

## Week ending 06/10/18 - PA-08 MoCTrack Report

### Tracking Congress in the Age of Trump

The lower the number, the more the legislator votes in opposition to the Trump agenda.

Senator Bob Casey — **30.1%** (no change from last report)

Representative Brian Fitzpatrick — **83.3%** (-1.1% from last report)

Senator Pat Toomey — **91.4%** (no change from last report)

Nate Silver's FiveThirtyEight website assesses the voting records of our MoCs to provide this index, by comparing any bills where President Trump has stated a position, and comparing the vote of the legislator to that opinion. One House bill was scored this week, on rescinding previously approved funding (more on rescission in the Learning about Legislation section this week).

### Words From Our Founders

"It is ESSENTIAL to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honorable title of republic."

— [James Madison](#), from Federalist 39, "The Conformity of the Plan to Republican Principles"

### Votes of Interest -

#### H.R. 3: Spending Cuts to Expired and Unnecessary Programs Act

<https://www.govtrack.us/congress/votes/115-2018/h243>

Back in 1974 the Congress passed the Congressional Budget and Impoundment Control Act, legislation that allows a President to request that Congress rescind funds from an appropriations bill that has already passed (for more on rescission, page down to this week's "Learning about Legislation" section). The President sent a [rescission request](#) to Congress this past May. The [package](#) would take back about \$15 billion from the \$1.3 trillion omnibus spending package passed earlier this year. While that works out to a little more than 1% being taken back, the big problem is that almost half of the funds are being clawed back from the Children's Health Insurance Program (CHIP). The bill narrowly passed with a 210-206 vote taken on 06/7/18. **Fitzpatrick voted NO.**

#### On the Nomination PN1393: Kenneth L. Marcus, of Virginia, to be Assistant Secretary for Civil Rights, Department of Education

<https://www.govtrack.us/congress/votes/115-2018/s118>

Last autumn the *Washington Post* [reported](#) that Education Secretary Betsy DeVos "rescinded 72 policy documents that outline the rights of students with disabilities as part of the Trump administration's effort to eliminate regulations it deems superfluous." Then, in April the *New York Times* began [reporting](#) that the Department of Education's Office for Civil Rights had started to dismiss hundreds of complaints "under a new protocol that allows investigators to disregard cases that are part of serial filings or that they consider burdensome to the office." Issues related to civil rights at the Department of Education continued to escalate, with 17 Members of Congress (led by our own Sen. Casey) sending a [letter](#) to Secretary DeVos to protest the new process for complaint dismissal, noting that the abandonment of such a mission "would disregard" one of the founding purposes of the Department of Education." And then, on 05/31/18, three national civil rights organizations [brought suit](#) against the Department of Education over this issue.

It is in this tense environment that the Senate considered Kenneth Marcus for the position of the new Assistant Secretary for Civil Rights at the Department of Education. At the time of his first round of hearings, *The Nation* [reported](#):

Marcus has consistently taken positions that reveal his anti-civil rights agenda. During his time as head of the US Commission on Civil Rights (USCCR)—a position he held from 2004 to 2008, under George W. Bush—he opposed affirmative action and other remedies to racial discrimination by overseeing the publication of a report backing the dismantling of affirmative action in law schools. He also argued against university efforts to achieve diversity through “race-neutral alternatives” and other means, and he opposed a proposal to expand the scope of the USCCR to enable it to investigate violations of LGBTQ rights and broader human rights. More recently, during his HELP Committee hearing, Marcus said that he agreed with Secretary Betsy DeVos’s decision to rescind detailed Title IX guidance on sexual assault and increase protections for accused abusers.

The Leadership Conference, a coalition of more than 200 national civil rights organizations, sent a [letter](#) to the Senate opposing the nomination of Kenneth Marcus. They cited a number of the same issues detailed by the article in *The Nation*, but added that they had additional concerns about “the rights of immigrant children and language minorities in our schools” and that “Mr. Marcus has sought to use the OCR complaint process to chill a particular political point of view, rather than address unlawful discrimination.”

