

## **United Methodist Advocacy in Pennsylvania**

### **February 28, 2018**

There were two outstanding political stories for the month of February. First, was the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, and what followed. Second, was the new congressional districts map imposed by the PA Supreme Court, and what followed.

There are many items on my coverage list this month. Half involve the events mentioned above. The first eight items regard the PA Supreme Court's map. The next seven pertain to the shooting. Normally, one would expect Gov. Tom Wolf's budget address to be the main story for February. However, it can be found in the middle of the pack.

It is easy to focus on the hot topics, however the other items included in this report are worth knowing for the sake of political literacy, social justice and ethical concerns.

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## **U.S. Supreme Court Denies Stay of PA Ruling**

On February 5, a spokesman from the U.S. Supreme Court's public information office reported that Justice Samuel Alito denied the request by Pennsylvania Republican legislative leaders for a stay of the PA Supreme Court's January 22 decision that ordered the legislature to redraw the state's congressional districts map.

## **PA Supreme Court Gerrymandering Opinion**

On February 7, the Pennsylvania Supreme Court released the reasoning behind its decision on January 22, overturning the map of the state's 18 congressional districts. Republicans have criticized the Supreme Court for not releasing its opinion sooner.

At the time of the decision the court said the districts' boundaries "clearly, plainly and palpably" violate the state's constitution. Furthermore, it ordered lawmakers to draw a replacement map by February 9. After that, Gov. Tom Wolf would have until February 15 to approve the map and submit it to the court. If this failed to occur, the court would adopt its own map.

In the Feb. 7 majority opinion, Justice Debra McCloskey Todd wrote, "An election corrupted by extensive, sophisticated gerrymandering and partisan dilution of votes is not 'free and equal.' In such circumstances, a 'power, civil or military,' to wit, the General Assembly, has in fact 'interfered to prevent the free exercise of the right of suffrage.'"

Much of the opinion is devoted to summarizing past case law, the current congressional map, the history of this case, and the testimony of expert witnesses. In regard to gerrymandering, Justice Todd wrote: "This is the antithesis of a healthy representative democracy. Indeed, for our form of government to operate as intended, each and every Pennsylvania voter must have the same free and equal opportunity to select his or her representatives." By using the state constitution's "free and equal" clause—as distinct from the federal constitution's Equal Protection Clause—the opinion suggests that state constitutions can be broader in their protections.

Justices Christine Donohue, Kevin M. Dougherty, and David N. Wecht joined the opinion.

In his dissent, Chief Justice Thomas G. Saylor wrote that the court should have waited for more guidance from the U.S. Supreme Court, which is deciding on another gerrymandering case. Justice Sallie Updyke Mundy wrote in her dissent that the majority opinion is inconsistent with previous case law. Both justices were also concerned about the court's order that the congressional map be redrawn in less than three weeks.

The seventh justice, Max Baer, joined the majority in finding the current map unconstitutional, but believed the remedy "threatens the separation of powers."

## **PA Supreme Court Reveals Congressional Districts Map**

On February 19, the PA Supreme Court revealed its congressional districts map that will now go into effect. This map will replace the 2011 map, created by the Republican-controlled Legislature. The court found the previous map to be gerrymandered to the point of preventing free and equal election results.

The Republican-controlled Legislature and Democratic Gov. Tom Wolf were not able to produce a consensus replacement map in the three weeks allotted by the court. Consequently, as promised, the court produced its own version.

The map will be in place for the May 15 primary election. However, this change is causing consternation among many congressional candidates.

For example, Joe Peters intended to run for the seat of fellow Republican, Congressman Lou Barletta—Barletta is running for U.S. Senate. But, with the new district alignment, Peters finds his rural northeastern Pennsylvania home in the same district as Republican Rep. Tom Marino. Should he move?

Should he wait to see if lawsuits undo the new map? "It's a combination of a game of chicken and a game of chess," said Peters.

Images of the new map are readily available on the internet.

### **Trump Urges GOP to Fight PA Districts Map**

On February 20, the day after the PA Supreme Court revealed its congressional districts map, President Donald Trump encouraged Republicans to fight it. Trump tweeted that Republicans should challenge the court-imposed map all the way to the U.S. Supreme Court, if necessary. He wrote, "Your Original was correct! Don't let the Dems take elections away from you so that they can raise taxes & waste money!"

Pennsylvania has been viewed as one of the most gerrymandered states. The new map significantly modifies the Republican-drawn map that has allegedly produced the predominantly Republican Pennsylvania congressional delegation. With control of the U.S. House in the balance this November, why would the Republicans want to allow change?

### **PA Republicans Go Back to U.S. Supreme Court to Fight Map**

On February 21, Republican leaders in the Pennsylvania Legislature announced they were asking the U.S. Supreme Court to halt the imposition of the state's new congressional district map, revealed by the state's Supreme Court, two days earlier. On January 22, the state Supreme Court threw out the 2011 congressional district map that had been drafted by Republicans, saying it violated the state constitution's guarantee of free and equal elections. The new map is recognized as being friendlier to Democrats.

