

April 2018

## Afterward

Shelley Moore Capito  
*United States Senate*

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>

---

### Recommended Citation

Shelley M. Capito, *Afterward*, 120 W. Va. L. Rev. (2018).

Available at: <https://researchrepository.wvu.edu/wvlr/vol120/iss3/20>

This Essay on Appalachia is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact [ian.harmon@mail.wvu.edu](mailto:ian.harmon@mail.wvu.edu).

AFTERWORD TO THE *WEST VIRGINIA LAW REVIEW*  
APPALACHIAN JUSTICE SYMPOSIUM

*Senator Shelley Moore Capito*

I commend the *West Virginia Law Review* for hosting the Appalachian Justice Symposium and for publishing a series of articles containing practical ideas for improving our state and our region. As the nation's fourth oldest law review, hosted at our state's only law school, it is important that the *West Virginia Law Review* facilitate conversations about legal, social, and economic changes that will benefit our state. This symposium and the articles contained in this issue are consistent with West Virginia University's mission as a land grant institution.

West Virginia offers an appropriate forum for bringing together scholars of varying disciplines to discuss contemporary issues facing rural America. Our state has struggled through severe economic decline and job loss over the past decade in the aftermath of nationwide recession and the downturn in the state's coal industry.<sup>1</sup> Today, there is hope that West Virginia has turned a corner economically. After negative growth in 2016,<sup>2</sup> the state's economy grew in each of the first three quarters in 2017.<sup>3</sup>

There is significant work to be done to make sure that West Virginia's economic growth continues and results in more opportunities and higher wages for workers. Pro-growth legislation, like the tax reform and regulatory reform bills already passed by Congress, will play an important role in cementing economic progress nationally and regionally.

At the federal level, passage of historic tax reform promises to provide significant momentum to the state and national economies. By making America's tax code more competitive, businesses are less likely to move jobs

---

<sup>1</sup> *Economic Report Indicates WV Is in Recession*, HERALD DISPATCH: ASSOCIATED PRESS (Apr. 2, 2016), [http://www.herald-dispatch.com/news/economic-report-indicates-wv-is-in-recession/article\\_11d1d734-edd3-5283-90cb-f7fed8899674.html](http://www.herald-dispatch.com/news/economic-report-indicates-wv-is-in-recession/article_11d1d734-edd3-5283-90cb-f7fed8899674.html).

<sup>2</sup> *Gross Domestic Product by State: Fourth Quarter and Annual 2016*, U.S. DEP'T COM: BUREAU ECON. ANALYSIS (May 11, 2017, 8:30 AM), [https://www.bea.gov/newsreleases/regional/gdp\\_state/2017/qgsp0517.htm](https://www.bea.gov/newsreleases/regional/gdp_state/2017/qgsp0517.htm).

<sup>3</sup> *Gross Domestic Product by State: First Quarter of 2017*, U.S. DEP'T COM: BUREAU ECON. ANALYSIS (July 26, 2017, 8:30 AM), [https://www.bea.gov/newsreleases/regional/gdp\\_state/2017/qgsp0717.htm](https://www.bea.gov/newsreleases/regional/gdp_state/2017/qgsp0717.htm); *Gross Domestic Product by State: Second Quarter 2017*, U.S. DEP'T COM: BUREAU ECON. ANALYSIS (Nov. 21, 2017, 8:30 AM), [https://www.bea.gov/newsreleases/regional/gdp\\_state/qgsp\\_newsrelease.htm](https://www.bea.gov/newsreleases/regional/gdp_state/qgsp_newsrelease.htm); *Gross Domestic Product by State: Third Quarter 2017*, U.S. DEP'T COM: BUREAU ECON. ANALYSIS (Jan. 24, 2017, 8:30 AM), [https://www.bea.gov/newsreleases/regional/gdp\\_state/qgdpstate\\_newsrelease.htm](https://www.bea.gov/newsreleases/regional/gdp_state/qgdpstate_newsrelease.htm).

overseas and more likely to repatriate foreign earnings to invest in their American workers. Allowing small businesses to keep more of the money they earn and to immediately expense capital investments will help create more opportunity for workers across the country, especially in places like West Virginia where more than half of the private-sector workforce is employed by a small business and more than 95% of businesses qualify as small businesses.<sup>4</sup> Nearly doubling the standard deduction, doubling the child tax credit, and increasing the refundable portion of the child tax credit to \$1,400 per child will put more money in the pockets of middle- and working-class families.

