

## **United Methodist Advocacy in Pennsylvania**

### **July 31, 2018**

Even though the Pennsylvania General Assembly was on summer recess during the month of July, there was still plenty of news and activity on which to report.

The last few items in this month's list are not specific to Pennsylvania, but are federal developments that, except for the resignation of Scott Pruitt, might otherwise go unnoticed. They do relate to certain United Methodist Social Principles, however.

As usual, not all the pieces in my report are of equal weight. But, in my mind, several of the state-related items are especially significant this month—I'll leave it to the reader to determine that for yourself.

Because of the federal actions regarding undocumented immigrant families, this month, and some national attention that has fallen on the Berks County Residential Treatment Center, near Reading, PA, I decided to emphasize that subject this month. Though the activity surrounding this place is mostly "off the radar" to folks in Western Pennsylvania and possibly the northern tier of the state, it has been one of my most followed issues for the last two years. The first five pieces in this report cover the Berks Center. They should be understood as a package.

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## **Berks Center—Background**

The Berks County Residential Treatment Center in Bern Township, near Reading, is used to house undocumented immigrants seeking asylum. It was established in 2001 in a former nursing home, as the nation’s first residential immigration center. In 2014, the Obama administration began using it to detain mothers and children from Central America. It is licensed through the Pennsylvania Department of Human Services (DHS)—the license is currently under litigation.

The facility is operated by Berks County under a contract with U.S. Immigration and Customs Enforcement (ICE)—the federal agency responsible for enforcing immigration law. Berks County receives \$8.3 million annually for operating costs, plus another \$1.1 million for usage. The Berks Center is one of only three facilities in the United States where migrant families are detained—the other two are in Texas.

The facility contains 96 beds where adults and children are kept while federal authorities weigh their asylum claims. The families detained in the facility have entered the U.S. seeking refuge from danger in their home countries. To qualify for asylum in the United States, migrants must convince immigration officials they have a “credible fear” of harm if they are forced to return.

Most families at the Berks Center are only held until they have an interview to explain why they are seeking asylum. Theoretically, this should take less than two weeks. However, some are held longer, often because their request was denied and they have appealed.

According to ICE: Adults are housed with their children in a dormitory setting with day rooms, a library, TV room, recreation rooms and a toddler play area. Families and children older than 10 can move freely through the center. An outdoor recreation area has a playground, athletic courts and fields. The center has a law library with computers and legal publications for research, in addition to computers that families can use for email and other online services. Children receive educational assessments and education plans. Classes are taught by state certified teachers with training in English as a second language. Detainees have access to medical and mental health care 365 days a year.

## **Berks Center—Problems**

In 2014 the Obama administration began using the Berks Residential Center to hold undocumented mothers and their children coming from Central America. It was part of a principle called the “unlawful deterrence policy,” that is, an attempt to discourage illegal immigration.

In 2015, about 30 mothers and their children challenged their detentions while they appealed the government’s efforts to deport them without court hearings. They initially lost that challenge, and some were deported. But, some of the children were granted special immigration status and those families continued the fight. However, they ended up being held in the Berks Center for more than two years before immigration judges ordered their release.

I began reporting about the Berks Center in August 2016. Stories of poor conditions at the facility were reaching the public. The situation was beginning to attract the attention of individuals and groups—many being faith-based—who felt it necessary to advocate for the detainees. The organizing of monthly vigils outside the facility began at this time.

In April 2016, a 40-year-old guard at the Berks Center, Daniel W. Sharkey, pleaded guilty to institutional sexual assault, admitting he had a sexual relationship with a 19-year-old Honduran woman who was detained with her 3-year-old son. Institutional sexual assault is a third-degree felony and Sharkey was sentenced to 6 to 23 months in jail.

In the same year, there was a report that a 5-year-old girl suffered from cramps and diarrhea for weeks because of shigellosis, a contagious disease that went undiagnosed despite her mother's constant pleading with medical staff. In another case, nurses in the center were said to have told the mother of a 3-year-old who was vomiting blood that her daughter simply needed to drink more water. It was four days before the child was taken to a hospital. In a letter to the Department of Homeland Security—which oversees ICE—a group of mothers said that children confined for months have grown depressed and desperate and some even have contemplated suicide.

That summer, ICE was refusing to grant the detainees their asylum status interviews. During August, in desperation, 22 women began a two-week hunger strike to draw attention to their plight. They referred to themselves as “Madres Berks” (Berks Mothers). Pennsylvania U.S. Senator Bob Casey wrote a letter of support for the Mothers to Homeland Security Secretary Jeh Johnson, but to no apparent effect. Furthermore, the U.S. Court of Appeals, Third Circuit refused to review a petition filed on behalf of the Mothers.

Also in 2016, the Pennsylvania Department of Human Services revoked the center's license after finding that the center was operating under a license that allowed it to house delinquent children but not families. Berks County appealed the revocation and remained open during that process. In 2017, an administrative law judge reversed the revocation, saying the state's action was the result of political pressure on the governor and DHS Secretary Ted Dallas. DHS asked the court to reconsider. That decision is still pending.

Even at its best, the Berks Center is still a prison. The detainees do not face criminal charges but cannot leave. They are subject to guards. They experience the psychological effects of detention. And for the children the effect is intensified.

