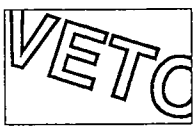
PRO: North Carolina Should Adopt a Gubernatorial Veto

by Ran Coble



PRO

Two hundred fourteen years ago, colonists knew what they wanted—a form of government as far away from the Royal Governor model as possible. From 1730 through 1775, Royal Governors enjoyed such prerogatives as the power to summon and dissolve the legislature, to enforce British trade laws, to appoint judges who served not for fixed terms but "during pleasure" of the governor, and to veto laws.[1]

Because the Royal Governors' powers were virtually unchecked by the legislature or the judiciary, the colonists rejected the idea of giving veto power to the governor once statehood was achieved in 1776. But in his 1985 testimony to an N.C. House of Representatives' committee hearing on veto power, Gov. James G. Martin reminded the solons of one key fact: "I understand the 18th century concern about Royal Governors," he said, "and how that carried over into the early 19th century. It is now nearing the end of the 20th century: they are not coming back. We have not had a Royal Governor for 209 years. We won!"[2]

During his first term in office and especially in the 1988 campaign, Governor Martin made veto power a centerpiece of his program. He seems to see the veto power largely in partisan terms as a way for a Republican governor to have some check on a Democratic legislature. His campaign success—as well as the success of the Republican Party in winning 59 of 170 seats in the 1989-90 General Assembly and the ouster of Liston Ramsey as speaker of the House—seems to indicate that the citizens of North Carolina also believe that some checks are needed on the legislative majority. But veto power is an issue that transcends partisan squabbles. It is an instrument that, if adopted, will alter fundamentally the balance of power between the legislative and executive branches. And it is also an idea whose time has come.

ARGUMENTS FOR VETO POWER

There are five arguments why veto power is needed for North Carolina governors—of all parties: (1) veto power is needed in order to make the governor a full partner in the legislative process; (2) veto power can serve as a check against passage of legislation which has been rushed through without full deliberation or which is not in the public interest; (3) it can be used to negate unconstitutional legislation; (4) it will restore a proper balance of power between the executive and legislative branches; and (5) it has worked well in practice at the federal level and in all other states.

1. Veto power is needed in order to make the governor a full partner in the legislative process.

Former Gov. Terry Sanford (1961-65) explains this argument best. He says the veto power forces the governor to take a stand on crucial policies and share political controversies with legislators. By withholding veto power, Sanford says, "The legislature seems to think it is protecting its own power, but in fact, it is shielding the governor from political exposure."[3]

Thus, the possibility of a veto would make the governor and legislature work more closely together. Knowing that a veto is possible, legisla-

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"... [Veto power would] increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design."

—Alexander Hamilton

tors must consult the governor in drafting legislation and as a bill moves through the legislative process. Knowing that every bill will eventually arrive on his or her desk for signing or for a veto, the governor must monitor every bill introduced and evaluate its benefits and liabilities. Veto power would make the governor less an interested observer and more an informed player who will be held accountable for what happens in the legislature. It means the legislature cannot ignore the governor's views, but it also means the governor cannot stand on the sidelines and choose to take all the credit and none of the blame for legislation which passes.

Former Gov. James B. Hunt, Jr. (1977-85) summarizes how veto power will work in practice. "The fact that the legislature has knowledge that the governor has a veto will make the governor more involved in the legislative process. It will lead to more cooperation between the governor and the legislature; and it will fix the responsibility" for legislation which passes.[4]

2. Veto power can serve as a check against passage of legislation which has been rushed through without full deliberation or which is not in the public interest.

The veto can serve as sort of a traffic cop at the end of the legislative process. Because only 5 percent of the bills passed by legislatures in the U.S. are vetoed by governors (see the discussion of veto use on page 18), the traffic cop governor with veto power shows the legislature a green light 95 percent of the time. Legislatures successfully override the governor's veto in varying degrees; in 1977-78, legislators overrode 8.7 percent of the vetoes nationally, while in 1986-87, the rate was 3.5 percent.[5] The point is that governors exercise vetoes very cautiously.

So why is there a need for the veto at the legislative traffic intersection? Because in a small number of cases, legislators make three kind of mistakes that a veto can help correct—mistakes when too many bills are passed during the frantic final days of a session, mistakes when legislation is not really in the public interest, and mistakes when unconstitutional legislation is passed.

