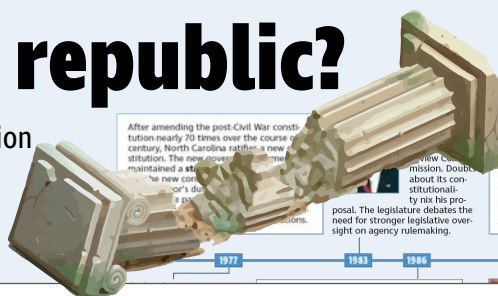


# A crumbling republic?

**TIMELINE:** The rise and fall of separation of powers in North Carolina.

**PAGE 12**



## Election 2020

Lawsuits, ballot challenges, statewide races, much more! Check updates daily at:

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# PAY ATTENTION!

## OUTCOME OF N.C. SUPREME COURT RACES COULD ALTER POLITICAL LANDSCAPE FOR YEARS



**KARI TRAVIS**  
ASSISTANT MANAGING EDITOR

The most important elections in North Carolina are the races for the N.C. Supreme Court.

So pay attention!

Judges are easily forgotten amid presidential campaigns and Washington antics. Media obsessions and arguments over COVID-19 add to the din. But in a year when so many freedoms are suffocated by Democratic Gov. Roy Cooper's arbitrary mandates, the only path to defend those freedoms is through the courts.

So far, that path has offered no relief to North Carolinians, who want only to open their businesses and exercise their freedoms.

That's because all state court battles end in the state's highest court, where Democrats hold a 6-1 majority. Those judges have shown — most recently in a bowl-

ing alley reopening lawsuit — that they're likely to side with Cooper.

But on Nov. 3, the power dynamics might shift. Three seats on the N.C. Supreme Court are in contention, and three Republicans are jostling with Democrats for a place on the bench. GOP candidates are a team, and they're running under one brand.

Conservatism.

Supreme Court Justice Paul Newby, the only remaining Republican on the court, is running for the court's top job against current seat holder — and Cooper appointee — Chief Justice Cheri Beasley. Court of Appeals Judge Phil Berger Jr., a Republican and the son of the N.C. Senate leader, is running against fellow Appeals Court Judge Lucy Inman for Newby's vacated seat. Former Republican state Sen. Tamara Barringer of Wake County is facing off against Justice Mark Davis, a Democrat appointed to the court by Cooper in 2019.

The outcome of judicial elections will determine the laws governing North Car-

olinians in the years ahead, says Jon Guze, director of legal studies at the John Locke Foundation.

"Voters need to remember that the North Carolina Supreme Court has become a superlegislature," Guze said. "As a result of judicial doctrines adopted in the second half of the 20th century, the court now has the power to uphold facially unconstitutional laws if a majority of the justices approve of them on policy grounds, to strike down facially constitutional laws if a majority of the justices disapprove of them on policy grounds, and to change the meaning of laws — and of the Constitution — in order to advance the majority's policy preferences."

Even a four-member majority on the seven-person Supreme Court wields more power than the General Assembly and the governor combined, Guze said.

The fate of Opportunity Scholarships, redistricting, and voter ID — to name a few issues — will be decided by those judges we elect Nov. 3.

continued PAGE 10

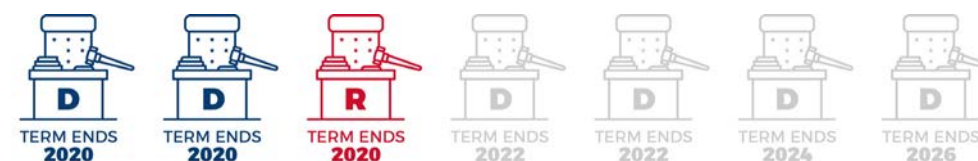


COURTESY PAUL NEWBY

**LONE CONSERVATIVE.** Justice Paul Newby is the only remaining Republican on the North Carolina Supreme Court. Democrats hold a 6-1 majority on the state's highest court, but in this year's election, Republicans could tilt the scales in their favor.

## Current Makeup of North Carolina Supreme Court

Three seats on the court are up for grabs Nov. 3



### Interview: Adam Griffin

Adam Griffin, constitutional law fellow at the Institute for Justice, discusses rulings regarding Wilmington's vacation rental restrictions.

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FROM THE PUBLISHER



## The confessions of a judiciary junkie

The 2016 presidential campaign turned me into a judiciary junkie. As Democrats force-fed the American public an unhealthy diet of identity politics, voters like me quietly became champions of the judicial branch. While we didn't know how Donald Trump would govern, we did know his judicial philosophy when he wisely released his list of potential Supreme Court nominees.

Four years later, Trump's policy positions aren't secret, and I agree with most of them. Yet I'm still focused on the judiciary. Although not quietly, and not just the U.S. Supreme Court, because in North Carolina we vote directly for our state Supreme Court justices.

The recent death of Justice Ruth Bader Ginsburg thrust the U.S. Supreme Court into the headlines. Already having two of his nominees confirmed to the Supreme Court, Trump will do his constitutional duty and nominate a replacement, as President Obama did in 2016 when Justice Antonin Scalia died. (The president had not announced his nominee as this column was finished.)

Democrats probably realize running on identity politics in 2016 was a political miscalculation. Now they're losing their collective



**6-1 PROGRESSIVE MAJORITY.**  
Despite losses at the federal level, Democrats have secured a 6-1 majority on the N.C. Supreme Court.

minds, threatening impeachment, court packing, burning down the country, blowing up the system, adding new states, eliminating the Electoral College — anything and everything to stop the president from doing his constitutional duty. None of this is new. Democrats want to hold our constitutional republic hostage because they failed to win crucial elections at critical times.

Despite losses at the federal level, Democrats have done well influencing the N.C. Supreme Court. Over a couple of election cycles, the left has secured a partisan 6-1 progressive Democrat majority.

continued PAGE 20

## COMMENTARY BY JOHN HOOD



## Cooper faces test on voter ID

I have repeatedly criticized Roy Cooper's troubling efforts to amass power in the governor's office at the expense of other elected state leaders, local governments, and private citizens.

What I have done too little of, however, is describe the extreme rationale for many of Cooper's decisions. The governor and his aides simply deny the current state legislature possesses the lawful authority to check his power in the first place.

Because its members were elected within House and Senate districts subsequently found to be illegal gerrymanders, the General Assembly is an "illegitimate

mate legislature," Cooper's attorneys argued in a brief they filed last year in favor of litigation to strike down two newly added provisions to the N.C. Constitution that cap the income-tax rate and institute a photo ID requirement for voting.

I certainly agree gerrymandering is abhorrent and violates basic principles of representative government. But to leap from challenging gerrymandered districts to questioning the very legitimacy of the elected General Assembly is to leap from high ground to quicksand.

North Carolina's legislative

continued PAGE 21



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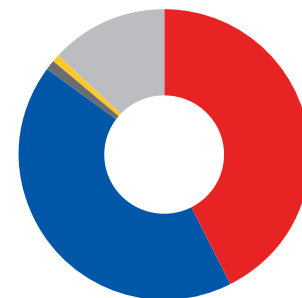


Harper Polling

## PUBLIC OPINION POLL

## North Carolina Judicial Elections

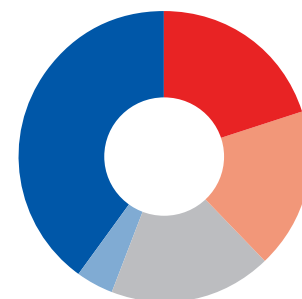
If the 2020 election for state Supreme Court were held today, would you vote for the Republican candidate, or for the Democratic candidate?



### By Party

REPUBLICAN CANDIDATE 43%  
DEMOCRATIC CANDIDATE 43%  
OTHER PARTY <1%  
NEITHER 1%  
UNDECIDED 13%

If the election for N.C. Supreme Court chief justice were held today, would you vote for Republican Paul Newby or for Democrat Cheri Beasley?



### By Candidate

DEFINITELY NEWBY 20%  
PROBABLY NEWBY 18%  
DEFINITELY BEASLEY 40%  
PROBABLY BEASLEY 4%  
UNDECIDED 18%

For a discussion of this poll see Donald Bryson's column on: **PAGE 20**

Harper Polling, on behalf of the Civitas Institute, surveyed 612 likely N.C. voters Sept. 17-20. The margin of error is plus or minus 3.96%. Due to rounding, the total percentages of responses may not equal 100%.

## Graduation rates continue to increase

**HIGH SCHOOL** graduation rates increased again this year, going from 86.5% in 2019 to 87.6% in 2020. The graduation rate for all subgroups exceeded 80% except for students with disabilities and those with limited English proficiency.

"Students need to know that there are many different career pathways they can pursue," State Superintendent Mark Johnson said, "but graduating from high school is the first step that all students must take for whatever path they choose."

COVID-19 could've helped boost the numbers. After schools closed

# 87.6%

High school graduation rate in North Carolina in 2020

for in-person instruction, the State Board of Education directed them to let high school seniors graduate if their grades were passing as of March 13. School districts also weren't allowed to require more than the minimum 22 credits typically needed to graduate.

By CJ Staff



## QUICK TAKES

### *Cooper gives districts a chance to reopen classrooms to K-5 students*

School districts can allow elementary-grade students to return to the classroom, Gov. Roy Cooper announced during a Sept. 17 news conference, but middle and high school students won't have the same opportunity.

The announcement — allowing local school districts to provide in-person instruction full time to younger students — came a day after Republican leaders urged the governor to offer that option at all levels statewide and let parents decide.

The move is a step in the right direction, Senate Leader Phil Berger, R-Rockingham, said in a news release, but the governor should have gone further with his decision.

"His new plan ignores the needs of low-income and exceptional students in middle and high schools for in-person instruction," Berger said.

On Sept. 16, Berger, along with Lt. Gov. Dan Forest and Catherine Truitt, the Republican candidate for state superintendent, called for schools to reopen completely. A handful of parents took part in the news conference to share their desperation with the remote instruction plans.

### Sept. 16

Senate leader Phil Berger, along with Lt. Gov. Dan Forest and Catherine Truitt, the Republican candidate for state superintendent, called for schools to fully reopen.

Cooper said his K-5 decision wasn't connected to the Republicans' news conference.

Over the summer, the state told school districts to create three reopening plans, from most to least restrictive. Plan A had the fewest restrictions, allowing in-person instruction with minimal social distancing of students and staff. Plan B required more stringent social distancing and fewer people in the school building. Under Plan C, schools could use only remote learning.

On July 14, Cooper announced school districts could either use Plan B or Plan C. No school district could offer Plan A, regardless of the COVID-19 metrics in the area.

### Moore calls out Dems for 'defund police'

**N.C. HOUSE** Speaker Tim Moore, R-Cleveland, says nearly 50 Democratic House lawmakers and candidates have backed a dangerous pledge to defund the police. House Minority Leader Darren Jackson, D-Wake, says that's a lie.

During a news conference Sept. 14, Moore attacked Democrats for signing a pledge to accomplish a list of policy goals by 2030 as outlined by the left-leaning advocacy group Future Now. Joining Moore's news conference were Rep. Carson Smith, R-Pender; Rep. John Faircloth, R-Guilford; and a handful of county sheriffs who shared Moore's concerns about what they considered a radical agenda.

Future Now's Pledge to Achieve America's Goals includes promises to provide affordable health care, boost education spending, and ensure equal opportunities for all. Dozens of N.C. House Democrats and Democratic candidates have signed the pledge since 2018.

While the pledge doesn't explicitly call for defunding the police, such a proposal can be found under the subsection for "Equal Opportunities For All" on the America's Goals website. Included is model legislation to create a commission



**CALLING OUT DEMS.** House Speaker Tim Moore, R-Cleveland, addresses a news conference, Sept. 14 at N.C. GOP headquarters in Raleigh.

to study taking money from police departments and giving those funds to other community programs like youth shelters.

"Right now, law enforcement officers across our nation are being targeted and attacked," Moore said. "I consider signing this pledge a direct attack on North Carolina law enforcement, too."

Rep. Marcia Morey, D-Durham,

told *Carolina Journal* that when she signed the Future Now pledge in 2018, defunding the police was not part of the stated goals. She told *CJ* the police proposals must have been added this year and she doesn't support defunding law enforcement.

*Carolina Journal* sent an email to Jackson asking him if he would pledge his support today now that a proposal to defund the police is listed on the America's Goals website. Jackson didn't respond.

Instead, Jackson sent out a news release challenging Moore.

Future Now has given thousands to Democratic candidates in 2020, including incumbent Reps. Christy Clark, D-Mecklenburg; Sydney Batch, D-Wake; Joe Sam Queen, D-Haywood; and Ray Russell, D-Ashe.

While some House Democrats may have signed the pledge in 2018, Democratic candidates running in 2020 likely signed this year. Future Now has given money to challengers, too. House Democratic candidates Nicole Quick, Kimberly Hardy, Brian Farkas, Aimey Steele, Dan Besse, Frances Vinell Jackson, and Ricky Hurtado have received campaign donations from Future Now.

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## QUICK TAKES

### *Judges reject attempt to block N.C. absentee witness requirement*

A three-judge panel has rejected a plea to block absentee ballot witness requirements for North Carolina's fall election. The decision in *N.C. Superior Court* generated praise from the state Senate's leader on election issues.

"The judges were right to reject this dangerous attempt to eliminate basic protections against fraudulent activity that took place in the most recent federal election, and I hope they do the same with the multiple other lawsuits filed by Washington Democrats this year," said Sen. Ralph Hise, R-Mitchell, in a news release. Hise co-chairs the General Assembly's Joint Legislative Elections Oversight Committee. He also leads a Senate committee on election and redistricting issues.

The judges agreed not to grant a preliminary injunction in the case of *Chambers v. State of North Carolina*. Filed July 10 by four individual plaintiffs working with the American Civil Liberties Union, the case challenges an absentee ballot witness requirement in state law. The law requires one adult to witness an absentee ballot. It places limits on who can serve as a ballot witness.

The lawsuit alleges violations of four sections of the N.C. Constitution. But Judges Alma Hinton, Robert Bell, and Thomas Lock disagreed with the plaintiffs' arguments. The judges found that "there is not a substantial likelihood" that the plaintiffs would win the case.



**SUPERIOR COURT.** A three-judge panel has rejected a plea to block absentee ballot witness requirements for North Carolina's fall election.

With more than 430,000 absentee ballots already requested at the time of the ruling, changing the process at this point would be a "time-, labor-, and cost-intensive process," according to the judges. "Indeed, such a process will create delays in mailing ballots for all North Carolinians voting by absentee ballot in the 2020 general election and would likely lead to voter confusion as to the process for voting by absentee ballot."

Hise's news release ties this lawsuit to others challenging N.C. election laws.

"Washington Democrats sued to overturn an election security law passed with bipartisan support in the wake of widespread absentee ballot fraud uncovered in

the 2018 Congressional election for North Carolina's Ninth Congressional District," according to Hise's news release.

"Witness signatures on absentee ballots helped uncover the fraudulent activity that took place in the 2018 Congressional election and is suspected to have taken place for many other elections before 2018," the release continued.

"The court upheld the election integrity law that passed with broad bipartisan support after the NC-9 absentee ballot fraud," Hise said.

Both state and federal courts have upheld the witness requirement, according to Hise's release.

CJ Staff

### Split court ruling permits some N.C. felons to vote



**SOME N.C. FELONS** who have finished their active prison time will be able to cast ballots in the 2020 election, based on a 2-1 ruling from a state Superior Court panel.

The court's order applies to any felon who is out of prison but still must pay fees or fines before his criminal sentence is considered complete.

The ruling in *Community Success Initiative v. Moore* represents a partial victory for the "Unlock Our Vote Campaign," led by advocacy group Forward Justice. The group's lawsuit filed in November 2019 aimed to restore voting rights for almost 60,000 convicted felons not serving active prison time. Supporters argued state laws regarding restoration of voting rights for felons violate the N.C. Constitution.

The Sept. 4 ruling in the case offered plaintiffs mixed news. The judges refused to strike down voting restrictions for all felons who have completed active prison sentences. But two members of the panel — Judges Lisa Bell and Keith Gregory — agreed money-related requirements for post-release felons create unconstitutional restrictions of voting rights.

Bell and Gregory agreed to grant a preliminary injunction allowing those felons to cast ballots this year. The judges limited their injunction to felons now prevented from voting "solely as a result of them being subject to an assessment of fees, fines, or other debts arising from a felony conviction." Felons on probation or parole with no outstanding fees or fines would not be affected.

The third judge in the case — John Dunlow — agreed with his colleagues only in the parts of their ruling that rejected plaintiffs' arguments. Dunlow would have thrown out the entire lawsuit and ruled in favor of the defendants.

The N.C. Republican Party responded to the ruling. "It is outrageous for these judges to change the rules for an election when absentee ballots have already started going out and voting has begun," N.C. GOP Chairman Michael Whatley said in an emailed statement. "This is yet another example of why we need to elect Conservative Judges who will apply the law rather than rewrite the laws they don't like."

