

**Couple
pleads guilty
in IRS tax
refund fraud
case/2**



CAROLINA JOURNAL

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

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CSX Continues Search For Rail Terminal Site

**NCDOT approved
\$100 million
subsidy for project**

BY DON CARRINGTON
Executive Editor

Months after the N.C. Department of Transportation approved a \$100 million subsidy for CSX to build an intermodal rail terminal in Johnston County near Selma, the railroad, amid local opposition at every North Carolina location CSX has considered, says it continues looking for sites in North Carolina and other states.

CSX approached the Rail Division of the N.C. Department of Transportation in 2014 with a plan to build the rail hub outside Selma, contingent on getting a taxpayer subsidy of at least \$100 million.

But opposition to the proposed project developed in Selma and at an alternative site near Four Oaks. Opponents of the project from Four Oaks say that when they contacted the governor's office to express their objections,



Pictured outside his home near Four Oaks, Randy Johnson, left, opposes a CSX project that would take his home and his family's farmland. Pharmacist Jack Austin, right, is concerned about air pollution from additional diesel engines. (CJ photo by Don Carrington)

they were told that the Department of Commerce, not NCDOT, was handling the project. Even so, NCDOT gave initial authorization to the subsidy in April.

Carolina Journal asked Commerce spokeswoman Kim Genardo about the status of the project, but she would

not acknowledge it existed. "NC Commerce is always looking for opportunities to recruit new companies to North Carolina and work with existing employers on expansion," Genardo said in an email. "However, North Carolina Commerce does not discuss whether it is or isn't working with any company

in any capacity. We are happy to provide information if and when a project is publicly announced."

While Commerce officials may not want to discuss the project, on April 19 Commerce provided a state-owned aircraft to fly a group of Johnston County business leaders and elected officials to tour a CSX intermodal terminal near North Baltimore, Ohio.

Governor rejects Selma

In a Jan. 14 press release, Gov. Pat McCrory announced plans for the 450-acre site near Selma, saying he was "enthusiastic that CSX, with support from local governments and planning organizations, has proposed this project for North Carolina."

Twelve days later, however, after news reports revealed that CSX was prepared to use eminent domain to acquire property from unwilling landowners in order to assemble the property it needed for the project, McCrory reversed his position, saying the Selma plan "does not appear to be a viable option."

CSX, based in Jacksonville, Fla., has 1,800 miles of track and employs

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'Revenuers' Concern for N.C. Distillery Owners

**High taxes, limits
on distribution
restrict businesses**

BY KARI TRAVIS
Associate Editor

BELMONT

Three years ago, Robbie and Caroline Delaney quit their jobs to become full-time rum distillers, and their Muddy River Distillery just west of Charlotte has done well.

But the couple pays 59 percent of their revenue in state and federal liquor taxes, and must comply with a long list of strict Alcoholic Beverage Control rules — causing them to won-



der if their entrepreneurial move was worth the hassle.

Robbie, a former construction worker who now runs his business without the support of any outside investors, said he works constantly, and adds, "I'd like to not pay [nearly] two-thirds of my revenue in taxes."

He said his and his wife's salary

"comes off the last month's revenue for the whole year. We work for the government, and then we skim a little bit off the top."

The Delaneys aren't the only small-scale distillery owners in North Carolina to be concerned about running into burdensome regulations from the state's ABC board.

But these small-scale distillers have found several advocates in the General Assembly who hope that removing unnecessary barriers to entrepreneurship can allow legal distilleries to join the state's noted craft breweries and wineries as homegrown success stories.

The idea to open a distillery was

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Couple Pleads Guilty in IRS Refund Fraud Case

Immigrant couple required interpreter during court session

By DON CARRINGTON
Executive Editor

WILMINGTON

Wallace, N.C., residents Walda Lorena Luna and her husband, Perfecto Ruano, pleaded guilty on June 20 in U.S. District Court in Wilmington, to charges associated with a tax fraud scheme in which they illegally obtained more than \$12 million from filing tax returns with the Internal Revenue Service claiming fraudulent refunds.

Carolina Journal first reported the couple's activities in January.

According to court documents, Luna is a native of Honduras who obtained temporary protective status in November 2006. She entered the United States illegally in 1993. Ruano is a native of Guatemala who obtained legal permanent resident status in 1988. Both required the services of a Spanish interpreter to participate in the court proceeding.

The illegal activity took place between January 2009 and May 2012. During that time, 2,760 U.S. Treasury refund checks with a total face value of \$12,104,825 were deposited in a business bank account maintained by the couple.

Luna and Ruano were arrested Jan. 11 and have remained in jail since that time. They are scheduled to be sentenced on Sept. 26 in federal court in Raleigh.

The IRS calls this type of crime Stolen Identity Refund Fraud, or SIRF. More recently it has labeled the crime Identity Theft tax refund fraud, or IDT refund fraud. The IRS has been aware of this type of fraud at least since 2011 and recently stepped up efforts to catch it.

But IRS computers did not detect the couple's activities. Instead, the agency first learned of the tax fraud as the result of a May 2014 traffic stop in Arkansas.

The Arkansas State Police stopped the couple for an unspecified reason and found them carrying \$1.8 million in cash. The police notified the Duplin County, N.C., Sheriff's Department, and within days law enforcement officials seized tax fraud evidence from the couple's North Carolina home and business.

Ruano's plea agreement involves one count of participating in a conspiracy to commit mail fraud offenses against the United States. He could receive a maximum prison sentence of five years.

Luna's plea agreement involved three counts. The first is identical to Ruano's. The second is the filing of a false personal income tax return in which she claimed as dependents two children who were not her relatives in order to reduce her tax bill. The third count is aggravated identity theft in which she used the Social Security numbers of those chil-

dren. She could receive a maximum sentence of 10 years.

They agreed to pay restitution to the IRS in the amount of \$2,944,799 and also to assist the government in the recovery and forfeiture of any assets that were acquired through their illegal activities. The government already filed a forfeiture notice stating that the couple would have to give up four parcels of real estate in Wallace.

According to court documents, Luna and Ruano obtained Individual Taxpayer Identification Numbers for at least 300 names that may represent real or fictitious people. The IRS issues ITINs instead of Social Security numbers to foreign individuals working in the United States, giving them a means of filing income tax returns and paying taxes on income earned.

Luna and Ruano allegedly fabricated W-2 wage and tax statements for each name using the names of real employers, then prepared tax returns and submitted refund claims to the IRS. The refund checks were sent to post office boxes rented by Luna or Ruano. The average refund check was \$4,385. The checks all were deposited in a First Bank business account that Luna had opened in 2006. Luna withdrew \$11,888,300 in cash by writing 252 checks for cash.

Since February 2010, Luna operated a small convenience store named Beverly Tienda, located on North Norwood Street in Wallace. For the 2009 through 2012 calendar years, Luna reported annual incomes from the store of \$16,000, \$18,000, \$17,481, and \$24,915, respectively. She reported no other income.

For 2009 through 2012 Ruano reported business income from several sources for a total of \$18,560, \$26,204, \$27,002, and \$59,123, respectively. He reported no other income.

Duplin County birth records show they are the parents of three children. The oldest, a daughter, was in court to see her parents enter guilty pleas.

CJ initially reported on SIRF in March 2013, identifying fraud schemes over the course of several months in Durham, Clinton, Union County, and Long Island, N.Y. CJ also reported that the IRS had been aware of the issue for years, but rarely had discussed it publicly.

In July 2012, IRS Inspector General Russell George's office issued a report stating that for tax year 2011, the IRS reported that it had detected 938,644 tax returns involving identity theft and prevented the issuance of fraudulent tax refunds totaling \$6.5 billion. But the losses from undetected identity fraud are substantial. The inspector general office's analysis of data from the 2010 tax year identified 1.5 million returns, representing \$5.2 billion, that likely were filed by identity thieves.

To combat SIRF, the report stated, "Access to third-party income and withholding information at the time the tax returns are processed is the single most important tool that the IRS could have to identify and prevent tax refund fraud. However, most of the third-party information is not available until well after tax return filing begins." CJ



Since 2010 Walda Lorena Luna had operated this convenience store, Beverly Tienda, on North Norwood Street in Wallace. (CJ photo by Don Carrington)

Carolina Journal
has reported
on similar
tax-fraud schemes
in Durham,
Union County,
and
Long Island, NY

CON Mandate Ended For New Mental Health Facilities

By DAN WAY
Associate Editor

RALEIGH

North Carolina's 2016-17 state budget increased the amount of money to open new psychiatric beds around the state from \$12 million to \$18 million using proceeds from the sale of the Dorothea Dix campus in Raleigh, while eliminating a controversial regulation that makes the goal of adding new beds more difficult.

"I think that there are some health care providers that are interested in putting in some beds that will be for mental health," said Sen. Louis Pate, R-Wayne, who co-chairs the Senate Health Care Committee. "They'll have to submit proposals, and somebody will have to go through them to see who's got the best deal."

"We agreed to \$18 million for crisis beds, \$2 million for pediatric beds," said Rep. Chris Malone, R-Wake, chairman of the House Appropriations Health and Human Services subcommittee. "The important thing about this bill is it handles all three [geographic] areas — the west, the east, and the central part of the state." The proposal allocates \$6 million to each region.

In addition to the mental health and substance-abuse provisions, the compromise package includes "a small mandate" to reopen a "free-standing emergency room" and potentially some mental health beds at Franklin Regional Medical Center in Louisburg, Malone said. Novant Health closed the hospital last October. Residents seeking those services now must drive to hospitals in Wake County or New Bern.

"These funds would be predomi-



Sen. Louis Pate, R-Wayne, at left, joined Gov. Pat McCrory for an April 11 event at which the governor announced his plans to incorporate findings of his mental health task force into his version of the state budget. (CJ photo by Dan Way)

nantly addressing the major complaints we get from hospitals about individuals being stuck in [emergency departments] and not having a bed to transfer them to," said Sen. Ralph Hise, R-Mitchell, the other co-chairman of the Senate Health Care Committee. "This is generally dealing with individuals that are not stable" because of behavioral health issues.

Expansion of mental health and substance abuse facilities would be achieved with one-time money the state received from the sale of the Dorothea Dix hospital property to Raleigh.

The money could be used to build new facilities or upgrade and convert existing beds at underutilized hospitals.

The proposal also aims to eliminate the state's certificate-of-need mandate for psychiatric facilities created with proceeds from the Dorothea Dix sale.

Certificate of need requires applicants to undergo a lengthy, costly, and often litigious process to get approval for new facilities or high-end equipment. Based on research from the Mercatus Center at George Mason University, North Carolina has the nation's fourth-highest level of state regulations under CON.

"It is my intent that there's no point doing any of it if you don't get rid of CON," Hise said of creating the new psychiatric beds. "We've not had a lot of disagreement" between House and Senate health appropriations subcommittee chairmen over that issue.

"I think this is just another example we're seeing that even projects or investments that we want to make can't happen, or can't go forward, because of the complexities we put on ourselves with the CON process," and that's why psychiatric facilities need to be exempted from CON, Hise said.

"I do think it's important that we repeal all of CON. I'm not backing down off of that," said Hise, a strong advocate of that action. While a proposal fully repealing the certificate-of-need law was not on the General Assembly's calendar at press time, backers of repeal suggested it could be considered before this year's session

adjourned.

"I think that CON is something that would have to be done large, not small," Malone said. Creating small exemptions here and there in a patchwork quilt is "the one thing I will always be against."

Yet he conceded he was swayed from that thinking on the psychiatric facilities because of the dire situation facing the state with continually rising behavioral health cases.

Behavioral health has "personally impacted" his family, Malone said. Last year, he sponsored House Bill 923 to create a pilot program converting unused acute-care beds in rural hospitals to inpatient mental health beds.

Malone's bill made it into the budget as a study to be conducted by the state Department of Health and Human Services, requiring a report to be submitted to the General Assembly. It then became part of Gov. Pat McCrory's mental health task force assessment.

Malone's wife works at WakeMed Hospital, where mental health patients have overwhelmed the available space while they wait for a crisis bed to open somewhere in the state.

"I saw the hallways where people were lined up 50 strong, and recently 100 strong, and they last in there for weeks, so we certainly need to do something regarding mental health," Malone said.

"I think that we put the cart before the horse, even if somebody had the right things in mind," Malone said of closing and selling Dorothea Dix before a plan was put in place to deal with the state's growing number of mental health patients.

"We've got to get the people out of jails and out of the emergency rooms, [who] are there with mental health problems," Pate said.

While Pate believes mental health issues and funding have not been given "the amount of attention necessary for the last several years ... I think it's probably going to gain some traction" as the culture becomes more aware of the seriousness and scope of the problem.

The state created regional agencies, known as local management entities/managed care organizations, to address developmental disability, substance abuse, and mental health problems, but legislatively they have been "kicked around for a long time," Pate said.

"I think they're doing good service, good work," he said, but he envisions some changes to the LME-MCO system in the future. That might include some mergers and integration with physical health services. "I think they are tied together." CJ



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A.G. Cooper's Refusal to Defend State Part of National Trend

BY KARI TRAVIS
Associate Editor

RALEIGH
State Attorney General Roy Cooper's refusal to represent North Carolina in a federal lawsuit over House Bill 2 is just one part of an expanding trend that sees attorneys general across the United States picking and choosing, depending on their party affiliation, which cases they will represent, some experts say.

Cooper, who announced his decision in March, stated that he would not defend any agencies over the state's controversial "bathroom bill" because "my office has had its own nondiscrimination policy that includes, along with other protections, marital status and sexual orientation — two classes not protected by the state."

This is not the first time Cooper has defied the wishes of the legislature. In 2011, despite appeals from the Republican-led General Assembly, Cooper refused to join a multistate lawsuit challenging the constitutionality of the Affordable Care Act, or Obamacare.

More recently, Gov. Pat McCrory signed on to a multistate lawsuit challenging President Obama's executive actions extending benefits to illegal immigrants — a lawsuit that was upheld in late June by a divided U.S. Supreme Court. Cooper had refused to join that lawsuit.

H.B. 2 overturned a Charlotte ordinance requiring that all public and private bathrooms, changing rooms, and other shared facilities in the city be open to individuals based on the gender with which they identify. State law now requires that transgender individuals use showers, restrooms, and locker rooms in public facilities that match the gender on their birth certificates. Private businesses may continue to set their own policies regarding gender identity and sexual orientation.

Following his refusal to represent the state in all resulting lawsuits, Cooper — who is running against McCrory in this year's gubernatorial election — called on the governor and legislature to overturn the law, saying the measure was unconstitutional.

On June 2, McCrory called on Cooper to resign, saying Cooper has put "politics over doing his job."

Also in June, a similar legal battle arose in Wisconsin, when state Attorney General Brad Schimel, a Republican, announced that he would not appear on behalf of the state's Department of Public Instruction in a lawsuit challenging the state's ability to determine a religious school's denomination for the purpose of allocating transportation funding to students. The state provides bus transportation funding for students attending religious schools, but limits that funding if two schools from the same denomination are in the same district.

The independent St. Augustine School is located less than a mile from the St. Gabriel Catholic School, which is affiliated with the local Catholic diocese. Wisconsin DPI said St. Augustine School also is Catholic, and students involved in the lawsuit argue Superintendent Tony Evers, a Democrat who opposes many of the state's school choice programs, is trying to deny their funding arbitrarily.

Schimel's office defended its decision to withhold representation, saying, "We believe different representation was appropriate based on our

legal analysis of DPI's position."

In cases when a state attorney general refuses to represent a state agency or department, inaction often has more to do with politics than with constitutional or ethical conflicts, says University of Virginia law professor Saikrishna Prakash.



N.C. Attorney General Roy Cooper is not alone in using party affiliation and ideology to decide whether to defend the state in lawsuits. (CJ file photo)

Prakash, who with College of William and Mary professor Neal Devins co-authored the 2015 study "Fifty States, Fifty Attorneys General, and Fifty Approaches to the Duty to Defend," notes that state laws across the country are inconsistent about the specific duties of an attorney general, and the study concludes this legal haziness makes it easy for attorneys general to turn controversial cases into political power plays.

