



# CAROLINA JOURNAL

AN AWARD-WINNING JOURNAL OF NEWS, ANALYSIS, AND OPINION FROM THE JOHN LOCKE FOUNDATION CAROLINAJOURNAL.COM VOL. 28 • NO. 11 • NOVEMBER 2019 • STATEWIDE EDITION

# A NEW WAR ON DRUGS

SMOKABLE HEMP AND VAPING: SEEING PAST THE SMOKE  
IN SEARCH OF SOLUTIONS ... AND PROBLEMS



### MORE INSIDE

**PAGE 10:** North Carolina says no reliable law enforcement field tests exist. Tennessee, Virginia say otherwise

**PAGE 11:** Jackson, Dixon share thoughts on smokable hemp production, regulation



**KARI TRAVIS**  
ASSISTANT MANAGING EDITOR

Jason Chen, owner of The Hemp Times, a CBD shop close to Raleigh's Glenwood South district, leans over a gray marble counter, hands hugging a jar full of crumbling, green hemp flowers. CBD-infused oils, honey, coffee, and gummies line display shelves in front of him.

On the counter to his right, rolled in thin, white paper, are hemp cigarettes.

This is the smokable hemp that for months has brought heated debate down upon the N.C. General Assembly, which led to an Oct. 28 Senate vote to ban the substance on June 1, 2020. With less than the federally allowed limit of 0.3% THC, this hemp won't get you high. But it will provide a rich hit of cannabinoids — natural chemical compounds that provide relief for pain, nausea, and anxiety.

Chen sells it for anywhere between \$120 and \$180 an ounce.

"There's still a huge stigma against cannabis and CBD as a whole, but people are starting to come around," Chen says. "The ball is rolling."

Chen, who opened his store in January, is a contractor, entrepreneur, and hemp enthusiast. On March 2, 2017, the shop owner was operating heavy machinery when a 900-pound lathe slipped from above him, crushing a vertebra in his back.

The pain was excruciating. Doctors wanted to prescribe painkillers, but Chen, who watched many of his

continued PAGE 8



### Interview: Samuel Abrams

A tenured professor at Sarah Lawrence College wants to raise awareness about the imbalance of ideological viewpoints on campus.

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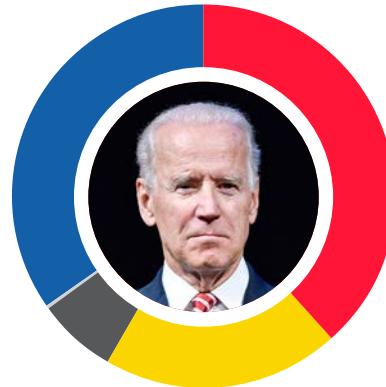


## 2020 Election

The Meredith Poll sampled 998 registered N.C. voters from Sept. 29 to Oct. 7 using a mix of landlines and online surveys to reach respondents. The margin of error is plus or minus 3%.

### Trump v. Biden

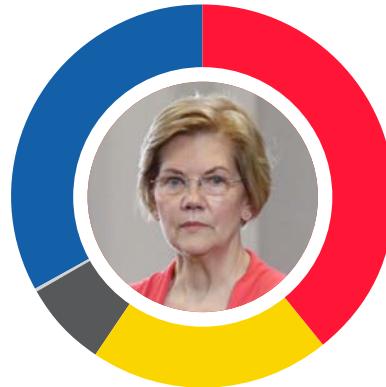
If the election for president were held today, would you vote for Republican Donald Trump, Democrat Joe Biden, or someone else?"



■ TRUMP 38.4%  
■ BIDEN 34.6%  
■ SOMEONE ELSE 20%  
■ DON'T KNOW 6.8%  
■ REFUSED/NO ANSWER 0.2%

### Trump v. Warren

If the election for president were held today, would you vote for Trump, Democrat Elizabeth Warren, or someone else?"



■ TRUMP 39.1%  
■ WARREN 33%  
■ SOMEONE ELSE 20.1%  
■ DON'T KNOW 7.4%  
■ REFUSED/NO ANSWER 0.1%

### Trump v. Anyone

If the election for president were held today, would you vote for Trump, or a name randomly chosen out of the phone book?"



■ TRUMP 42.7%  
■ RANDOM NAME 40.1%  
■ DON'T KNOW 16.2%  
■ REFUSED/NO ANSWER 1.1%

## State transportation department running low on reserves

The N.C. Department of Transportation is running out of gas. NCDOT depleted its budget in 2019, a new report shows, leaving top members of the N.C. General Assembly to question how, and why, the department failed to pump the brakes on this year's spending.

The financial review, commissioned by the Office of State Budget and Management, set out to untangle inefficiencies and improve operations in the state's \$5 billion transportation machine. State law requires the NCDOT keep a minimum of 7.5% of its revenue in the bank. That's about \$282 million, the report says. NC-

DOT over the past decade has maintained about \$1.2 billion in cash reserves. But the department's account is shrinking, in September riding at roughly \$432 million. That's the difference of less than two weeks in costs, the report says.

In August, the department announced hundreds of pending layoffs.

Bad weather and underestimated project costs have drained NCDOT's accounts, said Transportation Secretary Jim Trogon in a recent statement. Lawsuits over the state's repealed Map Act, a controversial law that allowed the NCDOT to take private land that was mapped for future

roads, have also forced the agency to pay hundreds of millions in settlements and court costs.

NCDOT isn't to blame for most of its money issues, Rep. John Torbett, R-Gaston, told *Carolina Journal*. Torbett, who is working on legislation that would put extra cash in the department's coffers, said it's not fair to the department to blame it for the Map Act, an invention of state lawmakers in 1987.

The law was designed to keep down costs for the state. But there was a catch. The NCDOT wasn't required to pay landowners until the road projects were under way.

Now, the law has been repealed, and the department must pay substantial settlements — to the tune of about \$311 million — out of pocket, Torbett said.

"If you added that to the cash balance they had today, it would be way above the floor," he said. "We would not be having the conversation we're having."

Due to bureaucratic red tape, NCDOT also reached into its stores for \$300 million to fix roads and cover other hurricane-related repairs, Torbett said.

Kari Travis



**CORRECTION:** The lead story in the October *Carolina Journal* included an error. The cost estimates of purchasing land versus renourishing the beach communities were reversed.

## COMMENTARY BY JOHN HOOD



### Uncertain policy has economic cost

In 2012, 92% of N.C. workers commuted to their place of employment by automobile. By 2018, that share had dipped to 90%.

But before mass-transit advocates get excited, I should hasten to add that the share of North Carolinians commuting by public transportation remained the same, at a minuscule 1%. Moreover, the decline in auto commuting from 2012 to 2018 occurred entirely among those who carpool. The share of commuters driving alone stayed the same at 81%, as did the share of those walking (2%) and using other

modes, such as paid ridesharing (1%).

So, if carpooling went down, what went up? The share of North Carolinians who work mostly from home rose two points, to 6%. The least-expensive, least-frustrating, and least-polluting way to commute is not to do it at all.

Politicians have been talking a lot about the implications of rapid growth in our urban and suburban areas. Such talk is valuable — as long as policymakers keep certain realities in mind.

One such reality is that, no

see HOOD PAGE 21

## QUICK TAKES

### N.C. gets millions to expand charter opportunities for educationally disadvantaged students

**THE U.S. DEPARTMENT** of Education awarded North Carolina \$10 million to bring more educationally disadvantaged students to charter schools, but state constraints on charters may make spending that money a challenge.

Joseph Maimone, a member of the Charter School Advisory Board, said some charter schools may find it difficult to take full advantage of the grants.

Maimone is also chief of staff for State Superintendent Mark Johnson and former headmaster at Thomas Jefferson Classical Academy in Rutherford County.

Unlike traditional public schools, charter schools don't receive capital funding to build their facilities.

"The reality is — let the elephant out here — that we're going to have difficulty spending this money," Maimone said during an Oct. 8 CSAB meeting, as reported by *The News & Observer*. "We've got to really think about how difficult it's going to be to use up the entire grant."

But additional context is needed.

Maimone told *Carolina Journal* his concerns involve long waiting lists at charter schools and constraints on facility capacity for eligible programs.

"This makes it difficult for them to take full advantage of the funding, since dollars cannot be used for facility expansion," Maimone told *CJ*. "However, what was not reported is that there will be a lot of interest and support for new schools, as well."



Since 2011, when the General Assembly lifted the cap on charter schools, the number of charter schools has grown exponentially. Though 198 operate in the state, enrollment caps have spurred waiting lists at many schools. Estimates suggest more than 55,000 students sit on waiting lists with hopes of enrolling in a charter school. At Raleigh Charter High School, for example, 1,152 students applied for the ninth grade, starting this fall. The school, through a lottery, accepted 150 rising ninth-graders.

Terry Stoops, vice president for research and director of education studies at the John Locke Foundation, said the state's charter schools need extra money to serve disadvantaged students.

"Despite my philosophical objection to federal involvement in public education, I am pleased that North Carolina's public charter schools will have access to these funds," Stoops said. "Because they are one-time grants, it is critical that charter schools use these funds judiciously."

*Lindsay Marchello*

## UNC, Vidant Health reach agreement after battle over board appointments

**T**he University of North Carolina System and Vidant Health — the eight-hospital system that holds a close relationship with East Carolina University's Brody School of Medicine — have settled a months-long turf war.

UNC sued Vidant on May 20 after the nonprofit corporation decided to block the UNC Board of Governors from appointing members to the board of Vidant Medical Center in Greenville — a privilege the board has held since 1975. The move stunned the BOG. Vidant didn't have legal authority to make such a change and didn't tell the BOG before changing the rules, UNC said.

The two entities, alongside Pitt County's government, announced an agreement Oct. 9. The terms follow:

- The dean of the Brody School of Medicine and the chancellor of East Carolina University will fill two of nine seats appointed by the UNC Board of Governors.
- Trustees for the remaining seven seats will be nominated by a Vidant Medical Center Board of Trustees nominating committee for approval by the Board of Governors.
- The chief executive officer for Vidant Health will serve as an official, designated liaison to the East Carolina University Board of Trustees Health Sciences Committee.
- The Brody School of Medicine and Vidant Medical Center will jointly engage a financial consultant to assess the current financial relationship between the entities. VMC serves as ECU's academic



**VIDANT MEDICAL CENTER.** UNC sued Vidant after the nonprofit tried to block the university from appointing members to the Vidant board in Greenville.

FILE PHOTO

teaching hospital. In 1975, the UNC BOG and ECU made an affiliation agreement with Pitt County Memorial Hospital.

In 1998, PCMH changed from a public hospital to a private, nonprofit hospital and was renamed Vidant Medical Center. The agreement between UNC, ECU, and the hospital remained in effect. As part of that agreement, renewed in 2013, the UNC BOG had appointment power over nine members of the hospital's 20-person board.

On April 24, Vidant stripped the BOG of all appointment power. The amendments instead let the hospital's board appoint the other nine trustees from a list provided by Vidant Health.

New articles of incorporation showed the Pitt County Board of Commissioners — which voted with Vidant to block BOG appoint-

ments — would retain privileges to appoint 11 members to the hospital's board.

The disagreement came under the leadership of former BOG Chairman Harry Smith, who was at odds with former ECU Chancellor Cecil Staton. Staton, under scrutiny from Smith, resigned in March, saying "there are some storms you cannot weather." The former chancellor said the decision to leave ECU wasn't voluntary. Notably, Vidant CEO Michael Waldrum was one of 128 Greenville leaders who signed a public letter of support for Staton in January, months after reliable sources told *CJ* that Staton was being forced from his position.

Smith resigned his leadership post Oct. 1. He remains on the UNC board.

*Kari Travis*



## A power-hungry president, a constitutional crisis, and a democracy in peril...

President Jerome Elliott was elected with overwhelming support from the American people. His populist platform and soaring promises captivated voters. But now, after a series of increasingly unorthodox policy decisions and suspicions of sinister motives, a shadow gathers over the White House.

When thirty-four state governors call for a constitutional convention to reform the federal government, Elliott fears losing control. In a desperate attempt to maintain power, he orders the revered 82nd Airborne Division to march on the convention and arrest its participants as domestic insurgents. The Georgia National Guard mobilizes to stop them, and the two forces clash in the small town of Madison. These actions echo across the nation, polarizing the populace and threatening to erupt into violence between the people and their government.

Meanwhile, television reporters Nicole Marcel and Luke Harper race to discover the truth behind the president's actions, while United Nations investigator Percy Leach digs deep into Elliott's past. Chasing facts and whispers alike, they uncover the roots of dark truths that, if realized, risk sundering the very fabric of American democracy.

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## QUICK TAKES

### *First-year look at ISD school shows there's work to be done*

**AS THE INNOVATIVE** School District's first and only school, Southside Ashpole Elementary has a lot to live up to in terms of academic progress. An early evaluation of the inaugural school shows much work is needed.

During a meeting Oct. 2, the State Board of Education discussed the "ISD Evaluation: Year 1 Report." ISD Superintendent James Ellerbe and Trip Stallings, director of policy research at N.C. State University's Friday Institute, presented the report.

Ellerbe said the report is in no way an evaluation of the ISD program, but rather a look at how the program has been implemented at Southside Ashpole.

The evaluation covered more than academic growth and achievement. It also looked at learning conditions, student behavior, school-community engagement, and school culture.

Southside Ashpole's academic performance didn't significantly improve since joining the ISD. School performance grades, released in September, showed Southside Ashpole received a 30, or an F. The school failed to meet growth expectations. Immediately before joining the ISD, Southside

Ashpole had a 29 and failed to meet growth.

The ISD — originally called the Achievement School District — places the lowest-performing schools in the state under management of charter or education organizations for five years. The goal is to improve school performance through awarding greater flexibility not typically afforded traditional public schools.

Southside Ashpole was selected as the first ISD school in November 2017 because of low academic performance and failure to meet growth. Achievement for All Children, a charter management organization, was chosen to run Southside Ashpole.

Under the ISD, Southside Ashpole's student academic performance has remained relatively flat. Some math scores improved. But, Stallings said, it's unclear whether the change is because of improvements in math instruction at the school or because of differences in grade-level populations.

Achievement for All Children implemented new mathematics and language-arts curriculums at Southside Ashpole. The new curriculums use Common Core Language Arts and Eureka Math. Stallings

said some students weren't prepared for the switch and had trouble adjusting. Most teachers said they liked the new curriculums and thought they provided structure, but didn't fully cover N.C. standards.

Terry Stoops, vice president for research and director of education studies at the John Locke Foundation, said accountability results should be the start, not the end, of the discussion about the ISD and Southside Ashpole. "The school turnaround process is not instantaneous, nor is it effortless," he said. "Stakeholders understand that it will take a few years and a lot of hard work to improve the school culture at Southside Ashpole."

Stoops said the most worrisome finding was an apparent division between staff and leadership. The report noted rifts between the school's principal and some faculty members.

Senate Bill 522 would give the state education board more time and flexibility in choosing schools for the program. The bill has been assigned to a conference committee, allowing lawmakers to work on a legislative compromise.

Lindsay Marchello



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## Ramsey unanimously approved as UNC Board of Governors chair

**W**ith neither discussion nor debate, the University of North Carolina's Board of Governors voted unanimously to approve Beaufort businessman Randy Ramsey as the board's new chairman.

The vote Oct. 1 comes after former board chairman Harry Smith, citing other professional demands, abruptly resigned Sept. 24.

Board rules dictate members must wait 30 days before selecting a new chair, but they voted to suspend the rules. Ramsey, who was vice chair, was the only nominee. He has an associate degree in marine propulsion from Carteret Community College.

Board member Doyle Parrish said he supports Ramsey's nomination, but he cautioned the board against suspending the rules in the future.

"If we continue to suspend the rules, that will, optically, be a problem," Parrish said.

Ramsey was named to the board in 2017 and became vice chair in

2018. Board member Wendy Murphy was unanimously approved to succeed Ramsey in that role.

Before serving on the BOG, Ramsey was a member of the N.C. State University Board of Trustees. Former Gov. Bev Perdue appointed Ramsey to the N.C. State board in June 2009, and he served for eight years.

Ramsey, a registered Republican, has a long history of giving money to Democrats and Republicans. He also has connections to an air travel controversy involving Perdue.

The Beaufort businessman donated money to Perdue's campaign and provided her with unreported air travel. Ramsey, or his boat-building company Jarrett Bay Boatworks, is connected to at least four flights provided to the 2008 Perdue campaign. He was later reimbursed for the flights after investigators took an interest in Perdue's flying habits.

Ramsey received donations from the family of Elizabethtown

businessman D.M. "Mac" Campbell Jr., who had close ties to the administrations of Perdue and Gov. Mike Easley. McQueen Campbell, Mac's son, provided numerous unreported flights to Easley and testified against him in a 2009 State Board of Elections hearing.

Despite his history of supporting Democrats, Ramsey in 2012 challenged Rep. Norm Sanderson, R-Carteret, in the N.C. Senate District 2 Republican primary. Sanderson was a state House member who decided to run for a Senate seat.

Ramsey significantly outraised Sanderson, taking in \$418,649 for his campaign. The Beaufort businessman loaned \$234,000 to his own campaign and spent \$285,299. Sanderson raised \$32,613 for his campaign and spent \$28,691.

Despite significantly outspending Sanderson, Ramsey lost the primary by a wide margin. Sanderson won 52% of the vote; Ramsey got 32%.