The first mistake can occur when an unusually large number of bills are passed in the final weeks of the session. In 1983, the average number of bills ratified per day was seven. During the last week of the session, however, the average was 27 per day. In 1987, the average number of bills ratified per day was 15. Again during the last week, the average was 40 per day.[6]

Veto power can help correct situations where legislators are tired, pass something, and then have to come back and repeal something they approved last session. Two recent examples here are (a) the comparable worth study passed as a special provision in the 1984 appropriations bill[7] and (b) the discovery law enacted in 1983, which required prosecutors to notify defense attorneys of any oral statement attributed to the defendant prior to trial.[8] In both cases, these laws were passed late in one session and then efforts made to change them *the very next session.*[9]

Former state Sen. Capus Waynick supported veto power for this same reason. He said it provided "a recooking process for legislation jerked from the griddle raw."[10] A few years ago, one weary committee voted unanimously on the last day of the session in favor of bill number 1425—only to discover later it had just approved the committee room number, not a proposed bill.[11]

Veto power can also serve as a check against a second kind of legislative mistake—legislation which is not in the public interest. Former Govs. Robert W. Scott (1969-73) and Dan K. Moore (1965-69) each offered examples of bills they would have vetoed as not in the public interest. In response to a questionnaire sent in 1983 to all former governors by two researchers at N.C. A&T State University, Scott said he would have vetoed the 1969 Legislative Retirement Act because it set up a retirement system for legislators that was better than the retirement system for state employees. He thought this was unfair and served a special interest of legislators, rather than the general public interest.

Similarly, former Governor Moore said he

would have vetoed the bill which created the school of medicine at what is now East Carolina University. Moore said the creation of this school "might well have been more properly planned and carried out if it had been delayed and reconsidered due to a veto." Moore questioned the need for a fourth medical school in the state and the high cost of operating an accredited school.[12]

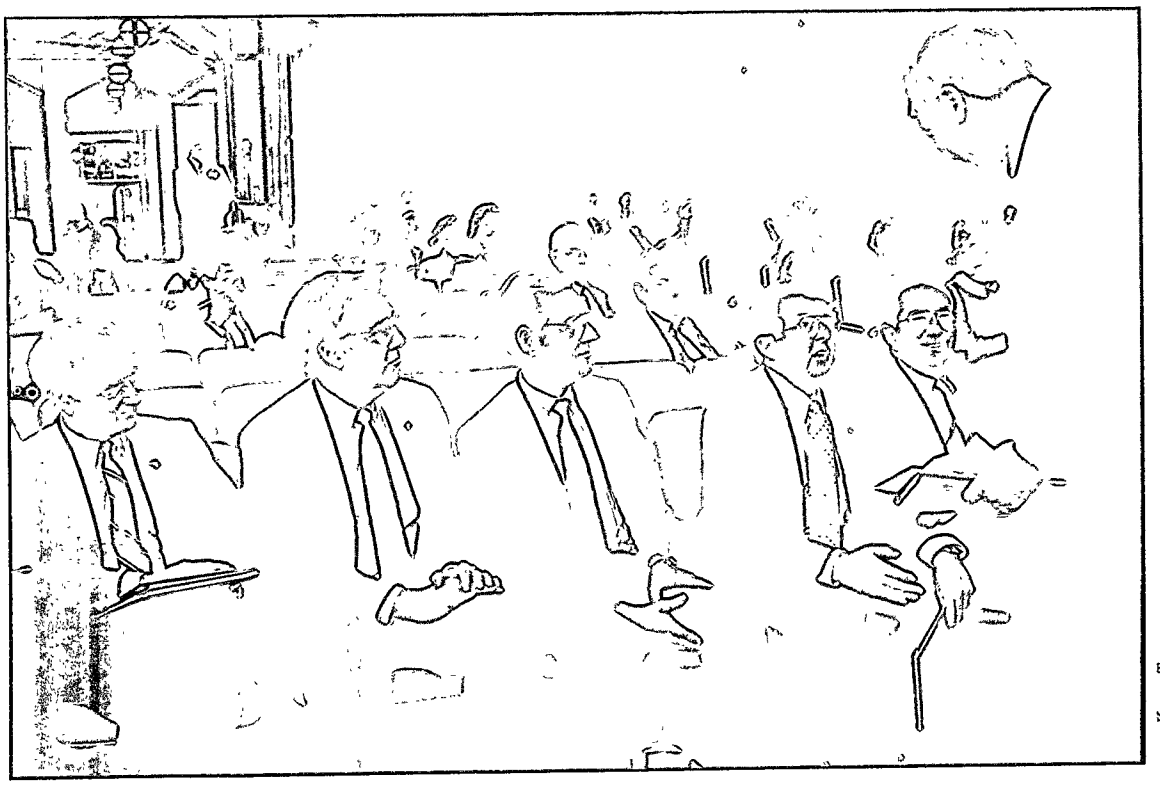
Reasonable persons may disagree as to whether these four policy decisions—a pay equity study, a criminal defense discovery law, a legislative retirement system, and a new medical school—were policy decisions in the public interest. Arguably, at least two of the four decisions were in the public interest, but in any event, a veto would have sent these pieces of rushed and rather "raw" legislation back to the legislative cooks until the product was more well done.

