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New legislation, elections in the 3rd and 9th districts

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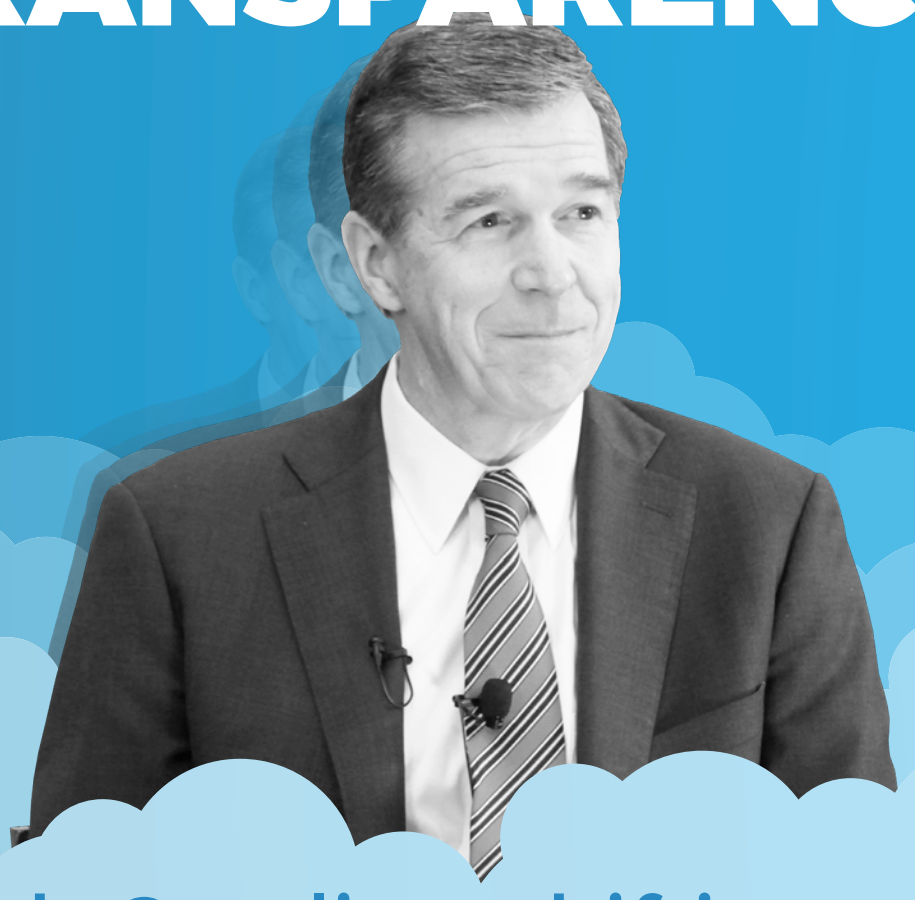
A CLOUDY STATE OF TRANSPARENCY



In North Carolina, shifting whims of government officials limit access to public records

KARI TRAVIS
ASSOCIATE EDITOR

LINDSAY MARCHELLO
ASSOCIATE EDITOR

"Chapel Hill professors question group's public records requests."

"Governor and NC media settle dispute over McCrory's records."

"Public records lawsuit filed against state Rep. Beverly Boswell."

All real headlines. All spanning North Carolina's news cycles over the past decade. All present important questions about transparency and access to government records, which are, by statute, open to everyone — not just journalists — for inspection.

Sunshine Week, March 10-16, exists to raise awareness of public records laws and encourage access to government. But that access is often stunted by misinterpretation or misuse of exemptions to transparency laws.

"The law is slowly losing ground, and it's death by a thousand cuts," said Jonathan Jones, a professor at Elon University and the former director of the N.C. Open Government Coalition; Jones left that position in February to pursue his own legal practice.

One more famous case involved "legislative privilege," a legally unfounded provision state lawmakers have used to dodge records requests.

In January 2018, Craig Merrill, a resident of Kitty Hawk, filed a public records lawsuit against Rep. Beverly Boswell, R-Dare. Merrill requested official communications, such as emails and phone records,

continued PAGE 12

Interview: Don Carrington

Carolina Journal's investigative reporter talks public records

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Lt. Gov. Dan Forest creates exploratory committee for 2020 governor bid

Lt. Gov. Dan Forest has announced the creation of an exploratory committee for the governorship, a first step in formally running for office.

On Jan. 28, Forest posted a video on social media announcing his plans to run for governor in 2020. The video highlights themes of unity and valuing the individual — rather than pitting groups against one another.

An exploratory committee is a common tactic used to determine whether a potential candidate should run for office by testing the waters with political polls.

Forest, a Republican, was elected lieutenant governor in 2012 and re-elected in 2016. His campaigns have featured visits to all 100 N.C. counties and a strong grass-roots organization.

Much of his time in office has been focused on education and school choice. As lieutenant governor, Forest sits on the State Board of Education; he chairs the Special Committee on Digital Technology.

During National School Choice Week, Forest attended a rally in Raleigh, where he spoke about how there is great division within the education world. He told attendees school choice is about children and not about institutions.

Lt. Gov. Dan Forest

Forest is the only Republican so far who has formally announced a 2020 challenge to current Democratic Gov. Roy Cooper. Former Republican Gov. Pat McCrory, who lost to Cooper in 2016, has indicated an interest in entering the race. But McCrory hasn't formally announced a bid to run again.

Lindsay Marchello

Former Magistrate Judge Webb cites financial concerns for leaving UNC BOG

FORMER UNIVERSITY of North Carolina System Board of Governors member Bill Webb, who resigned in January, vacated his seat for financial reasons, according to his resignation letter.

The document, tendered to UNC Board Chairman Harry Smith on Jan. 31, says, "I believe it is past time to maximize my earning potential in order to better provide for my family."

Webb, a 75-year-old former magistrate judge who currently serves as a senior adviser for Raleigh's Shanahan Law Group, told Smith, "although I am associated with a law firm, I have spent a great deal of my time on BOG activities which has severely restricted my income."

Webb had served on the board since 2015. His term was set to end on June 30.

A public servant for decades, Webb was a local prosecutor in Pennsylvania, a senior staff attorney in the U.S. House of Representatives, and an assistant U.S. attorney. He also worked with Supreme Court Justice Clarence Thomas as a member of the Equal Employment Opportunity Commission in Washington, D.C.

Judge William Webb

Webb served as a U.S. magistrate judge for 14 years in North Carolina's Eastern District. Earlier he had worked in many roles at the N.C. Department of Crime Control and Public Safety, including as deputy secretary and then general counsel.

Kari Travis

N.C. senators propose bill making female genital mutilation illegal

Female genital mutilation isn't illegal in North Carolina, but a group of senators introduced a bill to change that for girls younger than 18.

State Sen. Joyce Krawiec, R-Forsyth, announced Jan. 30 she's sponsoring a bill to ban FGM on minors. North Carolina is one of 23 states that hasn't yet made the practice illegal.

Lt. Gov. Dan Forest backs Senate Bill 9.

The federal government in 1996 passed a law banning FGM in all states, but a federal court in Michigan overturned that law last year. Congress "overstepped its bounds" due to the fact that FGM is a local criminal activity, U.S. District Judge Bernard Friedman wrote in his decision.

Friedman made the right call, but North Carolina should ban FGM for minors who have no say, Forest said during a news conference.

Unlike male circumcision, FGM involves permanent and life-altering injury to a woman's genital organs. Procedures often aren't performed by doctors and serve up a host of health risks and problems.

The practice is especially popular in Indonesia, Egypt, and Ethiopia, but is also on the rise in the United States.

The Centers for Disease Control estimate more than 500,000 girls in the United State are at risk of, or have suffered, FGM.

No one knows the exact number of affected women in North Carolina, Krawiec said.

But the CDC estimates more than 118,000 of those at risk of the procedure live in states that haven't banned the procedure.

Krawiec's bill would label FGM as a class C felony, with a minimum penalty of 44 months in prison, she said. The bill includes a "no-defense clause," which eliminates the ability to claim FGM as a protected cultural or religious practice.

Kari Travis

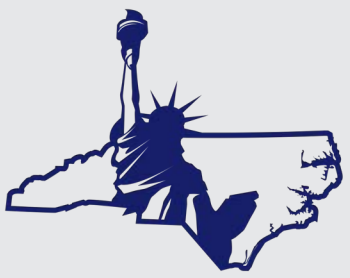
Libertarians, third parties can't nominate members to local election boards

THE LIBERTARIAN Party of North Carolina tried to nominate members to county elections boards but was told it was against the law.

Susan Hogarth, N.C. Libertarian Party chair, said the party is considering its options, but a legal challenge is unlikely.

Session Law 2018-145, a technical correction bill passed at the end of last year's special session, contains a provision preventing third parties from nominating members to county election boards. The law says for each county board of elections, the state board shall appoint two members each belonging to the two political parties with the highest number of registered affiliates.

County boards of elections consist of five members. The N.C. State Board of Elections appoints four members, and the governor appoints the fifth member to serve as the chair of the county board. None of those members are likely to be affiliated with a third party, or even unaffiliated.



The N.C. Libertarian party spent thousands just to get ballot access, something that's granted automatically for the Republican and Democratic parties. A 2017 law made it easier for third parties to gain ballot access, but it can still require substantial resources to obtain.

Voter registration data from the NCSBE shows the Democratic Party has 2,460,876 registered voters. Another 2,089,626 registered voters are unaffiliated. Republicans have 1,982,918 voters. The Libertarian Party has 36,010 registered voters.

LIndsay Marchello

QUICK TAKES

Former Wake elections official sentenced for helping noncitizen boyfriend vote illegally

A federal judge sentenced a former Wake County elections official to two months in federal prison followed by a year of supervised release for assisting a noncitizen to vote.

U.S. Attorney Robert Higdon announced that Judge Louise Wood Flanagan also ordered Wake County resident Denslo Allen Paige, 66, to pay a $250 fine and $25 special assessment.

The case is part of a larger action involving 19 foreign nationals indicted by a grand jury in Wilmington.

Higdon also is the U.S. attorney to whom the state elections board sent its report on absentee ballot irregularities in Pender County during the 2016 election cycle. He has not commented on the status of that investigation. It came to light as part of further absentee ballot mischief in the 2018 9th U.S. Congressional District race.

Court records show Paige, who was a paid election worker, advised Guadalupe Espinosa-Pena, a Mexican citizen, to register and vote in the 2016 general election. She knew Espinosa-Pena, her boyfriend, was a legal permanent resident, but not a U.S. citizen, according to news reports at the time. Espinosa-Pena had been denied naturalization twice.

Paige urged him to vote to make his voice heard, and she assisted him in completing his voter registration form. He then voted at a Wake County polling site. Falsely claiming U.S. citizenship to vote carries a maximum sentence of six years' imprisonment and a $350,000 fine.

Higdon's office described Paige as a paid volunteer and former election official. Wake County records identified Paige as a precinct official.

Dan Way

Beasley first female African-American chief justice of N.C. Supreme Court

Gov. Roy Cooper picked the youngest member of the N.C. Supreme Court to fill its top position.

Cooper named fellow Democrat Cheri Beasley, 52, an associate justice on the court, to succeed Republican Mark Martin, who left the chief justice's post at the end of February. Beasley also is the first African-American woman to serve as chief justice in the 200-year history of the state's highest court.

Cooper wouldn't say whether he would name a Republican to replace Beasley and maintain the court's current 5-2 partisan balance. He had not named a replacement by press time.

Cooper said Beasley has the high legal ability, decency, integrity, and devotion to public service required for the job. He called her the right person at the right time in defending his decision to bypass longer-serving Senior Associate Justice Paul Newby, a Republican who already announced as a chief justice candidate in 2020, and Associate Justice Robin Hudson, a Democrat.

Cooper said the people ultimately will decide whether Beasley and her replacement remain on the court. They would have to stand for election in 2020.

Senate leader Phil Berger, R-Rockingham, issued a statement wishing Beasley well in her new role. But he said he was disappointed Cooper ignored a decades-old precedent of appointing the most senior member of the court as chief justice.

Martin's last day as chief justice was Feb. 28. He will be dean of the law school at Regent University in Virginia Beach, Virginia.

If Cooper names a Democrat to replace Beasley, the party would hold a 6-1 majority, with Newby the only remaining Republican.

CJ Staff


CHERI BEASLEY

CHIEF JUSTICE. **N.C. Supreme Court Chief Justice Cheri Beasley, as she was introduced Feb. 12 by Gov. Roy Cooper.**

Bills implementing recommended ABC reforms introduced in Senate

SENS. JOYCE Waddell, D-Mecklenburg, and Andy Wells, R-Catawba, have filed legislation that would take a big step toward reforming the alcohol control system in North Carolina.

The bill is based on recommendations by the North Carolina Program Evaluation Division, which presented a report — "Changing how North Carolina Controls Liquor Sales has Operational, Regulatory, and Financial Ramifications" — to the Joint Legislative Program Evaluation Oversight Committee on Feb. 11.

The measure, Senate Bill 87, would require the merger of N.C. Alcoholic Beverage Control Commission systems in a county with two or more ABC systems. A companion bill, House Bill 91, was filed Feb. 18.

For instance, Rockingham County, which has about 90,000 residents, has three ABC boards. Brunswick County, home to myriad beach communities, has nine boards. Wake and Mecklenburg counties, which have by far the largest populations in North Carolina, each has one.

North Carolina is one of 17 remaining alcohol control states in the country and may well be the most restrictive. It's the only state giving local boards control over what's on the shelves.

For the latest developments on ABC reform, go online:
CAROLINAJOURNAL.COM

The bill also would repeal the purchase-transportation permit requirement for spirituous liquor, a decades-old rule originally established to deter bootlegging. It also would allow local governments the option of operating ABC stores on Sunday and allow the purchase of individual bottles when placing a special order of spirituous liquor — as opposed to a case — and allow spirituous liquor tastings at ABC stores. It also would require the N.C. ABC to submit a quarterly report on its process for obtaining a contract for state warehouse services.

The state auditor in August found that poor contract administration by the N.C. ABC related to warehousing liquor cost North Carolina taxpayers at least $11.3 million over 13 years. Unused warehouse space potentially cost the state $2.1 million over seven years, and a lack of monitoring left the state underpaid by at least $297,537 over two years.

The senators filed S.B. 87 on Feb. 19, and it was referred to the Committee on Rules and Operations of the Senate the next day.

John Trump

Western Carolina sets enrollment record thanks to discount tuition

Enrollment at Western Carolina University is at a record high now that a low-tuition plan for select University of North Carolina schools is in effect.

WCU's enrollment has spiked to 11,028. That's almost 800 students more than were enrolled this time last year. Republican lawmakers link the growth to N.C. Promise, a $500 per semester tuition plan for in-state students. The plan also dropped out-of-state tuition to $2,500 a semester.

N.C. Promise became law in 2016. The cut-rate tuition applies to Elizabeth City State University and UNC-Pembroke, in addition to WCU. State legislators invested $51 million in the program. Their main goal was to improve enrollment at some of North Carolina's Historically Black Colleges and Universities, although only ECSU chose to participate in NC Promise.

The N.C. General Assembly hasn't said how long it will continue the program or whether other UNC System campuses will get a chance to participate in it.

WCU has seen a boost in the number of graduate students, undergraduate transfers, and returning freshmen, WCU officials told ABC 13 in Asheville.

"We've seen more folks knowing about Western from active recruitment and marketing. We've seen the word-of-mouth spreading. N.C. Promise, obviously, was kind of a booster rocket," said Phil Cauley, assistant vice chancellor for undergraduate enrollment.

Kari Travis

QUICK TAKES

UNC chooses familiar face as interim chancellor

The University of North Carolina at Chapel Hill will have a new chancellor, at least for a few months. Kevin Guskiewicz, dean of the College of Arts and Sciences, was named interim chancellor on Feb. 6.

Guskiewicz filled the temporary position after former Chancellor Carol Folt officially departed Jan. 31.

On Jan. 14, Folt announced her intent to resign by the end of the academic year, as well as her decision to remove Silent Sam's pedestal from McCorkle Place. The UNC Board of Governors then accelerated Folt's resignation to take effect at the end of January.

During a Board of Governors meeting Jan. 25, UNC System Interim President William Roper said the interim chancellor must meet several criteria, including familiarity with the university system and possession of a substantive resume.

"Kevin is that leader," Roper said in a news release.

Guskiewicz has served as dean of the College of Arts and Sciences since January 2016 and has been a part of the university's faculty since 1995. Under his leadership, the college has played a major role in developing and implementing Carolina's five-year Quality Enhancement Plan.

Guskiewicz is now overseeing a major overhaul of UNC-Chapel Hill's general education curriculum. This hasn't been done in 12 years.

As a neuroscientist and nationally recognized sports-related concussion expert, Guskiewicz serves as principal investigator or co-investigator on three active research grants worth more than $16 million.

He is co-director of the Matthew Gfeller sport-related Traumatic Brain Injury Research Center and director of the Center for the Study of Retired Athletes.

His work on sport-related concussions won him a MacArthur Fellowship in 2011. In 2013, *Time* magazine named Guskiewicz a "Game Changer," one of 18 "innovators and problem-solvers who are inspiring change in America."

Lindsay Marchello

COURTESY OF UNC CHAPEL HILL

A FAMILIAR FACE. Kevin Guskiewicz, dean of the College of Arts and Sciences at the University of North Carolina at Chapel Hill, was named interim chancellor of the university Feb. 6.

House approves proposed constitutional amendment restricting eminent domain

THE HOUSE APPROVED a bill Feb. 27, asking voters to enshrine eminent domain restrictions in the state constitution. The measure passed easily, by a 94-21 vote.

House Bill 3 would restrict eminent domain in the state to "public use" and require just compensation to be decided by a jury. Reps. Destin Hall, R-Caldwell; Chuck McGrady, R-Henderson; David Lewis, R-Harnett; and Ken Goodman, D-Richmond, are the primary sponsors of the bill.

If the bill passes, voters would decide whether to include the following phrase into the state constitution: "Private property shall not be taken by eminent domain except for a public use. Just compensation shall be paid and shall be determined by a jury at the request of any party."

The proposed amendment would appear on the ballot for the May 2020 primary election.

Under the bill, the government could continue using eminent domain to build and maintain railroads, roads, electric power lines, bridges, and other public utility facilities or infrastructure.

"At the end of the day this bill is about protecting property rights," Hall said. "Protecting property rights is a fundamental purpose of government and this bill helps to do that for the citizens of North Carolina."

STOCOK PHOTO

EMINENT DOMAIN: The government's power to take private property for a public use while requiring "just" compensation to be given to the owner.

Jon Guze, the director of legal studies at the John Locke Foundation, said the bill is a great start but he hopes to see it go even further to protect against eminent domain abuse.

"What would make this even better, either through a constitutional amendment or through some statutory change, would be something to ensure that eminent domain isn't used to transfer property from one private party to another in the name of economic development," Guze said.

While the bill allows eminent domain to be used only to take private property for public use, Guze said it would be nice to see a provision explicitly prohibiting the taking of property for economic development as it was in the case of *Kelo v. City of New London.*

The City of New London in Connecticut used eminent domain to take private property and give it to a private developer for commercial development. In *Kelo v. City of New London*, the U.S. Supreme Court upheld the City of New London's use of eminent domain, but left the door open for state and local governments to determine what kinds of public needs justify the use of eminent domain. The court also ruled that states can place restrictions on taking powers.

