



CJ PHOTO BY GREG DE DEUGD

Kathy Harrington: Senate's first female leader

Harrington is known for her no-nonsense approach

BY JULIE HAVLAK

Sen. Kathy Harrington, R-Gaston, doesn't seem impressed at becoming the first female majority leader of the N.C. Senate.

She is one of the most powerful lawmakers in Raleigh. She sports a concealed-carry permit, and her daughter is a law enforcement officer. She listens more than she talks, and she doesn't forget.

She is not someone to cross.

"She always fascinated me. She's a whiskey-drinking, cigar-smoking, motorcycle-riding badass," said Dylan Watts, political director at the N.C. Republican

Senate Caucus. "She's probably going to text me and say, 'Dylan, what the hell?'"

The Senate is famous for how little is said on the floor. Compared to the House, it's run with iron control. Describing its culture, Watts quoted the former majority leader and Democratic power broker Tony Rand: "Your enemy is not Democrat or Republican — your enemy is the House."

Harrington has risen to the highest ranks in this cul-

ture. She is reserved with the press — but not with her constituents. She is famously private, but she admits her favorite part of politics is campaigning. She is also a devout Catholic. She used to sprinkle holy water on Jim Blaine's desk, calling him the "Devil." Blaine declines to say how he earned that nickname. Blaine was N.C. Senate leader Phil Berger's chief of staff.

"She strongly adheres to the very wise political max-

im that the closed mouth swallows no flies," said Blaine, who now runs a political consulting firm. "She says little, but she listens carefully. She pays attention, and she files it away for later. Kathy does not forget."

Harrington swept into office in the Republican wave in 2010, when Republicans seized control of the Senate for the first time in 140 years. There were so few experienced Republicans that Harrington walked in as the

chair of the Senate Transportation Committee — something her husband, a former lawmaker himself, teased her about.

"I jokingly blame him for getting me into politics," Harrington, R-Gaston, said. "We have the distinction of being the only husband and wife who lost to the same person."

She laughs — but she runs a tough campaign.

continued PAGE 10

CERTIFICATE
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PAGE 4

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FROM THE PUBLISHER

Arabella Advisors and the political soul of North Carolina: Can David slay Goliath?



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Greater good

If you thought last fall's elections were expensive and complicated by multiple lawsuits and grossly distorted negative campaigns, I have some news. It's about to get worse in what could be a decade-long David versus Goliath battle.

2020 was supposed to be the year that self-described progressives would flip North Carolina blue. Ahead of this year's redistricting, a far-left faction of the Democrat party was supposed to control the governor's mansion, attorney general's office, Council of State, N.C. Supreme Court, and at least one chamber of the General Assembly.

Voters proved to be an obstacle to the Left's grand plan. North

Carolina returned incumbent Democrat Gov. Roy Cooper and Attorney General Josh Stein to their posts, but rejected the Left everywhere else.

To ensure voters comply in future elections, one of the Left's most well-kept secrets is infiltrating North Carolina.

Meet Arabella Advisors, a consulting company that controls a \$731 million nonprofit nexus from its Washington, D.C., headquarters. Through four in-house nonprofits — innocuously named New Venture Fund, Sixteen Thirty Fund, Hopewell Fund, and Windward Fund — Arabella has quietly funneled nearly \$2.5 billion since

continued PAGE 20

COMMENTARY BY JOHN HOOD



Legislators should reclaim their power

AMONG THE MANY reasons the political discourse in Washington has gotten so toxic, and at the same time so unproductive, is that the legislative branch of our federal government has allowed itself to become increasingly irrelevant.

It isn't just that the presidency and the courts have usurped policymaking authority that properly belongs to Congress. Most members of Congress, in both parties, have willingly ceded that power. With great power comes great responsibility, as Spider-Man famously learned to his horror. To put it bluntly, most members of Congress don't want the responsibility. They'd rather blivate on television or run

online fundraisers than actually do their jobs.

Here in North Carolina, our General Assembly has faced similar encroachments on legislative authority by Gov. Roy Cooper and, occasionally, the state judiciary. Unlike their federal counterparts, state lawmakers haven't shirked their responsibility. They've fought back. Sometimes they've won. Sometimes they've lost. But even losing in the short run can bring victory on the issue in the long run.

Why does a weak legislative branch produce toxic, unproductive politics? Because representative bodies are the best places

continued PAGE 21

Economists raise outlook for state budget, predicting more tax revenue despite COVID



ROSY FINANCIAL PICTURE? New economic estimates for the current fiscal year are \$4.1 billion rosier than the prediction made in May

BY ANDREW DUNN

The state budget may be spared economists' worst fears from the COVID pandemic, according to a new tax revenue forecast.

New estimates for the current fiscal year are \$4.1 billion rosier than the prediction made in May, says the new consensus revenue forecast released Feb. 11 by the Office of State Budget and Management and the General Assembly's Fiscal Research Division.

The outlook is not completely positive. The state's economic team warns that tax revenue may contract slightly in fiscal 2021-22 after years of growth.

The state now expects a substantial tax revenue increase versus the years prior — \$27.6 billion, about 15% higher than the \$23.9 billion collected last year. In May, the forecast had been for a 2% decline in tax revenue.

State economists credit COVID relief from the federal government for buoying North Carolina's budget outlook. Stimulus money bolstered income tax returns, and the Paycheck Protection Program aided business tax collections.

Sales tax collections were also higher than feared, in part due to a recent change requiring online marketplaces to collect sales tax.

House Speaker Tim Moore, R-Cleveland, touted the report as evidence that the Republican-led General Assembly's conservative fiscal policies have helped the state weather what could have been a damaging recession.

"Today's revenue forecast represents promises kept for North Carolina to prepare for economic and natural disasters with a pro-growth

BY THE NUMBERS

\$27.6 billion

Amount of tax revenue North Carolina expects this year — \$4.1 billion more than expected.

tax code and responsible budgets that invest in shared priorities," Moore said in a statement. "People are paying lower taxes in North Carolina and benefiting from a pro-growth approach to the public and private sector."

However, there are significant assumptions made in the new forecast that may not pan out.

Forecasters are counting on the federal government to pass another stimulus bill that makes direct payments to U.S. citizens and extends unemployment benefits still further.

The projection also assumes coronavirus cases continue their recent decline amid widespread vaccinations, and no new strain that boosts case counts.

Even this relatively rosy financial picture is not without cause for concern.

The state economists forecast that tax revenue will dip slightly in fiscal 2021-22, falling about 1% to \$27.4 billion. Revenue would then grow slowly — 4% — in 2022-23.

"The state's economy is in the recovery phase of the business cycle after the quick and sudden recession precipitated by the pandemic," the report from the Fiscal Research Division states. "The forecast envisions that the economy will remain stable throughout the forecast period as the pandemic finally begins to recede later this calendar year."

NORTH CAROLINA

A bevy of unlicensed providers receiving Medicaid funds

BY JOHNNY KAMPIS

An audit released by State Auditor Beth Wood's office Feb. 18 found the state Department of Health and Human Services did a poor job of gatekeeping the Medicaid provider enrollment process.

The auditor's office says DHHS didn't properly ensure that only qualified providers were approved to provide services to Medicaid beneficiaries and to get payments from the state's Medicaid program. DHHS didn't identify those providers who had professional licenses suspended or terminated so they could remove them from the program, the audit said.

Furthermore, the audit found that DHHS didn't ensure its contractor General Dynamics Information Technology verified all professional credentials and provider ownership information during the enrollment reverification process. Auditors sampled 191 approved applications and found that 185 of



MEDICAID AUDIT. State Auditor Beth Wood's office found that Health and Human Services didn't properly ensure that providers were qualified.

them never had their professional credentials verified.

"The Department of Health and Human Services does not

check any credentials during this reverification process. None," Wood said in a video accompanying the audit.

FILE PHOTO

Examiners discovered that of 66 Medicaid providers disciplined by their licensing board in the 2019 budget year, 26 had their license suspended or terminated. DHHS removed only eight of the 26 from the Medicaid program.

The reasons for the suspended or terminated licenses ranged from substance abuse to sexual misconduct to a felony conviction related to health care fraud.

These errors increased the risk that ill-equipped providers could receive millions of dollars in improper payments, the audit said. Such neglect is a big deal across the country: The Government Accountability Office reported that noncompliance with provider screening and enrollment requirements among the states contributed to more than a third of the \$36.3 billion in estimated improper payments in 2018.

States are required to screen and enroll Medicaid providers in accordance with standards set by the U.S. Centers for Medicare and

Medicaid Services to help combat waste, fraud, and abuse in the system. It's also a matter of safety, as Wood's office said that some providers on the Medicaid rolls lost their licenses due to patient deaths.

The audit said unlicensed providers received \$1.64 million in Medicaid payments during the 2020 budget year. Providers lacking proper credentials got \$11.2 million in funds that year.

Dr. Mandy Cohen, secretary of DHHS, said in a response included with the audit that she agrees with the findings, and the department has removed ineligible providers and is working to recoup improper payments.

"Ensuring that we enroll and maintain only qualified providers to care for the beneficiaries is a fundamental responsibility of the Medicaid program," she wrote. "I have directed our Medicaid program leadership to make the issues identified in the report a top priority."

COVID restrictions clobber North Carolina jobs

Little improvement expected until 2022

BY ANDREW DUNN

NORTH CAROLINA'S heavy-fisted response to the coronavirus pandemic has resulted in a delayed economic recovery, reports from state and national economists show.

Things won't speed up for a while. The latest projections call for relatively high unemployment through next year.

School closures and business restrictions led to an "unprecedented drop in economic activity," says the N.C. Department of Commerce.

Now, jobs are still more than

5% below where they were before COVID, totaling 241,500 "missing jobs," as Wells Fargo economists put it. The majority of these are in places like restaurants, bars, hotels, entertainment, fitness, and hair salons — all industries still suffering under emergency restrictions.

"While manufacturing appears to have strong momentum, high-contact areas of the economy will not recover in a meaningful way until the COVID pandemic recedes," the Wells Fargo economists write.

But there is also evidence North Carolina is a distinct case.

Net job loss in North Carolina is significantly worse than states such as Georgia, Arizona, South Dakota, Tennessee, South Carolina, and Texas, all of which have gained back a much higher percentage of jobs, according to the Bureau of Labor Statistics.

N.C. manufacturers cut nearly 54,000 jobs during the spring 2020

lockdowns but hired back only a third of them as the economy began to open slowly.

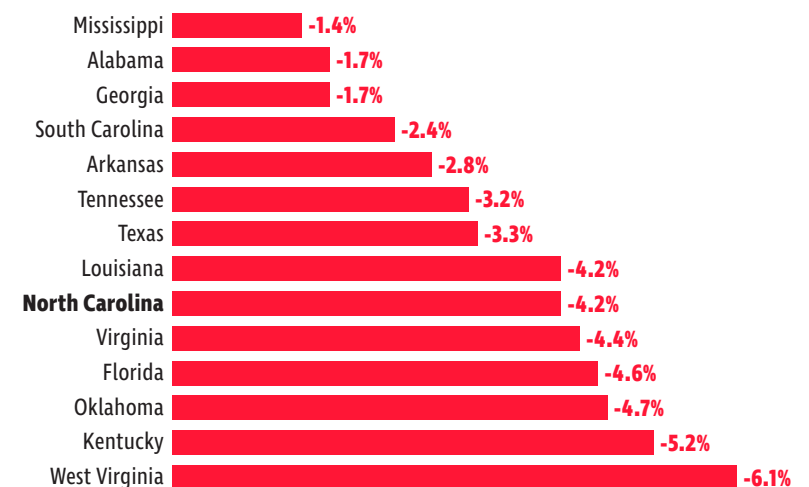
UNC-Charlotte and Barings predict in their latest quarterly forecast that North Carolina will add about 245,000 jobs in 2021, roughly equal to the number lost last year. Unemployment will remain elevated until 2022.

As is often the case, North Carolina's metro areas are likely to bounce back more quickly. The Charlotte region added some 44,000 jobs in the fourth quarter, a 3.5% growth rate that far outstripped the national average, according to the Charlotte Regional Business Alliance.

Financial services and headquarters office jobs were among the only industries to grow during the pandemic. Still, the Charlotte region had regained just half of the jobs it lost during the first half of 2020 by the end of the year.

Mid-sized metros could be in

Net loss in employment in southern states from December 2019 to December 2020, seasonally adjusted



SOURCE: U.S. Bureau of Labor Statistics

line for more growth, as well, as warehouse and industrial expansion continues.

"While the year will start off le-

thargically, we expect the recovery to gain strength over the course of the year," Wells Fargo economists wrote.

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CERTIFICATE OF NEED

A tangled web of bureaucracy, clout, and backroom deals can crush competition, hurt smaller providers, and endanger patients

CERTIFICATE OF NEED

A tangled web of bureaucracy, clout, and backroom deals can crush competition, hurt smaller providers, and endanger patients

BY JULIE HAVLAK

A coal miner's son. A powerful attorney. A defeated surgeon. Two college sweethearts.

All of them became caught up in a powerful system known as certificate of need. Certificate-of-need laws give the state control of medical resources. Twenty-five people, an advisory board appointed by the governor, oversee the supply of hospital beds, medical equipment, and a host of other resources.

In theory, the system is supposed to guard patients' access to health care.

But the system offers a wealth of opportunities to crush unwanted competition and hamstringing smaller doctors' practices. Under CON laws, incumbent providers can take their competitors to court and force them to bleed money for months, years, or even decades.

It may be easy to praise the system on the record. But those who criticize it do so quietly, and they fear retribution. Many declined to publish their names in this story or to speak on the record.

"It's human nature, so I shouldn't be surprised, but I have clients who think it's unconstitutional, it's terrible, it's an unfair restraint on trade," said a CON attorney. "But once they get it, CON is great, it's saving money, it's good for the people. It's incredible the metamorphosis they undergo."

The Fighter

Dr. Jay Singleton sometimes says he's not the right man for the job.

Singleton is the son of coal miners. He spent his childhood crisscrossing Appalachia in a trailer, always in search of another dying nonunion mine. The good old days of mining were just a memory, and, more and more, the only thing left was strip mining, tearing the tops off mountains.

Singleton is now the champion of those who would wage a war against the wealthiest hospi-



DR. JAY SINGLETON. Singleton can't even perform a five-minute cataract surgery without admitting his patients to a hospital.

tal systems in North Carolina and against the state itself. Singleton is suing to overthrow the CON regime. His constitutional challenge could decide the future of health care as North Carolinians know it.

Singleton isn't polished. He tries not to come off as intense, but his face always reddens when he's debating lawmakers or lobbyists. All of his in-laws know about CON laws.

But Singleton prides himself on his quips. He jokes that his siblings used to sit around for hours and make fun of each other. They were so poor there wasn't much else to do.

"Growing up, one day I asked my mom, who was really frustrated, probably for about a billion reasons, and she was crying," Singleton said. "She told me it was because we were poor. And I was thinking: How can I not be poor?"

