

# United Methodist Advocacy in Pennsylvania

## September 30, 2020

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### **Wolf Calls for Legalized Recreational Marijuana**

On September 3, during a press conference, Gov. Tom Wolf called for the legalization of recreational marijuana. “Now more than ever, we see a desperate need for the economic boost cannabis legalization can provide. So today I am proposing we legalize adult-use cannabis here in Pennsylvania with a portion of the revenue going toward existing small business grants,” Wolf said.

The Governor noted that half of these grants would go to historically disadvantaged businesses. The other portion, he said would “go toward restorative justice programs that give priority to repairing the harm done to crime victims and communities as a result of cannabis criminalization.”

Wolf referred to revenue generated in other state through marijuana legalization—a total of 11 states.

### **Wolf Criticizes General Assembly**

On September 24, Governor Tom Wolf conducted a press conference where he criticized the General Assembly. He told the Republican majority General Assembly to stop advancing legislation he called “meaningless,” a “waste,” “grandstanding” and “dangerous”—such as the school sports and spectators bill he vetoed.

The Governor said GOP legislative leaders know his phone number, and he indicated he has an entire staff of people whose job it is to speak with state legislators and their leaders. He said it was a “lame excuse” for GOP leaders to say he hasn’t spoken with them about any of the orders he’s implemented or policies he’s proposed.

He also noted the reality that COVID-19 is here and not going away, but legislators are trying to pass bills that ignore the fact.

In reaction to Wolf, Senate GOP spokeswoman Jenn Kocher wrote, “The Governor continues to campaign instead of working with the elected officials who are directly in touch with their communities. He has held more than 15 press conferences since Aug. 1 and has not once talked with Republican legislative leaders himself. His continued posturing is holding Pennsylvania back.”

### **Wolf Vetoes PA Scholastic Sports Bill**

On September 21, Gov. Tom Wolf vetoed House Bill 2787, intended to place decisions for scholastic sports and spectator pandemic protocols in the hands of locally-elected school boards.

“This bill is entirely unnecessary,” said Wolf in his veto message. “While I recommended against holding school sports before January 2021, it was a recommendation and neither an order nor a mandate. Local school governing bodies have maintained the authority to decide how extracurricular activities, including school sports, proceed at the local level. Furthermore, to the extent COVID-19 cases may rise and spread during the fall and through the upcoming cold and flu season, the Department of Health must maintain the critical authority to limit exposure to COVID-19. Minimizing this exposure is paramount.”

GOP leaders immediately promised an override vote, a logical reaction, since 155 House members and 39 senators originally voted for HB2787, enough to override a veto.

House Majority Leader Kerry Benninghoff (R-Centre) said, “In vetoing this bill, Gov. Wolf stands directly opposed to children and families looking for some semblance of normalcy and to receive the numerous invaluable benefits of fully participating in school sports....To once again stand up for children and families, the House will vote to override this ridiculous veto.”

HB2787 would grant “the governing authority of a school entity or nonpublic school” with exclusive authority to determine whether to hold school sports and extracurricular activities in-person during the 2020-21 school year.

School officials would be responsible to:

- Establish safety protocols for permitting visitors and spectators to attend sports and in-person extracurricular activities.
- Limit on gatherings for indoor and outdoor sports and in-person extracurricular activities to ensure social distancing.
- Set protocols for sports consistent with the Centers for Disease Control and Prevention Considerations for Youth Sports.
- Establish methods of ensuring that social distancing and other safety measures are in place for students, staff and spectators.

### **Veto of Scholastic Sports Bill Not Overriden**

On September 23, the state House failed to override the Governor’s veto of House Bill 2787. The veto override fell five votes short of the 135 needed. Two dozen Democrats voted against the override. Though it is interesting to note that the bill originally passed by a vote of 155-47, on September 2.

HB2787 would have allowed “the governing authority of a school entity or nonpublic school” with exclusive authority to determine whether to hold school sports and extracurricular activities in-person during the 2020-21 school year.