House Speaker Mike Turzai (R-Allegheny) said that he and Senate President Pro Tempore Joe Scarnati (R-Jefferson) will request an emergency stay on the new map, that he called a "completely partisan, ultimate gerrymander." Essentially, they believe the PA Supreme Court's decision to be legally presumptuous.

This will be the third time in four months that Turzai and Scarnati have asked the U.S. Supreme Court to halt litigation involving the congressional districts map. They were denied the preceding two times.

### **Congressmen Challenge Map**

On February 22, eight Republican congressmen filed seeking an injunction in federal court, in Harrisburg, arguing that the Pennsylvania Supreme Court exceeded its authority in creating a new congressional district map, revealed on February 19. They also contend that it did not give the legislature enough time to produce its own new map. They say that the 2011 map should remain in use. The plaintiffs are asking for an injunction to prevent the Department of State from implementing the new plan.

The Philadelphia-based Public Interest Law Center, which successfully argued the case against the old map, called the Republican lawsuit "baseless." In a federal court filing, they said independent analysts found the court's new map shows no sign of partisan bias. They also said that Republican leadership never really tried to pass a replacement map on time.

The plaintiffs include seven Republican members of Congress who are expected to seek re-election: Reps. Ryan Costello, Mike Kelly, Tom Marino, Scott Perry, Keith Rothfus, Lloyd Smucker and Glenn Thompson. These incumbents say they have already spent money on re-election campaigns in their existing districts, and that ongoing work to help constituents they may no longer represent is likely to be disrupted.

The federal lawsuit was filed the day after Republican Legislative leaders asked the U.S. Supreme Court to stop the court-ordered map from being implemented.

On February 23, the request was placed in the hands of a panel of three federal judges. All three were Republican appointments. The majority in the Pennsylvania Supreme Court that allowed the new map are all Democrats.

## **Impeach Justices?**

Some Pennsylvania Republicans, angry that the state Supreme Court threw out the existing congressional districts map on the basis that it is unfairly gerrymandered, are talking about impeaching the justices responsible for the decision. State Rep. Cris Dush (R-Jefferson) raised the idea a few weeks ago. Recently, U.S. Rep Ryan Costello (R-Chester) agreed. U.S. Sen. Pat Toomey said the idea was worth discussing.

However, only once has a Pennsylvania Supreme Court justice been impeached and removed from office. That was Justice Rolf Larsen, following conviction in 1994 of criminal conspiracy—the only public official to be impeached in Pennsylvania since 1803. Now, Rep. Dush would like to impeach five at the same time. A Pennsylvania judge has never been impeached for a controversial ruling. Grounds for removing a judge would typically be criminal or corrupt behavior.

Supporters of Dush argue that the justices who voted to invalidate the 2011 congressional map violated the legislative process and redistricting rights that belong to the general assembly.

No impeachment bill has yet been introduced. But, in his memo circulated to fellow lawmakers, Dush contends the high court's ruling "blatantly and clearly contradicts the plain language of the Pennsylvania Constitution."

Regarding impeachment, the state constitution says: "The Governor and all other civil officers shall be liable to impeachment for any misbehavior in office." But, the constitution does not define the term *misbehavior*.

Republicans control both chambers of the General Assembly. Impeachment would require a majority vote in the House; a conviction would require a two-thirds majority in the Senate. The five justices in question are each Democrats. Each has been elected to a 10-year-term. They are Max Baer, Kevin Dougherty, Debra McCloskey Todd, Christine Donohue, and David Wecht. None is up for retention until 2023.

"If the state legislature disagrees with the state court's interpretation of the law, there's a process that doesn't involve attacking the individual justices," said Justin Levitt, a law professor and associate dean at Loyola Law School in Los Angeles. "If the Supreme Court interprets a statute wrong, the legislature can pass a new statute." If the issue is the state constitution, he continued, the legislature could propose a new constitutional amendment.

## **Comment on PA Supreme Court Imposing Its Map**

*On February 20, 2018, EPAUMC Communications Director John Coleman asked me to comment regarding the release of the PA Supreme Court's Congressional District Map. Following is my reply:*

In January 2017, I visited Pennsylvania House Majority Leader Dave Reed at his district office. The topic of the visit was legislative redistricting reform. The legislative redistricting reform (anti-gerrymandering) movement was just starting.

I requested the visit because I felt that this movement was going to take hold and become a major political issue. I wanted to see what he knew, where he stood and, most importantly, to begin to encourage support for the movement. I felt that this was, as we say in the church, the *Kairos time* on this issue.

During that visit, I made three observations to Rep. Reed. First, to expect a significant groundswell of popular support for legislative redistricting reform. Second, anyone who opposes this movement will end

up on the wrong side of history. Third, any politician who supports this movement will be recognized as an altruistic visionary.

