

United Methodist Advocacy in Pennsylvania

July 31, 2017

Following is my UM Advocacy report for July 2017:

Though my main focus is Harrisburg and Pennsylvania, Washington has figured prominently in the news in July. Let's start there:

At the White House, four resignations took place: Walter Shaub, White House Ethics Secretary; Sean Spicer, Press Secretary; Reince Priebus, Chief of Staff; and Anthony "Mooch" Scaramucci as Communications Director, after a few days.

President Donald Trump provoked a backlash three times: when he verbally attacked U.S. Attorney General Jeff Sessions, proposed to ban military service for transgender people, and implied overlooking abuse of suspects in police custody.

The President took two trips abroad. At the G20 summit in Hamburg, July 7-8, Mr. Trump took the opportunity to conduct private, unconventional diplomacy with Russian President Vladimir Putin. On a Bastille Day visit to Paris, the President played the role of honored guest.

We learned one new word, "Magnitsky."

On the last day of the month, President Trump's approval rating reached an all-time low.

Health care was the primary issue in the U.S. Congress for the month of July. The Republican majority attempted to unilaterally eliminate the Affordable Care Act through "repeal and replace." When that failed, they attempted "repeal only." When that failed, they attempted "skinny repeal." When that failed...well, Sen. Pat Toomey declared that the battle was not over.

In the Pennsylvania legislature, the front-and-center issue was the creation of a revenue package to balance the spending package, as mandated in the state's constitution. However, that task was not accomplished. The month of July ends with the state budget being unfinished and out of compliance.

This month I attended several meetings, including a session with other faith-based advocates, an environmental update with the Clean Air Council, and a conference call with staff of the General Board of Church and Society regarding health care. I delivered a letter from the Pennsylvania Council of Churches to Sen. Toomey's Pittsburgh office, asking for the preservation of Medicaid. I delivered Sunday sermons on the topic of faith and political advocacy at Heritage UMC, Ligonier.

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- **Visit with DOC Secretary Wetzel**
 - **PA Senate and Budget Revenue**
 - **Medicaid Work Requirements**
 - **Environment and Budget Confusion**
 - **Property Tax Referendum**
 - **Police Video Bill**
 - **Marijuana Physicians**
 - **Auditor General—Marijuana**
 - **Health Agency Merger**
 - **Inspector General**
 - **PASSHE**
 - **PA Population Decline**
 - **AG Sues DeVos**
 - **Presidential Advisory Committee on Election Integrity**
 - **Sessions, Sanctuary Cities and Philadelphia**

Visit with DOC Secretary Wetzel

On July 19, I participated in a dialogue with Department of Corrections Secretary, John Wetzel, at the department's headquarters in Mechanicsburg. There were eight other advocates present, including representatives from the Pennsylvania Prison Society, the Center for Returning Citizens, and the National Religious Campaign Against Torture.

The visit was coordinated through the Pennsylvania Council of Churches. The main issue at this meeting was to receive an update on the progress of reductions in solitary confinement in the Pennsylvania prison system.

Mr. Wetzel said that currently there are about 1900 inmates being held in isolation (solitary confinement). This is down from a previous high of 2500—or about a 20 percent reduction. The median length of stay in isolation is 39 to 64 days. However, 80 percent of inmates in isolation are there for non-violent reasons. The goal is to reduce the numbers in isolation and to find alternatives for non-violent offenses.

Mr. Wetzel is known as a progressive in the field of corrections. He is a proponent of data-proven programming. He declares that at the heart of all he has tried to accomplish in his six years as secretary of corrections is the humanization of people who are incarcerated.

Mr. Wetzel reviewed some of the programming and staff training that is taking place in the state prison system. He noted his opposition to mandatory minimum sentencing. He supports prison advocacy and said that informed people are needed to oppose resistance to progress.

Our group has been invited to “go anywhere.” Consequently, we will visit Muncy State Correctional Institution on September 29.

PA Senate and Budget Revenue

On July 27, the state Senate narrowly approved, 26-24, a revenue package to balance the \$32 billion 2017-18 budget. The plan, surprisingly, includes levies on natural gas drilling and increases in consumer taxes on telephone, electric and gas usage.