Gov. Tom Wolf, as promised, vetoed the bill on September 21. “This bill is entirely unnecessary,” said Wolf in his veto message. “While I recommended against holding school sports before January 2021, it was a recommendation and neither an order nor a mandate. Local school governing bodies have maintained the authority to decide how extracurricular activities, including school sports, proceed at the local level.”

Though Republicans acknowledge that school districts have this authority, they note those decisions must be made within the confines of the governor’s executive orders, and the governor and state Health Secretary Dr. Rachel Levine can rescind that authority or change the rules governing those decisions at any time by executive order.

House Majority Leader Rep. Kerry Benninghoff (R-Centre) said, “Unfortunately, today more Democrats decided to cave to political pressure by flipping their vote instead of standing up for their constituents. Until more Democrats are willing to stand up for the people of Pennsylvania instead of standing with their political party or their governor, the Commonwealth will remain mired in the governor’s emergency rule.”

### **PA Supreme Court Rules on Mailed Ballot Deadline**

On September 24, the Pennsylvania Supreme Court denied a Republican request to put a hold on the Court’s own previous decision to extend the deadline for mailed ballots.

The week before, the Supreme Court granted the Democratic Party’s request to order an extension of the Commonwealth’s Election Day deadline for counting mailed ballots. The divided court’s decision allows mailed ballots to be postmarked until poll closing-time and be received by county election boards by 5:00 p.m. November 6, three days after the election. Furthermore, a ballot can be counted if it lacks a postmark, a legible postmark or some other proof of mailing, unless a “preponderance of the evidence” shows it was mailed after Election Day.

The Court cited the prospect of Postal Service delays, along with the high demand for mailed ballots during the pandemic, as the reason for the ruling. State courts have previously extended election deadlines during a disaster emergency.

Republicans argued against both changing the mailed deadline and counting mailed ballots without clearly dated postmarks. They say the ruling violates federal law establishing Election Day as the first Tuesday in November. They also say the action exceeds the Court’s constitutional authority. Republicans might now ask the U.S. Supreme Court to block the ruling.

### **PA Supreme Court Rules on Election Issues**

On September 17, the Pennsylvania Supreme Court announced decisions in the case of Pennsylvania Democratic Party v. Boockvar. The case deals with election procedures and has immediate implications for the November General Election.

Justice Max Baer wrote the majority opinion regarding the five counts of the decision. The Court found:

- 1) County boards of election are permitted to collect hand-delivered mail-in ballots at locations other than their office addresses, including drop-boxes.
- 2) A three-day extension of the absentee and mail-in ballots received-by deadline is permissible. Ballots mailed by voters via the United States Postal Service and postmarked by 8 p.m. on Election Day, Nov. 3, 2020, shall be counted if they are otherwise valid and received by the county boards of election on or before 5 p.m. on Nov. 6, 2020.
- 3) Denied was the request to require that boards of election contact qualified electors whose mail-in or absentee ballots contain minor facial defects resulting from their failure to comply with the statutory requirements for voting by mail, and provide them with an opportunity to cure those defects.
- 4) Denied was the request to require boards of election to count mail-in ballots that were returned without the secrecy envelope, rather than invalidate them.
- 5) Upheld as constitutional is the Election Code’s current poll watcher county residency requirement.

Gov. Tom Wolf and Attorney General Josh Shapiro lauded the decision in a joint statement: “This is a victory that will help ensure that every eligible voter will more easily be able to cast their ballot and have it counted fairly.”

The court-ordered mail-in counting extension, along with the drop-box allowance, was criticized by House Republican leaders. They accused Gov. Wolf of again bypassing the legislative process to get what he wants.

## **Election Reform Bogged Down**

On September 2, the state House passed House Bill 2626 by a vote of 112-90. The bill makes many changes to the state election law. But, the devil is in the details. Most Democrats oppose the bill as making voting less accessible. Gov. Tom Wolf indicated he would veto the present form of the bill.