That question put Singleton on course to become an eye surgeon and to clash with CON laws in New Bern. He can't even perform a five-minute cataract surgery on his patients without admitting them to a hospital's surgery center — and saddling them with a bill for thousands of dollars.

Singleton has seen patients go



Certificate-of-need laws give the state control of medical resources. Twenty-five people, an advisory board appointed by the governor, oversee the supply of hospital beds, medical equipment, and a host of other resources.

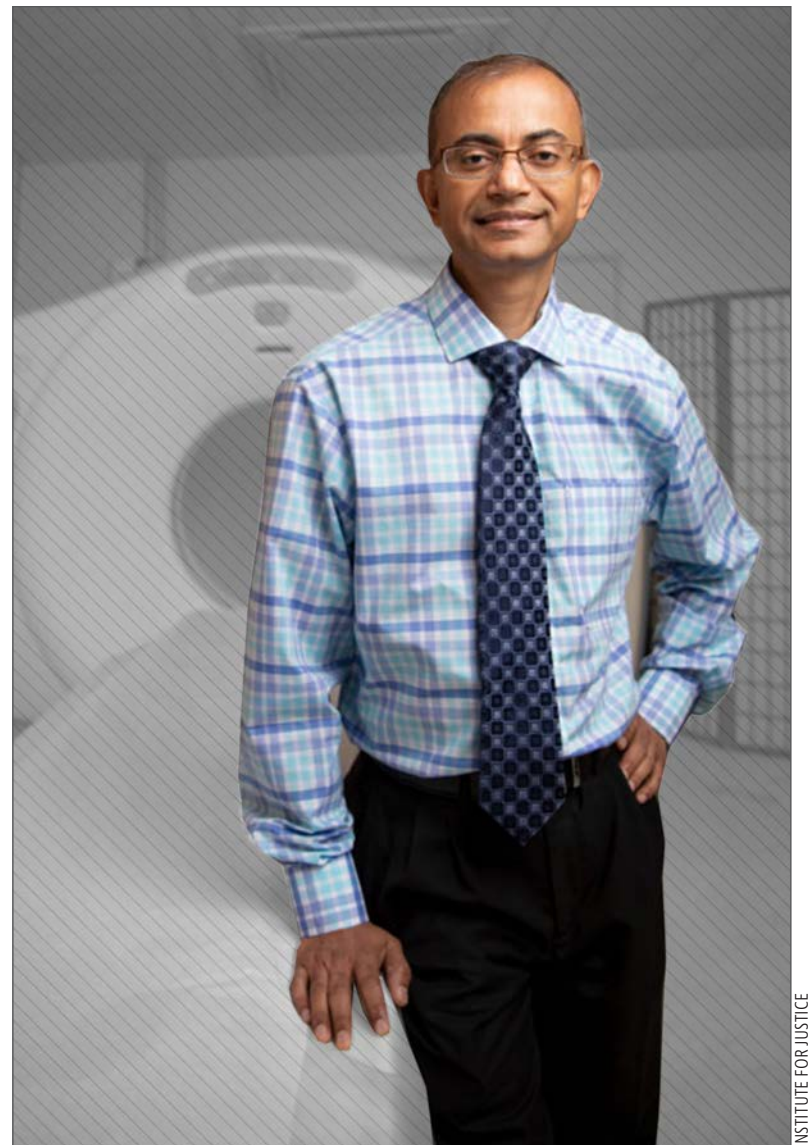
blind because they couldn't afford hospital prices.

"You do see things that you don't think are right," Singleton said. "It doesn't make hospitals solvent. It makes them rich."

First Blood

Dr. Gajendra Singh is a soft-spoken, meticulously polite surgeon who tried to treat poor patients. He paid the price. Singh began the fight Singleton carries on.

Singh watched his patients be-



DR. GAJENDRA SINGH. Singh founded his own imaging center in Forsyth County, and sued to overthrow the CON regime.

ing crushed by medical bills or catching cancer too late. One man put off getting an MRI for more than a year. What he found was worse than any medical bill.

"So, I saw it," Singh told WFDD. "He had a cancer spread everywhere. And that was a stage-four cancer. And I felt guilty. Like you know, that as a society we had failed him."

Singh founded his own imaging center in Forsyth County a year later and sued to overthrow the CON regime. He is something of a legend now, at least in pockets of the medical community.

Singh saved his patients thousands of dollars. Some drove for hours; some came from other states. Some came because of mysterious pain and others because these were the only scans they could afford.

"Singh, man, gotta hand it to him. But he bit off a lot," Singleton said. "He went after the MRIs, the 'Shangri La,' the temple."

But Singh's practice collapsed under the stress inflicted by CON laws and the COVID-19 pandemic. His patients have lost their access to affordable medical scans, and Singh has stopped talking to the press.

"Trailblazers are usually found dead on the trail," Singleton said. "You want to be the second guy, the third guy. Not the first guy."

'Hostage'

For Dr. Richard Bruch, it would have been easier if his hospital had just burned down.

The McPherson Hospital was so old that its elevator dated to 1926, and modern hospital beds couldn't fit inside. Patients avoided the dated facility, and the Durham hospital faced closure.

Where others saw decay, Bruch saw opportunity.

A group of doctors wanted to restore the hospital's legacy and build a state-of-the-art facility for patients. But unless disaster ruined the current property, moving to a new building would require a new CON.

And the state said no.

Bruch applied three times in a row, dropping \$50,000 each time — but the state denied the need for a better hospital each time. Duke Health blocked Bruch's applications, complaining that a newer, 18-bed hospital would unfairly

continued NEXT PAGE

CERTIFICATE OF NEED

continued from PAGE 5

compete with Duke's 335-bed behemoth in Durham. The CON process cost Bruch four years and hundreds of thousands of dollars in the early 2000s.

"North Carolina is held hostage by those who have CONs already," said Bruch.

This wasn't Bruch's first brush with CON laws, and it wouldn't be his last. The system once forced him to pay a competitor thousands of dollars.

In the early 2000s, Bruch's Triangle Orthopedics was running enough MRI scans to qualify for its own MRI scanner. But the company that rented him a mobile MRI didn't want to lose his business — and all it had to do was appeal under the CON system to prevent that from happening.

Bruch says he settled and ponied up \$100,000 to the rental company.

"They wanted to make certain that they got their money," Bruch said.

'Hoops on Fire'

Dr. Bruce Schroeder is lucky in his marriage.

Schroeder is a gutsy New Yorker, his wife an organized pediatrician. The two of them graduated college together, survived medical school together, built a breast imaging center together, and conquered the CON system together.

"I've jumped through all the hoops, and the hoops were on fire," Schroeder said.

The Schroeders hoped they could dodge the CON process in Greenville. They couldn't afford to waste months waiting instead of working, all the while spending a fortune they didn't have.

But advances in medicine outpaced their plans when 3-D mammograms hit the market. If they spent more than \$500,000, they couldn't escape the CON process.

"My wife and I looked at each other and said, 'Holy crap, we have to get a CON,'" Schroeder said. "We couldn't spend a nickel without crossing that ridiculous threshold. I mean, we couldn't buy a pencil. If things break, we'd be dead in the water."

They still couldn't afford to hire a lawyer. Instead, they spent months working on their application, night after night, drawing up bus schedules and gathering data. Neither of them knew anything about law or the CON process, but they were learning fast.

"I always vote for the underdog, especially when it's me," Schroeder said. "We said this is the worst term we've ever written."

There was nothing they could do if their competitors decided to



DR. RICHARD BRUCH. Bruch wanted to restore McPherson Hospital in Durham, but the state said no. Duke Health, which would be a competitor, blocked Bruch's application six times.

take them to court. But after what seemed like the longest month of their married lives, they got lucky and won their first CON.

"Holy crap, that was a nice bottle of champagne," Schroeder said. "All CONs are adversarial. You're always trying to eat someone else's lunch when you're competing with them."

High Stakes

The hospital couldn't afford to lose this court battle.

Desperate for a CON, the Presbyterian Hospital had gambled millions. It built a new hospital in Huntersville before finalizing its CON permission — and now the hospital's future depended on attorney Noah Huffstetler.

"That should tell you how gutsy my client was," Huffstetler said.

It was up to Huffstetler to make sure the hospital didn't lose more than \$48 million. Huffstetler would have to defeat a rival's lawsuit at the N.C. Supreme Court.

"My client said, 'We can't afford to lose this.' And it was like, thanks," Huffstetler said. "I have never been under more pressure to win a case than that."

In a triumph of verbal acrobat-



It's very political. You can look at the council, see who's there, and whose interests they're protecting. Reality is, there's an oligopoly. There's a few big medical centers. They have all the money and all the clout.

- Former member of the State Health Coordinating Council

ics, Huffstetler likened his client's case to building permits, and the judges actually bought his argument in 2005. His hospital was safe.

But its rival had never risked much. The incumbent only stood to lose a \$50,000 bond — what other lawyers call "chump change" in the world of health care.

'Weaponized'

These two doctors have the ultimate mover's regret.



DR. BRUCE SCHROEDER: "All CONs are adversarial. You're always trying to eat someone else's lunch when you're competing with them."

The Bone and Joint Surgery Clinic's old MRI scanner broke when it changed offices, and its doctors decided to buy a modern replacement for their patients in Raleigh. That was a mistake.

The CON system gave UNC Health the opportunity to drag surgeons Dr. Paul Burroughs and Dr. Gary Fleischer into court. UNC Rex's Wake Radiology complained that a newer machine was not "replacement equipment" for the broken MRI in 2018, according to court documents.

"It didn't make sense," Burroughs said. "We weren't going to go out and buy an antique machine to replace it with."

Things got worse when Burroughs asked to use the new MRI to its full potential in 2019.

The state agreed; Wake Radiology sued again. They've been stuck in court since.

"From that point on, we've been having to pay legal fees to stay in business," Fleischer said. "There's no end. They can keep appealing, and the appeal can be appealed. It just never ends."

CON laws originally aimed to prevent doctors from splurging on expensive equipment without using it. The irony isn't lost on the

two surgeons.

"The process is twisted. It can be weaponized," Burroughs said.

Blindsided

One provider in Monroe has a CON for eye surgery. Dr. Ivan Mac doesn't.

In theory, this means patients' access to health care is safeguarded. In practice, it means that Mac has to ask his patients to pay more for 10-minute eye surgery.

Mac has to admit his patients into the hospital-owned surgery center, which charges them higher fees. In other cities, doctors can use their own surgery centers, but Mac says he's been told that it would be a waste of his time to apply for a CON.

"The playing field is not exactly level," Mac said. "As soon as you apply, you're in litigation. Instant litigation."

Ophthalmologist Dr. Terry Forrest believes CON laws are hurting rural providers. His Goldsboro practice lost millions during the pandemic, but he was at a disadvantage even before the coronavi-

continued NEXT PAGE

CERTIFICATE OF NEED

continued from PAGE 6

rus hit. Under the CON system, he fights against a price disadvantage, and he also struggles to recruit doctors.

“No one who’s got an IQ above room temperature wants to move to a city where they’re not in control of their patients’ care,” Forrest said. “My patients are going to get a bill from the hospital, too? They hear that, and they’re not interested.”

Forrest saw a woman go blind in the last month because she was afraid of the co-pays and didn’t want to seek care.

“Our politicians don’t care. They don’t want to make the people with the money upset,” Forrest said. “They really just don’t care, as long as they have good policies for them and their families.”

The Council

Even former council members can’t agree on whether the CON process is driven by data or swayed by politics.

The 25-member State Health Coordinating Council is dominated by hospital systems, which control at least 10 seats. Two business advocates, two elected lawmakers, and one insurer are tasked with representing small and large businesses.

The critics accuse the state of playing politics with patients’ access to health care. They point to



PRESBYTERIAN HOSPITAL IN HUNTERSVILLE. "In the face of CON, you find out who the true predators are. Small hospitals [like Presbyterian] have to fear our larger hospitals, kind of like fish," says Dr. Jay Singleton.

studies showing that CON states have fewer rural hospitals.

“It’s very political. You can look at the council, see who’s there, and whose interests they’re protecting,” said a former council member who feared retribution. “Reality is, there’s an oligopoly. There’s a few big medical centers. They have all the money and all the clout.”

CON’s supporters say the council protects the state from a destructive medical arms race. They warn that rural hospitals will close if exposed to uncontrolled competition.

“When hospitals had to shut down electives, rural hospitals really struggled,” said Cody Hand, lobbyist for the N.C. Healthcare Association.

“Without the CON laws, those hospitals couldn’t make it financially. ... Our fear is that, without CON, someone could come in and easily pick those profitable services off.”

Another former council member believes CON laws have created monopolies. He supports parts of CON, but its process forced him

to spend hundreds of thousands of dollars on CON’s legal battles.

“If they keep filing lawsuits, they can delay that competitor from coming in, and they’ll make up the legal fees,” the former council member said.

“That’s been a nasty battle. There’s still bad blood between the two parties. The scars are still there.”

He believes there has to be a legal recourse for providers. But he also acknowledged the dangers of the current system.

“It’s crazy, crazy stuff,” he said. “The small guys, the hospital can beat them down.”

CON reform is notoriously difficult to move in the legislature. But the N.C. Healthcare Association does support reforming the litigation that dogs the CON process, Hand said.

Hand said he wouldn’t oppose raising the bond — or the \$50,000 competitors must stake to sue over CONs — to create a “good-faith scenario.” But he rejected any repeal efforts.

“It’s a burden on my members as well,” Hand said. “But [repeal] for us is a baby with the bathwater issue.”

Singleton is less charmed. If he heard Hand’s comment, he would likely accuse him of drowning the baby.

“In the face of CON, you find out who the true predators are,” Singleton said. “Small hospitals have to fear our larger hospitals, kind of like fish.”

