

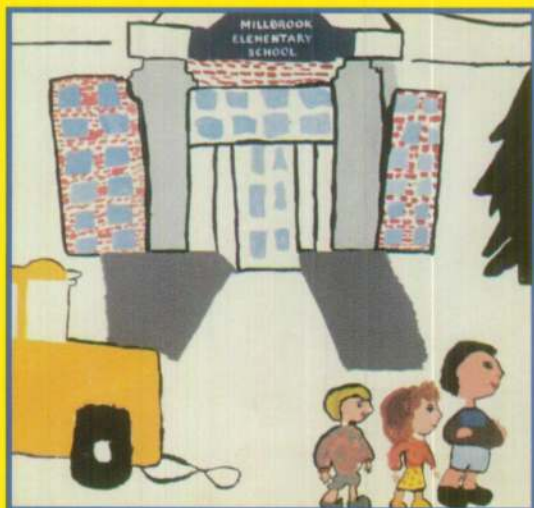
North  
Carolina

# Insight

\$8

SEPTEMBER 1995

VOL. 16, NO. 2



## School Choice in North Carolina? A Pro/Con Discussion

*Also Tracking the N.C. Railroad's Future*



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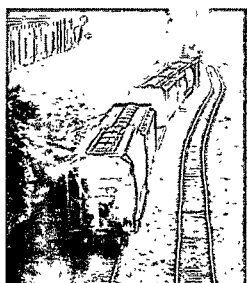
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Cover: Art work by students at Millbrook Elementary School in Raleigh, Wake County Public Schools. (Photo by Karen Tam.)





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# *School Choice:*

## A Simple Term Covers a Range of Options

by Tom Mather

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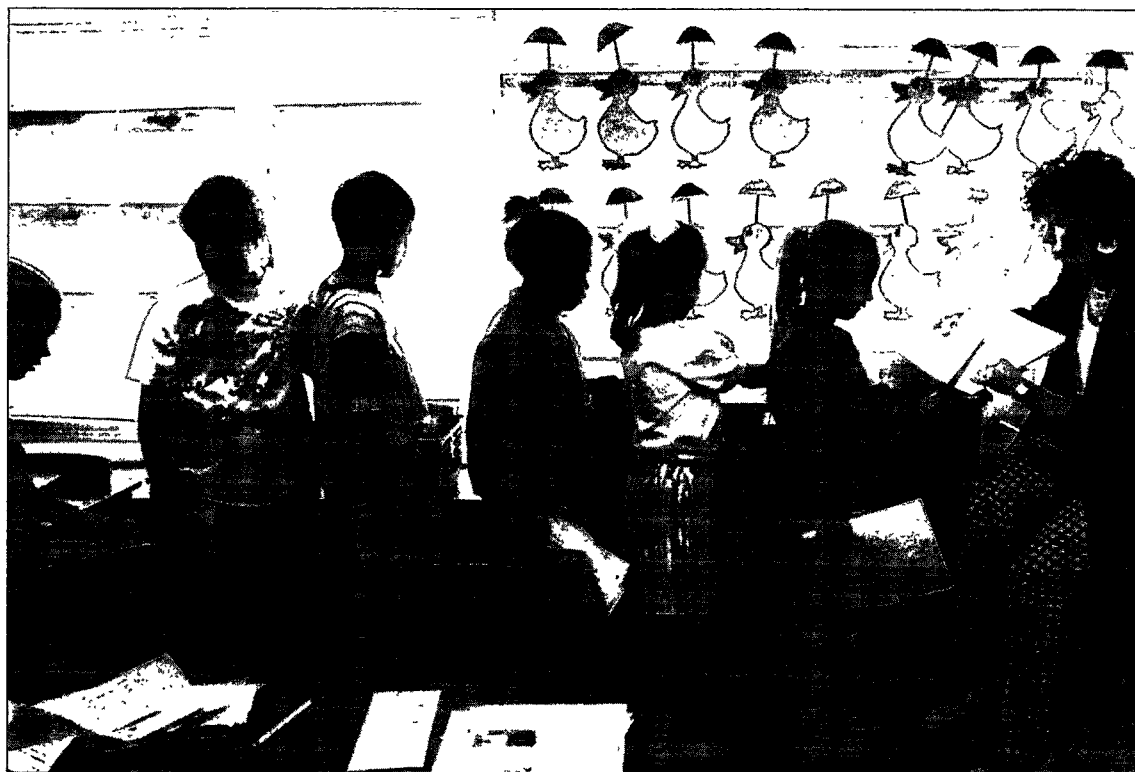
### Summary

*School choice, the concept of letting parents pick which schools their children attend, has been one of the most talked-about education proposals over the past decade. Proponents tout school choice as a way to increase educational opportunities and achievement by promoting competition in public schools and parental involvement in education. But critics say choice would destroy public schools by starving them of funds and magnifying inequalities.*

*Following the debate can be confusing because of differing views about what school choice is. In fact, choice encompasses a range of options involving both public and private schools. Public-school choice options include: **transfers**, in which districts allow students to attend other schools on a case-by-case basis; **magnet schools**, which focus on themes and draw students from anywhere in a district; **charter schools**, which are like magnets but are largely free from state and local educational regulations; and **open-enrollment programs**, in which students can attend any school in their district or state. Private-school choice options use state tax money to pay for students' tuition at private and religious schools, including: **vouchers**, which are credit slips that schools can redeem for cash from the state; **tuition grants**, which are direct payments to parents; and **tax credits**, which allow parents to deduct tuition costs from their income taxes.*

*This article discusses various school choice options. It also introduces a pro/con discussion of private-school choice, with the pro side written by Vernon Robinson, president of the N.C. Education Reform Foundation, and the con side written by Cecil Banks, president of the N.C. Association of Educators.*

*The following articles on school choice were supported by grants from The Broyhill Family Foundation of Lenoir, N.C., the Hillsdale Fund of Greensboro, N.C., and the Weyerhaeuser Company Foundation of New Bern, N.C., and Tacoma, Washington. The N.C. Center for Public Policy Research extends its sincere thanks to these foundations for their generous support of this project.*



Karen Tam

Nearly 25 cents out of every dollar in state taxes collected in North Carolina goes to support the public schools.<sup>1</sup> Yet some citizens, particularly many parents who send their children to private schools, say they aren't getting their fair share of the state's educational spending. They say the state should give them vouchers or tax credits to offset the money they spend on private school tuition.

"I feel like we should get reimbursed because we pay our taxes and we aren't using the public schools," says one such parent, Ann Coble of Raleigh. She and her husband, John, spend about \$4,000 a year to send their two school-aged children to a private religious school.<sup>2</sup> "I would love vouchers," she says. "I think we should get something for the taxes we pay."

Families like the Cobles would get some relief under so-called "school choice" legislation considered in the 1995 N.C. General Assembly. Republican lawmakers in the N.C. House introduced several bills that would help families send their children to private and religious schools. (See Table 1 on p. 7.) Under those bills, the state would provide tax credits, vouchers, or tuition grants that families could use to offset tuition and other costs at private

schools. One of those bills (H.B. 954) also would allow open enrollment, thus letting parents choose which public schools their children attend. In addition, legislators from both parties introduced bills in the state House and the Senate that would authorize the establishment of charter schools, which are publicly funded but free from most state and local education regulations. Although the legislature enacted none of the school choice bills in 1995, such proposals are certain to be considered in future sessions.

"We want to provide as many options as possible to let parents choose the educational setting that best helps their children learn," says Rep. Steve Wood (R-Guilford), chair of the N.C. House Education Committee and sponsor of two school-choice bills—one that would establish charter schools and one for private-school vouchers and tax credits.

Such sentiments are at the heart of one of the most talked-about topics today in education: "School Choice." (See Table 2 on p. 18 for a summary of the key arguments for and against school choice.) Proponents tout school choice as a way to expand educational opportunities by letting parents pick which schools their children attend. School choice also would instill a much-needed element of competition in the public education system, supporters say. Increased competition, they argue, would

Tom Mather is Associate Editor of North Carolina Insight.



Karen Tam

**Rep. Steve Wood (R-Guilford) presiding at the House Education Committee, which he chairs.**

spur educational improvements by encouraging schools to excel and by weeding out the poorly performing ones (See Vernon Robinson's article, "Pro: North Carolina Should Embrace School Choice," starting on p. 33, for a more detailed discussion of the merits of vouchers and other school choice options.)

"The problems facing primary and secondary education in North Carolina will never be addressed without changing the system's incentive structure,"

***"We want to provide as many options as possible to let parents choose the educational setting that best helps their children learn."***

*—REP. STEVE WOOD (R-GUILFORD),  
chair of House Education Committee,  
sponsor of bills to provide vouchers and tax  
credits for private-school tuition*

says Rep. Larry Linney (R-Buncombe), who introduced legislation (H.B. 781) that would provide tuition grants to parents with children in private and religious schools. "This bill empowers parents by giving them choices and making the customer king or queen in a new market of educational services."<sup>3</sup>

But critics say vouchers and tax credits would derail efforts to improve the public schools by diverting funds to wealthier citizens who can afford private schools. Such reasoning led Citizens for Public Schools—a bipartisan coalition of 28 organizations representing educators, parents, business people, and other citizens—to release an open letter on June 19, urging North Carolinians to oppose the tuition tax credit bill (H.B. 954), which appeared to be the most likely private-school choice legislation to win approval in the legislature.<sup>4</sup> The letter, signed by Democratic Gov. Jim Hunt and former Republican Gov. Jim Martin, stressed that the bill would cost taxpayers \$15 million in 1996 and \$77 million in 1997—just to provide tax credits to existing users of private schools.<sup>5</sup> Instead of spending public money on tax credits, the group says, such funds should be used to: (1) reduce class sizes, (2) raise teachers' pay, or (3) provide for other performance incentives for educators.

**"The problems facing primary and secondary education in North Carolina will never be addressed without changing the system's incentive structure."**

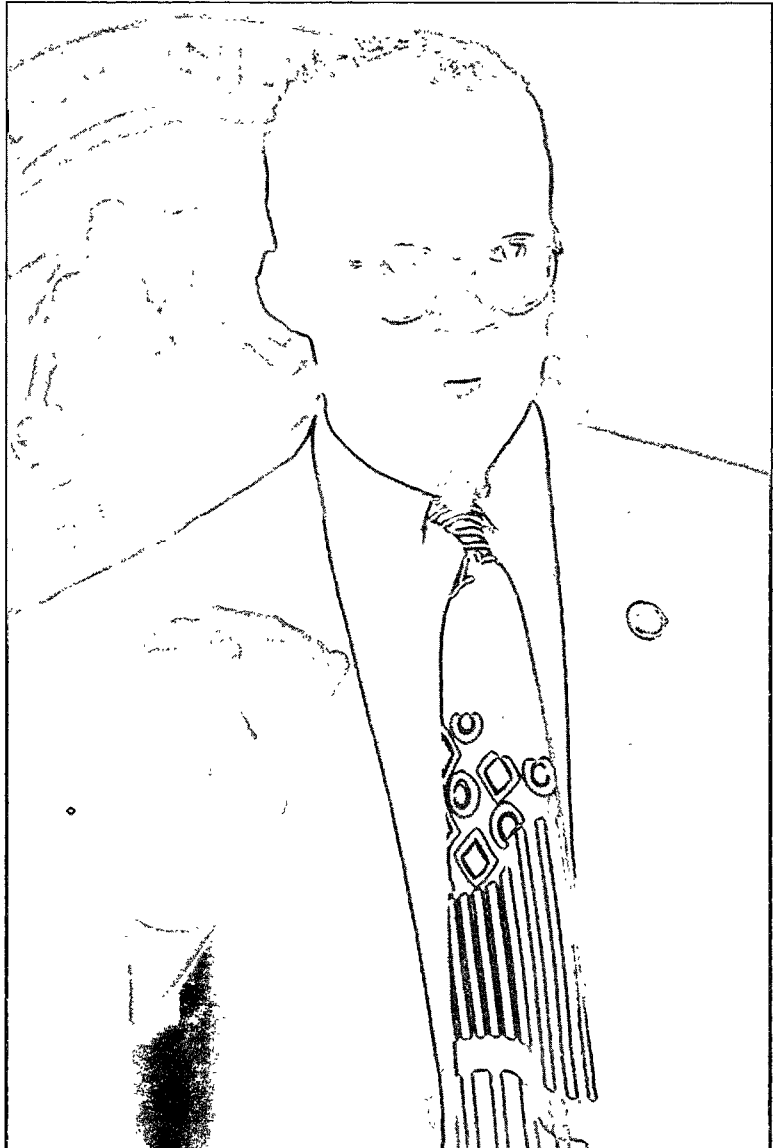
—REP. LARRY LINNEY (R-BUNCOMBE),  
sponsor of bill to provide  
grants for private-school tuition

"Taxpayers deserve to get their money's worth from the schools," the letter states. "But we believe North Carolina should focus on improving the public schools, and we believe the legislature has taken historic action to do that. For the first time, school systems and individual schools will have the authority they need to meet their obligations to taxpayers and be held accountable for the results. That clear authority and accountability could be undermined if HB 954, or any tuition tax credit/voucher bill, is enacted."

Opponents of private-school choice also argue that increased competition would be a farce because public schools and private schools don't com-

pete on even terms. Private schools can cherry-pick the brightest students from wealthy families, but public schools must take all comers—including the poor, the disabled, the disciplinary problems, and the not-so-intelligent. (See Cecil Banks' article, "Con: School Vouchers Would Destroy Public Education," starting on p. 42, for a discussion of the drawbacks of school choice.)

"Possession of a voucher doesn't guarantee anyone a place in private schools," says Albert Shanker, president of the American Federation of Teachers. "If students are of the wrong religion or social background, or the school thinks they won't fit in, private schools don't have to take them. The notion of 'parental choice' is a false promise, since the private schools actually do the choosing, not the parents."<sup>6</sup>



**Rep. Larry Linney  
(R-Buncombe) discusses  
his school-choice bill,  
which would provide  
grants for private-school  
tuition, at a press  
conference in the  
Legislative Building.**

Karen Tam

**"... North Carolina should focus on improving the public schools, and we believe the legislature has taken historic action to do that. For the first time, school systems and individual schools will have the authority they need to meet their obligations to taxpayers and be held accountable for the results. That clear authority and accountability could be undermined if HB 954, or any tax credit/voucher bill, is enacted."**

—CITIZENS FOR PUBLIC SCHOOLS,  
coalition opposing private-school choice, in an open letter  
signed by Gov. Jim Hunt, former Gov. Jim Martin, and others

Despite vigorous opposition from many educators, support for school choice appears to be growing. In 1994, legislatures in 25 states were considering bills that would establish some type of school choice, according to The Heritage Foundation, a conservative think tank in Washington, D.C.<sup>7</sup> Plus, the governors in 40 states have expressed support for some type of school choice.<sup>8</sup>

The push for school choice has taken on a new vigor since Republican candidates captured many local, state, and national offices in the 1994 elections—including control of the N.C. House. That's because the Republican Party and other conservative groups have propelled most of the efforts to expand school choice, particularly voucher programs. Republican leaders such as former President George Bush have been some of the most visible proponents of school choice at the national level. But school choice encompasses much more than vouchers. So it's important to clarify terms to avoid confusing apples with oranges.

### **School Choice Encompasses a Range of Options**

**I**n its broadest sense, school choice means giving parents—rather than school administrators—the freedom to select which schools children attend. But school choice can include a wide range of options. At one extreme is the traditional approach, in which the only way parents can choose a school is to live in or move to the district in which the school is located. At the other extreme is the voucher concept, in which parents can send their children to any school—public, private, or religious

—at government expense. Here is a brief description of various school choice options, ranging from the most to the least restrictive:

#### **Transfers.**

Traditionally, most students are assigned to public schools by attendance district. They can attend other schools by moving to another district or by requesting transfers, which some systems grant on a case-by-case basis. (See related article, Neigh-

borhood Schools the Choice for Many Parents," on p. 8.)

**Magnet Schools.** Students are assigned to public schools by district but can enroll in special "magnet" schools. Although most magnets accept students from all districts within a county or city school system, schools may turn away some students if they receive too many applications. Magnet schools typically specialize in themes—such as the arts, science and technology, academically gifted, or international studies—and often are established to increase racial diversity. For example,

—continues on page 10

**"Possession of a voucher doesn't guarantee anyone a place in private schools. If students are of the wrong religion or social background, or the school thinks they won't fit in, private schools don't have to take them. The notion of 'parental choice' is a false promise, since the private schools actually do the choosing, not the parents."**

—ALBERT SHANKER,  
president, American Federation of Teachers

**Table 1. School Choice Legislation in the  
1995 N.C. General Assembly**

<b>Bill Number</b>	<b>Short Title</b>	<b>Sponsor</b>	<b>Brief Description</b>	<b>Status in N.C. Legislature at end of 1995 Session</b>
HB 190	Education Expenses Tax Credit	Rep. Ken Miller (R-Alamance), et al.	Provides tax credits worth \$3,100 for private and religious schools and \$2,480 for home schools.	Pending in House Education Committee
HB 781	Children First/Educational Opportunity	Rep. Larry Linney (R-Buncombe), et al.	Provides private-school tuition grants worth about \$2,050 for low-income families and \$1,400 for others.	Pending in House Appropriations Committee/Education Subcommittee
HB 954 (Committee Substitute) <sup>1</sup>	Parental Choice in Education	Rep. Steve Wood (R-Guilford), et al.	Provides refundable tax credits worth \$200 in 1996, increasing to \$1,000 in 1997, for tuition at private and religious schools. Allows public school students to attend schools outside their districts.	Passed House Education and Finance Committees. Pending in House Appropriations Committee/Education Subcommittee
HB 955	Charter School Educational Opportunity Act	Rep. Steve Wood (R-Guilford)	Sets guidelines for charter schools, with a variety of public agencies authorized to approve charters.	Passed House. Pending in joint House/Senate conference committee
SB 940	Charter School Act of 1995	Sen. Wib Gulley (D-Durham), et al.	Sets guidelines for charter schools, with final approval by the State Board of Education.	Passed Senate. Pending in joint House/Senate conference committee
SB 941	Charter Schools Act of 1995	Sen. Fletcher Hartsell (R-Cabarrus), et al.	Authorizes and sets guidelines for charter schools.	Pending in Senate Education/Higher Education Committee

<sup>1</sup> The original version of H.B. 954 introduced by Rep. Steve Wood would have provided vouchers worth \$1,500 and tax credits the same as in H.B. 190 for tuition at private and religious schools.

## *Neighborhood Schools the Choice for Many Parents*

**R**ALEIGH—One of the rites of spring in rapidly growing Wake County is the release of the public school system's annual Student Assignment Plan. Many parents of school-age children dread the new assignment plan because it changes the boundaries for school districts. That means that some students are prevented from attending the school of their choice, or are uprooted from a campus they already attend.

"We go through this as a yearly ritual," says Jerry Diehl, a parent with two children in Wake County Public Schools. "The insecurity is always present."

Diehl was among hundreds of parents and students who spoke at a public hearing on the Wake assignment plan in March 1995. Most of the speakers were parents who expressed frustrations about their children not being allowed to attend the schools of their choice. For these parents, school choice isn't about wanting to send

their children to a private school or a school outside their district. It's about having some control over where their child attends public school.

Diehl and his wife, Lynne, bought a home outside Fuquay-Varina in 1993 so their daughters could attend a nearby elementary school. But the Diehls—like many parents—soon learned a hard lesson: When it comes to selecting public schools, the choice doesn't belong to them, but to the local school system. In March 1995, the Wake school system notified the Diehls that their younger child had been reassigned to another elementary school on the other side of town. That prompted the Diehls to speak against the student reassignments at the Wake County Board of Education's public hearing on the plan.

"My husband and I are from Air Force families," Lynne Diehl told the board. "As children, we were both yanked from one school to the next. We decided that when we had our own children,

***Lynne and Jerry Diehl contested the Wake County Board of Education's reassignment plan when one of their children was transferred to an elementary school across town.***



Karen Tam

this was not going to happen to them. So we built our home close to the school of our choice. . . . You have taken away my choice for my child's education."

### **Most Parents Seek Stable, Nearby Schools**

Such sentiments are one of the factors pushing the drive for school choice. For many parents, choice isn't a way to switch their children to other schools, but to keep them from being transferred or bused across town. Surveys have shown that most parents of public school students have no desire to transfer their children to another public or private school.<sup>1</sup> Rather, they seek to keep their children in schools that are safe, disciplined, academically challenging, and *close to home*.

"The biggest reason why we're here today is that we all want our children to go to neighborhood schools," one parent, Elaine Rohlik of Raleigh, said at the Wake public hearing. Many students these days in urban communities, like Wake County, don't know what it's like to attend a local neighborhood school. "We have changed schools four times in six years," says Thomas Allen, a sixth-grader at East Millbrook Middle School in Raleigh. Under the new assignment plan, he would be transferred to East Wake Middle School—about eight miles farther from his home than his current school.

Another factor contributing to frustrations over school assignments in many communities has been the use of busing to increase racial diversity in public schools. Many of the parents who spoke at the Wake hearing complained about their children being bused to schools far from their neighborhoods. Such frustrations are shared by parents of all races.

"You're shifting these problems to other schools, rather than addressing them," said Jacqueline Winston, an African-American parent from Fuquay-Varina. "If the school board were concerned about the structure of education that our children are receiving, rather than the racial balance, our children would receive a much better education."

Wake school officials say they have no option but to reassign students. The explosive

population growth in Raleigh, Cary, Apex, and other communities close to Research Triangle Park has boosted the number of students attending Wake Public Schools by more than 2,000 students a year over the past decade. The school system has responded by building new schools and redrawing the base districts for existing schools.

"Since 1990, we've literally grown by about 3,100 students a year," says Scott Ragland, assistant public information officer for the Wake system. "That's the equivalent of three or four schools a year, but we obviously can't build three or four new schools a year. The majority of reassignments are because of space—simply because the schools are overcrowded. Racial balance figures in as well, but what really drives it is overcrowding."

To help deal with frustrations over school assignments, the Wake school system has offered parents more choices through magnet schools, year-round schools, and occasional transfers. The magnet and year-round schools program also has helped the school system achieve more racial diversity, by attracting suburban students to inner-city schools and vice versa. But the program has caused further frustrations for some parents, because the system has been swamped with more applications than it can accommodate. (See the related article, "Magnet Schools: The First Step Toward School Choice," on p. 12.) Nevertheless, more than 14,000 of the system's 77,000 students choose to attend a school outside their district of residence.

"In Wake County, it's pretty tough because of the space limitations and crowding," says Patrick Kinlaw, director of magnet programs for Wake public schools. "But still, that's a pretty good number—so about 19 percent of our students are exercising the choice option. . . . In addition, about 80 percent of our students either attend a school of their choice or their closest school."

—Tom Mather

### **FOOTNOTES**

<sup>1</sup>Ernest L. Boyer, ed., *School Choice*, The Carnegie Foundation for the Advancement of Teaching, Princeton, N.J., 1992, pp. 10–11. The Carnegie study surveyed 1,013 parents with children in public schools and found that 70 percent did *not* wish to send their children to another school, public or private.

—continued from page 6

Bugg Elementary in Raleigh focuses on the creative arts and science, with specialized instruction in visual arts, music, dance, and the theater. (See the related article, "Magnet Schools: The First Step Toward School Choice," on p. 12.)

**Charter Schools.** Teachers or other groups can apply for "charters" to operate schools that receive government funding, but are largely free from the administrative control of local school systems. As with magnet schools, students can attend charter schools outside their assigned districts, but may be denied admission if the school has too many applicants. An example of a charter school

*"The decade-long struggle to reform American education seems suddenly to hang on a single word: choice. Advocates of choice are promoting this option from the nation's most respected political and academic pulpits, driven by the conviction that public schools are in deep trouble and that bold, creative steps are needed to shake up a lethargic education system."*

—CARNEGIE FOUNDATION FOR THE  
ADVANCEMENT OF TEACHING,  
in its report, *School Choice*



is City Academy of St. Paul, Minn., which was established by teachers to attract high-school dropouts. The school, which has only about 30 students and seven teachers, receives funding from the state as well as local businesses.<sup>9</sup>

**Open Enrollment.** Students can attend any public school that is appropriate to their grade level. Administrators make final selections, however, and students may have to settle for second or third choices if schools have more applicants than they can accommodate. Open enrollment can be district-wide or statewide. In district-wide programs, students can attend any public school *within* their local system. For example, elementary and middle-school students in the East Harlem section of New York City can enroll in any public school in the

district, with the schools offering a range of different educational approaches.<sup>10</sup> In statewide programs, students can attend any public school *in their state*, with state funding typically shifting from the transfer students' district of residence to the district of the school they attend. In Minnesota, the first state to adopt statewide open enrollment (in 1987), students can attend virtually any public school in the state.<sup>11</sup>

**Private-School Choice.** In addition to public school options, students can attend any *private* school of their choice, with their tuition paid for or supplemented by government-funded vouchers, grants, or tax credits. Vouchers are credit slips that parents give to schools, which can redeem them for cash from the state. Grants are direct payments to parents for tuition costs. Tax credits allow parents to deduct tuition costs from their income taxes or to receive tax refunds. As with other choice options, however, school administrators make final enrollment decisions based on the availability of space. Plus, private schools can deny students who don't meet their educational standards, don't belong to affiliated religious faiths, or cannot afford the full tuition even with government support. Minnesota and Iowa are the only states with statewide private-school choice, allowing parents to deduct educational expenses—which can include private-school tuition—from their state income taxes.<sup>12</sup>

### Support for School Choice Rooted in Many Causes

**T**he push for school choice is rooted in many causes. These include: parental frustrations over the lack of control in selecting public schools; concerns about the quality of education in public schools; violence, drugs, and other crimes in public schools; opposition to busing and other efforts to promote racial integration in public schools; resentment by parents who must pay taxes for public schools while also paying tuition for their children to attend private schools; parents who want a religious education for their children; and desires for stability in rapidly growing communities where students are frequently reassigned to different schools. (See the related article, "What Polls Have Shown About Public Attitudes Toward School Choice," on p. 30.)

"The decade-long struggle to reform American education seems suddenly to hang on a single word: choice," the Carnegie Foundation states in a detailed report on school choice. "Advocates of choice are promoting this option from the nation's



N.C. Division of Archives and History

***A first-grade class at Davie Avenue Elementary School in Statesville, 1938.***

most respected political and academic pulpits, driven by the conviction that public schools are in deep trouble and that bold, creative steps are needed to shake up a lethargic education system.”<sup>13</sup>

### **Public School Systems Offering More Choices**

**P**ublic school systems have responded to requests for more educational choices in several ways, including student transfers, magnet schools, charter schools, and open enrollment programs. Some people argue that such options are all that’s needed to satisfy public demands for more school choice. “These are true parental choices within the public schools,” says Bob Berlam, director of government relations for the N.C. School Boards Association. “We now have these choices, and they are developing.”

Others, however, contend that public-school choice options serve only a small percentage of the student population. “There is hardly anywhere in North Carolina—other than your urban areas—that has any magnet choices,” says Rep. Fern Shubert

(R-Union), who adds that transfers and open enrollment programs are equally rare. “They (school systems) are perfectly capable, yet I doubt that they would unless they would be forced to do so.” In the 1994–95 school year, 8.4 percent (10 of 119) of the state’s local school systems offered some sort of magnet program, according to the N.C. Department of Public Instruction.

Virtually all school systems allow some students to transfer to schools outside their districts of residence, typically on a case-by-case basis. But most systems allow only limited numbers of transfers because of difficulties arranging transportation and allocating space in the schools. For instance, Wake County Public Schools approved about 4,700 transfer requests (not including magnet and year-round schools) for the 1994–95 school year, representing about 6 percent of the total student population in the system.<sup>14</sup>

Magnet schools are the first step toward expanding choice, and many school districts across the state have opened magnet schools—particularly in urban areas. Typically, students from anywhere in

*—continues on p. 15*

## *Magnet Schools: The First Step Toward School Choice*

**D**URHAM—Durham High School looks like the same old brick fortress that has towered over Duke Street since the early 1920s. But the school now goes by a different name—Durham Magnet Center—and its focus has changed as well.

Starting with the 1995–96 academic year, Durham High will become one of nine new magnet schools in the Durham Public School System. So, instead of drawing from a base district decided by school administrators, the school will be filled with students who have chosen to enroll there because of its unique academic offerings.

“We will have a focus on the visual and performing arts and global studies,” Ed Forsythe, principal of Durham Magnet Center, tells a

crowd of students and parents who have packed into the school’s assembly hall for an open house. Forsythe essentially is delivering a sales pitch to the parents, who have only a few days to decide whether to enroll their children at the Durham Magnet Center, some other magnet school in the system, or the base school for their district of residence.

Some of those parents are impressed by the school’s new approach, some are skeptical, and others seem confused. “I want to thank you for doing this,” one father says during the question-and-answer session. “This is a great idea.” But a mother warns Forsythe to keep the school focused on its arts theme: “I would encourage you to stick with the one program—and try to do that really well.”

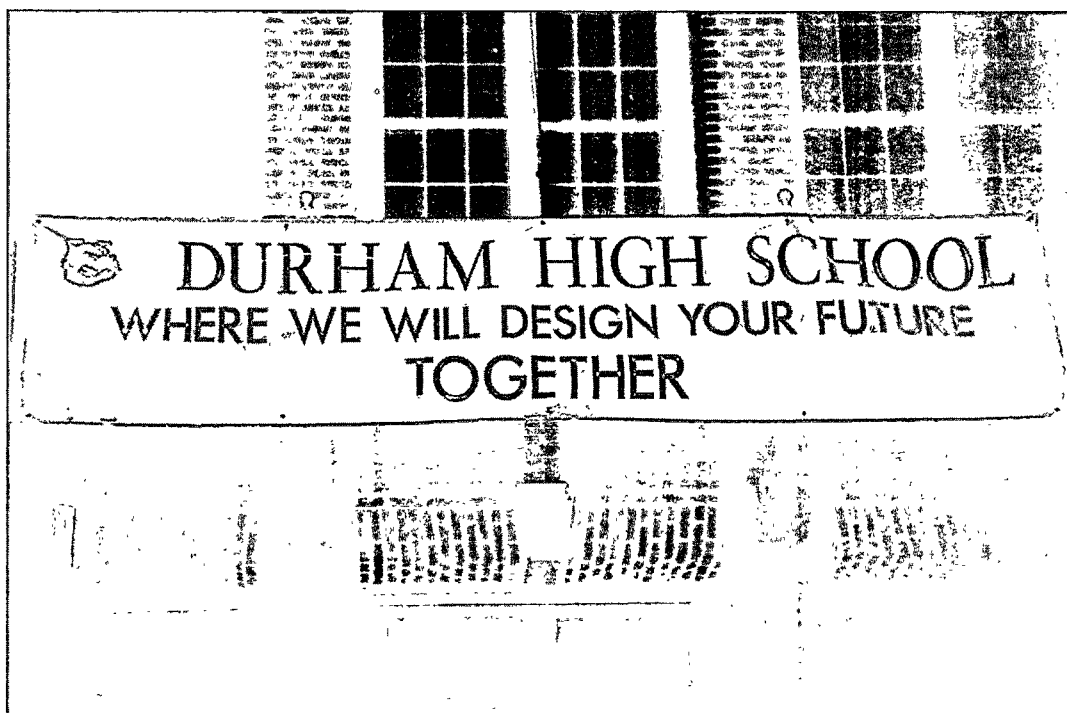
A number of parents apparently are struggling with the choice of enrolling their child in the school—which is innovative but unproven. “I have a kid in a really good music program in another school,” says one father. “Now I have to decide within a short period of time whether to pull him out and move him here.”

Many families have been wrestling with similar concerns in the Durham community, but they apparently like having such choices. Durham Public Schools received more than 3,100 applications for placements in the system’s nine magnet schools during the sign-up period in March 1995, representing about 15 percent of the total student enrollment in grades K–8. [All of Durham’s magnets are elementary and middle schools, but



***Ed Forsythe, principal of the Durham Magnet Center, tells parents about educational offerings in the new magnet school program at Durham High School.***

Tom Mather



Tom Mather

***A banner hanging on the front of Durham High School describes the school's new approach as a magnet school.***

high-school grades will be phased in at Durham Magnet Center starting with the 1996-97 school year.]

"The parents are very excited," says Anita Tanner, executive director of Durham's magnet school program. "I think when you look at the fact that we had over 3,100 applications—in the first year the magnet program was offered—that shows that the community is very, very interested."

Magnet schools such as the ones in Durham are one of the key ways in which public school systems in North Carolina are trying to give parents more educational choices. About eight percent of the state's public school systems (10 of 119) offer magnet programs, according to the state Department of Public Instruction. Most of the magnet programs have cropped up in school systems in larger cities like Raleigh, Charlotte, Greensboro, Winston-Salem, and Wilmington.

For instance, the Wake County Public School System has 29 magnet schools serving about 22,000 (28 percent) of its 77,000 students.<sup>1</sup>

The magnet schools are so popular that they don't have openings for all of the applicants. For the 1995-96 school year, the system had to turn away more than 3,000 students.

### **Magnet Schools Serve a Number of Purposes**

Tanner, the director of the Durham magnet program, says that magnet schools serve four primary purposes: (1) to improve student achievement; (2) to offer unique and innovative programs; (3) to bring about internal reform in the operation of public schools; and (4) to increase the diversity of schools in terms of race, gender, disabilities, religion, geography, and socioeconomic backgrounds. In essence, the magnet concept is that by offering innovative programs—such as the focus on arts at Durham Magnet Center—schools will motivate students and teachers to improve achievement. "That's first and foremost in any school," Tanner says.

—continues

One of the key reasons for establishing magnet schools in Durham and other communities has been to help increase racial diversity in schools. For instance, magnet programs have been used to attract white, suburban students to predominantly black, inner city schools. "You're trying to bring together as strong a mix as possible," Tanner says. "The magnet philosophy is: the stronger the mix of student backgrounds, the stronger the educational climate and potential for achievement."

The real drawing card for most parents, however, is the expanded choice in educational offerings. For Robin Watson of Durham, the system's magnet program allowed her to enroll her 4-year-old son, Darius, in a new Montessori school at Morehead Elementary. "I definitely wanted to put him in a Montessori school," Watson says. "The hands-on approach is what I really enjoy. . . . I think if you pick what your child needs, he'll be able to excel and be challenged." The Montessori style of teaching

focuses on hands-on, individualized instruction that promotes independence, creativity, problem-solving, and social skills.

The Durham school system decided to establish a Montessori program—one of the first in a public school in the state—because of requests from parents.<sup>2</sup> "Some of these children, without having a district magnet, would never have the opportunity to use the kind of choices we offer," says Beverly Honeycutt, the principal at Morehead.

The popularity of the Durham Montessori magnet school highlights one of the drawbacks of magnet programs. Although magnets offer a choice to those parents who want it, the school systems retain the final word on assignments. In other words, students from anywhere in a school system can attend a magnet—unless the school has more applicants than it has spaces. That means that some students don't get to attend their chosen magnet, if the school is a particularly popular one.

***Beverly Honeycutt, right, principal of Morehead Montessori Magnet School in Durham, describes the school's innovative programs to a parent at an open house.***



Tom Mather

"We had over 200 parents that applied; 160 (students) were accepted," says Honeycutt, the principal at Morehead Montessori. "I have not recruited at all."

At Durham Magnet Center, Principal Ed Forsythe says the school filled all of the 400 slots it had available for the 1995-96 school year. "Right now, they're clamoring to get in," he says. "But you have to deliver on your promises. If you don't, the parents are not naive."

Forsythe and his staff will have their work cut out for them if they want to keep those students coming back. During the open house at Durham Magnet Center, he led a group of visiting parents into a large, oily smelling room. The floor was spotted with grease and painted with stripes like a parking lot. Large, industrial-size lamps and ventilation pipes hung from the ceiling, and a cluttered workbench abutted one of the walls.

