

CON: North Carolina Should Not Adopt a Gubernatorial Veto

by J. Allen Adams and Abraham Holtzman

"The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other."

—*Declaration of Rights, N.C. Constitution, Article 1, Section 6.*

"The legislative power of the State shall be vested in the General Assembly. . . ."

—*N.C. Constitution, Article II, Section 1.*



Why is North Carolina even considering a violation of her historic separation of powers doctrine by means of a gubernatorial veto?¹ Will it enhance the quality of our state government? Doubtful. Will

it transfer legislative power from the General Assembly to the governor? Definitely. Will it exacerbate relations between the executive and legislative branches of our state government? Obviously. Do we need to amend our constitution in this manner? Decidedly not.

The answers to these questions rest firmly on two basic premises: (1) North Carolina does not need a gubernatorial veto. (2) A gubernatorial veto has decidedly negative consequences for state politics and policies.

North Carolina Does Not Need a Gubernatorial Veto

North Carolina has traditionally honored the maxim, "If it ain't broke, don't fix it." North Carolina's government is not "broke." It operates on a balanced budget which reflects the tough decisions that our legislators have to make on expenditures. It has been, with rare exception,

scandal-free. In a state of relatively modest means, it has produced excellent institutions of higher education and has been a leader of all the states in community colleges. Our people have been blessed with a comparatively well-protected environment and a low tax burden. Almost alone in our region, our government reacted responsibly amidst the hysteria generated by racial desegregation decisions, and we have long been considered one of the most progressive governments in the South. We have rated consistently as one of the most attractive states for business expansion and as a location for retirement.

At least some of our blessings may be attributed to North Carolina's good government, and all in the absence of a gubernatorial veto throughout our history. Why, therefore, engage in a radical change at this time if "it ain't broke" just because other states, where "it is broke" in many instances, adopted the veto at some previous time in their history?

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Recently some of our former governors as well as the incumbent have urged the General Assembly to propose a gubernatorial veto amendment to our constitution.² They reason this way: (1) The governor is really weak and the legislature inordinately strong. Therefore, the veto is needed to overcome the imbalance of power. (2) Because chief executives in all the other states and the national government have the veto, North Carolina should adopt the veto as well. (3) The veto power will force the governor to take a position on bills that the General Assembly adopts, to accept or reject them, and he will therefore be more responsible to the people.

That these North Carolina governors advocate the veto makes sense, *from their point of view*. The veto expands the governor's power tremendously, while it diminishes that of the General Assembly, the governor's occasional rival and frequent partner.

Is There An Imbalance of Power?

Research turns up no objective analysis that concludes that a serious imbalance exists between executive and legislative power in North Carolina. Listen to Milton S. Heath Jr., an expert on the subject at the Institute of Government at UNC-Chapel Hill. "Has the legislative branch grown so disproportionately as to jeopardize the balance of power? There is undoubtedly a feeling . . . in North Carolina that this is the case but *it is not clear the facts support this sentiment*" (emphasis added).³

In 1981, Thad Beyle, a political science professor at Chapel Hill and a strong supporter of the veto, found that in appointive powers our gover-

nor stood alone in the southeast as "very strong," that in tenure potential he was "strong" (which, after Gov. James G. Martin's easy re-election in 1988, ought to raise the "tenure potential" to "very strong"), but that his budget-making powers were only "moderate."⁴ Since this article, however, the Advisory Budget Commission, composed mainly of legislators, has been made advisory in fact as well as in name in response to a 1982 separation of powers decision by the N.C. Supreme Court.⁵

After concluding that, because of the lack of veto, North Carolina governors were relatively weak in formal powers, Professor Beyle perceptively pointed to the informal powers of the governor as outweighing any constraints on his formal powers. "A media-wise governor can . . . dominate a state's political and policy agenda. . . . A strong media base in the state provides the governor with a major vehicle to command attention. . . . [T]here are no other highly-visible political leaders with which the governor has to compete. . . . The wide range of informal powers available to the North Carolina governor tends to balance the structural weaknesses. . . ."⁶

The decided predominance of television as the public's source of information has greatly increased the actual power of the executive branch. In soap-opera-like TV coverage of politics, the executive plays the role of the leading man.⁷ Coverage of legislative branch activity becomes the saga of how the hero is affected and his reaction thereto: "Bush's choice thwarted by Senate" or "Martin's proposal rejected by General Assembly" or "Reagan's budget passes Congress" or "Hunt's Safe Roads Program delayed by legislative bickering." Any criticism or questioning of the executive by the legislature, or even the print media, is resented.⁸

If the governor is so strong as a result of his formal and informal powers combined, what justifies making him super strong and the legislature weak by giving him the veto power?