One of the authors of the U.S. Constitution, Alexander Hamilton, came to a similar conclusion. Hamilton argued in *The Federalist Papers*, "It may perhaps be said that the power of preventing bad laws includes that of preventing good ones; and may be used to the one purpose as well as to the other. But this objection will have little weight. . . . The injury which may possibly be done by defeating a few good laws will be amply compensated by the advantage of preventing a number of bad ones." He concluded that one of the main arguments for veto power was that it would "increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design."[13]

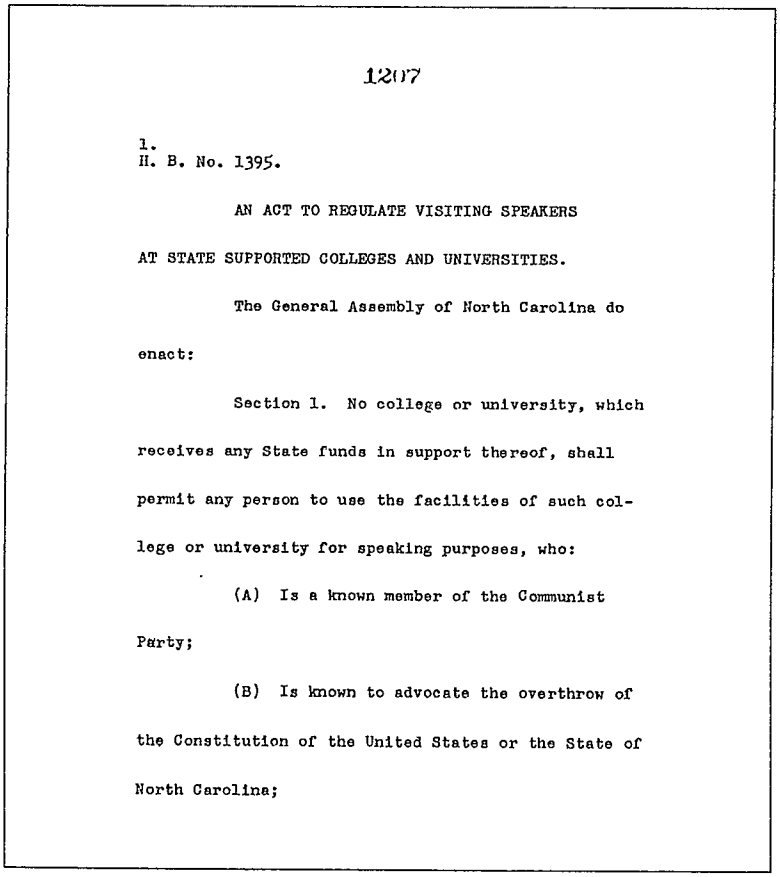
3. Veto power can serve as a check on unconstitutional legislation.

Sometimes—though not often—the legislature can get so caught up in the fervor of a political issue that it is willing to sacrifice the constitutional rights of a minority to the wishes of a majority—the third type of legislative mistake.

Former Gov. Robert W. Scott, far right, following his testimony before the N.C. Senate Committee on Constitutional Amendments in favor of the veto in February 1989. Others, from left, are former Gov. James B. Hunt Jr.; former Lt. Gov. Robert B. Jordan III; retired U.S. Army Major Robert Crump of Moore County; former Gov. James E. Holshouser Jr., and Sam Poole, representing former Gov. Terry Sanford, now a U.S. Senator. All but Crump favored the veto.



