

NCGA featured tax cuts and additional savings/2



CAROLINA JOURNAL

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

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STATEWIDE EDITION

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Climate alarmists target JLF, others

Critics accuse Senate Democrats of holding deceptive 'inquisition'

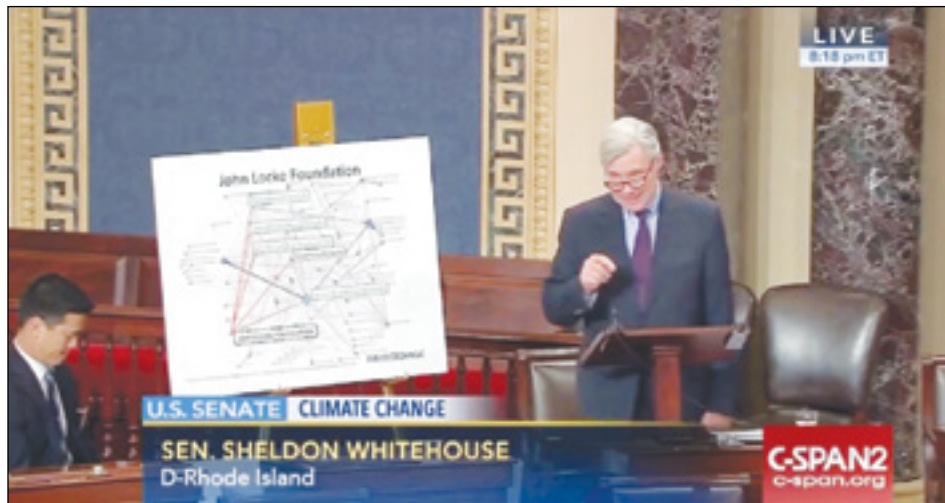
BY DAN WAY
Associate Editor

RALEIGH

Spokesmen for North Carolina Republican U.S. Sens. Thom Tillis and Richard Burr condemned Senate Democrats' attacks on the John Locke Foundation, *Carolina Journal*, and 47 other organizations that Sen. Sheldon Whitehouse, D-R.I., accused of concocting a "Web of Denial" through research and reporting that creates a skeptical view of climate change alarmism.

In an orchestrated campaign, 19 Democratic senators have been pushing a concurrent resolution hoping to compel the free-market organizations to participate in unspecified investigations that the senators contend would show the groups deceived the public about the perceived dangers of man-made climate change, a theory many scientists have challenged.

The measure condemning the 48



Sen. Sheldon Whitehouse, R-R.I., was among many U.S. senators who spent the day on July 12 criticizing organizations and corporations who haven't accepted the dire hypotheses of the global warming alarmist community. (Image via C-SPAN2)

organizations is considered to have little chance to pass in the Republican-led Senate. JLF is the only organization cited in the campaign that conducts public policy research focusing on a single state.

"Rather than use their time and energy to stifle the First Amendment rights of American citizens, Senate Democrats should start doing their jobs and work with Senate Republicans to fund our troops and military," said Tillis press secretary Daniel Keylin.

Senate Democrats used a filibuster to block the \$575 billion 2017 Defense appropriations bill that funds military operations, while spending two days in a series of floor speeches pushing the concurrent resolution.

"There are more than 100,000 active-duty soldiers in North Carolina. What do I tell them when I go home? In spite of all of these threats, politics is above the principle of funding our troops and protecting our nation?" Tillis

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Experts call activists' 'Web of Denial' an attack on free speech

BY DAN WAY
Associate Editor

RALEIGH

U.S. Senate Democrats are endangering constitutionally protected freedoms of speech and assembly in their attempts to coerce the John Locke Foundation and other free-market organizations to comply with climate change investigations, while threatening them with charges under statutes reserved for criminal racketeering, two constitutional experts say.

"All they're doing is doing what blowhards do, which is bloat. Every one of those guys, if that's what they're pursuing, is simply demonstrating their ignorance of the United States Constitution," said Raleigh media attorney Mark Prak, who often is involved in First Amendment cases.

He believes it is an assault on the freedom-of-assembly rights of JLF and the other 47 organizations targeted in a two-day series of speeches on the Sen-

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Feds: Energy tax credit recipients confidential

N.C. requires names of those getting credits be disclosed

BY DAN WAY
Associate Editor

RALEIGH

The federal government issued tax credits in North Carolina approaching a half-billion dollars for renewable energy investment in the five most recent years for which records are available, and high-income earners have benefited the most from the tax favors.

But the names of beneficiaries of that \$466,928,000 in carve-outs from



2009 to 2013, the last year for which federal data is available, are sealed.

"Disclosure provisions of the Internal Revenue Code, specifically Internal Revenue Code section 6103, make it against the law for me to discuss private taxpayer information," said Internal Revenue Service spokes-

man Luis Garcia.

That nondisclosure prevents cross-referencing recipients of the 30 percent federal solar tax credit to those that have collected North Carolina's more generous 35 percent renewable energy tax credit, which totaled \$101 million over the five-year federal credit period, and then more than tripled at the state level to \$363 million through 2015.

Together, those state and federal tax credits total at least \$830 million since 2009, without knowing the 2014 and 2015 federal tax credit amounts.

"The refusal of the federal government to disclose the renewable energy tax credit recipients is completely

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NCGA short session saw tax cuts, added savings

By DAN WAY
Associate Editor

RALEIGH

The Republican-led General Assembly in the 2016 short session maintained spending restraint, created and enlarged fiscal safeguards in case of an economic downturn, granted more income tax relief, moved toward merit pay raises for state employees, resolved coal ash clean-up disputes, and eliminated some health care regulations.

Although the \$22.34 billion 2016-17 General Fund spending plan exceeded the previous year's \$21.7 billion, that 2.8 percent increase was below the goal of a 2.9 percent threshold of the so-called Taxpayer Bill of Rights. The TABOR formula combines population growth and inflation.

"On the whole this budget does a wonderful job of rewarding teachers, state employees, within the limited resources we've had, provides stability in budgeting for the future, which is very important, and tax relief for working families in this state," state Rep. Nelson Dollar, R-Wake, the House chief budget writer, said when shepherding it through final House floor debate.

"You just really can't get a better combination than that," he said.

House Bill 1030, the 2016 Appropriations Act, makes adjustments in the two-year budget passed last year. Democrats argued during committee meetings and floor votes to ease spending restraints. Republicans were more intent on controlling spending and saving for a future recession to avoid imposing tax hikes in a bad economy.

The budget sets aside \$475 million in savings reserve "to raise that reserve to a record \$1.58 billion," Dollar said. That is equivalent to 7.5 percent of the General Fund budget, with a goal of reaching 8 percent next year, which the state requires local governments to do, Dollar said.

The budget also creates a \$10 million disaster relief fund.

"When I entered office in 2013, the state had only \$419 million in savings, which represents 3 percent of the overall budget," Gov. Pat McCrory said early in the budget process.

Under Republican direction, a shift in tax policy has put more emphasis on expanding the sales tax base and reducing the dependence on personal income tax. Senate Leader Phil Berger, R-Rockingham, said the budget provides "major tax relief for the middle class and small businesses" by increasing the standard deduction, that portion of income exempt from the personal income tax.

That deduction for married taxpayers filing jointly will increase by \$1,000 in 2016, and another \$1,000 in 2017, when it reaches \$17,500. Berger said that is a \$145 million tax cut in the 2016 tax year and \$205 million in 2017, with the cuts targeted at low- and middle-income taxpayers. Some 75,000 filers no longer would owe any state income taxes under this plan.

While the legislature traditionally has given across-the-board pay raises, Republican leaders have been pushing a policy of pay hikes linked to performance and experience. This budget moves in their preferred direction.

The budget channels \$80 million to state agencies to issue merit-based pay hikes to rank-and-file state employees. That is part of a \$550 million allocation for salary and benefits that includes an average 1.5 percent across-the-board raise and a bonus equivalent to another 0.5 percent hike.

The education portion of the budget also allocates \$10 million to be split among the highest-performing third-grade reading teachers, with up to a \$6,500 bonus possible. That is on top of an average 4.7 percent pay raise for all teachers.

Targeted pay raises based on experience and will be directed to teachers, assistant principals, principals, State Highway Patrol troopers, clerks, magistrates, and correctional officers.

Fiscal conservatives have been fighting for years to end the certificate-of-need process in the state. While a compre-

hensive bill failed to get passed, supporters were able to push through a more limited version that repeals CON requirements for new mental-health facilities in rural hospitals while also providing \$18 million for psychiatric beds and \$2 million for child crisis centers to help the mentally ill.

"This is generally dealing with individuals that are not stable, and couldn't be released, and are being held in emergency departments," said Sen. Ralph Hise, R-Mitchell, co-chairman of the Senate Appropriations subcommittee on Health and Human Services.

Hise said having psychiatric facilities regulated under the CON process hamstrung the state's ability to address North Carolina's mental health

crisis and is one example of why repeal of the entire regulatory scheme is needed. He hopes this targeted repeal keeps further CON reforms in motion.

A compromise coal ash bill sparked by a 2014 spill into the Dan River near Eden empowers the state Department of Environmental Quality to supervise Duke Energy's cleanup of its coal ash repositories and requires provision of safe drinking water to residents with wells around the sites.

One main feature of the measure allows Duke to use material exhumed from three of its coal ash repositories for recycling into Portland cement, bricks, cinder blocks, and other building materials, for which there is a ready market.

Another significant provision requires only the highest-risk sites to be excavated and the coal ash transported to special landfills for disposal. Lower-risk sites may be drained to avoid groundwater contamination and capped in place, a less expensive solution. By not requiring all sites to be excavated and landfilled, ratepayers could be spared as much as \$6 billion in pass-through costs, according to Duke.

House Bill 959 places a one-year moratorium on the state's Map Act. That act authorized the state Department of Transportation to file a proposed highway corridor map while prohibiting local governments from issuing building permits or allowing subdivisions within the future corridor.

The legislation also rescinds all existing maps and requires payment to property owners for litigation damages and costs. The N.C. Supreme Court unanimously declared the Map Act restrictions an eminent domain property taking that did not offer property owners just compensa-



Rep. Nelson Dollar, R-Wake, senior chairman of the House Appropriations Committee, says the 2016-17 General Fund budget adds stability to state finances while providing tax relief. (CJ file photo)

Legislators left some business unfinished in short session

Major regulatory reforms likely to be revived next year

BY BARRY SMITH
Associate Editor

RALEIGH

The 2016 short session of the General Assembly adjourned leaving plenty of items on the table, and some of them could be revived during the 2017 long session.

Those issues include regulatory reform, reducing occupational licensing requirements, comprehensive certificate-of-need reform, and tackling the issue of eminent domain abuse.

"There's no doubt that we have some very strong regulatory reform measures that are already precooked and waiting for next session," said Rep. Chris Millis, R-Pender, who helped lead the regulatory reform efforts in the House.

One of the regulatory reform measures that didn't make it into law was a proposal prohibiting an agency from adopting rules that impose an economic burden of \$100 million or more over a five-year period. Another would have required either the governor, a Council of State member, or a su-

permajority of a board or commission to sign off on any new rules projected to cost the economy between \$10 million and \$100 million over a five-year period. Those provisions were included in a Senate version of regulatory reform, but not in the House version.

The conference committee that was working out differences between the two bills was unable to reach an agreement before the session adjourned in early July.

The notion of requiring limits on the financial burden of regulations "definitely is something that I like," Millis said. "It was a heavy provision that was vetted on the Senate side," but he added it was too significant to be debated and passed quickly in the closing hours of the session.

Other regulatory reform provisions that are likely to be considered next year include a proposal to repeal the landfill ban on electronic equipment, such as computers and televisions, and a new law clarifying that an employee of a franchisee should not be considered a franchiser's employee.

Jon Sanders, director of regulatory studies at the John Locke Foundation, said he was disappointed at the lack of regulatory reform progress during the session.

"I understand that it was a short session, and it would be difficult for a lot of things to get through," Sanders

said. "Still it was disappointing that nothing was done regarding occupational licensing or regulatory reform."

Sanders said he expects to see those topics come up next year. "I have no idea if they will fare better," Sanders said. "But I do expect that they will get a more thorough hearing and discussion."

Lawmakers also did not make any sweeping changes in the state's certificate-of-need law, which requires many health care providers to get state government's permission before adding or upgrading services, such as hospital beds or magnetic resonance imaging machines. However, an exception was made in the budget bill, which exempted some new mental health beds from the CON law requirement and used money from the sale of the Dorothea Dix hospital property to underwrite the new mental health facilities.

A proposal to add an amendment to the N.C. Constitution protecting property owners from eminent domain abuse came closer to reality than it has since 2005, when the U.S. Supreme Court ruled that government could condemn private property and turn it over to a private owner for economic development.

The proposed amendment passed the House last year. During the short session, the Senate combined the eminent domain amendment with other

proposals — one lowering the cap on the income tax rate from 10 percent to 5.5 percent, one mandating contributions to the state's rainy day fund, and the other enshrining the right to hunt and fish in the state Constitution. (See related story on Page 7 of this issue.)

When the Senate returned the bill to the House late last month, leaders sent it to the House Rules Committee, where it died.

The Senate also didn't agree with a House-backed proposal to cancel the Interstate 77 toll lane project in Mecklenburg and Iredell counties. Opponents of the toll project say they'll try canceling the contract again next year.




In addition, lawmakers didn't tinker with the "bathroom" provisions in the state's controversial House Bill 2. They did, however, restore the right of workers to sue in state courts for discrimination.

Other proposals that died at the end of the session and could be revived include a bill addressing Common Core curriculum math standards in public high schools that would allow parents and students to choose between using the Common Core "integrated math" curriculum or taking the traditional sequence of Algebra I, Geometry, and Algebra II, and the so-called sanctuary cities legislation. *CJ*

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News, views, and research from groups across the state

<div style="text-align: center;">  <p>NEWS, VIEWS & RESEARCH FROM GROUPS ACROSS THE STATE</p> </div> <p>John Locke Foundation</p> <ul style="list-style-type: none"> ➤ Privatization's promise ➤ Shocker! Leading IRS political hack likely broke the law ➤ National Review columnist calls for real analysis ➤ Obama administration promoting business with Iran ➤ Walker Williams pines multiculturalism ➤ Holy moly! Home school enrollment up 11 percent, over 118,000 students ➤ Cannon: Supreme Court ruling pulls curtain back on licensing restrictions ➤ Leaf documents feds' misguided attack on FEDs 	<div style="text-align: center;">  <p>NEWS, VIEWS & RESEARCH FROM GROUPS ACROSS THE STATE</p> </div> <p>Source Archives: John Locke Foundation</p> <p>Privatization's promise</p> <p>Chris Edwards of the Cato Institute has released a new study spelling out the advantages of privatizing government services. A privatization revolution has swept the world since the 1980s. Following the United Kingdom's lead, governments in more than 100 ...</p> <p>Shocker! Leading IRS political hack likely broke the law</p> <p>Ellans Johnson of National Review Online highlights some bad news for former IRS lackey Lois Lerner. It is likely the largest unauthorized disclosure of tax-return information in history; the transfer of some 1.25 million pages of confidential tax returns to the ...</p> <p>National Review columnist calls for real analysis</p> <p>Kevin Williamson of National Review Online wants to put data and research to work in fighting society's largest public policy problems. One of the most interesting projects of recent years is the</p>	<div style="text-align: center;">  <p>NEWS, VIEWS & RESEARCH FROM GROUPS ACROSS THE STATE</p> </div> <p>Carolina Journal</p> <ul style="list-style-type: none"> ➤ House Passes bill effectively nullifying Map Act ➤ Achievement School District bill passes House, heads to governor ➤ While the getting is good ➤ Measure with four constitutional amendments heads to House ➤ Calling it both ways ➤ Farm bill extends tax subsidy for biofuels company ➤ Coal ash cleanup bill awaits vote in House ➤ Senate Expected To Give Budget Final Approval Today
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Hispanic group joins growing fight against overcriminalization

BY BARRY SMITH
Associate Editor

MORRISVILLE
A recent event hosted by the Libre Institute highlighted an issue that's gaining support across the ideological spectrum: reforms in the criminal-justice system that would clean up the legal code, not only reducing penalties for nonviolent offenses but also removing many crimes from the books.

"Each one of us is likely unwittingly committing up to three felonies a week," said Libre Institute spokeswoman Marilinda Garcia, who noted that there are tens of thousands of laws on the books. The Libre Institute, a non-profit organization that promotes economic freedom, limited government, property rights, and the rule of law to the Hispanic community and nation, sponsored the panel on "overcriminalization" on July 16 at Carmen's Cuban Café. About 50 people attended the bilingual event.

