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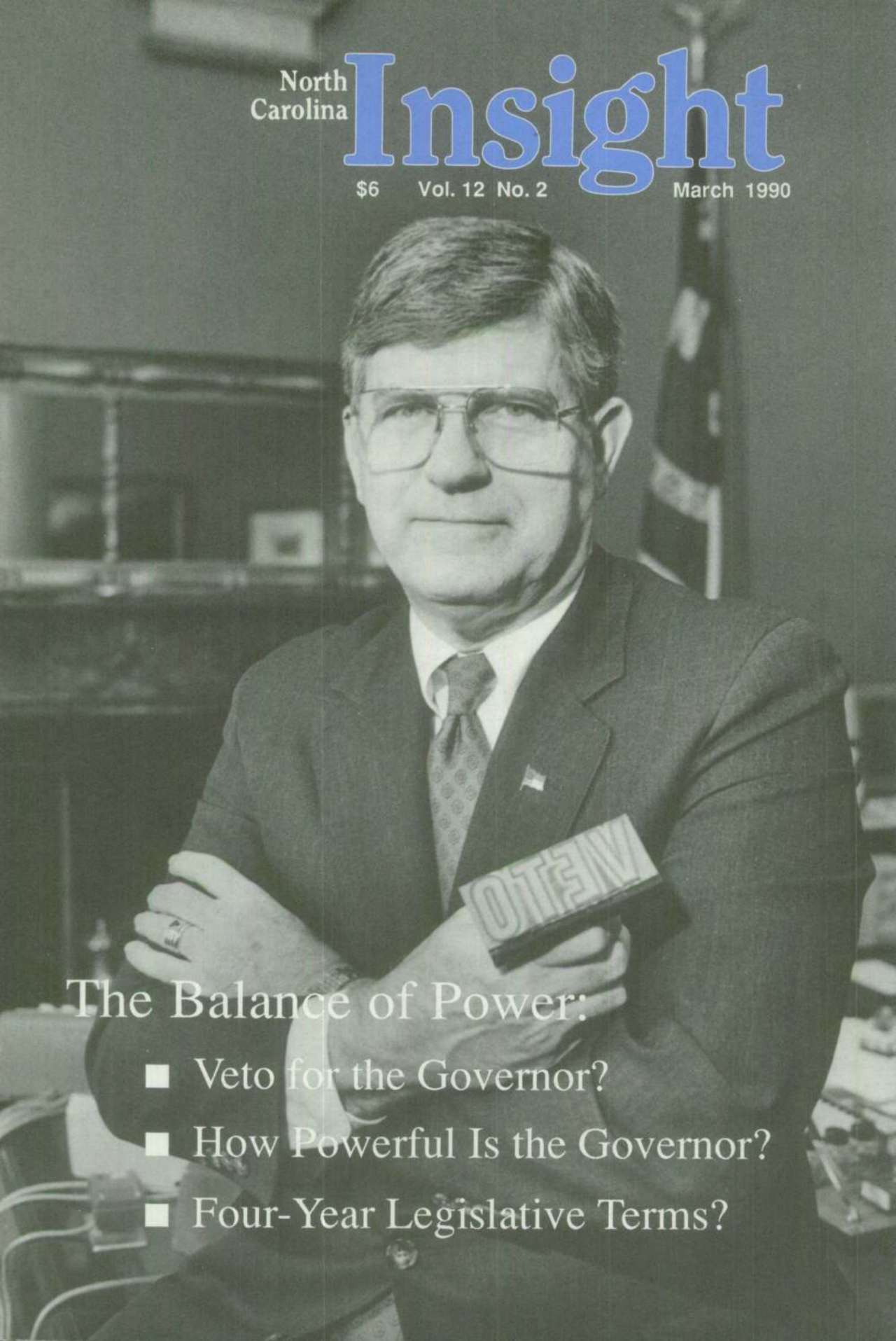

The Balance of Power:

- Veto for the Governor?
- How Powerful Is the Governor?
- Four-Year Legislative Terms?

N.C. Center for Public Policy Research

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An Introduction

The Veto: After Half a Century of Debate, Still on the Public Calendar

by Jack Betts

On the corner of his desk in his Capitol office, Gov. Jim Martin keeps a rubber stamp that he hopes to be able to use one day—at least figuratively. The stamp, a gift for Martin's 50th birthday, reads "VETO." It is as close to the veto as Martin has gotten in his six years in office, but now the 1990 General Assembly will debate a bill to send a proposed constitutional amendment to voters later this year to decide whether North Carolina should join in the 49 other states that grant their governor the power of the veto. What is the veto debate all about?

ve•to: Latin for *I forbid*, the first person singular present indicative of vetare, the word by which the Roman tribunes of the people opposed measures of the Senate or actions of the magistrates.
—The Oxford English Dictionary

When Sen. Dennis Winner (D-Buncombe) dropped Senate Bill 3 into the hopper on January 11, 1989, he set in motion the unwieldy, balky, noisy machinery that fashions changes in the North Carolina Constitution if enough legislators and enough voters of the state agree. Winner's bill proposed what most Tar Heel chief executives of the 20th century would have given their eyeteeth for—the veto, a powerful tool that would at long last make the governor a master mechanic in the production, and sometimes the rejection, of legislation.

Ever since the last of the Royal Governors was chased out of North Carolina, the legislature had kept the executive branch on a short leash. The state's governor was a relatively weak one in terms of formal powers, lacking the right to succeed himself until 1977, and still the only one of the country's 50 governors without veto power of any sort (See Table 1, page 10, for more).

But that could change this year, if the General Assembly approves an amendment to the state constitution that—pending the approval of voters

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in a statewide referendum—would allow the governor to veto legislation passed by the two houses of the assembly.[1] That veto would kill legislation unless the legislature overrode it on a special vote.

The veto, says Gov. James G. Martin, "is a just and proper role for a governor. On the tough issues of the day, courageous positions must be taken by legislators who stand alone under the pressure of opposition. With veto power, a governor must bear that pressure with you. A governor must take a position and explain that position."[2] Martin, who first opposed veto for the Governor during the 1984 campaign (see footnote 1, page 26, for more), has sought the veto since 1985.

The Veto in North Carolina: A Brief History

Ironically, this issue might have been settled more than half a century ago. The 1933 General Assembly approved a constitutional revision that included veto for the governor, but through a legal technicality, the revision was never put to the voters (see sidebar, page 8, for more). Had that issue gone to the voters as scheduled in 1934, it likely would have been approved. In the decade ending with the 1932 election, a majority (10 of 16) of the constitutional amendments put to the people were *rejected*; in the following decade, all 14 constitutional amendments put to the voters were *approved* by the people.

One other push for the gubernatorial veto occurred in the late 1960s, when Gov. Dan Moore urged the adoption of the veto as part of a constitutional revision. But Moore's request for the veto died in the legislature and was not part of the new constitution adopted by the voters on Nov. 3, 1970—essentially the constitution under which we operate today.

Constitutions are not an easy thing to change. North Carolina has had but three constitutions in its more than 200-year history, and the federal Constitution has been amended only 16 times since the Bill of Rights was adopted as the first 10 amendments in 1791—26 amendments in all. Two ways exist to amend the N.C. Constitution—a state constitutional convention, or legislative initiation.[3] The constitutional convention avenue may be the harder road to travel. Calling such a convention requires a two-thirds majority vote of the membership of each house of the legislature. The last such state convention was in 1875.

Yet legislative initiation is equally cumbersome. These constitutional amendments require a three-fifths majority of the membership of each house of the legislature (fewer than the two-thirds majority a convention requires) before they can be put on the ballot. Then a simple majority of the voters must approve—or ratify, as it's called—the amendment before it becomes part of the Constitution.

Once amendments are put on the ballot, they are likely to pass—but there's no guarantee of that. Since 1868, 133 proposals have been put to the people; 98 have been approved, while 35 have been rejected, for a 74 percent approval rate. In the last 10 years, nine amendments have been approved and five have been rejected—a 64 percent success rate.[4] Many of these amendments had little to do with the structure of government, but authorized changes in state finance practices, for instance. Others directly change the way the state is governed—such as the 1977 constitutional amendment that gave governors the right to run for another full term.

For many years, there were no major constitutional revisions affecting the governor or members of the General Assembly. Though a series of governors had supported allowing both governors and lieutenant governors to succeed themselves for a second four-year term in office, it was not until 1977 that a governor (James B. Hunt Jr.) had the clout to shepherd the issue through the General Assembly.[5] Hunt, while lieutenant governor, had campaigned for governor in 1976 on a platform that included calls for both succession and veto, but once Hunt took office, little more was heard about it while Hunt's allies quietly signed up enough cosponsors in the Senate and in the House for approval of succession. They concluded the veto was too much to ask for, and succession was more important to a governor's

"Since 1868, 133 proposals have been put to the people; 98 have been approved, while 35 have been rejected, for a 74 percent approval rate."

political future than was the veto. Hunt's allies made sure the amendment allowed Hunt to succeed himself, and they rammed through an unrelated bill (a clean water bond issue) that put the succession issue on the ballot in November 1977—striking while the iron of the governor's popularity was still red hot and thus enhancing chances for passage. Most amendments have been scheduled for general elections in even-numbered years.

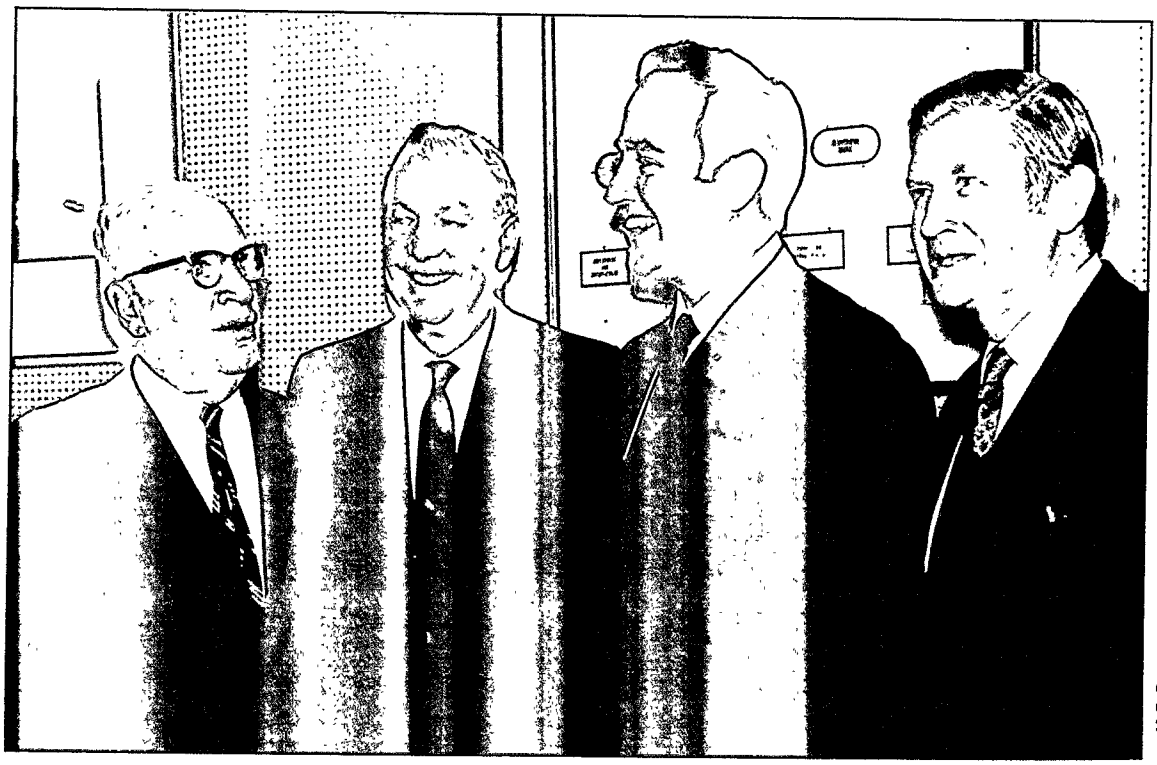
The succession fight was a hot one, with Lt. Gov. James C. Green, who wanted to run for governor in 1980, opposing it behind the scenes. Opponents argued that succession would upset the balance of powers between the legislative and executive branches, particularly by slowing up the production of new leaders, while proponents argued that North Carolina's governor was among the weakest in the nation (see article on page 27 for more) and needed the clout that would come with the right to succeed to a second full term. And they argued that the legislature was too powerful, running roughshod over the governor and ignoring his proposals.

The vote approving succession was a narrow one—passing by fewer than 30,000 votes out of more than 585,000 cast—a 53 percent majority. Despite this narrow margin, the voters since 1977 have not been particularly disposed to approve constitutional changes that would strengthen the legislature. The electorate voted against doubling the length of legislative terms from two years to four years in 1982,[6] and in 1986 voted down a proposal to change the date of elections to odd years, a proposal that was perceived as a measure to help keep Democrats in office in the legislature and on the Council of State.[7] Another constitutional proposal, to repeal succession, was approved by the 1985 General Assembly but recalled by the 1986 session before it went to the people for a vote.[8]

The Current Debate: What Kind of Veto?

While the right of succession gave the governor new political clout, it also led directly and indirectly to a series of changes in the House

Three former governors agreed with an incumbent governor on at least one issue: All supported the veto. From left, the late Gov. Luther H. Hodges; the late Gov. Dan K. Moore; then-incumbent Gov. Robert W. Scott; and former Gov. Terry Sanford, now a U.S. Senator.



N.C. Department of Cultural Resources

and Senate that caused the legislative leadership to flex its muscles. The assembly, traditionally distrustful of the executive anyway, preferred to go its own way in matters legislative, frequently ignoring the wishes of the governor on a variety of matters. Unwittingly, the legislature gave the executive branch an ideal political issue, and Martin and his allies made the most of it in campaigning for the veto during the 1988 elections. When Martin was re-elected with greater Republican support in the legislature than ever before, it was obvious that a veto was a real possibility. The question no longer seemed to be whether the governor should have the veto, but what sort of veto should the governor have? And which governor should be the first to have it?

Like most legal devices, vetoes come in a style, size, color, shape, and pattern to suit almost any taste. Stripped of the chrome plating and the tail fins, there are basically two types of vetoes: those that allow only the veto of individual words or sections within a bill passed by the legislature, and those that allow only the veto of the entire bill, as the president of the United States has. The former is called an item veto, or line-item veto, and a nearly infinite variety of item vetoes can be designed: item vetoes for appropriations bills only, or tax and appropriations bills, or all bills, or all bills except for resolutions or constitutional amendments or redistricting plans or—well, you name it.

Overall, 49 states provide some form of veto to the governor. Of those, 43 allow an item veto, while six states—Indiana, Maine, Nevada, New Hampshire, Rhode Island, and Vermont—allow a regular veto but not an item veto.

If that's not enough, there are also several different ways to design overrides—those votes by which a veto may be overridden by the legislature. The congressional override requires a two-thirds majority of those present and voting. But on the state level, 24 states with item vetoes and two states with regular vetoes require an override of two-thirds of the number elected, as Table 1, page 10 shows. Nine more states with an item veto require override votes of two-thirds of the legislators present in the chamber, and so do two states with a regular veto. And five states with an item veto require a three-fifths majority of those elected to override a veto. The distinction between those elected, and those present, is an important one. It's easier to override a veto when the required majority is based on the number of members *present* rather than those *elected*, and an override by a simple majority of those present is somewhat easier still.

Five states with an item veto require only a simple majority of those elected for an override. Finally, one state (Rhode Island) with a regular veto requires a three-fifths majority of those present for an override, and one state with a regular veto (Indiana) requires only a simple majority for an override.

"Like most legal devices, vetoes come in a style, size, color, shape, and pattern to suit almost any taste."

In addition to these forms of vetoes and overrides, points out UNC-CH Political Science Professor Thad Beyle, 33 states allow their legislatures to recall bills from the governor's desk prior to action vetoing a bill, thus setting up the opportunity for negotiations over revisions before the veto stamp is inked.

The major veto legislation moving through the N.C. General Assembly is the basic, no-frills, generic veto with a moderately easy override feature requiring a vote of three-fifths of those present and voting. Because a quorum (one-half of those elected plus one) required for a veto vote in the N.C. Senate would be 26 members, a three-fifths majority of those present and voting could be as few as 16 senators. Likewise, in the 120-member House, a three-fifths override majority could be as few as 37 Representatives. In actual practice, however, it's far more likely that the vast majority of the members will be present and voting on any override attempt.

Generally, fewer than 10 percent of gubernatorial vetoes are overridden nationally. However, with a General Assembly dominated by one party and the governor belonging to the loyal opposition, the opportunities for both vetoes and overrides are much higher in North Carolina than in states where the governor has a majority in each legislative chamber. Following the 1988 elections, 18 states had a governor facing a legislature

The Item Veto — Partisan Advantage or Fiscal Restraint?

Imagine this scenario: a governor of one political party is often at odds with the legislature, which is dominated by members belonging to another political party. The legislature often approves bills the governor doesn't want, but especially galling to the governor is the legislature's practice of placing odious features in otherwise much-needed legislation. In this particular case, the legislature approves the governor's proposal for a law honoring motherhood and adopting apple pie as the official state dessert, but before final passage, powerful farm interests include a provision declaring that "there shall be no tax on cattle." The governor, who campaigned on the motherhood-and-apple-pie issue, has no choice but to grit his teeth and accept the bad with the good, because he has no veto. It's a classic case of what can happen in North Carolina.

How about this scenario: Another governor in another state faces the same sort of opposition in the legislature, but this governor has a powerful weapon: an item veto. Like governors in 42 other states, this governor can use the item veto to excise unwanted features, like the tax loophole that could cost the state treasury millions of dollars. But taken to its extreme, this item veto can make for even more mischief. Suppose that one of the governor's top cronies owns a brewery. Under at least one state Supreme Court interpretation, the governor could not only change simple legislative intent with an item veto, but also could create new policy. In this case, thanks to the help of the Wisconsin Supreme Court, the governor could zap the legislature and pay off a political debt if he chose to. "For instance, the phrase 'there shall be no tax on cattle' could become 'there shall be no tax on ale' by striking the t's and the c in cattle," notes *State Legislatures* magazine in a hypothetical look at the benefits and disadvantages of the item veto.[1]

Those are the two extremes: North Carolina, the only state in the nation with no veto, and Wisconsin, which has the nation's most liberal interpretation of the item veto. While all but seven states have some form of item veto, legislative experts in recent years have come to criticize its use as a policymaking tool rather than as the device of fiscal restraint that it was created to be.

Item vetoes were first created in the Constitution of the Confederate States of America during the Civil War, and during the Age of Spoils that followed, several states incorporated the item veto in their constitutions.[2] Now 43 states have such a veto. Tony Hutchison, a staff member with the National Conference of State Legislatures, observes that "modern governors have turned a tool of fiscal restraint into a tool of one-upmanship," and says many states should "redesign their item veto to fit the politics of today."[3]

That view is echoed by a national study of the line-item veto. This study, published by *Public Administration Review*, found that [i]t was easier to portray the item veto as an instrument of the executive increasing his or her legislative powers rather than as an instrument for [fiscal] efficiency," and that "the item veto probably has had minimal effect on making legislatures or state government fiscally more restrained."[4]

Item veto is not an issue in the current debate in North Carolina, however. The state Senate killed the line-item veto by tabling it on a 35-13 vote that followed party lines on March 2, 1989. —*Jack Betts*

[1]Tony Hutchison, "Legislating Via Veto," *State Legislatures* magazine, National Conference of State Legislatures, Jan. 20, 1989, p. 21.

[2]House Committee on Rules, 99th Congress, "Item Veto: State Experience and Its Application to the Federal Situation," Committee Print 1986, pp. 6-7.

[3]Hutchison, pp. 21-22.

[4]Glenn Abney and Thomas Lauth, "The Line-Item Veto in the States: An Instrument for Fiscal Restraint or an Instrument for Partisanship?" *Public Administration Review*, Vol. 45, No. 3, May/June 1985, pp. 372 and 377.

Karen Tam

Former Gov. James E. Holshouser Jr., left, a Republican, and former Gov. James B. Hunt Jr., a Democrat, after testifying in favor of the veto for governors at the N. C. General Assembly in February 1989.

dominated by the opposition party. Four were Democratic governors, while 14 (including Martin) were Republican governors.