Karen Tam



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1.
H. B. No. 1395.

AN ACT TO REGULATE VISITING SPEAKERS AT STATE SUPPORTED COLLEGES AND UNIVERSITIES.

The General Assembly of North Carolina do enact:

Section 1. No college or university, which receives any State funds in support thereof, shall permit any person to use the facilities of such college or university for speaking purposes, who:

(A) Is a known member of the Communist Party;

(B) Is known to advocate the overthrow of the Constitution of the United States or the State of North Carolina;

The 1965 Speaker Ban Law would have been vetoed if Gov. Terry Sanford had had the veto power.

No state and no legislature is immune to this possibility, particularly as evidenced by legislative enactments depriving black citizens of their constitutional guarantees. For example, it was as late as 1989 that the legislature voted to have North Carolina join the states ratifying the 24th Amendment to the U.S. Constitution. That amendment, ratified nationally in 1964, outlawed poll taxes used to deny blacks the right to vote.[14] The 1989 legislature also might pass some prohibition on obscene bumper stickers, a bill (SB 5) whose constitutionality is questioned by many.

But perhaps the best example of a bill that should have been vetoed—and would have been, according to former Governor Sanford—was the Speaker Ban Law. This 1963 law prohibited any person who "(1) Is a known member of the Communist Party; (2) Is known to advocate the overthrow of the Constitution of the United States or the State of North Carolina; [or] (3) Has pleaded the Fifth Amendment... in refusing to answer any question, with respect to Communist or subversive connections..." from speaking on any state-supported college campus. Legislators argued that their constituents favored the act and that its opponents were soft on communism. The Speaker Ban Law is *still* on the statute books, though it has been rendered ineffective by a 1968 federal court decision.[15] Former Governor Sanford has said repeatedly that he would have vetoed the act if he had had veto power at the time.[16]

More recently, the General Assembly placed legislators on the Environmental Management Commission and 37 other boards and commissions in the executive branch until the N.C. Supreme Court ruled such practices unconstitutional in 1982.[17] Thus, veto power can be used to correct three kinds of legislative mistakes—legislation passed in a rush, legislation which is not in the public interest, and legislation which is popular but unconstitutional.

4. Veto power will restore the proper balance of power between the executive and legislative branches.

The major argument given by the country's founders for veto power for the President of the United States was to enable the executive "to defend himself" against the legislative branch. Hamilton worried about the "propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments" and guarded "the necessity of furnishing each [branch] with constitutional arms for its own defense...."[18] Veto power was to be the executive's defense shield, while the power to impeach the executive was to be the legislature's escutcheon.

On April 1, 1985, Governor Martin issued a press release giving three examples of legislative encroachment upon the executive, and used those examples to argue for veto power. "On Tuesday, two co-chairman [sic] of the Base Budget Committees announced they had frozen authority to

hire new employees without prior consent of their legislative committee. On Thursday, actions was [sic] hastily completed in the Senate to strip the governor's appointive power over the elections chief, once again repeating the highly partisan stand that had deprived Gov. Holshouser of this authority that all Democratic governors have been responsible for. Legislation is quickly brewing to transfer the new Missing Children Center away from its home in the Department of Crime Control and Public Safety [headed by a Martin appointee] over to the Justice Department" [headed by the separately elected Democratic attorney general].[19]

This kind of fighting over executive and legislative boundaries does not arise only between Republican governors and Democratic legislatures. In 1982, Governor Hunt had to get the attorney general's and N.C. Supreme Court's help to head off legislative incursions into the executive's power to administer the budget. Of course, a governor without a veto can always file suit to stop legislative encroachments into the executive branch, but a lawsuit between branches of government poisons the entire well of relations between these two branches of government, whereas a veto of one bill will not. However, injudicious use of multiple vetoes by the governor would lead to the same result.

This is not to say that it is always the legislature encroaching on the executive's turf. Sometimes, the executive tries to infringe on the legislature's authority to appropriate funds.[20] But what the constitutional framers argued at the federal level is just as true at the state level. The governor needs veto power to ensure that he or she has both an adequate shield and adequate tools to fulfill the will of the people.

