 56 percent from 1997-2012.

Case studies reveal just how burdensome compliance can be. Vanderbilt University, which recently analyzed its federal compliance costs, found that they accounted for \$150 million — or 11 percent — of the university’s 2013 expenditures. (Vanderbilt announced that for each student, those compliance costs “equate to approximately \$11,000 in additional tuition per year.”)

North Carolina’s universities are not immune from such problems.

“[The] expansion of regulatory and legal oversight of higher education in recent decades has necessitated the development of administrative structures and staffing within colleges and universities that are focused almost solely on institutional compliance,” said UNC system vice president for legal affairs Thomas Shanahan in 2013. Shanahan had been called to testify about the high costs of compliance before a subcommittee of the U.S. House Education and the Workforce Committee.

The “administrative structures” identified by Shanahan come with hefty price tags. UNC administrative pay is extremely generous, with many campus bureaucrats earning six-figure salaries. That’s partly because UNC system schools must comply with at least six layers of regulations and rules, including federal, state, and local laws, UNC Board of Governors



policies, Southern Association of Colleges and Schools accreditation rules, and NCAA policies. They also must respond to demands by the agencies that enforce federal and state laws.

Not surprisingly, federal compliance is especially onerous. A study of 13 colleges and universities published in October by the Boston Consulting Group found that federal compliance amounts to between 3 and 11 percent of yearly expenditures (6.4 percent was the median). The study estimated that schools report to 18 different federal agencies and comply with about 30 different areas of regulation and more than 200 federal laws and guidelines.

Although three UNC institutions were included in the research, specific data for the schools — UNC-Chapel Hill, UNC-Charlotte, and N.C. Central University — were not released. But if the UNC system spends the median 6.4 percent of operating expenditures on compliance, then the expense is more than \$500 million per year, or about \$2,500 per student.

North Carolina officials have begun to speak out against higher education’s bureaucratic machine. Former UNC President Tom Ross and N.C. A&T State University Chancellor Harold Martin, for instance, both served on the aforementioned U.S. Senate task force on federal higher education regulations, which was led in part by North Carolina Sen. Richard Burr.

The task force made several solid recommendations aimed at easing the regulatory burden and curtailing Education Department excesses. Some are intended to streamline state authorization of distance education programs, while others are meant to make the verification process for student financial aid more efficient. Some of the factors that contribute to the rising costs, however, were not addressed in the report, such as the Sarbanes-Oxley law (which has increased colleges’ internal audit costs) and recent changes to Title IX of the Civil Rights Act (now requiring schools to concentrate more resources on sexual assault issues).

While the report’s recommendations are a good start, more is needed to ensure that higher education is neither overregulated nor prohibitively costly. Leaders in North Carolina and around the country need to unite in their battle against regulatory overreach. Interestingly, new UNC system President Margaret Spellings, a former U.S. education secretary, could emerge as a key leader in that battle. The famous Spellings Commission that she oversaw took aim at costly regulations. And more recently, she has made clear her belief that public higher education in North Carolina should be provided at the lowest possible cost to taxpayers — a goal that is jeopardized when bureaucrats from afar dictate universities’ activities. CJ

*Jenna A. Robinson is the president of the John W. Pope Center for Higher Education Policy, and Jesse Saffron is the Pope Center’s senior writer.*



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## COMMENTARY

## DPI Database Needs Scrutiny

In 2013, the North Carolina Department of Public Instruction unveiled Home Base, billed as a “suite of digital classroom management tools and instructional resources,” to replace the disastrous NC WISE computer system. DPI officials used state and federal Race to the Top funds to pay three primary vendors — Pearson, Public Consulting Group, and Truenorth-logic — for the initial development and implementation of the Home Base system.

The most important application in the Home Base suite is the PowerSchool student information database. Teachers and administrators use PowerSchool to record student attendance, course enrollment, grades, and information that frankly very few parents know are being collected on their children. Simply put, PowerSchool was designed to make educators’ jobs easier and data collection more transparent, but it may have done the opposite.

In February 2014, widespread problems with the system prompted state education officials to ask Pearson to refund a portion of its \$7.1 million fee. Then-Charlotte-Mecklenburg Superintendent Heath Morrison later called PowerSchool “a train wreck.” Problems persisted through the end of the year, and by February 2015 Pearson announced it was selling PowerSchool. Private equity firm Vista Equity Partners purchased PowerSchool for \$350 million last year and established PowerSchool Group LLC to manage it. But problems continue.

Unless you follow @nchomebasealert on Twitter or receive email alerts from PowerSchool staff, you are not aware of the system’s outages and malfunctions. There are a handful of exceptions, however, when the public gets a glimpse of the problems that teachers and administrators encounter. For example, in October media outlets reported that a cyberattack forced about 20 North Carolina school systems to delay issuing report cards.

Things have gotten so bad that Rich Gay and Chad Dirks of the PowerSchool Group sent a letter apologizing to DPI. In their

February memo to state education officials, Gay and Dirks wrote:

“PowerSchool Group LLC has been working hard to provide North Carolina users a solution that is dependable and user-friendly. We know that for the past few months the ongoing performance issues related to the Century-Link hosting facility have had an unacceptable toll on the business of your districts. ... We sincerely apologize for the performance issues you have experienced.

You have our renewed commitment that we are taking immediate action to dedicate the resources and tools necessary to keep your PowerSchool server up and running with success.”

Less than a week later, DPI responded, “We are aware that the current work environment has not met expectations and is operating at an unacceptable level

to support the important work you do on a daily basis.” They pledged to “push” PowerSchool Group to resolve outstanding issues.

Making matters worse, federal funds no longer are available to subsidize at least part of the annual cost of the Home Base system. Districts and charter schools that opt for Home Base will be required to fork over state and local funds to cover the required per student fee. Because of the amount of data already in the system and the prohibitive cost of migrating student information to another application, districts and most charter schools will be forced to pay the PowerSchool ransom.

As North Carolina approaches the three-year anniversary of Home Base, it is worth asking whether the PowerSchool platform is financially and technologically sustainable. While implementation problems were to be expected during the first year of operation, state education officials appear to have spent tens of millions of taxpayer dollars for a system that, like its predecessor NC WISE, has the word “boondoggle” written all over it. CJ

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



**TERRY STOOPS**

## COMMENTARY

## The Risks Behind Guaranteed Tuition Plans

Amid what appears to be a national crisis of student debt, legislators and higher education leaders have clamored for more affordable ways for students to complete bachelor’s degrees. Last year, for instance, the North Carolina General Assembly introduced a bill instructing the UNC system’s Board of Governors to “study the establishment of a fixed tuition program as a payment option at the UNC system schools.”