The Veto Does Not Make the Executive Branch More Responsible

A reasonable question can even be raised as to whether forcing a governor to accept or reject all the bills that the legislature adopts necessarily makes a governor more responsible. Certainly it is a responsibility that a chief executive can shed easily at times. Consider the recent experience with President Ronald Reagan. Not once did he propose a balanced budget to Congress and he

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signed the budget bills as passed by Congress, yet he denied all responsibility for the large unbalanced budgets of the national government and the immense debt that accrued from the high deficits. On the contrary, he insisted that the blame lay entirely with Congress. Governors, too, can avoid responsibility for bills that they sign into law by transferring the blame to the legislatures.

In allowing the executive to sign a measure, the veto system would enable him to take credit for legislation in whose passage he may not have played any role. The legislation becomes his, and

the hapless legislators who sweated and bled to secure its passage are lucky if the TV camera flashes to them as they might happen to receive one of the imperial pens.⁹ There is no evidence that the veto system would on balance add useful information to the woefully under-informed electorate. On the contrary, it will inevitably add to the overwhelming public relations imbalance now enjoyed by the executive and provide him with another opportunity to verbally whip up on the legislature.

The Veto Does Not Fit With the Long Ballot

One aspect of North Carolina's government that proponents of the veto never even consider is its relationship to our other constitutional state executives: the secretary of state, the auditor, the treasurer, the superintendent of public instruction, the attorney general, and the commissioners of agriculture, of labor, and of insurance.¹⁰ Like the governor, they too are elected on a statewide basis, and they too are responsible for administering major parts of the executive branch and for proposing policies. As independent, elected executives, should they too not have the veto power? If they propose and shepherd legislation through the General Assembly, does the governor have to consult or even listen to them if he intends to veto their legislation? Or should they be given a veto over the governor's veto?

The Real Potential Imbalance of Power

Before North Carolina legislators and citizens act on a constitutional amendment proposing a gubernatorial veto, they should fully understand that the veto is strictly a power mechanism. It will transfer enormous power—explicit and implicit—to the governor and thereby weaken the legislative branch. If in our history, our General Assemblies had been corrupt, inattentive to the problems of our state, indifferent to the wishes or needs of our people, or composed of stupid, ill-advised members who consistently drafted improperly prepared legislation, a veto proposal could have merit. It could also have merit if our governors had been inordinately weak and our General Assemblies had abused their

power arrogantly. But none of these conclusions have characterized the legislatures or the governors of North Carolina.

Negative Effects of a Veto

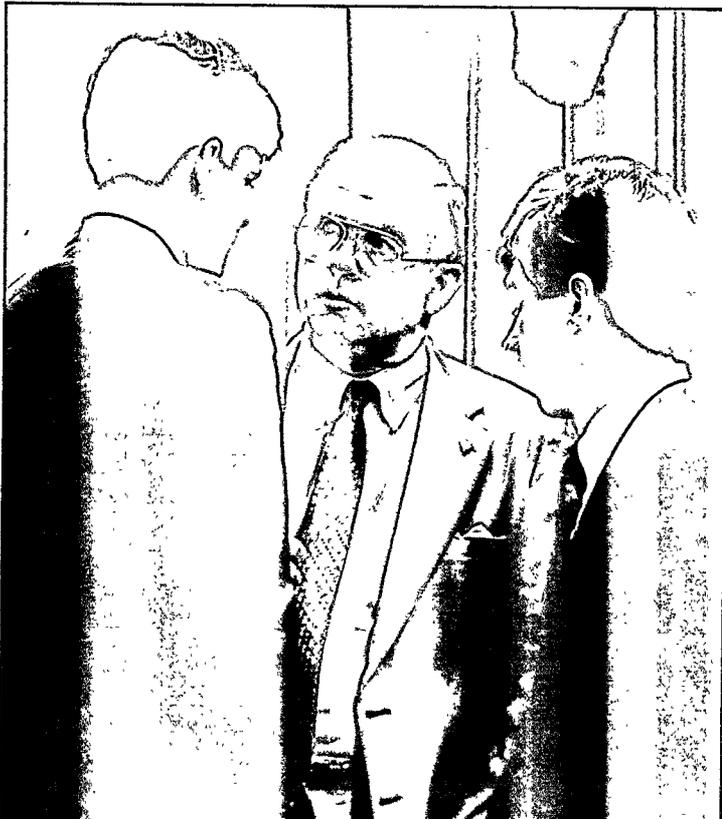
North Carolina legislators and citizens also must recognize that the veto undoubtedly will have negative side effects.

