

spotlight

No. 417 – January 5, 2012

COMPENSATING NC'S EUGENICS VICTIMS

Five Ways North Carolina Can Help Right the Wrong

KEY FACTS: • North Carolina forcibly sterilized approximately 7,600 individuals in the 20th Century as part of its eugenics program.

• Many eugenics victims are still alive in North Carolina. Recent state estimates have ranged from 2,944 living victims to a total of about 1,500–2,000 individuals.

• Victims should be compensated (the harm imposed on them is clear), but there is no quicker way to undermine the idea of compensating the victims than attempting to compensate descendants of the victims (where the harm is speculative at best).

• There are five ways that North Carolina should compensate the victims:

1. Pay each living victim \$20,000 from the General Fund. The same amount was provided to the living victims of the Japanese internment camps.

2. Offer a \$3 checkbox on state tax returns. It would be similar to the state's taxpayer-supported campaign-finance program for appellate court judges.

3. Use the \$7 million in the Judicial Campaign Finance Fund. The legislature should end the judicial taxpayer campaign finance system in light of a U.S. Supreme Court opinion that held that the matching-funds provision central to such systems is unconstitutional.

4. Excuse victims from paying the state income tax. Offer victims a refundable tax credit of about \$1,000 (the average amount of annual personal income tax paid).

5. Offer eugenics license plates. They would generate revenue for the victims as well as educate the public.

• These recommendations would provide victims more than \$20,000 each and would trigger compensation immediately, before it is too late for many of the victims.

200 W. Morgan, #200
Raleigh, NC 27601
phone: 919-828-3876
fax: 919-821-5117
www.johnlocke.org

The John Locke Foundation is a 501(c)(3) nonprofit, nonpartisan research institute dedicated to improving public policy debate in North Carolina. Viewpoints expressed by authors do not necessarily reflect those of the staff or board of the Locke Foundation.

n

orth Carolina forcibly sterilized approximately 7,600 individuals in the 20th Century.¹ These sterilizations were based on the practice of “negative eugenics,” which attempts to discourage reproduction by individuals deemed to have undesirable traits.²

After World War II and the lessons learned from Nazi Germany’s use of eugenics, most states in the country stopped forcibly sterilizing its citizens.³ North Carolina, however, ramped up its forced-sterilization program. In fact, 77 percent of all the individuals forcibly sterilized in North Carolina were sterilized after World War II.⁴ Some of the sterilizations occurred as late as the 1970s.⁵

As a result of this recent forced sterilization, there are many eugenics victims who are still alive in North Carolina. Recent state estimates have ranged from 2,944 living victims to a total of about 1,500–2,000 individuals.⁶ In fairness, capturing an accurate number is difficult.

This *Spotlight* report is not about *whether* these victims should be compensated but *how* they should be compensated. It will discuss who should receive compensations and then outline ways to provide compensation in a timely manner.

Compensate the Victims Only

Recent reports indicate that there may be an interest in compensating the descendants of the victims. One member of Governor Perdue’s Eugenics Compensation Task Force expressed a willingness to give \$20,000 “to the estates of any verified victims who die before legislation is passed.”⁷

There is no quicker way to undermine the idea of compensating the victims than attempting to compensate descendants of the victims (many sterilization victims did have children prior to being sterilized). The harm imposed on the victims is clear, direct, and not speculative. Any harm to descendants is based on conjecture. The distinction is not unlike the concept of standing in court, in which plaintiffs must show that they have personally suffered clear injuries.⁸

Compensating the descendants also would hurt the victims. Less money would be provided to the victims. If money were to go to the descendants, the fear of opening the door to slavery reparations or reparations to the descendants of World War II internment camps would be justified. The bright-line distinction between compensating living victims as opposed to descendants should not be crossed.

How to Compensate the Victims

Victim compensation should be kept in perspective. There is no feasible way that the victims will be made whole through any compensation scheme. North Carolina can, however, take a serious step to righting a wrong by providing meaningful compensation to victims. Further, it is by actions, not words, that the state can demonstrate it is trying to make things right.

Complicating matters even more are the state’s budget woes. Nevertheless, the compensation program should be a priority. The state should not drag its feet, because the number of living victims will only decline.

The following five recommendations are designed to complement each other, not replace each other. For example, \$20,000 should be provided to victims but so too should other forms of compensation.

1) Pay Each Living Victim \$20,000 from the General Fund

In 1988, the federal Civil Liberties Act of 1988 provided the living victims of the Japanese internment camps \$20,000 in compensation.⁹ While more than two decades have passed since passage of that law, the \$20,000 figure is a good starting point.