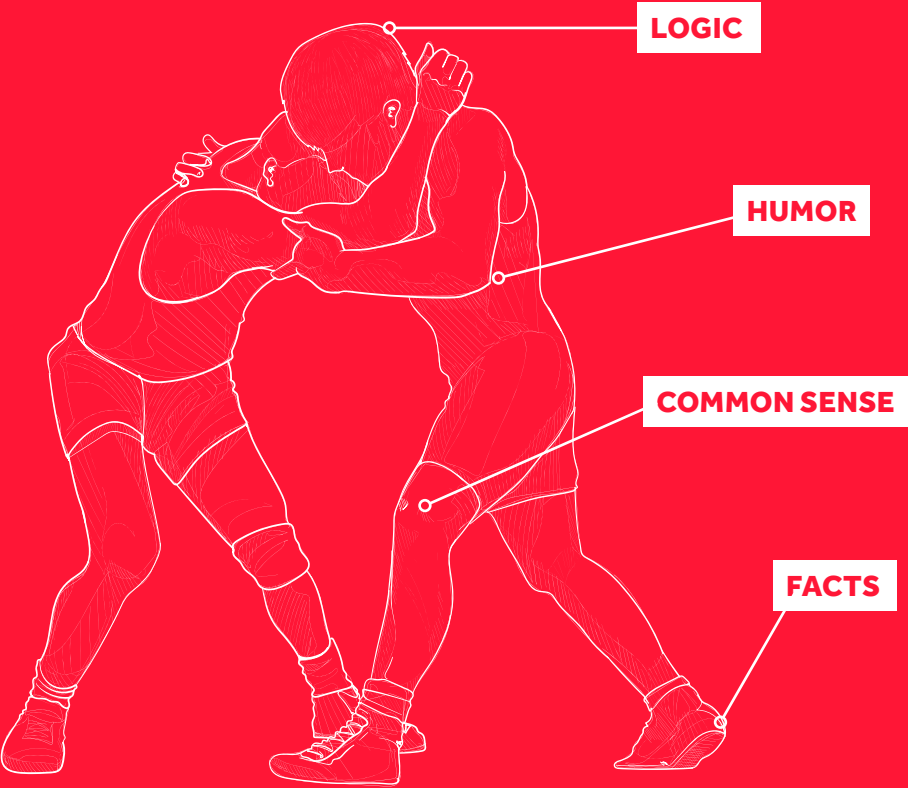
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TIMELINE - CON SCANDALS & CORRUPTION

Scandal and corruption: A history of certificate-of-need laws

BY JULIE HAVLAK

Certificate-of-need laws have ruined governors and exiled the wealthy and the powerful to federal prison. Millions of dollars have changed hands, and more than a few political campaigns have been fueled by corruption in the CON system.

CON laws are the reason hundreds of cardiac patients couldn't get care in Maui, forcing doctors to fly critical patients to Honolulu. They're blamed for restricting cancer patients' access to treatment. They made Louisiana's "Cajun King" rich, and then they staggered the governor's hayride. They keep an army of specialized lawyers employed.

They've also helped to worsen the shortage of hospital beds during the coronavirus pandemic.

In North Carolina, CON laws give control over the supply of health care to 25 people, an advisory body with members appointed by the governor. The state then dictates where new hospitals can be built, who owns expensive medical equipment, who can expand to treat more patients.

CON laws are the source of immense power and immense frustration in the medical community. The process exposes applications to lawsuits from competitors, and hospitals have wrestled over CONs for more than a decade. Independent doctors complain hospital administrators use CON laws to hamstring the competition.

North Carolina entered the pandemic crippled on a key metric for reopening. States with CON laws have 30% fewer hospitals per 100,000 residents, compared to states without CON.

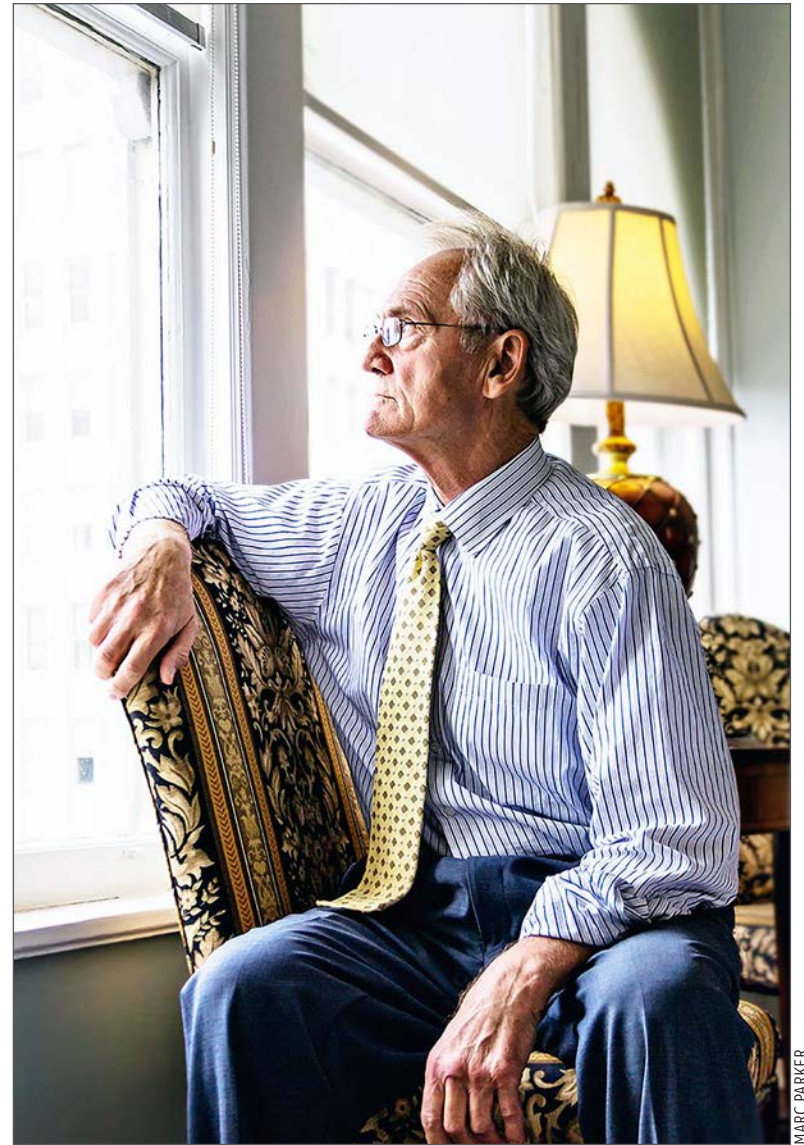
The state legislature plans to make another stab at repealing CON laws this session. But lawmakers face intense pushback from industry special interests; reforming the laws will be no small fight.

Here's a look at effects of certificate-of-need laws:



FILE PHOTO

ILLINOIS GOV. ROD BLAGOJEVICH. Blagojevich was found guilty of 17 counts of corruption stemming from an investigation related to CON laws.



MARC PARKER

ALABAMA GOV. DON SIEGELMAN. Convicted, along with health care executive Richard Scrushy, of using CON laws to crush competitor hospitals.

1970s

Health insurers have a dilemma, and Uncle Sam is about to get involved. At the time, insurers pay hospitals for their costs. Hospitals go on buying sprees, and everyone else foots the bill.

1971

North Carolina decides hospitals have a spending problem, and they need a budget. Lawmakers require providers to get state permission before making any big purchases — and certificate-of-need laws are born.

1973

Not so fast. The N.C. Supreme Court axes the first version of CON laws for "establishing a monopoly."

1974

Congress picks up the idea, and it passes a certificate-of-need mandate. But Congress does nothing to fix the underlying

incentive to waste money. Instead, Congress pushes states into adopting regulations known as CON laws.

1974

N.C. lawmakers try again, and this time they justify CON laws with "findings of fact." The strategy works. Twenty-five people now control the supply of health care in the state. Providers must get their permission to add hospital beds, buy equipment, or launch renovations, along with a host of other items. Market incumbents, including hospital systems, get seats on the board. And competitors can sue to take the battle for CON permission to court.

1980

All states except Louisiana have adopted CON laws, and Louisiana will soon follow suit.

1985

Louisiana's "Cajun King," the infamous Gov. Edwin Edwards, gets into trouble with CON

laws. In the "hospital hayride" scandal, Edwards is accused of selling hospital and nursing home permits to friends for \$10 million in profits. The feds say Edwards has rigged the CON system, grabbed millions, and threatened the survival of rural hospitals. He faces a maximum sentence of 265 years in prison but jokes that he's healthy enough to outlive any sentence. "This [the trial] is just an inconvenience for him," says his press secretary.

1986

The hayride falters. A federal grand jury indicts Edwards, and the man who bragged about surviving 11 grand jury investigations is headed to trial. But the jury deadlocks, and he gets off.

1993

North Carolina updates its CON laws. This is the last time it will adjust the monetary thresholds that trigger CON laws for inflation.

1986

Congress sours on CON laws. As Congress scraps its CON mandate, the feds say it "failed to control health care costs and was insensitive to community needs." By the end of the decade, 19 states will have repealed or shrunk their CON laws.

1996

Pennsylvania eliminates its CON laws, despite protests from the governor and hospital special interests.

2004

The feds slam CON laws for restricting cancer patients' access to treatment. CON laws are "jeopardizing" patient care and making health care unaffordable, say the Federal Trade Commission and Department of Justice. They conclude, "CON programs aren't successful in containing health care costs, and that they pose serious anti-competitive risks that usually outweigh their purported

TIMELINE - CON SCANDALS & CORRUPTION



LOUISIANA GOV. EDWIN EDWARDS. Indicted for selling hospital and nursing home permits to friends for \$10 million in profits.

economic benefits.” They worry hospital systems can squeeze any doctors who try to compete.

2004

Scandal stains Illinois’ CON laws. CON board member Stuart Levine flexes his authority to extort millions of dollars from a Chicago medical school and a charity. He also is charged with blocking hospital projects — until they gave a cut of the action to his friends in construction and finance. He is eventually sentenced to more than five years in prison.

2004

Convicted felon and former Illinois Gov. Rod Blagojevich promises a “fresh start” for the state’s CON laws. Blagojevich won’t deliver that fresh start — the same investigation will later put him behind bars.

2005

Federal authorities indict Levine for using the CON

process to squeeze hospitals for favors, kickbacks, and cash for his political friends. The president of Edward Hospital testifies that his “pay to play” schemes targeted her hospital because the “temptation for corruption is huge” under the CON process.

2005

The feds charge Alabama Gov. Don Siegelman and HealthSouth founder Richard Scrushy, who are accused of using CON laws to crush competing hospitals and doctors. The prosecution alleges that Scrushy “would and did use his seat on the CON Board to attempt to affect the interests of HealthSouth and its competitors,” and that Scrushy “would and did offer things of value to another Board member to attempt to affect the interests of HealthSouth and its competitors.” A federal grand jury indicts Scrushy and Siegelman. Scrushy spends six years, 10 months in prison, and Siegelman gets five years.

2006

Patients in Maui don’t have critical medical services, but they won’t get a hospital, either, because of CON laws. The island’s only hospital is state-run, needs renovation, and can’t handle cardiac cases or premature infants. Doctors must fly patients to Honolulu for critical care. A private hospital wants to set up in Maui, but the incumbent hospital objects to the competition. The state shoots it down, forcing more than 350 cardiac patients to fly off-island each year.

2008

The Federal Trade Commission and the Department of Justice take a swing at Illinois CON laws, saying they “undercut consumer choice, stifle innovation, and weaken markets’ ability to contain health care costs.”

2008

Florida Gov. Charlie Crist escalates his quest to repeal CON laws and achieves some reforms.

2009

North Carolina’s governor puts the CON State Health Coordinating Council under some ethics requirements. This is the first time they can’t vote on issues that concern themselves or their employers.

2011

The CON process earns itself some unflattering epithets. The system, a study says, is described as a “food fight,” a “valuable tool to block physician-owned facilities,” an engine for mediocrity, and a crony-capitalist bludgeon. “Certificate-of-need programs tend to be influenced heavily by political relationships, such as a provider’s clout, organizational size, or overall wealth and resources, rather than policy objectives,” says a study from the National Institute for Health Care Reform. Researchers say hospitals use CON to “‘keep tabs’ on competitors and block new entrants.” Worse, they report seeing large hospitals keep “smaller hospitals out of a market by tying them up in CON litigation for years.”

2015

New Hampshire axes its CON program.

2015

Iowa’s mental health system might be “in crisis,” but no one

is going to do anything about it. Two incumbent providers shoot down a proposed 72-bed inpatient mental health facility. They block its application for a CON, ignoring their own published warnings that “[t]he needs of the sickest and the poorest of our community are not being met.” They delay any decision on the CON for more than two years.

2017

West Virginia frees telehealth, remedial care, ambulatory health facilities, and imaging services from CON restrictions.

2017

Trouble is brewing for North Carolina. States with CON laws have 30% fewer hospitals per 100,000 residents, finds a study from the Mercatus Center. States with CON laws have 131 fewer acute hospital beds per 100,000 people than non-CON states. Rural residents also find themselves with fewer rural hospitals.

2018

A doctor wants to offer affordable medical scans to poor patients in Winston-Salem. But CON laws block him from buying an MRI machine — even though he would save patients thousands of dollars. Surgeon Dr. Gajendra Singh sues to overthrow the CON regime as unconstitutional and monopolistic. He becomes locked in a legal battle against the state and its most powerful hospital systems.

June 2019

Florida discards entire sections of its CON laws.

January 2020

If Singh wants an MRI scanner, he will have to get a CON from Novant Health or Wake Forest Baptist Medical Center. The two boast billions in unrestricted reserves, and they hold all the CONs for Forsyth County’s 17 MRI scanners. “I have no doubt that his odds of getting an MRI against those two companies, once they’ve decided to knock him out, is zero,” says Superior Court Judge Gregory McGuire.

February 2020

It might have taken 15 years of legal battles with the competition, but a South Carolina hospital system finally wins permission to build a medical center. It had to appeal all the way to the state Supreme Court for the privilege, due to the CON process.

March 2020

North Carolina diagnoses its first case of COVID-19.

March 2020

Experts warn CON laws could cripple North Carolina’s response to the COVID-19 pandemic. Hospitals can’t add beds without getting state approval — and the State Health Coordinating Council doesn’t meet until June.

March 12, 2020

Gov. Roy Cooper waives CON restrictions on hospital beds.

March 24, 2020

North Carolina is still critically behind the rest of the nation. States with CON laws have 1.3 fewer hospital beds per 1,000 people than states without CON laws. That deprives them of almost 50% of the national average of 2.8 hospital beds.

March 27, 2020

Cooper shuts down the state and orders people to stay at home for 30 days. He says the state must slow the spread of COVID-19 or risk running out of hospital capacity.

April 8, 2020

Cooper waives more CON regulations.

April 24, 2020

Singh’s imaging center folds. He couldn’t survive the combined pressure of fighting CON laws, the shutdowns, and the coronavirus pandemic. The middle class and the poor lose their access to Singh’s affordable medical scans. But a new challenger steps forward. Ophthalmologist Dr. Jay Singleton sues to overthrow CON laws after his patients can’t afford cataract surgery. Singleton could fix cataracts for less than \$1,800 in his office. But the local hospital CarolinaEast charges almost \$6,000 for the facility fee alone, the lawsuit says, and some hospitals charge as much as \$12,758 in the Triangle area.

Dec. 8, 2021

Cooper enacts a curfew, citing concerns about the spread of COVID-19 and hospital capacity.

January 2021

The pandemic has effectively suspended CON laws across 24 states that have kept them.

STATE GOVERNMENT



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Harrington

continued from PAGE 1

Her first election was the last election that she ever lost. She then trounced her Republican opponent in the 2010 primary and Democratic opponent in the general election, winning almost twice as many votes as both opponents. No one has run against her in the primaries since.

In this past election, when every forecast doomed Republican majorities, she poured hours into campaigning and carried off 65% of the vote.