■ *It will inevitably increase conflict and bitterness between the governor and the legislature.* Each exercise of the veto is a slap in the face of legislative majorities in the House and the Senate that have considered bills in committees and on the floor and that have allowed interested individuals and groups to participate in the open legislative decision-making process. At the same time, every veto is an assertion that the governor, who does not operate through an open decision-making process in the executive branch, epitomizes a higher wisdom as to legislation than that of the legislature itself.

Not satisfied with the veto's usurpation of legislative judgment, some advocates¹¹ advance the argument that the chief executive must have a veto to exercise *judicial* powers; to decide, in the place of the courts, the constitutionality of a legislative enactment. Why do they presume that the governor has access to better legal advice than does the legislature?

In turn, the majorities in the legislature that initially passed the legislation frequently find institutional, political, and policy reasons to attempt to override the vetoes. In almost all such cases, however, the cards will be stacked in favor of the governor if a super-majority is required for a legislative override, especially if it is based on the total membership of each chamber. It takes only a minority in either the House or the Senate to join with the governor in thwarting the will and wisdom of overwhelming majorities in both chambers. Conflict can lead to bad feelings and may make it difficult for the governor and the legislature to cooperate on legislation that may be important to our state.

Three key veto supporters confer on Aug. 3, 1989, on veto strategy. From left, Rep. Johnathan Rhyne, R-Lincoln, Speaker Josephus Mavretic, D-Edgecombe, and Rep. Roy Cooper, D-Nash.



■ *The veto reduces the need for the governor to rely on persuasion and logic in dealing with the legislature.* Because the negative veto decision is almost always bound to prevail over the votes of the legislature, the governor has less of an inducement to rely on persuasion. With the blunt instrument of the veto at his fingertips and the likely success in sustaining the veto, the chief executive is less likely to rely on negotiations and logic in trying to induce the legislature to follow his leadership.

Without the veto, North Carolina governors have traditionally had to reach out to legislators, to be as persuasive and convincing as possible to secure the adoption of their programs or stop that which they opposed. In effect, they have had to act as creative forces in the legislature. This approach enhances mutual understanding of the unique problems of the legislature and the executive, and leads to the creative fashioning of compromises that reflect the give and take of both branches and a realization that each has something to offer.

Our governors have not been exactly helpless in this process. They have a range of political Green Stamps and sanctions that they can bring to such bargaining relations.

The history of gubernatorial vetoes in the other 49 states demonstrates that North Carolina governors inevitably will rely on the veto to black-jack the legislature one way or another in the knowledge that these efforts will almost always succeed. The latest published research on vetoes shows that only 3.5 percent of such vetoes were overridden in 1986-87.¹² This means that more than 96 percent of the time (every time in 36 of the states) the governor won in a veto fight. This demonstrates that the veto, when exercised, for all intents and purposes gives the governor ultimate legislative power.

■ *A hidden or covert veto underlies the granting of the regular veto to a governor, further maximizing his power over the legislature.* It is true that, on the average, only 5 percent of all legislation is vetoed by the governors. What the data do not reveal is that governors successfully use the threat of a veto to accomplish their objectives regarding other bills. A governor can trade a prospective veto over any piece of legislation for support of his own pet proposals. Since the legislators are aware that the overwhelming majority of vetoes prevail, a veto threat is a very effective way of bullying legislators to support a governor's proposal if their own is not to be killed in future executive action.

A covert veto can also have two additional effects. It can force a legislator to change a bill—to the governor's satisfaction—in order to avoid a veto, and it can sometimes kill a bill when its

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sponsor decides that he would lose anyway in a veto fight. A potential for executive blackmail over the process and policies of the General Assembly underlies, therefore, the proposal to grant the North Carolina governor the veto power.