The measure now goes to the House. However, though the GOP controls both the House and Senate, the Republicans in one chamber are not in agreement with the other, regarding budget revenue. The House Republican leadership has informed its 120-member caucus to expect to return to the Capital before the end of August. But, they noted, “We certainly have no intentions to rubber stamp these bills.”

State Treasurer Joe Torsella has warned that by mid-September the state could run out of money, unless a complete budget is passed. If the budget process is not completed soon, Gov. Wolf might be forced to freeze spending.

From the moment the spending plan was passed, on the last day of June, the legislature has struggled to settle on a plan to pay for it all—not to mention the \$1.5 billion shortfall remaining from last year. The House, led by Rep. Mike Turzai (R-Allegheny) has resisted taxes as a source of revenue. The previously mentioned letter to the House Republicans stated, "From the beginning our goal was to protect the wallets of taxpayers. Make no mistake; that is still where our caucus stands."

By their own estimates, the tax package the Senate approved will raise about \$530 million. They also intend to borrow \$1.3 billion against the tobacco settlement fund—of course, this

creates more debt which will need to be paid off. Furthermore, they want to take \$200 million from a state fund that provides medical malpractice insurance for physicians.

Senate leaders propose a gambling expansion package to bring in another \$200 million. But, no details have been worked out. This is another issue on which Senate and House Republicans have differing opinions. They have been going round-and-round on this matter for two years.

The tax on natural gas drilling would be in addition the current one-time impact fee. The new tax is expected to bring in \$100 million annually. Republican lawmakers have resisted this severance tax for many years, on the grounds that it will scare away industry, though similar taxes have been levied by all other gas-producing states.

The proposal for the consumer taxes would reinstate a 5.7 percent tax on natural gas bills, increase taxes to 6 percent from the current 5 percent on telephone service, including cellphones, and raise taxes on electric service to 6.5 percent from the current 5.9 percent. \$20 million from the natural gas tax would go to the state's heating-assistance program.

Medicaid Work Requirements

The budget revenue package passed by the state Senate included a work/work-search requirement for some persons receiving benefits from Pennsylvania's Medicaid program.

This requirement is one budget area on which both the Senate and House Republicans seem to agree.

Medicaid, the primary public medical assistance program for the poor, blind and disabled, is one of the most expensive programs in state government. Of course, its cost is directly tied to the exploding costs in medical treatment. Pennsylvania taxpayers cover nearly half the cost of the Medicaid program in the state. For the 2015-16 budget year, Medicaid accounted for 29 percent of all state general fund spending.

The Wolf Administration would need to seek approval from the federal government to impose "reasonable employment or job search requirements for non-disabled, non-pregnant, non-elderly Medicaid eligible adults."

Environment and Budget Confusion

Attorney John Childe has asked Commonwealth Court to declare the current state budget to be unconstitutional.

Mr. Childe, with the Pennsylvania Environmental Defense Foundation, previously argued another case challenging the use of revenue from oil and gas operations, on state land, for non-conservation activities. The state Supreme Court recently affirmed Childe's view—for details, see my report for June 2017.

This time, Mr. Childe argues that using proceeds from the state's Oil and Gas Lease Fund to pay general operating expenses at the Department of Conservation and Natural Resources (DCNR) violates the Supreme Court's decision, which ruled the PA Constitution's Environmental Rights Amendment requires all three branches of government to hold the state's natural resources in public trust, incorporating all the fiduciary responsibilities associated with the state's private trust laws.

“If that’s a constitutional use of our natural resources then we don’t have control over those funds,” said Childe. “They can’t commingle that money with commonwealth money.” He points out that DCNR’s general operating budget for fiscal year 2017-2018 relies in part on funds from the Oil and Gas Lease Fund, which is comprised of royalty money, as well as bonus payments to the state from oil and gas companies that operate on public land. The fund is expected to generate \$80 million in royalties this year.

Childe writes in his motion that the Supreme Court, in a majority opinion written by Justice Christine Donohue, made clear that the funds were to go towards preservation and conservation only.

Former Secretary of the Department of Environmental Protection, John Quigley—who also ran DCNR under former Gov. Ed Rendell—says in 2004 the auditor general counseled against using Oil and Gas Lease Fund proceeds for general operating expenses at DCNR.. “I actually think [Childe’s] motion is based on a pretty clear reading of the Supreme Court decision and he’s got a good shot at this,” said Quigley. “This is a natural unfolding of the decision.”