Overcriminalization is a topic that appears to be gaining steam among some politicians and policy organizations. Heritage Foundation researchers describe overcriminalization as "the trend to use the criminal law rather than the civil law to solve every problem, to punish every mistake, and to compel compliance with regulatory objectives. Criminal law should be used only if a person intentionally flouts the law or engages in conduct that is morally blameworthy or dangerous."

The effort to reduce the effects of overcriminalization includes sentencing reform, as displayed in North Carolina's "justice reinvestment" program, along with efforts to get some laws taken off the books.

A 2014 report by the Council



Pablo Carvajal, North Carolina field director for the Libre Institute speaks at a July 16 event in Morrisville. (CJ photo by Barry Smith)

of State Governments Justice Center showed that North Carolina's 2011 Justice Reinvestment Act resulted in a \$48 million savings for the 2013-14 fiscal year alone and contributed to the closure of 10 prisons.

However, criminal-justice reformers say more needs to be done to slow the increase in criminal offenses being enacted while taking outdated and unnecessary laws off the books.

"Over the years, especially at the state level, states have enacted more and more criminal offenses," said Rafael Mangual, project manager for legal policy at the Manhattan Institute for Policy Research in New York City. He added that they weren't necessarily high-level criminal offenses requiring long sentences. They're mostly misdemeanors and low-level felonies, he said.

Nevertheless, these crimes can have "collateral consequences" for

small business owners and family farmers who "don't necessarily have the resources available to them to navigate the kind of minefield that the criminal law has become," Mangual said.

"There's an old adage that ignorance of the law is no excuse," Mangual said. "That made more sense when the criminal law's size was a lot more manageable for the average person."

There are more than 300,000 criminal laws and rules at the federal level. "No one person could actually digest all that in a lifetime and keep all of that in mind," Mangual said.

Mangual said the Manhattan Institute examined the criminal codes in a number of states, including North Carolina. The Tar Heel State's "criminal code is 765 sections, which is very, very large," Mangual said. "That's 55 percent larger than Virginia's and 38 percent larger than South Carolina's."

He said North Carolina added a net 34 crimes a year between 2008 and 2013.

Mangual said the Manhattan Institute has some recommendations for state legislatures to consider to help reduce overcriminalization. One is to enact a "default criminal intent" standard for people to be charged with a crime. That standard could include proving an offender knowingly violated the law, was reckless, or was negligent, he said.

The Manhattan Institute also recommends that the state create a bipartisan legislative task force to focus on overcriminalization. The state also should create a commission to comb through the statutes and regulatory code to look for laws that are outdated.

"Kansas has the office of the repealer," an executive branch office that

recommends regulations, laws, and executive orders for repeal, he said. Its recommendations can be forwarded by the governor to the legislature, which then votes to repeal or retain the measures.

Meanwhile, in 2014, Minnesota had an "unsession" of the legislature that did nothing but repeal laws. Mangual added that while "1,175 crimes in 2014 were repealed, the sky hasn't fallen in Minnesota."

At the Libre Institute gathering, Garcia said that overcriminalization takes an especially heavy toll on people who are less well off financially because they are unable to afford adequate legal assistance or even come up with the money to post bail.

Angela Hight, criminal justice policy analyst at the Civitas Institute, echoed the suggestion that many laws need to be repealed.

"We need to take some old laws off the books," Hight said, adding that incarceration should be reserved primarily for violent offenses and for people who pose genuine threats to others.

"We should be incarcerating those people we're afraid of, not those we're mad at," said Debbie Walsh, a board member of a number of prison ministries. "Is anybody afraid of Martha Stewart? No, we're mad at her."

Ivette Diaz, the Libre Institute's head of family policy, said that while the organization fights for criminal-justice reforms, families need to take responsibility for their own actions.

Garcia said that the effort to reduce overcriminalization is part of the Libre Institute's mission. "Our motto is unlimited opportunity and limited government," Garcia said. "We want government limited because we want more opportunity." CJ

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Auditor candidate compares Clinton and Edwards cases

Ex-FBI agent Stuber says indictments rare close to an election

BY DAN WAY
Associate Editor

RALEIGH

Republican state auditor candidate and former FBI special agent Chuck Stuber says he was puzzled that the bureau's investigation into Democratic presidential nominee Hillary Clinton's private email server did not follow standard protocol on several fronts, though he said FBI Director James Comey may have performed a "stroke of genius" by publicly releasing details of the probe.

During a July 14 news conference at state Republican Party headquarters, Stuber, who has been involved in investigations that resulted in prosecutions against some of the most powerful politicians in North Carolina, said he was not surprised that Clinton was not charged. He even predicted that outcome based on his work on the 2008 case of former North Carolina U.S. senator and one-time Democratic presidential candidate John Edwards.

One of the "big concerns" the Department of Justice had in the FBI investigation of Edwards was that the allegations about the former senator's illegal use of campaign funds to hide his pregnant mistress came forward in August 2008. The presidential election was in November, and Justice Department officials didn't want to affect the outcome.

"They wanted us to refrain from going out and doing anything overtly as far as interviewing people or anything that could get in the news me-



Former FBI agent and candidate for state auditor Chuck Stuber said he was not surprised that Hillary Clinton was not indicted so close to a presidential election, but said FBI Director James Comey's decision to disclose all of the damaging information against the Democratic candidate in a press conference was "a stroke of genius." (CJ photo by Dan Way)

dia ... and even though John Edwards was no longer a presidential candidate, they were concerned it could impact the election," Stuber said.

"So I would have been very surprised if an indictment would have come forward against Hillary Clinton so close to the [2016] election," Stuber said.

He believes Comey "probably realized" Attorney General Loretta Lynch and President Obama, both Democrats, would not recommend indicting Clinton, "and [Comey] felt like

this was a way that he could at least make the public aware of the facts of the investigation, the fact that she had sent and received classified information on her emails, [and] the fact that some of her emails actually contained secret and top-secret information."

Stuber said he sees "a stroke of genius in what Director Comey did" by presenting facts to the American public to consider as they vote for president.

Stuber is concerned about the national security implications of Clinton keeping classified information on her personal computer server, and her denial that she sent or received classified information, which the investigation concluded was untruthful. He said that calls into question her trustworthiness to be president.

Clinton's popularity has slipped in opinion polls conducted since Comey outlined her numerous infractions, and Stuber said the possibility of another FBI investigation into Clinton's conduct could boost his candidacy against incumbent State Auditor Beth Wood.

A May poll by the Civitas Institute showing Wood with a lead among likely voters by a 35 percent to 30 percent margin, with 33 percent undecided, "didn't seem so bad to me. You've been a politician for five months, and you're within striking distance of a two-term incumbent, so we'll take that and keep working at it," Stuber said.

The FBI could investigate whether Clinton lied to Congress under oath about the secret email servers and other matters, or probe legal questions surrounding the Clinton Foundation's

receipt of millions of dollars from foreign governments while Clinton was dealing with them in her former role as secretary of state. That was "a way to enhance the financial resources in a way that might look a little suspicious," Stuber said.

And former President Bill Clinton's unusual meeting with Lynch on the tarmac of the Phoenix airport at the conclusion of the FBI investigation "does sound very suspicious," Stuber said.

All of that could affect down-ballot races to his favor, Stuber said.

"Without conducting my own investigation, without personally reviewing all the evidence gathered, without any oversight from my office of the evidence-gathering process, to comment in any way [about the Clinton FBI probe] would be conjecture at best and irresponsible at worse," Wood said.

"The Office of the State Auditor has worked hard to assure that every report, every finding, every conclusion, and even comments coming from this office are supported by hard evidence. No one, other than those FBI officials who worked the case, has enough knowledge and evidence to support any statements being made about the Clinton email situation," Wood said.

Stuber admitted he was "surprised that Director Comey would come out and make a statement himself" about the Clinton investigation, because as a rule the FBI doesn't advocate for or against the filing of criminal charges.

Typically, the agency remains mum and refers results of an investigation to the U.S. attorney's office, the Department of Justice, or a district attorney's office, "and that's what I expected would happen in the Hillary Clinton case," Stuber said.

Although he has no "inside information," Stuber said based on his FBI experience it is possible Comey rejected recommendations to charge Clinton. "I think it would probably be safe to say there might have been some disagreements between the people on the investigative team."

Stuber said he has no way of knowing whether having Donald Trump as the Republican presidential nominee would help or hurt him.

"All I can do is work as hard as I possibly can to hopefully win my race, get my message out to the voters," he said.

"Mr. Trump, like myself, is an outsider," Stuber said, and while there may be some disadvantages to running as an insurgent, "I really feel like we need new people in government" with fresh perspectives, energy, and ideas.

Stuber says his career as an FBI agent and chief investigator for the State Board of Elections gives him the ability to take the auditor's office to "a new level as far as finding fraud and wasteful spending." CJ

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By John Hood
Chairman of the
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Next treasurer may face tougher scrutiny on outside jobs

BY DAN WAY
Associate Editor

An "ill-advised decision" by state Treasurer Janet Cowell to take positions on two outside corporate boards led to a discussion on July 21 by the boards of trustees of the state's pension plans to enact secondary employment restrictions on future treasurers.

"It's in my opinion that there are no looming ethics breaches, but a difference of opinion, and an ill-advised decision" by Cowell, said Michael Mebane, a Teachers and State Employees Retirement System board member who also sits on the seven-member Investment Advisory Committee that helps steer state investment management. Cowell chairs both boards.

"I do feel that a strong stance and further action is required either through this board, ... the Investment Advisory Committee, or both," said Mebane. "I certainly feel that the sole fiduciary obligation of the treasurer supersedes any other activities that the treasurer, whoever that might be, should engage in."

No guidelines were imposed or recommended at the meeting. The retirement system's staff will conduct a study and make a recommendation or offer alternatives at the October meeting of the boards. Cowell's outside employment will not be affected, Mebane said.

Cowell is not the only Council of State member unencumbered from outside employment, a situation that has raised eyebrows resulting from the potential conflicts of interest that could arise.

"I was actually shocked to learn that the governor [or any other Council of State member] could have another job," said John Anerella, a TSERS board member who also is on the Investment Advisory Committee. Even those involved in setting policy for Council of State agencies can seek outside compensation. He said he knows of a state Insurance Commission member who sits on the board of a publicly traded insurance company.

Given the nature of the treasurer's and governor's offices, "and a matter of fact any of the Council of State offices, getting paid to be on an outside board or getting paid for another job is probably not the best use of their time," Anerella said.

Mark Stohlman, who was sworn in to the Local Governmental Employees Retirement System Board of Trust-

ees at the start of the meeting, said he was stunned to learn there is no regulation of outside employment for the treasurer and other Council of State positions.

Noting that he had to disclose any conflicts of interest as part of Thursday's formal agenda, and had a similar obligation while serving in municipal government, Stohlman said, "To me that overlying ethics responsibility that we all have is taught on day one."

Mebane said Cowell would be "happy to work with us in establishing guidelines that can be implemented by future treasurers." But she has raised a concern "there are other Council of State positions that should also be held to the same standard."

Cowell, who earns \$125,676 as state treasurer, blindsided system board members this year by joining the corporate boards of James River Group Holdings and ChannelAdvisor without consulting the board.

Mebane told *Carolina Journal* a state treasurer working for other entities "isn't [the] normal course of business," and the board learned of her secondary employment only through media accounts.

Cowell is believed to be making \$125,000 a year serving on the two outside boards and \$175,000 in restricted stock. She is not seeking a third term as treasurer.

"Treasurer Cowell will leave this to the boards to explore the issue and does not have any comment beyond her initial statement," Brad Young, her press secretary, said of the outside jobs study.

In the earlier statement, Cowell said: "I vetted any opportunities with the state Ethics Commission and voluntarily recused myself from any potential decision-making that involved these companies, neither of which are in the state pension funds."

Dan Blue III, a Democrat running for Cowell's seat, agreed with the thrust of the boards' conclusions, adding "the state treasurer should not serve on corporate boards or receive outside compensation as part of another job, and that the subject warrants further review for consistency across state government."

"I believe that when you have the responsibility for \$90 billion worth of public workers' pension money that 100 percent of your loyalty and energy

needs to be devoted to the participants of the plan," said Dale Folwell, the Republican nominee for state treasurer.

"In terms of this particular situation, I don't need a law to tell me right from wrong," Folwell said. "In all of my years of public service, I've never accepted that form of compensation, nor will I ever as the next state treasurer."

Folwell said Cowell's decision brought "overwhelming negative reaction" from around the state, and in national and international media.

"I think that when we're facing a \$30 billion bankrupt state health plan, when we're looking at a state pension plan that has not earned its required rate of return for the 15-year term just ended, that the problems are wider and deeper than just a discussion about sole fiduciary," Folwell said.

Noting that Cowell did not attend Thursday's meeting, when debate on placing secondary employment restraints on future treasurers took place, Folwell said, "I think her absence speaks for itself."

"I'm a Republican. She's a Democrat. I support her," Mebane told *CJ*. "I thought she's done a great job, but sometimes things override the good job that people are doing."

He praised Cowell for establishing transparency in the governance committee, and said the investment management division was "extraordinarily professional with excellent top-down management, ... great asset allocations," and an ability to respond to General Assembly mandates.

During the meeting, Mebane said retirement boards must be certain they represent members fully and effectively.

"Our members expect that we stand vigil guarding their interests every day as we serve them," Mebane said. "I have often said that this board's credibility on significant issues depends on how we deal with the small issues like supplemental employment." *CJ*



N.C. State Treasurer Janet Cowell



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Sponsors: Amendment lowering income tax cap will be back

By DAN WAY
Associate Editor

RALEIGH

State Sen. Jerry Tillman, R-Randolph, said the Senate will push again in the 2017 legislative session to pass a constitutional amendment lowering the cap on the personal income tax rate from 10 percent to 5.5 percent.

Imposing a 5.5 percent income tax ceiling was one of three constitutional amendments in House Bill 3. It passed the Senate by a 31-18 margin just before the end of the recently concluded short legislative session, but the House failed to act on it before adjournment. The current cap is 10 percent.

The tax cap in H.B. 3 was combined with a provision creating an Emergency Savings Reserve Fund along with two other constitutional amendments — one barring the public taking of private property for transfer to another private person for economic development, and a third enshrining the right to hunt and fish.

"I don't know where that opposition came from," Tillman said of the House's referral of H.B. 3 to the House Rules Committee, which often is a legislative graveyard.

"The House ran out of time, and maybe they ran out of nerve," Tillman said. "I don't think they were as gung-ho as we were to do these things, but I do think we'll get them eventually. Probably next year you'll see them again. The House will see them again."

While there were three constitutional amendments under consideration, Tillman said the other measures in H.B. 3 "pale in comparison" to capping the income tax rate. "Eminent domain will come back, I feel sure," and would be his second priority, followed by the hunting and fishing amend-

ment.

"Nothing to me is as important as saying this is the maximum amount we'll take from taxpayers, and let individuals and businesses know how to plan their budgets, family budgets, business budgets, and everything else," Tillman said.

The Office of State Treasurer opposed the income tax cap, saying that could have a negative impact on North Carolina's AAA bond rating, the highest possible, which would drive up state costs for borrowing money.

During floor debate in the Senate, Sen. Jay Chaudhuri, D-Wake, former general counsel for the state treasurer, said that agency's strategic plan has been "to apply conservative debt management practices to maintain the state's AAA bond rating," and has challenged both Democratic and Republican governors and legislatures on their fiscal policies.

"This proposed constitutional amendment impacts two areas for credit rating agency assessment," governance and financial strength, Chaud-

huri argued, and rating agencies could downgrade the state's bond ratings because the cap "hamstrings our state's ability to increase revenues."

"It makes no sense to me for a treasurer to say it will hurt the bond ratings," Tillman said. "I don't believe it will as long as we keep spending in check, and so far we've been keeping

spending in check since the Republicans have been in control," with the state running surpluses between \$200 million and \$400 million a year, he said.

Sen. Bill Rabon, R-Brunswick, criticized a letter from Treasurer Jane Cowell, pointing out that she mentioned five states negatively affected by lowered income tax caps, but

omitted Georgia, where the constitutional limit of 6 percent was passed in 2014, and has been successful.

Sen. Mike Lee, R-New Hanover, made the same point during floor debate that Georgia did not suffer a credit downgrade. Republicans countered Cowell by noting she cited states that did not control spending while cutting taxes, causing the income tax caps to backfire.

The Republicans' position has now been supported in an investigation by Ballotpedia, a nonpartisan political and electoral online encyclopedia.

"Rabon is correct," wrote Paul Brennan. "All three major ratings agencies — Standard and Poor's Rating Services, Moody's Investor Services, and Fitch Ratings — gave the bonds their highest ratings both before and after the introduction of the income tax cap" in 2016.

In 2015 Moody's described Georgia as having a "strong governance framework and financial management

practices [that] have helped to support the state's Aaa rating over many years," and issued Georgia its highest rating, AAA, Brennan wrote.