Lindsay Marchello



**BOARD OF GOVERNORS.** Randy Ramsey, named chairman of the UNC System Board of Governors Oct. 1, 2019, speaks during the BOG's Sept. 20 meeting.

# QUICK TAKES

## State Appeals Court chides Meck sheriff's office for denying veteran concealed handgun permit

The N.C. Court of Appeals determined the Mecklenburg County Sheriff's Office violated a Vietnam veteran's due process rights by denying his application for a concealed handgun permit.

Paul Valone, president of Grass Roots N.C., says the case is part of a larger issue of sheriffs failing to enforce concealed handgun permit laws in a uniform manner.

"For years, GRNC has worked to reduce arbitrary and illegal denials of concealed handgun permits," Valone said. "Clearly, more work needs to be done in getting sheriffs to obey the law."

In the Oct. 15 ruling, the Appeals Court ordered a lower court to reconsider the sheriff's office's rejection of Howard Duvall's application.

In the majority opinion, the court argued the sheriff's office violated Duvall's due process rights by failing to notify the Vietnam veteran properly about why it denied his permit application.

In a concurring opinion, Judge

Richard Dietz wrote that the state created a process for reviewing and issuing concealed-carry permits. The process requires the sheriff's office to notify the applicant in writing if an application is denied and include the reason for denial.

On May 18, 2018, Duvall received MCSO's rejection of his concealed handgun permit. The denial cited substance abuse and "information received from Veteran's Affairs."

Duvall contacted his primary care physician at the Charlotte Veterans Administration Clinic and asked if anything in his record would lead MCSO to believe he had a substance abuse problem. A registered nurse from the VA clinic said she didn't see anything and suggested Duvall contact MCSO for clarification.

On June 26, 2018, Duvall filed a formal appeal with the Mecklenburg County District Court. The District Court denied Duvall's appeal after a Sept. 4, 2018, hearing.

In its ruling, the District Court agreed with MCSO's findings that Duvall had a substance abuse problem related to drinking.

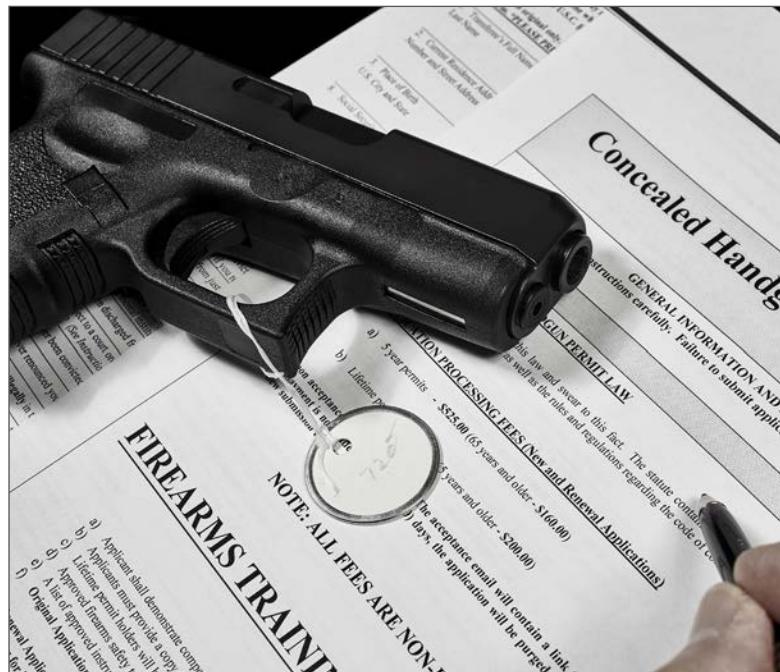
The District Court also found he was unqualified under the safe-handling subsection because he had "PTSD and suicidal ideation."

Duvall argued that there is no evidence he has an unlawful substance abuse problem. Since there was no District Court transcript of the hearing, the Court of Appeals was limited in how to address the issue.

In the ruling, the Court of Appeals noted the only references in Duvall's VA medical history are of "possible substance addiction, not unlawful use."

With that in mind, the court ordered the lower court to use the standard definition of an "addict" when applying the substance abuse subsection.

Lindsay Marchello



**CONCEALED CARRY ENFORCEMENT.** The N.C. Court of Appeals determined the Mecklenburg County Sheriff's Office violated a Vietnam veteran's due process rights by denying his application for a concealed handgun permit.



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# EDUCATION

## Charter school supporters voice concerns about *Leandro* commission

BY LINDSAY MARCHELLO

Proponents of charter schools worry the Governor's Commission on Access to a Sound Basic Education will use the *Leandro* ruling as a roundabout way to restrict charter schools. A commission meeting didn't allay those concerns.

Charter schools are public schools, but their place in the *Leandro* discussion isn't entirely clear.

Nor is their place on the commission.

Gov. Roy Cooper created the Commission on Access to a Sound Basic Education in 2018 to develop recommendations on how the state could comply with the landmark *Leandro* rulings. Since its inception, the 19-member commission has held numerous meetings to determine what steps the state could take to ensure all students have access to a sound, basic education.

Mike Long, president of Parents for Educational Freedom in North Carolina, says charter schools were never part of the *Leandro* discussion until appointees to the commission brought them up.

"This is nothing more than an effort to use the *Leandro* lawsuit to stand in the doorway of charter school expansion," says Long.

*Leandro* dates back to 1994, when five rural school districts sued the state, arguing they couldn't raise enough tax revenue locally to provide their students an education on the same level with schools in wealthier districts. Soon after, the state Supreme Court held that every N.C. child has a right to "a sound, basic education" under the state constitution. In 2004, the court ruled the state failed to live up to the earlier ruling.

But the growing number of char-



LEANDRO. The governor's Leandro commission at a Sept. 9, 2019 meeting.

ter schools across the state concerns the commission. In its draft recommendations, the commission claims the expansion of charter schools has placed a financial and planning burden on school districts. Recommendations include calling for the state to conduct a study on how best to fund charter schools while maintaining the opportunity for every student to have access to a sound, basic education.

Rhonda Dillingham, executive director of the N.C. Association for Public Charter Schools, said some members are outright opponents of charter schools.

What's more, a lack of charter school representation on the commission raises red flags.

"It is good to study school funding to make sure students in our state have all of the resources that they need to succeed," Long said. "However, pitting one against the other, in this case, only seeks to serve systems over families and students."

Long said charter schools account for about 6% of the total N.C. public school population. He isn't convinced charter schools are placing a large financial burden on public school districts.

"Charter schools get about three quarters of the money that district schools get. They get no funding for facilities at all. That has to come out of their operating expenses," Dillingham said. "For the North Carolina taxpayer, charter schools are a pretty good deal."

As for the planning burden, Dillingham said, districts know at least a year in advance that a charter school is coming.

"Bottom line is: The money follows the child," Dillingham said. "If the district is not teaching the child, the district should not get the money for the child."

Helen "Sunny" Ladd, Susan B. King professor emeritus of public policy at Duke University, questioned whether teacher licensing requirements for charter schools

conflict with *Leandro*. One of the court's requirements calls for every classroom to have a "competent, certified, well-trained teacher who is teaching the standard course of study."

"We talk about having qualified teachers in every school, but charter schools don't have to have 100% certified teachers," Ladd said during a conference call meeting Oct. 14.

Dillingham said the quality of a teacher doesn't begin and end with certification.

"I understand the value of certification, but I can also say from my many years of experience, having a certified teacher in the classroom doesn't necessarily equal excellence in instruction," Dillingham said.

As a former high school educator and assistant principal, Dillingham said she has seen plenty of licensed teachers who shouldn't have been teaching. She also has seen highly effective teachers who weren't certified.

Raleigh Charter High School has consistently been named as one of the top high schools in the country, but 30% of its teachers are unlicensed. In March 2019, the *News & Observer* found "no strong correlation between passing rates on state exams and the percentage of fully licensed teachers at charter schools."

Steven Walker, chief of staff and general counsel for Lt. Gov. Dan For-

est, said he opposes the idea of increasing a requirement that 50% of charter school teachers be licensed.

"I would be interested to see if they have any data or studies that show that a higher percentage of licensure results in increased student performance, because I have not seen a study that demonstrates that," Walker said.

Fouad Abd-El-Khalick, UNC-Chapel Hill School of Education dean, said he didn't see any reason to compromise teacher preparation, even though many teachers in charter schools aren't certified.



**This is nothing more than an effort to use the *Leandro* lawsuit to stand in the doorway of charter school expansion.**

- Mike Long,  
Parents for  
Educational  
Freedom

The commission is close to finalizing recommendations. It tweaked a few based on earlier suggestions. It won't finalize the recommendations until members consider the WestEd report.

WestEd was selected as an independent consultant in the *Leandro* case and charged with producing recommendations to satisfy the rulings. Judge

David Lee received the WestEd report over the summer but hasn't made the findings public.

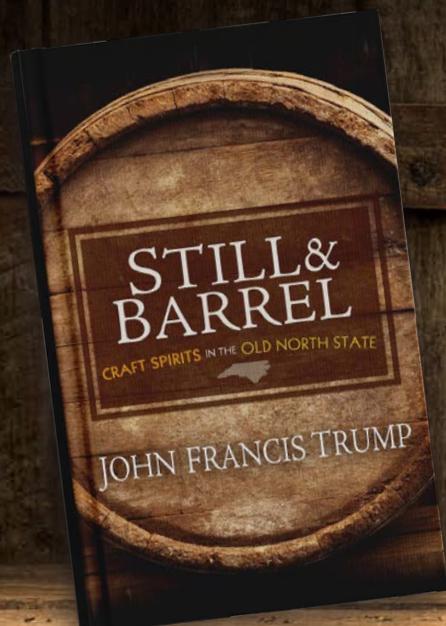
Recommendations range from calling for "adequate" funding to districts and teachers to urging the state to fund school districts' full operational costs.

Other recommendations include expanding the state's pre-K program, providing recurring funds for capital and infrastructure needs, and discontinuing the A-F school performance grades.

### BOOKS BY JLF STAFF



**John Trump**  
Managing Editor,  
Carolina Journal



### *Still & Barrel: Craft Spirits in the Old North State*

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## RULES AND REGULATIONS

# JLF enters latest legal challenge targeting certificate-of-need laws

BY JULIE HAVLAK

It's illegal for him to treat his patients. By law, he can't get an MRI machine because the hospital down the street already has one.

Under certificate-of-need laws, state planners decide which medical providers can have medical equipment. In Dr. Gajendra Singh's case, the planners decided his area didn't need another magnetic resonance imaging machine, so he can't give his patients scans.

Singh is challenging CON laws as unconstitutional, and the John Locke Foundation filed an amicus brief supporting the doctor's case. After the state tried to get the case thrown out, JLF defended the doctor's ability to challenge CON as an unconstitutional, monopolistic law.

"Not only is the CON law unconstitutional as Dr. Singh asserts, but it directly harms patients and taxpayers by making health care more expensive and less accessible," said Jon Guze, JLF director of legal studies and author of the brief. "Our friend-of-the-court brief responds to the state's motion to dismiss this case. We show that, contrary to the state's claims, Dr. Singh has indeed suffered direct injury, and will continue to suffer injury, as a result of the CON law. Each of his constitutional claims is supported by law."

Singh was one of the few who offered transparent, affordable prices for MRIs. At Forsyth Imaging Center, Dr. Singh charged \$500 or \$700 for an MRI. But depending on where patients go, they can pay up to \$24,000.

Hospital systems can hit patients with room charges known as "facility fees" — jargon that nicely disguises their effect on a patient's wallet. The fees add nothing to



**CON LAWS.** At a July 31, 2018, press conference, Dr. Gajendra Singh, a Forsyth County surgeon, discusses the lawsuit he has filed challenging certificate-of-need laws. At left is Raleigh attorney Denton Worrell and at right is Institute for Justice Attorney Renee Flaherty.

the patient's experience but higher bills.

After he had to pay about \$1,200 for an ultrasound at a hospital outpatient center, Singh rebelled. He started his imaging center in 2018, but he couldn't buy one of the most important, and the most expensive, pieces of equipment: an MRI machine.

For a time, Singh rented an MRI machine. He ran the machine on weekends, cycling through as many as 10 patients and churning out images of their spines, abdomens, and brains.

But it wasn't enough. The MRI machine costs thousands of dollars to rent, just for one day.

"It's an end run around the CON, but for smaller providers like him, it doesn't work out, because renting an MRI is just ridiculously expensive. It's crazy," said Singh's Institute for Justice attorney, Renée Flaherty.

Singh can no longer afford to offer MRIs to his patients. Without a fixed MRI machine, performing the scans is prohibitively expensive.

"He's not able to buy the medical equipment he wants to," JLF health policy analyst Jordan Roberts said. "That's affecting low-income patients because they are denied a cheaper option for medical imaging. They're really at the behest of the hospital who holds the CON of the MRI machines in the area."

Singh is challenging CON laws as unconstitutional and monopolistic.

"[Our mission] means protecting people's rights to earn an honest living, and oftentimes that involves challenging laws that restrict competition and create monopolies," Flaherty said. "And that's exactly what CON laws do."

Like the MRI, CON laws are a child of the 1970s. At the time, Congress aimed to cut costs by cutting down on unnecessary services. Instead of changing the payment system, they tried to hamstring providers' ability to provide services.

"Quite rightly, it was believed that [the old payment system] created an incentive to overprovide," Guze said. "So in a typically ham-fisted way, they [wanted] every state to pass a CON law to reduce the number of health care providers."

A decade later, Congress scuttled the mandate. The Federal Trade Commission warned that big companies can use the law to squash smaller competitors, saying that CON can "limit consumer choice and stifle innovation."

But by then, North Carolina had already passed CON laws.

It took two tries for the legislature to persuade the state Supreme

Court the law wasn't unconstitutional.

The court struck down the first incarnation of CON in 1973 for "establish[ing] a monopoly." Five years later, Congress rolled out a virtually identical bill, but this time lawmakers defended it with "findings of fact" arguing that the bill restrained medical costs.

Singh's lawyers are attacking these findings of fact. They say that because Congress has overhauled the entire payment system since the 1980s, CON laws are miserably outdated and monopolistic.

A 2010 state court decision which upheld CON laws didn't account for the defunct payment system and how changes have reinforced CON's monopolistic tendencies. Singh's lawsuit focuses on them.

Supporters of CON laws argue that they are necessary to protect the financing of rural health care.

The state tried to get the case thrown out, but JLF and other free-market organizations have filed briefs supporting Singh's challenge.

"I'll be amazed if the court dismisses this. There's a lot of spotlight, a lot of pressure," Guze said. "He can't just casually dismiss it because there's so much national attention."

No one expects the case to make it to the state Supreme Court any time soon. The state's tactics so far have been to delay the case.

"If the whole thing is struck down completely, it would be huge. So many facilities could be built, people could purchase MRIs like Dr. Singh, and there would be more competition, lower prices, and more choices for consumers," Flaherty said. "But if we could win just as applied to Dr. Singh, just for MRIs, that would still be a huge win."



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## COVER STORY

# Smokable hemp and vaping: Seeing past the smoke in search of solutions ... and problems

continued from PAGE 1

friends suffer opioid addiction, opted for a different remedy.

He began smoking hemp.

The results, he says, were astounding. Though doctors can't officially confirm he healed quickly due to hemp products, the experience was enough to make Chen a believer.

After the federal government officially removed hemp from its list of controlled substances in 2018, Chen decided to open a CBD shop.

Just two months after the doors of his tiny store opened, a state lawmaker — blocks away on Jones Street — would file a bill meant to expand and regulate North Carolina's hemp industry.

Instead, smokable hemp would become a new target of the decades-long war on drugs and the stigmas that surround it.

## Up in smoke

"I've learned more about hemp and marijuana than I ever wanted to know."

Sen. Brent Jackson, R-Sampson, chuckled across a long, narrow conference table in his offices at the N.C. Legislative Building. A state map hung on the wall behind him. A pile of notes lay neatly to his right. A cannabis testing kit sat to his left.

Jackson, a melon farmer from Autryville, regularly runs farm legislation in the Senate. When he filed Senate Bill 315 in March, he expected to field debates with some ease. But complications and conflicts colored the eight months after the lawmaker introduced his bill in the Senate. Hemp regulations, or a lack thereof, were largely to blame.