Despite these considerable concerns and in complete disregard of the fraught atmosphere related to the issue of civil rights at the Department of Education, the entire Republican caucus of the Senate voted to confirm Kenneth Marcus. The vote, taken on 06/07/18, was 50-46. **Casey voted NO** and **Toomey voted YES**.

## MoC Twitter Action

**Senator Bob Casey hot topics:** The senator was back to early 2017 level Twitter output, with over 50 tweets this week. He covered a lot of ground, including:

- A vigorous defense of the Mueller investigation
- Thanking local Congressmen who are promoting efforts to address mitigation of mold, asbestos and lead paint in our schools
- An invitation to the Eagles to come to the Capitol as his guests, in place of the President’s rescinded event
- A multi-tweet thread on how the GOP’s continued attempts to sabotage the Affordable Care Act have led to increased premiums
- Details on the Administration’s agreement to lift a ban on a Chinese company guilty of major trade infractions
- A multi-tweet explanation of his decision to withhold a blue slip on a controversial appeals court nominee (more on this below, in the special topic coverage), including letters from many civil rights groups - including the NAACP, League of Conservation Voters and the Leadership Conference - who also oppose the nominee
- A spirited slap back at Education Secretary Betsy DeVos and her opinion that her school safety commission need not include any discussion of gun violence
- A multi-day, multi-tweet denunciation of the Trump Administration policy of family separation at the border
- Several retweets of colleagues’ legislative efforts, like that of Sen. Kirsten Gillibrand (D-N.Y.), promoting her Paycheck Fairness Act
- Images from several events, including a meeting he had with about 100 people from Puerto Rico who moved to Pennsylvania after last year’s hurricanes
- A tweetstorm on the Trump Administration’s latest effort to attack the ACA, this time via a court case that would deny coverage to people with pre-existing conditions

He was quite prolific this week!

**Casey tweet of the week, 06/04/18:** “No one is above the law, including the President of the United States. I’ll leave the legal arguments to the constitutional scholars, but the idea that any public official could pardon themselves is contrary to our nation’s most basic values.”

— [the senator’s response to President Trump’s assertion via tweet that he can pardon himself](#)

**Representative Brian Fitzpatrick hot topics:** The representative only tweeted once this week, to commemorate the 74th anniversary of D-Day.

**Fitzpatrick tweet of the week, 06/06/18:** “Today marks the 74th anniversary of D-Day, when the #GreatestGeneration stormed the shores of Normandy to liberate Europe. We will never forget their service and sacrifice. May God bless all our troops who pave the way to freedom.”

— [shared with a photo collage meme that reads “Remembering D-DAY”](#)

**Senator Pat Toomey hot topics:** Most of this senator’s Twitter output this week focused on President Trump’s tariff plan. Senator Toomey called upon his colleagues to limit the President’s ability to implement unilateral trade actions, noting “Congress can reassert its constitutional responsibility (Art 1, Sec 8, Clauses 1 & 3).” He also promoted two pieces of legislation, one that allows veterans to bypass Veterans’ Affairs medical facilities, and the other to “protect the children of service members from pedophiles in schools.”

**Toomey tweet of the week, 06/05/18:** “Today’s @TimesTribune editorial spotlights my efforts to push back on new taxes that will harm American consumers and businesses, and limit economic growth. Read “Tariff power to Congress”

— [shared with an opinion piece from the Scranton Times-Tribune editorial board](#)

#### **Honorable mention, lawmaker**

From @SenGillibrand, Kirsten Gillibrand (D-N.Y.) on 06/09/18: “As we’ve come together to stand behind Democratic women this year, we’ve seen victory after victory in primaries across the country. Now, we need to keep the momentum going on Tuesday in NV, ME, ND, VA and SC, and support women who are fighting to change the face of Congress!”