Standard and Poor's 2015 report said Georgia's amendment had "no impact on the projected state income tax revenues," Brennan wrote.

Fitch's 2015 report said Georgia's income tax ceiling "limits the state's revenue-raising ability, although not in a manner that threatens current financial flexibility," Brennan wrote.

North Carolina's Republican leadership has pushed to lower the income tax while expanding the sales tax base.

"In the long term, economically speaking, you will have a stronger economy with a shift from income-based tax to a consumption-based tax. That's well-established in the literature," said Brent Lane, director of the UNC Center for Competitive Economies.

"That's a different question than is it good for the state fiscally in terms of its budget, or certainly very different from is it good for our state credit rating, bond rating, to do it constitutionally," Lane said.

"I've been an advocate for a focus on a shift from income to consumption," Lane said. "The issue of capping things constitutionally is not one I've gotten into."

He said if he were to propose a constitutional amendment, "it would be to make our tax code less vulnerable to amendments. Maybe there's a similar attitude in there about setting the levels, but I am more concerned about the erosion of the simplicity of our tax code as special interests get more exemptions put back in there."

The state's goal should be "to make tax policy as irrelevant as possible in people's day-to-day and market decision-making," not by eliminating the income tax, but in applying it "with consistency and simplicity ... so that we aren't distorting market behavior, we're not intervening in market behavior," Lane said.

He believes all income ought to have the same tax rate, whether it's high or low, "and in general we should not discourage what we want to increase, like income, and that means you have to shift toward consumption in the varied forms it comes in." CJ



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"The House ran out of time, and maybe they ran out of nerve."

**Rep. Jerry Tillman
R-Randolph**

RNC platform urges Congress to embrace 'Right to Try'

'Right to Try' law passed in N.C. Senate and House

BY KARI TRAVIS AND BARRY SMITH
Associate Editors

RALEIGH

The platform adopted at the Republican National Convention in July includes a provision urging Congress to enact "Right to Try" legislation, which allows terminally ill patients the opportunity to use drugs or devices that have yet to gain federal Food and Drug Administration approval.

The RNC platform, adopted in Cleveland, commends the 31 states, including North Carolina, that already have adopted "Right to Try" legislation. The N.C. General Assembly passed the legislation, and Gov. Pat McCrory signed it into law in 2015.

"We're thrilled to see that this issue that has been a really successful effort at the state level, reaching the top level of political engagement at the national level as well," said Starlee Coleman, a spokeswoman for the Phoenix, Ariz.-based Goldwater Institute, which has pushed for the legislation at both the state and national levels. "That signals that you have struck a chord with the people as well."



Christina Sandefur, executive vice president of the Goldwater Institute, discussed the growth of "Right to Try" laws during a March event at the John Locke Foundation. (CJ file photo)

"When someone is going to die, the federal government shouldn't stand in the way between them and a drug that can save their life," Coleman continued.

Coleman said the Democratic National Convention wouldn't consider a Right to Try provision at its Philadelphia meeting. That's because the platform already had been negotiated between surrogates for the two top contenders, Hillary Clinton and Bernie Sanders, she said.

However, Coleman said, "Right to Try" is not a partisan issue. In North Carolina, the law passed unanimously in both the Senate and the House.

"We have been very grateful that many Democrats have supported

it," Coleman said. "Seven Democratic governors have signed 'Right to Try' laws."

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

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

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

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

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

During a March 28 presentation at the John Locke Foundation's Shaftesbury Society, Goldwater Institute executive vice president Christina Sandefur explained that support for "Right to Try" laws has grown through education and advocacy efforts from patients and organizations. Patients suffering from terminal illnesses should ask their doctors if they are eligible to take advantage of the new law, she said.

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

State Audit: Tiny Martin Community College muffed financial reports

BY DAN WAY
Associate Editor

RALEIGH

Martin Community College was at increased risk of fraud and its true financial picture was clouded because it lacked proper controls over financial reporting that resulted in a series of accounting errors, based on an audit of the 2014-15 school year by the Office of State Auditor.

According to the findings, issued by state Auditor Beth Wood, Martin Community College, located in Williamston and enrolling 410 students in Martin and Bertie counties, submitted financial statements and related notes that "contained significant misstatements that were identified and corrected as a result of our audit."

At least seven accounts either were overstated or understated by 100 percent or more, with one being off by 416 percent.

"Without these error corrections, users of the financial statements could be misinformed about the college's financial condition, including sufficiency and flexibility of resources, asset performance, and operating results,"

the audit said.

The problems included:

- Incorrect preparation, or no preparation at all, of numerous year-end entries necessary to classify cash, and net position, which is a combination of assets, liabilities, and deferred resources that flow in and out of the college.

- Incorrect preparation of entries to record decreases in accumulated depreciation for machinery and equipment disposals.

- Overstating operating revenue due to improper reporting of noncapital grants.

The college "did not ensure that controls over financial reporting were designed and implemented to prevent significant misstatements from occurring," according to the audit. Because of those ineffective controls, various accounts were overstated or understated. Those errors, along with the percentage of understatement or overstatement, were:

Overstated

- Noncurrent restricted cash, \$103,562, 21.28 percent.
- Restricted nonexpendable

"other," \$61,248, 100 percent.

- Restricted expendable "other," \$301,713, 416.22 percent.

- Unrestricted, \$31,603, 2.28 percent.

- Accumulated depreciation for machinery and equipment, \$51,181, 4.5 percent.

- Supplies and materials, \$55,776, 2.8 percent.

- Federal grants and contracts revenue, operating, \$29,292, 100 percent.

- State and local grants and contracts revenue, operating, \$92,587, 100 percent.

Understated

- Current restricted cash, \$103,562, 12.57 percent.

- Restricted nonexpendable, scholarships and fellowships, \$61,248, 100 percent.

- Restricted expendable, scholarships and fellowships, \$68,317, 90.27 percent.

- Restricted expendable, specific programs, \$265,000, 100 percent.

- Other nonoperating expenses, \$4,594, 100 percent.

- Noncapital grants, federal stu-

dent financial aid revenue, \$29,292, 2.35 percent.

- Noncapital grants revenue, \$92,587, 16.32 percent.

The college said the errors occurred or went undetected because of unprecedented employee turnover and inadequate staffing due to health-related absences, preventing the completion of year-end reports or day-to-day accounting operations, along with the absence of a year-end plan to complete and review financial statements.

The audit recommended fixing those problems. It made clear "the college's management is responsible" for accurate financial reports, and senior management should "regularly review" performance of one period against prior periods, and against planned or expected results.

The college said more staff training is needed, and a year-end plan will be developed and implemented.

The audit further found the college "did not ensure that controls over cash management were being implemented as designed," causing its cash balance to be overstated by 5.16 percent, or \$97,775. *CJ*

JLF: Bike lanes multimillion-dollar vanity project for elites

By CJ STAFF

RALEIGH

Census data show that new and converted bicycle lanes represent a “poor use” of limited state and local N.C. transportation dollars. That’s a key finding from a new John Locke Foundation Spotlight report.

“Leaders at the N.C. Department of Transportation and in North Carolina’s cities should rely on demonstrated widespread demand for bike infrastructure before spending tax dollars on these projects,” said report author Julie Tisdale, JLF city and county policy analyst. “And they should weigh that demand against the negative impact on the vast majority of employees, business owners, and consumers who choose to travel by car.”

Tisdale urges policymakers to rely on transportation data, not rhetoric. Raleigh’s bicycle plan serves as an example with statewide implications. Raleigh spent \$4.62 million on on-road bikeways in 2015. The city increased its bikeway infrastructure from 73 miles to 179 miles from 2009 to 2015.

“What becomes apparent very quickly when reading Raleigh’s plan is that low ridership numbers don’t really matter to planners,” Tisdale said. “They might like numbers to be higher, but the language in the plan offers a mix of aspiration, moral superiority, and social engineering.”

The Raleigh plan points to policies that “can establish a new social norm” while supporting “healthy choices and active transportation,” Tisdale notes. The same plan expresses a “desire to increase bicycle transportation” and asserts the “importance and benefit of a shift from drive-alone automobile trips to biking trips.”

“There’s even language that



New bike lanes installed this year on Hillsborough Street in Raleigh reduced automobile through lanes from four to two, with a turn lane at intersections, such as above at North Dawson Street. (CJ photo)

seems downright punitive toward motorists,” Tisdale adds. “After mentioning that bicyclists commonly report parked cars and other obstacles in bike lanes, the Raleigh plan says the city should ‘target offenders’ with education and enforcement strategies.”

Raleigh is not alone in emphasizing bikes. Tisdale’s report documents more than \$4 million in state DOT planning grants awarded since 2004 to help more than 160 communities “develop comprehensive bicycle and pedestrian plans.”

“Yet, despite all the money being spent on infrastructure and programs, bicycling remains a tiny, and largely insignificant, form of commuting,” Tisdale said. “Census Bureau data suggest about 1 percent of the commuters in America’s 50 largest cities use bicycles for their commutes. In North Carolina, the numbers are even smaller: 0.2 percent of Charlotte commuters, and 0.6 percent of those in Raleigh.”

The report distinguishes between biking for fun and biking for work, commerce, and family transportation. “When considering the investment of taxpayers’ money, it’s most important to consider transportation infrastructure that meets the needs of employers, employees, businesses, and customers. That is crucial for economic growth and increased employment.”

Cities with the largest numbers of bicycle commuters tend to be small or densely populated, with the most common commute time lasting 10 to 14 minutes, Tisdale reports.

“North Carolina cities don’t fit the profile for easy bicycle commuting,” she said. “Larger cities nationwide with the highest rates of bicycling to work have an average population density of 8,000 people per square mile. Raleigh has 3,000 people per square mile, while Charlotte has 2,700. Census data also show the lowest rates of cycling are in the South.”

Younger commuters and those with no children are more likely to commute by bicycle, Tisdale said. “As people get older, their preferences change, and fewer wish to bicycle for work or other business,” she said. “Some new, younger workers will enter the cycling group, but many slightly older workers will exit it at the same time.”

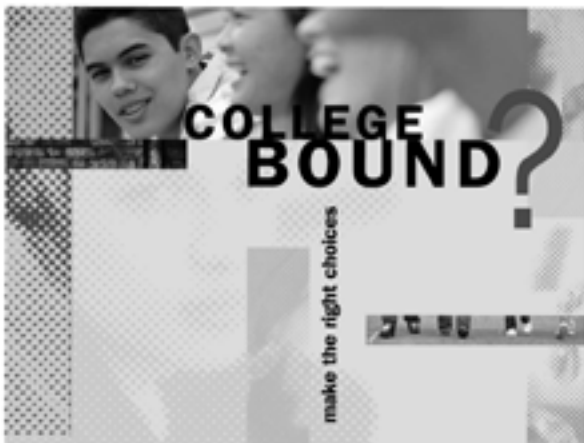
“This is especially true for new parents,” Tisdale added. “Most of them prefer to load their children in a climate-controlled car with space for all their stuff. In addition, those who move their families from the cities to the suburbs tend to live farther from the places where they work, shop, and do other business.”

The data should send a message to policymakers, Tisdale said. “Infrastructure, like bike lanes, either diverts money from other sorts of road projects or reduces the existing capacity for motorized transportation on roads by converting some portion of that paved space to lanes reserved for bicycle traffic,” she said. “This is evident in places such as Raleigh, which has converted four-lane roads into two-lane roads and dropped some central turn lanes, in order to add bike lanes to existing pavement.”

“The Census data show that converting roads in this way, or using limited transportation resources to build new bike lanes, is a poor use of those resources,” Tisdale said. “Government at all levels should meet the population’s infrastructure needs, not drive the population to change its behavior. Building lanes for which there is little demonstrated demand in order to promote a ‘green, healthy lifestyle’ puts government preferences above individual choices.”

CJ

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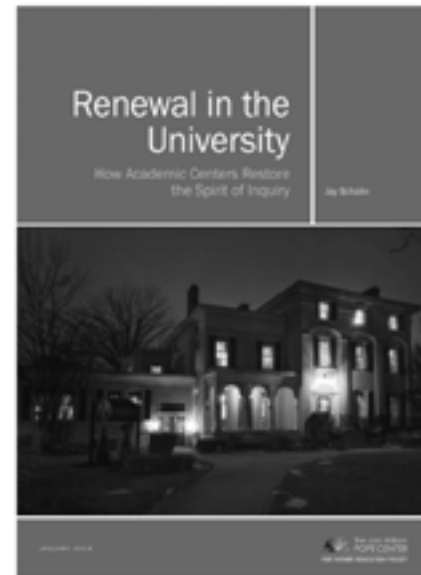
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Wake elections board appeals decision outlawing local districts

BY BARRY SMITH
Associate Editor

RALEIGH

While the Wake County Board of Elections voted along party lines to appeal a 4th U.S. Circuit Court of Appeals ruling throwing out local school board and county commissioner districts, state legislative leaders continue fighting to get back in as defendants in the case.

On July 14, Senate leader Phil Berger, R-Rockingham, and House Speaker Tim Moore, R-Cleveland, issued a statement saying they planned to file a motion to intervene in the lawsuit and appeal the ruling by a three-judge panel of the 4th Circuit, saying Attorney General Roy Cooper refused to provide an adequate defense of the maps for the state. The decision by legislative leaders came a day after the Wake board voted to appeal the ruling to the full Appeals Court.

At press time, the Appeals Court had not announced whether Berger and Moore would be allowed to intervene.

Rep. Paul "Skip" Stam, R-Wake, had said he hoped Berger and Moore would attempt to intervene as defendants and seek an immediate appeal to the U.S. Supreme Court. He said that the House speaker and Senate leader had been "involuntarily dismissed" as defendants from the lawsuit challenging the Wake districts, adding that when the case got to the 4th Circuit, no one went to bat for lawmakers who redrew the districts.

After Stam's statement was published at Carolina Journal Online, Anita Earls, an attorney for the plaintiffs in the lawsuit, told *The News & Observer* that Stam's statement was "demonstrably false."

But the details are not that clear. Earls subsequently told *CJ* that plaintiffs had attempted to add legislative leaders as defendants. "The attorney general's office filed briefs arguing that we had no legal right to add them and they should not be added," Earls said.

The attorney general's office usually represents the state in court and in lawsuits challenging the constitutionality or legality of state laws.

Noelle Talley, a spokeswoman for Cooper, did not explain why the A.G.'s office didn't want the legislative leaders listed as defendants. "Attorneys with

our office argued to have the state and state plaintiffs dismissed from the case, and the court agreed," Talley said.

The General Assembly redrew Wake County's school board districts in 2013. The plan included two "super districts" and seven small districts. In 2015, lawmakers redrew Wake County's county commissioner districts, using identical maps.

An original 2013 lawsuit challenging the school board districts was dismissed in March 2014 by U.S. District Court Judge Terrence Boyle. Later, other lawsuits were filed, challenging the school board and county commission districts. Earlier this year, Chief U.S. District Court Judge James Dever ruled that the plaintiffs had failed to

prove their case. However, on July 1, the 4th Circuit reversed Dever's ruling in a 2-1 decision.

"Judge Boyle viewed the plaintiffs' effort to add legislators to the case as futile since he dismissed the case on its merits," said Amy Auth, a spokeswoman for Berger. "Legislative leaders have never appeared in the cases but decided to intervene because the 4th Circuit reversed the trial court decision and because [Attorney General] Roy Cooper refused to do his job."

Boyle ruled that the legislative leaders had no enforcement power in overseeing elections, since the State Board of Elections is the agency that administers election law. "An amendment that casts [legislators] as defendants would be futile," Boyle wrote.

GOP leaders ripped the way Cooper's office has handled the case. Cooper is the Democratic nominee for governor. He faces incumbent GOP Gov. Pat McCrory and Libertarian Lon Cecil in the Nov. 8 general election. "I think [the choice not to add Berger and Moore] was a way for Roy Cooper to wash his hands of it," Stam said.

"Roy Cooper has once again refused to do his job and defend state law — this time creating chaos, confu-

sion, and uncertainty for Wake County voters in the 11th hour in an election year," Moore and Berger said in their statement. "That's why we have no choice but to intervene and defend the right of voters to cast their ballots for geographically diverse representation in Wake County government in November."