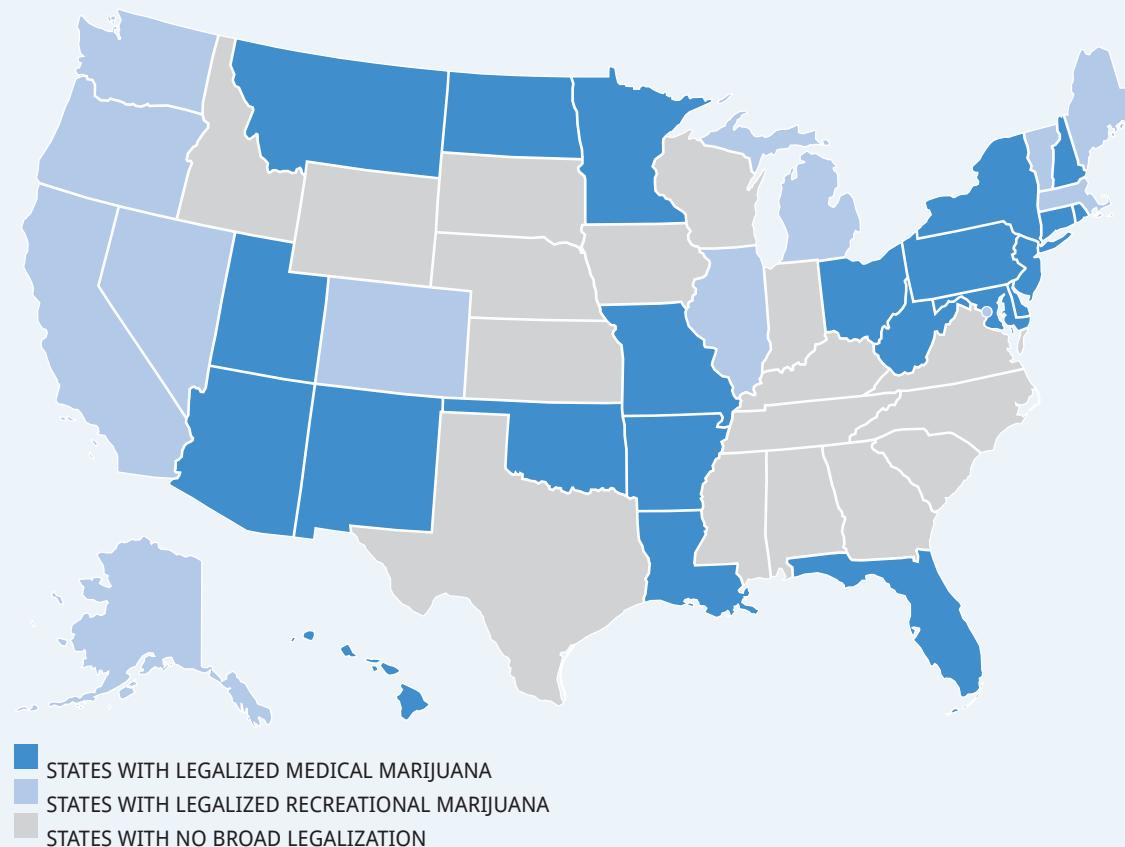
Lawmakers in the House and Senate have argued over how to regulate North Carolina's growing hemp industry. Smokable hemp, which looks exactly like marijuana, is the main point of contention. In the House, Rep. Jimmy Dixon, R-Duplin, wants to ban the substance. But Jackson, who has said he understands law enforcement concerns, wants to find another solution. He'd rather not block farmers from growing and selling a part of the plant the federal government has made fully legal.

North Carolina has some 1,200 hemp farmers. It's a fast-growing industry that's gaining interest. But overbearing regulation — like the smokable hemp ban — could wilt the crop's potential.

"It's like telling the livestock in-

## State Marijuana Laws in 2019

Thirty-three states and the District of Columbia currently have passed laws broadly legalizing marijuana in some form.



**A FAST-GROWING INDUSTRY.** North Carolina has some 1,200 hemp farmers.

dustry that you can sell all parts of the hog except for the shoulder that you [use to] make bacon," Jackson told *Carolina Journal*. "And being a farmer myself, [I understand] that you've got to sell what you produce

— and the more you can sell of what you produce is how you end up surviving."

Jackson hopes the ban — an end-of-session compromise that ended the stalemate over smokable

hemp — will ultimately be overturned. S.B. 315, as of press time, directs law enforcers, the N.C. Department of Agriculture, and members of the state's hemp industry to meet quarterly. It instructs the State Bu-

reau of Investigation to notify officials immediately when the U.S. Drug Enforcement Administration announces an official field test to distinguish hemp from marijuana.

Dixon, on the other hand, doesn't think smokable hemp should be legal. While the retired poultry farmer fully supports CBD oil products, he believes lawmakers rushed into legalizing hemp without properly weighing the consequences.

The conflict over North Carolina's hemp industry actually began in 2015 during the waning hours of another painfully long legislative session, Dixon told *CJ*.

On Sept. 28, 2015, just two days before the legislature adjourned, members gathered to vote on Senate Bill 313, a special license plate bill that for weeks had stagnated in the House Rules Committee.

But lawmakers decided to scrub S.B. 313 and replace it with language enacting the state's industrial hemp pilot program, Dixon said. The bill wasn't heard in committee. Instead, it was sent straight to the House floor. Only seven members, Dixon included, voted against it. The Senate concurred with the legislation the next day.

It was one of many such events that happen in the "witching hour," Dixon said, and one that did a great disservice to the people of North Carolina.

"You're frustrated," Dixon said of lawmakers' attitudes at the end of a long, arduous session. "You're tired."

Few legislators would have voted for the hemp pilot program if the word "smokable" was uttered in 2015, Dixon told *CJ*. Smoking hemp could be considered a gateway to marijuana, and marijuana could be a gateway to other drugs, he said.

It's an argument the lawmaker has made many times — and it evokes images from fights long past.

## Old arguments, new wars

The war on drugs began with Harry Anslinger, the first commissioner of the U.S. Treasury Department's Federal Bureau of Narcotics. Born in 1892, Anslinger worked from 1917 to 1928 to police international drug trafficking and rose to prominence in 1930 as an appointee under his wife's uncle, Treasury Secretary Andrew Mellon.

Anslinger's office, formerly known as the Department of Prohibition, was seeking its next war. Before the end of Prohibition, Ansling-

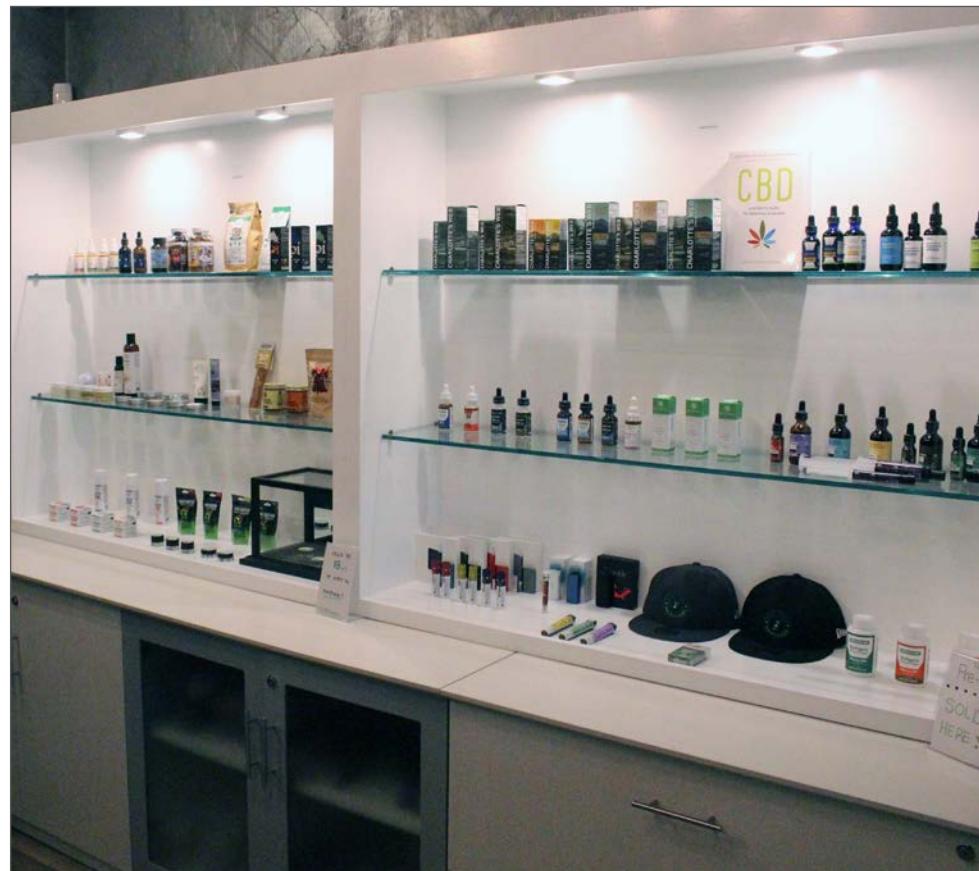
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## COVER STORY



CI PHOTO BY KARI TRAVIS

OPENING A CBD SHOP. Jason Chen, owner of the Hemp Times.



CI PHOTO BY KARI TRAVIS

POPULAR. CBD oil and hemp products have spiked in popularity in North Carolina.

continued from PAGE 8

er insisted cannabis wasn't a problem. But when alcohol was no longer a public enemy, obsolescence threatened the bureaucrat's department. So Anslinger sought his next target.

He engineered a campaign against marijuana.

His first step was to see Congress enact the Marijuana Tax Act of 1937 — a bill that would place the substance completely under federal control. The second was to launch a media campaign to paint the substance as dangerous and criminal.

Though the drug war peaked throughout the administrations of presidents Richard Nixon and Ronald Reagan — resulting in the Controlled Substance Act of 1970 and creating the era of "Just Say No" — its remnants remain today, reincarnating themselves in the arguments of those who welcome some forms of hemp, but try to ban others — like smokable hemp flower.

It's a trend that's popped up in Kansas, Kentucky, Louisiana, Texas, and, most notably, Indiana, where a federal judge recently blocked the state from enforcing its own ban.

If North Carolina's ban kicks in next year, the state will likely face a similar fate, said Rod Kight, a prominent Asheville lawyer who special-

izes in cannabis law. Kight, who represents nearly 300 clients — many of whom are farmers, processors, and retailers — believes North Carolina's ban is unconstitutional, given the federal court's preliminary ruling.

"It's a strong signal that, 'Hey, you shouldn't be enacting this law in North Carolina. It violates federal law,'" Kight said.

While the N.C. hemp industry isn't thrilled with the state's 2020 ban, some are optimistic a lawsuit may not be necessary.

Farmers are disappointed the Senate couldn't stall the ban, but most are looking forward to working with the state on a solution, said Blake Butler, executive director of the N.C. Industrial Hemp Association, an industry trade group.

"This has been a long fight, and it's drained the majority of our resources," Butler told *CJ*. "But this is not the end. This is a new beginning."

There's a chance that hemp farmers will file a lawsuit after June 1, if the ban is allowed to kick-in, Butler said. But hemp farmers will do their best to reach a consensus with law enforcement before legal action becomes necessary.

**Marijuana has now been legalized, in some form, by 33 states and Washington, D.C. But North Carolina lawmakers refuse to budge on the issue.**

All arguments over smokable hemp would be solved if North Carolina simply legalized medical marijuana, said Rep. Pricey Harrison, D-Guilford. Harrison, who uses CBD oil daily, has been a primary sponsor of every medical marijuana bill to be introduced in the legislature since 2004.

House Bill 401, Enact Medical Cannabis Act, was filed in March and is sitting — untouched — in the House Committee on Health.

"It's been a heck of a battle," Harrison told *CJ*.

Marijuana has now been legalized, in some form, by 33 states and Washington, D.C. But N.C. lawmakers refuse to budge on the issue,

Harrison said, and the smokable hemp ban feels like a backslide.

Legalizing hemp was never about opening a door for marijuana, Jackson told *CJ*.

But hemp can be destigmatized only when lawmakers are willing to talk about all forms of cannabis — including marijuana, Kight said.

The transition is just a matter of time, he added.

"In the long arc, cannabis is cannabis," he said. "There are so many different breeds and strains, and from a medical standpoint there are different combinations and genetics that can help people, so if we look at the 10- or 20-year arc, we're just going to be talking about cannabis. We're not going to have this hard division [between hemp and marijuana]."

One of the best ways to normalize something is to make it part of the market, he said.

### A hazy future

"It's hard for me to light up a joint of hemp flower outside without somebody wanting to call the cops or seeming kind of sketchy about it," Chen says.

Today, nearly three years after his injury, Chen takes a CBD oil tincture to control daily inflammation. He still smokes hemp for more

immediate relief when his back pain is too much to handle.

Smoking hemp and ingesting hemp oil is like the difference between receiving full and partial nutrition, Chen says. Smoking the flower provides a full spectrum of cannabinoids — like eating fresh vegetables instead of a processed TV dinner.

Right now, smokable hemp comprises between 10% and 15% of Chen's revenue at The Hemp Times, and the shop owner is launching a separate distribution company.

"A ban will definitely hurt my business a lot," he says.

More important, it would hurt consumers who, like Chen, use smokable hemp to manage pain. His store serves customers between the ages of 21 and 89.

Chen even assists people with opioid addictions who use smokable hemp to counteract their symptoms.

Stamping out this part of the industry is counterproductive, he says, and will serve only to prolong old, destructive battles. Lawmakers may be struggling over problems of enforcement, but the real focus should be promotion of public health — and personal choices.

"At the end of the day, yeah, it's now kind of a war on drugs."

## A NEW WAR ON DRUGS

# Oooh, that smell ...

North Carolina says no reliable law enforcement field tests exist. Tennessee, Virginia say otherwise

BY BROOKE CONRAD

A field test contained in an orange box could end a stalemate on the N.C. Farm Act of 2019. Over the past few months, lawmakers and other interested parties have taken as fact that no field test exists for distinguishing marijuana from smokable hemp; when smoked, they're indistinguishable by smell.

Law enforcement has pushed for a ban on smokable hemp, inciting sharp disagreement within the General Assembly and stalling — for months — the hemp provision and the entire farm bill. Meanwhile, the agricultural community holds out hope that a reliable field test will appear should the General Assembly ban smokable hemp in June 2020.

Their hope is not unfounded: Law enforcement in other states is already using field tests to deal with the smokable hemp issue. It may not be long before North Carolina follows suit.

### The Light Lab

Among the most accurate and affordable is the Light Lab — a user-friendly test contained in an orange, briefcase-sized box. It can measure delta-9 THC levels as small as 0.03%, a level 10 times more sensitive than the 0.3% federal standard officers enforce.

Several agricultural and law enforcement interests have bought the test, including the Oklahoma Department of Agriculture, seven N.C. farmers, and the Shelby County Sheriff's narcotics division in Tennessee.

To operate, the user follows a touchscreen through each step of the process. For smokable hemp, the screen will read, "Homogenize one gram of flower." Next, the user adds an extraction solvent, shakes for two minutes, and places the liquid in the Light Lab, which runs on its own for eight minutes. The process finishes with an exact weight-percentage display of the plant's chemicals — including delta-9 THC.

The test costs \$13,500. More



**LAB TESTS.** A chemist at CannaSafe Analytics, an accredited cannabis laboratory, prepares test samples at its lab.

sophisticated, nonportable lab equipment can reach into the hundred-thousand-dollar range. And the lab doesn't require a technical background, said Stephanie McArdle, president of Light Lab's manufacturer, Orange Photonics.

The Light Lab can run wet plants, dry plants, or even hemp-infused products such as concentrates, lotions, and some edibles. The kit can even predict how much delta-9 THC the plant will contain when the THC acid in the plant converts — a phenomenon that can cause problems for farmers in ensuring they raise a legal crop.

"Essentially, we can quantify [THC] under all circumstances, which is the point of hemp oversight and certainly the regulatory threshold," McArdle said.

The test platform has a few drawbacks, say researchers Amanda Vickers and Matthew Robison at US Botanical Safety Laboratory. They tested the Light Lab a year ago and found results weren't always repeatable, especially in cases where CBD was high and THC was low. For example, the substance can contain an unknown amount of moisture that would hinder a completely accurate, precise result.

Officers also could get different numbers depending on which mode they use. Testing only for THC requires 10 times the amount of plant material as the standard mode does, making it more difficult to get accurate measurements.

The Light Lab also requires a

level surface, so an officer couldn't operate it out of a car, Robison added. The test only functions between 55 degrees and 85 degrees Fahrenheit. If it's too hot or too cold, officers would have to bring it back to the lab, McArdle said.

But Shelby County Detective Alex Posten says the test is "extremely reliable" and makes it easy to distinguish between legal and illegal substances. His department tests samples at the office, as they're a full-time narcotics agency and don't regularly send officers into the field.

"If you don't enter the correct weight, you can have variances," he said. "But not enough to produce a false positive or false negative."

### The Swiss test: imprecise, but low-cost

Virginia law enforcement has been eyeing a different test. In early October, the Department of Forensic Science bought 16,000 Swiss-made field kits, called 4-APs, from a distributor in Florida, Syndicate Chemistry.

To use the kit, an officer places a small bit of substance in a plastic bag, seals it, and squeezes to break the kit's liquid ampules. After shaking it around, the bag's contents change color: if it's pink, the CBD concentration is about three times higher than the THC concentration, suggesting hemp. If it turns blue, the THC nearly triples CBD, suggesting marijuana.

The test costs only \$6.50 apiece

**The agricultural community holds out hope that a reliable field test will appear before the General Assembly bans smokable hemp in June 2020.**

and will soon be distributed to Virginia law enforcement, said Linda Jackson, DFS director.

The Drug Enforcement Administration also has purchased the Swiss tests, said Scott Maye, lab director for the Virginia DFS northern laboratory. The DEA purchased other tests but hasn't yet validated any for use by law enforcement.

The Swiss test has its own flaws. It would be impossible to enforce a precise 0.3% standard by using the Swiss test alone, because it measures only ratios. In addition, it sometimes produces a color reading for substances that aren't marijuana or hemp at all: oregano, for example, turns blue.

Virginia's DFS accounts for this with a three-step process. First, an officer runs the substance through the Duquenois-Levine test, a decades-old law enforcement test indicating the presence of THC. Then the officer runs the substance through the Swiss test to determine the THC/CBD ratio.