In approving veto legislation, N.C. senators declined to give the governor a line item veto; a veto of proposed new constitutions; a veto of constitutional amendments to either the U.S. or the N.C. Constitutions; or a veto for the redistricting plans of the N.C. House, N.C. Senate, or U.S. House. All other bills would be subject to the veto, but the governor could not exercise a pocket veto—a veto in which the governor declines to sign a bill into law after the General Assembly adjourns. In those cases, the governor must reconvene the assembly to consider a veto override, or else the bill becomes law.

When the bill was approved by the Senate on March 2, 1989, the debate was marked less by discussion of the relative balance of powers between the branches of government and more on politics. When Republicans lost attempts to give the governor a line item veto on a 35-13 vote and a veto of congressional redistricting on a 36-11 vote, Democrats were riled. They had asked Republicans not to bring those issues to a vote, and when Republicans went ahead with the two losing attempts, Democrats brought out their own amendment to postpone the effective date of the veto from 1991, when Republican Governor Martin would still be in office, to 1993, when his successor will have taken office. That amendment, proposed by Senate Majority Leader Ted Kaplan (D-Forsyth) was approved on a 26-21 vote, with several Democrats joining Republicans in opposition.

Republicans believe the ploy will backfire on

the Democrats. "By moving it [the veto] to 1993, Senator Kaplan did something to assure it will be a Republican governor [Martin's successor] who will be the first to use it," said then-Sen. Laurence Cobb (R-Mecklenburg).

But the House of Representatives took a different view. In June and July, the House Judiciary Committee was considering legislation to combine the veto with several other proposed amendments affecting the balance of power between the executive and legislative branches. Veto power itself—and the veto override—are two of the chief tools of the system of checks and balances between these two branches of government. Concerned that granting veto power might cede too much power to the executive, the House committee wrestled with proposals to balance veto power for the governor with restrictions on how long the governor could serve and with measures increasing legislators' tenure (see box, page 12, for more).

Those measures included granting more power of incumbency to the legislature by lengthening terms from two to four years for representatives and senators; changing the dates of elections for governor, lieutenant governor, and council of state offices from presidential election years to mid-term elections; and slightly restricting the clout of the House by limiting the speaker of the House to no more than four consecutive years in that office. Other proposals included requiring the candidates for governor and lieutenant governor to run as a team, merit selection of judges, repeal of gubernatorial succession, and limiting the governor to a single, six-year term.

The House bill that emerged from committee on July 29, 1989, however, was unencumbered by these additions. It proposed giving the governor the veto in 1993 if voters approved it in a November 1992 referendum. That essentially was what Republicans had sought—a vote on veto without other issues on the ballot at the same time or

Demon Rum and Constitutional Revision

In a way, it's all Demon Rum's fault that North Carolina's governor still doesn't have the veto after all these years. Had it not been for the state's traditional ambivalence over spirituous liquors, the Tar Heel chief executive might well have had the veto 55 years ago, saving the 1989 General Assembly and the general public the trouble of voting on it. But owing to an inadvertent mistake of the sort that the legislature seems to produce from time to time, the North Carolina voters were never able to vote on the proposal despite the General Assembly's having voted for them to be able to do so—in 1933.

In that year, the legislature approved the adoption of a new state constitution—one according the veto power to the governor—and scheduled it for the public's approval at the next general election, as the existing constitution required.[1] General elections then, as now, are held in even-numbered years, and the question would be on the ballot in November 1934.

Almost simultaneously, the assembly was also dealing with another troublesome constitutional matter—whether to join the national movement to repeal the 18th Amendment to the U.S. Constitution, which prohibited the dispensing of liquor, wine, and beer in the United States. The legislature, after a series of fits and starts, approved a bill creating what it called a "general election" for November 1933 for "the sole and exclusive purpose of" voting on repeal of Prohibition.[2] That election was held at the

linked together. But that decision may have doomed veto in the 1989 session, because the House membership—still dominated by Democrats—was lukewarm to the idea of increasing the governor's powers without enhancing legislators' powers as well.

All the proposals for constitutional amendments raised yet another proposal—calling for a state constitutional convention to consider the overall balance of powers. Rep. Dan Blue (D-Wake) sponsored the call for a state constitutional convention because, he said, the magnitude of the proposed constitutional changes was such that only a convention could consider all the proposals at once. Such a convention could educate the public as to what the constitution currently provides and what it should provide in the future, said Blue, and it also would bring more people into the decision-making process. "If we pass all of them piecemeal, we'll have no idea until sometime down the road how they all fit together," Blue said early in the session.

But there was little sentiment for such a session. Governor Martin was pushing for a vote on veto alone, and on Aug. 3, 1989, he got it. First the House amended the bill (SB 3) to schedule the ratification referendum for November 1990 and to make the veto effective in 1991—so Martin could have the veto his last two years. The House approved the 1990 referendum on a 59-45 vote and the 1991 effective date on a 54-47 vote. These amendments passed on simple majority votes after Speaker Mavretic ruled that amendments to proposed constitutional amendments do not require a three-fifths majority.

The debate on the merits of the bill, however, focused on which branch of the government would have more power. House Majority Leader Dennis Wicker, (D-Lee), an opponent of veto, said, "As people become more educated about what veto's effect is on state government and how much more power it will concentrate in one person, the less

appointed time (and drys voted overwhelmingly against wets in North Carolina to reject repeal of Prohibition, but the national vote brought liquor back in) while proponents of the revised state constitution prepared for the 1934 general election.

By the following year, Gov. J.C.B. Ehringhaus was worried enough to ask the state Supreme Court for an advisory opinion. Was the November 1933 election (in which the 18th Amendment repeal was the only item on the ballot) the "next general election" following the adjournment of the 1933 General Assembly? The five justices of the Supreme Court answered on Sept. 13, 1934, that indeed the 1933 election was the "next general election."[3] What did that mean? It meant that the N.C. Constitution revision had been sandbagged. It had missed its election, and could not go before the voters in the 1934 election. Constitutional revision was dead for the year, and it would be 55 years—until the 1989 General Assembly—before veto would once again be at the top of the legislative agenda.

Old-timers in Raleigh still debate whether supporters of the proposed 1933 constitutional revisions, fearing defeat of the changes, pressed Governor Ehringhaus to ask for the advisory opinion in the belief that the Court's opinion would scuttle the election. Others believe that high-ranking officeholders who opposed veto for the governor also pressed for the advisory opinion in hopes that it would sink the veto. But all that is ancient history, and for the first time in the history of the state, voters at long last may get to decide for themselves whether the governor should have the veto.

—*Jack Betts*

FOOTNOTES

[1]Chapter 383 of the 1933 Session Laws.

[2]Chapter 403 of the 1933 Session Laws.

[3]In re General Election, 207 NC 879 (1934). For more on advisory opinions, see Katherine White, "Advisory Opinions: The 'Ghosts That Slay,'" *North Carolina Insight*, Vol. 8, No. 2, November 1985, p. 48.

Table 1. Type of Veto, by State, in 1989

State	Item Veto: 2/3 Elected Override	Item Veto: 2/3 Present Override	Item Veto: 3/5 Elected Override	Item Veto: Majority Elected Override	Non-Item Veto: Special Majority Override	Non-Item Veto: Simple Majority Override	No Veto
Alabama				X			
Alaska	X						
Arizona	X						
Arkansas				X			
California	X						
Colorado	X						
Connecticut	X						
Delaware			X				
Florida	X						
Georgia	X						
Hawaii	X						
Idaho	X						
Illinois			X				
Indiana						X	
Iowa	X						
Kansas	X						
Kentucky				X			
Louisiana	X						
Maine					X (2/3P)		
Maryland			X				
Massachusetts		X					
Michigan	X						
Minnesota	X						
Mississippi	X						
Missouri	X						
Montana		X					
Nebraska			X				
Nevada					X (2/3E)		
New Hampshire					X (2/3E)		
New Jersey	X						
New Mexico		X					
New York	X						
North Carolina							X
North Dakota	X						
Ohio			X				
Oklahoma	X						
Oregon		X					
Pennsylvania	X						
Rhode Island					X (3/5P)		
South Carolina		X					
South Dakota	X						
Tennessee				X			
Texas		X					
Utah	X						
Vermont					X (2/3P)		
Virginia		X					
Washington		X					
West Virginia				X			
Wisconsin		X					
Wyoming	X						
Totals	**24**	**9**	**5**	**5**	**5**	**1**	**1**

Number of states with line-item veto: 43
Number of states with non-item veto: 6
Number of states without the veto: 1

(2/3P: Override of 2/3 present)
(2/3E: Override of 2/3 elected)
(3/5P: Override of 3/5 present)

Source: The Book of the States, 1988-1989 Edition

support it is going to enjoy with that public." Rep. Billy Watkins, a Granville County Democratic firebrand and perennial power in the legislature (who died of a heart attack after the session adjourned), put it this way: "This would be one giant step toward a constitutional monocracy."

Others disagreed. Minority Leader Johnathan Rhyne (R-Lincoln) told the House that the bill was not a matter of taking a property right from the House. Instead, it was "a vote to let the people decide how they will be governed." And Rep. Sam Hunt (D-Alamance), one of the dissident Democrats who in January 1989 toppled former Democratic Speaker Liston Ramsey, put it in practical terms. "I say we've got a good deal and we ought to take it.... It's a weak veto," he said. And that's not all, Hunt said. If the legislature continued to deny the veto to the governor, the voters might retaliate against incumbent legislators—and most incumbents are Democrats. "This is a two-party state, and you just can't ignore any longer the wishes of the people," Hunt said. "You can look to the back of the room and see about 40 people missing from our party [who were beaten by Republicans in the 1988 election].... This is a vote to let the people vote and when you deny the people the right to vote, you're on dangerous ground."

But veto power was defeated on a 60-43 vote on August 3 because a three-fifths majority—or 72 votes—is needed for passage of a proposed constitutional amendment. Only 16 Democrats joined 44 Republicans in voting for the bill, 43 Democrats voted against it, and 15 Democrats and two Republicans did not vote or were absent from the chamber. Governor Martin was dismayed by the vote but pleased by the 16 Democratic votes for veto—a sign to him of a political breakthrough that might be parlayed into eventual success. After a weekend of intensive personal lobbying by the governor and his allies, the veto bill was resurrected from its burial place on August 7 when the House voted 55-29 (a simple majority was all that was needed) to revive it and send it to the House Rules Committee. How did this happen? Among other things, the governor and the speaker had lunch, and the governor changed his mind about his earlier opposition to four-year terms for legislators. Hard details of the agreement were not released, but the governor and the speaker agreed to continue to negotiate over a compromise that would put both the veto issue and four-year terms for lawmakers on the ballot.

The negotiations took on a note of hilarity later in the week when the governor, evidently counting his chickens before they hatched, dispatched two state airplanes to a legislative conference in Oklahoma, where a number of House members were attending a conference. Martin thought the members would like to return to Raleigh to vote in favor of a veto, but the episode turned into a $6,000 embarrassment for the governor when the state aircraft returned—empty but for the pilots. Republican Sen. Jim Johnson of Cabarrus County, who since has switched his registration to the Democratic Party, quipped, "The only thing that flew about that thing was those two planes." Without the votes of the Legislative Black Caucus (see "Black Legislators: From Political Novelty to Political Force," *North Carolina Insight*, December 1989, pp. 40-58, for more on the maneuvering for black votes on veto), veto obviously was going nowhere in the 1989 session. But for Governor Martin, the issue at least was alive for the 1990 short session, particularly if enough House Democrats could be attracted by the promise of four-year legislative terms on the agenda.

"... fewer than 10 percent of gubernatorial vetoes are overridden nationally."

That's precisely the sort of package proposal that Representative Blue, former state Rep. Tom Gilmore of Julian, and former state Sen. McNeill Smith of Greensboro hoped to avoid. Smith and Gilmore are members of the private Committee on Constitutional Integrity. That committee has warned against submitting proposed constitutional amendments in a package. "We're mainly concerned that any amendments to go before the voters go separately and not as a package deal," says Smith. "Voter participation is taking a back seat on these issues."[9]

More than half a century ago, an esteemed journalist named Clarence Poe, editor of the *Progressive Farmer*, expressed his personal ambivalence about the veto. Giving the governor out-

Proposed Legislation Which Would Alter the Powers of the N.C. Governor

In the 1989 General Assembly, eight measures were proposed which would increase, decrease, or otherwise affect the governor's powers in North Carolina. They are as follows:

A. Legislation Which Would Increase the Governor's Powers

1. Veto power
2. Team elections with the lieutenant governor (by removing a possible adversary in dealing with the General Assembly)
3. Merit selection of judges (by increasing the number of the governor's appointments)
4. Limiting the speaker of the House of Representatives to two terms (limiting the longevity and thereby the power of the House's leadership)

B. Legislation Which Would Decrease the Governor's Powers

5. Repeal of gubernatorial succession
6. Limiting the governor to one six-year term

C. Legislation Which Would Otherwise Affect the Governor's Powers

7. Four-year terms for legislators
8. Moving state elections to non-presidential election years

—Ran Coble

right power to nullify a legislative act would get "too far away from the sound principle of trusting the common sense of the most," but at least a veto with a simple majority override provision would give the governor "the power to sound a general alarm" about dubious legislation and thus make the legislature reconsider its vote before affirming it. "With such a veto power, the governor could turn the powerful spotlight of statewide publicity upon any measure that he believes should not have been passed and thus render many an invaluable service to our people," Poe wrote in 1932.[10]

Should the governor have such a searchlight to turn on legislation? Or would that tilt too much power toward the executive branch and make the legislature subservient to an all-powerful chief executive—the sort that legislators have feared since the days of the Royal Governors?

To answer those questions, consider the arguments made in the following pages for and against the veto for the governor of North Carolina.

FOOTNOTES

[1] Senate Bill 3, 1989 General Assembly.

[2] Statement of Gov. James G. Martin to the N.C Senate Committee on Constitutional Amendments, Feb. 2, 1989.

[3] Article 13, Sections 1 and 4, Constitution of North Carolina.

[4] "North Carolina Constitutional Propositions Voted On by The People Since 1868," *North Carolina Manual 1987-1988*, p. 193.

[5] Chapter 363 of the 1977 Session Laws. Ratified by the people on Nov. 8, 1977, on a 307,754 (53%) to 278,013 (47%) vote.

[6] Chapter 504 of the 1981 Session Laws. Rejected by the people on June 29, 1982, by a 163,058 (24%) to 522,181 (76%) vote.

[7] Chapter 768 of the 1985 Session Laws. Rejected by the people on May 6, 1986, by a 230,159 (30%) to 547,076 (70%) vote.

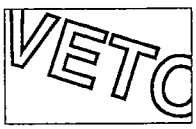
[8] Chapter 61 of the 1985 Session Laws, withdrawn before being put to a voteof the people by Chapter 1010 of the 1985 Session Laws (Second Session 1986).

[9] Lex Alexander, "Bipartisan committee pushes for constitutional convention," *Greensboro News & Record*, Feb. 14, 1989, p. B-1.

[10] "Alternative Suggestions as to Gubernatorial Veto," Report of the Constitutional Commission, November 1932, p. 46.

PRO: North Carolina Should Adopt a Gubernatorial Veto

by Ran Coble



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.

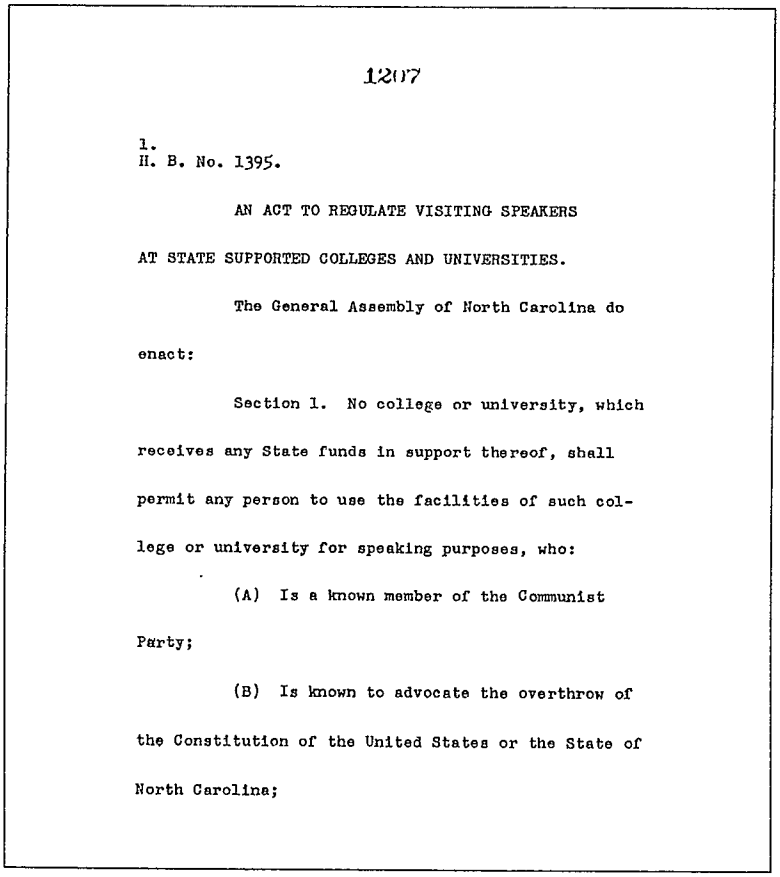
One of the authors of the U.S. Constitution, Alexander Hamilton, came to a similar conclusion. Hamilton argued in *The Federalist Papers*, "It may perhaps be said that the power of preventing bad laws includes that of preventing good ones; and may be used to the one purpose as well as to the other. But 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



1207

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.*

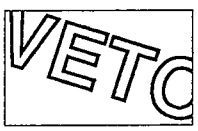
—Thad L. Beyle

CON: North Carolina Should Not Adopt a Gubernatorial Veto

by J. Allen Adams and Abraham Holtzman

"The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other."
—Declaration of Rights, N.C. Constitution, Article 1, Section 6.

"The legislative power of the State shall be vested in the General Assembly. . . ." *—N.C. Constitution, Article II, Section 1.*



CON

Why is North Carolina even considering a violation of her historic separation of powers doctrine by means of a gubernatorial veto?[1] Will it enhance the quality of our state government? Doubtful. Will it transfer legislative power from the General Assembly to the governor? Definitely. Will it exacerbate relations between the executive and legislative branches of our state government? Obviously. Do we need to amend our constitution in this manner? Decidedly not.

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

North Carolina Does Not Need a Gubernatorial Veto

North Carolina has traditionally honored the maxim, "If it ain't broke, don't fix it." North Carolina's government is not "broke." It operates on a balanced budget which reflects the tough decisions that our legislators have to make on expenditures. It has been, with rare exception, scandal-free. In a state of relatively modest means, it has produced excellent institutions of higher education and has been a leader of all the states in community colleges. Our people have been blessed with a comparatively well-protected environment and a low tax burden. Almost alone in our region, our government reacted responsibly amidst the hysteria generated by racial desegregation decisions, and we have long been considered one of the most progressive governments in the South. We have rated consistently as one of the most attractive states for business expansion and as a location for retirement.

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

J. Allen Adams served five terms in the N.C. General Assembly and is a Raleigh lawyer and lobbyist. Abraham Holtzman is professor of political science at N.C. State University in Raleigh and is director of the legislative internship program for the N.C. General Assembly.

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

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

Is There An Imbalance of Power?

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

In 1981, Thad Beyle, a political science professor at Chapel Hill and a strong supporter of the veto, found that in appointive powers our governor stood alone in the southeast as "very strong," that in tenure potential he was "strong" (which, after Gov. James G. Martin's easy re-election in 1988, ought to raise the "tenure potential" to "very strong"), but that his budget-making powers were only "moderate."[4] Since this article, however, the Advisory Budget Commission, composed mainly of legislators, has been made advisory in fact as well as in name in response to a 1982 separation of powers decision by the N.C. Supreme Court.[5]

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

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

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

"At least some of our blessings may be attributed to North Carolina's good government, and all in the absence of a gubernatorial veto throughout our history."

The Veto Does Not Make the Executive Branch More Responsible

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

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Sen. Dennis Winner, D-Buncombe, seated, sponsored veto bill in Senate while Robert Swain, D-Buncombe, opposed it.

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

In allowing the executive to sign a measure, the veto system would enable him to take credit for legislation in whose passage he may not have played any role. The legislation becomes his, and the hapless legislators who sweated and bled to secure its passage are lucky if the TV camera flashes to them as they might happen to receive one of the imperial pens.[9] There is no evidence that the veto system would on balance add useful information to the woefully under-informed electorate. On the contrary, it will inevitably add to the overwhelming public relations imbalance now enjoyed by the executive and provide him with another opportunity to verbally whip up on the legislature.

