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This issue of COMMONWEALTH marks a milestone for the publication. It was launched as a general interest journal of Political Science in 1987 under the editorship of Donald Tannenbaum of Gettysburg College. COMMONWEALTH had always encouraged scholarship about the Keystone State. However, as the journal evolved under the editorships of Thomas Baldino (Wilkes University) and Gerard Fitzpatrick (Ursinus College) the content began to focus more heavily on Pennsylvania politics. In 2014, the Executive Board of the Pennsylvania Political Science Association (PPSA) decided the journal should focus exclusively on scholarship involving Pennsylvania. PPSA, in conjunction with the Pennsylvania Policy Forum and Temple University’s Institute for Public Affairs, approached Temple University Press about publishing the newly reconstituted journal. They agreed and will begin publishing COMMONWEALTH: A JOURNAL OF PENNSYLVANIA POLITICS AND POLICY in 2016. Consequently, this issue marks the final iteration of COMMONWEALTH: A JOURNAL OF POLITICAL SCIENCE.

Thanks are due to those who have built the journal over the course of the last twenty-eight years. In addition to the three Editors-in-Chief, many others have assisted in various editorial capacities. We would like to thank Michael Cassidy (Office of the Democratic Chairman, Pennsylvania House of Representatives), Beverly Cigler (Penn State Harrisburg), Martin Collo (Widener University), Harold Cox (Wilkes University), Gordon Henderson (Widener University), Mike King (Legislative Office for Research Liaison, Pennsylvania House of Representatives), James Morse (Widener University), James Skok (Penn State Harrisburg), and Annette Steigelfest (Widener University).

On a personal note I would like to thank Gerard Fitzpatrick who has done everything to help create a smooth transition in editorship. He has put up with innumerable panicked emails concerning the finer points of getting a journal to press and for that I am much indebted to him. I would also like to thank Christopher Borick (Muhlenberg College), Paula Holoviak
(Kutztown University), Joseph McLaughlin (Temple University) and Michelle Atherton (Temple University) for their fine work in reimagining the mission of COMMONWEALTH. Finally, Barbara Crawford, Phil Wolfe of Phil Wolfe Graphic Design and Ashley Adamik and Scot Cantalupo of Sheridan Press all deserve thanks for their excellent job of getting the final “independent” issue of COMMONWEALTH to press.

Wes Leckrone, the incoming Editor of COMMONWEALTH, has asked me, as the Founding Editor from 1985-1993 (and co-Editor for Political Theory since 1994), to write a brief retrospective on this journal's development to date. I am happy to do so, especially since it allows me to thank some of the many people and institutions involved in its creation and evolution.

In the first issue (1987) I wrote: “It is especially satisfying to bring to life a wholly new publication.” It stemmed from several years of discussion and planning. We began on a high note, with the monetary support of a number of excellent Pennsylvania colleges and universities and the financial input and intellectual backing of the Pennsylvania Political Science Association. Among those instrumental in helping me get the journal off the ground were my first Managing Editor, Annette Steigelfest, PPSA President Frank Colon, PPSA Past President Donald Buzinkai, and Council Member Thomas Baldino, who succeeded me as Editor in 1994, and who was followed in 2002 by Gerard J. (“Gerry”) Fitzpatrick. Both supervening Editors have been invaluable in advancing the mission of the journal (see below). I also benefitted from the contributions of a powerhouse Editorial Review Board recruited from some 25 prominent colleges and universities across the nation, from Cambridge to Berkeley, as well as friends from various professional associations and editors of other political science journals.

The journal’s original mission was to publish “important scholarly research from among the many subfields and perspectives in the discipline as well as those of an interdisciplinary nature. Open to a variety of approaches and methodologies, it [sought] studies…based on theoretical perspectives (empirical and/or normative) as well as those which advance knowledge by using historical approaches.” Additionally, we encouraged articles dealing with Pennsylvania state and regional politics and public policy. Such studies have been featured in virtually every issue, and they were the sole focus of three special policy issues in 2008-2009. Additional editorial input was recruited for these special issues, including Michael Cassidy, Michael King,
and Beverly Cigler. As COMMONWEALTH transitions to a central focus on such studies, henceforth to be published by Temple University Press, I would note that the journal has flourished over the years where virtually all other state political science journals have disappeared. We must be doing something right.
Although the issue of state mandates has been off the agenda in recent years, the fiscal constraints imposed by the “new normal” for state and local governments has brought the issue to the foreground once again at the state level. This article examines the impact of state mandates as perceived by local governments in Pennsylvania. Pennsylvania, as a Commonwealth, has a unique relationship with its many forms of local government, which results in policymaking by bargaining as well as by statute. This article is the result of a comprehensive 2010 survey of the types of state mandates and their impact and cost to local governments in Pennsylvania. This article focuses upon the different responses to state mandates generated by the varied types of local government in Pennsylvania. In particular, it focuses upon resource and administrative constraints for rural as opposed to urban municipalities.

While federal and state mandates have received a great deal of academic and legislative scrutiny in the past 40 years, they have recently taken a backseat to more pressing issues at the local level. But mandates have not disappeared and, in fact, continue to play a large role in policy decisions, resource allocation, and administrative practices at the local level. Recently, the state senate in Pennsylvania commissioned a comprehensive study of the effects of state mandates upon local governments. Although the study was prompted by complaints from local government associations, the question remains as to how important is this issue? Given the fiscal constraints of recent years, how burdensome do local governments perceive these mandates to be? Moreover, is this burden different for larger versus smaller or urban versus rural local governments? This research seeks to address these two questions by examining survey data gathered in 2011 by the Pennsylvania Local Government Commission. Descriptive statistics and
tests of differences among groups are used to determine how burdensome state mandates are in the opinion of local governments.

Background on Mandates

The issue of mandates imposed by the federal government upon state and local government and by state governments upon local governments was very prevalent in research and legislation in the early 1980s and throughout the 1990s. Mandates can be broadly defined to include direct orders from one level of government to another, a crosscutting requirement or condition of aid, or any partial preemption of government functions by another level of government (Gormley 2006). The issue of state mandates placed upon local governments came to the forefront with the U.S. Advisory Commission on Intergovernmental Relations report, which found that state priorities were replacing local priorities due to the expanded use of mandates (ACIR 1990). Other studies have shown that while state mandates can provide equity in both the type of service provision and the quality of those services, state mandates, and in particular unfunded or under-funded mandates, can displace local priorities (Lovell and Tobin 1981; St. George 1995). In addition, because the vast majority of state mandates involve administrative mandates rather than policy mandates, their effects and costs are much more difficult to track (Kelly 1997). Past strategies for dealing with the administrative and budgetary burdens caused by state mandates have included constitutional and legislatively mandated reimbursement requirements, fiscal notes or costs estimation for proposed mandates, voter approval, exceptions or exemptions from mandate provisions granted by the governor or legislature, and sunset legislation for existing mandates. However, the vast majority of these “fixes” have proven to be highly ineffective in dealing with fiscal and administrative costs (Lovell and Tobin; Zimmerman 1995; Grossback 2002).

The Pennsylvania Mandate Issue

The problems and costs associated with state mandates placed on local government appeared to have fallen off the issue agenda in recent years. However, the fiscal constraints imposed by the Great Recession and the associated decline in state and local revenue sources have brought the issue to the forefront once again. The “new normal,” as many researchers have dubbed the current crisis, involves shrinking local tax bases, permanent cuts in expenditures, layoffs, pension and benefit cuts, decreased capital spending, and cuts in local services (Martin et al. 2012). According to a 2012 report by the U.S. Census Bureau on the status of state and local governments, between 2007 and 2012, state and local government revenues declined by
1.1% with cash and security holdings declining 1.7%. During this same time period, indebtedness increased 22.2% from $2.4 trillion to $2.9 trillion. Local governments accounted for 61% of this debt (Barnett et al. 2014). It was in this atmosphere of retrenchment and fiscal austerity that Pennsylvania Senate Resolution 323 was commissioned on July 2, 2012. The Pennsylvania Local Government Commission, a state legislative agency, was directed to study the costs and the real and perceived effects of state statutory mandates upon all levels of Pennsylvania local government, counties, cities, boroughs, towns, and townships (PA Local Government Commission 2012).

According to the Local Government Commission, Pennsylvania has over 6,500 local government mandates, which include “direct order, a condition of aid, an authorization, a condition of an authorization, or a combination…” (Local Government Commission 2012: S-2). Given this overwhelming number of mandates, the Commission chose a more restrictive definition of mandate for the commissioned study.

“Mandate” – A duty imposed by a law enacted by the General Assembly that is a direct order or condition of aid which requires that a municipality establish, expand or modify its activities or services in such a way as to necessitate expenditures from municipal revenues. A mandate shall not include any duty imposed by, required to implement, or necessary to avoid violating:… (Local Government Commission SRS 323 Study 2012: 2-31)

Excluded from this definition of mandate were any requirements imposed by a courts order, federal law, the U.S. Constitution, or the Pennsylvania Constitution as well as certain laws dealing with elections, municipal powers and structure, duties, powers and ethical considerations of public officials, collective bargaining agreements, and voter referendum (Local Government Commission).

Since local government administers roughly 84% of these state mandates, the Commission, with the assistance of a group of academic advisors, put together a multifaceted evaluation design to obtain measures of cost and perceived burden on local government. The methodology included a survey of state agencies (36) and all Pennsylvania local governments. This paper provides analysis of all the municipal survey results (excluding the counties) while providing more in-depth analysis of the results of the survey of Pennsylvania’s larger municipalities as classified by population and population density, cities, boroughs, and first-class townships.

**Methodology—Local Government Surveys**

The Commission requested the major local government associations in the state to have their membership identify the most burdensome mandates.
This was done by the use of mail and email surveys, through association newsletters, and by in-person surveys conducted at association annual meetings and conventions. The County Commissioners Association of Pennsylvania (CCAP) identified 17 mandates of which 13 were chosen as not being currently addressed or studied. Several municipal associations were surveyed: the Pennsylvania League of Cities and Municipalities (PLCM) (now the Pennsylvania Municipal League); the Pennsylvania State Association of Boroughs (PSAB); the Pennsylvania State Association of Township Commissioners (PSATC), which largely comprises more urban first-class townships; and the Pennsylvania State Association of Township Supervisors (PSATS), which is a more rural based organization of second-class townships. These associations identified 23 issues. Twelve of these issues were identified as either federal in nature and not state mandates, already studied, of little financial impact, or not measurable at this time, leaving 11 issues for the final survey. To develop survey questions based on the most burdensome issues identified by the associations, University led teams of students and professors then conducted field interviews with rural, urban, and suburban counties; cities; boroughs; first- and second-class townships in four regions across the state (three in Eastern Pennsylvania and one mix rural/urban in Western Pennsylvania).

The Commission then formulated and conducted a survey of all Pennsylvania counties, cities, boroughs, and first- and second-class townships. An online survey instrument was used as well as a mail survey for those municipalities without email. The survey gathered information on costs estimates of mandates as well as the ranking of the perceived burden of these mandates. Of the 67 counties surveyed, 59 or 88% responded (results not discussed here). The 2,562 municipalities surveyed generated a 30% overall completion rate. A total of 1,108 cities, boroughs and first-class townships responded (25%) to the entire survey but only 498 (45%) completed the ranking portion of the survey. Among the second-class, rural townships, 1,452 (34%) responded to the entire survey with 708 (49%) responding to the ranking questions.

Survey questions included rating mandates from not burdensome to very burdensome and estimates of costs associated with the implementation of these mandates. Costs were defined as direct costs of implementing mandates such as mandatory police collective bargaining arbitration and added costs to projects from mandated competitive bidding and advertising. In addition, the survey asked respondents to choose from a list of mandate “fixes” and to identify any other burdensome mandates not identified in the survey. The list of costs and mandate burden relief was generated by each of the municipal associations identified previously. Lastly the survey gathered general data on the location of the municipality and whether or not the municipality operated under a home rule charter.
Survey Findings

Appendices A and B provide a full list of the mandate-rating questions and responses for the municipal governments. Participants were asked to rate 11 issues on a scale from not burdensome to very burdensome. These issues represented the mandates identified by the municipal associations. Thus the municipal respondents, who ranged from professional administrators to full- or part-time elected officials to clerks, could be assumed to have familiarity with the issues posed. Table 1 summarizes the rankings of these issues from most to least burdensome excluding the not applicable responses.

Table 1
Most Burdensome Mandates (Most to Least)
Source (Local Govt. Commission Mandate Survey 2011–2012)

<table>
<thead>
<tr>
<th>Rank</th>
<th>Cities, Boroughs, First-Class Townships</th>
<th>Second-Class Townships</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rank 1</strong></td>
<td>Police and Firefighter Collective Bargaining Mandatory Arbitration</td>
<td>Prevailing Wage for Public Works Projects</td>
</tr>
<tr>
<td><strong>Rank 2</strong></td>
<td>Prevailing Wage for Public Works Projects</td>
<td>Police Collective Bargaining Mandatory Arbitration</td>
</tr>
<tr>
<td><strong>Rank 3</strong></td>
<td>Competitive Bidding &amp; Advertising Requirements</td>
<td>Competitive Bidding &amp; Advertising Requirements</td>
</tr>
<tr>
<td><strong>Rank 4</strong></td>
<td>Property Exempt From Real Estate Tax</td>
<td>Stormwater Facilities and Traffic Control Maintenance on State Roads</td>
</tr>
<tr>
<td><strong>Rank 5</strong></td>
<td>Right-to-Know Law Compliance</td>
<td>Advertising or Publication of Legal Notices</td>
</tr>
<tr>
<td><strong>Rank 6</strong></td>
<td>Uniform Construction Code Triennial Education &amp; Certification</td>
<td>Separate Specifications and Bids for Public Buildings</td>
</tr>
<tr>
<td><strong>Rank 7</strong></td>
<td>Stormwater Facilities and Traffic Control Maintenance on State Roads</td>
<td>Right-to-Know Law Compliance</td>
</tr>
<tr>
<td><strong>Rank 8</strong></td>
<td>Police Certification and Training</td>
<td>Property Exempt From Real Estate Tax</td>
</tr>
<tr>
<td><strong>Rank 9</strong></td>
<td>Advertising or Publication of Legal Notices</td>
<td>Uniform Construction Code Triennial Education &amp; Certification</td>
</tr>
<tr>
<td><strong>Rank 10</strong></td>
<td>Separate Specifications and Bids for Public Buildings</td>
<td>Act 101 of 1988 Recycling Requirements</td>
</tr>
<tr>
<td><strong>Rank 11</strong></td>
<td>Act 101 of 1988 Recycling Requirements</td>
<td>Police Certification and Training</td>
</tr>
</tbody>
</table>
But just how burdensome do the municipalities find these issues to be, given that the state associations strongly urged action on 23 different mandates? Table 2 summarizes the survey results for the top two ranked most burdensome mandates for cities, boroughs, and first-class townships.

### Table 2

**Police and Firefighter Collective Bargaining Mandatory Arbitration and Prevailing Wage for Public Works Projects (Cities, Boroughs, and First-class Townships)**

<table>
<thead>
<tr>
<th></th>
<th>Mandatory Arbitration</th>
<th>Prevailing Wage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td>Percent</td>
</tr>
<tr>
<td>Not Burdensome</td>
<td>38</td>
<td>10.1</td>
</tr>
<tr>
<td>Moderately Burdensome</td>
<td>73</td>
<td>19.4</td>
</tr>
<tr>
<td>Very Burdensome</td>
<td>265</td>
<td>70.5</td>
</tr>
<tr>
<td>Total</td>
<td>376</td>
<td>100</td>
</tr>
</tbody>
</table>

It is interesting to note that the not applicable response number for the collective bargaining question was 86 (18.6%) and for prevailing wage only 31 (6.7%). Based on the field interviews, it was found that many municipalities do not deal with all of these mandates on a monthly or even yearly basis (Author 2011). In fact, in examining the bottom ranked issues, separate specifications and bidding for public building projects and mandatory recycling, only 8.9% and 2.7% of larger municipalities found these mandates to be burdensome.

Likewise for the top two most burdensome mandates for more rural second-class townships, while 72.9% of respondents rank prevailing wage as very burdensome and 62.1% find police collective bargaining mandatory arbitration very burdensome only a little over 10% find recycling or police certification to be an issue. Note that second-class townships do not have professional firefighters but rather rely upon a system of volunteer fire companies. In fact, upon examining the not applicable responses (Table 3), 23% of second-class townships had no opinion on prevailing wage and fully 77% of second-class townships found the police collective bargaining mandate to be not applicable. This may be a reflection of the small size of many 2nd class townships, some of which provide no police protection at all, relying upon agreements with other municipalities or upon the state police force.
Table 3
Prevailing Wage for Public Works Projects and Police Collective Bargaining
Mandatory Arbitration (Second-Class Townships)

<table>
<thead>
<tr>
<th></th>
<th>Mandatory Arbitration</th>
<th>Prevailing Wage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td>Percent</td>
</tr>
<tr>
<td>Not Burdensome</td>
<td>73</td>
<td>15.8</td>
</tr>
<tr>
<td>Moderately Burdensome</td>
<td>161</td>
<td>34.8</td>
</tr>
<tr>
<td>Very Burdensome</td>
<td>197</td>
<td>42.6</td>
</tr>
<tr>
<td>Total</td>
<td>431</td>
<td>93.2</td>
</tr>
<tr>
<td>Not Applicable</td>
<td>31</td>
<td>6.8</td>
</tr>
<tr>
<td>Total</td>
<td>462</td>
<td>100.0</td>
</tr>
</tbody>
</table>

So do size and municipal type matter? Do different levels or types of municipalities have differing perceptions regarding the burden of mandates? Since second-class townships are exempt from some mandates based on population size (recycling) or do not offer certain types of services (fire), we will examine two incorporated types of municipalities (cities and boroughs) and the more densely populated first-class townships to explore differences in perceptions based upon municipal type.

Chi-square analysis of the difference among the three groups was applied to all 11 mandates studied. In all cases the differences among the three types of municipal government (cities, boroughs, first-class townships) were statistically significant at the .05 level of significance. Table 4 summarizes the results.

Table 4
Summary Statistics for Cross Tabulations (Cities, Boroughs and First-Class Townships)

<table>
<thead>
<tr>
<th>Mandate</th>
<th>Chi-square</th>
<th>Probability</th>
<th>Cramer’s V</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police and Firefighter Collective</td>
<td>34.842</td>
<td>.000</td>
<td>.197</td>
</tr>
<tr>
<td>Bargaining</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police Certification</td>
<td>26.452</td>
<td>.000</td>
<td>.243</td>
</tr>
<tr>
<td>Prevailing Wage</td>
<td>18.383</td>
<td>.005</td>
<td>.143</td>
</tr>
<tr>
<td>Tax Exempt Property</td>
<td>61.389</td>
<td>.000</td>
<td>.262</td>
</tr>
<tr>
<td>Competitive bidding</td>
<td>25.448</td>
<td>.000</td>
<td>.168</td>
</tr>
<tr>
<td>Right-to-Know</td>
<td>20.057</td>
<td>.003</td>
<td>.250</td>
</tr>
<tr>
<td>Stormwater and Traffic Control Devices</td>
<td>29.281</td>
<td>.000</td>
<td>.180</td>
</tr>
<tr>
<td>Separate Bidding Public Buildings</td>
<td>68.576</td>
<td>.000</td>
<td>.277</td>
</tr>
</tbody>
</table>
Table 4
(Continued)

<table>
<thead>
<tr>
<th>Mandate</th>
<th>Chi-square</th>
<th>Probability</th>
<th>Cramer's V</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uniform Construction Code Certification</td>
<td>13.269</td>
<td>.039</td>
<td>.122</td>
</tr>
<tr>
<td>Recycling Requirements</td>
<td>22.604</td>
<td>.001</td>
<td>.158</td>
</tr>
<tr>
<td>Publication of Legal Notices</td>
<td>36.222</td>
<td>.000</td>
<td>.252</td>
</tr>
</tbody>
</table>

The strength of the relationship between municipal type and mandate rating varies from moderate to fairly strong. Tables 5 and 6 examine the top two most onerous mandates as rated by the cities, boroughs, and first-class townships.

Table 5
Police and Firefighter Collective Bargaining Mandatory Arbitration

<table>
<thead>
<tr>
<th></th>
<th>First-Class Township</th>
<th>Borough</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Burdensome</td>
<td>0%</td>
<td>9.7%</td>
<td>1.9%</td>
</tr>
<tr>
<td>Moderately Burdensome</td>
<td>0%</td>
<td>17.5%</td>
<td>11.5%</td>
</tr>
<tr>
<td>Very Burdensome</td>
<td>100%</td>
<td>53.4%</td>
<td>86.5%</td>
</tr>
<tr>
<td>Not Applicable</td>
<td>0%</td>
<td>19.4%</td>
<td>0%</td>
</tr>
</tbody>
</table>

Table 6
Prevailing Wage for Public Works Projects

<table>
<thead>
<tr>
<th></th>
<th>1st Class Township</th>
<th>Borough</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Burdensome</td>
<td>18.8%</td>
<td>16.5%</td>
<td>13.5%</td>
</tr>
<tr>
<td>Moderately Burdensome</td>
<td>6.3%</td>
<td>38.8%</td>
<td>25.0%</td>
</tr>
<tr>
<td>Very Burdensome</td>
<td>75%</td>
<td>40.2%</td>
<td>61.5%</td>
</tr>
<tr>
<td>Not Applicable</td>
<td>0%</td>
<td>4.7%</td>
<td>0%</td>
</tr>
</tbody>
</table>

Both first-class townships and cities find these two mandates to be very burdensome while boroughs find them less so and in some cases even not applicable to the daily or yearly functioning of boroughs. Again, small rural boroughs have fewer police officers and more part-time officers. Likewise, small boroughs are less likely to engage in public works projects, which trigger the prevailing wage standard (Holoviak 2011).
The large number of properties exempt from real estate taxes due to their nonprofit status can cause financial hardships for cash strapped municipalities. Hospitals, schools, universities, public charities, and churches all require police and fire protection, and other municipal services, but they are not required to pay property tax under Pennsylvania law. As seen in Table 7, both first-class townships (most of which are located adjacent to urban centers and are densely populated) and cities find this mandate to be very burdensome. Boroughs that tend to be more rural are less inclined to rate this as very burdensome.