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## QUICK TAKES

# Billboard challenges Cooper's lockdown, use of science, data

Like many N.C. business owners burdened by Gov. Roy Cooper's prolonged COVID-19 shutdowns, Greensboro developer Marty Kotis is fed up.

He's taking questions and complaints to the streets, literally, launching a billboard campaign along Greensboro's Battleground Avenue.

"Where's the logic?" asks one message on an enormous roadside screen.

"Show your data."

"Science is not political."

The campaign, Kotis told *Carolina Journal*, is about "pinning Cooper down on scientific reasoning," which the governor repeatedly claims is his basis for keeping bars, movie theaters, lounges, nightclubs, and other businesses closed. Cooper originally said bars and movie theaters would reopen as part of his Phase 2. But he moved the dates, revised the phases, and prolonged certain types of business closures. Kotis owns several Greensboro restaurants, a brewery, and a movie theater. The theater remains closed under Cooper's revised Phase 2.5. Meanwhile, Kotis said, gyms, restaurants, churches, and



**MARTY KOTIS:** The campaign is about "pinning Cooper down on scientific reasoning," which the governor repeatedly claims is his basis for the shutdown.



bowling alleys have reopened. Even some casinos reopened in May.

The governor's logic doesn't make sense, Kotis said, and that's the whole point. With the help of some Soviet-inspired art, he crafted his messages and splashed them on screen for passersby to see. And ponder.

"Your governor is in control. Listen and comply," another message reads.

WFMY news in Greensboro called the billboard "strange," "odd," and "unusual," pointing to scientific studies used by N.C. Health Secretary Mandy Cohen. Those studies show COVID-19 has a higher rate of transmission indoors.

"Well, no sh\*t," Kotis told *CJ*. "But that doesn't explain gyms, restaurants, casinos, bowling alleys, churches — all being open,

and not others?"

Kotis sits on the University of North Carolina System's Board of Governors, where he's outspoken about the need for student safety and affordable education amid the pandemic.

Most of his hospitality operations have been closed since March, he said in a recent Facebook post. He's installed foot-operated door pulls, sanitizing stations, UVC

air filtration units, and other safety equipment. He's put staff testing and temperature checks in place.

"What I want to understand is the science and data behind which businesses are allowed to open and which businesses are not," Kotis said. "We should be focused on health and safety practices and not on business types."

*CJ Staff*



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## STATE GOVERNMENT

# Governor's lawsuit against Rules Review Commission could unleash executive power, experts say

BY JULIE HAVLAK

**G**ov. Roy Cooper is suing to dismantle a powerful legislative check on executive power. The N.C. Supreme Court will eventually decide the issue.

The legislature and the governor are fighting over control of the Rules Review Commission — a powerful board, chosen by lawmakers, that can prevent bureaucrats in the executive branch from wielding legislative power without the lawmakers' consent.

If the Democrat Cooper wins in court, his victory will weaken legislative authority and erode separation of powers in North Carolina, experts say. A ruling in Cooper's favor would cripple the legislature's control over how regulatory agencies interpret state laws.

Republican lawmakers bashed Cooper's lawsuit as "another power grab, plain and simple." Cooper argues that lawmakers are interfering with the executive branch's authority to set policy in rulemaking.

The agency they're fighting over is a powerful watchdog. Its commissioners can veto rules on election laws, unemployment benefits, environmental conservation — even rules about hearing loss and heavy metals in fish. Its members have been said to "wield more power than most elected officials," argued former commissioner Harry Payne, who later joined the N.C. Justice Center, a left-leaning policy group.

Shifting control to the executive branch could disable the commission's oversight role. It also could help Cooper centralize power within the executive branch, says Andy



**POWERFUL BOARD.** Gov. Cooper wants to weaken the Rules Review Commission.

Taylor, political science professor at N.C. State University.

Jon Sanders, John Locke Foundation director of regulatory studies, agrees.

"At that point, the fear would be that the governor would be able to rubber-stamp anything that he wanted and remove any due diligence from the process," Sanders said.

The House and Senate appoint the board's 10 members. "Cooper wants a majority of appointments, which would kill the legislature's veto in the rulemaking process," said Mitch Kokai, JLF senior political analyst. "It serves as a safeguard against unelected bureaucrats making rules that have a drastic negative impact on North Carolinians."

"Not everything that affects people's lives is the result of a law passed by lawmakers that you can hold accountable at the ballot box," Kokai said. "Much of what happens

in government is the result of bureaucrats interpreting laws."

Republican lawmakers accuse Cooper of dodging the legislature and pushing his policies through executive rulemaking and the courts.

So far during the COVID-19 pandemic, the commission has stymied two of Cooper's policies.

It blocked the State Board of Elections' request for emergency powers and complicated the Division of Employment Security's plan for expanding unemployment benefits.

In May, the elections board asked for emergency powers — including the ability to change some election dates, as well as the deadlines for accepting mail-in ballots, reporting the sorting of ballots by precinct, hearings for candidate challenges, and election protest appeals.

Rules review commissioners unanimously sank the request. Commissioner Tommy Tucker ques-

tioned whether it was "a devious stunt" and "an end run around the public, the General Assembly, and the courts."

Weeks later, the commission became a potential roadblock for DES' move to expand unemployment benefits linked to COVID-19.

Lawmakers expanded benefits to four narrow groups — residents infected or officially quarantined, and employees who lost hours or employers. But the department went further.

It expanded unemployment benefits to people who "reasonably believe there is a valid degree of risk" because of an employer's failure to comply with state or federal guidelines. Benefits also would cover high-risk individuals and parents whose children can't attend school.

The John Locke Foundation challenged the rule at the Office of Administrative Hearings. Republican legislative leaders questioned how the agency would determine employers' failures. The agency failed to submit the necessary paperwork to go before the commissioners in August.

"The RRC will continue to stymie executive rulemaking pursuant to an unconstitutional statutory scheme that violates the Constitution's separation of powers," Cooper argued in his lawsuit.

Since the General Assembly created the RRC in 1986, the commission has been embroiled in the conflict between regulators and the regulated business community. Agencies complain the process slows regulations, while businesses praise its oversight. But the controversy never boiled over into major litigation

— until now.

The lawsuit has the business community concerned. The Rules Review Commission has played a major role in the push for regulatory reform in North Carolina.

"We're concerned about any sort of lawsuit that would diminish the protections that are afforded to citizens," said Michael Carpenter, N.C. Home Builders Association executive vice president. "Executive branch agencies have never liked this. They could basically do what they pleased, and this is clearly a restriction on their ability to do that."

The legislature's chances for keeping its appointments are slim. A 2016 state Supreme Court decision weakened legislative appointments within the executive branch, said Jon Guze, JLF director of legal studies.

Only state Supreme Court Justice Paul Newby dissented with the 2016 ruling to defend legislative authority. Newby, a Republican, is running for chief justice in November, when two other seats on the state's highest court are up for election.

Cooper's lawsuit could cost the legislature its management role in overseeing governmental regulations, said William Yeatman, research fellow in Cato Institute's Robert A. Levy Center for Constitutional Studies.

"That would be a big, big deal," Yeatman said. "Given how much regulatory power has already been transferred to the executive, it would almost make it seem like a one-way ratchet. They can pass laws that would empower the executive but not a law that allows them to compete with the executive."

NORTH CAROLINA

## BUDGET IN PICTURES

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## COVID-19 LOCKDOWN

# Cooper's permission slip does little to help this small-town bowling alley

BY KARI TRAVIS

Bowling alleys are finally allowed to reopen in North Carolina. But for small-town operations like Fairwood Lanes in Roanoke Rapids, the governor's permission slip may be too little, too late.

The financial strain is crippling, Fairwood Lanes owners Elizabeth and Timothy Robinson tell me when I visit to watch their Superheroes league, a group of bowlers with special needs. The last time I dropped by Fairwood it was July, and the Robinsons were locked in a legal battle with Gov. Roy Cooper over his prolonged COVID-19 shutdowns. Fairwood Lanes, along with bowling alleys across the state, reopened after Judge James Gale issued a preliminary injunction in their favor. The Robinsons rejoiced. But, one week later, the N.C. Supreme Court ordered bowling alleys to close again while it reviewed an appeal from Cooper. Democrats hold a 6-1 majority on the state's highest court — two of those Democrats are Cooper appointees — giving the governor a partisan edge.

The Robinsons had to shutter things indefinitely. The blow was devastating.

When Cooper finally moved the state into a modified Phase 2.5 on Sept. 4, bowling alleys could reopen. But Fairwood was closed for so long the damage was done, the Robinsons say. They're nearly \$2 million in debt, Elizabeth tells me. The couple works in real estate development. They're trying to sell 60 properties just to make ends meet at Fairwood.

Elizabeth is concerned, too, about social distancing and masks, which are required under Cooper's orders. The governor made the rules but left businesses to enforce them.

"I'm just afraid it's going to be a disaster," Elizabeth says. She spent thousands of dollars on renovations to ensure social distancing. Fairwood now features sanitizing stations, Plexiglass dividers, and limited lanes to keep bowlers separated. Staffers wipe down every pair of shoes, every bowling ball, and every table after use. Elizabeth requires masks for all staffers.

It's up to customers to follow the rules, Elizabeth says. But in this small town 100 miles from Raleigh and the governor's mansion, it's tough to make people comply. She understands their discomfort, but she's afraid of another forced closing.

So is Jennifer Clapton, whose



**OPEN AGAIN.** Jordan Clapton bowls at Fairwood Lanes Sept. 16. Jordan's only social outlet is Fairwood Lanes.



**SMILES AND LAUGHTER.** Jordan Clapton is happy to be back at Fairwood Lanes, but the owners, Elizabeth and Timothy Robinson, are feeling more cautious.

autistic 22-year-old son, Jordan, loves to bowl with the Superheroes league.

Jordan awoke at 6 a.m. to start waiting for his 4 p.m. bowling date. Now he's throwing balls down the wooden lanes, smiling, chatting with his friends.

Clapton smiles behind her mask, but a layer of caution mutes her excitement.

"I'm just worried about what happens if Cooper shuts everything down again," she says.

Jordan's only social outlet is Fairwood Lanes, Clapton says. And while she's cautious about health and safety during the pandemic, she's equally concerned about her son's mental well-being. For

months, Jordan stayed home, isolated from everyone but his family. He watched TV, played word games, and occasionally went to Walmart. But he missed socializing.

He missed bowling.

Just try explaining to Jordan why he can go to Walmart, but his favorite bowling alley — warm, welcoming, and safe — is off limits, Clapton says.

"I get that there's a pandemic, but at this point, life has to go on," Clapton says. "I'll wear a full body suit as long as I can just get on with things."

Clapton wrote me a note after my Sept. 16 visit to Fairwood Lanes. "The smiles and laughter today are what I wish the governor could see,"

she wrote. "I guess until you have a special-needs child you can't appreciate how huge an impact Fairwood Lanes is making with this league."

If people start getting sick with COVID-19 after bowling at Fairwood, then shut it down, fix it, and start over, Clapton wrote.

"But if he [Cooper] shuts it down again otherwise, I'm gonna be standing on his porch waiting for an explanation!"

Cooper's orders, which continue to block movie theaters, bars, lounges, and concert venues from opening, seem arbitrary and confusing to many, Clapton included. In March, the governor said his goal was to "flatten the curve" of coronavirus cases. But the goalposts have

moved many times since. In May, Cooper told the public he wanted to lower the state's percentage of positive cases to 5%. North Carolina hit that number, but Cooper still didn't reopen the economy. During a news conference Sept. 17, a reporter asked Cooper what "tangible metric" he was now aiming to hit before fully reopening the state. The governor's answer was cautious and non-committal.

"We've stabilized, but we want to see numbers keep decreasing," he said.

That's not a comforting answer for small business owners skittish about Cooper's arbitrary decision-making. But a recent federal court ruling in Pennsylvania could give them a legal precedent to follow if the governor closes the economy again.

U.S. District Judge William Stickman on Sept. 14 blocked some of Pennsylvania Gov. Tom Wolf's COVID-19 restrictions, calling them unconstitutional.

"The Constitution cannot accept the concept of a 'new normal' where the basic liberties of the people can be subordinated to open-ended emergency mitigation measures," Stickman wrote in his more than 60-page opinion.

Like Cooper, Wolf placed limits on indoor and outdoor gatherings, and closed "nonessential businesses" to slow the spread of the virus. Wolf has appealed the ruling. It will head to the 3rd U.S. Circuit Court of Appeals and could go to the U.S. Supreme Court.

The outcome in that case could affect businesses that remain closed in North Carolina. I emailed Cooper's press office, asking if Stickman's decision gives the governor pause to reconsider his use of emergency powers. I got no response.

Meanwhile, those businesses Cooper has allowed to open face harsh consequences.

The Robinsons reduced their staff from 30 people to six. They reopened with a limited menu and reduced operating hours.

There's no money to sustain things if Cooper changes his mind, Elizabeth says.

She adjusts her brightly colored mask and looks toward the door, where a handful of people are traipsing in. Even her regulars have been hesitant to return, she tells me. Some are concerned about safety. Others just don't want to bowl in a mask.

"Will we even have enough customers to stay open?" Elizabeth says. "I just don't know."

CIP PHOTO BY KARI TRAVIS

CIP PHOTO BY KARI TRAVIS



## BUDGET & SPENDING

# USGA deal at Pinehurst is cronyism at its worst, experts say

BY KARI TRAVIS

It's a beautiful day for golfing in Pinehurst, or so North Carolina's politicians would have you believe. Look closer, experts say, and you'll see it's a beautiful day for government handouts and corporate welfare.

On Sept. 9, the U.S. Golf Association — already set to hold the 2024 U.S. Open at Pinehurst Resort — announced Pinehurst will be home to the Open again in 2029, 2035, 2041, and 2047. USGA also plans to move part of its official headquarters from New Jersey to North Carolina. It will build “Golf House Pinehurst,” a visitors’ center, museum, and research base.

But the announcement includes a multimillion-dollar catch.

North Carolina will give USGA \$18 million in incentives and millions of dollars in extra tax breaks. The deal, inserted into an existing state House bill, swiftly passed both chambers of the legislature. Gov. Roy Cooper, a Democrat, immediately signed it into law. Lawmakers called it the Championship NC Act. But it's really a bipartisan package supporting crony capitalism, say John Locke Foundation researchers.

“I’m so tired of these things, I can’t even work up fire for it,” Joe Coletti, JLF’s senior fellow for fiscal and tax policy, said after the USGA announcement. “This is the state helping Pinehurst Resort with something that was probably going to happen anyway.”

Coletti has spent countless hours tracking North Carolina’s economic struggle through the governor’s COVID-19 shutdown. In short, he’s exhausted. And now, despite the state’s significant tax losses and slumping economy, the legislature managed to scrape together enough money for a golf deal.

North Carolina will pay \$3.6 million to USGA this fiscal year. To foot the bill, lawmakers pulled \$3.5 million from the One North Carolina Fund — formerly dubbed “the



**WHIFF SHOT:** Thousands in North Carolina have lost their jobs amid the governor’s shutdowns, employers face harsh restrictions in the name of COVID-19, and Cooper wrongly points to the USGA deal as a win for the state’s economy.

governor’s walking around money” — and another \$100,000 from the Job Development Investment Grant. JDIG is a Commerce Department “discretionary fund” giving money to companies that bring jobs to North Carolina.

There’s no guessing where the state will find the remaining \$14.4 million, which it plans to pay USGA over the next four years, Coletti said.

Yet politicians, Republican and Democrat, were overjoyed during a news conference with USGA. Cooper, House Speaker Tim Moore, R-Cleveland, Sen. Tom McInnis, R-Richmond, and Rep. Jamie Boles, R-Moore, were among those to praise the \$18 million deal. It will bring money to the community and the state, they said. It will help North Carolina’s struggling hospitality industry.

But not right away. Construction isn’t set to start until 2022.

Meanwhile, that industry has

**North Carolina will give USGA \$18 million in incentives and millions of dollars in extra tax breaks. The deal, inserted into an existing House bill, swiftly passed both chambers of the legislature.**

been hit hard by Cooper’s prolonged COVID-19 shutdowns.

About 169,500 hospitality workers remain unemployed, Cooper’s office said, pointing to the USGA deal as a boost for that economy. In March, restaurants, hotels, bars, and other recreational com-

panies employed 535,800 people. More than half were laid off in March. Only 336,300 have returned to work, Cooper said. To date, bars, nightclubs, lounges, movie theaters, and music halls remain closed under the governor’s executive orders. Gyms, bowling alleys, and other fitness centers reopened only recently. Restaurants continue to operate at only 50% capacity, as mandated by Cooper.

USGA plans to invest “up to \$36 million” in its Pinehurst campus, Cooper said in a news release. The organization will hire 50 people. At least 35 employees must be new hires, state law stipulates, and all 50 employees must receive an annual salary of at least \$80,000.