## **Berks Center—Opposition**

The uproar caused by the events at the Berks Residential Center in 2016 led to an ongoing movement of activism. Many individuals and watchdog groups have been involved to various degrees of advocacy, from being occasionally supportive to being hardcore. Intentionality of the activists has also ranged from a desire to improve conditions at the facility, to making the procedures more fair and just, to closing the facility and changing how the system handles undocumented migrants.

Different church groups have taken turns in leading the monthly Berks Center vigils that began in the summer of 2016. On March 12, 2017 Bishop Peggy Johnson and representatives from the Eastern Pennsylvania United Methodist Conference led one of the vigils. The purpose was to express sympathy and to pray for those who were being detained, as well as to challenge the officious and indifferent enforcement of immigration policy. I participated in that event.

For the past four years, lawyers from Aldea—an organization of legal advocates doing pro bono work at Berks—have represented more than 780 clients in the facility. Without the help of Aldea and other legal advocates, the rights of the detainees would have been ignored.

An appropriately-named group called Shut Down Berks Coalition has advocated for over two years for what their name indicates. They host weekly webinars and have hosted rallies outside the governor's office in Philadelphia.

This past June, the Philadelphia City Council approved a resolution calling for the governor to issue an Emergency Removal Order (ERO) to release the detainees. Others have recommended the same action.

Governor Tom Wolf's office says that he would like to see the Berks Center closed and that he urges the Trump administration to shut it down. Wolf's preference would be to allow migrant families to enter the community under supervision while they await the outcomes of their cases.

But, the governor's office has claimed that he does not have the authority to issue an ERO, nor have violations been observed that merit such action--the Department of Human Services (DHS) would be the agency to actually issue an ERO.

In a personal conversation, Ted Dallas—former head of DHS—told me that the reason they don't want to issue an ERO is that the order can be appealed, complicating the issue and creating another front. DHS wanted to keep the issue focused on the license revocation litigation (see **Berks Center—Problems**, above). To me, this is the most logical explanation for the administration not issuing an ERO. But, I am perturbed by the fact that everybody in the Wolf administration seems to be on a different page and that there are as many rationalizations as people to be asked.

However, Temple University's Sheller Center for Social Justice says the governor does have the authority to issue an ERO and he should. The argument is: The Berks Center, though housing federal detainees, is under state law and authority. The conditions inside the facility warrant an ERO. The license litigation is superfluous.

## **Berks Center—National Attention**

As the federal government steps back from its policy of separating migrant children and parents at the southern border, the Berks Residential Center is drawing national attention. Though President Donald Trump's June 20 executive order ended family separation, it called for indefinite detention of families apprehended at the border. Berks looks to be the focus for that policy. It is the only facility where parents and children can be detained long-term while awaiting interviews for asylum.

The two family detention centers in Texas, Karnes and Dilly, are privately owned and thus bound by the 1997 Flores Settlement Agreement that only allows holding children for 20 days. But, children can be held for more than 20 days if the facility is licensed and "unsecured." ICE contends that the Berks Center is both licensed and unsecured. Because of this, detainees whose cases take too long in Texas are transferred to Pennsylvania—as was the case for some women in 2016 who were detained nearly two years.

On July 9, federal District Judge Dolly Gee denied the federal government's request to extend the amount of time it can detain children in an unlicensed facility. She upheld Flores. Consequently, the only suitable facility is Berks—though the Trump administration has called for expanding the capacity for family detention by five times.

However, it can be argued that the Berks Center is neither licensed nor unsecure. And even if one decides that the license being in limbo is not the same as having no license, the facility is by definition not “unsecured.” ICE concedes that detainees are not free to leave. Furthermore, a sign in the front reads “secure property.”

## **Berks Center—Recent Conditions**

Presently, there are close to 50 people detained at the Berks Residential Center. Most are Central American fathers and their children. Most have only been there for a few weeks. Most have family members in the U.S. to sponsor them.

The facility employs 66 county residents. Berks County officials are generally supportive of the center. County Commissioner Kevin Barnhardt said the county runs “a real first-class operation here.” An assistant for Commissioners Chairman Christian Leinbach pointed out that county officials are barred from speaking about the center under the county’s contract with ICE.

On July 2, several lawmakers visited the Berks Center. State Sen. Judy Schwank (D-Lehigh) said the detainee she spoke to had had no complaints. State Rep. Peter Schweyer (D-Lehigh) said he spoke with parents and saw county social workers treating them kindly. The families had privacy in their sleeping areas and bathrooms. The children were engaged in what appeared to be English immersion classes provided by the Berks County Intermediate Unit. He felt that conditions were generally good.

However, other members of the tour were more critical. Rep. Christopher Rabb (D-Philadelphia) who was one of 24 state representatives who sent a letter to the governor on June 21 urging him to close the facility, said that he was disturbed to see people unnecessarily detained for the profit of local governments.

## **Immigrant Children Becoming an Industry**

According to an Associated Press analysis, detaining immigrant children has turning into a billion-dollar industry. U.S. Department of Health and Human Services (HHS) grants for shelters, foster care and other child welfare services for detained unaccompanied and separated children soared from \$74.5 million in 2007 to \$958 million in 2017.

HHS is reviewing a new round of proposals amid efforts by the Trump Administration to keep immigrant children in government custody.