After the landmark ruling in 2005, several states enacted laws restricting eminent domain use, including many in the southeast. North Carolina has yet to do so, but that isn't from want of trying. McGrady and former Rep. Skip Stam, R-Wake, have made multiple attempts to pass eminent domain abuse protections since the *Kelo* decision.

While the House has passed similar legislation, the bills have never survived the Senate. This time may be different, as a companion bill to H.B. 3 is in the Senate. Senate Bill 27 was introduced by Sens. Brent Jackson, R-Sampson; Danny Earl Britt Jr., R-Robeson; and Norm Sanderson, R-Pamlico.

"The heart of this is taking a strict view as to when government can use that power to seize somebody's property," McGrady said. "We are trying to return to our roots with this amendment and limit the use of eminent domain to when government really needs to condemn property or utilities are needed to provide service to the public."

After passing the House, H.B. 3 goes to the Senate. Before it can reach the ballot, it will need the support of at least 30 senators, or 60 percent of the membership of that chamber.

Lindsay Marchello

N.C. GOVERNOR'S CRIME COMMISSION

The Special Committee on School Shootings recommends more cops, more investment in mental health for school safety

Making money available for mental health programs and including students in conversations about school safety are among the recommendations in a report from the N.C. Governor's Crime Commission Special Committee on School Shootings.

The committee presented the report to Gov. Roy Cooper on Feb. 7.

The committee was formed after the Feb. 14, 2018, shooting at Marjory Stoneman Douglas High School in Florida, in which 17 people died. The group, composed of various law enforcement and state officials, held five meetings and hosted two public forums in 2018. The committee came up with 22 recommendations in areas of training, physical security, threat intelligence/assessments, school-law enforcement partnerships, and possible statutory changes. An additional 11 recommendations outside of those categories are included in the report.

A handful of recommendations in the report include:

- Enhancing mental health training for school resource officers
- Enhancing active-shooter drills and requiring vulnerability assessments
- Training SROs to teach people in the schools about how to respond to an active-shooter crisis
- Considering new legislation, including a recommendation for full funding for an SRO to be assigned to every school in the state

The report recommends following through with Cooper's 2018-19 budget, which adds $55 million for mental health personnel and training. The budget also calls for $15 million for programs to train teachers, school staff, and mental health professionals to identify and respond to student mental health challenges.

Lindsay Marchello

QUICK TAKES

Elon Poll finds slim majority in N.C. supports ending ABC monopoly on liquor sales

An Elon University Poll finds 52 percent of North Carolinians contacted support closing the state's Alcoholic Beverage Control stores.

The poll was conducted in collaboration with the General Assembly's Program Evaluation Division, which released its report — "Changing How North Carolina Controls Liquor Sales Has Operational, Regulatory, and Financial Ramifications" — Feb. 11.

The Elon poll found a similar majority of state residents — 52 percent — believe that ABC stores should continue to be closed Sundays.

"We found no consensus among North Carolina voters when it comes to privatizing ABC stores or allowing liquor sales on Sundays," said Jason Husser, director of the Elon Poll and associate professor of political science. "A very slim majority support closing ABC stores in favor of private businesses, and a similar majority wanted ABC stores to remain closed on Sunday."

The live-caller — landline and cell phone — survey of 379 registered voters in North Carolina was conducted Oct. 1-4, 2018, with a margin of error of plus or minus 5 percent.

High Point University conducted a similar poll, surveying 827 people, online and by telephone. In the High Point poll, 47 percent favored closing ABC stores, and 34 percent were opposed. Nineteen percent didn't know.

About one-third of respondents in the Elon poll — 32 percent — opposed closing the stores. Another 16 percent said they didn't know.

Opinions differed based upon whether a person shops at ABC stores, an Elon news release says. ABC store shoppers were more likely to support their closure, though people who don't shop there were more likely to say that they should remain the state's only liquor retailers, the release says.

Fifty-eight percent of people who shop at ABC stores think they should close; 34 percent of non-shoppers support closure in favor of private retailers.

People who don't shop at ABC stores were more likely to say the current system of ABC stores should remain, according to the Elon Poll. Among those who don't shop at ABC stores, half oppose their closure. The rate was much lower for those who do shop at ABC stores, with about one in four — 26 percent — opposing their closure.

ABC stores are, by law, closed Sundays and, the release says, a slight majority of respondents want it to stay that way. Fifty-two percent say they should remain closed on Sunday, while 37 percent say they should be open; 10 percent "don't know."

While 45 percent of Democrats were in favor of Sunday sales, just 22 percent of Republicans agreed. Similarly, 70 percent of Republicans support the current prohibition of Sunday sales at ABC stores, while 45 percent of Democrats shared that view.

For High Point, 46 percent of the people polled preferred stores closing Sunday; 45 percent would rather they be open; 9 percent were undecided.

John Trump

ELON POLL

Do you support or oppose closing ABC stores in favor of private liquor retailers?

SUPPORT	52%
OPPOSE	32%
DON'T KNOW	16%

HIGH POINT UNIVERSITY SURVEY RESEARCH CENTER

Would you support or oppose a proposal to close government-operated ABC stores and instead allow private businesses to sell liquor?

SUPPORT	47%
OPPOSE	34%
DON'T KNOW	19%

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COURTS

Collins' decision on amendments called unusual, dubious, 'sticky'

BY KARI TRAVIS

A decision by Wake County Superior Court Judge Bryan Collins to invalidate two constitutional amendments isn't necessarily tarnished by partisanship or judicial activism, former Supreme Court Justice Bob Orr says.

In some ways, Orr told *Carolina Journal,* Collins' ruling poses critical questions about the enforcement of a truly constitutional government.

In November, North Carolinians voted to add voter ID and an income tax cap to the N.C. constitution. Both measures were placed on the ballot by a three-fifths majority vote of the General Assembly. Both were challenged in court by the NAACP and Clean Air Carolina.

On Feb. 22, Collins ruled in favor of the NAACP, voiding the amendments and stating the legislature is ineligible to pass such ballot measures due to illegally gerrymandered legislative districts. Collins said CAC lacked standing to sue.

"The requirements for amending the state Constitution are unique and distinct from the requirements to enact other legislation," Collins wrote in his opinion. "The General Assembly has the authority to submit proposed amendments to the Constitution only insofar as it has been bestowed with the popular sovereignty."

Some praised Collins. Others criticized him. Still others, like Orr, took a step back to consider the context of the situation.

STOCK IMAGE

RULING. Wake County Superior Court Judge Bryan Collins invalidated two constitutional amendments. In November, North Carolinians voted to add voter ID and to lower the income tax cap in the N.C. Constitution.

"We're in sticky territory," Orr told *CJ.*

In 2018, a panel of federal judges ruled North Carolina's districts unconstitutional. That decision begs questions about whether lawmakers elected in those districts should be able to push ballot measures to amend the constitution, Orr said.

"It's been a question hanging out there that the federal courts have not given any guidance on. And that is, if a body is declared by the federal courts as 'unconstitutionally constituted,' what are the ramifications?"

Republican lawmakers, led by Senate leader Phil Berger, R-Rockingham, have filed a motion to stay Collins' decision while they seek an appeal.

Some prominent Democratic lawmakers also have expressed concern over the decision.

Sen. Jeff Jackson, D-Mecklenburg, tweeted Feb. 25: "I would certainly agree that we are a deeply gerrymandered state and that this affects the moral credibility of our state legislature ... but I've got two issues with this ruling: 1. It's not the appropriate judicial remedy. ... 2. The ruling itself is unworkable."

"If a legislature can't be allowed to pass constitutional amendments, then it shouldn't be allowed to pass statutes either. Which means the precedent here really supports rolling back a decade's worth of laws. As much as some people might appreciate that, it's not a viable option," Jackson wrote.

> **I do not know of any other case around the country where a state court has relied on the reasoning employed by Judge Collins to invalidate a state constitutional amendment**
>
> - John Dinan, political scientist at Wake Forest University.

Collins' decision so far hasn't "attracted much support in terms of legal doctrine," said John Dinan, professor of politics and international affairs at Wake Forest University.

"One can never make firm predictions about what will happen when a lower-court ruling is appealed, but in this particular instance there are a number of reasons why appellate judges are likely to scrutinize and express doubts about the lower-court judge's reasoning," he told *CJ.*

Collins' legal rationale is highly unusual, Dinan said, though it isn't unprecedented for state or federal judges to invalidate a constitutional amendment after it has been ratified.

Montana is one example, he said, pointing to a case in which that state's Supreme Court invalidated a voter-approved Marsy's Law amendment on technical grounds.

"Such rulings are rare but not unprecedented," Dinan said. "But I do not know of any other case around the country where a state court has relied on the reasoning employed by Judge Collins to invalidate a state constitutional amendment — that is, for a court to rule that the legislature is essentially barred from governing once legislative districts are found by a court to be improperly drawn."

Collins isn't an activist judge, and he had to play with the cards in his hand, Orr said.

"He was dealt two propositions. Either there is an impact by virtue of the federal court's ruling, or there's no impact. He tried to thread the needle, I think, by saying in the context of this specific case, there is an impact."

"[Collins] listened to the arguments. He read the briefs. He couldn't say, 'You know, this really is a sticky mess. I hope you get somebody to resolve it.' He did what his job was and made a ruling. Was he right? I don't know."

At press time, the General Assembly had asked Collins for a temporary stay, but he hadn't acted.

NORTH CAROLINA

Second redistricting reform bill emphasizes rules and transparency

BY CJ STAFF

A bipartisan group of state lawmakers has introduced two of what may be several measures to reform North Carolina's redistricting process.

The two bills share several sponsors.

House Bill 140, Fairness and Integrity in Redistricting, not only would change state law but also would ask voters to cement those changes by adding them to the state constitution.

"North Carolina has few robust safeguards against partisan gerrymandering, and we aim to change this," Rep. Chuck McGrady, R-Henderson, the bill's primary sponsor, said at a Feb. 21 news conference.

House Bill 69, introduced a few days before H.B. 140, would replace lawmakers with a nonpartisan commission in drawing election maps.

H.B. 140, McGrady says, has three main goals: making mapmaking information transparent, drawing "common-sense" districts, and removing excessive partisanship from districts' design.

Rules would guide mapmakers to a large extent. Other than to comply with federal law, those drawing district lines in North Carolina couldn't consider:

- The political affiliation of registered voters
- Results of previous elections
- Where incumbents or challengers live
- Demographic information of voters, other than the population count
- Any other information which could help identify how voters cast ballots

Districts also would have to satisfy state and federal laws. As much as possible they must have equal populations, shouldn't divide counties, and must be contiguous (connected geographically) and compact.

Each district would have a single representative. They couldn't be drawn with the goal of boosting the representation of any racial group or political party.

When lawmakers propose a set of congressional or legislative districts, the maps would be public for at least 10 legislative days before a floor vote could take place.

It's one major difference between H.B. 140 and H.B. 69, which calls for an independent commission to draw the maps (based on somewhat similar rules) and allows a vote on them in the General Assembly as soon as three legislative days after they're introduced.

H.B. 69 also is only a statute with no constitutional amendment attached.

In the accompanying statute, H.B. 140 would have members of the nonpartisan legislative staff draw district maps, subject to the criteria in the constitutional amendment as well as more-specific definitions provided in the statute. A five-member advisory commission would answer questions the staff may have in applying the rules and host the required public hearings on any proposed districts, but the elected General Assembly would still have to approve the final product. The proposed constitutional amendment contains a separate provision authorizing other uses for redistricting commissions, although the accompanying statute does not pursue them.

Former UNC System President Tom Ross, who chairs North Carolinians for Redistricting Reform, a bipartisan nonprofit group created to promote H.B. 140, endorsed the measure at the news conference, along with Raleigh businessman Art Pope (former chairman of the John Locke Foundation), and Vicki Lee Parker, director of the NC Business Council.

Jane Pinsky, director of the N.C. Coalition for Lobbying and Government Reform, one of the driving forces among the nearly 30 groups pushing H.B. 69, acknowledged lawmakers might reject commission-drawn maps they don't like. But if they tried to amend them on a partisan basis, voters would see that, and the weight of negative public opinion would prevent such moves.

Rep. Robert Reives, D-Chatham, who along with McGrady sponsored both measures, said lawmakers don't want judges involved in the legislative branch's constitutional authority to draw electoral districts.

Nor does he support what some derisively call Democrats' sue-'til-you're-blue approach of finding judges aligned with their election lawsuit arguments to get favorable rulings.

Reives said unlike legislators, judges aren't elected to serve constituents. Lawmakers are duty-bound to create election maps through a collaborative process.

The N.C. Constitution requires the legislature to approve the maps. But it doesn't require lawmakers to draw them.

In a state evenly divided between Republican- and Democratic-leaning voters, members of both parties worry about being drawn out of power when districts are reset after the 2020 census, depending on who's in charge of the General Assembly.

UNC report shows 'serious deficiencies' in response to protests and Silent Sam's fall

BY LINDSAY MARCHELLO

An after-action report on the toppling of Silent Sam reveals "serious deficiencies" in how UNC-Chapel Hill law enforcement handled the situation.

The UNC Board of Governors voted to make the report public Jan 15 and disclosed it Feb. 1.

The UNC-Chapel Hill police department and the university administration have been criticized about how they handled the situation Aug. 20, when protesters pulled Silent Sam from its pedestal despite a police presence.

Lawyers from Parker Poe Adams & Bernstein LLP and law enforcement management consultants from Hillard Heintze LLC wrote the after-action assessment and report. They interviewed dozens of members from the UNC-Chapel Hill police department, UNC-Chapel Hill administrators, UNC-Chapel Hill Board of Trustees, and witnesses.

"We found that while there were serious deficiencies in the way the Aug. 20, 2018, event was handled, there is no evidence of a conspiracy between UNC-CH and any protesters or any other individuals to remove Silent Sam," the report reads.

The report says UNC-Chapel Hill must change how it plans for and responds to protests, because the university faces a growing threat from outside protest organizations and well-organized nonstudent groups.

A number of factors led to the forceful removal of Silent Sam.

"Miscommunication between the University Police and UNC-CH senior leadership combined with inefficient and inadequate information-gathering, insufficient staffing, and outdated crowd control training made preventing what happened on Aug. 20 difficult if not impossible to achieve," the report stated.

Silent Sam was erected on campus in 1913, after the United Daughters of the Confederacy requested a monument be built to commemorate the more than 300 students who died serving the Confederacy in the Civil War.

The statue has since been the centerpiece of protests, demonstrations, and marches. Maya Little, a UNC-Chapel Hill graduate student, defaced Silent Sam on April 30 with red paint allegedly mixed with her own blood. Little was arrested, which led to the planned protest Aug. 20.

"University Police claim that they expected that the protest would only involve anti-statue and pro-Little groups," the report reads. "Based on several interviews, this observation became significant because it meant that the protest was perceived as being unlikely to be as large or violent as events that feature two opposing groups."

In hindsight, the report says, these predictions fell short of reality.

Anticipating a low turnout, and considering the one-sided nature of the protest, just a handful of officers were initially asked to work.

Barricades weren't set up, either due to miscommunication between the police department and university administration or a belief the presence of barricades during the first weekend of the academic year would reflect poorly on the university.

Several officers, per the report, said they were confused and uncomfortable after hearing barricades wouldn't be used.

During the Aug. 20 march and protests, officers tried to arrest people in the crowd who were wearing masks, but were met with resistance. Some officers were assaulted, and a protester threw a smoke bomb.

As this happened, other protesters were able to surround the statue and set up banners. For a time they remained there to chant and throw red paint on the pedestal, but they left about 9 p.m. to march up Franklin Street.

Fifteen to 28 officers surrounded Silent Sam after most protesters left on a march. About 9:14 p.m., a majority of the protesters returned to the statue. The report describes them as hostile and physical.

"A number of the officers state that this was one of the only times in their careers where they felt scared for their and other persons' safety," the report reads. "The crowd then began to throw frozen water bottles and eggs at the officers surrounding the statue."

The report says at least two officers were hit with the frozen bottles. Capt. Tom Twiddy, UNC-Chapel Hill Police Department patrol services commander, ordered the officers, none of whom were outfitted with riot gear, to pull back to the edge of the crowd. Soon after, the protesters tied a rope around the statue and pulled it down. Officers returned to surround the fallen statue, and, once it began to rain, the protesters dispersed.

Six people were arrested.

The report says, "enough red flags existed prior to Aug. 20 to suggest that Silent Sam would be forcibly removed."

Key decision-makers, such as the chief of university police and the chancellor, must meet and confer to discuss major campus events, says the report.

The burden of gathering and analyzing upcoming events should be shared among several officers, it says, and university police should provide ongoing, departmentwide crowd control training to prepare better for large protests and hostile crowds.

ELECTIONS

Ballot fraud may well go beyond Robeson, Bladen counties, political consultant says

BY DAN WAY

NEWS & OBSERVER POOL PHOTO

DOWLESS. Attorney Cynthia Singletary, left, announced Feb. 18 that client McCrae Dowless would not testify without immunity during a public evidentiary hearing linked to the 9th Congressional District investigation. The four-day hearing led to a vote to conduct a new election.

NEWS & OBSERVER POOL PHOTO

HARRIS. Republican congressional candidate Mark Harris prepared to testify Feb. 21, the fourth day of the State Board of Elections evidentiary hearing into 9th Congressional District absentee ballot irregularities. Harris later called for a new election and decided not to run for the office.

The widespread absentee ballot fraud and other election irregularities in Bladen and Robeson counties during the Nov. 6 election offer a mere glimpse of a statewide problem, a Republican political consultant says.

"It's a mess down there," said Larry Shaheen, who has shunned working with most political operations in those counties.

He thinks the state should take away the counties' supervision of the new election ordered for the 9th U.S. Congressional District.

The Rev. Mark Harris, a Republican, was the unofficial winner of the 9th District with a 905-vote margin over Democrat Dan McCready and a much wider margin over Libertarian Jeff Scott. The elections board stripped him of that victory after a four-day evidentiary hearing that ended Feb. 21.

By a 5-0 vote, board members said there was so much election fraud that it cast doubt on the integrity of the contest, and a new election was the only way to restore confidence in the process.

Harris, citing health concerns and a scheduled surgery in March, announced in a Feb. 26 email that he won't run again for the seat.

"The State Board of Elections needs to take over operations of Bladen County from this point forward, and at no time should anyone in Bladen County be allowed to participate until they have proven that they are not going to in any way allow this type of thing to reoccur," Shaheen said.

He said voters should be rightly offended and disgusted.

"Any election fraud is too much election fraud. One vote, 100 votes, 1,000 votes, it doesn't matter. Anyone who is involved in it should be prosecuted to the fullest extent of the law. Period," Shaheen said. He supports jail time for offenders.

Shaheen thinks the elections board's investigation should expand beyond Harris' campaign, because both Democrats and Republicans are guilty.

He suggested McCready's campaign might be tainted by some of the same unlawful absentee ballot harvesting because it helped to fund groups such as the Democratic-linked Bladen County Improvement Association PAC, whose activities also have been called into question.

Democrats and Republicans must purge their parties of anyone who has ever worked with or supported this type of activity, and election reform is vital, Shaheen said.