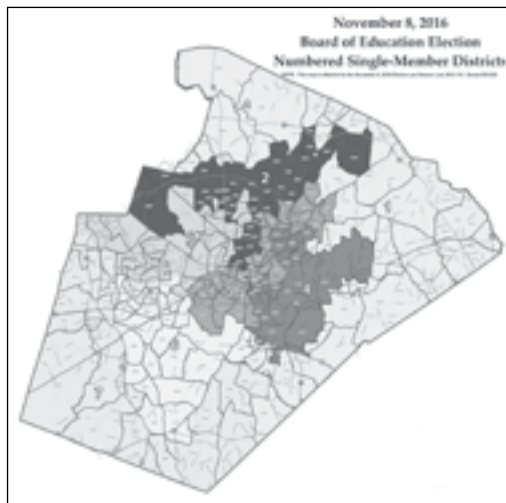
The primaries for county commissioner were held on March 15. Filing for the school board races ended on July 1, the same day the 4th Circuit's ruling came out.

The Wake County Board of Elections voted on July 13 to appeal the 4th Circuit panel's decision to the full 15-member Circuit Court. Neither GOP Chairman Brian Ratledge, who supported the appeal, nor board attorney Charles Marshall responded to phone calls seeking a comment on the action.

Democratic board member Mark Ezzell referred *CJ* to a Facebook post citing his reasons for disagreeing "vehemently" with the decision.

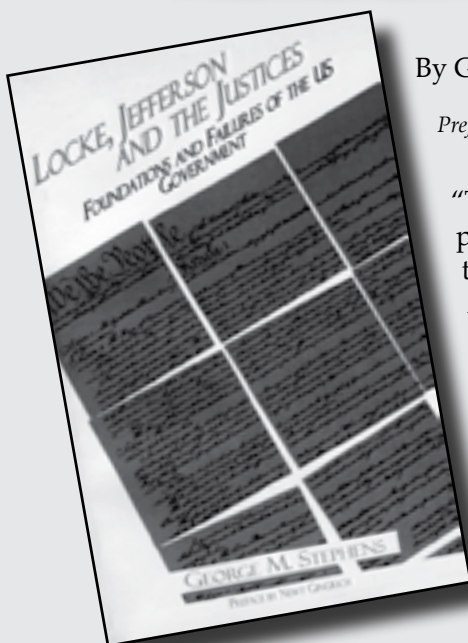
Ezzell said he thought the 4th Circuit's decision, penned by Judge James Wynn, was correct. "It's abundantly clear that the General Assembly's districts were the result of illegitimate reapportionment considerations," Ezzell said.

Appealing the ruling is a waste of taxpayer money and would further bring confusion to the election season, Ezzell said. Also, Ezzell said not appealing would force the General Assembly, who he called "the rightful defendant in this case," to take responsibility for its actions. "If the legislature believes so strongly in their maps, they should pony up the money to take legal steps to re-enter the case," Ezzell said. *CJ*



Locke, Jefferson and the Justices:

Foundations and Failures of the U.S. Government



By George M. Stephens

Preface by Newt Gingrich

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Justices: N.C. cyberbullying law vague and unconstitutional

BY MICHAEL LOWREY
Contributor

RALEIGH

The state's rarely used cyberbullying law, passed in 2009, recently was struck down as unconstitutional, with the N.C. Supreme Court holding that the poorly worded law violates First Amendment free-speech rights.

During the 2011-12 school year, Dillion Price was a sophomore at Southern Alamance High School. Soon after the term began, several of Price's classmates began posting derogatory pictures and comments on his Facebook page. Price's mother eventually discovered the posts and contacted local law enforcement.

Robert Bishop was arrested in February 2012 and charged with one count of cyberbullying for comments he made

online toward Price, including, "Anyone who would be so defensive over Dillion can't be too intelligent" and "I never got to slap him down before Christmas Break," followed by a "sad face" emoticon. A jury convicted Bishop, who received a sentence of 30 days in jail, which was suspended, and four years of supervised probation.

The N.C. Court of Appeals upheld the conviction, concluding that the statute at its core "prohibits conduct, not speech," specifically "the act of posting or encouraging another to post on the Internet with the intent to intimidate or torment" a minor. It also held that any burden on free speech was merely incidental and no greater than necessary to further the state's interest in protecting children from the harmful effects of harassment.

Bishop asked the N.C. Supreme Court to take the case. Before the justices, Bishop again argued that the cyberbullying statute violated his First Amendment rights, and the high court agreed with him.

"We hold that [the cyberbullying provision] restricts speech, and not just nonexpressive conduct; that the restriction created is content-based, not content-neutral; and that the statute's scope is not sufficiently narrowly tailored to serve the state's asserted interest in protecting children from the harms resulting from online bullying," wrote Justice Robin Hudson for the unanimous N.C. Supreme Court.

The court first held that Bishop's

online comments were speech protected by the Constitution.

"Posting information on the Internet — whatever the subject matter — can constitute speech as surely as stapling flyers [sic] to bulletin boards or distributing pamphlets to passersby — activities long protected by the First Amendment," wrote Hudson.

"Such communication does not lose protection merely because it involves the 'act' of posting information online, for much speech requires an 'act' of some variety — whether putting ink to paper or paint to canvas, or hoisting a picket sign, or donning a message-bearing jacket. Nor is such communication subject to any lesser protection simply because it occurs online."

This did not end the matter, however, as the right to free speech is not absolute. In certain

circumstances the government may place limits on how freedom of speech is exercised. The high court also had to consider what standard to use to assess the speech restrictions imposed by the cyberbullying law. The Supreme Court found that the law created a content-based restriction — that it criminalized certain messages but not others — and was subject to "strict scrutiny."

Strict scrutiny requires the state to show both "that the statute serves a compelling governmental interest, and that the law is narrowly tailored to effectuate that interest."

"At the outset, it is apparent that the statute contains no requirement that the subject of an online posting suffer injury as a result, or even that he or she become aware of such a posting. ... Regarding motive, the statute prohibits anyone from posting forbidden content with the intent to 'intimidate or torment' a minor. However, neither 'intimidate' nor 'torment' is defined in the statute, and the state itself contends that we should define 'torment' broadly to reference conduct intended 'to annoy, pester, or harass,'" Hudson added. "[I]t is hardly clear that teenagers require protection via the criminal law from online annoyance."

The justices also found that the list of subject matter covered by the law — "private, personal, or sexual information pertaining to a minor" — was too broad.

The case is *State v. Bishop*, (223PA15).



The North Carolina Courts

COMMENTARY

Fayetteville's bush-league stadium plan

Baseball is all the rage in Fayetteville, with the city close to signing a deal that would commit more than \$40 million for a new baseball stadium in the hope of attracting a minor-league team to town. Unfortunately, there are many errors in the city's logic and implementation, making the idea more a foul tip than a home run.

Over the past two years, Fayetteville's movers and shakers have come to the conclusion that minor-league baseball would solve many of the city's problems, culminating in a city-funded consultant's report in June on the feasibility of the project. The city is in negotiations to land the Houston Astros' Class-A Advanced farm team, which currently plays in Lancaster, Calif. The Astros want to wrap up an agreement with the city by Aug. 19.

"I think everybody sees it as an economic development opportunity," the *Fayetteville Observer* quoted Councilman Kirk deViere as saying.

Councilman Mitch Colvin was even more blunt, proclaiming that "Fayetteville needs this to move forward."

Would a minor-league baseball team create some jobs? Sure, but given the nature of the entertainment it provides — the season is only about five months long, with each game lasting around three hours — most of those jobs would be part-time, seasonal, or both. That hasn't seemed to bother Fayetteville officials.

Baseball supposedly would be only part of the stadium project. Councilman Jim Arp has talked up how a stadium could serve as more than a minor-league baseball facility, also hosting football and soccer games, concerts, and even act as a municipal park.

That's questionable thinking at best. If multi-use stadiums were such a great idea, we'd see them everywhere. And we don't. Why? Because the shape of the playing area differs greatly among baseball, football, and soccer. A great seat for a baseball game would be a poor seat for a soccer match.

Is adding another large place for bands to play really a top

concern in Fayetteville? The area already has other viable options, beginning with the Crown Complex, which was built with public money.

A baseball stadium could be a key element in an economic development plan, but it's risky, even if you have a specific site early on with an actual plan for the broader area you're trying to remake. In Fayetteville's case, the consultants' June report identified two possible sites, located miles apart, and the

city doesn't have a larger redevelopment concept.

Absent that planning, Fayetteville is essentially saying that baseball is good for the community in a general economic sense. The economics literature, however, has repeatedly demonstrated just the opposite — stadiums are bad public investments.

The city's main concern is the stadium's projected price tag of \$43.9 million or \$46.9 million, depending upon location. That's a lot of money — over \$200 per resident.

Even more troubling is that despite the Astros' deadline being less than a month away, the city has no idea how to pay for the ballpark. Financing stadium construction would cost about \$3 million a year. By comparison, the city took in \$30.4 million in sales tax revenue and \$68.4 million in property tax collections in the fiscal year that ended June 30, 2015.

It's just hard to imagine Fayetteville paying for a stadium without significantly raising taxes or fees and/or cutting services. Making matters worse, the city has no idea whether Cumberland County might chip in on the project, as the city's consultants were directed not to talk to the county.

Sports is very much a business, but Fayetteville's approach to building a stadium is very much bush-league. Before going down this risky path, any city should at least develop a more coherent vision than Fayetteville has so far. CJ

Michael Lowrey is a Carolina Journal contributor.



MICHAEL LOWREY

Climate alarmists target Locke Foundation, others

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lis was quoted as saying in a Republican press release.

Burr chastised Democrats' climate change inquisition through press secretary Taylor Holgate.

"Sen. Burr does not believe it is the role of the United States Senate to silence free speech or involve itself in academic research," Holgate said.

Deborah Ross, Burr's Democratic opponent in this year's general election and former N.C. state director of the American Civil Liberties Union, did not respond to multiple attempts seeking comment.

But Sean Haugh, a Libertarian challenging Burr for his seat, called the "showboating" action by 19 Senate Democrats to spur a Senate condemnation of JLF and the other organizations "a despicable tactic."

"If you set aside for a moment what the issue is, and how you might feel about it, it's just bad governing precisely because they're trying to persecute people for stating their opinions and putting their points of view out there," Haugh said. Democrats are "trying to spread culture war," he said.

There needs to be "robust debate among the people" on topics such as climate change because "the science is not settled," Haugh said.

The Democrats' concurrent resolution alleges fossil fuel companies "developed a sophisticated and deceitful campaign that funded think tanks and front groups, and paid public relations firms to deny, counter, and obfuscate" studies purporting to show climate change is caused by human activities and will have catastrophic consequences. JLF neither markets nor produces fossil fuels.

"This kind of tactic, I think, really is deliberately meant to chill free

speech and free debate over this kind of issue," Haugh said. "It's thought crime is what they're talking about."

Aside from basing their condemnation on unsettled science, Haugh said the Democrats' call for action against the 48 organizations is duplicitous.

Democrats, particularly, are "perfectly willing to go along with treaties and legislation that allow their corporate donors to continue polluting, and they come up with crazy schemes like carbon tax credits" that do not address or abate the speculative problems they rail against, Haugh said.

Speaking from the Senate floor July 11, Whitehouse took aim at billionaire brothers David and Charles Koch, who have become bogeymen of the Left for their political funding of many conservative groups and causes. Koch Industries, the global company they operate, has significant investments in oil and natural gas production and marketing.

Whitehouse said 43 of the 48 groups Democrats are condemning are "Koch-linked," and 28 "are either

Koch front groups, or the beneficiaries of regular Koch funding, groups like the James Madison Institute, the John Locke Foundation, and the American Legislative Exchange Council. ... The Kochs blow their dog whistle, and the hounds appear."

The following day, Whitehouse became even more direct and accusatory, using

charts during his floor remarks to describe what he sees as a web of climate change denial and naming donors to free-market organizations.

He specifically and repeatedly accused the John Locke Foundation and CJ of being key agents in what he called the "climate change denier and counter-movement organizations."

Whitehouse has compared the potential dangers of "climate fraud" to the "scheme of fraud" perpetrated by tobacco companies on smokers and has called for civil lawsuits seeking financial penalties against fossil fuel producers, much like the \$246 billion global settlement in 1998 between tobacco companies and state governments.

"The insertion of this authoritarian narrative — that climate change hysteria is the final word, and that to exercise your First Amendment rights to question such claims may make you subject to government surveillance — is an assault on the idea and practice of democracy in the United States," JLF's President and CEO Kory Swanson said on July 12.

Whitehouse was among a cadre of Democrats who last year sent a demand letter to JLF and 106 other groups ordering that they surrender 10 years of voluminous records about research, funding, activities, donors' names, and a broad array of other documents. JLF refused, and Senate Republicans roundly condemned the Democrats' overreach.

David Legates, a University of Delaware professor and former Delaware state climatologist who has been targeted by left-leaning climate activists for his research, has argued there is no convincing evidence that human activity is causing catastrophic change to the climate.

In a previous interview with *CJ*, Legates said that political interference in the scientific method, and attempts by government and its vested researchers to shut down conflicting ideas and findings, are both real and harmful to pure science and public policy development.

Legates said President Eisenhower warned in his 1961 farewell address against creating a scientific technological elite, "where if the government starts funding science to a specific level to get a certain answer, that's the answer they're going to get regardless of whether it's true or not. And I think we've seen this in climate change."

That approach, along with intimidating research professors and others whose research findings differ, "stifles science," Legates said. *CJ*



Page one of a letter sent to Democratic U.S. senators from conservative groups targeted by the senators in their "Web of Denial" campaign on the Senate floor.

Experts call 'Web of Denial' effort attack on free speech

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ate floor by 19 Democrats seeking a concurrent resolution condemning the groups, and setting up the possibility of an investigation under the Racketeer Influenced and Corrupt Organizations Act.

Sen. Sheldon Whitehouse, D-R.I., has been pushing the government for RICO charges and was the chief antagonist of JLF and the *Carolina Journal* during Senate floor remarks July 11 and 12, naming them repeatedly as part of a "Web of Denial" about purported dangers of climate change.

Senate Minority Leader Harry Reid, D-Nev., also took to the Senate

floor. "Dozens of shadowy organizations are waging a campaign to mislead the public and undermine American leadership on climate change, the Paris climate agreement, and clean energy initiatives across the country," Reid said.

"Those groups have a [right to] freedom of association under the First Amendment that makes it none of his business," Prak said of Whitehouse's crusade.

"He'll simply have to make his climate change arguments in the field of scientific public opinion and do battle in that forum," Prak said. "He's not going to be able to beat up on people who write checks or happen to believe

in the principles of the John Locke Foundation."

Democrats are seeking to show ExxonMobil, billionaire businessmen philanthropists Charles and David Koch, and other fossil fuel interests are coordinating a campaign with think tanks, researchers, and other organizations to cast doubt about the climate change threat. The senators have been attempting to intimidate the groups into turning over massive reams of documentation about donors, grants, memberships, and activities.

"For them to think they have the right to acquire that sort of information is simply ignorant," Prak said. "There's plenty of bloviating politicians in this

world on both sides of the aisle, and these guys are a great example of that species on the left wing of the political continuum."

Prak said the Democrats' abusive action is akin to the 1958 case *NAACP v. Alabama* in which the state government sought to intimidate and prevent the civil rights organization from operating in Alabama. The Supreme Court ruled the state was not entitled to the NAACP's membership list because the organization's constitutional freedom-of-assembly rights trumped the state's interest.

The Democratic senators, who

Continued as "Experts," Page 13

Feds say energy tax credit recipient list confidential

Continued from Page 1

unacceptable. What could possibly be the justification? There are no national security implications to justify these secret deals," said Jacki Pick, executive vice president and senior energy fellow at the Dallas-based National Center for Policy Analysis.

"This refusal to act transparently with taxpayer funds is the reason Americans' trust in their government is at an all-time low," Pick said.

She suggested the secrecy might be a matter for investigation by congressional oversight committees.

Carolina Journal made numerous attempts by telephone and email to get a reaction from U.S. Rep. Richard Hudson, R-8th District, who sits on the House Energy and Commerce Committee's oversight subcommittee. Hudson did not respond.

Hudson also voted against the 2015 omnibus spending bill that included an extension of the federal renewable investment tax credits.

Nicolas Loris, research fellow in energy and environment policy at the Heritage Foundation, agrees with Pick that the secrecy is puzzling.

Loris testified before a congressional committee in March against the U.S. Department of Energy's tax-funded loan-guarantee programs that include solar and other renewable energy projects. The federal government releases the names of loan recipients, he said.

"If they do that for the loan guarantee program, I shouldn't see why they couldn't do it for other preferential policies that exist," including the renewable energy tax credits, Loris said.

The best solution would be to terminate all preferential treatment programs, he said.

Until then, passing stricter laws demanding transparency on the renewable tax credits "would be helpful, and maybe it would raise some eyebrows about why we are having these programs if the benefits are just accruing to the highest income earners in the United States," Loris said. "It's cronyism."

According to *CJ* research, in 2015 all 23 North Carolina entities receiving \$1 million or more in state renewable energy tax credits were large corporations. Eighty of the 86 recipients of at least \$100,000 in renewable tax breaks were corporations. Blue Cross and Blue Shield of North Carolina and Duke Energy collected \$54 million between them.