The Veto Does Not Fit With the Long Ballot

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

The Real Potential Imbalance of Power

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

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

Negative Effects of a Veto

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

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

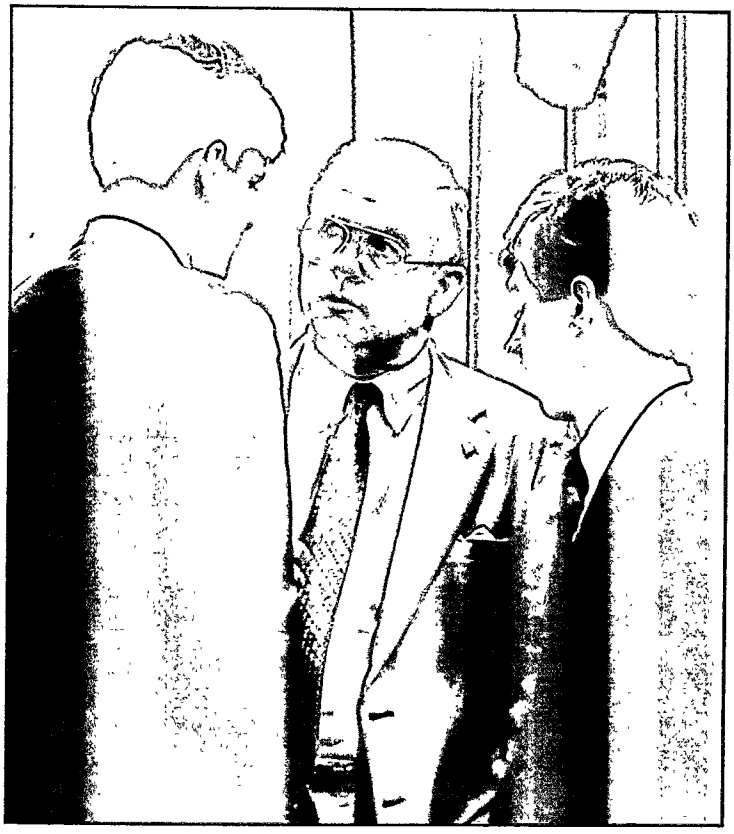
Not satisfied with the veto's usurpation of legislative judgment, some advocates[11] advance the argument that the chief executive must have a veto to exercise *judicial* powers; to decide, in the place of the courts, the constitutionality of a legislative enactment. Why do they presume that the governor has access to better legal advice than does the legislature?

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

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

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

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



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

The history of gubernatorial vetoes in the other 49 states demonstrates that North Carolina governors inevitably will rely on the veto to blackjack the legislature one way or another in the knowledge that these efforts will almost always succeed. The latest published research on vetoes shows that only 3.5 percent of such vetoes were overridden in 1986-87.[12] This means that more than 96 percent of the time (every time in 36 of the states) the governor won in a veto fight. This demonstrates that the veto, when exercised, for all intents and purposes gives the governor ultimate legislative power.

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

A covert veto can also have two additional effects. It can force a legislator to change a bill—to the governor's satisfaction—in order to avoid a veto, and it can sometimes kill a bill when its sponsor decides that he would lose anyway in a veto fight. A potential for executive blackmail over the process and policies of the General Assembly underlies, therefore, the proposal to grant the North Carolina governor the veto power.

"Before North Carolina legislators and citizens act on a constitutional amendment proposing a gubernatorial veto, they should fully understand that the veto is strictly a power mechanism."

"If North Carolina citizens grant their governor veto powers, he will not only be the highest paid governor in the United States, but also one of the most powerful of these governors."

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

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

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

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

FOOTNOTES

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

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

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

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

[5] *State ex rel. Wallace, et al. v. Bone, et al.*, 304 N.C. 591, 286 SE 2d 79 (1982).

[6] Beyle, p. 9.

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

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

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

[10] North Carolina Constitution, Article III, Section 7.

[11] 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. 563.

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

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

Karen Tam

The Powers of the Governor in North Carolina: Where the Weak Grow Strong*—Except for the Governor

by Thad L. Beyle

As the N.C. House of Representatives debated a proposed constitutional amendment in August 1989 to give the governor the veto power, more than one legislator rose to argue that the North Carolina governor already was too powerful, and that granting veto power would upset the balance of powers between the legislative and executive branches. Some legislators even went so far as to argue that the N.C. governor already is the nation's strongest governor. But does the record show that to be the case? Hardly. In fact, North Carolina's governor is among the weakest such offices in the nation, based on a comparison of formal powers among the 50 governors.

To those who sit in the N.C. General Assembly, there is no more powerful political creature than the governor of North Carolina. But to the official who sits in the State Capitol two blocks south of the North Carolina Legislative Building, the office of governor isn't strong enough to deal with the problems of the state—or even to deal effectively with the 170 members of the General Assembly. In fact, the record shows that North Carolina's governor is among the three weakest in the nation in terms of formal, institutional powers. Only the governor's personal political skills and his ability to capitalize on the informal powers available to him partially compensate for the lack of more formal powers and inherent strength.

This lack of formal powers and dependence

With apologies to Leonora Martin and Mary Burke Kerr, authors of The State Toast, whose lines include: "...Where the weak grow strong and the strong grow great...."

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on political capital is especially obvious in the case of Gov. James G. Martin, now beginning his sixth year in office. In January 1989, Governor Martin raised his right hand and made history. He became the first Republican governor to be sworn into a second four-year term. Martin was able to make that history because of a major constitutional change that enhanced the power of the North Carolina governorship. In 1977, the voters of the state amended the North Carolina Constitution to allow the governor to succeed himself, and Democrat James B. Hunt Jr. was the first governor to take advantage of that new opportunity. As Martin began his second term in 1989, he, like Hunt before him, could depend upon a cadre of experienced cabinet members, top staff, and budget officers—men and women he had placed in positions of power four years earlier.

N.C. Department of Community Colleges

Former Gov. Bob Scott thought North Carolina shortchanged itself until it allowed governors to seek a second successive term.

How does the position that Governor Martin now holds stack up with that position in the other 50 states? And how has the North Carolina governorship changed in the last 20 years? Answers to these two questions provide some important guideposts for understanding the rapidly growing business of state government. For, unlike the Colonial era and the 19th century, today's governors sit at the top of the pecking order of political power in most states.

FORMAL INSTITUTIONAL POWERS

Assessing the powers accorded a governor by state constitutions and statutes provides one means of measuring the relative strength of the 50 governors in this country. The five formal institutional powers common to almost all governors are length of tenure and succession; the power to appoint key officials to various state offices; the power to remove officials; control over the budget; and veto power. In addition, the power of the legislature to change the governor's budget proposals, and whether the governor and the legislature are of the same party, are important parts of the gubernatorial power calculus. To examine and compare these seven institutional powers (as defined by the National Governors' Association) for all the states, a point system for each category and for cumulative groupings was used. This analysis is based in part on an earlier study published in *Insight* in 1981 and on a recent National Governors' Association report.[1] Portions of this update are taken from a chapter on "Governors" to be published this year.[2]

1. Length of Tenure and Succession

The longer a governor serves, the more likely that governor is to achieve his goals and have an impact on the state. The length of term and ability to succeed oneself, then, are critical determinants of a governor's power. In the original 13 states, 10 governors had one-year terms, one had a two-year term, and two had a three-year term. States gradually moved to either two- or four-year terms, but one-year tenures were not phased out completely until early this century. By 1940, about

Table 1.[1] Length of Tenure and Succession Potential[2]

Very Strong (18)[3]	Strong (26)	Moderate (3)	Weak (3)	Very Weak (0)
Arizona	Alabama	Kentucky	New Hampshire	—
California	Alaska	New Mexico	Rhode Island	
Colorado	Arkansas	Virginia	Vermont	
Connecticut	Delaware			
Idaho	Florida			
Illinois	Georgia			
Iowa	Hawaii			
Massachusetts	Indiana			
Michigan	Kansas			
Minnesota	Louisiana			
Montana	Maine			
New York	Maryland			
North Dakota	Mississippi			
Texas	Missouri			
Utah	Nebraska			
Washington	Nevada			
Wisconsin	New Jersey			
Wyoming	**North Carolina**			
	Ohio			
	Oklahoma			
	Oregon			
	Pennsylvania			
	South Carolina			
	South Dakota			
	Tennessee			
	West Virginia			

[1] Using a point system ranging from 0 to 5, except for Table 2, which used a O-to-6-point system, the states were grouped into six categories: Very Strong (VS), or 5 points; Strong (S), or 4 points; Moderate (M), or 3 points; Weak (W), or 2 points; Very Weak (VW), or 1 point; and None (N), or no points. Sources for these tables are *The Book of the States,* 1988-89 (Lexington, Ky: Council of State Governments, 1988); *Legislative Budget Procedures in the 50 States* (Denver: National Conference of State Legislatures, 1988); "1988 Election Results," *State Legislatures* (November/December 1988) p. 14; and "The Institutionalized Powers of the Governorship, 1965-1985," *State Services Management Notes,* (Washington, DC: National Governors' Association, 1987, 1989).

[2] These rankings are based on how long a term in office is and whether the governor may succeed to one or more successive terms.

VS – 4-year term, unlimited re-election allowed;
S – 4-year terms, one re-election permitted (N.C. governor has no limit on number of terms he or she can serve, but must sit out at least a term after serving two successive terms);
M – 4-year term, no re-election permitted;
W – 2-year term, unlimited re-election permitted;
VW – 2-year term, one re-election permitted; and
N – 2 year term, no re-election permitted.

[3] Numbers in ( ) show the number of states falling under this category.

Table 2. Power to Appoint Officials to Major Offices [1]

Very Strong (3)[2]	Strong (19)	Moderate (18)	Weak (5)	Very Weak (5)
Indiana	Alaska	Alabama	Arizona	Georgia
Massachusetts	Arkansas	California	Idaho	Mississippi
Tennessee	Colorado	Connecticut	Montana	Oklahoma
	Delaware	Florida	Nebraska	South Carolina
	Illinois	Hawaii	Washington	Texas
	Iowa	Louisiana		
	Kansas	Michigan		
	Kentucky	Missouri		
	Maine	Nevada		
	Maryland	New Hampshire		
	Minnesota	New Mexico		
	New Jersey	North Dakota		
	New York	Rhode Island		
	North Carolina	South Dakota		
	Ohio	Utah		
	Oregon	West Virginia		
	Pennsylvania	Wisconsin		
	Vermont	Wyoming		
	Virginia			

[1]These rankings are based on a governor's ability to appoint officials in six major functions common to every state: corrections, education, health, highways, public utility regulation, and public welfare (in this category, a governor who alone can appoint all six officials can receive a score of 6, as does the governor of Massachusetts).

VS – Governor alone appoints all officials;
S – Governor appoints and one house of legislature must confirm;
M – Governor appoints and both houses of legislature must confirm;
W – Appointment by department director with governor's approval;
VW – Appointment by department director, board, legislature, or by civil service; and
N – Popularly elected by the people.

[2]Numbers in ( ) show the number of states falling under this category.

the same number of states had two- and four-year terms. From 1940 to 1989, the number of states allowing the governor only a two-year term shrank drastically, from 24 to three (New Hampshire, Rhode Island, and Vermont). And from 1960 to 1989, the number prohibiting consecutive terms declined from 15 to three (Kentucky, New Mexico, and Virginia).

To rank the states according to the governor's tenure potential, more weight was given to four-year than to two-year terms, and more to unlimited re-election possibilities than to restraints on re-election. North Carolina (four-year term, one consecutive re-election permitted) fell in the second strongest group of states (see Table 1, page 29).

Until 1977, the governor of North Carolina could not succeed himself. Not only did this limit his power in developing programs within the state, it also curtailed his effectiveness within intergovernmental circles. The governor serves on interstate bodies concerned with education, energy,

growth policy, and other issues, and he works closely with colleagues in the Southern and National Governors' Associations. The governor represents the state in meetings with the president, cabinet members, and members of Congress, and negotiates with federal agencies regarding various issues, programs, and funds. Such complex relationships and activities take time to perform effectively. The governor is also a key figure in negotiating and serving as a member of regional compacts, such as the recent five-state regional hazardous waste disposal compact ratified by the General Assembly.[3] Further, leadership in some of these organizations provides a platform for making views known and having impact on regional and national policy directions.

Until succession passed, North Carolina shortchanged itself. Former Gov. Robert W. Scott (1969-73) put it this way in 1971: "North Carolina is not very effective in shaping regional and national policy as it affects our state because our state changes the team captain and key players just about the time we get the opportunity and know-how to carry the ball and score."[4] Now all that has changed. Jim Hunt succeeded himself and served eight consecutive years, and Jim Martin is doing the same thing. (For more on how gubernatorial succession has worked out, see "The Effects of Gubernatorial Succession: The Good, the Bad, and the Otherwise," *North Carolina Insight,* Vol. 10, No. 1, October 1987, p. 2.) Thus, in the area of tenure potential, North Carolina's governor rates as *strong.*

2. The Power of Appointment

One of the first sets of decisions facing a governor-elect on the first Wednesday morning in November after the election is the appointment of personnel to key positions within the new administration. The appointive power enhances the governor's legislative role: promises of appointments to high-level executive positions, to the state judiciary, and to about 240 boards and commissions often are the coins spent for support of particular legislation.

The measure of the governor's appointive powers is the extent to which he or she is free to name the heads of the state agencies administering the six major state functions common to most states, of corrections, education, health, highways, public utility regulation, and public welfare. These categories were chosen by the National Governors' Association as key indicators of a governor's appointive powers. Governors who can appoint these officials without any other body involved are more powerful than those who must have either or both houses of the legislature confirm an appointment. And governors who only approve appointments rather than initiating them

Governor Jim Martin's appointive powers are strong. In this 1986 photo, Martin named Rhoda Billings to a vacancy as chief justice of North Carolina, but she lost the seat in the 1986 election.

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have even less appointive power. The weakest states are those in which a governor neither appoints nor approves but where a separate body does so, or where separately elected officials head these agencies.

In appointive power for these six functions, the governor of North Carolina ranks among the more powerful of the 50 chief executives. Two weak spots limit the power of the N.C. chief executive: (1) education, where the superintendent of public instruction is a separately elected official even though the governor is able to appoint (subject to confirmation or rejection by the legislature) 11 of the 13 members of the State Board of Education;[5] and (2) public utilities regulation, where the General Assembly must confirm the governor's nominees to the seven-member N.C. Utilities Commission.[6] And the governor has no power to appoint top leaders of the state's 16-campus university system. The 32-member University of North Carolina Board of Governors is nominated and elected solely by the legislature, and the board itself selects the president of the UNC system.[7]

Two additional factors should be noted. First, this study did not analyze the number of appointments made to state boards, commissions and councils.[8] According to figures from a printout supplied by the Department of Administration, the governor can appoint 2,693 individuals to a variety of state boards and commissions—some of them to full-time, paid jobs and most others as unpaid citizens serving on boards advising state agencies. This large number of appointments shows the extensive nature of the North Carolina governor's appointment powers. On the other hand, nine other state officials are independently elected statewide in North Carolina. They have the power to name more than 500 appointees who might normally be appointed by a governor in another state, such as New Jersey or Maine, where the governor does not share powers with any other elected officials.

Because the governor shares a large measure of executive branch responsibility with the nine-member Council of State—elected on a statewide basis to direct the departments of Justice, Labor, Education, Agriculture, Insurance, Treasurer, Secretary of State, Auditor and Lieutenant Governor—much of the power that in other states is concentrated in the office of governor lies in the hands of other officials in North Carolina.[9] Were it not for this broad sharing of powers, North Carolina's governor would rank very strong in

Karen Tam

Table 3. Power to Remove Officials from Offices[1]

Very Strong (4)[2]	Strong (5)	Moderate (13)	Weak (19)	Very Weak (9)
Indiana	Alaska	Arkansas	Arizona	Georgia
Montana	Colorado	Alabama	Connecticut	Iowa
New Mexico	Delaware	California	Florida	Minnesota
South Dakota	Louisiana	Hawaii	Idaho	Nevada
	Maryland	Illinois	Massachusetts	**North Carolina**
		Kansas	Michigan	North Dakota
		Kentucky	Mississippi	Ohio
		Maine	Nebraska	Oregon
		Missouri	New Hampshire	Washington
		New Jersey	Oklahoma	
		New York	Rhode Island	
		Pennsylvania	South Carolina	
		Virginia	Tennessee	
			Texas	
			Utah	
			Vermont	
			West Virginia	
			Wisconsin	
			Wyoming	

[1]These rankings are based on a governor's power to remove officials with or without cause, and on whether those powers are granted directly by the state constitution, through state statutes, or other avenues.

VS – Power based in state constitution or court decision; no specifications or restrictions as to use;
S – Power based in state constitution or statutory elaboration of constitutional provision; specifications or restrictions in only one area (cause, scope, or process);
M – Power based on statutory elaboration of constitutional provision or statute; specifications or restrictions in one or two areas (cause, scope, or process);
W – Power based on statutory elaboration of constitutional provision or statute; specifications or restrictions in two or all three areas (cause, scope, or process); and
VW – Power based on statute or restricted by court decision; specifications or restrictions in all three areas (cause, scope, and process).

[2]Numbers in ( ) show the number of states falling under this category.

appointive power. On the other hand, if the governor's powers were measured in all 50 states based on who appoints officials to these nine posts, the North Carolina governor might rank even weaker. But on the basis of the powers measured here, North Carolina's governor ranks as *strong* in appointive power.

3. The Power to Remove Officials

The reverse side of appointive power is often overlooked—the power of removal. The power to appoint officials theoretically implies the power to remove officials so that an alternative appointment can be made. Generally, this is a difficult power to exercise unless an official is accused of

outright corruption or unethical behavior. In fact, the political costs of trying to remove someone are often greater than the costs of living with the problem that they create.[10]

Recently, another constraint on the governor's removal power has arisen from a series of U.S. Supreme Court decisions protecting individuals from political firings, beginning with the *Elrod v. Burns* decision in 1976.[11] This constraint is based on an individual's freedom of speech and freedom of association (in this case, with political parties) embedded in and protected by the First Amendment to the U.S. Constitution. There are some limits in these rulings, however. An employee's political rights "may be required to yield to the state's vital interest in maintaining governmental effectiveness and efficiency" if these individual rights "would interfere with the discharge of his official duties (*Branti v. Finkel*)." Another case illustrates that political rights do not protect from dismissal public employees who complain about working conditions or their supervisor (*Connick v. Meyers*). The previously noted cases all involved local jurisdictions.

Currently, *Stott v. Martin*, a case brought to challenge the North Carolina governor's power of removal, is pending in the U.S. Eastern District Court in Raleigh.[12] This is a pivotal case with considerable national interest because it is the first case to challenge directly a governor's power of removal. Bobby Stott, a state employee and holdover from the Hunt administration, was fired when Republican Jim Martin took office. Stott sued, contending that a firing on mere political grounds was unconstitutional. *Stott v. Martin* is scheduled to be tried in 1990 after several pretrial motions and appeals are settled. Then there will be an almost certain appeal to the U.S. Court of Appeals and the U.S. Supreme Court, no matter what the decision may be.

The power of removal is strongest when lodged in the state's constitution rather than in a state statute. It is also stronger when there are few specifications or restrictions as to who might be removed, or the reasons for which removal might be warranted, or if the removal is the governor's prerogative alone and not shared with another state agency. State supreme court decisions have either provided the governor with considerable power of removal (Indiana) or a somewhat restricted power of removal (Arizona), or have hamstrung the governor (Georgia).[13]

To rank the states on the governor's removal power, more weight was given to a constitutional provision than to a statutory provision, the degree to which the governor is constrained by restrictions on the cause needed to remove an official, the scope of the removal power, or the removal process involved. Although the N.C. governor can fire without cause those key personnel who are designated as exempt from the protections of the State Personnel Act, Tar Heel governors have not always been able to remove holdovers from previous administrations. Their powers do not stem directly and unfettered from the N.C. Constitution, which would grant the most power. Instead, the Tar Heel governor's removal powers stem from the statutes, and in some cases the governor is restricted in his removal power.

"A governor who has full responsibility for developing the state's budget is more powerful than those who share this responsibility with others."