"With Democrats and Republicans squarely divided on issues like same-sex marriage, gun control, and campaign finance, we predict that attorneys general will increasingly seek political advantage by refusing to defend (or insisting on the defense of) laws that divide the parties," the authors say. "We also foresee that failures to defend will be especially likely to occur in states where the attorney general is of a different political party than the governor, legislature, or the preceding attorney general."

Former North Carolina Supreme Court Justice Bob Orr says Cooper's political maneuvering raises legitimate questions about whether Cooper should resign his office and campaign full-time. Orr points to state constitu-

tional and statutory requirements as evidence that Cooper is — at the least — not following his job description.

"I think there are some very legitimate professionalism issues here that frankly maybe the State Bar needs to clarify," Orr told *Carolina Journal*. "But I do think that the attorney general and his employees are obligated under the laws of the state to represent the state unless there is a specific conflict, or the client, whatever agency or entity it may be, says, 'we don't want the A.G. to represent us.'"

"But my concern really is conflict," Orr continued. "I can't ever remember a sitting A.G. running against a sitting governor, and it's not a good situation for them to continue to be able to sort of pick and choose when the A.G. represents the state. I think there's a statutory responsibility, period, that's says the A.G. represents the state, not how he or she might choose to represent the state."

But during a June 7 interview with Time Warner Cable News, Prakash said the statutes are still too vague in many states, North Carolina included, to say for sure whether or not attorneys general like Cooper or Schimel are in conflict with the law — making legal subjectivity inevitable.

"I've said that A.G. stands for 'aspiring governor,'" Prakash said. "Every attorney general sees themselves in the governor's mansion. ... I think they're all thinking about politics when they make these decisions. ... Where the law is unclear, politics will affect the attorney general's decision to defend or not to defend. I'm not taking a position on what's going on in North Carolina. I'm just saying that this is happening everywhere, and it's happening in part based on politics." CJ

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Justices Rule That Map Act Uses Eminent Domain Powers

BY BARRY SMITH
Associate Editor

RALEIGH

The N.C. Supreme Court on June 10 handed hundreds of property owners in highway corridors a victory by ruling unanimously that restrictions placed on landowners by the state's Map Act amounted to a use of eminent domain requiring just compensation.

The amount of money the N.C. Department of Transportation will have to pay to the landowners could reach hundreds of millions of dollars.

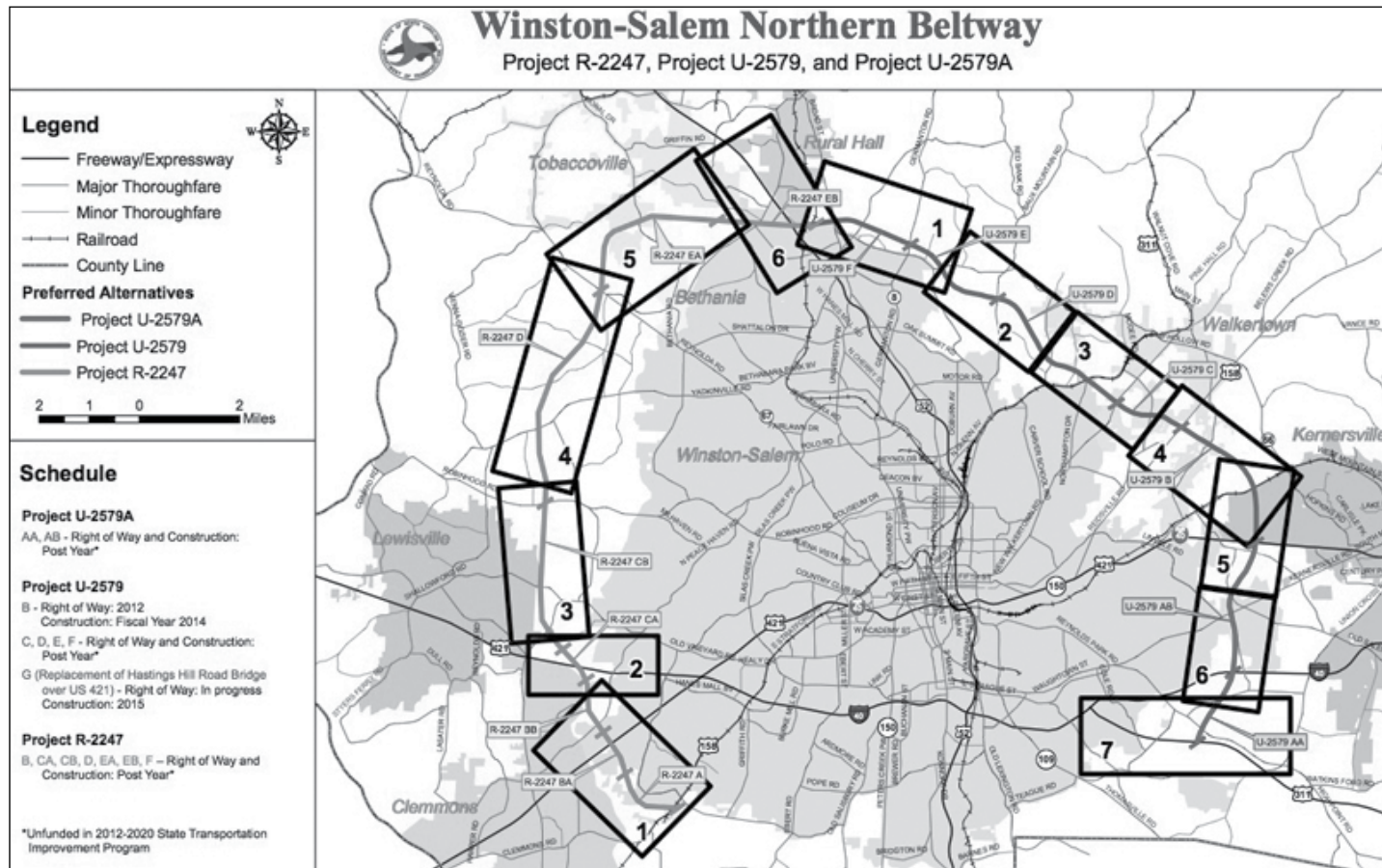
"The Supreme Court vindicated their property rights," said Matthew Bryant, a Winston-Salem lawyer who led the plaintiffs' legal team. "There are limits to what government can properly do. North Carolina failed to recognize that for 20 years."

Justice Paul Newby wrote for the court:

Upon NCDOT's recording of the highway corridor maps at issue here, the Map Act restricted plaintiffs' fundamental rights to improve, develop, and subdivide their property for an unlimited period of time," Newby wrote. "These restraints, coupled with their indefinite nature, constitute a taking of plaintiffs' elemental property rights by eminent domain.

The General Assembly enacted the Map Act in 1987. It allows the DOT to file a highway corridor map with local officials. While the language of the statutes says local governments can be blocked from issuing building permits on property within the corridor for as long as three years, several plaintiffs in this case have been fighting the state for more than two decades. The act also prohibits land within the corridor from being subdivided.

The purpose of the law is to hold down taxpayer costs for highway proj-



N.C. Department of Transportation maps like this one of highway a corridor around Winston-Salem locked up the property of citizens for years without any compensation.

ects by preventing development, NCDOT officials have said.

Property owners are allowed a break on property taxes under the law. And they could apply to NCDOT for an expedited acquisition process if they could show that Map Act restrictions placed a hardship on them.

However, the court ruled that the law doesn't go far enough in protecting property rights.

"From the very beginnings of our republic we have jealously guarded against the governmental taking of property," Newby wrote, citing philos-

opher John Locke and President James Madison.

The court rejected the state's argument that NCDOT was using its police powers, and not eminent domain powers, in placing restrictions on development of property.

"Under the police power, the government regulates property to prevent injury to the public," Newby wrote. "Under the power of eminent domain, the government takes property for public use because such action is advantageous or beneficial to the public."

Newby said that while a reduction in property acquisition cost for highway projects is a laudable public policy, it doesn't fall under police power protections.

"The societal benefits envisioned by the Map Act are not designed primarily to prevent injury or protect the health, safety, and welfare of the public," Newby wrote. "Furthermore, the provisions of the Map Act that allow landowners relief from the statutory scheme are inadequate to safeguard their constitutionally protected property rights."

Newby said that the Map Act language "plainly points to future condemnation of land in the development of corridor highway projects, thus requiring NCDOT to invoke eminent domain."

The case before the Supreme Court relates to the Northern Beltway around Winston-Salem in Forsyth County. However, similar lawsuits were filed in Cleveland, Guilford, Wake, Cumberland, Robeson, and Pender counties involving more than

300 landowners.

"The state's estimate of this is several hundred million dollars that will be due to these owners," Bryant said. "That money was due to them a long time ago. And it's money the state intended to spend at some point in time in the future."

Bryant noted that organizations filing amicus (friend-of-the-court) briefs backing the property owners in the case ranged across the political spectrum. They included the John Locke Foundation, Civitas Institute, N.C. Advocates for Justice, N.C. Justice Center, and N.C. Association of Realtors.

"Our cause was just," Bryant said. "It wasn't political."

Jon Guze, director of legal studies at the John Locke Foundation, called Newby's decision "a great opinion and a great result" placing the importance of property rights in historical context, including quotations from Madison and Locke.

"Citing North Carolina's 1776 Constitution as evidence," Guze said, Newby "notes that, 'The fundamental right to property is as old as our state,'" and, "'From the very beginnings of our republic we have jealously guarded against the governmental taking of property.'"

The Wilmington Urban Area Metropolitan Planning Organization filed a friend-of-the-court brief backing NCDOT.

The case will now go back to the trial-court level to determine how much NCDOT owes individual property owners.

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By John Hood
Chairman of the
John Locke Foundation

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General Fund Budget Features Tax Cuts, Teacher Pay Hike

Spending increases set below inflation, population growth

BY BARRY SMITH
Associate Editor

RALEIGH

House and Senate leaders announced a \$22.3 billion General Fund budget agreement on June 27 that boosts teacher pay, increases the “zero tax bracket,” and keeps spending increases below the proportional increase in population and inflation.

“This is a great budget that we arrived at through compromise,” House Speaker Tim Moore, R-Cleveland, said at a press conference. “It was a good compromise that allowed us to cut taxes and fund the critical needs of the state.”

“This budget achieves our shared goals with Gov. [Pat] McCrory of prioritizing teacher pay, cutting taxes on the middle class, controlling the growth of government spending, and bolstering our savings,” Senate leader Phil Berger, R-Rockingham, said.

The final budget spends slightly more than the bottom-line spending figure of \$22.225 billion budget writers originally negotiated. Rep. Nelson Dollar, R-Wake, the senior House budget writer, said legislative leaders received word in the days before the budget announcement that the state would receive \$62.4 million in additional reversions — spending on programs that had been allocated but not used — to put into the new budget.

The budget represents a 2.8 percent increase over the current fiscal year budget. That falls slightly below the Taxpayer Bill of Rights index of 2.9 percent. The TABOR index adds the percentage of population growth in the state to the inflation rate.

“It provides major tax relief for the middle class and small businesses by making the first \$17,500 a family earns exempt from income tax over the next two years,” Berger said. “This means a family making the North Carolina median household income of \$44,000 annually will see an additional tax cut of \$110 next year alone.”

The tax cuts would be phased in over two years, with the standard deduction rising to \$16,500 the first year and \$17,500 the second year. The cuts come to \$145 million for the 2016 tax year and \$205 million for 2017, according to Berger’s office.

Berger said the budget would set aside \$475 million for the rainy day



House Speaker Tim Moore, R-Cleveland, at microphone, and Senate leader Phil Berger, right, at a June 27 press conference announcing the \$22.3 billion General Fund budget. (CJ photo by Kari Travis)

fund. That money “gets us up close to \$1.6 billion” in the state’s emergency reserve fund, said Sen. Harry Brown, R-Onslow, the Senate’s senior budget writer.

The teacher pay plan would increase average teacher salaries to \$50,186 for the next school year and to nearly \$55,000 within three years, Berger said. Average teacher compensation would rise by 4.7 percent, Berger said, and average pay will have increased \$10,000 since 2013, when Republicans took control of the executive and legislative branches of state government.

State employees would see an average 3 percent increase in their pay, Dollar said, adding that half of that would come from a 1.5 percent across-the-board pay raise. State employees would get a one-time bonus of 0.5 percent of their salary. An additional average 1 percent in merit pay increases would be awarded, he said. Retirees would get a 1.6 percent one-time increase.

Other budget provisions include:

- Appropriating \$34.8 million for a reserve fund to reduce the waiting list for the Opportunity Scholarship Program, which provides vouchers of as much as \$4,200 for children from lower-income families to attend private schools. In addition, the budget includes a provision to increase funding incrementally to pay for more vouchers over the next 10 years.

- Spending \$18 million from the sale of the Dorothea Dix property in Raleigh to expand in-patient mental health care targeting rural areas and \$2 million for crisis facilities for chil-

dren. Those added facilities would be exempt from the state’s certificate-of-need law, said Rep. Ralph Hise, R-Mitchell.

- Setting tuition at three public universities — Elizabeth City State University, UNC-Pembroke, and Western Carolina University — at \$1,000 per year for in-state students and \$5,000 per year for out-of-state students, beginning in 2018.

- Guaranteeing no in-state tuition increases for a standard undergraduate college term (usually four years) at the other UNC campuses, beginning in the fall of 2017. The bud-

get also freezes student fees at current levels in the UNC system and limits future increases to 3 percent per year.

Donald Bryson, state director of the North Carolina chapter of Americans for Prosperity, praised the tax relief afforded in the budget. “The people of North Carolina are becoming accustomed to tax cuts from these state lawmakers — this is the third round of take-home pay relief for earners statewide since 2011,” Bryson said. “The billions in unburdening are long overdue for working families and individuals who deserve to keep every dollar not essential to state services and government functions. Our state’s economic improvements in [gross domestic product] growth and job creation speak for themselves. North Carolina is on the right path with tax reform and responsible spending.”

Darrell Allison, executive director of Parents for Educational Freedom in North Carolina, noted the expansion of funding for opportunity scholarships, which would grow from nearly 11,000 in the 2017-18 school year to 36,000 by 2027-28.

“It’s hard to believe that this program was figuratively on life support just three short years ago, plagued with multiple court challenges and legal stoppages and injunctions. Today, with more than 22,300 applications submitted for the Opportunity Scholarship Program since its inception in 2013, this proposed budget is an acknowledgement to the thousands of working-class families who never gave up on this program in hopes of it being a real game-changer for their children,” Allison said. CJ

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Group Against I-77 Toll Not Giving Up Despite NCGA Inaction

BY BARRY SMITH
Associate Editor

RALEIGH

Managed-lane opponents in Mecklenburg and Iredell counties aren't giving up after learning that the Senate will allow the General Assembly to adjourn without taking up House Bill 954, a measure canceling the Interstate 77 high-occupancy-or-toll-lanes project.

"We'll probably reintroduce this again, maybe with a different makeup in the legislature and a change in the executive branch," said Kurt Naas, a spokesman for Widen I-77, a group opposing the project.

North Carolina citizens will elect a governor as well as all 170 members of the General Assembly this November. Incumbent Republican Gov. Pat McCrory's administration has backed the I-77 HOT-lane project.

Naas noted that canceling the

contract will get more difficult as the project advances.

"It doesn't get any easier the further it goes," Naas said. "But the drumbeat keeps getting louder."

Naas acknowledged that Cintra, the Spanish company that has the contract, already has initiated work on the I-77 project, noting that some vegetation clearing is under way. "They've done some grading," Naas added.

He said he doesn't understand how the bill, which passed the House overwhelmingly, could not get taken up in the Senate.