"My expectation is that you would see the same at the federal level," with corporations receiving the

North Carolina entities have claimed \$466,928,000 in federal renewable energy tax credits since 2009. Below are figures for the last three years available.

2013			
Income	Number	Amount	Average
All Returns	90,180	\$38,324,000	\$425
Under \$1	10	2,000	200
\$1-\$9,999	10	2,000	200
\$10,000-\$24,999	4,190	997,000	238
\$25,000-\$49,999	20,670	6,595,000	319
\$50,000-\$74,999	20,680	7,372,000	356
\$75,000-\$99,999	15,970	6,060,000	379
\$100,000-\$199,999	22,490	10,514,000	467
\$200,000-\$499,999	5,340	4,662,000	873
\$500,000-\$999,999	620	1,324,000	2,135
\$1 million or more	210	796,000	3,790

2012			
Income	Number	Amount	Average
All Returns	69,090	\$31,827,000	\$461
Under \$1	10	13,000	1,300
\$1-\$9,999	10	1,000	100
\$10,000-\$24,999	3,390	788,000	232
\$25,000-\$49,999	15,430	4,989,000	323
\$50,000-\$74,999	15,830	5,735,000	362
\$75,000-\$99,999	12,320	4,979,000	404
\$100,000-\$199,999	17,310	9,123,000	527
\$200,000-\$499,999	4,090	4,141,000	1,012
\$500,000-\$999,999	500	1,139,000	2,278
\$1 million or more	200	918,000	4,590

2011			
Income	Number	Amount	Average
All Returns	112,168	\$42,784,000	\$381
Under \$1	4	70,000	17,500
\$1-\$24,999	6,531	1,446,000	221
\$25,000-\$49,999	28,944	8,801,000	304
\$50,000-\$74,999	27,041	8,886,000	329
\$75,000-\$99,999	19,390	6,831,000	352
\$100,000-\$199,999	24,233	10,884,000	449
\$200,000-\$499,999	5,190	4,215,000	812
\$500,000-\$999,999	643	1,064,000	1,655
\$1 million or more	192	587,000	3,057

Source: U.S. Internal Revenue Service

lion's share of tax credits, Pick said.

While the IRS does not identify renewable tax credit recipients, it lists the aggregate number of tax filers receiving a tax credit across several income ranges and provides a total amount of tax credits issued for each income group.

According to IRS records, 90,180 North Carolina recipients received federal tax credits totaling \$38,324,000 in 2013.

Those earning \$1 million or more averaged \$3,790 in tax credits. That was nearly nine times more than the overall average of \$425 and roughly 12 times higher than the \$319 average tax credit of those earning between \$25,000 and \$49,000. The state's median household income is \$46,693.

But those numbers pale in comparison to what would be a \$17,500 average on \$70,000 in tax credits issued to four tax filers in the group that claimed less than \$1 in net income on their 2011 tax returns. The overall average tax credit for all tax filers that year was \$381. The IRS did not respond to multiple requests for an explanation.

North Carolina passed a law eliminating its 35 percent renewable investment tax credit at the end of 2015, though it will continue to be issued for several more years because the law allows it to be divided and claimed over a five-year period. Last year the General Assembly extended the tax credit for select companies still in the process of developing their solar projects.

Congress voted last year to extend the federal tax credit until 2023.

"There is no way to know what a future Congress will do with this policy, but once a federal freebie is put in place, it dies hard — if ever," Pick said.

Targeted tax programs usually start for a limited number of years, with the affected industry claiming it needs some time to become competitive. After the tax carve-out is established, industry lobbyists almost always seek recurring extensions, Loris said.

It is a bipartisan problem, Loris said. Even states with mostly Republican members in their congressional delegations fight to perpetuate the policies "because it's their states that stand to benefit," whether it's for wind power in the Midwest or solar power in the Southwest.

But he remains optimistic, even though the federal wind production and solar investment tax credits were extended last year.

"In this last bout of renewable targeted tax credit fights, some of them got left out in the must-pass omnibus bill," Loris said, and some members of Congress are vigilant to keep them from being sneaked into "must-pass" bills unrelated to energy.

"So I think there's opposition," Loris said. "We shouldn't be picking winners and losers and having this cronyism in the energy sector." *CJ*

Experts call 'Web of Denial' effort attack on free speech

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are coordinating their anti-fossil-fuel efforts with environmental advocacy and renewable energy organizations, are repeating Alabama's losing strategy, Prak said. "This ought to be easy enough for them to understand, but obviously their logic and reason have been overcome by emotion," Prak said.

The Democrats' action hasn't reached the level of prior restraint — government censorship — yet, Prak said, although Whitehouse emphatically has urged media outlets not to publish op-eds by climate "skeptics."

"They're trying to bully people who don't believe in climate change

into believing it because they say so, which is pretty much contrary to the scientific method," Prak said. "Those who use the scientific method pretty much understand that final conclusions are rare, and it's frequently true that politicians will overstate facts in their rhetoric. That truth is demonstrated every day."

Campbell University constitutional law professor Greg Wallace also sees First Amendment threats in how Senate Democrats conducted this matter.

"When the Democrats and these Democrat attorneys general begin threatening companies and nonprofit organizations and scientists for simply

speaking out on what is a political issue, and for funding scientific research, I think the First Amendment is implicated here," Wallace said. "I think this kind of activity can have a chilling effect" on free speech.

Wallace believes climate change is as much a political movement as it is a scientific matter.

"If you don't think science has been influenced by the politics, you haven't been paying attention," he said.

"If they're going after companies for misleading the public on what is at its core a political issue, then maybe they should look to clean up their own houses first," Wallace said of the poli-

ticians pushing that effort. "There's plenty on their own plates there for them to be occupied with."

Democrats can't use government power "to threaten people because they don't agree with your political message," he said, but he is concerned that strategy is becoming all too common in a number of arenas.

"Liberals, if they cannot get their way, they're going to resort to some sort of coercion and intimidation," Wallace said. "You see this happening on college campuses all the time where speech is being suppressed right and left to advance some left-wing political agenda. It's all about the ends justifying the means." *CJ*

Education reforms highlighted during 2016 legislative session

BY KARI TRAVIS
Associate Editor

RALEIGH

While teacher pay raises headlined education issues during North Carolina's 2016-17 legislative session, several other key policy changes were packed into the K-12 agenda, including measures that will provide performance-based bonuses for top educators across the state.

In addition to raising teacher pay by an average of 4.7 percent — boosting average annual salaries to \$50,186 by next year, and to nearly \$55,000 within the next three years — legislators included in the state's \$22.34 billion General Fund budget a plan to provide bonuses to high-performing third-grade teachers who help students develop top-flight reading skills.

The Third Grade Reading Teacher Performance Pilot Program, the largest of several pilot programs enacted to test models for performance-based pay, allocates \$10 million in funding to be divided between the top 25 percent of teachers statewide and the top 25 percent of teachers within each school district.

"We as a legislature believe in incentives for teachers to award outstanding performance," Rep. Craig Horn, R-Union, chairman of the House Committee on K-12 Education, told *Carolina Journal*. "You reward people for success. It acts as an incentive as well as a reward. It encourages people to do more and to reach beyond themselves. And we believe that it does work as a way to approach teacher pay."

Terry Stoops, director of research and education studies at the John Locke Foundation, said the bonuses may not serve as an actual incentive for teachers, but he believes the measure will boost overall classroom performance.

"I think what's going to happen here is that this actually won't make the kids work harder or the teachers work harder. Performance pay rarely does that," Stoops said. "But what it will do is encourage principals to put their very best teachers in third grade."

The program is set to be implemented this fall by the Department of Public Instruction, a move some members of the General Assembly see as problematic, said Sen. Jerry Tillman, R-Randolph, chairman of the Senate Committee for Education and Higher Education.

"We've had some concern about how [DPI has] administered [previous] programs, and I am hopeful that they will follow the law, because this is the law now," Tillman said. "So we will closely monitor it and do what we need to do to see that it's fully implemented."



John Locke Foundation Director of Education Studies Terry Stoops, center, joined N.C. Superintendent of Public Instruction June Atkinson, right, and Brenda Berg, CEO and president of BEST NC (Business for Educational Success and Transformation in North Carolina), left, to discuss education issues at a legislative committee hearing in January. (CJ file photo)

State Superintendent June Atkinson said DPI has a strong track record of working with the legislature.

"My friend Sen. Tillman ... knows that we have always, during my time as superintendent, administered the law of North Carolina to the best of our ability and according to the requirements of the legislation," Atkinson said.

"We are an arm of the General Assembly to carry out its directives and its laws," she continued. "And we intend to do that with this law and have in the past. I'm sure that Sen. Tillman would be hard-pressed to find any time we have not administered the law according to what has been passed by the General Assembly."

Atkinson added that she is pleased with the legislature's commitment to across-the-board teacher pay raises and applauded pilot programs like the reading plan for third-grade teachers. She said more should be done to increase teacher compensation in the future, through regular pay raises and special bonus programs.

The legislature is likely to enact further legislation to provide performance-based bonuses for other early-childhood educators, Stoops said.

"The overwhelming question that this is going to raise is about the efforts of teachers in grades K-2," Stoops said. "They are just as responsible — as much as the third-grade teacher — of getting that student to grade level. That's a legitimate point. My guess is that the legislature is going to start at third grade and work its way down."

In addition to forming performance-based teacher pay pilot programs, lawmakers added funding to the state's Opportunity Scholarship Program to address a growing list of applicants. The program gives children from low-income families vouchers of up to \$4,200 to attend private school. It would see \$10 million added to its existing \$34.8 million fund each year for the next 10 years, boosting it to a total

of \$144.8 million.

Special-needs vouchers also will see a \$10 million increase in scholarship funding over the next year.

"We'll continue to provide scholarship money for those students that can avail themselves of that program," said Tillman. "Special-needs scholarships, opportunity scholarships, it's all money to help kids who are not having great success in school."

In an effort to rehabilitate five of the state's lowest-performing schools, lawmakers passed a bill that would remove them from district control, instead placing them under charter school management as part of an Achievement School District.

House Bill 1080, "Achievement School District," also includes a measure that would allow any local school district with a school in the ASD to place up to three other low-performing schools in an "Innovation Zone," pro-

viding those schools with more charter-like flexibility and privileges.

H.B. 1080 faced opposition in both House and Senate debates, with critics raising concerns about using public money to fund charter school operators. Supporters, however, said the measure was necessary for continually failing schools to reverse course.

"Let's try something, and have a good and strong consistent oversight to what we're trying," Horn said. "Let's learn from how others approached this, and look at what didn't work and solve those problems so that we're not doing that here in North Carolina. It's only reasonable."

Charter school advocates supported a bill, which was ultimately struck down, that would have clarified funding streams from the state. Their consolation prize came in the form of House Bill 242, the charter school "cleanup bill." Most notable among the changes is a provision that would allow low-performing charter schools to remain open, providing they show progress on state student achievement tests, according to Stoops.

"Not all low-performing charter schools are low-performing for the same reasons," Stoops said. "Some may be low-performing due to the population from which it draws students. Some of it may be due to the fact that the charter school has only been in operation for a year or two."


Under old rules, the State Board of Education would be compelled to begin the revocation process for a low-performing charter immediately, but the new language allows more flexibility in the State Board of Education's charter school review process, Stoops said. CJ

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Free-speech case settlement at N.C. State could set precedent

BY KARI TRAVIS
Associate Editor

North Carolina State University recently tossed out a rule that the evangelical campus group Grace Christian Life said blocked its free-speech rights, a move that may set a precedent for statewide reform of controversial speech policies on University of North Carolina system campuses.

GCL on July 18 dropped a lawsuit against N.C. State following the school's decision to end a policy requiring student groups to apply for a permit before they were allowed to distribute literature or solicit other students on campus. Anna Beavon Gravely, state director of Generation Opportunity, a free-market group representing Millennials, told *Carolina Journal* a legislative proposal from Lt. Gov. Dan Forest protecting free expression on campuses could prevent similar instances of free-speech violations at other North Carolina public universities.

The conflict at N.C. State began during April when university administrators prevented members of GCL from passing out fliers because the group had failed to secure a permit.



Group members, who had been issued 20 permits on other occasions prior to the incident, sought legal representation from the Alliance Defending Freedom, a legal advocacy organization that defends the free-exercise rights of religious individuals and groups.

"The university only selectively enforced its permit policy and did so against Grace Christian Life," ADF stated in a July 19 press release, following N.C. State's decision to dissolve the rule in question.

"Students of any religious, political, or ideological persuasion should be able to freely and peacefully speak with their fellow students about their views without interference from university officials who may prefer one view over another," said ADF senior counsel Tyson Langhofer. "N.C. State did the right thing in revising its policy to reflect this instead of continuing to defend its previous policy, which was not constitutionally defensible."

In April, N.C. State Chancellor Randy Woodson announced that the policy was not discriminatory and that free speech never had been targeted by his administration.

"The implication that an organization has been treated differently on our campus because [it is] a religious group is false," Woodson wrote in an April 28 statement. "N.C. State reviews requests solely for time, place, and manner considerations without regard to messaging or beliefs."

In a letter released after N.C. State's decision to settle the ADF lawsuit out of court, Woodson stated that the university chose to settle to save litigation costs. Under the settlement terms, N.C. State owes ADF \$72,500 in legal fees.

While Woodson continues to call the policy fair, Generation Opportunity's Gravely and others say that administrative permission never should be required of students who want to exercise speech rights on a public campus.

The university's decision to dissolve its policy is a step in the right direction, she said, citing UNC-Charlotte, UNC-Chapel Hill, and UNC-Greensboro as other campuses that should follow N.C. State's example.

"We're hoping that these campuses and these administrators understand that there is a lot of censorship that takes place on campus," Gravely said. "And the question that I always ask is how are we harmed by that? How is society harmed as a whole?"

"So many of our greatest inventions, additions to society, take place during those four years on college

campuses or in the college age," she added. "So when students are not able to express different opinions, how is society harmed? All opinions, even those that are unpopular, should be respected and protected."

Gravely said passage of the Campus Free Expression Act — a legislative proposal pushed by Forest that may be introduced in the North Carolina General Assembly next year — would be a big help. The bill would remove limits on where students can speak freely at UNC campuses, and would place disciplinary actions on individuals who disrupt public meetings or block free expression.

"The worst offender, in my mind, is students silencing other students, because it's becoming a culturally acceptable norm," Gravely said. "And that's really the true harm of censorship on campus — the fact that we're starting to believe that if we say something that offends somebody else, that we should be called out by regulations, by the law."

N.C. State student Madeline Finnegan, who serves as president of UNC's Association of Student Governments and is the ex-officio member of the Board of Governors, said that student censorship across UNC's campuses is less of an issue than what is often portrayed in the media, and that — prior to GCL's lawsuit — she hadn't heard of any complaints about freedom of speech under the university's policy.

"I think I can really only speak from what I've seen and talked about to other student leaders, but I, at least, haven't seen any other instances like GCL pushback to the rule at all," Finnegan said, adding that she viewed N.C. State's now-obsolete permit rule as a way for student groups to reserve tables in certain areas across campus. "I have not really seen a lot of struggle or anguish to get those [permit] spots."

"I can't speak for every single [campus], but I think [the lawsuit] was surprising more than anything," she continued. "It seems to me that if there was a problem with the policy, or if GCL felt like they weren't getting adequate access to students, that should have been a conversation rather than a lawsuit filed."

As far as the legislature's proposal to address free speech on campuses, Finnegan says that — while she thinks protection of First Amendment rights is important — she has reservations.

"I understand the want and the reasoning behind a lack of disruption during meetings," Finnegan said. "And I think that's really important for getting things done and making decisions on behalf of students, but I also know that there is a lot of discontent among students across the system — and if we quiet that, to what extent do we quiet it?"

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A MONTHLY JOURNAL OF NEWS, ANALYSIS, AND OPINION
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Opinion

N.C.'s new higher-education budget spends more and saves less

The N.C. General Assembly's budget for 2016-17 increases University of North Carolina System appropriations by \$168 million, with \$31 million of the increase dedicated to fund projected enrollment increases. At many of the system's 16 universities, however, increased funding for that purpose is unnecessary.

In addition, the new state higher education budget, totaling \$2.8 billion (the overall budget including federal funding amounts to roughly \$9.5 billion), demands little in the way of increasing efficiency and reducing administrative bloat, which is a significant cost driver on campuses. But more on that issue later.

First, take a closer look at the flawed way North Carolina funds university enrollment.

The General Assembly allocates money to the state's universities through a hopelessly complicated, Rube Goldberg-like enrollment funding formula. The formula takes into account a school's total enrollment, the types of classes students take, and average faculty pay. Other costs are added for institutional support and employee benefits.