Since that time, the redistricting reform movement has made incredible headway. I am hesitant to make political predictions. But, I think I was accurate on this matter. The Congressional District Map recently authorized by the Pennsylvania Supreme Court is concrete evidence of what a determined grassroots political effort can accomplish.

However, the finality of the Supreme Court's map is not certain. Legislative leadership opposed to redistricting reform will continue to litigate against the new map. One of their arguments will be that only the legislative branch, not the courts, has authority to define legislative districts. We will have to watch as this continues to play out.

I have supported legislative redistricting reform based on our United Methodist position that "We hold governments responsible for the protection of the right of the people to free and fair elections... The church should continually exert a strong ethical influence upon the state..." At least four different forms of scientifically-based analytics have demonstrated unrepresentative election results as a consequence of gerrymandering.

I do not think that the State Legislature is yet ready or able to reform what has become of the legislative district-making process. They are unable to be objective. Perhaps, only the judicial branch can level the field. I can see what needs to happen as being like the Old Testament concept of the Year of Jubilee. There comes a time when things need to be brought back to square one.

## **Florida Shooting and Aftermath**

On February 14, Valentine's Day, 17-year-old Nikolas Cruz shot and killed 17 people at Marjory Stoneman Douglas High School in Parkland, Florida.

It is not necessary to report the details of this mass shooting. Everyone knows the story.

However, the ongoing effort of many of the surviving students is significant, as they advocate for gun reform—especially, to ban military-style assault weapons—at the state and national level. The students are articulate, serious and undeterred by the rhetoric of their gun-rights opponents. Several have become media darlings. They've confronted lawmakers, appeared on national TV and demanded answers from the National Rifle Association.

The efforts of the survivors have had an impact. There are calls for boycotts, organizing for rallies, proposals for gun control legislation. Dick's Sporting Goods pulled assault-style rifles from their shelves. Furthermore, both Dick's and Walmart declared they will not sell guns to anyone under 21. More than a dozen companies have severed business ties with the N.R.A.—we're now talking about actions that relate to profit and loss, something is seriously afoot.

## **Metcalf Criticizes School Shooting Survivors**

On February 21, Rep. Daryl Metcalfe (R-Butler) broadcast his opinion on Facebook and Twitter regarding the teenagers who survived the deadly mass shooting at Marjory Stoneman Douglas High School, and who have become outspoken advocates for tighter gun control.

As occurred with other mass shootings, misinformation, disinformation and conspiracy theories move rapidly, going from right-wing conspiracy websites onto social-media networks, and even surfacing on major media outlets. Impulsive and indiscriminate politicians sometimes end up parroting the lines.

Metcalf, aligning himself with conspiracy theorists, attacked the credibility of the activist survivors. His post reads: "I enlisted in the U.S. Army at 17 years old. This morning I was working out and listening to the news about 'students' being bused in to the Florida Capitol. The hypocrisy of the left struck me! They expect lawmakers to listen to the policy advice of 18 year old and younger 'students' who are advocating

for gun control, but they do not believe 18 year olds who are old enough to serve on the battlefields of Afghanistan are old enough to purchase a rifle."

A spokeswoman for Metcalfe said she could not speak for him regarding this post.

Some right-wing commentators have suggested that the students are making it all up, or that they are paid actors, or that their talking points have been manufactured by public relations experts.

One article published by Gateway Pundit claimed that one of the students, 17-year-old David Hogg, was being coached to peddle anti-gun rhetoric and that he was a pawn of the FBI—Hogg has said that his father is a retired FBI agent. The president's son, Donald Trump Jr., liked a tweet linking to that article.

However, some conservative legislators are not taking the bait. U.S. Sen. Marco Rubio (R-Fla.) tweeted that claims that the students are actors "is the work of a disgusting group of idiots with no sense of decency."

### **State Rep. Kampf Addresses Mass Shootings**

Following are excerpts from a Feb. 20 press release:

HARRISBURG – Rep. Warren Kampf (R-Montgomery/Chester) today announced that he will be introducing a comprehensive package of legislation to help prevent tragic mass shootings.

"I am the father of two young children in our public schools. I could not imagine the anguish if anything happened to them, or anyone's children, and while some will refuse to act, I will not," Kampf said. "The issue of public safety isn't Republican or Democrat; it is the job of every elected leader regardless of party."...(Kampf) is putting forth the following proposals:

- Funding for mental health and mental rehabilitation services with monies focused on treatment...
- Requiring background checks on all gun sales – long arms and pistols, including private sales...
- Implementing "Red Flag" legislation that allows family members or law enforcement to ask the courts to temporarily remove firearms from a person who poses a danger to themselves or others—with appropriate due process.
- Providing immunity for teachers, medical professionals, and the general public for reporting potentially troubled individuals to law enforcement and/or mental health specialists...
- Prohibiting bump stocks and high-capacity magazines...
- Protecting victims of domestic violence by changing the state's rules regarding protection From Abuse Orders by requiring the immediate relinquishing of firearms...
- Funding for school security, which is perhaps a federal, state, county and local cooperative effort...