"My reaction I think mirrors thousands in the Lake Norman community, which is why did the Senate Republican leadership put the interest of a multibillion-dollar foreign company ahead of their fellow North Carolinians?"

Senate leader Phil Berger, R-Rockingham, said during an April

news conference that he had not seen any information leading him to believe that canceling the project was the right thing to do.

During a committee meeting in June, when the House was taking up the bill, Transportation Secretary Nick Tennyson said that the N.C. Department of Transportation could be liable for penalties if the project were canceled and a court sided with Cintra in a potential lawsuit. While no one could cite a definite potential liability figure, some lawmakers estimated it could be as high as \$250 million.

Tennyson also said that he had no idea when I-77 would be widened to alleviate congestion if lawmakers canceled the contract with Cintra.

Opponents of the HOT-lane plan said they believed the contract could be canceled for cause at no penalty to the state because Cintra had failed to disclose to state officials some con-

struction-related litigation and other financial problems affecting the company. Company officials have brushed off such concerns, saying they will have no impact on the agreement with North Carolina.

Plans call for Cintra to construct HOT lanes on a 26-mile stretch of I-77 from the Brookshire Freeway in Charlotte to the N.C. 150 interchange in Iredell County. The construction would leave four lanes heading both north and south.

Two lanes in each direction would remain standard lanes and not require a toll. Motorists could ride on the other two lanes either by paying a toll or having at least three people in their vehicles.

Naas said that he expects other grass-roots organizations in the Lake Norman area to make the I-77 project an issue in the 2016 elections. *CJ*

Legal Battle Between State Bar, Legal Zoom Could End Soon

BY BARRY SMITH
Associate Editor

RALEIGH

The General Assembly has codified many of the provisions of a 2015 consent judgment between LegalZoom and the N.C. State Bar, which allows the online self-help service to provide routine legal documents to consumers in the state. If Gov. Pat McCrory signs the legislation, it would end a battle that has lasted more than a dozen years.

Both the House and Senate approved a conference report on June 16 that redefines the state's statute governing the unauthorized practice of law. House Bill 436 was awaiting McCrory's signature at press time.

The bill ends a long-running squabble between LegalZoom and the State Bar dating to 2003, when the State Bar's Authorized Practice Committee opened an inquiry into whether LegalZoom's online document offerings constituted unauthorized practice of law.

The new law is broader than the consent agreement between LegalZoom and the State Bar. It applies the provisions in the consent order to online legal services that are similar to LegalZoom.

"It's important to make sure we covered everybody," said Rep. Leo Daughtry, R-Johnston, who sponsored the bill.

"LegalZoom is probably the most legitimate of all those that are out there," Daughtry continued. "I think they're a pretty good company. They want to do the right thing, and they don't want to have any problems."



Not all companies are as easy to work with as LegalZoom, he said. "For example, some of these providers say that if there is a dispute, you [have to] mediate it in California," Daughtry said. "We don't want that. That's not good for anybody. We wanted to make sure that all the other providers were treated the same as LegalZoom."

To address that concern, one provision of the bill prohibits online legal providers from requiring their customers to agree to resolve disputes in any state other than North Carolina.

Other provisions of the bill require:

- consumers to be able to view a blank template or a completed document before purchasing the document;
- an attorney licensed in North Carolina to review each blank template offered to North Carolina consumers;
- the provider to inform consumers that the forms are not a substitute for getting advice from an attorney;

- the provider to disclose to consumers its legal name, physical location, and address;

- the provider not to limit consumers' options to recover damages or other remedies;

- the provider to have a consumer satisfaction process.

Providers also must register annually with the State Bar. The initial registration fee can be up to \$100. Annual renewal fees of up to \$50 can be charged.

"You've got to adjust to the Internet," Daughtry said. "It's here to stay. If you practice law on the Internet, we've got to find a way to protect the public."

After the State Bar's 2003 inquiry, LegalZoom responded by saying its legal document service was simply an online version of off-the-shelf software widely available throughout the United States. Later in the year, the State Bar committee wrote Legal Zoom, say-

ing it had dismissed the complaint, citing insufficient evidence to pursue the matter.

In January 2007, the committee initiated a second inquiry geared toward the company's documents for forming corporations. Again, the State Bar committee asserted that LegalZoom was engaging in an unauthorized practice of law. LegalZoom replied that its practice had not changed materially since the 2003 inquiry was closed.

The State Bar sent a cease-and-desist letter to LegalZoom in May 2008, reasserting the claim of an unauthorized practice of law. The State Bar also threatened to seek an injunction against LegalZoom. The company responded by saying there were inaccuracies in the State Bar's assertions.

The State Bar never responded to the 2008 LegalZoom letter, other than acknowledging its receipt. But it didn't pursue an injunction either.

When LegalZoom tried to register its prepaid legal plans for individuals and businesses in North Carolina in July 2010, the State Bar refused to consider the application, citing the 2008 cease-and-desist letter and requesting more information.

After further attempts to resolve the conflict proved unsuccessful, LegalZoom filed a lawsuit against the State Bar in September 2011.

The case ended in October 2015 when the N.C. Business Court entered a consent judgment in the litigation. The consent judgment could have remained in effect for as long as two years had the legislation not been adopted. *CJ*

N.C. Regulatory Reforms Praised by National Analysts

BY DAN WAY
Associate Editor

North Carolina was lauded for “impressive reforms” curtailing its regulatory burdens on businesses and individuals, and national policy analysts discussed methods of further reducing costly restrictions during a June 22 teleconference call.

“North Carolina has been a model for a lot of things,” said Patrick Gleason, director of state affairs at Americans for Tax Reform.

“They’ve enacted some of the more impressive reforms in the country on a host of things, from tax and education policy to regulatory reform,” Gleason said.

Regulatory reforms at the state level are vital as President Obama’s White House continues “looking to use the pen and the phone as often as they can” and amid the backdrop of the Competitive Enterprise Institute’s research showing “the federal regulatory burden is now higher than the federal income tax burden,” Gleason said.

Jeff Warren, senior policy adviser to North Carolina Senate leader Phil Berger, R-Rockingham, said regulatory reform “has become a major platform issue” since Republicans took majority control of the General Assembly in 2011.

While regulatory reform generally is viewed as a part of tax reform, “We’ve also had a parallel run on regulations that slow or arrest economic development, regulations that are confusing, outdated, duplicative, conflicting, [or] unnecessary,” Warren said.

“Every year we’ve done a signature regulatory reform package” in the Senate, Warren said. But this year, “interestingly enough, the House is running

a Regulatory Reform Bill of 2016, and we are trying a different model in the Senate called the Regulatory Reduction Act of 2016” focused on repeals. (At press time, differences between the two measures had not been reconciled by the House and Senate.)

He said the Senate opted for a new approach because regulatory reform in the past often was accomplished with large omnibus bills containing as many as 50 provisions filling up to 60 pages.

“It was an efficient way to move a lot of policy, but it picked up some ugly passengers along the way” with legislative add-ons, Warren said.

The Senate refused to pass the House plan in its original form, and it will now be subject to compromise

among negotiators of both parties.

Warren also said:

- In 1994, the first year records were kept, there were 19,900 rules in the North Carolina administrative code. In 2011 there were 23,940 rules. “We’ve cut 2,500 of those and expect more cuts as we move forward.”

- Many of the rules that were eliminated were environmental regulations that hamper development, but those are the measures for which Republican lawmakers “get pilloried in the media.”

- Between 1900 and 1969, the state added an average of one occupational licensing commission every three years. From 1969 until 2008, the average was one every 10 months. The Republican-led General Assembly was “able to slash about 50 boards” in its first year of majority rule and has eliminated roughly a dozen more since then. Eradicating those commissions and freeing entry into the market is difficult because the occupations with licensing requirements are loath to allow outsiders who may have fewer professional or educational credentials into licensed professions.

Jon Sanders, director of regulatory studies at the John Locke Foundation, said “the most important” reform North Carolina has passed is a sunset provision that requires the periodic review of regulations to ensure they are working as intended and allows lawmakers to end those doing more harm than good.

About 6,225 rules, or one-third of the total, have been reviewed, and 690 are slated to be removed. Close to 2,000 are subject to re-adoption, which will require another round of vetting. About 58 percent of the regulations will remain in the code.

Sanders said North Carolina needs a provision most states have that grants a small business flexibility in meeting regulatory mandates because those companies often don’t have a large company’s financial means to hire a legal compliance staff.

Oliver Sherouse, regulatory studies analyst at George Mason University’s Mercatus Center, said British Columbia, a Canadian province with population about the same as Louisiana, is a model for successful regulatory reform that can be adopted in the United States.

From 2001 to today, British Columbia decreased regulatory restrictions by 43 percent. If a new regulation is passed, an existing one must be cut. The province went “from being one of the worst performers in the Canadian economy to one of the best,”

Sherouse said.

British Columbia rose from 2 points below the national average on economic growth to 1.1 points higher than the national average. Its per-person disposable income increased from its previous position of 500 Canadian dollars below the national average, and the number of business incorporations is up about 50 percent.

Sherouse also said:

- The Mercatus Center has com-

pleted a RegData project with software it developed, quantifying the number of regulatory restrictions in the U.S. administrative code. In 2010 there were more than 1 million individual restrictions. A similar study of all 50 states will be conducted in the coming year.

- If the federal government had frozen the number of regulations at 1980 levels, there would have been \$4 trillion more in the national gross domestic product as of 2012, or \$33,000 more per household.

Ben Wilterdink, director of commerce, insurance, and economic development at the American Legislative Exchange Council, which hosted the teleconference, said the organization is advocating its Regulatory Review and Recission Act as a model that can be adopted by the states, and tailored to meet their individual conditions and circumstances.

The model legislation requires a cost-benefit analysis of any regulation with an impact of at least \$500,000 that might act as a barrier to entry into the market.

Witterdink likened it to a fiscal note that lawmakers often request to determine how much a tax measure or other program will cost. In this case, legislative staff could inform legislators about the magnitude of a possible regulation’s economic impact at the front end of the debate to enable more educated decisions about regulations to be made. The legislation also has a three-year post-mortem review allowing a governor to rescind a burdensome rule. *CJ*



More than 6,000 rules have been reviewed, with 690 slated to be removed

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Farm Bill Extends Renewable Tax Credit for One Company

By DAN WAY
Associate Editor

RALEIGH

A continuing rift among House Republicans over taxpayer subsidies for renewable energy ignited during debate on a farm bill that includes a provision letting a biofuels company receive \$50 million in tax credits.

Critics called the provision “crony capitalism” that would cost state taxpayers up to \$900,000 per job created.

The amendment to Senate Bill 770, the NC Farm Act of 2016, introduced by Rep. Chris Millis, R-Pender, failed during House floor debate on June 29 by a 33-79 vote.

The amendment would have denied Biochemtex of Wilmington and its partners exemption from the state law that ended issuance of new renewable tax credits Jan. 1, 2017.

The farm act, which passed by a 92-22 margin, extends the deadline to 2020 for Biochemtex to build a commercial-scale biofuels electric-generating plant in Sampson County that would require 45 square miles of giant reed growth to power it.

Millis said Biochemtex is in the process of receiving more than \$8 million in federal, state, and local tax benefits to erect the biofuels plant, Carolina Cellulosic Biofuels, in Clinton.

“If this amendment does not pass, they’re going to receive another approximately \$50 million in state tax credits, in addition to the federal tax credits that they’ll get, which I don’t even know how much that is,” Millis said. “But on just the money we know about, the 65 jobs that they’re saying they will create are going to cost the

taxpayers \$900,000 per job.”

Rep. Nelson Dollar, R-Wake, was among those supporting the carve-out for Biochemtex.

“This is a \$200 million investment that they have been working on for years,” Dollar said. “Their bids have already been extended, and this is jobs ... in rural North Carolina, so vote for jobs. Vote for \$200 million in investment.”

Rep. Bob Steinburg, R-Chowan, spoke against the Millis amendment, noting

jobs created by the project would pay \$48,000 a year in an area where the average wage is about \$31,000.

Companies want “business certainty, that the rules don’t change once they’ve made business decisions, and they’ve made plans, they’ve expended funds,” said Rep. John Szoka, R-Cumberland.

“I truly believe that there’s a good case for this company to receive this exception,” Szoka said. “They’ve been working on this for quite some time. At the time they started this they knew exactly what the rules were,” but encountered unavoidable roadblocks.

Rep. Charles Jeter, R-Mecklenburg, also pushed to kill the Millis amendment.

“I think that this is a unique situation for a company that had been planned well before the sunset provision was put in last year,” Jeter said. He called the project “an outlier” and

said House Finance Committee staff assured him no other companies had signed a letter of commitment with the Department of Commerce before Sept. 1, 2013, qualifying them for the tax credits.

He said Biochemtex was “a company that tried to do it by the rules, had some things that they couldn’t control” in meeting a Dec. 31, 2013, deadline to

begin construction of its facility, or a Jan. 1, 2017, deadline to have its facility in service.

Millis said he,

too, believes in business certainty, but that should not include favoritism for one entity to line its pockets under a statute the General Assembly already voted to sunset.

“Why are we going to continue to ride the backs of our taxpayers and ratepayers to subsidize specific companies for something that actually does not lead to net job growth?” he asked.

“A lot of politicians will tell you about job growth. We heard a while ago ‘Vote for jobs, this is \$200 million,’” Millis said. “But it does not lead to net job growth, and the reason being because we’re giving \$50 million of taxpayers’ money that could be spent elsewhere” to improve the economy instead of subsidizing a more expensive and unreliable form of energy.

“I also like taxpayer certainty. We told our taxpayers we were going to sunset these credits that are targeted and only benefit a few at the expense of

the rest of the taxpayers in the state,” said Rep. Jeff Collins, R-Nash.

“We’re practicing crony capitalism,” he said. “I think it’s unconscionable for us to continue to change the rules on our taxpayers.”

Collins said he lives in a farm district, and some of his best supporters are farmers.

“I can almost never vote for a farm bill because of some other piece of junk that’s crammed into a farm bill that has nothing to do with farming, and this is the piece this year,” he said.

Rep. Marilyn Avila, R-Wake, pushed proponents of breaking the renewable tax credit sunset for their justification and a timeline to determine when Biochemtex went off the rails in meeting state deadlines to receive the tax credits. None could do so.

Rep. Jimmy Dixon, R-Duplin, said Biochemtex was granted its first extension because it was unable to obtain financing and some of the necessary permitting to get the financing arrangements was not completed.

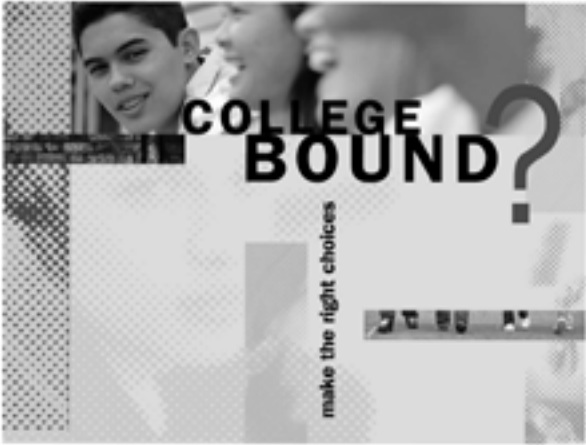
Jeter said the owner of the company died, and company restructuring further delayed matters.

“We’re told to reach into our hearts and feel bad for a company that’s not going to get \$50 million of taxpayer money because they’re not going to meet the January end date” cast in law to have a renewable facility completed, said Rep. Michael Speciale, R-Craven. “You guys are killing me,” he said, accusing backers of the exemption of disrespecting the taxpayers.