Under a guaranteed tuition plan, students are promised a constant rate of tuition for a limited time while they pursue their degrees. But case studies from other states indicate that the promise of fixed tuition rates comes along with potential negative consequences for both students and universities.

By enrolling in guaranteed tuition programs, students and their families essentially take a gamble. Students agree to pay a surcharge — often ranging from 5 percent to 15 percent more than standard tuition — on the assumption that standard tuition will rise at even faster rates in the ensuing four years.

However, if legislators invest more in higher education, or if the student fails to earn a degree, the plans can cost students much more than standard tuition. Western Oregon University, for example, established a guaranteed tuition initiative to help reduce students’ financial burdens. But results from the initial 2012 cohort show that students in the program paid \$1,266 more than those in the standard plan.

Some officials assert that putting a four-year limit on tuition gives students an incentive to complete their degrees during that period. However, according to recent Education Department data, completion rates at Illinois public universities experimenting with the program have not been affected significantly, even though rates went up slightly (by a few percentage points).

Proponents also claim that retention rates would increase under these plans because students are able to plan costs accurately. While first-to-second-year retention rates remained much higher at the

University of Kansas than the national average, the introduction of guaranteed tuition in 2008 seems to have had little measurable impact. And after an initial increase that peaked in 2009, Western Oregon University’s retention rates have declined steadily.

Furthermore, while these plans may provide students and their families financial certainty from a tuition perspective, almost none of them include room, board, and other fees in the fixed tuition rate, meaning that students still could experience new unexpected costs each year.

The risks of these programs are not nearly as ambiguous as the benefits. Illinois’ current budget crisis illustrates some of the unintended consequences of legislatively mandated tuition guarantees.

Due to a budget standoff between the legislature and the governor, the state has provided no direct aid to Illinois public universities for more than eight months. Illinois’ 12 public universities have struggled to maintain operations while waiting out the crisis; however, because of the guaranteed tuition law, administrators cannot raise rates on current students to cover short-term operational needs. The situation has caused Moody’s Investors Service to downgrade the credit rating of three of the state’s universities and pushed Chicago State University to accelerate the current semester and close early for the summer.

North Carolina legislators are right to be curious about the potential benefits of tuition guarantees. However, a 2014 report from the National Association of Student Financial Aid Administrators found no evidence that tuition guarantees actually affect retention or graduation. The report also cautions against attempting to use tuition guarantees to control the cost of attendance. Legislators and the public must be cautious about jumping on the bandwagon of a potentially damaging financial scheme in the name of affordability and student success. CJ

*Stephanie Keaveney is a policy associate at the John W. Pope Center for Higher Education Policy.*



**STEPHANIE KEAVENEY**

# Southern Culture's Multiracial Stew Affects American Music

Recently I watched a documentary about the popular music phenomenon known as the Muscle Shoals sound. The film not only discussed all the top hits that were produced in that distinct Alabama area along the Tennessee River, but also explored why so many national hits came out of such a small place.

The first megahit from the area was Percy Sledge's "When A Man Loves A Woman." Wilson Pickett, Aretha Franklin, Etta James, and Duane Allman also recorded hits there. The songs were by black and white musicians working together in a seemingly unlikely place for collaboration during the 1960s and 1970s.

Along with Fame Studio producer Rick Hall, the Muscle Shoals Rhythm Section (which later started another studio in town and were referred to as "The Swampers") improvised grooves during the recording sessions that produced Billboard hits.



**TROY  
KICKLER**

Lynyrd Skynyrd mentions the local band in "Sweet Home Alabama." Whether you enjoy their sound, the musicians in and near Muscle Shoals influenced national musical tastes.

All of this information (some recalled and some new) prompted a conversation regarding Southern contributions to the American music scene: Can you imagine American music without the South? What would it sound like? I later thought particularly about North Carolina's contributions to the music scene.

Indeed, the region has given the nation much of its musical genres that were many times products of the interaction between black and white cultures. The genres include jazz, Dixieland, country, bluegrass, blues, rhythm and blues, zydeco, funk, gospel, Southern gospel, beach music, Tex-Mex, and rock and roll.

Many national and iconic performers hailed from below the Mason-Dixon line. Can you list some?

Did you think of Elvis Presley or Dolly Parton or Buddy Holly or Johnny Cash? How about Ray Charles, James Brown, Little Richard, or Fats Domino? Maybe you thought of Hank Williams or Otis Redding or

Bo Diddley. You may have recalled the so-called Southern rock groups, including Lynyrd Skynyrd, the Allman Brothers, Wet Willie, or the Marshall Tucker Band. Or maybe you remembered a gospel or Southern gospel singer or group, such as J.D. Sumner and The Stamps. The list goes on. But I hope you get the point.

North Carolina contributed to the national scene, too. One notable musician was the banjoist Charlie Poole, a native of Randolph County. Another was Thelonious Monk, a Rocky Mount native and pianist who has been called an American original who introduced "bebop" to America. Monk later collaborated with another North Carolinian, John Coltrane, a native of Hamlet who grew up in High Point.

Other notable Tar Heel musicians are Charlie Daniels, Roberta Flack, Maceo Parker, Ben E. King, James Taylor, George Clinton, Doc Watson, Randy Travis, and Nina Simone. And let's not forget Earl Scruggs.

More contemporary artists with deep North Carolina roots include Ryan Adams, Eric Church, Ben Folds Five, the Avett Brothers, Carolina Chocolate Drops, and Steep Canyon

Rangers (who've become banjoist/comedian Steve Martin's regular backup band).

I also began thinking about dance forms, remembering Carolina beach music with its "shag" and Appalachian bluegrass with its "clogging." As a child growing up in the Piedmont, barbecue was Lexington-style, and eventually I learned how to clog. I even knew some folks who could "flat foot."