Several national studies have rated our governor as among the weakest in the United States, and Tar Heel government observers have used those evaluations to argue that veto power will help restore a proper balance of power between the legislative, judicial, and executive branches. In a 1981 article in this magazine, Thad Beyle, known as one of the foremost authorities in the country on the office of governor, listed five formal powers of governors: (1) the power of succession; (2) appointments power; (3) budget authority; (4) organizational power; (5) and veto power. The North Carolina governor has had the right of succession since 1977. The governor's appointive powers, however, have been diluted by a legislature which appoints the Board of Governors for the University of North Carolina, and which makes more than 324 appointments to boards and commissions in the executive branch, upon recommendation of either the lieutenant governor (195 appointments) or the speaker of the House (129 appointments). The governor also shares organizational powers with nine other officials elected statewide, further diluting his office. Beyle concluded that North Carolina governors were among the six weakest in the nation.[21] In a 1990 update that begins on page 27 of this issue, Beyle dropped organizational power as a key indicator and substituted the power to remove officials from office.

In 1987, the National Governors' Association (NGA) conducted a similar evaluation of the institutional powers of all governors over a 20-year period, 1965-85. The NGA concluded that Tar Heel governors were among the four weakest in the country, and a January 1990 update of that research pegs the N.C. governor as among the three weakest.[22]

Despite acquiring the right of succession during those 20 years, the governor has lost ground in relation to the legislature. In testifying for veto power at the April 1985 legislative public hearing, former Governor Scott said conditions had changed in the past 10 to 15 years to tilt power in favor of the legislative branch. The General Assembly, which once had no staff and had to rely on the executive branch for much of its information, now has its own staff, is meeting longer, and enacting more laws, he said. Scott said the spirit of cooperation between the legislature and the governor had also declined.[23]

This is not to say our governors are powerless. The records of almost all recent governors would belie that assertion. It is to say, however, that our governors are less powerful than almost

"Despite acquiring the right of succession during those 20 years, the governor has lost ground in relation to the legislature."

all other states and that they need veto power to do the things we elect them to do. *The N.C. governor should have a regular veto, but not a line item veto.*

5. Veto power has worked well in practice at the federal level and in all other states.

The argument most often used in favor of veto power in North Carolina is "How can 49 other states and the federal system be wrong and we be right?" To which veto opponents drag out the cliché, "If it ain't broke, don't fix it." Neither argument is very powerful; the former argument will have the citizens of North Carolina jump off a legislative cliff just because everyone else is doing it, while the latter argument would have the citizens steadfastly refuse to move out of a deep legislative rut—even if it means avoiding getting hit by a truck.

It is the *experience* of the 49 other states and the federal government that tells us that veto power will not turn our governors into executive bullies or nay-saying ogres. Over four decades, the rate of gubernatorial vetoes has remained relatively low and constant. In 1947, all governors combined vetoed only 5 percent of all bills, and 6 percent of those vetoes were overridden by the legislature.[24] In 1977-78, governors were still vetoing only 5.2 percent of all bills, with 8.6 percent then passed into law by a legislative override. In 1986-87, the veto rate was still around 5 percent and the override rate was 3.5 percent.[25] At the federal level, 103 of 1,419 non-pocket vetoes (the proposal on the ballot in North Carolina would not give the governor a pocket veto, while the president has such powers), or 7.3 percent, were overridden by Congress.[26] Thus, it is safe to predict that the veto power would be exercised with caution by North Carolina governors, because about 95 percent of all legislation at the state level is signed into law by governors. And overriding a governor's veto is not easy, but it can be done. The federal framers of the constitution called this system of a veto with the possibility of an override "a qualified negative."

Some argue that to look only at statistics on overrides of vetoes ignores the more frequently mentioned fear of the threat of a veto. This is a very real fear among legislators, and it often can lead to negotiations between the executive and the legislature.

But frequent use of vetoes or threats were not the dangers feared by the constitutional framers. Hamilton worried that "there would be greater danger of his not using his power when necessary, than of his using it too often, or too much."[27]

And one outgoing governor in the 1980s advised newly elected governors to "avoid threatening to veto a bill. You just relieve the legislature of responsibility for sound legislation."[28] History has proved that Hamilton was a wise seer in terms of the use of veto power and that 1980s governors are still aware of limiting its use.

One final note: Former Governor Holshouser (1973-77) says that he has never seen a poll where fewer than 75 percent of the people favored veto power. Governor Martin says his polls show 65 percent of the state's voters favor veto power for the governor (see sidebar, page 19-20, for more). Isn't it time to conduct the ultimate poll and let North Carolina's citizens vote on a constitutional amendment granting veto power to the governor?