Reps. Kelly Hastings, R-Gaston, and Larry Pittman, R-Cabarrus, also spoke in favor of Millis’ amendment. *CJ*



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Achievement School District Reforms Pass General Assembly

BY KARI TRAVIS
Associate Editor

A measure to rehabilitate five of North Carolina's failing public schools passed the state House and Senate on consecutive days in late June after facing opposition from Democratic lawmakers who said the bill would allow charter school companies to exploit taxpayers while perpetuating low performance among struggling students.

Republican backers of House Bill 1080, "Achievement School District," said their Democratic counterparts were willing to trap students in failing schools.

H.B. 1080 was introduced earlier this year by Rep. Rob Bryan, R-Mecklenburg. The plan is modeled after Tennessee and Louisiana programs that removed failing public schools from state control, placing them instead under charter-like management.

Under the proposal, the State Board of Education would place five low-performing public schools (selected from those statewide ranking in the bottom 5 percent of performance measures) into the ASD. There, a superintendent would recommend an independent entity, such as a charter school operator, to run each achievement school.

Bryan's legislation included two additional options for school rehabilitation. Innovation Zones would allow a school board that has entered one of its schools into the ASD to create a modified schedule with extra flexibility for up to three additional low-performing schools in its district.

The version of H.B. 1080 that passed the House initially also in-

cluded a Principal Turnaround Model, which would allow a local school board to fire a school's principal and instead hire a "turnaround" principal with a proven record of success.

The Senate amended the bill, keeping Innovation Zones but tossing out the Principal Turnaround Model. That provision was not popular with the Senate's Republican majority, said Sen. Chad Barefoot, R-Wake, who presented the bill to the Senate.

"I hope you'll agree with me that we can no longer stand by while students attend our institutions with low-performing scores and unacceptable growth," Barefoot said. "These schools will be chosen out of the bottom 5 percent of low-performing schools in North Carolina. A superintendent will be chosen to oversee the schools, and will oversee the hiring of new management, and will also allow for the creation of Innovation Zones for the school districts that qualify into the Achievement School District."

Senate members debated the bill for nearly an hour on June 27, with Democratic opponents questioning the necessity of an ASD program, stating that existing "restart models" — provisions that offer local school boards some charter-like flexibility to improve failing schools — are a better answer to the problem.

"I have heard from our school systems that they disapprove of out-

side entities — and I disapprove of outside entities, private entities — coming in and using state funds to work with our children, most of whom are low-income and minority children," said Sen. Gladys Robinson, D-Guilford.

"One of the things that concerns me about this bill is the coercive nature of it," said Sen. Angela Bryant, D-Nash. "This process as described is very disruptive to a community."

Bryant, who joined several other Democrats in proposing amendments that would exempt Guilford County, Mecklenburg County, Wake County, and Rocky Mount schools from the ASD program — none of which were adopted — also stated that the legislation was built around a "mistaken philosophy."

Bryant suggested that any private operators of achievement schools would be "lining their pockets" with taxpayer money.

Barefoot answered a series of challenges from Democrats, pointing to continued failure in some public schools as evidence that the state must do something to reboot the system. He also noted that any independent operator of an achievement school would receive no more taxpayer funding than K-12 public schools now receive.

And he addressed concerns about private operators for ASD schools, proposing an amendment to stipulate that the ASD superintendent must have a sound track record in improving failing schools, and that any private operator selected to run an ASD must present a credible and specific plan for improving the school's operations. That amendment was later adopted as part of the Senate's version of the bill.

"It's not inevitable that it's some

type of out-of-state private corporation," Barefoot said of ASD operators. "In fact ... these operators have to have proven that they can do what it is that — up until this point — the public school system can't."

"I will also say that roughly 90 percent of the Local Education Authorities in this state will not be affected by this legislation, because ... many do not have low-performing schools," Barefoot continued. "This bill specifically addresses the bottom 5 percent of low-performing schools in North Carolina."

Other challenges to the legislation involved concerns that Tennessee's ASD program has seen several failures, including a downturn in student performance. Supporters of H.B. 1080 defended the legislation against those complaints, calling it more practical than the legislation passed in Tennessee.

"You can't go too big like [Tennessee] did," said Sen. Jerry Tillman, R-Randolph. "There were many factors at play there so that structurally it couldn't succeed. We're going on a very small scale with a model that can succeed. Other school systems can try to do this on their own. The problem is, you never close a public school. You never say, 'You've failed long enough, and you're not going to fail anymore.' We don't do that."

The amended version of H.B. 1080 passed the Senate on June 28 by a 35-14 margin. The next day, despite similar objections from House Democrats, the House concurred with the Senate's revisions, passing the bill, 67-39.

At press time, the bill was awaiting Gov. Pat McCrory's signature. *CJ*



Rep. Rob Bryan, R-Mecklenburg

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."

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Appeals Court: Anonymous 911 Callers Can Be Cross-Examined

By MICHAEL LOWREY
Contributor

RALEIGH

Among the basic guarantees of liberty provided by the Bill of Rights is the right to confront one's accusers during a criminal trial. A recent ruling by the state's second-highest court highlights how this right can extend even to those accused by callers to 911 emergency networks.

On the evening of April 12, 2014, Wilmington police officers responded to an anonymous 911 call in the Long Leaf Park subdivision reporting a possible dispute involving a man

with a gun. Officer Scott Bramley was among those responding to the call. When he arrived in the area, he noticed two men standing next to a black Mercedes-Benz parked beside a vacant lot. One

of the men, in a red- and-white plaid shirt, walked toward the officer. Bramley did not have a description of the suspect, but he decided to confront the man and ask if he had a gun. The man said no, submitted to a pat-down, and after Bramley did not find a gun, he let the man go.

Bramley then contacted the New Hanover County 911 dispatcher for a description of the suspect. The dispatcher replied that the caller, who wished to remain anonymous, "said [the suspect] was in a field in a black car" and that "someone said he might have thrown the gun." The man with the gun was described as wearing a light plaid shirt.

Police searched the area around the Mercedes and found a Sig Sauer P320 handgun. Bramley was convinced that the man he encountered was the suspect. Soon after that, the man — Christopher Allen McKiver — returned and asked what the police were doing to his car. Bramley then arrested McKiver.

The Mercedes was registered to McKiver's brother in Elizabethtown. No fingerprint or DNA evidence was found on the gun, which had been reported as stolen from an address in Elizabethtown.

At trial, McKiver was convicted of possession of a firearm by a felon. Superior Court Judge Benjamin Alford refused to suppress the information from the anonymous 911 caller. Alford sentenced McKiver to six months in

prison and three years of supervised probation.

On appeal, McKiver renewed his argument that using the 911 caller's statements violated his rights under the Sixth Amendment of the U.S. Constitution, which provides that "in all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him."

In the 2004 case of *Crawford v. Washington*, the U.S. Supreme Court held that the Confrontation Clause forbids "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to

testify, and the defendant had had a prior opportunity for cross-examination." Two years later, in *Davis v. Washington*, it provided additional guidance:

Statements are nontestimonial when made in the

course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

A unanimous three-judge panel of the N.C. Court of Appeals held that the 911 caller's statements were testimonial in nature and thus inadmissible since McKiver had no opportunity to cross-examine the caller.

In the court's opinion, Judge Linda Stephens wrote the record suggested there was no emergency and that "the anonymous caller's statements during her initial 911 call — that she did not know whether the man with the gun was pointing his weapon at or even arguing with anyone; that she was inside and had moved away from the window to a position of relative safety; and that she did not feel the need to remain on the line with authorities until help could arrive — make clear that she was not facing any bona fide physical threat."

Given that there was little to tie McKiver to the gun besides the anonymous call, the Appeals Court held that admitting it was not a harmless error and that McKiver was entitled to a new trial.

The case is *State v. McKiver* (15-1070). CJ



COMMENTARY

The Government As Travel Agent

The arrival of summer means vacation time for many, and airports stay busy. While we think of domestic airline service as being deregulated, the reality is that government decisions still play a role in where airlines fly.

The most obvious case of government involvement comes in awarding international routes. While the U.S. Department of Transportation has done a good job of pushing "Open Skies" agreements that allow airlines to fly to foreign destinations as often as they want, some countries do not allow such deals. In those cases, the DOT allocates the limited number of flights that are available. These route award proceedings often are contested hotly; an airline can make a lot of money by being one of the few allowed to serve a popular destination.

Flight rights to Cuba, China, and Tokyo's Haneda Airport are among the routes that the DOT will hand out this year. There's a North Carolina link here, as American Airlines wants to fly from Charlotte to Havana daily, but the current U.S. agreement with Cuba allows only 20 flights a day, and various airlines have requested more than 60 daily flights to Havana.

If you're flying to Washington or New York City, government policy influences your travel options. Four key airports — Newark, John F. Kennedy, LaGuardia, and Reagan National — are heavily congested. The DOT has responded by imposing capacity limits, assigning airlines a fixed number of takeoff and landing slots. In addition, LaGuardia and Reagan National both allow only nonstop flights within a limited geographic radius to encourage usage at alternative airports.

Federal law also limits capacity at Dallas Love Field, the airport used by Southwest Airlines. Local politicians wanted Dallas-Fort Worth International Airport to be the airport for the entire Dallas-Fort Worth metroplex and set limits on Love Field's usage before Southwest was formed. In 2014, the restrictions on Love Field changed from geographic — non-

stop flights could serve only some nearby states — to a hard cap on the number of gates at Love Field. The change has allowed Southwest to offer one flight a day from Love to both Charlotte and Raleigh, but also limits future growth severely.

On the other side of the spectrum are routes that are subsidized by either the federal or local governments. When airlines were deregulated in the late 1970s, the feds established a subsidy program for places that lost air service as a

result of deregulation — the Essential Air Service program. It guarantees local airports could maintain access to cities they served in 1979, when deregulation came into effect. Currently, more than 100 cities use the EAS program at a total cost of about \$250 million a year. None of these cities is in North Carolina, though Beckley, W.Va.'s twice-daily EAS flights

are to Charlotte.

The federal government also has a grant program for smaller cities to attract new flights. Unlike EAS, the Small Community Air Service Development Program requires communities to put up some of their own money to get a grant. Among the communities that applied for a SCASDP grant are Greenville, which wants to lure Delta Air Lines with flights to Atlanta, and Concord, which is seeking federal money to help market its existing flights to Florida on Allegiant Air.

Local airports often also offer financial incentives for new routes, sometimes in conjunction with an SCASDP bid. Raleigh-Durham International Airport is paying Delta up to \$2.2 million, primarily with public money, to help cover first-year losses on the airline's RDU-Paris flight.

Enjoy your vacation this summer. But as you're flying to wherever you're going — New York City, Dallas, Paris, or someplace else — keep in mind that government policy still can influence how you get there. CJ

Michael Lowrey is a contributor to Carolina Journal.



MICHAEL LOWREY

CSX Continues Search for Site to Locate Rail Hub

Continued from Page 1

1,120 workers in North Carolina. In June 2014 CSX quietly began working on the project with NCDOT's Rail Division. The Rail Division paid \$377,413.71 to a consulting firm to evaluate CSX's proposal.

Named the Carolina Connector, or CCX, the potential project is still alive. "CSX continues to evaluate a number of sites inside and outside of North Carolina for the proposed CCX intermodal terminal," spokeswoman Kristin Seay told *CJ* on June 16.

One alternative site near, but outside the corporate limits of, the town of Four Oaks has been offered by Four Oaks Mayor Linwood Parker. But it too has generated considerable opposition from landowners who would be affected by the project.

\$100 million subsidy

CSX says the Selma project would cost \$272 million, and the company's share would be \$150 million. It is counting on taxpayers to make up the difference of \$122 million.

The transfer station would allow CSX to provide additional shipping options for its customers. More containers would travel using a combination of rail and truck instead of just by truck only.

CSX claims on its website that the project "will bring tangible economic benefits to eastern Johnston County and the state of North Carolina by expanding market reach and reducing logistics costs for existing business and the State's ports."

But like any for-profit company, CSX has a goal of increasing profits. The company competes with Norfolk Southern Railway and trucking companies. In 2015, the company had net earnings of \$2 billion from \$11.8 billion in revenue.

On Jan. 21, *CJ* reported that CSX's new Ohio terminal did not receive a subsidy from that state and that CSX did not have to use eminent domain to acquire the Ohio property.

On April 6, NCDOT released a list of transportation projects it had evaluated through the Strategic Transportation Investments program. The list contained 69 proposed rail projects. The CCX project, including the \$100 million cost to NCDOT, scored the highest in all three categories — state-wide mobility, regional impact, and transportation division needs.

Selma still featured

While CSX says it is looking at sites elsewhere, its website continues to feature the Jan. 14 press release announcing the project as planned for the Selma site.

"CSX is planning to develop a new intermodal rail terminal in east-



Randy Johnson's home (seen in background) and land are adjacent to the existing CSX tracks and in the center of a site proposed by Four Oaks Mayor Linwood Parker for a rail hub. (*CJ* photo by Don Carrington)

ern Johnston County, North Carolina, called the Carolina Connector, or CCX. CSX is committed to investing \$150 million — the majority of funds needed to complete the project. The development of the terminal is contingent upon securing an additional \$100 million through the state of North Carolina's Strategic Transportation Investments program," the release stated.

The release added that CSX officials already had begun "reaching out to landowners in Johnston County to secure options on property east of Selma and close to Interstate 95 where the proposed facility would be constructed."

On Feb. 10, *CJ* reported that CSX had sent letters to some Johnston County landowners canceling purchase agreements that both parties had signed.

Four Oaks site

In addition to the governor, the Johnston County Board of Commissioners dropped its support for the Selma site after hearing from a substantial number of citizens opposed to the project. Commissioners later announced they supported a CSX project and would help locate another site within the county.

After noting the initial opposition to the Selma location, on Jan. 22 Four Oaks Mayor Parker told reporters he was working with Johnston County to secure another site. Parker proposed a location a mile southwest of Four Oaks and 16 miles southwest of the Selma site.

When details of Parker's selected site became public, a group of citizens organized to oppose the project. They

set up a Facebook page named "Four Oaks Does Not Want CSX Here."

Randy Johnson owns a home and farm that sit in the middle of the area outlined by Parker as the Four Oaks site. Johnson and family members own approximately 200 acres that would be taken for the project.

"I live outside the city limits," he told *CJ*. "The most disturbing thing about this is that Mayor Parker has offered my land to CSX without getting my approval. He has offered the whole community to CSX, and they don't want it either."

Another outspoken opponent is local pharmacist Jack Austin. His

home would not be taken for the project, but he told *CJ* that the increase in train traffic would be disruptive to the town. "I understand that the 12 daily trains that pass through Four Oaks would increase to 40," he said. "That is a big problem because we have three crossings that will be blocked off a lot more than they are now."

"But the main thing that bothers me is the pollution," said Austin. "I have seen several reports of significant health risks to those that are living within five miles of such a facility. The particulate matter produced from the burning of diesel fuel is hazardous to anyone's health." *CJ*

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'Revenuers' Concern North Carolina's Craft Distillers

Continued from Page 1

first hatched in 2011 when Robbie, who had been traveling extensively for work, read an article about how Charlotte's microbreweries were growing, and about how craft distilleries were about to become popular in the area as well.

He latched onto the idea and decided to build a still of his own.

"I don't think he really thought of it as a business, but he just came home and started doing it illegally in the kitchen in 2011," said Caroline, a former accountant who now handles Muddy River's business affairs. "I was like, 'You're crazy! Don't blow anything up. I have no idea how this works.' And he wanted to scale up. He thought it was fun, ... and he really fell in love with the process."

Robbie experimented with recipes for a few months before the couple decided to find a different location for his still. They secured federal and state permits and began to distill rum legally on the weekends — in a 500-square-foot space inside an old mill they'd discovered on Craigslist.

It was during that time that they began to realize the severity of North Carolina's alcohol regulations.

"Every drop of liquor that comes into North Carolina goes into a warehouse in Raleigh, and then the ABC stores order by pallet from there," Caroline said. "So we have to ship them all of our [alcohol] and then go talk to the ABC stores as well and get them to order it."