Currently, more than 11,800 children, from a few months old to 17, are housed in nearly 90 facilities in 15 states — Arizona, California, Connecticut, Florida, Illinois, Kansas, Maryland, Michigan, New Jersey, New York, Oregon, Pennsylvania, Texas, Virginia and Washington. They are being held while their parents await immigration proceedings or, if the children arrived unaccompanied, are reviewed for possible asylum themselves.

In May, the agency issued requests for bids for five projects that could total more than \$500 million for beds, foster and therapeutic care, and guards. More contracts are expected to come up for bids in October.

The recipients of the money run the gamut from nonprofits, religious organizations and for-profit entities. They are government contractors for HHS—the agency that administers the program keeping immigrant children in custody.

President Donald Trump argues that cracking down on immigration can lead to less costs and having fewer immigrants in government custody, in the long run. In April, Attorney General Jeff Sessions announced a “zero tolerance policy” directing authorities to arrest, jail and prosecute anyone illegally crossing the border, including people seeking asylum and without previous offenses. As a result, more than 2,300 children were turned over to HHS. Supporters of the policy consider it to be a deterrent to future immigrants and asylum-seekers fleeing violence and poverty.

Steven Wagner, acting assistant secretary for the Administration for Children and Families—an HHS division—said, “[the immigrant child custody program] was never intended to be a foster care system with more than 10,000 children in custody at an immediate cost to the federal taxpayer of over \$1 billion dollars per year.”

## **Philadelphia and ICE**

Philadelphia will stop giving U.S. Immigration and Customs Enforcement (ICE) access to their real-time arrest database, saying the agency is misusing the information to conduct sweeps in which otherwise law-abiding immigrants are also being rounded up. The database is called the Preliminary Arraignment Reporting System (PARS).

Philadelphia and ICE have a contract that allows ICE access to PARS. The contract expires at the end of August. To renew the contract, at least two of the three stakeholders—the district attorney, city courts and the city—would have to vote in favor of continuing the contract. Both the district attorney and the city have refused to renew.

Anyone who interacts with law enforcement is entered into PARS, certainly those arrested, but also victims, witnesses and others. According to the contract, ICE officers are supposed to be blocked from seeing information on victims and witnesses.

In a termination letter sent to ICE on July 26, city solicitor Marcel Pratt said the contract "has created the false perception that the city is willing to be an extension of ICE... It is not in the best interests of the city and its residents for the city to acquiesce to that perception.”

On July 11, Philadelphia District Attorney Larry Krasner stated he would not support renewing the contract. "Let me be crystal clear: I will absolutely be a 'no' vote to provide additional access to PARS for ICE. The current arrangement shares information with ICE in a way that should not continue," Krasner said in a written statement. "Many immigrants are scared to participate in our criminal justice system because they are fearful that they or their loved ones will be deported. Quite frankly, cooperating with ICE at this time makes our city less safe because it makes undocumented individuals fearful of coming forward to report crimes or testify in criminal cases."

Earlier in the month, Mayor Jim Kenny was undecided on the issue, because of the possibility of losing federal funding. Kenny said his office was looking into whether ICE officials had misused PARS by targeting "noncriminal" undocumented immigrants. He said if ICE had done so, he would vote not to renew the contract.

By the end of the month, Kenny had made his decision to not renew the contract. He said immigration officers are wrongly using the database to go to homes and workplaces of people who list foreign countries of origin and arresting other people who are in the country illegally but are otherwise not accused of any crimes.

U.S. Homeland Security spokeswoman Katie Waldman called the decision irresponsible and said the city will end up "harboring criminal aliens... Sanctuary-city policies make American communities like Philadelphia less safe by putting the rights of criminal aliens over the safety and security of American citizens."

Kenney said the federal agency's actions have created fear and distrust in the city's immigrant community and made it more difficult for police to solve crimes. "How anyone can define this as making America great again is beyond me," the mayor said.

## **AGs Uphold DACA**

According to a July 23 press release, Pennsylvania Attorney General Josh Shapiro participated as part of a 20 attorneys general coalition to protect Deferred Action for Early Childhood Arrivals (DACA). The attorneys general filed a legal brief in a federal case, *Texas v. United States*, in which certain states are seeking to end DACA.

Ending DACA would put 5,889 "Dreamers" in Pennsylvania at risk.

So-called "Dreamers" are undocumented immigrants brought into the USA as infants and young children. DACA is an Obama-era policy permitting these individuals to grow up and seek citizenship without threat of deportation. Dreamers have paid a \$495 fee, passed background checks, submitted personal information, can be located and have followed the law as adults.

There are approximately 800,000 DACA registrants nationwide. According to the Center for American Progress, 87 percent of DACA grantees in Pennsylvania are employed and generate more than \$20 million in state and local taxes annually. Shapiro said, "There are nearly 6,000 'Dreamers' in Pennsylvania who contribute to our economy, our military and quality of life. They came here through no fault of their own as young children in the care of their parents. They relied on a commitment from the federal government and should be able to depend on that promise—not live in fear."

In their brief in the Texas case, the attorneys general argue that ending DACA would devastate the lives of the Dreamers and harm communities, employers and public institutions. In two other federal court cases, the attorneys general have obtained preliminary injunctions barring the ending of DACA.

In addition to Pennsylvania Attorney General Shapiro, the brief was supported by the attorneys general of California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Mexico, New York, North Carolina, Oregon, Rhode Island, Virginia, Vermont, Washington, and the District of Columbia.