"It never works very well to bully her," Blaine said. "She has a Margaret Thatcher-esque quality about her. She's very tough. The first thing she wants to do is something people tell her she can't do."

The marble floors of the legislature are murder on the knees. Harrington had walked them almost a decade, and her knees were shot. One day she limped into Sen. Bill Rabon's office, wearing what he describes as the ugliest shoes he ever saw — and he told her so, "old lady."

She stalked back to her office, donned high heels, and threw the offending shoes on his desk.

"She said, 'I'll suffer the pain before I'll suffer the humiliation,'" Rabon, R-Brunswick, said. "I have them hanging on my wall. I say, 'See that? Don't mess with her. She's tough.'"

Rabon and Harrington are now key allies in the legislature and "thick as thieves." But when he first gave her his cell phone number, offering his help, she threw it in the trash. Her husband just laughed at her, and she was too embarrassed to ask for it again.

You can thank the two of them for a functional road system. Before Harrington, political power built roads — not population, not data, and not need.

"You could look at the roads and say that's so-and-so road," Blaine said. "She got those roads stopped. ... She's a tough cookie."

Harrington dragged department officials in front of Senate committees and put them under subpoenas. She scrapped powerful lawmakers' favored roads, and then blew up the whole funding system. She then trained her focus on the gas tax and corrupt local officials in the Transportation Department.

"A lot of legislators are generalists," Blaine said. "They like to have their finger in every pie. That's not Kathy's style."

Now Harrington faces the challenge of her career.

The coronavirus pandemic and the shutdowns have wrecked the economy. The state's vaccination rollout has been slow, and unemployment claims continued to



KATHY HARRINGTON ON THE PANDEMIC: "It's my hope and prayer that we'll start coming out of this and start to recover, that we'll see the economy improve and kids can get back into the classroom when it's appropriate."

CJ PHOTO BY GREG DE DEUGO

climb across the nation throughout the winter.

"Everything is going to have a shadow of the pandemic on it," Harrington said. "It's my hope and prayer that we'll start coming out of this and start to recover, that we'll see the economy improve and kids can get back into the classroom when it's appropriate."

Republican legislative leaders kept their majorities, but the governor's veto power remains strong.

The relationship between the two is more poisonous than ever: After months of budget impasse and a record-breaking number of vetoes, lawmakers voted to strip the governor of his emergency powers. Gov. Roy Cooper vetoed the bill and extended his lockdowns.

The state budget is just as strained. Harrington will help lead budget writing — but Cooper can block any budget she passes. He sank the last budget over Medicaid

expansion. Both sides lost a slew of priorities.

Here, again, she is characteristically reserved, saying only that she hopes history won't repeat itself. The closed mouth swallows no flies.

"If you play poker with Senator Harrington, when she calls, you better have the cards. The dealing is over," Rabon said. "And that's a good thing in politics. It makes her good for tough negotiations."



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OPINION

GOP-led legislature made sure we saved for this rainy day

BY DEAN ARP

We've had a lot of rainy days in North Carolina lately, both literally and figuratively.

Literally, 2020 was one of the wettest years on record for our state. But also figuratively we had a lot of rainfall, too, as people struggled in all sorts of ways because of the pandemic.

The good news is that from a financial perspective, North Carolina was prepared for those rainy days because of the fiscal discipline of the state legislature for the last decade.

We were pleased to find out recently from the legislature's budget office that North Carolina's economy is rebounding more quickly than expected, and state government finances remain strong, despite the extraordinary strain placed on them by the pandemic.

As we begin preparing the state's biennial budget plan this spring, we can do so with an eye toward helping those most damaged by the coronavirus shutdowns, including small business owners and students who have



GOP LEGISLATURE. House Speaker Tim Moore, R-Cleveland, speaks at a Nov. 16 news conference at N.C. Republican Party headquarters in Raleigh.

fallen behind in their learning, and positioning North Carolina to continue the strong growth it was experiencing before the pandemic.

This is a stark contrast to the situation the state found itself in after the financial crisis of 2008, when the state had to furlough teachers, slash public employee

salaries, and make big spending cuts, despite having some of the highest tax rates in the country.

What changed?

In 2010, North Carolina elected the first Republican-controlled legislature in more than a century. In the years since, we have reformed the tax code to levy lower sales, income, and corporate taxes. We now consistently rank among the best states in which to do business.

Over the last few budget cycles, legislative leaders have resolutely rejected enormous pressure from the governor to spend and borrow billions more, to sign on to expensive federal programs and to raid our cash reserves — those “rainy funds” — to do so. As a result, we can help people when they really need it.

The key now is to stay the course and to resist the call of tax-and-spend liberals — often aided by a sympathetic media — to indulge in ineffective big-government programs to please special interests.

When we sat down to write the state biennial budget in 2019, no one anticipated that the very next year, a mysterious illness from

China would upend our entire way of life for many months. However, we held firm to our conservative fiscal principles, pushing through a sensible spending plan over the veto of Gov. Roy Cooper, whose proposed budget would have had businesses paying higher taxes and the state taking on more debt just as we were heading into the greatest public health crisis of our lifetimes.

Because of prudent budgeting, not one teacher has been furloughed, not one program has been cut, and not one salary has been slashed as a result of the pandemic. Under the governor's budget plan, I am not sure that would have been the case.

There is no doubt that North Carolina's future is bright, and that our best days are ahead as we continue to improve our education, technology, and transportation infrastructure while reducing taxes and regulation. But under the leadership of the GOP, we will make sure we stay ready for the rain, too.

Rep. Dean Arp, R-Union, is a senior chairman of the House Appropriations Committee.

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OPINION

UNC will lower costs by practicing discipline, accountability

BY PETER HANS

North Carolina colleges face plenty of challenges, from COVID recovery to a fast-changing economy. But when you poll students and families, one issue stands head and shoulders above the rest: cost.

For as long as I've been in public life, the narrative about higher education has been one of the relentless increases in price. Tales of runaway tuition costs and crushing student debt led to a generation of students who are more skeptical about the value of college, more concerned about the risks of pursuing opportunity beyond high school. That has real consequences for our economy. Higher costs slow the rate of college attainment, leading to slower job growth and a greater divide between those with a degree and those without.

If we want more of our citizens to earn a degree and enjoy the economic opportunity that comes with it, we must decrease the burden on families and keep student debt low. That's exactly what we've done over the past few years at North Carolina's public universities, and it's paying off.

Tuition has been flat for five years running, breaking a de-



NC PROMISE. NC Promise dropped tuition at Western Carolina (pictured), UNC-Pembroke, and Elizabeth City State University to just \$500 per semester.

CADES-long trend of ever-rising prices. And NC Promise, backed by an extraordinary investment from state lawmakers, dropped tuition at three of our campuses to just \$500 per semester. That means that in the spring of 2022, we'll see hundreds of newly minted N.C. graduates who paid just \$4,000 in tuition for a world-class education.

Systemwide, we're on track for

a reduction in student debt even as we continue to improve already strong graduation rates. According to data from the College Board, we were one of just a handful of states to reduce the average cost of in-state tuition over the last five years, strengthening our status as one of the most affordable places in the country to go to college.

That kind of progress doesn't

happen by accident. It takes a sharp focus on containing costs, finding ways to operate more efficiently and generate greater value for the people we serve. We've enacted sensible, effective reforms that hold me and our chancellors accountable for improving graduation rates, reducing debt, and serving more low-income and first-generation North Carolinians. We've passed new policies to focus on new degree programs, making sure they deliver a clear benefit to students and taxpayers. And we're pursuing major reforms to the state's financial aid program, making it easier to understand and encouraging more students to consider that there are multiple paths to success after high school.

We still have plenty of work to do. Student fees and living costs remain a major concern, and we are making the transfer from community college an easier and more reliable option for earning an affordable degree. And even with recent improvements in five-year graduation rates — now at a systemwide high of 71% — we still have way too many students taking more than four years to earn a degree. Our universities need to do better in guiding every student toward finishing in eight

semesters or fewer.

None of this is revolutionary, and that's the point. Our universities are extraordinarily innovative in their research and scholarship, in the ideas and inventions they pursue and the possibilities they open up for students. But when it comes to running the place, what we need isn't innovation so much as discipline. Modest, focused budgets. Metrics that hold us all accountable for outcomes rather than inputs. We may teach poetry, but we're going to govern in prose — prose, and spreadsheets.

Our lawmakers and the general public rightly expect that kind of accountability. It's what gives them the confidence to maintain public investment in higher education, which in turn helps lower the cost to students and keeps the university within reach for all North Carolinians. It's a virtuous cycle, one I'm determined to preserve and enhance.

I grew up as a deep believer in our university system, awed by a state that would invest so much in a kid from Horse Shoe, North Carolina. But I know that we can only remain "the people's university" if the people can afford it.

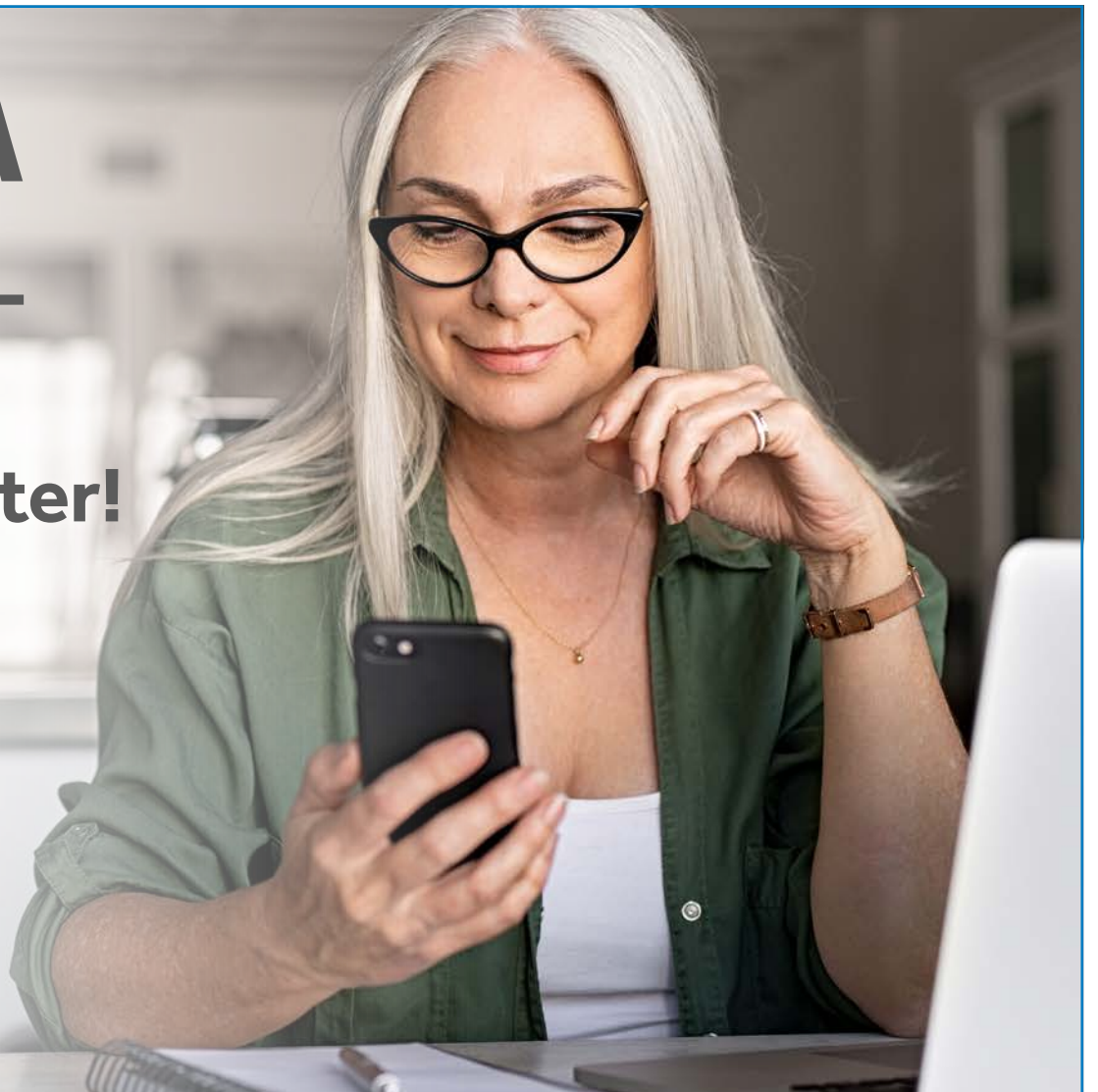
Peter Hans is president of the University of North Carolina System.



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LETTER TO THE EDITOR

No visitor policy at hospital is inhumane

As the president and founder of Medical Patient Modesty (www.patientmodesty.org), a nonprofit organization that works to educate patients about their rights to dignity, privacy, and freedom from abuse in medical settings, I was very disappointed that many hospitals in America including North Carolina implemented a zero-visitor policy last year when the coronavirus pandemic began and again in November/December.

Carolina Journal published the article, "Cohen says No Patient Left Alone Bill would violate federal law, pose risks" on June 19, 2020, about how several state senators in N.C. tried to pass a No Patient Left Alone Act that would require all hospitals in N.C. to allow each patient one support person even during a pandemic. Dr. Cohen argued that the bill would violate federal rules for infection control measures. The truth is each patient's support person could follow the same steps as hospital employees such as wearing masks.

Because of limited time devoted to each patient, it's impossible for



Technology cannot substitute for in-person interaction, respectful advocacy, and the protection from abuse which (despite even best efforts by hospitals) can only be guaranteed by the constant presence of a loved one.

even the best medical professionals to provide personalized attention to each patient. Technology cannot substitute for in-person interaction, respectful advocacy, and the protection from abuse which (despite even best efforts by hospitals) can only be guaranteed by the constant presence of a loved one.

The zero-visitor policy, even during a pandemic, is inhumane and should never be implemented.

The truth is this policy does more harm than good. More people will die from non-COVID health issues such as heart attacks because they will forgo potentially life-saving medical procedures because they do not want to recover alone. Also, more patients, especially the elderly, will give up the will to live since they do not have a loved one present to support them in their recovery. Also, patients who were forced to recover alone at the hospital may forego medical care in the future because they were so traumatized by recovering alone.

We need to unite our voices and put pressure on hospital administrators to never implement this policy again in the future.

I encourage everyone to read the article, "No Visitor Policy During a Pandemic," at <http://patientmodesty.org/novisitorpolicy.aspx> and watch the video, "Zero Visitor Policy During Coronavirus" at www.youtube.com/patientmodesty.

*Misty Roberts
Waynesville, N.C.*



GOT AN OPINION?

The Carolina Journal is accepting letters to the editor and guest opinions (op-eds)* on issues related to North Carolina. We cover the state from a limited government and free market perspective but will consider varying viewpoints, depending on relevance and quality. A good guideline for letters is 200-500 words and 550-800 words for op-eds. A letter to the editor is comment or disagreement with a published CJ piece; an op-ed is a guest opinion argument.