“Today’s news will add new energy to the leisure and hospitality services and significantly contribute to the long-term recovery of that important segment of our economy,” Commerce Secretary Anthony Copeland said.

The project will yield \$2 billion for North Carolina’s economy over 25 years, USGA estimates.

“None of these numbers are real, except for what’s being paid out by the state,” Coletti said.

USGA is legally required to spend just \$5 million of its own money on the project, while North Carolinians remain on the hook for \$18 million, said Jon Sanders, JLF’s director of regulatory studies.

The Championship NC Act carves out a benefit for the state, too, ordering USGA to provide the Commerce Department a “hospitality pavilion” at each men’s championship.

“Defining it as a ‘gift’ lets the governor and legislators do a statutory Jedi hand wave and say it *isn’t* a form of quid pro quo,” Sanders said. “We (lawmakers) gave them (USGA) \$18 million, and out of the goodness of their hearts they just up and let us enjoy this large, catered gathering place at a major championship sporting event for free. Oh, but just men’s championships, for some reason.”

Thousands in North Carolina have lost their jobs amid the governor’s shutdowns, employers face harsh restrictions in the name of COVID-19, and Cooper wrongly points to the USGA deal as a win for the state’s economy, Sanders said.

“The same governor who has refused for half the year to fight tooth and nail to save their jobs wants praise for using money taken from taxpayers in this economy to bring 35 new hires to one of the state’s wealthiest areas?” Sanders said. “That’s the sort of blinkered arrogance one expects from a centrally planned police state, not North Carolina.”

In 2019, USGA’s revenue was \$211 million, USA Today reported in February. The organization, which is a nonprofit, says most of that money is invested back into the sport. The median annual income for Pinehurst Village is \$80,128, according to the most recent data from the U.S. Census Bureau.





## HEALTH CARE

# Nurse's union win in Asheville could be a loss for patients

BY JULIE HAVLAK

Unions won a new stronghold in North Carolina. Patients will pay the price, experts say.

A national nurse's union won a vote to organize 1,800 registered nurses across western North Carolina. The 965 votes to unionize Mission Health dwarfed 411 in opposition.

The vote caps a long fight between HCA Healthcare, the country's largest hospital system, and National Nurses Union, the nation's largest union. But the union's success could hurt patients' ability to afford health care, says Jon Guze, John Locke Foundation director of legal studies.

Both sides say patient safety is at risk.

Union critics warn that strikes could endanger patients and leave them suffering without care. They point to research showing spikes in hospital mortality of almost 20% for patients admitted during a nursing strike.

Union organizers argue Mission Health hurt patients with inadequate staffing and safety measures. The union says this is the "largest union election win in the South in 12 years." The National Labor Relations Board announced the vote to unionize Mission Health on Sept. 17.

That union victory could drive medical costs higher across western

North Carolina, said Guze.

Patients will have little recourse. Hospital consolidation has left patients and nurses few alternatives and less market competition, said Guze.

Mission Health controls almost half of the health care services and providers in 11 counties in western North Carolina, according to *Modern Healthcare*. The system's own consultant dubbed it "the only major producer of hospital services in Western North Carolina," said an Urban Institute 2015 report on the system.

"Unionization is a response to cartelization," Guze said. "The fact that we have fewer and fewer larger health care providers is a problem — not only for employees but also for us as consumers of health care. ... It harms the rest of us, not just with higher prices but also lower quality."

HCA has battled political backlash since its \$1.5 billion takeover of Mission Health. Patient safety grades fell from "A" to "C" in little over a year, according to the hospital watchdog Leapfrog. Attorney General Josh Stein said he received "harrowing" complaints about quality of care.

"Only a few months into the HCA buyout, we started to see dramatic decreases in the amount of staff and resources we had across the hospital," Sue Fischer, a float pool registered nurse at Mission,



**MISSION HEALTH.** A national nurse's union won a vote to organize 1,800 registered nurses across western North Carolina.

said in a news release.

HCA denies the union's accusations. It has argued it has enough resources and staff to care for patients safely.

Escalating health care consolidation drives unionization. And the damage won't be limited to western North Carolina, says Guze.

"We should see this as a manifestation of a disturbing trend that's going to make health care less affordable, less accessible, and less innovative in the years to come," Guze said.

The victory is also a "huge

booster shot" for union activity across the South, Dan Bowling, senior lecturing fellow of employment law at the Duke University law school, told *Carolina Journal* before the vote.

It is also a major defeat for HCA Healthcare, which controlled 184 hospitals and \$51.3 billion in revenue in 2019. Only 37 of its hospitals had any union presence, and many of them were concentrated in right-to-work states.

But union activity within the health care sector is picking up.

The wife of Democratic presi-

dential nominee Joe Biden appeared in a virtual roundtable hosted by National Nurses United just days before the union's victory. Jill Biden promised her husband "will be the most pro-union president since [Franklin Roosevelt]."

North Carolina boasts the second-lowest unionization rate in the nation, behind only South Carolina. Only 2.3% of its workers belonged to a union in 2019, according to the U.S. Department of Labor's Bureau of Labor Statistics.

The fight isn't over at Mission Health. Union organizers say this win is "just the beginning" of their agenda. They say they will bargain for patient safety, higher staffing, and higher wages.

But critics contend that unionization will erode flexibility and hurt nurses' advancement opportunities, said Michael Cannon, Cato Institute director of health policy studies.

HCA says it will examine the election process and the parties' conduct. It says it plans to "ensure that all of our nurses had the fair election that they deserve."

"This isn't what is going to fix health care," Cannon told *CJ*. "Dividing up the pie as it exists right now isn't going to help patients. ... We need things that will drive down the cost of care — not changes that shift some money from hospitals to nurses and drive up spending overall."

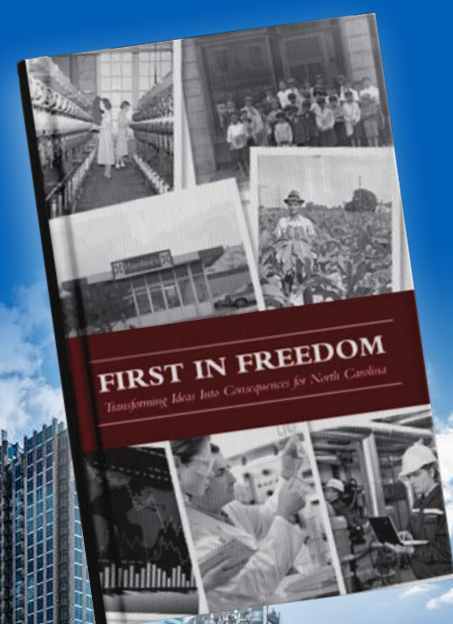
MISSION HEALTH IN ASHEVILLE (WIKI COMMONS IMAGE)

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# N.C. SUPREME COURT ELECTIONS

## Pay attention

continued from PAGE 1

### Opportunity Scholarships

Nariah, a sixth-grader from Charlotte, wants to continue her education at the private school where she's currently enrolled.

Her future might depend on the N.C. Supreme Court elections.

Born two months premature, Nariah struggled in public school through kindergarten and first grade. She needed extra help. More time for assignments. A flexible learning schedule. Her grandmother and legal guardian, Janet Nunn, wanted Nariah to repeat first grade and master the fundamentals before moving on.

Nariah's public school rejected that option.

Nunn was already paying a private tutor to help Nariah, she said during a recent interview with *Carolina Journal's* Mitch Kokai. She couldn't afford private school. She was desperate for options.

Then, Nunn heard about the N.C. Opportunity Scholarship program, passed by the General Assembly in 2013. The program gives vouchers of up to \$4,200 per year to low-income students. It was exactly what Nariah needed. With the help of the scholarship, Nunn enrolled Nariah at Victory Christian School in Charlotte, where her granddaughter repeated first grade and became a B-average student.

Now, Nariah attends Brookstone Schools in Charlotte. She's thriving.

"She's not sitting in the back of the classroom," Nunn told *CJ*. "She's not holding her head down. She's not saying that she's not as smart as her classmates. She's sitting there, she's raising her hands, she's asking questions, she's moving forward to be in front and be a leader."

But a new lawsuit against Opportunity Scholarships has made Nariah's future uncertain. The program already faced a legal challenge in 2015. In *Hart v. State*, a Wake County Superior Court ruled the scholarships unconstitutional. The state Supreme Court later overturned the decision. Four Republican judges voted in favor of Opportunity Scholarships. Three Democrats voted against them.

Now, another lawsuit against the program is pending. The N.C. Association of Educators is again gunning for the program, calling it unconstitutional and insisting it lacks state oversight.

The vouchers "siphon money from public schools already strapped for cash," NCAE President Tamika Walker Kelly said.

The case could end up, again,

## BUT WAIT ... THERE'S MORE!

# Court of Appeals races

Five seats are on the ballot for the N.C. Court of Appeals. Members of this 15-judge body serve eight-year terms. Three-judge panels of this court decide cases appealed from district or superior courts. Its role is to decide whether the trial courts correctly applied the law.

The Court of Appeals is often overlooked, but typically it has the final word on state legal disputes. The state Supreme Court doesn't have to hear appeals of unanimous decisions from the appellate court. But if a three-judge

panel splits 2-1, and the lawsuit is appealed, the Supreme Court must review the case.

The eight Republicans running for appellate court seats — three for the Supreme Court and five for the Court of Appeals — are running as a conservative ticket. Douglas Keith of the left-leaning Brennan Center for Justice at New York University told *Carolina Journal* earlier this year this is the first time nationally he's seen a group of appellate court candidates coordinate their campaigns so closely.

### HERE ARE THE CANDIDATES FOR THE COURT OF APPEALS: (\* = INCUMBENT)

SEAT 4: APRIL WOOD (R) VS. TRICIA SHIELDS (D)

SEAT 5: FRED GORE (R) VS. LORA CHRISTINE CUBBAGE (D)

SEAT 6: CHRIS DILLON (R)\* VS. GRAY STYERS (D)

SEAT 7: JEFF CARPENTER (R) VS. REUBEN YOUNG (D)\*

SEAT 13: JEFFERSON GRIFFIN (R) VS. CHRIS BROOK (D)\*

— Rick Henderson



**JANET NUNN WITH NARIAH:** The voucher program helped Nariah attend private school, but if Democrats are in total control of the N.C. Supreme Court, she almost certainly would be forced to return to a public school.

at the consideration of the state's highest court.

If Democrats are in total control, Nariah almost certainly would be forced to return to a public school.

Newby supported Opportunity Scholarships back in 2015. He is the only member of the four-vote Hart majority remaining on the court today. The most senior of all the current justices, Newby says his judicial responsibility is to the Constitution and the original text of the law.

"If somebody says judicial philosophy doesn't matter, boy, it does," Newby said during an August interview with the N.C.

FreeEnterprise Foundation. "It's the absolute foundation for what judges actually do."

Beasley, the first African American chief justice in North Carolina history, opposed Opportunity Scholarships in 2015.

"Given North Carolina's history of public education and the State's continued efforts to address shortcomings to deliver on its constitutional mandate, the General Assembly's decision to pursue vouchers at this time and in this way is vexing," Beasley wrote in a *Hart v. State* dissent.

Besides, Beasley wrote, extra expenses at private schools — trans-

portation, tuition, books, uniforms — make the "opportunity" advertised by school vouchers a "cruel illusion." Offering scholarships to low-income and minority families like the Nunns only exacerbates educational, class, and racial divides, Beasley said, pointing to "systemic and cultural adjustments" as the real necessity.

Janet Nunn doesn't see things that way.

What do you think of the lawsuit against Opportunity Scholarships? *CJ* asked her. Nunn went through the first legal battle back in 2015. The idea of fighting it again makes her cry.

"It's ridiculous," she said, holding back tears. "We live in a country that we say is free. We're supposed to be in pursuit of happiness and freedom, and that pursuit is in education as well."

"I don't see what's unconstitutional," she said of the current challenge to the program. "Because of low income? Is that what makes it unconstitutional? I want to give my child an opportunity, and that's exactly what this scholarship is."

All Supreme Court candidates participated in a Sept. 10 forum moderated by the John Locke Foundation's Donna Martinez, who asked candidates to speak to the new legal challenge against the Opportunity Scholarships.

"It would be really inappropriate for us to have a comment on that," Beasley said.

The cards are stacked against the program, Guze said. Justices Robin Hudson and Sam Ervin IV were on the court during the last lawsuit against Opportunity Scholarships. They joined Beasley in voting against the program. Both Hudson and Ervin will hold seats on the Supreme Court until 2022 and will preside if the current lawsuit against Opportunity Scholarships is heard. Depending on the election and timing Beasley may, too.

Ideology and party commitments may factor into the judges' decisions about the program, Guze said. But voters should proceed on the assumption that all Supreme Court justices, regardless of party affiliation, are men and women of integrity, he said.

"I don't think it's beyond the realm of possibility that one or more Democrats vote to uphold the program this time."

## Redistricting

Redistricting lawsuits, which will stir more drama after the 2020 census is complete, are likely to come before the high court. Legislative and congressional gerrymandering was a major issue in 2019, when a three-judge Superior Court panel threw out the state's districts in two separate cases, calling them an extreme gerrymander. Redraw the maps, judges said. The legislature did, but the result made Republican and Democratic activists angry. Republicans didn't agree with the judges' order to redraw the maps. Democrats were disappointed the panel didn't assign their pick, a professor from California, to redraw General Assembly districts.

The process was fair, said John Hood, political analyst, John Locke Foundation chairman, and John William Pope Foundation president. Hood advocates legislation to adopt a more transparent redistricting process. So far, no such law has

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# N.C. SUPREME COURT ELECTIONS

## CANDIDATES RUNNING FOR Chief Justice, N.C. Supreme Court



**Cheri Beasley**  
DEMOCRAT

**Background:** Appointed Chief Justice by Gov. Roy Cooper in March 2019. Served on the Supreme Court since 2012, when she was appointed by former Democratic Gov. Bev. Perdue. Served four years on the N.C. Court of Appeals between 2008 and 2012. Beasley worked as an assistant public defender before 1999, the year Democratic Gov. Jim Hunt appointed her as a state District Court judge.

**Education:** Undergraduate degree from Rutgers University, law degree from University of Tennessee.

**Judicial philosophy:** “Making sure we are interpreting the laws that are made by the General Assembly, and that we are not tempted by any particular slant.”



**Paul Newby**  
REPUBLICAN

**Background:** Supreme Court justice since 2005. Adjunct professor at Campbell University Law School. Served nearly 20 years as an assistant U.S. district attorney in eastern North Carolina.

**Education:** Undergraduate degree from Duke University, law degree from UNC Chapel Hill

**Judicial philosophy:** Constitutional consistency, predictability, equal justice under the law.

## CANDIDATES RUNNING FOR N.C. Supreme Court Seat 2



**Lucy Inman**  
DEMOCRAT

**Background:** Inman has been a judge on the N.C. Court of Appeals since 2014. Between 1992 and 2010, she was a private lawyer. In 2010, former Democratic Gov. Bev Perdue appointed Inman to the N.C. Superior Court.

**Education:** Undergraduate degree from N.C. State University, law degree from UNC Chapel Hill

**Judicial philosophy:** Believes in the importance of stability and respect for the Constitution. “Leave partisan politics on the courthouse steps.”



**Phil Berger Jr.**  
REPUBLICAN

**Background:** Berger was a private-practice lawyer from 1991 to 2006. In 2006, Berger was elected district attorney in Prosecutorial District 17A, where he served nearly a decade. Between 2015 and 2016, he served as an administrative law judge for the N.C. Office of Administrative Hearings. Berger was elected to the N.C. Court of Appeals in 2016.

**Education:** Undergraduate degree from UNC Wilmington, law degree from Wake Forest University

**Judicial philosophy:** Believes in limited government and judicial restraint. “I’m a conservative judge, first and foremost.”

## CANDIDATES RUNNING FOR N.C. Supreme Court Seat 4



**Mark Davis**  
DEMOCRAT

**Background:** Private lawyer from 1993 to 2006, special deputy attorney general in the N.C. Department of Justice from 2006 to 2011. Davis served two years as general counsel for the governor’s office before former Democratic Gov. Bev. Perdue appointed him to the N.C. Court of Appeals in 2013. On March 11, 2019, Gov. Roy Cooper appointed Davis to fill a vacancy on the N.C. Supreme Court.

**Education:** Undergraduate and law degrees from UNC Chapel Hill

**Judicial philosophy:** “Our job is to interpret. I think it’s improper for judges to let their personal feelings [affect] how they decide a case.”



**Tamara Barringer**  
REPUBLICAN

**Background:** Barringer served as a state senator representing Wake County from 2013 to 2018. She is a private-practice lawyer and a business professor at UNC Chapel Hill.

**Education:** Undergraduate and law degrees from UNC Chapel Hill

**Judicial philosophy:** Believes in the constitutional interpretation of laws passed by the General Assembly. “It is imperative that we have justices who refrain from legislating from the bench.”

continued from PREVIOUS PAGE

passed the General Assembly. In 2021, lawmakers will restart the mandatory redistricting process. Regardless of what party is in power — Democrats may retake the legislative majority Republicans have held for a decade — more gerrymandering lawsuits are imminent.