## **Sin Taxes**

On July 19, The Pew Charitable Trusts and the Rockefeller Institute of Government released a study entitled "Are Sin Taxes Healthy for State Budgets?" In the report, one can see how Pennsylvania compares to other states. The report also makes some observations regarding the viability of "sin taxes."

I have previously made note of Pennsylvania's reliance on taxes on tobacco, alcohol and gambling. Over the last few years, our Legislature has preferred sin taxes over raising income or sales taxes.

According to the Pew study—focusing on the year 2015—sin taxes accounted for 7.3 percent of Pennsylvania's revenues. Our state ranked seventh among the 50 states for the percentage of its revenue that is generated from these sources.

According to PennWatch, a state government transparency website, cigarette, liquor, malt beverage and gambling taxes generated nearly \$1.4 billion for Pennsylvania in 2014-15. In 2016-17, with the addition of a new tax on other tobacco products and higher cigarette tax, those revenue sources raised more than \$1.85 billion. However, in 2017-18 that figure dipped by about \$16 million.

Following are the states that ranked higher than Pennsylvania for sin tax revenue in 2015:

No. 1: Nevada – 12 percent

No. 2: Rhode Island - 11.1 percent

No. 3: West Virginia - 8.1 percent

No. 4: Louisiana - 8.1 percent

No. 5: New Hampshire - 7.9 percent

No. 6: South Dakota - 7.7 percent

North Dakota ranked last, with less than 1 percent of its revenues from sin taxes.

The portion of revenue that sin taxes generate in each state is relatively small. However, in recent years, policymakers have continued to seek these taxes to plug budget holes—Pennsylvania being a prime example. This persistence is what piqued Pew and the Rockefeller Center's interest in looking into this subject.

The study's authors consider it risky business for states to look at existing sin taxes as silver bullets in addressing revenue needs. The societal or public health costs associated with them need to be considered. They conclude that such taxes are not likely to "prove a reliable or robust funding source over the long term, at least without continued growth or higher tax rates."

## **Legalizing Marijuana**

At a news conference on July 19, Pennsylvania Auditor General Eugene DePasquale suggested that legalizing marijuana for recreational use could provide the state with \$581 million in tax revenue per year. Mr. DePasquale said this estimate comes from the number of Pennsylvanians who say they smoke marijuana, along with estimates from other states about how much marijuana users spend on the drug.

According to the Auditor General, more than 8 percent of Pennsylvania adults admit they use marijuana recreationally. In Colorado and Washington, where marijuana has been legal since 2012, adult users spend an average of \$2,080 annually, DePasquale said.

A statewide poll by Franklin and Marshall College, released last September, found that 59 percent of Pennsylvanians surveyed support legalizing marijuana. Gov. Tom Wolf supports the decriminalization of possession of small amounts of marijuana, but he has not backed a broader move to fully legalize marijuana for recreational use.

Possession or sale of the drug for non-medical purposes remains a crime, though Philadelphia, Pittsburgh and several other Pennsylvania cities have decriminalized the possession of small



amounts of marijuana. DePasquale says nearly 21,000 adults were charged last year with low-level marijuana offenses.

Pennsylvania passed its medical marijuana law in 2016. Dispensaries for patients to acquire medical marijuana first opened early this calendar year. There are now 29 dispensaries in Pennsylvania, according to the Department of Health.

The Pennsylvania District Attorneys Association opposes the idea of legalizing recreational marijuana. Richard Long, executive director of the association, said that the societal costs outweigh the revenue benefits.

## **More Online Gambling**

On July 16, six Pennsylvania casino operators each paid \$10 million for certificates granting the right to offer internet-based versions of poker, slot machines and table games (igames). The Pennsylvania Gaming Control Board made the certificates available to the 13 companies with Pennsylvania casino licenses. The six that applied for rights to offer gambling online were Mount Airy, Parx, Penn National, Rivers, Sugarhouse and Stadium Casino LLC.

Igame players will be able to gamble from desktops, laptops, tablets or smart phones. Pennsylvania operators will only be able to offer play to bettors who are physically located in the state and can prove through identity confirmation software that they are at least 21.

Following the July 16 first application day, other Pennsylvania casino license-holders still have 30 days to apply, but they will pay \$12 million for a certificate to operate the three types of gambling. Eventually, if the state's casino licensees do not all apply, the PGCB could make any remaining certificates available to out-of-state operators.

Pennsylvania is in the middle of a gambling expansion, as the state scrounges for cash to shore up its treasury. Under legislation passed last October, Pennsylvania became the fourth state to legalize online casino gambling, joining Delaware, Nevada and New Jersey. Pennsylvania's casinos take in more gross revenues than any other state except Nevada, according to American Gaming Association figures. Pennsylvania ranks first in tax revenue from the casino industry, netting \$1.4 billion in the 2016-17 fiscal year. Pennsylvania will become the first state to offer both casino gambling and lottery gambling online.

The Pennsylvania Lottery began offering igames in May. The casino industry has observed that these games improperly resemble casino-style gaming. The casino operators recently send a letter to state Revenue Secretary C. Daniel Hassell saying as much and threatening possible legal action.

Given competition and the growth of online gambling in the three other states, it is likely that most or all the remaining Pennsylvania casino licensees will apply for the available licenses.