— [followed by a series of links to fundraising efforts for a number of progressive female candidates](#)

#### **Honorable mention, media**

From @MaggieNYT, Maggie Haberman of the New York Times on 06/08/18: “Consistent theme for people I talk to who didn’t meet Trump till the transition and only worked for him then/in White House is ‘Trump’s behavior is getting much worse.’ Consistent theme for people who knew him before that is ‘this is how he’s always been.’ For the first six to ten months, Trump was overwhelmed by the job and, for rare time in his life, scared. Since then, he’s emboldened and feels (as most presidents do in the second year) like he understands the job better. So his behavior has reverted to being more like himself. But there are now fewer fig-leaf-like people working around him to keep his behaviors/views/statements hidden from view, plus he has decided he is right to engage Mueller.”

### **Honorable mention, constituent response**

From @PhillyResistNow on 06/09/18: "Look at you @SenToomey! You grow a spine the instant that Trump threatens your personal worth. So there is exactly ONE PA resident you care about. His name is Pat Toomey."

— posted in response to Senator Toomey's [tweet](#) promoting his weekend appearances on Fox News to discuss tariff policy, and shared with a [sassy meme](#) that reads "Shouldn't Sen. Toomey care more about his constituents than his own bank account?"

### **Hearings on judicial nominee David Porter for the United States Court of Appeals for the Third Circuit commence, our Senators respond**

Despite the fact that Senator Casey has not returned a [blue slip](#), Senate Judiciary Chairman Chuck Grassley (R-Iowa) scheduled nominee David Porter for confirmation hearings this week.

#### **Bob Casey, 06/06/18, via his [website](#):**

As the Senate considers David Porter for a seat on the U.S. Court of Appeals, U.S. Senator Bob Casey (D-PA) released the following statement:

"David Porter has no judicial experience so one of the only ways to assess his fitness for the second highest court in the nation, the U.S. Court of Appeals, is through his writings. His published works reveal an ideology that will serve only the wealthy and powerful as opposed to protecting the rights of all Americans. Mr. Porter has argued against the Constitution's Commerce Clause, which has guaranteed civil rights protections to millions of Americans. He has also praised a ruling that sought to overturn portions of the Violence Against Women Act. Our courts must be guardians of civil rights, of our values and of basic protections for workers.

My bipartisan work to recommend highly qualified individuals to the federal bench, both Republicans and Democrats, including five individuals nominated to the District Court in Pennsylvania by this Administration, is second to none. I have worked in good faith to move forward mainstream nominees whose judicial philosophy I disagreed with, including this Administration's nominee for a Third Circuit seat in Philadelphia.

Instead of working in a bipartisan fashion to put mainstream individuals on the bench, this Administration and the Senate Majority Leader are demanding that the Senate confirm judicial nominees who advocate a hard-right ideology to appease their corporate donors. As a Senator representing more than 12 million Pennsylvanians, I refuse to be a rubber stamp for the extreme right. Mr. Porter has spent his career advocating an ideology that puts special interests, big corporations and those at the top ahead of Pennsylvania families. I urge my colleagues to reject this nomination."

#### **Pat Toomey, 06/06/18, from [website](#):**

As part of this morning's Senate Judiciary Committee hearing, U.S. Senator Pat Toomey (R-Pa.) introduced David Porter, a nominee for the United States Court of Appeals for the Third Circuit.

Senator Toomey offered the following remarks as part of his introduction of Mr. Porter:

"Like Mr. Porter's peers in the legal community on both sides of the political aisle, I also enthusiastically support his nomination to the Third Circuit. I am certain that he has the essential qualities needed to excel as a federal judge, which are: experience, intelligence, integrity, and very importantly, respect for the limited role of the judiciary in our constitutional system. I wholeheartedly endorse his candidacy."

View Senator Toomey's [full remarks](#).

## Casey in the News

“The Trump administration is coming after the Affordable Care Act's protections for people with pre-existing conditions and it's time for us to draw a hard line. I'm mad as hell, and I'm ready to fight this with both fists up.”

— from an [article](#) in Honolulu's *ABC News* affiliate, titled “Trump court move on Obamacare bolsters Democrats' midterm message”

“The 2.5 million Pennsylvanians that rely on Medicare, the millions who receive retirement benefits, and the hundreds of thousands of Pennsylvanians with disabilities that rely on Social Security assistance deserve peace of mind that they will be able to continue living their daily lives as they do now. As we work to find solutions to the programs' funding issues, I will fight against 'reforms' that impose unnecessary cuts and to defeat far-right schemes to privatize Social Security.”