Republicans have criticized Democrats for using judicial activism to regain strongholds in the General Assembly. Democratic groups bankrolled the 2018 lawsuits challenging legislative and congressional redistricting.

Senate President Pro Tem Phil Berger, R-Rockingham, said judges used a “flawed approach to redistricting law” and questioned their constitutional reasoning. Republicans didn’t appeal the decision because of a looming deadline for candidate filing.

A 2019 U.S. Supreme Court ruling in *Rucho v. Common Cause* left all political gerrymandering cases up to the states. Such battles start in North Carolina’s lower courts and end at its highest one. If Democrats control every seat on the Supreme Court after the election, the party will either control or exercise a judicial veto over all subsequent voter maps.

Notably, Justice Anita Earls,

who won her seat on the high court in 2018, is the founder and former executive director of the Southern Coalition for Social Justice. SCSJ — a leftist organization — was active in redistricting lawsuits against Republicans in 2018. The organization was also instrumental in *Holmes v. Moore*, the case that blocked North Carolina’s voter ID law.

Earls helped get North Carolina’s 2013 voter ID law overturned. She remains publicly connected to SCSJ, appearing on an August panel alongside Allison Riggs, SCSJ’s general counsel for voting rights.

### Voter ID

In September, state voter ID, hotly contested by Democrats, became a critical issue for the Supreme Court.

In 2018, North Carolinians voted in favor of constitutional amendments requiring voter ID and lowering the cap on state income tax rates. The NAACP sued the legislature, saying the amendments never should have gone before voters. The lawsuit argued the General Assembly that placed the amendments on the ballot was illegitimate because of gerrymandering. A Superior Court sided with the plaintiffs and voided both amendments.

On Sept. 15, the Court of Appeals overturned the lower court’s ruling. The NAACP’s argument

doesn’t apply, two of the three appellate judges said. Voter ID remains part of the state’s constitution, as amended by voters.

But hours after the Appeals Court announced its decision, the NAACP said it would take its case before the Supreme Court.

“Voter ID just became the most important issue in the N.C. Supreme Court campaigns,” tweeted Brent Woodcox, an attorney for legislative Republicans.

### Separation of powers

The N.C. Constitution is clear that judicial, legislative, and executive powers are separate. But the line between the three is often muddled by judicial interpretation.

In the 2017 case *Cooper v. Berger*, Gov. Roy Cooper sued the legislature over its attempt to form a bipartisan election board. By forcing the governor to appoint four Republicans and four Democrats to the board, legislators stripped Cooper of his executive powers, the governor argued.

A three-judge Superior Court panel rejected Cooper’s arguments. But when the case arrived at the Supreme Court, the Democratic majority ruled in favor of Cooper. The legislature limited Cooper’s control over “the views and priorities” of the bipartisan elections board by requiring that the governor choose members who would block Cooper’s

own policy preferences, the judges wrote in their opinion.

Newby dissented, along with the other two Republicans who served on the court at the time.

The court violated the constitutional separation-of-powers principle it claimed to protect in the case, Newby wrote in his dissent.

“The Court strips the General Assembly of its historic, constitutionally prescribed authority to make the laws and creates a novel and sweeping constitutional power in the office of the Governor — the authority to implement personal policy preferences,” Newby wrote.

During interviews Newby, Berger, and Barringer have frequently extolled the constitutional separation of powers. Barringer, who spent six years in the state legislature, says her experience in making laws helped prepare her for the judiciary.

“It is imperative that we have judges who refrain from legislating from the bench,” Barringer said Sept. 10.

While the Supreme Court wields “super legislative powers,” that doesn’t mean it has to, Guze said. Certain judges have “renounced such powers and limited themselves to their constitutionally permissible role of applying the state’s law and the state constitution as written.”

Some will, regardless of party, resist the urge to put policy and political preferences first, Guze said.

Appeals Court Judge Lucy Inman, a Democratic contender for Newby’s vacated Supreme Court seat, showed this ability to put party affiliation aside in 2019. In another case called *Cooper v. Berger*, the governor challenged the General Assembly’s control over federal block grant funds. A lower court affirmed the legislature’s authority to use the money as it saw fit. Inman, along with two other appellate judges, upheld the ruling.

Inman herself wrote the opinion, which came down hard on Cooper’s attempt to dictate use of state money without legislative input.

“This court is an error-correcting court, not a law-making court,” Inman wrote. “The North Carolina Constitution plainly provides that no money shall be drawn from the State treasury but in consequence of appropriations made by law.”

North Carolinians are lucky, Guze said, since members of the state Supreme Court are elected, not appointed for life. If judges misuse power or legislate from the bench, the best recourse is found at the ballot box, Guze said.

“My advice to voters is this: When you go to the polls, or when you fill out your absentee ballots, remember the N.C. Supreme Court justices you choose will be able to exercise more power over you and your family than any other candidates on the ballot. So, choose wisely!”



TIMELINE



BY JULIE HAVLAK

North Carolina has been shut down for six months, nearly 30 weeks, almost 200 days. The N.C. Constitution created a feeble executive branch, and its governor re-

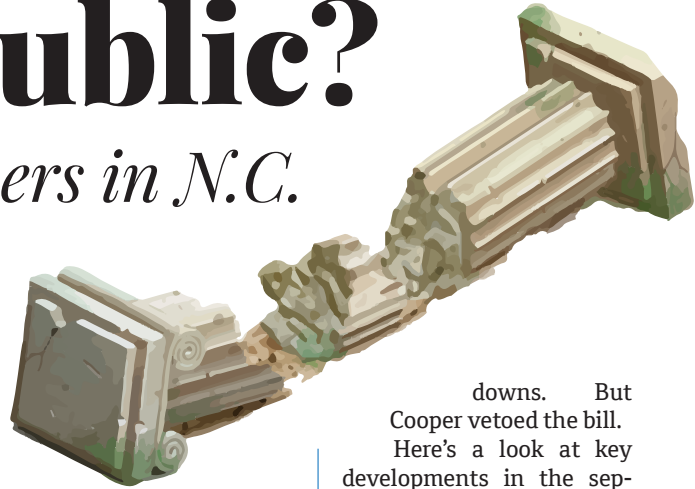
# A crumbling republic?

The rise, fall of separation of powers in N.C.

mained among the weakest in the nation. Until now. When the pandemic hit, Gov. Roy Cooper seized control of the economy, selecting essential businesses and shuttering the rest. His orders unleashed widespread economic devastation. Up to 40% of targeted businesses may not survive the virus and the shutdowns, some economists predict.

The governor's ability to levy and extend lockdowns remains unchecked. The legislature has passed a battery of reopening bills, with little effect. Any attempts to limit Cooper's emergency powers have collapsed. Reopening bills sagged under opposition from Democrats, who blocked veto overrides "because it takes power away

from the governor." A bill checking Cooper's emergency powers sank for the same reasons. Legal challenges mostly met a similar fate. Under current court interpretations of state law, Cooper doesn't need Council of State concurrence to restrict the economy. The courts ruled the Council of State has no teeth during an emergency. Republican law-




makers tried to require governors to get approval from the elected 10-member Council of State for shut-

downs. But Cooper vetoed the bill. Here's a look at key developments in the separation-of-powers debate during the five decades since North Carolina ratified its most recent constitution.

## The Roy Cooper Era

2016

Cooper is elected in November, and **Republican lawmakers scramble to weaken the executive branch.** Cooper loses his ability to appoint Cabinet secretaries without legislative approval. Lawmakers strip his appointments to UNC campus Boards of Trustees, as well as state and county elections boards. The number of state employees the governor can hire and fire without consequence plunges from 1,500 to 425. Cooper sues.



Republicans lose their majority on the N.C. Supreme Court.

2017

**JANUARY:** Cooper tries to expand Medicaid through executive action, without legislative approval. He argues it is "the core executive authority of the governor to accept federal funds to look out for the health of the people." Republican lawmakers sue, blasting his move as illegal. The outgoing Obama administration promises to process his proposal as "expeditiously as possible." But a federal judge slaps a restraining order on Cooper's attempt, and the delay sinks unilateral expansion.

**MARCH 17:** A three-judge panel refuses limits on Cooper's power. It shoots down the legislature's overhaul of the state and county boards of elections and protects some of the governor's appointments. But it allows the Senate to approve the governor's Cabinet appointments.

**MARCH 23:** The General Assembly makes Superior Court and District Court judicial elections partisan.

NC Supreme Court  
Chief Justice  
Seat 1  
(You may vote for ONE)

Cheri Beasley  
Democrat


Paul Newby  
Republican

NC Supreme Court


**APRIL 11:** Lawmakers trim the state Court of Appeals from 15 to 12 members. They allow more cases to be appealed to the state Supreme Court and require the next three vacancies of the court to remain empty. Cooper sues.

Court of Appeals

2019



**MARCH:** Democrats gain a 6-1 majority on the N.C. Supreme Court as Cooper names the newest chief justice and fills a vacancy.



**FALL:** Cooper vetoes the budget over Medicaid expansion. Republican lawmakers fail to break the gridlock. They send Cooper a series of mini-budgets to keep state government operating. He vetoes some, including teacher pay raises and Medicaid transformation, and signs others.


2020

**JANUARY:** Cooper breaks records by issuing 42 vetoes, more than the combined totals of three former governors over the past 16 years.

**MARCH 10:** Cooper declares a state of emergency for COVID-19.

**MARCH 12:** Cooper's administration waives state-imposed restrictions on the supply of hospital beds.

**MARCH 16:** Cooper closes K-12 schools. He cancels gatherings of 100 or more people.



**APRIL 13:** Cooper's administration decides to release some nonviolent inmates.

**APRIL 14:** A new group called Reopen NC protests Cooper's orders. Police declare the protest a violation of the mass gathering ban and ask protesters to socially distance. Several protesters are arrested. The Raleigh Police Department calls protesting a "nonessential activity." Two Republican senators slam Cooper for a "grave overstep in your authority."

**APRIL 21:** Cooper expands eligibility for unemployment benefits with another executive order.

**MAY 5:** Cooper moves the state into Phase One of reopening. He removes the distinction between essential and nonessential businesses. Retail businesses can open at 50% capacity. State parks and child care facilities reopen. Restaurants remain closed. Worship services must take place outside, unless "impossible."

**MAY 12:** Cooper relaxes oversight measures over Medicaid eligibility.


**MAY 14:** Churches sue Cooper.



TIMELINE

Setting the Stage: 1971 through 2016

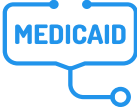
After amending the post-Civil War constitution nearly 70 times over the course of a century, North Carolina ratifies a new constitution. The new governing document maintained a **strong legislative branch**. But the new constitution also consolidates the governor's duties and powers. Lawmakers delegate part of their legislative power to the executive branch, where agencies interpret laws to make rules and regulations.



**Gov. Jim Hunt** proposes a Governor's Administrative Rules Review Commission. Doubts about its constitutionality nix his proposal. The legislature debates the need for stronger legislative oversight on agency rulemaking.

Legislative control over bureaucratic rulemaking gets a boost. Lawmakers strengthen the Rules Review Commission. It gains the ability to veto administrative rules, letting members slap down regulations that write law instead of interpreting it. This is a major victory for the legislature — and for the traditional interpretation of the balance of powers. **The General Assembly regains some of the legislative authority it delegated to the executive branch.**

Pushback against the RRC is already under way. Former commissioner **Harry Payne** writes that "the members of the Rules Review Commission wield more power than most elected officials." Agencies complain about the check on their power. They say the RRC slows the process of the administrative state and the passage of new rules.



Lawmakers pass a bill to prevent the governor from sidestepping the legislature to expand Medicaid.

**1971**


The legislature creates a committee to oversee the bureaucracy's administrative rulemaking. But it's limited to simple oversight.

**1977**

Lawmakers claw back some control over how executive agencies interpret their laws. They create the **Rules Review Commission**. It's supposed to ensure bureaucrats in the executive branch can't wield legislative power without lawmakers' consent. But it still lacks teeth. It can only object to rules, with no effect whatsoever.

**1983**

**1986**




North Carolina becomes the last state to give its governor the power to veto legislation.

**1995**

**1996**

**1998**

Democrats strip away much of the Republican lieutenant governor's power, giving it to the **Senate president pro tem**.



Republican **Gov. Pat McCrory** wins a lawsuit and gains majority control over appointments to boards with executive branch authority.

**2013**

**2016**

**JUNE 28:** The legislature limits Cooper's ability to hire private lawyers to overturn legislation. It also removes the state Industrial Commission from Cooper's control.

**AUG. 8:** Cooper sues over the budget. He says he doesn't want the General Assembly to dictate how he writes budget proposals.

**AUG. 30:** The legislature whittles away more of Cooper's appointments.

**Legislative authority over the executive branch reaches its zenith.** The government is split between parties, and Republican lawmakers can ignore many of Cooper's policy priorities. But they remain vulnerable to the courts.

2018



**JANUARY:** Cooper wins his suit to control the State Board of Elections. This skews the balance of power toward the executive.

**NOVEMBER:** Democrats break Republican veto-proof supermajorities in both the House and Senate, boosting the power of the executive branch. Cooper's vetoes gain some bite.

WHAT IS VETO-PROOF?

A three-fifths majority is needed in each chamber to override vetoes.

**30** votes in the N.C. Senate | **72** votes in the N.C. House

**MARCH 17:** Cooper closes restaurants, bars, and clubs. Lt. Gov. Dan Forest, Cooper's 2020 election opponent, argues the lockdown is unconstitutional, saying the Council of State voted against banning in-person dining at private clubs and restaurants. Forest says Cooper "will devastate our economy, shutter many small businesses, and leave many people unemployed, especially in the rural areas of our state where food supply is already critical."

**MARCH 23:** Cooper closes gyms, hair and nail salons, spas, health clubs, and movie theaters. He prohibits mass gatherings of 50 or more people, including church services.



**MARCH 27:** Cooper shuts down the state, declaring a stay-at-home order. Residents must remain at home unless getting food, receiving medical services, volunteering, worshipping, exercising outdoors, or working at an essential business. He bans gatherings of more than 10 people. Prominent Republican lawmakers question Cooper's data. North Carolina is rocked by 300,000 new unemployment claims in just 11 days.

**APRIL 8:** Cooper sets new rules for nursing homes. After limiting visitors, he requires masks, screenings, isolation, and COVID-19 case reporting to the state.



**APRIL 8:** Cooper relaxes certificate-of-need laws that choke the supply of health care in North Carolina.

**APRIL 9:** Cooper restricts the number of shoppers allowed inside stores.



**MAY 15:** The state asks nursing homes to begin regular, proactive testing for the coronavirus.

**MAY 16:** Cooper can't prevent people from worshipping indoors. U.S. District Judge James Dever prohibits the enforcement of Cooper's order. Sen. Warren Daniel, R-Burke, says that "Cooper cannot treat retailers and ABC stores one way and houses of worship another. Nor can he allow one type of worship service to proceed while prohibiting another. Hopefully, this decision will put some guardrails on what has been unchecked executive power."

**MAY 20:** Cooper moves North Carolina into "Safer at Home Phase Two." This phase reopens restaurants, salons, pools, and tattoo parlors. But gyms, yoga studios, and public playgrounds remain closed. Even businesses that made the cut face strict capacity restrictions.

**MAY 21:** The State Board of Elections seeks emergency powers and is unanimously shot down by the N.C. Rules Review Commission. The elections board asks for the authority to change hearings for candidate challenges and election protest appeals. It requests the ability to change election dates, as well as deadlines for voter registration and accepting absentee by-mail ballots. Commissioner Tommy Tucker says that he is "concerned this is an end run around the public, the General Assembly, and the courts." Republican lawmakers slam the agency for a "back-door attempt to rewrite election laws."

**MAY 27:** Gyms sue Cooper.

STATE OF NORTH CAROLINA Rule 2.1 Exempted Cases REPHASED T. SMITH, JR., et al., Plaintiffs,	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
vs. BOY A. COOPER, JR., in his official capacity as Governor, STATE OF NORTH CAROLINA, Defendants,	30 CVS 4035 (Wake County)
vs. OLD AMERICAN FISH CO., INC. d/b/a AMERICAN FISH COMPANY, Plaintiff,	30 CVS 4036 (Wake County)
vs. GOVERNOR BOY COOPER, JR., in his official capacity, Defendant,	30 CVS 1854 (Davidson County)
vs. JESSE FITZGERALD JR., LLC, et al., Plaintiffs,	
vs. BOY A. COOPER, JR., as Governor of the State of North Carolina, and the Plaintiffs, et al., Plaintiffs,	

**MAY 28:** The General Assembly votes to reopen private bars, clubs, breweries, wineries, and distilleries. Republicans try to expand outdoor seating in restaurants and brewpubs. During the debate, Rep. Michael Speciale, R-Craven, argues that "governors don't make laws. ... We've got people whose livelihoods are dependent upon us doing something. The governor hasn't done anything."