Among its many provisions, HB2626 would move the deadline to apply for absentee and mail-in ballots from 7 days prior to an election to 15 days prior to an election. Counties would begin mailing absentee and mail-in ballots no later than 28 days prior to an election, rather than the current minimum of 14 days before an election. The legislation would also allow county boards of election to do pre-canvassing of absentee and mail-in ballots as early as 8 a.m. on the Saturday before the election—the current start-time for counting mail-in ballots is 7 a.m. on election day.

HB2626 also includes clarification regarding the way that absentee and mail-in ballots can be returned: by mail; in person to the county board of election's permanent office; in person to a location in the courthouse designated by the county board of election; or in person to the voter's polling place on election day.

The bill would also change existing law regarding the poll watcher residency requirement, HB2626 would allow poll watchers to be registered electors of the Commonwealth, rather than registered electors from the county, as current law requires.

This bill has been a political football. Its intention is to ease the logistical problems anticipated in receiving and counting ballots this year. But, HB2626 sits in the Senate Appropriations Committee. One wonders if there is time to implement any of its provisions.

## **Wolf Adjusts Restaurant Mitigation Policy**

On September 8, Gov. Tom Wolf announced changes in pandemic mitigation measures he established in mid-July.

Effective September 21, restaurants may increase indoor occupancy to 50 percent. However, restaurants serving alcohol are required to cease those sales at 10:00 p.m.

To take advantage of the occupancy increase, restaurants must "self-certify." To accomplish this, the restaurant operator must access an online link. At the link, after reading the state's health and safety requirement, the operator inputs contact information. The restaurant will then be added to a searchable public database of certified restaurants and materials, such as window clings and other signage to indicate the restaurant is "self-certified," will be mailed to the address listed.

There are penalties for restaurants operating at greater than 25 percent capacity and not self-certified. Self-certified restaurants in violation of the health and safety requirements could also be subject to penalties and have their certification revoked. The self-certification process is modeled after a process in Connecticut.

Chuck Moran, executive director of the Pennsylvania Licensed Beverage and Tavern Association, observed, "Taverns and licensed restaurants should be required to follow science-based rules to help fight COVID-19, including masks and social distancing patron tables. But, where's the science that says having a drink with a meal after 10:00 p.m. is any different than having a drink with a meal at 6:00 p.m.?"

The other prohibitions and requirements of Wolf's July 15 order remain in effect:

- Prohibition from conducting operations unless the facility offers sit-down, dine-in meals or is serving take-out sales of alcoholic beverages. Customers being served must be seated at a table; bar service is prohibited.
- Alcohol only can be served for on-premises consumption when in the same transaction as a meal.
- Take-out sales of alcohol for the purposes of off-site consumption are permitted subject to any limitations or restrictions imposed by Pennsylvania law.
- Non-bar seating in outdoor areas may be used for customer seating.

## **Effort to Ease Limits for Food Service Industry**

On September 22, the state Senate approved House Bill 2513 by a vote of 43 to 6, that would countermand or ease pandemic mitigation restrictions placed on restaurants and bars by Gov. Tom Wolf on July 15.

HB2513 would set the minimum occupancy capacity for restaurants and taverns at 50 percent, with the potential for increased capacity. The bill would also remove Wolf's current ban on bar service, eliminate the governor's meal requirement to purchase alcohol, and allow for event venues to operate at a minimum of 50 percent capacity.

The measure returns to the House as a result of amendments by the Senate.

Chuck Moran, executive director of the Pennsylvania Licensed Beverage and Tavern Association, said, "Today, the Pennsylvania Senate voted to help small business taverns and licensed restaurants... Recent amendments to HB2513 return the industry to standards that were in place before the July 15 mitigation rule changes that have done significant damage to our small business members across the Commonwealth."

Pennsylvania's food service industry has lost over 134,000 workers this year, according to an estimate by the state's Independent Fiscal Office. Industry representatives say the state could see the permanent closing of 7,500 restaurants, resulting in the loss of 175,000 jobs.