FOOTNOTES

[1] Hugh T. Lefler and Albert R. Newsome, *North Carolina: The History of a Southern State*, University of North Carolina Press, 3rd edition (Chapel Hill, NC: 1973) pp. 149-150.

[2] Gov. James G. Martin, remarks to the N.C. House of Representatives Constitutional Amendments Committee, public hearing, April 18, 1985, p. 2.

[3] Sanford's response to a survey of former governors, as reported in Alva W. Stewart and Phung Nguyen, "Will North Carolina's Governor Ever Get the Veto Power?," *National Civic Review*, Vol. 73, No. 11 (December 1984), p. 567.

[4] Former Gov. James B. Hunt Jr., remarks to the N.C. Senate Committee on Constitutional Amendments, public hearing, Feb. 2, 1989.

[5] Virginia Gray, Herbert Jacob, and Kenneth N. Vines, editors, *Politics in the American States*, Little, Brown and Company (Boston: 1983), p. 201; and *The Book of the States, 1988-1989*, The Council of State Governments, Lexington, Ky., pp. 116 ff.

[6] Based on original research by Ran Coble and Jim Bryan, N.C. Center for Public Policy Research, April 17, 1985 and by Jack Betts on April 12, 1989. Raw data supplied by the Institute of Government at the University of North Carolina at Chapel Hill.

[7] Chapter 1034 (HB 80) of the 1983 Session Laws (2nd Session, 1984), section 146(c).

[8] Chapter 759 (HB 1143) of the 1983 Session Laws.

[9] The comparable worth study was repealed in Chapter 142 (HB 236) of the 1985 Session Laws. Part of the discovery law was modified in Chapter 6 (HB 2) of the 1983 Session Laws (Extra Session 1983) in a special session on Aug. 26, 1983, called to deal with the discovery law.

[10] *Op cit.*, Stewart and Nguyen, p. 561.

[11] As reported in "Time for the Veto," *Greensboro Daily News* editorial, Aug. 3, 1983, p. 10A.

[12] *Op cit.*, Scott and Moore's responses to N.C. A&T University survey in Stewart and Nguyen, pp. 564-565.

[13] Alexander Hamilton, *The Federalist Papers*, No. 73, Mentor Books edition, The New American Library, Inc. (New York: 1961), pp. 443-444.

[14] Chapter 84 (HB 109) of the 1989 Session Laws. The

amendment to the U.S. Constitution was ratified 25 years earlier, on Feb. 4, 1964.

[15] G.S. 116-199, declared unconstitutional in *Dickson v. Sitterson*, 280 F. Supp. 486 (M.D.N.C. 1968).

[16] Sanford's most recent statement on this was submitted to the N.C. Senate Committee on Constitutional Amendments, Feb. 2, 1989.

[17] *Wallace v. Bone*, 304 N.C. 591, 286 SE 2d 79 (1982). See the Center's 1985 report on *Boards, Commissions, and Councils in the Executive Branch of North Carolina State Government*, pp. 41-63, for more on this issue.

[18] *Op cit., The Federalist Papers*, pp. 442 and 443.

[19] "Statement From Governor Martin Concerning Veto Power," Office of the Governor, April 1, 1985, p. 1.

[20] For an excellent discussion of encroachments by all three branches of government upon each other, see John Orth, "Separation of Powers: An Old Doctrine Triggers a New Crisis," *N.C. Insight*, Vol. 5, No. 1 (May 1982), pp. 36-47.

[21] Thad L. Beyle, "How Powerful Is the North Carolina Governor?", *N.C. Insight*, Vol. 4, No. 4 (December 1981), pp. 3-11. An update of Beyle's analysis can be found in pp. 27-45 of this issue.

[22] "The Institutional Powers of the Governorship, 1965-1985," *State Services Management Note*, National Governors Association, Washington, D.C., June 1987. A 1989 update of the NGA study places North Carolina third from the bottom. See Thad Beyle, "Governors," in Virginia Gray, Herbert Jacob, and Robert B. Albritton, joint editors, *Politics in the American States*, 5th edition, Little, Brown and Co. (Boston, forthcoming 1990).

[23] As reported in John Drescher Jr., "Four ex-governors join Martin in support of gubernatorial veto," *The News & Observer* of Raleigh, April 19, 1985, p. 1A.