Table 7
Properties Exempt from Local Real Estate Taxes

<table>
<thead>
<tr>
<th></th>
<th>First-Class Township</th>
<th>Borough</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Burdensome</td>
<td>6.3%</td>
<td>28.2%</td>
<td>9.6%</td>
</tr>
<tr>
<td>Moderately Burdensome</td>
<td>12.5%</td>
<td>39.3%</td>
<td>15.4%</td>
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<tr>
<td>Very Burdensome</td>
<td>81.3%</td>
<td>28.2%</td>
<td>71.2%</td>
</tr>
<tr>
<td>Not Applicable</td>
<td>0%</td>
<td>4.2%</td>
<td>3.8%</td>
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</tbody>
</table>

Discussion: Rethinking the Burden of Mandates

Previous research has indicated that the best approach to the issue of local government mandates involves a partnership or collaborative approach between state and local government to address the issues of cost estimation, cost reimbursement, and best methods for meeting state standards for policy and services (Grossback; Zimmerman; Kelly 1994, 1997). In fact, in a 1995 National Civic Review essay on lessons learned regarding mandates, Kelly goes so far as to state that not only are mandates an essential part of governing but that local governments do not resist all state mandates (Kelly 1995). What the Pennsylvania study has shown is that the burden of mandates is really tied to the capacity of local governments to deal with the fiscal and administrative burdens generated by these mandates. According to the Center for Rural Pennsylvania’s 2014 data, 99% of Pennsylvania’s first-class townships are classified as urban while 80% of Pennsylvania’s second-class townships are classified as rural. Boroughs are split 56% urban and 44% rural. (Johnson 2015). Cities, with larger professional staffs and full-time executives, are less likely to see mandates as burdensome but more likely to see state requirements such as recycling or police and fire arbitration as part of the regular administrative activities of municipal government. Similarly, boroughs, which tend to be smaller in population and more limited in administrative and governmental capacity, often do not
LOCAL GOVERNMENT MANDATES IN PENNSYLVANIA

have to deal with many of these requirements. Boroughs are less likely to engage in a series of capital projects or to maintain a large police or fire department.

Likewise, second-class townships who do find themselves subject to certain mandates such as police arbitration find them to be very burdensome upon their tiny staffs, which often include only three part-time supervisors and at best one professional manager and some clerical staff (Holoviak 2011). Overall, second-class townships often don’t deal with issues such as prevailing wage or police certification at all. These mandates simply don’t apply to them even if they exist on the legislative books.

The type of local government caught most in the crosshairs of mandates appears to be Pennsylvania’s first-class townships. More densely populated and often adjacent to a large urban center, these suburbs and exurbs are expected to provide a higher level of municipal services but are restricted under Pennsylvania law from expanding their revenue sources. They are squeezed at both ends, unable to implement various taxes but required to meet all state standards for police, fire, prevailing wage, building codes, inspector certifications, etc.

In conclusion, a one-size-fits-all approach to mandate reform in the Commonwealth of Pennsylvania will not address the real impact of mandates upon its local governments. Only a targeted approach, taking into account the disparate impact of state mandates upon municipalities with very different administrative and fiscal capacities and very different populations may truly offer mandate relief. Other states that rely on a one-size-fits-all approach, such as mandatory legislative review or cost estimation requirements, may want to revisit their mandate strategies. In Pennsylvania, the Local Government Commission study recommends the possible creation of a state level review commission for mandates, similar to efforts in other states (Local Government Commission). While this may provide some relief, it will only be effective if the review takes into account the disparate impact of mandates based upon municipal size and municipal fiscal and administrative capacity.

References

Johnson, Jonathan, Senior Policy Analyst. 2015. Data provided by the Center for Rural Pennsylvania, A Legislative Agency of the Pennsylvania General Assembly.
### Appendix A
First-Class Townships, Boroughs, and Cities Mandate Ratings

<table>
<thead>
<tr>
<th>Mandate</th>
<th>Not Burdensome</th>
<th>Moderately Burdensome</th>
<th>Very Burdensome</th>
<th>Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td>%</td>
<td>Frequency</td>
<td>%</td>
</tr>
<tr>
<td>Police &amp; Firefighter Collective Bargaining</td>
<td>38</td>
<td>8.2</td>
<td>73</td>
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<td>Arbitration</td>
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</tr>
<tr>
<td>Prevailing Wage for Public Works Projects</td>
<td>73</td>
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<td>161</td>
<td>34.8</td>
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<tr>
<td>Property Exempt from Real Estate Taxes</td>
<td>113</td>
<td>24.5</td>
<td>159</td>
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</tr>
<tr>
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<td></td>
</tr>
<tr>
<td>Competitive Bidding and Related Advertising</td>
<td>58</td>
<td>12.6</td>
<td>172</td>
<td>37.2</td>
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<td>Requirements</td>
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<td></td>
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</tr>
<tr>
<td>Right-to-Know Law Compliance</td>
<td>92</td>
<td>19.9</td>
<td>146</td>
<td>31.6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stormwater and Traffic Control Device Maintenance on State Roads</td>
<td>106</td>
<td>22.9</td>
<td>174</td>
<td>37.7</td>
</tr>
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<td></td>
</tr>
<tr>
<td>Bidding Requirements for Public Buildings</td>
<td>151</td>
<td>32.7</td>
<td>168</td>
<td>36.4</td>
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<tr>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
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<td>Uniform Construction Code Education and Certification</td>
<td>122</td>
<td>26.4</td>
<td>205</td>
<td>44.4</td>
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<tr>
<td>Act 101 of 1988 Recycling Requirements</td>
<td>225</td>
<td>48.7</td>
<td>213</td>
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<tr>
<td>Advertising or Publication of Legal Notices</td>
<td>101</td>
<td>21.9</td>
<td>144</td>
<td>31.2</td>
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## Appendix B
### Second-Class Townships Mandate Ratings

<table>
<thead>
<tr>
<th>Mandate</th>
<th>Not Burdensome</th>
<th>Moderate Burdensome</th>
<th>Very Burdensome</th>
<th>Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td>%</td>
<td>Frequency</td>
<td>%</td>
</tr>
<tr>
<td>Police &amp; Firefighter Collective Bargaining Arbitration</td>
<td>22</td>
<td>2.9</td>
<td>44</td>
<td>5.7</td>
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<tr>
<td>Police Certification and Training</td>
<td>75</td>
<td>9.8</td>
<td>110</td>
<td>14.4</td>
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<tr>
<td>Prevailing Wage for Public Works Projects</td>
<td>41</td>
<td>5.4</td>
<td>119</td>
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</tr>
<tr>
<td>Property Exempt from Real Estate Taxes</td>
<td>210</td>
<td>27.4</td>
<td>287</td>
<td>37.5</td>
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<td>Competitive Bidding and Related Advertising Requirements</td>
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<td>7.6</td>
<td>267</td>
<td>34.9</td>
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<tr>
<td>Right-to-Know Law Compliance</td>
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<td>Stormwater and Traffic Control Device Maintenance on State Roads</td>
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<td>Bidding Requirements for Public Buildings</td>
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<td>Uniform Construction Code Education and Certification</td>
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<td>28.7</td>
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<td>Act 101 of 1988 Recycling Requirements</td>
<td>219</td>
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<td>204</td>
<td>26.6</td>
</tr>
<tr>
<td>Advertising or Publication of Legal Notices</td>
<td>119</td>
<td>15.5</td>
<td>269</td>
<td>35.1</td>
</tr>
</tbody>
</table>
This paper details the impact of the federal FMLA, as well as the complex web of additional protections many states have. Not all Americans enjoy the same rights to family and medical leave because 40% of them do not live in states that have written additional protections into state law. Pennsylvania is one such state. This paper offers a case study of the policy impact on citizens—particularly women, minorities, and the poor—in Pennsylvania, one of 21 states where lawmakers have not expanded their coverage beyond that of federal law.

Since its enactment more than 20 years ago, the Family Medical Leave Act (FMLA) has allowed millions of Americans to maintain job security while they tend to the important needs of their families. However, there are limits to the breadth of the federal law and many states have either subsequently passed their own leave protections that expand coverage in many ways or had pre-existing laws that went further than the federal law. This paper details the impact of the federal FMLA as well as the complex web of additional protections many states have. Critically, not all Americans enjoy the same rights to family and medical leave because 40% of them do not live in states that have written additional protections into state law. Therefore, this paper also offers a case study of the policy impact on citizens—particularly women—in Pennsylvania, one of 21 states where lawmakers have not expanded their coverage beyond that of federal law.

Family Medical Leave Laws

Signed into law in 1993, the federal Family Medical Leave Act (FMLA) guarantees eligible employees up to 12 weeks of unpaid leave per year for
health conditions, a new child, or military service. At the conclusion of the approved leave, eligible employees are guaranteed that their job (or one of comparable position) will have been held for their return. Employees that work in a business with more than 50 workers are eligible if they have worked for the company for at least a year, they have worked at least 1,250 hours during the previous year, and if they work at a location with at least 50 employees within a 75-mile radius. This generally means that part-time and self-employed individuals are not likely to be eligible. While these protections are for both men and women, the law was celebrated as being the first national effort to acknowledge maternity leave (albeit unpaid) for women.

Prior to passage, 34 states had some version of law that governed family and/or medical leave, though 11 of them applied only to state employees (Commission on Family and Medical Leave 1996). Only 12 states and the District of Columbia had laws that required employers to offer maternity leave (Irwin & Silberman 1993; Waldfogel 1994; Women’s Legal Defense Fund 1993). However, it should be noted that both large and/or unionized workplaces oftentimes had maternity and medical leave policies that were, in some cases, more generous than state law required (Waldfögel 1999). This continues to be the case.

**Impact of FMLA**

Following the passage of the FMLA, a series of government and academic studies aimed to determine whether the objectives of the law had been achieved. Three major conclusions were drawn about the effectiveness of the law in allowing workers greater access to job-protected leave.

The first conclusion pertained to the number of Americans who became eligible for leave protections under the new law. The Commission on Family and Medical Leave reported that as many as two-thirds of employees were employed by FMLA-covered employers (1996), but this statistic is misleading. Of this number, some employees did not work the required one-year total of 1,250 hours and still others had not been employed for the required one year. Ultimately, perhaps only as few as one-half of workers were eligible (Ruhm 1997).

Mothers fared even worse, as far fewer were eligible for maternity leave under the FMLA. It was estimated that 31% of working women of childbearing age had been with their employer the one year required for eligibility and a mere 19% of new mothers met eligibility requirements (Klerman and Leibowitz 1994). Considering the spattering of state laws and private employer policies that granted leave for one reason or another, in some form prior to implementation of the FMLA, it is unlikely that a
significant percentage of the workforce suddenly experienced a dramatic new access to protected leave. In fact, only 7% of workers that took a type of leave covered by the FMLA in 1994–1995 reported that they were able to do so by exercising FMLA benefits (Ruhm 1997), the remainder had other benefits they were able to use.

Additional findings were discussed following adoption of the law. The second conclusion was that as employers adjusted their benefit packages to bring them in line with the new law, which two-thirds report having done (Waldfogel 2001), they faced little hardship in having done so. The Commission on Family and Medical Leave stated that 90% of covered employers reported that the changes “had no noticeable effect on business performance or growth” (1996, in Ruhm 1997, 181). A survey of employers done in 2000 also reflected these positive reviews (Waldfogel 2001). Waldfogel (1999) estimated that it cost an employer only about $250 per year for each employee that takes leave.

Third, the law did increase the frequency of leave taking. The increase was found particularly at medium-sized firms that would have been less likely to have had pre-existing policies, and particularly for new mothers (Waldfogel 1999). An important consequence of the law is that it also institutionalized rights to parental leave, not just maternal leave; under the law men now have the same rights to paternity leave as women do to maternity leave. Another possible positive externality is the effect on women’s employment. Since the 1960s, there has been a steady increase of the number of women who return to the workplace after they have a child. Fifty-five percent of new mothers are back in the workforce within a year of their child’s birth (U.S. Bureau of the Census 2010).

In summation, while the FMLA offered a modest expansion of rights for workers, it did provide both more coverage and more usage for working women while imposing negligible costs to employers. Much of the reflection on the law’s early impact argues that this does not amount to a tremendous impact. However, it should be noted that most scholars observe (Ruhm1997; Waldfogel1997; 1999), as did the legislation’s supporters in the 1990s, that the law was not ever designed to be far reaching. The limited scope and strength of the law is a major contributor to the limited impact it had. Where the law had holes or inadequacies in coverage to meet the needs of the contemporary workforces, it was left up to states to compensate in the form of more expansive state laws.

More Comprehensive State Laws

Today, many of the original state laws that governed workers’ family and medical leave needs before passage of the FMLA are superseded by
the more comprehensive federal law. Other states have passed laws that add to or expand the protections in the federal law. In addition to the federal FMLA, 29 states have taken steps to expand the coverage for their own workers by adding additional benefits and/or expanding which employees are eligible for protections in their states.

Table 1 identifies the additional benefits states have enacted and in which states these more expansive laws apply.

<table>
<thead>
<tr>
<th>Type of Expansion</th>
<th>Expansion States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application to smaller employers (fewer than 50 employees)</td>
<td>DC, ME, OR, VT (family leave)</td>
</tr>
<tr>
<td></td>
<td>CA, IL, ME, NE, NY, OR, RI (military leave)</td>
</tr>
<tr>
<td></td>
<td>CA, CT, IA, LA, NH, WA (maternity leave)</td>
</tr>
<tr>
<td></td>
<td>CA, MN, NC, VT (small necessities leave)</td>
</tr>
<tr>
<td>Broader, more-inclusive definition of “family”</td>
<td>CA, CT, DC, HI, ME, NJ, OR, RI, TN, VT, WA, WI</td>
</tr>
<tr>
<td>Additional military protections</td>
<td>CA, CT, IL, IN, ME, MN, NE, NY, OH, OR, RI, WA</td>
</tr>
<tr>
<td>Pregnancy as specific disability</td>
<td>CA, CT, HI, IA, LA, MT, NH, WA</td>
</tr>
<tr>
<td>“Small necessities” allowances</td>
<td>CA, CO, DC, IL, LA, MA, MN, NV, NC, RI, VT</td>
</tr>
<tr>
<td>Domestic violence coverage</td>
<td>CA, CO, FL, HI, IL, ME, NM, NC, OR, WA</td>
</tr>
<tr>
<td>Temporary disabilities</td>
<td>CA, NJ, NY, RI</td>
</tr>
<tr>
<td>Paid sick leave</td>
<td>CT, DC</td>
</tr>
<tr>
<td>Adoptive parents</td>
<td>CO, KY, MD, MA, MN, NE, NY, VT, WI</td>
</tr>
</tbody>
</table>

Compiled from www.nolo.com (2014)

While each state that has enacted more comprehensive legislation has a different formula for what is covered and for whom, there are some general categories in which state laws have become more comprehensive than federal law. These categories are discussed below.
**Definition of Family**

In some states, what constitutes a family is redefined by including domestic partnerships, children of domestic partnerships, grandparents, or in-laws. In Washington, D.C., which has the most inclusive definition, “family members include parents, spouses, children, domestic partners, parents-in-law, grandchildren, children’s spouses, siblings, siblings’ spouses, children with whom the employee lives and whom the employee has responsibility for, and a person with whom the employee shares a residence and committed relationship” (District of Columbia 1990). In New Jersey, which also passed a FMLA in 1993 (NJFLA), the definition of eligible immediate family coincides with the federal definition, but extends it slightly to include a spouse’s parents (State of New Jersey n.d.). These states also have more flexible options when it comes to company size and leave availability.

**Additional Military Benefits**

Leave in the case of having a loved one on active duty is only available in 12 states, the most inclusive being Minnesota where if the employee’s grandparent, parent, legal guardian, sibling, child, grandchild, spouse, or fiancé is being deployed or coming back from deployment, or if they have been injured while deployed, they are entitled to limited leave. Other states, such as Maine, entitle domestic partners to leave. Some set limits on how many days of leave are permitted depending on the length of the deployment (it usually has to be over 90 days) (nolo.com).

**Pregnancy as Specific Disability**

Legislation regarding disability due to pregnancy is generally vague. States such as Connecticut, Hawaii, or Montana give “reasonable” leave due to pregnancy, while other states put a time limit on length of leave, commonly over at least three weeks. Recognizing pregnancy in itself as a disability has been a contentious issue since 1976 when the Supreme Court ruled in *General Electric Co. v. Gilbert* that discrimination on the basis of pregnancy alone did not equate to discrimination based on sex and was, therefore, not necessarily illegal. Congress responded in 1978 with The Pregnancy Discrimination Act (PDA), but the law has limitations when it comes to accommodations pregnant workers may need to continue working. National Public Radio recently reported that The Equal Employment Opportunity Commission has received 46% more pregnancy-related complaints over the last 14 years (National Public Radio 2014). The Philadelphia EEOC district office (which includes coverage of the entire state of Pennsylvania)
registered more than 300 complaints in that time period—second only to the Miami district office (United States Equal Employment Opportunity Commission 2014). As a result of the increased claims, the commission issued a detailed clarification of how the PDA should be applied in cases of disability and other issues of leave in July 2014 (EEOC 2014).

Small Necessities

Some states offer their employees with children a few hours per year of unpaid leave for parent/teacher conferences or even for involvement in their children’s schools.

Domestic Violence Coverage

Employees of certain states are allowed some unpaid leave to get social, family, and medical services, such as medical or legal assistance, or enhance the security of their homes after a violent assault. Maine and Washington employers are required to grant leave to employees who have a family member that has been attacked (nolo.com).

Temporary Disability

California, New Jersey, New York, and Rhode Island have Temporary Disability Insurance and Paid Family Leave that entitles employees to a percentage of their wages, previously withheld from their paychecks through payroll deduction, much like unemployment insurance.

Paid Sick Leave

Connecticut and the District of Columbia offer paid sick leave dependent on how many employees a company has and how many hours the employee has worked. In D.C., this leave also includes domestic violence or family leave.

Leave for Adoptive Parents

While recent interpretations of federal law recognize adoptive and other caretaking scenarios as parenting relationships covered by FMLA (U.S. Department of Labor 2010), these protections are not extended to employers who are not required to offer protections or private companies that offer their own set of benefits that go above and beyond. However, some states award adoptive parents the same rights to leave as birth parents in all cases, as long as the company offers parental leave to biological parents.
Some states, namely New York and Nebraska, make provisions regarding the child’s age. No state extends these additional benefits to step or foster parents.

**Family Medical Leave in Pennsylvania**

Twenty-one states offer no additional family-leave protections. Pennsylvania is one of the more populous of these states. Because there are currently no additional rights other than those afforded by the federal law, many of the state’s working women and their families have fewer protections than their peers in many other states.

**Paid Leave**

The largest disadvantage Pennsylvanians have is that state law does not mandate that private employers provide paid leave for its employees. While many private employers and municipalities do offer paid sick, family, and/or parental leave (United States Bureau of Labor Statistics 2013), they are not required to do so by federal or state law. So, while workers may be eligible for leave under FMLA, exercising it may be limited by financial considerations. Indeed, research shows that leave is much less-exercised by women with lower levels of education or women who are single parents (Han, Ruhm, and Woldfogel 2009).

Take into consideration the 24% of Pennsylvania families with household income that is below 200% of the Federal Poverty Level (FPL) (Pathways PA 2009). Many of these families (21%) have at least one parent with a low level of education, making it difficult for them to secure jobs with wages high enough to make ends meet. Lower-income jobs, such as health care aids, retail or fast food workers, and child care providers, are disproportionately held by women. In fact, Corporation for Enterprise Development recently reported that 21% of Pennsylvanians face “asset poverty,” meaning they would not have the resources to survive for up to three months of sustained loss of income. Single women are 40% more likely than single men to be asset poor in Pennsylvania—which is a greater disparity than most states (Corporation for Enterprise Development 2014). For individuals and families who are living paycheck-to-paycheck, any reduction in household income caused by an unpaid leave can seriously affect already precarious household budgets. Taking an unpaid leave simply is not a viable financial option.

The City of Philadelphia passed a law in 2011 that required city contractors to allow their workers to accrue paid sick leave. A strong effort in 2013 to expand this requirement to all private city employers with more than five employees fell just short of passage when Mayor Michael Nutter
vetoed the legislation, which had passed the city’s council by a vote of 11-6 (National Partnership for Women and Families 2014).

 Nonetheless, the efforts prompted 17 members of the Pennsylvania General Assembly to introduce House Bill 1807, The Leave Policy Act, which would prohibit “political subunits” in the state from enacting legislation requiring private employers to offer paid leave of any kind (Pennsylvania General Assembly 2013). The bill was referred to the full House by the Labor and Industry Committee in February 2014, but has not been voted on—likely because the 2014 election of Democrat Tom Wolf would mean the measure would face a veto.

**Adult Caregivers**

For many working women, it is not only their own health or the birth of a child that requires them to weigh their options for being off work. Increasingly, adult children are faced with providing care for aging parents. According to the Pennsylvania Department of Aging, there are 1.3 million “informal caregivers” in the state who invest 1.4 billion hours of unpaid time in caring for the elderly in the state (2013). Historically, this burden has fallen on the adult daughters (and presumably daughters-in-law) of the aging individual who needs care (Smith 2004), many of whom are still in the process of caring for their own children’s needs. According to Dr. Lynn Martire and her colleagues of the University of Pittsburgh’s department of psychiatry, this burden is not just financial, but psychological as well. This dual demand on working women exacerbates stress-related depression, especially as it complicates their other roles as employees, wives, and mothers (2000).