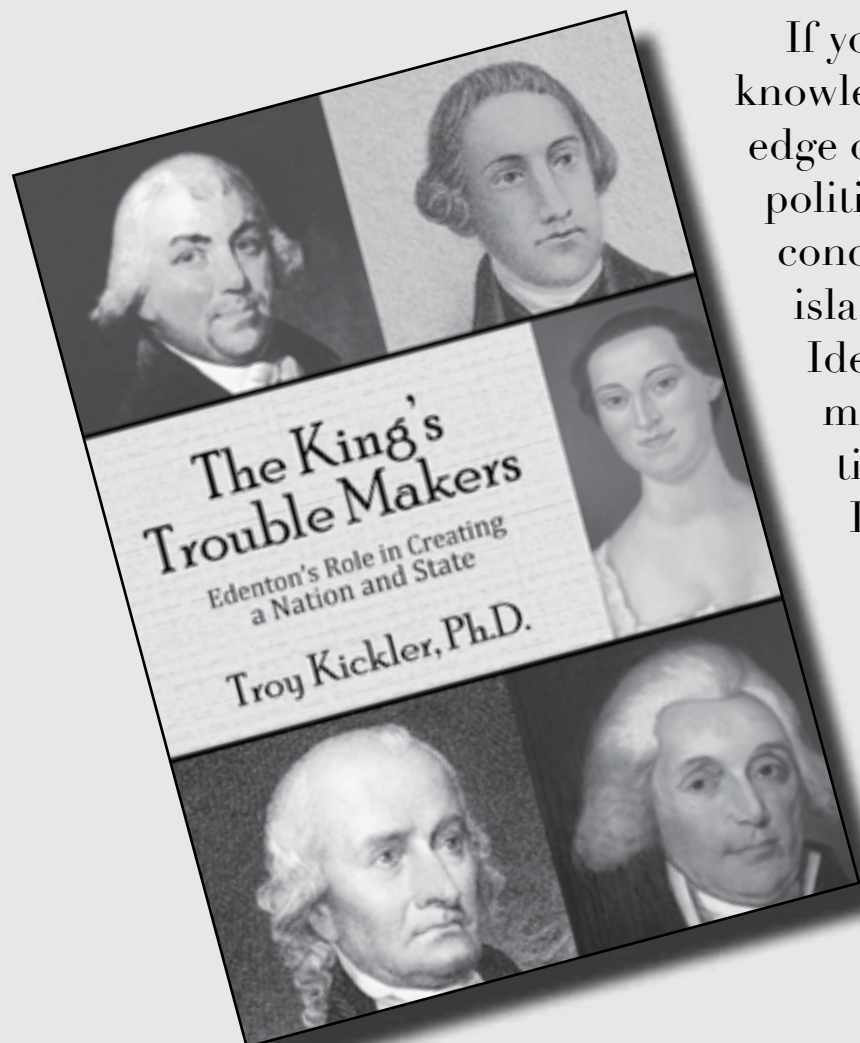
As a 10-year-old, I had only heard and read about Carolina beach music and shag. At the time, Lexington-style barbecue, verdant rolling hills, and Piedmont textile culture defined North Carolina to me.

Maybe the Great Compromise in North Carolina history occurred in 2005, when clogging was made the official folk dance and shagging was declared the official popular dance. Sometimes one has to give up something to keep what he holds dear.

North Carolinians, and their Southern counterparts, have contributed much to the American music scene. CJ

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

## BOOKS BY JOHN LOCKE FOUNDATION AUTHORS



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

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

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

# Caldwell: Globalization Great for Urban Elites, Others Not So Much

BY CJ STAFF

RALEIGH

Europe faces a host of problems connected with mass immigration and globalization. Christopher Caldwell, senior editor for *The Weekly Standard*, says Americans can learn some valuable lessons from Europe's current plight. Caldwell dissected Europe's ongoing challenges during the 2016 John W. Pope Lecture at North Carolina State University. He shared themes from that lecture with Mitch Kokai for Carolina Journal Radio. (Head to <http://www.carolina-journal.com/radio/> to find recent CJ Radio episodes.)

**Kokai:** You wrote about some of these topics several years ago ... in this [2009] book about *Reflections on the Revolution in Europe*. But more of these issues are coming to a head. I guess you were prophetic about what Europe has been facing — that we've been seeing in the headlines recently.

**Caldwell:** Well, I wouldn't say prophetic because I don't like to make many predictions. But maybe for that reason, I don't see much reason to revise anything that I wrote in the book. I think what's going on now is you're seeing some of the problems I noted in kind of a concentrated form. You have a very large immigration coming that started from the war zone in Syria and Iraq.

But that now has become sort of a lucrative, people-moving route. And once refugees discover how to move on it, people — guides, who take money from people to help them immigrate into Europe, and negotiate the bureaucracy and stuff — they can do it, too.

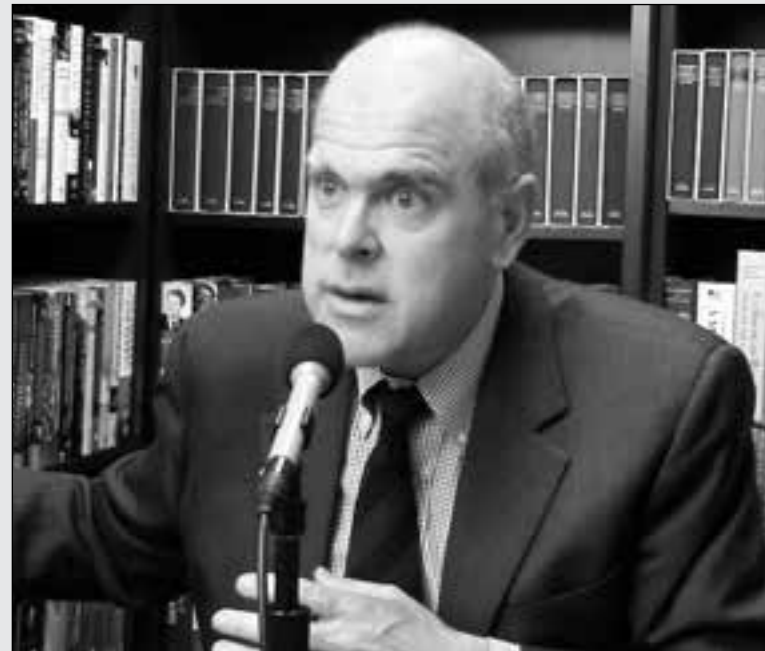
So you now have this massive movement of humanity along this road, leading out of Turkey, across the Ionian Sea, into Greece, and up through former Yugoslavia, and into Austria and Germany. And that route is being followed not just by Iranians and Syrians, but by Pakistanis and Iraqis and Bangladeshis and even Southeast Asians. So you're getting the same immigration pressures but in a huge, concentrated, fast-moving form.

**Kokai:** One of the more interesting points you made in this Pope Lecture was the fact that this seems to be evidence of the impact of globalization, and how it's really leading to two separate camps, and perhaps not the two camps people might think of off the top of their heads.

**Caldwell:** Yes. I'm glad you got that point. You know, we tend to divide things into the rich and the poor. And during the lecture, I was trying to relate Europe's situation to America's. And, you know, it's tempting to say,

*"[T]he big divide in Europe, as in America, is between people who benefit from the global economy and people who don't. And if you go to a big city ... you will find that it's inhabited by the masters of the universe, as Tom Wolfe used to call them, and immigrants. And so there's not much room for a middle class in such places."*

Christopher Caldwell  
Senior Editor  
The Weekly Standard



"Well, the Republicans used to be the party of the elite. And now the Democrats are the party of the elite." And I think that is, roughly speaking, true.