During Senate floor comments, Sen. Art Haywood (D-Philadelphia) spoke against HB2513, saying the bill would put people more at risk to COVID-19.

HB2513 returned to the House where the chamber concurred with amendments made by the Senate. The bill was signed in the House on September 23. It is sitting on the Governor's desk. Wolf spokeswoman Lyndsay Kensinger said the governor plans to veto the bill. The House is likely to attempt a veto override.

## **Potential Law to Expunge Minor Criminal Records**

On September 22, the Senate Judiciary Committee unanimously approved House Bill 440, following in the footsteps of the Clean Slate Law of 2019. The bill would automatically expunge criminal records for many minor offenses. The measure is sponsored by Rep. Sheryl DeLozier (R-Cumberland).

HB440 would provide for a person's criminal record to be expunged if that person has been unconditionally pardoned or fully acquitted of all charges, or received a trial verdict of not guilty.

The state would receive notice of a potential expungement and have 60 days to object and hold a hearing. Furthermore, according to DeLozier, HB440 will require an individual to pay court-ordered restitution.

A key goal of the Clean Slate initiative is to remove legal barriers for people convicted of minor offenses so they can return to society and find jobs, housing and educational opportunities. The Clean Slate Law is said to have led to the automatic sealing of 30 million criminal cases involving charges where an individual was found not guilty, as well as summary cases and other nonviolent crimes that have occurred more than a decade ago.

## **Senate Panel Approves Child Pornography Bill**

On September 21, the state Senate Judiciary Committee unanimously approved Senate Bill 1075, to go before the full chamber. The bill increases penalties for individuals possessing child pornography.

The bill would increase penalties when someone convicted of child pornography has images depicting a child under age 10. The charge for those cases would be one grade higher than the current law allows. The Pennsylvania Commission on Sentencing would be directed to provide guidelines in cases where the child depicted is known to the defendant under the bill.

The present bill was also amended to provide for creation of a 16-member state child sexual abuse prevention task force.

In July, former state Senator Mike Folmer was sentenced to one-to-two years in prison on charges of possessing child pornography. SB1075 is sponsored by Sen. Dave Arnold (R-Lebanon), Folmer's successor in the Senate.

## **Pandemic and Revenue**

On September 16, the state House Finance Committee heard testimony from Revenue Department official Amy Gill. Gill, deputy revenue secretary for tax policy, told the panel that it is expected that state tax revenue collections will take a few years to return to the level reached during Fiscal Year 2018-19.

These revenue projections are important to lawmakers, who must soon prepare a budget for the remaining seven months of the current Fiscal Year 2020-21.

Pennsylvania adopted a stopgap five-month \$25.1 billion state budget in June. This unusual partial-year budget was the result of uncertainties resulting from the pandemic. The stopgap budget expires Dec. 1. The governor and lawmakers still need to adopt a budget to cover the remainder of the year.

## **Judiciary Committee Reviews Policing Reform Laws**

On September 15, the state House Judiciary Committee heard views about improving training of police and accreditation of police departments throughout Pennsylvania. The hearing came two months after the state enacted two policing reform laws:

- Act 54 of 2020 establishes an electronic database maintained by the Municipal Police Officers' Education and Training Commission (MPOETC) to make information about an officer's prior use of excessive force and other misconduct available to a hiring law enforcement agency.
- Act 59 of 2020 requires MPOETC to develop in-service training for law enforcement officers that includes instruction on the use of force and de-escalation tactics, warning signs of child abuse and awareness of intellectual disabilities and autism.

MPOETC director Major Steve Ignatz, of the state police, told the panel, "We believe it's of paramount importance to continue to reevaluate our curriculum in order to ensure an effective balance between maintaining officer safety and the civil rights of the citizens and visitors to Pennsylvania."