The PGCB has not set a date for the start of online casino gaming. As part of the gambling expansion, the state has begun online lottery games and online fantasy sports games. There are five remaining mini-casino licenses available. The PGCB is also preparing regulations for online real-life sports betting, with a target of early September, in time for the start of the NFL season.

## **Clergy Sex Abuse Grand Jury Report**

In May the state Attorney General's office completed a two-year long grand jury investigation into decades of sexual abuse by clergy in six Pennsylvania Roman Catholic dioceses—

Allentown, Erie, Greensburg, Harrisburg, Pittsburgh and Scranton. More than 300 “predator priests” are said to be identified.

Supervising judge Norman Krumenacker blocked release of the 800-page report for 30 days to allow implicated but unindicted clergy and former clergy named in the report to respond. About two dozen persons responded, claiming the report is inaccurate, violated grand jury secrecy and their constitutional right to their reputation. They appealed to the state Supreme Court. On June 20, the Supreme Court placed a temporary stay on the report’s release. In reaction, Attorney General Josh Shapiro’s office filed a brief asking that the grand jury report be made public.

Finally, on July 27, the Pennsylvania Supreme Court ordered the release of the grand jury report, but in redacted form, concealing the names of the petitioners who contend the report is unfair.

In their 31-page order, the justices agreed that the complaints by the implicated clergy raise due-process issues. “There can be no doubt that the subject matter of the report is incendiary, and therefore, the stakes for individuals reproached therein are substantially heightened,” wrote Chief Justice Thomas Saylor. The justices said they were not “of one mind” on the best way to address concerns raised by the petitioners. Legal arguments on those issues are scheduled for September. In the interim, the justices directed the office of Attorney General Josh Shapiro to begin removing identifying information about the petitioners.

A limited version of the report could be made public as early as August 8, if all parties agree to the redactions. If not, a special master will be appointed to resolve differences, with an August 14 hard deadline.

Attorney General Josh Shapiro described the court’s decision as a victory for abuse survivors. “Our fear throughout this process has been that the entire grand jury report would be shelved and victims’ truth would be silenced,” Shapiro said. “Today’s order ensures that will not be the case.” He said further that he will fight to ensure every victim is heard and every church official is held accountable for their conduct.

## **Work Group on Election Security**

On July 20, Gov. Tom Wolf announced he was creating a task force of Pennsylvania government agencies to help ensure that the state's elections are secure. It is called the Inter-Agency Election Preparedness and Security Workgroup. It will be co-chaired by acting Secretary of State Robert Torres and the Office of Administration's chief information officer, John MacMillan.

The group includes the Military and Veterans Affairs Department, Pennsylvania Emergency Management Agency, the state police, the offices of the governor, homeland security and inspector general.

The group will focus on training and preparation at all levels of election administration, planning for different possible problems and collecting public input on the topic of election security.

## **PA Supreme Court Overturns Law Ending General Assistance**

On July 18, the Pennsylvania Supreme Court overturned a law that eliminated a cash assistance program for the poorest Pennsylvanians. The decision reversed a 2013 Commonwealth Court ruling. The reason behind the ruling was that the program was part of an unconstitutional bill that violated the “single subject rule”—requiring that bills in Pennsylvania legislation not contain provisions on unrelated subjects.

The plaintiffs in the case had sued the state over the cessation, in 2012, of the General Assistance program that supported about 60,000 people with a \$200 monthly stipend.

The bill started as a three-page piece of legislation in 2011 dealing with public assistance residency requirements. But, by the time it was signed into law by Gov. Tom Corbett in 2012 it had morphed into an omnibus bill, including the ending of General Assistance. Upon passage, the multi-part bill was called Act 80. The decision of the court strikes down all aspects of Act 80.

“We continue to have the ruling under review and it's important to note that the court did not issue an opinion on the substance of the legislation but rather invalidated the law due to the procedures used by the legislature to enact the law,” said Jennifer Kocher, a spokeswoman for Senate Republicans.

“At a time when many Pennsylvanians wait two years to appeal their denial of Social Security disability benefits and many people are seeking treatment for opioid use, we hope that today’s decision will restore some balance to Pennsylvania’s safety net,” said Richard Weishaupt, a senior attorney at Community Legal Services of Philadelphia, who argued the case. “We’re interpreting [the ruling] as meaning that Pennsylvania now has a General Assistance program again.”

State Rep. Gene DiGirolamo (R- Bucks), who chairs the House Human Services Committee and who voted against the 2012 bill, said he would like to see General Assistance reinstated. “The people who were getting this, that money was like a lifeline,” he said.

The program cost the state about \$150 million annually. It is unclear if and when the program would be reinstated, or what other changes might occur because of this ruling.

## **Energy Producers Seek Subsidies**

Energy producing industries in Pennsylvania are seeking help from the state in the form of subsidies. The subsidies would be drawn from tax or utility rate increases. The natural gas, nuclear and solar energy industries cite their need to offset falling energy prices, less demand from customers, and competition with one another.

Energy companies are heavily lobbying Harrisburg. But, in this election year especially, political will for higher taxes or energy bills will be hard to find.

However, for **natural gas** distribution companies, House Bill 107 is under consideration. This bill would subsidize access pipelines to homes and businesses in areas where none exist. Current law requires the consumer to pay for lateral line connections to the main line.