Though securing sales through individual ABC stores is difficult, a recently passed law that enables distilleries to sell one bottle per person per year to onsite customers has made it



Caroline Delaney, a former accountant, helps a customer at Muddy River Distillery, which she and her husband run in Belmont. (CJ photo by Kari Travis)

easier for Muddy River to make money on premises, Caroline said.

Prior to the law's passage, customers would come to the distillery expecting to taste some rum and buy a few bottles, Caroline said, and were surprised to find they couldn't do either.

"They were like, 'But I can buy wine at the winery!' They came in assuming that they could buy, most of the time," Caroline said. She said they usually gave two tours every other weekend and then would have to send their potential customers to an ABC store.

Since the law's passage, the couple has sold roughly \$30,000 worth of rum from their distillery's bottle shop and has increased the number of facility tours they offer, as well. But while that spike in sales is an improvement,

state liquor taxes alone have seen \$10,000 cut from that revenue stream, Caroline said.

And taxes aren't the only things that continue to burden small distilleries like Muddy River. ABC rules also require that Caroline and Robbie give a full tour of the distillery to customers prior to all tastings or alcohol sales.

Before allowing customers to taste their rums, the Delaneys must give a full tour of their distillery — a legal requirement the couple says deters some customers from staying long enough to buy.

"I'd like to be able to sell more bottles," Caroline said. "As the law is written, we have to legally give a tour before we can sell liquor. So when people come in, and they just want to try something new, they may not want to go through a whole tour. ... If we're here during the week, we'd be glad to have them come in and buy a bottle. But we can't stop what we're doing and give a tour for 30 minutes."

"It's not like a brewery where you can hang out," Robbie added. "It's an educational experience, and then you leave. So it's pretty lame." He said customers can't hang out and enjoy a cocktail, so, for many, it's not worth coming.

Additionally, Caroline and Robbie are not allowed to sell bottles of liquor on their website, a rule that keeps them from distributing their product more widely.

"I think one of the things we didn't realize was the impediment just to get product to market," said Rep. Jason Saine, R-Lincoln, following a May 17 Muddy River Distillery tour hosted

for state legislators by Americans for Prosperity's North Carolina chapter. "We've got a homegrown industry here. Folks who are taking their own personal capital, their own sweat equity, and really just putting a lot back into it."

He said legislators need to find a way to streamline the process for distillers. "The regulations are in place. There is plenty of regulatory effort here," he said. "Our job is also to protect the general public, but I don't think that's the issue here. The real issue is antiquated regulations that are keeping good business people from getting their product to market. And I think that's something we could look at very quickly and try to facilitate that in a quick fashion."

While the 2016 session of the General Assembly was unlikely to feature major ABC rule changes at press time, it's an area lawmakers say they are open to revisiting during the 2017 session.

"We thought the odds of getting the last bill through were really slim, but it flew through," said House Majority Leader Mike Hager, R-Rutherford, of last year's bill that allowed distilleries to begin selling limited quantities of product on premises. "So I think the

odds [of further deregulation] are pretty good. The last bill we ran ... was the first sales of liquor outside an ABC store since Prohibition, so that kind of kicked the door open. But we want to open it up a little bit more, now."

Hager also said the legislature likely would re-evaluate state liquor taxes as part of any future ABC regulation rollback.

In the meantime, while Caroline and Robbie have joked about moving their distillery to South Carolina, they plan to continue making rum in North Carolina — even if it means they keep earning only \$9.79 on a bottle that sells for \$23.49.

"We're loyal because we're Carolina rum and our customers are awesome," Robbie said. "There is no incentive to stay here," he added. But he said they hope the law will change.

"We should never be encouraging business to leave our state and go to the next state over. There is a duty to the public, particularly in this industry. We are talking about alcohol, and folks have serious concerns. We need to understand that and take that into account," Saine said. "But we need to understand that we've got to move toward a freer market and allow people to do what they need to do." CJ

Rules say they must give a full tour of their distillery before giving samples

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College Transparency Measure Reflects Efforts in Many States

BY KARI TRAVIS
Associate Editor

RALEIGH

A bill that would increase access to information about the costs, benefits, and consequences of college degrees available in North Carolina passed the General Assembly in late June and, at press time, was awaiting Gov. Pat McCrory's signature.

Senate Bill 536, "Students Know Before You Go and Central Residency," instructs the North Carolina State Education Assistance Authority to build a website providing college applicants information about the potential costs and benefits of receiving a degree from any community college, public university, or private institution in the state.

"Next to buying a house, a person's college education is probably the second most expensive thing that they will purchase," Sen. Chad Barefoot, R-Wake, the bill's primary sponsor, said at a June 14 meeting of the House Education Committee. "We have ... great institutions, both public and private, in North Carolina, and we just want to make sure that our students and their parents — while they're applying for financial aid — have good information on the degree programs that they are seeking from those institutions."

The data to be outlined for each institution will include graduation and transfer rates, percentage of students receiving financial aid, average and median amount of loan debt upon graduation, and percentage of graduates employed within six months of graduation.

The site also will include data about the state's employment needs and salary ranges. All information will

be obtained from the U.S. Department of Labor and the Bureau of Labor Statistics.

In addition to college transparency rules, the bill includes provisions that would, starting in the coming academic year, streamline the state's process for confirming a student's in-state public tuition and scholarship qualifications. Under current law, individual University of North Carolina institutions are responsible for determining if an applicant qualifies as a state resident and is eligible for special financial assistance.

The transparency measure would take effect in April 2017. North Carolina would join a handful of other states that over the last few years have passed legislation intended to provide college applicants more information about costs, risks, and potential returns on investment.

Those states include California, Connecticut, Maryland, and Michigan. While Maryland and Michigan lawmakers focused their regulations on for-profit schools only, California and

Connecticut have passed transparency laws that — like S.B. 536 — apply to public and private institutions.

Similarly, Minnesota's state legislature in 2015 introduced legislation that would require private, for-profit institutions to provide potential students with graduation and job placement rates, as well as information about credit transferability. That bill is in a state Senate committee.

While S.B. 536 passed the House without much debate, Rep. William Richardson, D-Cumberland, raised objections based on what he said was a precedent for legislative interference in a process that should be handled by the the

state's public and private university systems.

"I fear we're going down a slippery slope here," Richardson said. "We've formed the board of [N.C.] community colleges. We've formed the [University of North Carolina] Board of Governors. We've formed these institutions so that the legislature would not act as a super university, or a super community college."

Richardson added that he thought the legislature should stay out of it and "let the people who know what they're doing do it."

Richardson's statement reflects a record of somewhat tense relations between the General Assembly and the UNC Board of Governors over the past year resulting from a complicated dynamic that placed both bodies at odds over various issues.

The controversy began in October 2015, when former BOG chairman John Fennebresque attempted to sidestep a law passed by the General Assembly requiring more transparency during UNC's presidential search process. Board members called for Fennebresque's resignation, and he stepped down shortly thereafter.

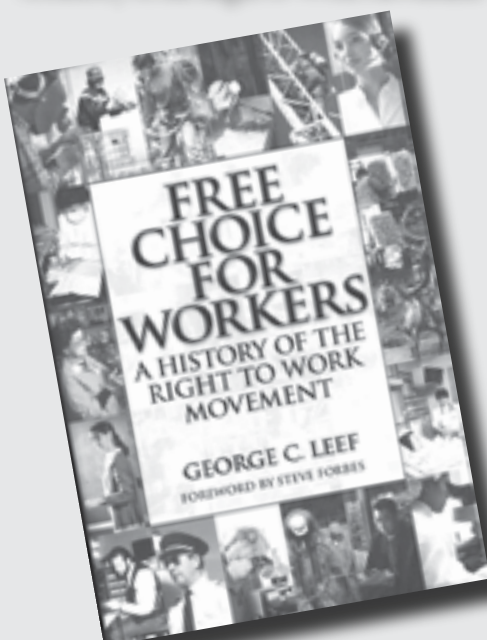
More conflict ensued later in the year when the board — under the leadership of current chairman Lou Bissette — held a closed-session vote to give 12 campus chancellors pay hikes. Board members told lawmakers that the votes were sensitive personnel issues, but that claim was challenged by Senate leader Phil Berger, R-Rockingham, and House Speaker Tim Moore, R-Cleveland, who issued a legal request to review minutes, agendas, and audio recordings from the Oct. 30 meeting. Berger and Moore also called Bissette before the Governmental Operations commission to provide further explanation of the board's actions.

The board since has made efforts to increase transparency, and UNC President Margaret Spellings has stated publicly that improving relations with the legislature is one of her top priorities. CJ



Sen. Chad Barefoot, R-Wake, speaking on behalf of Senate Bill 536 at a June 14 meeting of the House Education Committee. (CJ photo by Kari Travis)

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



By George C. Leef
Director of Research at the John W. Pope Center for Higher Education Policy

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Meadows Bill Would Relieve Students of Obamacare Mandate

BY KARI TRAVIS
Associate Editor

RALEIGH

Western Carolina University senior Tyann Stubbs juggles two on-campus jobs to help pay her own way through school. And she loves her work. But while the studio art major's jobs at WCU's career center and art museum offer great experience, she is limited to working just 25 hours per week during the school year — a rule the university put in place to avoid triggering the Affordable Care Act's employer mandate, says Chancellor David Belcher.

Under current ACA rules, all full-time college students who work 30 or more hours a week for their school must be offered the opportunity to sign onto their employer's ACA-mandated insurance plan. It's a regulation that can incur high costs to both universities and students, and deters schools like WCU from hiring student workers to work in full-time capacities, Belcher said.

Many students at WCU and other schools within the University of North Carolina System face similar challenges, says Belcher, who last year alongside U.S. Rep. Mark Meadows, R-11th District, helped introduce legislation in the U.S. House of Representatives that



U.S. Rep. Mark Meadows, R-11th, and Western Carolina University Chancellor David Belcher want to exempt students like WCU senior Tyann Stubbs from Obamacare work-hour restrictions. (Photo by Mark Haskett)

would exempt student workers from the employer mandate.

"WCU simply doesn't have the funding to cover the cost of health insurance for students," Belcher told *Carolina Journal*, noting that in 2014 the university calculated a starting cost of \$302,515 to insure 75 approved full-time workers of the school's total 1,500

student employees.

"Some people have suggested that universities might need to raise the cost of attendance to cover the cost of insurance," Belcher continued. "At WCU, this would be in direct opposition to our commitment to keeping the cost of attendance as low as possible."

Belcher also pointed to proposals that suggest WCU and other universities reduce their number of student employees, calling such efforts "counterproductive to efforts to keep students on track to graduate in four years."

WCU's 25-hour weekly limit is less than ideal for Stubbs, who averages 15-18 credit hours a semester and depends on her paychecks to cover living expenses and curb any costs not covered by her student financial aid package.

"Like most students and most people, I have bills," Stubbs said. "I'm the first person in my family to go to college, so I am putting myself through. So it was kind of crucial for me to get jobs on campus."

While Stubbs says she feels lucky to have good jobs and financial aid to help make ends meet, her limited earning potential is a very real problem.

"I use my financial aid so that I can save up my money that I earn working so that when I get out of school I can have my bases covered," Stubbs said. "But, you know, it's tight. We're not above eating ramen two or three nights a week."

"We know that employment on campus, as opposed to employment elsewhere, increases the likelihood that students stay enrolled, make good grades, and graduate on time," Belcher said.

Meadows' House Resolution 210, "The Student Worker Exemption Act of 2015," passed the Ways and Means Committee on June 16 and will next be considered on the House floor. The bill would amend the Internal Revenue

Code to ensure that full-time college students who are also employed by their schools to work 30 or more hours a week would not be classified under the ACA as "full-time employees."

Such a change is about common sense, Meadows said, calling the ACA's employer mandate a burden on both students and universities.

"College students typically secure health coverage through their family's plan or through government-regulated student health plans offered by institutions of higher education," according to a statement Meadows made when the bill passed the committee. "Nonetheless, under the Employer Mandate, colleges and universities must supply duplicative health insurance under their employee health plans to student workers."

The UNC system is a model for this redundancy in coverage under the ACA, as students at any of the 16 universities already are required to have health insurance — whether they are covered through their parents' policies or decide to purchase coverage at a student rate through UNC's plan, Belcher said.

If a student worker reaches full-time status under the employer mandate and decides to enroll in WCU's mandated employer insurance plan, the cost to the university would be \$122.78 per student per month, Belcher said. The student would be responsible for covering \$93.16 of that cost.

Neither students nor universities should be saddled with that extra financial burden, he said, pointing to the ACA's unintended impact on student workers as the catalyst for his work to help Meadows develop H.R. 210.

Passing such legislation would help students who have the ability to reconcile work and academic schedules the opportunity to work more hours, Stubbs said, pointing to her experiences at WCU's career center as evidence that many undergraduates would work more hours — if they could without incurring prohibitive insurance obligations.

"We get calls all the time with students saying, 'Well, I have a 4.0 GPA, I can juggle [more hours].' But we have to say, 'Sorry, you can only work so many.'"

Congressional support for the legislation has been promising, said Meadows spokesman Ben Williamson, and the bill is likely to go before the House soon, though no vote has been scheduled.

The bill's 33 sponsors include North Carolina U.S. Reps. Renee Ellmers, R-2nd District, Walter Jones, R-3rd District, and Robert Pittenger, R-9th District. No Senate sponsors have been enlisted, Williamson said.

"There's almost always some level of pushback on everything, but we feel very positive about the bill's prospects," Williamson said. "Passing the Ways and Means Committee is a great sign." *CJ*

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Opinion

College Dropouts Cost N.C. Taxpayers \$446 Million Per Year

Students who leave college with no degree but an accumulation of debt face obvious hardship, but what about the taxpayer money wasted on students with no degrees?

The results for North Carolina are staggering. Of the 155,982 students who enrolled in one of its 16 public universities last year, 52,184 will not graduate. To Harry Stille, president of the Higher Education Research and Policy Center, this trend indicates potential fraud — committed by public universities that knowingly admit unprepared students.

Stille estimates that in 2014, \$446 million in state money was wasted on students who did not complete their degrees. Accounting for the total educational cost — which includes tuition and fees paid by students and their families — the amount was \$672 million.

Stille has detailed these results in a new report on the cost of nongraduating students. His formula uses the six-year graduation rate, combined with figures for state-allocated dollars per student and tuition dollars per student, to estimate how much money is lost when students drop out. To help account for intrastate transfers, Stille added 5 percent to the graduation rate of each institution.

Among North Carolina institutions, UNC-Charlotte is the biggest offender, with an average 7,593 students

dropping out each year. UNC-Charlotte generates taxpayer waste of \$65 million and a total waste of \$97 million per year, based on Stille's calculations. More than 40 percent of students do not graduate at eight individual UNC schools, generating a taxpayer waste of more than \$213 million.

Among the 17 states included in the Southern Regional Educational Board, only 41.2 percent of universities have more graduates than nongraduates. North Carolina ranks among the highest for total taxpayer waste, but is fourth for lowest noncompletion rate. This is due to North Carolina's high allocation of tax dollars per student. Usually a big investment in students by the state would be celebrated, but when it leads to rampant waste, intent does not equal results.

To understand the issue on the largest scale possible, Stille's report provides data for all 529 public institutions in the United States. Combined, the taxpayer waste totals nearly \$12 billion nationwide.

As if the levels of state taxpayer waste were not staggering enough, the federal student loan program produces an additional burden. The Congressional Budget Office estimates

Issues in Higher Education



a threefold solution to the dilemma to the UNC Board of Governors: Improve academic preparation, inform students about their options, and provide incentives for institutional improvement and cost containment.

Kelly's recommendation to improve consumer knowledge is vital. Students are often unaware of the true cost of college, the potential wage earnings of their major, and their likelihood of success at a given school.