"This used to be the old mechanics shop," Forsythe told the parents. "It will go through a renovation and will be used as a black-box theater. We're looking at putting in seating for about 200 in this area. We're going to call it our theater-in-the-round. I wasn't kidding when I said we're going to roll up our sleeves and go to work here. We're going to have to."

—Tom Mather

## FOOTNOTES

<sup>1</sup> Personal communication with Patrick Kinlaw, director of magnet programs for Wake County Public Schools. The 22,000 magnet students include those who choose to attend magnet schools, students who live in the district of residence for such schools, and students who choose to attend year-round schools.

<sup>2</sup> The Charlotte-Mecklenburg public school system has offered a Montessori magnet program at James Elementary since 1992. The Wake County Public School System also established a Montessori program at Poe Elementary in Raleigh, starting with the 1995-96 school year.

—continued from page 11

a district can attend magnet schools. But magnet programs offer only a limited amount of choice because participating schools may turn away students—usually through lotteries—if they receive too many applications. For instance, the Wake County public school system received nearly twice as many applications as it had spaces for in its magnet schools for the 1995-96 academic year.<sup>15</sup> (For more on magnet schools, see the articles, "Magnet Schools: The First Step Toward School Choice," on p. 12, and "Neighborhood Schools the Choice for Many Parents," on p. 8.)

Charter schools are the next step toward school choice. As with magnet programs, students from anywhere in a school district can apply to attend charter schools. And, like magnets, charter schools may focus on a particular theme or style of education. The key distinction with charter schools is that, although they are publicly funded, they are largely free from educational controls set by local school boards and the state.<sup>16</sup> Instead, such schools are run by teachers or other groups—such as private contractors or education colleges—that are granted "charters" by the state or some other enabling body.

"It's a magnet school on steroids, basically," says Jim Johnson, a senior analyst with the N.C.

General Assembly's Fiscal Research Division. "The difference is in the flexibility of funding and how they decide to spend their money."

To keep its charter, a charter school has to meet or exceed predetermined standards of performance for student achievement, attendance, and other measures. In theory, that organizational structure spurs teachers and students to excel because the school's existence depends on its performance.

**"Charter schools are part of a movement for expanded opportunity, in a careful and thoughtful way. These people are accountable for results. There has to be measurable improvement in student achievement. If there isn't, then the charter school is closed."**

—JOE NATHAN,  
director, Center for School Change,  
University of Minnesota

"Charter schools are part of a movement for expanded opportunity, in a careful and thoughtful way," says Joe Nathan, director of the Center for School Change at the University of Minnesota and a leading proponent of charter schools. "These people are accountable for results. There has to be measurable improvement in student achievement. If there isn't, then the charter school is closed."

Minnesota was the first state to start a charter schools program, with its enabling legislation adopted in 1991. By January 1995, 11 states had passed laws establishing charter school programs, and those programs had approved charters for 134 schools.<sup>17</sup> (See Table 3 on p. 20.) In addition, more than 20 states were considering charter-school bills during the 1995 legislative session<sup>18</sup>, with at least eight of those states (Alaska, Arkansas, Delaware, Louisiana, New Hampshire, Rhode Island, Texas, and Wyoming) enacting laws by August.<sup>19</sup> (See Figure 1 on p. 21.) "Any list of charter schools should be viewed as out of date within a month of its publication," Nathan says.<sup>20</sup>

## Charter Schools Coming to North Carolina?

Currently there are no charter schools in North Carolina.<sup>21</sup> But the charter school concept was the only school-choice option to win approval in either house of the N.C. legislature in 1995. Both the House and the Senate passed bills (H.B. 955 and S.B. 940) that would authorize and set standards for charter schools in North Carolina. (See Table 1 on p. 7.) The bills failed to get out of conference by the end of the 1995 session. But legislators are confident that they can work out a compromise bill that will pass both houses in the 1996 session.

"We'll have a charter school law," says Rep. Steve Wood (R-Guilford), the chair of the House Education Committee and sponsor of House Bill 955. "What it amounts to now is just hammering out the differences between the two bills."

Both charter school bills would let various groups apply for charters—including teachers, groups of parents, and nonprofit contractors—but the House bill would allow private businesses as well. Both bills also would exempt charter schools from most rules and regulations set by local school boards, but they would still require such schools to abide by health, safety, and civil rights laws. The primary difference between the bills relates to which institutions would have the authority to approve charters. Under the House bill, charters could be approved by local boards of education, the State

**"I fear that we're going to be testing two days and teaching just one. If you want a cow to get fat, you feed the cow, not weigh the cow."**

—DUDLEY FLOOD, executive director  
N.C. Association of School Administrators



Board of Education, boards of county commissioners, community college boards, trustees for institutions in the University of North Carolina, and town or city councils. The Senate bill is much more restrictive, authorizing only the State Board of Education to grant final approval for charter applications, although local boards would have conditional approval authority.

"The other [Senate] charter bill is limited to the State Board of Education," Wood argues. "They've already got a monopoly on a \$4 billion industry, so nobody is going to expect them to run out and start chartering a bunch of schools." However, the legality of the House charter-school bill (H.B. 955) is open to question because the N.C. Constitution specifically delegates the supervision and administration of public schools to the State Board of Education.<sup>22</sup>

Sen. Wib Gulley (D-Durham), who introduced the Senate charter school bill (SB 940), points out that it was co-sponsored by Democrats and Republicans. "This offers some exciting opportunities that I think this state should look at very seriously," Gulley says. "We need to explore this."<sup>23</sup>

Not everyone is so enamored with charter schools, however. Dudley Flood, executive director of the N.C. Association of School Administrators, says he is concerned about the notion that increased competition would improve public schools. "There is no place in public schools for competition," Flood says. "What's needed in public education is collegiality, and collegiality brings improvement. They're going to get better because we realize that all the schools belong to all the people." Flood also warns against an over-reliance on testing, which would be used to gauge the progress of charter schools. "I fear that we're going to be testing two days and teaching just one," he says. "If you want a cow to get fat, you feed the cow, not weigh the cow."

Even Joe Nathan, the proponent from Minnesota, cautions that charter school programs—if not implemented carefully—could promote re-segregation and exacerbate disparities between rich and poor schools. “Choice, it seems to us, is a lot like electricity,” Nathan says. “It is a very powerful force and it has to be used carefully. If it’s not used very carefully, it could be used to increase inequality.

### **Open Enrollment Becoming More Widespread in Public Schools**

**M**ost of the debate over school choice in North Carolina has centered on charter schools and private-school choice options such as vouchers and tax credits. But the committee substitute for Rep.

Wood’s Parental Choice in Education bill (H.B. 954) also would establish limited open enrollment in North Carolina’s public schools. Under the bill—which is pending in the House Appropriations Committee—parents could send their children to public schools outside their district of residence if space is available. However, school systems could charge tuition for transfer students. Plus, parents would have to submit written requests at least one year before the beginning of the school year in which the transfer would occur.

Nationwide, the concept of open enrollment or public-school choice appears to have broad support. Several nationwide opinion polls have found that the public supports open enrollment by about a 2-to-1 margin. (See the article, “What Polls Have Shown About Public Attitudes Toward School Choice,” on

p. 30.) Likewise, at least 19 states allow some type of open enrollment—although not all of those programs are statewide in effect.<sup>24</sup>

Despite the broad support for open enrollment, such programs have been slow to catch on—even in states that have adopted comprehensive, statewide open enrollment programs. The Carnegie Foundation found in a 1992 study that less than 2 percent of the public school students had transferred from their school districts of residence in each of the seven states with statewide open enrollment programs at that time. (See Table 4 on p. 22.) Likewise, the Carnegie study found that



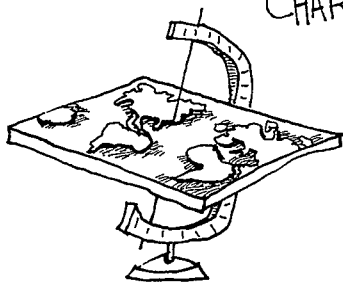
**Sen. Wib Gulley (D-Durham), describes his charter schools bill to the House Education Committee.**

Karen Tam

**Table 2.**  
**Key Arguments For and Against School Choice**

For	Against
1. Parents who send their children to private schools would get something back for taxes they pay for public education, perhaps building more support for education funding.	1. Choice could starve the public schools of funds as more parents send their children to private schools, perhaps becoming less willing to pay taxes for public education.
2. Choice is needed to provide alternatives to the public schools, which some people perceive as unsafe, undisciplined, and academically inferior to private schools.	2. Surveys show most parents do not want to send their children to other schools, public or private. Studies show that private schools are not significantly better than public schools when socio-economic factors are taken into account.
3. Charter schools and private-school choice options would create competition for the public schools, spurring them to improve.	3. Public schools can't compete on the same terms because private schools can exclude students who are less intelligent, cause disciplinary problems, or have learning disabilities and other handicaps.
4. Private-school choice could save public schools the expense of having to build new schools and educate students who transfer to private and religious schools.	4. The state would incur large expenses in paying tuition for transfer students, as well as for those already enrolled in private schools.
5. School choice could build more support and interest in education because parents and students would have more input and control.	5. School choice could greatly increase school systems' costs for administration and transportation.
6. Parents would not be penalized financially for sending their children to private and religious schools.	6. Using public money to pay for tuition at private schools could violate the guarantee of separation of church and state in the U.S. Constitution, as well as the public purpose clause of the N.C. Constitution.
7. Private-school choice would provide alternatives for low-income families that are unhappy with public schools but cannot afford tuition at private and religious schools.	7. Vouchers and tax credits would not help many low-income families that could not afford private-school tuition, even with the proposed funding supplements.
8. School choice is the fair thing to do because we live in a free society in which citizens choose their own destiny.	8. Although we live in a free society, our choices are often limited in how we vote, where we live, the work we do, and other options.

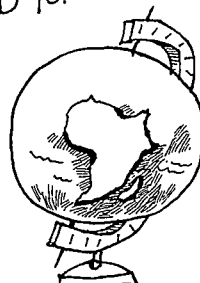
## CHARTER SCHOOLS TO LOOK FORWARD TO:



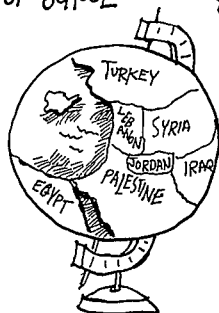
FUNDAMENTALIST SCHOOL



SCHOOL OF WESTERN VALUES



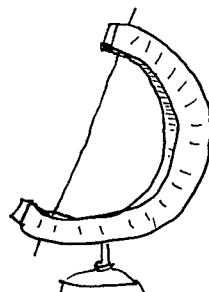
THE AFRO-ACADEMY



THE ISLAMIC JIHAD CENTER



THE MILITIA INSTITUTE



THE PUBLIC SCHOOL

Signe Wilkenson

Signe Wilkenson  
Philadelphia Daily News  
Cartoonists & Writers Syndicate

most parents with children in public schools (70 percent of those surveyed) had no desire to send their children to another school, public or private.<sup>25</sup> In explaining this apparent contradiction, the Carnegie study concluded:

"In summary, the vast majority of public school parents appear to be quite satisfied with the education their children are receiving. Most are not inclined to move their children to a different school. And in states where choice has been introduced, participation rates are very low. The general public, on the other hand, seems to find the idea of choice appealing. But when asked to choose between local schools and a market approach to education, Americans overwhelmingly support the neighborhood school arrangement. None of this speaks to the merits or demerits of choice. What it does suggest is that the push for school choice does not appear to be a groundswell from parents."<sup>26</sup>

Nevertheless, *district-wide* open enrollment has been credited with helping to revitalize public schools in areas such as Cambridge, Mass.; East Harlem, N.Y.; and Montclair, N.J. "These districts are routinely cited as evidence that school choice

can indeed deliver excellence to all, including children in the most challenging environments," the Carnegie study says. "Even education leaders who generally are skeptical of choice's potential have hailed these places for their efforts."<sup>27</sup> In all three of these districts, open enrollment programs have led to increased educational opportunities for students, better parental involvement, and improved racial harmony, the study concludes. But the programs have had less certain effects on academic performance, while increasing educational costs—particularly for transportation.<sup>28</sup>

The jury is still out on the merits of *statewide* open-enrollment programs. Although various polls have found strong support for the concept of open enrollment, existing statewide programs have encountered problems with providing transportation to transfer students, supplying adequate information for parents to compare schools, and assuring equitable funding and racial balance among school districts.<sup>29</sup> Such problems undoubtedly have helped account for the low participation rate in areas with statewide open enrollment programs. (See Table 4 on p. 22.) Even in Minnesota, which began

its statewide open enrollment in 1987, only 1.8 percent of the students were participating in the program by 1992.<sup>30</sup>

Transportation has become an issue with open-enrollment programs because many parents cannot afford to send their children to other schools unless bus rides are provided. Plus, bus-ing students across school district lines can greatly increase transportation costs, at a time when many

governments are trying to find ways to cut expenses. For instance, the Michigan legislature postponed plans for a statewide open enrollment program after studies estimated it would cost an additional \$20 million in state transportation funding.<sup>31</sup> Thus, in most states with comprehensive open enrollment programs, parents and local school districts are responsible for transportation.

**Table 3. Charter Schools Authorized and Approved in the States, January 1995.<sup>1</sup>**

State <sup>2</sup>	Year Law Passed	Number of Charters Authorized by Law	Number of Charter Schools Approved as of January 1995
1. Arizona	1994	No limit <sup>3</sup>	3
2. California	1992	100	73
3. Colorado	1993	50	16
4. Georgia	1993	No limit	0
5. Hawaii	1994	25	1
6. Kansas	1994	15	0
7. Massachusetts	1993	25	14
8. Michigan	1993	No limit <sup>4</sup>	8
9. Minnesota	1991	35	14
10. New Mexico	1993	5	4
11. Wisconsin	1993	20	1
<b>TOTAL</b>	—	—	134

<sup>1</sup> Source: U.S. General Accounting Office, "Charter Schools: New Model for Public Schools Provides Opportunities and Challenges," Report to Congress, GAO/HEHS-95-42, Washington, D.C., January 1995, p. 6.

<sup>2</sup> Table does not include states that adopted charter school bills during the 1995 legislative session. By August 1995, charter school laws had been enacted in at least eight additional states—Alaska, Arkansas, Delaware, Louisiana, New Hampshire, Rhode Island, Texas, and Wyoming. See Drew Lindsay, "In States, G.O.P. Stymied in Push to Revamp Policy," *Education Week*, Vol. XIV, No. 39 (June 21, 1995), p. 14.

<sup>3</sup> Local school districts may approve any number of charters in Arizona, but the state board of education and state board for charter schools may sponsor no more than 25 schools a year.

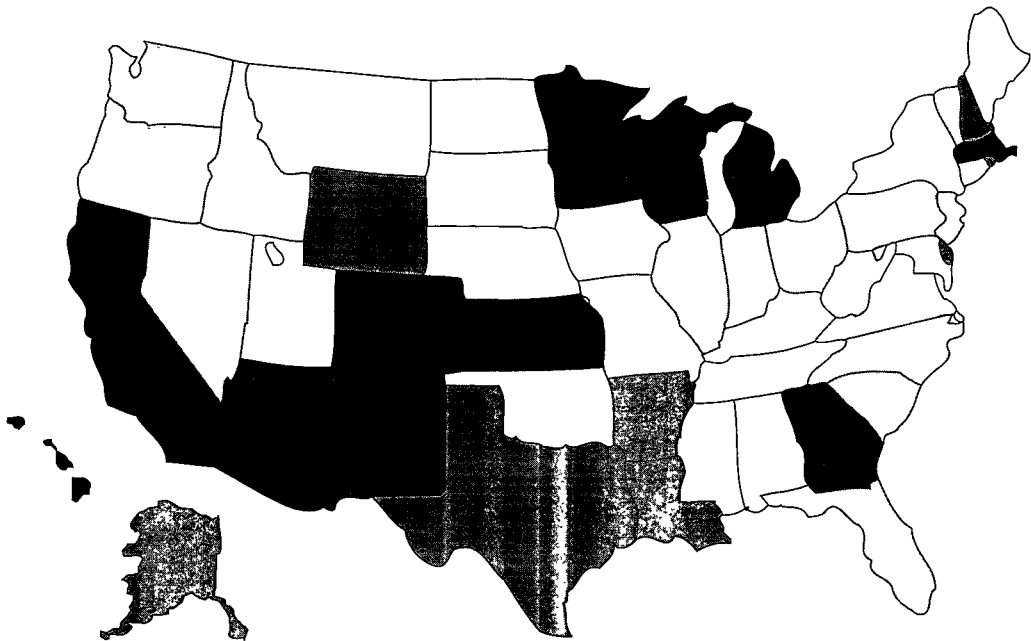
<sup>4</sup> State universities may approve no more than 75 charter schools in Michigan, but the state puts no limit on the number of charters sponsored by other institutions.

Parents also are largely on their own when it comes to comparing and evaluating different schools. The Carnegie study found that, except for Minnesota, states with comprehensive open enrollment programs provide parents with little reliable information for assessing school options.<sup>32</sup>




But perhaps the most serious shortcoming of statewide open enrollment programs concerns the allocation of educational resources. Various stud-

ies have found that open enrollment programs can exacerbate funding inequities among school districts because students tend to transfer from poorer schools with less resources to wealthier schools with more equipment.<sup>33</sup> Such inequities can become even worse with open enrollment programs as state funding generally transfers with the student. Thus, poor schools end up with even less money, making it harder for them to improve.

**Figure 1.**  
**States with Charter School Laws,**  
**Existing and Under Consideration in 1995.**



**Legend**

-  States with charter-school laws as of January 1995
-  States that enacted charter-school laws during 1995 legislative session as of August
-  States that were considering charter-school laws during the 1995 legislative session

Source: Center for School Change, Hubert H. Humphrey Institute of Public Affairs, University of Minnesota, Minneapolis, Minn.

**Table 4. Student Participation Rates in Comprehensive, Statewide Open Enrollment Programs, 1992.**

State	Number of Students in Open Enrollment	Percent of Total in Public Schools
1. Arkansas	1,667	0.4%
2. Idaho	2,580	1.2%
3. Iowa	5,227	1.0%
4. Massachusetts	1,100	0.1%
5. Minnesota	13,000	1.8%
6. Nebraska	3,300	1.2%
7. Utah	5,000	1.1%

Source: Ernest L. Boyer, ed., *School Choice*, The Carnegie Foundation for the Advancement of Teaching, Princeton, N.J., 1992, p. 12.

Such inequities also can magnify racial differences among school districts. For instance, hundreds of white students in Des Moines, Iowa, transferred from inner-city to suburban schools after the state began an open enrollment program. As a re-

sult, the Des Moines city school system was expected to lose more than \$1 million a year in state funding, even though the system had district-wide open enrollment with a broad range of educational choices.<sup>34</sup> Such problems led the Carnegie Foundation to conclude that states should *not* start comprehensive open enrollment programs until they have established measures to prevent inequities.

"By any standard of fairness, then, statewide [open enrollment] programs demand a level playing field," the Carnegie study concluded. "At a minimum, this means adequate transportation for all students; accessible, reliable information for parents and students about the plan itself and about the quality of schools and their programs; and serious attention to reducing the disparities between rich and poor districts. By these yardsticks, we conclude that responsible and effective statewide school choice does not exist in America today."<sup>35</sup>

### **Private-School Choice Still Largely Untested**

**A**lthough much of the debate over school choice has focused on vouchers, there are few examples of private-school choice programs in the United States. None of the states currently have statewide programs providing vouchers or other

*"... [T]he vast majority of public school parents appear to be quite satisfied with the education their children are receiving. Most are not inclined to move their children to a different school. And in states where choice has been introduced, participation rates are very low. The general public, on the other hand, seems to find the idea of choice appealing."*

—CARNEGIE FOUNDATION FOR THE  
ADVANCEMENT OF TEACHING,  
in its report, *School Choice*



direct financial support for parents who send their children to private schools. However, several states provide limited or indirect support for private-school students:

- Iowa allows parents who send their children to private schools to deduct from their state income taxes up to \$1,000 per child, with a limit of \$4,000 per family.
- Minnesota allows parents to deduct from their income taxes up to \$1,000 per year for school-related expenses, which can include private-

school tuition, as well as transportation, books, supplies, and required clothing.

- Vermont lets small towns that have no nearby public schools pay the tuition for residents who send their children to nearby private schools, but that tuition cannot be paid with state funds.
- Wisconsin has the nation's only state-sponsored voucher plan, but that program is limited to fewer than 1,000 families in Milwaukee. That plan provides vouchers worth about \$3,000 a year to students from low-income

## *New Book to Shed Light on Impact of Choice*

While evaluations of the impact of school choice on student learning are hard to come by, a forthcoming book promises to shed new light on the subject. The book, *School Choice: The Cultural Logic of Families, the Political Rationality of Institutions*,<sup>1</sup> examines school choice programs in San Antonio, Tex., and Milwaukee, Wis., and a magnet schools program in Montgomery County, Md.

Bruce Fuller, associate professor of education at Harvard University, is an editor of the book and the author of a July 1995 National Conference of State Legislatures policy brief on the topic. Among the findings Fuller mentions are these:<sup>2</sup>

- The public schools in San Antonio—in the face of a private school-choice effort—were able to attract large numbers of Hispanic children into multilingual alternative schools. There was a statistically significant impact on student achievement compared to students who remained in the traditional public schools. Part—but not all—of the higher achievement could be explained by more motivated students being attracted into the alternative schools.

- Inner-city African-American and Hispanic students, given the option through a choice program, flocked to private schools in Milwaukee, and new schools sprung up to meet the demand. There was little or no impact on learning, but parents were more satisfied.

- Magnet schools in Montgomery County drew few students, apparently because too little was done to distinguish the course offerings from those offered at other public schools. Researchers expressed a fear that more educated and affluent parents would have greater access to information about the magnet schools, thus creating inequities in opportunities for students.

Fuller cautions that research into the school choice movement is still in its early stages. He notes that the school choice movement can expand educational options for low-income families and increase parental satisfaction. But school choice may increase racial segregation in schools. That's because people of similar cultural backgrounds are more likely to be attracted to schools where those cultures are practiced.

Less-educated, low-income parents and those with lower educational expectations for their children also are less likely to choose, Fuller notes. This creates the risk of poor children of less-involved parents falling further behind.

—Mike McLaughlin

### FOOTNOTES

<sup>1</sup> Bruce Fuller, et al., *School Choice: The Cultural Logic of Families, The Political Rationality of Institutions*, Teachers College Press, Columbia University, New York, N.Y., forthcoming.

<sup>2</sup> Bruce Fuller, "Who Gains, Who Loses from School Choice: A Research Summary," National Conference of State Legislatures Policy Brief, Denver, Colo., pp. 1-8.

Mike McLaughlin is editor of North Carolina Insight



Karen Tam

families who attend private, *non-religious* schools of their choice. In July, the Wisconsin legislation expanded the program to include religious schools—even though a federal court had ruled in March 1995 that the voucher program could not apply to religious schools without violating the constitutional First Amendment guarantee of separation between church and state.<sup>36</sup> In addition, a recent survey of Wisconsin residents found that a solid majority (56 percent) opposed expanding the voucher program to religious schools.<sup>37</sup>

- Puerto Rico adopted a voucher program in 1993 that provided \$1,500 grants that low-income families could use to send their children to any public or private school, including religious institutions. But in November 1994, the Puerto Rico Supreme Court struck down, on constitutional grounds, portions of the law dealing with private-school vouchers.<sup>38</sup>

Despite the lack of any statewide, comprehensive voucher programs in the United States, such proposals have come up for votes in recent years in a number of state legislatures and referendums. But so far, at least, no statewide voucher proposals have been enacted into law. During the past five years, for instance, voters in three states have turned down

ballot initiatives that would have established statewide voucher systems:

- In 1990, Oregon voters defeated by a 2-to-1 margin a ballot proposal called “Measure 11” that would have given parents vouchers worth \$1,200 a year to pay for their children’s education in public, private, or home schools.<sup>39</sup>
- In 1992, Colorado voters defeated by a 62- to 37-percent margin a ballot initiative called “Choice School Reform” that would have provided vouchers worth up to \$2,500 that parents could use to send their children to public, private, or religious schools.<sup>40</sup>
- In 1993, California voters defeated by a 70- to 30-percent margin a ballot initiative called “Proposition 174” that would have given parents vouchers worth \$2,600 a year to pay for their children’s education at public, private, or religious schools.<sup>41</sup>

Voucher proposals have fared no better in state legislatures. Bills that would establish school voucher systems were introduced in at least 30 states from 1990 to 1994, but none of those bills were enacted during that period, according to The Heritage Foundation.<sup>42</sup> However, many observers predict that vouchers and other private-school

**"Vouchers, tuition grants, and tax credits would drain already precious funds away from public schools and divert them to private schools."**

—HELEN HEAVNER,  
board member,  
N.C. Association of Educators



choice options will fare much better in state legislatures in the wake of the Republican sweep at the polls in 1994.

"I do think there is a climate change of sorts," says Chester E. Finn Jr., a senior fellow at the Hudson Institute and former assistant secretary of education in the Reagan Administration.<sup>43</sup> Nevertheless, only two states had enacted voucher legislation as of August—even though more than 20 states were considering voucher bills in 1995.<sup>44</sup> (See Table 5 on p. 26.) In addition to the Wisconsin bill that expanded The Milwaukee voucher program, the Ohio legislature enacted a bill that would provide vouchers worth up to \$2,500 to low-income families in the Cleveland school district.<sup>45</sup>

### **N.C. Legislature Considering Several Private-School Choice Bills**

North Carolina is one of the states that considered private-school choice legislation in 1995, with three competing bills introduced by early May. (See Table 1 on p. 7.) All three bills would have provided financial support to parents who send their children to private and religious schools. The primary difference between the bills is in how they would reimburse parents for tuition costs:

- House Bill 190, introduced by Rep. Ken Miller (R-Alamance), would provide tax credits worth \$3,100 for students enrolled in private schools and \$2,480 for students taught at home.
- House Bill 781, introduced by Rep. Larry Linney (R-Buncombe), would provide tuition grants worth about \$2,050 for students from low-income families and \$1,400 for others.
- House Bill 954, introduced by Rep. Steve Wood (R-Guilford), the chair of the House Education Committee, would provide tax credits worth

\$3,100 for private schools and \$2,480 for home schools (the same as H.B. 190), plus vouchers worth \$1,500 per student.

In June, the House Finance Committee passed a committee substitute for H.B. 954 that dropped the voucher proposal and decreased the tax credits. Under the substitute bill, which is pending in the House Appropriations Committee, parents who send their children to private or religious schools would be eligible for refundable tax credits worth \$200 in 1996 and \$1,000 in 1997. The bill also would allow open enrollment in North Carolina public schools, while providing the same tax credits to parents who pay tuition to send their children to public schools outside their districts of residence.

Rep. Wood says he anticipated tough going in the legislature, as well as stiff opposition from groups representing teachers and school administrators. "This is benchmark legislation," Wood says. "They [critics] are going to fight us all the way. But we intend to engage them fully."

Wood wasn't overestimating the opposition. Citizens for Public Schools, the bipartisan coalition that released the letter in June opposing the tax-credit bill (H.B. 954), is made up of 28 organizations representing more than 300,000 citizens in North Carolina. Those groups include most of the major players in the state's education establishment, as well as many business organizations, including: the N.C. Association of Chamber of Commerce Executives; the N.C. Business Committee for Education; N.C. Citizens for Business and Industry; the Public School Forum of N.C.; the State Board of Education; the State Department of Public Instruction; the N.C. Congress of Parents and Teachers (PTA); the N.C. Association of Educators; the N.C.

**"There is a need for choice. You can see what is happening in the public schools, compared to the private schools.... We don't have to worry about discipline because it's taught as part of the curriculum."**

—MARGARET ROSE MURRAY,  
director, Vital Link private schools,  
Raleigh and Durham



**Table 5. Private-School Choice Legislation  
in State Legislatures, 1995.**

State	Choice Options	Scope	Status of Bill
1. Arizona <sup>1</sup>	Vouchers	Pilot and phased in statewide, private schools	Several competing bills introduced; none advanced
2. Connecticut <sup>2</sup>	Vouchers	Would let local systems adopt public or private-school choice plans	Governor postponed efforts to pass bill this year
3. Florida	Vouchers		Bill failed
4. Illinois <sup>3</sup>	Vouchers for low-income families	Pilot program in Chicago, private and religious schools	Bill passed state Senate, pending in House
5. Minnesota <sup>4</sup>	Vouchers	Targeted for at-risk students	Bill failed
6. North Carolina	Vouchers, tuition grants, and tax credits	Statewide, private and religious schools	Bills pending
7. Ohio <sup>5</sup>	Vouchers	Pilot program in Cleveland, private and religious schools	Bill passed
8. Oregon <sup>6</sup>	Vouchers	Statewide	Bill referred to committee for study
9. Pennsylvania <sup>7</sup>	Vouchers	Statewide, private and religious schools	Bill failed
10. Texas <sup>8</sup>	Vouchers	Statewide	Bill failed
11. Wisconsin <sup>9</sup>	Vouchers	Would expand existing Milwaukee program to religious schools	Bill passed <sup>10</sup>

<sup>1</sup> Drew Lindsay, "Grassroots Lobbying Kills Ariz. Voucher Proposals," *Education Week*, Vol. XIV, No. 31 (April 26, 1995), p. 13.

<sup>2</sup> "Choice Debate Postponed," *Education Week*, Vol. XIV, No. 38 (June 14, 1995), p. 17.

<sup>3</sup> Lonnie Harp, "Revolutionary School-Voucher Measure Falls Short in Ill. House," *Education Week*, Vol. XIV, No. 35 (May 24, 1995), p. 13.

<sup>4</sup> Joanna Richardson, "Minn. Abolishes Education Department, Merges State Services in New Agency," *Education Week*, Vol. XIV, No. 37 (June 7, 1995), p. 11.

<sup>5</sup> Drew Lindsay, "Wisconsin, Ohio Back Vouchers for Religious Schools," *Education Week*, Vol. XIV, No. 40 (July 12, 1995), p. 1.

<sup>6</sup> "No Voucher Vote," *Education Week*, Vol. XIV, No. 37 (June 7, 1995), p. 13.

<sup>7</sup> Drew Lindsay, "In Wake of Defeat, Pa. Governor Vows to Revive Education Plan," *Education Week*, Vol. XIV, No. 40 (July 12, 1995), p. 14.

<sup>8</sup> Lonnie Harp, "Tex. Lawmakers Reach Accord on Overhaul of Education Laws," *Education Week*, Vol. XIV, No. 36 (May 31, 1995), p. 19.

<sup>9</sup> Lindsay, note 5 above.

<sup>10</sup> In late August, the Wisconsin Supreme Court issued an injunction halting the use of state money for vouchers at religious schools. See *Thompson v. Warner Jackson, et al.*, No. 95-2153-OA (S. Ct. Wisconsin, filed Aug. 25, 1995).

School Boards Association; the American Civil Liberties Union of N.C.; and the N.C. Child Advocacy Institute.

Such concerns were apparent at a public hearing the House Education Committee conducted on May 4, 1995, when a number of those groups voiced strong opposition to vouchers and other private-school choice options. "Vouchers, tuition grants, and tax credits would drain already precious funds away from public schools and divert them to private schools," said Helen Heavner, a board member with the N.C. Association of Educators. Another speaker, Sandy Carmany, president of the N.C. PTA, said: "How would these schools, under private control, be accountable to me, the taxpayer? We would rather see our money spent on improving the public schools."

Nevertheless, hundreds of people showed up at the public hearing to voice their support for private-school choice. Those proponents included a number of parents and teachers representing African-

American churches and private schools.<sup>46</sup> One of those speakers, Margaret Rose Murray, says many African Americans are turning to private schools because the public schools have failed to provide a safe, disciplined educational environment for inner-city children.

"There is a need for choice," says Murray, the director of Vital Link, a private school with branches in Raleigh and Durham. "You can see what is happening in the public schools, compared to the private schools. . . . We don't have to worry about discipline because it's taught as part of the curriculum."

## Conclusion

At the simplest level, school choice seems as American as apple pie. After all, we are free to choose our leaders, our jobs, the communities we live in, and the products we buy. But freedom of choice, like most liberties, is not limitless. In reality, choice is merely the opportunity to select from a limited set of options. We can't vote for anyone we want, but usually must choose between the two candidates nominated by the Democratic and Republican parties. We're free to apply for any job, but our chances for success are limited by such factors as our education, experience, connections, inherent drive, and intelligence. We can live anywhere we want, as long as we can qualify for a loan and afford the house payments. We can buy any product we choose, as long as we can find it in nearby stores at a price we can afford.

In that sense, it could be argued that most Americans already have school choice. They can choose to enroll their children in any private school, if they can afford the tuition and meet the standards. They can choose to send their children to virtually any public school, if they can move to a neighborhood in its designated district.



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The reality, however, is that many people are not willing or able to pay the tuition at private schools. Likewise, many people cannot relocate in order to attend the public school of their choice. Thus, what the school choice debate is about is *lowering or easing* the barriers that prevent or discourage some families from attending the school of their choice. The following pro/con discussions debate that issue.

#### FOOTNOTES

<sup>1</sup>In the 1994–95 fiscal year, \$4.132 billion of the total \$16.589 billion state budget went to support public education (not including community colleges and the university system), according to the State Budget Office. This \$16.589 billion budget includes the General Fund, Highway Fund, and federal funds received by the state for appropriation by the General Assembly.

<sup>2</sup>Ann and John Coble are of no relation to Ran Coble, executive director of the N.C. Center for Public Policy Research.

<sup>3</sup>Rep. Linney made his remarks at a news conference concerning the introduction of his bill (H.B. 781) on April 4, 1995, at the Legislative Building in Raleigh.