At least twice in the last 12 years, the governor has solved a sticky removal problem by legislation. Then-freshman Gov. Jim Hunt solved a problem with an inherited Parole Commission appointed by his predecessor, Republican Jim Holshouser, in offbeat fashion: he persuaded the 1977 N.C. General Assembly to abolish the old commission and to set up a new one—whose members Hunt could name.[14] And in 1989, Governor Martin had a similar problem with a member of the N.C. Wildlife Commission he had appointed but who angered the governor by meddling in personnel policy. Martin did not have the power to fire wildlife commissioners until the 1989 legislature adopted a new law declaring that commissioners served "at the pleasure of the governor."[15]

On the other hand, some governors bring unusual powers of persuasion with them to office. Hunt rarely had difficulty in replacing holdover officials with his own key personnel, for instance.

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Table 4. Governor's Control Over the Budget[1]

Very Strong (44)[2]	Strong (5)	Moderate (0)	Weak (0)	Very Weak (1)
Alabama	Colorado			Texas
Alaska	Kentucky			
Arizona	Louisiana			
Arkansas	New Mexico			
California	South Carolina			
Connecticut				
Delaware				
Florida				
Georgia				
Hawaii				
Idaho				
Illinois				
Indiana				
Iowa				
Kansas				
Maine				
Maryland				
Massachusetts				
Michigan				
Minnesota				
Mississippi				
Missouri				
Montana				
Nebraska				
Nevada				
New Hampshire				
New Jersey				
New York				
North Carolina				
North Dakota				
Ohio				
Oklahoma				
Oregon				
Pennsylvania				
Rhode Island				
South Dakota				
Tennessee				
Utah				
Vermont				
Virginia				
Washington				
West Virginia				
Wisconsin				
Wyoming				

[1]These rankings are determined by how much power the governor has to draft and propose a state's annual budget.

VS – Governor has full responsibility for developing budget;
S – Governor shares responsibility with civil servant or with a person appointed by another official;
M – Governor shares responsibility with legislature;
W – Governor shares responsibility with another popularly elected official;
VW – Governor shares responsibility with several others with independent sources of strength.

[2]Numbers in ( ) show the number of states falling under this category.

Table 5. Ability of the Legislature To Change the Governor's Budget[1]

Very Strong (2)[2]	Strong (1)	Moderate (1)	Weak (1)	Very Weak (45)
Maryland West Virginia	Nebraska	New York	**North Carolina**	Alabama Alaska Arizona Arkansas California Colorado Connecticut Delaware Florida Georgia Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maine Massachusetts Michigan Minnesota Mississippi Missouri Montana Nevada New Hampshire New Jersey New Mexico North Dakota Ohio Oklahoma Oregon Pennsylvania Rhode Island South Carolina South Dakota Tennessee Texas Utah Vermont Virginia Washington Wisconsin Wyoming

[1]These rankings are based on how restricted a legislature is in its ability to limit the budgetary powers of the governor, because the greater a legislature's power to alter a governor's budget, the less power a governor will have. The rankings above reflect a governor's power relative to the legislature's ability to alter the budget.

- VS – Legislature may not increase the executive budget;
- S – A special (three-fifths majority) vote is require to increase a governor's recommendation;
- M – Legislature may reduce or strike out items, but may increase and add separate items subject to a governor's line item veto;
- W – Legislature can change budget, but must balance allocations with revenues; and
- VW – Unlimited power of the legislature to change the executive budget.

[2]Numbers in ( ) show the number of states falling under this category.

— *continued from page 35*

Some students of the governorship believe that because removal powers vary greatly from board to board, the N.C. governor's power to fire those he does not want in office is considerably stronger than it appears. Yet this comparison is based on a reading of the constitutional and statutory removal powers in each of the states, and is backed up by other national surveys. Not every governor is able to get his way, and because the governor's removal powers are somewhat limited and devolve from specific statutes, North Carolina falls among the more restricted governors among the 50 states in this power, and thus ranks as *very weak* in removal powers.

4. Governor's Control Over the Budget

An executive budget, centralized under gubernatorial control, is a 20th century response at all levels of our governmental system to the chaotic fiscal situations that existed at the turn of the century. A budget document brings together under the chief executive's control all the agency and departmental requests for legislatively appropriated funds. Sitting at the top of this process in the executive branch, a governor usually functions as chief cheerleader for the budget in the legislature as well.

A governor who has full responsibility for developing the state's budget is more powerful than those who share this responsibility with others. Most states (44) do give this power solely to the governor; in only six states do the governors have to share the control over the budget.

North Carolina, along with almost all other states, has provided its governors with very strong budget-making power. This is a change from the earlier 1981 evaluation of the governor's powers due to the reduction in the powers and functions of the Advisory Budget Commission (ABC) following a state Supreme Court decision in 1982.[16] Prior to this 1982 decision, the ABC, with at least eight legislators among its 12 members, effectively controlled much of the overall executive budget presented to the General Assembly.[17] This legislative role raised legal questions concerning the constitutional power of the North Carolina governor. Under the North Carolina Constitution, the governor "shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period."[18]

The *Wallace v. Bone* decision applied only to membership on the Environmental Management Commission, but the principle of the case—separation of powers—extended to other state boards and commissions, according to the state Attorney General's Office. By having a legislatively dominated commission—the ABC—actually carrying out a function that the constitution delegated specifically to the governor (the power to prepare and recommend a budget), the constitution's separation of powers clause was being violated. Thus the power of the ABC to actually recommend a joint budget to the full General Assembly was circumscribed greatly, to the point that the ABC now only advises the governor.

A savvy governor pays attention to the advice given by the Appropriations Committee chairs who sit on the ABC, but the end result is an increase in the governor's formal powers to propose a budget. There was a tradeoff involved, however. Under the old ABC operation, the governor shared budget-making powers with the ABC, but the governor had great success in getting his ABC-approved budget through the legislature because the ABC was peopled with so many legislative leaders. Now with the ABC merely advising the governor, the legislature has begun drafting its own budget proposals—though this likely would have occurred anyway, given the power split with a Republican governor and a Democratic majority in the legislature.

In addition, the legislature for a time attempted to limit the executive branch's authority to administer the budget. In two special provisions adopted in October 1981, the legislature sought to give its own Joint Legislative Commission on Governmental Operations authority over the executive branch transfer of funds, and also to create a new legislative group with authority over federal block grants. But in a rare, 1982 advisory opinion, the state Supreme Court advised that these incursions into executive branch turf were unconstitutional.[19] Largely because of the *Wallace v. Bone* limitations placed on the ABC and the advisory opinion's limitations on legislative incursions, the North Carolina governor's budget-making power ranks as *very strong*.

5. Ability of the Legislature to Change the Governor's Budget

This is the first of two gubernatorial powers that basically are negative. In every state, the governor may propose the next state budget, but the

"The most direct power a governor can exercise in relation to the legislature is the threat or the use of a veto."

more a legislature may change that proposed budget, the *less potential budget power* a governor has. Note the use of the word *potential;* it is applied purposely because not all legislative-gubernatorial relationships are adversarial and the governor's proposed budget most often sets the budgetary agenda for legislative consideration and decision.

There is little variation among the states on this, as only five states provide constraints on the legislature's ability to change the governor's proposals—and thus check his power. In fact, since 1965 no state has increased the governor's budget power vis-à-vis the legislature and four states actually have increased their legislature's power,[20] although prior to 1971, when a new N.C. Constitution was adopted, the N.C. General Assembly could have withdrawn all the governor's budgetary powers by statutory repeal. As mentioned earlier, the N.C. General Assembly has begun taking a more direct role in budget-making and in recent years has produced its own budget package—though it must by law and by constitutional provision produce a balanced budget.[21] That means the N.C. General Assembly can make nearly unlimited changes in the governor's budget—subject only to constitutional and statutory requirements to balance revenues and expenditures. Thus, North Carolina's governor ranks as *weak* in this category.

6. Veto Power

The most direct power a governor can exercise in relation to the legislature is the threat or the use of a veto. The type of veto power extended to governors ranges from the simple, all-or-nothing veto, to the item veto, to the amendatory veto, and to no veto at all (see pages 5 and 6 for more on the types of vetoes). As the politics of the past few years have highlighted, only one state has no veto power—North Carolina.

In addition to giving a governor direct power in struggles with the legislature, a veto also provides the governor with some administrative powers. For example, it gives him the ability to stop agencies from attempting an end run around a governor's adverse decision—such as when agencies go directly to the legislature to seek authority or spending approval for items the governor opposes. This is especially true in the 43 states where the governor can veto particular items in an agency's budget without overturning the entire bill. But like the legislature's authority to change the budget, this is also a measure of how the legislature may curtail a governor's power through its ability to override a governor's veto.

Ranking the states for veto power is based on two principal assumptions: first, that an item veto gives a governor more power than does a general veto; and second, that the larger the legislative vote needed to override a governor's veto, the stronger the veto power. In this category, North Carolina, with no veto power at all, ranks *a notch below very weak*—dead last of all the 50 states.

7. Governor and Legislature of the Same Party

Textbooks and politicians always list political party chief as one of the governor's major roles. That roles allows the governor to use partisanship to the utmost advantage. For example, if the governor and the majority of the members and the leadership of both houses of the legislature are of the same party—as they were when Democrat James B. Hunt Jr. was governor from 1977-1985—the governor's power is likely to be greater than if they are of opposite parties—as is the current case under Republican Gov. James G. Martin. When the leaders are of the same party, there is less chance of partisan conflicts and more chance for the governor to influence the legislature because it is dominated by the governor's own party. If they are of opposite parties, partisan conflicts can be the norm, and the governor loses power due to the inability to call on partisan loyalty for support.

In the recent past, the trend has been toward power splits where the executive and legislative branches of government are controlled by opposite parties either totally or partially. Following the 1984 elections, 16 states had such split party

Table 6. Veto Power[1]

Very Strong (38)[2]	Strong (5)	Moderate (0)	Weak (5)	Very Weak (1)	None (1)
Alaska	Alabama		Maine	Indiana	North Carolina
Arizona	Arkansas		Nevada		
California	Kentucky		New Hampshire		
Colorado	Tennessee		Rhode Island		
Connecticut	West Virginia		Vermont		
Delaware					
Florida					
Georgia					
Hawaii					
Idaho					
Illinois					
Iowa					
Kansas					
Louisiana					
Maryland					
Massachusetts					
Michigan					
Minnesota					
Mississippi					
Missouri					
Montana					
Nebraska					
New Jersey					
New Mexico					
New York					
North Dakota					
Ohio					
Oklahoma					
Oregon					
Pennsylvania					
South Carolina					
South Dakota					
Texas					
Utah					
Virginia					
Washington					
Wisconsin					
Wyoming					

[1]These rankings are based on the type of veto power a governor has.

VS – Line-item veto with at least a three-fifths majority of legislature needed to override;
S – Item veto with simple majority of legislature *elected* needed to override;
M – Item veto with majority of members of legislature *present* needed to override;
W – No item veto but *special* majority of legislature needed to override;
VW – No item veto with *simple* legislative majority needed to override; and
N – No veto of any kind.

[2]Numbers in ( ) show the number of states falling under this category.

Table 7. Governor and Legislature of the Same Party[1]

Very Strong (8)[2]	Strong (11)	Moderate (13)	Weak (16)	Very Weak (2)
Arkansas	Connecticut	Alaska	Arizona	Alabama
Georgia	Kansas	Delaware	California	Rhode Island
Hawaii	Kentucky	Indiana	Colorado	
Louisiana	Minnesota	Michigan	Florida	
Maryland	New Hampshire	Montana	Idaho	
Massachusetts	New Jersey	Nebraska	Illinois	
Mississippi	Oregon	Nevada	Iowa	
West Virginia	South Dakota	New York	Maine	
	Tennessee	North Dakota	Missouri	
	Utah	Ohio	New Mexico	
	Virginia	Pennsylvania	**North Carolina**	
		Vermont	Oklahoma	
		Washington	South Carolina	
			Texas	
			Wisconsin	
			Wyoming	

[1]These rankings are based on the added powers that accrue when the governor and legislature are of the same political party and the governor is head of the party.

VS – Governor's party controls both houses with substantial majority (75 percent or greater);
S – Governor's party has simple majority in both houses, or a simple majority in one house and a substantial majority in the other;
M – Split party control in the legislature or non-partisan legislature;
W – Governor's party in simple minority in both houses, or a simple minority in one and a substantial minority in the other;
VW – Governor's party in substantial minority in both houses.

[2]Numbers in ( ) show the number of states falling under this category.

control; in 1989, there were 30, including North Carolina. Political scientist V.O. Key Jr. called this phenomenon a "perversion" of the separation of powers built into our system of government at the national and state levels as it allows partisan differences to create an almost intractable situation.[22] Nebraska is unique—a nonpartisan, unicameral legislature and partisan governor.

Measuring this power of party control across the states is based on the assumption that the greater the margin of control by the governor's party in either or both houses of the legislature, the stronger the governor may be. Conversely, the weaker the governor's party in the legislature, the weaker the governor may be. Of course, this overlooks the possibility that the governor's style and personality can either surmount difficult partisan splits or make the worst of a good situation. North Carolina, with Republican Martin and a legislature ostensibly controlled by Democrats in both houses, falls toward the lower end of this measure, and ranks as *weak* in this category.

Figure 1. Relative Power of the Offices of the Governor

Very Weak	Weak (7)	Moderate (38)	Strong (4)	Very Strong (1)
None	NC	AK MI	MA	MD
	NH	AL MN	NY	
	NV	AR MO	SD	
	RI	AZ MS	WV	
	SC	CA MT		
	TX	CO NB		
	VT	CT ND		
		DE NJ		
		FL NM		
		GA OH		
		HI OK		
		IA OR		
		ID PA		
		IL TN		
		IN UT		
		KS VA		
		KY WA		
		LA WI		
		ME WY		

Note: Abbreviations are from two-letter postal service code. Scores are from Table 8, page 43, and power is rated on this scale: less than 17 points, Very Weak; 17 to 20 points, Weak; 21 to 27 points, Moderate; 28 to 30 points, Strong; and over 31 points, Very Strong. This list is shown alphabetically by group.

( ) indicates number of states in this category.

Summary of Overall Formal Institutional Powers

To compare the formal institutional powers of the 50 governors, each state was given an overall average score by using a two-step method. First, for each of six categories—length of tenure and succession, the power to remove officials, control over the budget, the ability of the legislature to change the governor's budget, veto power, and the governor's party control, a zero-to-five point scoring range was used. The appointment category had a zero-to-six point range to conform to the National Governors' Association study (see footnotes to Tables 1-8 for an explanation of the scoring system for each category). Critics may point out that each category is weighted equally and that this may obscure important differences among the powers of the 50 governors. But because such values can vary enormously from state to state, there is no simple way to weight them differently. This survey, after all, seeks to compare the powers of the various governors, as defined by the National Governors' Association, in order to provide a perspective on the relative powers and to help policymakers and voters consider how their chief executives compare with the governors in other states.

Second, the scores for the seven categories were totaled and divided by seven to get overall average scores, which ranged from 4.7 (Maryland, the strongest of all governors) to 2.4 (Rhode Island, the weakest governor). With a score of 2.7, North Carolina's governor is the third weakest in the nation, behind Rhode Island and Texas, and rests with six other states in the bottom rank

of states rated as having "weak" governors. No state's governor fell into the "very weak" category.

INFORMAL POWERS

These measures only tell part of the story of gubernatorial power. They emphasize the degree of control the governor has over the executive branch and his or her relationship with the legislature. They do not, however, measure the many informal sources of power or constraints on a governor such as supporting or opposing interest groups, a governor's ability to take advantage of the news media, access to campaign contributions, county political organizations, good looks, charisma, and overall political popularity—which itself can rise or fall with each new political brushfire. A media-wise governor can, for example, dominate a state's political and policy agenda if he or she is adept at handling the media and public appearances; by the same token, a governor's powers can decline if the governor is inept at controlling the political agenda or communicating through television cameras.

Some of the informal powers available to the N.C. governor outweigh many of the constraints on his institutional powers. A strong political base and popularity with the media provides the governor with a major vehicle to command the public's attention. Because no large urban area dominates the state's politics, there are no other highly visible political leaders with which the governor has to compete. In contrast, the mayors of New York, Chicago, Los Angeles, Atlanta, and other large cities have a political base which can vault them into a position to vie with a governor for leadership.

Moreover, in this state, few other institutions provide leaders a base for political attention.

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TABLE 8, FOOTNOTE

[1]In the Power Index column, the overall ratings were determined by averaging the scores for the seven categories for each state. A governor with a ranking of 4.5 or higher ranks as Very Strong (1 state); 4.0-4.4 merits a Strong ranking (4 states); 3.0-3.9 merits a Moderate ranking (38 states); 2.0-2.9 merits a Weak Ranking (7 states); and 1.9 or less merits a Very Weak ranking (0 states). See Figure 1, page 41, for more.

Table 8.

State	Tenure Potential	Appointment Power	Removal Power
Alabama	4	4	3
Alaska	4	5	4
Arizona	5	3	2
Arkansas	4	5	3
California	5	4	3
Colorado	5	5	4
Connecticut	5	4	2
Delaware	4	5	4
Florida	4	4	2
Georgia	4	2	1
Hawaii	4	4	3
Idaho	5	3	2
Illinois	5	5	3
Indiana	4	6	5
Iowa	5	5	1
Kansas	4	5	3
Kentucky	3	5	3
Louisiana	4	4	4
Maine	4	5	3
Maryland	4	5	4
Massachusetts	5	6	2
Michigan	5	4	2
Minnesota	5	5	1
Mississippi	4	2	2
Missouri	4	4	3
Montana	5	3	5
Nebraska	4	3	2
Nevada	4	4	1
New Hampshire	2	4	2
New Jersey	4	5	3
New Mexico	3	4	5
New York	5	5	3
North Carolina	**4**	**5**	**1**
North Dakota	5	4	1
Ohio	4	5	1
Oklahoma	4	2	2
Oregon	4	5	1
Pennsylvania	4	5	3
Rhode Island	2	4	2
South Carolina	4	2	2
South Dakota	4	4	5
Tennessee	4	6	2
Texas	5	2	2
Utah	5	4	2
Vermont	2	5	2
Virginia	3	5	3
Washington	5	3	1
West Virginia	4	4	2
Wisconsin	5	4	2
Wyoming	5	4	2
Average Score:	**4.2**	**4.2**	**2.5**

Combined Index of Formal Powers of the 50 Governors[1]

Governor Controls Budget	Legislature Can Change Budget	Veto Power	Governor & Legislature of Same Party	Total Score	Power Index	Ranking Among All 50 States
5	1	4	1	22	3.1	41 (tie)
5	1	5	3	27	3.9	6 (tie)
5	1	5	2	23	3.3	36 (tie)
5	1	4	5	27	3.9	6 (tie)
5	1	5	2	25	3.6	23 (tie)
4	1	5	2	26	3.7	14 (tie)
5	1	5	4	26	3.7	14 (tie)
5	1	5	3	27	3.9	6 (tie)
5	1	5	2	23	3.3	36 (tie)
5	1	5	5	23	3.3	36 (tie)
5	1	5	5	27	3.9	6 (tie)
5	1	5	2	23	3.3	36 (tie)
5	1	5	2	26	3.7	14 (tie)
5	1	1	3	25	3.6	23 (tie)
5	1	5	2	24	3.4	27 (tie)
5	1	5	4	27	3.9	6 (tie)
4	1	4	4	24	3.4	27 (tie)
4	1	5	5	27	3.9	6 (tie)
5	1	2	2	22	3.1	41 (tie)
5	5	5	5	33	4.7	1
5	1	5	5	29	4.1	2 (tie)
5	1	5	3	25	3.6	23 (tie)
5	1	5	4	26	3.7	14 (tie)
5	1	5	5	24	3.4	27 (tie)
5	1	5	2	24	3.4	27 (tie)
5	1	5	3	27	3.9	6 (tie)
5	4	5	3	26	3.7	14 (tie)
5	1	2	3	20	2.9	44 (tie)
5	1	2	4	20	2.9	44 (tie)
5	1	5	4	27	3.9	6 (tie)
4	1	5	2	24	3.4	27 (tie)
5	3	5	3	29	4.1	2 (tie)
5	**2**	**0**	**2**	**19**	**2.7**	**48**
5	1	5	3	24	3.4	27 (tie)
5	1	5	3	24	3.4	27 (tie)
5	1	5	2	21	3.0	43
5	1	5	4	25	3.6	23 (tie)
5	1	5	3	26	3.7	14 (tie)
5	1	2	1	17	2.4	50
4	1	5	2	20	2.9	44 (tie)
5	1	5	4	28	4.0	5
5	1	4	4	26	3.7	14 (tie)
1	1	5	2	18	2.6	49
5	1	5	4	26	3.7	14 (tie)
5	1	2	3	20	2.9	44 (tie)
5	1	5	4	26	3.7	14 (tie)
5	1	5	3	23	3.3	36 (tie)
5	5	4	5	29	4.1	2 (tie)
5	1	5	2	24	3.4	27 (tie)
5	1	5	2	24	3.4	27 (tie)
4.8	**1.3**	**4.4**	**3.1**	**24.6**	**3.5**	

Dwane Powell, The News and Observer

This 1977 political cartoon took note of Governor Hunt's strength in the N.C. General Assembly.