If it's blue, the officer will make an arrest and confirm the substance was illegal through more sophisticated, nonportable lab equipment. If the test turns pink, the THC-level is probably close to the legal hemp level. But it's still impossible to determine exactly how low. Even if the THC level was at 0.4%, the substance would be a violation.

But Jackson says she's confident the test will resolve the most recent cannabis law enforcement issues.

"It's an excellent way to understand whether the material I have in front of me is most likely hemp and needs to go through the regulatory process for growing hemp, or that it's most likely marijuana and needs to be sent to the lab to be confirmed," she said.

### The Purpl PRO: travel-size, near-instant results

One other test remains in the running, though no law enforce-

ment agencies currently use it. The Purpl PRO is about the size of a hockey puck and connects to an app on the user's phone. It can produce a reading in 25 seconds by reflecting light off the plant material to produce a graph, said distributor Chris Guthrie. The cost is relatively low — \$1,500 for an infinite number of tests.

The key downside: the Purpl PRO can't measure THC levels below 2%. Although 2% is nowhere near enough to produce an intoxicating effect (even if you smoked seven joints one right after another, you'd get only a momentary buzz, Guthrie said), it's still not precise enough to meet the 0.3% THC standard.

Even if North Carolina doesn't raise its THC standard, farmers still can use the test as an approximate tool. One Illinois farmer narrowly avoided disaster when his Purpl PRO showed he had accidentally purchased 20 acres of marijuana seeds that were testing at about 7% THC, Guthrie said. Several N.C. farmers also use Purpl PRO to gauge whether they have a marketable amount of CBD.

### N.C. law enforcement waiting on the GA

No N.C. law enforcement agencies that *Carolina Journal* contacted are using any of the tests.

Only the Guilford County Sheriff's office said it's seriously considering the Swiss tests. James Secor, legal adviser to the sheriff's office, said the agency still has 200 kits it received last year for validation. The office eventually will buy more regardless of what the General Assembly decides on smokable hemp, because it needs a way to test cannabis products that come in other forms, like oil, Secor said.

The usability of the test depends on whether the General Assembly enacts a ban, said Eddie Caldwell, executive vice president and general counsel for the N.C. Sheriffs' Association. He also noted the proposed ban won't go into effect for several more months, so there's still time. "I'm not focused on [the tests] because, in North Carolina, that's getting the cart before the horse," Caldwell said.

Buying field tests is more a local agency decision anyway, Caldwell said. He's not aware of any materials the State Crime Lab buys and distributes to officers in the field.

"That could change, but that's not how it's been done historically."

# A NEW WAR ON DRUGS

## Jackson, Dixon share thoughts on smokable hemp production, regulation

### INTERVIEW

In 2015, the N.C. General Assembly voted to establish a hemp research pilot program in North Carolina, kick-starting a booming agricultural industry. Today, roughly 1,200 farmers are licensed to grow hemp in the state.

In 2018, the federal government declassified hemp as a controlled substance, legalizing it in all 50 states — but leaving a big, unregulated gray area. In March, Sen. Brent Jackson, R-Sampson, set out to expand and regulate the industry in accordance with federal law. But smokable hemp — which looks and smells just like illegal marijuana — caused disagreement between the Senate and House.

While the Senate initially set a smokable hemp ban for Dec. 1, Jackson pushed the date back to June 1. He hoped the legislature could work with law enforcement and the hemp industry to solve enforceability issues, making the ban unnecessary. In the House, Rep. Jimmy Dixon, R-Duplin, wanted to ban smokable hemp by May 1. The lawmaker also wanted to place dried, smokable hemp flowers back on the state's list of controlled substances.

The conflict left the House and Senate in a weeks-long stalemate.

Days and hours before Dixon and Jackson reached an Oct. 24 legislative compromise, *Carolina Journal* reporters Brooke Conrad and Kari Travis sat down with both lawmakers in their Raleigh offices. The two farmers shared opinions about smokable hemp, responsible regulation, and marijuana legalization, among other things.



**Rep. Jimmy Dixon**  
R-Duplin

**CJ:** So, as far as the hemp research pilot program enacted in 2015, [you've said] nobody [in the House or Senate] really knew what they were getting [when they voted for it]. Between 2015 and today, did you see smokable hemp becoming such an issue?

**JD:** Smokable hemp was not even part of the discussion [in 2015]. As a matter of fact, the first time that I heard of smokable hemp ... was in one of [Senator Jackson's] committees [earlier this year]. And it was during that committee that Senator Jackson said that he never knew there was such a thing as smokable hemp. From 2015 until six or seven

months ago, when we talked about hemp, we talked about industrial hemp. We talked about CBD oil. [We talked about] benefits of CBD oil. [There was] no mention whatsoever of smokable hemp on this side of the issue.

I'm opposed to anybody promoting smokable hemp past one of the two deadlines that [were] set out in the legislation. Both the Senate and the House expressed the will to ban smokable hemp.

**CJ:** What are your thoughts on other forms of CBD oil infusions? Do you have objections or concerns, or is your focus mainly on smokable hemp?

**JD:** I'm very, very supportive of other aspects of hemp. [As far as] CBD I've seen significant evidence, and I have [heard] many personal testimonies. I have a young couple in my district whose son had severe seizures. They had medical expenses around \$3,500 a month, and the seizures were still severe. And they searched out and located a source of quality

CBD oil — not from this state — and under a doctor's supervision started the kid on [that]. Not only did his seizures stop, but their expenses went down to less than \$250 a month.

**CJ:** How would you suggest hemp be regulated?

**JD:** The interesting thing is that the industry is calling for regulation. To my knowledge, I don't know of any program that the government has successfully administered [regulation] better than private industry in my lifetime. I don't necessarily think that [government] regulation is the way to go. There is an alternative way of looking at regulation relative to the current proposed \$250,000 bond for the handlers and processors. One could easily say that these regulations regulate certain people in, and certain people out. There [are] 867 processors in the state of North Carolina. They haven't had to do any bond. Are all of those people good? No. Are all of those people bad? No. Are there people who cannot

afford a \$250,000 bond, who would be good processors? Certainly, there would be. And so, there is the appearance of — on a national level — certain companies who are invested or capitalized well, who would like to control the market. And one way of controlling the market is to regulate themselves in and regulate others out. So I'm not sure that the \$250,000 bond is the right place to be.

**CJ:** What would you do?

**JD:** Well, I would suggest doing exactly what we're doing. Additional conferences. Additional discussions. This thing's not going to reach any level of perfect maturity for several years. It is going to be a work in progress. But the key element superseding all other elements relative to the discussion is the fact that you cannot distinguish hemp from marijuana. If folks want to have a discussion about the legalization of marijuana, that is OK. If people don't want to discuss the legalization of marijuana, that's OK also.

**CJ:** Would you be open to a discussion about legalizing medical marijuana?

**JD:** [Given] science, and advances that we've made in science and technology, I think it would be irresponsible to not responsibly look at medical alternatives. And that would include additionally looking at the medicinal characteristics of medical marijuana.

**CJ:** What kind of conversations have you had with law enforcement on the issue? Have you looked into any of the field tests available to differentiate between hemp and marijuana?

**JD:** Well, here again, North Carolina hasn't gotten into it because we have only recently heard the term "smokable hemp." We can go back and check and see when that first informational hearing was in the Senate, but I believe it was in March or April, or maybe even later. ... That's the first time we'd heard [of] smokable hemp. They kept it well hidden.



**Sen. Brent Jackson**  
R-Sampson

**CJ:** When did you first hear about smokable hemp? What was your initial reaction to it?

**BJ:** We first heard and learned about it in late March or early April of this year. My initial reaction was that, according to the federal definition of hemp, it was legal. And [the feds] said that all parts of the hemp plant ... had been removed from the controlled substances list, so I didn't see an issue.

[Laughs] But how wrong was I?

**CJ:** What do you think of it today?

**BJ:** I understand law enforcement has a dilemma.

But I also understand ... that the federal law said all parts of the hemp plant are legal. To me that means everything, because the flowers used to make CBD oil are the same flowers used to make smokable hemp. There is no difference in the flowers. It's just what you do with it.

**CJ:** How will this affect hemp farmers if the ban passes? Who are the parties most affected?

**BJ:** I don't see anyone really being disadvantaged, other than those who are exclusively manufacturing smokable hemp. They could have problems after the ban takes effect.

But, in all honesty, the reason I am willing to compromise on this ban is that I am convinced the federal government will come out with rules, the [Drug Enforcement Administration] will have a test available, and I think this thing will iron itself out. Worst-case scenario ... the reason that I wanted to be in session [when the ban goes into effect] is that if we are within 30, 60, or 90

days of having all of this in place, we can run a bill to extend [the ban's] deadline. Whether it would pass or not is another story, but I think it would behoove us to give this industry a chance to get started.

**CJ:** You would pass a bill to extend the ban deadline, but once we have a field test, once we have the enforceability measures and all that, you would do away with the ban altogether?

**BJ:** Yes, that would be the end result I was hoping for. Now, it might not happen next year, but I really believe as this thing moves along, it will be.

**CJ:** What do responsible — but nonburdensome — rules for the hemp industry look like?

**BJ:** I'm really concerned about putting regulations on growers, farmers, or any other industry without it being really necessary. Because it goes totally against my grain, regulations do, when they're overburdened.

But, [for one thing], we're requiring the buyers of this product from the farmers to be bonded so that they get paid. That's been one of the biggest complaints we've heard about this. The other thing is, when the public goes to buy these products, they have no clue what is in that CBD oil, or in anything else. [The N.C. Department of Agriculture] went out and did a lot of testing. [They found] some of the CBD oil was what it was supposed to be.

A lot of it was coconut oil. Some of it was mixed with water. [Some of] the [manufacturing] conditions were unsanitary, and so those are the things we were trying to put in place as the framework [of regulations]. One was to protect the growers, one was to protect the consumers that are buying this product, [and the third] was to allow the industry to grow and flourish like any other industry.

**CJ:** Given that the big issue here is law enforcement's inability to distinguish between hemp and marijuana, would

you be open to discussion about legalizing marijuana in some form?

**BJ:** No, I have said from the get-go it has never been my intention to legalize marijuana in this state. And so, my answer to that is still "no." If there is enough pressure in years to come that we do it, and we see how these other states are doing it ... but that has never been my intention in this farm act dealing with this hemp.

**CJ:** Why should the people of North Carolina care about this issue?

**BJ:** Agriculture is in dire straits. It is a very depressed economy out there. Farm debt is as high as it's been in decades. Grain prices are as low as they've been in a long time. We've had two or three hurricanes over the last two years. North Carolina farmers are hurting. They are literally hurting. Tobacco has become nowhere near [as profitable as] it used to be. It's getting to the point where it's not even profitable to grow it. And we need all the new crops we can get.

## A NEW WAR ON DRUGS

# Vaporized?

Trump admin eyes flavor ban, which could eliminate an industry and turn people back toward smoking — or to the black market

BY JULIE HAVLAK

**W**ith a mysterious outbreak of lung injuries and a so-called epidemic of teen addiction, the federal government plans to crush the appeal of vaping.

The vaping industry has been free of meaningful regulation for the past decade, but that freedom is about to end abruptly. President Trump plans to ban flavors, while the U.S. Food and Drug Administration has pushed up a deadline when companies must submit expensive, lengthy pre-market tobacco applications to sell vaping products.

N.C. Attorney General Josh Stein has filed lawsuits against industry leader Juul and eight other vaping companies.

The state, the N.C. Justice Department says in a news release, this summer brought the lawsuits under the N.C. Unfair or Deceptive Trade Practices Act. They allege these companies are aggressively targeting children and don't require appropriate age verification when selling "these dangerous and addictive products."

In May, Stein filed a similar suit against Juul.

"At the same time as our kids are headed off to school, we are hearing new stories about the health risks associated with e-cigarettes on a daily basis," Stein said.

"Our complaints allege that these eight e-cig companies are helping to fuel an epidemic of vaping among high school and middle school students," Stein says in a statement. "One look at their marketing materials demonstrates just how egregious their sales tactics are — with flavors like cotton candy, gummy bear, unicorn, and graham cracker — they're clearly targeting young people. To teenagers, the health and addiction risks of vaping are simply too high."

Almost 2,000 vaping-related injuries, spread across every state but Alaska, and at least 33 deaths have been reported. North Carolina has had more than 50 cases and at least one death.

Almost 80% of patients self-re-



**VAPING INDUSTRY.** The embattled vape giant Juul has stopped selling its most popular fruit and dessert flavors until it receives the FDA's approval.

**Our complaints allege that these eight e-cig companies are helping to fuel an epidemic of vaping among high school and middle school students.**

- N.C. Attorney General  
Josh Stein

ported vaping THC — the chemical that produces the high in marijuana — and doctors believe that number may be higher.

Patients usually are weak, coughing, feverish, and short of breath. On scans, their lungs appear as dark voids, littered with splashes of white, where unknown chemicals have inflamed the tissue.

Doctors have treated patients with steroids, oxygen, and varying degrees of life support, ranging from ventilators to ECMO oxygenators — an extreme form of life support that usurps the lungs and pumps oxygen into the bloodstream.

"This is, 'I was healthy last week, and now, all of a sudden, I'm not,'" Cone Health pulmonologist Dr. Douglas McQuaid said. "This is pretty scary because it has hit people really hard, and it's come out of the blue."

The outbreak has become tangled in another vaping crisis: youth

addiction. The number of high schoolers using e-cigarettes increased by 888% from 2011 to 2015, rising to 16.8%.

"With millions of kids using e-cigarettes now, we have an epidemic of addiction happening in our school systems," said Dr. Adam Goldstein, professor at the University of North Carolina at Chapel Hill. "[With] the spread of vaping among teens, you do have a whole new set of new health concerns, but we have so little data on that."

And there is little regulation on the 7,000 flavorings sold on the market today. So far, the FDA has cleared e-liquid flavors based on whether they're safe to eat, not on whether they're safe to breathe.

But all of that will change next year.

Even if the Trump administration abandons its flavor ban, the FDA's regulations will kick in during 2020, when companies will submit pre-market tobacco applications or lose their ability to sell their products. Filing one such application can cost millions.

The embattled vaping giant Juul has stopped selling its most popular fruit and dessert flavors until it receives the FDA's approval for its pre-market tobacco application.

Harm reduction advocates are outraged.

"[Bans] are the wrong response to the problem," said Guy Bentley, director of consumer freedom at the libertarian Reason Foundation. "These deaths are overwhelmingly associated with vaping marijuana and THC products. ... We've

## Back to the kitchen? Vaping ban could send the industry underground

BY JULIE HAVLAK

**A**ttempts by the U.S. government to ban vaping flavors won't stop Wayne Walker from concocting exotic e-liquids.

The Philadelphia vape mixologist spends hours cracking recipes such as berry parfait and jasmine-coconut ice cream. With his chunky hipster glasses, he boasts an Ikea bookshelf stocked with almost 1,000 flavors, has a YouTube following of nearly 54,000, and holds a reputation as a leader in the do-it-yourself vaping community.

"[A ban] wouldn't prohibit us," Walker told *Carolina Journal*. "All the components are readily available from multiple different industries, so there isn't a worry there, other than hardware."

America hosts some 11 million people who vape and a \$7 billion industry built around flavored e-liquids. As the Trump administration pushes national flavor bans, industry experts warn such blockades could spawn a multibillion-dollar black market — potentially the biggest since Prohibition — and a new rash of vaping-related illnesses.

Vapers say bans would send the industry underground, back to its roots.

"It will be a huge, sprawling market that the [Food and Drug Administration] doesn't stand a great chance of controlling," said Gregory Conley, spokesman for the American Vaping Association.

"This market was created by consumers as a reaction to a tobacco problem," said Sherwin Mena, who owns a Raleigh vape shop. "And you're telling me that it won't go black market? It started in the kitchen, and it will go back into the kitchen."

Today's vaping DIYers sound eerily like aficionados on baking shows. They talk up flavors like pistachio yogurt — seasoned with a hint of Turkish tobacco — and raspberry apple macaroon.

"They're not doing it out of necessity; they're doing it out of a genuine interest. These people are in-tune enough to go online and do it with instructions," Conley said. "But if you suddenly remove all flavors from the market, you're going to have people mixing who have no business doing it. And you're going to have bad products inhaled by hundreds of people, especially young people."

Pure nicotine is a poison more



deadly than cyanide, and splashing raw nicotine on the skin can be lethal. The nicotine sold for mixing is usually diluted, but experts also worry about what ingredients black-market sellers could use to cut it.

"There's not much that is going to happen to you if you are using diluted nicotine, provided you don't bathe in it," Conley said. "The real danger comes with people using incorrect flavors."

Doctors diagnosed some of the patients with vaping-related illness as having lipoid pneumonia. The Centers for Disease Control and Prevention then suspected black-market sellers were cutting THC oil concentrates with vitamin E acetate, creating an e-liquid that sprayed the lungs with oil.

THC oil only mixes with other oil-based flavorings. Responsible legal sellers use THC powder, but the use of oil is pervasive, Walker said.

"It's rule No. 1 in the DIY vaping community: If it's an oil, you really don't want to use it at all," Walker said.

In the face of flavor bans, DIY mixing would become a lucrative skill.

"Whenever you ban something people want, you're creating a lucrative opportunity in the black market," Cato Institute Senior Fellow Jeffrey Singer said. "You cannot stop a black market. Prohibition is like playing a game of whack-a-mole, especially today with modern technology and the internet."

Open cartridges are readily available online, as are flavorings and nicotine.