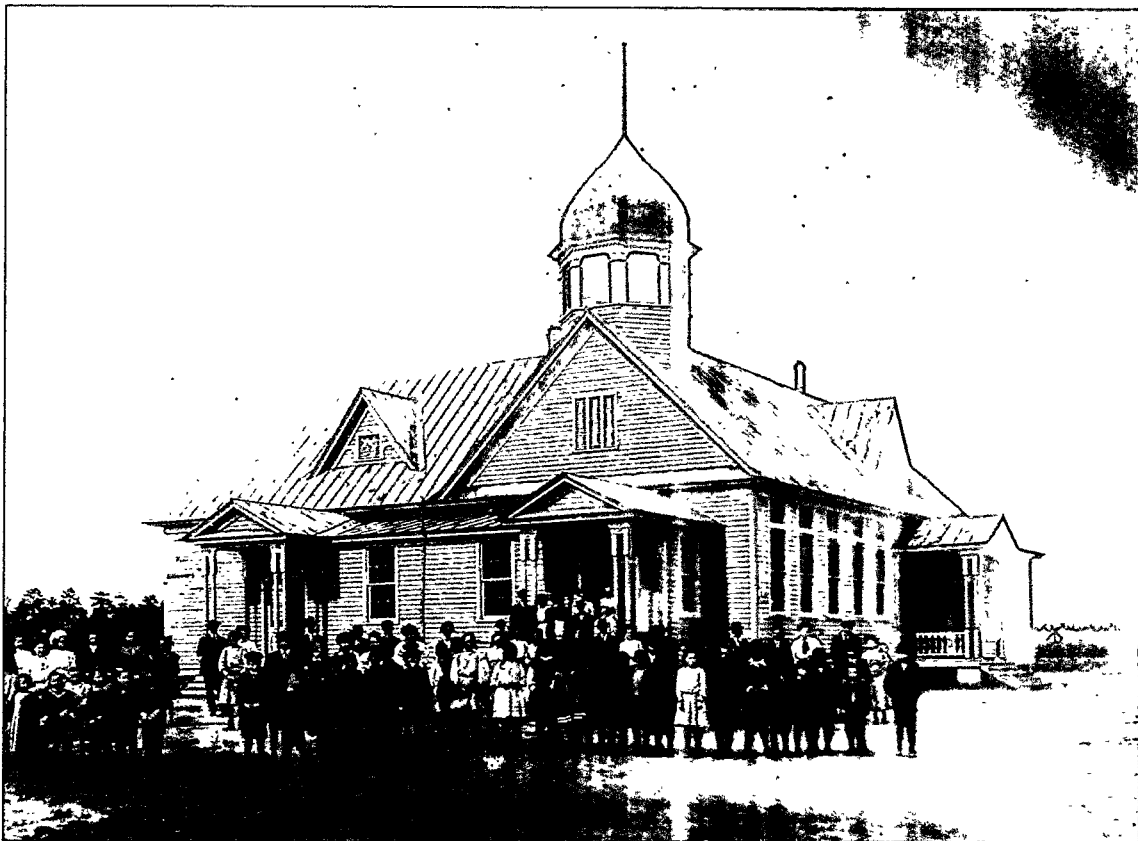
### ***“Education and religion are two subjects on which everybody considers himself an expert . . .”***

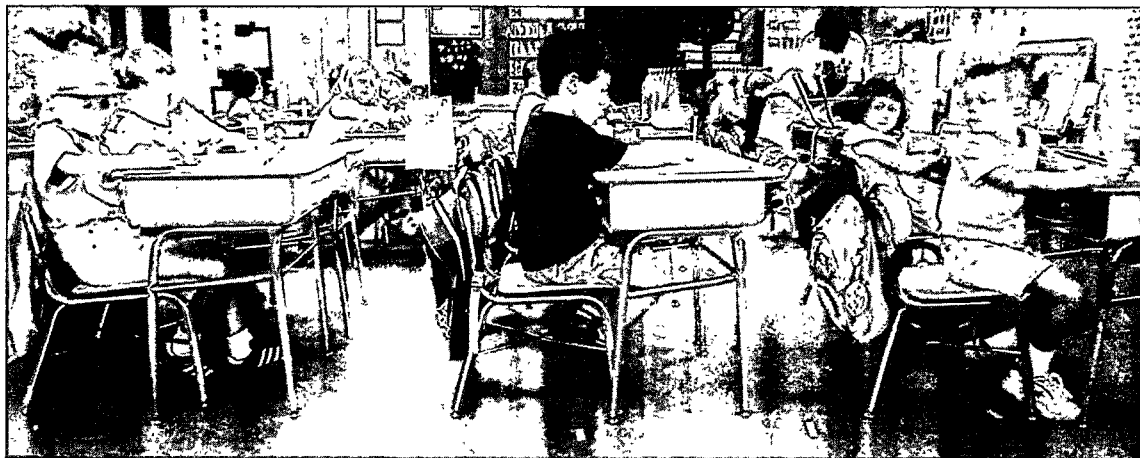
—ROBERTSON DAVIES  
IN *THE REBEL ANGELS*

<sup>4</sup>Gov. Jim Hunt’s office released the letter on June 19, 1995. In addition to Gov. Hunt and former Gov. Jim Martin, it was signed by: Jay Robinson, chair of the State Board of Education; Bob Etheridge, State Superintendent of Public Instruction; Howard Haworth, former chair of the State Board of Education; William R. Friday of the Kenan Charitable Trust; and Bill Lee, Chairman Emeritus of Duke Power Co.

<sup>5</sup>Citizens for Public Schools estimated the cost of the bill by multiplying the proposed tax credit (\$1,000) times the projected private-school enrollment in 1997 (77,000). Other analysts, however, note that this cost estimate does not take into account the savings that would result from public-school students who transferred to private schools, thus saving the state \$3,565 per student allotment. The N.C. Budget and Tax Center, a private group in Raleigh, estimates that the tax credit would cost the state more money, but not as much as projected by Citizens for Public Schools. See Dan Gerlach, “Is This the Time for Education Tax Credits and Other Tax Relief Proposals?” *BTC Reports*, Vol. 1, No. 8 (June 1995). “For the General Fund to break even over the next four years, at least five percent of the children who would otherwise be attending public schools (or approximately 60,000 students) would have to transfer to nonpublic schools,” Gerlach writes. “It is unlikely that the State’s nonpublic schools would have either the opera-

***Eureka School in Moore County, circa 1915***





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tional or facility capacity to accommodate such an increase in students."

<sup>6</sup> Albert Shanker, "Vouchers: The Devil is in the Details," advertisement in *State Legislatures* magazine, National Conference of State Legislatures, Denver, Colo., January 1995, p. 26.

<sup>7</sup> Allyson Tucker and William Lauber, *School Choice Programs: What's Happening in the States*, The Heritage Foundation, Washington, D.C., 1995, p. 2. In 1993, 33 states were considering some type of school-choice legislation, according to the 1994 edition of Tucker and Lauber's report.

<sup>8</sup> *Ibid.*

<sup>9</sup> Kathleen Sylvester, "The Charter School Experiment," *Governing* magazine, Washington, D.C., June 1993, p. 39.

<sup>10</sup> Ernest L. Boyer, ed., *School Choice*, The Carnegie Foundation for the Advancement of Teaching, Princeton, N.J., 1992, pp. 38-46. Also, David Kirp, "What School Choice Really Means," *The Atlantic Monthly*, November 1992, pp. 119-132.

<sup>11</sup> *Ibid.*, pp. 47-55.

<sup>12</sup> *Ibid.*, pp. 99-112. Also, Tucker and Lauber, note 7 above, pp. 9-55.

<sup>13</sup> *Ibid.*, p. 1.

<sup>14</sup> Todd Silberman, "Wake magnets turn away 3,000," *The News & Observer*, Raleigh, N.C., May 2, 1995, p. 3B.

<sup>15</sup> Although free from most educational regulations dealing with matters such as curricula, instruction, budgets, and personnel policies, charter schools generally must still abide by state and local health, safety, and civil rights laws.

<sup>16</sup> U.S. General Accounting Office, "Charter Schools: New Model for Public Schools Provides Opportunities and Challenges," Report to Congress, GAO/HEHS-95-42, January 1995, p. 6.

<sup>17</sup> Mark Walsh, "12 States Join Move To Pass Charter Laws," *Education Week*, Vol. XIV, No. 33 (May 10, 1995), p. 1. Walsh reported that 20 states were considering charter-school bills, but that number did not include North Carolina.

<sup>18</sup> Drew Lindsay, "In States, G.O.P. Stymied in Push To Re-vamp Policy," *Education Week*, Vol. XIV, No. 39 (June 21, 1995), p. 14.

<sup>19</sup> Joe Nathan, "Charter Public Schools: A Brief History and Preliminary Lessons," report from the Center for School Change, Hubert H. Humphrey Institute of Public Affairs, University of Minnesota, Minneapolis, Minn., March 1995, p. 8.

<sup>20</sup> According to an editorial in the Greensboro, N.C., *News & Record* (April 18, 1995), p. A6, the charter school concept is not unprecedented in North Carolina: "The Curry School that was operated in Greensboro for many years by the old Women's College (now UNC-G) was, in effect, a charter school. It is fondly remembered as an outpost of first-rate education."

<sup>21</sup> N.C. Constitution, Art. IX, Sec. 5.

<sup>22</sup> Tim Simmons, "Charter schools proposed," *The News & Observer*, Raleigh, N.C., March 20, 1995, p. 1A.

<sup>23</sup> Tucker and Lauber, note 7 above, p. 7.

<sup>24</sup> Boyer, note 10 above, pp. 9-12.

<sup>25</sup> *Ibid.*, p. 12.

<sup>26</sup> *Ibid.*, p. 29.

<sup>27</sup> *Ibid.*, pp. 29-46.

<sup>28</sup> For more detailed discussions of pros and cons associated with statewide open enrollment programs, see Boyer, pp. 47-62. Also see Kathleen Sylvester, "School Choice And Reality," *Governing* magazine, Washington, D.C., June 1993, pp. 36-41; and John F. Witte, *Choice in American Education*, report from the La Follette Institute of Public Affairs, University of Wisconsin, Madison, Wis., 1990, 28 pp.

<sup>29</sup> Boyer, note 10 above, p. 49.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*, p. 51.

<sup>32</sup> *Ibid.*, pp. 52-60; also, Sylvester, note 29 above, pp. 38-40; and Witte, note 29 above, pp. 14-15.

<sup>33</sup> Sylvester, note 29 above, p. 38.

<sup>34</sup> Boyer, note 10 above, p. 62.

<sup>35</sup> *Miller v. Benson*, 878 F. Supp. 1209 (E.D. Wis. 1995). See Peter Schmidt, "Religious Schools Cannot Join Wis. Voucher Plan, Judge Rules," *Education Week*, Vol. XIV, No. 27 (March 29, 1995), p. 16. Also see Drew Lindsay, "Wisconsin, Ohio Back Vouchers for Religious Schools," *Education Week*, Vol. XIV, No. 40 (July 12, 1995), p. 1.

<sup>36</sup> "Voucher Plan Opposed," *Education Week*, Vol. XIV, No. 32 (May 3, 1995), p. 18. The survey of 410 adults by Wisconsin Public Radio found that 56 percent opposed expanding the Milwaukee voucher program to religious schools, 38 percent favored the proposal, and 6 percent were undecided.

<sup>37</sup> *Asociación de Maestros de Puerto Rico [Teachers Association of Puerto Rico] v. Torres*. Also see Mark Walsh, "Court Strikes Down Puerto Rico's Private-School Voucher Program," *Education Week*, Vol. XIV, No. 15 (Dec. 14, 1994), p. 17.

<sup>38</sup> Tucker and Lauber, note 7 above, p. 44.

<sup>39</sup> *Ibid.*, p. 14.

<sup>40</sup> *Ibid.*, pp. 12-13.

<sup>41</sup> *Ibid.*, pp. 9-55.

<sup>42</sup> Mark Walsh, "Prospects Improve for Voucher Proposals in Congress," *Education Week*, Vol. XIV, No. 28 (April 5, 1995), pp. 25 and 27.

<sup>43</sup> Lindsay, note 19 above, p. 14.

<sup>44</sup> Lindsay, note 36 above, pp. 1 and 14.

<sup>45</sup> Tim Simmons, "Black churches push for school vouchers," *The News & Observer*, Raleigh, N.C., May 7, 1995, p. 1B.

# What Polls Have Shown About Public Attitudes Toward School Choice

Public opinion has been decidedly mixed on the concept of school choice. Public attitudes have ranged from strong support (as high as 69 percent in favor of open enrollment) to overwhelming opposition (as high as 74 percent against private-school choice) in various opinion polls. But, as with any survey, the results often depend on how pollsters phrase their questions or what groups they survey.

In general, polls have shown that the public strongly supports open enrollment in *public schools*. For example, in a 1993 Gallup poll, 65 percent of those surveyed agreed that students and their parents should be able to attend the public school of their choice.<sup>1</sup> However, polls also have found that most parents would *not* send their child to another public school, if given the choice. For instance, a 1992 survey of parents with students in public schools found that most (70 percent) had no desire to send their child to another school.<sup>2</sup>

Public opinion toward vouchers and other types of private-school choice has been mixed. A number of polls have found strong public opposition to vouchers, particularly when the surveys clearly state that public money would be used to pay for students attending private or religious schools. Nevertheless, some polls have shown moderate support for vouchers, depending on the wording of the questions. Not surprisingly, voucher proposals are backed much more strongly by parents with children in private schools. For instance, a 1994 Gallup poll found that vouchers were supported by less than half (45 percent) of all the survey respondents, but by more than two-thirds (69 percent) of the parents of private-school students.<sup>3</sup> Nevertheless, support for private-school choice options appears to be growing.

"Survey results may vary," the Carnegie Foundation reports in a study of school choice. "What is indisputable, however, is that in less than five years, the drive to include non-public schools in 'choice' plans has moved from the edge of the school reform debate toward the center stage."<sup>4</sup> Here are some examples of polls that have surveyed public opinion regarding school choice and vouchers, listed from the most to the least recent:

1. Simmons, Boyle & Associates, for the N.C. Association of Educators and the N.C. PTA, January 1995. (Telephone survey of 400 North Carolina registered voters; margin of error +/- 4 percent.)<sup>5</sup>

*"Do you believe that state funds should be used to support private schools (K-12)?"*

Yes .....	16.3%
No .....	78.5%
Don't know .....	5.0%

*"Using state funds to support private schools (K-12), would improve education in North Carolina:"*

A great deal .....	9.0%
Somewhat .....	10.8%
Very little .....	18.3%
Not at all .....	59.8%
No answer .....	2.3%

2. The Gallup Organization, for Phi Delta Kappa, May 10-June 8, 1994 (Survey of 1,326 adults nationwide; overall margin of error, +/- 3 percent.)<sup>6</sup>

*"A proposal has been made which would allow parents to send their school-age children to any public, private, or church-related school they choose. For those parents choosing nonpublic schools, the government would pay all or part of the tuition. Would you favor or oppose this proposal in your state?"*

	Favor	Oppose	Don't Know
All respondents .....	45%	54%	1%
No children in school ..	42%	57%	1%
Public school parents ...	48%	51%	1%
Nonpublic school parents .....	69%	29%	2%

**3. The Gallup Organization, for Phi Delta Kappa, May 21-June 9, 1993 (Survey of 1,306 adults nationwide; overall margin of error, +/- 3 percent.)<sup>7</sup>**

*"Do you favor or oppose allowing students and their parents to choose which public schools in this community the students attend, regardless of where they live?"*

	Favor	Oppose	Don't Know
All respondents .....	65%	33%	2%
Public school parents ...	68%	31%	1%
Nonpublic school parents .....	61%	38%	1%

*"Do you favor or oppose allowing students and parents to choose a private school to attend at public expense?"*

	Favor	Oppose	Don't Know
All respondents .....	24%	74%	2%
Public school parents ...	27%	72%	1%
Nonpublic school parents .....	45%	55%	—

**4. The Wirthlin Group, for The Carnegie Foundation for the Advancement of Teaching, September 1992 (Nationwide survey of 1,005 people; margin of error, +/- 3 percent.)<sup>8</sup>**

*"Please imagine two people having a discussion on how to improve the public schools in this country. Mr. Smith says: The best way to improve education is to focus directly on supporting neighborhood schools, giving every school the resources needed to achieve excellence. Mr. Jones says: The best way to improve education is to let schools compete with each other for students. Quality schools would be further strengthened and weak schools would improve or close.*

*Who are you more likely to agree with, Mr. Smith, who would support every neighborhood school, or Mr. Jones, who would let schools compete for students?"*

Mr. Smith .....	82%
Mr. Jones .....	15%
No opinion .....	2%
Don't know/No response .....	1%

**5. Louis Harris & Associates, for *Business Week*, Aug. 26-31, 1992 (Survey of 1,250 adults nationwide; margin of error, +/- 3 percent.)<sup>9</sup>**

*"... Now, I'd like to read you a series of statements about public school education in this country. Tell me whether you agree or disagree with each statement . . .*

*Children should be able to attend the public school of their choice, including one outside of their district, with government money going to the school they attend."*

Agree .....	69%
Disagree .....	29%
Not Sure .....	2%

*"Children should be able to attend any school they qualify for, including public, parochial, or private schools, with government money going to poor or middle income children attending private or parochial schools."*

Agree .....	63%
Disagree .....	35%
Not Sure .....	2%

**6. The Wirthlin Group, for The Carnegie Foundation for the Advancement of Teaching, July-August 1992 (Nationwide survey of 1,013 parents with children attending public schools; margin of error, +/- 3 percent.)<sup>10</sup>**

*"Is there some other school to which you would like to send your child? This school could be public or private, inside or outside of your district, with your child's grade level."*

Yes, public school .....	9%
Yes, private school .....	19%
No .....	70%
Don't know .....	2%

*"Some people think that parents should be given a voucher which they could use to enroll their children in a private school at public expense. Do you support or oppose this idea?"*

Support .....	32%
Oppose .....	62%
Don't know .....	6%

**7. The Gallup Organization, for Phi Delta Kappa, May 3-17, 1991 (Survey of 1,500 adults nationwide; margin or error, +/- 3 percent.)<sup>11</sup>**

*"In some nations, the government allots a certain amount of money for each child's education. The parents can then send the child to any public, parochial, or private school they choose. This is called the 'voucher system.' Would you like to see such an idea adopted in this country?"*

Favor ..... 50%  
Oppose ..... 39%  
Don't know ..... 11%

*"Do you favor or oppose allowing students and their parents to choose which public schools in this community the students attend, regardless of where they live?"*

Favor ..... 62%  
Oppose ..... 33%  
Don't know ..... 5%

*"If you could choose your children's schools among any of the public schools in this community, would you choose the ones they now attend or different ones?"*

	Public School Parents
Would choose same as now .....	68%
Different ones .....	23%
Don't know .....	9%

—Tom Mather

**FOOTNOTES**

<sup>1</sup>Poll conducted by the Gallup Organization for Phi Delta Kappa, May 21–June 9, 1993, in a survey of 1,306 adults nationwide, as reported in "Report Card on The Nation's Schools," *The Polling Report*, Oct. 11, 1993, p. 2.

<sup>2</sup>Poll conducted by The Wirthlin Group for The Carnegie Foundation for the Advancement of Teaching, July–August 1992, in a survey of 1,013 parents with children attending public schools, as reported by Ernest Boyer, ed., *School Choice*, The Carnegie Foundation, Princeton, N.J., 1992, pp. 10–11.

<sup>3</sup>Poll conducted by the Gallup Organization for Phi Delta Kappa, May 10–June 8, 1994, in a survey of 1,326 adults nationwide, as reported in "Report Card on the Nation's Schools," *The Polling Report*, Aug. 29, 1994, p. 1.

<sup>4</sup>Boyer, note 2 above, p. 63.

<sup>5</sup>Simmons, Boyle & Assoc., "NC Statewide Opinion Survey," poll conducted for the N.C. Association of Educators

and the N.C. Congress of Parents and Teachers, January 1995, pp. 11 and 23.

<sup>6</sup>"Report Card on the Nation's Schools," *The Polling Report*, Aug. 29, 1994, p. 1.

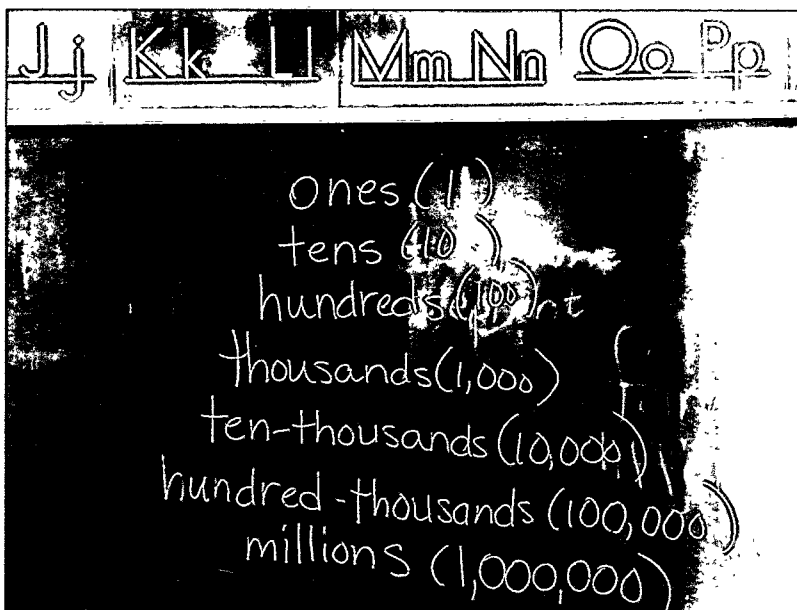
<sup>7</sup>"Report Card on the Nation's Schools," *The Polling Report*, Oct. 11, 1993, p. 2.

<sup>8</sup>Boyer, note 2 above, p. 13.

<sup>9</sup>"Public School Quality, Private School Choice," *The Polling Report*, Oct. 26, 1992, pp. 6–7.

<sup>10</sup>Boyer, note 2 above, pp. 11 and 19.

<sup>11</sup>"The Public Schools," *The Polling Report*, Sept. 2, 1991, p. 8.



Karen Tam

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# *Pro:* North Carolina Should Embrace School Choice

by Vernon Robinson

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*Education reform efforts have failed because the government has a monopoly on the public schools. True reform would result from a market-based approach to education in which parents would be free to choose their children's schools—public, private, or religious. Two approaches to school choice are being considered by N.C. legislators in bills that would establish charter schools and private-school choice. Charter schools, although publicly funded, are largely free from burdensome government regulations, allowing them more room to innovate. Private-school choice options include vouchers, tuition grants, and tax credits. Vouchers and tuition grants are preferable to tax credits because parents would receive financial support when they pay their tuition, rather than having to wait for tax refunds.*

**W**e must break up the failing government monopoly on public education in North Carolina in order to achieve real reforms that expand educational opportunities for students and professional satisfaction for teachers. Instead, legislators in North Carolina should replace the current highly politicized, centralized, and bureaucratized public school system with a marketplace of educational services. This market-based system should tie educational funds to the children, thus empowering parents to choose the best options available for their children's education.

The 1995–96 General Assembly considered several school-choice bills that could transform our state's current educational system—which ranks 48th in the nation in Scholastic Aptitude Test (SAT) scores<sup>1</sup>—into a higher-performing

► *Vernon Robinson is president of the N.C. Education Reform Foundation, a Winston-Salem based group that promotes school choice. In 1992, he ran for state Superintendent of Public Instruction in the Republican primary.*



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**The Basic Education Program, which took effect in 1985 and has cost the state \$3.5 billion so far, mandates class sizes, curriculum offerings, and other policies. But, instead of stronger student performance and safer schools, North Carolina only got better paid teachers.**



system. These proposals included legislation that would support charter schools, or independently run public schools, and would provide vouchers, tuition grants, or tax credits to the parents of students in private schools. (See Table 1 on p. 7 for a brief description of school-choice bills in the N.C. General Assembly.) But before we look at these policy options, let's look at the track record of education reform in North Carolina over the past 20 years.

### **Most Educational Reforms Have Not Worked**

One reform popular with educational bureaucrats and the uninformed public has been cutting class sizes. Class size in North Carolina declined more than 25 percent from 1974 to 1993.<sup>2</sup> Yet during that period, there was no correlation between smaller class sizes and student performance as measured by SAT scores.<sup>3</sup> That should come as no surprise. After all, the vast majority of studies comparing class size to student performance have found no link between student performance and student-teacher ratios.<sup>4</sup>

Undaunted, interest groups representing professional educators have pushed for class sizes to be cut from 23 to 17 students per teacher.<sup>5</sup> These reductions have cost the state an estimated \$1 billion, according to State Superintendent Bob Etheridge. But smaller class sizes do not result in real education reform because they do not change the incentives in the system. If class size is a problem, then why don't we hear such complaints with regard to the Sermon on the Mount!

Legislators spent more money under the Basic Education Program (BEP), North Carolina's major reform effort during the past decade.<sup>6</sup> The BEP, which took effect in 1985 and has cost the state \$3.5

billion<sup>7</sup> so far, mandates class sizes, curriculum offerings, and other policies. But, instead of stronger student performance and safer schools, North Carolina only got better paid teachers. If we control for the cost of living, teacher pay in North Carolina ranks 25th in the nation overall and a stunning 4th highest for beginning teachers.<sup>8</sup> But merely spending more money on teacher salaries or anything else under the BEP has not changed the incentives in the current system, nor will it ever.

Two other recent education reforms are Site-Based Management and Site-Based Decision Making, or "Schboom" and "Schdoo," which were supposed to increase flexibility and accountability in local school systems. These programs are prime examples of why good ideas cannot be grafted onto the current system without changing its incentives. For example, in Forsyth County, Cook Middle School's plan for improving sixth-grade test scores was "for the scores not to go down."<sup>9</sup> In any manufacturing firm in North Carolina, a manager who proposed a product-improvement or quality-assurance plan with the goal of "not having the product get worse" would be fired. Only government-run, monopoly schools would adopt such a plan. Again, without changes in the incentives, reforms like site-based management are doomed to fail.

My final example of a popular "reform" proposal is merit or performance pay, which also won't work with the incentives of the current system. I once thought this change would be good. But conversations with teachers have convinced me otherwise. Teachers have told me they have no confidence that administrators would hand out merit pay in a meritorious fashion. So I asked myself: What would happen in the current system if a principal gave the merit money to his golf buddies? Could the best teachers leave and start their own school? No. Could parents pull their children out and enroll them in another school? No. Could administrators twist the evaluations to achieve any desired result? Of course. Thus I concluded that the concerned teachers were right. In the current system, merit pay would likely be handed out for all sorts of reasons—but not for merit.

Now consider what would happen to our golf-playing principal in a system with competing providers of educational services. Anyone foolish enough to award merit pay for reasons other than true merit would most likely encounter very different results under an educational system that empowers parents to choose schools, allows teachers to create schools worthy of being chosen, and lowers the barriers to new entrants.

The most likely result under the new scenario is that the best teachers would leave the school. The next result is that parents—seeing the best teachers leave—would follow them. After a while, the principal and his golf buddies would find themselves alone in an empty school. Before that happened, however, the school board would give that principal plenty of time to play golf. He would be fired. That's because the operational definition of inadequate performance—in a competitive educational system—is a school where no one wants to send their children.

### **Successful Schools Share a Common Vision**

**B**ut how do we change the incentives, if even good ideas fail under the incentives currently present in public schools? I believe that the most effective schools create a common vision—one shared by the administrators, teachers, students, and parents. In government-run schools, bureaucrats in Raleigh make the overwhelming majority of substantive policy decisions. Local administrators assign children to their schools based on the accident of their residence—with the exception of a few magnet (or bribe-the-white-parents) schools. Under these circumstances, one can understand the difficulties in creating a shared vision. In fact, the only common vision in most public schools is the sports program.

By contrast, consider how Catholic and other independent schools manage their affairs. Private schools determine their own curricula, personnel policies, textbook selection, and budgetary priorities. Administrators and teachers work at those schools because they share a vision. Parents send their children to such schools for the same reason.

In *Politics, Markets, and America's Schools*, an influential report by The Brookings Institution, authors John Chubb and Terry Moe conclude that public schools will improve only if governments:

- Give educators the autonomy to create their own visions of what schools should be;
- Tie educational funding to the children; and
- Empower parents to choose their schools.<sup>10</sup>

Another important point that Chubb and Moe make in the debate over real education reform is that poor children are better off in a marketplace than in a political arena. Currently, most parents—and certainly poor parents—must compete for attention against organized special-interest groups that have more money, time, and political skills available to

influence the centralized and politicized system. But in a system of choice, parents—and particularly poor parents—merely would need to pick a better school for their children. They wouldn't have to win political fights.

The existing public school monopoly responds more to organized interest groups than to parents. The system's ethos may be described as "lousy service, highest prices in town for the value, and the customer is always wrong and usually dumb." By contrast, school choice would force all schools to respond to the needs of their customers, thus changing the system's ethos to something akin to: "Thank you for using AT&T!"

### **Racism Fails to Explain the Problems with Public Schools**

**M**any black citizens have blamed racism for the problems faced by lower-income minority students in government schools. But this theory fails to account for the low levels of academic achievement by white children as well. Nor does it explain why black kids have done so poorly in systems controlled by black administrators—such as the old city school system in Durham or the public schools in Washington, D.C. The color of the bureaucrats in failing government schools appears not to make any difference regarding student performance.

Critics also have argued that allowing parents to choose their schools would "re-segregate" the schools. But those who make that contention either

**Currently, most parents—and certainly poor parents—must compete for attention against organized special-interest groups that have more money, time, and political skills available to influence the centralized and politicized system. But in a system of choice, parents—and particularly poor parents—merely would need to pick a better school for their children. They wouldn't have to win political fights.**



are uninformed or are deliberately trying to mislead citizens with genuine concerns. Pre-integration schools in the South were not bad because black children attended the same schools. That system was unacceptable because administrators systematically assigned children to schools on the basis of race and then denied resources to the black schools.

Any school-choice proposal worth its salt would ensure that public resources are allocated fairly and that students are not assigned coercively by race. Indeed, it would be impossible to replicate the necessary conditions for segregated schools in a voucher system that ties a fair share of educational funding to the children and empowers parents to choose their schools.

Some critics maintain that a system of voluntary choices that results in racially identifiable schools also would be unacceptable. I disagree. Yet it's probable that more—rather than less—integration would occur with a full and fair school-choice system. Consider the views of a Roanoke Rapids public school teacher, who recently said: "I don't support (vouchers) because they (poor black children) would be able to go to the private academy where my child attends."<sup>11</sup> That teacher understands that a tuition grant of \$2,000 or more—far from being merely welfare for the rich—would offer a range of educational choices to poor children as well as those with more resources.

I believe that 25 years of desegregation policies have succeeded only at integrating the lunch lines at many public schools. Other policies, such as ability tracking and discipline measures, have often resulted in single-race classrooms. School choice is likely to foster more integration, given the better track record of Catholic schools and other moderately priced independent schools.<sup>12</sup>

### **Charter Schools Another Way to Instill Choice**

**T**he charter-school concept is the method of school choice that had the best chance of statewide adoption in 1995. Charter schools get public money, but are largely exempt from government regulations. Instead, charter schools are held accountable by market forces and measures of student achievement. (See Table 3 on p. 20 and Figure 1 on p. 21 for a list of the states that have enacted charter-school laws.)

In North Carolina, both the House and the Senate passed bills that would authorize the establishment and funding of charter schools, but lawmakers failed to enact a compromise bill by the end of the

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1995 session. (See Table 1 on p. 7.) The charter school legislation—if adopted in the 1996 session—would strip away tons of existing burdensome regulations, including the Basic Education Program, the Personnel Act, drug and AIDS education mandates, and teacher certification requirements. Such deregulation is the key that will enable charter schools to create a shared vision necessary to achieve higher student performance.

Reform saboteurs such as the N.C. Association of Educators, their allies in the N.C. Congress of Parents and Teachers (N.C. PTA), and duped business organizations probably will try to gut regulatory relief provisions in order to minimize the differences between charter schools and the traditional failing public schools. The other tactic that the educational establishment will use in trying to weaken the bill is a limit on the number of charters so that traditional government-run schools are not threatened by a large supply of higher-performing independent schools.

Charter schools, because they are public, must still comply with some government requirements. For example, charter schools would be non-religious with regard to their programs, admissions policies, employment practices, and all other operations. They would not charge tuition and would not discriminate against pupils on the basis of race, ethnicity, national origin, gender, or disability. Admission to charter schools also would be limited to legal residents of North Carolina.

The big political winners in a charter-school environment could be county commissioners. Under the House proposal (H.B. 955), these boards not only could add local supplements to the state money

that supports charter schools, but they also could issue charters. Thus county commissioners would have another option for dealing with public schools—in addition to their existing authority for either approving big spending requests or denying those requests and getting beaten up by the educational establishment.

Support is growing outside of Raleigh for charter school legislation. Groups that have gone on record supporting charter schools legislation include the Eastern North Carolina Chamber of Commerce and the Piedmont Triad Horizons Education Consortium Model School project.

### **Vouchers Would Improve Education at No Cost**

**V**ouchers, tuition grants, and tax credits are the main private-school options in legislation considered during the 1995 session of the N.C. General Assembly. Republican lawmakers introduced three private-school choice bills:

- H.B. 190, sponsored by Rep. Ken Miller (R-Alamance), which would provide tax credits for private-school tuition costs;
- H.B. 781, sponsored by Rep. Larry Linney (R-Buncombe), which would provide tuition grants for private schools; and

- H.B. 954, sponsored by Rep. Steve Wood (R-Guilford), which would provide vouchers and tax credits.

The only one of those bills that advanced in the legislature was H.B. 954, although in an amended form. In June, the House Finance Committee approved a committee substitute for H.B. 954 that eliminated the vouchers and decreased the tax credits. (For more details about these bills, see Table 1 on p. 7, and p. 25 in the article, "School Choice: A Simple Term Covers a Range of Options.") However, the House Appropriations Committee did not approve the bill during the 1995 session.

Tax credits are better than nothing, but vouchers and tuition grants are far superior because the families of needy children would get support up front. With tax credits, however, families would not be eligible for support until they filed their state income-tax returns. Thus many poor families, who have the hardest time obtaining credit, would have to borrow money to send their children to private schools until they received tax refunds (in January at the earliest)—many months after they paid school tuition and other expenses (starting in August of the previous year). For this reason, much of the support for greater school choice could shatter if tax credits became the primary focus of legislation.



**Opponents of private-school choice also contend that vouchers and tax credits would cost taxpayers millions of dollars. . . . But this analysis is flawed because it fails to take into account the savings that would result from students transferring out of public schools—thus saving the state \$3,565 per student in annual education expenditures, not including additional savings from lower transportation and construction costs.**



In fact, the voucher concept is really nothing new in North Carolina. That's because the state already provides tuition grants averaging about \$1,250 a year to students attending private universities and colleges.<sup>13</sup> The legislative rationale for this program is that the University of North Carolina system could not accommodate all of the qualified students who want to attend public colleges and universities in the state. Such reasoning should apply to voucher proposals for private elementary and secondary schools as well. Vouchers not only would promote higher academic achievement in a safer educational environment, but they would save taxpayers from having to foot the bill for massive amounts of school construction needed to accommodate the state's growing student population.

Many citizens support vouchers because they feel that public schools go out of their way to trample on the moral values that parents try to teach their children. Twenty years ago, if a young man was caught with a condom in school, he would ask that his parents not be told. Today, some public educators want to hand out condoms and they don't want the students to tell their parents.

Vouchers face two political dangers. First, a voucher program would be short-lived if the grants increased educational costs in today's environment of spending cuts. Second, vouchers would face a similar fate if the state reduced per-pupil expenditures in public schools. The proposed tuition grant

bill (H.B. 781) would have avoided those problems by creating a funding pool using the money now spent on public-school students who wish to transfer to independent schools. Both transfer students and those already enrolled in private schools could draw from this fund. By the second year, this approach would provide a tuition grant to anyone who wanted one. It also would not require increases in the amount spent on public education, nor would it force reductions in per-pupil expenditures.

### **Concerns Over Vouchers Are Not Warranted**

**T**he defeat of California's school-choice initiative in 1993 was a learning exercise for observant supporters of school vouchers. The initiative was vulnerable because many voters were concerned about potential spending cuts in public schools and increases in state spending. In addition, minorities were never an equal partner in the California school-choice coalition. Finally, voucher supporters were forced into a premature election battle with better-funded opponents.

Some conservatives fear that once private schools take government money, the state will do to them what it did to public schools—destroy them. But the government can strangle independent schools now. It could abolish home schooling next week if it cared to do so.<sup>14</sup> Governments are dangerous. The only guarantee of freedom in the face of government is a vigilant citizenry.

The proposed voucher and tuition grants bills (H.B. 781 and H.B. 954) had several features that would have protected independent schools. The first safeguard is that private schools don't have to take the money, nor must they continue receiving tuition grants if government regulation becomes unacceptable. A second safeguard under the bills is that the monetary support would be defined as grants to citizens, not as grants-in-aid to private schools. But perhaps the most important safeguard is that any legislator who votes for such a market-based educational system is explicitly rejecting the current failed educational system.

Some critics charge that tuition grants would violate the separation of church and state clause in the First Amendment of the U.S. Constitution or the public purpose clause in Article V of the N.C. Constitution. But I believe that a well-crafted voucher bill would survive constitutional challenges if it ensures that parents use educational funds at the schools of their choice and if it does not favor religious schools over other private institutions.

The proposed House bills establishing vouchers and charter schools (H.B. 781 and H.B. 955) both contain provisions for a Student Education Account. Under both bills, the account would enable parents to accumulate the unspent portions of their children's educational money for future educational expenses. This feature would keep tuitions in check while creating a way for poor families to accumulate educational assets.