Governor Wolf’s spokesman J.J. Abbott says the Office of General Counsel is reviewing the motion and will respond to the court.

Property Tax Referendum

A plan offering the potential of property tax relief for Pennsylvania homeowners through an amendment to the state constitution will be placed on the November ballot.

The state Senate voted 46-2, on July 11, to approve the measure allowing a ballot question to go to voters as a referendum. Lawmakers in both the state Senate and state House have now approved the measure in two consecutive legislative sessions, a necessity for an amendment to the state constitution.

The measure, known as the Homestead Exclusion Amendment, would allow local taxing bodies—school boards, municipalities and counties—to exclude up to 100 percent of the median assessed value of a home from taxation. This means that the town, county or school board choosing this option would not collect property taxes from homeowners.

Instead, local governments or school boards opting for this plan would implement an earned income tax or personal income tax in lieu of this property tax. The local governing body would set the income taxes at whatever it would take to replace the property tax revenue.

Currently, local governments can exclude up to 50 percent of the medium assessed value of a home. But that option has not been widely adopted.

If voters approve the referendum, it would then require enabling legislation before the plan could be implemented by individual taxing bodies.

Sen. David G. Argall (R-Schuylkill) is the prime sponsor of another bill, Senate Bill 76. This measure would eliminate school property taxes. It would replace the school property tax with a higher personal income tax and a higher sales tax. However, Argall supports the referendum, but he said, “We are still going to push for Senate Bill 76.”

Some advocates who have been working for property tax relief say the referendum isn't the remedy they have desired. The Pennsylvania Coalition of Taxpayers Associations, which represents 87 citizen advocacy groups, has been a leading voice pushing for the abolition of school property taxes. The coalition isn't satisfied with the upcoming referendum, said spokesman David Baldinger.

“It's not good enough,” Baldinger said. “[it sounds good] to the voters, to say that they lowered property taxes. In my opinion it doesn't do anything,”

The referendum, if approved, wouldn't apply to commercial properties. It would only apply to residential properties. And relief would be available only to homeowners in municipalities, school districts and counties that decide to adopt the plan. Baldinger opposes the referendum because it would only offer relief to residents in municipalities choosing the option. And the measure doesn't eliminate school property taxes, as would Argall's bill.

Police Video Bill

On July 7, Governor Wolf signed Senate Bill 560, clearing some legalities that will make it easier for law enforcement agencies in Pennsylvania to use body cameras—further details regarding this bill can be found in my June 2017 report.

The legislation was supported by police groups. Both chambers passed it overwhelmingly. However, the American Civil Liberties Union opposed it, warning that it will keep police videos largely out of public view.

The bill exempts police audio and video recordings from the Right-to-Know Law. It would let police and prosecutors deny requests for footage if they can't remove or obscure the identity of a confidential informant or victim, or the evidence in a criminal or administrative investigation.

When the bill was passed, in late June, an administration spokesman said that the governor would prefer a law that allows more transparency in the release of police video, but that he believed the bill is a good first step toward encouraging police departments to use body cameras to increase accountability without concerns over violating state privacy laws.

Marijuana Physicians

For the next step in its movement to allow medical marijuana, the state has begun the process to register physicians who wish to administer cannabis products to their patients.

These doctors must hold a valid medical license, apply to the state and complete a four-hour course on medical marijuana.

Like many medical marijuana programs across the country, doctors do not prescribe cannabis products, which are still considered Schedule 1 drugs by the Drug Enforcement Administration. Instead, physicians "certify" patients to use cannabis products.

Pennsylvania will allow 17 conditions for the use of medical marijuana, including cancer, epilepsy, glaucoma, HIV, multiple sclerosis and PTSD.

According to the state Department of Health, three-quarters of the 191 physicians who responded to a state survey about the program indicated that they planned to register for the program.

Auditor General- Recreational Marijuana

The state Auditor General has continued to call for legalized recreational marijuana in the commonwealth. Auditor General Eugene DePasquale came out in support of legal recreational marijuana earlier this year, saying revenue from taxes could reach \$200 million.