— the senator defends Social Security in a *Pittsburgh Tribune-Review* [article](#) titled “Senators Toomey, Casey could play key role in addressing Social Security problems”

“When the shoe was on the other foot in 2015 and President Obama nominated Rebecca Haywood, not only did I respect Sen. Toomey's decision not to return the blue slip, but the Senate Judiciary Committee did as well and didn't hold a hearing. I am only asking for the same respect.”

— the senator points out the GOP's diminishing respect for the Senate's procedures and precedent in a *Pittsburgh Post-Gazette* [article](#) titled “Why Bob Casey thinks the confirmation hearing for Pittsburgh attorney David Porter is breaking protocol”

“...any repeat, no matter how minimal, of the humanitarian crisis that occurred in Puerto Rico and the U.S. Virgin Islands following Hurricane Maria, is altogether unacceptable. We respectfully request a briefing on how the agencies plan to protect our older loved ones and people with disabilities this hurricane season, including hiring appropriate staff, to ensure that the tragedies from last season are never repeated.”

— an excerpt from a [letter](#) to the heads of the Departments of Health and Human Services and Homeland Security, signed jointly by Senators Casey, Bill Nelson (D-Fla.), Susan Collins (R-Maine) and Marco Rubio (R-Fla.), as reported in a *Tampa Bay Times* [article](#) titled “With hurricane season under way, Nelson and Rubio press feds on senior issues”

## Fitzpatrick in the News

Most of the coverage of Representative Fitzpatrick this week revolved around the results of a [Monmouth poll](#) related to the coming November election. Only one article had a quote from the representative on an issue unrelated to the coming election.

“He's not going to pardon himself.”

— the representative's response to President Trump's incendiary [tweet](#), as reported in a *Huffington Post* [article](#) titled “What Will House Republicans Do If Trump Pardons Himself? We Asked Them.”

## Toomey in the News

"I will tell you my own view is it is entirely possible for a president to obstruct justice. If a president committed perjury to lie to or mislead investigators, if he encouraged others to, if he destroyed evidence. I can think of lots of ways a president could obstruct justice."

— from a [PoliticsUSA article](#) titled "GOP Senators Say Trump Can Be Guilty of Obstruction of Justice"

"The Constitution gives it to Congress. What should be controversial about Congress exercising their authority?"

— the senator's comments on the Congress's constitutional authority to oversee trade, as reported in an [NPR article](#) titled "GOP Senators Want To Limit Trump's Power On Trade"

"The US only imports 2% of its steel from China. Changing course from this approach by invoking national security as a means of imposing new, huge tariffs on all kinds of imported steel is a big mistake that will increase costs on American consumers, cost our country jobs and invite retaliation from other countries"

— from an [American Metal Market \(a metals industry publication\) article](#) titled "Senators seek to limit Trump's tariff powers"

## Learning about Legislation - Rescission

The standard, English-language definition for the word rescission is "the revocation, cancellation, or repeal of a law, order, or agreement." When dealing with Congressional legislation, however, rescission has a more specific meaning. In the United States Senate [online glossary](#), rescission is defined as "the cancellation of budget authority previously provided by Congress. The Impoundment Control Act of 1974 specifies that the president may propose to Congress that funds be rescinded. If both Houses have not approved a rescission proposal (by passing legislation) within 45 days of continuous session, any funds being withheld must be made available for obligation."

This week, the House voted on a rescission bill (H.R. 3) that would pull back \$15 billion in funds from the \$1.3 trillion spending bill passed earlier this year. One way to look at this is that many of the line items put into the spending bill were part of tense negotiations, and were added to ensure the full support of enough legislators so that the bill would pass. Clawing back those funds now, after the required votes had been obtained, could be perceived as breaking a deal.