But the way I'd rather look at it is to say that the big divide in Europe, as in America, is between people who benefit from the global economy and people who don't. And if you go to a big city — you know, a big, successful city that's doing well under the global economy's terms, like say, Paris — you will find that it's inhabited by the masters of the universe, as Tom Wolfe used to call them, and immigrants. And so there's not much room for a middle class in such places.

**Kokai:** And so, as you were discussing in that lecture, you've got, basically, the folks who are well off, and then the immigrants who come in and take the lower-level jobs. And then there's, on the other side, everyone who gets left out.

**Caldwell:** That's right. You've got half the city, ... they mesh into the global economy very nicely. But the rest of the country doesn't really. And so there's been an awful lot of interesting, you know, work by sociologists done in France, trying to explain why the people, who are mostly in the countryside, but you could also say they're in what you'd call the French

equivalent of the exurbs, where their resentments come from, and why they feel left out of their society.

**Kokai:** You alluded to this earlier. You were tying what's happening in Europe into what we're seeing today in America. And especially in what we're seeing in the way our politics are dividing people. You mentioned that there really is a clear sign that what Europe is facing seems to be having an impact here, as well.

**Caldwell:** I think that there are certain parallels. When you look at, let's say for the last 10 or 15 years, there has been a growing minority in each European country, that's kind of lost patience with the country's mainstream politics. And in Europe, it's taken the form of third parties. You've seen, in the countries where there were two

big parties — you know, usually in France and Germany, you would have a roughly Christian Democratic Party and a roughly Social Democratic Party, and you have the Conservatives and Labour in Britain.

Those parties used to command close to half the allegiance of the electorate, like the Democrats and Republicans here. But now, only about one-third of the people like one of the two parties. So it's 30 percent for left, 30 percent for the right, and 40 percent

for the people who just don't see themselves in the country's politics at all.

So that 40 percent is a rich place to go hunting for votes. And it's why in some of the elections, like the first round of last winter's regional elections in France, you know, the National Front was the largest party in France. And very often in the polls, you see that this is the largest party in France. It's what we would call a populist, anti-system, anti-immigrant party. And I see a great deal in common with our own, you know, [Donald] Trump movement, and perhaps to a slightly lesser extent, the [Bernie] Sanders movement.

**Kokai:** In seeing what has happened in Europe, and what's continuing to happen, what sorts of lessons should we take here, in the U.S., about how the mainstream politicians ought to be addressing these folks' concerns?

**Caldwell:** Here's one lesson from Europe. ... We've all been so enamored with globalization, and the free market, and our victory in the Cold War, and the unquestionable advantages it has brought for us, and the wonders it has wrought. I mean, you know, you look around you, if you're in a big city, or in a university town, you see the things that you've gained by being able to hook into the global economy, and I don't just mean gainful employment opportunities, but I mean, you know, lattes from Starbucks, and 50 different kinds of cheese at a gourmet restaurant, and things like that.

These are all wonderful things. But there's a tendency for the people who don't live in that world to become invisible to the people who do live in it. And that's happened in Europe, and it's a big crisis for these countries. And I think that there are signs that it's a big crisis for us here.

CJ



## COMMENTARY

## Local Governments Should Stick to Core Functions

I was struck by two recent news stories appearing virtually side by side. One was the latest on the Randy Parton Theatre — now called the Roanoke Rapids Theater — a failed venture by the city of Roanoke Rapids that was supposed to attract big shows, create tourism, and bolster the economy.

The other was about the Greensboro-Randolph Megasite project, a proposal to create an industrial site for a large automotive or aerospace plant in Randolph County. The city of Greensboro will run water and sewer lines for the site, and Randolph County has purchased 420 acres for the project.

The two are very different. One's a theater, an entertainment venue, a partnership with a celebrity (or at least the sibling of a celebrity) that promised glitz and glam. The other is hardly glamorous, an industrial complex for a manufacturing facility. The theater is a project from 10 years ago. The megasite is just starting. The theater was a relatively simple project mainly involving the city of Roanoke Rapids, which built the theater.

The megasite project is more complex, with lots of different governments involved.

And yet, there's a fundamental characteristic that they share. Set aside the nature of the ventures for

a moment. It doesn't really matter whether it's a theater or an industrial site. Both of these are the sorts of ventures most people think of as primarily being in the realm of private business — theater building, land development. But in both of these cases, they've become government projects.

And therein lies the problem. These simply aren't the sorts of business ventures that local governments (or state or federal ones, for that matter) ought to be undertaking. The Roanoke Rapids experience demonstrates why. Governments, it turns out, just aren't very good at this sort of thing. The theater failed, Randy Parton proved to be an unreliable business partner, attendance didn't meet projections, and

the whole thing lost tons of money. The city and its taxpayers were left with tens of millions in debt, much of which remains to this day.

Fortunately, in the case of the theater, a private promotions company has come in and is finally managing to sell some tickets to a show or two. It's certainly too early to tell whether this will be a success, but there's at least some hope that a private company may be able to help fix the mess that the local government created.



**JULIE  
TISDALE**

And, of course, private companies make errors in judgment, too. They gamble on businesses that don't work or invest in projects that end up going bust. The difference is who's left footing the bill when things go wrong. In the case of private business, it's investors and shareholders, who willingly entered into those ventures hoping to make a profit.

That's not the case in a local government project. With a local government project, it's local taxpayers who are left to pay for a failed business, a bad loan, or a poor investment. Those taxpayers didn't get to choose the undertaking. In fact, the megasite has significant local opposition. But they do bear the burden when something goes wrong.

City and county governments should

stick to core functions, things like schools, police, fire, public streets, and sidewalks. They should steer well clear of speculative business ventures that put taxpayers on the hook.

In both of these cases, the local governments involved would have done better to focus on good infrastructure, low local taxes, and strong schools. If those things are in place — making cities and counties attractive locations for businesses and tourists — then businesses can handle choosing locations and doing their own building and development. CJ

*Julie Tisdale is city and county policy analyst for the John Locke Foundation.*

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## EDITORIAL

## Health Freedom Despite Obamacare

As Dan Way reported in this issue of Carolina Journal, any celebrations for the sixth anniversary of the Affordable Care Act, aka Obamacare, were muted.

With health care spending growing at its fastest rate since 2007, Obamacare has made health insurance anything but affordable. And that's not all. The law's primary goal was making health coverage universal, ending the alleged "free rider" problem that allows healthy people to forgo insurance until they get sick and have to go to emergency rooms for treatment.