"I believe that most [vape users] would go back to smoking or chewing tobacco, things that they can go to the gas station and get," Walker said. "But I could be completely wrong. This could be the biggest black market for illicit products that we've ever seen. It's very simple to make these products, and it's also legal in other countries, where the ingredients will be readily available."

see **KITCHEN PAGE 13**

see **VAPORIZED PAGE 13**

## A NEW WAR ON DRUGS

## Hazy regs

FDA regulations around vaping amount to little more than flavor bans

BY JULIE HAVLAK

Legal vaping flavors aren't nationally regulated, yet. The Trump administration is making noise about a flavor ban, and local efforts throughout the country are working toward that end.

The flavors make it past the Food and Drug Administration based on whether they're safe to ingest, not on whether they're safe to inhale. More than 7,000 flavors are on the market, and consumers create still more by mixing their own e-liquids.

"Vapers believe that there is some sort of regulatory oversight over these products, ... and that's also not necessarily the case," said Dr. Phillip Clapp, University of North Carolina at Chapel Hill inhalation toxicologist. "Really, the contents of these haven't been regulated yet."

Most legal flavors have never been tested for their effects on consumers' lungs, and almost all the vaping-related illnesses have been linked to unregulated, black-market products.

Scientists have demanded more regulation for years, but as the government finally begins cracking down, advocates say the FDA's regulatory process is little more than an unofficial flavor ban.

Companies will have to clear flavors by filing a pre-market tobacco application — a process that can cost millions — by May 2020.

"The flavors are generally things that are safe to eat, ... so we really don't know what happens when you inhale them," Clapp said. "It could be that people just assume that if something is safe to eat, it is also safe to inhale. But that's not true."

The human stomach can handle most chemicals, short of battery acid. But the lungs can't. Therefore, doctors have blamed some patients' lipid pneumonia on illegally vaped THC oil cut with Vitamin E oil. Vaping oil treats the lungs like a baking sheet, spraying them with oil. The lungs react by breaking down.

"Some things that we eat are very safe to eat. The stomach is well-equipped to deal with all these molecules, but the lungs aren't,"



**FLAVOR BAN.** President Donald Trump listens as Secretary of Health and Human Services Alex Azar talks about a plan to ban most flavored e-cigarettes.

said Hanno Erythropel, associate research scientist at Yale's chemical and engineering department. "They are much more delicate, and they might not be able to deal with all of these compounds."

Regulators might not even know the chemical composition of legal vapor.

Researchers have found e-cigarette liquids can be chemically unstable, especially when mixed. And they worry the DIY mixing culture in vaping often creates new, unknown chemical compounds.

"They will happily react with each other to form a new molecule," Erythropel said. "We're mixing many chemicals together, and why wouldn't we expect that some of them react with one another?"

Researchers at UNC-Chapel Hill tested the effects of vaping flavorings on the lungs. They exposed white blood cells in the lungs to various flavorings and watched the influence on the lungs' autoimmune defense system.

What they found was worrying. "[These cells] essentially find foreign things or damage that are not supposed to be in the lungs, and, for lack of a better word, they eat it. They engulf it, get rid of it, and protect the body," Clapp said. "We saw that when you exposed them to flavoring in e-cigarettes, depending on the flavoring, sometimes that function was completely shut down."

Without a fully functioning autoimmune system, the lungs become vulnerable.

"We know those changes occur for sure, even in otherwise healthy vapers with no other apparent lung disease," said Dr. Ilona Jaspers, UNC-Chapel Hill toxicology director. "One of the things that this will certainly do is increase your susceptibility to other infectious agents. That's what these cells are for."

Jaspers did not, however, blame flavorings for the rash of vaping-related illnesses.

"I would not go and say that that's what is causing it," Jaspers said. "Will this be the only trigger that brings these people into the hospital? It's probably a contributing factor."

Others are more skeptical. Advocates say vaping has been legal for more than a decade, while the lung injuries have just emerged. They also highlighted the high level of error in medical studies.

"We don't have 40 years of data on every single flavoring component used," said Gregory Conley, president of the American Vaping Association, a national advocacy group based in Connecticut. "But we do have extensive human data on the levels of carcinogens and chemicals that are in the blood of smokers, vapers, and nicotine therapy users. And the numbers are quite good for vapers."

The e-cigarette and vaping industry is pushing back, blasting the Centers for Disease Control and Prevention for failing to distinguish between legal and illegal e-liquids.

"Flavors are not causing lung

## Kitchen

continued from PAGE 12

Almost 80% of those diagnosed with the vaping-related illnesses self-reported vaping bootlegged THC products. Researchers have found a slew of chemicals inside bootlegged cartridges, includ-

ing hydrogen cyanide, oils, and pesticides.

"The people who want to vape are going to vape — just more dangerous products. This is going to be the new opioid crisis," Singer said. "Just when we're getting ready to shift this year and sound the alarm bells about the recurrent meth crisis, we're going to create for ourselves the vaping crisis."

## Vaporized

continued from PAGE 12

had products on the U.S. market for 10 years or more, with millions of people vaping, and we've never seen this problem before."

At most vape shops, sales have plunged. Customers are scared off by the outbreak, said Raleigh vape shop owner Sherwin Mena.

"We're really getting railroaded," Mena said. "Right now, smokers think that cigarettes are safer than vaping. That is insane. You're combusting fire into your lungs."

Dropping sales are the least of Mena's concerns. Flavor bans would shutter his business, but even the cost of the coming regulations will be enough to close his doors.

With flavor bans in the works, share prices for big tobacco companies are edging upward.

"It's a sound investment because the combustible cigarettes will still be there, but their greatest competitor would be removed from the market," Bentley said. "All those [small vape shops] would shut down, but, ironically, cigarettes would still be sold."

Experts say vapers will return to cigarettes if flavors are banned.

"[One woman] was a three-pack-a-day smoker, and now she vapes much less nicotine than she smoked," said Julie Gunlock of

the Independent Women's Forum, a national nonprofit educational center. "She worries so much because she hasn't tasted that taste in nine years. She hates menthol, but she feels like tobacco flavor will trigger something, that it will tempt her to have a cigarette again."

Among vapers, the U.K. has become a coveted model. The British government has embraced e-cigarettes as a harm-reduction tool. It even allows some hospitals to host vape shops.

But if flavor bans go through, the ready availability of flavors in other countries could pose its own problem. Experts worry bans could create a massive black market.

"This is an example of what happens when you have a black market," Mena said. "Go ahead, ban away, just expect more of these types of public health crises, plus the obliteration of an industry."

The Department of Health and Human Services has warned against vaping and smoking, especially as flu season approaches. Doctors fear complications as vaping-related illnesses and flu converge.

"The thing that is kind of scary as we come into flu season is how it can mimic the flu," McQuaid said. "It looks like a viral pneumonia, but we're going to have to be extra careful to make sure that we're asking people if they use electronic cigarettes."

diseases. Flavors are not causing youth initiation. Flavors are helping adults quit smoking," a vaping industry white paper says.

Vapers worry that when the FDA's proposed regulations actually kick in, flavors will all but disappear.

When a federal judge pushed up the FDA's deadline to 2020, companies lost two years to prepare and submit a pre-market tobacco application. Companies must now submit their applications by May 2020, the cutoff date when their ability to sell products without FDA approval will end.

The applications can cost millions to prepare, and, so far, the FDA has approved only one pre-market application — in 2015.

"Every little variation requires you to go through the application

process. So small companies cannot do it," said Daren Bakst, Heritage Foundation senior research fellow. "Nobody is really even arguing that point. You're going to lose most of the smaller companies, the vape shops. You're going to have the big companies selling this product."

Advocates called for streamlining the regulatory process or the creation of a "greenlist" of chemicals deemed safe to inhale.

"Once the FDA starts enforcing the regulation, I imagine there will be very few flavors, if any at all, because the hurdle will be too high," said Michelle Minton, senior fellow at the Competitive Enterprise Institute, a libertarian think tank. "Right now, the hurdles for the vaping industry are much higher than they are for cigarettes."

# COMMENTARY

## What's the biggest problem facing schools today?



**DR. TERRY STOOPS**  
VICE PRESIDENT FOR RESEARCH  
JOHN LOCKE FOUNDATION

Recently I asked my 14-year-old son to identify the biggest problem at the public school he attends in Wake County.

He didn't hesitate to answer.

"People who pay with cash or check in the lunch line," he said. He explained that it takes longer for the cashier to process the transaction when students use cash or a check, rather than the automated system, to pay for their meal. Apparently, nothing irks him more than retail transactions that delay the gratification of consuming a lukewarm and rarely satisfying school cafeteria lunch.

Unlike fussy teenagers, adults tend to focus on the big picture. Starting in 1969, education organization Phi Delta Kappa has asked a random national sample of adults to identify the biggest problem facing the public schools in their community. In 2019, a plurality of respondents, a mere 25%, said "lack of funding" was the biggest problem, and 36% of teachers agreed. Funding concerns have topped the list for 18 straight years.

It's important to note that few adults or teachers said that



the top problems facing public schools were school choice, school violence, non-English-speaking students, or racial segregation and discrimination. That's not to say respondents dismiss these issues or discount their importance to public school reform efforts. Instead, it's a reminder the problems that often get the most attention in the media are not paramount in the minds of adults. For modern Americans, money is.

Before "lack of funding" began its run in 2002, respondents offered a variety of answers to the Phi Delta Kappa poll question. Until the mid-1980s, "lack of discipline" was the most popular answer. Social and political conflict, combined with changes to instruc-

tional and disciplinary practices, led to the perception that America's public schools lacked order. Today, only 6% of adults polled believed discipline was the biggest problem facing public schools. Unsurprisingly, 13% of teachers cited student behavior as their top concern.

Between 1986 and 1992, "use of drugs" was the primary concern of those polled, undoubtedly fueled by first lady Nancy Reagan's ubiquitous "Just Say No" campaign and media reports of the Latin-American drug trade. With the prevalence of e-cigarette use in schools, one might suspect that more than 3% of 2019 respondents would identify drug use as the most critical problem. After all, the Centers



**While adults support increasing resources for public schools to propel improvement, Phi Delta Kappa finds they are not necessarily willing to pay higher taxes.**

for Disease Control and Prevention estimates more than 3.6 million middle and high school students used e-cigarettes in 2018, a sharp increase from the year before.

Between 1993 and 2001, responses varied from year to year. I can only assume the Clinton presidency took its toll on public opinion, among other things.

Why have concerns about funding dominated the poll question in recent years? Phi Delta Kappa points out about six of 10 adults believe there's a strong relationship between resources and school quality. But that only partly explains why perceived lack of funding is such a concern. After all, the idea that resources are tied to quality is not embraced by all. North Carolinians are much less confident in the power of money to raise student achievement. Last year, the Civitas Institute found that 44% of likely voters in the state believed that student outcomes in public schools would improve if state

government simply spent more money. The same percentage, 44%, disagreed.

While adults support increasing resources for public schools to propel improvement, Phi Delta Kappa finds they are not necessarily willing to pay higher taxes. Support for increasing revenue to public schools is strongest for cuts to existing government programs and the utilization of revenue from state lotteries, taxes on legal recreational marijuana, and taxes on sports gambling. That's not the case in our state, where there is limited support among lawmakers for legalizing marijuana and sports gambling. Moreover, the High Point University Poll consistently reports a majority of North Carolinians are willing to pay more taxes to boost education spending, although it is important to note that neither the size of the tax increase nor alternative revenue sources are presented.

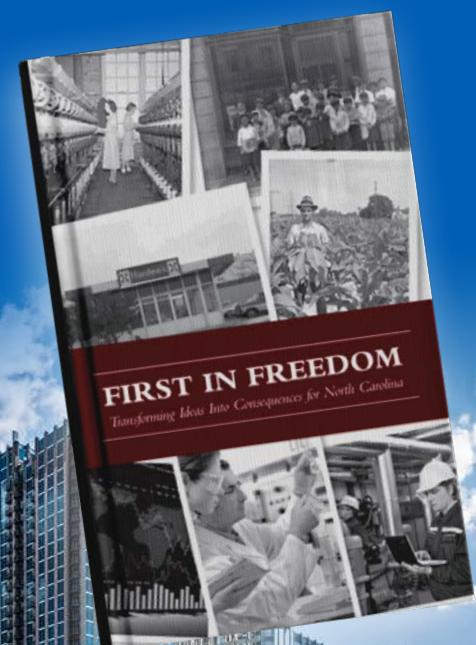
Public opinion on lunch line transactions, public school funding, and other critical matters is not a suitable guide to the creation of sound public policy because polls often exclude descriptions of trade-offs, opportunity costs, and implementation challenges. Nevertheless, polls may be useful for understanding priorities and perceptions that inform the behavior of voters and elected officials. The tension between effective public policy and voter preferences is one reason legislative action often falls short of expectations.

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# EDUCATION

## Time to reject political polarization on school choice

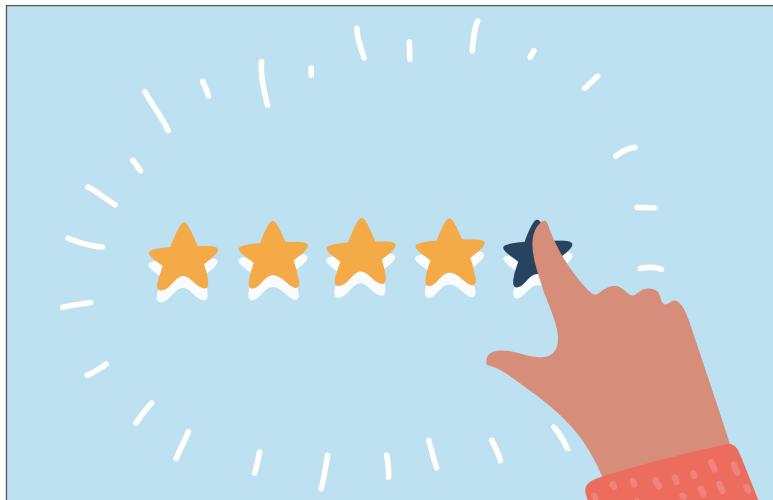


**KRISTEN BLAIR**  
COLUMNIST

To understand the educational zeitgeist of voters, start here: Most want choice and change. Republican or Democrat? Gen Xer or millennial? It doesn't matter much. Views on initiatives or implementation may differ, but conceptually, school choice garners broad bipartisan support. It's time to push past political polarization in rhetoric and debate. Ideas, not ideology, are winning the day.

Times and minds have changed. The school choice movement's effect on education has been propulsive, driving enrollment and expectations. Choice has disrupted tradition, reshaped the market. Change is a constant. Families are customers.

A new federal report, "School Choice in the United States 2019," provides long-term proof on enrollment claims. Culling years of data, the report shows choice has been a major engine of enrollment growth



**VOTERS' ATTITUDES HAVE STAYING POWER. 75% of millennials favor school choice, compared to 67% of Gen Xers and 64% of baby boomers.**

nationwide, fueling maverick models of schooling. Public charter growth is the stuff of reformers' dreams, skyrocketing 571% between 2000 and 2016. Homeschool enrollment nearly doubled. Most students, 47 million, still attend traditional public schools, but enrollment has increased just 1%. Private school enrollment decreased 4% during similar time frames.

Voters' attitudes defy partisan pigeonholing. A new poll from Education Reform Now of likely 2020 voters show 57% want "new ideas" and "real changes" in how

public schools operate, in addition to more funding. Eight in 10 Democratic primary voters and nearly nine in 10 black Democratic primary voters want expanded access to choices and options in public education, including charter schools.

A mainstream mantra, for education: Choice. Change. Now.

Voters' attitudes have staying power beyond the next election. Millennials and parents lead the charge on choice. A 2019 American Federation for Children survey of likely 2020 voters found 75% of

millennials favor the concept of school choice, compared to 67% of Gen Xers and 64% of baby boomers. Seventy-two percent of parents favor school choice.

North Carolina's enrollment trends track the nation's, with some exceptions. Data reveal an almost 600% increase in charter enrollment and a 319% uptick in homeschool enrollment between 2000 and 2018. Traditional public enrollment increased 16% overall during this period but began declining in 2015.

Private enrollment here is a national anomaly, increasing 14% since 2000. The big engine of growth is a form of private school choice — the Opportunity Scholarship Program, North Carolina's voucher initiative. Private enrollment began declining in 2008 but rebounded in 2014-15, when Opportunity Scholarships launched. Last year, 9,651 low-income students, 9% of the state's private school population, used these tuition scholarships to attend private schools.

North Carolina voters support both public and private school choice programs. According to a 2019 Civitas poll, 76% express some support for public charter schools, 33% of them strongly. Fully 85% of N.C. voters support

Opportunity Scholarships, 51% of them strongly.

Fundamentally, the concept of school choice tracks with cultural and marketplace trends. "Our whole culture is going to more choice," says Lindalyn Kakadelis, board chair of the N.C. Coalition for Charter Schools and member of North Carolina's Charter Schools Advisory Board.

"Don't assign me by ZIP code" — that's so antiquated. We're changing the culture of thought. That's different from putting in programs."

People worried choice would destroy public education, says Kakadelis, but "it's going to make it better. Treating children and families as customers? That's not a bad thing." Public schools are doing more marketing, she adds.

For millennials, supporting choice is intuitive; many grew up around it. "Instead of a foreigner to school choice, they are a native," says Kakadelis. "I don't think we'll go backward."