"I think this is the tip of an iceberg," Shaheen said of elections mischief. He said he is aware of county elected officials that filed no financial reports but were never held accountable for breaking the law, especially in Mecklenburg County.

He said it's unconscionable those politicians escape prosecution, but the state is handcuffed by lack of resources and statutory authority.

Catawba College political science professor Michael Bitzer, who closely followed the 9th District election and analyzed voting results, agrees.

"Maybe this is what kicks additional funding and priority onto training, and ensures that compliance is made," Bitzer said. Comprehensive instruction and training of election workers, he says, haven't been priorities.

That became apparent at the evidentiary hearing. Early-voting poll workers said they tabulated results before Election Day and turned them in to the Bladen County Board of Elections just as they had in previous elections. That is unlawful.

Poll worker Agnes Willis, who testified she helped the Bladen Improvement PAC as an absentee ballot witness, said her fellow election workers, none of whom was a Republican, viewed the results, also an impermissible act.

> ***UPDATE:*** *Leslie McCrae Dowless was arrested Feb. 27 and jailed in Wake County. Also indicted were Dowless associates Tonia Marie Gordon, Rebecca Thompson, Caitlyn Croom, and Matthew Monroe Mathis. Kelly Hendrix was named as an unindicted co-conspirator. The indictments said Dowless directed people under him to commit crimes and encouraged them to give false statements to investigators.*

Bitzer said he wouldn't be surprised if the state board stepped in to oversee elections in Bladen and Robeson counties this year, or appointed individuals to monitor their operations.

Blitzer said it's possible similar election misdeeds happen statewide. Absentee-by-mail voting would send up early smoke signals if it occurs on the scale it did in Bladen and Robeson counties.

"I think we are going to be scrutinizing election returns and voter data much more closely for the next couple of election cycles," he said.

Others have sounded the election fraud alarm.

A group of Republican senators held a press conference in early December lamenting the equal-opportunity election skullduggery among the political parties, urging reform and jail time for offenders.

They called on Democratic Gov. Roy Cooper to create a bipartisan task force to look at absentee ballot fraud on a statewide scale and suggested probes by legislative committees or the U.S. Department of Justice. Cooper and Senate Minority Leader Dan Blue, D-Wake, never responded to requests by *Carolina Journal* for comment on the idea.

Cooper did weigh in on the elections board's action, saying it did the right thing denying Harris' win.

"People must have confidence that their vote matters, and this action sends a strong message that election fraud must not be tolerated," he said in a written statement.

Elections board member Ken Raymond agrees. While he does not think Harris was aware of the illegal absentee ballot activities, he suspects Harris' political operative McCrae Dowless and the Bladen Improvement PAC were culprits.

Raymond told *CJ* he plans to continue pushing investigation of the Bladen Improvement PAC.

While most of the evidentiary hearing focused on Dowless' absentee ballot ring and witness testimony substantiating unlawful conduct, there also was testimony about the Bladen Improvement PAC's sketchy operations.

Lisa Britt, Dowless' stepdaughter, who admitted to illegal actions, testified Dowless and Bladen Improvement PAC officials had a no-compete arrangement.

She said Dowless would meet, compare notes, and exchange documents with Bladen Improvement PAC members Lola Wooten and Horace Munn to make sure they weren't soliciting absentee ballots from each other's party.

Precious Hall testified she received an absentee ballot but didn't request it. Bladen Improvement PAC workers came to her house, helped her fill it out, and left with it. It was one of nearly 100 absentee ballots Wooten reportedly witnessed.

Sandra Dowless, the political operative's ex-wife, said she was temporarily living at Dowless' house when he met with Jeff Smith. Smith was working for a different primary candidate than Dowless.

She testified she overheard Smith discussing collection of unsealed absentee ballots. A note allegedly written by Smith was placed into evidence at the hearing. It mentioned a payment schedule for collecting unsealed absentee ballots.

Scott, who attended all four days of the evidentiary hearing, said he will again be a candidate, "and I'm going to use a lot of the information that came out during this hearing in my campaign."

McCready has thrown his hat back in the ring. Harris has announced he will not run again.

Scott said voters are concerned about voting rights, voting corruption, the sanctity of the ballot, and the professionalism and temperament of their elected leaders.

With questions being raised about Harris and McCready in those areas, Scott thinks he's now in a better position than he was in 2018.

ELECTIONS

New election for vacant seat in 3rd Congressional District set for July 9

Gov. Roy Cooper issued a writ of election and proclamation Feb. 27 setting the special election for North Carolina's 3rd U.S. Congressional District on July 9. The seat has been vacant since U.S. Rep. Walter Jones Jr. died in February.

"People in eastern North Carolina need a voice in Congress," said Cooper. "We're moving ahead so they can choose their new representative quickly."

State and federal laws require the governor to fill vacant congressional seats. The winner will serve out the remainder of Jones' two-year term.

Candidate filing will be held between March 4 and March 8. Absentee voting for the special primary election will begin March 15, with a special primary April 30. If a primary runoff is required, it would occur July 9. The special general election would be pushed back to Sept. 10.

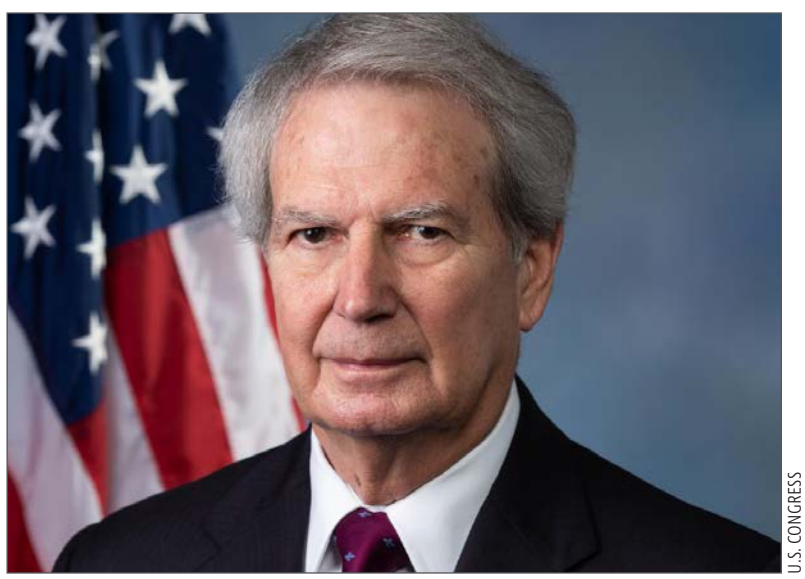
Absentee voting for the July 9 special election will begin May 24. If the Sept. 10 election date is needed, absentee voting for that election will start July 26.

Before the 2018 Republican primary, Jones said he planned to run for re-election for the last time. He was elected to his 13th congressional term Nov. 6, but suffered from a rapidly advancing illness that left him debilitated and absent from Congress.

U.S. Rep. G.K. Butterfield, D-1st District, swore Jones in during a private ceremony at Jones' Farmville home in early January.

Political observers expect a large field of candidates seeking to succeed Jones. The district includes all or parts of Beaufort, Camden, Carteret, Chowan, Craven, Currituck, Dare, Greene, Hyde, Jones, Lenoir, Onslow, Pamlico, Pasquotank, Perquimans, Pitt, and Tyrrell counties,. It is considered a Republican-leaning seat.

> **People in eastern North Carolina need a voice in Congress. We're moving ahead so they can choose their new representative quickly.**
>
> - Gov. Roy Cooper



U.S. CONGRESS

3RD DISTRICT. Rep. Walter Jones Jr., R-3rd District, died Feb. 10 on his 76th birthday.

Large field of contenders expected to try to succeed Jones in 3rd District

BY DAN WAY

Speculation has begun over who might run in a special election to succeed Republican U.S. Rep. Walter Jones, whose death left the 3rd U.S. Congressional District seat vacant. Political observers anticipate a crowded field that includes current state lawmakers and earlier challengers.

Jones, a former five-term state House member, was elected in 2018 to his 13th congressional term, saying it would be his last.

Several prospects put out feelers about a possible 2020 run for an open seat in the Republican district.

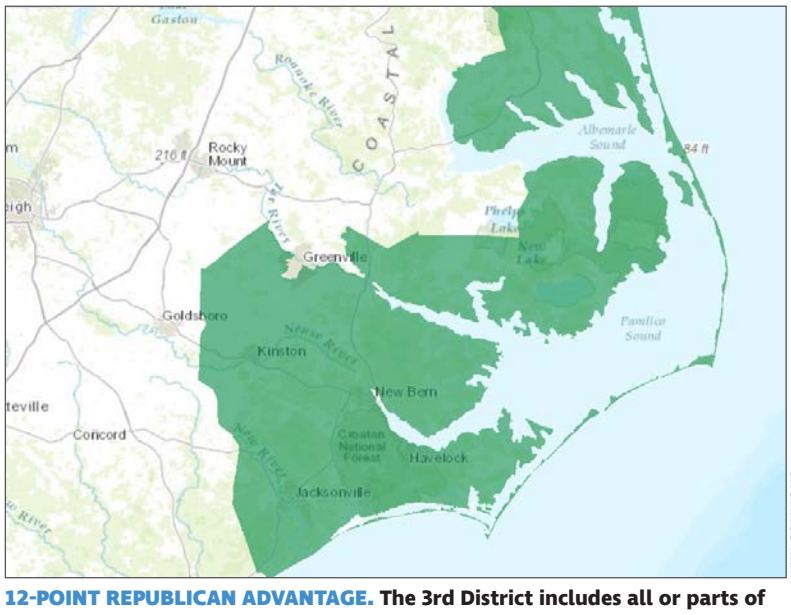
With Jones' death, contenders must decide whether they can quickly muster the three essential elements for success: messaging, money, and manpower.

"It would not surprise me to see anywhere between 15 or 20 folks run for this seat," said GOP political consultant Larry Shaheen. He compared the potential field to the 2012 Republican primary for the 9th U.S. Congressional District.

Eleven candidates ran for an open seat after Republican Sue Myrick's retirement.

A number of political consultants suggested candidates to *Carolina Journal.*

The most frequently mentioned possibilities were state legislators: Senate Majority Leader Harry Brown, R-Onslow; Sen. Bob Steinburg, R-Chowan; Rep. Greg Murphy, R-Pitt; and Rep. Phil Shepard, R-Onslow.



WIKI COMMONS

12-POINT REPUBLICAN ADVANTAGE. The 3rd District includes all or parts of Beaufort, Camden, Carteret, Chowan, Craven, Currituck, Dare, Greene, Hyde, Jones, Lenoir, Onslow, Pamlico, Pasquotank, Perquimans, Pitt, and Tyrrell counties.

N.C. Republican Party Vice Chairwoman Michele Nix was suggested as well, along with Phil Law, Scott Dacey, and Taylor Griffin, each of whom lost Republican primaries to Jones from 2014 to 2018.

The district includes all or parts of Beaufort, Camden, Carteret, Chowan, Craven, Currituck, Dare, Greene, Hyde, Jones, Lenoir, Onslow, Pamlico, Pasquotank, Perquimans, Pitt, and Tyrrell counties. The 2018 Cook Partisan Voter Index listed the district with a 12-point Republican advantage.

For the latest developments on the 3rd district, go online: **CAROLINAJOURNAL.COM**

"The Democrats are working to find a candidate," said Democratic political consultant Brad Crone. "Until you get redistricting, it's going to be mighty difficult for a Democrat to get in there and win."

A federal court has ruled North Carolina's 13 congressional districts unconstitutional and ordered them redrawn for the 2020 election.

> **It would not surprise me to see anywhere between 15 or 20 folks run for this seat.**
>
> - Larry Shaheen, GOP political consultant

Democratic political consultant Thomas Mills said he hasn't yet heard of any Democrats willing to test the waters.

Still, Democrats could win a low-turnout special election if they field a candidate who motivates the party's base, Mills said. But he doesn't see any current General Assembly Democrats giving up their seats to run for Congress.

Democrats' 2018 legislative wins erased Republicans' veto-proof supermajorities in both chambers, and they might be wary about risking those hard-fought gains.

Shaheen said if he had to make the call today, Brown and Steinburg would have the best chances to take the seat.

North Carolina historically elects congressional representatives who have served in the state Senate, Shaheen said.

The Senate's large districts often include large areas of a congressional district, providing senators broader name recognition than House members.

A candidate lacking Senate experience can win but will need a lot of money to mount a vigorous campaign, Shaheen said.

One wild card is whether someone working in Washington would come back to North Carolina to run.

Since Jones or his father, a Democrat, have represented an eastern N.C. congressional district for all but two years of the past half-century, Shaheen expects a spirited primary.

"There's going to be a lot of demons that get exorcised in this, a lot of old grudges that people have been waiting to go after," Shaheen said.

The younger Jones, a Democrat before entering Congress, was well known for his independent streak, often bucking the Republican Party.

"None of us agreed with him all the time, but by golly if nothing else he was consistent, and he loved the district," said Carl Mischka, chairman of the 3rd Congressional District Republican Party Executive Committee.

"You vote your conscience first, you vote your constituents second, and you vote your party third," Jones told *CJ* in a 2014 interview.

"When my party is right, I support my party. When I don't think the party is right for the people I represent, then I have to make another decision.

"This, from time to time, gets you into trouble."

ATLANTIC COAST PIPELINE

Whistleblower concerns raised as Cooper won't let employees talk to ACP investigators

BY DON CARRINGTON

Gov. Roy Cooper's administration could risk violating a state law protecting whistleblowers if it has threatened retribution against employees who want to cooperate with a legislative probe of the Atlantic Coast Pipeline deal.

Cooper has told state employees not to speak with investigators the ACP subcommittee hired. The workers were involved in the pipeline permitting process related to a $57.8 million discretionary fund Cooper was to control. When contacted by investigators, the employees — who work for the Department of Environmental Quality — said they were told to refer inquiries to management or William Lane, DEQ's general counsel.

Lane then told investigators he had been instructed not to let employees cooperate, according to phone call logs provided by Senate leader Phil Berger's office.

Raleigh attorney Michael C. Byrne, who has extensive experience representing state workers in employment matters, said Cooper's refusal raises questions.

"I am unaware of any legal prohibition against investigators legally appointed by the General Assembly interviewing state employees about matters of public concern. I am likewise unaware of any legal authority permitting the executive branch to refuse to allow such legally appointed investigators to interview state employees about such matters," said Byrne.

Byrne cited N.C. General Statute 126-84, commonly known as the Whistleblower Act.

Cooper's chief of staff, Kristi Jones, asked legislative leaders to schedule a public committee hearing on the pipeline permitting process. She also called the probe a "political circus" and suggested investigators should be paid by the Republican Party rather than taxpayers.

The lawmakers said a hearing may be appropriate, but only after their investigation is complete. Legislators also found Cooper's refusal to let employees cooperate with the investigation a troubling attempt to interfere with the General Assembly's oversight of the executive branch.

Jones' letter, dated Jan. 29, was sent to subcommittee chairmen Sen. Harry Brown, R-Onslow, and Rep. Dean Arp, R-Union. In it, she said the Cooper administration had provided requested documents and answered questions.

Brown and Arp responded Feb. 1. Their letter read, in part, "We expect public hearings on this matter will be necessary in the future."

But first, the investigators will do their jobs.

Brown and Arp noted documents Cooper provided to the legislature that appear to reveal that Strata Solar CEO Markus Wilhelm, Cooper's business partner in a solar project, asked the governor to intervene in a disagreement with Duke Energy.

"You allegedly then met one-on-one with Duke Energy CEO Lynn Good and discussed your business partner's request and the ACP permit."

The disagreement wasn't connected to the ACP. But lawmakers say the documents suggest ACP permits were used as leverage with Strata Solar. In December, the ACP subcommittee hired Eagle Intel Services to dig through documents and interview state employees connected with the pipeline permitting process. Eagle partners include former Internal Revenue Service special agent Thomas Beers, former IRS special agent Kevin Greene, and former FBI special agent Frank Brostrom.

The phone log released by Berger, a Rockingham County Republican, listed 12 calls between Eagle investigators and DEQ. The calls document attempts to set up interviews. All were unsuccessful. DEQ employees Brian Wrenn, Stanley Zimmerman, and Charles McEachern indicated they would speak with investigators but were told they had to get approval of either management or the legal department.

This is where North Carolina's Protection for Reporting Improper Government Activities law — aka the Whistleblower Act —may come in.

The law applies only to state employees. It says they have a duty to report verbally or in writing to their supervisor, department head, or other appropriate authority, evidence of criminal activity by a state agency or state employee. Reportable activities include breaking the law, fraud, misusing or wasting state resources, endangering public safety, or "gross abuse of authority."

The law also protects state workers from retaliation if they report any suspicious actions.

Cooper staffer's pipeline inquiry prompts warning against extortion from national governors' group

BY DON CARRINGTON

AS GOV. ROY COOPER'S administration engaged in negotiations involving the Atlantic Coast Pipeline, a national governors' group warned a Cooper adviser against a state agency taking action comparable to extortion.

The warning came in a Dec. 8, 2017, email from a National Governors Association staffer to Cooper energy policy adviser Jeremy Tarr.

The email came to light as part of the Cooper administration's recent release of thousands of documents related to the ACP negotiations.

The word "extort" surfaced in a discussion of potential payments a state government could negotiate with a company pursuing state permits.

"A company could volunteer to make a 'stipulation agreement,' but it wouldn't be appropriate for a commission to require such a thing in a determination of public need and benefit," wrote Sue Gander, NGA's division director for environment, energy, and transportation.

"A commission, it seems, ought to keep to 'prudently incurred costs' for essential utility services. To 'extort' (not my word) payments for 'anything not directly related to the cost of providing utility service' would raise 'due process' and 'ethical' concerns."

In specifying a "commission," Gander was referring to a public utilities commission.

She did not indicate whether an agreement reached between a state and company would raise similar "due process" or "ethical" concerns if negotiated by another government agency.

Gander's email followed a phone inquiry from Tarr, Cooper spokeswoman Noelle Talley told *Carolina Journal*.

Documents indicate Tarr was doing research at the request of Cooper adviser Ken Eudy.

Eudy negotiated a controversial $57.8 million Atlantic Coast Pipeline fund unveiled a little more than a month after Gander offered her email advice.

That fund generated a dispute between the governor and legislative leaders.

Cooper's Department of Environmental Quality issued an important environmental permit on Jan. 26, 2018, regarding the ACP.

The previous day, Cooper's office and ACP partners signed an agreement requiring that ACP partners pay the $57.8 million to a fund Cooper would control.

The General Assembly said Cooper lacked the authority to negotiate such a payment and voted to redirect the money to school systems in the eight N.C. counties where the pipeline would pass.

The pipeline project is on hold due to permitting issues in Virginia.

Responding to multiple media requests and an investigation by a special General Assembly subcommittee investigating the ACP, Cooper's office and his DEQ in December released approximately 40,000 pages of documents and emails related to the project.

The ACP subcommittee chairmen are Sen. Harry Brown, R-Onslow, and Rep. Dean Arp, R-Union.

The NGA's Gander attributed informaton in her email to research conducted by NGA senior policy analyst Tom Simchak.

"We didn't find an exact example in project construction approval at the wholesale level in gas or electric. What can be done would be based on what authority is involved — DNR or PUC, etc."

She was referring to a state's Department of Natural Resources or Public Utility Commission.