The *Investing in Opportunity Act*,<sup>5</sup> a bill I co-sponsored that passed as part of tax reform, could play an especially important role in helping the Appalachian region. Rural areas accounted for only 3% of American job growth between 2010 and 2014.<sup>6</sup> From 2010 to 2016, more businesses closed in rural areas than opened.<sup>7</sup> The *Investing in Opportunity Act* allows a state's governor to designate economically distressed census tracts as "opportunity zones."<sup>8</sup> The bill creates opportunity funds that provide tax advantages to investors if the opportunity fund invests in the economy of a designated opportunity zone.<sup>9</sup> This provision is designed to help parts of our country that have been left behind economically to benefit from the recent job growth that has largely occurred in more populated metropolitan areas.

Another positive development in the last year has been a return to sensible regulation from federal agencies. Passage of 14 resolutions of disapproval under the *Congressional Review Act*<sup>10</sup> has rolled back a number of overly burdensome regulations that discouraged investment and economic growth, including rules that almost certainly would have led to more job loss in West Virginia's energy industries.

Regional efforts, including many of those discussed at the Appalachian Justice Symposium, will be necessary to help the region confront our most pressing challenges and seize significant opportunities.

<sup>4</sup> U.S. SMALL BUSINESS ADMINISTRATION: OFFICE OF ADVOCACY, SMALL BUSINESS PROFILE: WEST VIRGINIA 3 (n.d.), [https://www.sba.gov/sites/default/files/advocacy/West\\_Virginia.pdf](https://www.sba.gov/sites/default/files/advocacy/West_Virginia.pdf).

<sup>5</sup> Investing Opportunity Act, S. 293, 115th Cong. (2017), available at <https://www.congress.gov/115/bills/s293/BILLS-115s293is.pdf>.

<sup>6</sup> Wendell Cox, *Suburbs (Continue to) Dominate Jobs and Job Growth*, NEWGEOGRAPHY (May 25, 2016), <http://www.newgeography.com/content/005264-suburbs-continue-dominate-jobs-and-job-growth>; *Many Rural Counties Continued to Lose Jobs in 2014*, USDA: ECON. RES. SERV. (Sept. 1, 2016), <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=77833>.

<sup>7</sup> Jim Tankersley, *Tucked into the Tax Bill, a Plan to Help Distressed America*, N.Y. TIMES (Jan. 29, 2018), <https://www.nytimes.com/2018/01/29/business/tax-bill-economic-recovery-opportunity-zones.html>.

<sup>8</sup> Investing Opportunity Act, *supra* note 5, at § 1400Z-1(b).

<sup>9</sup> *Id.* § 1400Z-2.

<sup>10</sup> 5 U.S.C. §§ 801–08.

One such opportunity is the Appalachian Storage Hub, a massive infrastructure project that has the potential to transform the region economically.<sup>11</sup> A significant increase in natural gas production from the Marcellus and Utica shale formations has resulted in a surge of valuable natural gas liquids, such as ethane. A lack of storage and distribution infrastructure in the region means these products are underutilized, and their potential contribution to growth in downstream industries goes unrealized. Establishing a storage hub in Appalachia would end this wastefulness and incentivize the development of a regional market for these byproducts. The American Chemistry Council estimates such a storage and distribution hub could lead to the creation of 100,000 jobs<sup>12</sup> and \$36 billion in private investment in the region.<sup>13</sup>

To realize this economic opportunity, federal agencies, state governments, and the private sector will have to work together to raise capital and confront various permitting and regulatory challenges. The end result could be a surge in downstream manufacturing that could revitalize the region's economy for a generation.