According to a report from the National Center for Public Policy and Higher Education, "Even those students who have done everything they were told to do to prepare for college find, often after they arrive, that their new institution has deemed them unprepared."

Fortunately, North Carolina has taken steps to improve academic preparation. Innovations in remedial education aim to deliver fundamental skills in math and reading to students

U.S. taxpayers will bear an additional \$170 billion in debt over the next decade resulting from unpaid student loans.

Andrew Kelly, the UNC system's new top policy adviser, recently presented

U.S. taxpayers will bear an additional \$170 billion in debt over the next decade resulting from unpaid student loans.

U.S. taxpayers will bear an additional \$170 billion in debt over the next decade resulting from unpaid student loans.

in high school, rather than in college. Additional programs such as the North Carolina Guaranteed Admission Program also may prevent waste caused by underprepared students.

But Stille thinks these are not enough. He recommends enrolling no students who come from the bottom 50 percent of their high school graduating class ranks, or who score below 910 on the SAT or 19 on the ACT.

Stille's formula demonstrates that policymakers and the public should be motivated to jumpstart this transformation. In the endeavor to push for universal access to higher education — where a bachelor's degree is imagined as a springboard for upward mobility — universities have conned students, their families, and taxpayers into spending billions of dollars, only to learn a large share of students were not prepared for rigorous college curricula.

While legislators may not be entirely aware of the completion crisis in state institutions, Stille argues that universities are.

"Student completion success as seen through admissions data is simple to conduct," writes Stille, "but hardly any institutions do it because they do not want to see the potential negative results."

State lawmakers must create more pressure for schools to improve completion rates. As elected officials entrusted with taxpayers' money, they must question why so many schools admit underprepared students. *CJ*

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



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COMMENTARY

School Choice Is Social Justice

Earlier this year, I had the opportunity to interact with undergraduate and doctoral students at the UNC-Chapel Hill School of Education. My charge was to address the intersection of education policy and advocacy. The discussion inevitably led to the subject of school choice.

I explained how and why Republicans created private-school scholarship programs for low-income and special-needs students, removed some of the regulatory shackles on public charter schools, and provided greater flexibility for home school families. I argued that the rapid growth in all three suggested that Republicans responded to a pent-up demand for choice, which their political opponents had ignored for a very long time.

But the growth of these choice programs worried one student. Shortly after my talk, I received an email that outlined some of her concerns. The student, who confessed that she “leaned liberal,” wrote:

If all parents were involved in their kids’ educations, school choice seems like a great option. But, many parents aren’t involved and can’t afford to drive their kids to school if their school of choice doesn’t offer transportation. Personally, I want choice of where I send my kids, but I’m also educated and informed.

Set aside, for the moment, the insinuation that families offered educational options are not “educated or informed” or that only those who are “educated and informed” should be able to choose the school that best meets the needs of their children. She raised two legitimate concerns. First, what happens when schools of choice are unable to offer the same level of services as district schools? Second, how do we ensure that parents have the information needed to make an informed choice?

Some have argued that schools that do not participate in the federal school lunch program or lack a formal transportation system discourage low-income families from seeking admission to a school of choice. Lawmakers have proposed legislation requiring North Carolina charter schools to provide these services. I haven’t found any compelling evidence,

however, that the absence of particular services is a deterrent.

In fact, charter schools that do not operate buses offer reimbursements for transportation services, encourage ride-sharing, or look for others ways to ensure that children get to school. Indeed, by choosing a school for their child, parents are joining a community that often works to solve problems through voluntary cooperation.

Moreover, the school choice community cares deeply about the school selection process, not just legislative and legal victories. There is universal agreement that all families must be supplied with information that is readily accessible and easy to understand. Some school choice organizations and advocacy groups, as well as government agencies, have set up multilingual websites, toll-free hotlines, and community meetings to assist parents as they make the best choice for their children.

Academic research confirms that parents, regardless of their economic circumstances, are willing and able to compare differences in student performance, class size, and student services in the school choice marketplace. In their 2008 *Quarterly Journal of Economics* study, “Information, School Choice, and Academic Achievement: Evidence from Two Experiments,” Justine Hastings and Jeffrey Weinstein found that low-income parents were much more likely to choose higher-performing schools when given basic information about the school. More recent studies have found that low-income parents tend to transfer out of low-performing schools when labeled as such, but the benefits of those choices are dependent on the availability of superior options.

By opposing school choice in the name of social justice, many “educated and informed” liberals stand in the way of allowing low-income parents to improve the education of their children. Doing so denies those families the economic opportunities and social mobility that they so desperately seek. Surely there is no justice in that. CJ

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



TERRY STOOPS

COMMENTARY

Ban the College Degree Box

Court decisions can have unintended consequences just as statutes or regulations can. The Supreme Court’s 1971 decision in *Griggs v. Duke Power* has had a huge impact on higher education, giving the “college for everyone” movement a great but unanticipated boost.

The problem is that the lack of a college degree now operates against people just as the lack of a high school diploma did in *Griggs*. People are shut out of many jobs not because they lack ability but just because they lack educational credentials.

In *Griggs*, Duke Power had a policy restricting workers who hadn’t graduated from high school to the most menial jobs, such as janitorial work.

Unanimously, the court held that employers could not insist that job applicants have such educational credentials unless they could demonstrate that those requirements had a reasonable relationship to the work they performed.

Oddly, there have been no challenges like *Griggs* to the requirements imposed by many employers that applicants for such mundane jobs as sales representative, rental car agent, and production supervisor have college degrees.

Quite a few people see that this “credential inflation” has created a serious problem.

One of them is law professor and longtime critic of America’s college mania Glenn Harlan Reynolds. In his June 6 *USA Today* column, he advocated “banning the college box.” That is, preventing employers from asking job applicants if they have a college degree, just as regulations in some cases ban them from asking applicants if they have a criminal record.

Reynolds writes, “College isn’t so much a source of mobility as the lack of college is a barrier to moving up, a barrier that disproportionately affects the poor. If you want equality, the best thing to do is to ban employers from asking students where they went to school and, perhaps, even if they went to

college at all.”

That argument might sound compelling, but we should resist it. Although I would like to see the credential mania broken so that young Americans don’t have to spend years of their lives and lots of money to get college degrees merely so they can have a chance at nonmenial jobs, another governmental ban isn’t the way to go about it.

For one thing, it’s overkill to tell employers that, under threat of legal penalty, they never may inquire about postsecondary education or refuse to consider applicants who don’t have what they regard as necessary educational attributes. Screening based on education can be perfectly rational. An investment firm, for example, has good reason to limit applications for analysts to those who have majored in finance and earned their degrees.

Instead of instituting a new prohibition in the labor market, the right policy is to open the market up, allowing employers to find the best means for screening job applicants. Congress should amend the Civil Rights Act to state that it is not “employment discrimination” for a firm to rely upon any kind of testing, whether or not it has a “disparate impact” on any group.

In the 2009 case *Ricci v. DeStefano*, the Supreme Court backed away from *Griggs* somewhat, ruling that the New Haven Fire Department should not have discarded a fair test for promotion just because the results weren’t racially balanced. Justice Anthony Kennedy wrote, “Fear of litigation alone cannot justify an employer’s reliance on race to the detriment of individuals who passed the examinations and qualified for promotions.”

Congress should take away that fear of litigation completely. Doing so would help the large number of Americans who are shut out of jobs because they lack college credentials. CJ

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



GEORGE LEEF

Willie Jones An Important North Carolina Anti-Federalist

In history books, Anti-Federalists often are depicted as losers during the ratification debates. But in many ways, they were victorious. For instance, they assured that a Bill of Rights was added to the U.S. Constitution, and their concerns prompted a vigorous political debate and constitutional commentary that Americans still reference. One of the leading founders and proponents for a Bill of Rights was North Carolina planter Willie (pronounced Wiley) Jones. The Anti-Federalist Jones influenced many of his contemporaries' political views and demands for a declaration of rights.

A Virginia native, Jones and his family moved to present-day Northampton County, N.C., in the early 1750s. The son of a large landholder, Willie was tutored at home and traveled to England for his formal education. Willie married Mary Montfort, the daughter of Col. Joseph Montfort, on June 27, 1776. The couple

had 13 children, of whom only five survived childhood (three girls and two boys), and only the three girls married. Jones died in 1801.

Jones' political career is worth examining. While North Carolina was a royal colony, Jones had served in the House of Commons. Becoming disenchanted with the Royal Governors and the British Crown, Jones eventually became an ardent revolutionary. Royal Gov. Josiah Martin remarked that Jones was one of the loudest voices encouraging secession from Britain and the establishment of an independent state.

During the Revolutionary War, Jones served in various political and military roles. He was a delegate of Halifax County at the Provincial Convention of 1774. He served in the 1775 and 1776 Provincial Congresses as a delegate of Halifax County. He was the president of the 1776 Provincial Council. From 1777-80, he served in the General Assembly House. He then represented North Carolina at the Continental Congress of 1780. In 1782, 1784, and 1788, Jones served in

the North Carolina Senate. During the war, Jones also fought the British; he became a lieutenant colonel under the command of Nathanael Greene and led 300 men in the pursuit of Lord Charles Cornwallis. In 1787, Jones was

elected as a delegate to the Constitutional Convention in Philadelphia (a meeting to solve the problems deemed inherent in the Articles of Confederation), but Jones declined, claiming to be too busy.

Once a new constitution was submitted to the states for ratification, Jones vigorously opposed its adoption. In North Carolina, two prominent Federalists (supporters of the Constitution) were James Iredell and William Davie. Jones opposed ratification for several reasons: He feared a standing army, a U.S. Supreme Court that could overrule state court decisions, and a federal government that regulated the economy to benefit a few commercial interests. To Jones, the Constitution could be a dangerous instrument of centralization. To prevent it from becoming so, he wanted the document to enumerate specific, individual

rights. Until such a list was included, Jones encouraged his colleagues not to ratify the Constitution.

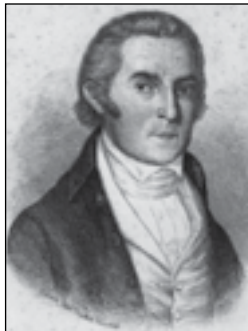
In great part because of Jones' influence, North Carolina was the only state to have two ratification conventions; the state initially voted neither to ratify nor reject the Constitution. North Carolina finally ratified the Constitution in 1789. And because of Jones and other Anti-Federalists, the Bill of Rights eventually was drafted.

After North Carolina ratified the Constitution, Jones never served in political office again, though he continued being a public servant. Thanks in great part to Jones' effort on a planning committee, the city of Raleigh was established in 1792. For his significant role in the establishment of the capital, Jones has been called the "real founder of Raleigh." Jones also served as a trustee for the University of North Carolina in the 1790s. For decades Jones had wanted (in true Jeffersonian spirit) a university that offered North Carolinians a means of enlightenment. CJ

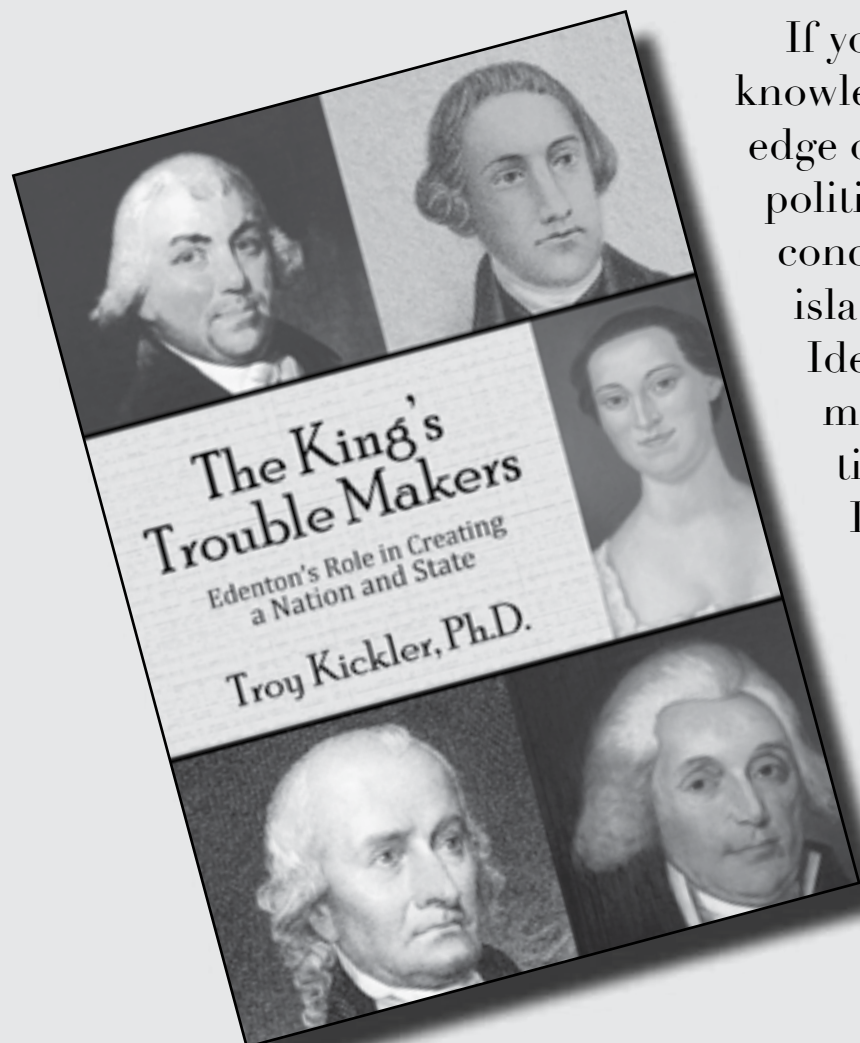
Troy Kickler is director of the North Carolina History Project (northcarolinahistory.org).



**TROY
KICKLER**



BOOKS BY JOHN LOCKE FOUNDATION AUTHORS



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

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

Go to northcarolinahistory.org for more information.

Cowen: Focus on Barriers to Opportunity to Address ‘Inequality’

BY CJ STAFF

RALEIGH

Much political debate in recent years has focused on income inequality in the United States and what, if anything, the federal government ought to do about it. Tyler Cowen, professor of economics at George Mason University and director of the Mercatus Center, has studied inequality. While in North Carolina to deliver Duke University’s Hayek Lecture, Cowen discussed income inequality with Mitch Kokai for Carolina Journal Radio. (Head to <http://www.carolinajournal.com/radio/> to find recent CJ Radio episodes.)

Kokai: We know that this has been a big issue, especially among Democratic politicians, in recent years — saying that that is a huge problem in the United States. When you, as an economist, look at this issue, is this as big a deal as people are making it out to be?

Cowen: I would reframe the problem a little. I see the issue as lower opportunity at the bottom. The problem isn’t the gap between the top and the bottom. If Bill Gates or Steve Jobs earns a lot of money selling a product at a global scale, that’s a good thing, not a bad thing. But opportunity in this country, in some ways, has dried up for a lot of people. The single biggest thing we could do to fix this would be to improve our systems of education, especially at the K-12 level.

Kokai: So the idea of focusing on income inequality — not the right way to look?

Cowen: I would focus on barriers to opportunity, which for many people have gone up. So we shouldn’t deny the problem, but again, the gains of the well-off are not causing the lack of opportunity for the less well-off. So I think “inequality” really is the wrong word to be framing this with.

Kokai: When you hear the politicians, whether it’s those on the Democratic side or Republican side, and talking about what we ought to do about the economy, are any of them on the right track, from your perspective? Or do they all have things that they could do to improve their programs?

Cowen: None of them are on the right track. That’s pretty obvious at this point. There have been a lot of ideas in the debates this year, a lot of passion, but not that much careful analysis really, on any side.