Opponents of private-school choice also contend that vouchers and tax credits would cost taxpayers millions of dollars. For instance, a consortium of business and education groups called Citizens for Public Schools recently distributed a letter—signed by Gov. Jim Hunt and former Gov. Jim Martin—which charged that the \$1,000 tuition

*Vouchers and charter schools would create a marketplace of educational services. The results would include lower prices, better service, greater responsiveness to customer concerns, and higher academic, moral, and safety standards.*



tax credit in H.B. 954 would cost taxpayers \$77 million a year by 1997. But this analysis is flawed

because it fails to take into account the savings that would result from students transferring out of public schools—thus saving the state \$3,565 per student in annual education expenditures, not including additional savings from lower transportation and construction costs. It's clear that demand for private education would increase with a \$1,000 tax credit because that would cut in half tuition costs, which average



**Rep. Steve Wood (R-Guilford), left, and Vernon Robinson, president of the N.C. Education Reform Foundation, discuss school choice legislation at a House Education Committee meeting.**

\$2,000 a year at Christian schools in North Carolina. I believe that the tax credits would not cost the state a dime because of the large numbers of students that would transfer from public to private schools.<sup>15</sup>

## Likely Effects of an Educational Services Market

Vouchers and charter schools would create a marketplace of educational services. The results would include lower prices, better service, greater responsiveness to customer concerns, and higher academic, moral, and safety standards. Schools would be smaller and closer to their customers, leading to lower transportation costs. Additional savings would result from schools contracting out transportation, meals, and other services to private companies with lower costs and better performance.

Lower barriers to entry would encourage more educational entrepreneurs to hang out their shingles and establish new private schools. Black churches would be among the most important of these new providers. Top-notch educators currently suffocating in the public schools would flee to create new charter and private schools. Competition for the best educational leaders would shatter the current union-like pay scale in the public schools as the compensation packages in schools of choice soared. Meanwhile, those public educators not contributing to the organization would find their compensation reduced to zero regardless of tenure, certification programs, and advanced degrees of questionable worth from education schools.

Stiff competition would force school boards to reorganize their systems, turning many traditional public schools into charter schools. The role of school boards also would shift, with boards focusing more on the management of the vast physical facilities they own. They also would be responsible for providing services to charter schools and monitoring student performance to ensure compliance with charter provisions.

Principals would be a likely casualty. They would be replaced by administrative officers who would deal with operational issues rather than instructional policy and leadership roles. Policy and leadership roles would become the purview of "master teachers," who would handle key decisions much like the managing partners or committees in law firms. At all levels, school systems would slash the numbers of non-instructional personnel and

middle managers—traveling much the same road that private businesses have followed over the past decade or so.

Children would be the big winners in this restructuring process. They would have not only a much brighter economic future, but also the literacy required of citizens who wish to stay free in a constitutional republic.

## Prospects for Passage

While the Republican sweep in the 1994 elections made real education reform possible, it did not assure the passage of legislation establishing charter schools, vouchers, and tuition tax credits. The educational establishment took major losses, but it is still a powerful force lobbying for the maintenance of the government education monopoly. However, the biggest impediments to real reform are the misguided businessmen who are afraid to alienate the teachers' organizations. Instead of supporting voucher proposals, these individuals are instead holding their noses and giving plaques to the "best" teachers and principals in the failing public school system—all the while enrolling their children in private schools. It is ironic that North Carolina businessmen—long a bulwark against workplace unionism—have been reluctant to take on the educational establishment.

When I ran for State Superintendent of Public Instruction in 1992, I saw fear in the faces of many young couples. This fear of failing public schools forced them to save each penny—not for college—but to pay for tuition at private schools. That's not the America I grew up in nor the nation my father fought for in World War II. But in spite of all the great obstacles to school choice, I believe that the forces for reform one day will prevail. These reformers help create opportunities in North Carolina so that no child must grow up with low hopes, dreams, skills, and wages.

## FOOTNOTES

<sup>1</sup> U.S. Department of Education, *Digest of Educational Statistics*, 1994, p. 131.

<sup>2</sup> N.C. Department of Public Instruction, *Statistical Profile*, editions 1974 through 1994. The average pupil-teacher ratio in North Carolina fell from 23.2-to-1 in 1972 to 17.1-to-1 in 1992.

<sup>3</sup> U.S. Department of Education, note 1 above, p. 131.

<sup>4</sup> John Hood, *The Entrepreneurial School: A Model For Education Reform in North Carolina*, John Locke Foundation, Raleigh, N.C., p. 8. Hood cites a study by University of Rochester researcher Eric Hanushek that reviewed hundreds of education studies and found that 82 percent of the studies found no link between student performance and student-teacher ratios. See Eric A. Hanushek, "Impact of Differential Expenditures on

School Performance," *Educational Researcher*, Vol. 18, No. 4 (May 1989), p. 45.

<sup>5</sup>For example, Owen Phillips and Teena Little, two of the candidates for State Superintendent of Public Instruction in 1992, supported reducing class sizes in grades K-3 from 23 to 17 students per teacher. That goal was supported by the State Board of Education, the N.C. Association of Educators, the N.C. Congress of Parents and Teachers (PTA), and the Professional Educators of North Carolina.

<sup>6</sup>N.C.G.S. 115C-81.

<sup>7</sup>Rob Christensen, "The rise and fall of N.C. education's Great Leap Forward," *The News & Observer*, Raleigh, N.C., June 12, 1995, p. 3A.

<sup>8</sup>John Hood, "New N.C. School Data Offer Lessons," Executive Memo No. 13 (Sept. 13, 1992), John Locke Foundation, Raleigh, N.C. Hood derived North Carolina's ranking by dividing the average total teacher compensation (salary and benefits) by the index of state costs of living. He then ranked the states by teacher salaries adjusted for cost of living in descending order.

<sup>9</sup>Interview with Norma T. Smith, a parent and member of the Cook Middle School Improvement Committee, fall of 1991.

<sup>10</sup>John E. Chubb and Terry M. Moe, "Politics, Markets and America's Schools," The Brookings Institution, Washington, D.C., 1990. Chubb is a senior fellow at The Brookings Institution and Moe is a political scientist at Stanford University.

<sup>11</sup>The teacher's comments were made to a school-choice field organizer.

<sup>12</sup>James Coleman, "Do Students Learn More in Private Schools than Public Schools?" *Florida Policy Review*, Vol. 5, No. 1 (Summer 1991).

<sup>13</sup>The General Assembly created the N.C. Legislative Tuition Grants (NCLTG) program in 1975 to provide tuition assistance to resident students attending private colleges and universities in the state. This was in addition to the State

Contractual Scholarship Fund (SCSF), created in 1971, which provides need-based grants to students at private colleges and universities in the state. Both programs are administered by the State Education Assistance Authority, located in Research Triangle Park. For the 1994-95 academic year, NCLTG grants averaged \$1,250 per student and SCSF grants averaged \$550.

<sup>14</sup>The N.C. Center for Public Policy Research looked at home schooling in an article by Katherine White, "When Is a School a School?" *North Carolina Insight*, Vol. 8, No. 1 (September 1985), pp. 82-83.

<sup>15</sup>Citizens for Public Schools estimated the cost of the bill by multiplying the proposed tax credit (\$1,000) times the projected private-school enrollment in 1997 (77,000). However, this cost estimate does not take into account the savings that would result from public-school students who transferred to private schools, thus saving the state \$3,565 per student allotment. The author argues that people change their buying habits as a function of the elasticity of demand. For instance, price greatly influences the demand for a product such as a house, with a high unit elasticity of demand (close to 3 on a scale of 0 to 3). Conversely, price has little effect on the demand for a product such as insulin, with a low unit elasticity of demand (close to 0). Conservatively assuming that the unit elasticity of demand for private-school tuition is 1 on a scale of 0 to 3, and that the average tuition cost is \$2,000 per child a year, a tuition tax credit of \$1,000 would increase demand for private-school education by 50 percent. Thus, an additional 38,500 students would transfer from public to private schools—saving the state \$2,565 per child (the \$3,565 allotment minus the \$1,000 tax credit). The savings for transfer students would total \$98,752,500 (38,500 students times \$2,565)—more than \$20 million higher than the cost of providing tax credits for existing private-school students (\$77 million). Therefore, the author maintains the tuition tax credit is likely to save taxpayers money.

***"Well, Johnny can dance and Johnny can love  
Johnny can push and Johnny can shove  
Johnny can hang out; Johnny can talk tough  
Johnny can get down and Johnny can throw up—***

***But Johnny can't read  
Summer is over and he's gone to seed  
You know that Johnny can't read  
He never learned nothin' that he'll ever need—***

***Well, is it Teacher's fault? Oh no  
Is it Mommie's fault? Oh no  
Is it Society's fault? Oh no  
Well, is it Johnny's fault? Oh no!"***

—DON HENLEY AND DANNY KORTCHMAR  
IN "JOHNNY CAN'T READ"

Con:

# Private-School Choice Would Destroy Public Education

by Cecil Banks

*School vouchers, tax credits, and other private-school choice options would destroy the public schools by diverting much-needed funds to private and religious schools. The state would incur large expenses in paying tuition for public-school students who transfer to private schools as well as those already enrolled in private schools—creating a new welfare program for the wealthy. School-choice options that would provide public money for tuition at religious schools would violate the separation of church and state clause in the First Amendment of the U.S. Constitution. Plus, using state money to support private or religious schools would violate the public purpose clause of the N.C. Constitution. Proponents say private-school choice options would create competition that would force public schools to improve. But public schools can't compete on the same terms because*

*private schools can exclude students who are less intelligent, cause disciplinary problems, or have learning disabilities. Furthermore, studies show that private schools are no better than public schools when socio-economic factors are taken into account.*



Karen Tam

**P**ublic schools, equally accessible to all of our nation's children, weave together the diverse elements of America's society into one cloth. Yet public schools have come under fire in recent years from critics who say that educational fabric has become frayed.

The debate over school reform often centers on vouchers, tax credits, and other types of private-school choice. Essentially, private-school choice is being promoted by individuals

◀ Cecil Banks is president of the North Carolina Association of Educators in Raleigh. He is on leave from Page High School in Greensboro, where he teaches social studies.

Essentially, private-school choice is being promoted by individuals who, for whatever reason, would indict the public schools for failing to perform adequately. These critics, in the guise of helping to improve education and save it from collapse, seek to replace our system of public schools—which are open to all children—with vouchers or tax credits that would transfer scarce tax dollars to private schools—which are selectively available only to some children.



who, for whatever reason, would indict the public schools for failing to perform adequately. These critics, in the guise of helping to improve education and save it from collapse, seek to replace our system of public schools—which are open to all children—with vouchers or tax credits that would transfer scarce tax dollars to private schools—which are selectively available only to some children.

Such proposals are based on a false premise. Our public schools are not failing America. "The many allegations that the education system has tumbled in recent decades constitute 'The Big Lie,'" says Gerald Bracey, an educational psychologist and researcher.<sup>1</sup> Studies show, in fact, that student achievement is scarcely different in public and private schools—despite private schools' ability to select students from the wealthiest and most favored backgrounds.

Proposals to privatize America's public schools via vouchers or tax credits also tend to deny the public interest in education. They assume that only individual parents have an abiding interest in education, while ignoring the benefits to society from providing an educational system that is open to all. Now, let's look more closely at these concepts of private-school choice.

## Vouchers Are Nothing New

In recent times, vouchers have come to signify a manner of funding private and often religious schools with public dollars. But the support of private schools with public money is not a new concept. Such proposals date back at least to the 1950s, following the U.S. Supreme Court's school desegregation decision in *Brown v. Board of Education*.<sup>2</sup> For instance, the state of Virginia adopted a tax-supported voucher plan that enabled white students to

attend freedom-of-choice schools.<sup>3</sup> Similarly, the Georgia legislature enacted—but never funded—scholarship grants as a means of financing white students' tuition at segregated academies.<sup>4</sup> Thus, the first voucher programs were designed to maintain systems of segregated schools.

The voucher concept was revived in a big way in the 1980s, a decade in which many political, educational, and corporate leaders touted private solutions to public problems. We can see now that these private solutions were no solutions at all. Instead, such privatization has led to an incongruous mix of diminished government services, increased government costs, and unprecedented government deficits. The 1980s also left us with the false promise of private-school choice.

Several variations of private-school choice have been proposed. In the most common model, the state would issue tax vouchers or tuition grants to the parents of school-age children, to be paid to any school willing to admit them as students. Depending on the particular plan, the admitting school could be public or private, secular or religious. Other plans would grant tax credits or deductions to parents, rather than outright cash payments.

The dollar value of vouchers or tax credits varies with plans. Most plans deal primarily with state funding, but some proposals would involve the transfer of local tax money to private schools. Additional costs such as transportation and administration must be estimated for each plan.

Using public money to support private and religious schools would clearly violate the constitutions of both the United States and North Carolina. The First Amendment of the U.S. Constitution guarantees the separation of church and state.<sup>5</sup> Plus, public support for private schools could be illegal under the public purpose clause (Article V) of the N.C. Constitution.<sup>6</sup> "The public purpose doctrine basi-

cally says that you can't use tax money for anything that is not a public purpose," says Deborah Ross, executive director of the American Civil Liberties Union of N.C. "This doesn't just apply to religious schools but to private schools as well."

## **Proponents Battle for Vouchers and Tax Credits on Three Fronts**

**P**roponents of vouchers and tax credits have organized a nationwide network with a unified campaign strategy. That battle is now being fought on three fronts: in ballot initiatives, in state courts, and in state legislatures.

Voucher proposals have not fared well in public referendums and ballot initiatives. Since 1990, voters have defeated school voucher initiatives by 2-to-1 margins in California, Colorado, and Oregon. Probably the most visible battlefield was in California, where voters in 1993 considered a ballot initiative [Proposition 174] that would have provided parents with vouchers worth \$2,600 per child that could be redeemed at any public, private, or religious school in the state. Voters rejected that measure by a 70 percent to 30 percent margin.<sup>7</sup> The California election marked the 19th time in 20 ballot initiatives since 1966 in which voters have rejected proposals to funnel tax dollars to private schools.<sup>8</sup> The only initiative approved was a textbook loan program in South Dakota.<sup>9</sup>

Voucher proponents also are pressing their case in the courts. Right-wing public interest groups have filed lawsuits—allegedly on behalf of low-income children—seeking court orders establishing private-school voucher systems on the grounds that supposedly failing public schools violate state constitutional education guarantees.<sup>10</sup> The remedy requested is that state courts mandate taxpayer-

funded vouchers that parents can use to send their children to private and religious schools. But the prospects for such lawsuits seem limited, based on the separation of church and state doctrine in the First Amendment of the U.S. Constitution.

Voucher proposals have fared no better on the legislative front—despite efforts in dozens of state legislatures. Over the past five years, vouchers and related proposals have come to dominate legislative discussions of school reform across the nation. In 1992 alone, some 37 states considered voucher legislation—up from a handful a few years earlier.<sup>11</sup> In 1994 and 1995, battles brewed in several states over the issue of providing taxpayer money for students to attend private schools, and substantial voucher efforts were expected in some 20 states.<sup>12</sup>

North Carolina hasn't escaped the fray. Republican legislators introduced three bills in the N.C. House in 1995 that would establish private-school choice programs, including vouchers, tuition grants, and tax credits. The only bill that advanced, a committee substitute for H.B. 954, would have provided refundable tax credits worth \$1,000 per child a year by 1997 to families with students in private or religious schools. (See Table 1 on p. 7.) Fortunately, the bill did not get out of the House Appropriations Committee.

Despite such efforts, Wisconsin is the only state with an existing voucher program—and that program is limited to a small number of students in the Milwaukee school system. Puerto Rico also has enacted a voucher plan, but the commonwealth's Supreme Court has scuttled that program on constitutional grounds.<sup>13</sup> Nevertheless, Republican gains in the November 1994 elections have prompted many observers to predict a revival of voucher proposals in Congress as well as in many state legislatures.<sup>14</sup>

## **Existing Programs Provide Little Reason to Support Vouchers**

**W**hat can we learn from existing voucher programs? Not much. Although the Wisconsin legislature approved the Milwaukee voucher plan five years ago, only about 800 students currently participate in the program.<sup>15</sup> Under the Milwaukee Parental Choice Program, up to 1,500 low-income families are eligible to receive tuition grants worth about \$3,200. Students can use those grants to attend any private, non-religious school in the state.

Republican Governor Tommy Thompson of Wisconsin has proposed expanding the Milwaukee voucher program statewide, and the 1995 Wisconsin

*Our public schools are not failing America. . . . Studies show, in fact, that student achievement is scarcely different in public and private schools—despite private schools' ability to select students from the wealthiest and most favored backgrounds.*





Karen Tam

legislature broadened it to include religious schools as well.<sup>16</sup> But a federal court ruled in March 1995 that the Wisconsin voucher program could not apply to religious schools without violating the constitutional First Amendment guarantee of separation between church and state.<sup>17</sup> In addition, a recent survey of Wisconsin residents found that a solid majority (56 percent) opposed expanding the voucher program to religious schools.<sup>18</sup>

The Milwaukee voucher program, now in its fifth year, also has had trouble attracting and keeping students. Many of the voucher students have dropped out of the program—35 percent of the students left their chosen private schools after the 1991–92 school year, and another 30 percent left after the 1992–93 school year. Half of these students returned to Milwaukee public schools.<sup>19</sup>

Likewise, only half of the eligible private schools have accepted voucher students, even though participating schools receive the total voucher amount regardless of their actual tuition.<sup>20</sup> According to an independent evaluation by a University of Wisconsin researcher, none of the private schools currently accepting voucher students “can adequately teach emotionally disturbed (ED) students,” and none would be able “to teach large numbers of learning disabled (LD) students effectively.”<sup>21</sup>

Academic results for Milwaukee’s voucher students have been mixed. Second- and third-year test

scores dropped significantly in reading, while math scores in the first two years stayed the same and rose significantly in the third year. Meanwhile, students in Milwaukee *public* schools gained in reading scores in 1990–91 and 1991–92, but fell slightly in 1992–93. In math, they gained in 1990–91, stayed the same in 1991–92, and declined significantly in 1992–93. According to the evaluation, all of the private schools participating in the Milwaukee voucher program were lacking in effective governance structures, fiscal accountability, and educational accountability.<sup>22</sup>

*The Milwaukee Journal* has detailed allegations by parents and teachers at one voucher school that “students were being pushed ahead academically without being fully prepared, that some teachers treated students rudely, and that the principal dealt improperly with three students by touching them abusively or inappropriately.”<sup>23</sup> Parents also presented complaints about the school’s food, health policies, rest rooms, teacher handling of student behavior, and lack of parent involvement in the school, according to the newspaper. One voucher school shut down midway through the first year, forcing voucher students to enroll in different schools in the middle of the term.

Puerto Rico’s experience with vouchers has been no more promising, although for different reasons. The Puerto Rico legislature adopted the law

in the summer of 1993, and it quickly faced legal challenges. Sheila Simmons, a senior associate with the National Education Association, summarized the main argument against the law in testimony before the Puerto Rico legislature: "Using vouchers to channel funding to religious schools is unconstitutional. If unregulated, this aid could contribute to furthering the cause of a particular religious denomination. If regulated, that may constitute an excessive entanglement of church and state."<sup>24</sup>

The Puerto Rico voucher program provides \$1,500 grants that low-income families can use to send their children to any public or private school, including religious institutions. More than 2,000 students have chosen to attend private schools under the program, while more than 12,000 students transferred to public schools of their choice.<sup>25</sup>

Puerto Rico's Supreme Court allowed the voucher program to proceed while it was considering the case. But the court struck down portions of the law dealing with private-school vouchers in a decision issued Nov. 30, 1994. The court ruled that the commonwealth's constitution prohibits the use of public money for private schools. Under the decision, however, the public-school choice program remains in effect.<sup>26</sup>

### **Vouchers Do Not Provide Choice or Accountability**

**T**axpayers must understand that vouchers and tax credits do not provide parents with choice. Such options leave choice in the hands of private schools. Unlike our public schools, private schools select who will enter their doors. They can base their choices, for example, on athletic skills, intelligence, grade level achievement, past behavior, social status, ethnicity, and religion. Most private schools require entrance exams, particularly in high schools. They also require students to be achieving at grade level.

Moreover, private schools are not equipped to teach all types of students. According to a statistical profile published by the U.S. Department of Education in 1991, only 30 percent of private schools offered programs for students with disabilities, compared to 90 percent of public schools. Only 10 percent of private schools offered remedial reading, and only 43 percent offered remedial math.<sup>27</sup>

School choice programs in East Harlem, New York, and Cambridge, Massachusetts, have received much positive publicity. But these are not voucher programs. These are public school systems that let parents select which schools their children

***Taxpayers must understand that vouchers and tax credits do not provide parents with choice. Such options leave choice in the hands of private schools. Unlike our public schools, private schools select who will enter their doors.***



attend—and they must admit all students. With too many applicants at any schools in such open-enrollment programs, students are selected by lottery. These schools are publicly accountable and universally accessible.

Public-school choice is a laudable goal to strive for, as long as it serves all segments of the population. Choice is also something that all school systems can implement to some degree—whether it's in the form of easier transfer policies, magnet schools, or open enrollment programs. But it's erroneous to equate open enrollment and other kinds of public-school choice with vouchers, tax credits, and other private-school choice options.

It's also a myth that vouchers and tax credits would increase accountability in education. In fact, they would decrease scrutiny because private schools are not publicly accountable. Proponents of every voucher plan proposed in state legislatures or ballot initiatives across the country have been very clear on one point: They want public funding for private schools—without increased public scrutiny. That means these private schools could continue their current practices without having to account for their admissions and discipline policies; the nature or quality of their educational outcomes; funding sources and spending; and student outcomes. Plus, the public would be paying the tab.

### **Superior Performance by Private School Students a Myth**

**P**roponents of vouchers and tax credits often assert that private and parochial schools do a better job of educating students, but this contention is not supported by the facts. Private-school students score only modestly better than public-school students on standardized achievement tests—despite the ability of private schools to select their

students. And research shows that this advantage disappears when one takes into account the socioeconomic backgrounds, academic tracks, and course-taking patterns of students in both types of schools.

For example, the 1991 National Assessment of Education Progress report on math achievement for fourth, eighth, and twelfth graders shows that private-school students outperformed their public-school counterparts by only a few percentage points.<sup>28</sup> Yet private-school students should have performed dramatically better—given the advantages that they generally have in their socioeconomic status and the educational backgrounds of their parents.

David Berliner, an education professor at Arizona State University, suggests that critics have made public schools a scapegoat for the nation's social and economic problems. "Perhaps our public education is failing certain students and their families, but not others, and perhaps it is not even failing most of the students in the public schools," Berliner says. "Perhaps Americans have been lied to, because when nations have economic difficulties or go through social change, their leaders look for scapegoats, and the American school system is a handy one."<sup>29</sup>

The adoption of vouchers or tax credits also could create or magnify disparities between public and private schools because there is no guarantee that private schools would accept any poor and minority students. Under most private-school choice proposals, including the bills introduced in the N.C. legislature, private schools retain the right to choose which children will attend. Moreover,

many low-income families still could not afford private schools under most voucher or tax credit proposals because the financial assistance often falls far below the tuition costs at private schools. Many private schools charge tuitions of \$5,000 a year or more—which is much more money than is proposed in any of the bills that would establish vouchers or tax credits in North Carolina. Although the tuition at religious schools tends to be lower, averaging about \$2,000 a year, that's still double the \$1,000 a year tax credit proposed in H.B. 954—the private-school choice legislation under most serious consideration in the 1995 N.C. General Assembly.<sup>30</sup>

Vouchers perhaps would allow some students to escape schools in crisis, but they would do nothing to provide quality education for all students. Schools losing their highest achieving students and most active parents would be drained not only of desperately needed funds but also of important human resources.

Linda Darling-Hammond, a leading African-American educator at Columbia University, notes that vouchers would be making a "tiny adjustment in the allocation of educational opportunity for a very small number of children and still condemning a large number of children to poorly funded, inadequate schools." She calls vouchers a "smoke screen to avoid tackling" the real equity issues in schools.<sup>31</sup>

### **Voucher Programs Would Drain Funds from Public Schools**

**V**ouchers and tax credits are costly. They not only would drain funds from the public school system, but they would make taxpayers foot the bill for educating students from affluent homes who already are enrolled in private schools. In that sense, vouchers would be welfare for the wealthy.

That's one of the key reasons why Citizens for Public Schools—a bipartisan coalition of 28 organizations representing educators, parents, business people, and citizens—released an open letter in June urging North Carolinians to oppose the tuition tax credit bill (H.B. 954). The letter, signed by Gov. Jim Hunt and former Gov. Jim Martin, stressed that the bill would cost taxpayers \$15 million in 1996 and \$77 million in 1997—just to provide tax credits to existing patrons of private schools. "If that much money is available in the budget, we believe it should be used to reduce class size, raise teachers' pay, or provide for other performance incentives for educators," the letter says.<sup>32</sup>

*Choice is also something that all school systems can implement to some degree—whether it's in the form of easier transfer policies, magnet schools, or open enrollment programs. But it's erroneous to equate open enrollment or other kinds of public-school choice with vouchers, tax credits, and other private-school choice options.*



**Proponents have developed elaborate scenarios that attempt to show that vouchers or tax credits would not increase taxes or public spending on education. Some even claim that taxpayers actually would save money under such programs. But the reality would be different. Taxpayers would pay big bucks for vouchers or tax credits that subsidize parents with children in private schools.**



Proponents have developed elaborate scenarios that attempt to show that vouchers or tax credits would not increase taxes or public spending on education. Some even claim that taxpayers actually would save money under such programs. But the reality would be different. Taxpayers would pay big bucks for vouchers or tax credits that subsidize parents with children in private schools. Furthermore, the political reality is that once such a program is in place, its beneficiaries would surely seek increases in the amount of the vouchers or tax credits.

House Republicans acknowledged as much when they tried to insert \$20 million in the state's 1995-96 expansion budget to pay for tax credits for private-school tuition. Although the House Appropriations Committee never approved the money, it somehow ended up in a House budget proposal. Republican leaders—calling it a mistake—stripped the money from the final House budget. But others weren't convinced that the item was just an oversight. "Ladies and gentlemen of the House, that \$20 million wasn't a mistake," said Rep. Toby Fitch (D-Wilson). "This whole ill-conceived, secretly written, class warfare, anti-education budget itself is a mistake."<sup>33</sup>

The 1993 California voucher proposal would have cost taxpayers over \$1 billion in subsidies to the parents of students already in private schools—without a single student transferring from public schools.<sup>34</sup> A 1991 Pennsylvania voucher bill had a price tag of more than \$300 million, just to subsidize existing private school parents.<sup>35</sup>

A headline in the *FTP-NEA Advocate*, published by the Florida Teaching Profession-National Education Association, says it all: "Voucher Legislation Would Virtually Bankrupt Public Schools."<sup>36</sup> According to the Florida group, "providing public funds to send children to private schools would take nearly three-quarters of a billion dollars (\$741,254,500) from a state school system that has been strapped for years and would give it to parents who already have children in private schools. The result would be a disastrous cutback in school personnel and increase in class sizes. None of the proponents of such plans have revealed how they would make up for this shortfall or how they would finance giving vouchers for even more students to attend private schools in Florida. Most voucher advocates oppose raising taxes."

### **Polls Show Limited Public Support for Vouchers**

**T**hus, it should come as no surprise that a number of nationwide surveys have found only limited public support for vouchers or tax credits. North Carolina voters, as well, have been cool to such proposals, as shown by an independent statewide survey conducted for the North Carolina Association of Educators and the N.C. Congress of Parents and Teachers in January 1995.<sup>37</sup> Among the survey respondents, more than 78 percent did not believe state funds should be used to support private schools for grades K-12. (For more information on surveys, see the related article, "What Polls Have Shown About Public Attitudes Toward School Choice," on p. 30.)

The North Carolinians surveyed, although opposed to giving money to private schools, supported a number of proposals for improving public schools. Survey respondents agreed that education could be improved by:

- Providing ongoing, continuous training for teachers (91 percent supporting);
- Giving more authority to teachers and parents at individual schools (89 percent);
- Providing more textbooks and instructional materials (75 percent);
- Improving technology in the classrooms (69 percent);
- Reducing class sizes (68 percent); and
- Granting effective control of public schools to local boards of education (67 percent).

# NCAE

North Carolina Association of Educators, Inc



**Cecil Banks speaking for the N.C. Association of Educators**

N.C. Association of Educators

## Conclusion

**I**t's time to stop using vouchers or tax credits as a way to avoid discussing the real issue—which is providing quality education to the majority of students who attend public schools. The challenge is to create schools of excellence for all of our children,

including both the impoverished children in neglected urban and rural schools as well as those who are fortunate enough to live in wealthier communities. We must act on our belief that all children can learn, and we must make certain that they all have opportunities to do so. ☐☐

**"Using vouchers to channel funding to religious schools is unconstitutional. If unregulated, the aid could contribute to furthering the cause of a particular religious denomination. If regulated, that may constitute an excessive entanglement of church and state."**

—SHEILA SIMMONS,  
senior associate  
National Education Association

## FOOTNOTES

<sup>1</sup> Gerald C. Bracey, "The Second Bracey Report on The Condition of Public Education," *Phi Delta Kappan*, October 1992, pp. 104–117.

<sup>2</sup> 347 U.S. 483 (1954).

<sup>3</sup> Center for the Preservation of Public Education, National Education Association (NEA), Washington, D.C.

<sup>4</sup> Andrea DiLorenzo, testimony on school choice for the National Education Association, presented to the Georgia Senate Education Committee, Oct. 28, 1993.

<sup>5</sup> The Establishment Clause of the First Amendment to the U.S. Constitution reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

<sup>6</sup> Article V, Section 2(1) of the N.C. Constitution reads: "The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away."

<sup>7</sup> For more on California's ballot initiative on vouchers, see articles by Laura A. Locke in the *California Journal of Sacramento, Calif.*, including: "Proposition 174: Vouchers Lose Big," December 1993, pp. 21–22; "The Voucher initia-

tive: Breakthrough or break-up for California Schools?" October 1993, pp. 8-14; and "The issue of choice: A voucher initiative goes before voters," June 1993, pp. 13-15.

<sup>8</sup> Edd Doerr and Albert J. Menendez, *Church Schools and Public Money: The Politics of Parochialism*, Prometheus Books, Buffalo, N.Y., 1991.

<sup>9</sup> *Ibid.*

<sup>10</sup> Article IX of the North Carolina Constitution states: "The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students."

<sup>11</sup> National Association of Educators (NEA), internal memo prepared by the NEA Center for the Preservation of Education, 1992-95.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Asociación de Maestros de Puerto Rico [Teachers Association of Puerto Rico] v. Torres*. Also see Mark Walsh, "Court Strikes Down Puerto Rico's Private-School-Voucher Program," *Education Week*, Vol. XIV, No. 15 (Dec. 14, 1994), p. 17.

<sup>14</sup> Mark Walsh, "Prospects Improve for Voucher Proposals in Congress," *Education Week*, Vol. XIV, No. 28 (April 5, 1995), p. 25; and Laura Miller, "Revival of Private-School Voucher Plans Predicted," *Education Week*, Vol. XIV, No. 15 (Dec. 14, 1994), p. 14.

<sup>15</sup> For more on the Milwaukee voucher program, see Miller, Note 14 above, p. 17. Also see Ernest L. Boyer (ed.), *School Choice*, The Carnegie Foundation for the Advancement of Teaching, Princeton, N.J., pp. 63-73.

<sup>16</sup> Laura Miller, "Wis. Vouchers For Religious Schools Urged," *Education Week*, Vol. XIV, No. 18 (Jan. 25, 1995), p. 1; also see Drew Lindsay, "Wisconsin, Ohio Back Vouchers for Religious Schools," *Education Week*, Vol. XIV, No. 40 (July 12, 1995), p. 1.

<sup>17</sup> *Miller v. Benson*, 878 F. Supp. 1209 (E.D. Wis. 1995). Also see Peter Schmidt, "Religious Schools Cannot Join Wis. Voucher Plan, Judge Rules," *Education Week*, Vol. XIV, No. 27 (March 29, 1995), p. 16.

<sup>18</sup> "Voucher Plan Opposed," *Education Week*, Vol. XIV, No. 32 (May 3, 1995), p. 18. The survey of 410 adults by Wisconsin Public Radio found that 56 percent opposed expanding the Milwaukee voucher program to religious schools, 38 percent favored the proposal, and 6 percent were undecided.

<sup>19</sup> John Witte, Andrea Bailey, and Christopher Thorn, *Second Year Report: Milwaukee Parental Choice Program*, Robert La Follette Institute of Public Affairs, Department of Political Science, University of Wisconsin, Madison, Wisc., December 1992.

<sup>20</sup> John Witte, Andrea Bailey, and Christopher Thorn, *Third Year Report: Milwaukee Parental Choice Program*, Robert La Follette Institute of Public Affairs, Department of Political Science, University of Wisconsin, Madison, Wisc., December 1993.

<sup>21</sup> Witte, et al., note 19 above.

<sup>22</sup> *Ibid.*

<sup>23</sup> Neil Rosenberg, "Allegations Swirl at Urban Day," *The Milwaukee Journal*, June 17, 1993, p. B5.

<sup>24</sup> Sheila Simmons, testimony on school vouchers for the National Education Association, presented to the Education Committee of the Puerto Rico legislature, Aug. 28, 1993.

<sup>25</sup> Walsh, note 13 above, p. 17.

<sup>26</sup> *Asociación de Maestros de Puerto Rico [Teachers Association of Puerto Rico] v. Torres*. Also see Walsh, note 13 above, p. 17.

<sup>27</sup> U.S. Department of Education, *Private Schools in the United States: A Statistical Profile, With Comparisons to Public Schools*, National Center for Educational Statistics, Washington, D.C., February 1991.

<sup>28</sup> U.S. Department of Education, *The State of Mathematics Achievements: NAEP's 1990 Assessment of the Nation and the Trial Assessment of the States*, National Center for Educational Statistics, June 1991, Executive Summary and Table 2.6, pp. 6-7.

<sup>29</sup> David C. Berliner, "Education Reform in an Era of Disinformation," paper presented at a meeting of the American Association of Colleges for Teacher Education, San Antonio, Texas, 1992.

<sup>30</sup> The average tuition cost for religious schools in North Carolina is about \$2,000 a year, according to Joe Haas, executive director of the N.C. Christian School Association in Goldsboro (personal communication). Nationwide, average annual tuition costs in 1991 were \$2,595 for all private schools, \$5,527 for non-religious schools, \$1,776 for Catholic schools, and \$2,633 for other religious schools. See U.S. Department of Education, *The Digest of Education Statistics*, National Center for Education Statistics, Washington, D.C., 1994, Table 62, p. 72.

<sup>31</sup> Barbara Miner, "'Choice' is a Smokescreen: An Interview with Linda Darling-Hammond," in *False Choices* (A Special Edition of Rethinking Schools), Milwaukee, Wisc., 1992.

<sup>32</sup> Gov. Jim Hunt's office released the letter on June 19, 1995. In addition to Gov. Hunt and former Gov. Jim Martin, it was signed by Jay Robinson, chair of the State Board of Education; Bob Etheridge, State Superintendent of Public Schools; Howard Haworth, former chair of the State Board of Education; William R. Friday of the Kenan Charitable Trust; and Bill Lee, chairman emeritus of Duke Power Co.

<sup>33</sup> Jay Eubank, "GOP budget push angers Democrats," *News & Record*, Greensboro, N.C., July 1, 1995, pp. A1-2.

<sup>34</sup> California Teachers Association (CTA), *The School Vouchers Initiative: A Summary and Analysis for CTA Members of the 'Education, Choice, Scholarships Initiative Constitutional Amendments'*, Burlingame, Cal., 1993.

<sup>35</sup> The Public Education Coalition to Oppose Tuition Vouchers, "Voucher Fact Sheet," Harrisburg, Pa., 1991.

<sup>36</sup> Aaron Wallace, "Voucher Legislation Would Virtually Bankrupt Public Schools, Figures Show," *FTP-NEA Advocate*, Florida Teaching Profession-National Education Association, January 1995, p. 1.

<sup>37</sup> The telephone survey was conducted by an independent research firm, Simmons, Boyle & Associates of Chapel Hill, in January 1995. The firm polled a random sample of 400 registered voters in North Carolina, with a sampling error of plus or minus 4 percent.