Time to move forward. Pushing past political polarization on school choice? Politicians and ideologues, take note. Most voters already have.

*Kristen Blair is a Chapel Hill-based education writer.*

## The success of community college 'non-completers'



**SHANNON WATKINS**  
COLUMNIST

**A SENSE OF URGENCY** has taken hold of higher education leaders nationwide. Reports of declining community college graduation rates and the lack of skilled workers have led policymakers and college leaders to sound the alarm and vow to do whatever it takes to lower the high rate of "dropouts" and equip students to meet the labor demands of an evolving economy.

For example, in a policy brief about noncompleting students written for myFutureNC — an organization focused on educational attainment — Anita Brown-Graham and Catherine Moga Bryant describe the "high numbers of noncompleters in North Carolina" and argue that "while many enroll, too few North Carolina students who attend two- or four-year institutions complete their programs." According to Brown-Graham and Bryant, the two primary reasons

students fail to complete a credential in community college are "inadequate preparation and difficulty navigating the higher education system."

But is community college student performance as dire as Brown-Graham and Bryant suggest? After all, 42% of North Carolina's community college students do graduate, transfer, or are still enrolled with 36 credits after six years. And while the majority of community college students don't complete credentials, are all "noncompleters" failing to find meaningful employment?

The story is much more complex than college officials acknowledge.

In their analyses of why students don't finish their studies, policymakers overlook an important subset of the community college population: students who want to take a few courses, but who don't intend to earn a credential or transfer. These students, sometimes referred to as "skills builders" or "upskillers," only take the few specific courses they need to gain new skills for employment or to advance in their careers. Skills builders commonly take courses that train students in specific work-related fields,

such as information technology or business management.

University of Michigan professor Peter Riley Bahr closely studies skills builders and criticizes how policymakers often define success in terms of credential completion. In his 2016 study "The Labor Market Returns to a Community College Education for Noncompleting Students," Bahr stated, "in contradiction to popular notions, students who leave community college without a credential have not necessarily failed to achieve their goals or dropped out."

Instead of solely measuring student success based on credential attainment, Bahr argues that job earnings and employment retention are also valuable measures. Far from being mere dropouts or a deadweight to society, Bahr found that skills builders in certain fields experienced notable financial gains or "returns" for the college credits they earned.

For example, students who took six college credits in public and protective services increased their annual earnings by \$1,952; six credits in engineering and industrial technologies resulted in an annual wage increase of \$1,600; for business and management students,

\$808; and for information technology courses, \$524.

"Given that the cost of two three-credit courses in a California community college is a mere \$276, these returns are large indeed," wrote Bahr.

Additionally, Bahr said some of his previous research indicated that "about one in six students in California's community college are highly successful noncompleters." That means that, according to Bahr's findings, nearly 17% of students who might be considered "failures" were found to be "highly successful" in the work force.

Unfortunately, little is known about the success of noncompleters in North Carolina. That's partly because the community college system primarily uses credential completion as its metric of student performance.

Bill Schneider, N.C. Community College system associate vice president of research and performance management, told the Martin Center the system is working to compile additional data about student success and make it publicly available in the coming months. Hopefully that includes more precise information about the earnings of noncompleters.

In the end, the state of community college success doesn't seem to be as grim as policymakers paint it to be.

First, it distracts — or blinds — officials to the real needs of students and how colleges can best serve them. Second, it feeds into the completion crisis narrative that contributes to policymakers' excessive focus on credential attainment. That excessive focus on credential attainment hurts the employment prospects of skills builders who, despite being competent workers, might appear "less qualified" on paper.

Policymakers should discard their narrow — and superficial — view of community colleges' mission. People attend community colleges for a wide number of reasons: to explore their interests, to figure out whether college is for them, to earn credits toward a four-year degree, to earn a work force credential, or simply to gain new, specific skills. It's time that these leaders recognize that only some of those goals fit into the current "must complete" narrative.

*Shannon Watkins is a policy associate at the James G. Martin Center for Academic Renewal.*

# EDUCATION

## Which country's system of higher education is best?



**GEORGE LEEF**  
COLUMNIST

Many Americans crow that our higher education system is “the envy of the world,” even though it’s nearly impossible to point to any proof of that. In truth, however, some Americans look down on our system, saying it’s clearly inferior to that of other nations, such as Japan and Finland.

A recent study published by the American Enterprise Institute, “International Higher Education Rankings,” by Jason Delisle and Preston Cooper, prompts my title. The authors have undertaken a comprehensive analysis of 35 advanced nations, examining their higher education systems along three metrics: attainment, resources, and subsidies.

In the study, a nation’s attainment score depends on the percentage of its population that has earned some kind of postsecondary education credential. Its resources score is a measurement of its per-capita spending on higher education relative to its economic capacity in gross domestic product. Its subsidy score is based

on government higher education spending relative to the nation’s entire higher education spending.

So, which countries score highest on those metrics?

Delisle and Cooper find that the top five on attainment are, in order, South Korea, Canada, Japan, Ireland, and Australia. They are most successful in getting people through some tertiary education program. The U.S. ranks 11th.

The top five on subsidies are Finland, Norway, Luxembourg, Denmark, and Austria. Those countries do the most to keep the cost of higher education low for students. The U.S. ranks 31st.

And on resources, the top five are the United Kingdom, Slovakia, the U.S., Sweden, and Japan. They’re spending the most on higher education relative to their economic capability.

Sensibly, the authors conclude that, from their analysis, it isn’t possible to state that any country’s system is best because they all must make trade-offs.

Finland, for example, is often lauded by American progressives because it makes higher education nearly free to students. So isn’t it the best? Delisle and Cooper say it’s a mistake to leap to that conclusion. As they note, “Finland offers a nice deal for students only if they are lucky and talented enough to get in. In 2016, Finnish institutions of higher education accepted just 33% of applicants.”

### International Higher Education Rankings

ATTAINMENT	RESOURCES	SUBSIDY
1..... South Korea	1..... United Kingdom	1..... Finland
2..... Canada	2..... Slovak Republic	2..... Norway
3..... Japan	<b>3..... United States</b>	3..... Luxembourg
4..... Ireland	4..... Sweden	4..... Denmark
5..... Australia	5..... Japan	5..... Austria
6..... United Kingdom	6..... Luxembourg	6..... Iceland
7..... Luxembourg	7..... Switzerland	7..... Sweden
8..... Switzerland	8..... Mexico	8..... Slovenia
9..... Norway	9..... Estonia	9..... Greece
10..... Israel	10..... Australia	10..... Belgium
<b>11..... United States</b>	11..... Finland	11..... Germany
12..... Iceland	12..... Latvia	12..... Poland
13..... Sweden	13..... New Zealand	13..... Slovak Republic
14..... Netherlands	14..... Norway	14..... France
15..... Denmark	15..... Portugal	15..... Czech Republic
16..... Belgium	16..... France	16..... Latvia
17..... Slovenia	17..... Netherlands	17..... Turkey
18..... France	18..... Belgium	18..... Estonia
19..... New Zealand	19..... Chile	19..... Ireland
20..... Poland	20..... Poland	20..... Mexico
21..... Estonia	21..... Spain	21..... Netherlands
22..... Spain	22..... Turkey	22..... Spain
23..... Greece	23..... Germany	23..... Portugal
24..... Latvia	24..... Austria	24..... Italy
25..... Finland	25..... Denmark	25..... Hungary
26..... Austria	26..... Hungary	26..... Israel
27..... Slovak Republic	27..... Czech Republic	27..... New Zealand
28..... Portugal	28..... Slovenia	28..... Canada
29..... Czech Republic	29..... Italy	29..... Australia
30..... Turkey	30..... Israel	30..... South Korea
31..... Germany	31..... South Korea	<b>31..... United States</b>
32..... Hungary	32..... Canada	32..... Chile
33..... Chile	33..... Iceland	33..... Japan
34..... Italy	34..... Ireland	34..... United Kingdom
35..... Mexico	35..... Greece	35..... Switzerland

SOURCE: American Enterprise Institute

By making higher education virtually free for students, Finland must accept a low attainment rate.

South Korea, on the other hand, has the highest attainment rate.

The trade-off for that, the authors note, is that South Korea has such a high number of college graduates that average earnings for them aren’t much higher than for

many South Koreans who don’t have college degrees.

Given the fact that resources are limited, there will always be trade-offs between seemingly positive outcomes. That’s the big point the authors hope political leaders and government regulators will take from their study: “Recognizing that trade-offs between desirable goals exist will force policymakers to think critically about whether pursuing a certain goal is worth it.”

That is what policymakers ought to do.

The trouble is that government officials, elected and appointed, are very unlikely to do any such thinking, and, even if they did, it’s unlikely they would make systemic adjustments to allow the nation to get the most educational value for the resources used.

To conclude, I have to take issue with Delisle and Cooper when they say in their subtitle, “no country’s higher education system can be the best.” Every country can have the best system, which is to say, getting the most educational value for the least expenditure of resources. They can do that by relying on the spontaneous order of the free market and ditching all governmental programs that interfere with it.

*George Leef is the director of editorial content at the James G. Martin Center for Academic Renewal.*

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FOR ACADEMIC RENEWAL

# COMMENTARY

## Likely 2020 chief justice opponents squared off once this year



**MITCH KOKAI**  
SENIOR POLITICAL ANALYST  
JOHN LOCKE FOUNDATION

When Cheri Beasley and Paul Newby face each other in the 2020 campaign for N.C. Supreme Court chief justice, it's unlikely that they will spend much time bashing each other's records. Nor will they say much about how they would rule in particularly contentious court disputes.

But voters can find clues within opinions handed down while Beasley and Newby have served on the state's highest court. Decisions reached this year — as the pair prepares for an electoral showdown — might yield especially interesting information.

Beasley joined the Supreme Court in December 2012. Gov. Roy Cooper elevated her to the chief's position this February.

Beasley and Cooper are Democrats. In choosing Beasley as chief, Cooper bypassed Newby. A registered Republican, Newby is the high court's senior associate justice. He has served on the Supreme Court since first winning election in 2004.

Both Beasley and Newby have signaled plans to run for the court's top job next year. Others could join the race. But no other candidates have stepped forward to date.

Judges face greater professional limits than other candidates when it comes to campaigning for office. Most are reluctant to engage in



**Cheri Beasley**



**Paul Newby**

partisan electioneering. Few ever utter a direct statement about the way they would rule in a particular legal dispute.

That's why the written record could prove handy. And while a significant majority of Supreme Court cases tend to be decided unanimously, Beasley and Newby have demonstrated contrasting approaches to particular legal disputes.

In 2017, the pair agreed in 48 of 58 cases. That 83% agreement rate might appear fairly strong, but it was the lowest rate of agreement among the seven justices serving that year. The same pattern emerged in 2018, when Beasley and Newby agreed in the results of 82 of 97 cases (85%). Subtract three cases in which Beasley and Newby supported opinions using different legal reasoning to reach a common result, and the agreement rate drops to 81%.

The two justices have agreed in 36 of 47 cases (77%) this year in which voting results have been made public. (One case decided in September resulted in a 3-3 split. The court did not indicate in its ruling which justices lined up on

which side of the issue.) Unlike the last two years, Beasley and Newby have not been the pair of justices most likely to disagree in 2019.

Instead Newby and freshman Democratic Justice Anita Earls have earned that distinction. Newby and Earls have ended up on the same side of a legal argument in just 27 of 42 cases (64%).

Of the 11 cases of disagreement between Beasley and Newby, there's just one in which the two justices have written on opposite sides of an issue. All three of Newby's majority opinions represented a unanimous court. Beasley also has authored one unanimous majority opinion.

Seven of Newby's eight written dissents involve cases in which Beasley joined another justice's opinion (three from Earls, two from Robin Hudson, and one each from Mark Davis and Sam Ervin IV). Newby also supported dissents from two other majority opinions authored by Earls and Davis.

Beasley has dissented just once this year, siding with the majority in 46 of 47 cases. In her one divergence from the winning side, she joined Earls' partial dissent

from a majority opinion written by Hudson.

That leaves *State v. White*, a May 10 decision in which Beasley wrote for a 4-2 majority. Newby wrote his own dissent in the case and joined a separate dissent authored by Justice Michael Morgan.

The Graham County case involved a 7-year-old, "Hannah," who had been sexually molested while living with her mother in a trailer owned by defendant Michael Lee White. After an aunt revealed the abuse to authorities, White confessed in writing to committing the offense.

In 2015, two years after the original indictment in the case, a new indictment identified Hannah solely as "Victim #1, a child who was under the age of 13 years, namely 7 years old." In contrast, the arrest warrant and original indictment had identified Hannah by name.

White's defense argued that his conviction should be thrown out because the 2015 indictment was invalid. State law required the indictment to name Hannah as the victim, White claimed.

A unanimous three-judge Appeals Court panel disagreed and upheld White's conviction. (Two members of that panel, Democrat Lucy Inman and Republican Phil Berger Jr., plan to run for Supreme Court seats in 2020.)

Yet Beasley and three Supreme Court colleagues agreed to overturn the unanimous appellate panel. They ruled that the indictment did not meet legal requirements for identifying the crime's alleged victim.

"The State concedes that its intent was to conceal the identity of the child — an intent at odds with the purpose of the naming requirement: to provide notice of the essential elements of the crime

charged to the accused," Beasley wrote for the majority. "Thus, use of the phrase 'Victim #1' does not constitute 'naming the child.'"

Morgan's dissent, supported by Newby, cited the Beasley majority's "narrow and rigid interpretation of the applicable law." Morgan lamented the "unnecessary collision course" the court's majority created for two important rights. One was the criminal defendant's right "to have sufficient notice of the charges lodged against him." The other: "the State's laudable aim to protect the identity of a minor who is the alleged victim of a sex crime."

In addition to supporting Morgan's argument, Newby's own dissent noted that the 2015 indictment had served its purpose in the legal process. He argued that the disputed indictment had not harmed White.

"Once again, a child victim must endure the emotional distress and indignities of another trial because of a purely legal technicality," Newby wrote. "It is this type of legal gamesmanship which leads to cynicism about whether justice prevails in our criminal justice system."

*State v. White* represents just one of hundreds of cases Beasley and Newby have decided during their years on the state's highest court. It's likely that supporters and critics of both jurists will scour their respective records in the months ahead. We can expect more details to emerge between now and the time voters cast ballots in the 2020 chief justice's race.

For now, though, these contrasting opinions in one case from May represent the closest thing to a head-to-head matchup we're likely to see in the race for North Carolina's top judicial job.

NORTH CAROLINA

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## COMMENTARY

# Overcriminalization: N.C. criminal laws are a mess



**BECKI GRAY**  
SENIOR VICE PRESIDENT  
JOHN LOCKE FOUNDATION

North Carolina suffers from a severe case of overcriminalization. We have more activities and actions classified as a crime, something worthy of public condemnation, than just about any state.

In addition, those crimes are scattered far and wide — not only in Chapter 14 of the General Statutes, the “crime” chapter, but throughout an additional 141 chapters of N.C. laws. But it gets worse. Crimes are also created through the rule-making process by state agencies — from the Department of Insurance to the Department of Health and Human Services to the Department of Environmental Quality and beyond.

If that’s not bad enough, crimes are found in rules regulating the state’s 400-plus boards and commissions. And that’s only the beginning. Every local government identifies criminal activities

and enacts penalties through their ordinances and rules. Cities even have an automatic default for any new ordinance to be designated a misdemeanor crime. In short, North Carolina’s criminal laws are a mess: We are overcriminalized.

In addition to their sheer volume, criminal laws are confusing, complicated, duplicative, and hard to follow and find, making it next to impossible to comply. Many have been declared unconstitutional by our courts. Others are impossible to enforce or are no longer enforceable. Many are duplicated in various sources.

For example, we have 17 various crimes of larceny. Why not one, i.e., it is against the law to steal stuff. Others vary across county or city lines.

In Huntersville, you can’t grow your grass higher than 10 inches. But in Saluda you can let it grow to 24 inches before being a criminal. Confusion around what activity may put you in danger of becoming a convicted criminal is an impediment to starting a business, practicing a profession, or even making improvements to your property. Fear of overstepping the law and being charged with a crime deters productivity and freedom. North Carolina needs criminal law reform.



**Cities even have an automatic default for any new ordinance to be designated a misdemeanor crime.**

Recodification is legalese for cleaning up our criminal code. We need to evaluate every crime that’s on the books, across every entity, and review, evaluate, and reorganize it all into a unified code. Activities that we agree are worthy of public condemnation should be easy to find, understand, and follow. That may mean getting rid of some, consolidating others, and strengthening those that need it. A periodic review is in order. Changes could address criminal justice questions, such as appropriate sentencing, restitution, and rehabilitation. A unified criminal law system ensures equal justice and opportunity under the law. Recodifying the code is the reform we need to fix overcriminalization.

N.C. leaders recognized the problem several years ago and have been working to fix it. In 2017, an amendment was added to House Bill 482. In the final hours of the long session, it would have

authorized a Criminal Code Recodification Commission, composed of experts in a variety of fields to address the problems of overcriminalization. The amendment wasn’t enacted, but it set the groundwork for future legislation.

In 2018, Session Law 2018-69, An Act to Assist the Criminal Law Recodification Working Group, required the Administrative Office of the Courts, state agencies, boards and commissions, and all local governments to report to the General Assembly all crimes on their books, with the intent of getting everything on the table. In 2019, Session Law 2019-198 took it a step further by strengthening requirements for municipalities to comply with the reporting. State agencies proposing new rules with criminal penalties will have legislative review, and a working group under the General Statutes Commission will begin sorting through the reports, classifying groups of crimes, and making recommendations for real reform.