This measure would add a 1.5 percent distribution charge to consumers’ monthly bills. The Energy Association of Pennsylvania, a gas lobby group, says this would average about \$12 a year.

Regulation of such a fee would come under the responsibility of the state Public Utility Commission. The PUC does not have a position on the bill. But, PUC Chairwoman Gladys Brown remarked that utilities should be made to prove in writing that they cannot afford to expand without the subsidy.

The House Consumer Affairs and Rules committees unanimously approved the bill in June. But, support for the bill dissipated under objections by lawmakers from communities already served by gas. However, HB107 could come up for another vote this fall.

**Nuclear power** companies are saying that their plants are too costly to maintain and they cannot compete on price with the other sources. But, the industry claims it is worthy of support because it is cleaner than coal or gas and creates or contributes to 16,000 jobs.

Closures are pending for nuclear plants. Exelon Corp. announced in May 2017 that without government assistance, it would close its Three Mile Island plant in 2019. Last March, FirstEnergy Corp. said it would close a Beaver County plant. If nuclear plants close, regional wholesale electricity prices would rise slightly, but then fall as the lost power is supplied by cheaper natural gas, according to a June report by Penn State University professor Seth Blumsack.

There is no current legislation in Pennsylvania to assist the nuclear power industry. Nuclear subsidy laws have passed in the neighboring states of New Jersey and New York.

The **Solar power** industry is seeking subsidies that will amount to about \$613 million annually. They cite cleaner air, new jobs and reuse of brownfields for solar farms. The state Department of Environmental Protection proposes increasing subsidies and tax exemptions for solar development. But, DEP has not proposed legislation. Learn more at: [www.dep.pa.gov](http://www.dep.pa.gov) (look at the list under the column “Top Pages,” on the left side).

## **Auditor General Reviewing PA Voter System**

On July 17, Pennsylvania Auditor General Eugene DePasquale said that he will broaden his review of the state’s election security.

In June, the Auditor General began an audit in response to a warning from the U.S. Department of Homeland Security that Pennsylvania was one of 21 states targeted by Russian hackers in 2016—there is no evidence that this attempt was successful. At that time, DePasquale said an audit would give everyone peace of mind--plus, help the state come up with a plan to replace the 16-year-old system. But now, he has new concerns.

DePasquale said the recent indictments of 12 Russian agents for their roles in hacking the Democratic National Committee increased the level of urgency of his review. Furthermore, he pointed to the fact that state officials in Maryland disclosed that Russian oligarch Vladimir Potanin is the largest investor in the company that manages that state’s voter registration system.

“Pennsylvania is currently reviewing options to modernize its election systems, and I want to ensure that any system Pennsylvania may use now and in the future is wholly owned, controlled and managed by a firm with American interests,” DePasquale said. He sent letters to the secretary of the U.S. Department of Homeland Security, the FBI and the three U.S. attorneys’ offices in Pennsylvania to begin discussions on how best to protect the state’s systems against election interference in the future.

## **Zappalla and Abortion**

On July 10, Allegheny County District Attorney Stephen A. Zappala Jr. promised that he would not prosecute doctors who perform abortions or individuals who seek them if *Roe v.*

Wade should be overturned. This statement was a response to President Donald Trump's Supreme Court nomination of Brett Kavanaugh, who many believe would support overturning *Roe v. Wade*.

Kavanaugh would replace Justice Anthony Kennedy, who has been a swing vote in favor of abortion rights. Kavanaugh, who is solidly conservative, would move the high court further to the right. In his 2006 confirmation hearing to become a federal judge, Kavanaugh said, "I would follow *Roe v. Wade* faithfully and fully" because it's "binding precedent" that has been "reaffirmed many times." However, many fear that his appointment would threaten abortion rights and the landmark *Roe v. Wade* decision that legalized abortion nationwide in 1973.

## **Weatherization Funds Unused**

On July 10, Pennsylvania Auditor General Eugene DePasquale released the results of an audit that examined federal funds provided to Pennsylvania for weatherization for low-income households. The audit covered July 1, 2013 to June 30, 2017. At the Harrisburg press conference, DePasquale said that the state failed to spend more than \$5.4 million dedicated to weatherization.

The Auditor General said that the money was sent back to the federal government, when it could have helped more than 500 homes become more energy efficient. The audit covered the *Weatherization Assistance Program*, administered by the state's Department of Community and Economic Development (DCED) and the *Low Income Home Energy Assistance Program* (LIHEAP), administered by the Department of Human Services, to help families pay their utility bills. Both programs are federally funded.

Mr. DePasquale said his audit showed the LIHEAP program is well-run. But, he faulted DCED for failing to spend the federal funds, as well as for what he called a "poorly administered" process to prioritize weatherization services.

The auditor said the governor should consider moving the program to the Department of Human Services and out of DCED—which is primarily an economic development agency. DCED said it "will continue to address deficiencies with all of our programs to improve the services offered to Pennsylvania businesses and residents."

## **Toxic Dirt**

On July 9, the state Senate Majority Policy Committee conducted a hearing on "dirty" land fill and how it affects the communities where it is dumped. Pennsylvania acts as a refuse destination for contaminated soil and debris—dirty dirt—from other states. Old quarries are a common dump site

Subjects of the hearing included truck traffic, soil testing, and communication breakdowns among property owners, local government and the state Department of Environmental Protection. Perhaps the most significant question was: Why does Pennsylvania allow fill more toxic than that allowed in New York and New Jersey?