The State offers some help with the financial burden with a means-tested program—The Pennsylvania Caregiver Support Program—that reimburses qualified applicants for some of the expenses associated with caretaking. Eligibility for the program is income-based and uses a sliding scale cost sharing approach that may reimburse caretakers up to $500 a month for expenses such as uncovered medical costs or up to $2000 for home renovations (Pennsylvania Department of Aging 2014).

Governor Corbett’s 2014–2015 budget proposal requested over $40 million in additional funds for programs for the state’s elderly (Pennsylvania Department of Aging 2014), but it is not clear how much, if any, of those funds will be directed into The Caregiver Program. Presently, the program is aiding only around 7,000 caretakers, and not all of them are eligible for financial support, but rather counseling or referral services. A decision, then, to take unpaid time off under the FMLA to care for an aging parent, can mean financial hardship in precisely the same way faced by new parents or those with personal or immediate family medical needs.
Small Necessities

Not all the demands on working mothers are long term or overly significant. Several states recognize that working parents have smaller needs that require their attention during work hours, like parent teacher conferences and regular trips to the pediatrician. Often referred to as a “small necessities” law, a bill that would have protected a worker’s right to a handful of hours leave time to attend to these things was recently introduced in Pennsylvania. HB1673, The Parental Involvement Leave Act was introduced in 2013 to “[provide] Statewide uniformity regarding vacation and other forms of leave mandated by political subdivisions, for parental involvement leave and for civil remedies.” The legislation was referred the House Labor and Industry Committee but has not come up for any votes. The legislation’s original prime sponsor, Dan Miller (D-Allegheny) has since withdrawn his original sponsorship, but in August, 2013, wrote his colleagues to encourage them to support the legislation’s goal of enhancing parental involvement in their children’s school by requiring Pennsylvania employers guarantee parents paid leave time to attend parent-teacher conferences and other related functions (Pennsylvania General Assembly 2014a). Miller reintroduced the legislation in the 2015–2016 term as HB 849, picking up 19 cosponsors, but with no Republicans among them, the bill seems unlikely to have much success in the Republican-controlled legislature (Pennsylvania General Assembly 2015).

This type of legislation generally only provides a few hours per year for worker’s to access protected leave, and it is exclusively unpaid. It does allow parents to participate in important events in their children’s lives.

Definition of Family

Many Pennsylvanians are also limited in their access to FMLA protections by the law’s narrow definition of “family.” The Obama Administration has expanded the interpretation of the law to include coverage for same-sex parents of children that lack a biological relationship with the child (U.S. Department of Labor 2010). This extension of the law should serve to directly impact the potential for job-protected parental leave for parents in Pennsylvania’s estimated 24,481 same-sex households (U.S. Department of Commerce 2012). The Supreme Court struck down the Defense of Marriage Act (1996) in their 2013 ruling on United States v. Windsor, which had—in part—prevented the extension of federal benefits to individuals in same-sex marriages. For now, this means that FMLA protections are extended to couples with marriages that are legally-recognized in the state in which they work (Department of Labor 2013), though there is an expectation that the ruling will ultimately extend federal protections to all legally-married
couples regardless of their state of residence or work. It is also presumed that many of these protections will be extended to Pennsylvanians in same-sex unions since the May 2014 legal decision\(^3\) that made same-sex marriage legal in the state.

What is less clear is how the limited definition of family will apply to same-sex couples as the interpretation of the law expands because there is no state law prohibiting workplace discrimination. Void of a more inclusive state law, committed couples or couples with marriages performed in other states will fail to have protections that extend to family members other than a spouse or children (e.g., in-laws, grandchildren, siblings).

**Military**

Some states’ laws recognize a family member’s military deployment as a “condition” sufficient for granting leave, known as a “qualifying exigency.” A member of the Armed Forces’ (to include the National Guard and Reserves) spouse, parents, or children (of any age) would be entitled to this leave under certain conditions requiring their absence from work (e.g., child or parent care, post-deployment activities) (U.S. Department of Labor 2013). Pennsylvania’s more than 56,000 military personnel (Department of Defense 2014) were only given this recognition by a federal expansion of FMLA that took effect in early 2013 (Department of Labor n.d.). The state’s thousands of Iraq and Afghan War veterans would not have been covered under this expansion. Also, despite the Obama Administration’s 2010 repeal of the Don’t Ask, Don’t Tell (DADT) policy, same-sex spouses or partners as well as extended family of deploying military personnel continue to have no guaranteed right to leave, particularly in states that do not recognize these unions.

Some Pennsylvania military families who fall through this particular crack might be helped by a state program run through the state’s Department of Military and Veterans Affairs. Using both public funds and private donations, The Military Family Relief Assistance Program (MFRAP) offers grants of up to $3,500 to qualifying service members or family members to help with costs associated with hardships due to deployment\(^4\)—including child care and other loss of employment income (Pennsylvania Department of Military and Veterans Affairs 2014). However, MFRAP is a small program and awarded only $104,000 to 33 approved applications in 2012\(^5\), very few of which described circumstances that would have been governed by an expanded FMLA (Pennsylvania Department of Military and Veterans Affairs 2103). Veteran support groups in the nonprofit sector also offer services that presumably could help families struggling with leave-related issues.
According to the National Network to End Domestic Violence, an average of more than 2,400 adults and children receive services for domestic violence (e.g., shelter, counseling) in Pennsylvania each day and there are, on average, 33 calls to hotlines every hour (National Network to End Domestic Violence 2013). These statistics are only a portion of individuals coping with domestic violence as they do not reflect victims that do not seek outside help. In 2013, an additional 30,000 Pennsylvanians sought help as victims of sexual violence (Pennsylvania Coalition Against Rape 2013). Again, many of these crimes go unreported and/or victims do not actively seek support in their recovery. In their lifetimes, one in four women will experience domestic violence (Pennsylvania Coalition Against Domestic Violence 2013), and one in three will be exposed to sexual abuse of some kind (WOAR n.d.).

These victims of both domestic violence and sexual assault face discrimination and problems obtaining needed time off in their jobs (Swanberg, Ojha, and Macke 2012; Brownmiller 2013). Pennsylvania’s employers are required to provide potentially critical workplace safety under the Occupational Safety and Health Act of 1970 (OSHA), and employees would qualify for leave under FMLA if their absence would be to seek medical treatment for or to recuperate from injuries due to an incidence of domestic violence or sexual assault. State statutes also provide work leave for a related subpoena or court appearance (Swanberg, Ojha, and Macke 2012).

However, victims of both domestic and sexual violence face far more than physical wounds they may have received in these attacks. Scholars who study the aftermath for victims of these crimes describe a long list of psychological concerns, as well—including post-traumatic stress disorder (PTSD), anxiety, insomnia, anger, self-harm, and high rates of depression (Armour et al., 2013; Humphreys and Thiara 2003). There are also more practical considerations, like victims needing to find a new place to live and, in some cases, establishing credit in their own names. These scenarios and others demonstrate how crucial the need to maintain employment can be to future empowerment of the victim. According to the Pennsylvania Coalition Against Domestic Violence (2014), while the state legislature is considering several pieces of legislation that support victims in other ways (e.g., laws to strengthen protection for children in environments of abuse), there is currently no legislation being considered in the state that would offer greater or more expansive employment protection for victims of either domestic or sexual violence.

As a result, the vast majority of Pennsylvanians have no leave protections under these dire circumstances. However, employees within the city of
Philadelphia do have additional protections that were passed by the City Council and took effect in 2009. The ordinance provides up to eight weeks\(^6\) of unpaid leave to workers of any Philadelphia employer\(^7\) who are victims of not only domestic or sexual violence, but also stalking. The ordinance allows an employee to take time off to tend to physical or psychological injuries, seek help from a domestic or sexual violence organization, receive counseling, relocate, or seek legal assistance for themselves or a member of their immediate family (City of Philadelphia 2009). However, there is some concern that this ordinance will be overturned by legislation passed by the state House of Representatives in March 2014 (H.B. 1796) that would prohibit municipalities from requiring certain benefit mandates from private employers (Pennsylvania General Assembly 2014c) similar to The Leave Policy Act mentioned above. When the General Assembly recessed in July 2014, H.B. 1796 was still under consideration in the senate, but no action had been taken.

*Temporary Disability and Pregnancy*

The Social Security Administration provides income replacement to workers who become disabled or ill and are not able to work for 12 months or more (Social Security Administration 2012). Shorter-term leave needs would be (for those covered) governed by FMLA, but would be unpaid unless the employer offers additional benefits or the absence is covered under a state or municipal statute that offers paid time off for short-term needs. Many employers do offer short-term disability insurance programs that serve this function. The important distinction is, however, that while these insurance programs will provide compensation, they do not offer job protection. While most states have statutes that extend the FMLA job protection to short-term disabilities, Pennsylvania does not (J. A. Gallagher, personal communication, May 5, 2014\(^8\)). Theoretically an employee in Pennsylvania could be approved for short-term disability payments through the insurance program they participate in but lose his or her job while on leave.

A few states (e.g., California, New York) have incorporated a paid leave component into their state leave laws that requires employee contributions to a short-term disability program, effectively removing any additional burden from employers because the funds come from employees not employers. Examples from the handful of states that have implemented these programs indicate that employees take the leave they need more often and for longer duration because they are receiving compensation when they do. In California, for example, single mothers are among the biggest beneficiaries of this program (Koss 2003).

Short-term disability issues are particularly complex in the context of a pregnancy and the issue remains unresolved in states, like Pennsylvania, that
have not made clear statutes defining pregnancy as a disability. According to legal scholar Jeanette Cox, recent expansions of the Americans with Disabilities Act (ADA) have allowed for more conditions that may be concomitant with pregnancy—like shortness of breath or back pain—to be protected under the law (and thus recognized by FMLA, as well). However, courts continue to bar extension of FMLA protection to pregnant workers suffering from ADA-recognized disabilities because pregnancy is not recognized as being a condition from which disabilities can stem. As Cox states, “the primary remaining justification for concluding that pregnant workers may not obtain ADA accommodations is that pregnancy is a physically healthy condition rather than a physiological defect (2012).”

Pennsylvania has been named one of the 10 worst states in the country for pregnancy discrimination (National Partnership for Women and Families 2008). Without specific state law that defines pregnancy as a disability, expectant mothers in Pennsylvania who are in some way limited from performing their job responsibilities by side effects of normal pregnancies cannot receive reasonable accommodation under the ADA or exercise FMLA rights. Without either of these protections, these women face potential repercussions by their employers when their job performances are affected. As a result, The National Women’s Law Center reports that many women are either forced to take a reduction in hours without pay, quit, or are fired from their jobs when employers refuse to make even small accommodations that are extended to disabled workers9.

Even when nondisability conditions associated with pregnancy are recognized, employers may insist employees take FMLA leave intermittently. Considering the law allows for only 12 weeks of protected leave, leaves during pregnancy can erode the amount of time available to a new mother once her baby is born (NWLC 2013).

In 2014, the Philadelphia City Council voted to amend the Philadelphia Fair Practices Ordinance of 2013 to include protections for pregnant workers in the city that require city employers to make reasonable accommodations (Council of the City of Philadelphia 2014). Testimony in support of the amendment drew attention to the fact that 53% of Philadelphia children are being raised by single working mothers, women who could not afford to suffer job and income loss because of pregnancy (Council of the City of Philadelphia 2013).

Rep. Mark Painter (D-Montgomery) introduced H.B. 1892, The Pennsylvania Pregnant Workers Fairness Act, in February 2014. The legislation is designed to eliminate discrimination and ensure reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy. The bill was referred to the Labor and Industry Committee, but no further action has been taken (Pennsylvania General Assembly 2014b).
Conclusion and Policy Prescriptions

In conclusion, it is obvious that Pennsylvania’s leave laws and supporting statutes provide some of the nation’s most meager protections for workers. In the 20 years since the passage of the federal FMLA, a majority of states and municipalities around the country have expanded the law’s scope with statutes of their own. Regrettably, in nearly every way, other states have chosen to expand FMLA to offer additional rights and protections for their citizens; Pennsylvania has not.

In recent years, it is the state’s political climate that can be blamed for inaction. The Democratic minority in the general assembly continues to introduce legislation that would expand leave, but such legislation has received virtually no Republican support. To this point, increased partisan polarization makes compromise unlikely on even modest expansions, let alone more dramatic proposals such as a paid leave policy for the state.

However, one need only look to neighboring New Jersey to identify a much more worker-sensitive environment. Two large cities in the state—Newark and Jersey City—passed municipal laws that would mandate employers to allow employees to accrue paid days off. East Orange is considering a similar measure, and five municipalities passed citizen-initiated ballot measures in fall 2014 that require employers to facilitate paid time off in their communities. The Associated Press reports that, as a result, New Jersey lawmakers are seriously considering legislation that would make the requirement apply to the entire state, and there appears to be enough support in the legislature to accomplish it (Mulvihill 2014). The state’s governor, Governor Chris Christie, however has expressed his reluctance to require businesses to provide paid time off to employees in the state, despite opinion polls that show more than 80% of citizens support government-mandated paid sick time (Dawsey 2015).

Meanwhile, Pennsylvania has taken no action. This inaction has created a work environment in the state that is less protective of workers than those in many other states. Most significant, this analysis finds that these gaps in protection and rights are most obvious and under-coverage has the biggest impact for the state’s most vulnerable citizens. For example, this report identifies how low-income families, single parents, and individuals living on meager budgets cannot afford to take unpaid leave. Employees straining under the burden of caring for elderly loved ones (and perhaps children concurrently) have far too many limitations in their leave options. Victims of domestic or sexual violence, face further hardships in trying to manage serious needs that arise out of their victimization when it puts their jobs in jeopardy. Pregnant women can still be discriminated against when their pregnancy affects their job performance. Pennsylvania can and should do better.
The following four recommendations for prudent action could make Pennsylvania a more hospitable place to work: Action by Municipalities, Leadership from the Private Sector, Support from the Nonprofit Community, and Expansion of State Laws.

Policy Prescription 1: Municipal Opportunity

One way expansions of leave laws have taken place in Pennsylvania, despite inaction by the state legislature, is the enactment of policy at the local level. Philadelphia and Pittsburgh\(^\text{10}\) (as well as Allegheny County), the state’s most populous cities, have recently instituted numerous policies that give workers who are employed within the city more access to and more expansive leave rights. While there are political forces at work against continuing to allow municipalities to enact these types of locally-applied ordinances, it remains an option for other communities that want to improve leave options in their jurisdiction.

In municipalities where significant political support for progressive protections for workers exist, an effort to address these types of issues on their governing councils could certainly be tackled. Even smaller municipalities may see prudence in protecting the quality of their local government work forces by improving benefits that local government employees and/or contractors receive—a move that would be entirely within a local governing body’s authority. Of course a community-by-community expansion of leave offers no comprehensive solution for workers who continue to fall through the cracks in the federal law, but developments in population-dense areas where a majority of jobs are could greatly expand the number of Pennsylvanians who could enjoy the same protections as those who live in states with more comprehensive laws.

Policy Prescription 2: Role for Private Sector

A frequent argument made by the state’s conservatives regarding state regulation of employment policies is that telling private businesses how to run their businesses can limit economic growth and is not an appropriate role for state legislators. Where state laws fall short, then, private companies are left to make decisions on what type of leave policies they will offer their employees. Responsible employers should and often do recognize that offering their employees access to the leave they need has the potential to decrease employee turnover and resources needed for training new employees, as well as a happy, healthy, and loyal workforce (Grover and Krooker 1995; Batt and Valcour 2003).
As Grover and Krooker (1995) found, “(E)mployees who had access to family-responsive policies showed significantly greater organizational commitment and expressed significantly lower intention to quit their jobs (271).”

Studies following the implementation of the federal FMLA also indicated that the cost of implementing (and employees exercising) leave policies is small. Because it can make good business sense, employers, from small to large and regardless of industry, should feel compelled to revisit their existing leave policies and consider expanding their benefits in perhaps small but significant ways that could improve the lives of their employees and create a culture of greater work-life balance in their industry. Even a slightly expanded leave policy could mean a great deal to workers faced with a personal need that prompts a tough choice about how to juggle their employment and the health and safety of themselves and their loved ones.

Policy Prescription 3: Need for Nonprofit Advocacy and Support

In reality, political will and corporate motivation to expand workers’ access to leave may require significant social pressure and targeted advocacy. A coordinated effort among organizations with missions that recognize the needs of workers, women, parents, families, children, the working poor, victims of domestic and sexual violence, and others could draw hereto unseen attention to the implications of the minimal protections Pennsylvanian workers have compared to workers in other states. A campaign that united these diverse but influential advocacy sectors behind an effort to expand state or local leave laws could be effective in a way that individual organizations (that have merely touched on some of these needs in their reform priorities) have not been. A larger, more expansive effort could draw attention to the vast opportunities lawmakers and employers have to improve working conditions in the state.

In the absence of expanded laws, many nonprofit organizations may also need to examine how they might develop programs that meet the needs of workers who have legal, personal, or financial hardships in the face of tough decisions about how to manage their leave needs. The nonprofit community is uniquely skilled at developing education and service programs that address many of the problems created by inadequate leave laws, as well as partnering with private corporations to meet many of these needs.

There are many considerations the nonprofit community could begin to make if there were an effort to more specifically address issues of leave in the state.
Policy Prescription 4: Action by State Legislature

Finally and most significant, without changes in state law and even with ad hoc policy changes at other levels, many Pennsylvanians will continue to face inadequate protection under federal laws. As has been outlined in this report, this disproportionately disadvantages many of the state’s most vulnerable populations (see Table 2). Lawmakers should examine prudent means of comprehensively extending additional protections to the state’s workers—with a specific examination of viable legislative options in the state. The newly-created, bicameral, and bipartisan Women’s Health Caucus in the General Assembly seems a likely starting point for this endeavor.

<table>
<thead>
<tr>
<th>Under-Covered Groups</th>
<th>Under Pennsylvania Law</th>
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<tbody>
<tr>
<td>Low-income families</td>
<td>Leave requires financial hardship</td>
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<tr>
<td>Parents</td>
<td>No leave for nonmedical needs, narrow options for adult caregiving leave</td>
</tr>
<tr>
<td>The Disabled</td>
<td>Private insurance programs do not protect jobs</td>
</tr>
<tr>
<td>Military Families</td>
<td>Families of recently-deployed veterans had few leave options</td>
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<tr>
<td>LGBT Families</td>
<td>State law has limited recognition of nontraditional families in application of existing law</td>
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<tr>
<td>Pregnant Women</td>
<td>Employers can force leave or terminate instead of making reasonable accommodations</td>
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<tr>
<td>Victims of Domestic/Sexual Violence</td>
<td>Justification for leave may not meet needs of victims</td>
</tr>
<tr>
<td>All Pennsylvanians</td>
<td>Scope, availability, justifications for, and ease of taking leave more limited than other states</td>
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The Caucus revealed The Pennsylvania Agenda for Women’s Health in December 2013 and has since introduced bipartisan legislation that addresses women’s health, safety, and financial security in the state. One of the group’s initiatives is H.B. 1892, The Pennsylvania Pregnant Workers Fairness Act, which addresses issues of pregnancy discrimination and accommodation discussed in this report. None of the other agenda items directly deals with issues of family or medical leave, but these issues are distinctly in the spirit of the caucus’s mission.
In particular, the legislature and the governor should consider options for extending paid leave to millions of Pennsylvanians that have none whatsoever through their employers. Many, many states have recognized the limitations of the federal law and have acted in important ways through state statute to strengthen the options available to workers. Doing so in Pennsylvania would give working women and their families, as well as working men, greater flexibility to manage their health, the health of their families, as well as unforeseen emergencies that can happen to any Pennsylvanian. In doing so, quality of life and work environment could be improved for all workers in the state, regardless of their economic or family status, or gender. This has been successfully done in many other states as the modest federal FMLA law provoked state legislatures to fill in the gaps. As such, it seems reasonable to expect that with the right political attention, some moderate expansion of leave laws in Pennsylvania could be possible.

Notes

1 Frequently only maternity leave, but employers are increasingly offering new parents—regardless of gender—some form of paid leave.
2 $40,000 for a family of four (Pathways PA, 2009).
3 Whitewood v. Wolf; Palladino v. Corbett
4 The grants are also awarded for several circumstances other than deployment, which would not be covered by family leave laws.
5 The most recent year for which data is available.
6 Employers with more than 50 employees must provide up to eight weeks of leave, while those with fewer than 50 are required to provide up to four weeks.
7 Regardless of whether the employer is subject to FMLA.
8 John Gallagher is a Pennsylvania disability attorney.
9 In March 2015, the U.S. Supreme Court set an important precedent that pregnant women have some right to pregnancy-related accommodation in Young v. United Parcel Service. Presumably if pregnant workers are more easily able to get accommodations from their employers, fewer will need to take leave during their pregnancy.
10 According to Pittsburgh City Councilwoman Natalia Rudiak (personal communication, March 17, 2015), the city could only offer paid leave to city employees because legal precedent prevents Council from requiring it be offered by employers within the city.

References


Enacted in the wake of election 2000, the Help America Vote Act of 2002 (HAVA) mandated nationwide standards in the conduct of federal elections. Several states went beyond the statutory requirements of HAVA and passed legislation requiring voters to show photo IDs at the polls. Pennsylvania passed such a law in 2012, triggering a protracted legal battle in state courts that continued well after that year’s presidential election. Although the Commonwealth lost this fight because of noncompliance with the statutory guarantee of liberal access to voter ID cards, the law may yet be upheld should the appeal process be taken further.