"Unlike many who are playing politics or simply appealing to the simplest of emotions, I am making concrete proposals that have a chance of becoming law and making a positive difference," Kampf said.

### **Deputy Who Did Not Engage the Shooter**

Deputy Scot Peterson, of the Broward County Sheriff's Office, was armed and stationed on the school's campus when Nikolas Cruz opened fire at Marjory Stoneman High School.

During a press conference, Sheriff Scott Israel said video showed Peterson arriving at the west side of the high school where the shooting took place. Israel said that Peterson took up a position but never went in. Peterson, according to the sheriff, "was absolutely on campus through this entire event." The deputy was armed and in uniform during the shooting, but never entered the building despite knowing a shooting was happening. The sheriff said he believes Peterson remained outside of the building for roughly four minutes, while the shooting in total lasted six minutes.

The sheriff said that he suspended Peterson without pay pending an internal investigation, but the officer resigned and retired. In 2014, Peterson was named School Resource Officer of the Year in Parkland. The district stated, "Deputy Peterson has proven to be reliable in handling issues with tact and judgment."

Two other deputies from the Broward County Sheriff's Office have been placed on restrictive duty while an investigation remains ongoing.

At this time, we do not know what Deputy Peterson was feeling, we do not know his assessment of the situation, we do not know what instructions he might have had. In a sense, he is a victim, too. Let us not be too hasty to judge.

On February 26, while speaking to the nation's governors at the White House, as part of their annual winter meeting, President Donald Trump told them that if he were at Marjory Stoneman Douglas High School, he would have rushed in to aid the students and teachers during the shooting. He said, "You don't know until you're tested, but I think, I really believe I'd run in there even if I didn't have a weapon and I think most of the people in this room would have done that, too." Faulting the officers on the scene, he added, "They really weren't exactly Medal of Honor winners."

## **Arming Teachers**

President Donald Trump has recommended arming teachers as a measure to prevent another school mass shooting.

On February 21, during a listening session with parents and survivors of school shootings, the president praised assistant football coach Aaron Feis, who was killed during the Marjory Stoneman Douglas High School shooting. Mr. Trump said that Feis "was very brave," remarking further, "If he had a firearm, he wouldn't have had to run."

Florida Republican Sen. Greg Steube said gun-free zones like schools are easy targets and has proposed allowing specially trained educators with military or law enforcement backgrounds to be armed. "Our most valuable, most precious resources are our children. Why in the world are we going to put them in a circumstance where there is nobody that is armed and trained at any of our schools to be able to respond quickly to an active shooter situation?" Steube told The Associated Press.

Explorations of the idea of arming teachers have recently taken place in Kentucky, Colorado, North Carolina and Alabama. Wisconsin's attorney general said he's open to the idea.

The public is divided on the issue. A poll by ABC News/Washington post says 42 percent of Americans believe teachers with guns could have prevented the Florida shooting.

There are eight states that allow, or don't specifically prohibit, concealed weapons in K-12 schools, according to the Giffords Law Center to Prevent Gun Violence. The attitude is that armed teachers are one element in a security plan that might include drilling for emergencies and shoring up buildings. Towns without police departments worry that response by law enforcement would come too late.

On the other side, the president of the 1.7 million-member American Federation of Teachers, Randi Weingarten, called arming teachers "one of the worst ideas I have heard in a series of really, really, really bad ideas."

The National Association of School Resource Officers favors hiring more trained law enforcement officers, in part to ensure a teacher's gun won't mistakenly wind up in a student's hands.

## **Trump Asks for Ban on Bump Stocks**

On February 20, President Donald Trump signed a memo directing the Justice Department to propose regulations to "ban all devices" like the rapid-fire bump stocks involved in last year's Las Vegas massacre.

The announcement was made during a White House ceremony recognizing bravery by the nation's public safety officer, and days after the mass shooting at Marjory Stoneman Douglas High School.

The President has also indicated he is open to a limited strengthening of federal background checks on gun purchases.

When Mr. Trump visited first responders and some of the Parkland victims on February 16, he focused his comments on the mental health aspect of shooters. During his presidency, the only action Trump has taken on firearms has been to sign a resolution repealing an Obama-era rule intended to keep guns out of the hands of certain mentally disabled persons.

### **Toomey Supports Background Checks on Gun Purchases**

On February 21, in the aftermath of the Parkland Florida mass shooting, Pennsylvania Republican U.S. Sen. Pat Toomey said that he will probably reintroduce legislation to expand background checks on gun purchases. He has twice before introduced such legislation and each time it has failed.

His legislation would require background checks for all gun purchases online and at gun shows. Currently, the checks are only required for transactions from licensed gun dealers.

For Toomey, finding compromise on gun control became a signature issue in his first term. He first introduced such legislation following the shooting deaths of 26 children and adults at Sandy Hook Elementary School in 2012.