Legislators and decisionmakers in other states and even federal government officials have expressed an interest in how we’re moving forward with criminal law reform. Other states have made efforts at reform but have been unsuccessful. North Carolina has an opportunity to, once again, be a

model for the rest of the nation in how to do reform right.

The 2019 session has been successful by setting the stage for criminal law reform while gathering more support, drawing good questions and broadening the interest in recodification. The John Locke Foundation and the Cato Institute held a criminal law reform summit in late October. Policy experts, legislators, law enforcement, academic scholars, district attorneys, city and county advocates, judges, law school deans, members of the legal community, and “just plain folks” came together for a full day of discussion and learning. They left in agreement North Carolina is overcriminalized, and with a commitment to do something about it.

A good starting point is a plan outlined by Professor Jessie Smith of the UNC School of Government. Smith’s recommendations include answering the core question: What do we want to criminalize? Other recommendations are subjecting all activities classified as crimes to a regular review; eliminating duplication; and placing it all in a single place.

Let’s do it. North Carolina is overcriminalized, we need criminal law reform, and recodification is the way to get there.

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# HIGHER EDUCATION

## Professor's column highlights campus ideological diversity problem

# Q & A



**Samuel Abrams**  
Professor  
Sarah Lawrence College

A tenured professor at Sarah Lawrence College wanted to raise awareness about the imbalance of ideological viewpoints on campus. But when **Samuel Abrams** wrote about the issue for *The New York Times*, he unleashed a torrent of criticism. The James G. Martin Center for Academic Renewal invited Abrams to Raleigh to tell his story. He shared themes from the presentation during an interview with Mitch Kokai for Carolina Journal Radio.

**MK: Why bring attention to ideological diversity?**

**SA:** A big part of it has to do with the fact that I've spent years looking at why our society is seemingly so polarized and why we have so much anger in this country. And when I realized that we're not able to talk, and that we're shutting down discourse and debate, I realized that's going to hurt our ability to build meaningful connections with others, meaningful neighborhoods, meaningful communities.

I said, "Gee, education is really the cornerstone to being able to have these conversations, which lead to, again, a healthy and virtuous civic life." If we're not able to have that education, and do what we're supposed to on higher-ed campuses, which is debate, argue, question, and do so openly without fear of reprisal and retribution, even if the idea is seemingly unpopular, then our future as a nation is at stake.

Now, that may sound extreme, how I'm tying my little corner of the world, and free speech, and viewpoint diversity into the health of this nation, but I do believe that if we can't talk, then our nation's great democratic experiment really is at risk. So I'm hopeful that people will hear just how important it is that we maintain the ability to debate and have this discourse because we're never going to solve our nation's problems if we can't.

**MK: Why take this issue to *The New York Times*?**

**SA:** *The New York Times* is our newspaper of record for the nation. It's widely read. And it has an editorial board that I very much admire. One of the things about its editorial board is that they've told me on a number of occasions that their mission is to publish things that people need to hear, that people need to read, and that people need to talk about.

So when I explained to the board my research and presented them with this problem, I'm very grateful that they said, "Yes, this is something we need to talk about." You know, at its very core, viewpoint diversity has nothing to do with a



**MID-TIERED STUDENT-FACING ADMINISTRATORS: "These individuals are everywhere. They set the tone, the tenor, the rules of engagement, and what can be talked about, and how it can be talked about."**

particular ideology. While a lot of folks who are right of center like to talk about it because college campuses are overtly progressive, no one should have a problem with viewpoint diversity. No one should have a problem with the statement, "Ideas should be able to be debated and aired freely."

If you do have a problem with that, we should talk. Because this, again, is the benchmark to how we progress as a society. Ideas are only as good as they are if they can stand up to very aggressive challenge and debate. No one should have a problem with that.

If you're on the left or the right, it should be a universal ideal, especially on our higher-ed campuses. That is what our mission statements, in most cases, are about. Not every school has a mission statement like that. Some are much more technical in orientation, but most, especially those who do humanities and the liberal arts, really value debate. And I'm trying to protect that debate.

**MK: What was your message to *New York Times* readers?**

**SA:** One of the key ideas with *The New York Times* piece was to indicate that there are a number of very important groups on our college and university campuses, and we often forget one of them. We always

think about the students. Students are front and center. We also hear about presidents and provosts. They make a lot of noise. They get a lot of attention when they speak. They can shift the ground. And then, of course, we hear about our faculty, the ones who do a lot of the teaching.

But when you are removed from higher ed, you don't really realize that there's another powerful group, and that very powerful group is this very large group of what I call "mid-tiered student-facing administrators." They're huge, millions of them. They set the tone and tenor of what goes on, on college and collegiate life generally, from orientation programs — which are huge, by the way, because a student comes in and is then told, "Here's what college is about. Here's how to think about things" — to how conflict and ideas are managed and debated in residence halls and dormitories, to campus community centers, whether it's a Jewish center, an LGBTQA+ center, an African-American center, to a student success center.

These individuals are everywhere. They set the tone, the tenor, the rules of engagement, and what can be talked about, and how it can be talked about. And too few people realized how powerful they were.

So *The Times* piece really had two key pieces to it. The

first was to recognize there's this pillar of people that have a huge influence, that we need to remember are very real and very powerful. And then the fact that they are very progressive and the most progressive, left-leaning group of people on campus.

It's important to mention that they don't come into their jobs necessarily trying to shut down debate. They just may not realize it. If everyone is incredibly left of center, and they're surrounded by other people who are left of center, they may not realize that they're programming is lopsided, and that's what I said in the piece.

It was not to indict them for being evil or doing anything bad — a very important distinction, that I don't think they're intrinsically evil at all. It's to say that the material and how they're going about their jobs, I think, is unbalanced, and that we need to make a correction and try to bring more balance in. And that was the goal of the piece.

**MK: People could have reacted to your column by saying, "No, you're wrong," but that's not what happened.**

**SA:** Yes. I expected a lot of people to say, "No, you are wrong." Very few people have. Also, when you're in higher ed, the cardinal virtue of something is to say, "Ah-ha. Maybe that's wrong. How are you wrong? Let me show you why you're wrong. Let me give you some other evidence to the contrary. Let me present you with a narrative that says, 'Actually, they're more centrist, or even in some cases, right of center.'"

I didn't see any of that. No one has been able to vigorously or really challenge the narrative whatsoever. Instead, sadly, it appears as if administrators at Sarah Lawrence and students — I don't know the details exactly — but wanted to come after me. Basically, I have received numerous threats, and property destruction, and harassing phone calls, slanderous allegations, and so on. It's been pretty unpleasant.

At the same time, it sort of proves my point of why

viewpoint diversity is under attack. Many people will think that if you challenge the prevailing wisdom there could be consequences. There have been consequences to me. That's been unambiguously clear. And sadly, it makes a case for why people are afraid to call out another form of injustice, which is what this is, when you have an imbalanced intellectual environment.

**MK: You're willing to talk about this experience, but what kind of impact does it have on others?**

**SA:** I think, for better or for worse, the impact is it promotes silence, and it promotes conformity with the prevailing behavior and outlooks on our college and university campuses. That all being said, the reaction to this piece has been shockingly huge. I've received tens of thousands of emails in support from parents, from students, from other administrators, from faculty, from board of trustee members, to various presidents, to the general public on the whole.

I think by shining a light on this problem, people have suddenly realized, "Yes, there really is an issue. Yes, we really do need to address it." Addressing it is going to take time. It's going to be painful. It's going to be very, very slow. But I think it's now in the public's consciousness. I think people are aware that viewpoint diversity is a real problem. We need to have more of it. The absence of it, again, harms our community, harms our educational experience, harms our ability to be civic in this country.

And schools are reacting to it. There are groups like the Heterodox Academy, and FIRE, and the American Council of Trustees, ACTA, and others that are working very hard to make these changes. I think, generally, in the world of ideas, this is an idea that people are now beginning to accept, as there is this group of people, they have some power. We need to monitor them a little more carefully, and we need to modify how they behave to promote this sort of real and positive academic and intellectual environment.

## EDITORIAL

# Cooper's coal-ash regulation amounts to a massive tax increase

If Gov. Roy Cooper proposed a \$5 billion tax increase, his Republican rivals would be both furious and gleeful — furious about the potential economic consequences, that is, and gleeful about the political ones.

Although the governor certainly thinks North Carolina's tax rates ought to be higher, he couldn't engineer a \$5 billion hike even if he wanted to. But the Cooper administration has issued a single regulatory decision that, unless blocked in court, will raise the cost of cleaning up Duke Energy's coal-ash ponds by about \$10.6 billion, up from the original cost estimate of \$5.6 billion.

At issue is the disposition of six of Duke Energy's coal-ash sites. While the company has already agreed to complete excavation at other locations — the ash would be removed and for the most part stored in lined landfills — it contends that the best solution for sites rated "low-risk" by state regulators would be to drain and then cap the ponds with a waterproof cover and layer of soil.

Digging up and transporting the ash from those sites would not improve public health enough to

justify the exorbitant cost, Duke Energy concluded. The Cooper administration disagreed, about both the company's conclusion and whether the cost of compliance was an appropriate consideration in this case.

Given the Cooper administration's other choices on energy policy, which seem to run the gamut from questionable to ludicrous, Duke Energy is probably right about the policy here. But even if you disagree, and think the environmental benefits justify Cooper's stance, it should be clear we are talking about a very large price tag.

Legally, the extra \$5 billion isn't a tax increase. In practical terms, however, it waddles and quacks like one.

Who will pay it? As with taxes of all kinds, the set of those who are legally responsible and the set of those who will bear the real burden overlap but are not identical. State regulators have already ruled that Duke shareholders won't be required to foot the entire bill — the ash was a byproduct of coal-fired power plants that previously received regulatory approval. Indeed, Duke Energy customers

are already paying \$175 million a year approved by regulators to help cover the cost of coal-ash cleanup.

But even the share of the cost legally assigned to the company probably will be divided in fact among shareholders, workers, and vendors, no matter what the regulators intended.

To say that regulations are a form of taxation — government exactions to pay for public services — is not to say they shouldn't be imposed. A core function of government is to protect individual rights to life, liberty, and property. Protecting those rights inevitably requires legislation, litigation, or some combination thereof.

Regulation is, in other words, not all cost. But no matter what the Cooper administration seems to argue, it isn't all benefit, either. When it comes to chemical exposure, for example, "the dose makes the poison," as the old saying goes. If it costs billions of dollars to reduce trace amounts to somewhat tinier amounts, the policy actually harms the public interest rather than advancing it, because the economic costs — lost jobs, incomes, and opportunities — have

their own adverse consequences on public health and safety.

Taxes transfer resources from payers to government coffers and then out to contractors or recipients to accomplish public ends. Regulation typically skips the middle step, using a public budget to broker the resource transfer.

As a result, regulation is less transparent than on-budget taxation and spending, though

no less coercive or costly. Indeed, according to the best estimates available, state regulations cost North Carolinians about \$26 billion annually — comparable to the state's General Fund budget.

Cooper's coal-ash policy will cost hundreds of millions of dollars a year. If it were an on-budget state spending item, it would attract significant scrutiny. As a regulation, it deserves just as much.



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## COMMENTARY BY JOHN HOOD



## Pols should accept urban realities

continued from PAGE 2

matter how much politicians may wish it were otherwise, North Carolinians are unlikely to flock in significant numbers to mass transit as a means of getting to work. I think it's entirely appropriate for cities to fund bus systems as a low-cost mobility option. That doesn't mean transit will be truly "mass" in North Carolina in the foreseeable future.

If your goal is to alleviate traffic congestion, far more productive would be to reduce the extent to which people enter vehicles of any kind in the first place, and how long they stay in them. That means rethinking zoning and other regulations that create artificial separation between where people live, work, and shop.

I'm not just talking about working from home, in other words, although policymakers ought to make sure they aren't unnecessarily blocking people from setting up businesses in their homes, for example. I'm also talking about mixed-use developments. More North Carolinians walk to work than take transit. I don't want the government to try to force mixed-used developments on unwilling sellers and buyers. But I also don't want government to get in their way, as is now too often the case.

Relaxing zoning codes, minimum lot sizes, and other regulations would have another welcome benefit in North Carolina's urbanizing areas: downward pressure on housing prices and rents. We have artificial restrictions on supply. Even if more-affluent North Carolinians are the ones most likely to buy downtown condos or rent in trendy high-rises, their decisions would free up other housing stock for other customers.

There's an emerging consensus that we currently practice "exclusionary zoning." But here's another reality policymakers need to accept: You can't fix the problem with "inclusionary zoning," with ordering developers to set aside some units as affordable housing. In the places this has been tried, reports Mercatus Center research fellow Emily Hamilton, it was either ineffectual or actively counterproductive, hiking the overall cost of housing.

The answer is to dismantle the barriers themselves. Let's get started.

# Change how we pay teachers

About this time last year, progressive activists and Democratic politicians were trumpeting the news that North Carolina was 49th in the country in friendliness to teachers, according to a study by the website WalletHub. The state's low ranking proved Republicans disliked public education, they alleged.

WalletHub recently released the 2019 version of the same study. North Carolina ranked 28th in the country in teacher-friendliness. Are those same Democrats and progressives touting this year's results? Of course not. The results are politically inconvenient.

As it happens, I don't think the study settles the issue. But I also felt the same way last year. Significant changes in methodology would surely be necessary to explain such a large jump from 2018 to 2019. And comparing teacher compensation and working conditions across a diverse set of states, each with its own structures and peculiarities, will never be a straightforward task.

Simply comparing average teacher pay, for example, is clearly a wrongheaded strategy. In faster-growing states such as North Carolina, where schools in



THE N.C. ASSOCIATION OF EDUCATORS wants teachers who obtain master's degrees to be paid more regardless of their effectiveness.

at least some counties have had to hire new teachers each year to keep up with demand, teachers tend to be, on average, younger. That pulls down the statewide average without suggesting anything about the competitiveness of compensation.

Some analysts have abandoned average-salary comparisons altogether and focused instead on how teacher pay compares with the average pay of other professions for which at least a bachelor's degree is required. But this approach creates

problems of its own, as Andrew Biggs and Jason Richwine argue in a recent edition of the journal *National Affairs*.

Just as one example, teachers are distributed across a state in rough proportion to population — public education is ubiquitous — but that's not necessarily the case for other professionals. Because rural salaries (and costs) tend to be lower, states that are disproportionately rural, such as North Carolina, will exhibit an artificially low ratio of teacher pay to other-professional pay.

The measurement problem isn't the only reason policymakers shouldn't focus on how we rank in average teacher pay. We hire specific teachers for specific jobs. While it is certainly challenging for North Carolina schools to attract and retain math and science teachers, for instance, filling other teaching jobs isn't so difficult.

Rather than chasing ephemeral headlines and dubious rankings, North Carolina and other states should focus on changing how we pay teachers. We need to differentiate salaries by subject, by school, and by performance.

No other professionals are paid the way teacher unions say their members want to be paid. It speaks volumes that in our state, the N.C. Association of Educators has made it a high priority that the legislature restore pay supplements for teachers who obtain graduate degrees. "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," says Matthew Chingos of the Urban Institute.

Most teachers don't belong to the NCAE. Wise choice.

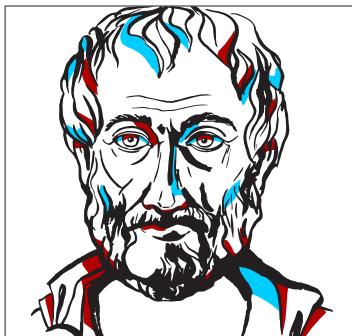
## POLITICAL PHILOSOPHY

# Freedom has many meanings

**WHAT DOES IT MEAN** to be free? Many seemingly intractable disputes about specific issues originate from the fact people don't answer this question in the same way. It's hard to have a useful political conversation without a truly common political language.

As usual, the ancient Greeks were among the first to figure this out. In Book Six of his masterwork *Politics*, Aristotle described two different conceptions. "One principle of liberty," he wrote, "is for all to rule and to be ruled in turn." When people enjoy the right to vote, to having an equal say in settling public disputes, then "whatever the majority approve must be the end and the just."

The idea is that to be free is to have an equal voice in deciding issues, through either direct democracy or electing representatives. You are denied political freedom, then, not only if you are explicitly denied the vote but also if the system is set up



ARISTOTLE

in such a way that the majority of the population is routinely denied the ability to exercise governmental power to achieve its desired end.

But political freedom was not the only kind enjoyed in Athens. Another principle of liberty, Aristotle wrote, was that "a man should live as he likes." Political freedom and personal freedom aren't incompatible. But they are distinguishable and, often, in tension.

The most famous case was of

Socrates. He relished the personal freedom to ask his questions. But he found its limits when he was tried, convicted, and sentenced to death. The city's majoritarian ethos challenged its libertarian one. The former prevailed.

Almost everyone embraces both conceptions to some degree. Progressives believe it to be a proper exercise of political freedom for a majority to vote itself resources through programs of income redistribution. Conservatives tend to disagree, arguing the personal freedom to keep the vast majority of what you earn ought not to be violable. But progressives are the first to deny that majorities have the right to prohibit abortion or same-sex marriage. And conservatives grant that within the proper sphere of government action, majority rule is the correct standard for filling public offices and forming policy.