—*continued from page 42*

Labor unions are weak; no independent citizens group has the power to challenge the governor on any sustained basis; and the dominant industries, like textiles, tobacco, furniture, and banking, usually work quietly behind the political scenes.

Finally, a North Carolina governor can still forge a grassroots political organization from Manteo to Murphy, although such an organization has not been evident in the latter half of the 1980s. The state is not so big as to make this process impossible, yet it is large enough to make such a county-by-county structure powerful. The North Carolina governor can appoint judges (about 60 percent of the state's 242 judges first gained office through gubernatorial appointment[23]) and, through his appointed Board of Transportation, pave highways and set the course of highway building for years to come. This power of robes and roads can help the governor garner political support and collect campaign workers and financing, essential ingredients for a grassroots network of supporters.

And not to be overlooked is the power of a governor to reorganize the existing executive branch structure to conform with his own plans. In North Carolina, the governor has broad powers to combine major state departments and to realign executive branch responsibilities under the Executive Organization Act of 1971.[24] Such powers allow a governor to shift the setup of the major agencies under his control, especially when pressing state needs indicate a reorganization would be helpful. However, Governor Martin declined an opportunity to create a new department in 1988 when the General Assembly delayed action on Martin's proposal to combine some of the environmental health functions of the Department of Human Resources with the environmental protection functions of the Department of Natural Resources and Community Development. Already at odds with the legislature over other matters, Martin did not press the issue, and not until mid-1989 did the General Assembly create the new Department of Environment, Health, and Natural Resources.[25]

All these formal and informal powers can confer upon an individual governor considerable

powers if that official knows how to take best advantage of them. In recent years in North Carolina, Democratic governors probably have been more powerful than their Republican counterparts, for a variety of reasons—including sharing the same party registration with the majority of the legislators.

SUMMARY

To place this analysis in a national perspective, Table 8 presents the comparative institutional powers of governors of all 50 states. Southern governors generally do not have as many institutional powers as do non-Southern governors. And Southern governors' powers often are shared with other statewide, elected officials, a weakness that other governors outside the region generally do not have. Moreover, North Carolina has not kept pace with its neighbors in enhancing its governor's powers. While the North Carolina governor gained power through the major executive branch reorganization of the early 1970s and the succession amendment of 1977, he still has to contend with a large number of separately elected state officials,[26] and to cope with the legislature without any veto power.

The wide range of informal powers available to the North Carolina governor tends to balance somewhat the governor's structural weaknesses. And the way in which the governor uses the institutional powers in a day-to-day functional sense can determine to a large extent how powerful that governor really is. In the final analysis, then, the degree of power that the North Carolina governor has today depends largely upon the person who occupies the gingerbread mansion on Blount Street and that person's political skills, instincts, ideals, and ambitions.

FOOTNOTES

[1] Thad L. Beyle, "How Powerful Is the North Carolina Governor?," *N.C. Insight*, Vol. 4, No. 4, December 1981, pp. 3-11; and Office of State Services, "The Institutional Powers of the Governorship: 1965-1985," *State Services Management Notes*, National Governors' Association, 1987, 1990.

[2] Thad L. Beyle, "Governors;" in Virginia Gray, Herbert Jacob, and Robert H. Albritton, editors, *Politics in the American States*, 5th Ed., (Boston: Scott, Foresman, 1990).

[3] Chapter 1 of the 1989 Session Laws (Extra Session 1989).

[4] Robert L. Farb, *Report on the Proposed Gubernatorial Succession Amendment*, UNC-Chapel Hill Institute of Government, 1977, p. 5.

[5] Article III, Sec. 7(1) of the N.C. Constitution created the office of Superintendent of Public Instruction. G.S. 115C-10 created the State Board of Education, comprising the lieutenant governor, the state treasurer, and 11 other members nominated by the governor and confirmed by the General Assembly.

[6] G.S. 62-10.

[7] G.S. 116-5 and 116-6.

[8] For more information on boards and commissions, see Jim Bryan, Ran Coble, and Lacy Maddox, *Boards, Commissions, and Councils in the Executive Branch of N.C. State Government*, N.C. Center for Public Policy Research, 1985, pp. 23-38.

[9] Article III, Sec. 2(1), and Sec. 7(1), of the N.C. Constitution.

[10] Dianne Kincaid Blair, "The Gubernatorial Appointment Power: Too Much of a Good Thing?," *State Government*, Vol. 55, No. 3, (1982), pp. 88-92.

[11] See *Elrod v. Burns*, 427 U.S. 347 (1976); *Branti v. Finkel*, 445 U.S. 507 (1981); and *Connick v. Meyers*, 461 U.S. 138 (1983).

[12] See *Stott v. Martin*, 89-1032L in the 4th Circuit U.S. Court of Appeals, Richmond; and 85-818-CIV-5, 86-650-CIV-5, and 86-638-CIV-5, U.S. Eastern District Court, Raleigh.

[13] See *Tucker v. State*, 218 Ind. 614 (1941); *Ahern v. Bailey*, 104 Ariz. 250, 451 P.2d 30 (1969); and *Holder v. Anderson*, 160 Ga. 433, 128 S.E. 1981 (1925).

[14] G.S. 143B-266.

[15] Chapter 68 of the 1989 Session Laws, codified as G.S. 143-241.

[16] *State ex. rel. Wallace v. Bone*, 304 N.C. 591, 286 S.E. 2nd 79 (1982). This decision removed legislators from one specific policymaking board in the executive branch, but the state's attorney general ruled in an advisory opinion that the decision applied to 36 other boards. The Advisory Budget Commission was advised by the attorney general to act only in an advisory manner, and as a result, the statutes were amended and the governor gained substantial power over the preparation and administration of the budget.

[17] See *The Advisory Budget Commission—Not as Simple as ABC*, N.C. Center for Public Policy Research, 1980, and *Boards, Commissions and Councils*, cited above in footnote 8, pp. 45, 50, and 60-63.

[18] Article III, Section 5(3), Constitution of North Carolina.

[19] These two special provisions are found in Chapter 1127 of the 1981 Sessions Laws (October Session, HB 1392) in Sections 63 and 82. The next year, the Supreme Court advised that both provisions likely were unconstitutional. See *Advisory Opinion in re: Separation of Powers*, 305 N.C. 767 (Appendix 1982). See also Katherine White, "Advisory Opinions: The 'Ghosts that Slay,'" *North Carolina Insight*, Vol. 8, No. 2, November 1985, p. 48.

[20] Office of State Services, "The Institutional Powers of the Governorship: 1965-1985," p. 7.

[21] Article III, Sec. 5(3) of the N.C. Constitution; see also G.S. 143-25.

[22] V.O. Key, Jr., *American State Politics*, (New York: Knopf, 1956), p. 52.

[23] See Jack Betts, "The Merit Selection Debate—Still Waiting in Legislative Wings," *North Carolina Insight*, Vol. 9, No. 4, June 1987, p. 17.

[24] G.S. 143A-14. See also Article III, Section 5(10) of the N.C. Constitution for more on the constitutional provisions empowering the governor to reorganize administrative departments.

[25] Chapter 727 of the 1989 Session Laws, now codified as G.S. 143B-279.1 *et seq.*

[26] For more on North Carolina's long ballot and Council of State, see Ferrel Guillory, "The Council of State and North Carolina's Long Ballot: A Tradition Hard to Change," *North Carolina Insight*, Vol. 10, No. 4, June 1988, p. 40.

Karen Tam

Reps. Don Dawkins (D-Richmond) and Alex Warner (D-Cumberland) discuss legislation in the House.

In 1982, North Carolina voters were asked to determine whether the term of office for state legislators should be extended from two to four years. Such a change requires voter approval of an amendment to the state constitution. The voters turned it down, but in 1989, the measure was proposed again as a means of maintaining the balance of power between the executive and legislative branches of state government as the legislature considered giving the governor veto power.

Proponents contend that four-year terms will strengthen the legislature, specifically its nature as a citizen legislature rather than as a professional body. Opponents insist the measure will make the legislature less accountable to voters and will not make it easier for the average citizen to serve. In the following pages, two experts on the legislative process lay out the arguments for and against longer terms for legislators.

PRO: North Carolina Needs Four-Year Terms for Legislators

by Henson Barnes

In 1835, a great debate arose in North Carolina over whether to switch from annual legislative sessions to a biennial system. The issue centered on whether annual sessions were costing the state too much money and resulting in a full-time legislature. After a spirited legislative debate and a close vote by the people, the call for a part-time, or "citizen" legislature—as opposed to a professional body—won the day. North Carolina, in contrast to most other states at the time, switched to biennial sessions, convened by a band of citizens who served as part-time legislators.[1]

In 1989, more than 150 years later, the concept of a citizen legislature is again endangered. And once again the state's voters can do something about it. While the nature of the debate has shifted from the frequency of legislative sessions to the length of time a legislator serves,[2] the heart of the debate is the same: What can we do to ensure that North Carolina continues to have a citizen legislature?

There are two choices: Limit the time demands on a legislator's duties or service; *or* reduce the burdens of running for office every two years.

The work load of the legislature is increasing rapidly and is not likely to slow down. The only alternative is to decrease the time spent running for office. The proposed shift from two-year terms to four-year terms accomplishes this goal.

Over the past half-century, many governments have adopted four-year terms, often staggering them so that half the lawmakers are elected in one election and the other half in the next election two years later. At one time, every state in the nation had two-year terms for its legislators. Now 38 states have four-year terms for at least one body in the legislature. Four states have four-year terms for both bodies (see Table 1, page 49). Two-year terms were once the norm for every county commissioner in North Carolina. Of the 100 counties, 96 have now gone to four-year terms for their commissioners. And today, more than half of our cities—about 215—have four-year terms for their governing boards or councils.

The Citizen Legislator Faces Extinction

In recent years, the legislature has increasingly resembled a full-time body. The sessions run longer. In 1987, the session began February 9 and lasted until August 14. In 1989, the session began January 11 and lasted until August 12 (see Table 2, page 50, for more). In addition, many legislators spend weeks in Raleigh in advance of the session preparing the budget. After adjournment, the legislators were serving on 175 study commissions, according to the Senate Principal Clerk's Office. When the legislature is not in session, the average legislator spends at least one day a week in Raleigh on official business.

In an off year, which is any even-numbered year, legislators return for a budget session of

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Henson Barnes (D-Wayne) is President Pro Tempore of the N.C. Senate. He has served seven terms in the Senate and one term in the House.

Karen Tam

Sen. Henson Barnes (D-Wayne) huddles with former Sen. Wanda Hunt (D-Moore) and others. Hunt resigned from the Senate on Jan. 31, 1990. She says the pay is too low in the legislature.

three to six weeks in May or June. Moreover, they have to campaign in a primary and a general election during these off years. There is little time for their jobs or families.

Historically, a citizen legislator has had a full-time job at home and part-time job as a legislator, and a legislator's pay has reflected the part-time level. The pay in 1990 is $927 a month plus per diem expenses for food and lodging ($81 per day) and travel during sessions. But the nature of a legislator's responsibilities has changed to such an extent that few lawmakers can maintain a full-time job at home and serve in the legislature. A number of legislators resign each off year rather than run for re-election—sometimes more than are defeated in the election. It is a myth that we have part-time legislators.

Consider your occupation. Should a member of your occupation be represented in the General Assembly? The answer is certainly yes. Now ask yourself if your employer would allow you or a colleague to take off from work up to 12 to 14 months out of each 24 months to serve as a legislator. If the answer is no, then you have effectively eliminated citizens in your occupation from serving in the General Assembly.

In theory, a citizen legislator should not be tied to any special interest group. He or she runs for office and raises sufficient funds from family and friends to run a modest campaign. That theory worked when you could call most of the people in your district by their first name. Now, it is necessary to go through the news media to reach those people. A one-page advertisement in a newspaper costs from $350 to $3,500, depending on the circulation of the paper. A one-minute ad on the radio can cost from $75 to $150. The average Senate campaign in 1988 cost $21,810, and the average House campaign cost $14,912—and some go as high as $30,000 to $50,000. This amount must be raised every other year for a two-year term (see Table 3, page 52, for more). Regular donors—special interest groups—become more important.

The two-year term is forcing legislators to accept—even depend upon—large contributions from special interest groups.[3] If the average citizen is going to serve in the legislature, we must do something about the cost of campaigns.

Regardless of how productive you are in the

Table 1. Terms of Office for State Legislatures

Unicameral Legislature 4-Year Term (1)
Nebraska

Four-Year Term for Both House and Senate Members (4)
Alabama
Louisiana
Maryland
Mississippi

Four-Year Term for House Members and Two-Year Term for Senate Members (0)
None

Four-Year Term for Senate Members and Two-Year Term for House Members (33)
Alaska
Arkansas
California
Colorado
Delaware
Florida
Hawaii
Illinois[1]
Indiana
Iowa
Kansas
Kentucky
Michigan
Minnesota
Missouri
Montana[2]
Nevada
New Jersey[3]
New Mexico
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
South Carolina
Tennessee
Texas
Utah
Virginia
Washington
West Virginia
Wisconsin
Wyoming

Two-Year Term for Both House and Senate Members (12)
Arizona
Connecticut
Georgia
Idaho
Maine
Massachusetts
New Hampshire
New York
North Carolina
Rhode Island
South Dakota
Vermont

[1] The entire Illinois Senate is up for election every 10 years, beginning in 1972. Senate districts are divided into three groups. One selects senators for terms of four years, four years, and two years; the second group for terms of four years, two years, and four years, and the third group for terms of two years, four years, and four years.

[2] After each decennial reapportionment in Montana, lots are drawn for half of the senators to serve an additional two-year term. Subsequent elections are for four-year terms.

[3] New Jersey Senate terms beginning in January of the second year following the U.S. decennial census are for two years only.

Source: The Book of the States 1988-89, Council of State Governments, 1988.

Table 2. Length of Legislative Sessions, 1971-1989 (Actual Working Days in Session)

Year of Session	Length of Long Sessions in Odd Years	Length of Short Sessions in Even Years	Total Length for Biennium
1971	141		141
1972		None	
1973	97		161
1974		64	
1975	117		127
1976		10	
1977	123		136
1978		13	
1979	108		123
1980		15	
1981	127		143
1982		16	
1983	138		161
1984		23	
1985	118		147
1986		29	
1987	135		163
1988		28	
1989	129 (Senate) 138 (House)	(Convenes May 21, 1990)	

Note: Totals include all working legislative days in each year, including extra sessions.
Source: UNC-Chapel Hill Institute of Government and House and Senate Principal Clerks' offices.

legislature or how well you serve your district, a member of the opposition party will probably file against you in the next election. Only four out of 50 senators were without opposition in 1988. If you have opposition, he or she will run expensive newspaper, radio, and television ads, as well as nail signs on every oak tree in your district. The incumbent must answer blow for blow. Campaigns continue to become more expensive. Four-year terms would tend to bring the staggering cost of campaigns under some control.

Karen Tam

Sens. Joe Johnson (D-Wake) and Marshall Rauch (D-Gaston) confer in the Senate.

The Fears of Opponents

Opponents of four-year terms have expressed fears of this proposed change. The most often-expressed concern is that a legislator will be less responsive to the people. A person is responsive if he or she is a conscientious and hard-working legislator. The length of the term does not matter. If the fear of less responsiveness is valid, we should be making every effort to go to full-length annual sessions. I have heard no one suggest that. Has anyone complained that county commissioners or city aldermen are less responsive now than when they served two-year terms?

Opponents also fear that legislators will run for other offices—such as governor or a Council of State seat—without having to resign, since a four-year legislative term would overlap the term of those offices. County commissioners and municipal officials throughout the state currently are serving four-year terms. Their terms overlap legislative terms. Rarely does a person run for another office while serving as a commissioner or alderman. That pattern suggests that few legislators, while serving a four-year term, would run for another office. In addition, there is a new law taking effect in 1991 that requires a person to resign from any office held before running for another office.[4] Should a legislator seek another office, what is the problem? Certainly, we do not want to build a fence around any particular office.

Opponents further fear that a lower percentage of people would vote in elections for four-year-term legislators because elections might be held in off years—those even-numbered years when a president and governor are not elected. But legislators are now elected every two years, so every other election, they are elected in off-year elections. The fact that legislators would be running for a four-year term might create greater interest. An off-year election would make the legislator's record subject to closer review, which could result in better performance.[5]

Opponents additionally claim that having four-year terms will upset the balance of power between the legislature and the governor. North Carolinians historically are concerned about concentrating too much power in the executive branch. That is why our governor does not have a veto. (A gubernatorial veto—also subject to approval by the voters—passed the Senate in the

Table 3. Campaign Contributions Raised by Legislative Incumbents, 1984-1988

	1984	1986	1988	Percent Increase from 1984
Average Raised by House Members	$ 6,396	$11,671	$14,912	133%
Average Raised by Senate Members	$14,209	$20,654	$21,810	53%
Total Raised by Senate and House Members	$1,542,771	$2,433,263	$2,879,986	87%

Source: These figures represent sums raised for campaigns by the 120 members of the House of Representatives and the 50 members of the Senate. The computations are based on research by *The Charlotte Observer* and published in a special series on June 16-20, 1985; April 5, 1987; and April 9, 1989.

1989 General Assembly and is pending in the House. See pages 2-26 for a pro-con discussion of the veto issue.) In 1977, the voters approved a constitutional amendment which allows the governor and lieutenant governor to succeed themselves.[6] Prior to 1981, a legislator had to be elected only twice to be in office for the same period of time as the governor. But now a legislator must be elected four times—he or she must serve eight years—to be in office for the same length of time as a governor who has been re-elected. Four-year terms will restore the historical balance between the legislative and executive branches.

Finally, opponents fear that four-year terms are self-serving. If the people of this state must vote on the question, how can the outcome be called self-serving? Four-year terms will be self-serving to the people of North Carolina because the longer terms will preserve the independence of the legislative branch.

Conclusion

Historically, the citizen legislator has served North Carolina well. In an effort to limit time demands, we have established study commissions between sessions and have attempted to limit the so-called short budget session in even-numbered years. Such patchwork efforts have not worked in reducing time demands and campaign costs for legislators.

In an effort to keep the citizen legislature, our forefathers had the courage to go from annual to biennial sessions. Let us emulate their courageous example and go from two-year to four-year terms. By doing so, the citizen legislature will continue to serve North Carolina well.

FOOTNOTES

[1] See Chuck Alston, "The Citizen Legislature—Fact or Fable?", *North Carolina Insight*, Vol. 8, No. 2, November 1985, pp. 50-53.

[2] Several bills dealing with four-year terms were introduced in the 1989 General Assembly. Chief among them were SB 95, providing four-year terms for legislators, which passed the Senate; HB 83, providing a veto for the governor, four-year terms for legislators, and a single six-year term for the governor; and HB 206, calling for a state constitutional convention to consider all constitutional changes dealing with the balance of powers between the executive and legislative branches.

[3] Political Action Committees particularly are becoming more involved in legislative races. According to *The Charlotte Observer*, PACs representing business alone gave more than $1 million in the 1988 election to legislative candidates—more than one-third of all campaign contributions. See Jim Morrill, "Lobbyists Escalate 'Arms Race,'" *The Charlotte Observer*, April 9, 1989, p. 1A.

[4] Chapter 325 of the 1989 Session Laws (SB 370).

[5] For more, see Thad Beyle, "The Presidential Primary—Sweeping Away Local Stakes," *N.C. Insight*, Vol. 3, No. 2, Spring 1980, pp. 18-19.

[6] Chapter 363 of the 1977 Session Laws. Ratified by the people on Nov. 8, 1977 on a 307,754 to 278,013 vote, as Article III, Section 2(2), N.C. Constitution.