When enrollment grows, funding grows with it. Unfortunately, lawmakers rarely scrutinize this portion

of the UNC budget, considering it an "automatic" way to fund growth. Essentially, universities add up their needs, subtract tuition revenues, and then report the difference to the legislature — which almost always funds the full amount.

After funding has been allotted, the General Assembly usually enacts a "management flexibility cut." This year's cut is \$62.8 million, tiny in comparison to the total UNC appropriation of \$2.8 billion. Through this process of large increases and small cuts, the system's funding usually grows, although not as much as UNC administrators would like it to.

But the "flex cuts" serve a more important purpose than just helping to balance the state budget. They encourage Board of Governors members, university chancellors, and other administrators to identify and eliminate wasteful and inefficient spending on campus.

The BOG allocates the cuts among campuses based on previously determined performance parameters. These include retention rates, graduation rates, degree efficiency, compliance with contracts, accounting and financial standards, spending per degree, and schools' proportion of Pell grant recipients.

Based on these standards, the cuts are distributed among 12 campuses and the UNC General Admin-



istration. (Last year, the General Assembly exempted five campuses from any management flex cuts: Elizabeth City State University, Fayetteville State University, UNC-Asheville, UNC School of the Arts,

and the N.C. School of Science and Mathematics.)

Once universities know their share of the cut, they identify low-priority positions and programs to eliminate. This is one of the only ways our state universities systematically address administrative bloat — a major driver of cost increases over the last 30 years.

As the UNC system's report on last year's cuts indicates, "the majority of the reductions were made to personnel expenditures (44 percent); reductions to purchased services and supplies made up the next largest shares at 27 percent and 25 percent, respectively."

Although 91 positions were eliminated, very few people lost their jobs. That's because 82 of those positions were vacant. In addition, funding for 2.82 "full-time equivalent" positions was shifted to a nonstate source. All in all, just 6.55 filled FTE positions (all at N.C. State University) were cut.

The same thing happened in 2011, when the Great Recession brought large cuts to the UNC system. At the time, UNC-Charlotte Chan-

cellor Philip DuBois reassured the campus community:

The 10 percent budget [cut] scenario would lead to a loss of the equivalent of 205 positions (120 faculty, 85 staff). To be clear, these would not be current UNC-Charlotte employees; rather, the reductions would be made from the open positions that we have held back from allocation to the campus. The current worst-case scenario would result in nine or fewer personnel layoffs from our existing work force.

In other words, this year's cuts are relatively small when we account for new appropriations earmarked for enrollment increases, employee raises, and funding for special programs. Some of those programs include support for "part-way home" students, internships for students at historically black universities, and scholarships for future school teachers and principals. UNC employees will receive a 1.5 percent salary increase and a 0.5 percent nonrecurring bonus.

This year's budget will increase university funding by \$168 million — and with very little debate on the university's main cost drivers. Until a better formula for growth is adopted, "flex cuts" are the best tool the legislature has to curb university excesses. Such cuts are beneficial because they demand a real examination of performance, efficiency, and growth in the UNC system. Lawmakers should either reform the funding formula or mandate flex cuts every year. *CJ*

Jenna A. Robinson is president of the John W. Pope Center for Higher Education Policy.



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COMMENTARY

School choice by the numbers

There are many reasons for North Carolinians to be proud of the statewide education reforms implemented over the last five years. The state has made massive investments in K-12 education with a focus on grade-level proficiency in reading. Accountability is stronger. We pay teachers better. School districts have unprecedented budgetary flexibility. The list goes on and on.

But no achievement is more impressive than the remarkable expansion of school choice in North Carolina. Today, around 17 percent of school-age children in North Carolina attend a home, private, or charter school.

In 2013, the General Assembly made changes to the state's homeschool statute that gave parents the option of using online schools and cooperative arrangements to supplement conventional, parent-led instruction. Since then, homeschool growth has been phenomenal.

In 2015, homeschool enrollment eclipsed the 100,000-student mark, and this year North Carolina had an estimated 118,268 homeschooled students, a staggering increase of 11,415 students — or nearly 11 percent.

While not as impressive as homeschool growth, private school enrollment inched up by roughly 500 students this year. After years of enrollment declines and only negligible increases over the past two years, private school enrollment finally exceeded the pre-recession enrollment peak of 97,656 students and was at last count 97,721.

The Opportunity Scholarship and Disability Grant programs, which provide private school vouchers to eligible low-income and special-needs students, are likely responsible for the recent uptick in the private school population. The General Assembly just approved substantial funding increases for both programs, so total private school enrollment may soon surpass 100,000 students.

More than 800 students received a voucher through the Disability Grant Program in 2016. The most recently passed state budget boosted funding for the program by 137 percent to \$10 million. Thanks to that change, hundreds of additional special-needs children

will have access to \$8,000 private-school vouchers.

Lawmakers also created a reserve fund for the Opportunity Scholarship Program that will add \$10 million a year to the \$34.8 million program budget over the next decade. More than 6,000 low-income children will receive an opportunity scholarship next year, well over five times the number of students who received a scholarship during the program's first year of operation. By the 2026-27 school year, the program will have a total budget of \$134.8 million, allowing thousands more to receive a \$4,200 voucher to attend a private school that better meets their needs.



**TERRY
STOOPS**

In recent years, the General Assembly has chipped away at unnecessary restrictions on charter school growth. In 2011, lawmakers removed the 100-school cap and further authorized charter enrollment to grow by as much as 20 percent a year. Subsequent statutory changes permitted charter schools to add one grade per year without approval from the State Board of Education and implemented a fast-track replication process for outstanding charter schools. In 2014, lawmakers approved legislation that allowed two virtual charter schools, N.C. Virtual Academy and N.C. Connections Academy, to begin operating in North Carolina.

Thanks to these forward-thinking changes, there are more charter schools now than at any time since passage of the charter law in 1996. Enrollment in the state's 158 charter schools had grown to nearly 82,000 students, an increase of 83 percent over the previous five years.

Too many families are not satisfied with the academic quality or social environment of their assigned public schools but do not have the means or opportunity to give their children an alternative. One day soon, household income and ZIP code no longer will correlate to the quality of education in North Carolina, and the leadership of the General Assembly will be the primary reason why. *CJ*

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

COMMENTARY

Hillary's proposals would make things worse

During her Democratic presidential primary fight with Vermont U.S. Sen. Bernie Sanders, Hillary Clinton argued that his "free college" promise went too far. She merely advocated that students should be able to graduate "free of debt."

Now, however, Clinton has come out with a plan to make public colleges and universities free for families who earn less than \$125,000 annually.

But because the president can't order states to comply, under her scheme the federal government would pay states for their cooperation if they charge no tuition to students from "poor" families.

Suppose a state decides to adopt Clinton's free college plan. What would the consequences be?

First, some students who previously concluded that the cost of college (even at the already highly subsidized public institutions) was greater than the expected benefits would now decide differently and enroll. Even though most students and their families don't attempt a precise cost/benefit analysis on going to college, if tuition suddenly were reduced to zero, that would certainly induce some to say, "Now it's worth a try."

That would mean at least a modest increase in enrollment, but it would come mainly from the most academically marginal students. The colleges and universities that gained in those enrollments also would find a need to increase remedial programs.

Even so, luring in more academically weak students will mean an increasing dropout rate, a metric that schools fear because it hurts their rankings. More students would be a mixed blessing.

Another adverse result from making college tuition free would be that many students would devote less effort to their courses. People have a tendency to put more of themselves — to feel more "invested" — when they have to pay for education (or any other good or service) than when they don't.

In a 2004 study, Federal Reserve Bank of New York economist Aysegul Sahin concluded, "Low-tuition, high-subsidy policies

cause an increase in the ratio of less highly motivated students among the college graduates and that even highly motivated ones respond to lower tuition by choosing to study less."

Therefore, while the Clinton plan might "produce" more college graduates, it would probably reduce the overall level of learning. This is another of those cases in which government action leads to visible benefits but at the expense of greater but hidden costs.

Another likely effect of the plan would be increased federal control over state university systems.

With a greatly increased inflow of federal dollars into those systems, U.S. Department of Education officials and Congress (particularly if the Democrats have control) would have more leverage than ever to dictate policy and curriculum. The prospect of

losing even more control over their university systems could cause some governors to say "no thanks" to the Clinton proposal.

Finally, how would this plan affect private colleges?

Many small schools already find it hard to stay afloat, and if some students who might have enrolled in them instead decide that attending a state university free of tuition is a better deal, those schools will be in much greater peril. Then we'd probably get another federal program to help save endangered private colleges.

Clinton also has released a new loan forgiveness idea. She wants to allow budding entrepreneurs to defer payments on their student loans for up to three years, along with any student loans held by "their first 10 or 20 employees."

This idea obviously is crafted to appeal to tech-savvy young people but is another instance of misusing educational policy to advance an economic objective.

These new campaign proposals show how much further the Democratic nominee will go to keep the higher education bubble inflated. *CJ*

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



**GEORGE
LEEF**

Fort Dobbs linked North Carolina to the first 'world war'

Located only a few minutes' drive from Statesville is Fort Dobbs — North Carolina's only frontier fort during the French and Indian War (also known as the Seven Years War).

Although the solid, wooden-block, three-story structure's dimensions and shape allowed as many as 100 soldiers to fire muskets simultaneously, the fort was manned by only about 50 soldiers. The structure has not been standing for more than two centuries; however, archeologists and historians have determined its dimensions and exact location. As a result, visitors can see the structure's dimensions and imagine its bulk and height, observing its exact location by means of a stringed outline secured by posts.

The French and Indian War occurred mostly in what became the northern and midwestern United States. (Parts of the conflict also occurred in Canada). The soon-to-be southern United States saw far fewer

engagements (at least on a major scale) and built far fewer forts than their northern colonial counterparts. To protect its western settlers, North Carolina, in particular, established Fort Dobbs.

Many scholars argue that the Seven Years War was the first global conflict in modern warfare. Involving and influencing other European nations, to be sure, the conflict pitted France and various Indian tribes against the British, American colonists, and various Indian tribes.

For some time, France and Britain had wanted the same land. Not surprisingly, Native American tribes had different degrees of alarm and anticipation regarding French and English encroachment, and accordingly they chose sides in hopes of enhancing their tribal interests. French trappers and traders had operated in the now midwestern states, and American colonists (not all of English origin) had moved westward for economic and other opportunities.

France worked to claim the land via a southward path from Canada to its Louisiana claims. Meanwhile, the English and the colonists moved westward from their eastern settlements. Eventually the two European nations'

respective longitudinal and latitudinal paths crossed, and conflict ensued.

The global conflict lasted — you guessed it! — seven years, from 1756-63. The British and their allies won the conflict. Eventually, the British government, through parliamentary action, demanded that American colonists reimburse the British government for providing frontier protection.

Parliament passed the Proclamation of 1763, an act that limited American expansion by placing control over western settlement in the hands of the British government. Parliament later passed the Sugar Act (1764) and the Stamp Act (1765). After decades of "salutary neglect," many angry American colonists, with an expansionist impulse, put forth arguments proclaiming "No taxation without representation!"

Although North Carolina citizens witnessed minimal fighting within the colony's boundaries during the French and Indian War, North Carolina militia fought as far north as New York, and North Carolina was the first colony to respond to Virginia's request for help as English and French interests collided in the Ohio Valley, which Virginia claimed as its territory.

Fort Dobbs is named after North

Carolina Royal Gov. Arthur Dobbs, who served from 1759-65 and was credited by historians for working to improve North Carolina's economic status and educational system while working to establish the Church of England.

The only known conflict to occur at or near Fort Dobbs occurred on Feb. 27, 1760, when approximately 60 Cherokee Indians failed to take the garrison. According to reports, between 10 and 12 Cherokee were killed or wounded, and two Americans were wounded (one severely). One boy was killed, but that seemed to be because he unintentionally found himself in harm's way. It was not uncommon for settlers occasionally to be near the fort for protection, or for merchants and cooks to sell goods or food to soldiers.

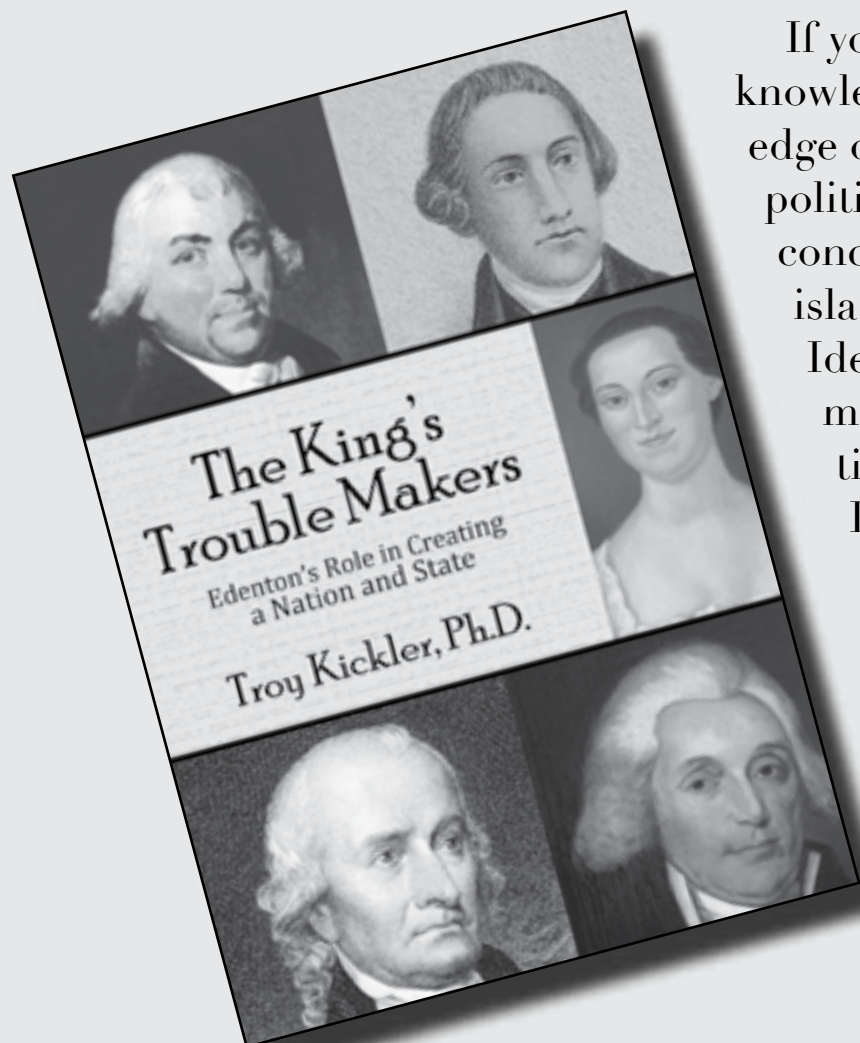
During a sweltering day last year in July — when first-come, first-served claims to a shade tree might have been worth as much as owning gold — this historian's imaginings of what the actual Fort Dobbs might have looked like more than two centuries ago ran rampant. *CJ*

Troy Kickler is the founding 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.

Bolitho: Comey's handling of Hillary email case 'struck me as odd'

By CJ STAFF

RALEIGH

The head of the FBI has characterized Democratic presidential candidate Hillary Clinton as “extremely careless” in handling sensitive — even classified — information on her private email server when she led the U.S. State Department. Still, FBI Director James Comey generated controversy in July when he concluded that “no reasonable prosecutor” would charge Clinton with a federal crime. One former federal prosecutor, Campbell University assistant law professor Zachary Bolitho, discussed Comey’s conclusion with Mitch Kokai for Carolina Journal Radio. (Head to <http://www.carolinajournal.com/radio/> to find recent CJ Radio episodes.)

Kokai: You heard the FBI director spell out this case, or lack of case, against Hillary Clinton. What was your first impression?

Bolitho: Well, my first impression was that the entire press conference itself was very odd and unusual in the sense that the FBI director, or the FBI in general, doesn’t announce, publicly, recommendations as to charges. So the fact that the FBI director is having a press conference to announce what normally would be a secret communication between the FBI and the U.S. Attorney’s Office, or the U.S. Department of Justice, itself was very strange — something I’d never seen and something some former colleagues of mine, who’ve been DOJ lawyers for a long time, have never seen. So right away, that struck me as odd.

And it colored the whole, entire press conference because the role of the FBI is to find facts and gather information. The role of the U.S. attorney or the U.S. Department of Justice is to look at those facts and make a determination, whether, under the law, there is a case to be brought before the grand jury, and if the grand jury indicts, whether you will go forward to trial.

Here the FBI director was basically making the decision or announcing his decision of what should happen with the prosecution. Just very strange.