Consider the example of public education. Most North Carolinians recognize and agree with the

state constitution's mandate to provide universal access to taxpayer-funded schools. But how should these schools be constituted and governed?

Some emphasize the role of political freedom. All public schools should be the possessions of countywide districts governed by popularly elected school boards with the power to hire administrators and assign students.

Others emphasize the role of personal freedom. Educators should be free to set up, and parents should be free to choose, public schools that exist outside the control of district superintendents and school boards with charters from the state.

Again, these concepts are in tension, not in complete contradiction. All public schools, district or charter, are funded by majoritarian legislatures. And few advocate that all students be forced to attend district schools. But on the particulars, many disagreements remain. May we continue to air them freely.

# COMMENTARY

## The stately pillars of the Fourth Estate must remain strong



**JOHN TRUMP**  
MANAGING EDITOR

The pillars of the Fourth Estate, i.e., the press, are taking a beating. “Fake news” has become a ridiculous cliché, yet the mantra is starting to damage those pillars like so much wind and rain.

The stately columns are weathered. Cracked and chipped. Tweets and social media posts declare news “fake” without provocation or investigation. The meaning of “fact” is viewed in some corners as mere idea and suggestion.

Sometimes those ideas and suggestions are correct. But most times they aren’t, yet “press” and “media,” among many Americans, are pejoratives, even though the press is significantly more trustworthy than, say, around the turn of the 20th century, when yellow journalism and muckraking were the norm as newspapers tried to grab paying readers who had dozens of choices, at least. Even then, the stories, while sensational and hyperbolic, were typically built on the truth.

That’s the key. Simply put, people need to know. America, Walter Hussman Jr. wrote recently in *The Wall Street Journal*, “has a vital interest in good journalism.” Hus-

man, publisher of the *Arkansas Democrat-Gazette*, points out 1,800 U.S. newspapers, mostly weeklies, have closed in the past 15 years. Those surviving, he rightly says, are shadows of their former selves.

It’s an industry in crisis, and we should be worried. All of us, regardless of partisan affiliations, political ideology, or socio-economic standing. It’s critical for our democracy, and for the strength of our republic, that we maintain and support platforms for good journalism. Fact is, because of the fall of newspapers and, subsequently, shrinking staffs, we’re missing things. Important things.

Dr. Patrick Conway, CEO of Blue Cross N.C., resigned after he was charged with drunken driving and misdemeanor child abuse.

Conway was arrested in June after his SUV sideswiped a truck on Interstate 85. His two young daughters were in the back of the car. A police report says Conway drove erratically for more than 90 miles along the busy highway. He refused to take a breathalyzer test, and he couldn’t complete sobriety tests without swaying and stumbling.

According to the report, Conway was “absolutely belligerent” when taken to jail. Officers wrote that Conway cursed at them, threatening to get them into trouble with Gov. Roy Cooper and demanding his release.

Conway was planning an affiliation between Blue Cross N.C. and the Pacific Coast Blues plan Cambia

Health Solutions. The move, which died after Conway’s arrest, was unprecedented. Together, the two Blues would have composed a \$16 billion enterprise covering 7 million people across five states. The affiliation would have launched Conway into national prominence. He would have taken over as the CEO of Cambia Health Solutions, as well as holding onto his role as CEO of Blue Cross N.C.

Yet few knew of Conway’s troubles, which didn’t come to light until late September. He was arrested in June, in Randolph County. The media didn’t learn of the charges — as well as the public, i.e., customers — until, apparently, Conway’s name appeared on a court docket.

That’s a problem.

The CEO of Coastal Credit Union faces an impaired driving charge, WRAL reported recently.

Charles Marvin Purvis was arrested April 9 after his van ran off the right side of Forest Pines Drive near his Raleigh home. He struck two trees and a light pole, WRAL says, according to a police report.

This happened in April.

“Purvis’ case came to light because of attention paid in recent days to the June DWI arrest of Dr. Patrick Conway, who was the CEO of Blue Cross Blue Shield of North Carolina at the time,” WRAL wrote.

That’s not good enough. Reporters, whether they’re with a newspaper, radio station, or TV, are the conduit of information on which we’ve been ingrained to rely.

Or should be. Local news report-

ers are falling into extinction.

No one caught either event on the police scanners. No reporter caught it from reading an arrest report. No magistrate or other law enforcement source picked up the phone and called a reporter. Probably because they weren’t familiar with any.

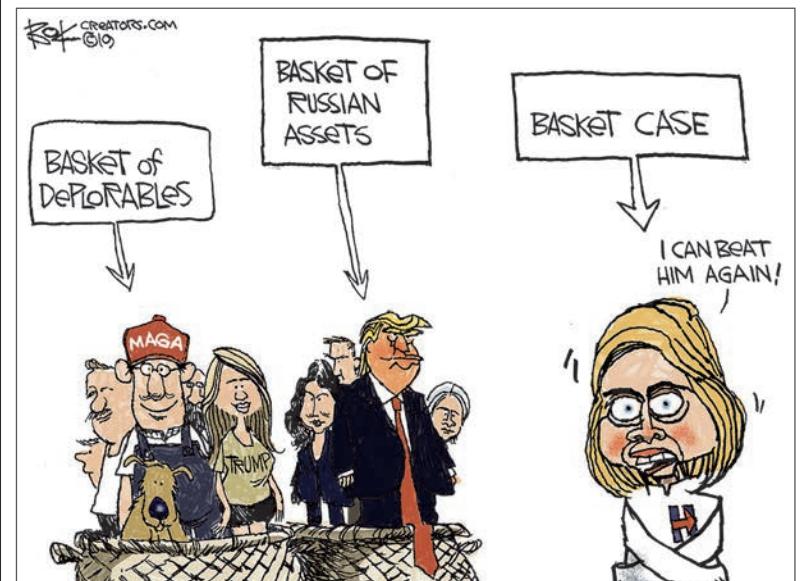
News, from local sources, is vital. Social media can be a good avenue for news, as long as it brings people back to a trusted outlet or emanates from a trusted source.

The idea of fake news is nothing more than an awkward strategy to divert people’s attention from what’s real and important. It’s really not that hard to tell the difference. Or, well, it didn’t used to be, during a time when newspapers, victimized by a failed business

model, were replete with will and resources. When the line between news and opinion was clearly defined. When political leaders who decried credible stories due to perceptions of negativity and unfair criticism were thwarted by the truth.

Even with scant resources, local media must work to do better. To better filter the cacophony from Washington, including the salacious and baiting tweets and posts. It’s well past time to begin rebuilding journalism at the local level. Committing to local news.

What happened with Conway and Purvis is a microcosm of a growing national crisis. A lack of transparency and a culture of secrecy. Of cover-ups. Scary times to be sure.



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## HEADLOCKE

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## COMMENTARY

*Redistricting, gerrymandering, and legislating from the bench*

**ANDY TAYLOR**  
COLUMNIST

I have written about gerrymandering in these pages before, but the recent Superior Court ruling that the state's legislative districts constitute an unconstitutional partisan gerrymander makes me want to do it again.

This is a prime example of judicial overreach and regrettable encroachment of quantitative social science into legal decision making. I don't think there's any doubt the state legislative map in question was a gerrymander in the technical sense of the word — that is, the maps were drawn by legislators intent on maximizing their party's representation in the General Assembly. But how on earth did the court see it as violation of North Carolina's Constitution?

I'm not going to take on the arguments about whether the plaintiffs enjoyed legal standing or gerrymandering is justiciable. Let me focus on the court's proposition that the map in question violates three important elements of the state's constitution: its "equal protection," "free elections," and "free speech" and related "free assembly" provisions.

First: How does a partisan ger-



rymandering treat voters unequally? Everyone gets one vote. All voters in the jurisdiction get the same ballot. Of course, outcomes are always unequal. Some voters will select winners, others losers regardless of the district's composition.

In fact, if voting rights are so sacred and should be weighted equally, the U.S. Supreme Court needs to reverse its 2016 ruling in *Evenwel v. Abbot*. The court held that legislative districts should be the same size by total population, not number of eligible voters. This is how you "dilute" votes.

Next, all the things that seem to impinge on "free elections" as generally understood have nothing to do with gerrymandering. These include registration and voter ID requirements, interminable lines at the polls, a limited choice of

candidates, and little or distorted information about the contest.

Finally, the free-speech and assembly arguments are just as contorted. Any restrictions on political speech and organization — such as campaign finance rules, municipal ordinances concerning protesting, etc. — are also unrelated to map drawing. People are of course members of political minorities all the time. Just ask the Libertarians. Don't like it? Make your party more appealing or switch allegiances.

To demonstrate how these are not free, fair, or equal elections, the court used a favorite phrase of the anti-gerrymander crowd: Politicians are choosing voters rather than the other way around. I hate to be snarky, but that is what districting is. Legislators don't choose the candidates, either. The state's filing rules are very relaxed, and

we also have primary elections for party nominees. A "sweetheart" gerrymander, one in which all incumbents regardless of party are safe and happy, is a clearer sign legislators as a class are "selecting their own voters." As "double-bunking" — districts pitting incumbent against incumbent — and many preemptive retirements demonstrated, this was not the case with the map under consideration.

Predictably, the court fell back on a fictitious right to choose representatives in competitive elections to bring about proportional outcomes — or where the shares of a party's seats in a legislature and total vote are roughly the same. But it showed tremendous ignorance of how to produce such a system. The concepts of competition and proportionality are different and often inversely correlated. Take for example a 100-seat legislature in a state evenly divided between Democrats and Republicans. We could plausibly create 100 50-50 seats and all would be highly competitive. But a small swing toward one party might give us something close to a 100-0 legislature, in which the governing party only got, say, 53% of the vote. We can ensure total proportionality with 50 100% Democratic districts and 50 100% Republican districts. Now that's a partisan gerrymander. By the way, does Massachusetts have free congressional elections in which Republicans regularly get about

35% of the statewide vote but no seats?

Why do the maps get blamed for the kinds of outcomes the court believes are harmful? Why don't parties just nominate candidates appealing to a district's voters? In the 1960s and 1970s, both Democrats and Republicans could win in just about any kind of place. The court's allies say partisan gerrymanders cause polarization. If so, why is the U.S. Senate so polarized? In fact, homogenous districts in heterogeneous states can force the parties to run a diverse slate of candidates and therefore reach out to many different political interests.

The legislature's motive, maligned by the court, is irrelevant as well. The district maps were legislation. Give me an example of a vote on important matters of public policy — including those affecting voting and other constitutional rights — where lawmakers aren't driven by partisan considerations.

I find partisan gerrymanders distasteful. But the court has taken a legitimate technical definition of the practice built on solid social science and forced it into law. That is legislating from the bench. There is now a similar case against North Carolina's congressional districts. Get ready for more.

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

## Can we talk ourselves into a recession?



**MICHAEL WALDEN**  
COLUMNIST

**MY LATE MOTHER** used to tell me, "Be careful what you wish for; it may come true." Her advice has relevance today, with all the talk about the possibility of an upcoming recession. I'm not implying people are wishing for a recession. The concern is that if we worry so much about it, can we actually talk ourselves into one?

As usual, economists are divided on the likelihood of a recession. A survey of business economists put the chances of a recession in the next two years at about one in three. Others, like CEOs, think it's much higher.

Economists are trained to think recessions are caused by funda-

mental factors, like households being overextended with debt so they curtail spending. This certainly was the major factor behind the Great Recession of 2007-09.

Or recessions can originate on the business side. The two recessions in the 1970s were mainly caused by big run-ups in oil prices. Big jumps in oil prices caused a surge in retail prices. With no commensurate increase in workers' incomes, households cut back on spending and plunged the economy into recessions.

One reason many economists today aren't worried about a recession is the fundamental causes like high household debt and rampant inflation don't exist today.

Still, economists have long recognized that more than fundamental economic factors can stir up recessionary fears. Fear can play a big role.

Economists who lived through the Great Depression of the 1930s realized the role fear has in the

economy. If households believe the future will be worse than the present, they will save money to prepare for that challenge. In particular, households will refrain from borrowing to buy big-ticket items like homes and vehicles.

Businesses will react to fear in a similar way. With households spending less, businesses will cut costs by reducing their labor forces and delaying upgrades to their equipment and technology. These actions reinforce the fear felt by households and send the economy spiraling down even more.

How does fear about the economic future develop? Part of the answer is through observation of facts. You see your neighbor lose her job, or you read about the closing of a company. But part of it may be through stories you hear or read, some of which could be inaccurate. As most of us know, as stories are passed from person to person, they can become embellished and overstated.

The Nobel Prize-winning economist Robert Shiller, who was one of the few to forecast the severity of the Great Recession, analyzes the impact of stories about the economy in his new book, *Narrative Economics*. He argues the effect of stories and perceptions may actually be greater now than in the past due to technology.

Today, people have a multitude of sources for information about the economy. Stiff competition between these sources for our attention sometimes means stories will be eye-catching and provocative. I've already seen numerous stories about how to prepare for the coming recession, as if it's already been decided a recession is near.

Modern technology also means stories receiving lots of "clicks" or "likes" can spread quickly. This means before something is analyzed, verified, and reconsidered, it can be seen and accepted by millions of individuals.

Now let me return to my opening question: Can we talk ourselves into a recession? I think the answer is a "qualified yes." The qualification is there needs to be an igniter.

That is, there needs to be some real trouble in the economy to start the worry. Once some valid worry does appear, widespread talk about it can exaggerate the trouble and potentially make the recession come sooner or cause it to be deeper.

We do have some trouble spots. Trade disputes — especially with China — are at the top of the list. Other concerns are slowness in foreign economies and political uncertainty in Washington. The question is: Could these sparks be fanned by fear into flames of a recession?

*Michael Walden is a Reynolds Distinguished Professor at N.C. State University. He does not speak for the university.*

# HEALTH CARE

## Democrats are trying to take away state health care flexibility



**JORDAN ROBERTS**  
HEALTH CARE POLICY ANALYST  
JOHN LOCKE FOUNDATION

Congressional Democrats are trying to take away what little potential flexibility states have over their health insurance markets. If they are successful in their challenge to a new Trump administration rule, states will lose out on increased opportunities to use federal waivers for innovation in state health insurance markets.

Section 1332 of the Affordable Care Act allows states to apply for a waiver with the federal government to waive specific ACA requirements that pertain to individual health insurance markets. This was a bipartisan provision that governors wanted in the ACA for states to experiment with new ways to provide coverage for their population. As was the case with several other health care policies, the Obama administration effectively made it impossible for states to use this section of

the ACA to design new health insurance markets for their state's population. In October 2018, the Trump administration issued new guidance on section 1332 waivers to increase the opportunity for state-based reforms. The Trump administration's guidance broadens the policy levers states could use to provide more affordable plans.

But now congressional Democrats are attempting to limit the choice and flexibility that states have under section 1332. By using the Congressional Review Act — a law that allows Congress to reverse rules from the executive branch — Democrats have introduced a resolution that would roll back the increased flexibility granted to states by the current administration. The resolution was sponsored by Rep. Annie Kuster, D-New Hampshire, and Sen. Mark Warner, D-Virginia, and has the support of all 47 Senate Democrats.

Several states have applied for waivers under section 1332. Not all waivers are the same, and states have several options. The most common is a waiver to set up a reinsurance pool in the state. Reinsurance is essentially stop-loss insurance for insurance



**One of the crucial shortcomings of the ACA was the top-down approach to providing health insurance. The state's innovation power was substantially decreased upon implementation.**

companies. Spreading risk like this allows insurance companies to lower premiums for everyone, since higher-cost patients have an extra level of insurance for expensive claims.

Several states were able to implement successful reinsurance pools. Maryland was the most successful example, bringing down exchange premiums up to 43%. Other states, such as Wisconsin and New Jersey, were similarly able to lower their exchange premiums by 10% and 15%, respectively. This is the kind of state innovation Congress is trying to take away.

One of the main concerns that congressional Democrats have is with the issue of pre-existing conditions. Many opponents of claim that the new 1332 guidance was an example of the Trump administration trying to take away protections for individuals with pre-existing conditions.

But this is entirely untrue. The HHS secretary doesn't have any authority to waive anything relating to pre-existing conditions protections. Not only is it false that this rule is an attempt to take away protections for those with pre-existing conditions, but what will hurt patients more is taking away the state's option to implement innovative health care solutions.

The rebuke of state innovation adds to a list of health care policies that were implemented by the Trump administration only to have those who disagree with the policies try to curtail them through legislation or the courts. Short-term, limited-duration plans and association health plans are facing the same fate. Yet what opponents of the current administration's health care policies fail to realize is that not everyone in the country benefited from the ACA. Many were left with higher

premiums and fewer choices. Each of these newer policies was implemented with the goal of providing additional choices and lower prices.

In the face of rising premiums, unaffordable out-of-pocket costs, and diminishing choices, the current administration has made progress in extending alternatives to states and consumers. Section 1332 in the ACA was widely regarded as one of the ways states could innovate and find better solutions for more affordable health insurance. Democrats are now trying to take away an opportunity for states to use existing funding and reallocate it in a way that would provide more choices or lower premiums for patients.

This all comes down to the misguided view that Washington, D.C., is better equipped than an individual state to provide affordable health insurance plans to its residents. One of the crucial shortcomings of the ACA was the top-down approach to providing health insurance. The state's innovation power was substantially decreased upon implementation. Congress shouldn't do anything to take away the expanded flexibility that states now have under 1332 waivers.

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