The Nationwide Push for Strict Voter Identification

The debacle of the 2000 presidential election prompted a national debate over electoral reform. One of the notable policy consequences of that debate was the enactment of the Help America Vote Act of 2002 (HAVA), which required the states to revamp their voter registration systems by implementing a “single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level” (Help America Vote Act 2002, 42 USC §15483 (a)(1)(A)). Presumably to curb the potential for voter fraud and maintain a fair electoral system, another key provision of the Act required the states to verify the identity of individuals who registered by mail and had not previously voted in a federal election (Help America Vote Act 2002, 42 USC §15483 (b)(2)(A)(i)(I)-(II)). To enhance electoral integrity beyond the minimum requirements of HAVA, some states began considering legislation to require all voters to show proof of their identity at the polls (Hale and Ramona 2010).
Indiana was a pioneer state in the introduction of strict photo identification laws. Approved in April 2005, Public Law 109-2005 required Indiana residents who cast their ballots in person to provide a current and valid photo identification (Senate Enrolled Act No. 483 2005, IC §3-11-8-25.1). Exempt from the photo ID requirement were people confined to nursing homes (Senate Enrolled Act No. 483 2005, IC §3-11-8-25.1(e)) and registered voters who qualified for absentee voting under state law (Senate Enrolled Act No. 483 2005, IC §3-11-10-1.2). Voters who did not have an officially sanctioned form of ID, or who for religious reasons did not wish to have their picture taken, were allowed to cast provisional ballots and report to their county election office within ten days of the election to execute an affidavit affirming the applicable exemption in order for their ballots to count (Senate Enrolled Act No. 483 2005, IC §3-11.7-5-2.5). Additionally, any voter who could not afford to pay for an official state-issued photo ID would be issued one at no charge (Senate Enrolled Act No. 483 2005, IC §9-24-16-10). These facilitative provisions and exceptions, however, did not insulate the law from the legal challenges that soon followed.

A coalition of civil rights organizations, along with the Indiana Democratic Party, challenged the voter ID law. They contended that because of the paucity of voter fraud cases, the law unjustifiably and arbitrarily burdened the voting rights of many properly registered voters, especially indigent, elderly, and minority voters, in violation of the Equal Protection Clause of the Fourteenth Amendment. The U.S. District Court for the Southern District of Indiana upheld the Act, noting that the plaintiffs, who had the burden of proof, failed to introduce “evidence of a single, individual Indiana resident who will be unable to vote” or who is “unduly burdened” by the requirements of the Act (Indiana Democratic Party v. Rokita 2006: 783). A divided panel of the U.S. Court of Appeals for the Seventh Circuit affirmed, with a strong dissent by Judge Evans contending that the Indiana law was “a not-too-thinly-veiled attempt to discourage election-day turnout by certain folks believed to skew Democratic” (Indiana Democratic Party v. Rokita 2006: 954). This interpretation of the law’s intent was especially valid, he added, given that “no one—in the history of Indiana—had ever been charged with violating” the state’s election law (Indiana Democratic Party v. Rokita 2006: 955).

On appeal, the U.S. Supreme Court affirmed the lower courts’ rulings in the test case of Crawford v. Marion County Election Board (2008), which garnered the attention of many state legislatures. Upholding the law, a plurality of the Court acknowledged the legitimacy of the state’s interest not only in “deterring and detecting voter fraud” but also in “safeguarding voter confidence” and “participating in a nationwide effort to improve and modernize election procedures that have been criticized as antiquated and
inefficient” (Crawford v. Marion County Election Board 2008: 191). As to the argument that the law was intended to advantage Republicans at the expense of Democrats, the Court found that the law was “nondiscriminatory” and “supported by valid neutral justifications,” which “should not be disregarded simply because partisan interests may have provided one motivation for the votes of individual legislators” (Crawford v. Marion County Election Board 2008: 204).

At the time it was passed, Indiana’s law was considered to be the strictest voter ID measure in the country. In upholding it, the Supreme Court rejected the contention that voter ID laws are subtle discriminatory devices akin to literacy tests, whose real purpose was to disfranchise rather than maintain an informed electorate. The Crawford ruling also established that voter photo ID laws are constitutionally sound so long as they are neutral on their face and in their application, even if they are deemed inconvenient by some voters or have the incidental effect of reducing voter turnout. Moreover, a state need not prove that voter fraud has already occurred to justify the burden that the photo ID requirement may place on potential voters (Schaffer and Wang 2009). The preservation of electoral integrity per se is a sufficient governmental interest to sustain the statute.

Though divided in its reasoning, the Court was united on the principle that voter ID laws are a valid exercise of a state’s police power to prevent fraud and govern elections. In his dissenting opinion, Justice Souter acknowledged “the legitimacy of interests on both sides” of the case, but he chided the plurality for not applying a balancing test to determine whether the state’s interest in structuring elections outweighed the burden the law imposed on voters’ rights (Crawford v. Marion County Election Board 2008: 210). Similarly, Justice Breyer “share[d] the general view of the lead opinion insofar as it holds that the Constitution does not automatically prohibit Indiana from enacting a photo ID requirement,” but he was disappointed by the plurality’s failure to apply a balancing test to the interests at issue (Crawford v. Marion County Election Board 2008: 238). The reasoning and language of these dissents show that the Court was split not so much over a state’s authority to require a photo ID to vote, as over the grounds on which it would uphold that requirement.

Encouraged by Crawford, other states began crafting their own photo identification programs. This trend gained significant momentum in the wake of the Republican tidal wave in the election of 2010 that gave the GOP control of more state legislatures. The new laws were generally patterned on Indiana’s. At the beginning of 2011, Indiana and Georgia were the only states requiring a government-issued photo ID card to vote; but within a year or so, the number had increased to sixteen (Hirschkorn 2012). Following the example of more than a dozen states, Pennsylvania passed its own voter
identification law in March 2012, using Indiana’s framework as its model (Ariosto 2012). This move precipitated a protracted legal battle that began in the run-up to that year’s presidential election.

The Enactment of Pennsylvania’s Voter Identification Law

The Pennsylvania Voter Identification Protection Act had its origin in House Bill 934, which was introduced on March 5, 2011, by State Representative Daryl Metcalfe (R-Butler), chairman of the House State Government Committee. Democrats vehemently opposed the bill, but it had enough Republican votes to pass. Tom Corbett, the state’s Republican governor, also supported the bill. Passing the House on June 23, 2011, the bill advanced to the Senate, where it cleared the Appropriations Committee on March 5, 2012, and the full chamber two days later by a vote of 26–23. The bill then returned to the House for a final vote on the Senate’s amendments. On March 14, 2012, after three straight days of often impassioned debate, the measure passed the House in a nearly party-line vote of 104–88, with only three Republican lawmakers joining the entire Democratic caucus in opposition (Finarelli 2012).

Within hours of the bill’s passage, Governor Corbett signed it into law, making Pennsylvania the sixteenth state in the nation to enact a photo identification requirement for voting (Miller and Mayes 2012). Pennsylvania toughened its voting rules considerably with this legislation, which did away with non-photo IDs and extended the proof of identity requirement to all voters in every election. Prior state law required identification only from people voting for the first time in a precinct and it allowed non-photo identification, such as utility bills and state or local government-issued checks (Associated Press 2012). Governor Corbett defended the tougher rules as necessary to ensure fair and accurate elections. As he signed the bill, the governor touted it as a means of protecting the “sacred principle . . . one person, one vote” (Miller and Mayes 2012). He further assured the citizenry that the bill “does not interfere with anyone’s legal right to vote,” and he pledged that the state would provide a free photo ID for voting to anyone who lacked a valid ID (Gorsegner 2012).

The Pennsylvania voter ID law was similar to the Indiana law upheld in Crawford. Acceptable forms of identification included any photo ID issued by the federal government, the Commonwealth of Pennsylvania, a municipality of the Commonwealth, an accredited Pennsylvania public or private institution of higher learning, or a Pennsylvania care facility (Pennsylvania Election Code 2012, 25 P.S. §2602(z.5)(2)). All IDs must have an expiration date that is current. As noted above, a free non-driver photo ID would be provided to voters who did not possess any of the
required IDs. Individuals with a religious objection to being photographed would be allowed to use a state-issued non-photo ID (Pennsylvania Election Code 2012, 25 P.S. §2602(z.5)(1)). A few minor differences set the two laws apart. For instance, Pennsylvania’s law allowed voters who did not present an ID card at the polls to verify their identity in person within six rather than ten days of voting (Pennsylvania Election Code 2012, 25 P.S. §3050(a.4)(5)(ii)(D)-(E)). Also at variance with the Indiana law, absentee ballot voters in Pennsylvania were not exempted from identification. They must provide either their driver’s license number or the last four digits of their Social Security number if they did not have a driver’s license (Pennsylvania Election Code 2012, 25 P.S. §2602(z.5)(3)(ii)).

It was somewhat surprising that the law did not divide the electorate as deeply as it had divided the state legislature, considering that it had been enacted in a presidential election year when partisan fervor tends to be especially intense. According to a Quinnipiac University poll conducted shortly after the law’s passage, Pennsylvania voters backed the idea of requiring an ID to vote by a 2:1 margin (Quinnipiac University Poll 2012). Conducted in June 2012, the poll found that Pennsylvania voters approved of the photo ID requirement, 66% to 32%. Republicans approved by 91% to 7% and independents approved by 64% to 35%, but Democrats were opposed by 53% to 46%. All age and income groups strongly supported the law. It is unclear, however, whether public support was strong because an estimated 99% of the state’s eligible voters already had acceptable photo IDs (Barcousky 2012), or because they shared their governor’s view that the law “sets a simple and clear standard to protect the integrity of our elections” (Hirschkorn 2012).

Some of the Democrats against the law likened it to “old-fashioned Jim Crow tactics,” and accused Republicans of trying to “steal the White House” by manufacturing barriers that limit access to the ballot box, especially in poor and minority precincts (Levy 2012). High-profile political action groups, such as the AARP, the NAACP, the Homeless Advocacy Project, and the League of Women Voters were highly critical of the law. The backlash was hardly surprising given that a coalition of 45 organizations called Protect Our Vote had vociferously opposed House Bill 934 when it came to a vote (Thompson 2012a). The American Civil Liberties Union announced it was preparing a challenge to the law, which was to take effect in the November general election rather than in the April state primary (Jerry 2012). Some citizen groups organized protests, while others conducted voter education workshops, but all advised voters to take advantage of the free photo identification cards offered by the Pennsylvania Department of Transportation (PennDOT), pending the legal challenge.
Objections to Pennsylvania’s Voter Identification Law

Opponents presented six arguments against the law, one specific to Pennsylvania and the others applicable to all voter identification laws. To start with the state-specific argument, opponents said the legislation was too costly to implement. Cost estimates for implementing the voter ID law ranged from $4 million to $11 million (Jerry 2012). The Harrisburg-based nonpartisan Pennsylvania Budget and Policy Center (PBPC) issued a statement in May 2011 estimating “the first-year costs for a voter identification program of approximately $11 million” (Ward 2011). It was feared that considerable expenditures would have to be devoted to the public awareness campaign, the poll workers’ training, and the free identification cards at a time when the Commonwealth was facing a projected budget deficit of $300 million that necessitated painful cuts in essential services (Boehm 2012). The limited availability of funds, critics argued, should have barred the introduction of yet another government program that would further strain the state budget by increasing election spending.

Although the vast majority of Pennsylvanians already had photo IDs, so the second argument went, the law could still prevent large numbers of eligible voters from participating in the democratic process. Senior citizens, first-time and students voters, and low-income and minority groups were among the populations deemed most vulnerable to disfranchisement under the law. For example, the AARP reported that as many as 570,000 of its 2.7 million Pennsylvania members did not have proper voter identification (Brown 2012). Moreover, a study by the Brennan Center for Justice at New York University School of Law found that one in four blacks and one in six Hispanics lacked a recognized photo ID, compared with one in ten of the general population (Pilkington 2012). Young people and student voters also drew concern because while most university-issued IDs have photos, they typically lack an expiration date, not to mention that out-of-state student IDs are unacceptable for voting. Of 114 colleges and universities surveyed by the NAACP, 95 issued student IDs without expiration dates (Brown 2012). The requirement that the names on the proof of residency and the ID match also had the potential of disfranchising the many women who did not change the name or update the address on their ID documents after they got married. In addition, thousands of senior citizens were at risk of losing their right to vote because they had no current driver’s license, passport, or military ID.

The third objection lodged by opponents was that while the non-driver photo ID itself may be free, the documents needed to apply for it are not (Thompson, 2012b). These documents include birth certificate, marriage license, passport, or citizenship/naturalization certificate, none of which is free of charge. Nor did the law arrange for the commute to and
from PennDOT centers or the other state offices that issue the underlying documents. These trips could be onerous on physically handicapped and wheelchair-bound voters and costly to those living on a fixed income. In addition, the state would not pay to replace people’s ID cards that might be stolen or lost through no fault of their own. This is not a farfetched or trivial concern in a country where 1,000 wallets and purses are stolen every two minutes (Ohio Department of Aging 2011). In fact, as will be discussed below, the lead plaintiff in the court challenge to the law, Viviette Applewhite, had lost her Social Security card when she was robbed of her purse. Another plaintiff, Wilola Shinholster Lee, had lost her birth certificate in a house fire, and Georgia (her birth state) was unable to locate her birth record to issue a new birth certificate (Bronner 2012).

Doubts were also raised about the law’s rationale and potential efficacy. Opponents contended that because voter fraud was hardly a problem in Pennsylvania and adequate safeguards were already in place, then the law would only serve to disfranchise citizens without furthering its stated purpose (Wojcik 2012). Under prior election law, anyone voting for the first time in a district had to appear in person at the polls on Election Day and provide proof of residency and identity. Also, every voter was required to sign the poll list before receiving a ballot, and the sign-in (or mail-in) signature had to be checked against the one in voter registration records. Opponents of the new law maintained that these requirements were effective in preventing and deterring voter fraud for many years as evidenced by the dearth of such prosecutions, which explains why proponents of voter ID laws typically point to the system’s vulnerability to fraud and abuse without proving their existence (Ansolabehere and Persily 2008). Hence, critics insisted that the law presented a “solution in search of a problem” (Gregg 2012).

The fifth argument is essentially an extension of the fourth. Because opponents saw no practical purpose in requiring a voter ID card, they attacked the law as merely a Republican political scheme designed to reduce Democratic turnout and thereby give the GOP an electoral advantage. Furthermore, they charged that Republican legislators had acted in bad faith, knowing that most of the potentially disfranchised voters belonged to the Democratic Party (Douglas 2011). Partisan wrangling aside, some studies conducted by neutral third parties, such as the Brennan Center for Justice, found that voter ID laws disproportionately disadvantage racial minorities, among other groups that tend to vote Democratic. While other studies yielded mixed results about the effect of such laws on voter turnout (see de Alth 2009), the fact remained that hundreds of thousands of voters across Pennsylvania lacked acceptable forms of identification and most of them were traditionally Democratic supporters.

Finally, voter ID laws in general have been criticized as a step backward in voting rights because they may hamper the democratic process and
impair the exercise of a fundamental right. As stated earlier, for lack of proper identification the new rules could result in denying eligible voters the opportunity to vote, or allowing them to cast only provisional ballots until their eligibility is established (Baker 2012). According to data released in July 2012 by the Pennsylvania Department of State, as many as 758,939 voters, or 9.2% of the state’s registered voters, could be disqualified from voting for not having a Pennsylvania driver’s license, the most common form of photo ID in the state (Madison 2012). It is true that IDs are an essential part of everyday life and are required for many activities, such as flying, driving, drinking, and obtaining gun permits. What makes voting different, an opponent of voter ID laws would argue, is that voting is a sacrosanct right of citizenship in a class by itself, as well as an important civic duty that should be encouraged rather than stifled (Sullivan 2012). It is already difficult enough for many people to vote. The voter ID law could further compound the difficulties facing many voters and prevent or dissuade them from exercising their voting rights.

Pennsylvania’s Voter Identification Law Litigated

Opponents of the voter ID law tried to achieve in state courts what they could not in state legislative chambers. On May 1, 2012, the ACLU, along with several other civil rights groups,6 filed suit to enjoin the Corbett administration from enforcing the law. The plaintiffs pointed to three alleged flaws that put the law at odds with the state Constitution. They argued first that the law “unduly burdens the fundamental right to vote in violation of Article I, Section 5 of the Pennsylvania Constitution”; second that it “imposes burdens on the right to vote that do not bear upon all voters equally under similar circumstances in violation of the equal protection guarantees of Article I, Sections 1 and 26 of the Pennsylvania Constitution”; and third that it “imposes an additional qualification on the right to vote in violation of Article VII, Section 1 of the Pennsylvania Constitution” (Applewhite v. Commonwealth 2012a: 4–5).

The Commonwealth Court Upholds the Voter Identification Law

The action was brought on behalf of ten Pennsylvanians struggling to obtain IDs, among them a 93-year-old Philadelphia resident, Viviette Applewhite, who had voted regularly since 1960 and was now in danger of being disfranchised by the law. With her eventful past and complicated circumstances, Applewhite appeared to be an ideal lead plaintiff for the case. She was a twice-married elderly black woman who had been adopted as a child and who had gone through several name changes (Bronner 2012). In

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addition, she had lost her Social Security card when her purse was stolen in a supermarket four years before, and she could not procure a certified copy of her birth certificate because of the “bureaucratic confusion surrounding her identity,” as one commentator tersely put it (Ungar 2012). Shortly after the lawsuit was filed, PennDOT made an exception for Viviette Applewhite and issued her an ID, even though she lacked the documentation required by law and never had a driver’s license in her life. Still, this flexibility on the part of the state did not render the case moot because of the other individual and organizational plaintiffs named in the suit.7

On August 15, 2012, Commonwealth Judge Robert Simpson issued his opinion upholding the law as a “reasonable, nondiscriminatory, non-severe burden” that is justified and outweighed by “a relevant and legitimate state interest” (Applewhite v. Commonwealth 2012a: 88). After setting out the background of the case, summarizing the key provisions of the statute (Act 18) under consideration, and delineating the standard that should apply for granting or denying the preliminary injunction motion, Judge Simpson went on to reject the facial challenge because the plaintiffs failed to meet the heavy burden of showing that every application of the statute would be unconstitutional, or “no set of circumstances exist under which the statute would be valid” (Applewhite v. Commonwealth 2012a: 22). Nor did the judge find merit in the contention that the statute would inevitably disadvantage certain voters, noting that it “applies equally to all qualified electors . . . [and] does not expressly disenfranchise or burden any qualified elector or group of electors” (Applewhite v. Commonwealth 2012a: 30). He attached no constitutional significance to House Majority Leader Mike Turzai’s brazen boast in a videotaped Republican State Committee meeting that the enactment of the voter ID law would “allow Governor Romney to win the state of Pennsylvania” (Cernetich 2012). Dismissing the “partisan motivation” argument, Judge Simpson asserted that while Turzai’s “tendentious statements” were “disturbing,” they “did not invalidate the interests supporting Act 18, for factual and legal reasons” (Applewhite v. Commonwealth 2012a: 86).

With the failure of the facial challenge, it remained for the plaintiffs to furnish the circumstances under which the statute was applied in an unconstitutional manner, but this would not be possible until after the enforcement date of November 6. Stated differently, because the statute was found facially valid, it could only be subject to an as-applied challenge, which Judge Simpson concluded was unripe because the statute was not in operation at the time. After making this determination, he proceeded to explain at length why the statute was a constitutionally permissible means of regulating elections. The bulk of the 70-page opinion analyzed and drew analogies from several recent precedents, especially the 2008 Crawford
THE RISE AND FALL OF PENNSYLVANIA’S VOTER IDENTIFICATION LAW

decision in which the “Supreme Court upheld a nearly identical Indiana voter ID law despite the absence of any evidence of in-person voter fraud occurring in that state” (Applewhite v. Commonwealth 2012a: 86).

The Pennsylvania Supreme Court Remands the Case

In denying the motion for a preliminary injunction, the trial court kept the voter ID law in effect and cleared the way for the case to proceed further. The possibility of obtaining an injunction from a higher court was not out of reach, given that Election Day was still about 11 weeks away. On August 23, 2012, the Supreme Court of Pennsylvania granted the request for expedited review and scheduled the oral arguments for September 13. As the trial date was nearing, some voting rights advocates suggested it did not bode well for the Pennsylvania law when a federal court blocked a Texas voter ID law. Proponents of the law, however, discounted such speculation because Pennsylvania legislators had avoided the constitutional pitfall that doomed the Texas law by providing for free photo IDs. They were even optimistic since the decision of the lower court could stand if the state supreme court split along predictable ideological lines.

Neither side was correct in its conjectures. On September 18, after a week of testimony and oral arguments, the highest state court issued a surprise 4–2 ruling, ordering the case sent back to the Commonwealth Court for reconsideration. Rather than determine the Act’s constitutionality, the supreme court opted to “return the matter to the Commonwealth Court to make a present assessment of the actual availability of the alternate identification cards on a developed record in light of the experience since the time the cards became available” (Applewhite v. Commonwealth 2012b: 5). By not granting a permanent injunction, the court tacitly recognized that the Act could conceivably be constitutionally applied if the state implemented adequate measures to ensure that voting rights would not be curtailed. Still, the decision gave petitioners some hope by allowing their facial constitutional challenge to proceed. Correcting the lower court, the supreme court upheld the validity of making a facial challenge because of the short-term implications of the Act. The court reasoned that “if a statute violates constitutional norms in the short term, a facial challenge may be sustainable even though the statute might validly be enforced at some time in the future” (Applewhite v. Commonwealth 2012b: 5).

Although the state supreme court did not render a conclusive judgment, its ruling was perceived as a victory for the law’s opponents insofar as it restricted the lower court’s range of review, thereby pressuring it to stay the law from taking effect. In remanding the case, the supreme court specifically instructed the lower court to “consider whether the procedures being used for deployment of the cards comport with the requirement of
liberal access which the General Assembly attached to the issuance of PennDOT identification cards” (*Applewhite v. Commonwealth* 2012b: 5). Moreover, unless the Commonwealth Court is “convinced in its predictive judgment that there will be no voter disenfranchisement . . . for purposes of the upcoming election,” it is “obliged to enter a preliminary injunction” (*Applewhite v. Commonwealth* 2012b: 5). Some legal analysts averred that these instructions would induce the lower court to reverse its prior decision.10

The two dissenters, however, were frustrated by the court’s reserved decision. They believed that the court should have granted outright an injunction to protect thousands of qualified voters from potential disenfranchisement. Justice McCaffery explained that while he had “no argument with the requirement that all Pennsylvania voters, at some reasonable point in the future, will have to present photo identification before they may cast their ballots,” he saw no reason other than politics for “implementing Act 18 prior to the November 2012 election” (*Applewhite v. Commonwealth* 2012b: 9). Accordingly, he opined that the court should have remanded the case “with the specific directive to the Commonwealth Court to immediately grant the requested preliminary injunction” (*Applewhite v. Commonwealth* 2012b: 9). The other dissenter, Justice Todd, castigated the court for “abdicat[ing] its duty to emphatically decide a legal controversy vitally important to the citizens of this Commonwealth” in the face of the “impending near-certain loss of voting rights” (*Applewhite v. Commonwealth* 2012b: 6).