Kokai: So if we were trying to look at the biggest economic problems that the United States faces right now, where should we be looking? What

“If Bill Gates or Steve Jobs earns a lot of money selling a product at a global scale, that’s a good thing, not a bad thing. ... [T]he gains of the well-off are not causing the lack of opportunity for the less well-off. So I think ‘inequality’ really is the wrong word to be framing this with.”

*Tyler Cowen
Professor of Economics
George Mason University
and
Director of the Mercatus Center*



kinds of things should we be looking at doing?

Cowen: Well, with respect to the lack of opportunity, another big problem we have is that it’s much more costly to move into a dynamic city, to try to get a better job. So in the 1950s, the 1960s, if you wanted to move to Manhattan, Los Angeles, places of that kind, as a way of getting ahead, you were able to afford cheap living quarters. But they don’t build more land, and we’ve put a lot of regulations and restrictions on building.

So this is now much harder. I think this is a major problem. It’s a silent problem. On any given day, there’s no crisis that you see. But it does mean that it is harder for people to find pathways to opportunity. So I think we ought to do more to deregulate building, especially in our most dynamic cities. And I would start with San Francisco.

Kokai: And this is certainly a situation [in which] the people who are already there see some benefits from having the tight restrictions. But as you mentioned, if you’re not already there, this creates a major barrier, doesn’t it?

Cowen: Especially if they own real estate. They don’t want to deregulate the market. But we more and more have an economy where the people who got there first entrench themselves and protect their privilege by passing laws and regulations. And again, this is one of the biggest problems for the American economy today. And it does contribute to what people are describing as this inequality problem.

Kokai: Is anyone who has any position of power looking at this situation in the right way? Or are we just chasing things that we shouldn’t be chasing when we’re talking about im-

proving our economy?

Cowen: The political dialogue on remedying America’s opportunity problems ... people are pretty aware of education. But very often, they’re not willing to do that much about it. One nice thing about North Carolina is simply what percentage of the students are, in some way, outside of the state system — be it home schooling, private schools, schools which are not certified or accredited in the typical way. So this makes the system here more competitive.

But I think in at least half of America we need more school choice. We need more experiments with charter schools, more home schooling where that’s appropriate or possible. And a lot of it’s a question of political courage. I think at this point a lot of people know.

But when you look at building restrictions, that has received a lot less attention. It’s much more invisible. And we need a much more open dialogue about that. And in some ways, this is maybe more likely to come from the Democrats than the Republicans.

Kokai: And why would that be?

Cowen: The people who suffer the most from this, very often, are either Democratic voters or probably they potentially would be Democratic voters if they were to vote: people who are new to this country, people who are lower-income, possibly ethnic minorities. They’re the biggest losers. But again, I don’t think there’s a lot of awareness of this problem compared to, say, debates over the minimum wage.

Kokai: So if Democrats were very interested in dealing with the issues that are the issues of their voters, we might actually see some action on these things? Some positive action on

these things?

Cowen: There’s some talk. There’s not much action. If you look at the people who are on President Obama’s Council of Economic Advisers, a lot of them are well aware of this problem. I don’t mean to speak for them, but I think they would agree with some version of what I’m saying.

But these regulations are state and local. And it’s quite entrenched. The role of the federal government to do something is not so great. One thing we could do is just to put more building regulation at the state level rather than the city level. And when that’s the case, there’s a lot of data that state regulators tend to allow more building because they’re less captured by the very local landowners. So that’s one thing we could start by doing. We’re not close to doing it, however.

Kokai: You talked about regulation on building. Another thing that we’ve often heard is about the number of regulations, or the amount of regulations, on people who want to start a business, the entrepreneurs. Is there a lot of work that needs to be done there as well?

Cowen: Occupational licensure is a big problem. Now, over 30 percent of the jobs in this country require some kind of legal license. And you may think this is necessary for, say, a doctor. But when you look at a barber, an interior decorator, these are just barriers to competition. They keep people out. They raise prices for consumers. There’s just no good reason to have them.

But again, at especially the state level, it’s hard to see a lot of change has happened because of inertia, and there are entrenched interests. And the people who are most aware of this tend to be talking and operating at the national or federal level, not at the state. *CJ*

COMMENTARY

Focus on Growth, Not Development

North Carolina should abandon economic development policy and completely refocus on economic growth. These are distinctly different goals that more often than not conflict with each other. Most policies meant to promote economic development create economic inefficiencies and therefore hinder economic growth.

For decades North Carolina has been pursuing “economic development policy.” Indeed, the N.C. Department of Commerce is completely dedicated to this concept. As is emphasized on the department website, “The N.C. Department of Commerce is the state’s leading economic-development agency, working with local, regional, national, and international companies.”

The department claims it accomplishes this by “giving companies the assistance and resources necessary to meet their unique business needs.” But government agencies, as non-participants in the market process, have no way of determining a company’s unique business needs.

The department has no market incentive — profit and loss — nor the necessary market knowledge to get these decisions right. In attempting to implement such policies, it is invoking what Nobel Laureate F.A. Hayek referred to as a “pretense of knowledge.”

Since the money used to implement these policies is not manna from heaven, the department must use the state’s taxing authority to transfer resources from the majority of North Carolina taxpayers to businesses that the agency determines are worthy of its largesse.

It necessarily entails an effort by the state to pick marketplace winners and losers by using tax breaks and direct subsidies to promote targeted businesses and industries. This, in fact, is what “crony capitalism” is all about.

On its website, the agency boasts about targeting specific industries for special consideration. They include tourism, film, sports development, telecommunications, biotechnologies, health care, and financial services. In reality, economic development is a disguised form of state central planning of the economy, and it should be abandoned.

Policy that focuses on economic growth rather than economic development starts from a differ-

ent premise than that taken by the Commerce Department and programs the state has supported over the years, like the One North Carolina Fund, Golden LEAF Foundation, and Job Development Investment Grants. All of these channel resources into government-determined uses and away from market allocation based on free choice.

The starting premise behind policies to promote economic growth is that private entrepreneurs, using their own money or

money from voluntary investors, know best how resources should be allocated. Policymakers should see to it that property rights are secure, entrepreneurs can use their property rights in any way they believe will be most productive, and tax and regulatory policies do not get in the way of this process.

Economic development policies divert resources from this process,

thereby moving resources to less efficient uses, hindering economic growth.

Over the past several years, North Carolina lawmakers have begun to craft policies with an eye toward enhancing economic growth. They have done this primarily by implementing pro-growth tax and regulatory reform and cutting taxes overall. And economic growth rates in North Carolina relative to the rest of the country attest to the success of this approach.

Unfortunately, policymakers have continued to pursue anti-growth and counterproductive economic development policies. During the 2015 legislative session, every proposal to implement new or to expand existing economic development programs became law.

This schizophrenic approach to economic policy is like trying to increase a boat’s speed by investing in a bigger and more powerful motor while simultaneously tossing a heavy anchor over the side. Sure, the boat may continue to move forward, and indeed it may increase its speed if the force of the new engine is greater than the drag of the anchor.

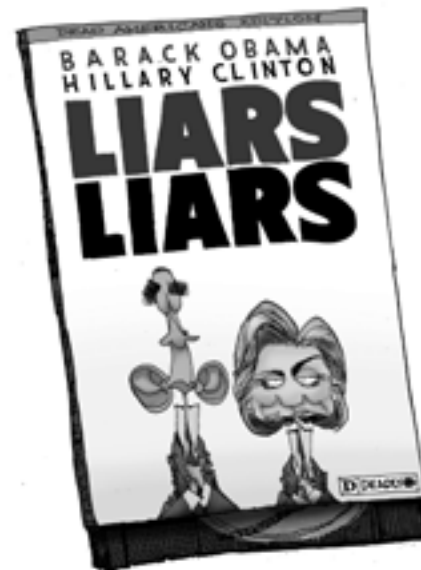
But clearly the new engine would work even better if the anchor were lifted completely. CJ

Roy Cordato is vice president for research and resident scholar at the John Locke Foundation.



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EDITORIAL

North Carolina Gives Conservatives Hope

To the extent that American conservatives are increasingly pessimistic about the future of their decades-old political movement, they should look at North Carolina and feel better.

Raleigh is a place where conservative leaders have rolled up their sleeves, converted abstract ideas into practical policies, and outmaneuvered a host of special-interest groups to enact an ambitious agenda.

The General Assembly’s latest contribution to that effort, a 2016-17 state budget plan, will continue to make North Carolina a national leader in conservative reform. It cuts taxes for virtually all households in the state, saves nearly a half-billion dollars more in the state’s rainy-day fund, and offsets new spending on high priorities such as teacher pay and law enforcement with cuts and economies elsewhere in the budget. It also advances core conservative ideas such as school choice, innovation, competition, and pay for performance.

Naturally, left-wing interest groups and editorial boards are highly critical of the new budget. They call it “extreme,” “radical,” even “crazy.” That’s great news. Their sentiments are a reliable contrary indicator. If they liked the new state budget, that would be a sign North Carolina leaders were abandoning the sound policies that have boosted the state’s fiscal soundness and economic recovery.

Conservatives don’t oppose all government. Particularly at the state and local levels, we recognize the value of core public services such as public safety, courts, infrastructure,

and education. But we don’t believe they all must be provided by government monopolies. More importantly, we don’t think government is a device for planning people’s lives, attempting to solve all their problems, or providing them with personal meaning. These are tasks best left to individuals, families, and other voluntary social institutions.

If you put North Carolina’s new 2016-17 state budget into the context of five previous budget plans enacted by conservative legislators (three of them bearing the signature of Gov. Pat McCrory), you can see a conservative vision being implemented into law.

For the vast majority of North Carolinians, state taxes will be significantly lower than they were in 2010. While it has grown in dollar terms, government spending will be significantly lower as a share of the state’s economy. More workers will have jobs. More entrepreneurs will have the freedom to start or expand their businesses without excessive regulations. More parents can choose where their children attend school. More patients will have more choices about where to get their health care, thanks to a regulatory change in the budget bill as well as upcoming Medicaid reforms.

Conservatives have disagreed with McCrory and legislative leaders on occasion. But perspective is critical.

Such leadership currently is lacking in Washington. If conservatives would find it, they must look to the states — starting with the one just south of Virginia and just east of Tennessee. CJ

EDITORIALS

Cash and Votes

Voluntary funding essential for liberty

For anyone who has watched politicians do their jobs up close and personal, it's hard not to conclude that most of them spend most of their political careers advancing what they perceive to be principled positions on public policy. They don't put their votes up for sale to the highest bid from potential donors.

Money flows from interested parties to politicians across the political spectrum. Labor unions and hardline environmentalists tend to contribute to liberals and Democrats. Business owners and hardline abortion foes tend to contribute to conservatives and Republicans.

In the vast majority of cases, however, politicians don't change their views to get cash. Incumbents express their general political philosophies in the form of votes. Candidates express them in the form of speeches or pledges. Private individuals and associations then choose the politicians whose views are closest to their own and try to elect or re-elect them.

To say that private, voluntary funding of campaigns is inherently and systematically corrupt is a setup. It is a ploy designed to pave the way for coercive limitations on political liberty — on the freedom of individuals to band together to say, print, or broadcast whatever they want, both during electoral campaigns and dur-

ing political debates on local, state, and national issues.

A recent study of state lawmakers confirms that most legislative outcomes are not related to the source of campaign contributions. In a paper published earlier this year by *Legislative Studies Quarterly*, political scientists Jeffrey Harden of the University of Colorado-Boulder and Justin Kirkland of the University of Houston looked at a "natural experiment" in New Jersey, where some lawmakers were allowed access to government financing for their campaigns while others were not, as well as cases in Maine and Arizona where larger-scale systems of government financing were implemented.

Harden and Kirkland found that "public financing exerts a negligible effect on legislative voting behavior." Legislators with publicly funded campaigns vote virtually the same way as legislators with privately funded ones. These findings appear to comport with previous studies on the same topic.

We should not disregard the risks of vote-buying or other forms of corruption. They do happen. But they are not the norm. Restrictions on freedoms of speech, press, petition, and association do tremendous damage to republican government and individual liberty. *CJ*

Limiting Debt

Even when it's cheap, it's costly

It's cheap to borrow right now. That doesn't mean you ought to load up with new debt, however, and this same wisdom applies to the public sector.

North Carolina traditionally has maintained comparatively low levels of indebtedness. According to the latest available statistics on total state and local debt, for the 2013 fiscal year, North Carolina ranks 44th in the country at \$5,233 per person.

The rankings don't include local bond issuances since 2013 or the cost of financing the \$2 billion Connect NC bond package approved by voters earlier this year. But North Carolina's ranking probably won't change much. Other jurisdictions have been approving significant bond issuances, as well. They've cited the same reason North Carolina officials have: historically low interest rates.

Assuming that the capital needs in question are real, it's not irrational

to borrow instead of pay as you go when rates are so low — particularly when the project being financed will produce significant economic returns when completed. Still, some fiscal conservatives argued that the Connect NC projects — many of them on university or community college campuses — didn't meet that test.

Moreover, Gov. Pat McCrory has called for another \$1 billion-plus bond package in 2017, this time for transportation.

We urge caution. The truth is that, due to strict fiscal discipline over the past six years, North Carolina has been paying down debts and building up savings. Even the passage of the Connect NC bond package will only slow the decline in state indebtedness as a share of state spending and the economy, rather than reversing it.

What's even better than a low debt payment? No debt payment. *CJ*

COMMENTARY

We Never Were
In Kansas

As the general election campaign begins in North Carolina, you can expect to hear a lot about Kansas.

Yes, I can read a map. Kansas and North Carolina aren't exactly neighbors. But when it comes to fiscal policy, critics of Gov. Pat McCrory and the General Assembly in Raleigh prefer to talk about what's happening out on the prairies of the Sunflower State rather than what's happening in the mountains, Piedmont, and coastal plain of the Tar Heel State.

Several years ago, Kansas and North Carolina began a series of tax reforms and reductions. Because both sets of policies were championed by many conservatives and savaged by many liberals, they came to be associated with each other. In reality, however, the two states made markedly different choices — and have ended up with markedly different results.

A couple of months ago, the Kansas legislature had to fill a large hole in its state budget by delaying a scheduled contribution to its state pension fund as well as cutting its school, university, and road budgets across the board. Here in North Carolina, the latest estimates (through May 31) show our state's General Fund budget running an operating surplus for the current fiscal year of \$1.2 billion. That reflects the difference between \$20.1 billion in revenue and \$18.9 billion in expenditures.

This hefty surplus for the first 11 months of the fiscal year, combined with leftover money from last year and healthy revenue projections for next year, should explain why state lawmakers were able to enact a state budget that raises teacher pay substantially, funds other necessary services, saves more money for a rainy day, and provides North Carolinians another round of tax relief.

How did Kansas and North Carolina end up in such different conditions? For one thing, Kansas punched a large hole in its income-tax base by excluding self-employment income. North Carolina briefly created a version of this exclusion in the immediate

aftermath of the Great Recession, but then wisely eliminated it.

In Kansas, lawmakers allowed themselves to be bamboozled by some out-of-state tax "experts" claiming that cutting income taxes would generate so much new investment, entrepreneurship, and population growth that the revenue loss to the state would be offset substantially. This can be true, of course — in the very long run, counted over decades. In the short run of state budgeting, however, policymakers are better off making far more conservative assumptions about revenue feedbacks.

North Carolina did precisely that. Our state policymakers didn't just reduce and reform taxes. They also controlled expenditures. Since the enactment of the 2013 tax changes, their authorized budgets never have pushed spending growth above the combined rates of inflation and population growth. Actual spending, in fact, often has come in below even these budgeted amounts. Look at the first 11 months of this year. Most of the operating surplus comes from lower-than-expected spending (\$1 billion), not higher-than-expected revenues (\$224 million).

North Carolina's economy has outperformed that of Kansas, to be sure, although the real difference here was one of strategy. It's better to set conservative goals and then be pleasantly surprised, rather than let rosy scenarios lead to unpleasant shocks.