Toomey opposes broader restrictions, such as limits on magazine size and bans on certain kinds of semi-automatic rifles. But, he supports restrictions on sales of rapid-fire bump stocks. He also wants to increase the prosecution of people who lie on a federal firearms background check application. Toomey said he would also support legislation that would not allow people on no-fly lists to buy guns.

However, Toomey supported President Trump's repeal of an Obama-era rule intended to keep guns out of the hands of certain mentally disabled persons.

### **Governor's Budget Address**

On February 6, Gov. Tom Wolf delivered his budget address for 2018-19. This is the governor's fourth and final first-term budget request.

Wolf's plan avoids increasing income and sales taxes, but would increase spending by 3 percent, or about \$1 billion, costing a total of \$33 billion for the fiscal year beginning July 1. The higher spending would go toward public schools, skills training, pension obligations, prison costs and social services.

The Democratic governor also persists in proposing a tax on Marcellus Shale natural gas extraction and increasing the minimum wage—both of which have been stymied by the Republican legislature.

Wolf will again request that municipalities that use the state police for law enforcement coverage pay \$25 per-person. It is believed that this will produce income of \$63 million a year. The Republican legislature has also resisted this request.

The governor expects significant income from the expansion of gambling, approved by lawmakers last October. He projects no deficit next year—though some independent analysts are doubtful.

Wolf touted Philadelphia and Pittsburgh for being named to the short-list for Amazon's second headquarters and said businesses don't come to states that don't invest in schools, skills training and transportation infrastructure.

Following are other points from the governor's budget address:

- \$225 million for pre-school, public and technical schools and the state's higher education system.
- \$50 million on a new initiative meant to match worker training with available jobs.
- Reduce the corporate tax rate to 7.99 percent by 2023. This would occur in conjunction with eliminating the "Delaware loophole" by next January. The loophole allows corporations to avoid the state corporate tax by lumping revenue generated in Pennsylvania with revenue produced in states with lower income taxes and paying the tax of the lower-tax state.
- Increase the number of state troopers by 100.
- \$6 million for state police body cameras.



- \$74 million more for services for people with intellectual disabilities and autism.
- \$25 million more for low-income, working parents, to pay for day care for their children.
- \$600,000 more for the state Human Relations Commission to support victims of sexual misconduct.
- \$10 million more to fix bridges.
- \$1.6 million to wipe out infestations of spotted lanternflies, insects that threaten the state's grape, fruit and hardwood trees.
- Eliminate funding for regional cancer institutes, poison control centers and civil air patrol.

The House Appropriations and Senate Appropriations committees have begun listening to department heads explain their spending requests. However, the General Assembly typically doesn't get serious about concretely crafting the budget until June.

### **Not 100,000 Noncitizen Voters in PA**

On February 28, responding to a lawsuit in federal court, Pennsylvania election officials said there is no evidence to back up a claim that more than 100,000 noncitizen immigrants had been registered to vote in the state.

The Department of State, in a statement to The Associated Press, said it is reviewing data and that the figure "is not confirmed by any substantive analysis by the Department. It is not a credible figure and there is no reason to believe it to be accurate."

The department, which oversees elections in Pennsylvania, did not provide a figure as to how many noncitizens it does believe are registered to vote.

More than 8.4 million Pennsylvanians are presently registered to vote, according to department data.

The lawsuit, filed February 26 in federal court by the conservative Public Interest Legal Foundation, said the state is violating the National Voter Registration Act by blocking its access to records of Pennsylvania's efforts to identify and remove noncitizen immigrants from voter registration lists.

### **Medical Marijuana for Sale**

On February 15, the first Pennsylvania medical marijuana dispensary began sales in Butler County. Five other dispensaries opened during the following two days. These locations include Bucks County, Chester County, Cumberland County and the cities of Bethlehem and Pittsburgh.

An announcement regarding these openings was made by Governor Tom Wolf. Wolf recommended that patients contact the dispensaries in advance to determine if they require an appointment.

Medical marijuana was legalized in Pennsylvania during the spring of 2016. The state has developed a regulatory structure and distribution system in two years. The Governor noted, "Medical marijuana is legal, safe and now available to Pennsylvanians suffering from 17 serious medical conditions."

More than 17,000 patients are in the process to be approved to purchase medical marijuana in the state. More dispensaries are under way to open.

### **Chesapeake Bay Funding Cut**

The Trump administration is proposing a 90 percent cut in federal funding for Chesapeake Bay cleanup. The president's 2019 budget recommendation, released February 12, cuts the U.S. Environmental Protection Agency's annual bay budget from \$73 million to \$7.3 million. This leaves only enough for monitoring, but nothing for restoration.

Pennsylvania is one of six states in the Chesapeake Bay watershed, as well as the District of Columbia. A watershed cleanup effort is underway through 2025. Though the states contribute millions to the effort, federal funding is critical.