The state supreme court required the lower court to file its opinion on or before October 2, 2012, that is, within two weeks. As already noted above, the outcome this time around was not necessarily a foregone conclusion. Although Judge Simpson had once held that the law was “neutral and nondiscriminatory” (*Applewhite v. Commonwealth* 2012a: 11), he now had to examine the law afresh under a different and higher standard of review. In the first trial, he saddled the plaintiffs with the burden of proving the risk of disenfranchisement, but on appeal, the supreme court directed him to probe the state’s assertion that no voters would be disenfranchised, thus reversing the onus of proof (see *Applewhite v. Commonwealth* 2012b: 5).

To comply with this directive, Judge Simpson would have to shift the focus of analysis from the legitimacy of the law’s purpose to the potential impact of its implementation on the imminent election. So while the dissent took the court to task for not going far enough in its findings, the remand order made it exceedingly difficult for the lower court to let the law go into effect.

**Voter Identification Requirements Suspended for the Presidential Election**

On October 2, the Commonwealth Court handed down its much-anticipated decision, precluding the enforcement of the key components of
the Act on the grounds that the state was not yet ready to implement it in full. More precisely, it entered a preliminary injunction enjoining the enforcement of only “those parts of Act 18 which directly result in disenfranchisement,” principally the photo ID provision (Applewhite v. Commonwealth 2012c: 9). Following the strict guidelines set forth by the state supreme court, Judge Simpson said he was “not still convinced . . . that there will be no voter disenfranchisement arising out of the Commonwealth’s implementation of a voter identification requirement for purposes of the upcoming election” (Applewhite v. Commonwealth 2012c: 6). Despite the state’s assurances, he could not but “question whether sufficient time now remains to attain the goal of liberal access” (Applewhite v. Commonwealth 2012c: 4), given the relatively small number of IDs that had so far been issued.11 With barely five weeks remaining until Election Day, he had to agree with the petitioners that “the gap between the photo IDs issued and the estimated need will not be closed” (Applewhite v. Commonwealth 2012c: 6).

It did not come as a surprise that the Corbett administration decided not to appeal the ruling, given its modest practical impact in the broader scheme of things. The law had already been upheld in August, in the first court challenge, and the October ruling did not change that. The Commonwealth was to continue with its efforts to put more photo IDs in the hands of more citizens to meet the liberal access standard. The preliminary injunction was limited in duration and scope. Though voters would not have to show a photo ID to vote, the terms of the injunction allowed the “soft-run” to go forward to familiarize voters with the new procedures and iron out unforeseen snags in preparation for full future implementation (Applewhite v. Commonwealth 2012c: 14).12

In rejecting “Petitioners’ request to enjoin all outreach and education efforts” (Applewhite v. Commonwealth 2012c: 8) and declining to “restrain election officials from asking for photo ID at the polls” (Applewhite v. Commonwealth 2012c: 9), Judge Simpson made it clear that the sole issue the injunction was narrowly drawn to address was the readiness of the state rather than the constitutionality of the Act. As such, the seemingly adverse ruling confirmed that it was only a matter of time before the Act would go into full effect. This is why Governor Corbett’s reaction was quite upbeat. In a press conference, the governor said he saw the ruling as a win for the law in the long term because the court had ultimately approved the voter ID requirement, despite the deferred implementation (Gibson 2012). Echoing the governor’s message, Ron Ruman, a spokesman for the Pennsylvania Department of State, said the agency “is pleased the judgment in effect has upheld the voter ID law for future elections” (Bumsted and Smeltz 2012).

Contrary to initial apprehensions, Election Day in Pennsylvania was largely uneventful. Complications were limited to reports of confused voters and uninformed poll workers in several districts.13 As in the April primary,
voters who did not have or want to produce a photo ID were allowed to vote, but this time they were also given information leaflets to educate them about the procedures that ought to be followed in the future. The long lines and heavy turnout reflected the intensity of the campaign. The two candidates battled over Pennsylvania’s 20 electoral votes, but the outcome favored President Obama by a margin of 52–47. Despite their electoral victory, the Democrats resumed the legal challenge to the voter ID law that was still on the docket in the hope of defeating it once and for all.\textsuperscript{14}

After consulting with the lawyers on both sides, Judge Simpson announced in late January that the trial would be held on July 15, 2013. Since the issue remained unresolved, Commonwealth and ACLU lawyers agreed to postpone the enforcement of the law again until the lawsuit had been heard in court. Approving the agreement, Judge Simpson issued an order on February 19, 2013, extending the partial preliminary injunction through the municipal and judicial primaries scheduled for May 21. As in the two prior elections, poll workers would be allowed to ask for a photo ID but voters would not be required to show it in order to cast a ballot.

In a surprise development in June, while final arrangements for the July hearing were underway, Judge Simpson quietly bowed out of the spotlight and turned the case over to Commonwealth Judge Bernard McGinley without formally stating a reason. Neither side made much of his withdrawal, partly because the trial date remained the same, and partly because an appeal to the state supreme court by the losing party seemed almost inevitable. It was now up to the new judge to block the law for November’s general elections while the case was still under review.

\textit{The Voter Identification Law Back in Commonwealth Court}

The Commonwealth Court called the case for trial in mid-July as scheduled, when it heard oral arguments and testimony from expert witnesses, state officials, and longtime voters adversely affected by the voter ID law. The testimony was as intense as the public interest in the trial. One reporter aptly described it as a “statistical duel” (Jackson 2013). Relying on a report by an expert statistician, Bernard Siskin, petitioners contended that the law was both unjustified and unduly restrictive, and unless enjoined it would bar many people from the polls, especially poor, elderly, and minority voters.\textsuperscript{15} They further argued that the law was a “political ploy” contrived in an election year to help the Romney candidacy, as candidly admitted by Rep. Turzai in his address to the Republican State Committee (Esack 2013b). Moreover, petitioners attacked the law as not only ill-considered but also ill-executed because the state had failed to provide the statutorily mandated liberal access to the free PennDOT and DOS voter ID cards, leaving hundreds of thousands of registered voters without the
needed identification. The petitioners finally asserted that a permanent injunction was warranted because there was no reason to assume the state could do any better and close this gap (Pearson and Musselman 2013). As one reporter succinctly summed up, the challengers argued that the law was “unconstitutional as written and too hard for too many to comply with” (Baer 2013).

Noting that the law had already passed muster in 2012, the state countered that it was a necessary anti-fraud measure to ensure a fair voting process and that the free voter ID cards were readily available. The state hired its own expert statistician, William Wecker, who questioned the methodology in Siskin’s report and cast doubt on its findings. In particular, Wecker attacked the theory that the relatively small number of voting-only IDs issued by PennDOT meant that numerous voters did not have valid IDs. There was, of course, no way to ascertain how many voters already had or were able to obtain other acceptable forms of identification, nor was it possible to determine how many voters had died, moved out of state, or lost their right to vote due to a criminal conviction (Jackson 2013). As a gesture of goodwill, the state offered to delay the enforcement of the law until 2015 and dedicate more time and resources to its public outreach and voter education campaign (Baer 2013). In so proceeding, it appears that the state’s legal team sought to steer the court away from even inquiring into the constitutionality of the statute and direct its attention to compliance with the statutory requirements instead.

The trial lasted more than two weeks. A ruling on the constitutionality of the law was not expected until late fall or early 2014. Meanwhile, the petitioners requested that the enforcement ban be extended to the statewide municipal and judicial elections to be held on November 5. The state was receptive to this request, provided that the injunction was renewed only one election at a time until a final decree was made in the case. A separate request that the state did not support was to block officials from questioning voters for identification (without requiring it) and distributing printed information about the law as part of the voter education and outreach program. A ruling on this interim matter was expected before the end of August.

To be sure, on August 16, the new presiding judge suspended the law for the forthcoming election. He also modified the soft rollout but stopped short of suspending it altogether, allowing poll workers to ask for the unrequired identification yet barring them from advising voters that proper identification would be required in future elections. Using particularly strong language in his memorandum opinion, Judge McGinley described this voter notification practice as “erroneous at best, deceptive at worst” (Applewhite v. Commonwealth 2013: 7–8), thus raising doubts about the law’s fate. It was the third time a judge had halted the implementation of the law ahead of an election, the other two times being the 2012 general election.
and the 2013 primaries. The petitioners hailed the court order as a victory for Pennsylvania voters and pledged to fight the law until it is permanently enjoined.

The Defeat of the Voter Identification Law

On January 17, 2014, after more than a year and a half of litigation, the Commonwealth Court struck down Section 3 of Act 18, the core provision that applies to in-person voting requirements. In granting a permanent injunction, Judge McGinley found that “not much has changed” since the state supreme court had issued its remand order in September 2012 so as to warrant a different disposition (Applewhite v. Commonwealth 2014: 12). Despite some measures taken by the state, including the introduction of the DOS ID in the summer of 2012 as an alternative equivalent to the PennDOT Voting ID, the state still fell short of “comport[ing] with the liberal access compelled by the statute” (Applewhite v. Commonwealth 2014: 6). The court quite reasonably attached significant weight to the testimony of state officials. Citing the testimony of Jonathan Marks, Commissioner of the Bureau of Commissions, Elections, and Legislation, Judge McGinley noted that the number of voters who lacked any of the specified forms of photo ID was still “ranging from hundreds of thousands to over a half million” (Applewhite v. Commonwealth 2014: 12). Further damaging testimony against the state’s readiness came from Rebecca Oyler, director of policy at Pennsylvania’s Department of State, who also estimated that the “enactment of the Voter ID Law, without an adequate safety net, would preclude 1% of qualified electors from exercising the franchise” (Applewhite v. Commonwealth 2014: 12). The solid evidence presented at trial was sufficient to support the finding that the law imposed an unreasonable burden on the right to vote.

Though unequivocal in his conclusion that the law should be permanently enjoined, Judge McGinley had no qualms about the voter ID requirement itself. He was troubled, however, by the absence of a “statutory mechanism for ensuring liberal access” to the free photo IDs (Applewhite v. Commonwealth 2014: 18). Moreover, he dismissed the equal protection claim, finding that the “Voter ID law is facially neutral” (Applewhite v. Commonwealth 2014: 47), and faulting the petitioners for “not submit[ting] any evidence that all of the individuals lacking compliant ID belong to specially protected classes” (Applewhite v. Commonwealth 2014: 48). Like Judge Simpson, he also considered Rep. Turzai’s “unfortunate comments” of no importance in determining whether the Equal Protection Clause was violated, noting that “no case in [the Supreme] Court has held that a legislative act may violate equal protection solely because of the motivations of the men who voted for it” (Applewhite v. Commonwealth 2014: n.33).
Under this reasoning, it is evident that Judge McGinley invalidated Section 3 not because the statute was defective in its premise, but because it was flawed in its implementation. Since the obstacle is execution rather than principle, the decision left the door open for salvaging the statute, if sufficient effort and resources are invested to save it. Admittedly, the opinion stated that the statute “as written suggests a legislative disconnect from reality” (Applewhite v. Commonwealth 2014: 41), but this comment was distinctly confined to the expiration date requirement, which seemed irrational because it implicitly excluded military-retiree IDs and student IDs for not having an expiration date while explicitly recognizing state-employee IDs despite lacking an expiration date. This point, while well taken, would become moot if the state ameliorated its implementation strategies to comply with the liberal access requirement.

The Corbett administration reacted guardedly. Attorney General Kathleen Kane said in a statement that she “respect[ed] Judge McGinley’s very thoughtful decision,” without indicating whether an appeal would be pursued (Frantz 2014). Post-trial motions had to be filed within ten days, but given the immense task that remained to be done to achieve voter readiness, the state’s motions were unlikely to affect the substantive outcome of the case. On January 27, the state filed a motion seeking en banc review by the full Commonwealth Court, which was denied on March 11. The motion to reconsider was also denied, on April 28, letting the ruling stand. The unsuccessful post-trial motions were the last option available before an appeal could be filed in the state supreme court.

On May 8, 2014, the Governor’s Office released a statement announcing that “[t]he Commonwealth will not pursue an appeal to the Pennsylvania Supreme Court to overturn the Commonwealth Court’s decision to enjoin Act 18’s photo identification mandate” (Office of the Governor 2014). Conceding that “changes must be made to address accessibility to photo identifications,” Governor Corbett said he would be working with the legislature in the current legislative term to identify and meet the challenges associated with what he called “a sensible and reasonable measure for the Commonwealth” (Office of the Governor 2014). He also highlighted the necessity of “passing a balanced budget and addressing ongoing legislative priorities” (Office of the Governor 2014), thus signaling his reluctance to rush into what is likely to be another losing battle absent a major shift in the status quo.

Conclusion

As the Commonwealth contemplates a new approach, speculation abounds over the future of the voter ID law. For now, at least, opponents have won a significant victory, despite the Supreme Court’s decision in
Crawford. The Commonwealth Court deemed the Crawford precedent of little if any direct relevance to the case at bar, or “inapposite to the facts and legal challenge here,” because there “the statute did not jeopardize the right to vote” (Applewhite v. Commonwealth 2014: n.25). The state’s contention that it was well prepared for the full implementation of the law was not credible in the face of the evidentiary record, which clearly demonstrated that the goal of liberal access had not been sufficiently met. Though the state has made some progress toward this goal, it has unsurprisingly fallen short of its own targets.

To illustrate, Pennsylvania has 9,300 polling places, some of which are conveniently located inside senior citizen apartment buildings. By contrast, only 71 PennDOT licensing locations are spread unevenly across the state, and they do not operate enough hours to help the state meet its statutorily prescribed obligations. Two years after the law’s enactment hundreds of thousands of people still lack compliant IDs when PennDOT offices in 22 out of the state’s 67 counties are open only one or two days a week and nine counties still have no ID-issuing centers (Lindstrom 2013). Voters could scarcely be blamed for this state of affairs. If the state has changed the law to require voters to present picture ID at the polls, the onus is on the state to help voters overcome the barriers to obtaining one.

State resources need to be used more effectively and new strategies need to be developed to accommodate voters, especially those with income and mobility limitations who do not have the wherewithal to travel to other counties or the stamina to wait in line or sit in a wheelchair for hours to get a voter ID card (Gregg 2013). The state can, for instance, set up mobile units in lower income districts and underserved areas, as proposed by the plaintiffs. Alternatively, the state can arrange for transporting voters to government offices or at least to the nearest PennDot location. It can add new DMV offices or extend the hours of operation of existing ones, as other states have done. As a supplemental measure, perhaps the limited range of state-approved forms of identification can be expanded. Converting traditional voter registration cards into photo voter ID cards is one option to consider. Whatever the strategy, the state must find ways to reach out to voters needing photo IDs, particularly in fringe populations and vulnerable communities, if the law is to be sustained upon appeal.

Notwithstanding the many challenges before the state, it should be noted again that the problem at hand is one of preparedness rather than substance. The two Commonwealth judges who blocked the law’s enforcement have agreed in principle that requiring a voter ID per se is not an unconstitutional deprivation of the right to vote so long as all eligible voters will be able to vote. The constitutional concern, as stated earlier, is not the voter ID requirement itself, but the lack of supportive mechanisms that facilitate full electoral participation. This has been and continues to be the fundamental
impediment to the law’s full implementation. The state must ensure that voters have access to the ballot rather than expect them to contend with various institutional and bureaucratic obstacles in order to gain such access. As the political scientist E. E. Schattschneider famously put it, “Democracy was made for the people, not the people for democracy” (Schattschneider 1960: 135). Unless the required liberal access is demonstrably provided, there is no reason to believe that the Pennsylvania Supreme Court will disturb the findings of the Commonwealth Court, should the state eventually decide to appeal.

Notes

2 This provision arguably creates a loophole considering that the proven cases of voter fraud in other states, such as Florida, Illinois, Indiana, Texas, and North Carolina, mainly involved absentee ballots rather than polling place impersonation (see Biesecker and Yost 2013; Liptak 2012; Slater 2013).
3 Poll workers were to perform only a test run or soft rollout in the primary election, whereby they would merely ask voters for state-approved identification without requiring it or barring them from voting should they lack such identification.
4 The Independent Fiscal Office projected a deficit of $300 million by the end of fiscal year 2012. The actual deficit for 2012 turned out to be $162.8 million due to freezes in state spending (Reuters 2012).
6 The other four organizational petitioner were the NAACP, the Pennsylvania State Conference, the League of Women Voters of Pennsylvania, and the Homeless Advocacy Project.
7 Although the court did not expressly address the issue of standing, the organizational plaintiffs were deemed to have associational standing because their members, as registered voters, had standing to challenge the law in their own right. This has been the recognized basis on which courts have granted standing to membership organizations in scores of voting rights cases across the country, including Crawford (see Crawford v. Marion County Election Board 2008: note 7).
8 In the Texas challenge, a three-judge district court panel denied the state’s request for a declaratory judgment, finding that the law “imposes strict, unforgiving burdens on the poor, and racial minorities in Texas are disproportionately likely to live in poverty” (see Texas v. Holder 2012: 144). The unanimous court noted that to meet the law’s strict requirements, voters would have to spend a minimum of $22 to obtain the required documentation.
9 The Supreme Court of Pennsylvania normally has seven members, but Justice Joan Orie Melvin was suspended pending a trial on campaign corruption charges, leaving the court evenly divided between its conservative and liberal wings (see Langley 2012).
10 For instance, John Burkoff, a law professor at the University of Pittsburgh Law School, observed that “this decision means that the voter ID law is dead meat, at least for this election.” Similarly, Bruce Ledewitz, a Duquesne University law professor, considered the supreme court’s language to be “as strong a hint as an appellate court can give” (see Bumsted and Wereschagin 2012).
According to evidence presented at the hearings, “between 9300 and 9500 PennDOT IDs for voting have been issued. Also, between 1300 and 1350 DOS IDs” (Applewhite v. Commonwealth 2012c: 5). Launched in August 2012, Department of State (DOS) photo IDs were also free of charge but available only to voters who had exhausted the options for obtaining other state-issued IDs (see Worden and Parks 2012).

Under the limited enforcement scheme, a voter without proper identification would still be allowed to cast a regular ballot, instead of being either rejected or obliged to cast a provisional ballot that would not count unless the voter provided a valid photo ID within six days.

Lehigh Valley’s Morning Call, for instance, reported some delays and complaints by voters who were “subjected to repeated requests for ID” (see Morning Call Staff 2012). Mother Jones magazine also received multiple complaints from voters who were told they needed an ID to vote in this election (see Eichelberger and Harkinsson 2012).

The possibility of averting a trial and resolving the matter by settlement was unlikely, for the legal director of the ACLU, a lead challenger in the case, had vowed, “Until it’s declared unconstitutional we’re not going to give in” (McNulty 2012).

According to the “Petitioner’s Disclosure of Expert Reports,” dated July 1, 2013, Bernard Siskin estimated that as many as 511,415 registered voters had neither a PennDOT nor a DOS ID. Available at: http://moritzlaw.osu.edu/electionlaw/litigation/documents/PetExpSistine.pdf.

In a pre-trial brief dated June 17, 2013, petitioners argued that the Pennsylvania Department of State itself estimated that “about 4%-5% of Pennsylvanians (roughly 328,000 to 410,000)” had no PennDOT identification, and yet only “16,754 free IDs for voting” had been issued as of June 7, 2013. Petitioner’s Pre-Trial Statement is available at: http://moritzlaw.osu.edu/electionlaw/litigation/documents/PETiApplewhitePreTrialBrief.pdf.

Nils Hagen-Frederiksen, the Press Secretary for the Governor’s Office of General Counsel, commented early in the trial, “Voter ID is constitutional . . . the trial is about the implementation” (see Shawn 2013). By contrast, ACLU attorney Michael Rubin thought “[t]his case is about a law that on its face, and as it is applied, can lead to one result, thousands of voters losing their right to vote” (see Esack 2013a).

In a post-hearing brief dated August 5, 2013, petitioners contended that “nothing has changed since last fall, or is likely to change in the future, that would justify lifting the preliminary injunction before the end of this case.” Petitioners’ Post-Hearing Brief is available at: http://www.aclupa.org/download_file/view_inline/1156/624.


The plaintiffs presented as evidence a video of Mina Kanter-Pripstein, a 92-year-old resident of Philadelphia, in which she said she could vote inside her apartment building but was unable to get to a licensing center to obtain an ID (see Lindstrom 2013).

References


Crawford v. Marion County Election Board. 2007. 472 F.3d 949 (7th Cir.).


The Pennsylvania General Assembly has introduced bills to reform the allocation of electoral votes in presidential elections. These reforms include changing from a winner-take-all (unit) system of allocating electoral votes to inclusion in the National Popular Vote Interstate Compact and adopting the congressional district method of allocating electoral votes. This paper argues that while there are substantial problems with the current method by which Pennsylvania (and most other states) allocate its electoral votes, the potential problems associated with reform proposals would not improve the fairness of the current system, the efficacy of citizens’ votes, nor the importance of the state of Pennsylvania in presidential elections.

Arguments for making the presidential election more democratic by reforming the Electoral College system are abundant in both the academic literature and the popular press, although empirical studies on the subject are rather dated. Short of amending the United States Constitution, the path to changing the way Americans select their president lies within the state legislatures, who are given the power to determine the way electors are chosen.