Please email any submissions to opinion editor Ray Nothstine (rnothstine@lockehq.org)

*We retain the right to edit or to not publish any submitted letters or op-eds.



OPINION

North Carolina still has room for improvement on taxes



RAY NOTHSTINE
OPINION EDITOR

Despite the bizarre virtue signaling by a few rich CEOs on cable news to pay more in taxes, the vast majority of Americans don't like having their pockets emptied by the government. A lower tax climate is an American tradition. The liberal economist John Kenneth Galbraith once wrote, "The American colonies, all know, were greatly opposed to taxation without representation. They were also, a less celebrated quality, equally opposed to taxation with representation." Fortunately, over the past decade, a lower tax climate and culture is becoming more ingrained in North Carolina. Still, more can and should be done to lower taxes for all.

For 2021, the state ranking is 10th for best business tax climate by the Tax Foundation. Less than a decade ago, North Carolina ranked in the bottom 10 as seventh worst in the nation. Liberal tax-and-spend policies of other states, particularly in the Northeast, are a motivating factor for many relocating to North Carolina to take advantage of improved employment opportunities and affordable living. In

Tax Foundation's Business Tax Climate Index

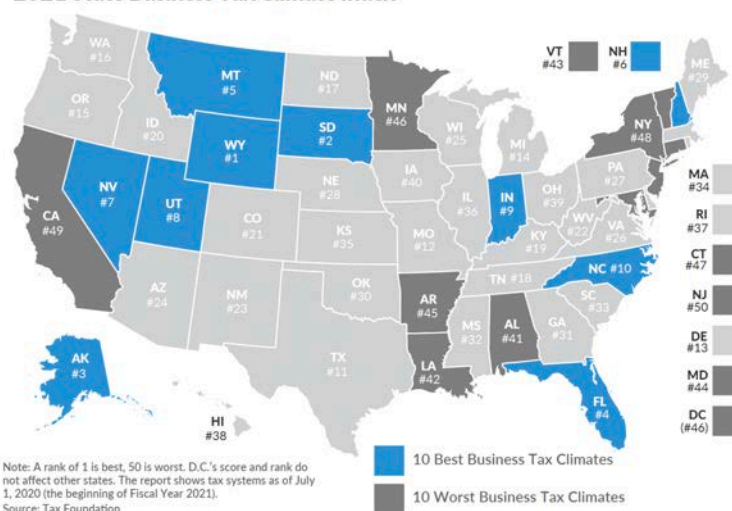
The 10 best states in this year's Index are:

1. Wyoming
2. South Dakota
3. Alaska
4. Florida
5. Montana
6. New Hampshire
7. Nevada
8. Utah
9. Indiana
10. North Carolina

The 10 lowest-ranked, or worst, states in this year's Index are:

41. Alabama
42. Louisiana
43. Vermont
44. Maryland
45. Arkansas
46. Minnesota
47. Connecticut
48. New York
49. California
50. New Jersey

2021 State Business Tax Climate Index



the past decade, the income tax has been reduced from 7.75% in 2013 to 5.25%, with more income being eligible for exemption. Despite the wailing and gnashing of teeth from many in the media and other predictable special-in-

terest groups, N.C. voters easily approved a state constitutional amendment in 2018 that lowered the percentage of income that can be taxed by the state.

Improvements shouldn't be halted given that seven states



Republicans in the General Assembly should be lauded for the progress they have made on spending restraint and tax cuts, yet if other states can have lower gas and income tax rates, so can North Carolina.

have no personal income tax and New Hampshire and Tennessee only tax dividend and interest income. After all, in states that do tax income, 16 still have lower rates than North Carolina.

While society is probably more partisan today than in over a century, the evidence that tax cuts improve the economy is so overwhelming it's becoming less controversial. Even some blue states have made modest reductions in tax rates. Yet economic improvement by itself shouldn't be a main motivator for cutting taxes. Allowing for more in our state to benefit fully from the fruits of their labor is always the morally right thing to do. In his autobiography, Calvin Coolidge, our 30th president, offered up this timeless observation: "When I went around with my father [who was a tax collector] I realized

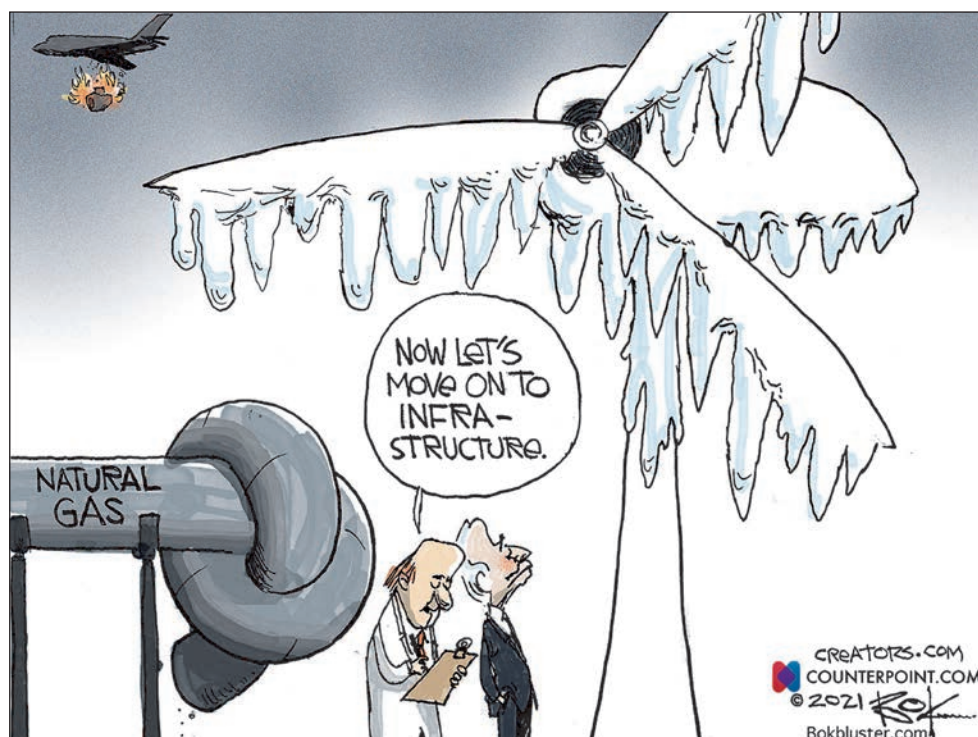
people had to work to earn money to pay those taxes."

Furthermore, regressive taxes like the sales and gas tax fall disproportionately on lower-income citizens. They end up coughing up a much higher percentage of their take-home pay. North Carolina has one of the highest gas tax rates in the Southeast and 13th highest in the nation. When coupled with the 18-cent federal gas tax, 55 cents of every gallon of unleaded gasoline goes to taxes. Lawmakers would be wise to look at further prioritizing spending so more regressive taxes can be alleviated on lower-income North Carolinians. They are too often punished the most by governments that are unable to restrain spending.

Ultimately, people have to ask themselves if they trust the government to grow the economy and alleviate poverty, or do they trust a free-market economy? Republicans in the General Assembly should be lauded for the progress they have made on spending restraint and tax cuts, yet if other states can have lower gas and income tax rates, so can North Carolina.

One of the most important tasks of politicians is to orient government toward its basic purpose of protecting natural rights. That purpose is protecting "life, liberty, and property," to echo John Locke. Tax cuts, which promote human freedom and flourishing, are one of the very best ways to accomplish that.

CARTOONS



COMMENTARY

What are teachers teaching? We have no idea



DR. TERRY STOOPS

CENTER FOR EFFECTIVE EDUCATION
JOHN LOCKE FOUNDATION

One of the most peculiar aspects of education in North Carolina is that we know the number of wireless access points per classroom but know very little about what's taught inside of it.

North Carolinians assume that instruction is uniform across public school classrooms, schools, and districts. But the truth is that the state does not have a standardized curriculum. The lack of standardization produces mind-boggling variation in instructional methods, tasks assigned to students, and tests used to determine their progress.

All classroom instruction starts at the same place: state-mandated content standards. Standards delineate broad learning goals and include general outlines of topics and themes teachers are expected to cover during the school year. In the words of the N.C. Department of Public Instruction, standards “define what students are expected to know and be able to do by the end of each grade.”



Educators and curriculum experts develop content standards for arts education, career and technical education, English as a second language, guidance, healthful living, information and technology skills, science, social studies, and world languages. These standards are updated periodically and are subject to approval by the State Board of Education. Typically, the revision and approval process takes about one year to complete and occurs with little fanfare. Conversely, the new social studies standards approved by the board at its February meeting consumed nearly two years of work and attracted substantial media attention. Over the coming months, DPI staff will develop supplementary resources to help teachers navi-

gate the approved social studies standards.

Because standards are designed to be a starting point, DPI resources do not include curricular materials, such as worksheets, projects, classroom activities, quizzes, or unit tests. For better or worse, the state grants schools and teachers an extraordinary amount of autonomy regarding curriculum matters. There are risks and rewards to this arrangement. On the one hand, it allows educators to blend knowledge and creativity to tailor standards-aligned lessons to their students' unique needs. On the other hand, it permits inexperienced and incompetent educators to fill students' time with ill-conceived busywork pulled from the bowels of the interwebs.

At its worst, teachers exploit this flexibility to push an ideological or political agenda on their impressionable pupils.

In “De-Escalating the Curriculum Wars: A Proposal for Academic Transparency in K-12 Education,” Matt Beienburg, director of Education Policy at the Goldwater Institute in Arizona, argues the “proliferation of politically infused content has indisputably risen to the forefront of education — in some cases even eclipsing the emphasis placed on academic achievement.”

This includes utilizing the discredited *New York Times* 1619 Project, using materials from the radical Zinn Education Project, and adopting lesson plans from social justice websites like Learning for Justice. There is no shortage of left-wing education organizations ready to supply teachers with the means to carry out woke indoctrination with impunity.

One proposal for balancing teacher autonomy and taxpayer accountability is an academic transparency requirement. Model legislation developed by Beienburg would impose two requirements on public schools. First, each school would be obligated to list on a publicly accessible portion of its website by July 1 all “learning materials and activities that were used for student instruction at the school during the prior

year, organized at a minimum by subject area and grade.” Second, all schools would post “any procedures for the documentation, review, or approval of the learning materials used for student instruction at the school, including by the principal, curriculum administrators, or other teachers.” These two components may not block all nonsense from entering the classroom, but they would make teachers think twice about what they teach.

Academic transparency legislation would complement efforts by N.C. lawmakers to address deficiencies in the public school curriculum. In 2011, the General Assembly approved the Founding Principles Act, mandating that high school students receive instruction about the fundamental principles of American government and civic life.

Health education, character education, and financial literacy are other content requirements outlined in statutes. The requirement to teach multiplication tables and cursive writing are two notable curriculum mandates passed into law.

N.C. public schools are a \$14-plus billion industry, yet taxpayers have little information about what happens inside the classroom. An academic transparency requirement is an indispensable way to protect that investment.

NEW RESEARCH PAPER

Funding Students Instead of Systems

The Economic Impacts of Statewide Education Savings Accounts in North Carolina



Corey A. DeAngelis is the director of school choice at Reason Foundation. He is also an adjunct scholar at Cato Institute.

Download the paper at: loc.ke/fsios



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COMMENTARY

To fight debt, schools need to stop pushing Parent PLUS loans



ANNA MARTINA

COLUMNIST

Student loan debt has received more attention lately, but one aspect has been left out of the debate: parents taking on loans for their children.

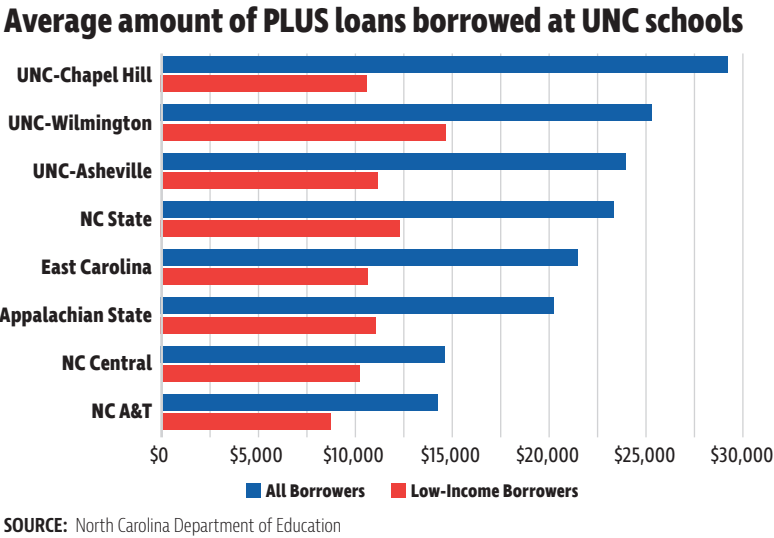
While undergraduate students generally can borrow only \$12,500 each year, Parent PLUS loans have no such limits. This is the first year that the U.S. Department of Education has shared data on the amount of debt that parents have acquired through their PLUS loans.

The data aren't pretty, either. More than 3.6 million Americans carry PLUS loan burdens.

Despite their higher interest rates, origination fees, and a growing default rate, parents are still taking out PLUS loans. Most take on this debt with the hopes that their children will have successful futures. However, many parents are stuck with debt, and their children don't earn a degree.

Rather than acting as a leg up for families that are struggling, Parent PLUS loans add yet another burden to the young and the old.

In 1989-90, only 4% of under-



grads had Parent PLUS loans paying for their education, according to the Department of Education. By 1999-2000, 12% did — and by 2011-12, 20% did. As the percentage of PLUS loan borrowers increased, so did the default rate.

Universities keep promoting PLUS loans as a prominent financial aid program, and many parents borrowing for their children do not know the difficulty linked to paying off those loans.

For example, N.C. A&T State University advertises the PLUS loan as “a low-interest loan for parents of eligible dependent undergraduate students.” The PLUS loan, however, is nearly double the interest rate of federal loans for undergraduate

borrowers.

Only at college and university financial aid offices are loans advertised as aid rather than a financing option. Colleges might offer the PLUS loan program as part of their financial aid packages, yet these loans don't lower the cost of attendance.

In North Carolina, some schools rely on PLUS loans more than others. North Carolina's public colleges have limited tuition increases for in-state students and capped fee increases at 3%. Tuition is also fixed for four years, so students don't have to worry about an ever-higher tuition bill. Even though UNC schools are responsible for less PLUS loan debt than the na-

tional average, parents still take on large amounts of debt.

While low-income students were borrowing less in Parent PLUS loans on average, it's important to remember that loan defaults are more common for borrowers with small debts. Less debt isn't always the easiest to repay.

Among UNC schools, the highest median debt for PLUS loans is at UNC-Chapel Hill: \$29,234. Chapel Hill has the highest cost of attendance among UNC schools, but lower-income families borrow less in PLUS loans than at other UNC institutions.

