

Grading the Legislature

By the time you read this, there will be only a few days left of the 2008 Regular Session of the West Virginia Legislature. And while an overview of what bills pass into law is in order—I'll certainly be looking at this within the next couple of weeks—it should be noted that at this juncture, the most significant enacted legislation has not concerned our state's toxic business environment but rather an increase in compensation for the state's legislators. Tasked with improving our state's feeble economy, your state Representatives and Senators have first given themselves a raise. We still have a week left to pass meaningful policy—eliminating of the business franchise tax, lowering the net corporate income tax, creating nonpartisan elections for judges—but the priorities established thus far are a bit disturbing. Here's to hoping for a strong final week.

Senate Bill 749 – State-determined need of medical service

Grade: F

SB 749 sets out to empower the state to determine need for certain state medical facilities. West Virginians should be embarrassed that their representatives do not credit them with the ability to determine if they need additional medical services. The fact is, a process already exists to determine whether citizens demand any good or service—market capitalism.

In a market system, firms are rewarded for supplying goods and services demanded by the public, and conversely, punished for producing goods and services that nobody wants. A “certificate of need” is inherent in each profit and loss statement; if capitalism does anything, it determines which firms are needed and which are not. Our state government has no process by which to aggregate the preferences of every individual in the state in order to determine what is “needed” and what is not. The problems that plague certificates of need are the same as those that plague any centrally planned economy, and I would expect the overall effectiveness of each to be similar as well.

Applying anti-market policies to health practices is especially harmful since our citizens are not particularly healthy. West Virginians contract heart disease at over 15% of the national rate; cancer, 9%; diabetes, 32%. Infant mortality occurs at a nearly 13% higher rate when compared to the rest of the country.

Certificates of need will achieve one goal, however—more political favors being traded in Charleston. Like all regulation, certificates of need will hinder competition at the benefit of those firms already within the market. Consumers, then, pay higher prices than they would in a situation of free competition. Because existing firms are making higher profits from regulation—known as rents—they are willing to support candidates that allow them to make these rents by requiring certificates of need.

House Bill 4304 – Restriction of Markets for Organs

Grade: C-

Organ donation lists here in the United States are long and getting longer, for a range of reasons. There are more of us every day and in particular more entering retirement age. We're living longer. Some would argue that we're living increasingly unhealthy lives.

West Virginia doesn't face as dire of an organ donation situation as do some other areas in the country; whereas nationwide about one person in four thousand is waiting for a kidney, the figure here in the Mountain State is about one person in ten thousand. Nonetheless, West Virginia could take an important step towards eliminating the shortage of organs by removing the ban on the sale of organs. House Bill 4304 states clearly that there will be no such transactions, and by doing so also states clearly that there will be a perpetual shortage of organs within the state for as long as the law remains.

To be certain, there are redeeming qualities about HB 4304. Insofar as the measures put forth in the bill allow for clearer channels by which to donate organs along traditional methods, lives will be improved. But this remedy is a band-aid on a broken arm; the problem is not murky organ donation procedures—it's the smothering of the market for organs.

Many people would never consider selling an organ; at the moment, I would fall into this group. But that does not justify banning an entire market. Just as the prohibition of table gaming is an effort to legislate one set of morals onto an entire population, so too is making organ sales illegal.

One of the arguments against a market for organs is that only wealthy individuals would be able to afford organs, and the rest of society would be out of luck. It is a tangential way of saying that organs would have a price. And while true—some have estimated a kidney would fetch a price of about \$10,000—a market for organs would supplement the existing organ donation process, not replace it. By allowing a marketplace to develop, *those that enter the organ market improve the well-being of every single person on a donation list behind them.* Should you need an organ transplant, your health today is directly related to how many people are in front of you to receive a donated organ. Insofar as there are methods to remove people in front of you from the list without making them worse off—and organ markets are completely voluntary—then you stand to benefit.

Organ markets are a very contentious issue and, sadly, I don't see them being incorporated any time soon. But there are lives to be saved from doing so—and wouldn't it be great for a change if West Virginia were the first to incorporate good policy rather than the last?

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