While discussions of altering the Electoral College process tend to be limited to the time periods directly before and after the presidential election (Grofman and Feld 2005: 1), “the incentives to change the institution tend to fade fast after an election, as those who won become reluctant to give up
what they now come to regard as a winning formula” (Grofman and Feld 2005: 13). The arguments to change the way Americans elect their president tend to fall into several categories, including amending the Constitution to adopt a direct election and changing the way states allocate electoral votes. Within a larger discussion of attempts to reform the Electoral College, this paper will attempt to refute the reform proposals introduced into the Pennsylvania General Assembly to change the method by which our state allocates its electoral votes.

The Framers of the Constitution, after much debate, ultimately settled upon an indirect election of the executive. Whether the reasons for this decision were due to their mistrust of the citizenry to directly elect the president or a concession made to assuage the southern states as a side deal to the three-fifths compromise (Thomas et al. 2012: 3), their design resulted in a system with which most Americans are confused and few support.

According to Article II, section 1, of the United States Constitution, “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors.” At the Constitutional Convention, the delegates proposed several methods of selecting electors: “by state legislatures, by governors, and popular election. Convention delegates, probably motivated by the desire to secure ratification, left it to the states” (Thomas et al. 2012: 3). The states not only have the power to determine how electors are selected, they have power over administering elections, including determining voter eligibility (Muller 2012: 1239).

Three basic methods of elector selection were used in the first presidential election: “state legislature, popular vote, and a hybrid of these two methods” (Adkinson and Elliott 1997: 78). Although states remain free to decide how to choose their electors, after experimenting with different processes, all states now use the popular election to determine their electors (Johnson 2012: 9-10; The Philadelphia Inquirer 2008; Haddock 2004; Adkison and Elliott 1997: 78). While the Framers of the Constitution assumed that electors would vote independently, the use of popular elections to determine the choice of electors and the winner-take-all method of allocating the electors “evolved as state political machines flexed their muscle” (USA Today 2004).

The delegates at the Constitutional Convention mandated that the candidate who achieved the most electoral votes would become president and the candidate receiving the second most electoral votes would become vice president. This system remained unchanged until a sharply divided election in 1800 between Aaron Burr and Thomas Jefferson forced Congress to make a change. On June 18, 1804, the states ratified the 12th Amendment to the Constitution, which created the separate election of the president and vice president by the Electoral College. The Electoral College has remained unchanged at its core since the ratification of the 12th Amendment.¹
Despite the stability of the Electoral College as an institution for over 200 years, criticisms of the method by which Americans select their president abound. In fact, Muller argues that the country is closer to abolishing the Electoral College “than at any time in nearly fifty years and on pace for an overhaul as early as the next presidential election” (Muller 2012: 1238). Gallup polls measuring popular support for the Electoral College have revealed that Americans would prefer the Electoral College to be abolished (Johnson 2012: 34; Sampson 2008). The rationales for reforming the Electoral College predominantly stem from an issue of fairness.

Millions of citizens are disenfranchised every time they cast their ballot for president due to the current system (Duquette and Schultz 2011: 18). There is an inherent disparity in the Electoral College that causes votes in some states to count more than votes in other states. Because representation in the Senate is vastly disproportionate and representation in the House of Representatives is unbalanced as well, the number of electoral votes awarded to each state does not reflect the differences in population among the states (Patel 2012: 7). For example, California has 53 times the population of Wyoming, but only 18 times more of the vote in the Electoral College (Patel 2012: 7). Small states, due to their constitutionally guaranteed one member of the House of Representatives and two senators, have as much as three times the vote share in the Electoral College as they would if electoral votes were distributed purely on population (Johnson 2012: 33; Dahl 2003). “Montana has a population of approximately 940,000 people and receives three electoral votes while California’s population is near forty times Montana’s and receives 55 electoral votes, or only 18 times as many votes (Sampson 2008; Levinson 2006)” (Johnson 2012: 34).

The disparities in apportionment of electoral votes in the Electoral College create a dilution of citizens’ votes in every state other than the least populated states. “The dilution of voters potentially disenfranchises Americans and it violates the democratic tenets on which this nation was founded” (Johnson 2012: 33). However, the malapportionment of electoral votes is not the only way in which votes in some states are made to count for more at the state level in presidential elections.

The Electoral College wastes millions of votes (Edwards 2004). In Reynolds v. Sims (1964), Chief Justice Earl Warren argued, “to the extent that a citizen’s right to vote is debased, he is that much less a citizen” (Edwards 2004: 53). Under the institution of the Electoral College, citizens who vote for the losing presidential candidate in their state have wasted their vote because it does not count at the national level.

Because the outcome of which presidential candidate’s party will win most states is virtually predetermined, citizens in states that are considered reliably blue or red states are ignored as if their vote for president does not matter (Johnson 2012: 18). Therefore, the issues of concern to safe states
are ignored throughout the election. “New Yorkers [who represent a very reliable blue state] are playing almost no role in picking the next leader of the free world. No inspiring rallies. No pandering to our local concerns. Precious few diner visits or door-to-door campaigning” (Hammond 2008). Typically, presidential candidates tend to ignore around 76% of the states (Richie and Levien 2013: 360) and instead focus their time, energy, and campaign dollars on the few states that are up for grabs. Table 1 shows changes in the number of competitive states in presidential elections from 1960 to 2012 and their electoral votes (Richie and Levien 2013: 363).

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Swing States</th>
<th>Total Electoral Votes in Swing States</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>23</td>
<td>319</td>
</tr>
<tr>
<td>1964</td>
<td>17</td>
<td>204</td>
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<tr>
<td>1968</td>
<td>19</td>
<td>273</td>
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<td>1972</td>
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<td>1976</td>
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<td>345</td>
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<td>1980</td>
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<td>221</td>
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<td>1984</td>
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<td>1988</td>
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<td>1996</td>
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<td>167</td>
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<td>2004</td>
<td>13</td>
<td>159</td>
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<tr>
<td>2008</td>
<td>9</td>
<td>116</td>
</tr>
<tr>
<td>2012</td>
<td>11</td>
<td>140</td>
</tr>
</tbody>
</table>

The winner-take-all method of allocating electoral votes also causes Republican votes in reliably blue states as well as Democratic votes in reliably red states to not count at all. The citizens in safe states who vote contrary to the majority of the state’s citizens have no representation of their vote at all. In the 2000 presidential election, 4.5 million Californians (45% of the electorate in the state) voted for George W. Bush (Haddock 2004); however, none of their votes were reflected by the allocation of all the states’ electoral votes for Al Gore. The three most populous states in the country, New York, California, and Texas, receive virtually no attention from presidential candidates who assume that the winner in that state is a
foregone conclusion. “So White House hopefuls of both parties spend way too much time worrying about corn farmers and anti-Castro Cuban refugees and nowhere near enough focusing on concerns such as mass transit and protecting major cities from terrorist attacks” (Hammond 2008). In Barack Obama’s first presidential campaign, he solicited millions of dollars from citizens in California that was used to woo voters in Nevada, Iowa, Colorado, Ohio, New Hampshire, Florida, Pennsylvania, Virginia, and North Carolina. Campaigns focusing only on battleground states do not address national problems; rather, the campaigns ignore issues of concern to the majority of Americans (Johnson 2012: 21-22).

Voters in Pennsylvania, Ohio, and Florida have a much larger role in deciding who will be elected president than voters in safe states. In 2004, voters in swing states determined the winner of the presidential election, and their state populations consisted of only 27% of the total nation’s population (Johnson 2012: 20). The few swing states in presidential electoral politics decide the winner of the campaign. For the swing states, this is a huge advantage. Presidential candidates not only spend more money to attract potential voters, thereby contributing to the states’ economies, but they also spend more time campaigning in these states. In the last six months of the 2008 campaign, Ohio and Pennsylvania benefitted from over 40 visits from the presidential candidates (Johnson 2012: 69).

Depending upon the closeness of the election in the state and the election year, one citizen’s vote may count up to a hundred or a thousand times more than a citizen’s vote in another state (Duquette and Schultz 2011: 5; The Philadelphia Inquirer 2008). This is due to the winner-take-all method of allocating electoral votes.

The winner-take-all allocation of states’ Electoral College votes…leads to distortions every time a presidential election is held. These distortions undermine the public’s faith in democracy. A case can be made that they may run afoul of the constitutional principle of “one-person, one-vote”. When a vote for president in one state carries 215 times the impact on the final Electoral College tally of a vote for president in another state…the principle of “one-person, one-vote” is undermined. What all this suggests is that voters in some states, because of the winner-take-all method of allocating electoral votes, have significantly more influence in an election than do those in other states (Duquette and Schultz 2011: 18).

This criticism of the Electoral College is valid. Because the weights of some citizens’ votes count more during a presidential election than the weights of other citizens’ votes, it is possible that the interests and opinions of a majority of citizens are discounted (Johnson 2012: 17-18).
Critics of the Electoral College also argue that the institution decreases political participation (Johnson 2012: 21) and “results in stagnation in state elections” (Johnson 2012: 23). There is an estimated 6% lower voter turnout in reliably red and blue states than in swing states due to the fact that citizens in “safe states” correctly perceive that their presidential vote is not important (Johnson 2012: 23).

Some proponents of reforming the Electoral College have focused on plans to change the winner-take-all allocation of electoral votes. They argue that the winner-take-all system, in which the presidential candidate who receives a plurality of a state’s popular vote is awarded all of the state’s electoral votes, leads to bias and the possibility of electing as president the loser of the popular vote (Adkinson and Elliott 1997: 79; Longley and Dana 1992: 123). Although many authors argue that the Electoral College itself is biased, undemocratic, and can lead to the election of the loser of the plurality vote (Adkinson and Elliott 1997: 79), most fail to cite the winner-take-all system as complicit in these problems. Eliminating the Electoral College would be cumbersome at best due to the need to amend the Constitution, but the Constitution does not require that states allocate their electoral votes on a winner-take-all basis.

The winner-take-all system developed in the early nineteenth century as a way for the two-party system to create incentives for a state’s dominant party…to maximize the impact of their state’s voters in determining the presidential outcome. As more states adopted a winner-take-all allocation rule, the remaining states generally followed suit out of self-defense, lest internal divisions reduce the state’s overall impact on outcomes (Grofman and Feld 2005: 13).

States essentially were compelled to adopt the winner-take-all system in order to maintain influence in presidential elections. States are not required by the U.S. Constitution to base the allocation of their electoral votes on a plurality of the state’s popular vote. In *Bush v Gore* (2000), the Supreme Court ruled that “the individual citizen has no federal constitutional right to vote for the electors for the President of the United States unless and until [his/her state] chooses a statewide election as the means” of choosing electors. Hypothetically, a state “could simply choose not to have a November general presidential election at all and select presidential electors by some means other than a general popular election” (Amar 2007). However, the Court also ruled that once a state chose the popular election as the method of allocating their electoral votes, “the right for voters to participate in that election is constitutionally ‘fundamental’ and cannot be denied or abridged except for compelling reasons” (Amar 2007).
In the twentieth century, the focus of presidential election criticism has become less about reforming the Electoral College and more about its abolition and subsequent replacement with a new method by which to elect the president. Thus far, the most popular alternative method for the Electoral College has been the direct election. This method, at its foundation, is the idea that the president be chosen by a plurality of voters from across the nation, regardless of state. Furthermore, various alternative electoral systems like runoff and ranked-choice voting have been proposed. Since the idea of the direct election gained popularity, 24 different legislatures have passed resolutions that call for their state to remove itself from the Electoral College and embrace a direct election. Although these states have made some progress toward the creation of a direct election, they remain well short of their goal because they have not achieved nearly enough support to make the necessary constitutional change for the direct election to replace the Electoral College. The process of amending the Constitution is enumerated in Article V.

The first such major reform proposal came in 1950 with the Lodge-Gossett Amendment, which called for a heavy modification of the Electoral College that would have replaced it with a proportional electoral vote. Under this plan, named for its creators, Senator Henry Cabot Lodge (R–MA) and Representative Edward Gossett (R–TX), the electors of the state would have remained in place, and rather than awarding all of the electoral votes to only the winner, the electoral votes would be allocated proportionally to the popular vote of that state. This amendment also would have required that the ticket with the most electoral votes would have to receive at least a 40% majority of all the votes. The amendment stated that if no ticket reached the necessary 40% threshold, a collaborative effort by the Senate and House would decide the winner from the two most successful tickets.

This amendment passed through the Senate of the 81st Congress but died in the House. A lingering concern that ultimately doomed this amendment was best stated by Senator Robert A. Taft (R–OH), “[t]here is no doubt that the Republican Party would fare worse under this amendment than under the present system, other things being equal. This is because the Republicans would receive a small proportion of the electoral vote in the southern states than the Democrats would receive in the northern states. We would have been somewhat worse off in every election” (Taft and Wunderlin 2006: 50). This amendment was revisited again in 1955 and received support from the Senate Judiciary Committee, but died in the Senate under the opposition of Senator John F. Kennedy (D–MA).

In 1956, Senator Hubert Humphrey (D-MN) proposed a new, unique constitutional amendment to the 84th Congress. His plan was not to eliminate the concept of electoral votes, but to drastically alter the way they were distributed. Of the 531 total electoral votes at the time, two would
be given to the candidate who won the popular vote in each state, and the remaining 435 would be distributed proportionally to the candidates in the nationwide popular vote. This proposal passed the House of Representatives but did not survive its consideration in the Senate.

Another attempt to reform the Electoral College arose following the presidential election of 1968. The third-party campaign of Governor George Wallace was successful enough to win 46 electoral votes, which fostered the concern that political parties may be willing to trade electoral votes for political concessions. In order to avoid this potential problem, Representative Emanuel Celler (D-NY) proposed a constitutional amendment to abolish the Electoral College and replace it with a true direct popular election. The only contingency that Representative Celler inserted was that the plurality winner would have to achieve at least 40% of the vote. If that percentage was not achieved by any candidate, a runoff election of the top two vote recipients would take place until the 40% minimum was achieved.

This amendment passed through the House 338–70 and received public support from President Richard Nixon. The Celler Amendment, however, ran into a massive roadblock as it was introduced into the Senate Judiciary Committee, chaired by James Eastland (D-MS) and including members like Strom Thurmond (D-SC). After a bitter round of Judiciary Committee hearings, which included threats by Thurmond to filibuster the proposal, the Celler Amendment was voted out of committee 11–6 and was sent to the floor for a vote. Opposition to the amendment, led by Sam Ervin (D-NC), Thurmond, and Eastland, claimed that the amendment would harm states’ rights, disadvantage the smaller states, undo the stability of the two-party system, and ultimately encourage splinter parties, fraud, and intrusive national voting requirements. After long and bitter debates on the floor, two calls to invoke cloture failed, and the Celler Amendment died in the Senate (Keyssar 2009).

An ally of the Celler Amendment, Senator Birch Bayh (D-IN) introduced a similar proposal to eliminate the Electoral College altogether and replace it with a direct national vote. Inspired by the close election of 1976 between Governor Jimmy Carter and President Gerald Ford, Bayh proposed his amendment in the Senate to much the same criticism that the amendment had received previously. A close vote in the Senate of 51–48 ultimately doomed the Bayh reincarnation to failure, which deterred the House from even considering the issue.

Another attempt to eliminate the Electoral College and to institute a direct election of the president was proposed in the House of Representatives in 1989. The constitutional amendment received 338 positive votes and 80 negative votes (Dahl 2003). Despite the amendment’s vast support in the lower chamber of Congress, it ultimately failed in the Senate due to a filibuster, despite the attempts of supporting senators, who rallied an
insufficient 54 cloture votes (Johnson 2012: 38; Dahl 2003). Consequently, the amendment’s demise in the Senate led to its end.

After this series of attempted amendments, there have been at least 38 different proposals to amend the Constitution concerning the Electoral College. Each one has called for the elimination of the Electoral College and its immediate replacement with a direct nationwide election. In 2009, there were three similarly worded proposals from members of Congress to abolish the Electoral College and implement the direct popular election of the president, including Senator Bill Nelson (D–FL), Representative Jesse Jackson, Jr. (D–IL) and Representative Gene Green (D–TX). In defense of his proposal, Senator Nelson stated, “It’s time for Congress to really give Americans the power of one-person, one-vote, instead of the political machinery selecting candidates and electing our president” (O’Brien 2009). The numerous attempts of Senator Nelson and others to present constitutional amendments in Congress since the Bayh proposal have failed to make it past committee. The reason these amendments to the Constitution keep dying in committee remains unknown, so little discussion is provided for them after they are introduced. One theory for the lack of consideration of these amendments is that lawmakers who represent larger states believe that eliminating the Electoral College would forfeit their state’s significance in the presidential race. Another theory asserts that a direct election would cause rural areas to become irrelevant.

The most traditional means to amend the Constitution enumerated under Article V is the passage of an amendment through two-thirds majority of both houses of Congress. If Congress were to pass an amendment, it would then be subject to ratification by three-fourths of the state legislatures. This method of proposing an amendment in one of the houses has become a reoccurring practice in the last half of the twentieth century. In the last 60 years, there have been several proposals either to drastically reform the Electoral College or eliminate it completely, replacing it with a more democratic form of election.

However, representatives of large states believe that they benefit from the winner-take-all system of allocating electoral votes, and representatives of small states believe they benefit from the two-seat bonus (Grofman and Feld 2005: 13). Members of Congress, who would be initially involved in any attempts to change our system of selecting the president, are for the most part unwilling to risk undermining the power of their state under the current system.

The advantage that small states receive in the Electoral College due to the malapportionment in the House and especially in the Senate precludes any chance of reforming the Electoral College through constitutional amendment. Because the amendment process requires a two thirds vote in both houses of Congress, only 34 senators are necessary to prevent a
proposed amendment from moving on to the states for ratification. “Using the 2000 census data, the senators representing only 7.28% of the nation’s population can block an amendment” (Johnson 2012: 38). Even if both houses of Congress could manage to muster the two thirds majority to fulfill the first stage in the amendment process, it is actually more unlikely that the second stage of the amendment process could be completed—ratification by three fourths of the states. “Again using 2000 Census data, the legislatures from the thirteen smallest states can block an amendment from passing despite the fact that their legislatures represent only a minute 3.87% of the nation’s population” (Johnson 2012: 38). Therefore, prospects of abolishing or reforming the Electoral College through constitutional amendment are virtually nonexistent. Proponents of reform have had to resort to other methods of attempting to change the way the President of the United States is selected.

However, scholars, pundits, and politicians disagree about which states would be disadvantaged by the elimination of the Electoral College. Over 70% of Americans support adopting a nationwide, popular election of the president, avoiding the dominant focus “on only a few ‘battleground’ states while the interests of the rest of the nation are ignored” (Dean 2007). Regardless of its popularity with the American public, the political ramifications for the states losing any advantage they have due to the system in place now makes eliminating the Electoral College completely doubtful at best (Hasen 2007).

Although the people are not granted the power to vote for the president under the Constitution, American citizens widely believe the president represents every person equally; therefore, it is logical to believe that every American voter should have their presidential vote count equally (Amar 2006). This is one of the rationales for the National Popular Vote Compact. Because proposing and/or ratifying a constitutional amendment faces so many obstacles at the federal level, John Koza and Barry Fadem founded National Popular Vote in 2006 (Johnson 2012: 68; Sampson 2008), “an interstate compact in which the compacting states agree to award their electoral voters to the winner of the national popular vote, effectively converting the Electoral College into a direct election for president” (Muller 2012: 1238). This reform proposal would not require amending the U.S. Constitution because states would form a compact stating that they agree to allocate all of their electoral votes to the presidential candidate with the highest number of votes nationwide (Amar 2006). The agreement, officially called “the National Popular Vote Act,” would formally go into effect once enough states comprising a majority of the Electoral College adopt the proposal. The ultimate result of this compact would allow the presidential candidate with the highest percentage of the popular vote nationally to be awarded all of the electoral votes from the compacting states.
Proponents of the interstate compact reform idea argue that when enough states enter into the compact to comprise a majority of electoral votes, the unrepresentativeness of state citizens’ votes will be eliminated (Johnson 2012: 78), presidential candidates would be forced to compete for every vote in every state equally (Haddock 2004), “the influence of small states and other sparsely populated areas” will be diminished (Patel 2012: 9), and reliably red and blue states would not be ignored. Because each citizen’s vote would count equally, “state boundaries” would “not skew the power of the voter. This allows minority voters in each of the states to aggregate their votes with one another, potentially tipping the election in the favor of their candidate” (Johnson 2012: 61).

Currently, eight states—Maryland, Hawaii, Illinois, New Jersey, Washington, Massachusetts, Vermont, New York, Rhode Island, and California—and Washington, D.C. have successfully passed the National Popular Vote Act (National Popular Vote 2014). Together, these states only account for 165 total electoral votes, which places them 105 votes short of compact implementation. The progress of this reform proposal has been steady. Since its origin in 2006, the movement has amassed 61% of the electoral votes needed to go into effect. Additionally, the bill has passed both Houses in CO; another ten states have passed the bill through one house (CT, DE, ME, MI, NC, AR, NM, NV, OK, and OR); nine more states have passed the bill through one committee (WV, KY, AL, LA, MS, MT, MN, IA, and AK); 11 states have conducted committee hearings regarding the bill (NH, PA, VA, WI, MO, KS, NE, SD, ND, UT, and AZ); and the remaining nine states have introduced the National Popular Vote Bill (OH, IN, FL, GA, SC, TN, TX, WY, and ID) (National Popular Vote 2014).