Chapel Hill and UNC-Wilmington have the highest graduation rates in the UNC System; PLUS loans may be less risky at those schools. Others, such as UNC-Asheville, however, have lower graduation rates and post-graduate salaries that are less impressive.

PLUS loans are especially popular at historically black colleges and universities. With black families less wealthy on average, and HBCUs educating more Pell grant recipients on average, it's no surprise. PLUS loans help students attend college who may otherwise be unable to afford it, but they are also more likely to get stuck with debt.

In 2011, when the federal government implemented more strict guidelines for Parent PLUS loan

approvals, HBCUs, including North Carolina's HBCUs, fought back. This was due to the new guidelines' disproportionate impact that caused nearly 30,000 HBCU students to be denied loans. Once again, schools showed that they were more concerned with their revenue than setting up students and their families for financial success.

The UNC Board of Governors doesn't have the authority to limit how much students can borrow, but it can make more of an effort to educate students about the riskiness of debt. The board also could provide more information about student outcomes and the problems with indebtedness that often accompany Parent PLUS loans.

Students and parents need to take the college process seriously by knowing the cost of college and potential debt. For decades, the federal government has offered easy-to-obtain loans to attend college, but those loans don't always improve life for students. More education is often promoted to move up in the world, but too many examples of indebted families show that it's not a risk-free plan.

Anna Martina is a native North Carolinian and N.C. State alumna, where she studied political science and social work. She is now the John Blundell Fellow at the John William Pope Foundation.

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THE JAMES G. MARTIN CENTER FOR ACADEMIC RENEWAL

COMMENTARY

Expanding school choice and funding students, not systems



BECKI GRAY

SENIOR VICE PRESIDENT
JOHN LOCKE FOUNDATION

The General Assembly continues its work to address the many challenges facing North Carolina. In addition to federal COVID relief funding allocation and a clumsy roll-out of the vaccine, businesses continue to struggle and people are still out of work. But it's the effects on education that have grabbed most of the attention over the past few weeks and demand immediate attention.

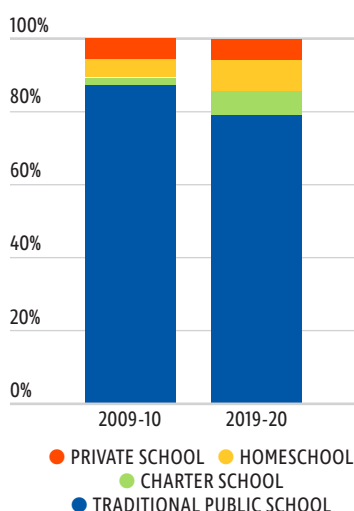
Many students have been out of the classroom for a year now. We know there has been significant learning loss and that our most vulnerable students will be hit the hardest.

We know that 58% of our state budget is spent on education, and billions more in federal COVID funds have been spent on short-term needs created by the pandemic. One of the biggest challenges our state faces is how to help our kids and how to spend education dollars better.

Over the past 10 years, N.C. lawmakers have opened more options for kids and families to find the educational opportunity that works

K-12 Student Enrollment in North Carolina

Even with several school choice options, 79% of students in the state chose a traditional public school for the 2019-20 school year.



SOURCE: NC DPI, NC DOA

best for them. In addition to traditional public schools, parents can also choose public charter schools, low-income families can attend a private school of their choice with an opportunity scholarship, and parents with a special-needs child can use an education savings account to pay for the best options for their child. Lawmakers have wisely kept restrictions at a minimum to allow for robust homeschool communities.

Even with several school choice



The complicated, convoluted funding formula that education bureaucrats have relied on for years needs to be dismantled and put back together with one goal — how can every dollar be spent to get the best result for the kids.

options, 79% of students in the state chose a traditional public school for the 2019-20 school year. Lawmakers must ensure that traditional public schools remain as strong as possible. Since 2009-10, the percentages of parents choosing a traditional public school has declined from 87% to 79%. Those that choose public charters have increased from 2.3% in 2009-10 to 6.5% in 2019-20; those choosing homeschooling increased from 4.9% to 8.4%; private school enrollment remained the same at 5.8% over the 10-year period. Parents like choice, and students thrive under personalized opportunities.

Recovery from COVID-19 and

learning loss from months out of the classroom will drive decisions about education this session. While most traditional public schools have been closed for in-person instruction since March 2020, private schools and many charter schools have been open, safely, with little to no danger or disruption to in-person instruction.

Reports from school districts are starting to come in. We're seeing 50% and more of students failing at least one class and increased mental health problems. Some kids are doing better than others, but most aren't doing well.

We've learned a couple of things through COVID. Students learn differently, even students in the same family. If we're going to meet the needs of these students effectively and quickly to mitigate the damage that they've incurred, we must meet them where they are and offer options that best meet their needs, whether that's through a traditional public school, a charter school, a private school, or homeschooling. The days of cookie-cutter, one-size-fits-all education for everyone are over. School choice is the only way to ensure that every student has the opportunity to receive an education that best meets their needs.

Parents know what's best for their kids. When the schools shut down last March, every parent with a school-aged child became a teacher. They saw firsthand the

ways their children succeeded and where they struggled. Months of computer-screen learning have empowered parents to insist on better options for their families, and they don't intend to look back.

Funding systems instead of kids hasn't worked even before the shutdowns. The complicated, convoluted funding formula that education bureaucrats have relied on for years needs to be dismantled and put back together with one goal — how can every dollar be spent to get the best result for the kids. There are barely any empirical studies to support the notion that more money spent results in better educational outcomes. In other words, it's not how much is spent, it's how it's spent. Instead of funding massive systems, close to \$10 billion for K-12, a better plan would be to attach that money to the student, on average \$9,865 per pupil. Offer open enrollment for schools statewide coupled with student-centered funding and allowing parents to find and fund the education opportunity that works best for their child.

Every cloud has a silver lining. Expanding school choice and funding kids instead of systems may be the silver lining for thousands who have been under the cloud of COVID-19 school closings for a year. Let's do everything we can to make schools work for kids. Expanding school choice and directing the money to the student are good starting points.



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COMMENTARY

Newby's first opinion as chief justice a reminder of legislative power



MITCH KOKAI
SENIOR POLITICAL ANALYST
JOHN LOCKE FOUNDATION

In his first written opinion since taking the top job in N.C. government's judicial branch, Paul Newby went out of his way to emphasize the power of the legislative branch.

The Feb. 5 opinion could offer a valuable clue for political observers. It could signal the new state Supreme Court chief justice's likely approach toward future clashes involving legislators, the governor, and judges.

The case that prompted Newby's writing has an interesting history.

In 2012 a political group tied to the State Employees Association of North Carolina aired a television ad against Dan Forest, the Republican candidate for lieutenant governor. The ad ran afoul of disclosure requirements tied to a state law called "Stand By Your Ad."

Forest won the election. State lawmakers later repealed "Stand By Your Ad." But neither of those factors blocked the lieutenant governor from taking the state employees group to court.

The "Stand By Your Ad" law had given political candidates like Forest the right to sue over an offending ad. If successful, the candidate could collect damages equal to the amount of money spent airing the ad.

In what turned out to be a slow-moving case, a trial court threw out Forest's suit in 2017, three months after his re-election to a second term as lieutenant governor. But Forest pressed the matter. In June 2018, a split Appeals Court panel ruled in his favor.



STAND BY YOUR AD. The "Stand By Your Ad" law had given political candidates like Dan Forest the right to sue over an offending ad. Chief Justice Paul Newby concurred with Democrats that Forest could proceed with his case.

The 2-1 appellate decision guaranteed that the case would head to the N.C. Supreme Court. Justices would address the question of whether Forest had legal standing to proceed with his suit. In December 2018, the high court agreed to take up other issues, including whether the now-repealed "Stand By Your Ad" law was constitutional.

Nearly another full year passed before the Supreme Court heard arguments in the case in November 2019. After another 15 months, the court rendered its decision.

Four justices — all Democrats — agreed that Forest could move forward with his complaint. He had legal standing to proceed. That's despite the fact that Forest has now left state government after two full terms as lieutenant governor and an unsuccessful bid last fall for the governor's job.

Over 84 pages, Justice Robin Hudson's majority opinion detailed

differences between state and federal court rules regarding standing. In a footnote at the end of that opinion, Hudson mentioned that the court's majority declined to address whether "Stand By Your Ad" was constitutional.

Newby took a different approach.

In a seven-page concurring opinion, the chief justice supported only the end result of his Democratic colleagues' work. Newby agreed with them that Forest could proceed with the case.

But the chief justice set out a different rationale. "A system of fair elections is foundational to self-government," he wrote. "Our state constitution acknowledges this principle and allows the General Assembly broad authority to enact laws to protect the integrity of elections and thus encourage public trust and confidence in the election process."

Such was the motivation when a General Assembly run by Democrats enacted "Stand By Your Ad" in 1999. "Part of that statute allowed a candidate affected by the illegal ad to enforce the regulations by bringing suit and established statutory damages he or she could seek," Newby wrote. "This provision is one of many where our General Assembly has provided for such private enforcement."

Forest followed the law in pursuing his case, in Newby's estimation.

"There is no dispute that plaintiff's complaint precisely tracks the requirements of the statute," the chief justice wrote. "The only remaining question, then, is whether [a subsection of the law] is enforceable as written; in other words, is the statute constitutional? It is. Here the General Assembly used its longstanding constitutional authority to create causes of action like this one."

Newby could have stopped writing at that point. He had made his argument supporting Forest's suit.

But the opinion continued. Newby touted the merits of legislators enabling a type of lawsuit dubbed a "private attorney general action."

"Private attorney general actions allow nongovernmental actors to enforce laws," the chief justice explained. "These actions are integral to the well-being of this State's citizens. They are often used when the harm is to the public generally and is difficult to quantify. Such a statute by its own accord recognizes that an injury has occurred and allows a specified party to sue for recovery."

The solo opinion concluded with a clear restatement of legislative authority.

"Private attorney general actions with statutory damages serve to vindicate the rights of an injured public when harm is hard to quantify," Newby wrote. "The General Assembly, within its constitutional authority, provided for such a cause of action and such damages in this case. Plaintiff has the right to sue under this statute, and neither the North Carolina Constitution nor this Court's precedent limit courts from hearing the case."

Neither of the Supreme Court's newest justices — Republicans Tamara Barringer and Phil Berger Jr. — took part in the Forest case. It's unclear whether either would sign on to Newby's legal reasoning.

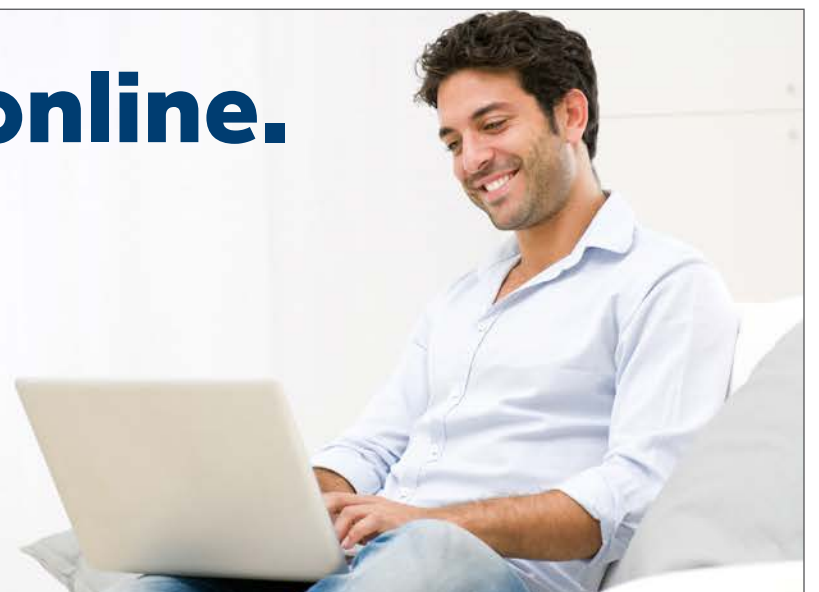
But even though he acted alone in this instance, Newby went out of his way to affirm a basic principle: The General Assembly maintains "constitutional authority" to write the state's laws. Courts must keep that fact in mind as they render decisions involving those laws.

The Supreme Court is likely to see the principle tested again in the weeks and months ahead.

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COMMENTARY

North Carolina needs an energy plan that works



DONALD BRYSON
PRESIDENT
JOHN LOCKE FOUNDATION

In his influential 2002 book *The Hydrogen Economy*, Jeremy Rifkin writes, “All of life requires energy and sufficient power to maintain the rate of flow.” This energy requirement is true of animals, plants, ecosystems, and economies. A sufficient and reliable power supply is essential to economic productivity and is partially responsible for the explosion in human flourishing that we have experienced in the past 150 years.

Unfortunately, many of our elected leaders are not tied to this essential reality. Case in point, President Joe Biden has officially rejoined the United States to the Paris Climate Agreement, which will be a disaster for the national economy.

The compact from which President Donald Trump rightly withdrew the United States in 2017, imposed a goal of an almost 30% reduction in U.S. carbon emissions

by 2025 — an unrealistic benchmark that threatens to strangle our COVID-racked economy.

The Paris deal is a far-reaching agreement developed in 2015 requiring that developed nations slash their fossil fuel use, tighten greenhouse gas emission targets every five years, and become “carbon-neutral” within a few decades.

N.C. Gov. Roy Cooper is set to be a cheerleader of this policy move. In 2017, Cooper signed an open letter to the international community declaring that our state was “still in” concerning the Paris climate agreement.

By signing the letter, Cooper joined the U.S. Climate Alliance — a group of 25 state and territorial governors who still wanted to adhere to the Paris agreement, even after President Trump removed the United States from the deal.

Cooper has written “North Carolina knows that clean air and energy innovation are good for our economy and health.” Unfortunately, the Paris Climate Agreement achieves neither.

According to scientists supporting the climate deal, even if the United States and all other nations that took part in the agreement meet their obligations, increases in global temperatures will vary little from the anticipated increases if



If our economy's life is dependent on energy, then our current course of the Biden and Cooper administrations will be a death blow to untold numbers of jobs.

the deal were not in place.

While the agreement's positive environmental impact is nearly nonexistent, the negative economic consequences will be very real. A 2016 report from the Heritage Foundation found that the United States adhering to the Paris agreement would result in an overall loss of nearly 400,000 jobs, half of which would be manufacturing jobs.

North Carolina's economy would be hit especially hard because the state is heavily reliant on manufacturing. The manufacturing sector accounts for 10.36% of North Carolina's work force and 18.31% of its economic output.

The Heritage report also found that the Paris agreement would lead to an average total income loss of more than \$20,000 for a family

of four nationally and an aggregate gross domestic product loss of more than \$2.5 trillion.

Re-entering the Paris agreement is not a recipe for national economic recovery. Adhering to and exceeding the Paris Protocols, as called for in Cooper's Clean Energy Plan, is a recipe for economic stagnation in the Old North State.