Les Neri, president of Pennsylvania State Lodge, Fraternal Order of Police, said MPOETC does a good job with basic training of new police officers, but improvements are needed with continuing education. With half of Pennsylvania's police departments having 10 officers or less. Paying for that training is a problem, he said

Pennsylvania Chiefs of Police Association executive director Scott Bohn noted, "Accreditation is a symbol of quality," meaning a department meets performance standards.

Elizabeth Pittinger, executive director of the Independent Citizens Review Board of Pittsburgh, in written testimony, said the state can't train away racism but it can enhance the quality of police officer applicants by providing education.

## **Legislation to Allow Unlimited Religious Assembly at All Times**

On September 16, the state House approved House Bill 2530, by a vote of 149-53. The bill would amend the 2002 Religious Freedom Protection Act to state that no order issued during an emergency, or a control measure issued under the Disease Prevention and Control Law, will impact the free exercise of religion in the Commonwealth.

The legislation is a reaction to Gov. Tom Wolf's pandemic mitigation measure of placing capacity limits on places of worship.

Our right to religious freedom does not go away in this disaster declaration, or any future declaration," said bill sponsor Rep. Clint Owlett (R-Tioga). "With this language added to our Religious Freedom Protection Act, this administration, or any future administration that gets the idea to try and restrict our religious freedoms, will certainly think twice."

House Speaker Bryan Cutler (R-Lancaster) said, "Is this the time to lock up churches?...Today's vote reflects the vast majority of members recognize William Penn's 'holy experiment' is a success and affirms that it must still be respected today."

HB2530 will now go to the Senate.

### **Judge finds Wolf Pandemic Restrictions to be Unconstitutional**

On September 14, U.S. District Court judge William Stickman IV ruled that Gov. Tom Wolf's pandemic lockdown orders are unconstitutional, violating both the First and 14<sup>th</sup> Amendments. The decision was the result of a lawsuit, filed last May, by several Western Pennsylvania counties, seven businesses and several legislators.

In a 66-page ruling, Judge Stickman struck down Wolf's limits on indoor and outdoor gatherings. Stickman ruled that the governor's stay-home order and mandatory closure of businesses, which were deemed non-essential to curb the spread of the coronavirus, infringed on citizen freedoms and discriminated based upon arbitrary "life sustaining" and "non-life sustaining" standards.

Stickman said, "(He) believes that defendants undertook their actions in a well-intentioned effort to protect Pennsylvanians from the virus. However, good intentions toward a laudable end are not alone enough to uphold governmental action against a constitutional challenge. Indeed, the greatest threats to our system of constitutional liberties may arise when the ends are laudable, and the intent is good — especially in a time of emergency."

When contacted about Stickman's opinion, Wolf spokesperson Lyndsay Kensinger stated: "The administration is disappointed with the result and will seek a stay of the decision and file an appeal. The actions taken by the administration were mirrored by governors across the country and saved, and continue to save lives in the absence of federal action. This decision is especially worrying as Pennsylvania and the rest of the country are likely to face a challenging time with the possible resurgence of COVID-19 and the flu in the fall and winter.

Stickman found the business closures to have been inconsistently applied. He indicated there is no such designation of "life-sustaining" or "non-life-sustaining" in state law or regulation and, likewise, found the North American Industry Classification System (NAICS) doesn't use the terms "life-sustaining" and "non-life-sustaining" to classify businesses.

Stickman further highlighted the arbitrary nature of the policy by pointing to many businesses determined to be "non-life-sustaining" even though they sell the same products or perform the same services that were available in stores that were deemed "life-sustaining." Because of the arbitrary and inconsistent nature of the business closures, Stickman found they violated both substantive due process and equal protection provisions of the Fourteenth Amendment.

The Wolf Administration, indeed, asked for a stay of the ruling. But, on September 22, Judge Stickman denied the stay, rejecting the administration's argument that "irreparable harm will result if a stay is not imposed."

Wolf is moving forward with an appeal of Stickman's original decision to the 3<sup>rd</sup> U.S. Circuit Court of Appeals.