# MEMORABLE MEMO



6/11  
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Winston-Salem, N.C.  
June 4, 1930.

*Good. But - last  
note. Will be last  
to you C.*

HIS EXCELLENCY, GOVERNOR O. MAX GARDNER,  
Raleigh, North Carolina.  
Honored Sir:

It requires considerable courage to address such an important personage as the First Executive of our Commonwealth with no more plausible excuse for the presumption than to entreat a favor. However, if my memory serves me rightly, his transcendent graciousness is bestowed impartially upon both his august and humble subjects.

It has been my privilege recently to select some of the outstanding benefactors of the race, some conspicuous examples of successful lives, whose achievement of this eminence has been the fruition of their own indefatigable efforts - the glorious few, whose ideals ascend above materialism, whose vision encompasses the universe, and whose chosen stars in the firmament of ambition have beckoned them to the exalted vocation of service to humanity.

A careful study of the history of North Carolina reveals to me no more exemplary life than yours, and, with your gracious permission and assistance, I would like to prepare a biographical sketch of the Governor in whom we feel just pride, and the life we consider most inspirational and worthy of emulation. This article, with your approval, will appear in Psychology Magazine.

Awaiting your instructions, and assuring you of my profound esteem and admiration, I beg to remain,  
Sincerely and Gratefully Yours,  
*Mrs. Garland E. Webb*

PATRONS ARE REQUESTED TO FAVOR

**W UNION**

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GOV GARDNER=  
GOVERNORS MANSION RALEIGH NCAR=  
DEAR GOVERNOR I AM ENTIRELY SURPRISED AT THE ATTITUDE YOU  
HAVE TAKEN IN AS MUCH AS YOU HAVE NEVER DONE AN HONEST DAY  
WORK HOW CAN YOU SPEAK FOR SO MANY PEOPLE YOURS TRULY=  
E R WILLIAMS.

It requires considerable courage to offer as our memorable memo this fan mail to former Governor O. Max Gardner (1929-33) with no more plausible excuse for the presumption than to entreat a chuckle. But as readers are no doubt aware, Insight's transcendent graciousness is bestowed impartially on subjects august and humble. Meanwhile, with the gracious permission and assistance of our readers, we would like to prepare a memorable memo for our next edition. This memo, with your approval, will appear in North Carolina Insight magazine. Awaiting your memos, and assuring you of our profound esteem and admiration, we beg to remain,

The editors of Insight

P.S.  
Anonymity guaranteed.



# Is the North Carolina Railroad on the Right Track?

by Steve Adams

## Summary

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*In the fall of 1994, the state announced the terms of a tentative new lease with Norfolk Southern Corporation for the North Carolina Railroad—a 317-mile rail line that arcs across the state from Morehead City through Goldsboro, Raleigh, and Greensboro to Charlotte. The state owns 75 percent of the railroad and private shareholders own 25 percent.*

*Announcing a lease agreement ended months of speculation about how much the state would improve on a 99-year lease (1895 to 1994) that returned less than 1 percent on today's dollar—a figure history had proven to be ridiculously low. The tentative agreement included a substantially higher lease rate, plus plans to reorganize the railroad as a real estate investment trust to escape state and federal taxes and thus increase its return to investors. But as quickly as the new lease was announced, it was denounced by the private shareholders. They complained they had been low-balled again and continued to maintain that the state has a conflict of interest that forces it to keep lease rates low at their expense. Private shareholders moved quickly to try and block the agreement. Four separate lawsuits were filed, and another group of shareholders launched a boycott of the meeting at which the new lease agreement would be proposed for approval.*

*The state's primary interest is in keeping the rail line open and operating for economic development purposes—even the less profitable links such as the line between Goldsboro and Morehead City. Longer term, the state sees a role for the railroad in upgrading passenger service between Charlotte and Raleigh, providing commuter service for rapidly growing urban areas such as the Research Triangle Park region, and even providing a corridor for futuristic high-speed rail. These interests—particularly the desire to keep all segments of the rail line open and freight costs low for economic development purposes—may encourage the state to keep lease rates low. The private shareholders are interested in maximizing return on investment, which means the highest possible lease rates. The state's taxpayers also have an interest in a high lease rate in order to bring more revenue into state budget coffers.*

*In this latest round of lease negotiations, the private shareholders maintain, the state has given away the store at the bargaining table. This article revisits a long-standing question: Is the public-private ownership structure any way to run a railroad?*

**T**he N.C. General Assembly had economic development in mind in 1849 when it chartered the North Carolina Railroad (NCRR) with the state as majority shareholder. The state was descending deeper into poverty as its neighbors to the north and south prospered, and many blamed the state's poor transportation system. East-west railroads were developing in South Carolina and Virginia, and there was concern that an imminent north-south link would bypass eastern North Carolina, derailing what economic growth there was.<sup>1</sup>

The NCRR's first president was John Motley Morehead, who had been governor from 1841 to 1845. He proclaimed that the new railroad would be "the Tree of Life to North Carolina," reaching from the coast to the mountains.<sup>2</sup> And he might have been right: the small towns along the tracks grew into what is now known as the Piedmont Crescent.

The company ceased rail operations in 1871 and leased its tracks and all of its rolling stock, which was to be replaced when the lease expired. Yet, today it still owns a rail line that arcs 317 miles across the state from Morehead City through Goldsboro, Raleigh and Greensboro to Charlotte. As negotiations proceed on the details of a new lease, Norfolk Southern Corporation continues to operate the line under the terms of two leases that began in 1895 and 1939 and expired at the end of 1994.<sup>3</sup>

The state owns 75 percent of the NCRR's stock, and the governor appoints 10 members of the corporation's 15 member board. Nevertheless, the NCRR is in most respects an ordinary corporation. Its remaining shareholders are private investors. This arrangement creates inherent conflicts.

The state needs flexibility in order to pursue its public policy objectives. For example, it could use its leverage to keep lease rates low and promote economic development. Or it could seek a high rate of return and use the proceeds

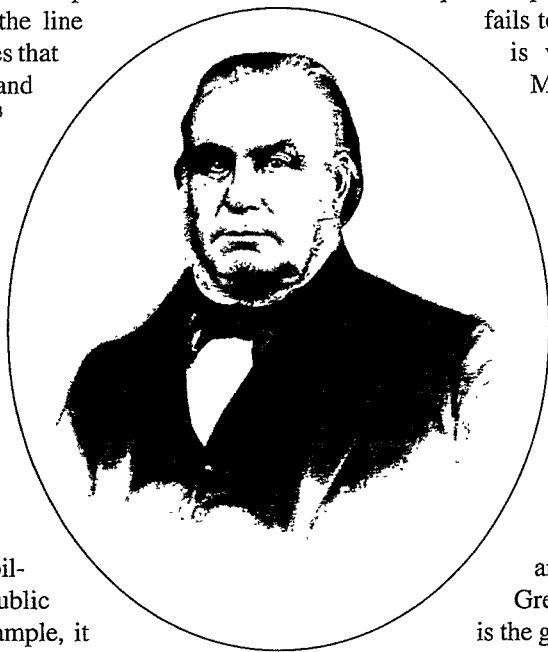
to subsidize public transportation or other beneficial public purposes. The private shareholders, at least the most vocal of them, have made it clear that they have only one objective in mind—return on their investment. Norfolk Southern says it is willing to cooperate with the state—but only within strict limits.

The conflict between the state and private shareholders came to a head in the fall of 1994. After months of super-secret negotiations, the NCRR announced a tentative agreement for a new lease for \$8 million a year, with adjustments to approximate inflation, plus a one-time payment of \$5 million. In August 1995, the NCRR board approved a 30-year lease, with Norfolk Southern Corp. holding an option for a 20-year renewal that requires a payment to the NCRR of more than \$5 million to exercise.<sup>4</sup> The NCRR also would be restructured as a real estate investment trust (REIT), freeing it from state and federal corporate income tax.<sup>5</sup>

The announced agreement represents a significant improvement over the current lease, which produces rent of less than 1 percent of even the lowest assessment of the current value of the railroad's assets—\$674,277 in 1994.<sup>6</sup>

Still, private shareholders have been quick to protest that the tentative deal fails to protect their interests. "It is way off the mark," says Marshall Johnson, a Greensboro stockbroker who has followed the NCRR for many years. "... It was negotiated on an arbitrary basis." One group of private shareholders is attempting to increase the return to private shareholders through a boycott of the shareholder meeting at which the new lease would be proposed for adoption.<sup>7</sup>

These shareholders are led by Walker Rucker, a Greensboro businessman who is the great, great grandson of John Motley Morehead, and Luther Hodges Jr., a former bank executive in Charlotte, a U.S. Senate candidate in 1978, and son of a highly



**(above) Former Gov. John Motley Morehead (1841-45), first president of the North Carolina Railroad Co.**

*N.C. Division of Archives and History*

*Steve Adams is a freelance writer living in Raleigh. He wrote about the North Carolina Railroad for Insight in June 1983.*

regarded former North Carolina governor. They hope to negotiate a stock swap that would provide them a higher return on their investment than the announced lease would yield.

Hodges makes the case for a boycott in a letter to private shareholders attempting to round up support. "All of the shareholders, I am certain, are in favor of the continued economic development of North Carolina," writes Hodges. "It is unfair, however, for this economic development to be at the expense of the private shareholders who made an investment in anticipation of a properly negotiated lease. The state has, in fact, taken advantage of the minority shareholders."

Another group of private shareholders has chosen litigation over negotiation. These shareholders have filed suits in federal court alleging that the NCRR violated their right to a fair return in order to promote the state's economic development interests. The suits seek to block the lease agreement and to recover unspecified damages.<sup>8</sup>

Shortly after the tentative deal was announced, NCRR board president John McNair III rejected the contention by the private shareholders that the state

**—rivers are tunneled: trestles  
cross oozy swampland: wheels repeating  
the same gesture remain relatively  
stationary: rails forever parallel  
return on themselves infinitely.**

**The dance is sure.**

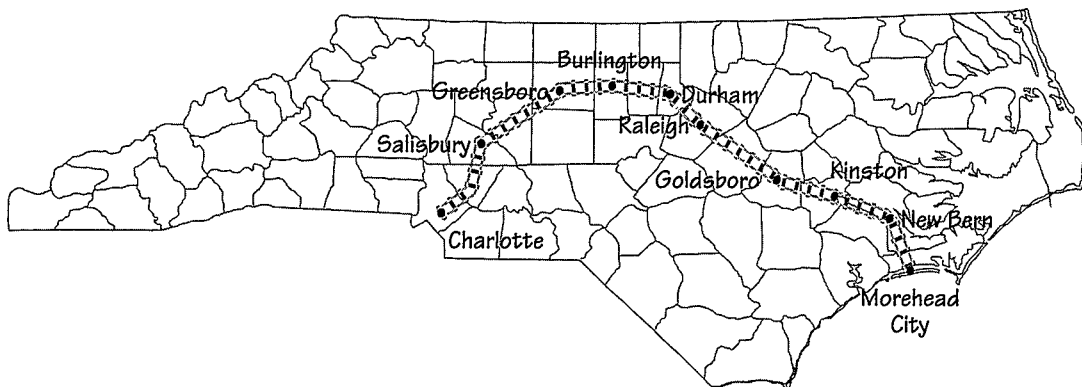
—WILLIAM CARLOS WILLIAMS

"OVERTURE TO A DANCE OF LOCOMOTIVES

is intentionally keeping lease rates low for economic development purposes. "If they've got a buyer who will pay more, I'd love to hear about it," McNair told the *News & Record* of Greensboro in one of his few public comments on the lease. "I've been trying to find one for 18 months."<sup>9</sup>

As the great philosopher Yogi Berra might have put it, it was *deja vu* all over again. A banner headline in the Aug. 17, 1895, edition of *The News & Observer* of Raleigh had called the original lease

**Figure 1.**  
**Map of the North Carolina Railroad**





**Gov. Jim Hunt**  
(1977-85, 1993-present)

with Southern Railway Company "The Crime of a Century." That lease too had been negotiated in secrecy and announced to great controversy, according to an analysis published in *The News & Observer* nearly a century later in September 1985.

"The state went crazy," said Gerry Cohen, who in the mid-1980s staffed a Legislative Research Commission study on railroad operations and is now director of the legislature's Bill Drafting Division.<sup>10</sup> "There were legislative investigating commissions, threatened indictments, court suits, state officials trying to void the lease." The primary issues were secrecy, the speed with which the deal was consummated, and the low lease rate.

Even if the current lease negotiations are completed and the lawsuits resolved, key policy issues will remain. Can the NCRR, as a private corporation, balance its legal obligations to the state shareholders who want to use the railroad for economic development and to the private shareholders who want to make profits? Does the state, as majority shareholder, have enough power to advance public policy objectives? Does the railroad's status as a private corporation frustrate the public's—and even state officials'—right to know the public's business? Does the state control the NCRR's destiny—or should it?

Two governors, Republican Jim Martin (1985-93) and Democrat Jim Hunt (1977-85, 1993-present), as well as the Council of State, have endorsed a study committee's proposal that the state buy out the private shareholders after the lease negotiations are settled in order to avoid such conflicts. But in more than 15 years of trying, the state has not adopted a clear policy.

### What Is at Stake?

**T**he state owns a majority interest in the NCRR because the state's initial investment made the railroad possible. During the 1850s, the legislature appropriated \$4.35 million of the \$5.8 million required to build what is now the NCRR. The rest was raised from private sources. Originally, the NCRR owned the tracks from Charlotte to Goldsboro; a sister company, the Atlantic and North Carolina Railroad, owned the tracks from Goldsboro to Morehead City.

In 1871, the NCRR leased its tracks to the Richmond and Danville Railroad Co., which later was taken over by Southern Railway. The original lease agreement was driven by rich northern promoters who wanted to create a single railroad line between Washington and New Orleans, says Allen W. Trelease, a historian and author of the book, *The*

### Former Gov. Jim Martin (1985-93)



NORTH CAROLINA RAILROAD COMPANY  
TO THE

SOUTHERN RAILWAY COMPANY.

LEASE.

**This Deed**, made this 16th day of August, 1895, by and between the NORTH CAROLINA RAILROAD COMPANY, a corporation incorporated by the State of North Carolina, of the one part, and the SOUTHERN RAILWAY COMPANY, a corporation incorporated by the State of Virginia, of the other part, witnesseth :

THAT WHEREAS, it is provided by the nineteenth section of the charter of the North Carolina Railroad Company, "that the said Company may, when they see fit, farm out their right of transportation over said road, subject to the rules above mentioned; and the said Company, and every person who may have received from them the right of transportation of goods, wares and produce, shall be deemed and taken to be a common carrier, as respects all goods, wares, produce and merchandise entrusted to them for transportation :"

AND WHEREAS, by an Act of the General Assembly of Virginia, approved February 20, 1894, the Southern Railway Company is empowered, from time to time, to lease, use, operate, consolidate with, purchase or otherwise acquire, or be leased, used or operated by, or consolidated with any railroad or transportation company now or hereafter incorporated by the laws of the United States, or any of the States thereof ;

AND WHEREAS, it now seems to the North Carolina Railroad Company to be fit and judicious and to the advantage of the said Company, to "farm out" their entire railroad, with all their franchises, rights of transportation, works and property, thereunto belonging and used, and connected therewith, as hereinafter described, to the Southern Railway Company aforesaid for a term of years : "

**Now this Deed further witnesseth**, that in consideration of the several sums of money, rents, covenants and agreements hereinafter specified and agreed to be paid, kept and performed by the Southern Railway Company, the said party of the first part, namely, the North Carolina Railroad Company, has demised, let, hired, "farmed out," and delivered, and by these presents doth demise, let, hire, "farm out" and deliver, to the said party of the second, part, namely, the Southern Railway Company, the entire railroad of said party of the first part, with all its franchises, rights of transportation, works and property, including, among other things,

**The crime of the  
century? That's what critics called the  
1895 lease of the NCRR to Southern Railway company**

*North Carolina Railroad, 1849-1871, and the Modernization of North Carolina.* The Greensboro-Charlotte segment was considered vital, but the promoters used as leverage the fact that they could create a parallel line. That same argument, says Trelease, was used in lease negotiations in 1895 and 1994.

In 1895, the NCRR signed a 99-year lease with Southern at a fixed rate of \$286,000 a year. The A&NC operated independently and under leases to various railroads until 1939, when it leased its

tracks to what later became a Southern Railway subsidiary. Southern became part of Norfolk Southern in 1982 when Southern consolidated with Norfolk and Western Railway.<sup>11</sup> The NCRR and the A&NC merged in 1989, with the NCRR acquiring its smaller sister company through an exchange of stock.

If the NCRR didn't exist, would the state build it now? Almost certainly not. And neither would Norfolk Southern. Nearly everyone agrees it would be cost prohibitive to acquire a 317-mile

rail corridor that cuts a swath through some of the state's prime downtown real estate.

Would the state buy the NCRR if it were on the auction block at a lower price than the replacement cost? Probably not, at least if there were a private bidder. But the economic impact would be severe if the NCRR tracks, or even parts of them, actually went out of service.<sup>12</sup>

Why then, should the state be in the railroad business at all? Why not sell the state's shares in the NCRR, put the money to other uses, and let the market determine the NCRR's fate?

Although the NCRR has done little other than collect rent for more than a century, there are compelling reasons for the state to protect the future of the right-of-way as a matter of economic and transportation policy. The NCRR's tracks are the backbone of the state's east-west rail freight system, and they provide the only rail service available to the state port at Morehead City and the fledgling Global TransPark in Kinston, the state's planned rail, highway, and air cargo hub. The tracks also are critical to the state's plans to upgrade passenger train service between Raleigh and Charlotte, and they could become a link in a high-speed rail system connecting Atlanta to the Northeast corridor. Finally, they offer the potential for commuter rail service that otherwise would be prohibitively expensive, especially in the Research Triangle area.

In short, the NCRR is a virtually irreplaceable transportation corridor. The state has a vital interest in protecting it.

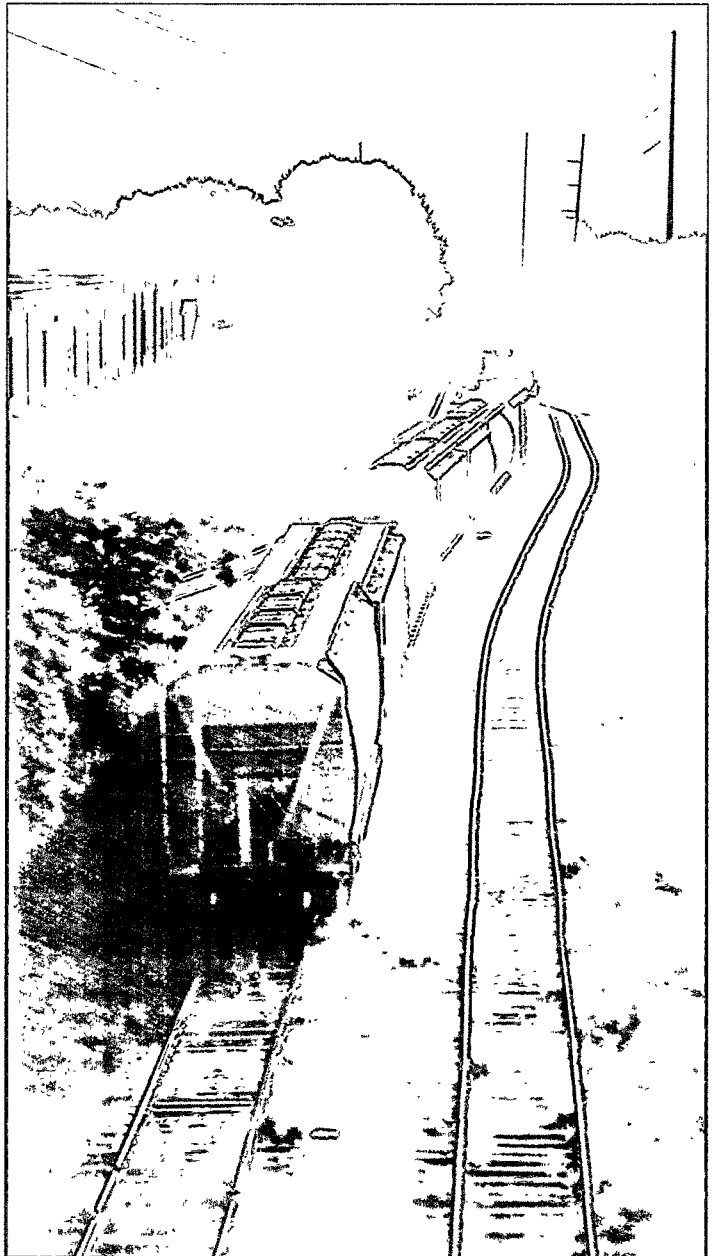
### State Planning Derails

**I**n 1979 and 1980, eight-and-a-half decades after the signing of the 1895 lease, the state's interest in the NCRR again began to percolate. The return on the state's investment was negligible, and the expiration of the leases in 1994 was close enough that the NCRR might have some room to maneuver. At least, legislators and state officials thought, the NCRR should position itself for the coming lease negotiations.

Early efforts produced little. In 1982, a legislative study commission helped bring four options into focus.<sup>13</sup> The state could:

- do nothing until the leases expired;
- buy out the private shareholders;
- sell the state's stock;
- or renegotiate the lease.

But the commission produced little more than a now-outdated appraisal. In 1985, the General Assembly created a negotiating commission to address the problem. A minor flap developed over whether the authority to conduct negotiations belonged to the NCRR board, the legislature, or the Council of State, the 10-member board of statewide



Karen Tam

elected officials. The dispute ultimately was resolved in favor of the NCRR board. Otherwise, the commission's efforts came to naught.

At that point no one even had an accurate inventory of the NCRR's holdings. Attorney C. Allen Foster of Greensboro, who was the railroad's general counsel from 1985 to 1989, recalls that when he took the job, the records were delivered in two cardboard boxes. "No one knew what we owned, what it was worth, what was being done with it, what would be done with it . . . and what had been done with it in the past," he says.<sup>14</sup>

The market for the NCRR's lightly traded over-the-counter stock also seemed confused. The price climbed from about \$200 per share in 1981 to nearly \$1,000 in mid-1985, and then soared to \$5,500 in 1986—an increase of more than 500 percent in less than a year. Even at the time, no one seemed to have an explanation for the investors' optimism.<sup>15</sup> After a stock split in which 100 shares of stock were issued in exchange for each share of existing stock, the stock dropped to around \$25 a share. That's roughly half the peak value of the NCRR stock when the stock split is taken into account. It has traded from the low \$20 range to the mid \$30 range ever since.

The merger of the NCRR and the A&NC in 1989 represented the only real progress in a decade of efforts by the state to chart a course for the railroad. The consolidation put the NCRR in position to negotiate a single lease. It also may have provided a measure of protection for the A&NC tracks east of Goldsboro, which are far less valuable to Norfolk Southern than the leg across the Piedmont.

The company finally had an accurate inventory of its holdings. The merger also placed a definite value on the new company. American Appraisal Associates evaluated the combined company as worth \$151 million (\$35.1 a share)<sup>16</sup> to Norfolk Southern. AAA said the railroad was worth \$241.6 million, or \$56.2 a share, if operated as an independent enterprise rather than leasing out its tracks, an option that has not been seriously considered. And the appraisers put the replacement cost—the amount it would take to build the NCRR from scratch—at \$512 million (\$119 a share). Private shareholders would later seize on that last number in their lawsuits.

Nevertheless, it soon would become clear that the state still was not in a position to control the upcoming lease negotiations directly. Aside from the merger, the state had adopted the 1982 commission's first option: do nothing.

***I'm gonna ride, I mean, on that southbound passenger train. I'm gonna buy me a ticket as long as my arm. I'm gonna ride that train baby all night long.***

—DOC WATSON

"SOUTHBOUND PASSENGER TRAIN"

### A Conflict of Interest?

The state did not address the conflict between economic development policy and profitability directly until the eve of the new lease negotiations. In March of 1992, two months before the lease negotiations began, Gov. Martin appointed another study committee to determine whether the state should buy out the private shareholders. The committee was chaired by C.C. Cameron, retired chairman of First Union Corp. and former state budget director under Martin. "The governor became aware that there was a divergence between the interests of private individuals and the state's interest in economic development," said James Trotter, the governor's general counsel.<sup>17</sup>

David King, now deputy transportation secretary for public transportation, added: "The inherent conflict is that investors will want to improve that rate of return when it comes time to negotiate with (Norfolk) Southern, and they might give something away that could hurt the railroad. . . . The public interest is in the economic health, well-being, and development of North Carolina, especially its eastern region. What if Norfolk Southern offered to pay more if the NCRR allowed it to stop using the rail east of Raleigh? The shareholders would make money, but the citizens of the coast would suffer."<sup>18</sup>

In December 1992, the Cameron committee recommended that the state buy out the private shareholders. The proposal was endorsed the next month by the Council of State and in June 1993 by Gov. James B. Hunt Jr., Martin's successor.

The Cameron committee's analysis of the conflict between the NCRR's legal obligation to make profits for its private investors and the state's policy interests later would be quoted extensively in the

lawsuits brought by private shareholders. "Through the creative management of the [NCRR]'s rail line, the State has the potential to exert a positive influence on economic development in North Carolina," the committee found. "A flexible lease structure could open new avenues for the productive use of the [NCRR] corridor. . . . Unlike the minority shareholders, the primary value of the [NCRR] to the State is not based on the monetary return on its investment, but on the ability to leverage [NCRR]'s assets to promote economic growth throughout the State."<sup>19</sup>

The committee found the NCRR's legal obligations to its private shareholders and to the public to be ambiguous. As a private corporation, it must maximize profits for shareholders. But because the state has granted it governmental powers, such as the right of eminent domain, it also has a legal obligation to serve its intended public purpose.

However, the committee found, "The case law does not address whether providing rail service to the citizens of North Carolina is merely ancillary to the private shareholders' rights to profit from their enterprise, or is a more fundamental purpose of the

## *Railroad's Ownership Structure Governs Lease Negotiations*

**T**he latest long-term lease for the North Carolina Railroad was negotiated in strict secrecy by a committee of the railroad's board dealing directly with the lessee, Norfolk Southern Corporation. State officials, from the governor on down, say they took a hands-off stance once the negotiations got underway, even though the state owns three-quarters of the stock in this multimillion dollar corporation.

Is this any way to run a railroad? Yes, according to the N.C. Attorney General's Office. In fact, says Deputy Attorney General Grayson Kelly, it's the *only* way to run a railroad with an ownership structure like the NCRR.

"There is no legal reason why the governor should or could be involved in the negotiations," says Kelly, who is representing the governor and the state in lawsuits filed over the announced lease agreement between the NCRR and Norfolk Southern. "As the major stockholder of a corporation, your power is limited to voting your shares."

Of course the governor has the authority to appoint the majority of the NCRR board, which would seem to give him power over the board's negotiating positions. But Kelly says even that power is circumscribed. "He could let his views be known to the directors, but the director's first duty is to the corporation." Legally, that leaves the state out of direct negotiations, and it limits

the state's ability to pursue policy options that might hurt the profitability of the railroad.

This fiduciary responsibility to the corporation protects the interests of the private shareholders in the railroad. And it isn't their only protection. According to Kelly, the railroad's bylaws require a 50 percent vote of the private shareholders to ratify any substantial action.

That means opponents of the new lease can block its ratification if they can convince half the private shareholders to vote against it. "If they can get proxies or 50 percent of the private shareholders to vote against the lease, they [the NCRR] won't be able to ratify it," says Kelly.

The state could resolve some of these issues by buying out the private shareholders. If the state were the sole shareholder, Kelly says, "it could define its interests however it wanted to."

An issue in discussion of a buy-out of private shareholders has been when such a buy-out would occur, Kelly says. The state wants a buy-out after the lease issue is settled, because a lease would help determine the value of the private shares. Private shareholders, if they want a buy-out at all, would prefer it to happen before the lease is settled in hopes of fetching a higher price for their shares.

The dispute is yet another illustration of the railroad's awkward ownership structure. "It's reached a point where I think it's going to have to be resolved eventually," says Kelly.

*Mike McLaughlin is editor of North Carolina Insight.*

*—Mike McLaughlin*



Karen Tam

### The Amtrak station in Raleigh

[NCRR].”<sup>20</sup> The state has taken no further action on the committee’s recommendation to buy out the private shareholders.

Attorneys for the plaintiffs in the private shareholder suits declined to discuss the details of the cases, but they found fertile material for their suits in the report. “Although the state would derive both direct and indirect benefits from ancillary economic growth, *the minority shareholders would derive no similar benefits*,” two companion suits say.<sup>21</sup> The second pair of suits contend that the state directed the governor’s appointees on the board “to cast aside the best interests of NCRR and its minority shareholders, and to negotiate a sweetheart lease with Norfolk [Southern] that will result in a lost opportunity for NCRR and a waste of corporate assets.”<sup>22</sup>

Spokesmen for the NCRR and Norfolk Southern said their companies would not comment on pending suits. But Foster, the former NCRR general counsel, is no longer involved in the controversy on any side. Foster believes the courts will clarify the NCRR’s obligations in striking a balance between the minority and majority shareholders. “It’s remarkable how much clearer answers you get in litigation than you do otherwise,” he says. In the end, the state simply failed to make a clear policy decision about how to manage its interest in the NCRR before the lease negotiations began.

### Who Runs the Railroad?

State Treasurer Harlan Boyles, as the state’s chief financial officer and a member of the Council of State, has been involved in negotiations over the fate of the railroad over a 15-year period. Boyles votes the state’s shares in the railroad by proxy on behalf of the governor. Like other state officials, Boyles was cut out of the latest round of lease discussions for fear of violating federal Securities and Exchange Commission rules. But he has a long association with and interest in the railroad.

Boyles has changed his position on ownership structure. Early on, he advocated selling the state’s shares and investing the proceeds. Later, he endorsed the Cameron committee’s buyout proposal. Now, he asks, “What can you do with 100 percent of the railroad that you can’t do with 75 percent of it?”

Boyles says he was simply reacting to a changing set of circumstances. “My early feeling was that something should be done to clear up the ownership and administration issues and that the state could earn a higher return by selling the asset and investing the proceeds elsewhere,” says Boyles. “When asked by then Governor Jim Martin to support a proposal to buy out private shareholders, I did so, understanding that this would clear up the ownership issue once and for all. That proposal met with opposition from the private shareholders and

***Who's the engineer on the Freedom Train?  
Can a coal black man drive the Freedom Train?  
Or am I still a porter on the Freedom Train?  
Is there ballot boxes on the Freedom Train?  
When it stops in Mississippi will it be made plain  
Everybody's got a right to board the Freedom Train?***

—LANGSTON HUGHES  
"FREEDOM TRAIN"

my reaction was to question what, strictly from an ownership position, the state could do as 100 percent owners that we could not do as 75 percent owners?"

Two answers come to mind. First, if the state owned the railroad outright, it could pursue policy objectives. For instance, it could make financial concessions to Norfolk Southern, if necessary, without creating a conflict with private shareholders. This could be a tool for economic development, whether through lower freight rates or through negotiating to keep less profitable rail links open.

Second, the public's interest in open meetings and records could be better served. The lease negotiations have been conducted in strict secrecy by a committee appointed by the NCCR board. Apparently, not even the governor has been privy to the discussions.

The secrecy issue has contributed to a rift between the private shareholders and the state, Boyles says, creating distrust and spoiling what might have been a fruitful public-private partnership. "This situation has followed the advice of the attorney general of North Carolina," Boyles says. "Certainly, this fact has created misunderstandings and apprehensions about the negotiation process." As majority shareholder, the state can veto any agreement between NCCR and Norfolk Southern, but it has not been involved in the talks directly.

The state does exercise a strong influence on the NCCR through the governor's appointment of 10 of the 15 board members.<sup>23</sup> Gov. Hunt demonstrated that point emphatically in July 1993, when he demanded the resignations of five Martin appointees and replaced three others whose terms were expiring. Among those Hunt ousted was NCCR

President E. Stephen Stroud, a prominent Raleigh commercial real estate broker and treasurer of the state Republican Party. Hunt replaced him with John F. McNair III of Winston-Salem, retired president and chief executive officer of Wachovia Corp.

Despite being forced from the board, Stroud still believes the state should buy out the private shareholders. "There are just a lot of things on the table that could conflict with private shareholder interests," says Stroud.

The public-private conflict quickly surfaced at the annual shareholders meeting at which Hunt's appointees were formally installed. Walker F. Rucker of Greensboro, whose family is the railroad's fourth-largest private shareholder, complained that Hunt wanted to keep Norfolk Southern's rental rate low in order to attract industry with lower freight rates. To judge from the "squeals and groans" of Norfolk Southern officials, the railroad was "being properly roped and branded" by the former board, he said.<sup>24</sup>

Brad Wilson, Hunt's legal counsel, countered that the governor had no hidden agenda and had no idea what stance the old board had taken. Rachel Perry, Hunt's press secretary, added: "Given the importance of this lease renegotiation, Gov. Hunt felt strongly that his leadership team be in place."

The governor or his staff may have given the new members instructions about the policy direction they were to take. And yet, neither Hunt nor Martin—nor anyone in either administration—has ever had any idea of the status of the negotiations, much less exercised any direct control over them, according to several officials interviewed for this article. The explanation is generally that the federal Securities and Exchange Act of 1934 and Securities

and Exchange Commission regulations prohibit anyone with direct knowledge of such negotiations—or anyone proposing a tender offer, as the state may eventually do—from disclosing anything, either to shareholders or to the public.

*The Charlotte Observer*, in a strongly worded editorial, had this to say on the subject:<sup>25</sup> “Gov. Morehead surely would be appalled to learn that while the state is the railroad’s principal owner and majority stockholder, railroad directors have in effect told the state to butt out of negotiations for a new lease on the 317-mile railway. . . . Neither the SEC nor its attorneys are woodenly inflexible. Surely the state’s attorneys could set up ground rules that abide by the spirit of the securities laws and make it possible for the state to be involved in the negotiations.”

Gov. Hunt declined to be interviewed for this article, but Wilson confirms that the administration has not taken an active role in the lease negotiations. “Our primary role on issues relating to the board of directors took place in July [1993],” Wilson said in a mid-1994 interview. “Since then, our role has been very passive. It’s in the hands of McNair and the board. I’m not privy to any policy decisions the board has made.” In early 1995, after

the shareholder suits were filed, he added, “We’re doing exactly what our lawyers [in the attorney general’s office] tell us to do, which is to say nothing and do nothing.”

The state Department of Transportation, which is responsible for state rail planning, also has been cut out of the picture. “I have no idea what kind of positions have been made over there [in the governor’s office],” says state rail planner Mark Sullivan. “We haven’t heard anything since the new [Hunt] administration.”

The Cameron committee’s concern about the state’s ability to manage the railroad’s future apparently still holds: “The awkwardness of [NCRR]’s current ownership structure is highlighted by the current lease negotiations with Norfolk Southern. . . . [B]ecause of the [NCRR]’s reluctance to disclose to the State the details of its future plans or lease negotiations, the state is unable to ascertain whether or not its important interests are being promoted. Even though the state can insist that any final lease of the [NCRR]’s trackage rights be subject to shareholder approval, such after the fact review will not necessarily allow the State to insure that its interest in economic development and transportation will be protected.”<sup>26</sup>

***Freight still comes first over passenger service on Norfolk Southern tracks.***



Karen Tam

## Promoting Economic Development

Norfolk Southern and the state are both gung-ho about economic development. The railroad wants the freight traffic generated by new plants. The state wants the jobs and tax revenues. It also wants to help develop eastern North Carolina, which has been bypassed by much of North Carolina's recent growth.

Of 19 North Carolina counties that lost population during the 1980s, 15 were in eastern North Carolina—a region rife with poverty. The region remains heavily dependent on agriculture while the number of agricultural jobs continues to decline. And it has a heavy dependence on the military, where the threat of downsizing looms.<sup>27</sup> The state has high-hopes pinned to the Global TransPark in Kinston—at the heart of the distressed region. The railroad provides a crucial transportation link to the transpark,<sup>28</sup> as it does to the state port in Morehead City.