"In a ratemaking case, PUCs could add provisions. But that wouldn't really apply to a wholesale pipeline being built," she wrote.

She then cautioned Tarr about a situation involving extorting payments from a company. *CJ* couldn't determine if she meant extortion would apply only to a PUC or to any government agency involved in the approval process.

Gander told *CJ* responding to questions from a governor's office staff is routine.

She couldn't recall who used the word "extort," and said it must have shown up in research based on a situation in another state.

Simchak is no longer with NGA, but *CJ* found him and asked where "extort" came from.

"Would've been quoting someone I spoke to when researching the memo. But I have no recollection who that was for that bullet," he said.

CJ couldn't determine when Tarr first shared the NGA response with Eudy or if Tarr ever relayed the NGA language "extort," "due process," or "ethical."

ACP TIMELINE

Gov. Roy Cooper and the Atlantic Coast Pipeline

BY DON CARRINGTON

Atlantic Coast Pipeline LLC was formed in 2014. The consortium would build a 600-mile pipeline to bring natural gas from West Virginia to Virginia and North Carolina. The next year, ACP filed an application to the Federal Energy Regulatory Commission; ACP would also need environmental permits in each of the three states and applied for North Carolina permits in 2017.

Gov. Roy Cooper, who took office as governor in 2017, was getting pressure from ACP opponents to stop the pipeline. Documents indicate he didn't think he could end the project, but he wanted to offset concerns. Cooper staff members searched for a "precedent for a company setting aside funds for community benefit before approval of a major deal or project."

In December 2017, Cooper representatives convinced ACP to provide the mitigation fund to the state. On Jan. 25, 2018, William McKinney, representing Cooper and the ACP, and Dominion Energy Vice President Leslie Hartz, representing ACP, signed a final version of the Mitigation Project Memorandum of Understanding. It called for ACP to provide $57.8 million — not to the state — but to be placed in an account controlled by Cooper and for him to spend at his discretion on damage mitigation, economic development, and renewable energy projects in the eight counties affected by the pipeline.

The next day, Cooper's Department of Environmental Quality announced it was issuing a critical water quality permit to ACP. Soon after, Cooper's office announced the $57.8 million fund.

Carolina Journal's reporting raised concerns about the legality of the fund. Legislators said the arrangement was unconstitutional and looked like a "pay to play' scheme. In February, the General Assembly voted to redirect Cooper's discretionary fund to the school systems in eight counties in the path of the pipeline.

Legislative leaders still wanted to know the details of the DEQ permitting process and the background behind the $57.8 million discretionary fund, as well as Cooper's possible intervention in negotiations between Duke and the solar industry on the interpretation of recent legislation aimed at reducing the cost of solar power to ratepayers. They established a subcommittee to study all aspects of the ACP. In December 2018 that subcommittee hired private investigators to examine documents and the people involved. Cooper won't allow investigators to interview state employees.

CJ has written more than 30 stories related to the ACP.

2014

Dominion Energy, Duke Energy, Piedmont Natural Gas, and AGL Resources form Atlantic Coast Pipeline, LLC to build a 600-mile gas pipeline in West Virginia, Virginia, and North Carolina.

2015

Sept. 18

ACP files application to the Federal Energy Regulatory Commission for authorization to build and operate a pipeline.

2017

Jan. 1

Cooper sworn in, and Ken Eudy takes job as a senior policy adviser.

May 9

ACP files 401 Water Quality Permit Application with N.C. Department of Environmental Quality.

Aug. 17

Cooper policy adviser Jeremy Tarr asks DEQ officials for an estimated timeline for the ACP 401 permit.

Aug. 19

Tarr sends ACP update memo to policy director Jenni Owen and recommends Cooper meet with ACP opponents.

Aug. 21

Owen shares Tarr's memo with Cooper's senior staff, including Eudy and Cooper political consultant Morgan Jackson.

Aug. 28

Owen asks Tarr for more information on the permitting process. "I'm asking about timeframe overall so we can decide if/when/what Gov will make a statement," she wrote.

Aug. 30

Tarr sends memo to Kristi Jones to give her background information on Strata Solar CEO Markus Wilhelm for Wilhelm's upcoming call to governor. Wilhelm wrote to Cooper for help in negotiating better terms for solar companies wishing to connect with Duke Energy.

Oct. 13

FERC approves Certificate of Public Convenience and Necessity for the ACP.

Nov. 30

Cooper meets with Duke Energy CEO Lynn Good at Capitol. No staff. Issues are ACP, rate cases, coal ash.

Dec. 8

A National Governors Association staff member responds to a request from Tarr, who asked whether a precedent exists for a company setting aside funds for community benefit before approval of a major deal or project. NGA staffer warns Tarr such an arrangement may be considered an extortion scenario.

Dec. 13

Duke Energy lobbyist Kathy Hawkins, representing ACP, submits first version of a Mitigation Memorandum of Understanding (MOU) that establishes a fund payable upon approval of all permits and construction of the pipeline.

Dec. 29

Cooper's legal counsel texts Eudy that Duke wants to sign the MOU at 10 a.m. Jan. 2.

2018

Jan. 1

McKinney texts Cooper and Eudy: "Am set to sign MOU regarding Pipeline with ACP tomorrow morning at ten." Cooper: "It's what we discussed earlier right?" McKinney: "Correct" Cooper: "Where are the solar boys on their deal?" Eudy texts Steve Levitas (solar executive): "Do y'all have agreement with DE [Duke Energy]?"

Jan. 2

Eudy to Steve Levitas: "???" Eudy texts McKinney: "No response from Levitas yet. Not sure we should sign ACP agreement unless solar deal works." McKinney agrees, but says, "shouldn't linger."

Jan. 6

Duke Energy Carolinas Region President Lloyd Yates asks Jones: "Here is the issue: Why does it seem that approval of the Atlantic Coast Pipeline is dragging? How can we move it along? We have had a number of discussions with Eudy and slow progress."

Jan. 22

Text message exchange between Eudy and Cooper Communications Director Sadie Weiner: "On the ACP tick tick, is there any time for selected pre-announcement media background briefing?" Weiner reponds: "There is not. I love the idea of it but I'm not sure our press corps understands or appreciates those. But assuming solar comes together we will need to pick a reporter to share that with and bring him or her in to sit down with you to understand wtf it's all about."

Jan. 24

Political donor and solar energy advocate Fred Stanback writes to Dogwood Alliance Executive Director Danna Smith about a conversation Stanback had with Cooper. "Governor Cooper named several good things he was doing, but said that if the state opposed the pipeline, it would get sued and lose. He said he negotiated several concessions from Duke Energy," Stanback wrote.

Jan. 25

McKinney, representing Cooper, and ACP sign the final version of an agreement — ACP provides $57.8 million for Cooper to spend on damage mitigation, economic development, and renewable energy projects in counties affected by the pipeline.

Jan. 26

DEQ announces it granted the Water Quality Permit for ACP project and Cooper's office announces the $57.8 million MOU.

Jan. 29

Cooper announces solar companies and Duke reach agreement on how to handle new projects.

Jan. 29

Legislative leaders begin to challenge legality of Cooper's MOU.

Feb. 13

General Assembly passes bill redirecting Cooper's $57.8 million fund to school systems. and seeks information from Cooper about the permitting process.

Sept. 6

General Assembly appoints a subcommittee to investigate all aspects of ACP permitting and the related $57.8 million fund. Sen. Harry Brown and Rep. Dean Arp co-chair the ACP subcommittee.

Dec. 12

The subcommittee hires private investigators to review documents and interview state employees involved with the ACP permit process and the $57.8 million.

Dec. 20

Cooper's office and DEQ release to the media and the ACP subcommittee about 40,000 pages of emails and documents associated with the ACP.

2019

Jan. 17

Jones writes letter to Brown and Arp informing them outside investigators won't be allowed to interview employees involved in the ACP permitting process or those who negotiated the $57.8 million fund.

Jan. 23

Brown and Arp respond to Jones by writing Cooper directly. They accuse him of obstructing the investigation and say the investigators will continue to pursue interviews with state employees.

KEN EUDY
Senior policy adviser to Gov. Roy Cooper

JEREMY TARR
Policy adviser to Cooper

JENNI OWEN
Policy adviser to Cooper

MORGAN JACKSON
Co-founder of Nexus Strategies and political consultant to Cooper

KRISTI JONES
Cooper's chief of staff

MARKUS WILHELM
CEO of Strata Solar

LYNN GOOD
Chairman, president and CEO of Duke Energy

KATHY HAWKINS
Lobbyist for Duke Energy

WILLIAM MCKINNEY
Legal counsel to Cooper

STEVE LEVITAS
Senior VP at Cypress Creek Renewables

LLOYD YATES
Duke Energy Carolinas Region President

SADIE WEINER
Cooper's communications director

FRED STANBACK
Political donor and solar energy advocate

DANNA SMITH
Founder and executive director of Dogwood Alliance

HARRY BROWN
ACP subcommittee co chair, Republican senator from Onslow County

DEAN ARP
ACP subcommittee co-chair, Republican represenative from Union County

FILE PHOTO

ROY COOPER. Took office as governor in 2017, pressured by ACP opponents to stop the pipeline.

GOVERNMENT TRANSPARENCY

continued from PAGE 1

exchanged between Boswell and her constituents in House District 6.

Over nine months, Merrill requested the records 15 times.

Boswell refused to release them. Those documents, her office said, were protected under the umbrella of legislative privilege, an alleged provision that supposedly shields state legislators from public records laws.

"All records are not 'public records' even though those records may have been created, received, or in the custody of a public official," Boswell's legislative assistant, Beth Strandberg, wrote in response to Merrill's requests.

Strandberg said "requests from legislators to legislative staff, and documents prepared by legislative staff upon the request of legislators, are not public records."

The lawsuit was settled out of court, setting no legal precedent for future cases. Legislators have since been slower to use legislative privilege as an argument for immunity against sunshine laws, but plenty of other legal exemptions make it difficult for the public to scrutinize the business of its government, Jones told *CJ*.

FACEBOOK

BEVERLY BOSWELL. **Craig Merrill, a resident of Kitty Hawk, requested phone records and emails from Boswell's office. Boswell contends that documents between legislators and their staff are not public record.**

What are public records?

North Carolina defines public records as paper and electronic documents, such as emails, letters, and sound recordings. Although the span of qualifying documents is broad, roughly 150 exemptions clutter Chapter 132 of the N.C. General Statutes, making it impossible for taxpayers to view items under any number of classifications.

Requesting a public record can be tedious and time-consuming. In North Carolina, anyone can request a record so long as the data doesn't contain confidential information, such as personnel matters or ongoing criminal investigations. But simply making a request doesn't mean the information will be disclosed in a timely manner, or at all. North Carolina's public records law doesn't specify a timeframe for complying with a records request, only that the records are reviewed as promptly as possible. It can be weeks, months, or even years before documents are released.

Sometimes government agencies decide against disclosing documents, citing issues of confidentiality or privileged information relating to trade secrets or legal matters. The only recourse for denied access is an appeal in court. Suing the government can be an intimidating job — especially for private citizens with limited resources.

"For the average resident, the idea of dropping thousands of dollars on an attorney and going to court over a refusal to get information is daunting and impractical," Jones said.

Making public records truly 'public'

The ideal solution to public record disputes would be for North Carolina to employ an access counselor or "ombudsman," Jones said. The role would see an attorney reviewing public records disputes and determining whether the documents should be made public.

"Those types of reviews are essentially creating an independent review in government," Jones said. "Those are quite effective where they are employed, because it's no cost to the requester to seek that administrative review."

If the access counselor determines the records shouldn't be made public and the requester disagrees, both parties have the option of going to court.

For this to become standard practice in North Carolina, the legislature would need to change the public records law. So far, Jones said, there's been little appetite to reform the process.

It's one thing to have a law that allows access. It's a completely different thing to have a functional system that makes access possible for all, said Brooks Fuller, director of the N.C. Open Government Coalition.

"That's just one way that North Carolina, just like a lot of other states, is struggling. And I think a lot of it boils down to how adequately our government offices are staffed. How well [employees] are trained. [It also depends] on the technological interfaces that our citizens have to go through to get what they need."

Some counties and cities have created web databases with searchable information, Fuller said. But those are sometimes clunky — and tough to navigate. The solution is a matter of keeping technology streamlined, seamless, and simple, he said.

"I'm an attorney who has practiced law and is in this position, and I have a [doctoral degree], and I cannot navigate for the life of me certain cities, municipalities, and register of deeds offices because of how broken they are, or how broken they feel."

Updated technology seems expensive up-front, but modernizing systems and easing access to information is cheaper than settling lawsuits and paying lawyers' fees, he said.

In many cases, public records requests — in and of themselves — may be considered a transparency failure on the part of the government, Jones said.

"I think there really is something to this idea that I shouldn't have to ask for this information. It ought to be readily available."

UNC-Chapel Hill professors view public records request as a form of intimidation

AT LEAST 30 PROFESSORS from the University of North Carolina at Chapel Hill published a letter in November 2013 condemning a public records request from the Civitas Institute, a conservative public policy organization. The letter questioned Civitas' motives for requesting the email correspondences, phone records, and calendars of Gene Nichol, director of the UNC-CH Center on Poverty, Work, and Opportunity.

"Surveilling a professor's communications is a really troubling approach to protecting liberty," the letter states.

The public records request came after Nichol criticized the McCrory administration for failing to attend the funeral of civil rights leader Julius Chambers and for passing a voter ID bill. Hundreds of professors from a variety of universities argued in a December 2013 letter the timing meant the request was in retaliation for that criticism and served only as a fishing expedition.

"Such an attempt at punishing speech ill befits an organization that purports in its mission statement to advance 'liberty' and to 'empower citizens to become better civic leaders,'" Nancy MacLean, a Duke University history professor, wrote in the December 2013 letter.

Brian Balfour, a Civitas representative, told WUNC the request was part of a years-long investigation into the poverty center's possible use of taxpayer dollars for advocacy purposes. Civitas eventually got the records, but not without significant pushback from numerous professors of law, political science, journalism, and more.

Jonathan Jones, a professor at Elon University and the former director of the N.C. Open Government Coalition, said UNC-Chapel Hill has been notoriously allergic to transparency.

"Historically, UNC-Chapel Hill has been the worst offender when it comes to responding to public records requests," Jones said. "Now things are better there over the last year or so, but UNC has really just for a very long time had an incredible struggle to be transparent."

Gov. Roy Cooper settles lawsuit between media organizations and Pat McCrory

Gov. Roy Cooper settled in August 2017 an inherited lawsuit between the Pat McCrory administration and several media organizations, including the *News & Observer*, *Charlotte Observer*, Capitol Broadcasting Co., and advocacy groups such as the N.C. Justice Center and the Southern Environmental Law Center.

The lawsuit was over a failure by McCrory's administration to comply with public records requests in a timely manner and for failing to disclose certain requested documents. Defendants in the lawsuit argued the administration repeatedly failed to respond to records requests, provided false or unreasonably high fees for records, and misled requesters by acknowledging the request but failing to provide the solicited information.

The lawsuit says the administration has demonstrated "patterns and practices of delay, obfuscation, nonresponsiveness, foot-dragging and stonewalling" regarding public records requests over everything from travel records to emails.

The former governor attempted to claim "sovereign immunity" as a defense against the lawsuit, but the Court of Appeals rejected that argument.

The Cooper administration opted to settle instead of continuing the lawsuit. As part of the settlement, the state paid $250,000 in attorney's fees to the coalition of media organizations and public records advocates. The Council of State approved the payment in January 2018.

CJ PHOTO BY DON CARRINGTON

PAT MCCRORY. **Gov. Roy Cooper settled a lawsuit concerning a failure by the McCrory administration to comply with public records requests.**

GOVERNMENT TRANSPARENCY

How other states compare when it comes to transparency

BY LINDSAY MARCHELLO

It's nothing new. Reporters, government accountability activists, and residents often grapple with government institutions, which can be slow to respond or even hostile toward any attempt to shine light on their operations.

Some states have taken steps toward transparency, yet others have seemingly doubled down on restricting people's right to know. Some of North Carolina's neighbors have handled government transparency like this:

Virginia: Only residents of the commonwealth or media with a circulation in the state can request public records. This is unlike North Carolina, where nonresidents can request public information. Virginia has live webcasts for proceedings in the state House and Senate, as well as live webcasts of committee hearings. The state also keeps archived webcasts of past committee hearings and floor proceedings. The Virginia Coalition for Open Government releases a monthly sunshine report that tracks bills related to public records, open meetings, and other related transparency issues.

South Carolina: People have access to live and archived webcasts for the House and Senate floor proceedings, as well as access to live and archived videos of committee hearings. South Carolina also broadcasts the House and Senate when in session.

Anyone in South Carolina can make a records request without including a statement of purpose. Confidential attorney communications, income tax returns, and certain business transactions are exempt from the open-records law.

Georgia: People can watch live or archived videos of House and Senate floor proceedings, as well as live webcasts of committee hearings. People can also watch Georgia Public Broadcasting, which covers the House and Senate when in session. Regarding public records laws, an agency in Georgia has three days to respond to a request by either releasing the request documents or citing a reason for a refusal.

In the wake of the federal bribery probe into former Atlanta Mayor Kasim Reed's administration, the city created the Atlanta's Open Checkbook. The tool makes the city's expenditures publicly available.

FILE PHOTO

SOUTH CAROLINA STATE HOUSE. South Carolinians have access to live and archived webcasts for the House and Senate floor proceedings, as well as access to live and archived videos of committee hearings.

Lights, camera, legislative action

FILE PHOTO

HOUSE BILL 218. Legislation establishes webcasts of daily House sessions and stipulates that sessions of "particular public importance" should be aired on UNC TV.

THE N.C. GENERAL Assembly represents one of seven state governments that fail to offer video of any legislative sessions or committees.

Rep. Destin Hall, R-Caldwell; Rep. Jason Saine, R-Lincoln; and Rep. Brenden Jones, R-Columbus, are looking to use video cameras in the House.

"We're doing the business of the public, they should have a right to tune in and keep a watch on what their government is doing," Hall said. "We had the governor's 'State of The State' address the other night. It was televised, and everybody across the state could see it. That should be the same for everyday legislative business.

"We are enacting laws that affect people all across the state. People of the state are paying for this building's proceedings, and they should be able to have access to the process."

The legislature provides online audio streams of the House, Senate, major committee rooms, and press conference room in its complex. Members of the public can tune-in while their lawmakers debate and vote. But the lack of visuals often makes it tough to follow the action.

House Bill 218, Broadcast N.C. House of Reps. Sessions, would work to build more widespread video coverage at the General Assembly.

It establishes webcasts of daily House sessions and stipulates that sessions of "particular public importance" should be aired on UNC TV. The legislation also creates a study committee to weigh the feasibility of broadcasting daily House sessions on UNC TV.

H.B. 218 directs the Legislative Services Office to create an Information Systems Division responsible for "procuring video equipment and implementing the daily video production and broadcast of the House of Representatives' daily sessions."

Estimates show equipment would cost $300,000. The legislature would hire only one or two permanent employees to run the system, Hall's office said.

"This is another great step forward for transparency in the North Carolina House." Saine said. "Forty years after the launch of C-SPAN, it is time to move the N.C. legislature into the 21st century and allow for regular and routine video broadcasts of our proceedings."