Kokai: Now as a prosecutor, had that been done in one of your cases, would you have said, “Hey, wait a minute, that’s my job”?

Bolitho: I would have been very upset because, in a sense, the FBI director has boxed DOJ into a corner because he has come out and publicly said his recommendation. He doesn’t think there’s a basis for a prosecution. But he says that ultimate decision is

“[I]t colored the whole, entire press conference because the role of the FBI is to find facts and gather information. The role of the U.S. attorney or the U.S. Department of Justice is to look at those facts and make a determination, whether, under the law ... you will go forward to trial.”

*Zachary Bolitho
Assistant law professor
at Campbell University
and former federal prosecutor*



up to the Department of Justice and its prosecutors. But now, if you’re sitting there as a Department of Justice prosecutor, you’ve had the FBI director say he doesn’t think there’s a case. And so what are you going to do at that point? So it’s painted you into a corner.

And also, to be honest, it’s bowling outside of his lane. If I’m a prosecutor, I would think, “You find the facts. You read the documents. You come up with the investigative report. Let me do the work of determining if a prosecution is appropriate or not. I don’t tell you how to investigate the case. You don’t tell me whether I should prosecute it.”

Kokai: For those who were watching or listening to this news conference — who aren’t attorneys, who aren’t federal prosecutors — I think most people heard the first two-thirds ... of it, and said, “Wow. She did all of these really bad things, and it sounds like she’s in real trouble.” And then, near the end, “Oh, but no. No one should do anything about this.” Did we get the same sense that someone who does know the law gets from this?

Bolitho: I have the same sense. In fact, I think you could view that first part of the press conference as almost a prosecutor’s opening statement as to why this was a proper forum for prosecution, why this was a proper case to be brought. And then there was kind of that unforeseen left turn that left me shaking my head as to how the first part of that press conference squared with the end.

Kokai: Now, another key element of this discussion from FBI Director Comey was the notion that, even though there was what he described as

“extreme carelessness,” and that there was a possibility that some of these emails got into the wrong hands, that there was no intent from former Secretary of State Hillary Clinton to harm the United States — to do anything wrong, to break the law. And because there was no intent, that was one of the reasons a prosecutor is unlikely to go forward with the case. From some of the commentary I’ve been reading, in this particular type of crime, intent is not an issue.

Bolitho: Intent is not an element of the crime. There are two federal statutes that the FBI was looking at. The first one is Title 18 United States Code, Section 793 (f). All that it requires is that you are an individual who’s been entrusted with national defense information, and that through gross negligence, you have either removed or caused that information to be removed from its proper place. So nowhere in those elements is there an intent to cause harm to the United States or an intent to violate the law. The standard is gross negligence and not an intentional crime.

Kokai: So in this case, the particular crime that they were looking at, intent is irrelevant?

Bolitho: Intent is irrelevant. And in fact, in the law sometimes, as prosecutors, we would refer to — when a defense had created an argument that really had no bearing on the actual issue to be decided — we would call it a “straw man.” We would say that, “The defense, ladies and gentlemen, the defense has just stood up before you, and they’ve created a straw man. And then they’ve beat it down. But what they just said has nothing to do with what

the judge is going to instruct you the law is.”

And in fact, if I was giving a rebuttal to FBI Director Comey’s press conference, I would stand up and say, “That’s all well and good. Of course, ladies and gentlemen, when the judge instructs you on the elements of this crime, he’s never going to use the word ‘intent.’ All of the stuff about intent is irrelevant. We don’t have to prove intent.”

Kokai: Some people who’ve been looking at this say, “It looks as if it’s putting into play a situation where the normal person would probably get charged with something like this, but the politically connected people can get away with it.” Based on what you know about how the process works, is this an example that would [lead] people to think this?

Bolitho: I certainly understand how that perception could be conveyed to individuals. I’d like to think that that’s not the way the system really works. I didn’t see it work that way. Of course, this case just has a lot of other things going on that lend itself to that. But what I think is, if you’re trying to convey the message that, “We handled this the way that we would have handled everything else,” then handle it the way that you would handle everything else.

Don’t go out and give a press conference as the FBI director. Send your recommendation privately to the Department of Justice, along with your investigative report. Let the prosecutors there do their job, reach their decision, in the way that you normally do. When you add all these other things that make it look abnormal, I think it just adds to the perception that this has been treated in a different way. CJ

COMMENTARY

A short, productive session for conservatives

The 2016-17 short session is over, the General Assembly has adjourned, and everyone is home, either campaigning or planning retirement. What happened? In short, a continuation of the transformational reforms that began in 2011 and have resulted in a smaller state government, tax cuts, education that works, and sustainable economic growth.

Here are a few highlights.

As one of the fastest-growing states in the country, with an average of 281 people moving to North Carolina every day, pressures on the state budget grow. The state General Fund budget for fiscal year 2016-17 is \$22.34 billion. The 2.8 percent increase is lower than the inflation rate and population growth. More money was put into savings than ever before, more than \$1 billion in reserves, bringing the total savings to 7.5 percent of our budget for the first time in history.

Even as savings went up, tax rates went down. Since 2011, North Carolinians have seen their taxes cut every year. There's more this year. The level of income married couples filing jointly can earn that is not taxed increases from \$15,500 to \$17,500, benefiting middle class taxpayers the most. In addition, sales taxes were broadened, and the personal income tax rate will go down again, resulting in a \$605 million net new tax cut this year.

The highest priority in the budget was compensation for teachers and state employees, with 62 percent of the recurring money going to salaries. Public school teachers got nearly a 5 percent increase this year, bringing the total increase under Gov. Pat McCrory to 15 percent. The average pay for an N.C. teacher is \$50,000 and will increase to \$55,000 over the next three years; North Carolina is set to have the highest teacher pay in the Southeast by next year. State employees received a 1.5 percent pay increase with many now eligible for additional pay based on merit. Retired state employees got a 1.6 percent cost-of-living bonus.

Education spending increased by \$512 million over last year's

budget. Education is clearly a priority, and this budget focuses that spending where it matters, ensuring every kid has every opportunity to succeed.

We saw an expansion of the successful and life-changing opportunity scholarships with a 10-year commitment to expand the program by 2,000 additional kids every year and expand the funding from the current \$10 million to \$25 million next year and \$145 million by the 10th year. This commitment to stability, consistency, and sustainability gives parents and families confidence to enroll, enjoy opportunities they never imagined, and watch their kids flourish.

More than 500 North Carolina schools are failing. Their students are falling further behind every day. The traditional methods to help have failed. These kids are stuck with no way out, until now. A special designation called an Achievement School District has been created for five of North Carolina's worst schools. Turnaround teams of education experts with proven success will have the flexibility to transform the schools. In addition, districts with an achievement school can set up an innovation zone that offers low-performing schools the flexibility found in charter schools to innovate and improve.

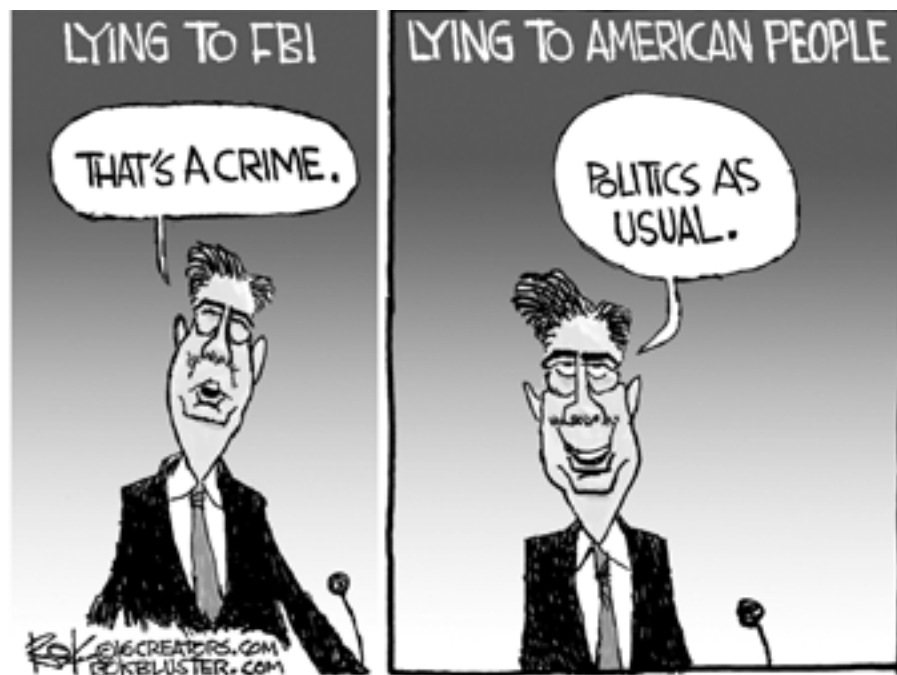
After years of revenue shortfalls, there is a \$425 million surplus for the fiscal year that just ended. North Carolina has beaten the national and regional averages in gross domestic product, job creation, and per-capita income growth since the adoption of conservative budgets in 2013. Unemployment rates have dropped in all 100 counties. According to the latest U.S. income numbers, North Carolina has met or exceeded the U.S. growth rate of per-capita income for 10 consecutive quarters. That's the best stretch of comparative income growth since 1996.

All in all, this was a very good session for fiscal conservatives. CJ

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



BECKI GRAY



EDITORIAL

Outside influence in government

Several members of the Investment Advisory Committee, a state commission that advises the treasurer about financial strategies for the state's substantial investment portfolio, were surprised to learn at a recent meeting that, unlike many elected and appointed officials in the federal government, nothing prevents the treasurer, or most state employees (along with elected officials and government board members) from accepting outside employment that offers significant compensation and could pose conflicts of interest.

You may not know that there's no limit to the amount of money North Carolina public employees and officials can receive in addition to their government salaries. State ethics laws require many of these officials to disclose those outside sources of compensation — including business interests, investments, rental income, and scholarships — to the state Ethics Commission in a document known as a Statement of Economic Interest.

But merely disclosing personal holdings seems inadequate.

There are criminal penalties for filing SEI forms with false or incomplete information, but that hasn't prevented Lt. Gov. Dan Forest from being part-owner of two real estate firms, Insurance Commissioner Wayne Goodwin from being part of a firm that collects lease revenues from a building in Rockingham, Attorney General Roy Cooper from getting rent from commercial and residential real estate, or Gov. Pat McCrory from owning stock in Duke Energy, as WRAL News reported earlier this year.

The IAC's concerns are related to a recently enacted state law that requires stricter ethics guidelines

for the treasurer, who serves as the ultimate decision maker for investing nearly \$90 billion in pension funds for state and local employees and teachers. Retiring Treasurer Janet Cowell raised eyebrows several months ago when she joined the corporate boards of James River Group Holdings and ChannelAdvisor without notifying the IAC or the pensions' board of trustees. Cowell reportedly received roughly \$300,000 in compensation, between cash and stock, for joining the corporate boards.

Cowell would have to recuse herself from any decision the retirement fund might make if it considered investing in those entities. The candidates seeking to win the treasurer's office this fall — Democrat Dan Blue III and Republican Dale Folwell — say they would not serve on corporate boards.

Blue told *Carolina Journal* he thinks that a prohibition on outside income should be considered for a number of offices across state government. Folwell said the treasurer, in particular, should be focused fully on protecting state investments and not have the potential distractions corporate board membership or other outside employment would entail.

We agree that high-level public servants should give their undivided attention to the people of North Carolina and not be in a position in which they may be distracted or compromised by outside interests.

Many senior elected or appointed officials in the federal government must surrender any outside business interests or place their assets in blind trusts. Similar requirements might be appropriate for those serving at the top echelons of state government. CJ

EDITORIALS

Dems' H.B. 2 blitz

The Left won't discuss the good news

Do you want to know why the Left has tried to make North Carolina politics into an "all House Bill 2, all the time" zone? Here are some reasons:

- Since mid-2013, when Gov. Pat McCrory's first budgets and other policy priorities were enacted, North Carolina's gross domestic product has expanded by an average annual increase of 2.7 percent, after adjusting for state-by-state price changes. That's one of the fastest rates of real GDP growth in the country.

- Since mid-2013, average personal income per person in North Carolina also has risen faster than the national and Southeastern averages.

- Since mid-2013, North Carolina employers have added nearly 265,000 net new jobs while the broadest measure of unemployment — the U-6 rate, including discouraged workers and involuntary part-timers — has dropped by 4.6 percentage points, faster than the national and regional averages.

- After Republicans enacted the 2013-14 state budget and tax cuts, liberal critics predicted billion-dollar deficits. Instead, state government has run substantial budget surpluses each year. These critics weren't just mistaken. They were massively, embarrassingly wrong.

- Starting with that initial

2013-14 budget, average teacher pay in North Carolina has gone up by about 15 percent — one of the largest teacher-pay raises in the country.

- Since the GOP took over the legislature, state spending on highway construction and maintenance has grown by hundreds of millions of dollars a year.

Given these promising trends, wouldn't you try to change the subject if your goal was to turn out the state's incumbent leadership?

Not all the news in North Carolina is unambiguously good, of course. And not all the good outcomes may have resulted directly from state-level policy choices.

To debate such weighty matters, however, would be to stay on political territory that, in general, favors Republicans. If North Carolina's economy were relatively weak, its state finances were in a shambles, and its education and transportation programs were getting scant attention from state leaders, the Left would want the state's political conversation to be about these issues.

Because the facts are otherwise, liberals prefer to focus on H.B. 2. The Left's fixation on the bill is wildly, indefensibly disproportionate. They think it will determine the outcome of the 2016 elections. They're wrong about that, too. CJ

Back to the future

Old-style campaigns making a comeback

During North Carolina's primary elections earlier this year, did you get a visit to your home from a campaign worker?

If so, you are far from alone.

One of the most noticeable changes in political campaigns during the past decade has been the return of door-to-door canvassing. It was a mainstay of electoral campaigns many decades ago, before the advent of saturation ad buys on television. It has returned.

Why have the political pros gone back to the future? Because here in North Carolina and in other highly competitive parts of the country, even small differences in campaign tactics can determine outcomes.

After a certain point, spending more money on TV ads doesn't seem to help candidates very much. If you plot the benefits of this strategy, the line goes from a rising slope to a horizontal. Once you reach that plateau, more ad spending won't increase

name recognition or counter attacks effectively.

At the same time, the rate of return on the three "direct" methods of campaigning — mail, telephone calls, and home visits — has gone up. Ironically, the explanation is technological innovation. By collecting and manipulating massive amounts of data, a campaign, party, or independent-expenditure group can target its message to the people it needs either to persuade or go to the polls.

A recent paper in *Political Science Research and Methods* quantified the effects for the 2012 presidential race. On average, these old-school efforts by the Obama and Romney campaigns and supporters increased turnout in battleground states by 7 to 8 percentage points. No single act makes a big difference. It's about repetition.

Expect to see a lot more of it this fall. CJ

COMMENTARY

Candidates go their own way

When North Carolina Democrats Jim Hunt and Rufus Edmisten were running their races for U.S. Senate and governor in 1984, they kept as far away as they could from the Democratic nominee for president, Walter Mondale.

Hunt and Edmisten co-chaired the state's delegation to the Democratic National Convention that summer, for example, but kept a low profile. Hunt declined an invitation to fill a prime speaking slot — held in San Francisco, as if the event's leftward tilt needed an extra shove — while Edmisten tried to stay out of every camera shot. Later, when Mondale made a campaign stop in Asheville, Hunt and Edmisten arranged to be elsewhere.

Their opponents, Jesse Helms and Jim Martin respectively, did the opposite. They attached themselves firmly to the president who would go on to win 62 percent of the vote in the Tar Heel State. "If Ronald Reagan wins and Jim Martin wins, North Carolina wins," the latter told audiences. Sen. Helms was re-elected with 52 percent. Martin won the governor's race with 54 percent.

In North Carolina, presidential contests always coincide with gubernatorial races and usually with U.S. Senate races. In the 2016 cycle — which features the two most unpopular presidential nominees since polling began — there has been a great deal of speculation about how Democratic and Republican candidates for statewide office will respond to the situation.

History offers some lessons here. But they must be interpreted carefully. Generally speaking, since North Carolina politics truly became competitive, Democrats have tended to outperform their presidential nominees while Republicans have tended to underperform theirs. From 1972 to 2008, for example, the Democratic nominees for North Carolina governor averaged nearly 230,000 more votes than their party's presidential nominees did. Republican gubernatorial candidates got an average of 185,000 fewer votes than theirs.

In percentage terms, Democratic vote shares for governor averaged 10 points higher than their

presidential shares, while the GOP gubernatorial average was eight points lower. The same kind of differential, although a bit weaker, was evident for U.S. Senate races in presidential years: On average, Democrats outpolled their presidential nominees by six points while Republicans fell short by three.