Liberals in our state can (and will) say that North Carolina should have kept taxes higher to fund more government spending. Conservatives obviously disagree. But what liberals can't say now — even though they predicted it in 2013 — is that North Carolina's tax reforms have created a fiscal crisis. Our operating budget and savings reserve are both in good shape.

"I've a feeling we're not in Kansas anymore," Dorothy told Toto. When it comes to state fiscal policy, North Carolina never was. *CJ*



JOHN HOOD

John Hood is chairman of the John Locke Foundation.

MEDIA MANGLE

Trace Elements
Of Journalism

I stumbled upon *The Elements of Journalism* by Bill Kovach and Tom Rosenstiel recently. In the 2007 book, Kovach, a former *New York Times* reporter and former editor of *The Atlanta Constitution*, and Rosenstiel, head of the American Press Institute, seek to identify what they see as the essential principles and practices of journalism.

Their first, and, presumably, most important element states: "Journalism's first obligation is to the truth." Having just watched how the media handled the terrorist attack in Orlando, this is almost laughable.

An incident of obvious radical Islamic terrorism became, at the hands of mainstream journalism, merely an issue of homophobia and gun availability. Within a week, the worst modern mass shooting in this country had dropped out of the news almost completely.

This could not be accomplished had the media not enthusiastically followed cues and spin from the Obama administration. The administration refused to name "radical Islam" as the motive for the Orlando massacre, and the media, sadly, followed suit, repeating the absurd claim by Attorney General Loretta Lynch that the motive of the shooter, Omar Mateen, was simply unfathomable.

Obama and his spokespeople declared immediately that the issue was guns and gun availability. The mainstream media took that cue, too, and ran with it. The result was some of the most embarrassing, ignorant, and inaccurate journalism seen in some time. Reporters nationwide, local and national, showed their ignorance of "automatic weapons," "semiautomatic weapons," "AR-15s," "assault weapons," "clips," and "magazines."

The relish with which the media followed uncritically and enthusiastically the administration's cues conflicts starkly with two other important journalistic elements on Kovach and Rosenstiel's list: "Its practitioners must maintain an independence from those they cover," and "It must serve as an independent monitor of power."

The fawning media coverage of the anti-gun Democratic sit-in, in which Democrats tried to replicate a 1960s civil rights sit-in in support of *taking away* constitutional rights of citizens, ran directly counter to another Kovach-Rosenstiel element of journalism: "Its first loyalty is to citizens."

That media bias against "the people" revealed itself a week later, in the coverage of Great Britain's surprise vote to leave the European Union. Those on the winning side were widely characterized as uninformed, uneducated, xenophobic, racist, and worse.

It's clear that if there are any elements of journalism left, they are merely trace elements. CJ

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



JON
HAM

WHAT DIFFERENCE
AT THIS POINT
DOES IT MAKE?



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CORREL

Lessons From 1970s Gas Crisis

Two important events happened in my life 40 years ago. I met my future wife. And I was an unwilling participant of the decade's gas crisis.

The first event went well — my wife and I have been married for 36 years. While the second event — the gas crisis — wasn't fun at the time, it has provided some lessons for how public policy-makers respond to shortages in key commodities, like gasoline.

The gas crisis of the 1970s was prompted by two events: a war between Israel and surrounding Arab countries and the Iranian Revolution. During the Arab-Israeli War, the Saudis tightened oil spigots to protest the United States' supply of military equipment to Israel. Likewise, American support for the overthrown shah of Iran led to retaliation by the new Iranian government in the form of reduced oil sales.

The 1970s was also a time when U.S. oil production was declining. So the combination of reduced oil imports from the Middle East and lower domestic oil production meant the available supplies of oil — and its derivative, gasoline — fell substantially in the country.

At the highest levels in two presidential administrations (Ford and Carter) there was an intense debate about how to respond. One side wanted to limit the increase in gas prices and directly ration limited gas supplies to customers. The opposing side favored letting gas prices rise, arguing the increase would naturally reduce gas buying but also boost the incentive for more domestic production.

This was more than an academic debate as fights, shootings, and other disruptions broke out over access to gasoline.

The first policy response was the adoption of price and supply controls. Federal regulators limited the price increases of oil produced by domestic drillers and directly allocated gasoline supplies to different regions of the country. At the pump, this resulted in the now infamous odd-even license number gas buying system.

But this response didn't satisfy most people. The inability to purchase gas when you wanted frustrated drivers. Truck drivers complained politics was influencing how gas was being allocated. Do-

mestic oil producers said prices were still too low to motivate more drilling and more oil production.

Ultimately the second policy response won out. Price controls on oil and other energy sources were lifted and the regional allocations dismantled. Fortunately, this policy shift corresponded to the end of the oil embargoes from the Middle East, so supplies of oil also increased. Gas prices at the pump — adjusted for inflation — fell by 60 percent from 1980 to 2000.

However, domestic oil production still dropped until the mid-2000s, mostly because the oil fields reached by conventional means were drying up. But with world oil prices rising again in the 2000s as consumption by China and other developing countries surged, U.S. drillers knew they could make good profits if they could find more oil. They hit the jackpot when new access techniques, like horizontal drilling and hydraulic fracturing, allowed them to reach previously undiscovered pools of oil. In 2015, U.S. oil production was just a few barrels short of establishing an all-time output record.

So what are the lessons from this story? I think there are three. First, the "laws" of economics can't be overcome. One of these laws says that when something becomes scarcer — as when oil supplies drop — that product becomes more valuable, meaning its price rises.

The second lesson flows from the first. If public policy prevents the price of a scarcer product from rising, a shortage will occur. In economics, this means people want to purchase more units (like gallons of gasoline) of the product than are available. So public policy will have to couple a price cap with governmental rationing of the product, as happened in the 1970s.

Third, if public policy prevents the price of a scarcer product from rising, it reduces the incentive for producers to make more of the product and ultimately eliminate the shortage.

I think these are good lessons to remember. CJ

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MICHAEL
WALDEN

ISIS May Not Be Our Biggest Threat

Since 2001 Americans have been focused on the danger of radical Islamic terrorism. Samuel Huntington calls the current conflict part of a broader “clash of civilizations,” one in which al-Qaida, ISIS, and others wish to destroy our culture and ideas. But it is difficult to see this threat as existential, even if it does give us a severe and constant security headache. It is sometimes hard to believe it, but there are potentially greater challenges to Western values of liberty and democracy than an Islamic caliphate supported by a network of terrorists.



**ANDY
TAYLOR**

China seems the main candidate. As a result of massive state investment in infrastructure and exports buoyed by currency devaluation, subsidies, and frequent dumping, its economy has grown spectacularly over the past 20 years. In 1997 China’s gross domestic product was less than \$1 trillion; today it is nearly \$11 trillion. It certainly represents an economic threat. Even though the Cold

War is over, China also might challenge the U.S. militarily. It has more than 2 million troops and currently is shifting its military focus away from manpower and toward technology. Its defense budget is only about one-fourth of America’s, but it has had nuclear weapons since 1964, is rapidly revamping its navy and air force, and recently has acquired sophisticated cyberwarfare capabilities. Recent actions in East Asia and the Pacific suggest it is willing to “mix it up” with rivals to extend its regional influence. North Korea and Taiwan always have the potential to provide flashpoints in the Sino-American relationship.

We were led to believe that China would be a partner rather than a rival, particularly after the Soviet Union collapsed. The roughly 20-year rule of premiers Jiang Zemin and Hu Jintao that followed seemed to confirm the impression. But under Xi Jinping, America’s relationship with China has worsened. Trade disputes continue, and China’s dollar currency peg has not waylaid accusations of manipulation. In 2015 the U.S. trade deficit with the country hit a new record of \$366 billion. President Xi has centralized power greatly, if that sounded possible, by granting himself new civilian and military powers. The green shoots

of freedom of speech, association, and religion that emerged under his predecessors have been trampled, often in the name of the president’s admittedly admirable efforts to extinguish corruption. Potential opposition seems, like many of the Chinese people, to be mesmerized by Xi’s “cult of personality” and his glamorous wife, Peng Liyuan.

We can overestimate the Chinese challenge, however. The possibility was revealed to me during a recent visit to Shanghai. The downtown of this sprawling city gleams with the rewards of capitalism. It has towering skyscrapers and a first-class rail system. But the vast majority of its 20 million residents, especially those of its enormous and chaotic suburbs, seem unhappy. The city is frenetic — it has a distinctive “Western” vibe — but people seem stuck in place. Their working lives are unrewarding. They cannot own houses, so they live in shacks or Soviet-style high-rises, generally alone or with aging parents. Most public services are decrepit, particularly health care and education. Success seems dependent upon connections rather than talent. The lives of Shanghai residents are devoid of the civic institutions that give ours meaning like family, church, book

clubs, the local tavern. Their communist society, ironically, is atomistic. And, of course, they have little opportunity to speak out or organize politically to bring about change. There’s no Facebook or Google in China. The government’s “Great Firewall” largely blocks access to them and many other Western websites.

The city has a growing globalized class largely made up of educated, tech-savvy millennials. They seem content at the moment, but at some stage surely they will insist on political reform and multiparty democracy, freedom of speech, and a more concerted effort to end corruption and bring about meritocracy. We know from 1989 and the events in Tiananmen Square that this will be resisted. It is hard to know what will happen, but the process will set China back a great deal economically, and probably militarily.

Our presidential election this year is, according to Donald Trump, about making America great again. That might be true. But for now we are — at least in a comparative sense — if not great, certainly top of the pile. *CJ*

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

New Markets Tax Credit a Wrong Turn

Like a recovering addict on the verge of a major binge, some North Carolina lawmakers are on the brink of falling back into the black hole of tax credits. Rather than serving as a national model for tax and regulatory reform, North Carolina risks becoming, again, a national leader in crony capitalism.

At press time, Senate Bill 826 would have created a new state-level credit mirroring the federal New Markets Tax Credit. The state version would have given insurance companies and affiliates a credit to filter money to private entities making investments in distressed communities. Even if S.B. 826 is not enacted into law this year, the NMTC concept won’t go away any time soon.

Established in 2000, NMTC was designed to provide capital, spurring the revitalization of low-income and impoverished communities. To date, 14 states have adopted NMTC pro-



**BECKI
GRAY**

grams. Texas and Georgia have joined North Carolina in introducing state-level legislation.

Targeted incentives never live up to their promises, benefit a few at the expense of many, and are not a good investment of taxpayer money. When credits, grants, and carve-outs are piled on, success for “investors” comes almost entirely at the expense of taxpayers.

The proposed North Carolina New Markets Tax Credit would offer a 25 percent state tax credit for private investments over seven years, so long as 75 percent of the investment is made in the economically disadvantaged Tier 1 and Tier 2 counties. This would be on top of a convoluted federal program that already offers a 39 percent credit over seven years.

Before a project can qualify, supporters must provide government overseers a revenue impact assessment using “a nationally recognized third-party independent economic forecasting method that projects state and local tax revenue to be generated by the project.” You can bet the forecast will claim large increases in state revenues, economic outputs, and jobs, because the reports often use a flawed

economic analysis model called IMPLAN, which ignores opportunity costs and frequently conflates business costs with societal benefits.

A July 2014 U.S. Government Accountability Office report on the federal NMTC called the program complex, nontransparent, and unnecessarily duplicative. The GAO also found “the data on equity remaining in businesses after the credit period were unreliable,” and “data on NMTC project failure rates were unavailable.”

The NMTC isn’t the only subsidy available to the politically connected. At the federal level, about 16 additional tax credits, breaks, and carve-outs also are used in conjunction with NMTC. Duplication of tax credits is likely in North Carolina as well. Historic restoration credits, solar and renewable energy credits, Job Development Investment Grants, OneNC Fund grants, and local incentives are just a few of the other programs an investor might qualify for in addition to NMTC.

The only projects prohibited from the North Carolina credit are real-estate investments. Although the stated intent is to generate economic activity in Tier 1 and Tier 2 counties,

of the 95 federal NMTC projects currently underway in North Carolina, 60 are located in Charlotte, Durham, Greensboro, Raleigh, and Winston-Salem. There are hundreds of projects in North Carolina already identified as eligible for the NMTC. Most are clustered around the same areas.

Long-term evidence and academic research tell us that investment credits don’t work. They benefit a few at the risk and expense of all other taxpayers.

North Carolina lawmakers have fought hard to roll back special tax carve-outs and set the state on the right road to economic prosperity. To turn in the opposite direction, adopt a state New Markets Tax Credit, and set the state back is foolish, irresponsible, and ill-advised.

North Carolina has become a national model in tax reform, focusing on low rates and fair tax treatment rather than picking winners and losers through targeted incentives. We’ve come too far to return to bad habits, poor choices, and destructive decisions. *CJ*

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

N.C. Democratic Convention Delegates Plan Soft Drink Offensive (a *CJ* parody)

By R.C. COLA
Beverage Correspondent

RALEIGH

A contentious issue is bubbling up between North Carolina's 121 delegates to the Democratic National Convention and national party leaders, and it has nothing to do with Hillary Clinton or Bernie Sanders.

No, it's not politics at issue, but soft drinks.

North Carolina's national convention-goers are notorious for imbibing soft drinks, while their Northern counterparts tend more toward harder beverages.

But a recently passed tax on sugary drinks and even diet beverages in Philadelphia, the site of the convention, would add \$1.08 to any purchase of a six-pack of 12-ounce soft drinks.

The tax was scheduled to go into effect on Jan. 1, 2017, but the city fathers of the City of Brotherly Love decided that an influx of thousands of imbibing convention-goers to the Democratic gathering, July 25-28, was too good a revenue opportunity to pass up, so the effective date of the tax was moved to July 1.

N.C. Democratic Party Chairwoman Patsy Keever told *Carolina Journal* that this extra expense for delegates has become a huge issue.

"Look," said Keever, "we North Carolinians come from a state that in-



Interns at the N.C. Democratic Party headquarters on Hillsborough Street in Raleigh were seen recently carrying dozens of cases of soft drinks into the building. (*CJ* spooof photo)

vented Pepsi-Cola and Cheerwine. We take our soft drinks seriously, and we drink a lot of them. If the cost goes up more than a buck a six-pack, that will put a serious dent in our per diems."

Keever explained that Northern and Western delegates are known to shun soft drinks, preferring harder beverages. "And they mostly drink their liquor neat," said Keever, while North Carolinians are fond of mixing with Coke, Pepsi, and other sweet drinks.

After hearing of the new soft-

drink tax, several Democratic delegates said they'd rather stay home than have to spend nearly a week in Philadelphia without a bubbly sweet drink.

"I really wanted a Philly cheese steak from Geno's, but that wasn't enough to make up for not having my Pepsi to mix with Captain Morgan," said one delegate, who wished to remain anonymous, lest his pastor learn he imbibes.

To allay the fears of people like this delegate, however, a plan was hatched.

After an emergency meeting in late June, Keever announced that several hundred cases of soft drinks of various brands will be trucked to Philadelphia for the convenience of the Tar Heel delegates.

Democratic Party interns could be seen delivering the cases of drinks to Democratic Party headquarters on Hillsborough Street in Raleigh recently.

Some delegates were concerned with being scofflaws and smugglers, but one delegate eased their concerns by pointing out that Northerners had been doing this with North Carolina cigarettes for decades.

North Carolina delegate and U.S. Rep. Alma Adams, D-12th District, told *CJ* she was fully on board with smuggling soft drinks for delegates, saying it was "exciting" to break the law for a just cause. "This tax on drinks is a burden for all delegates," she said. "It's just and fitting that we should use civil disobedience to fight it."

Even so, many Democratic delegates, while upset that they might have had to pay the tax in Philadelphia, were impressed with the amount of revenue it is reported already to be raising in Philadelphia.

"Even though we don't want to have to pay this tax at our convention," said Adams, "we have to be big enough to bite the bullet and do something good for North Carolina, like passing a law like this for our state." *CJ*

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