CON: North Carolina Does Not Need Four-Year Terms for Legislators

by Parks Helms

Those who propose four-year terms for legislators do so with a legitimate concern—maintenance of a citizen legislature, which has served the people of North Carolina with distinction and ability. Over the last 15 years, our General Assembly has lost many of its most capable and respected members. Some have gone on to offices such as judgeships and executive appointments, while others have returned to private life. Why this drop-out rate among legislators?[1] Among other factors, it stems from the relatively low pay legislators receive, and the tremendous increase in campaign costs. These factors have combined to make legislative service an activity few working men and women can afford. The danger in allowing this trend to continue is that our General Assembly could become dominated by very wealthy or retired persons and lose its character as a citizen legislature.

Parks Helms is an attorney in Charlotte and a former five-term member of the N.C. House of Representatives. He ran for the Democratic nomination for lieutenant governor in 1988.

Karen Tam

A four-year term, however, does not solve the problem of getting and keeping competent citizen representatives and senators. And it ignores the issue of legislator responsiveness and accountability to the people. It would reinforce the existing imbalance of power between the executive and legislative branches. And paradoxically, it would not even solve the problem it is supposed to correct. For philosophical and practical reasons, the four-year term should be defeated.

Karen Tam

Rep. David Diamont (D-Surry) and Sen. Kenneth Royall (D-Durham) grapple with budget questions in committee session.

Philosophical Issues

Our state and federal governments were designed so that elected officials in at least one branch would have to face the voters at least every two years. Frequent elections serve to reflect the current mood of the people. In North Carolina, this proposition took formal shape in Article I, Section 9 of the state constitution: "For redress of grievances and for amending and strengthening the law, elections shall be often held."

The desirability of frequent elections is no less important today than it was when our constitution was adopted. The people we elect to our General Assembly should represent our present views on how government should be conducted. The immediate dissemination of information through the electronic media has made the average citizen more likely to change his stance on important issues much more often than every four years. Thus, a legislature which is isolated from the voters for four years is a legislature that does not reflect the true sense of the times in which it functions.

A legislator with a four-year term is less accountable to his constituents than one with a two-year term. Some members may be tempted with a four-year term to pay more attention to the well-heeled special interest groups and less attention to the needs and wishes of the constituents in their districts, hoping that time will cause the people of the district they represent to forget what they have or have not done. By creating a legislature which insulates its members from challenge for four years, a constitutional amendment to create four-year terms would contradict representative government as we have come to know it in North Carolina. At least some other states have adopted staggered terms to go along with their four-year terms, so that at least some legislators are elected every two years. North Carolina's current proposal does not envision staggered terms.

At a time when credibility of government at every level is in question, any change of governmental principles should be carefully studied. Now more than ever, it is important that constituents' views be reflected in public policy decisions. It is not a time to move to four year terms.

Practical Issues

Proponents of four-year terms argue that the majority of states already have precedents for such a system. At best, this is a half-argument. North Carolina, along with 11 other states, has a legislature in which both representatives and senators serve two-year terms. But should voters approve the proposed amendment, North Carolina would become one of only five states which grant four-year terms to *all lawmakers* (see Table 1, page 49). The proposal, then, takes our state from one minority category (12 states) to an even more

isolated one (four states). The argument that we should adopt a four-year system because other states have done it does not examine the whole statistical picture.

For government to be truly responsive, it must permit voters to participate often in the electoral process. The state constitution speaks to this necessity, and it is too important a principle to be abandoned. In terms of voter participation, the four-year term would undoubtedly reduce the number of people participating in the election of our legislators. The elections might be in off years—when a governor and president are not being elected. Absent any prominent statewide or national races, off-year elections have less press coverage, less public interest, and not surprisingly, significantly lower voter turnout (see Table 4, below, for more). One could argue that people who do not vote deserve the government they get, but that position overlooks the fact that those of us who do vote get the same government. Going to four-year terms would cut in half the opportunities to vote for legislators.

Aside from its effect on the General Assembly, the four-year term would have a significant impact on the executive branch as well. North Carolina's governor is already the only chief executive in the nation without veto power. And, in recent years, the General Assembly has sought to encroach more and more on duties traditionally performed by the governor and the executive branch. The North Carolina Supreme Court ruled in 1982 that the legislature had overstepped its constitutional bounds by placing some legislators on the state Environmental Management Commission in the executive branch.[2] A four-year term would increase such intrusions into the executive branch and would make relations between

Table 4. Turnout of Registered North Carolina Voters in Statewide Elections, 1972-1988

Year of Statewide Election	Total Voters Who Were Registered	Total Voters Who Voted In Top Race	Percentage of Registered Voters Who Actually Voted
1972 (P)	2,357,645	1,518,612	64.4 %
1974	2,279,646	1,021,990	44.8 %
1976 (P)	2,553,717	1,677,906	65.7 %
1978	2,430,306	1,135,814	46.7 %
1980 (P)	2,774,844	1,855,833	66.9 %
1982 *	2,618,340	685,239	26.2 % *
1984 (P)	3,270,933	2,239,051	68.5 %
1986	3,080,990	1,591,330	51.6 %
1988 (P)	3,432,042	2,134,370	62.2 %

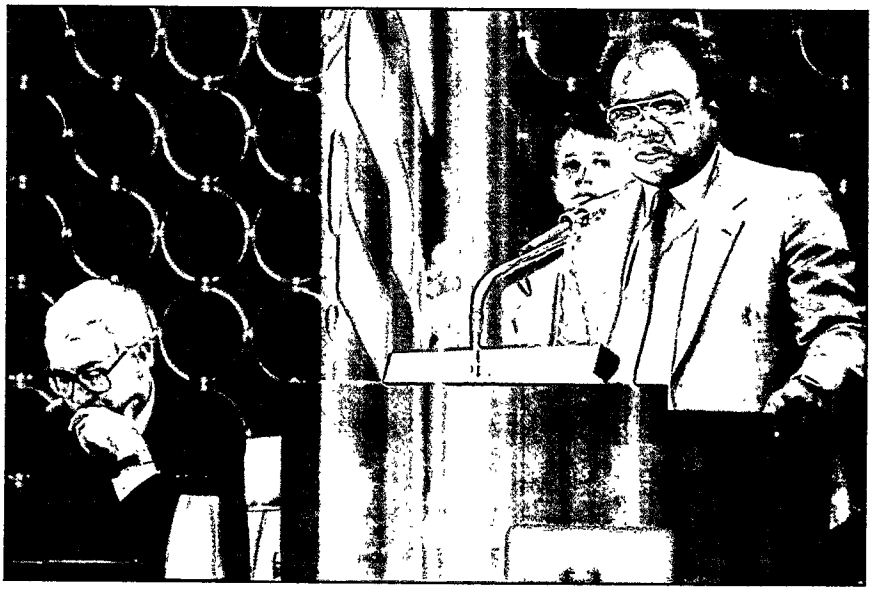
(P) denotes presidential and gubernatorial election years.

* 1982 was not a presidential or gubernatorial election year and there was no statewide race between candidates, but there was a statewide election — during the primary. In that election, the proposal to double the length of legislative terms, voted on in the primary on June 29, 1982, failed on a 163,058-522,181 vote — 23.7% for, and 76.2% against.

Source: Computations based on statistics maintained by N.C. State Board of Elections.

the Governor's Office and the legislature even more difficult.

In a 1981 issue of *N.C. Insight*, Thad Beyle, a political science professor at the University of North Carolina at Chapel Hill and an expert on state government, rated North Carolina's governor as one of the five weakest chief executives in the nation, primarily because the governor lacks exclusive authority over the budget, shares power with other elected officials, and does not have veto power.* Governors could find themselves severely impaired when dealing with the entrenched legislature that would result from four-year terms. Gubernatorial succession, approved by the voters in 1977 and won by Gov. James B. Hunt Jr. in 1980 and Gov. James G. Martin in 1988, has served a useful purpose in balancing the powers of the executive and legislative branches. But we must not approve "legislative succession," which would swing too much power back to the legislative side.



Karen Tam

Lt. Gov. Jim Gardner, left, a Republican, takes a breather while Sen. Frank Ballance (D-Warren) presides in Senate.

The final practical twist to the four-year term debate is that longer terms will not accomplish what proponents claim they will do—make it easier for men and women of all occupations to serve in the General Assembly. This proposal does not raise the salary of a legislator, now $11,124 annually. A person supporting a family would be just as hard pressed to serve for four years at such low wages as for two years. More importantly, if the length of sessions continues to increase, it will be just as difficult for legislators to find time to serve, no matter how long the term of office is.

Regarding campaign costs, it may be true that a four-year term would result in a legislator spending less on a re-election campaign. But if an incumbent would have to spend less in campaign costs, a challenger would have to spend more to run. A four-year incumbent would have more name identity in the home district than would a two-year incumbent. Generally speaking, the longer a legislator stays in office, the more formidable an opponent he or she becomes for a challenger. Hence a challenger would have to spend more against an incumbent legislator serving a four-year term. It is an unpleasant fact of political life that some talented legislators are defeated for re-election. But defeat is a risk that each person in public office assumes. No legislator, no matter how proficient he or she may be, deserves to be insulated from the voters of this state for a period of four years.

Conclusion

Encouraging qualified men and women to run for office and serve in the General Assembly can be accomplished by means other than changing the term of office to four years. Increasing salaries for legislators would do more to encourage service in the General Assembly than would the four-year term. And attracting qualified persons to stay in the legislature might well produce more frugal policies, actually saving the state more than the cost of increased salaries.

Changes less drastic than going to four-year

**Editors note: An updated version of Thad Beyle's article, "The Powers of the Governor in North Carolina: Where the Weak Grow Strong—Except for the Governor," appears on pages 27-45 of this issue. That update ranks the N.C. governor the third weakest.*

Karen Tam

Rep. Sharon Thompson (D-Durham) is not running again for the House because of time constraints and financial considerations.

terms can preserve the historical citizen character of our legislature. More efficient management of legislative sessions could reduce meeting time. For instance, by adopting a system under which committees work on bills before a session—as is the case in Florida and other states—the General Assembly could transact the same amount of business while requiring legislators to spend less time in Raleigh. Standing committees could be given the authority to meet between sessions to study bills and resolutions. And we could formally limit the length of a session. Several states have in their constitutions limited the length of legislative sessions to as few as 30 days (Virginia in odd-numbered years) or to as many as 140 days (Texas). These types of measures surely would produce more positive results than would four-year terms.[3]

The N.C. General Assembly is often characterized as the most powerful legislative body in America in relation to the executive branch. After all, short of judicial reprimand, the only check on our legislature comes from the voters. The loss of many of our competent legislators is a disturbing trend that concerns all of us who support a citizen legislature. But implementing four-year terms for all legislators repudiates in a wholesale manner our long-established principle of representative government. Four-year terms will do little to make good legislators better and may go a long way toward making bad legislators worse.

"Changes less drastic than going to four-year terms can preserve the historical citizen character of our legislature...."

FOOTNOTES

[1] The dropout rate for the General Assembly has not been computed, but over the years a number of experienced, senior leaders have chosen not to run for re-election because of the demands on their time, their families, their businesses or their professions. Among them in recent years have been state Reps. John Ed Davenport (D-Nash), Jim Morgan (D-Guilford), Charles Evans (D-Dare) and Malcolm Fulcher (D-Carteret). These legislators have not resigned to take other government jobs or run for other office, but to return to their home towns and to their vocations. For more on legislators who leave, see article on p. 58.

[2] *State ex. rel. Wallace v. Bone*, 304 N.C. 591, 286 S.E. 2nd 79 (1982). See also *The Advisory Budget Commission—Not as Simple as ABC*, N.C. Center for Public Policy Research, 1980, and see Jim Bryan, Ran Coble, and Lacy Maddox, *Boards, Commissions, and Councils in the Executive Branch of N.C. State Government*, N.C. Center for Public Policy Research, 1985, p. 23.

[3] See Bill Pound, "The State Legislatures," *The Book of the States 1988-89*, The Council of State Governments, May 1989, p. 77. Pound reports that 12 states, including North Carolina, place no limits on session length; 32 states have a constitutional limit; and six states have a statutory or indirect limit (such as a cessation of legislative salaries or per diem expense payments) on the length of legislative sessions.

Appointing Legislators to Other State Posts: Robbing Peter to Pay Paul?

by Mike McLaughlin

This regular Insight *department examines policymaking and the decision-making process in the legislative branch of state government. In this installment,* Insight *looks at the long-standing practice of North Carolina governors tapping legislators for appointments in the executive and judicial branches of state government.*

Senate President Pro Tempore Henson Barnes (D-Wayne) likes to tell the story about how close he once came to getting appointed to a lofty judicial post. Barnes was chairman of the Senate Judiciary III Committee during the administration of Gov. James B. Hunt Jr. when Hunt appointed his two vice chairmen, Rep. Richard Erwin (D-Forsyth) and Sen. Willis Whichard (D-Durham), to the North Carolina Court of Appeals.

Those Appeals Court appointments—Erwin's in 1978 and Whichard's in 1980—made a strong impression on the young lawyer from Goldsboro. Here two of his colleagues—and actually his subordinates under the legislature's committee system—had been elevated to the state's second-highest court. But no one accused Barnes of being a slow learner. Figuring that the governor did not want to appoint a judicial committee chairman and thus remove him from the legislature, Barnes did the obvious thing. He took the chairmanship of another committee and got appointed vice chairman of the Judiciary Committee, a prime position in case Hunt followed precedent and turned to the committee for another high-level judicial appointment.

And sure enough, Hunt dipped into the Judiciary Committee one more time—but not the way Barnes had envisioned it. "That next year, he took the chairman [Sen. William Creech (D-Wake)] and appointed *him* a judge," says Barnes.[1]

Barnes says the story is true, except that then-Lt. Gov. Jimmy Green had asked him to take another committee expected to face a heavy workload during the session. Green wanted an experienced hand at the helm. Still, the anecdote illustrates the kinds of plums governors hand out to loyal legislators—full time jobs that in most cases more than quadruple their part-time pay in the legislature of $927 a month—and the maneuvering that can go on to get those jobs

Governors and legislators alike say the General Assembly, with its 170 members seasoned to the ways of policy and politics, provides an obvious talent pool for filling full-time positions in state government. But when a lawmaker resigns to accept another job in the executive or judicial branches, experience and leadership abilities are lost to the legislature. Are we robbing Peter to pay Paul? Or does this practice of picking off legislators for other full-time government positions have the benefits of opening the way for the

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development of new leadership in the General Assembly and infusing new blood into the bureaucracy?

To determine the extent of this legislative brain drain, the North Carolina Center for Public Policy Research traced the record of legislative resignations from 1973 to the present. The research spans three gubernatorial administrations—two Republican and one Democratic—and the overall findings are strikingly clear. Acceptance of a gubernatorial appointment is the leading reason for legislators' resignations when they resign their posts *before* their terms expire.

Since 1973, 66 legislators have resigned their posts, according to records kept by the North Carolina House of Representatives and the Senate principal clerks and the Secretary of State's Office. Nearly half of those resignations—33—were submitted in order to accept a judicial or executive branch appointment. (See table, page 60.) And these figures do not include lawmakers who served out their terms with the intention of accepting judicial or executive branch posts when their terms expired.

In fact, only the Grim Reaper came close to interrupting more legislative terms than the Governor's Office, with 15 legislators dying in office during the 17-year span. "If I've got a choice between the executive branch or dying, I'll take the executive branch," says former Sen. Bill Redman (R-Iredell), who resigned his post as Senate Minority Leader in 1987 to accept an appointment to the state Utilities Commission.

It seems that the promise of a better job in state government is the only allure that has enticed lawmakers to quit midterm in any significant numbers. During the 17-year period, 22 lawmakers quit to take executive branch appointments and 11 gave up their seats in favor of the judiciary. By comparison, only three gave up legislative seats to seek higher elected office, and three resigned House seats to take appointments to the Senate. Two lawmakers resigned after pleading guilty to felonies—Rep. G. Ronald Taylor (D-Bladen) in 1982, and Sen. John Jordan (D-Alamance) in 1985. Another, former Rep. Walt Windley (R-Gaston), resigned when he was charged with soliciting a prostitute outside a Charlotte nightclub.[2] Two lawmakers, Rep. Mary Pegg (R-Forsyth) and Rep. James Cole (R-Watauga), were required to resign when they moved out of their districts. One, former Sen. Hamilton C. Horton Jr. (R-Forsyth), resigned to return to his law practice, and one, former Rep. Tom Rabon Jr. (D-Brunswick), resigned to take a more lucrative post in private industry as a lobbyist for AT&T. Nearly half of the legislative resignations, then, can be attributed to executive and judicial appointments, and when death is excluded, it's closer to two-thirds.

"If I've got a choice between the executive branch or dying, I'll take the executive branch."

—Former Sen. Bill Redman (R-Iredell)

Most such resignations occurred during the eight-year tenure of Democratic Gov. James B. Hunt Jr. In office from 1977 to 1985, Hunt depended upon the legislature for appointments much more than either of the two Republican governors who served during the 17-year period. Hunt appointed 10 legislators to executive branch posts and 11 to judicial seats during his eight years in office, for a total of 21 appointments of legislators. "In every case, they were the best person," says Hunt in explaining his relatively heavy reliance on legislators for executive and judicial appointments. "In almost every case, they wanted the position."

Republican Gov. James E. Holshouser Jr.—in office from 1973 to 1977—tapped only four legislators who had not completed their terms during his administration. Six lawmakers quit to take executive branch posts during Holshouser's term, but two of these, Rep. James E. Long (D-Alamance) and Rep. David M. Blackwell (D-Rockingham), took jobs as aides to Commissioner John Ingram in the Department of Insurance, which is not controlled by the governor. Ingram later fired both, but Long won election as insurance commissioner in 1984. Holshouser tapped no lawmakers for judicial posts.