[24] Thad L. Beyle, "The Governor As Chief Legislator," in Beyle and Lynn R. Muchmore, editors, *Being Governor: The Views from the Office*, Duke University Press (Durham: 1983), pp. 138-139.

[25] *The Book of the States*, 1988-1989, The Council of State Governments, Lexington, Ky., pp. 116 ff.

[26] Calvin Bellamy, "Item Veto: Dangerous Constitutional Tinkering," *Public Administration Review*, January/February 1989, p. 48.

[27] *Op cit., The Federalist Papers*, pp. 444-445.

[28] Thad L. Beyle and Robert Huefner, "Quips and Quotes from Old Governors to New," *Public Administration Review*, May/June 1983, pp. 268-269.

Polling Tar Heels on the Veto

The good news for supporters of the gubernatorial veto is that by a 69 to 31 percent margin, North Carolinians support the veto—at least among those who have an opinion. An October 1989 poll by Accurus Systems of Burlington, owned by state Sen. Sam Hunt (D-Alamance), found strong support for the veto—up from that reported in an earlier, February 1989 poll by FG*I of Chapel Hill, which had a 59-41 percent favorable margin. About 10 percent of the public was undecided in the October Accurus poll, 12 percent in the FG*I poll.

While there were differences among groups in the level of support in the October poll, more impressive was how consistent the support was across most groups in North Carolina. Most supportive of the veto were Republicans, those living in the Research Triangle area, those over 45 years of age, and whites. Support for veto lagged among blacks, those with no educational degrees, and those living in the Piedmont Triad of Greensboro, High Point, and Winston-Salem.

The greatest variability in support levels was in respondents' level of education. Support from those with no degrees (57 percent in support of veto) lagged well behind those with more education. Support also varied according to region, with a high of 76 percent support for the veto in the Triangle to a low of 59 percent for the veto in the Triad—a difference of 17 points. There also was a 16 point differential between blacks and whites, and an eight point differential among age groups. Support for veto among those 45 and over was 74 percent, while it dropped to 65 percent for the 30-44 age bracket.

This polls shows that North Carolinians are generally positive about a gubernatorial veto, but some groups are not as enthusiastic. This does not mean that approval of the veto at the real polls, the voting booth, is a sure thing. Any campaign for approval must rely not on rosy views presented by supporters, but on arguments designed to hold on to voters who now approve of the veto. And the campaign must be able to rebut the arguments of those who oppose the veto in order to win over the less enthusiastic.

The Accurus Systems poll asked, "Do you agree or disagree that the governor should have veto power?" The table on the following page shows the results. —*Thad L. Beyle*

Do You Agree or Disagree That the Governor Should Have Veto Power?

Group	Breakdown	Percent of Survey	Percent of those with an opinion who Agree	Disagree	Undecided* or No Opinion
N.C.		100 %	69 %	31 %	10 %*
Sex:	Male	48	69	31	6
	Female	52	69	31	13
Age:	18-29	24	67	33	5
	30-44	32	65	35	8
	45-64	27	74	26	13
	65 +	17	74	26	15
Income:	$0 -$19,999	23	71	29	20
	$20-$34,999	36	69	31	7
	$35-$49,999	20	66	34	5
	$50,000 +	12	72	28	8
Race:	White	80	73	27	9
	Black	18	57	43	14
Region:	Charlotte	25	69	31	9
	Triad	19	59	41	12
	Research Triangle	29	76	24	8
	East	18	70	30	12
	West	9	68	32	8
Party:	Democrats	43	67	33	10
	Republicans	23	81	19	10
	Independent **	4	67	33	3
Educ-cation:	No degree	16	57	43	21
	H.S. degree	48	75	25	9
	Assoc. degree	16	63	37	8
	College degree	13	70	30	5
	Graduate degree	6	77	23	2

Poll was conducted Oct. 23-26, 1989 by Accurus Systems of Burlington and was based on telephone interviews with 661 adults 18 or older. Margin of error is +/- 4 %.

** This column represents the percentage of the total sample who had no opinion or were undecided. The agree and disagree columns represent the percentage breakdown of all those who did have an opinion on the veto. Thus, the three columns do not add to 100 percent.*

*** The number of respondents in this category is so small that the margin of error is considerably greater than +- 4 %. Among all respondents, 29 percent would not identify themselves as a member of either party or as an independent.*

—Thad L. Beyle