Morehead City, New Bern, and Kinston are among the cities that would suffer if Norfolk Southern dropped its rail service along the NCRR line in eastern North Carolina. "Frigidaire located its plant here several years ago because they saw the need to ship by rail," says Vernon H. Rochelle, a Kinston lawyer and former secretary to the A&NC Railroad.<sup>29</sup> "Rail isn't the main focus, but it's a very useful component in attracting business."

But the railroad plays an important role in the state's high-growth regions as well. When Hunt engineered his takeover of the NCRR board in 1993, some shareholders said that the governor probably just wanted to offer Mercedes-Benz a break on freight rates to persuade the German automaker to locate a proposed plant in Mebane—located along Interstate 85 in the heart of the industrialized Piedmont Crescent. After Hunt's coup at the annual shareholders meeting, Boyles, the state treasurer, said Hunt considered the NCRR a vital part of what turned out to be an unsuccessful pitch to Mercedes-Benz.<sup>30</sup>

But what if it were to turn out that the NCRR, or part of it, is worth more as real estate and scrap metal than it is to Norfolk Southern? East of Raleigh, Norfolk Southern makes a profit by operating on the NCRR tracks, but the freight traffic is marginal, compared with the tonnage shipped between Greensboro and Charlotte. The NCRR board could find itself in conflict over whether to make money or to serve public policy. The NCRR may actually be more critical to the state's interests than it is to Norfolk Southern's.

The state's rail system shrank from a peak of 5,522 miles in 1920 to 3,620 in 1991; 715 miles of rail were lost between 1971 and 1991. "Besides being detrimental to economic development, loss of rail corridors has potentially serious impact on the state's ability to meet its future transportation needs," a committee appointed by former Gov. Jim Martin found.<sup>31</sup> And while the freight industry has received rave coverage for increases in tonnage, revenues, and productivity in the business press, most of the growth has been in the Western United States. In fact, in the Eastern U.S., freight lines are operating at mid-1970s levels, while lines in the West have set new records nearly every year.<sup>32</sup>

In North Carolina, the NCRR tracks between Charlotte and Greensboro are a key section of Norfolk Southern's main system. East of Greensboro, and especially east of Raleigh, traffic drops off dramatically. "Between Greensboro and Charlotte, they [Norfolk Southern Co. officials] want it [the NCRR] badly," says David King, the deputy transportation secretary. "It's not a must-have situation. . . . They own an alternate right-of-way, but [upgrading it] would cost tens and arguably hundreds of millions of dollars. Between Greensboro and Raleigh, they're interested, but I would say only moderately. East of Raleigh I think their interest is muted, but it's not out-and-out disinterest."

The facts and figures bear out King's assessment that the tracks west of Greensboro are much more important to Norfolk Southern than tracks to the east. Norfolk Southern hauls 40 million tons of freight a year between Greensboro and Charlotte, compared with 10 million tons between Greensboro and Raleigh and 2 million tons between New Bern and Morehead City, according to Bill Schafer,

***Ooh, midnight flyer—engineer  
won't you let your whistle moan  
Ooh, midnight flyer—paid my dues  
and I feel like travelin' on.***

—PAUL CRAFT  
"MIDNIGHT FLYER"

***Good morning America, how are you?  
Don't ya know me, I'm your native son.  
I'm the train they call the City of New Orleans.  
I'll be gone 500 miles when the day is done.***

— STEVE GOODMAN  
"CITY OF NEW ORLEANS"

director of strategic planning for Norfolk Southern. The lightest traffic on the NCRR is between Goldsboro and New Bern. Norfolk Southern has its own tracks that run roughly parallel and bypass Goldsboro and Kinston before rejoining the NCRR at New Bern, he says. But the Goldsboro-New Bern stretch of the NCRR serves Global TransPark at Kinston and is strategically important to the state's plans for the facility.

It is also significant that two appraisals in the 1980s put the value of at least some of the property much higher than it was worth to Norfolk Southern. The appraisals also emphasize how much more valuable, in a business sense, the Piedmont tracks are than those in the east. That raises the possibility that, just looking at the business angle, it might be more profitable for the NCRR to liquidate some or all of its assets than to continue leasing them.

In an appraisal prepared for the 1989 merger, American Appraisal Associates valued the NCRR, running from Charlotte to Goldsboro, at \$141 million and the A&NC, from Goldsboro to Morehead City, at \$10 million. Moreover, AAA found that if the railroads were operated as "independent enterprises" rather than leased to Norfolk Southern, they would be worth even more—\$228 million for the NCRR and \$13.6 million for the A&NC.<sup>33</sup>

In a 1982 appraisal commissioned by the legislature, Printon, Kane Research reached similar conclusions, although it put the total value of the railroads much lower. That study appraised the NCRR at about \$72 million and the A&NC at about \$1.8 million.<sup>34</sup> Later that year, Isabel H. Benham, president of Printon, Kane, told the Legislative Study Commission on Railroad Operations<sup>35</sup> that tracks from Goldsboro to Morehead City were worth more as scrap than to Southern because they were only marginally profitable. For shareholders, she said, "it would be just as great to scrap the property and get their \$4 or \$5 million and call it quits."<sup>36</sup>

Norfolk Southern has given no indication that it intends to abandon any of the NCRR. Even if it did, the state could buy the right-of-way and recruit a short line operator, as it often does when freight service is curtailed. There are also military interests that could come into play if the eastern segment of the rail line were threatened, due to the strong military presence in Eastern North Carolina. From a strictly business standpoint, however, the NCRR's private shareholders might have no particular interest in selling to the state if there were a higher bidder.

Thus, there is potential for a future conflict of interest on the NCRR board, even regarding freight operations. Robert Auman, a spokesman for Norfolk Southern, puts it succinctly: "What is really so important here is the industries that ship by rail, the people they employ, and the goods they produce."

## **Providing Passenger Service**

State and regional rail planners are enthusiastic about increasing passenger service as a way to reduce the cost of building new highways and to reduce traffic congestion and pollution. But even the strongest proponents agree that increased passenger service will require substantial government subsidies. Whether the savings in government spending for roads would offset the costs is unresolved.

Two ambitious plans involving NCRR tracks have been put forward. One, by the state Department of Transportation, is to dramatically improve passenger service between Raleigh and Charlotte, ultimately making the rail line a link between the northeast corridor of the U.S. and Atlanta. The NCRR's Charlotte-Raleigh rail corridor is one of only five corridors nationwide designated by the U.S. Department of Transportation for development of high-speed passenger rail.<sup>37</sup>



Karen Tam

***The Piedmont, the second of two state-sponsored passenger trains operating between Charlotte and Raleigh, was inaugurated in May 1995.***

The other plan, proposed by the Triangle Transit Authority, is to create a \$400 million commuter system linking Raleigh, Durham, and Chapel Hill by the year 2020. Charlotte has a longer-term commuter rail plan, but it would make minimal use of NCRR tracks. The city in fact became embroiled in a legal dispute with the NCRR when it proceeded with plans to build a new convention center on top of a long-abandoned rail line. While NCRR officials envisioned high-speed speed trains whisking through the center, Charlotte officials termed the idea "laughable." The city's commuter plans call for using a Norfolk-Southern line to the west of downtown.<sup>38</sup>

Both the Charlotte and Research Triangle area commuter proposals face major hurdles: cost, adequate numbers of passengers, political support, and, potentially, Norfolk Southern Corporation. "If you want Norfolk Southern to do business with you, you'll have to operate in the real world, just as we and our freight customers do," Bill Schafer of Norfolk Southern told a meeting of commuter planners in 1994. "For starters, assume that you'll have to provide the capacity for your trains. You will need long lead times, a pretty good banker, a great liability insurance carrier . . . and friendly politicians."<sup>39</sup>

Today, North Carolinians can ride the *Carolinian*, sponsored by the state and operated by Amtrak, between Raleigh and Charlotte—east in the morning, west in the evening. And they can ride the *Piedmont*, which began operating on the opposite schedule in May of 1995, making one-day round trips from Raleigh possible.

At an average speed of 48 mph, the pace is almost leisurely—slowed by the number of small towns en route, regulations governing speed, and track engineering. It takes these trains 3 hours and 40 minutes to travel the 175 miles between the two cities, about 40 minutes longer than it takes to drive.<sup>40</sup>

Of course, trains are capable of much greater speeds and have been for quite some time. The *Zephyr*, a diesel streamliner that made its maiden run from Denver to Chicago in 1934, could reach speeds of more than 110 mph and averaged more than 75 mph on a long haul. The train ran on a straight, signalled track across the open prairie, and at that time the railroads set their own speed limits. In Europe, passenger trains routinely reach 200 mph and are capable of even higher speeds.<sup>41</sup>

Gov. Hunt says he wants the travel time from Raleigh to Charlotte cut to 2 hours by the year

2000—an average speed of 87.5 mph. (In 1993, a study group appointed by Gov. Martin proposed building a new railroad to cut travel time to 1 hour 30 minutes. That, however, would require a new right-of-way, so the NCRRT would not be involved.)

To reduce travel time to 2 hours would require a significant investment by the state. Federal law sets a speed limit of 79 mph without computerized signals in the engineer's cab, as opposed to beside the track. Installing those signals would cost about \$73 million. In addition, tracks would have to be straightened and banked. Road crossings also would have to be improved or eliminated. To get from Raleigh to Charlotte in two hours, trains would have to run through small towns at 100 mph.<sup>42</sup> State transportation officials estimate that these improvements would cost an additional \$100 million to \$150 million.

These are not huge figures compared with the cost of highway construction. However, the state's *entire* rail program, of which the NCRRT is only a part,<sup>43</sup> for fiscal 1994 through fiscal 1998 totals only \$62.6 million. Only \$17.6 million of that is for track and signal improvements—a fraction of the amount needed.

The Triangle Transit Authority's proposed regional rail system would be even more expensive: the \$400 million price tag is roughly equivalent to what the state will spend to build the northern half of Raleigh's Outer Loop highway.<sup>44</sup> Still, says TTA Director Jim Ritchey, "Support for public transportation doesn't necessarily go down one side of the aisle or the other. There are a number of very conservative members of our board who believe this is a fiscally responsible proposal."

The first phase of the Triangle regional rail system would connect North Raleigh, Raleigh, and Durham. By 2002, the TTA hopes to operate self-contained diesel railway cars every 15 minutes in each direction, Ritchey says. The first phase would cost \$149.5 million to develop and \$8.6 million a year to operate. The system would use NCRRT tracks to travel from downtown Raleigh to downtown Durham; CSX Transportation owns the North Raleigh tracks. Later phases, to be completed by 2020, could reach southeast to Garner and Smithfield and west to Burlington. No funding is in place.

No one suggests that either the DOT or the TTA proposals could be self-supporting. In addition, transportation planners generally agree that public transportation requires a critical level of population density to operate efficiently. Despite population growth across the Piedmont, both pro-

posals face that problem. "There are some real questions about . . . how dense an area has to be to support urban transportation and how the population must be distributed to support inter-urban, high-speed rail," says Sheron Morgan, director of the Office of State Planning.<sup>45</sup>

Even if those financial and practical problems can be overcome, both the state and the TTA would have to arrange to use the tracks leased by Norfolk Southern. The railroad has formally expressed a general willingness to cooperate with passenger service, but with several important provisos:<sup>46</sup>

- Contracts with passenger services must provide a profit comparable to what Norfolk Southern earns on freight.
- Passenger service must not interfere with freight traffic.
- Norfolk Southern must be protected against any liabilities resulting from passenger accidents "regardless of cause."
- Passenger trains generally will not be allowed to exceed 79 mph on tracks that also carry freight.

"In a nutshell, we will be glad to negotiate with a passenger venture that satisfactorily addresses NS's requirements for safety, capacity, financial compensation, and liability," says Norfolk Southern's Schafer. "The acid test is that the value of our shareholders will be increased under such a deal."<sup>47</sup>

For the purpose of those negotiations, it won't make much difference who owns the NCRRT tracks if Norfolk Southern holds a long-term lease. Unless the new lease includes provisions that haven't been disclosed, any arrangement with Norfolk Southern will be a straightforward business deal.

***We are riding, on a railroad—  
singing someone else's song  
Forever standing, by that  
crossroads—take a side and step  
along.***

—JAMES TAYLOR  
"RIDING ON A RAILROAD"

"It's not an unsurmountable hurdle," says Patrick Simmons, director of the state Rail Division. "Everything is negotiable."

### Putting a Price on the NCCR

A question that remains unresolved is the worth of the NCCR. Appraisals range from a low of \$72 million in Printon, Kane's 1982 evaluation to a high of \$512 million, AAA's estimate of the railroad's replacement cost. The plaintiffs in the private shareholder suits have seized on the latter figure, but investors have never put their money behind an estimate that high.

At its peak in the mid-1980s, NCCR stock sold at the equivalent of \$55 a share (\$5,500 a share before the 100-to-1 stock split). That would put the market value of the railroad's 4.3 million shares at \$236.5 million if one were to assume that all of it were on the market. In the early 1990s, the stock dropped to a low of \$21, indicating a market value of \$90.3 million. The stock was trading at about \$36 a share until the tentative lease agreement was announced in November 1994. It tumbled 30 percent on news of the agreement,<sup>48</sup> but has since recovered to trade in the low- to mid-\$30 range by July 1995.

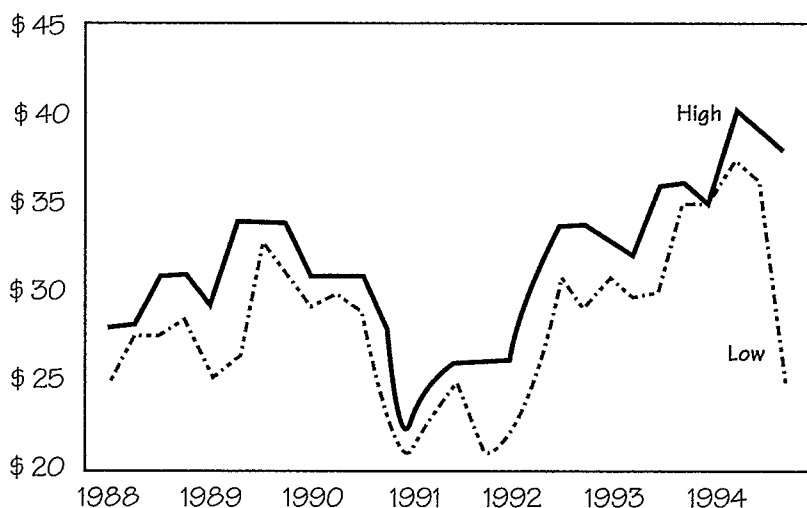
But as Marshall Johnson, the Greensboro stockbroker, points out, the price of a share of stock does not necessarily indicate the value of the stock in a buy-out. "The total is worth more than a piece," says Johnson. "A merger often pays far more than price."

Walker Rucker, the private shareholder leading the movement for a stock swap, believes any negotiated arrangement with the private shareholders should take into account the 1987 appraisal, plus inflation in real estate values of roughly 32 percent. "I'll accept the state making a sweetheart deal [with Norfolk Southern] if we get what we feel like our stock is worth based on the appraisal and inflation."

Boyles, the state treasurer, believes efforts to place a value on the NCCR have been flawed. He notes that they attempt "to place a value on something which, in all probability, can only be determined by a willing buyer and a willing seller."

But assuming that NCCR is able to sign a new lease with Norfolk Southern, the truth is that the NCCR is worth exactly what the lease is worth. As anyone who has ever leased a car knows, there is no appreciable difference between the present value of a lease and the value of the property; it's just a question of how to arrange the financing.

**Figure 2.**  
**North Carolina Railroad Stock Prices, 1988–1994**



The plaintiffs make a point that the stock climbed as high as \$40.50 in April 1994. In June 1995, the bid price for the stock was \$30 a share, a total market value of \$129 million if all 4.3 million shares were for sale.

It's anyone's guess how the market would respond if the state tried to buy out the private shareholders or decided to sell its shares. But at that price, the state's share is worth roughly \$96.5 million, and the private shareholders' stock is worth about \$32.5 million.

Meanwhile, for an investor who buys the stock at \$30, the stock offers a cash return of about 6.5 percent under the proposed new lease. If one assumes that the property value and lease payments will increase by 4 percent per year, however, the return is about 11.5 percent.<sup>49</sup>

Is the pending lease agreement a sweetheart deal wired for Norfolk Southern from the start? That is what the private shareholders maintain. NCRS president John McNair rejects this notion. But the private shareholders are seeking satisfaction both through negotiations and through the courts based on their contention that the NCRS put other interests ahead of maximizing profits for the rail line.

Until the legal and lease issues are settled, it is difficult to say how much it would cost the state to buy out the private shareholders or how much the state would receive if it sold its shares. If the buyer turned out to be Norfolk Southern, which is at least a possibility, the railroad would not likely pay more than the value of the lease.

## Conclusion

**F**or 15 years, the state has been trying to decide what to do with the NCRS, and it still hasn't made up its mind. Sullivan, the state rail planner, compares the situation to a dog chasing an automobile: "I've never been able to figure out what I'd do with that car if I caught it." N.C. Secretary of Transportation Sam Hunt adds: "We don't have a plan for the corridor. That's what we're working on now."

It's a little late for that. Sam Hunt says he doesn't know what Jim Hunt's policy is on the railroad. Jim Hunt's office says it doesn't know what the NCRS negotiators are doing. It may be that the train is heading out of the switchyard toward another long-term lease that will give Norfolk Southern practically total control over the right-of-way. It may be that the deal will be sidetracked by the dispute with the private shareholders.

***Well the big train keeps on rolling  
Rolling on down the track.***

***And the way she's moving buddy  
I don't believe she's ever coming  
back.***


—BOB SEGER

"LONG TWIN SILVER LINE"

Whatever the outcome of the lease negotiations, the fact remains that the current structure of the NCRS is unsatisfactory for both the state and the private shareholders. The conflict of interest between state public policy and the private shareholder's right to a maximum return will remain, whatever the terms of the lease. And it makes no sense for state officials to be in the dark about how the negotiations are proceeding. The state might want to appoint railroad experts to represent it, but if the state is not at the table, it can't control the railroad's destiny.

Even if the train has left the station for this round of negotiations, there will be more to come. In a political climate favoring cutting government and privatization, it might be tempting for the state to sell its shares in the NCRS. But the lesson of the 1895 lease is that seeking short-term financial gain is short-sighted. Selling the state's shares would produce a fairly modest windfall. It would be a one-time gain that would have little effect on the state's finances or tax rates.

Even though the state has failed to establish a policy on the NCRS, it basically knows what it needs to do. The General Assembly put it succinctly when it set up its ill-fated negotiating commission in 1985: "Any new lease should require that the lessee cooperate with innovative uses of the right of way, whether for fiber optics, intracity light rail (trolley) service, and passenger service."<sup>50</sup> Next time, maybe.

This is a long-term proposition. The state is still paying for its lack of foresight 100 years ago. Nevertheless, as Transportation Secretary Sam Hunt puts it, "Whatever you have to say bad about it, [the NCRS] has done a whole lot of good. It's been important for the last 100 years, and it will continue to be important for the next hundred years." 

## Recommendations

**W**hile the announced lease agreement removes some of the uncertainty about the revenue-generating potential of the NCRR, it can only be approved at a shareholder meeting at which the majority of the private stockholders are present or represented. That means a boycott of the yet unannounced meeting has some chance for success if enough stockholders can be brought on board. And even if the lease is approved, what effect will the suits filed by the private shareholders have on its terms? Despite these unanswered questions, one conclusion is crystal clear. The railroad's potential for serving the public good is tightly tied to its ownership structure.

Given the importance of the railroad to the state's future in transportation planning and economic development, the Center makes the following recommendations:

**(1) The state should *not* sell its stock in the North Carolina Railroad Co.** The tracks are the backbone of the state's east-west rail freight system, and they provide the primary rail link to the state port at Morehead City and the planned Global Transpark in Kinston. They are critical to passenger train service between Charlotte and Raleigh and to proposed commuter service in the Research Triangle area. They may also represent a key link to future high-speed rail and a right-of-way for fiber optic cable.

With selling its stock off the table, the state is left with only two viable options: (1) buying out the private shareholders at a yet undetermined price; or (2) maintaining the current 75 percent state, 25 percent private ownership structure.

There are clear disadvantages to maintaining the status quo. Out of concern for the private shareholders, the state will not be able to exercise its full range of policy options for the railroad. The conflict between the need to keep rail lines open and lease rates low for economic development and the need to earn a high rate of return for private shareholders will continue to exist. Freight will come first over any commuter service. And the level of secrecy around lease negotiations likely will continue, leaving both the state and private shareholders in the dark until the deal is struck.

There is only one item on the ledger sheet favoring the status quo. Cost. There would be no need to tamper with the current ownership structure if the following conditions could be met: if the door could be left open to mass transit; if Norfolk Southern could guarantee freight service on all segments of the rail line; if the state's economic development needs could be met; and if the NCRR could earn the maximum return on its assets.

But the number of lawsuits pending against the NCRR is evidence that balancing all these interests is well-nigh impossible. Over the long haul, the state's needs would be best served if it were to follow the advice of both former Gov. Jim Martin and Gov. Jim Hunt and buy out the private shareholders.

**(2) The North Carolina Railroad Co. board of directors should buy out the private shareholders in the company so the state can take maximum advantage of this valuable asset in the formation of transportation and economic development policy. The board should use the revenue from the rail lease to accomplish the purchase without spending state tax money through the issuance of revenue bonds or a similar financing vehicle.** Among the advantages of full state ownership are these:

- the state could have full control over the future of the rail corridor and could negotiate to keep vital but less profitable rail links open;
- any future lease negotiations could be more open to public scrutiny;
- the state could negotiate lower lease rates if necessary as a catalyst for economic development, and;
- the terms of any lease could include accommodation of passenger service.

In short, the state could plan and implement transportation policy for the NCCR without choosing between getting private shareholders the maximum return on their investment or facing a host of lawsuits.

A primary disadvantage is cost. It would take a minimum of \$25 million and perhaps as much as \$50 million to buy out the private share-

holders. While this is not an outrageous sum in the context of a \$10 billion-plus state budget, it is a significant amount of money given the current fiscal climate in state government.

Yet there is a way out of this thicket. The state could use the proven revenue producing potential of the lease to pay off any indebtedness resulting from the purchase of the private shares. The only loss to the state's till would be future revenue generated by the lease. The investment potentially could be as painless as that of a worker who gets a raise and decides to use part of the raise to invest in the future through retirement savings. Thus, the purchase of the private shares can likely be accomplished without increasing taxes.

There remains one last obstacle to a buyout: fixing a price. The best means of determining the value of the private shares is to finalize the lease agreement and execute a buyout after the deal is approved at a shareholder meeting. After all, the lease determines the revenue generating

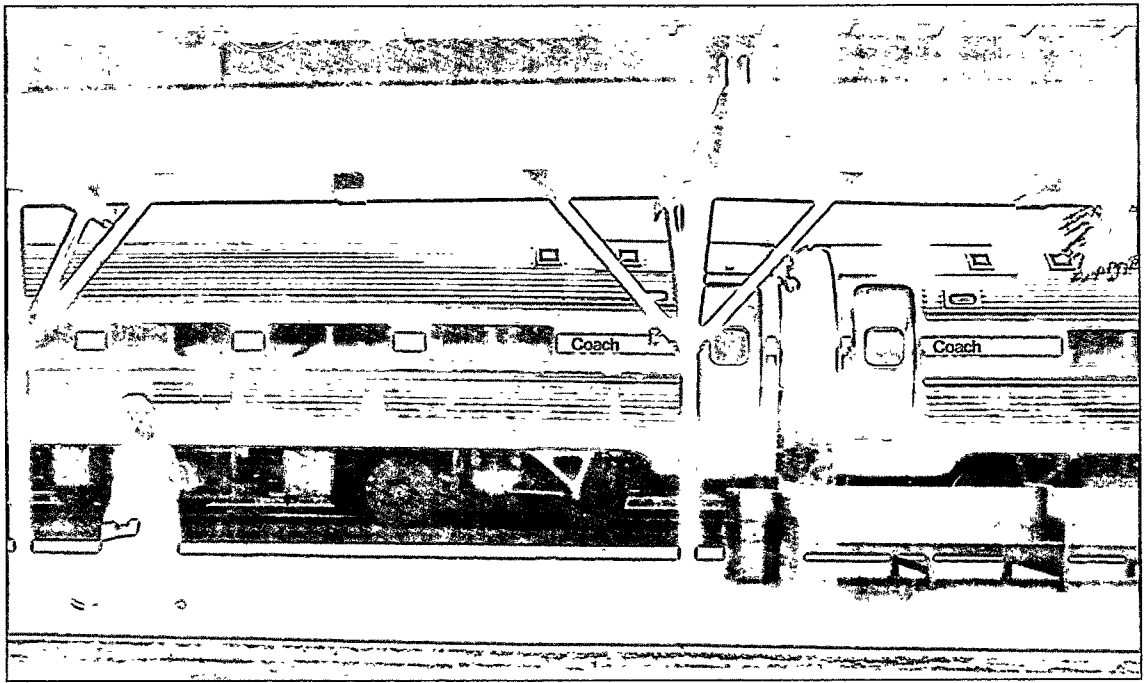
potential of the property. When the lease issue is settled, the NCRR board can proceed with acquiring the private shares. If this means negotiating for a higher return to end the boycott by the private shareholders, so be it.

The state has an opportunity to act on a century-and-a-half old vision to nurture the "tree of life" that has spread its branches across North Carolina. For less than the cost of a professional football stadium in Charlotte or a college basketball arena in Wake County, the state can claim full control of the destiny of 317 miles of rail vital to its long-term transportation and economic development interests. And thanks to the commercial viability of the North Carolina Railroad, the deal likely may be consummated at no direct cost to the taxpayers. It's time to complete John Motley Morehead's vision for the North Carolina Railroad by purchasing the private shares and developing this valuable asset to its full potential.

—Mike McLaughlin



Karen Tom



Karen Tam

## FOOTNOTES

<sup>1</sup> For a comprehensive look at the early history of the North Carolina Railroad, see Allen W. Trelease, *The North Carolina Railroad, 1849-1871, and the Modernization of North Carolina*, The University of North Carolina Press, Chapel Hill, N.C., 1991. See also, *Report of the Governor's Special North Carolina Railroad Study Group*, Jan. 5, 1992, p. 2 ff.; Grady B. Jefferys, *The Tree of Life: A History of the North Carolina Railroad*, The North Carolina Railroad Co., Raleigh, N.C., 1972, p. 1 ff.; Steve Adams, "North Carolina's Railroads: Which Track for the Future?" *North Carolina Insight*, N.C. Center for Public Policy Research, Raleigh, N.C., Vol. 16, No. 1 (June 1983), pp 2-16.

<sup>2</sup> *Ibid.*, Jefferys, p. 1.

<sup>3</sup> One of the leases began in 1895 and expired December 31, 1994. The other began in 1939 and expired Jan. 1, 1995.

<sup>4</sup> Press release, "N.C. Railroad Co. Board Approves Norfolk Southern Lease," NCRR, Aug. 10, 1995. The \$5 million one-time payment is to satisfy the requirement in an 1895 lease to Southern Railway Co. that the latter return the NCRR's property "in at least as good condition and repair" as it was at the beginning of the lease. The 1895 lease is described in the NCRR's annual reports and reproduced in full in *The Tree of Life*.

<sup>5</sup> REIT's, while maintaining public ownership of their shares, are required to pay about 95 percent of their net income in dividends to shareholders, according to a press release issued by the NCRR. For more, see "N.C. Railroad Co. Outlines Basic Terms of Rail and Property Lease with Norfolk Southern," North Carolina Railroad Co., Raleigh, N.C., Nov. 22, 1994, p. 2. According to published reports, only one other U.S. railroad is structured as an REIT, the Pittsburgh & West Virginia Railroad. This 27-year-old trust was formed to facilitate the acquisition of a small leased railroad (Kyle Marshall, "N.C. Railroad strikes \$8 million deal with rail firm," *The News & Observer*, Raleigh, N.C., Nov. 24, 1994, p. 10C).

<sup>6</sup> North Carolina Railroad Company, 1994 Form 10-K, filed with the U.S. Securities and Exchange Commission, p. 17.

<sup>7</sup> Private shareholders appear to have succeeded in at least delaying a shareholder meeting at which the tentative lease agreement might have been ratified. NCRR Board President John McNair III, in a July 11, 1995, letter to NCRR shareholders, wrote that the July 1995 shareholder meeting had been postponed due to unresolved issues that precluded a final agreement with Norfolk Southern. In the letter, McNair made reference to the planned boycott of the shareholder meeting.

<sup>8</sup> *Werner, et al. Profit Sharing Plan v. John M. Alexander Jr. et al.*; *John H. Norberg Jr. et al. v. John McKnitt Alexander Jr. et al.*; *Alan Kahn et al. v. John McKnitt Alexander Jr. et al.*; *Edward Taran v. John M. Alexander Jr. et al.* All are shareholder derivative actions filed in U.S. District Court, Eastern District of North Carolina, Raleigh Division.

<sup>9</sup> As quoted in Jack Scism, "Lease renewal causes railroad's stock to fall," the *News & Record*, Greensboro, N.C., Nov. 30, 1994, p. B5.

<sup>10</sup> As quoted in Pat Stith, "Negotiations to begin on disposition of North Carolina's railroad stock," *The News & Observer*, Raleigh, N.C., Sept. 22, 1985, p. 1A.

<sup>11</sup> Adams, note 1 above, p. 5.

<sup>12</sup> In preparation for the 1989 merger of the NCRR and the A&NC, American Appraisal Associates estimated the replacement cost of the two railroads at \$512 million. AAA evaluated the worth of the two railroads to Norfolk Southern at \$151 million, which is approximately the figure on which the merger was based.

<sup>13</sup> *Railroad Operations*, Legislative Research Commission Report to the 1981 General Assembly of North Carolina, 1982 session, May 20, 1982, pp. 1-6, plus attachments.

<sup>14</sup> As quoted in Todd Cohen, "Politics plays its part in state railroad debate," *The News & Observer*, Raleigh, N.C., July 26, 1988, p. 3D.

<sup>15</sup> Steve Adams, "Tracking a hot stock: NCRR sells at \$5,500, and no one's sure why," *Triangle Business*, Raleigh, N.C., April 7-14, 1986, p. 1.

<sup>16</sup> Per share values based on the 1987 appraisal were

included at the suggestion of Walker Rucker, a leader of the effort among the private shareholders to block the tentative lease agreement through a boycott. They are calculated by dividing the appraised value of the NCRR under various operating scenarios by the railroad's current 4.3 million shares of stock. Rucker believes a real estate inflation adjustment of approximately 32 percent would be necessary to bring the 1987 valuation up to date.

<sup>17</sup> As quoted in Kay McFadden, "N.C. Railroad faces conflict over its mission," *The News & Observer*, Raleigh, N.C., May 31, 1992, p. 1F.

<sup>18</sup> Cohen, note 14 above.

<sup>19</sup> *Report of the Governor's Special North Carolina Railroad Study Group*, December 1992, pp. 7-9.

<sup>20</sup> *Ibid.* at p. 5.

<sup>21</sup> *Werner and Taran*, note 8 above. *Kahn and Norberg* do not name the state as a defendant. *Werner and Taran* also cite GS 143B-361, which declares the state's interest in maintaining rail service, and the NCRR in particular, as "an integral and necessary part of a balanced transportation system."

<sup>22</sup> *Werner et al. and Norberg*, note 8 above.

<sup>23</sup> The remaining five members are elected by the private shareholders.

<sup>24</sup> For accounts of Hunt's appointments to the NCRR board, see Bernie Kohn, "Hunt maneuvers for rail line," *The Charlotte Observer*, Charlotte, N.C., July 8, 1993, p. 1D; Kohn, "POWER PLAY FOR RAILROAD: Hunt's nominees take over railroad in effort to spice up Mercedes bid," *The Charlotte Observer*, July 9, 1993, p. 6D; and David Ranii, "Hunt runs over N.C. Railroad, ousts board members," *The News & Observer*, Raleigh, N.C., July 8, 1993, p. 6C.

<sup>25</sup> "Troubled 'Tree of Life,'" unsigned editorial, *The Charlotte Observer*, December 7, 1992, p. 12A.

<sup>26</sup> *Report of the Governor's Special North Carolina Railroad Study Group*, p. 10.

<sup>27</sup> For more on growth patterns in North Carolina during the 1980s, see Ken Otterbourg and Mike McLaughlin, "North Carolina's Demographic Destiny: The Policy Implications of the 1990 Census," *North Carolina Insight*, Vol. 14, No. 4 (August 1993), pp. 2-49.

<sup>28</sup> For more on the proposed Global TransPark, see Tom Mather, "Air Cargo Complex: Flight or Fancy?" *North Carolina Insight*, Vol. 14, No. 2 (September 1992), pp. 26-57. This package features a pro-con discussion on the wisdom of the public's investment in the transpark, with the pro side written by former Gov. James G. Martin and the con side written by N.C. State University economist Michael L. Walden.

<sup>29</sup> As quoted in Kay McFadden, "N.C. Railroad faces conflict over its mission," *The News*

*& Observer*, Raleigh, N.C., May 31, 1992, p. 1F.

<sup>30</sup> Kohn, "POWER PLAY FOR THE RAILROAD," note 24 above.

<sup>31</sup> *Report of the Governor's Rail Task Force*, January 1993, p. 22.

<sup>32</sup> *Railroad Facts*, 1992 edition, Economics & Finance Division, Association of American Railroads, Washington, D.C., pp. 13 and 27.

<sup>33</sup> The American Appraisal Associates report is cited in a joint proxy statement issued by the NCRR and A&NC, July 20, 1989, pp. 14-15.

<sup>34</sup> *Valuation of North Carolina Railroad Company and Atlantic and North Carolina Railroad Company*, Printon, Kane Research, Inc., New York, 1982, pp. 3-5.

<sup>35</sup> The study was authorized by Resolution 61 of the 1981 Session Laws and by House Bill 1599, Chapter 1372 of the 1981 Session Laws (Regular Session 1982).

<sup>36</sup> Stith, note 10 above.

<sup>37</sup> Associated Press, "Hunt OKs buying railroad company," *The Herald-Sun*, Durham, N.C., June 6, 1993, p. B10.

<sup>38</sup> Bernie Kohn, "Ghost track remains live issue: Railroad wants line rebuilt through convention center," *The Charlotte Observer*, Charlotte, N.C., Aug. 8, 1993, p. B1.

<sup>39</sup> Bill Schafer, text of remarks at the 3rd Annual Emerging Commuter Train Seminar, San Diego, Cal., Aug. 19, 1994, p. 8.

<sup>40</sup> Associated Press, "2nd Raleigh-Charlotte rail route questioned," *News & Observer*, Raleigh, N.C., Jan. 8, 1994, p. 4A.

<sup>41</sup> Mark Reutter, "The Lost Promise of the American Railroad," *Wilson Quarterly*, Washington, D.C., Vol. 18, No. 1 (winter 1994), pp. 10-35.

<sup>42</sup> *Report of the Governor's Rail Task Force*, note 31 above, pp. 18-19.

<sup>43</sup> N.C. Rail Division activities include: providing intercity passenger services; assisting shortline railroads to improve freight traffic; funding grants for rail spurs to serve industry; planning for future high-speed rail; preserving threatened corridors for future rail use; and restoring historic rail stations.

<sup>44</sup> Stephen Hoar, "Rail system pushed: Authority to offer plan at 8 meetings," *The News & Observer*, Raleigh, N.C., Jan. 29, 1995, p. 1B.

<sup>45</sup> Otterbourg and McLaughlin, note 27 above, p. 22.

<sup>46</sup> White paper titled, "Rail Passenger and Freight Services: Norfolk Southern Corporation's Policy," March 29, 1994, p. 1 ff.