Now, he says that beside easing the state's financial issues, legal pot could be a useful tool in fighting the opioid epidemic. Mr. DePasquale says research shows there are 25% fewer deaths from opioid overdose in states that permit medical marijuana use.

"So, the connection I'm drawing there is: there are times when there are going to be people who will smoke marijuana as a way to reduce their pain," DePasquale said. "The ideal would be for nobody to have any pain, but that's not reality. In many instances, marijuana is a much safer alternative than opioids."

DePasquale says he's not trying to play doctor, he's just looking at the numbers.

Health Agency Merger

A proposal to merge four state agencies into a Department of Health and Human Services will not include Pennsylvania's Department of Aging or its Department of Drug and Alcohol Programs.

Gov. Tom Wolf, as part of his budget recommendations in February, proposed merging the state's departments of Aging, Health, Drug and Alcohol Programs, and Human Services into one department. His rationale was that the merger would increase efficiency and reduce costs.

From the beginning, the idea faced resistance from a number of sources for a number of reasons. "It was a matter of sheer size and volume of the agency, and a concern for too much at one time," said Jennifer Kocher, a spokeswoman for Senate Republicans. "We need to be able to take our time and make sure that we are doing this correctly."

The spending budget approved by the General Assembly assumes only the merging of the departments of Health and of Human Services. However, that merger must still be approved by legislation. A timeline for when that would happen is unclear.

Sen. Judy Schwank (D-Berks), the prime sponsor of the merger legislation in the Senate, said she believes the idea to merge all the agencies could be revisited in the future.

Inspector General

On July 20, Gov. Tom Wolf signed Senate Bill 527. The bill makes the office of inspector general a cabinet-level position, appointed by the governor. Before this legislation, the position required an executive order.

The governor vetoed similar legislation last October. The previous version required Senate confirmation of the governor's appointment. Sen. Ryan Aument (R-Lancaster) sponsored SB527. Gov. Wolf thanked Sen. Aument for his efforts.

The office of inspector general was formed to investigate waste, fraud and abuse in welfare programs and allegations of misconduct in state agencies. Among other powers, the bill now grants subpoena power to the inspector general.

PASSHE Report

In mid-July, the National Center for Higher Education Management Systems unveiled its report concerning the Pennsylvania State System of Higher Education (PASSHE). The system consists of 14 public colleges and universities. The National Center, of Boulder, Colorado, was hired by PASSHE earlier this year to evaluate the system, following several years of overall enrollment decline and financial difficulties. I have been following this item in my briefings over several months.

The National Center report recommended numerous changes. It said the schools need better top management, more cooperation and a greater focus on their educational mission, as opposed to their status as regional centers of employment. It said PASSHE is plagued by a "climate of distrust, non-transparency, confrontation and competition" and claimed there is weak leadership capacity at all levels.

The report suggested an array of strategies to help turn things around, but did not recommend closing any campuses. Closings would negatively affect entire regions and leave behind lingering obligations, such as paying off construction projects. Mergers also would probably not save much money.

The study endorsed changing state law to replace the 20-member board of governors with a different structure made up of "lay persons." The current board consists of 11 gubernatorial picks, confirmed by the state Senate, four lawmakers chosen by caucus leaders in each chamber, three state system students, the Pennsylvania governor and the secretary of education.

Board of Governors Chairwoman Cynthia Shapira said the report made "a lot of extremely interesting suggestions" but cautioned that decisions would not be made quickly.

The state system has a \$1.7 billion budget and full-time enrollment of about 98,000, down from a peak of about 112,000 six years ago. About half of its students come from families with \$48,000 or less in annual household income. About three-quarters of the budget goes to pay personnel costs. Tuition and fees account for two-thirds of the revenue. Full-time, in-state tuition is currently about \$7,200, but is being increased.

The report elicited various reactions. "We had hoped for more detailed information," said Sen. David Argall (R-Schuylkill), chairman of the Senate majority policy committee. "The report didn't tell us anything we didn't know," echoed Sen. Andy Dinniman (D-Chester), "and it never got into how you could accomplish the objectives they spoke about."

Earlier this year, Sen. Argall led an effort to get approval for the Senate's Legislative Budget and Finance Committee to conduct its own study of the system. Argall said that with the National Center's report finished, he plans to soon launch the effort with the goal of finishing by the end of the year.