A reasonable concern is the potential cost for such a program. There is no clear idea of how many living victims there are. If the number of victims were on the high end of estimates, such as about 2,900 victims, the total cost would be \$58 million.

That estimated total cost is not a realistic number for two key reasons. First, the number of living victims is likely lower. Secondly, many victims likely would never come forward and request the money possibly because of shame or to protect their privacy.

Coming up with some definite number is impossible. To help mitigate the financial impact, whatever it may be, the money could be provided in increments. A possible solution would be to provide the money in two-year increments of \$10,000 each.

There also would need to be some statute of limitations on providing compensation. If a victim did not request the money within, e.g., five years upon the effective date of the law, then compensation would no longer be available. There would be a reasonable five-year window of opportunity for victims to request compensation.

2) Offer a \$3 Checkbox on State Tax Returns

The state should implement a program similar to the state's taxpayer-supported campaign-finance program for appellate court judges whereby taxpayers would be able to check a box on their state tax return that would help compensate the victims. By checking the box, taxpayers would allocate \$3 of their taxes to a fund that would compensate the sterilization victims.

3) Use the \$7 Million in the Judicial Campaign Finance Fund

North Carolina has a judicial campaign-finance system, funded through multiple sources, that currently, has about \$7 million.¹⁰ A central component of this system, matching funds, is unconstitutional. The legislature is likely to remove that provision from the law.¹¹

Matching funds are an attempt to entice candidates to participate in taxpayer-financing systems by giving tax dollars to subsidized candidates to ensure they are not outspent by candidates who choose not to participate in the program. Without such a mechanism, taxpayer-financing systems are not appealing to candidates.¹²

Ironically, the judicial fund was started in part by taking money from a failed partial campaign-finance program for governor,¹³ for which taxpayers could divert some of their tax money. The gubernatorial program had little support, however.¹⁴

A legislative research division memo explains, "It never generated enough money to support the program, and the General Assembly finally repealed the statute in 2002, pouring over the accumulated add-on proceeds into the Public Campaign Fund for appellate judges."¹⁵

Especially now that the United States Supreme Court has held matching funds to be unconstitutional,¹⁶ the legislature should repeal the taxpayer-financing systems that exist in the state, including the judicial program. The money in the fund, instead of going to the General Fund, could go directly to the eugenics compensation fund. The \$7 million would make an immediate difference in the lives of the victims without the legislature having to appropriate any additional money.

4) Excuse Victims from Paying the State Income Tax

The victims should not be required to pay state income taxes ever again—they should not have to fund the state that committed such a wrong upon them.

There may be various ways to make this work. The average individual income tax paid in North Carolina was \$1,019 in fiscal year 2009.¹⁷ One possible way to secure tax relief is to create a nonrefundable or refundable tax credit based on the average income tax bill. The number could be adjusted based on the latest data.

A nonrefundable tax credit would allow taxpayers to reduce their tax obligation by the amount of the credit. For taxpayers who do not owe any taxes, they would not receive a benefit.

To make this a benefit for victims without regard to income, a refundable tax credit would be preferable. The taxpayer who does not owe any taxes would receive the amount of the credit as well.

5) Offer Eugenics License Plates

There are numerous specialized licensed plates that North Carolina drivers can purchase for an additional fee. These additional fees range from \$15 to \$30.¹⁸

As both a means to generate some revenue and to educate the public, a new specialized license plate should be created, the purchase of which would support the sterilization victims.

Normally, a portion of the extra money for the plates goes to an account called the Special Registration Plate Account.¹⁹ Some of that money goes to the Department of Transportation.²⁰ No money for the sterilization compensation plates should go to the state, however, unless it could be shown that the underlying fee for a regular license plate would not cover the costs for the special license plate.

The number of specialized licensed plates that would be sold is unclear. There were 277,573 specialized license plates active as of November 2011.²¹ Some of those plates have built-in markets (e.g., alumni of postsecondary institutions) and would sell more than a sterilization compensation plate. To estimate from the sales of comparable plates, the sale of eugenics plates would likely be in the hundreds or low thousands.²² As a result, the amount of revenue per year would be modest, but the money certainly would help, and the plate's educational benefits should not be ignored.

The license plate should have an appealing and informative message to a broad audience. One recommendation is for it to include an image of the North Carolina Justice for Sterilization Victims Foundation logo and to use the last line of the Pledge of Allegiance, "Liberty and Justice for All." Furthermore, and though it may sound trivial, the color scheme and design are also very important and should be created in a manner to increase sales.

Conclusion

The clock is ticking on the living victims of North Carolina's sterilization program. The legislature should take immediate action to provide them compensation. Until such action is taken, those victims will likely not come forward, nor will they receive a real apology backed up by action, not words.