Obamacare failed that test as well. A recent report by the Center for Medicare and Medicaid Services found that the percentage of Americans who had no health insurance fell a mere 2.7 percentage points between 2010, when the president signed Obamacare into law (13.9 percent), and the end of 2014 — the most recent data available (11.2 percent).

Most of the problems with America's health care system predated Obamacare — led by too much regulation and tax laws making employer-provided health insurance cheaper than individual policies — and they're unlikely to vanish if the law were repealed under a new administration and Congress.

But there are things North Carolina legislators could do during the short legislative session to make health care more accessible and more affordable without involving Washington lawmakers or bureaucrats:

- **Repeal Certificate of Need.**

North Carolina requires doctors and hospitals to get a Certificate of Need — a government permission slip — before offering new technology, better facilities, or more treatment options.

North Carolina's CON program is one of the most stringent in the nation, regulating more than two dozen services, ranging from organ transplants to acute-care hospital beds to ambulatory surgery centers. Repealing the law would let patients and practitioners rather than bureaucrats decide where new facilities go.

- **Expand scope of practice.**

To expand access to care in rural and low-income areas, nurse practitioners and other midlevel providers should receive full practice authority — in other words, letting them prescribe medicines and order diagnostic tests without the direct supervision of a physician. This reform would help reduce primary care shortages in 145 areas across the state.

- **Promote direct primary care.**

In exchange for an affordable monthly fee covering a defined package of services, direct primary care guarantees patients unlimited access to their physicians. More doctors are bypassing regulatory burdens that take time away from treating patients by establishing DPC practices. State policymakers should pass legislation ensuring that patients' monthly membership fees are not classified as insurance premiums. That reform would protect this health care delivery method from regulations under the N.C. Department of Insurance in the future and likely lead to a stronger DPC presence in North Carolina.

These three changes would bring better medical services to more people in more locations at lower costs. And they would inject a healthy dose of freedom in North Carolina's medical marketplace no matter who occupies the White House or controls Capitol Hill in 2017. CJ

## EDITORIALS

## Governor's Race

*News for McCrory is mixed*

**G**ov. Pat McCrory just got both good news and bad news about his prospects of defeating his likely Democratic challenger, Attorney General Roy Cooper, in the fall election.

Let's start with the bad news. While Donald Trump's delegate harvest over the March primaries and caucuses fell short of media expectations — because his Republican opponents and leading conservatives across the country finally began focusing attention on the front-runner's manifest shortcomings on policy issues, general-election prospects, and personal character — Trump still won a plurality. He still got closer to the GOP nomination.

If Trump gets it, the most likely outcome in the fall is a disastrous loss to Hillary Clinton and a significant drag on the Republican Party's ability to elect or re-elect other candidates down the ballot, including McCrory.

On the other hand, news in March presented the governor with significant opportunities to make his case to voters. One was the release of gross domestic product data for the third quarter of 2015. North Carolina ranked first in the Southeast, and 14th in the nation, with an annualized

growth rate in inflation-adjusted GDP of 2.8 percent for the quarter, markedly higher than the 1.9 percent rate for the nation as a whole.

That's just a snapshot of a single quarter, admittedly. But the longer-term trend is also impressive for North Carolina. If you start the analysis in mid-2013, when McCrory's first budget, tax reform, and other signature programs were enacted into law, the state's economy has grown by a compounded annual rate of 3.2 percent — the 12th-highest rate in the nation and the second-highest in our region, trailing only Florida's 3.3 percent.

The state's economy is on the upswing. High Point University's recent polls document the trend. Its Index of Consumer Sentiment reached 89.7 in February, up from 70.4 in September 2013. McCrory's approval rating is now 48 percent in the HPU poll, up from 43 percent at this time last year and 38 percent in 2014.

We expect the gubernatorial race to be highly competitive. If McCrory is on the ticket with Donald Trump, it will be like trying to win a footrace with a ball and chain dragging behind him. It's doable, particularly if Cooper continues stumbling. But it may turn out to be an exhausting photo finish. *CJ*

## Costs Vs. Prices

*Shifting responsibility isn't cutting*

**T**he cost of attending college has grown faster than the cost of other goods and services for many years. It's putting significant pressure on family budgets as well as those of federal and state governments. And it's of great interest to liberal and conservative politicians, commentators, and analysts.

But the term "college costs" often conjures up different images in the minds of the two ideological camps. For example, Democratic candidates Bernie Sanders, Hillary Clinton, and Roy Cooper are promising to combat the rising cost of college by having government pay more (or all) of the annual cost of tuition and fees.

That's not really a policy intended to reduce the cost of higher education, however. It is intended to reduce the price charged to its direct beneficiaries, namely students and their families.

The cost of higher education either would stay the same or, more

likely, rise if tuition were more heavily subsidized, in the latter instance because demand for college and university educations would increase. Institutions could add more personnel, more facilities, and more ancillary services without deterring most students from enrolling. Someone else would pay, probably driving costs even higher.

On the other hand, in higher education the needs of some students are served better and more efficiently by the community college system than by the University of North Carolina system, at least during the first two years of general-college education. New technologies, new systems to certify knowledge and skills, and new ways to organize post-secondary education also offer a great deal of promise in reducing costs.

To make higher education affordable means reducing the actual cost of delivering those services. There's no painless alternative. *CJ*

## COMMENTARY

## Let's Learn How To Disagree

**W**hen it comes to politics, North Carolina is a closely divided state.

Look at party, for instance. According to a March poll for WRAL-TV, 32 percent of registered voters in our state identified themselves as Republicans. The same share, 32 percent, identified as Democrats. (Self-reported party identification is more useful than registration when analyzing voter behavior.) The remaining 36 percent said they were independent, but most actually vote either Republican or Democrat most of the time. Only 12 percent are true swing voters.

Now look at issues. Asked to describe themselves as "pro-life" or "pro-choice" on abortion, North Carolina adults were about as likely to say the former (47 percent) as the latter (46 percent). Asked what the next president and Congress should do about

Obamacare, 46 percent said leave it alone or leave it in place with some adjustments, while 51 percent said repeal all or large portions of it. And asked how much the North Carolina legislature should raise average teacher pay this year, 45 percent said the raise should be 3 percent or less while 51 percent said the raise should be up to 10 percent.

As you read each of those poll questions, you probably thought about your own position. Fair enough. Now, see if you can think up the best possible argument for the opposing position — for abortion rights, if you happen to be pro-life, or for repealing the Affordable Care Act, if you happen to like the ACA.

Could you do it without assuming the worst about the other side? Did you struggle even to imagine how someone of good faith could come to a different conclusion about abortion, health policy, or education spending?