Ensuring that rural communities across West Virginia have access to quality, high-speed broadband is also vital to our providing economic and educational opportunities, as well as access to health care. Broadband is essential as we transition to a 21st century global economy where nearly every aspect of our economy is contingent upon access to fast, reliable internet service. One of my top priorities as a U.S. senator has been closing the digital divide that is plaguing many rural communities. In 2015, I began my Capito Connect Plan,<sup>14</sup> an effort to spur a conversation about the importance of broadband access and provide a roadmap to investing in this indispensable infrastructure. Since then, I have sponsored several pieces of legislation, such as the *Gigabit Opportunity (GO) Act*,<sup>15</sup> to encourage deployment of rural broadband. And I worked to create a new \$600 million pilot program at the U.S. Department of Agriculture to provide assistance to underserved rural communities in deploying broadband that was included in government funding legislation that became law in March

---

<sup>11</sup> Jonathan Mattise, *Appalachian Underground Natural Gas Storage Hub Clears Initial Hurdle*, W. VA. PUB. BROAD. (Jan. 3, 2018), <http://wvpublic.org/post/appalachian-underground-natural-gas-storage-hub-clears-initial-hurdle#stream/0>.

<sup>12</sup> See AM. CHEMISTRY COUNCIL, *THE POTENTIAL ECONOMIC BENEFITS OF AN APPALACHIAN PETROCHEMICAL INDUSTRY 4* (May 2017), <https://www.americanchemistry.com/Appalachian-Petrochem-Study/>.

<sup>13</sup> *Id.* at 15.

<sup>14</sup> See *Capito Connect Plan*, SHELLEY MOORE CAPITO, U.S. SENATOR FOR W. VA., [https://www.capito.senate.gov/imo/media/doc/05.27.2015\\_Capito%20Connect%20Plan3.pdf](https://www.capito.senate.gov/imo/media/doc/05.27.2015_Capito%20Connect%20Plan3.pdf) (last visited Mar. 27, 2018).

<sup>15</sup> *Gigabit Opportunity Act*, S. 1013, 115th Cong. (2017), available at <https://www.congress.gov/115/bills/s/1013/BILLS-115s1013is.pdf>.

2018.<sup>16</sup> As Congress debates future funding and infrastructure legislation, advancing broadband deployment in rural communities will remain be a key priority for me.

Moving West Virginia and Appalachia forward requires a massive effort to fight the opioid epidemic that has devastated our region. According to the Centers for Disease Control and Prevention, West Virginia led the nation in drug overdose deaths in 2016, with 52 deaths per 100,000 residents.<sup>17</sup> A recent study found that the opioid epidemic has cost more than 12% of West Virginia's state GDP, far and away the highest in the country.<sup>18</sup>

The opioid epidemic has touched our youngest West Virginians, as babies are born suffering from neonatal abstinence syndrome, a disorder caused by opioid withdrawal at birth.<sup>19</sup> I have supported legislative efforts to make sure that federal health care programs appropriately reimburse facilities that specialize in carrying for these newborns.<sup>20</sup> And in February 2018, the U.S. Department of Health and Human Services granted West Virginia's request to become the first state authorized to be reimbursed for Neonatal Abstinence Syndrome treatment services.<sup>21</sup>

Congress passed the *Comprehensive Addiction Recovery Act*<sup>22</sup> in 2015 and later provided \$1 billion in funding to states to target opioid abuse,<sup>23</sup> but it is clear that additional resources will be needed to aid prevention and recovery efforts.

<sup>16</sup> *Agriculture, Food and Drug Administration, Rural Development, and Related Agencies Appropriation Bill, 2018: Omnibus Agreement Summary*, U.S. SENATE, <https://www.appropriations.senate.gov/imo/media/doc/FY18-OMNI-AGRICULTURE-SUM.pdf> (last visited Apr. 9, 2018); *Secretary Perdue Applauds Broadband Investment Included in Omnibus*, U.S. DEP'T AGRIC. (Mar. 23, 2018), <https://www.usda.gov/media/press-releases/2018/03/23/secretary-perdue-applauds-broadband-investment-included-omnibus>.

<sup>17</sup> *Drug Overdose Mortality by State*, CDC, [https://www.cdc.gov/nchs/pressroom/sosmap/drug\\_poisoning\\_mortality/drug\\_poisoning.htm](https://www.cdc.gov/nchs/pressroom/sosmap/drug_poisoning_mortality/drug_poisoning.htm) (last updated Jan. 10, 2018).