The recommendations in this paper would provide victims more than \$20,000 each and would trigger compensation immediately, before it is too late for many of the victims. North Carolina should be ashamed for its past deeds, but taking action now to compensate its forced-sterilization victims would demonstrate that the state owns up to its terrible mistakes. That would be something the state could be proud of.

Daren Bakst, J.D., LL.M., is Director of Legal and Regulatory Studies at the John Locke Foundation.

End Notes

1. Kevin Begos, "Lifting the curtain on a shameful era," *Against Their Will: North Carolina's Sterilization Program, Part One*, *Winston-Salem Journal*, *extras*. journalnow.com/againsttheirwill/parts/one/story1.html.
2. Definition of "eugenics," Dictionary.com (including definition of negative eugenics), dictionary.reference.com/browse/eugenics.
3. *Op. cit.*, note 1.

4. *Biennial Report of the Eugenics Board of North Carolina, July 1, 1966–June 30, 1968* (Raleigh, N.C., 1968), table 12, p. 26; 1968-1973 data were gathered from an unpublished Eugenics Board chart entitled “Cases Handled 1964-1973,” which can be found in the North Carolina State Archives, www.digital.ncdcr.gov/cdm4/document.php?CISOROOT=/p249901coll22&CISOPTR=25796&REC=1.
4. For example, see North Carolina Department of Administration’s North Carolina Justice for Sterilization Victims Foundation home page www.doa.state.nc.us/ncjsvf. It is possible that sterilizations could have occurred even beyond the 1970s; see, e.g., *In re Johnson*, 45 N.C. App. 649 (1980).
5. Don Akin, “Estimation of Number of Sterilization Victim Survivors,” State Center for Health Statistics, 2011, www.sterilizationvictims.nc.gov/taskforce.aspx; Martha Waggoner, “Eugenics task force struggles to find proper compensation for victims,” NBC-17, December 6, 2011, www2.nbc17.com/news/wake-county/2011/dec/06/eugenics-task-force-struggles-find-proper-compensa-ar-1685592.
6. Waggoner, *Ibid.*
7. Lynn Bonner, “Eugenics payments considered for N.C. victims,” *The News & Observer*, December 7, 2011, www.newsobserver.com/2011/12/07/1694642/eugenics-payments-considered.html.
8. See, e.g., “Standing,” The Lectric Law Library, www.lectlaw.com/def2/s064.htm.
9. Civil Liberties Act of 1988, Pub. L. No. 100-383, (1988).
10. North Carolina Public Campaign Finance Fund data as of October 31, 2011, North Carolina State Board of Elections.
11. See, e.g., *North Carolina Right to Life Political Action Committee v. Leake*, Second Motion to Extend Time to Answer or Otherwise Respond, United States District Court, Eastern District of North Carolina, Western Division, Case 5:11-cv-00472-FL, November 14, 2011. Attorney General Roy Cooper submitted this pleading and explained that Mr. Bartlett, the State Board of Elections Executive Director, had met with legislative leaders requesting that they repeal the matching fund provisions in the judicial campaign-finance statutes. He also explained that legislative leadership informed him and Mr. Bartlett that they will take up repeal of the statutes (most likely this meant just the unconstitutional provisions, but it is not clear from the document).
12. The purpose of matching funds is to provide the necessary incentive for candidates to participate in the program. These unconstitutional matching funds and related reporting requirements also severely punish candidates who do not participate in the program.
13. William R. Gilkeson, memorandum regarding “Overview of Public Financing of Campaigns,” House Select Committee on Ethics and Governmental Reform, Subcommittee on Campaign Finance/Reporting and Election Laws, March 23, 2006.
14. *Ibid.*
15. *Ibid.*
16. *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, No. 10-238, United States Supreme Court, June 27, 2011, www.supremecourt.gov/opinions/10pdf/10-238.pdf.
17. North Carolina Department of Revenue, “Individual Income Tax Rates and Net Collections and Personal Income for Those States Levying a Tax On Personal Income,” Table 22, Statistical Abstract of North Carolina Taxes, 2010, www.dornc.com/publications/abstract/2010/part3.html.
18. N.C. Gen. Stat. § 20-79.7, www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_20/GS_20-79.7.html.
19. North Carolina Division of Motor Vehicles, “Where do personalized fees go?,” <https://edmv-sp.dot.state.nc.us/sp/PersonalizedPlateFee.html>.
20. *Ibid.*
21. Active plate data as of November 30, 2011, North Carolina Division of Motor Vehicles, Special License Plate Unit.
22. *Ibid.* The estimate was based on the active plate data as of November 30, 2011.