Continued Next Page



TIMELINE

2020 (Continued from Page 13)

**JUNE 1:** Victory Fitness sues Cooper after its owner is charged with a Class 2 misdemeanor for reopening his gym. Cooper marches with protesters outside the Executive Mansion, his mask — at one point — dangling from an ear.

**JUNE 4:** The N.C. Bar and Tavern Association sues Cooper on behalf of 185 businesses. Zack Medford, president of the N.C. Bar and Tavern Association, argues that Cooper "is effectively signing a death warrant for 1,063 bars across North Carolina while offering zero relief to the small-business owners or their employees."

**JUNE 5:** Cooper vetoes the bill to reopen bars and expand restaurants' outdoor seating. Sen. Wiley Nickel, D-Wake, says he will oppose a veto override on House Bill 536 "because it takes power away from the governor."

**JUNE 11:** ACE Speedway loses in court against Cooper's shutdowns.

**JUNE 11:** The General Assembly sends Cooper a rewritten bill to reopen gyms and bars and expand seating in restaurants.

**JUNE 16:** Rural towns plead for relief from his executive orders on utility nonpayments. They say his orders are driving them into bankruptcy. Elizabeth City eventually announces its plan to defy the governor, and he grants it a waiver hours later. The town of La Grange sues Cooper. The courts deny the town's request for immediate relief. State Treasurer Dale Folwell pleads for relief for local utilities in a Council of State meeting but is refused. Cooper's order expires at the end of July.

**JUNE 19:** State Health and Human Services Secretary Mandy Cohen says that the legislature's No Patient Left Alone Act would violate federal law.


**JUNE 19:** Cooper vetoes the legislature's second attempt to reopen gyms and bars. Sen. Rick Gunn, R-Alamance, slams Cooper, asking "why did he walk with protesters without a mask on, but prohibits everyday citizens from using an elliptical machine at a gym? Why is it safe to have a drink outside at a restaurant, but it's dangerous to have a drink outside at a bar? Cooper needs to release the science behind these apparent contradictions."

**JUNE 20:** Cooper orders the removal of Confederate monuments from the grounds of the State Capitol.

**JUNE 24:** Lawmakers fail to override Cooper's veto of the reopening bill.

**JUNE 26:** Cooper's mask mandate kicks into effect. His order makes businesses responsible for enforcement.

A court sides with Cooper and against the lawsuit to reopen bars.



**JUNE 26:** Cooper's Division of Employment Security expands access to unemployment benefits with an emergency rule.

**JULY 1:** Forest sues Cooper, claiming an abuse of emergency powers. Forest accuses Cooper of unlawfully acting without concurrence from the Council of State. His lawsuit argues that the Council of State acts as a check so that "executive power of the governor is not unlimited."

**JULY 2:** Cooper vetoes another bill to reopen gyms.

**JULY 14:** The N.C. Supreme Court shuts bowling alleys back down. Bowling alleys had won a victory in their lawsuit against Cooper when Judge James Gale allowed them to reopen. But their success lasted only one week. The Supreme Court overturned Gale's original ruling, and ordered bowling alleys to close again while it reviewed Cooper's appeal.

**JULY 14:** Cooper allows schools to begin reopening with a mix of virtual and in-person learning. But he doesn't allow schools the option to go for a full in-person setting. Districts don't have the flexibility to craft local plans.

**JULY 24:** Legislative leaders question how Cooper's administration interpreted the law they passed on unemployment benefits. Lawmakers expanded unemployment benefits to four narrow groups — people diagnosed or officially quarantined, or workers who lost hours or employers because of the virus.

The Division of Employment Security then opened benefits to people who "reasonably believe there is a valid degree of risk to the claimant's health and safety due to a significant risk" of infection due to an employer's failure to comply with federal or state safety guidelines. It included people who refuse work to comply with the governor's orders, high-risk individuals over the age of 65, and parents who can't work because of canceled schools.

The John Locke Foundation challenges DES' expansion of unemployment benefits. The agency fails to file the paperwork to go before the Rules Review Commission in August, letting the emergency rule expire.



# A crumbling republic?

*The rise, fall of separation of powers in N.C.*



**JULY 28:** Cooper bans the sale of alcohol after 11 p.m.

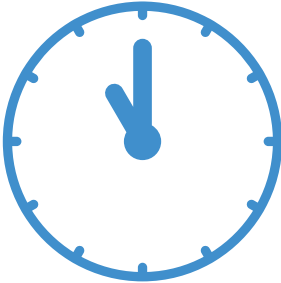
**AUG. 4:** Judge James Gale suggests the N.C. Supreme Court will decide the outcome of Forest's lawsuit against Cooper: "My guess is, whatever I do, I might just be teeing it up for seven other people."

**AUG. 5:** Cooper extends Phase Two restrictions. One of the state's leading economists warns that the economy could take two to three years to recover. As many as 40% of businesses targeted with restrictions won't survive, said Michael Walden, N.C. State University economist and member of the governor's N.C. Economic Recovery Group.

**AUG. 11:** Cooper wins against Forest in Superior Court. Forest later drops his lawsuit.

**AUG. 14:** The N.C. State Board of Education freezes enrollment at the state's two virtual charter academies. It rejects a unanimous recommendation from the state's Charter School Advisory Board to let 3,800 more students enroll. The education board's vote was 7-4, with Cooper's appointees voting along partisan lines.

**AUG. 27:** Cooper proposes a \$25 billion budget to expand Medicaid and unemployment benefits, grant teacher bonuses, and slash the Opportunity Scholarship program. He wants to draw down \$5 billion in new debt, \$1 billion of which won't need taxpayer approval. The GOP calls it a "spend now, pray later" plan.



**AUG. 28:** Cooper sues to disable a powerful check on how the executive branch can use the legislative authority delegated by the General Assembly. His lawsuit would cripple the legislature's veto power over how agencies interpret its laws. Cooper demands a majority of appointments to the Rules Review Commission. A ruling in Cooper's favor would permanently shift the balance of powers, experts say. The state Supreme Court will eventually decide the issue. Sen. Ralph Hise, R-Mitchell, calls it "another power grab, plain and simple."

**SEPT. 1:** Cooper opens gyms to 30% or less of their capacity. He moves the state into Phase 2.5, lifting shutdowns on indoor fitness centers, playgrounds, and museums. But bars and movie theaters remain closed. And some businesses say they cannot survive his capacity restrictions.

**SEPT. 16:** GOP leaders call on Cooper to reopen schools. Politicians and parents argue that virtual learning is leaving students behind, especially kids with disabilities.

**SEPT. 17:** Cooper gives elementary students the chance to learn in the classroom full time. He allows local school districts to choose to provide in-person learning full time, starting in October.

**NOVEMBER:** Three of the seven N.C. Supreme Court justices are up for election. So is Cooper.



# CONSTITUTION

## Lawsuit challenged Wilmington's restrictions on vacation rentals



**Adam Griffin**  
Fellow  
Institute for Justice

A Superior Court judge has blocked Wilmington's attempt to limit vacation property rentals across the city. Judge Richard Harrell ruled on Sept. 16 that Wilmington violated state law when enacting its vacation rental restrictions. The city's actions had prompted a lawsuit from residents who sank their life savings into a vacation-rental property they couldn't use. Before the judge's ruling, **Adam Griffin**, constitutional law fellow at the Institute for Justice, discussed the case's importance during an interview with Mitch Kokai for Carolina Journal Radio.

**MK:** Tell us what it is that Wilmington has changed in its rules that affect people who would like to rent out structures for vacationers?

**AG:** The city of Wilmington has passed a new ordinance in the last year. It forces property owners to obtain a permit if they want to rent their property. Prior to the ordinance's enactment, it was perfectly legal to engage in vacation rentals in the city of Wilmington. You didn't need permission from the government to rent your property.

After the ordinance was passed, they're now requiring a permit to rent. And to enforce that permit, they have imposed a cap and separation requirements to limit the amount of people who are allowed to have a permit. So it's not just a simple fill out a form and get a permit to rent. They've limited it to an exclusive group of people that they're allowed to rent their property for a short term.

They've done that by saying only 2% of properties in the beach town of Wilmington can engage in vacation rentals. And if one property is renting to vacation rentals — has this permit — no other property within 400 feet of that property is allowed to vacation rent. So they've really constricted the property rights in the city of Wilmington and limited to a small group the amount of people that are allowed to vacation rent.

**MK:** And this has had a direct impact on the clients that the Institute for Justice is working with. Tell us about the circumstances of your clients.

**AG:** David and Peggy Schroeder are a retired couple. They raised their family in Wilmington. They were residents of Wilmington for 30 years, and they recently retired to the N.C. mountains. But in order to stay connected to their family, they bought a townhome in Wilmington. They were going to live there as a second home, and they were also going to rent the townhome out.

They made substantial investments in the townhome,

put a lot of money into the townhome, to suit it up for renting. Right as they were ready to rent — they had started renting — the city passed this ordinance. That's what makes this ordinance particularly bad. It doesn't just enforce newcomers to the city, so it doesn't just enforce prospectively.

What this ordinance does is it says: Even though you already have a right, even though you've made substantial investments, even though you've already started renting, it then takes that right from you after they've started renting. But the city can't change the rules in the middle of the game and then punish people for following those rules.

That's what happened with the Schroeders. They were just law-abiding citizens who were following the rules, who bought a property that they knew they could vacation rent. Then, once they had made substantial investments, the city of Wilmington changed the rules on them and is depriving them of the use of their property as a vacation rental. That's unconstitutional under the North Carolina Constitution.

**MK:** Everything, I suspect, that the Schroeders were doing throughout this process was under the impression that Wilmington is going to operate as it always has. People will be able to rent out their homes. They had no idea that Wilmington was going to change the rules on them.

**AG:** No, they didn't. They actually did their due diligence. They researched state law, local law, their [homeowners association] rules and regulations. They consulted a Realtor and a lawyer, who all told them that vacation rentals were legal. They bought in a community where vacation rentals were lawful.

But then what happened, when the city of Wilmington changed the rules on them, [the city] decided that they would raffle off their property rights. So the city of Wilmington took the Schroeders' use of their property, took everyone's use of their property in the city of Wilmington, and put them



**They think that their zoning power is just not limited by the constitution. That's why we filed this lawsuit.**

into a lottery and raffled off their rights. Because the Schroeders' neighbor was within 400 feet of them and won the lottery, the Schroeders lost their right to rent. So the city of Wilmington turned their property right into a raffle ticket and gave it away. That's just not something that the N.C. Constitution allows them to do.

**MK:** Now, at first blush, those of us who are interested in property rights hear this and say, "This sounds crazy." Obviously, working on this case, you had to have come across what Wilmington says is its justification. How does the city say that this makes sense and that it's constitutional?

**AG:** The city of Wilmington — you know, we don't think they have constitutional arguments. But their basic argument is that the constitution and state law [don't] prevent them from zoning. They can do anything they want with zoning. If that means raffling off people's property rights, if that means capping and limiting the amount of people that can engage in this, if that means taking people's property rights by changing the rules in the middle of the game, then they think that they can do that.

They think that their zoning power is just not limited by the constitution. That's why we filed this lawsuit — to demonstrate to the city that they are in fact bound by the constitution and to stand up for the Schroeders and other families who want to keep their property rights and not be arbitrarily deprived of those property rights through a raffle system.

**MK:** What sort of impact has this decision had on the Schroeders?

**AG:** It was really devastating to the Schroeders. This was their retirement dream home. This [city] was where they raised their children. This was where they spent their entire lives. They've done a lot in the community to give back to the community. So it really felt like the city of Wilmington had turned its back on them — that they would change the rules on them in the middle of the game, that they would take away their property rights through a raffle.

The thing with the Schroeders is that they're hard-working people. They saved their money all their lives. Their retirement is in rental property. They sold two other properties to purchase this townhome. They put a lot of money into substantially renovating it. They can't afford to keep it if they can't vacation rent it. The only way they can afford to have this home — this second home — is to be able to rent it when they're not using it.

So if they lose this right, if the city is allowed to raffle off their property rights, then they are probably going to be forced to sell their townhome and be disconnected from the community that they spent their lives in and the place where their children and grandchildren and all of their friends are.

It has been really challenging for the Schroeders, but they've been tough, and they've stood strong. They're partnering with the Institute for Justice to show that you can fight City Hall and that the constitution was designed to put limits on government and what government can do to infringe your property rights.

**MK:** What is the ultimate goal of this suit?

**AG:** We want to establish precedent in North Carolina that a very pernicious idea called amortization has constitutional limits. Amortization is this idea that government can take your property and — rather than pay you for that property — it can force you to pay yourself for their taking.

Under the N.C. Constitution and under the U.S. Constitution, it is well-established law that when

the government takes your property, they have to pay you just compensation. But what amortization does is: They take the Schroeders' right to rent from them and then they say, "You know, now that we've taken that right, you can rent for one more year." So what happened is the Schroeders lost the lottery, ... and the city said, "You can rent for one more year. And then you can work and keep the property up and pay yourself. We're not going to pay you for taking that property right away. We're going to allow you to pay yourself for it."

That's unconstitutional. ... If the government's going to take your property away, they have to pay you for it. They can't require you to pay for it yourself. And so what amortization really is — it's a loophole around eminent domain. It's a ticking time bomb on the Schroeders' rights. That's unconstitutional under North Carolina's "law of the land" clause.

**MK:** If the Schroeders lose, what does this mean in terms of protection of property rights?

**AG:** It is dangerous if the Schroeders lose. It means that property rights are even more in jeopardy — that they are more at the whim of municipalities and cities, who think that they can just change the rules in the middle of the game and that that's perfectly fair, and that they can take people's property and not have to pay for it and require them to compensate themselves when they take that property, and that they can give rights to small groups of people. In this case, 2% of the people with a 400-foot buffer around them have the exclusive right to rent. Property rights are very much threatened if Wilmington is not held accountable here.

*Editor's note: The Schroeders' victory in Superior Court does not set a statewide legal precedent. If this case ends with the judge's ruling against Wilmington, the Institute for Justice would have to seek another case to challenge amortization as unconstitutional.*



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# COMMENTARY

## The case against public sector collective bargaining



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

Sometimes the legislation with the fewest words unleashes the greatest harm.

For example: “G.S. 95-98 is repealed. This act is effective when it becomes law.”

That’s the full text of House Bill 710 and Senate Bill 575, both filed by Democrats in the General Assembly last year to repeal the state statute that prohibits collective bargaining for public-sector employees. Passage of either one would have imposed significant costs on taxpayers without commensurate benefits.

While neither bill advanced far during the last legislative session, it signaled that public-sector unions, employee associations, and the Democratic Party’s radical wing have repeal of the statute in their sights. A Democratic majority in 2021 would open the door to public-sector unionization in a state that has remained relatively free of labor union coercion and continues to prosper as a result.

The N.C. General Assembly approved a ban on collective bargaining by public-sector employees more than six decades

ago. This legislative effort to ban collective bargaining was led by Democratic Rep. Frank Snepp of Mecklenburg County, who filed the bill in response to an attempt by Jimmy Hoffa and the Teamsters to organize Charlotte police. The General Assembly passed the ban on collective bargaining by a large margin in spring 1959.

Since passage of the ban, a few Democratic lawmakers have filed bills to reverse course, but neither Democratic nor Republican leaders of the General Assembly have allowed proposed legislation to reach the governor’s desk. Instead, North Carolina has remained a state that has discouraged efforts by labor unions to organize its public-sector workers.

Today, North Carolina, South Carolina, and Virginia are the only three states to have statutory prohibitions on collective bargaining of all public-sector employees. By this time next year, the number of states will fall to two. Lawmakers in Virginia approved legislation earlier this year that would allow certain local government workers, including teachers, nurses, and firefighters, to bargain with their employers collectively. The legislation becomes effective May 1, 2021.

While South Carolina appears to be safe from efforts to expand public-sector unionization in the Southeast, North Carolina is not. In 2018 and 2019, the N.C. Association of Educators organized “Red for Ed” walkouts that inspired



**Public-sector unions depend on elected officials for financial support. This dependency adds a powerful incentive for union leaders to immerse their organizations in political activity.**

thousands of public-school employees and advocates to travel to Raleigh on a school day in May. In 2020, the group’s members elected leaders who were “inspired by the powerful organizing and social justice focus of the Chicago Teachers’ Union” and have embraced the strategies and tactics employed by their teacher union comrades in Chicago and other large cities. And the NCAE is working hard to elect like-minded, pro-union candidates for legislative and state offices.

Because G.S. 95-98 repeal appears to have political momentum, researchers from the John Locke Foundation and the Economic Research Center at The Buckeye Institute produced a new report — available at [johnlocke.org/research](http://johnlocke.org/research) — that estimates the cost of repealing the collective bargaining law. We found the repeal would increase state government spending

by between \$889 million and \$1.32 billion, depending on the type of dispute settlement mechanism adopted by lawmakers. This translates into an additional cost of between \$84.75 and \$126.03 for each North Carolinian and a decrease in state gross domestic product.