Delaware, Kansas, Missouri, Vermont, Wyoming, and Maryland are the only other states without any video access to legislative proceedings, according to the National Conference of State Legislatures.

How transparent are North Carolina's counties?

BY CJ STAFF

Four *Carolina Journal* staff members sent public records requests last month to all 100 county governments in North Carolina. Counties were asked to provide their number of full-time equivalent positions authorized over the three most recent fiscal years, as well as the operating budget authorized by the respective county commissioners for the three most recent fiscal years.

The survey was informal and wholly unscientific, although it was reflective of the work of the daily, routine work of journalists.

Responses trickled in over the course of a couple of weeks, with some counties responding on the same day. Some county officials responded and referred the questions to another office or led us to a county website. Many counties failed to respond at all.

Results were as follows:

- 64 counties responded to the public records request and provided the requested data.
- Seven counties responded but failed to provide the requested data.
- 29 counties never responded to the public records request.

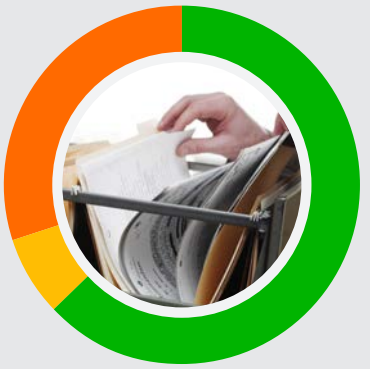
Though budget information is available on most county websites, sometimes the information isn't presented in an easy-to-read format. Hunting down pertinent data can become tedious and time-consuming. In at least one case, the provided links were broken.

Some counties have designated public information officers, but a good number don't have a communications or media relations team. Several emails were sent instead to county managers, county clerks, financial officers, or administrative assistants. Contact information in a few cases was scant, aside from a contact form or a phone number.

Because the survey was informal, and the tallies unscientific, it's possible our emails were lost or were buried beneath dozens of other requests.

It's also entirely possible our requests were ignored. Sending multiple public records requests, or making phone calls, could have resulted in obtaining the requested information, but *CJ* members sent just one email.

N.C. COUNTIES' REPONSE TO PUBLIC RECORDS REQUESTS BY CJ STAFF



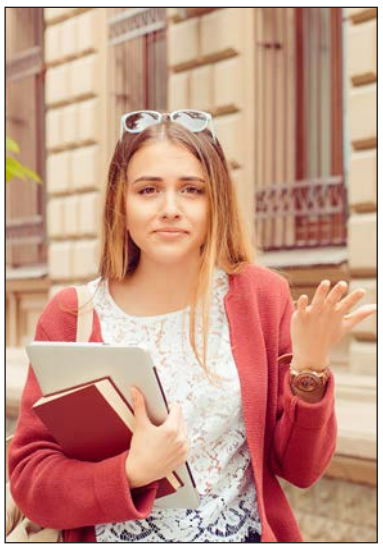
COMMENTARY

Lawmakers unwise to reconsider master's pay for teachers

DR. TERRY STOOPS
VICE PRESIDENT FOR RESEARCH
JOHN LOCKE FOUNDATION

Pay for the attainment of a master's degree is one of the most common teacher salary supplements offered by states and school districts. National Council on Teacher Quality researchers reported that 88 percent of the largest school districts in the United States provided a master's degree supplement to teachers. The average supplement for a teacher at the top of the pay scale is around $7,400 per year. In some school districts, teachers with a master's degree can receive tens of thousands of dollars more than those with a bachelor's degree only.

The reason states and school districts may choose to offer salary supplements for master's degrees is simple. Presumably, educators who complete a master's degree obtain advanced knowledge and skills that make them more effective in the classroom. Otherwise, it may function as a way to identify and reward highly motivated teachers. In sum, elected officials see it as a way to improve the quality of their teacher work force by supplementing the pay of those who attain an advanced degree and incentivize others to do the same.



The fact that teachers with master's degrees are no more effective in the classroom, on average, than their colleagues without advanced degrees is one of the most consistent findings in education research.

- Matthew Chingos
Urban Institute

But decades of empirical research consistently find teachers with master's degrees are no more effective than those without. As Matthew Chingos of the Urban Institute pointed out in an article published in *Education Next*, "The fact that teachers with master's degrees are no more effective in the classroom, on average, than their colleagues without advanced degrees is one of the most consistent findings in education research." He concluded that eliminating the M.A. pay bump was "the obvious solution."

When Republican lawmakers discontinued the teacher salary supplement for master's degrees in 2013, they reasoned that scarce taxpayer resources could be redirected to programs that offered more direct benefits to teachers and students.

By pursuing "the obvious solution," North Carolina became the first (and remains the only) state to prohibit districts from offering additional pay to educators who possess an advanced degree.

That said, lawmakers did not completely abolish master's pay. Teachers who started a master's degree program by Aug. 1, 2013, staff who are required to have a master's degree for licensure, and teachers who received the extra pay prior to 2014 continue to receive the graduate degree supplement.

With the introduction of Senate Bill 28, state lawmakers recently revived the debate over the master's degree supplement. Bipartisan sponsors of the legislation seek to restore master's pay for teachers who obtain their degree in the subject that they teach.

Earlier research studies concluded that teachers who have master's degrees in math and science were more likely to produce higher levels of student achievement in those subjects. More recently, UNC-Chapel Hill professor Kevin Bastian published a study of N.C. teachers indicating educators with advanced degrees in the subject they teach tend to produce meaningful gains in student learning.

In his 2018 *Education Finance and Policy* journal article titled "A Degree Above? The Value-Added Estimates and Evaluation Ratings of Teachers with a Graduate Degree," Bastian concludes "salary supplements for all graduate degrees are not well-supported by extant research (including findings from this study)."

But he found that in-area graduate degrees appear to be related to teacher effectiveness. To those who support the targeted restoration of master's degree supplements, Bastian's study offers an adequate justification for the swift approval of S.B. 28.

But Bastian wisely compares student learning gains of teachers with an in-area master's degree to gains realized through on-the-job skill attainment and National Board for Professional Teaching Standards certification. In addition to the experienced-based salary steps embedded in the state salary schedule, N.C. public schools award NBPTS-certified teachers a 12 percent pay increase for 10 years.

Bastian's analysis suggests that gains from in-area degrees are modest compared to on-the-job skill attainment and NBPTS certification. In other words, both experience-based and NBPTS certification salary bumps for educators may be better investments than in-area graduate degrees.

Of course, many supporters of S.B. 28 believe the legislation represents an opportunity to roll back the 2013 measure and re-establish supplemental funding for all master's degrees, not just for those in certain subject areas.

Teacher advocacy groups will contend it's unfair to fund master's degrees for some educators and not others. Depressingly, the justification for a full-scale restoration of the master's degree salary supplement would have little to do with the practical value of the degree itself.

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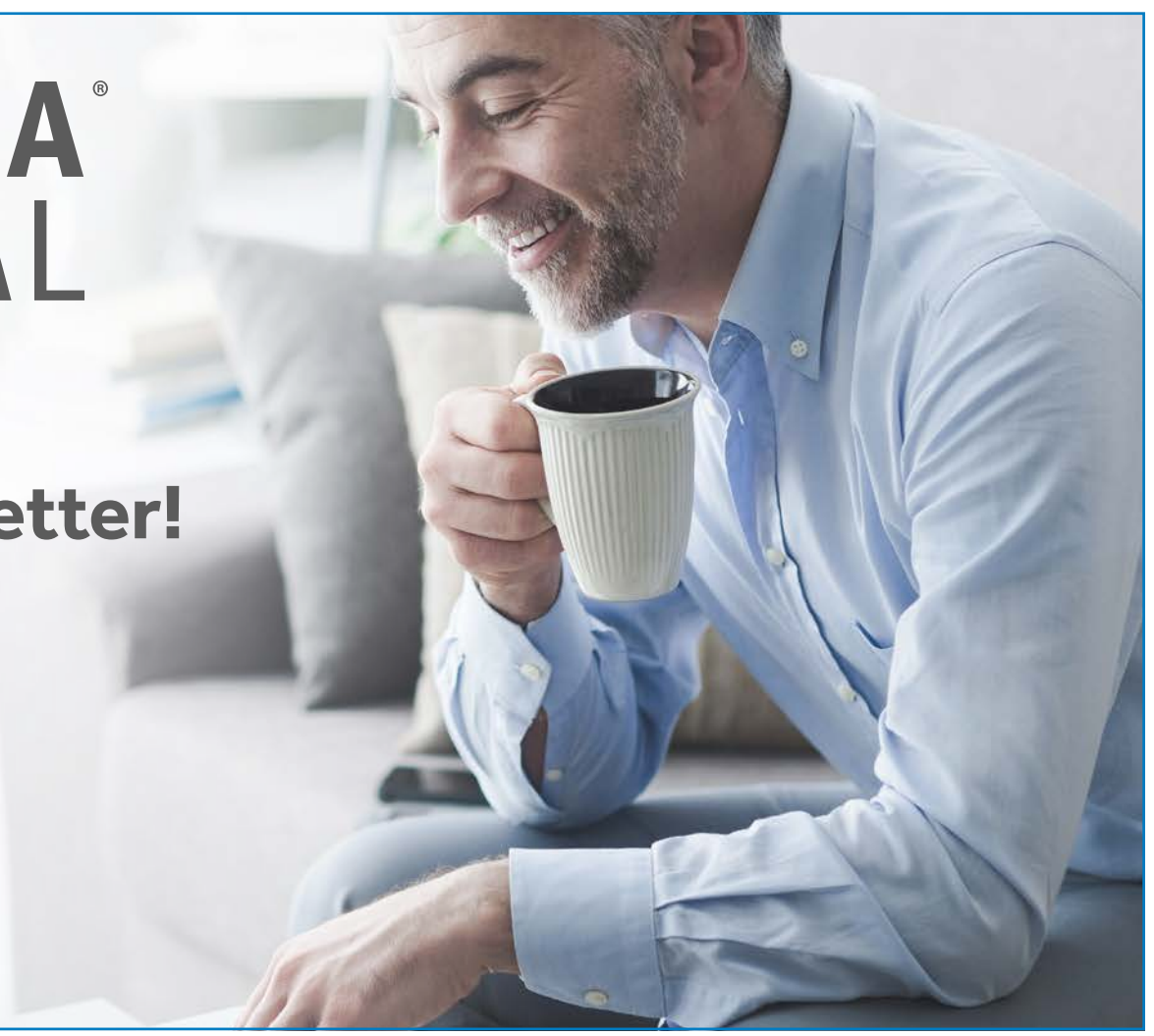


COMMENTARY

AOC's proposal shines light on tax-rate debate

MITCH KOKAI
SENIOR POLITICAL ANALYST
JOHN LOCKE FOUNDATION

Alexandria Ocasio-Cortez deserves a big "Thank you." In calling for top marginal tax rates of 70 percent, the freshman U.S. representative from New York is attracting attention to often-neglected issues linked to federal tax policy.

To be clear, this column is not endorsing Ocasio-Cortez's proposal. A near doubling of the current top tax rate would be unwise.

Still, Ocasio-Cortez's high profile — especially among younger voters — means that at least some AOC fans might be willing to devote time to learning facts about tax rates. Those who look into the topic might be surprised at what they learn.

Permitted since the adoption of the U.S. Constitution's 16th Amendment, the modern federal income tax started in 1913 with a rate of 7 percent. Its top marginal rate reached as high as 94 percent during World War II. The top rate stood at 91 percent as recently as 1963. It didn't dip below Ocasio-Cortez's 70 percent standard until 1981.

Ronald Reagan entered the White House that same year and began a concerted campaign to lower tax rates across the board, including the top marginal rate. (Reagan's jump from the Democratic Party to the Republicans had stemmed, in large part, from his own experience with high marginal tax rates. At the peak of his movie-star career, the Gipper had experienced firsthand the disincentives linked to sky-high rates. If he could keep less than a dime of each dollar he earned beyond a certain income threshold, why bother working on another movie?)

By the time Reagan left office, the top marginal rate stood at a postwar low of 28 percent. Rates have climbed since that time. The top rate has fluctuated between 35 percent and roughly 40 percent for the last quarter century.

Ocasio-Cortez and her supporters point to the pre-Reagan historical record. They see that the American economy thrived at times when tax rates topped out at 70 percent or higher. They are correct.

But as economist Milton Ezrati noted recently in New York's *City Journal*, those higher rates accompanied a much different federal tax code. Deductions and exemptions "drastically reduced" the amount of income subject to the higher rates. Tax cuts enacted since the Reagan era have closed most of those "loopholes."

"Taxpayers could write off all state and local taxes, with no limit — including sales taxes, licensing fees, property taxes, and income taxes," Ezrati reminds us of the era of 70 percent top marginal rates. "They could also write off all interest expenses without limit — on their mortgages (no matter how many), all credit-card debt, auto loans, or home-improvement loans. Imagine the benefits to a plutocrat, buying a third home or a fifth Bentley."

That's not all. "The code included dividend exclusions and generous provisions for capital-gains preferences," Ezrati adds. "Taxpayers back then could shelter unlimited amounts in IRAs. Social Security payouts were tax-free, no matter how high a person's income. Individuals could write down their taxable income through averaging provisions and transfer as much income as they liked to their children, who paid at lower rates. There was no limit to rental-loss deduction. Business losses counted against all income."

The end result: Few people paid 70 percent rates on any income. Ezrati cites a Tax Foundation estimate that the top 1 percent of taxpayers in the 1950s ended up paying an average effective tax rate of 17 percent. That was despite a top rate that hit 92 percent.

"If our highest earners today were offered the 2019 code or the old one, they might well go for the old rules, even at a 92 percent top rate," Ezrati concludes.

The old rules might benefit those high earners, but it's hard to argue that the increased complexity in the tax code would benefit the economy as a whole. Tax reformers argue fairly consistently for "neutrality and simplicity." That means eliminating special credits and deductions that complicate the tax code and skew taxpayers' economic decisions.

One suspects that Ocasio-Cortez has no interest in restoring the old special breaks and deals that helped high earners avoid much of the tax burden a 70 percent rate would imply. Instead she is likely to support higher rates alongside the current number — or even fewer — credits and deductions.

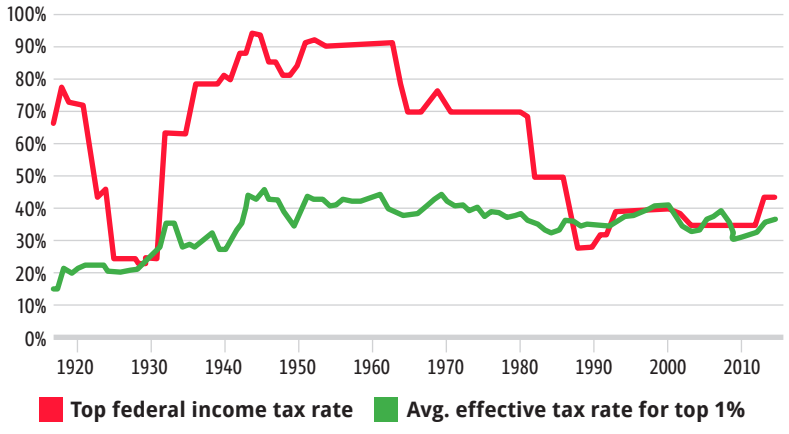
If that's true, one can expect high earners to follow one of several courses in the face of a new sky-high tax bracket. First, they might emulate the moviemaking Reagan and simply curtail their income-generating activity. If they can't keep more than 30 cents of every dollar they earn, they'll have less incentive to earn that additional dollar. That means less economic activity overall and a hit to American economic growth.

Second, they might steer more of their earnings toward tax accountants and lawyers who will help them game the system. These are the very taxpayers who will be able to afford that type of specialized tax expertise. Money spent for tax-saving purposes won't go into savings and investment that boost economic growth.

Third, high earners will hire lobbyists to help them win targeted tax relief from Congress. The higher the top marginal tax rate, the larger the incentive for prospective payers to seek a deal from Washington bureaucrats and elected officials. New breaks would undo many of the reforms that helped improve the American tax code over the past four decades.

It's doubtful that Ocasio-Cortez has spent much time considering these potential consequences. One hopes at least some of her followers will dedicate more attention to these critical details.

Top income tax rates compared with the effective tax rates on the top 1% of U.S. households



SOURCE: Tax Foundation

TAX-RATE DEBATE. Alexandria Ocasio-Cortez has called for top marginal tax rates of 70 percent.

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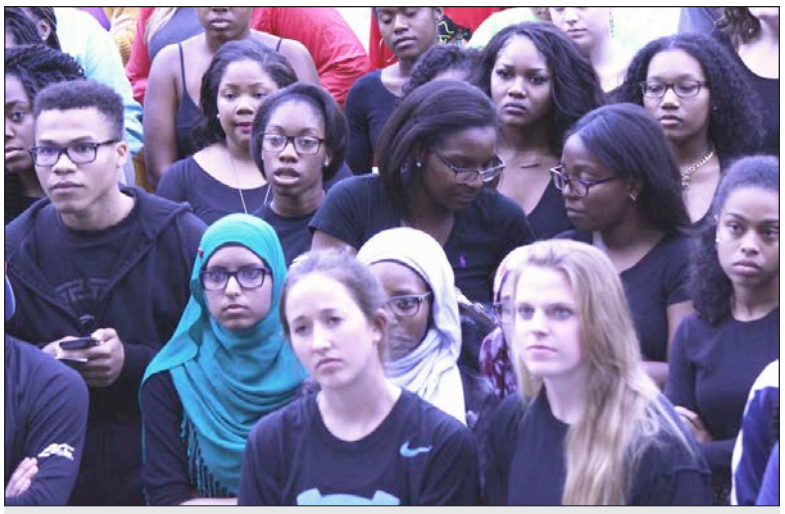
EDUCATION

UNC crisis exposes academia's feckless mind-set

JAY SCHALIN
COLUMNIST



Carol Folt's tenure as chancellor of the University of North Carolina at Chapel Hill came to an abrupt end, thanks to her failure to grasp political realities and her defiant support of the school's radical social justice crowd. She challenged the system's governing body, the Board of Governors, by having the pedestal of the Civil War memorial known as "Silent Sam" removed. In response, the BOG gave her a couple of weeks to clean out her desk instead of letting her finish the spring semester as she intended.

It should hardly surprise anybody that Folt ran afoul of the university system's ultimate authority to promote or reject the social justice agenda. After all, she has always sided with the radical diversity agenda against more prudent interests.

That audacious act of removing Silent Sam was both within character and predictable. Back at Dartmouth, then-provost and interim president Folt deliberately stoked a controversy that began with a small group of gender radicals taking over the stage at an orientation program for admitted high school seniors. The radicals, who called themselves "Real-Talk Dartmouth," shouted, "Dartmouth has a problem" and presented to the stunned future freshmen a scenario of the campus as an ominous sexual battleground filled with violence and intimidation.

Which, of course, was silly. Dartmouth is far safer than most places on earth, and the protesters represented just about nobody else on campus. But instead of regarding the incident as a teachable moment about civil discourse and handing the protesters a minor punishment for interrupting a campus event, Folt poured gasoline on the fire, turning it into a raging altercation. A week after the orientation session was disrupted, she shut down classes for a "campuswide 'diversity and inclusion' training day" to further the protesters' cause.