Gov. James G. Martin, too, has appointed far fewer legislators than did Hunt. Martin, approaching the midpoint of his second term in 1990, has appointed six state lawmakers to executive branch posts. He is yet to appoint a lawmaker

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Legislative Resignations or Deaths Since the 1973 Session of the N.C. General Assembly[1]

Year	Legislator	Reason Office Vacated
1973	Sen. Phillip J. Kirk Jr. (R-Rowan)	Appointed Administrative Assistant to Gov. James E. Holshouser Jr.
	Rep. Robert Q. Beard (R-Catawba)	Appointed Director, Division of Aging, Department of Human Resources
	Rep. Herschel H. Harkins (D-Buncombe)	Resigned for personal reasons
	Rep. Joe H. Hege Jr. (R-Davidson)	Appointed Assistant Director, state Services for the Blind
	Rep. Frank S. White (D-Robeson)	Died in office
1974	Sen. Hamilton C. Horton Jr. (R-Forsyth)	Resigned to return to law practice
	Rep. C. Dempsey McDaniel (R-Forsyth)	Appointed to Parole Commission
	Rep. Edgar M. McKnight (R-Forsyth)	Appointed to state Senate
	Rep. William E. Stevens (R-Caldwell)	Resigned to run for U.S. Senate
1975	Rep. David M. Blackwell (D-Rockingham)	Appointed Deputy Insurance Commissioner
	Rep. James E. Long (D-Alamance)	Appointed Deputy Insurance Commissioner
1976	Rep. Richard L. Brown III (D-Stanly)	Resigned to run for State Treasurer
	Rep. John J. Hunt (D-Cleveland)	Resigned to run for U.S. House
	Rep. Arthur W. Thomas Jr. (D-Cabarrus)	Died in office
1977	Sen. Wesley D. Webster (D-Rockingham)	Appointed Administrative Aide to Secretary of Transportation
	Sen. John W. Winters (D-Wake)	Appointed to Utilities Commission
	Rep. Conrad Riley Duncan (D-Rockingham)	Appointed to state Senate
	Rep. Robert L. Farmer (D-Wake)	Appointed Superior Court Judge
	Rep. Peter W. Hairston (D-Davie)	Appointed Superior Court Judge
	Rep. W.S. Harris Jr. (D-Alamance)	Appointed Superior Court Judge
	Rep. Ronald E. Mason (D-Carteret)	Appointed Coordinator of Civil Works, Department of Natural Resources and Community Development
	Rep. H.M. Michaux Jr. (D-Durham)	Appointed U.S. District Attorney (Middle District) by President
1978	Sen. Luther Britt (D-Robeson)	Died in office
	Sen. D. Livingston Stallings (D-Craven)	Died in office
	Rep. Richard C. Erwin (D-Forsyth)	Appointed to N.C. Court of Appeals
	Rep. Thomas Gilmore (D-Guilford)	Appointed Deputy Secretary of Human Resources
	Rep. Joy Johnson (D-Robeson)	Appointed to Parole Commission
1979	Sen. Irvin C. Crawford (D-Buncombe)	Died in office
	Sen. John T. Henley (D-Cumberland)	Named President of N.C. Association of Independent Colleges and Universities
	Sen. Cecil J. Hill (D-Transylvania)	Appointed to N.C. Court of Appeals
	Sen. Katherine H. Sebo (D-Guilford)	Named White House Fellow
	Rep. Joseph L. Bright (D-Craven)	Died in office
	Rep. A. Hartwell Campbell (D-Wilson)	Appointed to Utilities Commission
	Rep. Judson D. DeRamus Jr. (D-Forsyth)	Appointed Superior Court Judge
	Rep. Robert H. Hobgood (D-Franklin)	Appointed Superior Court Judge
	Rep. Mary C. Nesbitt (D-Buncombe)	Died in office
1980	Sen. Fred Alexander (D-Mecklenburg)	Died in office
	Sen. Willis P. Whichard (D-Durham)	Appointed to N.C. Court of Appeals
	Rep. H. Otha Carter (R-Stanly)	Died in office
	Rep. James Ezzell (D-Nash)	Appointed District Court Judge

Legislative Resignations or Deaths Since the 1973 Session of the N.C. General Assembly, *continued*

Year	Legislator	Reason Office Vacated
1981	Sen. Glenn R. Jernigan (D-Cumberland)	Appointed Chairman of the Employment Security Commission
	Rep. J.M. Gardner (D-Johnston)	Died in office
	Rep. Patricia Hunt (D-Orange)	Appointed District Court Judge
	Rep. Ernest Messer (D-Haywood)	Appointed Assistant Secretary of Aging, N.C. Department of Human Resources
	Rep. Mary N. Pegg (R-Forsyth)	Moved out of district
1982	Sen. William A. Creech (D-Wake)	Appointed District Court Judge
	Sen. Joe H. Palmer (D-Haywood)	Appointed to Parole Commission
	Rep. Robert A. Jones (D-Rutherford)	Died in office
	Rep. G. Ronald Taylor (D-Bladen)	Resigned as condition of imprisonment after pleading guilty to charges of conspiracy and unlawful burning[2]
1983	Sen. Julian R. Allsbrook (D-Halifax)	Died in office
	Rep. Samuel D. Bundy (D-Pitt)	Died in office
	Rep. Ruth E. Cook (D-Wake)	Appointed to Utilities Commission
	Rep. Tom Rabon Jr. (D-Brunswick)	Resigned to become lobbyist for AT&T
	Rep. W. Frank Redding III (R-Randolph)	Died in office
1984	Sen. Cary Allred (R-Alamance)	Resigned to be sworn in as county commissioner
1985	Sen. John Jordan (D-Alamance)	Resigned after pleading guilty to charges of misconduct in office, solicitation of a bribe, and extortion[3]
	Sen. Julius A. Wright (R-New Hanover)	Appointed to Utilities Commission
	Rep. Charles H. Hughes (R-Henderson)	Appointed to head Governor's Research Office
	Rep. Tim McDowell (D-Alamance)	Appointed to state Senate
1986	Rep. James M. Cole (R-Watauga)	Moved out of district
1987	Sen. William W. Redman (R-Iredell)	Appointed to Utilities Commission
1988	None	
1989	Sen. Laurence Cobb (R-Mecklenburg)	Appointed to Utilities Commission
	Rep. Ann Duncan (R-Forsyth)	Appointed Assistant Secretary, Department of Environment, Health, and Natural Resources
	Rep. Billy Watkins (D-Granville)	Died in office
	Rep. Walt Windley (R-Gaston)	Resigned after being charged with solicitation of a prostitute and carrying a concealed weapon[4]
1990	Sen. Wanda Hunt (D-Moore)	Appointed Assistant Chief, Child Support Enforcement Section, Department of Human Resources

Major Sources: North Carolina Government, 1585-1979, A Narrative and Statistical History, North Carolina Department of the Secretary of State, Raleigh, N.C., 1981, pp. 547-574; Office of the Secretary of State; House Principal Clerk's Office; Senate Principal Clerk's Office.

FOOTNOTES

[1]Legislators were included in this table if they vacated their office before their terms expired.

[2]A.L. May, "Taylor's Guilty Plea to End His Candidacy," *The News and Observer* of Raleigh, Aug. 31, 1982, p. 2C.

[3]"State Law Requires Jordan Resignation," *The News and Observer* of Raleigh, Aug. 18, 1985, p. 1A.

[4]"Windley Resigns Following Solicitation Charge, Asks Forgiveness," as reported by the Associated Press, *The News and Observer* of Raleigh, Dec. 10, 1988, p. 10A.

Table prepared by Mike McLaughlin, with assistance from Center intern Adrianne Goins.

—*continued from page 59*
to the judiciary. Martin says that's because few Republican legislators want to take a judicial appointment and risk defeat in the next election.

"I believe the state judiciary, for many years in the past, has been the last exclusive domain of one-party hierarchy," says Martin. "For a Democratic legislator, appointment to a judgeship typically meant a lifetime appointment. For a Republican legislator, it could mean surrendering a secure legislative seat for a very short-run judicial term followed by a tough statewide race. While this political fact of life is changing, the introduction of two-party politics in the judiciary is slower than every other elected position. Judicial appointments are simply not an attractive prospect for many Republican legislators, so they don't tend to seek them."

Republican governors say one reason they have relied less on the legislature for executive appointments is that there have been far fewer Republicans from whom to choose. Republicans controlled only 50 of the 170 seats in the General Assembly when Holshouser took office in 1973, and many of these were first-term legislators swept into office during the Nixon landslide of 1972. Then in the 1974 elections, the GOP gains in the General Assembly were erased, leaving Republicans with 10 legislators. Holshouser says throughout his term he had to guard against depleting the thin ranks of allies in the legislature. "You have to keep in mind the relative number of Democrats versus Republicans in the legislature," says Holshouser. "There is more of a pool of potential appointees among Democrats and people who are interested in appointments.

" In appointing legislators, governors are able to choose among knowledgeable people who have withstood a higher level of public scrutiny and have a record of public service. "

"You obviously had to look at the impact of what an appointment did to the delegation," Holshouser adds. "I think that's something a Republican governor is more likely to consider because Republicans have been a minority in the legislature for such a long time."

Martin says Governor Hunt had a pool of 160 Democratic legislators to tap for appointments at the beginning of his first term, and 136 potential appointees when his second term began. The Republican pool stood at 50 state lawmakers when Martin took office and reached 59 after the 1988 election. The defection of Sen. James C. Johnson Jr. (D-Cabarrus) to the Democratic Party in 1989 has reduced Republican ranks to 58. "There are many more safe Democratic seats than Republican, so appointments from the legislature are less likely to dilute legislative numerical strength," says Martin.

But despite much stronger numbers overall, Hunt had to weigh similar considerations when he appointed *black* lawmakers to key executive and judicial posts during his administration. Of the six black lawmakers who started the 1977 session, all but one wound up leaving the legislature and taking other government appointments. The one black legislator who did not take another state or federal job, Sen. Fred Alexander (D-Mecklenburg), died in office in 1980. Rep. Joy Johnson (D-Robeson) got a Parole Commission appointment, and Rep. Richard C. Erwin was appointed to the N.C. Court of Appeals. Sen. Henry Frye (D-Guilford) served out his term and briefly returned to private practice as a lawyer before he was appointed to the state Supreme Court, and Rep. H.M. "Mickey" Michaux got a presidential appointment as a U.S. Attorney. Sen. John Winters (D-Wake) accepted a Utilities Commission appointment.

Frye says criticism leveled at Governor Hunt for depleting black leadership was ill-founded. "I remember telling people, 'You can't fault Governor Hunt for appointing people who are willing to take the appointments,'" says Frye. "'We can develop new leadership.'"

In appointing legislators, governors are able to choose among knowledgeable people who have withstood a higher level of public scrutiny and have a record of public service, says Frye. "They are accustomed to being in the public light, have won the respect of their constituents, and have attained a position of leadership in the General Assembly. The chances of getting a good person are much better in that way."

Michaux, a longstanding member of the Legislative Black Caucus who returned to the General Assembly in 1985, says blacks clearly lost some leadership and experience during the early years of the Hunt administration. But Michaux points out that blacks were winning groundbreaking appointments in the Hunt administration, and in every instance a black was appointed to fill the job of the black lawmaker who resigned. "At that time, it was a fairly friendly atmosphere," says Michaux, adding that the new black appointments to the legislature were well qualified and were fast learners. "We knew it wouldn't take them long to catch on to the ropes. The Hunt administration was a little more sensitive to the needs and aspirations of minorities—much more than the current administration."

Adds Erwin, now chief U.S. District Judge for the Middle District of North Carolina, "I don't think anybody left the General Assembly against his will to take a judgeship."

"It was a time of real breakthrough in black leadership during my administration," says Hunt. "A lot of times, no blacks had ever held these positions, or very few. . . . I was honored to have the chance to appoint them." And Hunt says the fact that the ranks of black lawmakers have expanded from the six black lawmakers who started the 1977 session to 17 in the 1989-90 session indicates that there were more able black leaders waiting to move into legislative seats. "There was a short time of less experience among blacks in the legislature," says Hunt, "but obviously others came along."

Martin vigorously defends his administration's record of hiring and promoting minorities, providing data from the Office of State Personnel that shows he hired a higher percentage of blacks during his first year in office than did Hunt. Martin says black men made up 17.4 percent of hiring during his first year in office, when most job changes occur, while 16.8 percent of those hired by Hunt were minority men. Martin says he also held a slight edge in hiring of minority women, 10 percent to 9 percent. "My point is not to gloat," says Martin. "Those numbers indicate only slight percentages favoring my administration. But I hope to make the point that this administration has been every bit as sensitive to the needs of minorities as any previous administration. In fact, many people would say I have tried harder than any previous governor."

Hunt says that as governor, he thought about whether he was depleting legislative leadership when considering lawmakers for appointments, but the overriding concern was whether the legislator was the best person for the job. "Sometimes you need somebody more in an executive or judicial position" than in the legislature, says Hunt, "It's not that you don't have more good legislative leadership coming along."

"You know, you can't force somebody to stay in the legislature."

—Former Gov. James B. Hunt Jr.

In many cases, adds Hunt, lawmakers sought out judicial or executive posts because they had achieved their goals in the General Assembly or wanted full-time work. "Many of them felt they had been in the legislature almost as long as they could, either for financial reasons or just wanting to get back to a full-time position," says Hunt. "You know, you can't force somebody to stay in the legislature. In many cases, they had achieved the ultimate in getting legislation through, had achieved a pinnacle . . . . It then made sense for them to go in and try to administer these programs."

Martin says that although he considers the loss of legislative leadership when deciding on an appointment, the attainment of a leadership role in the General Assembly is itself an indication of inherent leadership abilities. Two of his six executive appointees, in fact, held the position of minority leader in the Senate when tapped for Utilities Commission appointments.[3] "Clearly, they held high leadership posts, but that experience qualified them for the commission," says Martin. "In those and other appointments, I must look at the personalities available to step into the leadership role being vacated."

And Martin says aside from judicial appointments, he and Holshouser were more likely to appoint legislators from the available party pool than was Hunt. Holshouser's appointment of four legislators to executive branch positions represented 8 percent of the pool of GOP legislators available when he took office in 1973, Hunt's 10 appointments represented only 6 percent of 160 Democrats available when he took office in 1977,

"Governors do not want to risk their legislative agendas by depleting the ranks of allies in the General Assembly."

and Martin's five Republican executive appointments totaled 10 percent of the 50 GOP lawmakers in office when he was inaugurated in 1985. A sixth lawmaker, Sen. Wanda Hunt (D-Moore), also got an executive branch appointment during the Martin administration, but Martin says he did not make the decision to appoint her.

Legislators and former legislators say executive and judicial branch appointments are attractive because they combine better pay—and in some cases more prestige—with the opportunity for continued public service. Former Sen. Phil Kirk Jr. (R-Rowan) says he resigned to become Holshouser's administrative assistant because with the inauguration in 1973 of the first Republican governor elected this century, he accurately foresaw the shift in 1974 from biennial to annual legislative sessions. As a school teacher, Kirk says he could not afford the financial sacrifice of coming to Raleigh every year. The move paid off for Kirk. In 1976 he was appointed Secretary of Human Resources under Holshouser, and when Republicans regained control of the Governor's Office in 1985, Kirk was again tapped as secretary of Human Resources.[4]

Kirk says he sees no problem with the appointment of legislators to positions in the executive branch. "I think it helps relations between the executive and legislative branches," says Kirk. "Any time you get someone in the executive branch who understands the legislative branch, it helps both branches."

Others say the issue is not so clear-cut. "I have no quarrel whatsoever with the governor appointing people out of the legislature to executive or judicial posts," says Barnes. "The legislature is becoming a full-time job and the pay is becoming very much part-time." But Barnes says there is a cost. "As for the legislature, it then decimates leadership and [removes] people who are moving toward leadership positions."

Still, Barnes says governors traditionally have shown "wise discretion" in waiting until the long session of the General Assembly has ended to pluck off legislators for other posts. And he says he does not fault legislators for taking the better-paying positions. "You cannot quarrel with a person for giving up an $11,000-a-year job and taking a $50,000- to $60,000-a-year job that works you less hard, with less meetings and less pressure than the legislature. How can you quarrel with that? Yet there are those who love the legislative branch, who would decline any price paid, any job offered in the judicial or executive branch, because they feel they are filling a particular niche of service."

A legislator makes $11,124 a year, plus $465 a month for expenses and a daily allowance of $81, seven days a week when the legislature is in session. The typical legislator got $34,200 in 1989 from these sources. That does not include mileage paid for travel to and from the legislature and study commission meetings, or payment for attending meetings or conferences when the legislature is out of session. By comparison, a parole commissioner makes five times a legislator's base salary at $57,504, and the pay range for the assistant secretary for aging in the Department of Human Resources is $38,549 to $63,072. Starting pay for an Appeals Court judge is $79,968 a year, while Utilities Commission members make $70,992—the same salary as Superior Court judges.

Former Rep. Thomas Gilmore (D-Guilford) says not every acceptance of a gubernatorial appointment by a legislator represents a promotion and a lighter workload. Gilmore, who resigned to become deputy secretary of Human Resources in 1978, says Hunt appealed to his sense of public service in urging him to accept a post in the administration. "He personally appealed to me to resign and come in and manage the Department of Human Resources—to run it on a day-to-day basis," says Gilmore. "It was a mistake politically. I did the moral, ethical right thing."

Gilmore says by affiliating himself directly with the Department of Human Resources, which oversees the delivery of social services statewide, he became known as a liberal, and that hurt him in later bids for public office. But Gilmore, a successful nurseryman, says the notion that he gave up his legislative seat and torpedoed his political career for a posh state government job is nothing more than a myth. "I worked a 12- to 14-hour day as a member of the executive branch," says

Gilmore. "Never have I worked that hard in my own business."

Redman, the current Utilities Commission chairman who gave up his legislative seat in 1987, says family considerations helped him make the decision to take an executive branch post. "I've been able to combine the opportunity to serve in an office that affects people with the ability to spend time with my family and also to get a little financial reward out of it," says Redman.

If the legislature were treated more like a full-time job, there would be fewer resignations, says Redman, but then the tradition of a citizen legislature would be lost. That would usher in a whole new set of problems.[5] "It would be more like Congress, where you get them in and they don't ever get out," says Redman. "Some people feel the legislators would lose sight of why they are here. They would spend all their time campaigning instead of taking care of the business at hand. People would probably stay in longer and the price of campaigning would probably go up."

As long as legislative pay falls short of the time commitment required to serve effectively in the legislature, the allure of executive and judicial branch appointments will remain strong for state lawmakers. But there is one check against an over-reliance upon legislators for gubernatorial appointments. Governors do not want to risk their legislative agendas by depleting the ranks of allies in the General Assembly. "Governors are always going to have to have strong ties to the legislative branch," says Lt. Gov. Jim Gardner, the presiding officer in the Senate. "There could be a point where you could deplete some legislative experience if you went totally overboard. So far, I haven't seen that."

Three legislators have resigned to accept executive branch appointments from Martin since Gardner took office in 1989. They include former Sen. Laurence Cobb (R-Mecklenburg), now a Utilities Commission member, and former Rep. Ann Duncan (R-Forsyth), now assistant secretary in the Department of Environment, Health, and Natural Resources. Hunt, the Moore County Democrat, took a job in December as assistant chief of child support enforcement in the Department of Human Resources[6] and resigned her legislative seat in January 1990. Hunt led the ticket in the competitive 16th Senate District when she won re-election in 1988, but Martin says she "contacted the department" about the job and was not lured away to improve Republican chances of winning another legislative seat. He says Human Resources Secretary David Flaherty made the decision to hire Hunt.

Gardner says both Cobb and Duncan came from Republican-leaning districts, which probably helped sway the decision to appoint them to executive branch positions. "I think the first thing would be that the governor would look for a qualified person," says Gardner. "Then if you have a political bone in your body, you've got to say, 'We don't want to lose two members.' In my own mind, I felt we could keep both [seats]."

So the best control against depleting the legislative branch with an excess of judicial and executive appointments may be old-fashioned self-interest on the part of the chief executive. As the Center's biennial survey of legislative effectiveness points out time after time, seniority is among the major keys to building power in the legislature.[7] Governors do not want to head over to the General Assembly—legislative agendas in hand—only to find they have no friends in high places.

FOOTNOTES

[1]Another former Judiciary III Committee member, Sen. Henry Frye (D-Guilford), who served as vice-chairman along with Barnes, was appointed a Supreme Court justice by Hunt after Frye completed his Senate term in 1983.

[2]Windley's criminal record was to be wiped clean when he completed a first offenders' program (*The News and Observer* of Raleigh, Feb. 8, 1989, p. 2C). Taylor and Jordan faced forced resignations because they pleaded guilty to felonies. Charges against Taylor centered on his conspiring to burn Sen. J.J. "Monk" Harrington's warehouse (A.L. May, *The News and Observer* of Raleigh, Aug. 31, 1982, p. 10A). Jordan pleaded guilty to charges stemming from using his influence as a legislator to try to enhance the value of property he owned in Chatham County (*The News and Observer* of Raleigh, Aug. 18, 1985, p. 1A).

[3]The two were Sen. William Redman (R-Iredell), appointed to the commission in 1987, and Sen. Laurence Cobb (R-Mecklenburg), appointed to the commission in 1989.

[4]Kirk recently resigned his position as Governor Martin's chief of staff to become president and secretary of N.C. Citizens for Business and Industry and publisher of *We the People of North Carolina*, the association's magazine.

[5]For more on this topic, see Chuck Alston, "The Citizen Legislature—Fact or Fable?" *North Carolina Insight*, Vol. 8, No. 2, November 1985, pp. 50-53.

[6]Seth Effron, "Statehouse Democrat Takes $41,436 Post Working for Martin," *Greensboro News and Record*, Jan. 4, 1990, p. 1D.

[7]Longevity of service has long been a key factor in obtaining a high ranking among North Carolina lawmakers in the Center's biennial legislative effectiveness survey, the latest example being the 1987-88 study. Of the legislators ranked in the bottom 40 in the 120-member House, only seven had served more than one prior term. In the Senate, only four of the 50 senators ranked in the bottom 10 had served more than one prior term. Effectiveness rankings are reported every other year in *Article II: A Guide to the N.C. Legislature*, first published in 1978.

The Ump Is Blind—And So Is Justice

by Jack Betts

This regular Insight *feature examines policymaking in the judicial branch of state government. Now, with winter approaching an end and with the beginning of a new season,* Insight *looks at a little-known, quarter-century old N.C. Supreme Court decision that, had it gone the other way, could have changed the way we play and watch the national pastime and altered the course of western civilization—at least between the foul lines.*

Nearly 3,500 howling, baying fans were packed into Devereux Meadow that hot June night in 1960 when the Raleigh Caps entertained the Greensboro Yankees in a battle for the lead in the Carolina League. The G-Yanks, scourge of the league, were leading by one full game, and a win by the Caps, a Boston Red Sox farm club, could have forced a tie. But the outcome of the game was of little consequence compared to the outcome of a lawsuit sparked by a fracas at the end of the game between an irate fan and the field umpire, one John H. Toone of Daytona Beach, Fla. The ump sued the home club after the fan socked the ump on his way out of the park, but the Supreme Court ruled Toone out by a mile.