"Today, pollution is down. Jobs have been created, human health protected and local economies improved. The dead zone is getting smaller; crabs, oysters and underwater grasses are rebounding," said William Baker, president of the Chesapeake Bay Foundation. "A budget cut of this magnitude would kill that progress."

Attempts to clean up the bay, America's largest estuary, date back thirty years. But, the work received a boost in 2010, when the watershed states agreed to put themselves on a "pollution diet" to limit further water degradation.

It is worth noting that federal commitment and practice for Chesapeake Bay tends to be mirrored for Lake Erie, at the opposite corner of our state.

### **Citizenship Question on Census**

On February 12, a coalition of state attorneys general sent a letter to Commerce Secretary Wilber Ross urging the U.S. Department of Commerce to not add a question about citizenship to the 2020 census, saying it could lower participation among immigrants and cause a population undercount. Pennsylvania's Josh Shapiro was a signatory on the letter.

The letter said the attorneys general were opposing a request by the U.S. Department of Justice to add the question because, "Including a question on the 2020 Census that would manipulate the count by scaring people away from being counted—causing grave harm to the states and our residents—is inconsistent with those obligations" ("obligations" meaning the mandate to carry out an accurate enumeration used to guide programs and political representation).

Following are the states represented in the letter: California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Mississippi, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington.

### **Who Pays for Sexual Misconduct?**

The revelation that legislatures frequently use taxpayer money to protect lawmakers and staff accused of sexual misconduct has created some recent outrage. Advocates for taxpayers say that lawmakers need to be held personally responsible for their actions.

But, holding individual lawmakers, and not the government, responsible for sexual harassment may lessen the incentive for legislatures to offer sexual harassment training and to police their own. And, because some lawmakers may not be able to come up with the money for a settlement, it might be less likely for the victim to receive compensation for his or her claim.

However, legislative bodies are responsible under the Civil Rights Act for creating a workplace that is free from harassment and discrimination. Employers that don't attempt to prevent harassment—and report and investigate claims when they arise—can be held liable. It is an employer's responsibility to prevent a toxic environment.

Pennsylvania spent \$900,000 on a single payout in 2016, after an employee accused a manager in the Revenue Department of harassing her, sexually assaulting her, and making racial slurs.

But, some have asked the question as to why the state is paying for the transgressions of lawmakers, who do not have a traditional employer-employee relationship. Lawmakers don't have employers, other than their constituents. To hold a legislator accountable, maybe it makes sense for them to be personally liable.

Pennsylvania state Rep. Leanne Krueger-Braneky (D-Delaware) is proposing legislation that would ensure that victims of sexual misconduct in the Capitol are made whole. It would require the state to pay

the settlement amount, and then require the lawmaker to reimburse the state. The bill would allow the state to tap into lawmakers' pensions to settle claims. "My goal is this language is strong enough that no legislator engages in harassment activity ever again," she said. "But if it happens, there will be a clear nonpolitical way to address it and a real cost to the legislator."

### **A Detour on the Road to Downsizing the Legislature**

On February 5, the Pennsylvania House of Representatives essentially stopped progress on a bill designed to reduce the number of members in the state House. House Bill 153, sponsored by Rep. Jerry Knowles (R-Schuylkill), called for a constitutional amendment to reduce the size of the House, annually saving an estimated \$15 million in salaries and related costs.

The bill appeared to be making headway—see my January 2018 report. However, forward movement was halted when House lawmakers amended HB153 to also include a reduction of the Senate. This was done knowing that the Senate will not vote to reduce its own membership.

The bill proposes to cut the House ranks from 203 to 151, following the 2020 U.S. Census. For that to happen, the bill needs to be passed before the end of this calendar year.

As I have described many times, a constitutional amendment requires the House and Senate to adopt the exact same bill during two consecutive legislative sessions. Once accomplished, the proposal is then placed before the electorate for final approval as a ballot referendum.

In this case, the same bill was passed during the 2015-16 session. To continue progress, Knowles reintroduced the bill in January 2017, beginning the second step in the process. HB153 sat in committee for a year, but last month it was moved out for consideration by the full House—making it possible to be passed in the 2017-18 session.

This month however, because of the amendment, the bill no longer fulfills the requirement of being a duplicate of the one passed during the previous session.

In 2015-16, 107 Republicans and 39 Democrats voted to support the bill. This time, 45 of those original supporters (22 Republicans and 23 Democrats) approved the amendment. Others who voted against the bill the first time around, this month voted for it. It's an old legislative ploy. Lawmakers can defeat a popular bill that doesn't suit them, while being able to tell constituents that they voted for it.

However, for those who think reducing the legislature is a good idea, there is hope. There are two possibilities to keep the movement alive in time to be enacted in 2020. First, when the Senate receives the bill, it could remove the amendment and send it back to the House. The House—where one-in-four stand to lose the best job they'll ever have—could pass it. Second, the Senate—that has resisted its own downsizing like the plague—could approve the amended bill. This would be the first passage, opening the opportunity for a second passage during the spring of 2019 and a referendum that same fall.