Joni Finney, director of the Institute for Research on Higher Education at the University of Pennsylvania, praised the report, saying, "I think they were pretty tough on everybody."

Regarding the recommended elimination of the board of governors, Sen. Judith L. Schwank (D-Berks) said, "I'm all for it. This model that we have really is out of step with the rest of the country." She said the report gave her hope. "The key in terms of outcome will be whether we have the courage to move forward on the recommendations that they made."

On July 17, the State System of Higher Education announced that Chancellor Frank Brogan will retire on Sept. 1 from the position that pays him \$346,000 a year. Mr. Brogan has held the position for four years.

Brogan, who is 63-years-old, told the board of his decision before the meeting at which the system received the report by the National Center for Higher Education Management Systems.

Brogan came to Pennsylvania after serving as chancellor of the State University System of Florida. He's a former Florida lieutenant governor.

PA Population Decline

Pennsylvania's population dropped by more than 7,600 between 2015 and 2016, according to an economic outlook report from Wells Fargo Securities. Pennsylvania was one of eight states, including New York, Illinois, Connecticut and West Virginia, to experience a net loss in residents during that time period.

"Pittsburgh lost 9,000 residents in 2016," observed economists Mark Vitner and Jamie Feik, authors of the report. "The 0.4 percent drop was the worst percentage decline among the nation's 50 largest metro areas, a spot Pittsburgh has claimed in three of the past four years."

The state's rural population has been in decline since the beginning of the 2008 recession, the report said. During 2016, 45,000 residents left the state, while 35,000 moved in.

AG Sues DeVos

On July 6, Pennsylvania Attorney General Josh Shapiro and 18 other Attorneys General sued Education Secretary Betsy DeVos and the U.S. Department of Education for abandoning the Borrower Defense Rule, that was scheduled to go into effect July 1.

The lawsuit, filed in U.S. District Court in Washington, challenges the Department of Education's action in abruptly rescinding its Borrower Defense Rule. The rule is designed to protect college students from abusive loan practices and hold higher education institutions, including for-profit companies, accountable for cheating students and taxpayers out of billions of dollars in federal loans.

The rule was finalized last November and followed the collapse and bankruptcy of Corinthian Colleges—a for-profit chain that committed multiple violations of state and federal law in advertising, enrolling and financing to students.

The regulations at issue provide protections for federal student loan borrowers and assist in enforcing state consumer protection laws. Additionally, they allow student loan borrowers to have their debt forgiven if they were victims of deceptive practices by their school or college, such as misrepresenting job placement rates at the school or other abusive practices.

Earlier this year, Secretary DeVos said the Department of Education would rethink the Borrower Defense Rule and would delay portions of it.

The suit by the Attorneys General asks the court to declare the delay to be unlawful and to order the Department to implement the Borrower Defense Rule.

In response to the lawsuit, Department spokeswoman Elizabeth Hill issued a statement that said: "With this ideologically driven suit, the state attorneys general are saying to regulate first, and ask the legal questions later...The borrower-defense regulations suffer from substantive and procedural flaws that need to be considered before imposing new burdens on regulated parties that will come at a cost to taxpayers of \$14.9 billion in the next 10 years."

The announcement of this suit, by the Pennsylvania AG's office, noted that the commonwealth has more than 200 colleges and universities and trade schools, and about 100 other for-profit educational institutions. Pennsylvania's college graduates carry the third-highest average debt in the nation, \$34,798.

In addition to Attorney General Shapiro, the other attorneys general joining the lawsuit include Massachusetts, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Mexico, New York, North Carolina, Oregon, Rhode Island, Washington, Vermont, Virginia, and the District of Columbia.

Presidential Advisory Commission on Election Integrity

On June 20, Gov. Tom Wolf refused to provide requested voter information to the Presidential Advisory Commission on Election Integrity, created by President Donald Trump in May. "I have serious reservations about the true intentions of this effort in light of the false statements this administration has made regarding voter integrity," Mr. Wolf wrote in a letter to Kris W. Kobach, vice chair of the commission and secretary of state in Kansas.