<sup>18</sup> *Cost of the Opioid Epidemic by State*, AEI, <https://www.aei.org/wp-content/uploads/2018/01/Opioid-Costs-by-State-Table.pdf> (last visited March 23, 2018).

<sup>19</sup> Karen McQueen & Jodie Murphy-Oikonen, *Neonatal Abstinence Syndrome*, NEW ENG. J. MED. (2016), available at <http://www.nejm.org/doi/full/10.1056/NEJMra1600879>.

<sup>20</sup> *See Legislation Introduced to Support Babies with Neonatal Abstinence Syndrome*, SHELLEY MOORE CAPITO, U.S. SENATOR FOR W. VA., <https://www.capito.senate.gov/news/in-the-news/legislation-introduced-to-support-babies-with-neonatal-abstinence-syndrome> (last visited Mar. 30, 2018).

<sup>21</sup> Carrie Hodousek, *WV Becomes First State to be Recognized for NAS Treatment Centers*, W. VA. METRO NEWS (Feb. 13, 2018), <http://wvmetronews.com/2018/02/13/wv-becomes-first-state-to-be-recognized-for-nas-treatment-centers/>.

<sup>22</sup> *Comprehensive Addiction and Recovery Act of 2016*, Pub. L. No. 114-198, 130 Stat. 695 (2016), available at <https://www.congress.gov/114/plaws/publ198/PLAW-114publ198.pdf>.

<sup>23</sup> *21st Century Cures Act*, Pub. L. No. 114-255, § 1003(b), 130 Stat. 1033 (2016), available at <https://www.congress.gov/114/plaws/publ255/PLAW-114publ255.pdf>.

The *Bipartisan Budget Act*,<sup>24</sup> signed into law on February 9, 2018, allocates \$6 billion to combat opioid abuse over two years.<sup>25</sup> More than \$4.6 billion of this money was appropriated by Congress in the fiscal year 2018 Omnibus Appropriations Bill that became law on March 23, 2018, an increase of \$3 billion over the 2017 figure.<sup>26</sup> President Trump's fiscal year 2019 budget suggests spending even more money to confront the epidemic.<sup>27</sup>

Fighting the opioid epidemic will require a multi-layered approach aimed at preventing individuals from becoming addicted in the first place and providing more treatment resources for those already struggling with addiction. Health care providers, law enforcement, judges, community organizations, and government officials all have an important role to play. There is no greater priority for West Virginia's future than combatting the opioid epidemic and ending the human suffering that it has brought to our communities.

From combatting drug abuse and expanding broadband deployment to growing the economies of distressed communities, the Appalachian Justice Symposium has addressed many of the most significant issues for West Virginia and our region. I hope the articles in this issue of the *West Virginia Law Review* will aid the legal community and other leaders in confronting these challenging public policy issues.

---

<sup>24</sup> Bipartisan Budget Act of 2018, H.R. 1892, 115th Cong. (2018), available at <https://www.congress.gov/115/bills/hr1892/BILLS-115hr1892enr.pdf>.

<sup>25</sup> See Regina Labelle, *\$6 Billion Allotted to Fight Opioid Epidemic—Here's How We Should Spend It*, HILL (Feb. 8, 2018, 11:00 AM), <http://thehill.com/opinion/healthcare/372875-6-billion-allotted-to-fight-opioid-epidemic-heres-how-we-should-spend-it>.

<sup>26</sup> Consolidated Appropriations Act of 2018, H.R. 1625, 115th Cong. (2018), available at <https://www.congress.gov/bill/115th-congress/house-bill/1625>; *FY2018 Omnibus Appropriations Bill Released*, U.S. SENATE COMM. APPROPRIATIONS (Mar. 31, 2018), <https://www.appropriations.senate.gov/news/majority/fy2018-omnibus-appropriations-bill-released>.

<sup>27</sup> OFFICE OF MGMT. & BUDGET, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2019, at 19–20 (2018), available at <https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf>.