<sup>47</sup> Schafer's remarks, note 39 above, p. 7.

<sup>48</sup> Scism, note 9 above.

<sup>49</sup> Internal rate of return calculated by the author.

<sup>50</sup> Stith, note 10 above.



# IN THE COURTS

## High Court Ruling Undercuts N.C. Law Aimed at Limiting Political Mudslinging

by Katherine White

*In State v. Petersilie, the N.C. Supreme Court let stand a 60-year-old statute outlawing true but anonymous political speech. No recorded reference to the statute is found in court documents until the Petersilie case, in which Frank Petersilie was convicted in 1989 of distributing anonymous campaign materials in a Boone Town Council Race. There followed a raft of similar prosecutions under the law. In a ruling with great First Amendment implications, Petersilie's conviction was upheld by the state's highest court in a 1993 decision. Ultimately, the ruling was clouded by a U.S. Supreme Court ruling in an Ohio case. But the high court did not have the North Carolina case before it, and it left enough room for the state to revisit the idea of regulation of political speech in the future. While cleaning up vicious political campaigns may have merit, the author reminds us there are also free speech issues to consider.*

**P**oliticians, citizens, and news commentators often deride the current mudslinging, vicious attacks, and distortions in many campaigns for electoral offices and referendums. But such sentiments didn't get much support from a recent decision of the U.S. Supreme Court that called into question the continuing validity of a North Carolina statute governing anonymous political speech.

In *McIntyre v. Ohio*,<sup>1</sup> the high court ruled that an Ohio statute prohibiting the distribution of anonymous but truthful campaign literature was unconstitutional because it violated the First Amendment's protection of political speech. The April 19, 1995, decision may have effectively nullified a North Carolina ruling that had let stand a

law limiting political speech in the interest of fairer campaigns. And the U.S. Supreme Court ruling makes it harder for states to limit political mudslinging, a result which brought the court jeers from a noted syndicated columnist at *The Washington Post*.

"It is presumably not the purpose of the [U.S.] Supreme Court to screw up the political process in this country more than it is already," political commentator David S. Broder wrote of the decision. "But if the learned justices had that intent, they could not be doing a better job."<sup>2</sup>

But did the high court err in its ruling? Should proper decorum in political campaigns really take precedence over free speech concerns? The answer is, probably not—at least not in the case of *State v. Petersilie*. The U.S. Supreme Court ruling means the state must find another vehicle in its quest for cleaner campaigns.

Already, the search is underway. The North Carolina Supreme Court's decision, *State v. Petersilie*,<sup>3</sup> was reviewed by a 1994 study commission of the N.C. General Assembly as it considered ways of improving the quality of political debate.<sup>4</sup> With the same purpose, state Sen. Wib Gulley (D-Durham) introduced a bill in the 1995 session of the General Assembly that would have provided state funding for candidates who take a "standard of conduct" pledge for running clean campaigns.<sup>5</sup>

And at least one North Carolina Supreme Court justice, despite the court's setback in *Petersilie*,

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*Katherine White, a regular Insight contributor, is a Raleigh lawyer specializing in First Amendment and communications issues.*

remains sympathetic to establishing some ground rules for campaigns. Justice Willis Whichard, a member of the 5-1 majority in the North Carolina decision, says he understands the U.S. Supreme Court's rationale in the *McIntyre* ruling—which undercut *State v. Petersilie*. But Whichard, a former state legislator, still wishes that some controls could be placed on negative campaigning. And Deputy Attorney General Charles Hensey believes the North Carolina law is sufficiently different from the Ohio law to allow its continued use.

That sentiment is not universal. For North Carolina Supreme Court Chief Justice Burley Mitchell, the *Petersilie* court's sole dissenter, the United States Supreme Court resurrected North Carolina's long history of freewheeling and anonymous political campaigning and debate.

The ruling also prompted a sigh of relief from William Van Alstyne, a renowned scholar of the First Amendment of the United States Constitution and a professor in the Duke University School of Law. Van Alstyne says the U.S. Supreme Court ruled correctly in the *McIntyre* case, and the North Carolina Court erred in its *Petersilie* decision. "Burley Mitchell has been vindicated in his lonely and solitary dissent," he says.

In *McIntyre*, Justice John Paul Stevens wrote for the U.S. Supreme Court: "Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority."

Those words may have effectively nullified the North Carolina Court's decision in July 1993. In *Petersilie*, the state Supreme Court upheld a North Carolina law that was similar to the one in Ohio. The state court concluded that the law was

constitutional under the First Amendment of the U.S. Constitution<sup>6</sup> and Article I, Section 14 of the North Carolina Constitution,<sup>7</sup> both of which guarantee free speech for all citizens.

Chief Justice James G. Exum, now retired, wrote for a majority of the state court that: "Because the statute expressly regulates political speech, it is content-based. . . . We must give it exacting scrutiny; and we must be satisfied that it is necessary to serve the State's compelling interest in having fair, honest elections."<sup>8</sup> The N.C. Supreme Court concluded that the law was narrowly tailored to serve the state's interest in fair elections and that the law did not infringe on anyone's First Amendment rights of free speech.

The North Carolina law makes it a misdemeanor "for any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such charge."<sup>9</sup> Ohio's version prohibited anonymous political campaign leaflets designed to "influence voters in any election."<sup>10</sup>

Van Alstyne says that the North Carolina statute "is dead in the water" as a result of the *McIntyre* decision. It also affects 39 other state laws as well as a similar act of Congress.

The public outcry in North Carolina against perceived abuses of political speech, including the cries of losing politicians in heated campaigns, prompted the North Carolina General Assembly to set up a 1994 study commission to look for ways to clean up the state's campaigns. As part of that study, legislators reviewed the statute under which *Petersilie* was convicted, in existence since 1931,

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***"It is presumably not the purpose of the [U.S.] Supreme Court to screw up the political process in this country more than it is already. But if the learned justices had that intent, they could not be doing a better job."***

—POLITICAL COMMENTATOR DAVID S. BRODER  
OF THE WASHINGTON POST ON THE *MCINTYRE* DECISION



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**Deputy Attorney General  
Charles Hensey believes  
the North Carolina law is  
sufficiently different from  
the Ohio law to allow its  
continued use.**

that makes it a crime to publish truthful but anonymous speech.<sup>11</sup>

North Carolina's retreat to the English tradition of punishing true but anonymous speech emerged some sixty years ago when this portion of the campaign law was adopted. But no reference to the statute is found in recorded court decisions until the *Petersilie* case.<sup>12</sup>

Although no new legislation was proposed by the 1994 study committee, the legislature's focus, in part, stemmed from some truthful, but negative and anonymous, campaign leaflets circulated in 1994 state legislative races. Former House member Maggie Jeffus (D-Guilford) objected to signs posted at polling places on election day stating that she had been endorsed by a gay rights organization. The information was true. Its distribution fell within the *Petersilie* statute and, therefore, exposed the person who posted the signs to potential criminal charges.

After decades of silence, the statute had regained statewide recognition in November 1989. Frank W. Petersilie, after failing to gain sufficient votes to qualify for a run-off race for a seat on the Boone Town Council, distributed a copy of a *Washington Post* article written by Nan Chase, the wife of Saul Chase, one of the candidates in the run-off election.

The article expressed Mrs. Chase's opinion about prayer in school. An unsigned letter distributed with the article quoted Mrs. Chase's description of herself as an "unbeliever (in Christianity) in the midst of the pious" who found herself unable to criticize "religious paraphernalia displayed in public offices and on state-owned vehicles."

The article and the views attributed to Mrs. Chase in the letter would have been unpopular with a segment of the Boone electorate, and distributing these materials was likely intended to damage Saul Chase's candidacy. Petersilie did not sign his name to the material he sent out. He

eventually admitted that he addressed some of the envelopes.

A few days later, Petersilie received a flyer urging voters to support the "pro liquor" candidates—Chase and another contender, Louise Miller. Petersilie remailed that flyer to about 20 or 25 individuals—again without signing his name.

He was charged with 11 counts of violating the anonymous political advertising statute and faced a maximum sentence of 22 years in prison. Instead, a Watauga County Superior Court judge sentenced him to a two-year prison term, which was suspended, and placed Petersilie on supervised probation for three years. He also was ordered to spend seven weekends in jail, to pay a \$400 fine and court costs, and to perform 180 hours of community service.<sup>13</sup>

Petersilie appealed his conviction on constitutional and jurisdictional grounds. The Supreme Court ordered a new trial for him on jurisdictional grounds but upheld the constitutionality of the statute upon which the conviction rested.<sup>14</sup>

After Petersilie's conviction, other individuals across the state were singled out for similar prosecution:

- Rick Rosen, a leader of a citizen's group opposed to an Alamance County landfill, was convicted of violating the law in June 1992 when his organization placed an advertisement in the *Burlington Times-News* that did not state the sponsor. Never mind that the organization had run similar ads with its sponsorship listed and that many people may have known the source. The county manager and four county commissioners, two of whom were up for reelection, sought retribution. Rosen was convicted and ordered to pay \$55 in court costs as punishment.<sup>15</sup> He appealed the decision and the prosecutor decided not to pursue the case further. The newspaper was not charged for publishing the ad.
- A former wife of Chapel Hill lawyer Barry Winston was charged in May 1994 with distributing anonymous flyers during his campaign for Orange County district attorney. Anne Russell of Wilmington distributed the flyers to businesses and placed them on car windshields. The flyers challenged Winston's integrity in dealings with former wives and included excerpts from a lawsuit seeking unpaid legal fees, part of an Internal Revenue Service letter declaring a tax lien, and a deposition concerning Winston's personal life.<sup>16</sup>

# VOTE LIQUOR BY THE DRINK FOR BOONE

FOUR YEARS AGO, WITH THE HELP OF SAUL CHASE, THE ASU, STUDENTS BROUGHT BEER TO BOONE. NOW IS THE TIME TO COMPLETE THE PARTY!

SUTTLE, DUGGER, & MARSH REFUSE TO ENDORSE THIS ISSUE AND WOULD WORK TO DEFEAT A LIQUOR BY THE DRINK REFERENDUM.

VOTE  
SAUL CHASE AND LOUISE MILLER  
NOV. 7TH  
THE "PRO-LIQUOR"  
CANDIDATES

Dear Fellow Christians:

Chase wants to take away aggressive Christian influence from public buildings and gathering places, such as our schools!

In an article published in the Washington Post, Mrs. Saul Chase ridiculed the people of Boone for their support of Christianity, stating that here "Christianity is...intimidating and self-perpetuating.

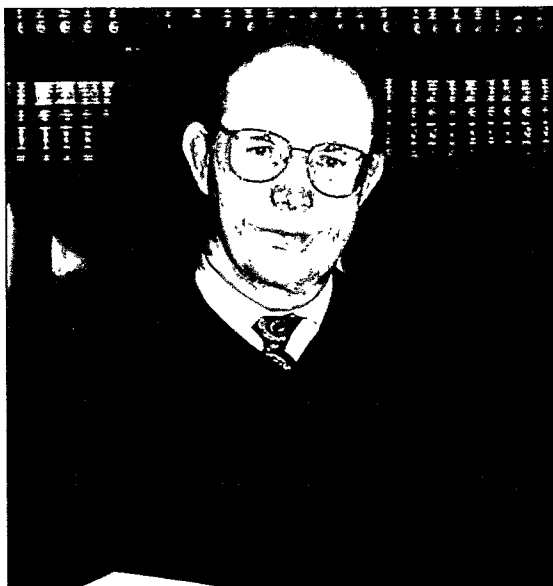
Calling herself an "unbeliever (in Christianity) in the midst of the pious", Mrs. Saul Chase states that she is unable to openly criticize "religious paraphernalia displayed in public offices and on state owned vehicles", and she also says that "it (anyone) speak(s) out forcefully against what may be an unconstitutional mixing of church and state, they will be unable to enter the political mainstream that has the power to separate the two spheres". --This thought has not been spoken to the people of Boone by Mrs. Chase, only to the Washington Post. Why keep it from us? Because her husband is on our Town Council, and was just put in the run off for re-election. If he wins, he will have the power to take away any Christian influence from the Town employees, buildings, etc... It can be assumed that Chase allegedly has a goal to wipe out Christian influence from our town, take it away from the very God-fearing Christian people who helped put him in office. Candidates should be open about all of their feelings of all issues and it appears that Saul Chase has been deceptive to us by not supporting the good, wholesome beliefs of our people. A deception that is allegedly a deliberate attempt to gain power to take our Christian atmosphere from us. We, the town, should stop him, keep him out of our town government and hold fast to our Christian freedoms that our forefathers fought hard to establish. Vote against Saul Chase

***This flier and an  
anonymous letter  
distributed by  
Boone resident  
Frank Petersilie led  
to criminal charges  
against Petersilie  
through a 60-year-old  
statute outlawing  
anonymous  
political speech.***

**Chief Justice Burley Mitchell, the lone dissenter in *Petersilie***

- In May 1994, Cumberland County District Attorney Ed Grannis asked the State Bureau of Investigation to investigate a negative ad against a candidate for the General Assembly that ran in the *Fayetteville Observer-Times* three days before the May 3 primary.<sup>17</sup> Again, the Fayetteville paper was not charged. The person placing the advertisement through an ad agency was the target of the investigation.
- In 1992, *The Shelby Star* ran an ad without the appropriate identifying information and the individual, not the newspaper, was prosecuted under the statute.<sup>18</sup>
- Again in 1992, *The Bugle Calls*, an anonymous newsletter written by "The Town Tattler" (whose real name is Frances Winslow), received a remonstrance from Assistant District Attorney Ernie Lee in Onslow County. Lee wrote a letter stating that the paper might be found in violation of the law if it continued writing anonymous criticism of political candidates.<sup>19</sup>

Curiously, newspapers printing such advertisements have yet to be prosecuted. Before the state Supreme Court ruled in *Petersilie*, Charles Hensey, an assistant attorney general representing the state in election law violations, said that he wouldn't go after a newspaper because he believed the state could not withstand a challenge from



newspapers of the First Amendment principles involved.

Then-Chief-Justice James Exum, writing for the majority of the court in *Petersilie*, concluded that the statute did not infringe upon free speech rights. He narrowly construed the statute to read that it is illegal to publish an anonymous accusation derogatory to a candidate in a political campaign. The state court balanced two U.S. Supreme Court cases—*Burson v. Freeman*<sup>20</sup> and *Talley v. California*<sup>21</sup>—which reached opposing results.

In *Burson*, the U.S. Supreme Court upheld a statute that prohibited election day solicitation of votes within 100 feet of a polling place. The Court explained that "a facially content-based restriction on political speech in a public forum. . . must be subject to exacting scrutiny: The State must show that the regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end."<sup>22</sup> The court felt the election day restriction met that test.

The U.S. Supreme Court in *Talley*, on the other hand, with facts more similar to *Petersilie*'s situation, applied the same standard, and concluded that the law prohibiting the distribution of anonymous pamphlets and leaflets on public matters of importance was void because "it would tend to restrict freedom to distribute information and thereby freedom of expression."<sup>23</sup>

***Justice Willis Whichard still wishes some controls could be placed on negative campaigning.***

The N.C. Supreme Court, faced with these and other U.S. Supreme Court opinions, concluded that the North Carolina law fell between the *Burson* and *Talley* decisions. "In the context of a campaign it is necessary for accusers of candidates to identify themselves, even if they speak the truth, in order for the electorate to be able to assess the accusers' bias and interest. . . . This kind of information is required in order for the electorate to determine what weight, if any, should be given the accusation, even if it is true. The source of the charge is as much at issue as the charge itself."<sup>24</sup> Therefore, the court held that the statute was narrow enough to withstand free speech scrutiny.

Justice Burley Mitchell, the lone dissenter in the case, wrote, "The decision of the majority to uphold this flagrant violation of the First Amendment opens a sad chapter in the history of this Court. I can only pray that this chapter and the inevitable harm that will result to this State's people and their government will be brief."<sup>25</sup>

He stated, "I have grave reservations as to whether, consistent with the First Amendment, any public purpose can justify such a limitation on pure political expression. . . . The right to anonymity has long been recognized in this country as a necessary component of the constitutional rights of free speech and a free press."<sup>26</sup>

Indeed, Justice Mitchell's dissent is consistent with North Carolina's early history and recent North Carolina Supreme Court decisions affecting other speech-related issues.<sup>27</sup> This state has stopped punishing invasion of privacy claims such as publication of private facts<sup>28</sup> and placing a person in a "false light."<sup>29</sup> North Carolina was the first state court to require public officials to meet a high standard of proof in libel cases.<sup>30</sup>

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***[I]n for a calf is not always  
in for a cow. . . . we do not  
thereby hold that the state  
may not in other, larger  
circumstances, require the  
speaker to disclose its  
interest by disclosing its  
identity.***

— JUSTICE RUTH BADER GINSBURG  
U.S. SUPREME COURT

North Carolina refused to ratify the U.S. Constitution because it lacked a freedom of speech and press clause. The *Petersilie* decision ran counter to the state's early determination to allow free flow of debate. As the late U.S. Supreme Court Justice Hugo Black wrote in *Talley*:

Anonymous pamphlets, leaflets, brochures and even books have played an important role in history. Persecuted groups and sects have been able to criticize oppressive practices and laws either anonymously or not at all. The press licensing law of England, enforced against the Colonies, was due in part to the knowledge that exposure of the names of printers, writers and distributors would lessen the circulation of literature critical of the government. The old seditious libel cases in England show the lengths to which government had to go to find out who was responsible for books that were critical of the rulers. . . .<sup>31</sup>

Before the Revolutionary War, colonial patriots frequently had to conceal their authorship or distribution of literature that easily could have brought down on them prosecutions by English-controlled courts. During that period the Letters of Junius were written to urge the colonists to rid themselves of English rule. The identity of their author is unknown to this day. Even the *Federalist Papers*, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes.

The anonymous but truthful political speech law of North Carolina harkens back to the English practice of punishing those individuals who distributed true information without identifying themselves. Had the authors of the *Federalist Papers* circulated their material in North Carolina today, they could now be languishing in jail.

The United States Supreme Court decision in *McIntyre v. Ohio* clearly calls into question the validity of the North Carolina statute. But the North Carolina statute is more narrowly drawn. And the high court left the door open a crack. As U.S. Supreme Court Justice Ruth Bader Ginsburg wrote in her concurring opinion in *McIntyre*:

[I]n for a calf is not always in for a cow. . . . we do not thereby hold that the state may not in other, larger circumstances, require the speaker to disclose its interest

by disclosing its identity. Appropriately leaving open matters not presented by McIntyre's handbills, the court recognizes that a State's interest in protecting an election process 'might justify a more limited identification requirement.'<sup>32</sup>

So the Supreme Court may have left the state some room to regulate political speech. But the court's overall ruling is a high hurdle for any state that wishes to constrain First Amendment rights to achieve that purpose. ☐☐

## FOOTNOTES

<sup>1</sup> *McIntyre v. Ohio Elections Commission*, 115 S.Ct. 1511 (1995).

<sup>2</sup> David S. Broder, *The Washington Post*, editorial, May 7, 1995, p. 7A.

<sup>3</sup> *State v. Petersilie*, 334 N.C. 169, 432 S.E.2d 832 (1993).

<sup>4</sup> "Questions about Regulating Negative Electioneering," Report by William R. Gilkeson, Staff Attorney, General Research Division, Legislative Services Office, December 1, 1994, p. 2.

<sup>5</sup> Senate Bill 1040. The bill was packaged with a House bill setting term limits for legislators (HB 12) and voted down in the Senate.

<sup>6</sup> The First Amendment of the U.S. Constitution states, "Congress shall make no law . . . abridging the freedom of speech, or of the press. . . ."

<sup>7</sup> Article I, Section 14 of the North Carolina Constitution states, "Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse."

<sup>8</sup> *Petersilie*, note 3 above, at p. 184.

<sup>9</sup> N.C. General Statute 163-274(7).

<sup>10</sup> Ohio Code, Section 3599.09(A).

<sup>11</sup> Gilkeson, note 4 above.

<sup>12</sup> The statute was used in 1986 to force the resignation of Bill Lashley, then a Burlington City Councilman, from office. Lashley had distributed an unsigned flier that said "Alamance County can't afford four more years of John Freeman wasting the taxpayer's money." Freeman was a Democratic county commissioner who was defeated in the November, 1984 election. Lashley also distributed other anonymous material in 1985 against other candidates. Then District Attorney George Hunt "claimed that Lashley was a danger to American society because he was trying to get people into office who held the

same views he did." See "In defense of free speech, tax protestors, and Bill Lashley," *The Alamance News*, Dec. 8, 1993, p. 2.

<sup>13</sup> Charlie Peek, "Judge Orders Petersilie to 7 Weekends in Jail," *Winston-Salem Journal*, Winston-Salem, N.C., Oct. 20, 1990, p. 17.

<sup>14</sup> Saul Chase says that while he can understand the Supreme Court's ruling in favor of true but anonymous political speech, it's important to note that not all of the material circulated against him was true. For example, in the letter mailed anonymously along with the *Washington Post* article, the author writes, "If he wins, he will have the power to take away any Christian influence from the Town employees, buildings, etc. . . . It can be assumed that Chase allegedly has a goal to wipe out Christian influence from our town, take it away from the very God-fearing Christian people who helped put him in office." Chase says he had neither the power nor the intent to wipe out Christian influence in Boone. Ultimately, Chase was vindicated at the polls. He ran for the Town Council again in 1994 and led the ticket. He now is mayor pro tempore of Boone.

<sup>15</sup> Alamance County District Court Division 92 CR 10807.

<sup>16</sup> Noah Bartolucci, "Candidate's Ex-Wife Charged in Flier Case in Orange DA's Race," *The News & Observer*, Raleigh, N.C., May 20, 1994, p. B6. Russell is seeking a reversal of her conviction in light of the McIntyre case. So far, her petitions have been denied, most recently on July 12, 1995, by the N.C. Court of Appeals (P95-269).

<sup>17</sup> Marc Barnes, "Richardson Attack Cut Short by Judge," the *Fayetteville Observer-Times*, Fayetteville, N.C., Dec. 20, 1994, p. 1A.

<sup>18</sup> Author's personal knowledge, based on a public seminar she participated in for media and elections officials in Shelby.

<sup>19</sup> Ben Stocking, "Some think law's a gag," *The News & Observer*, Raleigh, N.C., Aug. 3, 1992, p. A1.

<sup>20</sup> 504 U.S. 191, 112 S.Ct. 1846 (1992)

<sup>21</sup> 362 U.S. 60 (1960).

<sup>22</sup> *Burson* at p. 1851.

<sup>23</sup> *Talley* at p. 65.

<sup>24</sup> *Petersilie* at p. 187.

<sup>25</sup> *Petersilie* at p. 207.

<sup>26</sup> *Petersilie* at p. 199.

<sup>27</sup> For more on the court's decisions affecting speech-related issues, see Katherine White, "The N.C. Supreme Court at 175: Slow on Civil Rights But Fast on Free Speech?" *North Carolina Insight*, Vol. 15, Nos. 2-3 (September 1994), pp. 106-111.

<sup>28</sup> *Hall v. Post*, 323 N.C. 259, 372 SE2d 711 (1988).

<sup>29</sup> *Renwick v. News & Observer Publishing Co.*, 310 N.C. 312, 312 S.E. 2d 405 (1984).

<sup>30</sup> *Ponder v. Cobb*, 257 N.C. 281, 126 S.E.2d 67 (1962).

<sup>31</sup> *Talley v. California* at pp. 64-65 (footnotes omitted).

<sup>32</sup> *McIntyre v. Ohio Elections Commission*, note 1 above.



# FROM THE CENTER OUT

## *The Evolution of Party Politics: The March of the GOP Continues in North Carolina*

by Mebane Rash Whitman

*In March, the Center released the tenth edition of Article II: A Guide to the N.C. Legislature. Article II is a comprehensive guide to the 1995–96 General Assembly, containing profiles of each member, effectiveness rankings, demographic trends since 1975, and committee assignments. The latest edition reveals three major trends: (1) the significant gains of the Republican Party, which now holds 92 of 170 seats in the legislature; (2) women have more power in the 1995–96 General Assembly because they secured plum committee chairs; and (3) African-American legislators lost the speakership and powerful committee chairs, so their influence has declined.*

**T**he importance of the November 1994 elections in North Carolina should not be underestimated. Newspaper headlines heralded “Tarheel Revolution,” and election results surprised even Republicans.<sup>1</sup> The Grand Old Party’s gains in elections at all levels of government—national, state, and local—were grand indeed. So grand that some think it could portend a 21st century of Republican dominance in North Carolina state politics.

Information about the gains of the GOP in North Carolina is available in *Article II: A Guide to the 1995–96 N.C. Legislature*, a report released by the N.C. Center for Public Policy Research in March 1995. Other important trends also are apparent from the guide: women have more power in the 1995–96 General Assembly, while African Americans have less; there are many newcomers in the 1995–96 General Assembly, but not a record number; and the number of retirees in the legislature is up, while the number of lawyers continues to decline.

### **A Reactionary, Revolutionary, or Evolutionary Election?**

**A**nalysts disagree about how to frame the recent electoral wins of the GOP in North Carolina. Were the wins *reactionary*, that is, were voters reacting in an angry anti-incumbent, anti-Democrat, anti-tax, anti-big government manner? Were the wins *revolutionary*, a changing of the guard in terms of which party governs the state—from Democrats, whose party has governed the state for almost all of the 20th century, to Republicans, who hope to govern much of the 21st century? Or were they *evolutionary*, a single step in the long march of the Republican Party toward true competitiveness in a two-party state?

The results of most elections are to some extent reactionary, but 1994 was not a run-of-the-mill election. “Voters . . . revolted against Democratic-dominated national politics that seemed corrupt, divisive and slow to address the needs of ordinary citizens,” writes Stanley Greenberg, pollster for President Bill Clinton, in *The Polling Report*.<sup>2</sup> “Many voted to change a government that spends too much and accomplishes too little, and to shift the public discourse away from big government solutions.” Pollsters brought together after the election “agreed that a lot of votes were cast Nov. 8 in opposition to something—whether it was an individual, or the party in power, or even more broadly, the idea of government intruding into people’s lives.”<sup>3</sup>

Hal Hovey, former Illinois budget director, analyzed voters’ desire for change in the 1994 elections. In *State Policy Reports*, he writes, “If voters

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*Mebane Rash Whitman is the Center’s policy analyst.*



Karen Tan

**N.C. House Speaker Harold Brubaker (R-Randolph) was among the big winners in the 1994 GOP landslide.**

were unhappy with their lives and disillusioned with government, they may have concluded that change was desirable—not change in a particular direction, just change. This theory is supported by a poll showing that 53% of respondents explained election results as indicating ‘people wanted to see a change in Washington,’ which far outdistanced ‘voting against the President and his agenda’ (19%), and ‘because people wanted a more conservative Congress’ (12%).” Once voters decide they want change for change’s sake, according to this analysis, state policy does not matter. “It’s time for a change threatens incumbents regardless of what they do, so they can’t respond to the mandate except by finding their next job.”

Ran Coble, executive director of

the N.C. Center for Public Policy Research, uses two television-based images to describe the reactionary nature of the 1994 election. “One is the Nike athletic shoe commercial image of ‘Just Do It.’ As one voter put it, ‘Just do it. Do it now, do it quickly, just do it.’ The problem is, they disagree over what ‘it’ is. Nevertheless, a big theme of the last elections was change, since more than two-thirds of independent voters believe the country is on the wrong

track. People want *change* and a government that works well—one that delivers services more efficiently and for less money. The second image that may capture the 1994 electorate is that of the television remote control, as in ‘I believe I’ll change stations—or political parties. And if Republicans don’t produce, I’ll switch

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***“Voters this year revolted  
against Democratic-  
dominated national politics  
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address the needs of  
ordinary citizens.”***

—STANLEY GREENBERG  
POLLSTER FOR PRESIDENT BILL CLINTON,  
IN *THE POLLING REPORT*

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**"It was a very big victory for the Republican Party. We may well be looking at the complete political realignment of the once Democratic South to the now solidly Republican South."**

—CHARLES BULLOCK  
A PROFESSOR AT THE UNIVERSITY OF  
GEORGIA WHO STUDIES POLITICS  
IN THE SOUTH

again in 1996." The long-term impact of the 1994 elections is unknown until the results of the next few elections can be compared.

The Republican Party hopes the 1994 elections represented a permanent revolution, and some analysts believe their hopes were realized. Prior to the election, Tom Vass, in an essay published in *The Charlotte Observer*, proclaimed, "If . . . the citizens of this state should happen to rouse themselves to political fury in order to deal the Democrats a death blow, it would be to a political oblivion that the Democrats richly deserve."<sup>5</sup> Charles Bullock, a professor at the University of Georgia who studies politics in the South, says, "It was a very big victory for the Republican Party. We may well be looking at the complete political realignment of the once Democratic South to the now solidly Republican South." He cites North Carolina as an example of a state that's moving back towards a one-party system, this time controlled by the Republicans.

An editorial in *The Chapel Hill Herald* noted that "[f]ar from a ripple, the Nov. 8 election was a revolution."<sup>6</sup> Former Governor Jim Martin, in an article published in *The Charlotte Observer* shortly after the election, wrote, "In the political story of the decade, voters swept out Democrat incumbents all across America. Power was purged. . . . Nowhere was this more dramatic than in North Carolina, where the House was captured outright for the first time since Reconstruction."<sup>7</sup>

In 1987, the N.C. Center for Public Policy Research released its report *The Two-Party System in North Carolina: Do We Have One? And What Does It Mean?* The report found that, "A state dominated by Democrats since the turn of the cen-

tury, North Carolina since 1966 has been transformed into a state with a new political balance. Democrats still dominate politics at the state and at the local level, but Republicans regularly are winning the big elections—and lately, more of the little ones, too. North Carolina has become a two-party state in theory and in fact. The evidence of the shifting of political winds abounds."<sup>8</sup>

Thad Beyle, a professor of political science at the University of North Carolina at Chapel Hill, also thinks that the Republican gains in November were evolutionary, and says that none of this is surprising. "This was all happening prior to Watergate. In the late 1960s, after the Democrats passed the Civil Rights Act and the Voting Rights Act, the Republican Party began to gain momentum. But Watergate undid Republican gains in the South, and in 1976, North Carolinians supported fellow Southerner Jimmy Carter, the Democratic presidential nominee from Georgia," says Beyle. "It took the Reagan/Bush era to instill confidence in the Republican party again." In 1973, there were 50 Republican legislators in North Carolina. After Watergate, there were ten. When Reagan won a second term in 1984, the Republicans again held 50 seats in the 1985 state legislature. In 1995, they increased that number to 92.

"This potentially was one of the most significant elections," says Beyle. He notes several reasons for Republican gains. Low African-American turnout made it difficult for Democratic candidates

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**"We are not on the precipice of shifting to a one-party Republican South. The two-party system is an ingrained institution in national politics. It would be very hard for the Republicans to establish a monopoly like the Democrats enjoyed. . . ."**

—DEWEY GRANTHAM  
PROFESSOR EMERITUS AT  
VANDERBILT UNIVERSITY AND  
AUTHOR OF *THE SOUTH IN  
MODERN AMERICA*

# *Polarization Called Key to '94 Elections*

## *Pollsters Challenge Common Assumptions*

BY HOWARD GOLDBERG, THE ASSOCIATED PRESS

**NEW YORK**—Forget just about everything you thought you knew about the 1994 midterm elections.

The pollsters have done a post-mortem, and they say a lot of the conventional wisdom just doesn't hold up.

For instance, conventional wisdom says the Republican sweep was simply a vote against President Clinton.

The fact is, among those who say they voted for Clinton in 1992, only 2 percent say they cast ballots for Republicans last week as a way of voting against Clinton, according to pollsters.

"I think it's too simple to say people hate Bill Clinton," CBS pollster Kathleen Frankovic said. Most said Clinton was not a factor in their vote, but "for voters who were making the Clinton connection, it was a decidedly negative connection."

Exit polls conducted by Voter News Service, a cooperative effort of ABC, CBS, CNN, NBC, and The Associated Press, found 45 percent approving of Clinton's job performance. That is not markedly different from the ratings Presidents Carter and Reagan got in midterm elections, though Clinton's approval ratings were much lower in some Western and Southern states.

More conventional wisdom: There has been a huge party realignment in the United States.

Spread across the entire population of U.S. voters, the realignment is a matter of a few percentage points, the kind of narrow margin that is hard to measure because of the imprecision of polling.

What the polls made clear was how preferences shifted Republican among certain groups—men, whites, independents, 25–29-year-olds—while Democratic identification deepened among some traditionally Democratic groups.

"The key word here is polarization," said Warren Mitofsky, who conducted exit polls for some major newspapers.

The pollsters, brought together Thursday by the American Association for Public Opinion Research, agreed that a lot of votes were cast Nov. 8 in opposition to something—whether it was an individual, or the party in power, or even more broadly, the idea of government intruding into people's lives.

Still more conventional wisdom: Democrats lost because black turnout was down from 1992.

The 1994 election should be compared with the last midterm election, and minority turnout rose compared with 1990, Mitofsky said. The Democrats lost because they did miserably among white men.

Conventional wisdom: All politics is local, as former House Speaker Thomas P. "Tip" O'Neill used to say.

But in fact, Republican voters, whose party had a national platform called the Contract with America, indicated they were voting on national issues, while many Democratic candidates were running away from Clinton.

Conventional wisdom: Pollsters did a poor job of predicting how people would vote.

Sure, Republicans won landslides in some states where pollsters called toss-ups. And even Louis Harris and Associates gave New York Gov. Mario Cuomo a lead of more than 6 points on the eve of Cuomo's downfall. But most pollsters say that so few Americans vote these days, their main problem is figuring out who will turn out.

"It's harder to predict who will vote than how they will vote," said Humphrey Taylor, head of the Harris poll.

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*Reprinted by permission from The Associated Press.*

*Source: The News and Observer, Raleigh, N.C., Nov. 11, 1994, p. A6.*



**“ . . . [M]any North Carolina whites have lost their commitment to the Democratic party but have not yet transferred their loyalty to the Republicans.”**

REP. PAUL LUEBKE (D-DURHAM)

to win their elections. “And, the losses of the Democrats are tied to the decision to create minority race districts—the effect was to strip nearby districts of Democratic support.<sup>9</sup> Also, voters in North Carolina are increasingly conservative. We’ve become a destination state for retirees; businesses that have moved to this state have brought with them employees who tend to vote Republican; and students since the Reagan years are increasingly more conservative, more Republican.” So Beyle is cautious when making long-term predictions about the significance of the gains. He says the 1996 elections will determine whether the 1994 Republican gains were reactionary, revolutionary, or evolutionary. “If Republican gains are stable or increase, that will validate the importance of the 1994 elections.”

Others assert that the gains of Republicans in November are being overestimated, not underestimated. In his book, *Tar Heel Politics*, Rep. Paul Luebke (D-Durham) writes that dealignment—no realignment—characterizes the tendencies of voters in North Carolina. “The gradual weakening of Democratic loyalties by white Southerners is known as dealignment. Dealignment means that many North Carolina whites have lost their commitment to the Democratic party, but have not yet transferred their loyalty to the Republicans.”<sup>10</sup> Luebke asserts that Democratic politicians tend to act like generalists, failing to assert specific taxation and policy programs, and that they need to “draw clear distinctions between Democrats and Republicans. If dealigned white Tar Heel voters, typically registered Democrats who lack strong allegiance to ei-

ther political party, cannot easily see how they directly benefit from state government policies that are passed by the Democratic majority, they will vote against the Democrats.”<sup>11</sup> Luebke says, “That’s what happened in the 1994 election.” It is one of the reasons he has pushed hard in the 1995 session for repeal of the sales tax on food.

Dewey Grantham, professor emeritus at Vanderbilt University and author of *The South in Modern America*, comments, “We are not on the precipice of shifting to a one-party Republican South. The two-party system is an ingrained institution in national politics. It would be very hard for the Republicans to establish a monopoly like the Democrats enjoyed, even though they appear to be the dominant party.”