In his Executive Order No. 80, Cooper ordered that the Department of Environmental Quality create a “Clean Energy Plan” and directed that that plan reduce statewide greenhouse gas emissions to 40% below 2005 levels.

DEQ's plan, published in October 2019, takes a particularly aggressive aim at the electrical power sector, which DEQ aims to decarbonize by 2050.

Put another, more realistic way, the Cooper administration's Clean Energy Plan seeks to fully replace 44.65% of North Carolina's electrical energy production with a finite list of renewable energy sources.

Notice that the goal is not necessarily “clean energy” production in the “Clean Energy Plan.” Instead the CEP seeks to decarbonize and use renewable sources. Those are not necessarily the same goals.

That is quite a shame considering there are two clean energy sources that are dispatchable and

marketable now — nuclear and hydroelectric.

Instead, the Cooper administration is doubling down on more expensive renewable energy sources with deep corporate pockets and an army of lobbyists on Jones Street — solar, offshore wind, and biogas (methane collected from landfills, swine operations, and other sources).

Of course, calls for increased investments in renewable energy always come with job creation claims; however, the data tell another tale.

While constructing renewable energy facilities does create temporary jobs, it has cost and will cost North Carolina net jobs in the long term.

A 2015 report by the N.C. Department of Environment and Natural Resources (now DEQ) stated: “At higher-rate impact levels, the job losses from higher total cost of electricity across the state may exceed the jobs gained through renewables development.”

If our economy's life is dependent on energy, then our current course of the Biden and Cooper administrations will be a death blow to untold numbers of jobs.

North Carolina deserves a real energy plan, not a path designed to pander to “green” special interests.

Arabella Advisors and North Carolina

continued from PAGE 2

its creation in 2005 from major foundations and mega-donors to left-wing activists, voter registration groups, litigation nonprofits, and think tanks.

These groups push an extreme agenda. It includes no parental choice in education, divisive identity-politics issues, gun control, government-controlled health care, climate alarmism, higher taxes, energy poverty, and more. They work to discredit right-of-center candidates and popular causes like school choice, affordable health care, and energy independence. They do it for one singular purpose: to get Democrats elected and secure key states for the professional left.

For nearly 15 years, Arabella's network operated in secret with almost no press scrutiny, until it was exposed by the Capital Research Center, a right-leaning watchdog group.

Last year that network expanded into the Tar Heel State,



Founded by former Clinton appointee Eric Kessler, Arabella Advisors thrives in the shadows as it funnels massive amounts of money.

opening its fifth office in Durham. Other locations include Chicago, San Francisco, New York, and D.C. The Raleigh-Durham office is set to grow into “one of the company's largest.” Make no mistake: This is an activist invasion from Washington to change North Carolina fundamentally from a battleground state to a Democratic stronghold like California or New York, forcing progressive policies on North Carolinians.

The Sixteen Thirty Fund, Arabella's in-house lobbying shop, has been active in North Carolina for years. In 2018 it ran a “pop-up” — a website front designed to look like a standalone activist

group — called North Carolinians for a Fair Economy. It savaged Rep. George Holding, R-2nd District, as weak on health care, even flying a plane with a banner that read, “Congressman Holding: Hands Off Our Health Care.”

As a pass-through, the Sixteen Thirty Fund moves money from Big Labor, left-wing foundations, and mega-donors such as George Soros and California's Tom Steyer.

It's already channeled millions of dollars to far-left activists waging war on common sense in North Carolina. In 2019, Sixteen Thirty gave \$1.75 million to Piedmont Rising, a Philadelphia-based group that launched a faux TV news site

complete with “breaking news.” It was designed to mislead N.C. voters into believing the group's reports attacking Republican Sen. Thom Tillis were actual journalism.

The campaign was so deceptive and misleading that Piedmont Rising advisory board member Chuck Tryon, a professor of media studies at Fayetteville State University, resigned, according to WRAL.

Other Sixteen Thirty Fund grant recipients include Advance North Carolina, a voter registration group that targets Democratic-leaning constituencies; Make N.C. First, which spent roughly \$1 million successfully disrupting the 2016 re-election of state Supreme Court Justice Bob Edmunds; North Carolina Citizens for Protecting Our Schools, which lobbies for tax hikes; and Progress North Carolina Action, part of the advocacy coalition run by Blueprint NC, which coordinated 2020 efforts to paint the state permanently blue.

Right now, Arabella Advisors and its N.C. allies are hiring for multiple positions — everything from training local election boards to business analysts.

This is just the start of a top-down campaign to flip North Carolina to Democrats. To the professional Left — which sees its long, inevitable march to victory in

terms of generations, not elections — Republican success in 2020 was a fluke. They won't make the same mistake again, if conservatives give them the chance.

Coming from Colorado, I've seen firsthand as the Left and its funders invest tens of millions of dollars on take-no-prisoners messaging, misleading campaigns, and multiyear strategies with a singular goal of winning and flipping a state. Their consultants admit it. Take them at their word. Arabella Advisors and its donors thrive in the shadows as they funnel massive amounts of money to flip North Carolina blue.

Don't be fooled by “pop-ups” with slick websites and local-sounding names. Don't be silenced by their bullying. Since right-leaning groups are unlikely to outraise the left in dollars, the best chance to expose this well-funded, well-coordinated leftist empire is to call it what it is: a network of activists funded by wealthy elites from outside the state and controlled by powerful Washington consultants.

N.C. voters can prove that 2020 wasn't a fluke, and David can slay Goliath.

Hayden Ludwig of the Capital Research Center contributed to this column.

COMMENTARY BY JOHN HOOD



Legislators should reclaim their power

continued from PAGE 21

to hash out solutions to complicated problems. Crafting and passing bills is a messy process. That's a feature, not a bug. It's a process that subjects competing views to intense scrutiny. And it requires some give and take to get to a final version that can pass both chambers.

You never get entirely or precisely what you want from legislation. That's also a feature, not a bug! No one expects dozens or hundreds of legislators, from different parties, with varying priorities and interests, to "settle" an issue once and for all.

But when a single executive or a small group of judges became the focus of political debate, the stakes go up. The debate also becomes too personalized, too much about supporting or opposing individuals instead of ideas.

While Congress has let itself become enfeebled — preferring fan service over the hard work of legislating — the N.C. General Assembly has shown itself willing to defend its legislative prerogatives. During the course of the COVID crisis, when lawmakers saw Cooper exercise power far beyond what was intended by the Emergency Management Act, they enacted bills to reopen specific industries, such as bars, and to clarify that the governor must obtain support by a majority of the Council of State to shut down indefinitely vast swaths of economic and social activity. Now state lawmakers are talking about similar legislation to get North Carolina's schools reopened.

Cooper vetoed those past bills, of course. He'll likely veto the next one, too. He clearly believes he is making the right decisions in balancing the health risks of COVID-19 with adverse consequences for workers, businesses, families, and schoolchildren.

But the issue isn't going away. Every time the legislature puts him on record claiming virtually unlimited power, it becomes more likely that the Emergency Management Act will be amended in the future, probably when the COVID crisis is over. That will help restore needed checks and balances in N.C. government.

Congress ought to consider actually legislating for a change.

Picking winners is for losers

When it comes to giving out business incentives, you won't find North Carolina at the top of the list. Don't worry — that's actually good news.

Incentives can be targeted tax breaks, loans, marketing subsidies, or direct grants. Politicians use them to try to get companies either to relocate or expand within their jurisdictions. Businesses accept them, naturally, and in a few cases incentives may even be decisive.

But, generally, economic incentives are a failed policy, based on the fundamentally flawed premise that politicians are capable of predicting which companies or industries are worth investing in.

Although it may get me thrown out of the cynical-columnist club to say this, politicians aren't fools. Incentives don't fail because most lawmakers or bureaucrats are dumb, or suckers, or corrupt. It's just impossible for central planners to possess enough information, in real time, to make sensible investment decisions with taxpayer money.

Are they spending taxpayer money, though? Some defenders of incentives argue that allowing select companies to keep their own money, through selective



FAILED POLICY. Politicians use business incentives to try to get companies either to relocate or expand within their jurisdictions.

tax breaks or rebates, is not really a subsidy.

I understand why some think that, but basic principles of public finance tell us otherwise. Taxing the income, sales, or property of a business is a means of paying for government services associated with that business activity. It pays for police, courts, and other means of protecting property and adjudicating disputes. It pays to train current workers and educate future ones. It helps to pay for local streets and other infrastructure.

If a company builds or expands in a jurisdiction and then,

because of incentives, doesn't produce as much net revenue as it otherwise would, the expenditures don't go away.

The owners, employees, vendors, and consumers of that company still consume public services. Incentives have the effect of compelling others to pick up the tab.

So far, my argument has been all theory. I don't mind admitting that — because if we focus instead on empirical data, on actual experience, the theoretical case against incentives gets stronger, not weaker.

Scholars have been research-

ing these policies for decades. Most of their studies find that states and localities don't improve their economic outcomes by using incentives. They *don't* boost average incomes. They *don't* boost job creation. Some people gain. Others lose. In many cases, the losers outweigh the winners.

I wish the entire targeted incentives game would disappear. But I'm enough of a realist to recognize that's not going to happen. Actually, one recent finding in the research is that incentive grants tend to spike just as incumbent governors are running for re-election. Good luck convincing politicians not to wield a tool that, in the end, is more about creating job announcements than creating jobs.

But I do think North Carolina leaders deserve credit for their comparatively restrained approach. States with lower overall tax rates tend to make less use of targeted incentives. Those states also happen to grow faster than the desperate high-tax states throwing huge incentive grants around.

That's also a common finding in recent social science research — and I'm a big fan of science, after all.

SPENDING AND TAXATION

Sales tax hike is unneeded

BY THE NUMBERS

\$470 million

Sales tax revenue that North Carolina collects on tires, auto parts, repairs, and related businesses.

WHEN NORTH CAROLINA Democrats are in power, their go-to source of new revenue is to raise sales taxes.

Oh, I realize you've probably read or heard something different during recent election cycles. Left-wing politicians, activists, and editorialists have claimed that the GOP-controlled General Assembly increased North Carolina's sales tax burden by expanding the scope of the sales tax to include some previously untaxed services.

It was a grossly misleading claim. Republican tax legislation did, indeed, expand the sales tax base a bit, just as Democratic politicians had long advocated. But the GOP legislature also made sure the overall sales tax rate went down, by fighting off Democratic attempts to extend a previously enacted sales tax hike.

Due to GOP tax policy over the past decade, in other words, North Carolina's state sales tax burden went down, not up, by

hundreds of millions of dollars a year. Alas, some of this effect was offset by increases in county sales taxes. Who is responsible for those hikes? Democrats, overwhelmingly. Democratic politicians authorized those sales tax referendums, and Democratic voters were most likely to favor them.

Sure, Democrats will raise income taxes, too, if they can. That's happened several times during past recessions. But their sales tax hikes are usually larger and more lasting.

Which brings me to Gov. Roy Cooper. He's raised sales taxes in the past, as a state legislator. Now, a huge sales tax increase is a central recommendation of

a new report from the NC FIRST Commission, created by Cooper's Department of Transportation.

I'm not going to denigrate the efforts of the NC FIRST Commission. Its report is thoughtful, thorough, and full of important insights. The commissioners are absolutely right that North Carolina's system for financing highway construction and maintenance is outdated and inadequate.

Because of increases in fuel efficiency, North Carolinians are paying less and less gas tax per mile they drive. Moreover, as electric cars become an increasing share of the vehicle fleet traversing our roads, the link between highway use and highway revenue will erode even faster.

Taxing motor fuels used to be a reasonable proxy for charging by the mile. Not so much anymore. The NC FIRST Commission suggests that directly charging by mile traveled is the best long-term replacement. That's true. But the political will

isn't there, yet.

Instead, among other things, the commission proposes raising North Carolina's sales tax and using half the proceeds to reduce the gas tax. The net tax hike would come to as much as \$6.3 billion over the next 10 years.

I don't think Republican legislators will go along with this. They shouldn't. But there's a better idea in the commission's report: redirecting some current sales tax revenue.

North Carolina collects about \$470 million a year in sales tax on tires, auto parts, repairs, and related businesses. These goods and services exist solely to help motorists drive roads. Their sales even vary somewhat by miles traveled. The General Assembly ought to consider transferring some of that annual revenue to highway construction and maintenance.

Let's spend our existing revenue more prudently. Hiking sales taxes isn't the answer. It never was.

COMMENTARY

Stop talking about priorities, governor, and open businesses, schools



JOHN TRUMP
MANAGING EDITOR

Gov. Roy Cooper may not even realize it, but he's fallen into a weird pattern of announcing priorities.

Cooper issues executive orders — using broad powers granted him under the auspices of the N.C. Emergency Management Act — like a firefighter tossing out candy at a Christmas parade. That power, regardless of protests and lawsuits, continues unchecked.

Along the way, Cooper — again and again — uses a form of the word “priority.”

First, Cooper talked about keeping us safe and flattening the curve, a move toward keeping hospitals from becoming overwhelmed.

Hospitals, as they relate to the pandemic, are doing well. On Jan. 16, the state says, fewer than 2,000 people were hospitalized with COVID-19, down more than 1,000 in a month. So, the idea of flattening the curve, from what I can tell, is now a bit old-fashioned.

Let's try something else.

Later, Cooper said his top priority was getting kids back to school. It's going on a year since my boys, high school seniors, got anywhere near a Raleigh Charter High School



IN TROUBLE. The only thing consistent about Cooper's rhetoric is the laughable inconsistency. Businesses are in trouble. Workers are in trouble. Students are in trouble. We, as a state, are in trouble.

classroom, despite the best efforts of state Republicans.

This was clear: Cooper, who is inherently risk-averse, wouldn't push the state toward any form of normality until we had a vaccine. So, that happened.

Getting people vaccinated immediately became the new top priority. The rollout and distribution crawled painfully along, and the question became deciding who would get the golden ticket, and when.

Health care workers and the elderly go first, sure. But then, should we prioritize the vulnerable and infirm? People of color or first responders? Front-line workers?

Cooper recently sent educators to the front of the line. We must open our schools, he told us. It's a priority. The biggest one.

Round and round we go.

The only thing consistent about Cooper's rhetoric is the laughable inconsistency, a maddening game of multiple choice, delays, and obfuscations until he confers with his political base. The questions then change, as do the answers.

Cooper's so-called priorities are nothing more than excuses. For keeping businesses closed, for keeping children out of the classroom.

The General Assembly passed a bill to re-open schools for

in-person learning. Lawmakers introduced the measure about the same time Cooper proclaimed his support for re-opening schools. Not for the bill — he has concerns about that, and it was unclear at press time whether he would sign it — but the general idea of getting kids safely back in the classroom.

Ideas, though, aren't mandates, and groups such as teachers' unions are well aware of the fact. So is Cooper.