For example, polychlorinated biphenyls (PCBs) are potentially harmful. The federal standard for "clean" fill is 2 parts per million. Some states are even more strict in their standards. Pennsylvania's standard is 78 ppm.

Representatives on the business side supported importing fill and claimed to strive to meet all regulations. They said that fill is screened and tested and that it is necessary for leveling ground.

But, residents and local officials questioned the reliability of testing and the dependability of enforcement. They worried about the potential for contaminated water.

The Senate panel appeared to agree with the residents.

## **PA Turnpike Approves Toll Hike**

On July 3, the Pennsylvania Turnpike Commission approved a 6 percent increase in both E-ZPass and cash tolls, starting in January 2019. An average fare under E-ZPass will increase from \$1.30 to \$1.38. A cash fare of \$2.10 will increase to \$2.25.

## **Making Bullying a Crime**

State Senator John Blake (D-Lackawanna) is the primary sponsor of Senate Bill 462, that would assign a legal definition to bullying and make it a misdemeanor offense in Pennsylvania. He is supported by a bipartisan group of co-sponsors in the Senate. The bill is currently in the Senate Judiciary Committee.

The bill defines bullying as the intent to “harass, annoy, alarm or intimidate another individual or group of individuals” or “place another individual or group of individuals in fear of personal injury or property damage.”

An offense committed by a minor would constitute a third-degree misdemeanor. Offenses after the first two would constitute a second-degree misdemeanor. Bullying committed by an adult, 18-years or older, would be a second-degree misdemeanor.

A third-degree misdemeanor offense may result in up to one year of imprisonment and no more than \$2,000 in fines, according to the Pennsylvania Crimes Code. A second-degree misdemeanor may result in up to two years in jail and no more than \$5,000 in fines.

Blake said his bill would cover both bullying and cyberbullying.

## **Turzai Reacts to Delay of Senate Bill 22**

The state House of Representatives recessed for the summer without passing Senate Bill 22. SB22 would be the next step in amending the state’s constitution to change the way Pennsylvania’s legislative and congressional maps are drawn. The Senate passed the bill on June 13, with an amendment that would also change the way appeals court judges are elected. But, a maneuver to file hundreds of amendments, led by House Democrats, caused the bill to be delayed until the chamber reconvenes in the fall—or is called back by the Speaker of the House.

SB22 must be passed before the end of this year, or there will not be time to complete the procedural steps before the 2020 U.S. Census—based on the Census, district maps are redrawn every 10 years. If nothing happens, the old guidelines will be used, where the maps were thought by many to be an example of partisan gerrymandering. Indeed, the old maps were thrown out by the state Supreme Court.

Officials on both ends of the political spectrum, including Democratic Gov. Tom Wolf and the Republican leaders of the General Assembly, have all stated that they would like to see a new system for drawing maps.

House Speaker Mike Turzai can call the House back into session at any time. He has stated that he is willing to do so if a consensus develops so that SB22 can be considered.

Almost immediately after recessing, Turzai faced pressure from both his fellow Republican leaders in the Senate and the public. Much of the public attention cast blame on the Speaker. In reaction to one letter to the editor, Turzai wrote, "In my capacity as speaker, I referred Senate Bill 22 to the House Rules Committee... The bill was reported out of the Rules Committee the next day. I, along with every Republican member of the committee, voted yes." He explained further, "Today there are 605 amendments. More than 3 out of 4 of those amendments, 463 in total, were filed by Democratic leaders and members. This tells us two things. First, there is still no consensus on the issue. Second, the Democrats are not serious about the issue, or they would not have hijacked the process by filing so many amendments." Turzai then went on to say that leading Democrats had made no effort to contact him to try to find a solution.

In conclusion he wrote, "We made it clear that we would reconvene the House if a consensus plan was developed and prepared for a vote. That has not happened... I'm still willing to work on a compromise, but time is running out."

## **Mango Takes Medicare Job**

On July 24, the Centers for Medicare & Medicaid Services, in Washington D.C., announced the appointment of Paul Mango as chief principal deputy administrator and chief of staff. Mr. Mango was a candidate for the Republican primary nomination for governor of Pennsylvania this year.

As a political candidate, Paul Mango was a political newcomer. Mango criticized his Republican primary rivals, claiming to be the only true conservative. He advocated for broad tax reform and attacked Governor Tom Wolf. He came in second to Scott Wagner in a three-way primary. On the campaign trail he advocated for work requirements for Medicaid enrollees.

From Southwestern Pennsylvania, Mango is a retired health care consultant and U.S. Army veteran. He headed Pittsburgh-based McKinsey & Company's U.S. Center for Health Reform and served as executive vice president and chief operating officer at the Institute for Transfusion Medicine.

CMS Administrator Seema Verma said Mango will have a critical role to play in the Trump administration's agenda, including launching a new way for Medicare beneficiaries to access health records, improving monitoring programs, better measuring program outcomes, preventing prescription cost increases and removing regulatory obstacles to providers.