The governor suggested that Mr. Kobach purchase, for a \$20 fee, the state's publicly available voter data file, which includes some of the same information, such as name, date of birth, address, political party, and voter history. It does not contain social security numbers, driver's license numbers, military statuses, or felony convictions.

The governor wrote that during the presidential campaign, "then-candidate Trump repeatedly and falsely suggested, without evidence, that there existed widespread voter fraud in Pennsylvania and in particular in certain population centers in our commonwealth."

Early in July, Mr. Kobach sent a letter to the 50 secretaries of state requesting information about all registered voters, including their name, address, date of birth, political party, the last four digits of their Social Security number, which elections they voted in since 2006, military status, and felony convictions. Wolf said the letter Pennsylvania received also requested driver license numbers.

President Trump created the Presidential Advisory Commission on Election Integrity to investigate his allegations that millions of people voted illegally in 2016. At the commission's first meeting on July 19, the president questioned the motives of states that have refused to comply with the commission's request, suggesting they had something to hide.

Pennsylvania is one of 46 states that have either completely refused to cooperate or indicated they will only supply some of the information sought by the commission.

17 conservative state lawmakers criticized Governor Wolf in a letter. "Your refusal to cooperate with the commission's reasonable request to provide publicly available data and input from the states for the purpose of improving our election system is unacceptable and brings Pennsylvania into disrepute," wrote the letter's author, Rep. Daryl Metcalfe (R-Butler County), chairman of the House state government committee. Metcalfe's committee has convened a series of hearings intended to explore whether illegal voting has taken place.

The Presidential Advisory Commission on Election Integrity was temporarily interrupted in its work by a suit from the Electronic Privacy Information Center (EPIC), claiming that the

commission should have completed an assessment of privacy concerns before making requests for voter data.

However, on July 24, federal judge Colleen Kollar-Kotelly, of the U.S. District Court in the District of Columbia, denied the center's request. The judge found, since the commission is not an agency, it therefore is not required to do such an assessment. Furthermore, EPIC failed to show that its members would be harmed by the data collection. Mr. Kobach called the decision "a major victory for government accountability, transparency and the public's right to know about the integrity of our elections processes."

Similar lawsuits are pending in Texas, Florida and New Hampshire. The New Hampshire lawsuit, brought by two lawmakers and an American Civil Liberties Union chapter, was put on hold pending the outcome of the Washington case.

Sessions, Sanctuary Cities and Philadelphia

On July 21, in Philadelphia, U.S. Attorney General Jeff Sessions singled out Philadelphia as an increasingly violent city made more dangerous by immigrants living in the country illegally. Mr. Sessions spoke to federal prosecutors and local law enforcement officials for 20 minutes, addressing violent crime, immigration and the opioid crisis. He pleaded with local law enforcement to "reconsider carefully the harm they are doing to their residents" through policies he said "are giving sanctuary not to law-abiding citizens in our communities, but to criminals." Sessions urged officials to "re-think" such policies. "I know that you want to help," he said. "The problem is the policies that tie your hands."

Afterward, Philadelphia Police Commissioner Richard Ross told reporters that he supported Mayor Kenney's policies and believed local police should stay out of immigration enforcement.

Philadelphia Mayor Jim Kenney responded to Sessions's remarks, saying that the sanctuary city policy keeps the city safer. "Blaming an entire group of people for our country's problems and violating their right to due process isn't constitutional and it isn't American. Philadelphia treats immigrants as we would any other resident under our criminal justice system," he said.

Studies have shown lower crime rates among immigrants than among native-born Americans.

The U.S. Department of Justice recently announced broader restrictions on law enforcement grants, aimed at withholding federal money from sanctuary cities. In the past, such grants have funded police overtime and training. Philadelphia sent the Justice Department a letter last month arguing that it did comply with the law—see my June 2017 report.

Under these restrictions, to qualify for the same grants this year, cities must fulfill two additional requirements. They must allow Homeland Security officials into detention facilities to ask immigrants being held about "their right to be or remain in the United States." And, when Homeland Security officials request it, cities must give 48-hours notice before releasing an undocumented immigrant from custody.

President Donald Trump has tried to cut funding from cities that limit cooperation with U.S. immigration authorities. A federal judge said he's not likely to reinstate Trump's executive order to cut funding from cities that limit cooperation with U.S. immigration authorities.