However, there are fundamental political issues that arise with this reform idea. Some argue that the proposal “would essentially require all 50 states to sign on board to become effective. If any state were to continue to adhere to the current winner-take-all approach, then other states could not reasonably be expected to adopt a self-harming proportional approach. And this kind of prisoner’s dilemma often proves an intractable obstacle to action” (Amar 2006). The prisoner’s dilemma is not, however, applicable to the National Popular Vote Act. This Electoral College reform negates the possibility of such a dilemma by allowing “as few as 11 states” with an Electoral College majority to override the existing electoral system regardless of how the remaining states act (Amar 2006). If these 11 states command a majority of the votes in the Electoral College—as California (55), Texas (38), Florida (29), New York (29), Illinois (20), Pennsylvania (20), Ohio (18), Georgia (16), Michigan (16), North Carolina (15), and New Jersey (14) would (U.S. National Archives and Records Administration 2010)—and pledge to award their votes based on the national popular vote, the electoral votes of nonparticipating states will do nothing to sway the outcome.
Another criticism of the National Popular Vote Act is that interstate compacts were intended to settle disputes among regional state actors, not as a substitute for failure to enact national policy (Johnson 2012: 67). However, Robert W. Bennett, Akhill Reed Amar, and Vikram David Amar have argued that interstate compacts could be used to bypass the need for federal legislation (Pincus 2009: 520). In fact, the Compact Clause of the Constitution (Art. I, sec. 10), on which the National Popular Vote Act is predicated, requires congressional approval if the issue under compact empowers state governments over the federal government (Patel 2012: 3; Johnson 2012: 41-42, 83)

There continue to be strong arguments on either side of the issue of whether the National Popular Vote Initiative would require congressional approval. Patel (2012) argues the Compact

is likely to affect the power of states in terms of their influence on a presidential election. This factor seems unlikely to trigger a political-power limitation, however, as it relates to the power among the states, not to the federal government’s power over any given state. As such, the Compact does not seem to “encroach upon or interfere with the just supremacy of the United States,” and thus would fall outside the scope of the political power limitation (Patel 2012: 9).

Because passing a constitutional amendment to reform the Electoral College is unfeasible, the interstate compact may be the best and most effective manner of reforming the presidential selection system in the United States. “An interstate compact cannot be blocked by forty senators like an amendment and it can provide the same change. Instead, it unites states in an agreement to exercise their previously granted powers in a different manner” (Johnson 2012: 50). Additionally, many argue that the Compact does not require congressional approval because it does not bestow any powers to states that did not exist prior to the Compact. The Constitution guarantees states the power to decide how electors are chosen and thus allocated, therefore federal power is in no way diminished by states entering into this agreement.

Yet another idea for reforming the presidential election system would be for every state to adopt the method by which Maine and Nebraska currently allocate their electoral votes—the district method. This method allows a presidential candidate to receive one electoral vote for winning a plurality of the popular vote in each congressional district in the state, with a two-vote bonus for the candidate who wins a plurality of the popular vote statewide.

The district method of allocating electoral votes certainly allows each voter’s selection of presidential candidate to count more than the winner-
take-all system, addressing “the problem of the tyranny of the majority on a statewide basis, allowing individuals in districts more power in the election process. Breaking down the election into many district-based segments allows each individual more authority in determining the results of the election” (Johnson 2012: 23-24). California proposed such a reform in the Presidential Election Reform Act, a state referendum, before the 2008 election (Thomas, et al. 2012: 2).

However, mathematicians have shown that the adoption of this plan nationwide would disadvantage the Democratic Party and favor Republican presidential candidates.

Indeed, if every state followed the Maine/Nebraska approach in 2000, Bush would have beaten Gore in the electoral college by a margin of 289 to 249, which [is] much larger than the margin by which Bush actually won. This result seems counterintuitive, give that Gore—not Bush—won the nationwide popular vote. While the move toward more equitable distribution within each state would seem analytically a step in the direction of a true nationwide popular election, the counting of results on a state-by-state basis creates numerical anomalies (Amar 2004).

Other critics of the district method argue that presidential candidates would campaign only in highly competitive congressional districts, thereby ignoring other voters and failing to solve the same problem most have with the winner-take-all system of allocating electoral votes (Thomas et al. 2012: 3). In fact, in a quantitative study, researchers found “[t]he direct popular vote and the current electoral college are both substantially fairer compared to those alternatives where states would have divided their electoral votes by congressional district” (Thomas et al. 2012: 1).

Another proposal to reform our presidential election system suggests that states should agree to allocate their electoral votes proportionally to the popular vote in the state. For example, if Candidate A received 60% of the popular vote in a state, she would then receive 60% of that state’s electoral votes. Critics of this plan argue that this plan would encourage third-party candidates to enter the presidential contest, knowing that even 5% of a state’s popular vote would result in a proportional 5% of the state’s electoral votes. This proposal could also result in no candidate winning a majority of electoral votes and throwing the presidential election into the House, allowing minor parties to demand concessions from the major parties (USA Today 2004). This idea was proposed as a direct democracy initiative in Colorado in 2004. The initiative was ultimately defeated, but critics argued that Colorado stepping out and adopting the plan before other states also agreed to do so would decrease the state’s influence in choosing the president and amount to “unwise unilateral disarmament” (Amar). Perhaps
a larger issue with this initiative is its likely demise in the judicial system. Because the U.S. Constitution permits only the state legislatures to decide how electors are appointed, a plan initiated and adopted by the voters of a state, although very democratic, would most likely be ruled unconstitutional by the United States Supreme Court.

Initiatives of such nature have not only been propagated within the federal legislature and through isolated state proposals, but Pennsylvania has also attempted to reform their method of electoral vote allocation internally through reformations of proportional representation, congressional district-based allocation, and the National Popular Vote Act. Representative Mark Cohen (D-Philadelphia) and Representative Thomas Creighton (R-Lancaster) sponsored House Bill 1270, the Pennsylvania version of the National Popular Vote Interstate Compact along with 33 other members of the Pennsylvania House of Representatives as co-sponsors (Pennsylvania General Assembly). On 12 March 2012, the Pennsylvania House Majority Policy Committee held a public hearing on Creighton’s “legislation to change the way Pennsylvania casts its Electoral College votes...by aligning them with the national popular vote” (Pennsylvania General Assembly). Since this hearing and referral to committee, no other action has been taken (National Popular Vote 2014).

The National Popular Vote Interstate Compact was introduced into Pennsylvania’s House of Representatives as the Agreement Among the States to Elect the President by National Popular Vote and referred to committee (H. 1270, 2011). As proposed by Representative Creighton, the reason for this bill would be to elect the president through an indirect reflection of the national popular vote. The Chief Election Official of each affiliated state “shall designate the presidential slate with the largest national popular vote total as the ‘national popular vote winner’” (H. 1270, 2011). A state’s allocation of electoral votes to the national popular vote winner must be announced as an official statement to the other state’s officials in the compact within 24 hours of the presidential electors casting their ballots (H. 1270, 2011).

Questions have been raised about the viability of the National Popular Vote Interstate Compact in the occurrence of a tie; however, in the event of a tie, the bill contains specific legislation that proscribes the reversion of each state to the presently functioning form of electoral vote allocation (the winner-take-all method) (H. 1270, 2011). The withdrawal from the compact requires a state to repeal the bill at least six months prior to the end of a president’s term, and the entire bill shall be deemed invalid if the Electoral College is abolished (H. 1270, 2011). In order for this bill to be implemented, the accumulation of the states within said compact must possess a majority of the electoral votes (H. 1270, 2011).

Prior to this bill, Pennsylvania attempted to reform their method of allocation multiple times. These attempts have included both a multitude of
initiatives to implement the National Popular Vote Interstate Compact and an effort to allocate Pennsylvania’s electoral votes by means of congressional districts (Pennsylvania General Assembly). The former of these efforts for reform was proposed as House Bill 1028 (05 April 2007), House Bill 841 (10 March 2009), and Senate Bill 1116 (17 June 2011) (Pennsylvania General Assembly). Representative Cohen, one of two sponsors of the most current reform proposal (House Bill 1270), coincidentally sponsored both House Bill 1028 and 841 (Pennsylvania General Assembly). Like House Bill 1270, no other bill proposed in either House has made it to the floor for a vote (Pennsylvania General Assembly).

Although these bills have lacked any genuine sense of viability, the recent movement to adopt the district method of allocating electoral votes in the Pennsylvania state legislature has received much attention from both advocates and adversaries. Then-Senate Majority Leader, Senator Dominic Pileggi (R-Delaware) “proposed that Pennsylvania’s electoral votes be allocated by congressional district” on 12 September 2011 (Pennsylvania General Assembly). For Senator Pileggi, the goal of such a reformation is to not only redefine the method through which Pennsylvania allocates its electoral votes, but also to proscribe said votes in a manner that more closely reflects the state’s popular vote (Greenblatt 2013). Similar to Senator Pileggi’s original plan, an amendment to P.L. 1333, No. 320 has been introduced by Representative Robert Godshall (H. 94, 2013). This plan would not only delegate the responsibility of allocating Pennsylvania’s electoral votes to each congressional district, but also grant an additional two electoral votes to the presidential nominee who received the greatest number of votes statewide (H. 94, 2013).

Senator Pileggi rescinded his support of this reform proposal in order to appease criticism from his constituents and peers (Greenblatt 2013). Objections to Senator Pileggi’s proposal often embodied the sentiments of corrupt gerrymandering practices (Greenblatt 2013). If this bill were to be ratified and enacted, the Executive Branch would be subjected to the same practices that have historically disenfranchised voters through means of packing and cracking.

More recently, Senator Pileggi introduced Senate Bill 538 to the Pennsylvania state legislature, which has been referred to the Senate Government Committee (Lynch 2013). Senate Bill 538 would allocate Pennsylvania’s electoral votes proportionally, rather than the current winner-take-all system (Lynch 2013). As proposed, this amendment to P.L. 1333, No. 320 would modify the current system by means of the following criteria (Skelley 2013). The nominee for the Office of President of the United States who wins the plurality of the Statewide popular vote shall be awarded two presidential electors (S. 538, 2013). The remaining electors shall be divided between presidential nominees proportionally to the statewide popular vote,
with the electoral vote total rounded up to the nearest whole number (S. 538, 2013; Skelley 2013). If the total number of electoral votes required to properly allocate them proportionally exceeds the amount available, the candidate who received the smallest percentage of the popular vote shall be denied one electoral vote; this process continues for each candidate in chronological succession (excluding the recipient of the plurality) until the required amount of electoral votes is achieved (S. 538, 2013). This bill, along with the others introduced, has failed to reach floor of either chamber. Consequently, within each committee, the bills are motionless and progress is stationary. Such proposals do not seem to be gaining much attention beyond the minimal press coverage expected from a revolutionary bill.

The presidential electoral reforms proposed in Pennsylvania and explained above may in fact improve the ways by which Americans select their president. However, Pennsylvania legislators and political activists who have the best interest of the state in mind should abandon all attempts to reform the method by which our state allocates electoral votes and realize that the current winner-take-all system benefits our state. Because Pennsylvania is considered to be a swing state3, we benefit more from the status quo.

Because the proposal in the Pennsylvania General Assembly to adopt the district method for allocating electoral votes was ultimately brief and unsuccessful regardless of the press attention received by the proposal, we begin with the argument that this reform method would disadvantage our state. Pennsylvania should reject the district method of allocating electoral votes because the state would “lose attention and clout if fewer of its electoral votes were in play” (Thomas et al. 2012: 2). Under the winner-take-all system, Pennsylvania’s electoral votes are a huge prize for presidential candidates. Changing to a district method like Maine and Nebraska would merely result in presidential candidates ignoring Pennsylvania voters and the issues of interest to Pennsylvanians. Also, “there was the possibility that the change of focus to the Congressional district level for president would similarly affect other elections down the ticket, putting once-safe state-level seats into play again” (Thomas et al. 2012: 2).

Yet again, the district method does not solve the problem of not counting citizens’ votes at the national level. If Pennsylvania under the winner-take-all system provides all of its electoral votes to the Democratic presidential candidate, the votes of Republicans in the state have not been counted at the national level. Transforming our method of allocating votes to a district plan merely reduces the same problem to a congressional district level rather than a statewide level. For example, if the Third Congressional District of Pennsylvania awarded a plurality of its votes to the Republican presidential candidate, thereby providing that candidate with one electoral vote, the Democratic voters in that district would not have the benefit of
having their votes counted at the national or state level. The same problem of uncounted votes exists, just on a smaller platform.

Perhaps the greatest danger of instituting the district method of allocating electoral votes is the potential for more serious gerrymandering problems within the state (Thomas et al. 2012: 12). Indeed, since minority districts are more likely to be packed districts (and packed tightly), the district method may be unconstitutional too because it disenfranchises minority voters and violates the Voting Rights Act.

A far more likely scenario in Pennsylvania is that we would seriously consider entering the National Popular Vote Act. This reform, like the district method, would be detrimental to the importance of Pennsylvania in presidential politics. The Compact would cause Pennsylvania as a swing state to lose its importance because

the overall national vote total will matter, and proponents of the Compact believe that this will lead politicians to more equally value votes across all fifty states. On the other hand, a national popular vote system could lead presidential candidates to focus on states or cities that are highly populated because those areas would have the most possible votes (Patel 2012: 6).

In essence, not only would Pennsylvania lose its importance as a battleground state during presidential elections, millions of rural Pennsylvanians would also be ignored so that presidential candidates could focus on the heavily populated areas of the state and the country. It is, however, worth noting that the current electoral system is often seen as neglectful of rural voters and states. Under the National Popular Vote Act, the importance shifts from winning states to winning individual votes. So while rural voters and rural states might be ignored in the current state-centered electoral model because of their sparse numbers and limited effect on state-by-state outcomes, the National Popular Vote Act would actually benefit these rural voters and states by allowing their aggregate national power to be felt.

The next criticism of the Compact reform for Pennsylvania is that the Guarantee Clause of the Constitution provides that “[t]he United States shall guarantee to every State in this Union a Republican Form of Government.” Kristen Feeley

argues that the Guarantee Clause prohibits the Compact because the Compact undermines process federalism in presidential elections. Ms. Feeley reasons that, by mandating that member states allot their electoral votes for the national popular vote winner, the Compact not only silences the voice of the nonmember states, but also prohibits member states from making their own decisions (Patel 2012: 8).
This silencing of nonmember states is a serious concern. There is potential under the National Popular Vote Act for only 11 states to fundamentally restructure the selection process of the President of the United States regardless of the desires of the citizens in the other 39 states (Johnson 2012: 67; Ross 2004). It is worth noting, however, that the interests of voters in nonmember states would not be ignored. Under the National Popular Vote Act, these voters in nonmember states would still be courted for their votes. The Constitution empowers states to determine the time and method of elections; the Compact would necessitate the federal government enacting election laws to ensure uniformity throughout the compacting states. This would include “the manner in which elections are orchestrated, ballots are counted, and recounts are instituted” (Johnson 2012: 78). A problem such as the recount during the 2000 presidential election in Florida, under the National Popular Vote Act, would require a recount of every vote in the country.

The implementation of the interstate compact reform would also require the federal government to enact legislation dealing with voter eligibility. This reform is proposed due to the improbability of passing a constitutional amendment; therefore, the states would continue to have the power to decide which of their people are eligible to vote. If the winner of the presidency were predicated on the winner of the national popular vote, states could attempt to increase their influence in the election by broadening their definition of who is eligible to vote—“including definitions based on age, felon status, alien status, and mental incapacity” (Muller 2012: 1241). If states attempted to “cheat the system” by changing their voter eligibility laws, then a uniform federal law would be necessary to determine who is permitted to vote.

However, creating a federal standard to determine voter eligibility would present its own problems by disenfranchising voters in certain states. If, for example, the federal government decided to disenfranchise a set of ex-felons, it would need to define felony by referring to the different crimes in the fifty states, and it would disenfranchise individuals in one jurisdiction for conduct that would not disenfranchise them in another. A federal standard would almost certainly disenfranchise individuals currently given the right to vote, as the varying eligibility standards would find a political compromise in the center, enfranchising voters in some states while disenfranchising them in others (Muller 2012: 1242).

Therefore, it is clear that enacting the National Popular Vote Act would create serious problems in terms of voter eligibility, constitutional powers, and our federal system of government.

The final reason why neither Pennsylvania nor any state should entertain adoption of the National Popular Vote Act is that the reform ultimately
subverts the United States Constitution. Changing the Electoral College through an interstate compact rather than through the formal amendment process of the Constitution undermines our entire system of government. The Founders created a difficult but not impossible method for amending the Constitution: a proposal by two-thirds of both houses of Congress and ratification in three-fourths of the states. States adopting this reform are attempting to change through an interstate compact what they are unable to change through the supermajority required of a constitutional amendment. Certainly, this was not what the Framers intended when including the Compact Clause in the Constitution.

There are inherent issues with the wholesale elimination of the Electoral College. Opponents of reform argue that Americans would essentially be “trading an institution whose pluses and minuses we know for one whose evils are yet to be determined” (Grofman and Feld 2005: 12). It would be difficult to determine exactly what issues would arise from reform. We could be replacing the Electoral College with a system even more difficult to understand, predict, or deem as fair.

Despite many attempts and plans to reform the way America chooses its president, none of the proposals has been adopted thus far. The fact remains, however, that most Americans feel that the current Electoral College system presents problems of unfairness and inequality. Critics continue to argue that the Electoral College violates the constitutional principle of “one-person, one-vote” instilled by the Supreme Court’s interpretation of the 14th Amendment’s Equal Protection Clause (Muller 2012: 1241). This objection, however, cannot be sustained due to the fact that the United States Constitution does not provide American citizens with the right to vote for president. Rather, the Constitution empowers state legislatures to determine how electors are chosen.

The inherent problems with the current method by which most states allocate their electoral votes are undeniable. However, the winner-take-all method confines any necessary recounts to one state or one county within a state and creates clear winners and losers by exaggerating the margin of victory. The Electoral College “promotes stability in the election of the President by providing a clear and official winner for America. The Electoral College increases the spread in the election results signaling a clear winner” (Johnson 2012: 30).

The benefits of the current winner-take-all system of allocating votes in the Electoral College for the country and especially for Pennsylvania far outweigh the potential benefits and virtually certain disadvantages of adopting Electoral College reform through proportional methods, district methods, or an interstate compact. In order for Pennsylvania to maintain its importance in presidential electoral politics as well as its support for and endorsement of our federal system of government and the Constitution,
Pennsylvania citizens, activists, and legislators are encouraged to think about the ramifications of reform when the current system, while not perfect, is clearly most advantageous.

Notes

1 The constitutional language governing the Electoral College has not changed since the 12th Amendment was ratified in 1804. However, states continued to experiment with different methods of awarding electoral votes, with the winner-take-all system achieving universal use by the 1830s (Richie and Levien 2013:). Maine and Nebraska switched to the Congressional District Method in 1972 and 1996, respectively (The Center for Voting and Democracy 2009).

2 Nebraska and Maine are the only states that allocate their electoral votes by congressional district, rewarding the two “bonus” electoral votes to the overall winner of the state.

3 Pennsylvania has been considered a battleground, swing, or “purple” state for many years. Although the state was considered a weak Democratic state in the 2012 presidential election, we maintain that our Republican controlled state legislature as well as the slight margin of victory for presidential candidates in Pennsylvania through several election cycles ensures our continuation as a swing state.

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Comments from the Book Review Editor

This issue of COMMONWEALTH presents five book reviews, all concerning aspects of Pennsylvania government and politics. Two reviews deal with the state’s largest cities: Philadelphia and Pittsburgh. From the Outside In: Suburban Elites, Third-Sector Organizations, and the Reshaping of Philadelphia, by Carolyn T. Adams, examines how Philadelphia managed to reverse its economic and social decline by engaging “third sector actors.” In Devastation and Renewal: An Environmental History of Pittsburgh and Its Region, the editor, Joel A. Tarr, gathered essays that review how Pittsburgh’s growth affected the city’s and the region’s environmental quality and the steps that were taken to reverse the terrible consequences of decades of air and water pollution from the coal, steel, and manufacturing industries.

Three reviews concern the state’s politics and its tendency toward corruption. In Keystone Corruption: A Pennsylvania Insider’s View of a State Gone Wrong, Brad Bumsted reflects on his many years reporting from Harrisburg, where he observed too many of the state’s elected officials failing to serve their constituents honorably. On the Front Lines of Pennsylvania Politics: Twenty-Five Years of Keystone Reporting, another journalist, John M. Baer, covers much the same territory but from a somewhat more sympathetic perspective. William Ecenbarger’s Kids for Cash: Two Judges, Thousands of Children, and a $2.6 Million Kickback Scheme chronicles in great detail one of the state’s most tragic scandals. And finally, Harold Gullan’s Toomey’s Triumph: Inside a Key Senate Campaign offers a thorough account of the 2010 Senate race between Toomey and Sestak.

Anyone who has lived in or studied Philadelphia long enough to see it transition from a large, severely struggling, shrinking, East Coast city to a growing, shiny, and lively cosmopolitan metropolis worthy of emulation today has to wonder: “How did they do it?” In her book From the Outside In: Suburban Elites, Third-Sector Organizations, and the Reshaping of Philadelphia, Carolyn T. Adams answers that exact question. She also explains that anyone studying Philadelphia’s revival should be careful about defining who they are when asking about those responsible for the city’s resurgence. Recent scholars and advocates for regional thinking have been shifting their sights away from metropolitan government and toward governance by coalitions, alliances, networks, nonprofits, public-private partnerships, subgovernments, districts, and special purpose authorities. This is the Third Sector of the title, outside the private and the public sectors, but still acting as change agents for the public at large. Adams refers to this process as a “stealth regionalism…increasingly incorporating outside interests into the process of restructuring the city” (p. 2).

According to Third Sector actors, Philadelphia government is inefficient, corrupt, and slow; remove its influence and the trappings of machine politics, and the region can thrive. Politicians need to distribute as many benefits as possible to their immediate constituents, and as such, they operate on a narrow time horizon with a short-term goal of surviving through the next election. Of course, Philadelphia isn’t the only city to suffer from the by-products of nineteenth- and twentieth-century party politics. Third Sector organizations experience no such shortcomings, which has led to a trade-off of comprehensive planning at the local level for other benefits better accomplished by outside forces. Two policy domains that are traditionally under local control have drawn a lot of outside interest: land use and public education.

Undeniably, Philadelphia is important to the health of the region, and so it is no special curiosity that organizations and interests with access have seized the opportunity to influence its economic life. Yet, where does this leave city government and the preferences of the citizens who reside there? Do projects and revitalization that benefit the region as a whole improve the lives of everyday Philadelphians? In the case of immediate investment, yes; but as to when and where this investment takes place, not so much.