Oh yeah, it could happen...

### **Third Mini-Casino**

The process to auction licenses to operate 10 Pennsylvania mini-casinos continues. Mini-casinos—also called Category 4 casinos—can have up to 750 slot machines (license holders can pay another \$2.5 million to operate 30 table games). Auctions will take place every two weeks. Rights to the first two were awarded in January—see my report from last month.

The Pennsylvania Gaming Control Board revealed on February 8, that the third license was won by Mount Airy #1, LLC, for a bid of \$21,188,888.88. The company plans to build near the city of New Castle in Lawrence County, about an hour's drive northwest of Pittsburgh.

The two previous Category 4 licenses were awarded to entities that plan to build near Derry Township, Westmoreland County, and near the York County borough of Yoe. Western Pennsylvania will host two of

the first three mini-casinos. Officials in another Western Pennsylvania city, Johnstown, have expressed hopes that one of the mini-casinos will locate in their area, providing gambling revenue.

#### **Fourth Mini-Casino**

The Fourth mini-casino was awarded to Greenwood Gaming and Entertainment Inc.

At the original announcement, February 21, the state's Gaming Control Board declared that the fourth mini-casino license was being awarded to Sands Bethworks Gaming, for a bid of \$9.9 million. Sands intended to locate this mini-casino in or near Hempfield township in Mercer County, not far from the Ohio border.

However, a few hours after making the announcement, the Gaming Board issued a statement that it had invalidated the Sands bid. The reason was that the Sands zone overlapped the zone claimed by the third licensee, Mount Airy, centered in Lawrence County. Zones are established to avoid mini-casinos competing for customers in the same market.

Consequently, the Gaming Board awarded the fourth license to Greenwood Gaming, the only other bidder during the February 21 auction. The next day, the Gaming Board revealed that Greenwood Gaming had bid \$8.1 million and had selected a zone centered in South Newton Township, Cumberland County. The zone is strategically placed near Shippensburg and includes an area of commercial development north of Chambersburg. It also contains part of the I-81 corridor experiencing growth from the Washington D.C. metro region.

Mini-casinos cannot be located within 25 miles of any existing casino, and cannot encroach upon the 15-mile radius of another mini-casino. Furthermore, they must avoid the 1,000 municipalities that voted to opt out of hosting a mini-casino.

Sands could resubmit a bid in another auction.

#### **Sex Offender Registration**

On February 6, a bill meant to bring Pennsylvania's unconstitutional sex offender registration rules into compliance with state and federal law unanimously passed the state Legislature.

Last July, the Pennsylvania Supreme Court found that the state's Sex Offender Registration and Notification Act (SORNA), which allows police to monitor sex offenders, was punitive and consequently could not be applied retroactively. But, the opinion laid out no guidance for lower courts or law enforcement, and the Pennsylvania State Police found that more than 10,000 sex offenders on the registry for crimes committed before SORNA's enactment would have to come off.

SORNA replaced Megan's Law in December 2012. In addition to other changes from Megan's Law, SORNA adds crimes—Involving no sexual contact—for which a person must register. According to the high court's opinion, it is unconstitutional to force sex offenders sentenced when Megan's Law was still in effect to be registered under SORNA's stricter requirements.

In December 2017, state Rep. Ron Marsico (R-Dauphin) introduced a bill to rectify the court's concerns. But, as that bill worked its way through the legislative process, the state police worried that they would be forced to remove the Megan's Law registrants before it passed. Fearful of that happening, state Sen. Randy Vulakovich (R-Shaler), on February 5, amended an already existing bill advancing through the Legislature. That bill, which was written to address probation issues, was also given the language of Rep. Marsico's bill.

"I think the result is a good piece of legislation," said Rep. Vulakovich.

But, critics believe that the Legislature has complicated the issue. "This bill will create chaos in our courts," said Aaron Marcus, an assistant public defender in Philadelphia. The new legislation, Mr. Marcus said, does nothing to address the state Supreme Court's concerns that SORNA is excessive and

ineffective. He said the new legislation creates two registration schemes — one for offenders sentenced prior to SORNA's effective date, and one for those sentenced after.

Furthermore, Aaron Zappia, a spokesman for Sen. Stewart Greenleaf (R-Montgomery), said when the senator originally sponsored Megan's Law in 1995, it was intended to keep track of offenders who were deemed to be sexually violent predators. "It's gotten so broad over the years, it's diluted the efforts to keep track of the people who are truly dangerous."

## **PA Lottery**

The Pennsylvania Lottery posted an \$18.2 million deficit at the end of the 2016-17 fiscal year—see my October 2017 report. The deficit was projected to increase significantly by the end of 2017-18, according to the House Democratic Appropriations Committee. A lottery that cannot sustain itself is a nightmare to policymakers.