The governor is adept at looking busy while accomplishing nothing, deflecting blame with both eyes on Democrats and a leftist agenda, i.e., that of the N.C. Association of Educators and the like.

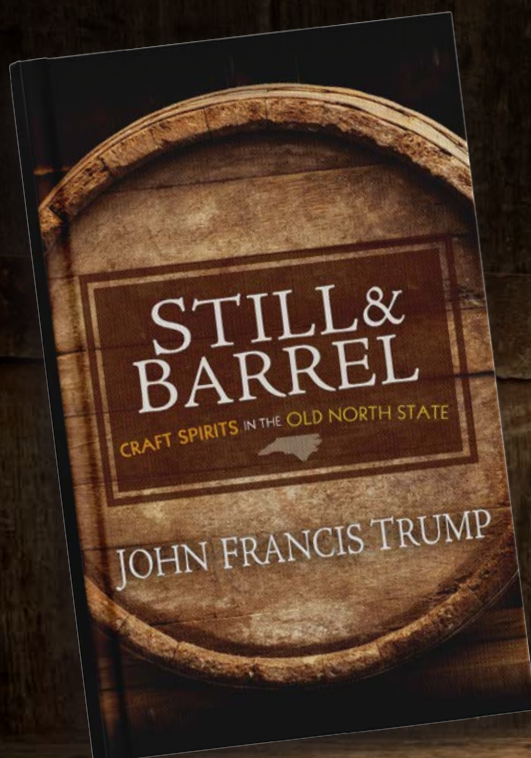
Cooper's indecision is having major consequences on small businesses, restaurants, and bars, which have been closed since March.

My family and I visited Wilmington on a recent rain-soaked weekend. It's one of my favorite places in North Carolina, but we viewed most of it from the windows of museums and restaurants, where we waited for a seat at a limited number of tables.

Cooper has since relaxed restrictions. Remember, too though, that because of a recent 10 p.m. to 5 a.m. curfew, no alcohol could be sold after 9 p.m., last call being around 8:30. A usually booming nightlife along Front Street went silent. Breweries, because of the rain and limited seating, closed early and canceled scheduled food trucks. The plethora of signs advertising empty buildings tell a sad tale, the ending of which only darkens as Cooper's restrictions linger.

Lawmakers, as of this writing, were working on a couple of bills that would loosen state licensing restrictions on businesses that serve alcohol — waiving certain permit fees and extending payment deadlines — to at least try to stop the bleeding. Important steps to be sure, but businesses are in trouble. Workers are in trouble. Students are in trouble. We, as a state, are in trouble.

Enough with talk of priorities. We're drowning here, governor. Send us a lifeboat, as opposed to making a “priority” of first deciding what to call it.



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COMMENTARY

How will a higher minimum wage affect workers?



MICHAEL WALDEN
COLUMNIST

A proposal in Washington, D.C., would more than double the minimum wage to \$15 an hour. The increase would be phased in over several years. Supporters say the increase is far overdue, as the last time the minimum wage was raised occurred in 2009. Plus advocates ask how anyone paid the current minimum wage of \$7.25 an hour can survive with today's prices.

Hence, it can be easy to be behind raising the minimum wage if it means low-income workers will earn more. But will the effects stop here? Could there be some adverse consequences of mandating a higher minimum wage that could come back to hurt the very individuals the higher wage is designed to help?

This is a question that economists have long examined for the more than 80 years the minimum wage has been in existence. There are several worries about a higher



EFFECTS. Minimum-wage workers who stay employed would realize a boost to their income but, collectively, employers will reduce the number of jobs.

minimum wage. Will employers reduce the number of minimum-wage workers employed? Or if the workers are kept, will employers cut their hours worked? Maybe over time, employers will hire only higher-skilled workers who — the employers judge — justify the higher pay. Also, will a higher minimum wage encourage employers to move away from using people to perform tasks to using technology and machines?

Let me relate a personal story to illustrate some of these issues. When I turned 16, I took a job at a fast-food restaurant and was paid the prevailing minimum wage of \$1 an hour. The hours didn't conflict with my high school education, and I was proud to be earning my own money.

After breaking me in on the fryer and then a stint on the grill, the owner-manager moved me to the counter for taking orders after he

discovered I was good at quickly adding numbers. In those days, the cash register did not add prices. Counter workers did the additions on customers' bags, and I rarely made a mistake.

After about a year a friend tipped me off to a job in a furniture warehouse. Initially, I wasn't interested because I'd be working mostly alone, and the hours weren't as good for my academic schedule. But then I heard the pay was \$1.65 an hour, 40% more than the \$1.15 I was earning after a couple of raises. I had an interview and was offered the job.

Still, I didn't want to leave the restaurant. I went to the owner-manager and told him about my offer. I hoped he would increase my wage to maybe \$1.50 an hour, which would be enough for me to stay.

The owner-manager didn't budge. He told me if he paid me \$1.50 an hour, word would eventually get out to the other employees and he'd have to give them a big raise, too. He said he just couldn't do that. He was already operating on a small margin of 3% — meaning revenues exceeded costs by only 3% — and raising everyone's pay would wipe that out. Alternatively, he could raise the prices

of his burgers, fries, and drinks to cover the raises, but that would only drive customers to other restaurants with lower costs.

Of course, a higher minimum wage would apply to all fast-food restaurants, so presumably losing customers to similar competitors wouldn't be an issue. Still, most of the concerns worrying the owner-manager over 50 years ago persist today.

As you might expect, economists have done hundreds of studies on the effects of a higher minimum wage. Not all — but a majority — show good and bad impacts. The good is minimum-wage workers who stay employed see a boost in income. The bad is that, collectively, employers will reduce the number of minimum-wage jobs or reduce their hours. This is especially the case for younger workers and those with a high school or less education.

Policymakers should remember the concerns of my owner-manager decades ago and carefully consider the pluses and minuses of raising the minimum wage.

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

Leadership focused on real problems, real solutions



ANDY TAYLOR
COLUMNIST

THIS IS A POLITICAL age of theater and the cult of personality. Two successive presidents, Barack Obama and Donald Trump, have beguiled their audiences. Obama's history-making tenure drew international adulation — he even won the Nobel Peace Prize during his first year in office — and the first couple dazzled Hollywood and big media names. Trump turned them off completely, but he reached out through a reputation built in real estate and reality TV, a bombastic personality, and Twitter. He had both his motley collection of supporters and sworn enemies in a trace, obsessed with his every move.

All seems quieter now. This is particularly true in North Carolina, where the two executives we live under, Gov. Roy Cooper and the new president Joe Biden, represent the antithesis of this kind of poli-

tics. Whereas Obama and Trump shot to the top in their short political careers, Biden and Cooper spent decades ascending the ladder. Biden was first elected to the Senate in 1972 as a 29-year-old — he only reached the constitutionally mandated age to serve in the body six weeks before swearing in. He was a senator for 36 years, heading first the Judiciary Committee and then Foreign Relations for much of that time. He was, of course, vice president for eight years. His 2020 campaign was his third attempt to capture the White House; the first came 32 years earlier.

Cooper's political career began in 1986 with his election to the N.C. House. Like Biden, he climbed slowly but relentlessly. Two terms in the General Assembly's lower chamber were followed by 10 years in the Senate and finally a 16-year stint as attorney general. He left that office for the governorship after winning in 2016.

Biden and Cooper are naturally pragmatic and cautious, traits that reflect their patience and have undoubtedly contributed to their success. They prefer change to be incremental. Their winning 2020 campaigns emphasized no "malarkey" leadership styles and a capac-

ity to, in Biden's words, "manage the hell" out of the coronavirus crisis. Both present themselves as listeners and observers, influenced profoundly by experts. Cooper has not been shy to restrict people's behavior during the pandemic but issued stay-at-home orders later than did most Democratic colleagues around the country. He has since moved piecemeal — North Carolina has become a laggard on the reversal of curfews and limits on nonessential business operations and large gatherings. His recent call merely "recommending" schools resume in-person learning was a typical hedge.

Both like working behind the scenes rather than in front of cameras. Biden's relationship with Senate Republican leader Mitch McConnell was crucial to inter-branch cooperation on fiscal policy in the Obama years. Few but the most connected Washington insiders knew much about it. Cooper's vetoes belie a surprisingly cordial relationship between his administration and the legislative Republican leadership's staff. There is enough trust to make agreements possible, as we saw recently on COVID relief.

As if to demonstrate Cooper's

dislike of the spotlight, his two inaugurations were low-key affairs. The first was scaled down because of a winter storm, the second curtailed by COVID. Even when forced into the public spotlight, the governor appears uncomfortable. His press conferences during the pandemic resemble a dirge, thankfully punctuated by the appearance of other officials like Dr. Mandy Cohen, secretary of health and human services. The approach might seem appropriate and substantive, but it does not always inspire confidence. The famous picture of Cooper looking sheepishly at the camera maskless and with a fist half-raised during a racial justice protest this past summer was characteristic. This is a man uncomfortable with the performative aspects of politics.

Both Biden and Cooper seem out of step with the new Democratic Party. They are both white, male and old. Biden beat a field full of female and minority candidates to secure his party's presidential nomination last year, but I suspect the Democrats will not have another presidential candidate quite like him for a very long time. Cooper won his nomination easily, but he sees where the party is going.

Just look at the handwringing when white state Sen. Jeff Jackson announced his entry into the 2022 U.S. Senate primary contest. Regardless of his talents, Jackson's decision was considered audacious for these woke times.

It may not compensate for the substance of their politics, but the Biden-Cooper style is what we need now. The most popular politicians are the angriest, most theatrical, and apparently victimized — Donald Trump, Bernie Sanders, Stacey Abrams, and Michelle Obama, for example.

But we need leadership focused on real problems and practical solutions. There are Republicans cut from this cloth, but as the recently announced retirements of U.S. senators like Rob Portman and Pat Toomey demonstrate, they are, like the Biden-Cooper types across the aisle, in decline. Edward-Isaac Dovere recently wrote a glowing piece on Cooper for *The Atlantic* suggesting he is a model for Democratic electoral success. Don't bet on it.

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

COMMENTARY

Government should limit its own power in these key areas



JORDAN ROBERTS

GOVERNMENT AFFAIRS ASSOCIATE
JOHN LOCKE FOUNDATION

The COVID-19 pandemic will not soon be gone, and its consequences will be with us for quite some time, perhaps forever. The pandemic resulted in illness, lost lives, lost jobs, closed businesses, and disruption of ordinary life. Another consequence of the pandemic is the unprecedented government overreach that has happened across the country. I hope that one positive outcome of the pandemic will be a reassessment of the power that the government can exercise over its people. N.C. lawmakers can reduce the government's role in some key areas that threaten the rights of the citizenry.

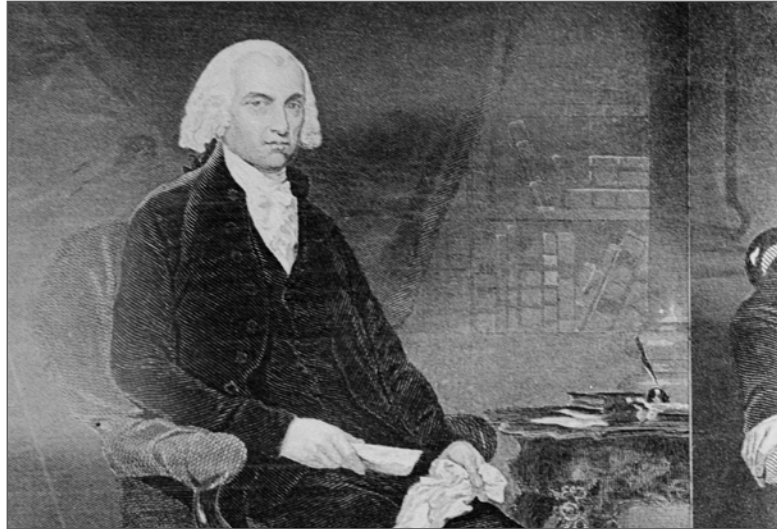
The first area that needs addressing is the emergency management powers delegated to the governor. The General Assembly needs to rein in the extent to which it has given the governor the ability to rule unilaterally without sufficient legislative oversight or checks on his or her power. In Federalist 51, James Madison wrote, "In framing a government which

is to be administered by men over men, the greatest difficulty lies in this: you must first enable government to control the governed; and in the next place oblige it to control itself." The latter difficulty in this quote is of relevance today regarding government action during the pandemic. North Carolina needs to reform the Emergency Management Act to close loopholes that can give the governor unchecked power to impose sweeping statewide mandates.

N.C. law gives the governor wide authority to act in the case of an emergency as the top executive of the state. Suppose the governor wants to go further than the enumerated powers laid out in this statute. In that case, he must get concurrence from the Council of State, a body of 10 executive officers elected by the voters of the entire state.

But during the pandemic, Gov. Roy Cooper claimed to have found a loophole that allowed him unilaterally to shut down businesses across the state without Council of State concurrence. No single individual should have the power to make unchecked decisions as the governor has done during this pandemic. Lawmakers should ensure any statewide mandates must get Council of State concurrence and review other troubling provisions in the statute.

Next, the state should protect and expand worker freedom.



MADISON: "In framing a government which is to be administered by men over men, the greatest difficulty lies in this: you must first enable government to control the governed; and in the next place oblige it to control itself."

There are two primary ways that lawmakers can achieve this. First, North Carolina's right-to-work law should be enshrined in the state constitution. Employees should not be coerced to join, or prohibited from joining, a labor union as a condition of employment. Freedom of association is key for a productive society, and the state should protect workers' choice of whether they want to join a union upon accepting a job.

Second, lawmakers need to reform North Carolina's occupational licensing laws. As our country recovers from the pandemic, we should ensure that any unneces-

sary barriers to work are repealed. Occupational licensing can present real hurdles for those trying to start a new business, start a new occupation, move into North Carolina to continue a trade, or enter the work force for the first time. Occupational licensing should be a regulation of last resort as the research shows burdensome licensing laws do little to protect public health and safety while unnecessarily raising costs for consumers and protecting incumbents at the expense of new market entrants.

Third, the government should protect citizens' rights to donate to nonprofit organizations with-

out fear of compulsory disclosure by the government. Lawmakers should pass legislation that clarifies under N.C. law that the state may not require disclosure of nonprofit organizations' donors except as required by court order or criminal investigation, or for contributions to political campaigns as required under state and federal laws.

First Amendment free-speech extends to charitable donations to nonprofit organizations. North Carolinians should not have to fear their personal information or nonprofit donations and personal information will be publicized.

There are many ways in which the government can check its power and protect residents from government overreach. Still, this column lays out four concrete reforms that N.C. lawmakers should consider this session.

As a matter of principle, lawmakers and the public should constantly review and refresh the social contract the public enters into with the governing bodies we choose to represent us, and the subsequent powers that can be exercised. The COVID-19 pandemic shows how easily government can overreach and infringe on citizen rights without proper safeguards in place. State leaders should limit some of the government's powers to revitalize the relationship between the citizens and their government.



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