Had the North Carolina Supreme Court held for Toone—and had that decision been upheld in the federal courts—the right of a manager to vigorously protest an umpire's decision would have been curtailed sharply.[1] No more Tommy Lasordas masticating on the tip of an umpire's nose. No more Cal Ripken Sr.s blistering the air of Baltimore with a choice selection of Anglo-Saxon adjectives and nouns. No more ripping of second base out of its foundation and tossing it into centerfield, or emptying a bat bag onto the playing field to protest an adverse decision. In short, no more childish behavior—and not nearly so much fun for the serious student of The Game.

Would it really have gone so far as to limit the antics of managers and coaches? "Absolutely," says Raleigh attorney J. Harold Tharrington, who as a law clerk did part of the research on the Supreme Court opinion in 1964. In fact, argued Raleigh attorney James K. Dorsett Jr. in the winter of 1964, "It would establish a very novel and far-reaching precedent and would dangerously affect organized sports contests, whether high school, collegiate, or professional."[2] That precedent, as sought by umpire Toone, would have held both players and coaches liable if their protests and arguments to an umpire or referee incited spectators to take violent action against the referee. Had Toone's claim been upheld, players and managers would have had to make sure they did not

Jack Betts is editor of North Carolina Insight *magazine. His major league baseball career was interrupted by a variety of factors, not the least of which involved his total inability to hit a curve ball.*

argue so loudly or demonstrably that the fans would become excited to the point of fisticuffs or other violent behavior. In law, this foresight—to perceive the ultimate consequences of an action—is called the rule of foreseeability. But applied in the Toone case, argued Dorsett, it "would truly 'stretch foreseeability into omniscience.'"

Raleigh Caps Manager Kenneth Deal didn't have that kind of omniscience on the night of June 16, 1960, when the two teams played at Devereux Meadow—now the site of a city vehicle maintenance center. As the game proceeded that night, Umpire Toone and Manager Deal tangled three times—once in the second when Toone ruled that the Cap rightfielder had trapped a ball in his glove and not caught it cleanly; once in the third when Toone ruled a Cap runner out at first base; and once more in the ninth when all hell broke loose. During the second argument, Deal had threatened that if Toone made one more adverse decision, Deal would misbehave, Toone would have to throw Deal out of the game, and the already unruly fans would be incensed to hostility. Sure enough, in the top half of the ninth, with Greensboro at bat, Toone called a runner safe at first on a close play with two men already aboard. As Deal rushed the field to complain, the Raleigh players also charged Toone. Unnoticed, the two Greensboro runners went on to score and the runner at first advanced to second. Deal blew his stack, cursed the umpire, dared Toone to run him out of the game, and taunted Toone that he would receive no help from Deal or his players in getting off the field when the game was over.

Toone would need that help. When the game ended with Greensboro winning and extending its lead to two games instead of winding up in a tie, the spectators poured over the right field fence onto the field, reviling Toone and spoiling for a fight. But Toone and the other umpire walked off the field to the players' gate, where they were met by two uniformed policemen who were to escort Toone to the dressing room. That's where Baxter Adams got into the game. Adams, one of the 3,452 fans who sat in the stands and wailed for Toone's neck, ignored the policemen and struck Toone a blow to the ear and jaw with the heel of his hand. Toone developed an earache, a headache, and a lawsuit. He claimed actual damages of $1,500 and punitive damages of $10,000, charging that it was Deal's responsibility to conduct himself in a reasonable manner and guarantee the ump's safety. Instead, Toone argued, Deal had "wilfully set out to force the umpire to rule favorably to him [Deal and the Raleigh Caps] or suffer the consequences." Those consequences, Toone went on, included inciting the Raleigh fans to violence—and for that the manager should be held responsible. Toone's injuries had been caused by the "wilful, wanton, and malicious negligence of the defendants"—including Deal, Adams, and the baseball club itself.

The next day's newspaper missed the prize fight when it reported the game story. In a piece written by Joe Tiede, *The News and Observer* took note of only one argument in "a wild ninth inning."[3] Raleigh players, wrote Tiede, "doubted the accuracy of the decision at first" in the ninth that led to the go-ahead run by Greensboro, but there was no reference to Toone, Adams, or the punchout—let alone intimations of a lawsuit. Who could know that the very foundations of baseball were in danger of crumbling?

Toone filed the suit in August 1960, but the case didn't reach first base until January 1964, when Judge Hal H. Walker found no cause for action. Walker said that both Deal and the baseball club "are as a matter of law not held to foresee the mere possibility that one spectator, out of a total of 3,452 spectators, will voluntarily decide to assault the plaintiff umpire after the conclusion of a baseball game."[4]

Toone disagreed and appealed to a higher court. At the time, there was no Court of Appeals in North Carolina, and the job fell to the N.C. Supreme Court and a jurist who would become known for many achievements—including her decision on baseball, a topic about which she previously had little knowledge. Associate Justice Susie Sharp, who eight years later would become the nation's first elected female chief justice, would write the opinion, but first there were arguments to be considered.

"Had the North Carolina Supreme Court held for Toone ... the right of a manager to vigorously protest an umpire's decision would have been curtailed sharply."

Toone saw it this way: The rules of the National Association of Professional Baseball Leagues require, among other things, that the home team furnish police protection to preserve order, that umpires remove players, managers, or even spectators for violating rules or for unsportsmanlike conduct, and that umpires' decisions involving judgment calls were final and could not be argued by players or managers. Deal and the Raleigh Caps violated those rules by arguing judgment calls, Toone argued, thus inciting the fans. Toone's lawyer, Wright Dixon, contended that "... the actions of Kenneth E. Deal were not merely negligent, but wilful, wanton and malicious in that Deal knew or intended that his actions should produce a resulting injury of some type to [Toone]."[5]

Deal, of course, saw it another way. His lawyer, Dorsett, contended it is common knowledge that sports contests arouse intense feelings among spectators. "It is equally well known that in the heat and excitement of close games, players and managers are prone to protest decisions by umpires and to argue with them in loud and colorful terms. This may expose a player or manager to a fine or even suspension, but it has been for many decades an accepted and expected part of baseball."[6]

Dorsett went on to point out that games often attract huge crowds—12,000 for basketball games in Raleigh and as many as 50,000 spectators at Tar Heel football games [at least until two recent 1-10 seasons]. "Such spectators are of diverse backgrounds, personality, and tempers, and some of them undoubtedly have neurotic and psychotic disorders. The participating teams and players have no control over the type of spectators who are admitted to the game and no possible knowledge as to the emotional temperament and stability of the different individuals."

Dorsett noted that Adams was the only fan to be so incensed as to punch out the ump, and added, "The fact that 3,451 other spectators did not assault the umpire indicates that such an assault was not likely or within the realm of reasonable foreseeability."

Thus the opinion came before an umpire of a different sort. In fact, umpires and judges are distantly related, each having the responsibility to decide cases—the one based on an instant's consideration, the other based on months of careful deliberations. The term *umpire* comes to us from folks who know nothing about baseball. The word derives from the French *noumpere*, which in turn comes from the Latin *non par*, meaning "not equal." A noumpere was that elevated individual whose job it was to decide a dispute. In *Toone v. Adams*, the noumpere was a jurist who had never before seen a professional baseball game, and as part of her research, she and her law clerks spent an evening at the old ballyard in Devereux Meadow. The resulting opinion, issued on July 10, 1964, was "one of the finest analyses of professional baseball ever written," recalls former Supreme Court Associate Justice J. Phil Carlton, himself a devoted baseball fan.

For Tharrington, who was clerking for Justice Sharp during the 1963-64 term and another clerk, Wade Smith (now a partner of Tharrington's in a prominent Raleigh firm), that night remains a vivid memory. "We were doing some research on the case and knew she had never been to a baseball game before," recalls Tharrington. "Wade suggested taking Judge Sharp to see a game. And we did. Wade sat on one side of her and I sat on the other, and the players got into the darndest shouting match about the seventh inning. The manager was butting the umpire and they were yelling at one another and carrying on, and Judge Sharp just took it all in."

Neither Tharrington nor Smith thought that there would be such an oral altercation between the manager and the umpire, but they thought Judge Sharp enjoyed the game, even as noisy and uncultured as it evidently was. "She had a great time," says Tharrington. "You know, here is this delicate and refined lady, but she thoroughly enjoyed the game even when exposed to the violence that occurred on the field that night."

Justice Sharp immediately grasped that it was

an important part of the spectacle of baseball to be able to call the umpire a succession of uncomplimentary names and to heap calumny upon his every decision. "For present-day fans," wrote Justice Sharp in her opinion for a unanimous court, "a goodly part of the sport in a baseball game is goading and denouncing the umpire when they do not concur in his decisions, and most feel that, without one or more rhubarbs, they have not received their money's worth. Ordinarily, however, an umpire garners only vituperation—not fisticuffs. Fortified by the knowledge of his infallibility in all judgment decisions, he is able to shed billingsgate like water on the proverbial duck's back."[7]

Sharp pointed to the ability of the umpire to decide what is and what is not in the old baseball story of the three noumperes:

> "Balls and strikes," said one, "I call them as I see them."
> "Balls and strikes," said the second, "I call them as they are."
> "They are not balls and strikes until I call them," decreed the third.

Then Sharp pointed out that Toone's contention that a baseball club had to furnish protection to an umpire was undermined by the fact that two policemen did escort Toone from the game. Sharp's opinion noted that Deal's arguments with Toone and Adams' blow were not contemporaneous. Adams was not on the field when Deal was busy questioning Toone's ancestry, nor was Deal around when Adams later smote Toone. Thus, "To say that Deal's conduct was a proximate cause of the attack on [Toone] would be pure speculation. No one can say whether Adams' assault on [Toone] was his own reaction to the umpire's ruling, to the 'rhubarb' created by Deal, or whether he was merely venting pent-up emotions and propensities which had been triggered by the epithets, dares, or challenges of one or more of the 3,451 other fans attending the game." Adams, Justice Sharp went on, was acting on his own and was legally and morally responsible for his own actions. "The mere fact that both Adams and Deal may have become simultaneously enraged with the plaintiff for the same cause does not establish a concert of action. It would be an intolerable burden upon managers of baseball teams to saddle them with the responsibility for the actions of every emotionally unstable person who might arrive at the game spoiling for a fight and become enraged over an umpire's call which the manager had protested."[8]

Though he lost the case, the ensuing 25 years have not altered Wright Dixon's view of the principle—"despite the fact that in the interim years as a coach for a Little League team, I found myself harassing umpires for blindness and stupidity." But, says Dixon, the point of Toone's suit "was not to limit the tumult and shouting on the field during the game," because Toone was "unperturbed by a manager's antics and threats." But it was the home club's responsibility to provide more protection for the umpire's post-game walk to the showers, and the Raleigh club failed to provide enough to protect the ump, Dixon says today. He adds, "I'm just glad Mr. Adams didn't have a knife."

Sharp's decision became well-known in the Sixties for more than one reason. The first, of course, was the novelty of it, and the second, for baseball fans, was its high regard for the ways of the game and the way it was written. "It was an important decision," says Wade Smith, "and it was a beautifully written decision." The Sharp opinion in *Toone v. Adams* had national implications, and partly for that reason, it was selected as a lead case in the 1966 edition of American Law Reports, a compendium of landmark cases that cites a ground-breaking case and publishes annotations of related cases.[9] Since it was published more than 25 years ago, the *Toone* case has ensured that while much else about the *business* of baseball may have changed, the *game* of baseball remains the prototypical American pastime—loud, boisterous, argumentative and colorful, and not easily altered by the threat of litigation.

FOOTNOTES

[1] *Toone v. Adams*, 262 N.C. 403 (1964), 136 SE 2d 132.

[2] Defendant Appellee's Brief, p. 6.

[3] Joe Tiede, "Greensboro Tops Caps, 6-4, With 3-Run Rally In Ninth," *The News and Observer*, June 17, 1960, p. 35.

[4] As reported in *Records and Briefs*, N.C. Supreme Court, Spring Term 1964, Vol. 3, *Toone v. Adams*, p. 12.

[5] Plaintiff Appellant's Brief, p. 11.

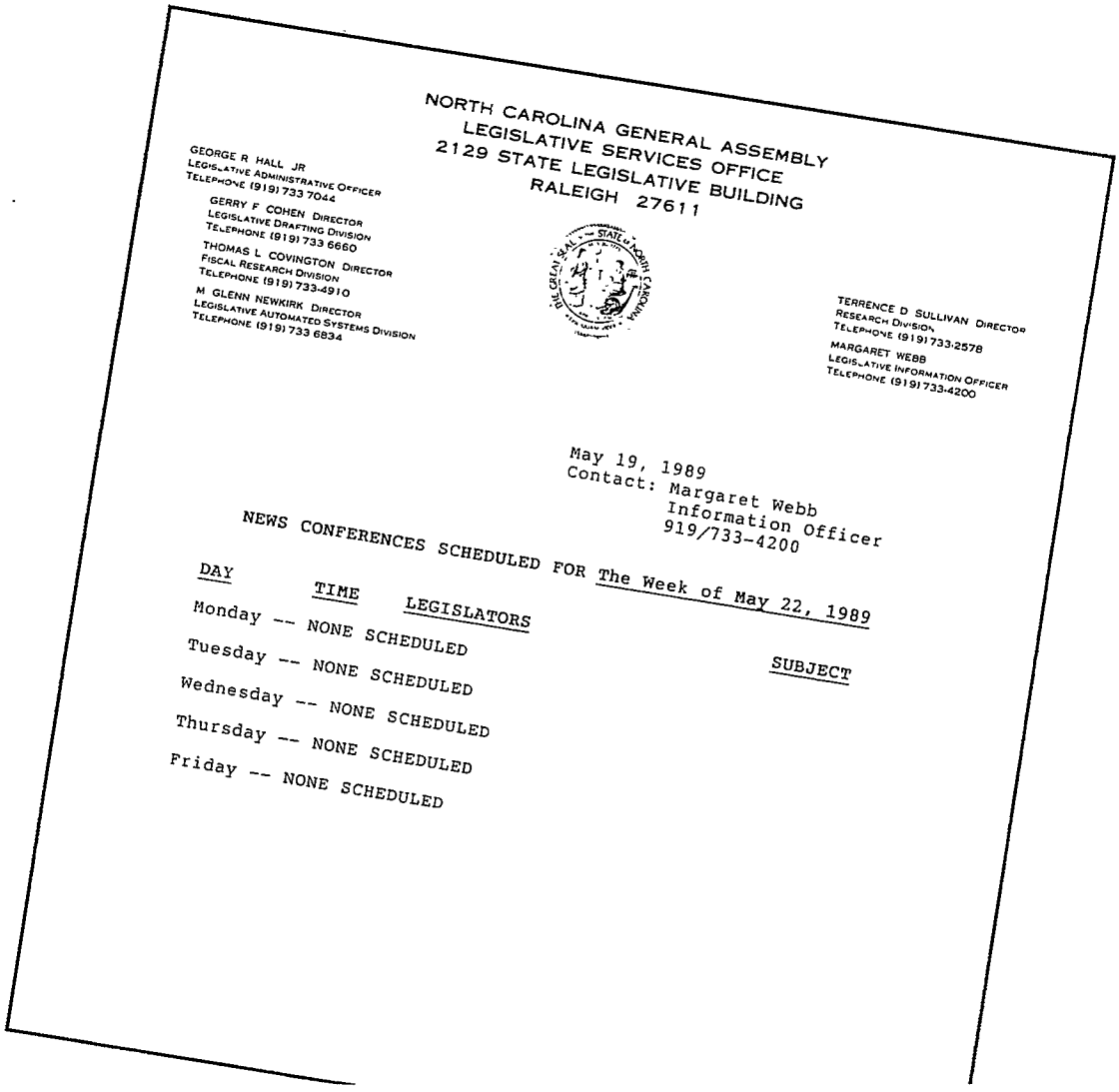
[6] Defendant Appellee's Brief, p. 7.

[7] *Toone v. Adams* at 408.

[8] *Ibid.* at 412.

[9] 10 ALR 3d 435. The office of the Commissioner of Baseball, which reviewed a draft of this article, suggested that readers who liked this opinion might also enjoy "Common law origins of the infield fly rule," 123 Pennsylvania Law Review 1474, June 1975.

MEMORABLE MEMO



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May 19, 1989
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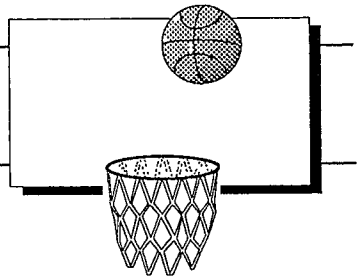
NEWS CONFERENCES SCHEDULED FOR The Week of May 22, 1989

DAY	TIME	LEGISLATORS	SUBJECT
Monday --	NONE SCHEDULED		
Tuesday --	NONE SCHEDULED		
Wednesday --	NONE SCHEDULED		
Thursday --	NONE SCHEDULED		
Friday --	NONE SCHEDULED		

What's this? A solid week in the heat of the 1989 General Assembly without a single news conference? Don't our state lawmakers know that if every inch of hometown news space was laid end to end it would stretch from Manteo to Murphy and back at least six times? Not to mention all that wasted TV news time. So let's have a little more good, old-fashioned opportunism. Mugging for the cameras, muttering sound bites, dishing out quotes, this sort of thing. And if there's no news worth having a conference over, make some up. If the great debate over the Plott hound as state pooch taught us anything, it's this: the news media will cover any old dog.

Meanwhile, if you've got any old dog-eared memos lying around on your desk, sled-dog them off to Insight. Growlers, barkers, howlers, and whiners welcome, but mind the fleas please. Mush, you huskies, anonymity guaranteed.

PARTING SHOT



NC Centerline

Volume 1, Number 1 — Governor's Highway Safety Program — First Quarter 1989

James G. Martin, Governor

BASKETBALL STAR MICHAEL JORDAN FEATURED IN SEAT BELT CAMPAIGN

High school athletes across North Carolina are trying to increase seat belt use among public school students as part of a new statewide educational campaign that is also enlisting the help of pro basketball star Michael Jordan.

Called "smart moves," the program initially involved high school athletic directors from 30 NC counties [illegible] have distributed infor- [illegible] athletes to use in [illegible] schools [illegible] elementa[illegible] program [illegible] public high [illegible]

Differ[illegible] planned for [illegible] will include fa[illegible] with state an[illegible] Athletes also [illegible] including egg car[illegible] balloon launche[illegible] students, school mas[illegible] incentive programs f[illegible] High school students [illegible] involved with anti-drunk [illegible]

Besides the presen[illegible] athletes, the program is l[illegible] poster that shows Jordan i[illegible] --slamming home a dunk sho[illegible] a thumbs-up sign after strap[illegible]

the former University of North Carolina star has been a longtime supporter of seat belt use in the state.

The program is a joint project of the NC High School Athletic Associ[illegible]on, the UNC Highway [illegible]ty Research Center, NC Governor's [illegible]ay Safety Program [illegible]t Belts for Safety.

[illegible] are excited about [illegible]ntial of this [illegible] program and [illegible]letes are an [illegible] model for [illegible] Charles H. [illegible]rtive di- [illegible]IC High [illegible] Associa- [illegible]

[illegible]hetti, [illegible]rom [illegible]aid [illegible]hs [illegible]y

[illegible]ident is the [illegible] crashes happen. When you look at their [illegible] 1 to 38 and accident statistics, young drivers are [illegible]ncrable," involved in more fatal crashes than any

Policeman nabs flying Air Jordan

The Associated Press

LEXINGTON, Ky. — A Lexington police officer has succeeded where many NBA guards failed. He slowed down Chicago Bulls star Michael Jordan.

Patrolman Tommy Puckett stopped Jordan, a former University of North Carolina star from Wilmington, N.C., near Lexington on June 6 and charged him with going 90 mph in a 60-mph zone on Interstate 75.

Puckett also cited Jordan, who was en route to North Carolina in a 1988 Ferrari Testarossa, for [illegible]ailing to have an operator's li- [illegible]ave arrested him [illegible]tification," [illegible]him. I

Michael Jordan demonstrates a "smart move". (Photo: Beth Ashton, NCDOT)

Wearing a seatbelt you can do, speeding you cannot, even if you are Michael Jordan or Spike Lee. Can, can't. Smart, not smart. No!

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