Public-sector unions increase government expenditures in two ways. The first and most obvious way is to use the collective bargaining process to negotiate higher salaries, more generous benefits, and expanded employment opportunities for union members and those covered by union contracts. Increases in salaries, benefits, and employment necessitate higher aggregate government spending, which invariably leads to higher taxes on individuals and businesses. The report outlines the tax implications of allowing public-sector workers to bargain collectively.

The second way is to use the political process to support pro-union candidates for key local and state offices. Sympathetic elected officials can then use their regulatory and legal authority to protect union interests while using the power of taxation to raise revenues necessary to accommodate compensation and employment demands.

Indeed, public-sector unions depend on elected officials, rather than the market economy, for financial support. This dependency adds a powerful incentive for public-sector union leaders to immerse their organizations in political

activity. According to one theory, the transformation of public-sector unions into organized political machines may have spurred the growth of unionization of state and local government employees in the 1960s and 1970s. Today, the state and local governments where public-sector unions are strongest are the same dismal localities with unsustainable budgets, broken pension systems, and corrupt, one-party rule.

Unions, employee associations, and their supporters argue that the costs of collective bargaining would be offset with improvements in public services and economic benefits from increasing student achievement in public schools. But the research basis for such claims is unconvincing. As such, I’m skeptical that embracing public-sector unionism in North Carolina would produce substantive improvements in public services or continue to spur economic growth.

The primary goal of unionization is self-preservation, often at the expense of the public purse. Economist Thomas Sowell summarized this perspective succinctly: “The biggest myth about labor unions is that unions are for the workers. Unions are for unions, just as corporations are for corporations, and politicians are for politicians.”

North Carolina’s public-sector workers should work for the people of the state, not for union bosses and the politicians they control.

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## COMMENTARY

*Of academic freedom and false alarms*

**GEORGE EHRHARDT**  
COLUMNIST

Three weeks ago, I opened my email to find an unsolicited note from a lawyer, asking if I needed help. When I opened it, I discovered it was from lawyers at the Foundation for Individual Rights in Education, asking if they could help with the controversy at Appalachian State, where I teach. What controversy?

A few frantic emails later, I managed to piece together what happened.

Over the weekend, a student in my team-taught course objected — actually, his friend's mother had objected — to a survey he took for class that seemingly advocated killing Republicans, and she reported it to a Townhall.com writer.

He produced a story, which briefly went viral. A friend even forwarded it to me with an angry call to defund the UNC System, totally unaware that it had happened in my class. The controversy reached the UNC Board of Governors and our chancellor.

The problem was that the story was wrong in just about every way imaginable.

So what did happen? The story



starts with an opportunity provided by the current online teaching environment. Without physical classrooms, we can explore new ways of team-teaching and be in multiple places at the same time. A co-teacher and I designed a “Current Political Issues” course where we would each teach our own sections but base them on shared content.

The idea was that she (a progressive Democrat) and I (a conservative Republican) would engage each other in conversations about political issues and present them online to both sections. This, we thought, would both model civil discourse for our students and let them hear sincere

arguments from each side.

We began the semester by asking students to take a survey from Jon Haidt, whose book *The Righteous Mind: Why We Argue about Politics and Religion* argues that there are different moral “tastes” and different people are hardwired to care about values like authority, fairness, taboos, etc., differently. He argues that this occurs for evolutionary reasons — the “tribe” needs variety to adapt and survive.

One student in my co-teacher's section, however, took a different survey at the same website where Haidt's is posted, one that she did not assign. It has since been taken down, but it sounded innocuous, a

“Political and Social Values” survey. It begins harmlessly enough, as well, saying that the authors just want to hear your opinion and there is no right answer.

But then it takes a dark turn, asking whether the survey takers agree with statements like the following:

- Conservatives are morally inferior to liberals.
- If a few of the worst Republican politicians were assassinated, it wouldn't be the end of the world.

Just to reiterate, we did not assign this survey, and it wasn't a student who complained. He showed it to a friend, who showed it to his mother, who complained.

Nevertheless, even if we had assigned it, the outrage was *still* misplaced. In reality, the survey is designed to measure “left-wing authoritarianism.” It asks extreme questions to elicit from respondents just how far they will go to suppress alternative thought.

Intolerance is a real concern, especially for us conservatives who persevere in higher education. Surveys like the one taken by the student are valuable. The more evidence we can gather, the stronger the case we can make for free-speech protections on campus.

Besides that, though, what can we learn from this about reporting on higher education?

It is ironic, to say the least, that in a course where I may be criticized for the conservative

things I intend to say, the first actual attack turned out to be a right-wing conspiracy theory. It was a useful lesson for readers not to believe everything they see, and for writers to take time to learn the full story before they start hyperventilating.

Second, it strikes me as an example of how opaque academia can be to those outside its walls. At a practical level, this opacity suggests that both sides — those demanding reform and those on the defensive — be more patient with each other.

The class design and the survey were my ideas. As a professor with tenure, I'm confident taking controversial stances. My co-teacher — the one who got into trouble — is an adjunct on a contract that could easily not be renewed. Can she be expected to pursue the university's traditional goal of seeking truth on potentially controversial topics if some student's friend's mom's media contact can potentially get her fired for something she didn't even do?

The various administrators at Appalachian State circled the wagons around us, perhaps a little too zealously, but that's not a bad thing. The green-light rating FIRE has given the university for protecting free speech was put to the test and found to be well-deserved.

*George Ehrhardt teaches political science at Appalachian State University.*

*When student debt is a good thing (and when it's not)*

**PRESTON COOPER**  
COLUMNIST

**STUDENT DEBT HAS** a bad reputation. It's under attack from the left, which sees debt as a ball and chain that ruins the lives of young people who had the audacity to seek a decent education. Many on the right share this dim view of student debt but lay the blame at the feet of a higher-education bubble that can't get its costs under control.

There's merit to both views. Student debt can sometimes ruin lives, and the federal student loan program has indeed driven bloat and a proliferation of useless degrees. But the truth is more complicated.

Student debt also can be beneficial when used responsibly. The question is not whether we should eliminate student debt, but how we can ensure it is used only for beneficial purposes.

When is student debt a good thing? “Good” student debt finances credentials that provide adequate value relative to their cost, increase lifetime earnings, and supply students with skills that are useful in the labor market and in life. “Bad” student debt deviates from this ideal in one or more respects.

A new NBER working paper quantifies the beneficial effects of student debt.

The study found that when students borrow slightly more, they are more likely to graduate college and enjoy higher earnings down the road. There was little quantifiable impact on student loan defaults or homeownership rates. The additional debt was an unambiguous net positive for the

students observed. If a student starts college, takes on debt, and makes satisfactory academic progress, it is better to take on more debt rather than drop out.

All this presumes the loans are financing a worthwhile education. Unfortunately, much student debt often falls short of this ideal.

There are three principal categories of “bad” student debt:

- Debt taken on by college dropouts,
- Debt associated with low-value degrees, and
- Debt that fuels credential inflation.

For people who borrow but never complete the degree, student debt can truly ruin lives. About two in five students fail to finish college within six years, with dropouts concentrated at for-profit schools and community colleges

Yet these students were both encouraged and enabled to go to college by the heavily subsidized federal student loan system.

The least visible problem with student debt, and consequently the trickiest to solve, is credential inflation. Subsidized student loans, along with other forms of financial support for higher education, enable more people to get degrees. Unfortunately, this leads employers to expect degrees from job candidates, even when those jobs have not required degrees in the past.

How can we steer student debt toward its beneficial uses and away from funding noncompletion, low-value degrees, and credential inflation?

Colleges should be financially accountable for a portion of student loans that are not paid back, which will encourage them to increase completion rates and de-emphasize low-value majors. There should be limits on the amount students can borrow from the federal government, particularly at the graduate level, to discourage degrees whose value doesn't justify their cost. Governments and

the private sector should invest in alternative credentials, such as apprenticeships and third-party certifications, to knock the expensive bachelor's degree off its perch as gatekeeper to high-paying jobs.

And when things do go wrong, policymakers should find ways to make paying for education less burdensome, such as replacing debt with income-share agreements.

The federal government issues roughly \$100 billion in new student loans every year, and much of that qualifies as “bad” debt. But the total eradication of student debt should not be the goal, since student loans still can be beneficial when used correctly. Instead, the right reforms can turn student debt from a drag on borrowers and the economy into a tool of individual empowerment.

*Preston Cooper is a visiting fellow at the Foundation for Research on Equal Opportunity.*



COMMENTARY

For North Carolina voters, the choice is clear



North Carolina voters have a choice. We know what we’d get with continued Republican leadership because — through four years of a Republican governor and a decade of legislative initiatives — Republicans have shown us.

If Republicans are in control, we’ll get more of the same: restrained spending, lower taxes, debt reduction, and a buildup in reserves. Republicans have rolled back burdensome regulations, made better investments in education — focusing on students over systems — and invested wisely in infrastructure.

We also know what we’d get with Democrats in control. We know because they’ve told us, through Gov. Roy Cooper’s budgets, vetoes, and through legislation sponsored by Democrats in the General Assembly. If they’re in control, we’ll get big spending, higher taxes, more regulations, a one-size-fits-all education system, and bigger, invasive government.

Cooper’s COVID executive orders shut down the state’s economy, picked winners and losers, choked the life and life savings out of

small businesses, threw record numbers into unemployment lines, and then proposed raising taxes to help the very people his actions hurt. Schools have been closed since March, throwing parents and students into chaos.

The damage to students won’t be known for months or years. Incidents of domestic violence, child abuse, mental health, depression, and substance abuse have escalated. We know who made the decisions, but who will accept the responsibility for the damage?

In his latest budget, Cooper would increase spending by \$1 billion, spend all money carried over from last year, and increase debt by \$5 billion. He would drain reserve funds to pay recurring expenses, leaving North Carolina vulnerable in the next storm or economic downturn.

The only way to support the increase in spending and expansion of government is increased taxes. “Millionaires” and “big corporations” are specific targets, but we will all pay in the end. Democrats will bring back the earned income tax credit and death tax and open tax carve-outs for solar farms and historic building renovations. They’ll increase tax giveaways to Hollywood film makers, removing the protective obscenity clause.

Every Republican budget since 2011 has limited growth within the rate of inflation plus population growth. Democrats have rejected each one. Cooper has vetoed every budget presented to him. They don’t think we spend enough.

**If Republicans are in control we’ll get restrained spending, lower taxes, debt reduction, and a buildup in reserves. Republicans have rolled back burdensome regulations, made better investments in education — focusing on students over systems — and invested wisely in infrastructure.**

Medicaid expansion will add 643,000 additional enrollees to a program that already covers 20% of the state’s population. Expansion will cost an additional \$4 billion to \$6 billion a year, leaving us directly responsible for \$119 million to \$171 million for mostly working age, able-bodied childless adults. Democrats want a state-wide universal health care system, which would — conservatively — cost \$41 billion in the first year, almost double the state budget.

Cooper, if re-elected and supported by a majority in the legislature, would rip school choice out from under thousands of students. He would slash funding and then eliminate the Opportunity Schol-

arship program. The Democrat candidate for N.C. superintendent of public instruction promises to close half the charter schools.

Democrat candidates across the state, if elected, have sworn to remove a ban on collective bargaining, paving the way for the unionization of every state employee.

Bernie Sanders, Joe Biden, Democratic legislators, and local officials supported and cheered on the recent unionization of nurses at Mission Hospital. The intent is to unionize nurses in hospitals across North Carolina.

The N.C. Association of Educators, flexing its left-wing, extreme, progressive muscles, has organized and encouraged teacher walkouts and engaged in what they call union activities. They have endorsed all Democrats running for statewide office, including every Democrat running for the N.C. Court of Appeals and N.C. Supreme Court.

We’ve seen shameless manipulation of rules overseeing absentee ballots by a Democrat-controlled State Board of Elections, putting the very integrity of our elections at risk. Pending lawsuits brought by leftist groups have challenged a voter ID requirement, which voters overwhelmingly approved. Democrats want to reinstate public campaign financing and eliminate the Electoral College.

Not satisfied with the separation of powers in our state constitution, Democrats have made numerous unauthorized grabs for

power. From a COVID-response overreach by executive order, to extending emergency management authority for months on end, to packing the election boards, to efforts to restructure the Rules Review Commission, Cooper and Democrat leaders have exerted power they didn’t have. When the General Assembly provided a backstop, the left turned to the courts with the intent to “sue ’til it’s blue,” an effort backed by big-name national Democratic lawyers Eric Holder and Mark Elias.

Cooper and the Democrat city leaders in Raleigh ordered law enforcement to step back as rioters tore down statutes and burned and looted downtown Raleigh. Addressing lawlessness, vandalism, and businesses across the state, Cooper tweeted, “Let me be clear about one thing. People are more important than property.”

Democrat-controlled Asheville has defunded a police force that has seen 30% of the force resign. An Asheville-area reporter was viciously attacked by protesters who also delivered a casket full of manure to the police department. Forty-seven Democratic legislative candidates signed a pledge to support radical leftist group Future Now Fund’s goals, including “re-allocating” resources away from law enforcement.

In this election, voters have a clear choice between what two parties propose for North Carolina. We know because they’ve shown and told us what they’ll do. Now, it’s up to us.

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## COMMENTARY

## Five-year-old court ruling should raise concerns



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

The latest legal challenge to North Carolina's Opportunity Scholarships has yet to head to a courtroom. But a review of a similar case from 2015 should raise concerns for scholarship supporters.

The N.C. Supreme Court upheld Opportunity Scholarships as constitutional five years ago. But the justices split, 4-3, along party lines. At a time when the court was still officially nonpartisan, all four Republican-affiliated justices supported the scholarships. All three Democrats rejected them.

Circumstances have changed dramatically since the state's highest court delivered that victory for school choice. Given the changes, it's worthwhile to revisit the Supreme Court's 2015 written opinion in *Hart v. State*.

In upholding Opportunity Scholarship school vouchers in July 2015, the state's highest court overruled an August 2014 ruling from a single Superior Court judge. That judge had sided with critics who wanted to kill the voucher program in the cradle.

Writing for the Supreme Court's four Republican members, then-Chief Justice Mark Martin assessed the General Assembly's decision to create a voucher program. Then he emphasized the courts' proper role.

"According to the most recent figures published by the Department of Public Instruction, a large percentage of economically disadvantaged students in North Carolina are not grade-level proficient with respect to the subjects tested on the State's end-of-year assessments," Martin wrote. "Disagreement exists as to the innovations and reforms necessary to address



**SCHOOL CHOICE.** 12,183 students participated in the Opportunity Scholarship Program in North Carolina in 2019. The program awards \$4,200 per school year for eligible students to attend a private school of their choice.

this and other educational issues in our state. Our state and country benefit from the debate between those with differing viewpoints in this quintessentially political dialogue."

"Such discussions inform the legislative process," Martin added. "But the role of judges is distinguishable, as we neither participate in this dialogue nor assess the wisdom of legislation."

"Our constitutionally assigned role is limited to a determination of whether the legislation is plainly and clearly prohibited by the constitution," the chief justice explained. "Because no prohibition in the constitution or in our precedent forecloses the General Assembly's enactment of the challenged legislation here, the trial court's order declaring the legislation unconstitutional is reversed."

Martin and the other three members of the *Hart* majority refrained from injecting their opinions about Opportunity Scholarships into their ruling. Instead they agreed that a decision about the scholarships belonged in the General Assembly, the home of "quintessentially political dialogue."

Voucher supporters might take

comfort in the *Hart* decision, if the justices who sat on the N.C. Supreme Court in 2015 occupied the same seats today. But Martin is gone, along with two of the other three justices who joined his majority opinion in *Hart*. Only Justice Paul Newby remains from that quartet.

Meanwhile, all three dissenters in the 2015 case remain on the N.C. Supreme Court. Two of the three dissenting justices wrote opinions in *Hart*. Neither dissent bodes well for the future of a program designed to help low-income families use tax dollars to send their children to the schools of their choice.

Justice Robin Hudson wrote the main dissent. "Because the Opportunity Scholarship Program provides for the spending of taxpayer money on private schools without incorporating any standards for determining whether students receive a sound basic — or indeed, any — education, I conclude that the program violates the North Carolina Constitution in two respects," Hudson wrote.

First, Hudson disputed the notion that Opportunity Scholarships fulfilled a public purpose. Second, she argued that voucher spending violated the state consti-



**JUSTICE CHERI BEASLEY.** Beasley used the words "cruel illusion" in describing Opportunity Scholarships.

tution's provision spelling out "a right to the privilege of education."

"The main constitutional flaw in this program is that it provides no framework at all for evaluating any of the participating schools' contribution to public purposes," Hudson argued. "[S]uch a huge omission is a constitutional black hole into which the entire program should disappear."