## **Race as a Factor in College Admissions**

On July 3, the Trump administration announced it is rescinding Obama-era guidance that encouraged schools to take a student's race into account for admissions, to encourage diversity. This change would give schools and universities the federal government's blessing to take a race-neutral approach to the students they consider for admission. Such guidance does not have

the force of law, but schools could use it to help defend themselves against lawsuits over their admission policies

The Supreme Court has upheld race-conscious admission practices as recently as 2016. In 2011 and 2016, the Obama administration's Justice and Education departments jointly spelled out for colleges their view of the law on the voluntary use of race in admissions. The 2011 statement recognized "benefits that flow from achieving a diverse student body." It encouraged schools "to take proactive steps, in a manner consistent with principles articulated in Supreme Court opinions, to meet this compelling interest."

Not all colleges consider race in admissions. Some states, including California and Florida, prohibit public universities from considering race and ethnicity.

Schools use several different criteria for admissions, for example: social, geographic and economic diversity, or first-generation post-secondary students, or more women in science and engineering, or more men in humanities.

But for some schools, race remains a factor as they seek to build incoming classes representative of a range of racial and ethnic backgrounds.

It remains to be seen what impact the Trump administration's action will have on practices. Administrative guidance does not carry the legal weight of court rulings or acts of Congress.

## **Endangered Species Act Weakened**

On July 19, the Trump administration unveiled a proposal that would strip the Endangered Species Act of critical provisions that conservationists say would weaken the law to prevent plant and animal extinctions. The announcement was made jointly by the Interior and Commerce departments, which are charged with protecting endangered wildlife. If the proposal is approved, likely by year's end, protections for threatened plants and animals would now be made on a case-by-case basis, rather than automatically by endangerment status.

In another rollback of a key provision, the administration wants the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration to strike language that guides officials to ignore economic impacts when determining how wildlife should be protected. "We propose to remove the phrase 'without reference to possible economic or other impacts of such determination,'" the proposed rule says. "The act requires the secretary to make determinations based 'solely on the basis of the best scientific and commercial data.'"

The Endangered Species Act brought the bald eagle and the Yellowstone grizzly bear back from the edge of extinction. "Unfortunately, the sweeping changes being proposed by the Trump administration include provisions that would undercut the effectiveness of the ESA and put species at risk of extinction," Jamie Rappaport Clark said. Ms. Clark is former director of the Fish and Wildlife Service and current president and chief executive of Defenders of Wildlife, a nonprofit advocacy group. "The signal being sent by the Trump administration is clear: Protecting America's wildlife and wild lands is simply not on their agenda."

Republicans say the ESA is cumbersome and restricts economic development. Some business leaders have long sought such changes, described as a bid to improve regulatory efficiency and reduce the burdens of such safeguards on landowners, industry and governments.

During the announcement of the proposal, Interior Deputy Secretary David Bernhardt described the proposed changes as an effort to fulfill Mr. Trump's executive order to scale back government regulation.



Interior and Commerce officials said the Endangered Species Act proposal would be published in the Federal Register “in coming days.” The public can submit comments on a government website within 60 days after publication.

## **Tax Donors to be Veiled**

On July 16, Treasury Department officials announced that they are lifting requirements that some tax-exempt groups disclose the identities of their donors to the Internal Revenue Service.

Treasury Department officials portrayed the changes as important free-speech and privacy protections for donors, while also preserving government transparency. “Americans shouldn’t be required to send the IRS information that it doesn’t need to effectively enforce our tax laws,” Treasury Secretary Steven Mnuchin said in a statement.

But, critics say the action will hurt openness in political campaigns and allow hidden unscrupulous donors to funnel money into the system. “It is another Trump blow against transparency and for obscurity,” said Norman Eisen, the chief ethics lawyer in the Obama administration who is a governance studies fellow at the Brookings Institution.

The day after the Treasury Department announcement, Sen. Ron Wyden of Oregon, the senior Democrat on the Senate Finance Committee, said he’ll vote against President Donald Trump’s nominee to head the IRS, Charles Rettig, unless Mr. Rettig commits to restoring the disclosure requirement.

## **Pruitt Resigns from EPA**

On July 5, Scott Pruitt resigned as Administrator of the federal Environmental Protection Agency (EPA). Supporters of Pruitt defended him as a champion of deregulation and destroyer of President Obama’s environmental policies. President Donald Trump praised Pruitt in a tweet, while accepting the resignation.

However, his supporters were unable to resist pressure from 13 investigations into Pruitt’s management of the agency. Indeed, environmentalists and lawmakers from both parties welcomed the resignation. Many viewed it as overdue by an official who sought to undermine the mission of the agency he headed.

In Philadelphia, Gary Morton, president of American Federation of Government Employees local 3631—a trade union that represents 675 EPA members—said, “If it can lead to some normalcy, and also America having confidence in the Environmental Protection Agency and its employees to carry out our mission to protect human health and the environment, then this is a change that was necessary.”

Delaware Sen. Tom Carper, the top Democrat on the Senate Environment and Public Works Committee, said Pruitt had sought to erode environmental protections, questioned sound science, and profited personally from his position. Earthjustice, an environmental law group, accused Pruitt of favoring industry in his actions as EPA administrator. Environmental Working Group, a research and advocacy group on environmental issues, called Pruitt the worst leader in the EPA’s history.

On July 9, Andrew Wheeler was appointed to be the EPA's acting administrator. In response, Environmental Working Group vice president Bill Walker said, "Andrew Wheeler's anti-science, anti-public health agenda is the same as Pruitt's."

Dai Morgan