Folt's complicity with the radical agenda did not stop once she came to Chapel Hill. She supported a task force on sexual assault convened by Holden Thorp, her predecessor. She turned the task force's findings into school policy, even though the new rules eliminated the due-process right of the accused to face his or her accuser and introduced the absurd "affirmative consent" standard — in which each step in the act of seduction requires verbal agreement.

In 2015, at the height of the Black Lives Matters protests, Folt initiated a campus "Town Hall on Race and Inclusion" with liberal syndicated columnist Clarence Page as the moderator. As the event got under way, a chanting mob of 40 student protesters burst into the auditorium, holding signs saying such things as "F— Whiteness." They took over the stage and berated the audience, then read a list of 40 demands, most of them ridiculously impractical.

Folt stood meekly on the side of the stage while the protesters raged, even though campus security stood ready at her command to restore order.

So, with such a track record, her impetuous removal of the Silent Sam pedestal was to be expected. She gave the UNC system's governing board no choice but to demand that she leave campus by the end of January instead of sticking around until May. Who knows what mischief she could have done to the school in her final semester, with no worries about salary raises or continued employment to temper her sympathies for radical politics.

The Carol Folt saga should herald a new era in Chapel Hill. The days when the powers-that-be could appoint a standard left-wing academic like Folt to head a major public university and expect everything to run smoothly are over. On today's campus, friction is to be anticipated; strong leadership is needed to keep the discourse civil. Also necessary is an open mind to listen to all sides and common sense for making fair, rational judgments. Ivy League elitists steeped in the left-wing academic tradition, such as Folt (Dartmouth), Duke's Dick Brodhead (Yale), and Brodhead successor Vincent Price (Penn), no longer fit the position.

For reality is dictating change. Much of the country is catching on to the seriousness of the cultural transformation being conducted on college campuses. Whatever one's feelings about Silent Sam the statue as a symbol of racial division, there is the deeper question of Silent Sam the cultural metaphor. Its demolition represented not just the physical act of pulling down a particular artwork, but the symbolic act of tearing down the rule of law and due process, tearing down respect for our own history and culture, and tearing down our spiritual contract with both past and future generations.

It's time to get UNC leadership that shows respect for all the people, not just for the angry, noisy ones who want to tear everything down. Campus controversies will be unavoidable in the near future; it's time to select leadership who can handle them on a higher plane than yielding to the mob.

Jay Schalin is director of policy analysis at the James G. Martin Center for Academic Renewal.

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EDUCATION

Challenging myths about competitive college admissions

KRISTEN BLAIR
COLUMNIST

March is madness for high school seniors. Each year, seniors mark March as the final month in the agonizing wait for college decisions. Early application timelines mean the admission process is blessedly over for some. But many still wait, even as stakes soar and odds seem to dwindle. UNC-Chapel Hill, for example, received nearly 45,000 first-year applications this year, the 14th consecutive year of record numbers. Is it harder and harder to get into college?

Hold for more jaw-dropping statistics: UCLA, the nation's most popular university, just reported more than 135,000 freshman and transfer applications; NYU received more than 84,000 first-year applications. Duke, Dartmouth, Yale, Tufts, and Brown announced record applicant numbers. Admit rates at elite institutions are falling, even as perceptions grow that a college degree is a baseline prerequisite for future economic viability.

High schoolers hear the hype. Such pressure pushes intensively, inexorably, into their school days and college dreams. Surveys of 100,000 students at high-achieving public, private, parochial, and charter high schools, conducted by the Stanford University-affiliated organization Challenge Success, reveal college admission is a perennial top stressor. To compete, kids labor to churn out awe-inspiring (and, they hope, admission-worthy) transcripts and resumes. They populate online message boards, anxiously posting test scores and GPAs, and asking others to "chance" their odds at top institutions.

Is their angst warranted? Is a spot at a prestige school the life-altering opportunity students believe it to be?

Not so, says Challenge Success, in a recent white paper emphasizing "fit" over rankings. The evidence is clear: There's no significant relationship between school selectivity and quality of learning. School status isn't linked closely with graduates' well-being or later job satisfaction, either. Attending a selective school does confer "modest" financial advantages, says Challenge Success. Such benefits are most evident for first-generation and underserved college students.

If college selectivity isn't a strong predictor of success, what is? Engagement — how much students invest, right where they are. Engagement, according to Challenge Success' review, leads to greater knowledge, competence, creativity, and curiosity. Effective engagement can include internships or mentoring, even projects and extracurriculars. College major and ambition also matter, and so does time on task. Study, study, study in college, wherever you go, and you'll do better. Don't, and you probably won't.

Some changes are coming. New college rankings will provide greater institutional accountability. *U.S. News & World Report*'s 2019 rankings weight student factors (scores and class standing) less. Institutional outcomes (including retention and graduation data) matter more. Admit rates are out. Social mobility metrics are in. These measure how well institutions do at graduating low-income students. Now that would be an indicator of life-altering opportunity.

More college applicants? That's a good thing, says Challenge Success co-founder Denise Pope, a senior lecturer at Stanford's Graduate School of Education — but a "fear-based mentality" clouds the application process. Misperceptions abound. Students must be perfect and apply to a bunch of schools just to get in somewhere. Only certain schools are worth attending. "All of those things are myths," she says. "There's actually a college spot for every person who wants to go to college."

Really, there are only 100 to 200 schools that are considered highly selective and "literally thousands of four-year institutions," Pope notes. Students should look beyond rankings, which still are flawed, and focus instead on fit — how well institutional attributes and offerings align with their passions and proclivities.

"There are multiple fits for everyone," Pope says, adding about the college decision process, "It's not like finding a soulmate."

Thank goodness for that. It's timely reassurance for the weeks of waiting ahead.

Kristen Blair is a Chapel Hill-based education writer.

Colleges should stop forcing students to live on campus

DOUGLAS OLIVER
COLUMNIST

A LONGTIME practice for many private universities has been to require most freshmen and sophomores to live in campus residence halls. State-supported public universities, too, have copied their private counterparts in recent years. However, doing so drives up the cost of education and restricts the constitutional rights of public university students — all in the name of "the university experience."

Starting in 2016, many full-time freshmen at the University of North Carolina at Wilmington and N.C. Central University were required to live on campus. In 2017, N.C. State University began enforcing a similar policy. Other universities, such as UNC-Charlotte and Elizabeth City State University, are considering on-campus living mandates. Local students usually can get a mandate exemption if they live with their parents, but few exceptions are made for students who wish to live with nonparental relatives or family friends.

Only five UNC schools don't require freshmen to live on-campus.

Many universities claim that living on campus improves the likelihood of academic success. For example, UNC-Wilmington claims that "research indicates students who live on-campus earn higher GPA's." N.C. State simply claims "living on campus is an essential part of the Wolfpack experience."

But a research paper in the journal *Urban Education* found that "for most students in most institutions, the type of residence during college does not seem to have a significant effect on first-year academic performance."

Those small academic benefits for students, if they exist, come at a high price. On-campus living can be substantially more expensive than off-campus living.

For example, UNC-Charlotte estimates annual costs for on-campus living to be $12,432, while off-campus costs are estimated at only $10,433. But students with extended family or a family friend near campus may be able to secure room and board at little or no cost.

According to data from the College Board, costs for college room and board have increased substantially above the rate of inflation since the mid-1990s.

Adjusted for inflation in 2018 dollars, the cost has increased about 60 percent since 1998. This rapid increase in relative cost gives universities a strong incentive to increase the number of students housed on-campus.

But beyond cost savings for students, legal arguments against on-campus living requirements are strong, too.

Unlike private universities, public universities are agents of the state. Their on-campus living mandates involve a government agency dictating where, and under what conditions, an adult student may live.

When a state university mandates on-campus living, that university potentially infringes on several constitutionally protected liberties.

When a state agency requires unwilling students to live in dorms, their privacy rights are seriously infringed. Campus speech codes, too, become more onerous when students are required to live on campus.

Nontraditional students, unfortunately, cannot avoid all on-campus mandates, either. For example, Appalachian State University requires freshmen students through age 24 to live on campus. Hence, a 24-year-old who has worked and lived on her own for years could be required to live in a dorm where she would have to abstain from alcohol and smoking in her room.

The desires of other students are ignored, too: Few housing policies give pious students a religious exemption to avoid the dorms.

The on-campus living requirements enacted by North Carolina's state universities provide questionable educational benefits. Yet, they create a substantial burden on some students — hurting them economically and, likely, restricting their constitutional rights. Rather than expanding the mandates in the UNC system, they should be abolished.

Douglas Oliver is an attorney in Ohio and an emeritus professor of mechanical engineering at the University of Toledo.

TAXATION

Coalition works to educate people about open government

Q&A

Brooks Fuller
Director
N.C. Open Government Coalition and Sunshine Center

The N.C. Open Government Coalition and Sunshine Center has a new director. The nonpartisan group is dedicated to raising awareness about "sunshine laws" and the principles and benefits of open government.

Brooks Fuller, a North Carolina native and former professor at Louisiana State University, took up the role in February. The former attorney will also teach media law and ethics at Elon University's School of Communications.

Fuller earned a bachelor's degree in journalism from the University of North Carolina at Chapel Hill and his law degree from the University of South Carolina School of Law. He practiced law in North Carolina for seven years before receiving a Ph.D. from the UNC School of Media and Journalism in 2017.

Fuller sat down Feb. 20 with *Carolina Journal* Associate Editor Kari Travis to talk about the coalition, his work, and the state of transparency and public-records laws in North Carolina.

The state's annual Sunshine Day, which Fuller will oversee this year, is March 11, coinciding with N.C. Sunshine Week to "bring awareness to the importance of open and accountable government in the state." Visit Elon University's website for more information.

KT: What is the mission of the N.C. Open Government Coalition?

BF: Part of being nonpartisan is making sure we stand to serve a public education mission. Most of our programming is geared toward that mission — to educate the public as best we can. When there are laws that are proposed that might impact transparency for regular [residents], the main thing we want to make sure we can do is explain how those laws are going to impact the day-to-day public-records requests, or the ability to attend a public meeting and what that means. If there is a bad law, we might form a position on it and speak out against it, but we do not spend a lot of time in Raleigh lobbying in the way you typically understand the word. We do serve a public education mission, and sometimes that means advocating on behalf of a more transparent government.

KT: Now that you're back in North Carolina, you probably have some fresh eyes on the public-records situation. What's your assessment of our government's transparency factor? Are we getting worse? Better? Or are we stuck?

BF: Generally speaking, our open-records and open-meetings laws are pretty standard-issue. ... The law, as written, is not the best law in the country. It's not the most open and transparent. There are a lot of exemptions that impact what types of records somebody can get, or what they're allowed to do and how they're allowed to engage at public meetings. The real problem is facilitating records requests and facilitating the ability to put all of that law into practice. It's one thing to have a law that allows access. It's a completely different thing to have a working, functioning system to make that access possible. ... That's just one way that North Carolina, like a lot of other states, is struggling. And I think a lot of it boils down to how adequately our government offices are staffed, [and also on what] technological interfaces our [residents] have to go through to get what they need. The ... struggle is making it simple and functional for [people] to get what they need.

GOVERNMENT DOCUMENTS: Searching public records can be incredibly cumbersome.

KT: When it comes to state-level public records, residents often must make multiple requests to access just a few documents. In the case of some counties, datasets of information are provided to the public, but the databases can be complicated and practically unsearchable for some. What's the point of accountability and transparency if the public doesn't know how to navigate systems?

BF: That is a challenging question. One of the problems is a very simple process of searching for a deed in the register of deeds office and finding information about the house that you own — or that your neighbor owns. It's been public record for as long as we can remember. But the way [that office's] technology is built is incredibly cumbersome. ... In that instance, making sure that someone of average and reasonable intelligence can understand what's in the records is simply a matter of functionality. Having user experiences that are going to help people who might have visual or hearing impairments, or who might just not be able to navigate the website because [it's] convoluted. So it's really a matter of keeping the technological infrastructure streamlined, and seamless, and simple for people. I'm an attorney who has practiced law and is in this position, and I have a Ph.D, and I cannot for the life of me navigate certain cities, municipalities, and register of deeds offices because of how broken they are or how broken they feel. This is not an indictment of the people who put those together, but it speaks to me of a missed opportunity to put someone with the modern expertise in a position to make these systems better.

> **There are new efforts on behalf of Wake County, the City of Charlotte, to make data open and available. Sometimes what that means is just creating large repositories of documents.**

And folks are trying. There are new efforts on behalf of Wake County, the City of Charlotte, to make data open and available. Sometimes what that means is just creating large repositories of documents. This is a very good thing for making things available, but it can also be very cumbersome for [residents]. ... One of the things we can do to [improve those systems] is to better fund those offices. In my opinion, we need to make it so that the human and technological capital are working together.

KT: The quest for government transparency seems cyclical and that it's easier for officials to talk about transparency than to practice it. How do we get politicians to prioritize it in a world where we are seeing more resistance to the press, and media, and even the public asking questions? How do we change that attitude?

BF: I would love to be able to answer that question. In fact, if I were able to answer the question about how to stoke the political fires to get members of the General Assembly or of Congress to be more caring about these issues, I feel like I would've stumbled upon this fantastic golden ticket for North Carolina [residents]. In all honesty, [the answer is found in] the concerted work of public service organizations and advocacy groups that write records requests, follow them through to fruition, and then when necessary litigate to give examples to our elected officials about where the law stops and starts — and what their obligations are.

In a lot of cases, I think the law is fairly clear. The law says that when you're transacting public business on behalf of a government agency, you're required, unless an exemption applies, to fulfill that public-records request as practically and swiftly as possible, without imposing undue and burdensome fees. And we're running into ... both situations. [Gov. Roy] Cooper's administration settled a lawsuit against [Gov. Pat] McCrory's administration, and a big part of that battle was over delay or inattention, or fees where the law doesn't provide an opportunity [for such things]. I don't understand how that's not more clear to someone who is at the highest level of a government administration. ... I don't want to speak out of turn, because I'm not in those rooms having those discussions, but it seems like the worst thing we can do is delay, as far as government goes. More stringent penalties and fee shifting is part of what our statute does. It provides for attorneys' fees. Having to pay attorneys' fees is a pretty huge incentive to act right. So if courts are willing to award those for grievous failures of compliance with the public-records law, that's one way to get that done.

KT: Of the roughly 150 exemptions to state public-records laws, which are most problematic?

BF: I'm thinking of two that are particularly problematic — one because of its potential vagueness. The personnel records exemptions, for example, cover such a tremendous swath of documents and records of someone's status as an employee. If you really stretch the definition of a personnel record, you can shove almost anything into it, ... and that can be problematic. The other [exemption] is criminal investigations that are no longer ongoing. Once a criminal investigation is closed, those files can be closed as well. ... Our history and tradition about that is a big factor. It's [an assumption] that criminal records are sacrosanct. But once those close up, and once those investigations reach a stopping point, it's time to shine the light on this. Especially at this particular political and social moment, where [establishing trust in law enforcement] is one of the most important things we can do as citizens. And one of the ways to do that is through shining light where light is due.

JOURNALISM

The successes, frustrations of public records investigations

INTERVIEW

Don Carrington
Executive Editor
Carolina Journal

Carolina Journal Executive Editor Don Carrington knows a thing or two about uncovering stories of corruption in government. As an investigative reporter for *Carolina Journal*, Carrington has broken several stories detailing cases of government corruption and incompetence.

Carolina Journal Associate Editor Lindsay Marchello sat down with Carrington on Feb. 15 to talk about his career and the challenges of keeping governments accountable.

This interview was edited for clarity and space.

LM: What does investigative reporting entail? How do you go about getting a story done?

DC: It can either start with something I read, where I see something wrong from either a behavior or policy side and something doesn't look quite right. It catches my attention. Usually it's something that I already know a little bit about. Or it can be a tip out of the blue on something that I know nothing about. I generally read a lot. If I think it can turn into a story, then I share it with others here [at *Carolina Journal*] to see what they think. Then I proceed. Oftentimes we don't do a story, or I end up learning a lot and say this just doesn't feel right for a story right now, like I learn about guardianship fraud but I feel like it's just not right for me to write about it right now or that the issue is getting coverage in other places. A lot of what I do is research, and that sometimes turns into a story, and sometimes it doesn't.

LM: So, once you pick up on a story, where do you go next?

DC: Well, I do a lot of research. That's why you see a lot of paper here. It's stuff I like, but there's an article about it, or some land records, or some personnel records or something that I have to remember and use it if I'm actually going to proceed with a story.

LM: What are some of the challenges you face in North Carolina when trying to obtain information or a document from a government agency?

DC: Getting cooperation from government officials has always been a challenge. It has been a challenge for me and for other investigative reporters and general reporters, too. Government officials are usually not very cooperative.

LM: How do you get around that lack of cooperation?

DC: You pester them, constantly. If you think it's been too long when they are not being cooperative, you have to threaten a lawsuit. I have not filed a lawsuit, but I have been part of threats many times. One example is with the development of the Randy Parton Theatre. The city of Roanoke Rapids was not going to release its contract with Randy Parton. The theater had been paid for with public funds. The only money they had in the beginning was public funds, that taxpayers agreed to borrow. They were not going to let me see his contract, so I said we are going to sue you. They coughed up the contract within a couple of days. But they did check with the Institute of Government. That was a unique situation, but I knew they would have to give it up. You can't borrow money and set up Dolly Parton's brother in business and build him a theater without sharing the deal. How much does he get? How much does he get to keep if people come to the show? The contract was startling. He himself would get up to [$1.5 million] a year. All of his expenses and his band would be paid for. That was a startling amount of money.

GREG DE DEUGD

DON CARRINGTON. ***Carolina Journal's*** **executive editor is committed to following the money.**

> **Getting cooperation from government officials has always been a challenge. … Government officials are usually not very cooperative.**

LM: That leads into my next question. What were some of the biggest finds of your career?

DC: Well, that was a pretty big find. Another one was there was an issue with Attorney General Mike Easley running public service ads in the year before he was getting ready to run for governor. The ads sure looked like campaign ads, which they said were prepared by his staff. I was able to get expenditures from his office through the controller's office. I essentially got the check registry for a period of time. I noticed there were payments to a sound studio in Philadelphia that just happened to be on the same block as his political consultant. I called them, and the person said, "Yes, we do political ads for Mike Easley." There the public record led me to the truth, that this was connected to his political campaign. At least the people producing it thought it was. He would tell people down here they were just public service ads. That was a pretty big find.

LM: Did any of your stories have real-world consequences?

DC: Yes, some of our earlier stories we relied on public records, but most of these were available at the General Assembly. They weren't online. They were records about an organization, a nonprofit that former congressman Frank Ballance had set up while he was a leader in the state Senate. You could see by the votes that he would put things in bills that would direct money to a nonprofit that he controlled. It was approximately $2 million over 10 years. Other records showed it was tied to his church, and after a couple of stories, the auditor — and we later learned federal investigators — went right after it. He was funneling money into his own organization, and he had never properly registered it as a nonprofit with the IRS, where some of the records are available. There was little evidence of any public good that this operation did. Frank eventually went to prison for four years.

LM: What are some cases in which you didn't get the information you requested?