Hudson also dismissed the notion that a wider variety of options in an "educational marketplace" would ensure higher-quality programs. "[M]arketplace standards are not a measure of constitutionality," she wrote. "To the contrary, this Court must insulate constitutional standards from the whims of the marketplace."

No one can say for certain how Hudson would rule in a second review of Opportunity Scholarships today. But given her preference for watching the program "disappear" into a "black hole" in 2015, voucher supporters would be wise not to count on her vote.

Just as disturbing for today's Opportunity Scholarship advocates is the second dissent in the *Hart* case. Having joined Hudson's dissent, Justice Cheri Beasley added her own distinct criticism of

school vouchers.

Beasley warned of "the danger posed by the General Assembly in designating general funds for nonpublic education and a nonpublic purpose." "[I]t effectively undermines the support the legislature is constitutionally obligated to provide to the public school system," she wrote.

The voucher program "circumvents the mission of public schools," Beasley argued, and she labeled the General Assembly's decision to enact a voucher program "vexing."

Perhaps Beasley's most damning assessment of Opportunity Scholarships involved the words "cruel illusion." First, she employed those words to criticize the "opportunity" in the voucher program's name. She used the language again when assessing the program's potential impact.

"Without systemic and cultural adjustments to address social inequalities, the further cruel illusion of the Opportunity Scholarship Program is that it stands to exacerbate, rather than alleviate, educational, class, and racial divides."

Not only does Beasley still sit on the Supreme Court. She has served as chief justice since Martin's resignation in February 2019. Beasley's current position gives her a larger role in overseeing the court's consideration of cases. She has voted with the majority in 99% of N.C. Supreme Court rulings this year. (Hudson's voted with the majority 98% of the time.)

Since 2015, the Opportunity Scholarship Program has grown to serve more than 12,000 families. They can use up to \$4,200 a year to send their children to the schools of their choice.

But a lawsuit tied to the N.C. Association of Educators teachers union aims to end Opportunity Scholarships once and for all. If the case heads to the state's highest court, dissents in *Hart v. State* from 2015 suggest scholarship supporters would face a tough audience.



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# FROM THE PUBLISHER

## Confessions of a judiciary junkie

continued from PAGE 2

With three justices' seats to be decided this year, balance on the court and the future of several popular public policies are on our ballot. After Nov. 3, it's likely to be either a 7-0 progressive Democrat majority, or if the slate of Republicans — Associate Justice Paul Newby, Judge Phil Berger Jr., and Tamara Barringer — wins, a tenuous 4-3 Democrat majority.

The left knows how important its majority is. Washington, D.C.-based political action committee Future Now Fund wrote in an analysis of N.C. redistricting: "The State Supreme Court is Democratic ... so that should be a check on Republicans' worst instincts."

Translation: Democrats on the court are to safeguard a partisan agenda and provide cover for Democrat Gov. Roy Cooper when he oversteps his executive branch authority.

No one knows this better than Fairwood Lanes owners Elizabeth and Timothy Robinson, who have

been locked in a legal battle with Cooper over his arbitrary COVID shutdowns. After Judge James Gale ruled in July that bowling alleys could reopen, the governor appealed to the state Supreme Court, which, unsurprisingly, sided with him and shuttered the couple's business indefinitely.

Fairwood Lanes is just one of an untold number of small businesses devastated by Cooper's unending shutdown that couldn't rely on our state Supreme Court for relief. As the National Federation of Independent Business explained in its endorsement of the Republican slate, it's important to have a judiciary that's fair, impartial, and "understands issues affecting the small-business community."

Along with NFIB, public safety professionals like the N.C. Troopers Association are keeping close tabs on these races and have endorsed the Republican slate, stating they prefer jurists "who rule by the law rather than legislate from the bench."

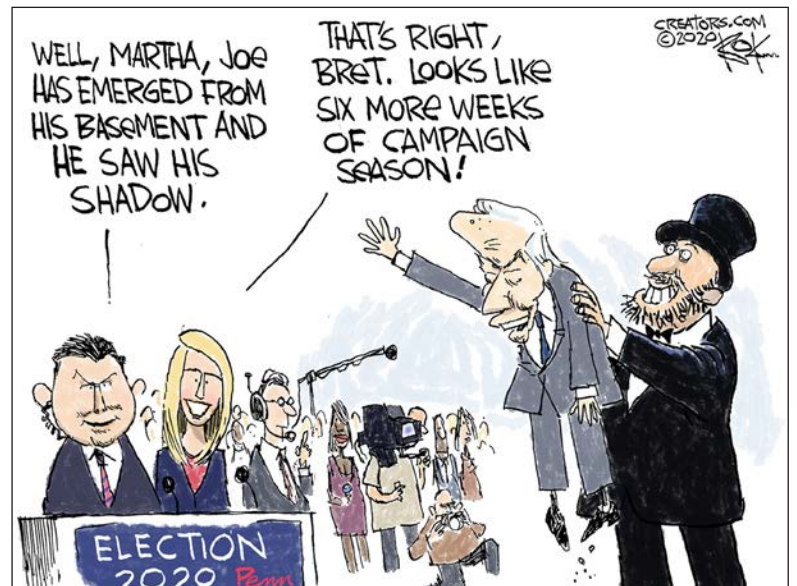
Voters have reason for concern about this court legislating from the bench. Two 2018 constitutional amendments — lowering the state income tax cap and establishing voter ID — were opposed by Democrats but passed by voters. Now they will end up in the state Supreme Court, thanks to a leftist special-interest-group lawsuit.

Each amendment garnered more votes than any statewide candidate on the ballot, including current Supreme Court Justice Anita Earls. The tax cap amendment secured 280,000 more votes than Earls. "Yet Earls and her Supreme Court colleagues could end up deciding whether the 2 million votes cast for the income tax cap and voter ID end up amounting to nothing," wrote my John Locke Foundation colleague Mitch Kokai.

Low-income students who receive Opportunity Scholarships and their parents should be worried, too. Cooper has been an outspoken opponent of the program, and current Chief Justice Cheri Beasley authored a scathing minority opinion against them in 2015 as an associate justice. With a new teachers' union lawsuit, Democrats look to weaken the school-choice option. They will pursue their goal through our state Supreme Court because they can't accomplish it in the legislature or in the court of public opinion.

Voters can't flip the majority in one election cycle, but they can begin to restore balance to the court. With so many important issues — including separation of powers, public safety, school choice, voter ID, and the Cooper shutdown — riding on these three seats, we should all be judiciary junkies now.

# CARTOONS



# Republicans face tough fight for state's highest court



**DONALD BRYSON**  
COLUMNIST

When it comes to the state's highest court, 2020 is a high-stakes year for N.C. Republicans.

Democrats now enjoy a 6-to-1 majority on the N.C. Supreme Court. Because North Carolina's Supreme Court justices serve "staggered" eight-year terms, three of the seven seats are up for election this year, including the chief justice's seat.

The best-case scenario for Republicans gets them to a 3-to-4 minority on the court. While that's still a minority, it would be a much stronger position than having only one Republican on the bench.

If Republicans can make a clean sweep, a tall order, they will be in a more advantageous position when two more Democrat justices are up for re-election in 2022.

But can Republicans make a clean sweep of all three Supreme Court races this year? According to

polling from the Civitas Institute and the latest campaign finance data, it's possible but difficult.

The Civitas Poll regularly fields questions termed "generic ballot tests" for Congress, the General Assembly, and the state Supreme Court. This measure is the percentage of likely voters in statewide surveys who say they intend to vote for either the Republican or the Democratic candidate for a given position. Since there are multiple judicial races, it may seem the generic ballot is too broad to forecast the outcome. But it has proven to be an accurate predictor of statewide and national partisan distribution of votes.

The latest Civitas Poll, fielded Sept. 17-20, shows the generic Democrat and Republican Supreme Court candidates tied, with 43% each. For Republicans, this is an uptick from April, when they trailed by 3 percentage points, 36 to 39. Looking into these numbers, it appears Republicans have made marked improvements with high-propensity voters, men, and in the Charlotte media market.

In a state where Democrats have historically dominated in voter registration, tied on the generic ballot test is not a bad place for Republicans in September.

## BY THE NUMBERS

**\$2.02 million**

Amount raised by Democrat N.C. Supreme Court candidates. Republican candidates have raised \$1.028 million.

But two variables should give judicial Republicans concern: campaign fundraising and the undervote.

The most recent data, from the N.C. State Board of Elections, are from second-quarter campaign finance reports. According to that data, Republicans have a substantial money problem. Combined at that point, the three Democratic candidates had \$2.02 million cash on hand, while the three Republican candidates had a combined \$1.028 million. In other words, going into the long summer of an election year, Democrats had a nearly 2-to-1 cash advantage.

Looking at the race for chief justice, we see a similar tale. Democrat Chief Justice Cheri Beasley's campaign, up until June 30, had raised \$1.09 million and had spent \$222,379. Meanwhile, Republican Justice Paul Newby's campaign had raised \$598,375 and had spent only \$39,111.

The September Civitas Poll asked voters about the chief justice race and found Beasley leading Newby, 44% to 38%.

Democrats have been much more aggressive than Republicans about fundraising — even during a global pandemic. Unfortunately for the three challenging Republicans, that means they're at a marked disadvantage.

The purpose of campaign fundraising is to promote yourself, your ideas, and your principles to the general public to garner widespread support.

The ability to create more support for yourself than your candidate becomes difficult when you have a substantial financial disadvantage. It becomes even more complicated when considering the problem of the undervote.

Undervote occurs when no vote is cast for a single-choice election on the ballot. For example, in 2016, 4,741,564 people cast a vote in North Carolina for the presidential election. In 2016, there also was an election for the state Supreme Court, which saw 3,961,352 votes cast.

In other words, 780,212 fewer votes, about 16.45%, were cast for the state Supreme Court than for president.

Why? Voter awareness is low. Many N.C. voters are surprised to find we elect Supreme Court justices instead of the federal appointment model. And even if they did know, the ability to make an informed decision is more difficult because of the lack of accessible information, compared to Congress, for example.

This lack of awareness is even more disturbing when considering the state's highest court's duty, weighing legal decisions on issues such as school choice, voter ID, and the death penalty.

All these issues come together to make 2020 an incredibly important judicial election year for Republicans and, even then, only working on getting to a more substantial minority on the state's highest court. But if Republicans succeed in winning at least two of the three Supreme Court races, 2022 will be hotly contested because the partisan majority of the court will hang in the balance.

On the other hand, if Democrats win all three, they'll have a majority until at least 2026.

*Donald Bryson is president and CEO of the Civitas Institute, a public policy think tank in Raleigh. Reach him @donaldbryson.*



## COMMENTARY BY JOHN HOOD



## Cooper faces test on voter ID

continued from PAGE 2

districts have been invalidated in court several times in the past. Even if the newly elected General Assembly enacts redistricting reform in early 2021 before drawing new maps, it is likely the result will be challenged in court. Perhaps the challenge will succeed.

Do we really want to treat every action of a General Assembly as only provisionally legitimate, its legal status dependent on whether a future court might strike down districts or other rules under which the previous elections were held? Surely not. The result would be utter chaos.

Cooper and his supporters admit that. In the lawsuit against voter ID and the tax cap, they argued that it would be OK for such an “illegitimate” legislature to enact budgets and the like but not to amend the state constitution.

Reasonable people might agree with that distinction if the General Assembly possessed the power to amend North Carolina’s constitution. But it doesn’t. By majorities of three-fifths in both chambers, the legislature can place amendments on the ballot. Only North Carolinians themselves can amend their constitution.

If the existence of gerrymandered districts truly established a justification for judges to prevent an “illegitimate” legislature from enacting laws, it would make more sense for judges to strike down ordinary laws, not constitutional amendments. After all, if voters don’t like an amendment, they can vote it down. But voters can’t do the same to laws. Two of three judges on a Court of Appeals panel made precisely this point in a mid-September decision that, at least for now, restores the voter ID provision.

Let me put it another way: By popular vote, by direct democracy, North Carolinians decided to require voter ID. The governor and his allies claim this outcome was undemocratic.

It’s an extreme position to defend, and not just for Cooper. The N.C. Supreme Court will ultimately decide the case. Three of its seats are up for election this fall. You’ll be hearing a lot about voter ID again this cycle, like it or not.

## State economic recovery is sputtering

According to the latest jobs report, North Carolina’s headline unemployment rate fell to 6.5% in August, down from 8.5% in July. Good news worth celebrating, right?

Don’t pop the cork on that champagne just yet. This was mostly a statistical artifact, not a major improvement in the state’s labor market. While the government counted about 100,000 fewer North Carolinians as unemployed in August, only 28,000 got jobs. The remaining 72,000 dropped out of the labor force.

In other words, they either gave up looking for a job in North Carolina or left the state. In a healthy economic recovery, your labor force should be growing, not shrinking. Indeed, according to other measures, North Carolina is experiencing the worst economic recovery in the Southeastern U.S.

Let’s begin with the issue I just referenced: labor-force participation. In February, 61.6% of North Carolinians at least 16 years of age and not living in some kind of institution were participating in the labor force. That is, they were either employed or actively looking for a job.

In August, that rate was 57.5%. North Carolina’s labor-force participation is down 3.9 percentage points. The



**FRUSTRATED, DEPRESSED, ANGRY.** North Carolina’s economic recovery is sputtering. Thousands of North Carolinians are finding new jobs every month, to be sure, but thousands more are being left behind.

other 11 states in the Southeast all had smaller declines. The regional average dropped by just 1.5 points.

Now let’s look at employment itself. Unlike the unemployment and participation-rate statistics, the government’s job count comes from a survey of employers, not households. This survey has a much-larger sample size and produces more stable results. Unfortunately, it doesn’t paint a rosier picture of

our state’s labor-market recovery to date.

In August, North Carolina employers reported 4.3 million filled positions. That comes to about 350,000 fewer jobs than in February, before the onset of the COVID-19 recession, a drop of 7.6% in total employment.

Again, that’s the worst performance in the Southeast. The next-hardest-hit state, Louisiana, experienced a 7% decline during the same period. Among

our neighbors, employment fell 6.1% in Virginia, 5.6% in South Carolina, 5.4% in Tennessee, and 4.7% in Georgia.

Perhaps our labor markets will look much healthier by October or November than they do right now. Taking an accurate temperature of any economy is always a challenging task — and COVID has made it more so in many ways.

Right now, though, based on the available evidence, it would be fair to say that North Carolina’s economic recovery is sputtering. Thousands of North Carolinians are finding new jobs every month, to be sure, but thousands more — frustrated, depressed, angry — are being left behind.

For some, their employers or their own small businesses have gone bankrupt. Others have intact employers but, faced with school closures, are having to cut back their hours at work or leave their jobs altogether so they can stay home with their young children. Some are exiting the state in search of better opportunities elsewhere in the region.

As we are in the middle of election season, you are of course free to draw whatever political conclusions you like. But first, please just give a thought, and say a prayer, for the North Carolinians who are suffering.

### COVID-19

## COVID response creates policy options

**ALTHOUGH WORKING** from home provides a great deal of flexibility and potential benefits, professional and personal, most of us don’t want to make it our default setting — even after, or perhaps because of, being ordered to work from home this spring during the initial response to the COVID-19 crisis.

The specific percentages vary by survey instrument, but the trend is unmistakable. Most people who’ve telecommuted this year have liked some aspects of it. They want the option to, say, work a few hours a week or a few days a month from home. But only about 12% to 19%, depending on the poll, want to transition fully or mostly to home-based employment.

By no means am I saying, however, that the COVID crisis will fail to produce lasting changes in workplaces. If even 12% of us end up telecommuting all or most of the time, that would roughly double the share of work hours



**I hope some state and local officials are starting to plan for a post-COVID future — one in which flexibility, adaptability, and innovation will be highly prized.**

previously done at home.

North Carolina policymakers face many short-term challenges, I know. But I hope some state and local officials are starting to plan for a post-COVID future — one in which flexibility, adaptability, and innovation will be highly prized.

Just as increasing numbers of North Carolinians will reject binary choices when it comes to workplaces, increasing numbers of N.C. parents will reject all-or-nothing choices in education. Should their children attend a dis-

trict-run public school, a chartered public school, a private school, or a homeschool? Many parents will answer “yes” to this formerly multiple-choice question.

They may use one mode for older children and another for younger children. Or, working from home themselves part of the week, some may opt for a hybrid approach: home education as a base with some classes at a school, or alternatively three to four days a week at school with a day or two of enrichment in homes, churches, arts, or athletic pursuits, or part-time jobs.

If policymakers want to be helpful, they’ll look for ways to remove rather than erect impediments to flexibility and choice. They’ll embrace education savings accounts that allow parents to deduct the money they save and invest in their children, along with state deposits into ESAs for families of modest means.

My colleagues and I at the John Locke Foundation have advocated

ESAs since the mid-1990s, and a version of the idea has now become reality in many states.