Don't beat yourself up. Lots of us, perhaps most of us, have been struggling with just such a failure of imagination. Here in North Carolina, the political discourse all too often has devolved into partisan cheerleading, shouting matches, and online snark. At the national

level, the presidential primaries have coarsened our culture and — let's be frank — produced two major-party front-runners who share the dubious distinction of being among the least-trusted politicians in America. In an ABC News/*Washington Post* survey from early March, just 37 percent of Americans said they thought Hillary Clinton was honest. Only 27 percent said the same about Donald Trump.

The solution is not to attempt to wish away our disagreements.

That would be futile.

Instead, we need to learn to disagree more constructively, with civility and a genuine desire to understand why others think what they think. If such a process yields public policies that most of us can embrace, or at least tolerate as part of a package deal, so much the better. But even if the process doesn't produce legislative action, it's still

worth doing.

I'm not alone in my belief. A new program called the North Carolina Leadership Forum just made its debut. Housed at Duke University's Sanford School of Public Policy, NCLF is convening some three dozen leaders from across our state — current and former politicians, educators, business executives, activists, philanthropists, and other community leaders — to discuss North Carolina's economic future.

More specifically, over the course of 2016 we will discuss how we can enable more North Carolinians to earn enough to support their families. The participants bring a wide variety of backgrounds and perspectives. I am serving as co-chair of NCLF's steering committee, along with former state senator and Z. Smith Reynolds Foundation executive director Leslie Winner.

While we intend to come up with mutually agreeable solutions to the economic problems facing our state, we also aspire to model the very civil dialogue North Carolina and the nation seem to lack. Please wish us well. *CJ*

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



**JOHN HOOD**

## MEDIA MANGLE

## Another Round Of Media Hysteria

We've been witness to a level of ideologically driven mass media hysteria in the past couple of weeks unseen since the Duke lacrosse rape hoax story.

I'm talking about the General Assembly's nullification, via House Bill 2, of Charlotte's ordinance designed to legislate against lesbian, gay, bisexual, and transgender discrimination.

The Charlotte ordinance, which was defeated in March 2015 in a close vote, but which passed 7-4 on Feb. 22, was billed as a nondiscrimination proposal that would have added sexual orientation and gender identity as protected categories in such things as job discrimination and public accommodations.



**JON  
HAM**

"Public accommodations" turned out to be the fly in Charlotte's social-justice ointment. It was undeniable, and universally agreed, in fact, that this law would allow transgender people to use public or private-business restrooms that, shall we say, didn't match their born-with plumbing.

The concerns of many that men dressed as women were going to be able to enter restrooms and locker rooms with women and girls were ridiculed by the media, in print and even on sports radio talks shows, who used the NBA's threat to yank the NBA all-star game from Charlotte as a means of entry into this story.

Nearly every news story ignored the real concern of men being able to use women's bathrooms and locker rooms, even though stories abound nationwide of men using such ordinances as cover to invade those once-protected premises. Most reports were content to call the Charlotte ordinance an "anti-discrimination ordinance" and leave it at that.

*The News & Observer*, for instance, ran a headline, "North Carolina not the only state restricting LGBT rights," unquestioningly classifying restrictions on men using women's facilities as a restriction of LGBT rights. If there has been any concern in the mainstream media with the right of privacy for girls and women in restrooms and locker rooms, I haven't found it.

The immediate hysteria on the part of corporate giants like Facebook, Apple, Bank of America, and the NBA was something to behold, spurred by inaccurate reporting and sensationalism.

The degree of hypocrisy behind these reactions was best captured by Charlotte blogger SA Matthews. She pointed out in an online column (<http://goo.gl/MsRSaR>) that since Charlotte didn't pass its anti-discrimination ordinance until February, the situation now is exactly the same as last year, when the NBA awarded the city the all-star game.

As it stands, private businesses can do what they like, but public restrooms are restricted to those whose birth certificate gender matches the sign on the restroom. This is status quo ante, which prompts the question: Why so much media and corporate hysteria? CJ

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

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## One Source of Public Anger

Political pundits following the presidential campaigns have agreed on one conclusion — many people appear to be angry. Experts offer this as the reason many voters are backing non-traditional candidates.

If the analysts are correct, then the follow-up question is: Why? Why are so many people angry? Of course there can be many reasons, such as fears over foreign threats, worries about personal safety, or concerns for specific costs like health care or education.

While all of these reasons could be part of the explanation, I think another answer lies at the bottom of the frustration. Very simply, most people have seen their annual earnings — after adjusting for inflation — drop in the last decade.

We can see this clearly in North Carolina. Comparing incomes in 2006 — the last full growth year before to the start of the Great Recession — to incomes in 2014 (the last available year for data) and, importantly, adjusting for inflation, the average North Carolina worker experienced a 7 percent drop in annual earnings.

But there was a distinct difference by educational level of the worker. Those with advanced college degrees (master's, doctorate, professional degree) did the best — losing only 3 percent of their inflation-adjusted income. Those with an associate's degree lost 12 percent, high school dropouts were down 10 percent, and high school grads and workers with a bachelor's degree had a cut nearing 8 percent.

What's perhaps even more disconcerting are the trends in incomes, between the bottom of the Great Recession in 2010 and 2014. This would normally be a time when incomes rise as the economy is recovering. But only one group of workers — high school dropouts — saw an increase in their inflation-adjusted income. All other workers saw a drop.

It should be pointed out these numbers include only what people earn from working. They don't include public resources or programs (food

stamps, Medicaid) people may use to help meet day-to-day expenses.

Still, the numbers paint a disturbing picture of most people in North Carolina not getting ahead based on their own work efforts. Also, it should be stressed the same picture emerges from looking at national data. Thus, most people in the country seem to be in the same economic boat!

Three big reasons are causing these trends for worker income — international competition, a slow-growing economy, and an ability of technology to do more of the jobs performed by humans.

More so than in the past, companies today have the ability to perform work virtually anywhere in the world. This means domestic workers are no longer only in competition with their counterparts in the country, but they also are often interchangeable with similar workers in other countries. In economics, more supply — in this case, of workers — means lower payments to workers.

The Great Recession was the deepest downturn in more than 60 years, but the subsequent recovery has also been one of the slowest. Translation: The economy of the last decade has been underperforming. For businesses, this means weaker revenue projections and relatively fewer funds to pay workers.

Maybe the greatest threat to worker pay in the future is technology. As emphasized in the recent Emerging Issues Forum at North Carolina State University, technology is rapidly becoming more sophisticated and expanding its capacity to perform work tasks. Plus, the work technology is increasingly able to do includes not just routine jobs (putting the right front fender on a vehicle moving down an assembly line), but also cognitive jobs in research, teaching, retailing, and medicine. One estimate forecasts technology ultimately will replace humans in almost half of today's occupations.