These arguments have concentrated solely on the regular veto, one by which a governor rejects a legislatively adopted bill and returns it to the legislature for its possible readoption. But the present North Carolina governor and a few of his predecessors have called for additional veto authority: a pocket veto and the item veto. A pocket veto enables the president and a number of state governors to kill bills without any chance for the legislature to reconsider such action. If the legislature has adjourned, there is no one to whom the president or governor can even return the bill; hence it dies automatically. Since a large number of bills are adopted in the final days of a legislature, the legislature is totally disadvantaged when the chief executive refuses to sign them after the legislature adjourns.

In a few states, constitutions provide for a return of the legislature or some other special arrangement to prevent such pocket vetoes. An item veto permits a governor (but not a president) to veto any provision of a bill rather than having to reject the entire bill. Some governors even have the power to rewrite those parts of the bill that they reject, as if they were in fact legislators themselves.

If North Carolina citizens grant their governor veto powers, he will not only be the highest paid governor in the United States, but also one of the most powerful of these governors. With his new veto powers added to his existing powers, and his ability to meet in secret with his advisors

in executive session to determine when to exercise his veto, together with his ability to manipulate the media and overwhelmingly dominate its coverage, the chief executive of North Carolina will also become the chief legislator of North Carolina—and our North Carolina system of separation of powers will be irretrievably torn asunder. ☐

FOOTNOTES

¹During the 1984 gubernatorial campaign, then-U.S. Rep. James G. Martin told *The Fayetteville Times* on Oct. 31, 1984, "It is the power of the General Assembly to make the laws, but the power of the governor to enforce and implement these laws. I feel it would be a violation of the separation of powers doctrine for the governor to have veto power over the legislature."

²Testimony of former Govs. Terry Sanford, Robert W. Scott, James E. Holshouser Jr., and James B. Hunt Jr., and of incumbent Gov. James G. Martin, at a public hearing of the Senate Constitutional Amendments Committee, Feb. 2, 1989.

³Milton S. Heath Jr., "The Separation of Powers in North Carolina," *Popular Government*, Vol. 48, No. 2, Fall 1982, p. 21.

⁴Thad L. Beyle, "How Powerful is the North Carolina Governor?," *N.C. Insight*, Vol. 4, No. 4, December 1981, p. 3. An update of Beyle's analysis can be found on pages 27-45 of this issue.

⁵*State ex rel. Wallace, et al. v. Bone, et al.*, 304 N.C.

591, 286 SE 2d 79 (1982).

⁶Beyle, p. 9.

⁷Hedrick Smith, *The Power Game*, Random House, (New York: 1988), pp. 399-400. See also Mark Hertsgaard, *On Bended Knee, The Press and the Reagan Presidency*, Farrar Straus Giroux (New York, 1988), Chapter 6, "Jelly Bean Journalism," p. 119: "True to its origin in the entertainment business, television news in particular was fascinated not by the pros and cons of President Reagan's program but by the spectacle of getting it passed on Capitol Hill."

⁸Ferrel Guillory, "The Imperial Executive Gains Acceptance," *The News and Observer* of Raleigh, March 8, 1985, Editorial Page. "Instead of accepting debate and disagreement as vital to the functioning of a democracy, [many Americans] call for submission to the executive branch. 'Why don't you be quiet,' they tell lawmakers and the press and other critics, 'and fall in line with President Reagan and Governor Martin?'" See also Thomas P. "Tip" O'Neill, *Man of the House*, Random House (New York, 1987), p. 351, for similar sentiments expressed to the ex-speaker of the House. "Leave the president alone, you fat bastard," spat one citizen.

⁹However, if the legislator has displeased the chief executive, such as then-U.S. Sen. J. Danforth Quayle (R-Indiana) did in his shepherding of the Job Training Partnership Act through the Congress in 1983, he may not even be invited to the royal ratification of his efforts.

¹⁰North Carolina Constitution, Article III, Section 7.

¹¹Alva W. Stewart and Phung Nguyen, "Will North Carolina's Governor Ever Get the Veto Power?," *National Civic Review*, Vol. 73, No. 11 (December 1984), p. 563.

¹²*The Book Of The States, 1988-1989 Edition*, The Council of State Governments, 1988, pp. 116-118.

Sen. Dennis Winner, D-Buncombe, sponsor of veto in the Senate, listens to a colleague.



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