In the first chapter, Adams explores the circumstances surrounding transportation in the region. The Vine Street Expressway eased the flow of traffic through the city, but removed sections of the surrounding neighborhoods against the desires of their residents, and served to wall off the northern boundary of the central city. The Southeastern Pennsylvania
Transportation Authority (SEPTA) directed investment to public transit within city boundaries, but at the expense of the city’s representation on the (disproportionately suburban) board that controls funding allocations. In a chapter dedicated to the educational landscape, she explains how suburban investment in the growth of charter schools (and to some extent, parochial schools) has removed financing from and sometimes the existence of the traditional neighborhood school itself, especially in predominantly poor and minority areas. In its place, these outside forces combine to dictate land use as well as education policy, with charter schools disconnected geographically from the communities of their students. In other chapters, Adams also explores large economic growth projects such as the Center City District, the Convention Center Authority, and community development nonprofits. Ultimately, the role of Third Sector organizations in combination with the city government must strike a balance between regionalism and the ability of citizens to direct their futures. The reader is left to decide whether growth and economic investment are beneficial, and for whom.

Adams’ book is vital reading for anyone interested in the economic development of cities, the potential for regional cooperation, and the role of politics in the process of both. Scholars and practitioners in politics, planning, education, nonprofits, and urban development will find this case study highly instructive and illuminating.

Michelle J. Atherton, Associate Director of the Temple University Institute for Public Affairs


All cities as they grow and evolve will directly modify the surrounding landscape and impact their local and regional environments. Very few cities have had such a dramatic impact on their local landscape and influenced the environment to the extent that Pittsburgh has during its over two centuries of growth and evolution. Devastation and Renewal: An Environmental History of Pittsburgh and its Region, edited by Joel A. Tarr, contains ten chapters that discuss how the landscape and location of Pittsburgh (situated at the confluence of the Allegheny and Monongahela Rivers, and mouth of the Ohio River) affected its development into a city that was a central link for trade between the coastal Atlantic cities and the western frontier during the 1800s. The city became an industrial powerhouse with its regional deposits of coal, oil, iron, and sand. But with the growth of trade and industry came destruction to the environment. While pollution was used as a measure of strength for an industrial city during the Industrial Era, pollution also impacted the health and welfare of people living in the city and its local and regional environment. The financial costs to
provide city residents with clean air and water and to reclaim and protect the environment from further pollution are considered in many chapters.

The book focuses on air and water pollution with discussion on how industrial, political and social decisions, land use, and waste impact air and water pollution. Specific chapters for water pollution include the historical development of the water treatment and distribution system that delivered clean water to city residents in the early 1900s and the decision to design a combined (storm water and domestic sewage) sewer collection system to treat wastewater in the mid-1900s. Another chapter provides a historical analysis of the environmental damage caused by acid mine drainage and how this drainage was ultimately regulated, not because of environmental harm or to protect citizens, but because another powerful industry was impacted, namely, the railroads, as the mine drainage polluted the railroads’ specifically designated water reservoirs.

Chapters on air pollution include environmental degradation to the surrounding area and decreased health of city residents due to industrial smoke. They describe how the city reduced smoke emissions mainly by creating smoke control ordinances from the early to mid-1900s to reduce industrial and residential pollution from burning natural gas as well as coal. By the late 1900s, the city recognized that it needed to improve the appearance of buildings by cleaning the smoke residues if it were to attract new businesses. One chapter provides an analysis of the 1948 Donora air pollution disaster when emissions from a zinc smelter were atmospherically trapped for several days, leaving hundreds of people suffering from breathing-related illnesses and causing twenty deaths. This disaster led to health-based regulations to control air emissions at the federal level.

Another chapter offers a historical description of the transformation of the Nine Mile Run Valley. It was one of the last undisturbed areas in Pittsburgh with access to the Monongahela River and a vision of becoming a park, but it was ultimately used as a dumping ground for slag wastes produced by iron and steel manufactures. In the late 1900s, the Nile Mile Run slag piles were converted to residential areas and parks, but the valley is permanently transformed and scarred by the remaining slag.

The final chapter is an essay by Samuel P. Hays, an environmental historian and long-time resident of Pittsburgh, on how city leaders overstate their environmental accomplishments, back legislation with limited power to regulate environmental issues, and have no holistic environmental vision for the city and region. To date, compromises have been made that balance economic, political, social, and environmental needs, which often produce less than ideal results.

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Pennsylvania has a unique and impressive political history that includes such monumental events as the creation and signing of both the Declaration of Independence and the Constitution. While the Commonwealth will always be associated with these landmark political documents, Pennsylvania also has a legendary history in another realm of the political world—corruption. From the political machines that dominated both Philadelphia and Pittsburgh throughout much of the twentieth century, to scandals that rocked the state government in Harrisburg during the 1970s, the Keystone State has a long and inglorious history of governmental malfeasance. Unfortunately for Pennsylvania’s residents, corruption is not an artifact of a bygone era, but remains alive and well in the 15 years since the turn of the twenty-first century. Journalist Brad Bumsted deftly describes the sordid political events that have recently occurred in his book *Keystone Corruption: A Pennsylvania Insider’s View of A State Gone Wrong.* Bumsted, a veteran Capitol reporter for the *Pittsburgh Tribune Review,* thoroughly unpacks the wave of political scandals that rocked the state between 2007 and 2015. Throughout this well researched and referenced book, Bumsted provides both a comprehensive description of the array of corruption that evolved during the turbulent five years that are examined as well as valuable insight about the underlying institutional and cultural factors that provided fertile ground for the growth of such abuses.

In *Keystone Corruption* Bumsted effectively uses his early chapters as a prelude to the more contemporary scandals that are his ultimate focus. He seamlessly reviews over a century of political corruption, highlighting some of the most egregious cases and ethically challenged characters of the twentieth century. While fans of political history may want even more detail about the events and players in these many scandals, Bumsted moves the reader quickly to his primary focus: the rash of serious corruption cases beginning around 2007. His best work comes when he is dealing with some of the most colorful characters of the era including Vince Fumo, Bill DeWeese, John Perzel and the imminently entertaining Orie family. At times the characters are so over the top that you have to remind yourself that the accounts are not fictional. Bumsted relies on both his own insider’s experience and solid research to explain how personal ambition and hubris, along with poorly designed institutions and a troubled political culture, can produce the intensity and scope of corruption that took place in the Commonwealth during this period.

Bumsted’s concluding chapter calls on some of the state’s major political figures and good government advocates to offer prescriptions for decreasing
political corruption in the Commonwealth, and they deliver well-reasoned and largely attainable ways that Pennsylvania can begin to limit the abuses that have become a hallmark of its political culture. However, as one finishes *Keystone Corruption*, it’s hard not to think that the scandals chronicled in this impressive work may now serve as a prelude to yet another period of corruption and scandal that has transpired since the book was published. From statewide elected officials such as Rob McCord and Kathleen Kane, to city governments in Reading and Allentown, corruption appears to be alive and well in the birthplace of American democracy. While this may be good news in terms of material for Bumsted’s next book, the latest round of scandal certainly tears at the fabric of Pennsylvania’s already tattered political environment.

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Nothing and no one are beyond John M. Baer’s critique. A journalist for more than 40 years, Baer has written on disasters, terrorist acts, scandals, politicians, and sports figures. However, it is Pennsylvania politics where he excels, fitting for a man born in the state’s capital. His book, *On the Front Lines of Pennsylvania Politics: Twenty-Five Years of Keystone Reporting*, is one part autobiography, one part history lesson and all parts storytelling on Pennsylvania’s most prominent politicians. “Covering politics in Pennsylvania is like going to the circus every day,” (p. 13) and Baer introduces readers to the state’s political ringmasters, jugglers, and clowns.

Baer divides the book into seven chapters, beginning with his love for Pennsylvania and its politics and concluding with a reflection on Pennsylvania’s political landscape. In “The Keystone State I Know and Love,” he reviews the state’s “history and politics” (p. 15) and foreshadows the political foibles, tragedies, success stories, and corruption found in coming chapters. Baer also introduces readers to the dark cloud seemingly fixated over Pennsylvania that prevents its politicians from succeeding nationally. He recognizes the state’s idiosyncrasies, as well as a “custom of corruption,” and a “custom of being non-progressive, anti-reform and holding one of the nation’s worst records in terms of women in elective office” (p. 21).

“How Pennsylvania (and I) Got from Thornburgh to Casey” provides a whirlwind trip from the 1978 election of Richard L. “Dick” Thornburgh in the Republican gubernatorial primary through the 1986 gubernatorial race between Republican Bill Scranton and Democrat Bob Casey. In
particular, Baer highlights three items that helped elect Casey: eleventh hour advertising, broken promises, and a national media spectacle focused on Scranton’s admission of recreational drug use and his refusal to name the drug(s). Casey’s election leads to Baer’s heftiest chapter: “The Casey Years (and Lots of Political Doings).”

As a seasoned political reporter, Baer knows the players in Pennsylvania’s political game. “The Casey Years,” as well as “The Ridge Years,” read like a Who’s Who of modern Pennsylvania politics: H. John Heinz, Harris Wofford, Frank Rizzo, Mark Cohen, Arlen Specter, Lynn Yeakel, Mark Singel, Tom Ridge, Rick Santorum, Ernie Preate Jr…the list and accompanying stories seem almost endless. Were it not for Baer’s concise, narrative writing, a reader easily could become lost.

“Ridge to Washington; Rendell to Harrisburg” begins on September 11, 2001. With Tom Ridge comfortably into his second term as governor, change was imminent. Less than two weeks after the terrorist attacks in New York City, Washington D.C., and Shanksville, Pa., President George W. Bush tabbed Ridge as the nation’s “anti-terrorism czar,” a “no-win job” but a “very big deal” nevertheless (p. 94). Ridge accomplished what few Pennsylvania politicians could achieve in all of U.S. history: ascend to global visibility. Ridge’s transition from Harrisburg to Washington was not without controversy. His security plans were vague; his family lived in the governor’s mansion—at the expense of taxpayers—after he was no longer governor; and the color-coded Homeland Security Advisory System “was instant fodder for comics” (p. 100). Lieutenant Governor Mark Schweiker assumed responsibility for running the state, but not for long. Democrat Ed Rendell defeated Republican Mike Fisher to become the state’s next governor.

In the book’s final chapters, “The Rendell Years (and Other Fun Stuff)” and “Ed Departs, Corbett Arrives and 2010 Brings a Surprise,” readers again are privy to Baer’s wit and political acumen. Baer recalls Rendell’s notoriety as “an epic eater” (p. 116), but the commentary is not a personal attack. The governor had racked up nearly $76,000 in food bills during his first 11 months in office. Baer also addresses Rendell’s penchant for high speeds—some topping 100 mph—on the Pennsylvania turnpike, and several scandals and controversies that surfaced late in his tenure. Baer concludes with a brief introduction to Rendell’s successor, Republican Tom Corbett, whom Baer describes as “the anti-Ed (Rendell)” (p. 148).

On the Front Lines is neither a book simply on Pennsylvania politics, nor is it the musings of a veteran political journalist. Rather, Baer takes the best of both to create a witty, yet poignant retrospective of 25 years of Pennsylvania politics. Those familiar with the state will recognize the names and personalities and appreciate more fully, the sometimes-only-alluded-to backstories of politicians and events. Yet even the unacquainted
can enjoy a glimpse into the circus and appreciate “the agony and ecstasy of covering Pennsylvania politics” (p. 7).

Kalen M.A. Churcher, Assistant Professor, Department of Communication Studies, Wilkes University


In the fall of 2009, veteran journalist William Ecenbarger was asked to fill in for an ill Philadelphia Inquirer reporter at the first hearing of the Interbranch Commission on Juvenile Justice. The commission was created to investigate the “kids for cash” bribery and extortion scheme in Luzerne County, Pennsylvania, in which thousands of kids were sent to a private detention facility in exchange for millions of dollars paid to two county judges.

Ecenbarger stayed with the story for the ensuing two and half years, resulting in this riveting American tragedy, part true crime and part essential public policy debate. Faithful to his journalistic principles, Ecenbarger provides the facts and lets readers develop an appropriate sense of horror on their own. And that does not take long.

The story starts with simple tales of everyday kids who made kid mistakes and who had to appear before Juvenile Court Judge Mark Ciavarella. Hiding behind a self-proclaimed “zero tolerance” policy, Ciavarella denied them due process, including the right to counsel, and ordered them to be shackled on the spot and hauled away to a for-profit detention facility. For that, he and his president judge were richly compensated.

How could this happen? Ecenbarger places some of the blame on the confluence of a corrupt political culture and a well-intentioned juvenile justice system that favors secrecy. Ecenbarger tracks the history of Luzerne County, home to hardworking immigrants with an old-country respect for politics and government. Public corruption and organized crime formed an early and comfortable relationship here, but regular folks chose to focus on the good and ignore the bad. It is a community where a politician can stumble, but still get a good word for a long ago kindness.

Ecenbarger also shows how the American juvenile justice policy has resulted in a more tolerant system for kids. Even the lexicon in juvenile court sounds not so bad. There are delinquents instead of criminals, hearings instead of trials, adjudications instead of convictions, and placement instead of imprisonment. And since juvenile court proceedings are not public, for the protection of the juvenile, hard facts rarely emerge.

The public policy discussion here is punctuated with additional examples of the evil in Ciavarella’s courtroom. These vignettes are reminders that this
is first a story about kids. And, ever the solid journalist, Ecenbarger follows through to the ongoing tragedy, the residual trauma suffered by kids and their families.

The development of the conspiracy is detailed at a deliberate pace, showing how even the most repugnant crimes often have a mundane beginning. But as the pace quickens, the end comes swiftly for the conspirators, with authorities, the press, and the judges’ cohorts and victims coming at them from every direction.

Ciavarella’s jury trial is described in detail, showing how a fair trial can be granted to someone who systematically denied others the same. When Ciavarella finally takes the stand, Ecenbarger wisely switches to the trial transcripts, letting Ciavarella’s own words sink him.

After his conviction, Ciavarella refused to accept responsibility, but he understood his standing in the community, as the leader of “cash for kids.” Lashing out at the prosecutor, he said, “Those three words made me the personification of evil. They made me the anti-Christ and the devil.”

This book strikes a compelling balance between true crime and public policy, and Ecenbarger ends where he started, at the Interbranch Juvenile Justice Commission, and its proposed reforms. And he closes with a discussion of public attitudes regarding juvenile crime, which Ecenbarger likens to a pendulum swinging between “the goals of child welfare and community safety.”

As for all those kids whose lives were easily traded for cash by an avaricious judge, Ecenbarger does not limit his criticism of criminal justice policy to Luzerne County or Pennsylvania, but he does blame “the pervasive belief that more people need to be locked up.” As he says, “Retribution trumps rehabilitation every election day. Thus it is that America, with only 5% of the world’s population, is home to 25% of its prisoners.”

Joseph Sabino Mistick, Professor, Duquesne University School of Law


The 2010 Pennsylvania U.S. Senate race was a bittersweet moment in my life and career. Arlen Specter, the man who had long been my personal political hero, faced his Waterloo in the Democratic primary after nearly forty years in public service. I grew up in a house where my father—a yellow dog, McGovern Democrat—religiously crossed party lines every six years to return Specter to the Senate. As a junior at Thiel College in 2001, I interned for Specter on Capitol Hill, doing policy research on education and small business issues, answering constituent mail, and taking notes at hearings.

I penned a guest op/ed for the Philadelphia Daily News in the closing days of Specter’s Senate service about his illustrious and occasionally
controversial career. I wrote that “perhaps the most essential element of the Specter legacy is that he provided equal treatment for every Pennsylvania citizen, showed equal concern for each of the state’s 67 counties and considered the importance of every citizen’s views regardless of his political party identification.”1 Like many Pennsylvania political observers, I anticipated a Specter versus Toomey rematch from the 2004 Republican primary, which was one of the most dynamic political contests in Pennsylvania history. However, an historic electoral earthquake shook Pennsylvania on May 18, 2010, as the hard-charging Congressman, Joe Sestak, defeated Specter in the Democratic primary by approximately 8%.

The 2010 general election was set. In one corner was Sestak, who, in his initial congressional run in 2006 and during the campaign against Specter, demonstrated an indefatigable fighting spirit and an uncanny ability to appear to be in multiple places at once, crisscrossing Pennsylvania as if it were the size of Rhode Island. In the opposite corner was Toomey, a former member of Congress and Club for Growth CEO. No matter the occasion, Toomey always seemed to cautiously choose each word uttered during a speech as he carefully explained positions on major policy questions. Toomey is and was the quintessential conservative in both the pursuit of policy as well as temperament and personality, a cross between Cal Coolidge and Bill Buckley. John Baer, the dean of the Capitol press corps in Harrisburg, once observed that “Toomey is controlled, concise and sounds sensible. Contrast that with the angry-older-GOP of Mitch McConnell, John McCain and John Boehner.”2

Enter Dr. Harold I. Gullan, author of Toomey’s Triumph: Inside a Key Senate Campaign, a thorough and thoughtful appraisal of the Toomey-Sestak race from the vantage point of a historian and political observer with unique behind-the-scenes access to one of the campaigns. Gullan has an abundance of experience in analyzing and writing about historically significant political campaigns as he did in The Upset that Wasn’t: Harry S. Truman and the Critical Election of 1948.

In Toomey’s Triumph, Gullan dedicated many hours observing and interviewing the core of Toomey’s campaign team. This book isn’t so much an assessment of Pat Toomey and Joe Sestak as candidates as it is a careful documentation of Gullan’s encounters with the individuals charged with steering the ship for Team Toomey. His analysis of the central nervous system of the campaign itself takes readers far behind the scenes to understand why the Toomey campaign employed certain strategies and messages and why such devices were developed and deployed.

Among the many attributes that made Gullan’s The Upset that Wasn’t such an important contribution to presidential campaign history was the author’s attentiveness to the political strategies employed by each
candidate, the personal lives and political careers of the contenders, and his understanding of how often the most powerful explanatory technique for assessing campaigns requires peeling back the proverbial political onion to examine the behind-the-scenes calculations of the candidates and operatives. Readers of Toomey’s Triumph will be glad to know that Gullan brings the same focus in this book.

Gullan astutely noted that the 2010 U.S. Senate race presented Pennsylvania voters with a unique opportunity to choose between two candidates embodying a genuine devotion to policy goals and ideological commitments that went much deeper than basic partisan divisions. Neither Sestak nor Toomey attempted to sidestep their respectively liberal or conservative records, and both men presented themselves in starkly different terms as individuals and as policymakers. Gullan paints remarkable pictures of Toomey and Sestak who gave Pennsylvanians a crystal clear choice between candidates with divergent platforms lacking significant overlap. The critical lessons learned through Gullan’s behind-the-scenes access to Toomey’s organization is what makes Toomey’s Triumph so valuable for those interested in electoral politics, or as a supplemental text for a course in campaign and elections or Pennsylvania history and politics.

Perhaps the greatest weakness to Toomey’s Triumph is that Gullan did not devote enough time covering Joe Sestak. Despite the fact that 2010 was a banner year for Republicans around the country and Pennsylvania, Toomey defeated Sestak by a mere 80,229 votes out of 3,977,661 cast (or just 1.02%). Meanwhile, Dan Onorato, the Democratic gubernatorial candidate lost to Republican Tom Corbett by 357,975 votes (or 8.98%). At the end of the day, three main stories emerged from the 2010 senatorial race in Pennsylvania. The first was the close of the Specter era, second was Toomey’s victory, and third was Sestak’s narrow defeat in a year when Republicans rode an electoral wave across the nation. Gullan did well in covering the importance of the first two items, but perhaps shortchanged the final component of the story. Gullan’s readers are left with a fairly clear understanding of how and why the Toomey campaign’s strategy was determined and implemented. Given the nature of this race, readers would certainly benefit from a deeper analysis of how and why Sestak and his campaign came so close to realizing victory in a year that was historically detrimental for Democrats. Similarly, James Michener’s Report of the County Chairman presented an account of the Kennedy campaign in 1960 in Bucks County that did not necessarily shine a light on the inner workings of both the Kennedy and Nixon campaigns, yet remains a crucial course for those seeking to understand Pennsylvania politics at the regional and grassroots levels. The absence of a detailed analysis of the strategy development and implementation by the Sestak campaign should not deter
potential readers from assessing—and enjoying—Gullan’s work, especially since Pennsylvanians may get to experience a Toomey-Sestak rematch in November 2016.

Nathan R. Shrader, Assistant Professor, Department of Political Science, Millsaps College

Notes

THE PENNSYLVANIA POLITICAL SCIENCE ASSOCIATION

Founded in 1939, the Pennsylvania Political Science Association (PPSA) is the nation’s oldest state political science association. Its mission has always been to promote scholarship, research, and the exchange of ideas within the Pennsylvania community of political scientists. PPSA draws its membership principally from the political science and public administration faculties of Pennsylvania’s public and private colleges and universities but also includes government professionals and faculty members from surrounding states.

PPSA’s annual conference includes dozens of panelists covering a wide variety of subject areas. While university faculty compose the vast majority of participants, legislators, legislative staff, executive officials, and undergraduates also have been participants. The PPSA began publishing COMMONWEALTH: A Journal of Political Science in 1987.

Guidelines for Submitting Manuscripts

Commonwealth is seeking manuscripts across a broad range of topics related to the politics, policy and political history of Pennsylvania. The journal is interdisciplinary in nature, appealing to scholars and practitioners in fields such as political science, public administration, public policy and history.

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COMMONWEALTH is a peer-reviewed journal founded by the Pennsylvania Political Science Association in 1987. From 2004-2010,
the now defunct Legislative Office for Research Liaison (LORL) of the Pennsylvania House of Representatives jointly published the journal with PPSA. *COMMONWEALTH’S* editorial staff, Editorial Review Board, and referees maintain the highest standards of peer review and publication. Copies of *COMMONWEALTH* are sent to all PPSA members—individual, departmental, and institutional. For PPSA membership rates, please visit the Association’s website at http://www.papolisci.org/.

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Widener University  
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