So many individuals are angry and upset, and a simple reason is declining incomes. Can this situation be reversed, and how? These are questions the political candidates — and people through their votes — hopefully can address. CJ

*Michael Walden is a William Neal Reynolds Distinguished Professor at North Carolina State University. He does not speak for the university.*



**MICHAEL  
WALDEN**

# Campaign Unveiling Distinct Ideological Strains

Before the 1970s, presidential nominations were won in smoke-filled rooms as deals were cut between party bigwigs motivated by promises of appointments and federal largess for their states. After the New Deal, a technocratic Democrat invariably faced off against a patrician Republican in a battle of pragmatists fought in an America run under a complicit arrangement between huge corporations, organized labor, and the Cold War military machine.



**ANDY  
TAYLOR**

The dramatic 1968 Democratic convention in Chicago changed the way parties nominated presidents, democratizing the process by making primaries and caucuses critical and forcing candidates to build large and sophisticated campaigns. But the general election was still normally between ideological cousins, differentiated largely by their positions on just a handful of issues. The presidential selection process revealed American politics as narrow, at least in comparative perspective and when juxtaposed with continental Europeans who

could vote for communist and quasi-fascist parties as well as center-right Christian and center-left social democrats.

This year seems different. We have on display the entire breadth of America's ideological spectrum, one that looks to be getting wider all the time. If we had genuinely open access to the ballot, an electoral system based upon proportional rather than winner-take-all principles, and legislative bodies organized to welcome members of third parties, I might be talking revolution. Still, there is enough happening this year to concern the Democratic and Republican establishments.

In fact, the candidates in the two parties' nomination contests reveal the existence of five distinct and vibrant ideological strains. Let's start on the Left. Sen. Bernie Sanders' unabashedly and energetic socialist campaign has, with the possible exception of the South, generated considerable support across the country. Proposing high marginal tax rates, single-payer health care, and free higher education, Sanders wants to move America to the left of France.

His Democratic opponent, Hillary Clinton, has moved in that direction, too, but she strongly supports some of the more conventionally liberal policies of the current president,

particularly Obamacare and recent financial market regulation — both of which have greatly extended the tentacles of the administrative state. Clinton is no typical old-style New Deal Democrat, however. Her campaign also is infused with the identity politics of a more modern liberalism that treats citizens as members of demographic groups rather than individuals and wishes to use government to engineer social outcomes.

This year's Republican race has exposed three strains that we might place on the right-hand side of the spectrum. A focus on natural rights, free markets, and limited government has been a hallmark of GOP politics for many decades, particularly since Ronald Reagan became a national political figure.

The libertarian or "classical liberal" school was perhaps most clearly represented in this year's race by Sen. Rand Paul, although it has played an important role in the campaigns of Sens. Ted Cruz and Marco Rubio and Gov. John Kasich. The idea that America needs a strong military and robust institutions like the family and church to provide social cohesion and transmit important values has had Cruz as its most successful champion.

The third approach is somewhat new, or it has only this year gathered a level of support to make it truly

competitive. It is what we might call right-wing populism, a group of ideas cohered by an appreciation for a strong state with authoritarian tendencies. It is most obviously manifest in the candidacy of businessman Donald Trump, although there were hints of it in Gov. Chris Christie's speeches. Trump generally sides with power over liberty and speaks in opposition to the free flow of capital, labor, and goods within and across national borders. He says he desires a limited government, but calls for a massive expansion in the reach and resources of several federal agencies. These policies should be enacted by a strong president without concern for the prerogatives given Congress and the states by the Constitution.

The range of ideas on display provides Americans with clear choices. This is a good thing. It is the emergence of several energetic challenges to the cause of liberty that is troubling. We are used to them emanating from Democrats. But Republicans, whose politics have been guided for over a century-and-a-half by ideas based on human freedom, are starting to offer them as well. *CJ*

*Andy Taylor is a professor of political science at the School of International and Public Affairs at N.C. State University. He does not speak for the university.*

## Unsatisfying, Unnecessary Policy Confrontations

The General Assembly recently passed a law invalidating a Charlotte ordinance allowing transgender people to use the bathroom of the sex with which they identify. Opponents of the ordinance cited privacy and safety concerns with allowing women to enter men's restrooms and men to enter women's restrooms, changing facilities, and locker rooms. Proponents hurled accusations of discrimination and radicalism.



**BECKI  
GRAY**

North Carolina is not alone in dealing with the transgender bathroom issue. In January and February, more than two dozen similar bills were filed in state legislatures. Legislators in Illinois, Indiana, Kentucky, Mississippi, Missouri, Oklahoma, South Dakota, Tennessee, Virginia, Washington, and Wisconsin are considering bills allowing transgender people to use the bathroom or locker room that reflects their gender identity.

The General Assembly came

back for a special session. The final vote in the House was 82-36, with bipartisan support. The vote in the Senate was 32-0; Democratic members of the Senate walked out, avoiding a vote altogether. Gov. Pat McCrory signed the bill into law hours later.

House Bill 2, disallowing the bathroom ordinance and clarifying local government authority, passed despite a lot of drama, press buzz, partisan bickering, and pundit posturing. But did it have to be so hard and so hurtful? No one should minimize the heartache, struggle, and hardship that people dealing with sexual identity challenges face, especially young people.

Senate Minority Leader Dan Blue said during the debate that a relatively simple court suit could have derailed the Charlotte ordinance without "scaring the bejesus" out of everyone. Amen.

Are costly lawsuits or sweeping legislation the only possible resolutions? Remember the controversy, legislation, and lawsuits surrounding magistrates objecting to conducting same-sex marriages? Couldn't that have been solved with reasonable accommodation for everyone involved? A common-sense photo ID provision preserving integrity in elections while

accommodating those who needed extra help might have prevented ugly protests, voter confusion, and costly litigation.

When did working through tough challenges and coming to agreements become the last choice in problem resolution and governing?

One alternative to the Charlotte ordinance would be for all public facilities to provide a single-occupancy bathroom option for anyone who feels uncomfortable using a multi-stall bathroom. This would be open to anyone who wants additional privacy — senior citizens, parents with young children, and yes, transgender people. If there is a need to construct them, do so at taxpayer expense.

It's different for private facilities. Government ought to respect the property rights of private business owners rather than mandating special accommodations. By allowing business owners the freedom to run their companies the way they choose and with motivation to succeed and make a profit, business practices eventually conform with public sentiment and demand without government coercion. Free markets work when left alone.