DC: Eventually you get it, but it could be as much as a year later, and it can be heavily redacted. You don't always get to have a conversation about why something is redacted. Several reporters and organizations wanted the documents related to the Atlantic Coast Pipeline, and the Cooper administration eventually released as much as 40,000 pages. A lot of it was not related to the pipeline. A lot of it was duplicated. You just don't know if they pulled anything out of it.

LM: How can we improve public records requests? Does it need to be improved?

DC: Yes, it needs to be improved. I think when I make a request I would expect someone to say that they received the request and discuss it with me. "Can we narrow this? Can we make this easier for me and you? We can do what you're asking, but can we narrow it down a little bit with the time period or the keywords you are searching for? Then I can get you something sooner." That's how adults would handle it. That's not going on now. You don't get a call back.

EDITORIAL

Lawmakers should be rulemakers, not cartographers

Death and taxes aren't the only two certainties North Carolinians face. New congressional and legislative districts are coming, too — for 2020 (by court order) and 2022 (after the end-of-decade census).

Chances also are strong the Tar Heel State will get a 14th congressional district, so reapportionment should be on the agenda for the 2022 election cycle.

If lawmakers don't want to spend most of the next three years in court fighting over new districts — spending taxpayer money which could go to better use — then they can limit the pain, the cost, and the public frustration by taking a few straightforward steps. Stop micromanaging the districts. And require the people who draw the maps to follow rules set in the constitution and by state courts.

A couple of proposals introduced in February would get us closer to that goal.

Reps. Chuck McGrady, R-Henderson, and Robert Reives, D-Chatham, have co-sponsored House Bill 69 and House Bill 140, which offer two different alternatives to the problem of extreme partisanship in mapmaking. They do it by giving individual lawmakers a minimal role in designing the maps.

The N.C. Constitution says the General Assembly has the sole authority to revise legislative and U.S. congressional districts. Yet it doesn't say the legislature has to draw the maps.

For more than two decades, the John Locke Foundation (publisher of *Carolina Journal*) has backed the establishment of an independent process to set district lines. So have multiple "good government" groups, many of them left-leaning. The idea is to curb the power of elected officials to entrench themselves in districts they draw.

H.B. 69 would use an appointed commission to handle the details. Similar commissions in about a dozen other states haven't always lived up to reformers' expectations. For one thing, the commissions often have a partisan slant, as officially "nonpartisan" seats get filled with those who either sympathize with a party or actively conceal partisan leanings.

H.B. 140 takes a different tack. It would have legislative staff draw the maps, based on the state constitution, federal laws — including the Voting Rights Act — and a set of concise rules designed to block the party in power at the time of redistricting from exercising an unfair advantage.

Under both bills, the legislature would vote up or down on the final plan, giving lawmakers no opportunity to tweak it.

Maps still would have to comply with the U.S. Constitution and the federal Voting Rights Act. They'd have to satisfy the state constitution — each district with roughly equal numbers of residents, contiguous, and leaving counties whole whenever possible.

But those requirements don't go far enough. The proposals also would uphold principles set out in the 2002 *Stephenson v. Bartlett* decisions by the N.C. Supreme Court.

One important principle rarely applied in N.C. maps but included in both bills: Districts should be compact.

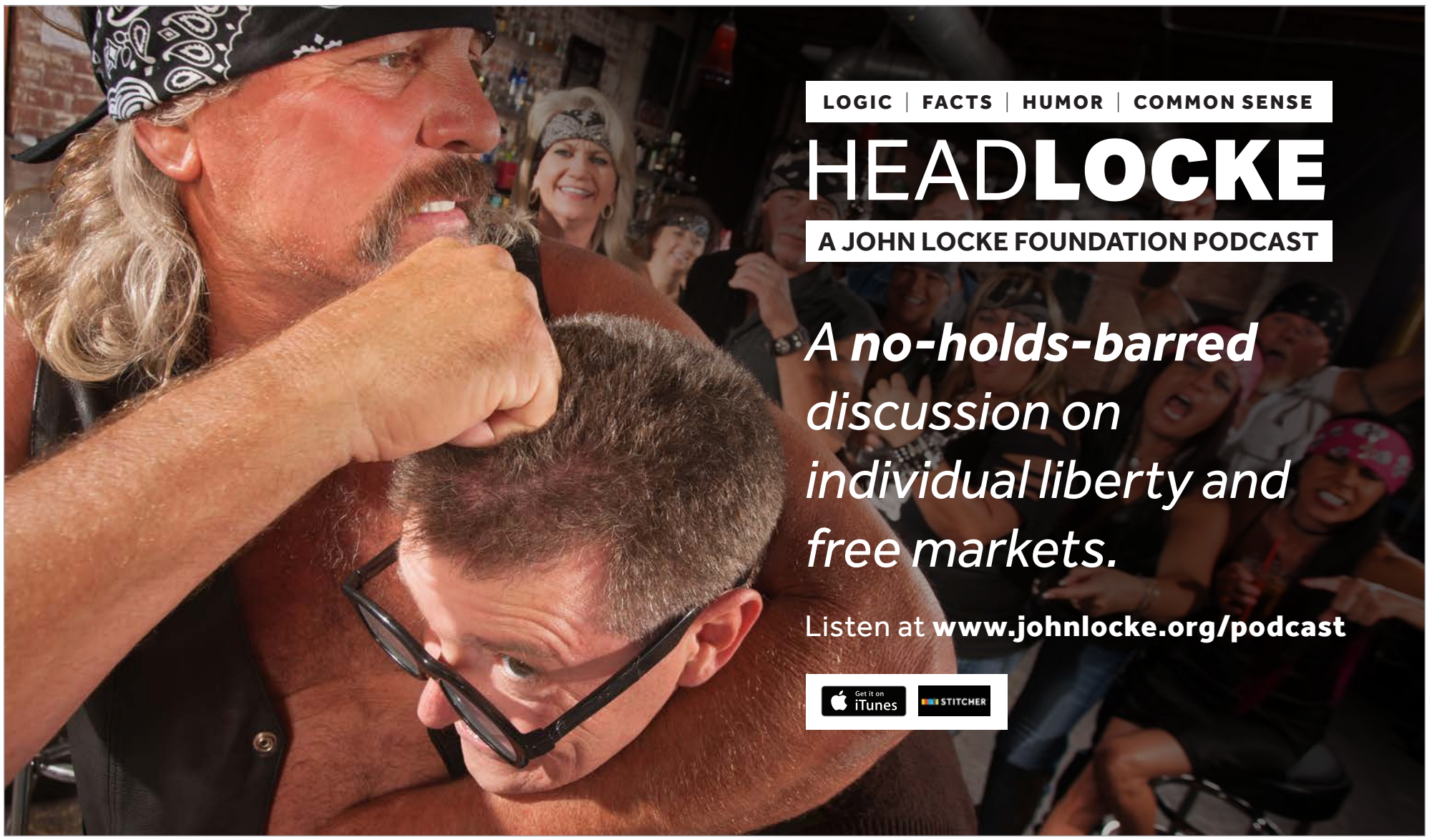
When congressional maps were redrawn for the 2014 election, residents of New Hanover County were outraged that the 7th Congressional District no longer was limited to counties in that corner of the state but instead stretched northwest to the Research Triangle Park exurbs.

The 9th Congressional District, which will elect a representative sometime this year (maybe), reaches from the southeastern suburbs of Charlotte east into Fayetteville and then Robeson County. It comprises many communities with often wildly divergent interests.

Common-sense districts would look more like circles than boots — or snakes. Abiding by the *Stephenson* principles gets us closer to that goal.

H.B. 140 also includes a proposed constitutional amendment. If put on the 2020 ballot and approved by voters, having those rules in place would reduce the potential for judicial overreach when map disputes go to court. A rules-based process would give state judges clear guidelines for setting legal district boundaries. A constitutional amendment also would make it tougher for a future General Assembly to undermine future redistricting plans with a simple majority vote by lawmakers.

A redistricting amendment would offer an insurance policy protecting those out of power and keeping those with power in their place.



COMMENTARY BY JOHN HOOD

Well-intended programs can do harm

Friar Laurence has the best of intentions. But in Shakespeare's *Romeo and Juliet*, the friar's well-intended interventions don't yield happy results.

Laurence's initial good intention is to end the destructive conflict between two warring families. That's why he agrees to marry Romeo and Juliet, though their romance is sudden and perilous. Later, the friar recognizes their true love and gives Juliet a potion so she can fake her death and slip away to be reunited with Romeo. Neither scheme works. The unintended consequence of Laurence's intervention is the death of star-crossed lovers.

When government actors translate their own good intentions into policy interventions, they often produce unintended and adverse consequences for many affected parties.

A famous example was the initial rollout of child safety caps for pharmaceuticals. The intention was to reduce incidence of accidental poisonings. And the new caps did so in many cases. But the intervention to frustrate the efforts of children to gain access to pills also frustrated the efforts of adults to open the containers. Some ended up leaving the caps off their medications altogether, which actually made it easier for kids to gain access.

Pointing out the unintended consequences of state action isn't to argue against all efforts to combat harms, of course. As a limited-government conservative, I recognize there are situations in which consumers have no practical way of discerning what risks they may bring on themselves — by purchasing food from a restaurant, for instance.

The gap between intentions and consequences is nothing more than a reflection of our human nature. We are risk calculators. But we are not computers. Instead of performing flawless calculations based on carefully curated data, we rely on traditions, rules of thumb, social cues, and time-saving assumptions.

These decision rules actually serve us well most of the time. When they don't, the intervention of others can certainly help us

see HOOD PAGE 24

Amendment decision endangers Democrats

Arguing that GOP-tilted districts had rendered elected lawmakers "usurpers" who "did not represent the people of North Carolina," Wake County Superior Court Judge Bryan Collins has struck down two constitutional amendments approved by state voters last fall: one requiring a photo ID to vote and the other capping North Carolina's income tax rate at 7 percent.

I have advocated nonpartisan redistricting reform for more than 30 years. Since Republicans won legislative majorities in 2010, I have prodded them to reform redistricting, just as I prodded Democratic leaders to do it when they were in charge. But to Democrats gleeful about what Judge Collins has just done, I can only say that you are making a grave error.

North Carolinians support voter ID and the tax cap. They just added them to the state constitution. If this decision survives appeal, voters will view the state's judiciary as the usurpers — and they'll be right.

Legal disputes about redistricting have, unfortunately, been part of our political landscape for decades. One reason I favor redistricting reform, and am working with a wide-ranging coalition to get it passed this year, is that I believe this litigation to be a costly, convoluted, and divisive force in North Carolina politics.

However, I also understand that opinions differ about what fairness in redistricting means, and that state and federal judges have repeatedly altered the standards for legally permissible district maps. Although courts must inevitably settle some such disputes, it would be foolish and reckless to insist that legislative elections held in districts subsequently found to be noncompliant with statutory or constitutional provisions have no democratic legitimacy — that such legislatures do not "represent the people of North Carolina" and thus cannot legally enact legislation.

The implication of Collins' theory is that every bill enacted by the General Assembly before the 2018 elections represents an invalid exercise of legislative power. Every tax dollar collected and appropriated by a budget bill, every pay raise for teachers and state employees, every change in civil and criminal law is suspect.

Collins was clearly aware of how ridiculous this would make him sound, so he tried to distinguish the legislative authority to propose amendments (requiring a three-fifths supermajority) from the authority to enact other bills. But the distinction doesn't work here. Collins noted that two-thirds of all legislative districts had to be redrawn to satsify the court order — which, of course, means that the Republicans' majorities, not just their supermajorities, were at issue. Indeed, under his theory it would make more sense to strike down enacted budgets and statutes than to strike down constitutional amendments, since only lawmakers ratify the former while the people themselves must ratify the latter.

"The prospect of invalidating 18 months of laws is the definition of chaos and confusion," Senate leader Phil Berger said in response to the Collins ruling. Quite so. No matter how passionate they feel about blocking voter ID, raising taxes, or reforming redistricting, Democrats should not embrace this radical and irresponsible ruling.

Its radicalism and irresponsibility extend beyond redistricting disputes. Among the "findings of fact" in the Collins decision was that capping the income tax was a racist act — that it will "act as a tax cut only for the wealthy" and tend to "favor white households and disadvantage people of color, reinforcing the accumulation of wealth for white households and undermining the financing of public structures that have the potential to benefit nonwealthy people, including people of color and the poor."

This claim by one of the plaintiffs, the NAACP, is both offensive and factually inaccurate. Before the General Assembly enacted tax reform in 2013, North Carolinians who earned more than $60,000 a year were subject to a state income tax rate of 7.75 percent on that income. The thresholds were $80,000 for a head of household and $100,000 for a married couple.

Do you consider all these North Carolinians "wealthy"? Do you think they were all white? That Judge Collins took this claim seriously as a justification for the NAACP's standing to challenge the tax cap should tell you all you need to know.

Politically, the plaintiffs and the progressive interest groups who have financed and cheered them on have put Democrats in a perilous situation and handed Republicans a potent election issue. If a Democratic judiciary strikes down popular policies just approved by the voters themselves, most will see the Democrats as the party hostile to popular sovereignty here, not the Republicans.

The plaintiffs have also done the cause of redistricting reform a great disservice. By blocking partisan abuses and producing fairer, more compact, more voter-friendly districts, reformers seek to promote stability and cooperation, not chaos and confrontation.

MEDIA AND POLITICS

Columns can change political views

I HAVE WRITTEN a syndicated column on politics and public policy for North Carolina newspapers since 1986. Have I influenced how readers think about the issues I discuss? I certainly hope so.

But there are plenty of smart people, scholars of public opinion and political behavior, who question whether editorials, columns, and op-eds matter. Some argue that political attitudes are so deeply felt, so bound up with partisan affiliation and personal experience, that they rarely change in response to what people read. This is especially true, the argument goes, for the insiders who wield a disproportionate influence on policy.

As with most questions of human behavior, the evidence here is mixed. Partisan preference is a powerful force that limits how much people are willing to stray from their team's consensus. Lots of people do "follow the crowd" when it comes to political attitudes, conforming their views on issues beyond their personal experience to those of their leaders or groups.

A strongly argued op-ed may also convince political actors who disagree with the writer that they might lose the debate, pushing them toward compromise.

But there is also good evidence for the proposition that ideas matter — that powerful messages conveyed in compelling ways can change the course of political debates, movements, and elections.

A fascinating study published last year in the *Quarterly Journal of Political Science* used online surveys to gauge the political views of respondents before and after they read op-eds published in *The New York Times*, *The Wall Street Journal*, *USA Today*, and *Newsweek*. In samples of both general readers and political "elites," those who read an op-ed became more favorably disposed to its thesis than those who did not, although the effect was weaker for political insiders (as might be expected).

Using reasonable estimates of the number of readers exposed to these op-eds in the "real world," the authors calculated the cost-per-mind-changed ranged from 50 cents to $3 — which compares favorably with other means of political communication.

Even if the skeptics are right to cast doubt on the persuasion effect, opinion pieces can serve other rhetorical goals. If the writer is a trusted leader, readers may shift their views based on the byline rather than the content.

A strongly argued op-ed may also convince political actors who disagree with the writer that they might lose the debate, pushing them toward compromise.

I have loved newspapers ever since I started reading them in the 1970s. I believe in their continued relevance as a critical source of news, analysis, and commentary, whether readers encounter them in print or online. I have considered it a privilege to write a regular column for North Carolina papers and to contribute occasionally to national ones. And I consider it an opportunity not just to express myself but to inform, challenge, provoke, and, yes, persuade readers to see things as I do.

It's a two-way street, of course. While my core philosophy has remained the same, my views have shifted on some issues in response to writing, responding to critics, and reading editorial content from other writers.

Today, I had a more limited goal: to persuade you to keep reading editorial pages and opinion sections. Did I succeed?

COMMENTARY

Time to wake up and reform the way North Carolina controls liquor

JOHN TRUMP
MANAGING EDITOR

IT'S TIME TO wake up, North Carolina. Enough is truly enough.

In truth, it's well past time lawmakers take substantive steps toward rewriting or eliminating many of the arcane laws governing alcohol, painfully documented in N.C. General Statute 18b.

It runs nearly 150 pages and almost 70,000 words. So, let's open that cracked and weathered book.

This column will have, to put things mildly, its detractors, some of whom have valid concerns and make salient points.

But continuing to follow laws created just after cutting the lights on the great mistake that was Prohibition is not only nonsensical but also grinds against our inherent spirit of progress and innovation so proudly touted by the people who govern us.

North Carolina is a great place to work, live, do business. To worship, to study, and to raise a family. For myriad reasons, chief among them an indelible spirit to create and to prosper.

Unless, in the minds of some, that spirit of innovation and invention is touched by alcohol, especially distilled spirits. A mere mention of making the state's broken alcohol control system more friendly to producers and consumers alike leads some lawmakers to scowl and others to turn and all but scurry for shelter.

They have their reasons. Politics plays no small role, of course. North Carolina has 168 local alcohol-control boards, and county commissioners and town leaders will resist relinquishing their power to appoint members. They will throw a collective fit over the possibility of losing money generated by liquor sales, to which they've become so accustomed to collecting and distributing.

Then there's the primal aspect of control, an old and frayed belief a state monopoly over spirits effectively inhibits overconsumption and dangerous consequences.

Enough is enough

And, to be fair, some small distillers have learned to use the state-controlled system to their advantage and have prospered, in part at least, because of it. They'll resist change, too.

Yet not all lawmakers are running from the issue. Rather, they, like me, have said, despite the many obstacles they'll be sure to face, "Enough is truly enough."

Look around, they'll say. Virginia recently reformed its laws to better help local distillers, as well as tourists. Kentucky, as *Carolina Journal* reported recently, has, through legislation, become a hotspot for tourists thirsty for bourbon.

"Kentucky bourbon now pours $8.6 billion each year into the state's economy, generates more than 20,100 good-paying jobs with an annual payroll topping $1 billion, provides $235 million in local and state tax revenue, and is in the middle of a $2.3 billion building boom," according to a news release from the Kentucky Distillers Association.

In 2005, North Carolina had one distillery. Now it has almost 60. This, despite the archaic rules.

For the past 10 years or so the John Locke Foundation has worked to reform the state's 80-year-old rules. And it will continue to do so.

My friend and colleague Jon Sanders offers a clear and consistent take on the issue. His research is vital in guiding lawmakers — and N.C. consumers — through a morass of state alcohol rules, codes, and statutes.

An argument over the evils of alcohol, though sometimes valid, shouldn't serve as one point of debate on what is a complex issue transcending the idea of whether people should buy liquor — whether to drink it or to collect it.

The argument, rather, is about getting government out of people's way. It's about giving entrepreneurs the freedom to honor tradition, to work on perfecting their crafts, to identify markets and to prosper from them. To give consumers more freedom to choose where to buy, and giving them more choice regarding what to buy.

Again, the debate among lawmakers over reforming the N.C. Alcoholic Beverage Control Commission is and will be composed of many points. Whether government should continue playing a role in deciding if consenting adults should even consume alcohol shouldn't be among them. These arguments are virtual red herrings, which crowd out more moderate voices and eventually derail pragmatic discussion.

It's not wrong to voice religious objections, or to refer to experience as a reason to oppose the sale and consumption of distilled spirits.

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Is it even possible to fix Social Security?

MICHAEL WALDEN
COLUMNIST

My wife is not an economist, but she does sometimes ask me about economic issues. One of her most frequent questions is about Social Security. She's eligible for Social Security, but — on my advice — has waited to take it until her pension amount is higher. Her big fear: Will Social Security even be around when she's ready?