### **Republican Party Seeks Permanent Shift**

As the Center’s 1987 report found, it is hard to downplay the significance of Republican gains in North Carolina over the past 30 years. The Republican campaign started at the national level. Before 1968, Republicans won only one presidential contest in North Carolina. Since 1968, Republican presidential candidates have won a plurality in North Carolina in all but one election, in 1976. (See Table 1 on pp. 86–87.) “The fall of the South as an assured stronghold of the Democratic party in presidential elections is one of the most significant developments in modern American politics,” write Earl and Merle Black in their book *The Vital South: How Presidents Are Elected*.<sup>12</sup>

In 1968, both U.S. Senators were Democrats. In 1972, Republican Jesse Helms won his first U.S. Senate race. He still holds that seat and Republican Lauch Faircloth holds the other North Carolina seat in the U.S. Senate. In November 1994, North Carolinians elected 12 members to the United States

**Table 1. Election Results in North Carolina, 1968–1992****PRESIDENTIAL VOTING RESULTS\***

<b>Year</b>	<b>Democrat</b>	<b>Vote in N.C.</b>	<b>%</b>	<b>Republican</b>	<b>Vote in N.C.</b>	<b>%</b>
1968	Hubert Humphrey	464,113	29.2	Richard Nixon	627,192	39.5
1972	George McGovern	427,981	28.6	Richard Nixon	1,043,162	69.8
1976	Jimmy Carter	927,365	55.3	Gerald Ford	741,960	44.2
1980	Jimmy Carter	875,635	47.2	Ronald Reagan	915,018	49.3
1984	Walter Mondale	824,287	37.9	Ronald Reagan	1,346,481	61.3
1988	Michael Dukakis	890,167	41.7	George Bush	1,237,258	58.0
1992	Bill Clinton	1,114,042	42.7	George Bush	1,134,661	43.4

**U.S. SENATE VOTING RESULTS**

<b>Year</b>	<b>Democrat</b>	<b>Vote</b>	<b>%</b>	<b>Republican</b>	<b>Vote</b>	<b>%</b>
1968	Sam Ervin	870,406	60.6	Robert Somers	566,934	39.4
1972	Nick Galifianakis	677,293	46.0	Jesse Helms	795,248	54.0
1978	John Ingram	516,663	45.5	Jesse Helms	619,151	54.5
1980	Robert Morgan	887,653	49.7	John East	898,064	50.3
1984	Jim Hunt	1,070,448	48.1	Jesse Helms	1,156,768	51.9
1986	Terry Sanford	823,662	51.8	James Broyhill	767,668	48.2
1990	Harvey Gantt	981,573	47.4	Jesse Helms	1,088,331	52.6
1992	Terry Sanford	1,194,015	46.3	Lauch Faircloth	1,297,892	50.3

\* Third party candidates are omitted from this table. In 1968, George C. Wallace received 496,188 votes—31.2 percent of the North Carolina vote. In 1980, John B. Anderson received 52,800 votes—2.9 percent of the vote. In 1992, Ross Perot received 357,864 votes—13.7 percent of the North Carolina vote.

*Source: The North Carolina Manual, Office of the Secretary of State.*

House of Representatives: eight were Republicans, four were Democrats. The last time the Republicans held a majority in the N.C. Congressional Delegation was in 1869, when they held seven of ten seats. In 1867, Republicans held all seven seats.

In 1972, Jim Holshouser became the first Republican governor in North Carolina elected in the 20th century. Republican Jim Martin was elected governor in 1984, and he served two terms.

The 1994 election results provided the GOP with significant gains in the state legislature (+ 39 seats) and at the local level (+ 56 seats on boards of county commissioners). Tar Heel Republicans in the Senate picked up 13 seats (from 11 to 24), gaining more seats than in any other state senate in the country. In the North Carolina Senate, Democrats hold 26 of 50 seats—a vulnerable majority. On the House side, North Carolina Republicans

**Table 1, continued**

**NUMBER OF N.C. DELEGATES TO U.S. HOUSE, BY PARTY**

<b>Year</b>	<b>Total # of Delegates</b>	<b>Democrat</b>	<b>Republican</b>
1968	11	8	3
1970	11	7	4
1972	11	7	4
1974	11	7	4
1976	11	9	2
1978	11	9	2
1980	11	9	2
1982	11	9	2
1984	11	6	5
1986	11	8	3
1988	11	8	3
1990	11	8	3
1992	12	8	4
1994	12	4	8

**GUBERNATORIAL VOTING RESULTS**

<b>Year</b>	<b>Democrat</b>	<b>Vote</b>	<b>%</b>	<b>Republican</b>	<b>Vote</b>	<b>%</b>
1968	Bob Scott	821,233	52.7	Jim Gardner	737,075	47.3
1972	Hargrove "Skipper" Bowles	729,104	48.7	Jim Holshouser	767,470	51.3
1976	Jim Hunt	1,081,293	65.7	David Flaherty, Sr.	564,102	34.3
1980	Jim Hunt	1,143,143	62.3	Beverly Lake, Jr.	691,449	37.7
1984	Rufus Edmisten	1,011,209	45.6	Jim Martin	1,208,167	54.4
1988	Bob Jordan	957,687	43.9	Jim Martin	1,222,338	56.1
1992	Jim Hunt	1,368,246	52.7	Jim Gardner	1,121,955	43.2

picked up 26 seats (from 42 to 68), securing the third largest gain in any state house after New Hampshire (+ 28 seats) and Washington (+ 27 seats).<sup>13</sup> With 68 of 120 seats, Republicans controlled the North Carolina House for the first time this century. "We had hoped to pick up 10 seats, recovering a few previously held by Republicans, for a total of 52; a new record, but short of 61 for a majority. Without losing a single Republican seat, 26 were taken from

the Democrats," writes former Governor Jim Martin.<sup>14</sup> One commentator, in the magazine *Campaigns & Elections*, writes, "[T]he GOP's seizure of the . . . North Carolina House is the culmination of years of steady gains by state legislative Republicans."<sup>15</sup> Overall, Republicans hold 92 of the 170 seats in the General Assembly.

And the march may not be over. Tres Glenn, former political director for the Republican Party in

North Carolina, predicts that this surge of Republican legislators has not peaked. "In the districts where Senator Jesse Helms, Governor Jim Martin, and President George Bush have run well, the Republican Party captured all but a handful of seats in 1994. By and large, in those districts, if we didn't get the seat, it was because we didn't contest the election." For example, in the 71st House district, Joe Mavretic lost in the Democratic primary, but Republicans didn't have a candidate running for that seat. "In the future, we will definitely contest those 10 seats," says Glenn.

Wayne McDevitt, chair of North Carolina's Democratic Party, thinks GOP gains will be hard to come by. "Voters want government to work better. Given the Republican leadership in the North Carolina House, there will be room for significant gains of the Democratic Party in 1996," says McDevitt.

Al Adams, a long-time Democratic Party activist, former legislator, and lobbyist, says, "It's much too early to tell how significant the November elections were. We're only three months into Republicans controlling the House. But, this is not a permanent 100- or 50-year change. The Democrats are more cohesive than ever."

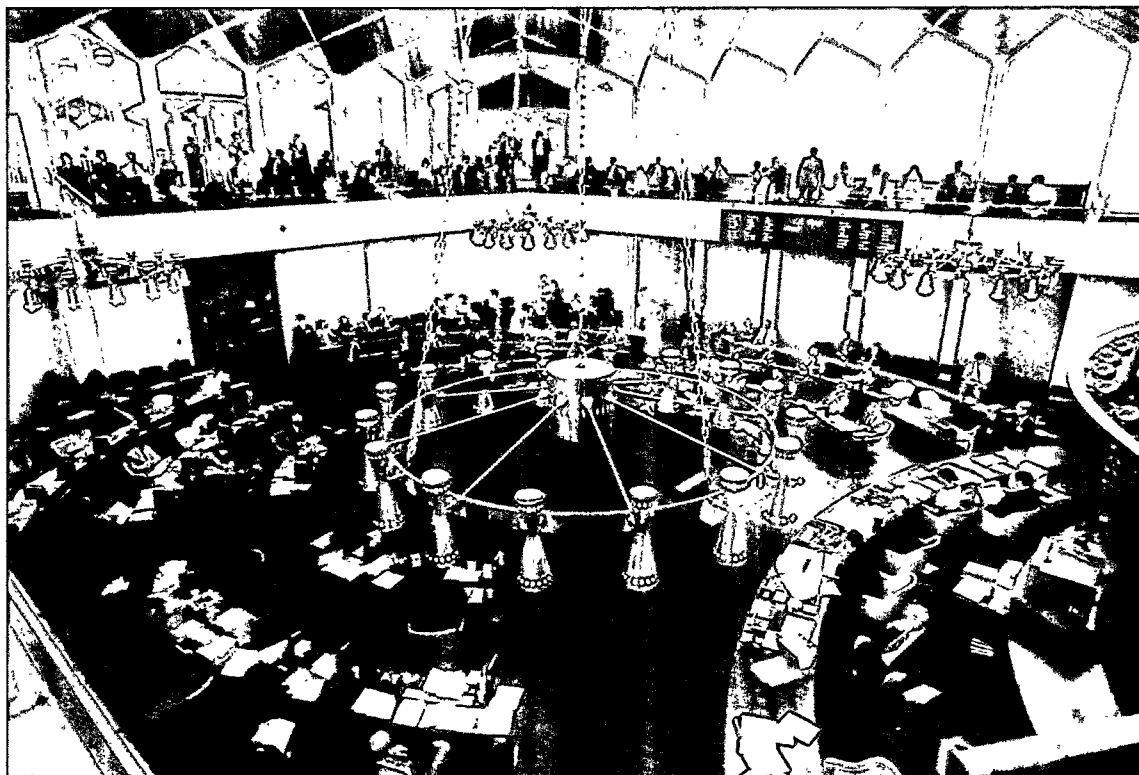
The judicial system in North Carolina, once devoid of Republicans, now has Republican judges

at all levels—from the Supreme Court down to district courts across the state. "After winning just three statewide judicial races this century, Republicans won all 12 statewide races they contested this year,"<sup>16</sup> writes Joseph Neff of *The News & Observer* in Raleigh. Republicans now hold two seats on the North Carolina Supreme Court, two seats on the North Carolina Court of Appeals, six Superior Court seats, and 15 District Court seats.

On the local level, Republicans are making key gains as well. In 1992, Republicans controlled only 27 boards of county commissioners; after the November elections, they control 42. (See Table 2 on p. 89.)<sup>17</sup> Of the 17 commissions where party control changed, 16 opted for Republican leadership. In 1992, Republicans held 29.2 percent of the seats on county commissions in North Carolina and Democrats held 70.8 percent. Republicans now hold 38.8 percent of the seats; Democrats hold 61.3 percent.

Republican voter registration is also on the rise. (See Table 3 on p. 91.) Over the last 10 years, Republican registration has substantially increased. In 1984, only 838,631 (25.6 percent of registered voters) North Carolinians were registered Republican; by 1994, the number of Republicans had increased to 1,191,878 (32.8 percent). At the same time, Democratic registration has declined:

***A view of the N.C. Senate Chamber, still controlled by Democrats—but barely.***



**Table 2. 1994 Election Results for Boards  
of County Commissioners,\* by Party, in N.C.**

	1992	1994
# of Republicans	161	217
% of Republicans	29.2%	38.8%
# of Boards of County Commissioners Controlled by Republicans	27	42
# of Democrats	390	343
% of Democrats	70.8%	61.3%
# of Boards of County Commissioners Controlled by Democrats	73	58

\* There are 100 boards of county commissioners in North Carolina.

Source: The North Carolina Association of County Commissioners,  
P. O. Box 1488, Raleigh, N.C. 27602  
(919)715-2893

2,289,061 North Carolinians (70.0 percent) were registered Democrats in 1984; only 2,129,159 (58.6 percent) were registered in 1994.<sup>18</sup>

A poll conducted for a pro-business nonprofit called N.C. FREE (Forum for Research and Economic Education) found continued erosion in the number of North Carolinians who identify themselves as Democrats. "Those identifying with the Democratic Party dropped from 43 to 33 percent during the past four years, while Republican identification has remained at about 41 percent."<sup>19</sup>

The Republican Party's intention to effect a permanent realignment in North Carolina also is evidenced by their recruitment of minority candidates. Just as the South was once thought to be exclusively controlled by the Democrats, African Americans have predominantly voted Democratic and run for office as Democrats. However, in the 1995-96 session of the General Assembly, there are three African-American Republican legislators—Sen. Henry McKoy (R-Wake), Rep. Larry Linney (R-Buncombe), and Rep. Frances Cummings (R-Robeson). Rep. Cummings ran as a Democrat, but switched parties after the election. She is the first female African-American Republican ever to serve in the N.C. General Assembly. In the journal *South-*

*ern Exposure*, Ron Nixon writes, "Across the South a small but growing number of African Americans, left disenfranchised and alienated by the Democrats, are joining the Republican Party. . . . Today's black Republicans express deeply conservative values and ideas."<sup>20</sup>

### The Republican Contract

**R**epublican gains at the national, state, and local level, in judicial races, and in registering voters are unprecedented in this state. The GOP presented voters with "A New Contract, by the People for the People of North Carolina." (See p. 90.) The eight-point document proposes an income-tax cut, state budget spending cuts, an end to the cap on the state's prison population, welfare reform, education governance changes, a citizen initiative and referendum process, veto power for the Governor, term limits, and changes in legislative procedure.

A potential problem for the Republicans is the shaky marriage between the Christian Right and the more moderate Republicans, says Charles Bullock. "To the extent that they beat up on each other instead of on the Democrats, the Democrats may find they have a new lease on life in 1996." How-

# A New Contract

by the People, for the People

## **Republican Reform Agenda**

Republican candidates for election to the North Carolina General Assembly in the general election to be held on November 8, 1994, have ratified a New Contract with the People of North Carolina, to be introduced as legislation in the 1995 session of the North Carolina General Assembly.

**A REAL INCOME TAX CUT** of not less than \$200 million in 1995 for the working people of North Carolina and the rejection of any new taxes.

**REAL SPENDING REFORM** that includes the passage of the Taxpayers Protection Act which limits the future growth of state spending to the rate of inflation plus an adjustment for population growth and creates an Emergency Reserve Fund and prohibits unfunded state mandates.

**REAL CRIMINAL JUSTICE REFORM** that removes the cap on the state's prison population; that requires the construction of additional no-frills prison units to meet existing demands; and that examines limits to judicial appeals by death row inmates.

**REAL WELFARE REFORM** that denies benefits to unwed mothers and fathers who fail to cooperate in establishing the parenthood of children born out of wedlock; that extends Workfare programs to cover all able bodied adult recipients of social services benefits; and that provides for a Learnfare program to encourage youthful welfare dependents to take advantage of public education opportunities so that they can become productive adult citizens.

**REAL EDUCATION REFORM** that grants effective control of public schools to local boards of education; that reduces the responsibilities and size of the State Department of Public Instruction bureaucracy; and that earmarks savings realized by this restructuring for use by local school boards to pay for textbooks, supplies, and other classroom materials.

**REAL EMPOWERMENT REFORM** that enables citizens of North Carolina, through voter initiative, to place issues on the statewide ballot as constitutional amendments.

**REAL GOVERNANCE REFORM** that calls for a 1995 popular referendum on granting veto power to the Governor; and that establishes term limits for members of the N.C. General Assembly and the state's congressional delegation.

**REAL LEGISLATIVE REFORM** that upon petition of a majority of members of the House or Senate, requires that legislation held in committee be brought to the floor of that body for a vote by its members.

**Table 3. Statewide Voter Registration by Party, 1974–1994**

Year	Total Registration	Democrats	% of Voters	Republicans	% of Voters
1974	2,279,646	1,654,304	72.6%	537,568	23.6%
1984	3,270,933	2,289,061	70.0%	838,631	25.6%
1994	3,635,875	2,129,159	58.6%	1,191,878	32.8%

Source: The State Board of Elections; *The Two-Party System in North Carolina: Do We Have One? What Does It Mean?* N.C. Center for Public Policy Research, December 1987.

ever, if Republicans successfully move their agenda and gain the additional seats they anticipate in 1996, the GOP's dominance in North Carolina will not be just a blip on the radar screen in the battle for political control of the Old North State.

"It's no surprise that the Democrats have lots of work to do," says McDevitt, the state Democratic Party chairman. "In the 1994 elections, the Democrats nationally allowed the Republicans to define the issues. In 1996, we will define what it is to be a Democrat in North Carolina. We will articulate our message clearly." Will the Democrats have their own contract in 1996? "Unlikely," McDevitt notes. "People are concerned about the issues—children,

public safety, education, jobs, cutting taxes for working families. The Democrats have a very good record of success on those issues. Voters want you to tell them what you're gonna do, do it, and then tell them what you did. That's our contract. That's what we'll do in 1996."

Keith Miles writes in *Southern Exposure*, "Both parties have tremendous challenges before them: the Republicans in translating a seductive philosophy into concrete policy without alienating their new constituency [white Southerners]; the Democrats in devising and articulating a new platform that recognizes and addresses the current drift to the right without losing their liberal and minority base.

What happens between now and the 1996 elections will determine whether there will be real realignment in the South."<sup>21</sup>

### Women Increase Power

**E**ven though women lost three seats in the November elections, they increased their power this session when they were given the plum committee chairs in both the N.C. House and Senate for the first time. There were only two women legislators in



**Rep. Frances Cummings (R-Robeson), one of three African-American, Republican legislators.**

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***"What happens between now and the 1996 elections will determine whether there will be real realignment in the South."***

—KEITH MILES,  
IN *SOUTHERN EXPOSURE*

1971; now there are 28. Nationally, North Carolina ranks 36th in terms of the number of women serving in its legislature.<sup>22</sup>

Although last session a record 31 women served in the legislature, women this session chair some of the most powerful committees. For example, Democrats selected Sen. Beverly Perdue (D-Craven) to co-chair the Senate Appropriations Committee, while Republicans chose Rep. Theresa Esposito (R-Forsyth) to co-chair the House Appropriations Committee. In addition, Rep. Connie Wilson (R-Mecklenburg) co-chairs the House Finance Committee, through which all major tax cut legislation passed. In the Center's biennial survey of legislators, the

Appropriations and Finance Committees again were named the most powerful in each house, in voting by all legislators, lobbyists, and capital news correspondents. (See Table 4 on p. 93.) Overall, women chaired 15 committees and subcommittees this session. Women also secured other important leadership posts. Rep. Carolyn Russell (R-Wayne) is the Speaker Pro Tempore of the House, while Sen. Betsy Cochrane (R-Davie) is Minority Leader in the Senate.

"Chairing the money committees in the General Assembly is definitely a political stepping stone. The next step up for women could be the Speaker's Office and President Pro Tem of the Senate. Or, you may see them choosing to pursue elected positions in the executive branch—Lieutenant Governor and Governor, for example," says the Center's Coble. "The first woman to step into one of these positions is very likely to come from this group of women legislators."

Sen. Perdue says, "Women have more clout this session than in 1993-94, but it is not just because they are women. It's all about hard work. With the tough policy issues and the incredible amount of fiscal responsibility facing legislators, positions are awarded based on individual accomplishments and commitment. Women have to be as good as or better than their counterparts."



***Control of powerful legislative committees is a sure sign of increasing power of women in the General Assembly. Rep. Theresa Esposito (R-Forsyth), left, is co-chair of the House Appropriations Committee, while Sen. Beverly Perdue (D-Craven), right, co-chairs the Senate Appropriations Committee.***

Steve Tuttle, in N.C. Citizens for Business and Industry's magazine, *North Carolina*, writes, "Behind every man in the 1995 General Assembly, there is a woman he must address as 'Madam Chairman,' or so it seems in this session of the legislature where women are heading up many of the most important committees. . . . In some cases it's seniority that has propelled the women to the front ranks, in other cases it's a result of the Republican takeover of the House."<sup>23</sup>

### Power of African Americans Declines

While women's power has increased, the influence of African-American legislators has declined. Because of the Republican takeover of the House by a 68-52 Republican margin, Rep. Dan Blue (D-Wake) lost his position as Speaker of the House. With him went the Democratic chairs of 11 house committees and subcommittees. This session, the only African American chairing a House committee or subcommittee is Rep. Frances Cummings (R-Robeson), who chairs the Education Subcommittee on Preschool, Elementary, and Secondary Education.

The number of African Americans elected to the General Assembly has significantly increased over the past 25 years—from two seats in 1971 to 24 seats in 1995. "Even though we only lost one seat in the November elections, blacks have less clout this session than they had in 1993-94 because of the Republican sweep," says Rep. H.M. "Mickey" Michaux (D-Durham). "In the environment that exists in the House—blacks control 17 seats, Republicans control 68 seats—we have found it very difficult to garner the influence we once had, and losing key leadership positions hasn't helped."

The Senate, however, is a different story. Sen. Frank Ballance (D-Warren), Majority Whip and chair of the Appropriations Subcommittee on Justice and Public Safety, has the potential to become the most powerful African American in the legislature. A slim 26-24 Democratic majority exists in the Senate, making African Americans powerful as

**Table 4. The Most Powerful Committees in the 1993-94 General Assembly**

#### The Six Most Powerful Senate Committees

1. Appropriations
2. Finance
3. Judiciary I
4. Education/Higher Education
5. Rules and Operations of the Senate
6. Judiciary II

#### The Six Most Powerful House Committees

1. Appropriations
2. Finance
3. Education
4. Constitutional Amendments and Referenda
5. Judiciary I
6. Rules, Calendar, and Operations of the House

*Source: Article II: A Guide to the 1995-96 N.C. Legislature, N.C. Center for Public Policy Research. Based on surveys sent to all state legislators, lobbyists, and capital news correspondents.*

a group. If the seven black senators choose to abstain from a vote, the Democrats could lose a critical bill.

### Lots of Newcomers—But Not a Record Number

"One of the things you notice most about the 1995-96 legislature is its inexperience," says the Center's Coble. There are 54 newcomers in the 1995 General Assembly. Nine of these, however, have previously served in the N.C. legislature—Senators Hamilton Horton, Tony Rand, and Thomas Sawyer and Representatives Cary Allred, Monroe Buchanan, Jim Crawford, Bill Hiatt, Bill Hurley, and Gene Wilson.

Of the 54 newcomers, 34—more than 60 percent—have no prior elected experience. Seventy-nine of the 170 legislators are in their first or second terms, and the average length of service for all legislators is 7.9 years. Thirty-seven incumbents lost their seats in the 1994 elections.

"The conventional wisdom is that turnover in the 1994 elections was the highest ever; it's not true," says Coble. "In 1975, 70 new members were elected; in 1985, 57 new members were elected; and

**Rep. Mickey Michaux (D-Durham)  
observes that Republican control  
means African Americans have  
lost clout in the House. . .**

this time there are 54 new members. Over the last 20 years, the average turnover rate in the House has been 27 percent, while in the Senate it's been 20 percent." This year, turnover was 33 percent in the House and 30 percent in the Senate. "We've got turnover without term limits."

### **Trends in Legislators' Occupations**

**T**he Center's guide to the legislature, *Article II*, also tracks the occupations of legislators. This session, the number of retirees in the legislature is up while the number of lawyers is down. The number of retired persons serving in the General Assembly has increased markedly in the past 20 years: in 1975, 1993, and 1995, retired persons held 7, 32, and 37 seats, respectively. The number of lawyers, on the other hand, has steadily declined from 68 in 1971 to 32 in 1995. (See Table 5 on p. 95.)



"The increase in the number of retired persons serving in the legislature doesn't surprise me, considering that retirement affords a person both time and flexibility," says Rep. Willis Brown (D-Harnett), a retired attorney. "Employment responsibilities generally don't permit the extended absences that are required now that sessions have become so lengthy and time-consuming." The decreasing number of lawyers, he says, can be attributed to three factors: first, the demanding nature of the practice of law; second, the extended absences from their positions required because of the length of legislative sessions; and third, lawyers don't tend to retire as early as most businessmen, choosing to practice until later in life.

**. . . But in the Senate, the story is different. African Americans, led by Sen. Frank Ballance (D-Warren) remain a significant voting bloc.**

**Table 5. Demographics and Occupations of the N.C. Legislature, 1973-1995**

Demographics	1973		1975		1993		1995	
	number	percent	number	percent	number	percent	number	percent
African Americans	3	2%	6	4%	25	15%	24	14%
Native Americans	1	1%	1	1%	1	1%	1	1%
Women	9	5%	15	9%	31	18%	28	17%
Democrats	120	71%	160	94%	117	69%	78	46%
Republicans	50	29%	10	6%	53	31%	92	54%
New members elected	65	38%	70	41%	50	29%	54	32%

Occupation*	1973		1975		1993		1995	
	number	percent	number	percent	number	percent	number	percent
Banking	3	2%	5	3%	6	4%	3	2%
Business/Sales	41	24%	49	29%	46	27%	46	27%
Construction/ Contracting	0	0%	2	1%	4	2%	7	4%
Education	12	7%	19	11%	21	12%	19	11%
Farming	17	10%	22	13%	19	11%	16	9%
Health Care	3	2%	4	2%	13	8%	8	5%
Homemaker	3	2%	4	2%	3	2%	3	2%
Insurance	12	7%	17	10%	11	7%	12	7%
Law	56	33%	51	30%	39	23%	32	19%
Legislator	0	0%	0	0%	2	1%	4	2%
Manufacturing	6	4%	5	3%	0	0%	2	1%
Minister	4	2%	2	1%	3	2%	3	2%
Real Estate	7	4%	14	8%	21	12%	19	11%
Retired	6	4%	7	4%	32	19%	37	22%
Self-employed	0	0%	0	0%	3	2%	1	1%

\* Because many legislators list more than one occupation, in the occupation table, numbers do not add up to the total number of legislators (170) nor do percents add up to 100.

Source: Article II: A Guide to the 1995-96 N.C. Legislature,  
N.C. Center for Public Policy Research.

## Committee Assignments and Bills Introduced

A supplement to the Center's legislative guide lists committee assignments for all 170 legislators. The Senate cut the number of its standing committees from 21 to 14, while the House reduced the number of its committees from 24 to 21.

For members who served in the 1993-94 General Assembly, *Article II* also shows the number of bills they introduced and, of those, the number that were adopted, ratified, and passed as part of another bill. Sen. Bill Martin (D-Guilford) introduced the most bills, sponsoring 239. Rep. George Miller (D-Durham) introduced the most bills in the House, sponsoring 94. For the most part, the number of bills introduced during the 1993-94 session was inflated by the large number of bills recommended by the Government Performance Audit Committee (GPAC)—an independent audit of state government conducted in 1992.

This session, Speaker of the House Harold Brubaker spearheaded a successful effort to limit the number of bills a representative can introduce in the 1995-96 session to 10 bills. This limit does not apply to local bills, bills recommended by study commissions, joint resolutions, or House resolutions, and a member may assign his or her unused quota to another member. The Senate has no such limit.

## Conclusion

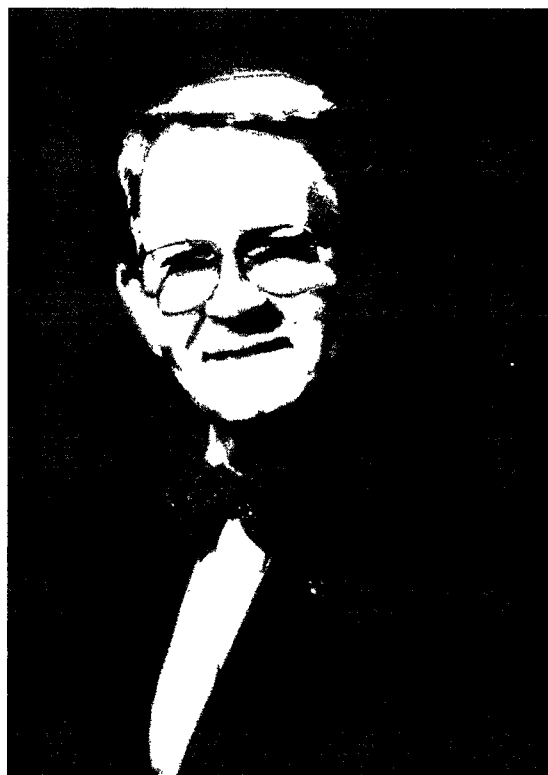
The demographic trends reported in *Article II* enable policymakers, the media, and interested citizens to assess the impact of elections by analyzing different trends: gains and losses of political parties, women, and minority groups; turnover rates; and, the occupation and education of our leaders in the General Assembly. The 1996 elections are eagerly anticipated because they will determine whether the previous gains of the Republican party in North Carolina were an aberration or whether the GOP has attained the status of a competitive party

all the way down the ballot. The prevalence of Republican wins in 1994 at all levels of government—national, state, and local—and the magnitude of their gains indicate that the Republicans likely will hold on to many of the seats in the 1996 elections.

Republicans used their contract with the people as a mechanism for developing a party platform and attracting voters, which has increased the significance of party affiliation in North Carolina. "The New Contract agenda began as a campaign gimmick last fall when almost no one thought it would make a difference," writes Jack Betts of *The Charlotte Observer*.<sup>24</sup> "Today, it represents what may become [House Speaker Harold] Brubaker's legacy to North Carolina—the imposition of a form of parliamentary government. If Brubaker's idea takes root and grows into the norm, future campaigns will turn on the notion that when you vote for a certain legislator, you vote for a program he has agreed to support and an ideology that politician will work to adopt."

Women legislators increased their power by securing key leadership positions. Selected in both houses to chair the money committees, the women in these leadership positions include Democrats and Republicans. Whatever the next political stepping stone for women may be—be it in the legislative or executive branch of state government—it seems

***Rep. Willis Brown (D-Harnett), a retired attorney, is among an increasing number of retirees in the General Assembly.***



likely that the women from this group of legislators will continue to emerge as strong candidates and capable leaders.

And, analysis of *Article II* reveals that the large amount of time it takes to serve in the General Assembly is affecting the occupational trends of legislators. Retirees and people with more flexible occupations can afford to devote long periods of time to legislative duties. Those whose occupational duties are harder to schedule around legislative duties find it harder to serve in the General Assembly. Thus, the lengthy sessions have an impact on who can serve in the General Assembly, changing the nature of what was conceived as a citizen legislature.

## Article II

**A**rticle II, the Center's legislative handbook, contains profiles of each member of the legislature, including photos, business and home addresses, telephone/fax numbers, district served, counties in that district, number of terms served, and educational and occupational backgrounds. For members who served last session, the guide lists votes on 14 of the most significant bills in 1993-94, effectiveness rankings since 1983, and five selected bills they introduced. Also included are demographics for the General Assembly since 1975, a list of the 50 most influential lobbyists, and a supplement that contains committee assignments by member and by committee.

The guide is available for \$22.50 from the North Carolina Center for Public Policy Research, P.O. Box 430, Raleigh, NC 27602. Phone: (919) 832-2839. FAX: (919) 832-2847. ☐☐

## FOOTNOTES

<sup>1</sup> David Rice, "Tarheel Revolution: GOP presents the voters with an eight-point contract for legislative change," *Winston-Salem Journal*, Winston-Salem, N.C., Jan. 22, 1995, p. A1. See also Editorial, "The Republican revolution," *The Chapel Hill Herald*, Durham, N.C., Mar. 9, 1995, p. 4. In September 1994, the chairman of the state Republican Party, Jack Hawke, predicted that his party would pick up ten seats in the state House. See David Rice, "GOP awaits Clinton backlash," *Winston-Salem Journal*, Winston-Salem, N.C., Sept. 18, 1994, p. E1. Party chairmen are prone to overestimate their expected gains when predicting the results of an election. However, in November 1994, the GOP picked up 26 seats in the N.C. House of Representatives.

<sup>2</sup> Stanley B. Greenberg, "Election of 1994: Revolt Against Politics," *The Polling Report*, Vol. 10, No. 22, Washington, D.C., Nov. 21, 1994, p. 1.

<sup>3</sup> Howard Goldberg, "Polarization called key to '94 elections," *The News & Observer*, Raleigh, N.C., Nov. 19, 1994, p. A6.

<sup>4</sup> *State Policy Reports*, Vol. 12, Issue 23, Dec. 1994, p. 9.

<sup>5</sup> Tom Vass, "North Carolina's 100-year legacy of one-party rule," *The Charlotte Observer*, Charlotte, N.C., Nov. 3, 1994, p. A19.

<sup>6</sup> Editorial, *The Chapel Hill Herald*, see note 1 above.

<sup>7</sup> James G. Martin, "At last, a 2-party South," *The Charlotte Observer*, Charlotte, N.C., Nov. 20, 1994, p. D4 [emphasis in original].

<sup>8</sup> Jack Betts & Vanessa Goodman, *The Two-Party System in North Carolina: Do We Have One? And What Does It Mean?*, N.C. Center for Public Policy Research, Raleigh, N.C., Dec. 1987, p. i.

<sup>9</sup> Rep. Paul Luebke, in his book *Tar Heel Politics: Myths and Realities*, cautions that two points remain important to African Americans in their continued advocacy for minority race districts, despite Republican gains. First, white Democrats needed to and did develop a political program that appealed to white voters because in the areas of the state where a strong two-party system exists, they could no longer rely on the party loyalty of blacks to win seats. Second, African Americans maintain their right to elect candidates of their own choosing. See Paul Luebke, *Tar Heel Politics: Myths and Realities*, University of North Carolina Press, Chapel Hill, N.C., 1990, p. 120. The result of increased African-American representation in the General Assembly may be the loss of indirect representation in the form of white Democratic legislators—as allies to black Democratic legislators and advocates for African-American constituents.

<sup>10</sup> *Ibid.*, p. 156.

<sup>11</sup> *Ibid.*, p. 211.

<sup>12</sup> Earl Black & Merle Black, *The Vital South: How Presidents Are Elected*, Harvard University Press, Cambridge, Mass., 1992, p. 4.

<sup>13</sup> Information provided by the National Conference of State Legislatures.

<sup>14</sup> Martin, see note 7 above.

<sup>15</sup> John F. Persinos, "The GOP Farm Team: Republican Gains in State Legislatures Could Pave the Way for Bigger Electoral Victories in the Future," *Campaigns & Elections*, Washington, D.C., Mar. 1995, p. 30.

<sup>16</sup> Joseph Neff, "Merit selection of judges may gain momentum," *The News & Observer*, Raleigh, N.C., Nov. 15, 1994, p. A3.

<sup>17</sup> Information provided by the North Carolina Association of County Commissioners.

<sup>18</sup> Voter registration information provided by the State Board of Elections and from the Center's report *The Two-Party System in North Carolina: Do We Have One? And What Does It Mean?*, table 1, p. 3.

<sup>19</sup> "Tar Heels worried about crime," *The News and Observer*, Raleigh, N.C., Mar. 18, 1995, p. A3. "The statewide survey of 800 registered voters was conducted . . . between Feb. 27-March 3 by Marketing Research Institute, a veteran polling firm located in Pensacola, Fla. The margin of error was 3.5 percentage points." The poll looked at voter identification with political parties since 1991. "[T]he survey found a moderate shift to the right by North Carolinians."

<sup>20</sup> Ron Nixon, "Plantation Politics," *Southern Exposure*, Institute for Southern Studies, Durham, N.C., Spring 1995, pp. 27-29.

<sup>21</sup> D. Keith Miles, "Whatever happened to the Southern Democrats? They Turned Republican," *Southern Exposure*, Institute for Southern Studies, Durham, N.C., Spring 1995, p. 39.

<sup>22</sup> Information provided by the Center for the American Woman and Politics, Eagleton Institute of Politics, Rutgers University, New Brunswick, N.J.

<sup>23</sup> Steve Tuttle, "'Madam Chairman' Today, Governor Tomorrow?" *North Carolina*, North Carolina Citizens for Business and Industry, Raleigh, N.C., Apr. 1995, p. 41.

<sup>24</sup> Jack Betts, "Thrust for change," *The Charlotte Observer*, Charlotte, N.C., Apr. 9, 1995, p. C1.

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