North Carolina is not a "home

rule" state, meaning local governments are the creature and creation of the General Assembly — it's in our state Constitution. There are some things cities just can't do without creating inconsistencies in laws across the state, causing confusion and inequities, and jeopardizing the competitive position of the state's business climate.

Passing the bathroom ordinance was way beyond Charlotte's legal authority. Requiring private contractors to pay certain wages or regulate their employment practices is also way beyond the city's authority. Charlotte leaders knew this and recklessly ignored the Constitution. The speedily called special session and resulting legislation were necessary to ensure public facility privacy and security, statewide consistency in laws, and protection of rights. It also was necessary to remind local governments that their authority is limited.

It's really a matter of rights: privacy rights, property rights, religious freedom rights, and the right to dignity and respect. North Carolina is a leader in protecting those rights. Let's keep it that way. *CJ*

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

# GOP Plan Puts Real Choice in Congressional Elections (a *CJ* parody)

BY JERRY MANDER  
Election Correspondent

RALEIGH

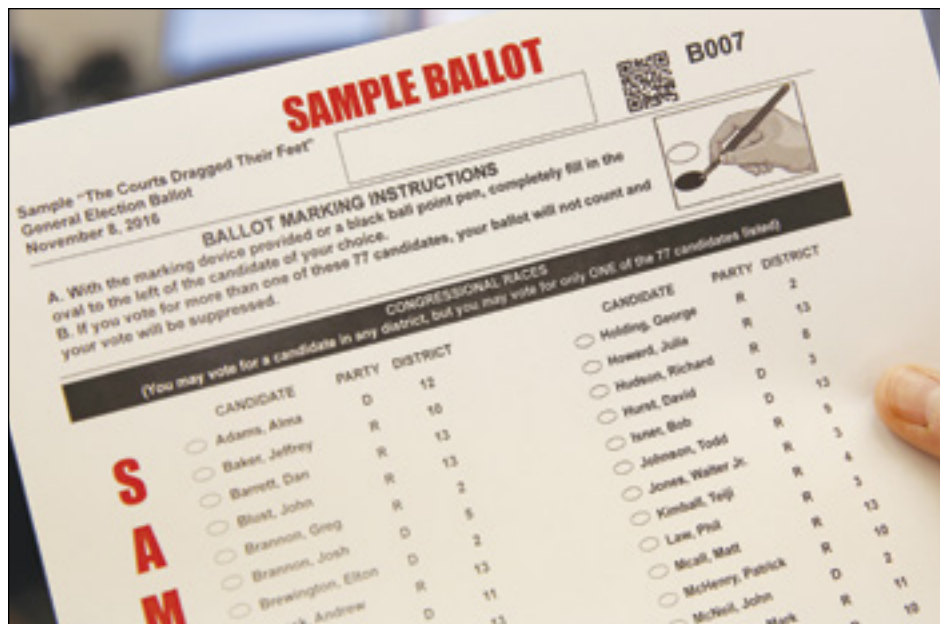
In the event federal judges throw out the latest North Carolina congressional district maps, a group of Republicans in the General Assembly has devised a plan that allows a voter to cast a ballot for any state congressional candidate, even if the voter lives in another congressional district, according to sources.

No member wanted to be interviewed for this story, but one staffer told *Carolina Journal* that legislators are fed up with court interference and constant second-guessing by interest and advocacy groups whenever redistricting time rolls around.

Under the proposed plan, called U-Choice (short for ultimate choice), each voter would continue to get just one vote. But the ballot for Congress would list every candidate from every party in all 13 districts. And just as North Carolina's congressional representatives are not required to live in the district they seek to represent, U-Choice would give voters freedom to choose a representative from outside their home district.

"Fair's fair," said the staffer. "People are fed up with double standards and special rules for the political class."

He said that one legislator told him, "We don't know if the federal court will overturn our current plan, but we want to be prepared. And if the



**If the courts don't act in time for North Carolina to hold a congressional primary, U-Choice will be implemented, and the ballot, like the sample above, will show all 77 candidates. (CJ spoof ballot)**

court throws out our latest plan, and we don't have time for a primary, we will then use U-Choice, with all 77 candidates on the ballot."

The districts drawn during a February special session of the General Assembly are before a three-judge panel in U.S. District Court. It's unclear when the court will rule on the map, but the primary is set for June 7.

Following every 10-year U.S. census, state lawmakers redraw legislative and congressional districts. By law, each district must contain a similar number of residents, but the politi-

cal party with the legislative majority usually attempts to maximize its victories by studying voting results from previous elections. The resulting districts often have unusual shapes and odd boundaries under a process called gerrymandering.

In recent decades, advocacy groups and the minority party have taken the state to court to seek different district lines. Those court battles can last several years and require new maps to be drawn.

The most recent census was in 2010, with districts redrawn in 2011.

Advocacy groups filed suit claiming the Republicans packed African-Americans in a few districts, allegedly reducing their influence.

The legislative staffer called U-Choice a "game-changer," because it would render gerrymandering complaints irrelevant. He added that the districts would maintain equal population numbers, even though some representatives may receive many more votes than the number of people living in their districts. This "maximizes voter preferences," which everyone seems to agree is a worthwhile goal, he said. "Freedom and choice are powerful forces, and we need more of that in our election process."

One Chapel Hill resident, a Republican, told *CJ* he has been disenfranchised for 30 years.

"Since 1986 I have been stuck in a district that favors David Price [an Orange County Democrat]. He lost one time in a fluke election in 1994 but got back in the next time. If we get U-Choice, my vote will now mean more. I can vote in a district for someone that has a chance of winning."

The N.C. NAACP and other frequent critics of earlier GOP redistricting proposals quickly cried foul. "We will challenge U-Choice. We really haven't figured out what's wrong with it yet, but if it's a Republican idea it's got to be sneaky, underhanded, unfair, and unconstitutional," the organization said in a news release. *CJ*



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- Goldsboro, WGBR-AM 1150, Sunday 4 pm
- Greenville, WTIB-FM 94.3, Sunday 9:30 am
- Jacksonville, WJNC-AM 1240, Sunday 10 am
- Laurinburg, WLNC-AM 1300, Sunday 10 am
- Morehead City, WTKF-FM 107.1, Sunday 10 am
- Rocky Mount, WEED-AM 1390, Sunday, 9:30 am
- Sanford, WWGP-AM 1050, Sunday 7:30 am
- Smithfield, WTSB-AM 1090, Sunday 7:06 am
- Statesville, WAME-AM 550, Sunday 5:30 am
- Valdese, WSVM-AM 1490, Monday 6 pm
- Wanchese, WYND-FM 97.1, Sunday 7:30 am
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