My answer to her is "yes," but with a qualifier. The trustees of Social Security estimate the surplus the system has built up over the past 50 years will be depleted by the mid-2030s. At that time, Social Security will only be able to rely on new revenue paid by existing workers. This will mean retirees will only receive around 80 percent of what they were promised.

How did Social Security get into this situation? Actually, decades ago the system faced a similar problem. In the early 1980s Social Security was running out of money. A major reason was some big increases in Social Security benefits passed by Congress and signed by President Nixon in the 1970s. These were increases the managers of Social Security had not expected.

Facing a calamity, a commission composed of politicians, labor leaders, business persons, and others was quickly assembled. The head of the commission was none other than Alan Greenspan, who later headed the Federal Reserve System under four presidents.

The Greenspan Commission recommended some "fixes" to Social Security, and Congress passed them.

Two of the major changes were a gradual increase in the age for receiving full Social Security benefits and an increase in Social Security tax rates on workers and employers. The result was a buildup of a multitrillion-dollar Social Security surplus. The surplus was supposed to keep Social Security fully funded until 2050.

Then why is Social Security expected to face financial problems in 2034 rather than 2050? The answer is simple: the dangers of long-term forecasts. Social Security has to make forecasts for a ton of important economic and social factors in order to estimate its financial condition decades ahead. Fertility rates, death rates, the growth of wages, inflation, and average longevity are some of the most important.

Forecasts just a little bit off can create big errors for conditions in future decades. With the benefit of hindsight, we can see Social Security overestimated fertility rates.

With fertility rates coming in lower than expected, there have been fewer new workers paying in to the system.

At the same time, Social Security underestimated the increased life span of those receiving Social Security. So the combination of less money coming in and more money going out moved forward the day of financial reckoning for Social Security.

What can be done? The answer is rather straightforward: We need another commission to agree upon a new set of fixes for Social Security.

Actually, President Obama did this in 2010 by appointing a commission headed by former U.S. Sen. Alan Simpson and former UNC System President Erskine Bowles. The commission made some reasonable recommendations for extending the life of Social Security, but they were never adopted.

My theory on why the Simpson-Bowles Commission was ignored is that it was just too soon. For our political system to deal with a crisis, that crisis sometimes has to be staring us in the face.

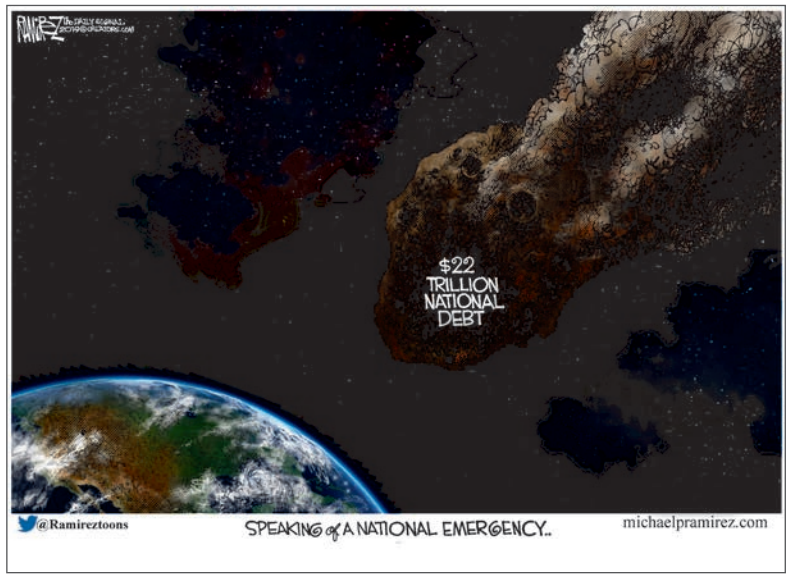
I predict sometime in the late 2020s or early 2030s we'll have another Social Security Commission. Some new fixes will then be included to extend the solvency of Social Security another 25 to 50 years.

And what might those fixes be? The federal Congressional Budget Office has outlined 35 possibilities.

Two that have struck me as possibilities are reducing the rate at which Social Security pensions increase for higher-income workers and using a more modest inflation rate to calculate a recipient's initial pension.

Will Social Security survive, and will my wife and I eventually get our promised benefits? I think the answer is yes, but it will likely take some political bargaining closer to the system's impending demise.

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



COMMENTARY

President can still make the deal look like art

ANDY TAYLOR
COLUMNIST

STOCK ART

The Art of the Deal spent almost a year on the best-seller list after its release in 1987, transforming its author, Donald Trump, from a brash Big Apple real-estate mogul into an American business icon. The book has been derided by political observers, but it's well worth their read. It reveals much about how the president works with friends and foes alike. Trump explains his "art form" is not making money, but "the deal."

The book's second chapter lays out 11 "key elements" to making a deal the Trump way. They include several pertinent to the author's new career, such as "think big" with regards to the ultimate outcome, "maximizing options" in both strategy and acceptable results, "using leverage" by not being seen to need an agreement, and "fighting back" if you feel you have been taken advantage of. Throughout, Trump views deal-making as volatile, tumultuous, and adversarial.

Trump has brought this style to Washington, D.C. But politics and its key protagonists — Congress, the parties, the bureaucracy, and foreign leaders — make the effects much less predictable now. Using his formula, the president has enjoyed some stunning successes, as well as humbling setbacks. I've detected a pattern.

When they enter office, most presidents look at the status quo and, on issues where they find it unsatisfactory, push for change. Success constitutes bringing policy closer to their preferred position. Failure is a victory for continuity. The reversion point — the result should there be no deal — is the policy unaltered.

Trump forged his biggest domestic legislative success, the tax cut passed in late 2017, under these conditions. In general, however, conventional policymaking doesn't suit him. The president was unable to make a deal to repeal Obamacare, perhaps his administration's biggest legislative failure to date. Trump did not have the steady hand, focused mind, and measured approach required to bring it off.

Trump's deal-making is better suited to situations where the reversion point is not the status quo. A good example of this is the budget. Without appropriations bills to fund the federal government, it shuts down — meaning its expenditures go to zero. This reversion point is rather dramatic and clearly far from the status quo or existing levels of spending. At least in theory, it can help tremendously with Trump's preference for ambitious thinking, strategic unorthodoxy, and pressurizing opponents.

But the president has failed to do this skillfully. In 2017, he capitulated and made a budget deal with congressional Democratic leaders. He was unable to further any of his policy interests and excluded fellow Republicans, Speaker Paul Ryan and Senate Majority leader Mitch McConnell, from the process. In late January this year, Speaker Nancy Pelosi cornered him into a deal to reopen the government without getting congressional appropriations for a wall on the Mexican border. Trump failed to use the force generated by the drastic reversion point when he said he was "proud" to shut the government down to secure funding for his project. Wanting the money for his wall, he took the position furthest from the reversion point. In budget negotiations, the big-spending Democrats usually occupy that space.

Trump's approach is therefore best suited to situations that more closely resemble the business world, where the reversion point can take multiple possible forms. Under these conditions, negotiators can be aggressive and deploy a variety of strategies, including the untraditional, as they forge deals that are fluid and multidimensional. Unlike the budget, deadlines are soft and largely artificial, and a no-deal outcome is plausible. The reversion point is unclear, making the effect of disagreement uncertain and potentially costly to the other side.

This dynamic exists in negotiations with foreign leaders. On China, Trump has suggested a wide array of no-deal scenarios, from huge punitive tariffs to tough restrictions on intellectual property transfer. On North Korea, he has interspersed offers of détente with credible threats of war. Another summit beckons. The Europeans have been intermittently threatened and embraced on trade and NATO. Although we do not think of presidents negotiating with the Fed, Trump's unconventional deal-making seems to have persuaded Chairman Jay Powell to tap the brakes on interest rates.

Of course, like any president, Trump prefers to make decisions unilaterally — that is, deal with himself. He might only get the border wall he wants by declaring a state of emergency. He has issued dozens of executive orders. He has single-handedly broken the Paris climate and Iran nuclear agreements. He is looking to pull troops out of Syria and Afghanistan. He can make appointments on his own, deciding not to "deal" with the Senate but present it with a take-it-or-leave-it option. It may not always be the president's favorite pastime these days, but he can still make the deal look like art.

Andy Taylor is a professor of political science at the School of International and Public Affairs at N.C. State University.

Funding surplus in N.C.? The money is already spent

BECKI GRAY
SENIOR VICE PRESIDENT
JOHN LOCKE FOUNDATION

THERE'S NO extra money.

The 2019-20 General Assembly session is well under way. Bills are being filed, and committees are meeting, but the attention will soon fall on the biennial budget. If the past is any indication, the governor will make his proposal mid-March, and we can expect new and expanded spending requests. Early revenue returns have been optimistic, even showing a surplus in the $150 million range. Folks eager to spend that might want to proceed cautiously. The money is already spent.

Smart budget decisions and a strong economy over the past few years enabled lawmakers to put $2 billion into the savings reserve fund, about 10 percent of the General Fund and the highest level of savings in state history. Thank goodness it was available when Hurricanes Michael and Florence devastated eastern communities.

The General Assembly took about $850 million out of the rainy-day fund for hurricane recovery with a promise to replenish it within five years. They would be wise to rebuild that savings account as quickly as possible to ensure North Carolina is prepared for the next storm, whether a natural disaster or an economic downturn. In addition, a 2016 law requires that 15 percent of revenue growth go directly into savings reserves.

What it takes to run the Medicaid program will be recalculated, as it is every year under the ACA, to adjust spending based on increasing medical costs and additions to enrollment and usage. Twenty percent of North Carolinians are on Medicaid, and almost 50 percent of babies born here are covered by Medicaid. A proposed expansion would add 500,000 mostly able-bodied, childless, working-age adults to the program. As a federal entitlement program, Medicaid funding takes precedence. This year's adjustment to the current program could cost up to $200 million.

Commitments have been made for repairs and renovations to state-owned facilities, new construction is under way on projects across the state, and general-obligation bonds and other debt equal $7.3 billion. A recent change in the law requires that 4 percent of the General Fund go toward paying these debts and obligations. The State Capital and Infrastructure Fund is $956 million. The $150 million is new money not spent last year.

North Carolina is now the ninth most-populous state, with more than 112,000 people moving here in the past year. As school enrollment grows, education costs rise. Recent reductions in class size require more school funding for the additional teachers as classes get smaller.

Thanks to a commitment to make teacher pay competitive with other states, and with four consecutive years of pay raises, average teacher pay is $53,000. Promises were made to raise the average salary to $55,000 next year.

Our state health and pension plans for state employees, teachers, and retirees has $50 billion in unfunded liabilities. Promises were made to continue paying the health-care costs of the 700,000 workers covered under the State Health Plan. As medical costs increase, so do costs to the State Health Plan. About 950,000 retirees in the system are entitled to receive pension benefits promised when hired. A recent law establishes an Employee Benefit Trust Fund. Building a reserve for this unfunded liability is a good idea. Meanwhile, the promise made to state employees has to be kept, and it's an expensive one — about $150 million this year.

Promises were made to continue expanding Opportunity Scholarships. Costs will be incurred as we implement the Raise the Age program for juveniles in the prison system.

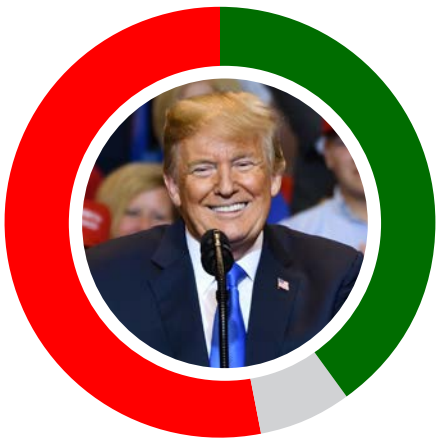
Built-in obligations mean added spending as additional tax cuts become effective in 2019. The personal income tax rate will go down from 5.499 percent to 5.25 percent, and the 3 percent corporate tax rate will tick down to 2.5 percent.

Promises made, promises kept.

Reining in the growth of state government, cutting taxes, reducing burdensome regulations, and making the right investments in education and infrastructure have paid off. Unemployment is the lowest in 17 years. North Carolina's economy is strong and continues to grow. To ensure continued growth, strong fiscal discipline is needed. We should stay the course, live within our means, save when we can, and spend cautiously and carefully. That means making reasonable promises you can keep and not spending money you don't have.

POLLS

Survey: Public approval of political leadership

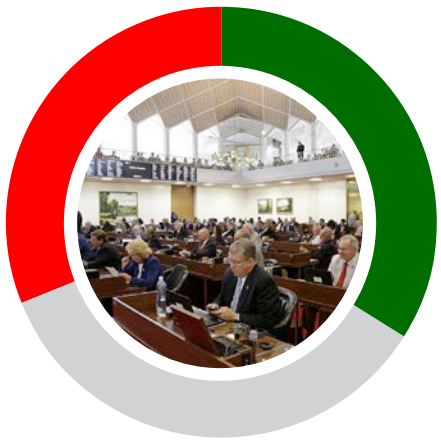


Do you approve or disapprove of the way that Donald Trump is handling his job as president?

- APPROVE - **40%**
- DISAPPROVE - **53%**
- UNSURE/DON'T KNOW - **8%**

Do you approve or disapprove of the way that Roy Cooper is handling his job as governor?

- APPROVE - **45%**
- DISAPPROVE - **29%**
- UNSURE/DON'T KNOW - **26%**



Do you approve or disapprove of the way that the General Assembly is handling its job?

- APPROVE - **34%**
- DISAPPROVE - **31%**
- UNSURE/DON'T KNOW - **35%**

High Point University Survey Research Center surveyed 873 North Carolina residents between Feb. 4 and Feb. 11 using phone and online samples. The credibility interval is plus or minus 4.4 percent. Some responses won't add up to 100 percent due to rounding of results.

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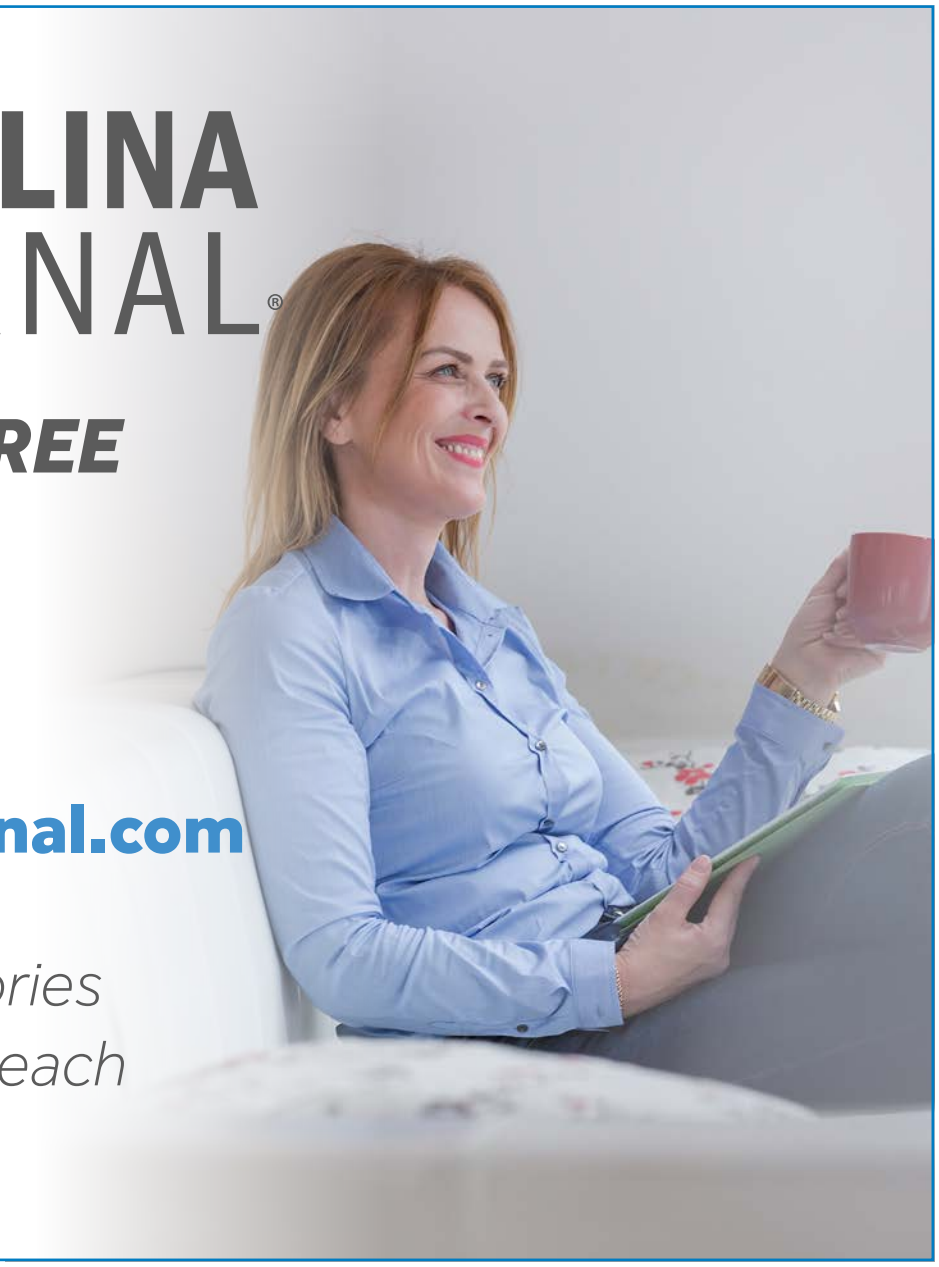

Liquor

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But, and I'll say it again, this isn't a debate about alcohol.

It's about North Carolina, which, in regard to the way it stubbornly maintains a stranglehold on liquor, is quickly losing touch with its neighbors, who apparently better see the value in promoting tourism and in helping ensure their small businesses are given the means to prosper and to grow.

Yes, let's focus on programs and ways to help people who have problems with alcohol. Let's educate people about the dangers of binge drinking. And, of course, let's protect our children from the dangers of underage drinking.

Thing is, Prohibition — which created far more problems than it solved — ended in North Carolina some 80 years ago. We must stop trying to bring it back, and we should cut loose a system of control that's steeped in politics and, by its very nature, tainted by hypocrisy.

Hood

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make better choices. Depending on the context, however, such an intervention can also distract us, remove a self-protective incentive, or provoke a self-destructive backlash.

Consider what happened when 11 states responded to the Great Recession by restricting employer access to the credit reports of prospective employees. Many of those who had lost jobs got behind on their mortgage payments or other debts. State lawmakers argued that to allow employers to request credit reports constituted "kicking people when they were down."

As a team of three economists found in a recent study of the policy, however, the real-world effects deviated significantly from the stated intention. Forbidden from using the data to distinguish between applicants and thus reduce the risk of a problematic hire, some employers simply cut back on new hires, particularly in communities with a disproportionate number of economically fragile residents. Indeed, delinquency rates for subprime loans rose in states where credit-check bans were enforced.

While Left and Right may differ on when government should intervene, we may at least agree that nudging is better than shoving, and that regulations that enhance information are likely superior to those that suppress it.