However, these averages obscure important variations. Both Lauch Faircloth in 1992 and Jesse Helms in 1996 attracted more votes for Senate than the respective tops of their tickets (George H.W. Bush and Bob Dole) got in North Carolina. And in both Martin's successful 1988 re-election campaign and Jim Gardner's unsuccessful 1992 campaign to succeed him, their vote totals were fairly close to the GOP presidential tally.

The biggest outlier of all was four years ago, when Pat McCrory was elected governor with 55 percent of the vote while Mitt Romney barely squeaked by Barack

Obama in the state. McCrory got 170,000 more votes than Romney did in 2012. His opponent, Walter Dalton, got nearly 247,000 fewer votes than Obama.

At this writing, the 2016 presidential race appears to be tightly contested in North Carolina. Most recent polls have Hillary Clinton ahead of Donald Trump, but not significantly. Burr currently leads his Democratic challenger, Deborah Ross, by an average of six points. McCrory and his Democratic opponent, Roy Cooper, are tied.

Democrats generally have gained from decoupling the state and national trends. Republicans never have won a race for U.S. Senate or governor in a year in which their presidential candidate did not win at least a slight plurality in North Carolina.

Will 2016 be different?

Four days after Trump accepted the GOP's presidential nomination, he appeared in Winston-Salem with McCrory and Burr, among others, by his side. Clinton stopped in Charlotte that same week, as did Trump, to speak at the VFW's annual convention, but made no other public appearances on that trip.

Stay tuned. CJ

John Hood is chairman of the John Locke Foundation.



JOHN HOOD

MEDIA MANGLE

Leaks betray media defenders

It's no secret that I think the so-called mainstream media is largely in the tank for Democrats and liberals. After all, I discuss examples of that every month in this space.

Many journalists and J-school academics scoff at the notion of left-wing bias in the media. They say it's not really bias; it's "news judgment." They don't explain, though, how "news judgment" always seems to redound to the benefit of liberals and Democrats.

As someone who has been harping on this issue since the early '90s, it's heartening when something happens that validates everything I've written about the collusion among Democrats, liberals, and the mainstream media. The most recent example is the leak by WikiLeaks late last month of Democratic National Committee emails.



**JON
HAM**

The initial "news" from these emails was that the Democratic National Committee had been working with the Hillary Clinton campaign to torpedo the campaign of Bernie Sanders. But hidden in the leaks, and almost completely ignored by the media, were emails attesting to a relationship between Democrats and the media that goes far beyond cozy and borders on the downright obscene.

Very quickly Democrats and the media mobilized to change the subject from the content of the emails to who had hacked them. Russia and Vladimir Putin quickly became the story as the media anxiously covered up its own sordid complicity betrayed by the leaks.

One email showed that *The Washington Post* and the Democratic National Committee held a joint fundraiser, but only after an email discussion as to how to hide the *Post's* involvement.

Another showed that Politico reporter Ken Vogel sent a story about Hillary Clinton's fundraising to the Democratic National Committee before the story's publication and even before it had been seen by his editors. For those who wonder why this is an issue, this is something that *simply is not done* by reputable journalists. Politico later announced lamely that "there were no substantive changes to the piece" after it was vetted by the DNC.

Other emails show that then-DNC chairwoman Debbie Wasserman Schultz pelted MSNBC executives with complaints about criticism of Hillary Clinton on "The Morning Joe" program. Ironically, the comments were critical of Clinton and her people for rigging the system against Bernie Sanders, something the leaks definitively confirmed.

Another DNC staffer wondered in an email "if we want to offer Jake Tapper questions to ask us." There is no indication that CNN's Tapper accepted any questions from the DNC, but the email makes clear the DNC didn't think that was outside the realm of possibility for CNN.

In case you were wondering, no emails surfaced of the media colluding with any conservatives or Republicans. Funny that. CJ

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



The declining U.S. labor force

In our modern, technology-driven world, one of the things we don't lack is information. As a professional economist, I have to admit my profession is part of the reason. We love economic statistics, and with new ones released almost daily, there's no shortage of these numbers.

Among all the economic data coming from various media outlets, one has received increased attention in recent years. In fact, I give this number top prize for most discussed economic statistic of the past couple of years.

And what is this digital darling? It's the labor force participation rate, or LFPR for short. It's actually a simple statistic, measuring the percentage of adults — usually defined as those 16 years of age and older — who either have a job or are looking for work.

Why has the LFPR received the equivalent of rock-star status for those avidly following the economy? Because the LFPR has displayed a fairly consistent trend during the last 20 years, and this trend has been down. In other words, as a percentage of our adult population, fewer people are working or are looking for work.

Just after World War II, the rate stood at 58 percent. By the mid-1990s it was almost 68 percent, a 10-percentage-point jump in 50 years. This was an amazing gain, fueled, in part, by a growing economy and the movement of many women into the paid labor force.

But the reversal in the rate over the last 20 years has been just as significant. The LFPR has dropped 5 percentage points, meaning half the earlier gain was given up in less than half the time. The LFPR is now at its lowest level in 30 years. We've seen the same trends for the LFPR in North Carolina.

Why has the LFPR declined, and why should we be concerned about its plunge? Also, what changes or policies could be instituted to increase it?

A big part of the reason for the rate's decline is we're an aging society with thousands of workers retiring every day. Additionally, more young people are going to college and thus staying in school longer before they work. There's some indication a greater share of young mothers may be delaying

entry into the labor force until their children are older. All of these factors would combine to reduce the labor force participation rate.

But research shows these factors together account for only about half the reduction in the LFPR. Importantly, the male rate has been declining continuously since the 1950s, and recently the drop has accelerated. The movement of men out of the labor force has been particularly large for young single men who have not pursued formal training beyond high school. The explanation is that this is the demographic group most adversely affected by the reduction in manufacturing jobs, the implosion in the construction industry, and the rise of machinery and technology replacing human labor in some occupations.

To increase the LFPR, a couple of initiatives are needed. First, many individuals aren't working today because they don't have skills businesses want. And while education is emphasized in our society, there are many people — particularly young people — who haven't found their occupational passion. Expanding vocational and technical training options in high schools and increasing apprenticeship collaborations with businesses are two ways to introduce the young to work options.

Second, to increase the attractiveness of work, public policy should ensure work always pays for the worker. In particular, for lower-earning workers this means social safety net support should be removed only gradually as the worker's earnings rise. Indeed, a recent study showed lower-earning workers trying to move up the income ladder often lose more than a dollar of public support for every dollar of new earnings. This reduces their incentive to work.

Among the hundreds of economic statistics available, the labor force participation rate may be one of the most telling and comprehensive. So if you're short on time, this may be the statistic to follow! CJ

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



**MICHAEL
WALDEN**

The right diagnosis but the wrong answers

These are trying times for conservatives. Revered institutions are facing existential challenges: the family and church by cultural transformation facilitated by policy and legal decisions; the nation by globalization and the power of supranational institutions led by a technocratic elite that holds little regard for sovereignty; and markets by the growing administrative state and an expansionary fiscal policy. What should be done?

I don't believe leaders like Donald Trump and Boris Johnson, who spearheaded the successful Brexit campaign in June, have the answers. They believe they own some kind of time machine, capable of turning back the clock to the 1950s, when social mores were very different and America and Britain were less pluralistic societies capable of succeeding economically from positions of relative isolation. Instead, conservatives need to accept that we live in an interconnected world where goods, capital, and human beings will continue to move somewhat freely and fewer people will share their traditional values. In that context, the institutions that matter should be protected and a thoughtful defense of them articulated to the



**ANDY
TAYLOR**

public. They are as important in this era of high technology, globalization, cultural liberalism, and demographic transformation as they always have been. Adaptation to the 21st century is essential.

Let's take the nation-state first. Many Brexiters supported the United Kingdom's membership in the European Union when the organization was merely a single market, designed solely for the free transnational exchange of goods and capital. Immigration, of course, was a sticking point for many others, but I believe there still would have been a comfortable majority for "Remain" if not for the thousands of meddlesome regulations crafted by unaccountable EU bureaucrats to manage and homogenize the everyday lives of European citizens.

The lesson is that people want extensive interaction between sovereign and autonomous nations that share classically liberal values like natural rights, the kind of world imagined by intellectual fathers of this country such as John Locke and Adam Smith. Trump is wrong to interpret Brexit sentiments — and, although polls are all over the place on this issue, I believe the views of most Americans — as consistent with his desire to scrap trade deals like the Trans-Pacific Partnership and build a wall to effectively shut out the rest of the world.

Trump is correct, however, when he says markets are not currently working for the average person. He

has won popular support by claiming the system is rigged and resembles a "cronyocracy," not a meritocracy. Some economic sectors, firms, and individuals are subsidized, and others enjoy exceptions from regulations, for reasons that can be explained only by politics. Conservatives need to communicate that, as Milton Friedman eloquently argued, markets are the most democratic and efficient mechanism for distributing resources when they are permitted to incentivize risk, generate productivity, and deliver economic growth.

We need greater transparency in our economy and to reward strategic investment, work, and talent. "Simple rules," to quote the title of libertarian law professor Richard Epstein's book on the topic, will provide the public with greater confidence than multiple layers of complex and uneven regulations they must navigate. When regulations are light, brief, clearly visible, equitably applied, and derived from broadly accepted underlying principles, markets work.

Next is family. It is difficult for many conservatives to adapt their traditional understanding of this institution to the huge cultural and attitudinal shifts American society is currently experiencing. But they can recognize that government presents a greater challenge to the nuclear arrangement than same-sex marriage.

A library of research demonstrates children are better off, physically, intellectually, and emotionally,

in a two-parent stable family than in other arrangements. An admittedly much smaller but nevertheless growing literature reports same-sex couples can deliver similar gains to their children. Many current tax and welfare policies, however, penalize marriage at a time when economic and cultural pressures on the institution are, as demonstrated most spectacularly by the experiences of the white working class, rising to intolerable levels.

Such a recalibrated defense of nation, markets, and the family is not just good policy rooted in core conservative values. It makes sense politically. Trump has virtues, not least his ability to energize white working-class voters. But, in the face of an extraordinarily unpopular Democratic opponent, he has also revealed the limits of assembling a coalition attracted more to the policies of 1956 than 2016.

If Republicans want to govern, they need to welcome Americans of all demographic types — so long as they are virtuous, hard-working people who see the value in ideas like American exceptionalism, free enterprise, and the family unit. By adapting the institutions that have delivered the country its freedom and prosperity over the past 2 ¼ centuries, the party can permit them to do the same for 2 ¼ more. CJ

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Safety, security dominate message from RNC

Overall, the Republican National Convention was a huge success for Donald Trump, Mike Pence, and the Republican Party.

Yes, there were a few bumps in the road, but the messages of safety, security, and law and order resonated with the middle class, which is where the battle this fall will be fought.

Trump and his team showcased his family, and they reciprocated by talking about their father's compassion for people, his values, and his work ethic.

Leading off was Trump's wife, Melania. She is smart and effective and has her own rags-to-riches story to tell. She stumbled when it was discovered that several passages of her speech were lifted from past conven-



**MARC
ROTTERMAN**

tion speakers. The mainstream media had a field day with the "revelation," but I would submit that Middle America was enchanted with this woman who speaks four languages, climbed the ladder of success, and along the way became an American citizen.

Then there were Donald Jr. and Ivanka — two stars on the rise. Both are great testaments to their father. Eric Trump also made a strong case for his father. The speeches also made clear that these are not a bunch of spoiled rich kids. They have worked on the Trump job sites and learned every aspect of the business, from the ground up.

Others who spoke on Trump's behalf were David Clarke, the "new sheriff in town," and "America's Mayor," Rudy Giuliani. Clarke, the Milwaukee sheriff, made the case "that blue lives matter." He spoke to America effectively and with passion. His message in a nutshell is that the "thin blue line" is all that separates us from anarchy and that assassination of our police will not stand. Giuliani

specifically laid out what needs to be done to crush ISIS and their affiliated groups.

And for the record, Newt Gingrich — "the Lion of American Conservatism" — pointed out the failed foreign policies of President Obama and Hillary Clinton and made a great case for a Trump presidency.

Gov. Pence's speech accepting the vice presidential nomination was spot on. On stage he was cool, calm, and self-deprecating. And most importantly — anyone watching could see he was up to the job.

As for Donald Trump's acceptance speech and his performance: First and foremost, it was disciplined and focused. In my view, he passed the commander-in-chief test with flying colors. In essence, many Americans could see Trump in the Oval Office, making the tough calls.

He talked about law and order, security, and safe neighborhoods. And one of his best lines of the night was when he defined the legacy of Hillary Clinton as secretary of state: "This is

the legacy of Hillary Clinton: Death, destruction, terrorism, and weakness."

He talked about crime in the inner city, black and Hispanic unemployment, and the ravages of drugs on every demographic in America. He talked about open borders, sanctuary cities, and the deaths of innocent Americans by criminal illegal aliens. He personalized the victims and their families.

Trump slammed the Obama economy and the impact of bad trade deals. He repeatedly talked about making "America great again" and "America first." These powerful phrases resonate with blue-collar Americans — the forgotten Americans.

To sum it up, Trump came out of Cleveland on a roll and gave Hillary a tough act to follow. CJ

Marc Rotterman is a senior fellow at the John Locke Foundation and host of "Front Row," an in-depth look at policy and politics on North Carolina Public Television's NC Channel.

ACC plans move to Bristol, Conn., as protest over H.B. 2 (a *CJ* parody)

BY BIFF BURNS
Sports Editor

RALEIGH

Voicing not to be outmaneuvered by the National Basketball Association, the Atlantic Coast Conference will announce plans to boycott North Carolina-based collegiate sporting events unless and until the state repeals House Bill 2, *Carolina Journal* has learned.

The plan was hatched soon after the NBA's July 21 announcement that the league would move its 2017 All-Star Game from Charlotte because the General Assembly refused to repeal H.B. 2, a law passed during a special session of the legislature requiring all people occupying shared public restrooms, changing rooms, locker rooms, and other similar facilities to use the one designated for the gender on their birth certificates.

According to the plan, discussed in emails hacked by Vladimir Putin and obtained by *Carolina Journal*, if H.B. 2 remains in effect after the 2017 long session of the General Assembly, all athletic events involving the four North Carolina-based ACC members — Duke University, N.C. State University, UNC-Chapel Hill, and Wake Forest University — would move out of North Carolina and to a proposed "ACC Sports Complex" adjacent to the headquarters of the sports cable giant



Rumors of the ACC's abandonment of North Carolina for Bristol, Conn., were rampant recently when this sign was tested at ESPN headquarters in the Nutmeg State. (CJ spoof photo)

ESPN in Bristol, Conn.

The conference's headquarters also would move from Greensboro to Bristol.

ESPN was chosen because its on-air personnel have offered regular encouragement for the repeal of H.B. 2.

The complex would have multipurpose facilities to accommodate football, basketball, baseball, soccer, lacrosse, track and field, and other sporting events. "The complex would be like a mini-Olympic village," said one email ESPN president John Skipper sent to ACC Commissioner John Swofford. (Both are alumni of UNC-Chapel

Hill.)

"Even if H.B. 2 is repealed, we'll have our own place to host games and can use the revenues to offset some of the erosion of our subscriber base," Skipper said in a separate email to other top officers at Disney Networks, which owns ESPN.

As part of the plan, the ESPN channel that features college sports, ESPNU, would move its main offices and studio from Charlotte to Bristol.

Another email Swofford sent to the athletic directors of the four North Carolina ACC schools reflected growing concern among conference officials

that the ACC would lose "moral stature" among liberal sportswriters and left-wing activists.

"We can't let the NBA steal the high ground here," Swofford said. "The *N&O* is already giving us grief for not moving the football championship out of Charlotte, and before you know it, Gene Nichol will be on our case." Swofford was referring to a column published July 22 in the *Raleigh News & Observer* by sportswriter Luke DeCock about the conference football title game and UNC law professor Nichol, who writes a regular column for that newspaper in which he trashes conservatives.

In other emails, reaction from the North Carolina ACC schools was mostly positive. Duke men's basketball coach Mike Krzyzewski, who publicly had called H.B. 2 "embarrassing," told his coaching staff, "It will be a shame to lose the advantage we get from the Cameron crazies [fans at Duke's home court at Cameron Indoor Stadium], but we'll be even closer to our main alumni base in New Jersey."

UNC-Chapel Hill coach Roy Williams reassured his colleagues at the other institutions that any academic issues arising from holding so many events hundreds of miles from campus would be no problem. "We wrote the book on keeping our kids eligible using distance learning," Williams wrote. *CJ*

FRONT ROW

HOST: Marc Rotterman

POLICY & POLITICS Fridays @ 9:30 PM & Sundays @ 9:30 AM

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