Flexibility and consumer choice should guide other post-COVID policies, too. For North Carolinians who want to telecommute, or even to found new businesses from their homes, policymakers should loosen any zoning and housing regulations that might get in their way.

North Carolina should also reform state licensing and insurance laws so that telemedicine can become a permanent part of the health care landscape rather than just a temporary expedient during a pandemic.

I’m not assuming our “new normal” will look radically different from our “old normal.” There’s no need to get carried away with grandiose predictions.

Even moderate shifts in tastes and behavior will require public policy adjustments. North Carolina’s leaders should be ready to enact them.



## COMMENTARY

# Gov. Cooper knows best, so who are we to question him?



**JOHN TRUMP**  
MANAGING EDITOR

Maybe I'm just too dumb to get it. All that science and data. Stupid me, thinking I could think for myself.

At one point in my life, not that long ago, really, I thought I was pretty smart. Well, smarter than average, anyway.

What a fool I was ... am.

Just plain stupid. That's me.

Thank you, Gov. Roy Cooper, for revealing my ignorance. For offering evidence of why you, and so many others like you, are so much smarter than me. You talk, and they listen. You give orders, and they follow.

Instead, I questioned your reasoning. Your motives. What was I thinki- ... darn it, there I go again. Won't happen again, I promise.

For some reason, I believed our dear leaders — at all levels — including you, sir, bungled this COVID-19 thing all to heck.

We failed, as a nation, to lock down early, and to recognize the dangerous potential of this virus. Then, as the White House shifted to the states responsibility for responding to the virus, things got immediately political.



**RIALTO THEATER.** Bars and movie theaters have been closed since March, despite heart rending pleas to the governor from owners and staff to reopen.

I think most of us supported the state's early response, including the strict lockdowns. I believed an emphasis on testing, education, and good old-fashioned common sense would allow us to soon resume some semblance of our former lives. That, with the right leadership, people would be careful, would try to keep one another safe. Other than a few exceptions — goofily portrayed by reporters on TV news — people have.

I believed the governor would proceed with his plan, to reopen in phases, and not to rely solely

on a heap of charts and graphs that only he and Dr. Mandy Cohen could accurately interpret.

I believed, for whatever reason, more than a few reporters would question the data and challenge Cooper and Cohen, not only on the veracity of the numbers but also the context in which they're presented.

I thought the goals and expectations regarding outcomes for testing, hospitalizations, etc., were rigid and immovable, as opposed to swinging targets. We've hit that magical 5%, as it relates to

positive tests.

Oops, missed again. Too smart for me, you two rascals.

Too smart, too, for my John Locke Foundation colleagues, I suppose, even with their degrees, their brilliant reasoning, and editorial profundity. One such colleague, Director of Regulatory Studies Jon Sanders, writes that, in North Carolina, 98.22% of people have never had a confirmed case of COVID-19.

People who aren't infectious.

"Think about that: 98.22% of folks you'd sit next to at a bar, watch a movie with, or stand next to in line to vote have never even had the virus," Sanders writes.

Bars and movie theaters have been closed since March, despite heartrending pleas to the governor from owners and staff to reopen.

Bars in "restaurants" are open, as are breweries, and they have been for months. I know this. I've seen this, at least I thought I did. Falling apart, I am.

Still, I figured Cooper would stop blatantly cherry-picking winners and losers. He'll throw those drowning people a rope, I believed. He will, soon, especially with cooler weather coming, when it's not so comfortable for people to sit outside.

Wrong again.

Cooper, before opening elementary schools, gave individual districts the option to reopen schools and, largely because of pressure from teachers, they remained

closed to in-person learning, even though state Republicans incessantly tried to change that.

Oh, those tricky Republicans. Middle and high schools remain closed to in-person learning.

Why send kids, who probably won't get seriously ill, to school anyway. All that social interaction — and the incumbent benefits — the one-on-one help, the relief for working parents ... pfft.

The isolation is good for them, don't you know? Nothing warms my heart more than watching my twin boys lounging in their beds, phones in hand watching videos from TikTok or Bleacher Report. At 9:30 a.m., because class finished early, when they could be meeting with teachers or talking with, I don't know, friends and classmates. About homework, or college.

Keep them home where they're safe, says the governor, our favorite scaredy cat. All along I thought that was up to us, the parents, to keep them safe.

Stupid, stupid, stupid. Me and millions like me.

A news reader from a Raleigh TV station said this week the station reached out to the governor about his plans for schools, but it's been a couple of days and he hasn't gotten back to them. Couldn't help but laugh.

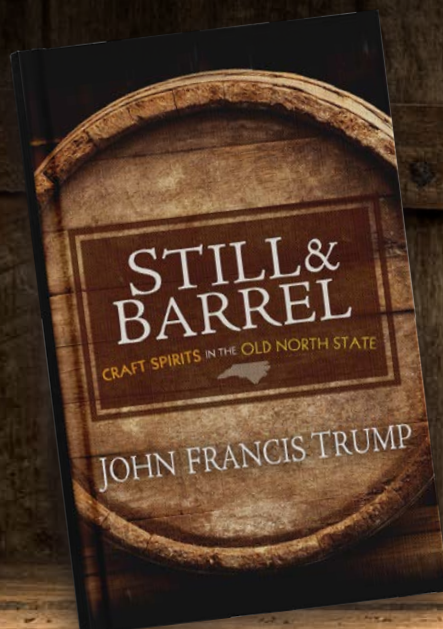
Not too smart, either, are you?

The governor knows best. Just shut up and listen, comply.

Just keep telling me it's raining.



**John Trump**  
Managing Editor,  
Carolina Journal



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## COMMENTARY

## Ever-changing districts portend interesting results



**ANDY TAYLOR**  
COLUMNIST

Last year, a Superior Court panel in North Carolina declared the state's congressional districts an unconstitutional partisan gerrymander. As I noted in a previous column, this was an egregious abuse of judicial power. No matter; it is done. We should now look forward and examine the effects the ruling will have on the 2020 U.S. House elections.

This was the third time this decade North Carolina has redrawn congressional district lines. In 2016, decisions — eventually affirmed by the U.S. Supreme Court — voided the map drawn after the 2010 census because it constituted a racial gerrymander in contravention of the 14th Amendment's equal protection clause.

To comply, the General Assembly approved a very different configuration. The 13th District was moved from the eastern part of the Triangle to the Triad, and two Republicans, Renee Ellmers and George Holding, were “double-bunked,” forced to compete against each other in a race



**THE “DO-OVER” DISTRICT.** In the now infamous 9th Congressional District, Dan Bishop faces corporate vice president Cynthia Wallace.

Holding won. The famous “snake” 12th District was compressed and pushed into its southern tip in the city of Charlotte. Yet the results were not particularly different. Twelve incumbents were re-elected, and the Republicans maintained their 10-3 advantage.

The current map is different again. The 13th now bleeds into the eastern Triad, and the 6th has retreated to Guilford and Forsyth counties. Instead of running from left-to-right together just west of Charlotte, the 5th and 10th still run side-by-side but now from top-to-bottom on the map. The 10th has only Lincoln and Catawba counties in common with its former self. The 2nd, which had formed a backward “C” around Raleigh, now occupies the southern two-thirds of

Wake County. The 4th has shifted to the north and east to add Granville and Franklin counties to its territory in the western Triangle.

Members are therefore getting to know new constituents and voters. This ought to make races as unpredictable as they can be in the days of partisan polarization, the internet, and sophisticated polling. Several of the races still look uncompetitive, however. The 1st, 4th, and 12th are all comfortably Democratic and will be won by entrenched and elderly members of the delegation facing nominal opposition. Five Republican incumbents are favored: Greg Murphy, who succeeded Walter Jones after the longtime congressman died in 2019, in the 3rd; Virginia Foxx, former chair of the House Education

and Labor committee, in the 5th; David Rouzer, who has strong agriculture bona fides that have made him popular down east, in the 7th; Pat McHenry, who is Republican leader on the House Financial Services committee, in the 10th; and Ted Budd, surprising winner of a 17-person 2016 primary that included four state legislators, in the 13th. A close presidential race might provide some help to their challengers, but the coronavirus epidemic makes it difficult to meet people and generate energy to run a successful underdog campaign.

Five other seats the GOP currently holds look more interesting. The party has an edge in three of them. In the now infamous 9th — the district with the “do-over” 2019 election following accusations of voter fraud in 2018 — incumbent Dan Bishop faces corporate vice president Cynthia Wallace. Two years ago, only 905 votes separated Republican and Democrat. The new district is a little wealthier. In the 8th, Richard Hudson goes against former state Supreme Court Justice Patricia Timmons-Goodson. Although the district's demographics have changed little, the quality of the Democratic challenge makes the race look quite close.

Out in the far west, the seat vacated by now White House Chief of Staff Mark Meadows is being contested by retired Air Force

colonel and former chief prosecutor at Guantanamo Moe Davis, the Democrat, and 25-year old Republican Madison Cawthorn. Cawthorn, who is confined to a wheelchair because of an auto accident, spoke at the Republican National Convention and has become a minor celebrity. Without a college degree or political experience, he beat out a number of talented candidates in the primary. The district has given us close races and interesting members — not just Meadows, but former NFL quarterback Heath Shuler, the colorful Charlie Taylor, and Democrat Jamie Clarke and Republican Bill Hendon, who exchanged the seat with one another four times in the 1980s.

That leaves two districts that look likely to “flip,” the new maps effectively giving Democrats the seats. In both, the Republican incumbents have retired. Deborah Ross, former ACLU state director, state representative, and U.S. Senate candidate, should win the 2nd that is now fully enclosed within increasingly blue Wake County. Attorney Kathy Manning, who lost to Budd in the old 13th in 2018, will likely capture the 6th that is now dominated by her home city of Greensboro.

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

## Did a third of the economy disappear?



**MICHAEL WALDEN**  
COLUMNIST

**THE HEADLINES WERE** eye-popping. “Economy shrinks by one-third.” “All economic growth from the last five years wiped out.” “Worse than the Great Depression of the 1930s.”

These were some of the reactions to the recent release by the federal government of GDP numbers for the second quarter — April, May, June — of this year.

Before I go any further, what in the world is GDP? GDP stands for “gross domestic product.” Think of GDP as an aggregate production value for the country. It's a number that represents all economic value generated by all types of businesses — farmers, manufacturers, service companies, educators, etc.,

and even government — during a specific time period. It's measured in dollars, but those dollars are always adjusted for inflation, so the value doesn't rise just because prices increase.

One of the most significant uses of GDP is in determining recessions and measuring their size. The major condition for a recession to occur is GDP falling for two consecutive quarters, which is six months. Then, once a recession is designated, the size of GDP's contraction gives an indication of the recession's severity.

GDP declined modestly in the first quarter of 2020. With the blockbuster drop in GDP during the second quarter, we have an official recession spanning at least the first half of 2020.

Now let me get back to those headlines. The report from the U.S. Bureau of Economic Analysis said GDP fell by slightly under 32% in the second quarter, just a hair short of one-third. With the economy having a GDP of \$19 trillion at the end of the first quarter, does



**With the economy having a GDP of \$19 trillion at the end of the first quarter, does this mean we lost 32% of that — amounting to \$6.1 trillion — in April, May, and June of 2020?**

this mean we lost 32% of that — amounting to \$6.1 trillion — in April, May, and June of 2020?

Fortunately, the economy did *not* lose \$6.1 trillion of GDP in the second quarter of 2020. The loss was much less. Here's the somewhat complicated reason why. First, BEA likes to post most of its numbers on an “annualized basis.” What does this mean? It means the numbers are quoted as if they continue to occur for an entire year. BEA does

this because users like to make comparisons in annual terms.

Indeed, if you closely read the press release from BEA announcing second-quarter GDP results, you'll see it says “GDP decreased at an *annual* rate [my emphasis] of 32% during the second quarter of 2020.” Translated, this means if whatever decrease *actually* occurred in the second quarter were to continue for an entire year, the total drop would be 32%.

So what was the *actual* decline in GDP in the second quarter? It was about 9%. When BEA says the annualized decline was 32%, it means that if the 9% drop happened for four consecutive quarters, then after adjusting for typical seasonal differences in the economy during the course of a year, the total annual contraction would be 32%.

Wow, there's a big difference between 9% and 32%. But the story doesn't stop here. The \$19 trillion GDP number at the end of the first quarter is also an annualized figure. The actual GDP created in the first three months of the year was \$4.8

trillion. Applying the decline of 9% to \$4.8 trillion gives a GDP loss in the second quarter of \$0.43 trillion, or \$430 billion.

Here's one more point. There have been numerous comparisons of the 2020 economic downturn to the Great Depression of the late 1920s and early 1930s. The actual 9% GDP decline in the second quarter of this year does exceed any quarterly pull-back during the Great Depression. However, the difference is the Great Depression went on for years, and the economy actually did shrink by almost one-third. Economists today don't think the economy will *actually* contract by one-third, and they expect today's recession won't continue for years.

The lesson here is economic headlines and economic details may not paint the same picture. Sometimes you have to dig to get the real meaning.

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



# COMMENTARY

## Funding gap in Cooper's Medicaid expansion plan



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

Amid a global pandemic and an election year, Medicaid expansion is again dominating headlines and debate among lawmakers. Gov. Roy Cooper, legislative Democrats, and liberal advocacy groups steadfastly support Medicaid expansion in North Carolina. They all have claimed repeatedly that the 10% state share of expansion costs won't have to be paid for by state money. Is this true?

Not according to a new analysis by the John Locke Foundation and the Buckeye Institute in Ohio. In the recently released report, the authors, one of whom is me, present evidence that Cooper is significantly underestimating his Medicaid expansion scheme's enrollment and costs.

The authors believe there will be a funding gap of anywhere between \$119.3 million and \$171.3

million in the first year, and this gap would persist.

To come up with this gap, we used three primary resources: Cooper's budget recommendations from 2019, a 2018 report from the Urban Institute on Medicaid expansion enrollment, and Centers for Medicare and Medicaid Services data for per-enrollee expenditures in Medicaid. We built on the Urban Institute's model, which projected 626,000 enrollees if North Carolina expanded Medicaid in 2019. Urban estimated 261,000 of these new Medicaid enrollees would move from private insurance to Medicaid.

Using enrollment data from the Urban Institute, total program costs from Cooper's budget, and CMS' cost per enrollee, we modeled likely scenarios and related costs. We then calculated how much tax revenue the governor would need for each scenario and compared it to a baseline scenario to calculate the funding gap.

How did we build our model? First, we needed to figure out the share of traditional and expansion populations who would enroll in Medicaid if North Carolina were to expand the program. "Expansion enrollees" are those who are newly eligible after expansion. Ninety



**The authors believe there will be a funding gap of anywhere between \$119.3 million and \$171.3 million in the first year.**

percent of the costs for this population are covered by the federal government, and the state covers the remainder. The "traditional enrollees" were previously eligible for Medicaid before expansion but only enrolled in the program after the expansion. The federal government pays for 67% of the cost of these enrollees, and the state covers the rest.

Next, we needed to calculate the proper cost per enrollee. We took CMS data on per-enrollee expenditures from other states regarding the costs of children, regular Medicaid adults, and expansion adults and adjusted them for inflation to come up with a range of per-enrollee costs.

These estimates were then used in our model to predict the total cost for different populations in

Medicaid.

Last, we needed to develop accurate enrollment figures and the share of the new enrollees in either the traditional Medicaid population or the expansion Medicaid population. As stated above, this new group of enrollees' composition is critical because there are different costs associated with each type of enrollee and how much the state needs to cover.

After collecting all of this data, we built a model based on the enrollment projections in the governor's budget and the Urban report. Neither the governor's budget nor the Urban report was clear on how many individuals between the two groups would enroll.

The Urban report indicates 626,000 total individuals will enroll in Medicaid, but not how many enrollees would be in each group. Cooper's budget suggests that he believes somewhere between 500,000 and 626,000 enrollees will be in both groups but isn't clear on exactly how the new enrollees will be distributed.

Because the complete picture of Medicaid expansion cost, enrollees, and costs per enrollee aren't clear from the sources listed above, we modeled 12 different scenarios with different combinations of

enrollment, the composition of enrollment, and costs per enrollee to determine the likelihood of each scenario. We were then able to narrow our modeled scenarios into the two most likely scenarios to calculate the cost to the states.

Cooper has proposed taxes on health insurance plans and hospitals to pay for the state share of Medicaid expansion. The health insurance plans and hospitals agreed to this tax but only for the baseline scenario amount from Cooper's budget.

When we take our two most likely scenarios and compare the state costs to the amount of taxes collected in the baseline scenario, that's where we find the funding gap of \$119.3 million to \$171.3 million in the first year.

Put another way, we believe Cooper is underestimating enrollment and costs of Medicaid expansion. With a gap of \$119.3 million to \$171.3 million in the first year, the state would need either to appropriate this amount from state funds or raise taxes on hospitals and insurance plans. Our analysis concludes that the claim from those on the left that Medicaid expansion would cost no state money is very likely not true.

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