The budget proposed by Gov. Tom Wolf projects the Lottery will return to the black with a positive ending balance of \$1.3 million in 2017-18, and a \$7 million balance in 2018-19. The administration is counting on two factors: the roll out in May of new on-line Lottery games and proposed shifts in how Lottery Funds are spent.

The administration's goal is to create a \$75 million reserve for the Lottery Fund in three years.

The gambling expansion law enacted last October, authorizes the Lottery to offer iLottery games and keno to customers using computer and mobile devices. The Lottery is also offering virtual sports games on monitors at retailer locations. The governor's budget office estimates these games will generate \$71 million in revenue for the Lottery Fund this fiscal year. The target audience is younger players more attuned to the internet than buying a ticket from a storefront Lottery retailer.

However, increasing ticket sales will also need to take place. The Lottery is creating a Sales Advisory Council to propose recommendations for increasing sales. Financial incentives will be offered to lottery sales agents who follow best practices to increase sales.

On the spending side, Wolf proposes a \$48 million reduction, next year, in Lottery revenue used for long-term care for seniors, next year. There will also be a \$15 million reduction, next year, in the PACE pharmaceutical assistance program.

## **Trump Wants to Eliminate LIHEAP**

The Trump administration is calling for the complete elimination of a heating assistance program that helps to keep the homes of low-income families warm. The program, LIHEAP—Low Income Home Energy Assistance Program—helps families pay their heating bills via grants that are sent directly to utility companies or heating fuel vendors. In warm weather states, like Florida and Arizona, LIHEAP also distributes money to keep people cool in the summer. All told, the program helps 6 million households.

The administration is using the same arguments as last year, when it tried to abolish the program, saying it's rife with fraud and that no one would be left freezing if the program goes away. At that time Congress resisted the President. Forty-five senators asked the president to maintain energy assistance and weatherization assistance programs.

The president's 2019 budget would cut social programs like federal housing assistance and the food stamp program, in addition to eliminating heating aid.

## **PA GOP Endorses Candidates**

On February 10 the Republican State Committee endorsed candidates for the May 15 primary elections. The committee endorsed Scott Wagner for Governor, Jeff Bartos for Lieutenant Governor, and

Congressman Lou Barletta for U.S. Senate. All three candidates are associated with the agenda of President Donald Trump.

According to party information, Mr. Barletta was unchallenged during the endorsement process. Mr. Wagner was challenged by Paul Mango. Jeff Bartos was challenged by Gordon Dinlinger and Peg Luksik.

Laura Ellsworth did not seek the party's endorsement in her run for Governor. Apparently, neither did State Representative Jim Christiana, who is running to be the Republican nominee for the senatorial seat.

Val DiGiorgio, chair of the state party, noted, "This is America and we encourage people to run in primaries and otherwise... We do not discourage anyone from running and I do not want to call anyone a bad Republican because they decide to go forward in the primary."

### **Turzai Suspends Run for Governor**

On February 10, at the PA State Republican Committee meeting, before the endorsement process, House Speaker Mike Turzai announced he was dropping his candidacy in the primary election for the Republican nomination for governor.

### **New GOP Lt. Governor Candidate**

A new candidate joined the race for lieutenant governor in the Republican primary. On February 13, Washington County Commissioner Diana Irey Vaughan declared her intention to run for the nomination.

The 55-year-old Irey Vaughan has run unsuccessfully for state treasurer and Congress. She's been a county commissioner since 1996. Though lieutenant governor candidates are elected separately in the primary, Republican gubernatorial candidate Paul Mango immediately declared that she is to be his running mate.

### **PA Dems Endorse Wolf and Casey**

On February 10, the Democratic State Committee endorsed incumbents Gov. Tom Wolf and U.S. Senator Bob Casey, as they run unopposed in the May 15 primary elections.

The party chose not to endorse a candidate for Lieutenant Governor. There are six candidates in the primary for Lt. Gov.: incumbent Mike Stack, Aryanna Berringer, Kathi Cozzone, Jon Fettermn, Craig Lehman and Ray Sosa.

During its Winter Meetings, the state Democratic Party enacted a sexual assault and harassment code of conduct.

### **Dean Gives Up Lt. Gov. Bid to Run for Congress**

State Rep. Madeleine Dean (D-Montgomery) announced that she is dropping out of the race for Pennsylvania lieutenant governor to run for the newly redrawn 4th Congressional District in suburban Philadelphia.

In a statement, Dean said she wanted to break up the boys' club in the state's Congressional delegation. "Pennsylvania sends two senators and 18 congressmen to represent us in Washington, and not one, not one of them is a woman," Dean said. "We have a Republican-controlled Congress that isn't doing its part to hold Donald Trump accountable, a majority that is undermining the education of our children; a woman's right to choose," and "a delegation that refuses to support common-sense gun safety measures."

Ms. Dean is being endorsed by former Governor Ed Rendell and former Philadelphia Mayor Michael Nutter.

Dai Morgan