### **Wolf Asserts Authority for Regional Greenhouse Gas Initiative**

On September 9, the state Senate passed veto-bound House Bill 2025, by a vote of 33-17. HB2025 would have required the governor to receive legislative approval before entering into the Regional Greenhouse Gas Initiative (RGGI).

The RGGI is a coalition of Northeastern states using a carbon cap-and-trade system imposed on carbon emissions producing industries—essentially a tax to discourage carbon-based fuels.

Gov. Tom Wolf wants Pennsylvania to enter into the agreement through Executive Branch action. He said HB2025 would prevent his administration from addressing the imminent threat of climate change.

Knowing the governor's position, this is one of those bills the Legislature's majority is using to make a statement about its role in governing, assuming the bill is going to be vetoed.

Indeed, on September 24, Gov. Tom Wolf vetoed HB2025.

Supporters of HB2025 argue that it is questionable whether RGGI actually results in reduced greenhouse gas emissions. Furthermore, they say it will increase energy costs for residential consumers.

"With his veto of House Bill 2025, Governor Wolf has signed the economic death warrant of the communities I represent," said Sen. Joe Pittman (R-Indiana).

## **Pa Moves Toward Regional Greenhouse Gas Initiative**

On September 15, the Wolf Administration proceeded with regulations that would allow Pennsylvania to join the Regional Greenhouse Gas Initiative.

During a virtual meeting, the Pennsylvania Environmental Quality Board (EQB), which falls under the state Department of Environmental Protection (DEP), voted 13-6 to promote a regulation that will impose a tax on carbon emissions from electricity generating facilities. Those proposed regulations will be reviewed by the Office of the Attorney General and a public comment period will be set.

DEP Secretary Patrick McDonnell claimed the regulation, “will decrease climate change causing carbon dioxide pollution as well as generate new jobs and reduce air pollution related illness.”

## **General Assembly Unsuccessful in Terminating Pandemic Emergency Declaration**

On September 2, the state House attempted to override Gov. Tom Wolf’s veto of a concurrent resolution by both the House and Senate, House Resolution 836, to terminate the governor’s pandemic disaster emergency declaration.

The disputed procedure by which the governor vetoed the resolution was upheld by the state Supreme Court. But, the Court’s ruling allowed for a veto override by a two-thirds vote of the House.

As it turned out, the vote, 118-84, was not enough to override the veto. Following the unsuccessful vote, Republican legislators submitted a reconsideration motion, allowing HR836 to be reconsidered at a later date.

## **Mini-Casino License Bid**

On September 2, the Pennsylvania Gaming Board conducted a special auction for a vacant mini-casino license. The winning bid of \$10 million was submitted by Philadelphia investor Ira M. Lubert.

Lubert identified the borough of Unionville as the center of the 15-mile radius for the mini-casino. Unionville is in Centre County, north of State College and near Interstate 80.

Lubert was one of two bidders for the license. The name of the other bidder wasn’t provided.

## **Hearing on Community Solar Energy**

On September 1, the state House Consumer Affairs Committee heard testimony on House Bill 531. The bill would allow consumers to participate in community solar projects, without needing to have solar panels on their roofs.

The measure sponsored by Rep. Aaron Kaufer (R-Luzerne), would permit individuals, businesses and farms to subscribe to off-site community solar projects. These shared arrays would also be connected to electric company distribution grids.

Rep. Kaufer believes that \$2 billion of private investment is available for community solar projects. “There are thousands of jobs on the line with this legislation,” said Kaufer. “There are no state tax dollars needed for these projects.”

Under current state law, renters, apartment dwellers and people lacking roof access can’t participate in solar energy projects.

Consumer Affairs Committee Majority Chairman Brad Roae (R-Crawford) said he will conduct another hearing on HB1970.

The measure will create new markets for solar energy, said Leslie Ann Elder, Mid-Atlantic Director for the Coalition for Community Solar Access. She said some 220 solar projects spread across 40 counties are ready to go if the bill is passed.

Dai Morgan