Nearly half of the funds being taken back in the rescission bill are from the Children's Health Insurance Plan (CHIP). In his comments on this issue, House Majority Whip Steve Scalise said, via reporting from *The Hill*, "...we overfunded the CHIP program, and so as that surplus money was identified, we made sure that that money will be able to be used to reduce the deficit and go to other things." But Rep. Nita Lowey (D-N.Y.), the ranking member on the House Appropriations Committee, countered that claim, observing, "Targeting CHIP for a rescission prevents Congress from reinvesting in other priorities like child and maternal health, early childhood education, biomedical research and our community health centers."

## Legislation of Interest

### **S. 3013: A bill to amend the Trade Expansion Act of 1962 to require Congressional approval before the President adjusts imports that are determined to threaten to impair national security**

<https://www.govtrack.us/congress/bills/115/s3013>

This bill was introduced by Sen. Bob Corker (R-Tenn.) on 06/06/18. It is pending in the Senate Finance Committee, and it has 13 co-sponsors (8R, 5D) including our own Senator Toomey. This legislation would strip the President's unilateral trade powers and return to the Constitutional model of the Congress having the ultimate authority on issues pertaining to the power of the purse. Senator Corker [explains](#) why he introduced this bill:

While we all agree on the need to ensure the international trade system is fair for American workers, companies and consumers, unfortunately, the administration is abusing the Section 232 authority delegated to the president by Congress. Making claims regarding national security to justify what is inherently an economic question not only harms the very people we all want to help and impairs relations with our allies but also could invite our competitors to retaliate. If the president truly believes invoking Section 232 is necessary to protect the United States from a genuine threat, he should make the case to Congress and to the American people and do the hard work necessary to secure congressional approval.

If you support the idea of a legislative branch reasserting its Constitutional authority, and attempting to place some check on the power of the executive, you may wish to call Senator Toomey and thank him for supporting this bill. If a thank you to our senator with the 91.4% Trump Tracker rating sticks in your craw, you could always couple it with a note that while this bill is a good first step, you expect to see him take more steps to curb an out-of-control President.

### **S. 3036: A bill to limit the separation of families at or near ports of entry**

<https://www.govtrack.us/congress/bills/115/s3036>

This bill was introduced by Sen. Dianne Feinstein (D-Calif.) on 06/07/18. It is pending in the Senate Judiciary Committee and it has 31 co-sponsors (29D, 2I), including our own Senator Casey. The issue of family separation at the border has been in the news a great deal lately, and this bill attempt to address that problem. This bill, which will carry the short title "The Keep Families Together Act," will keep immigrant families together by preventing the Department of Homeland Security from taking children from their parents at the border. Senator Feinstein [explains](#):

The United States must not be a country that traumatizes young children by separating them from their parents. Young children have been taken from their parents' arms and federal law enforcement hasn't given parents even the most basic information about their children's whereabouts. Congress has a moral obligation to take a stand and say that families should not be forcibly separated. Many of these families are fleeing terrible violence, traveling thousands of miles on foot for the chance to file an asylum claim and save their lives. To traumatize them further is unconscionable, and I hope that our Republican colleagues will work with us to put an end to this immoral policy.

Please consider calling Senator Casey to thank him for co-sponsoring this bill.

### **S. 2996: A bill to make available necessary disaster assistance for families affected by major disasters**

<https://www.govtrack.us/congress/bills/115/s2996>

This bill was introduced by Sen. Elizabeth Warren (D-Mass.) on 06/05/18. It is pending in the Senate Homeland Security and Governmental Affairs Committee and it has 8 co-sponsors (7D, 1I), including our own Senator Casey. The bill stems from administrative missteps that occurred in the months after the storms that slammed Puerto Rico and the Virgin Islands last year. Senators Warren and Ed Markey (D-Mass.) had attempted to get the U.S. Department of Housing and Urban Development (HUD) program to help Puerto Rico hurricane evacuees last year, but were unsuccessful in that effort. This bill would

mandate cooperation between HUD and the Federal Emergency Management Agency (FEMA). The key line from the [bill](#) says:

Not later than 15 days after the date of enactment of this Act, the Administrator [of FEMA] shall enter into an interagency agreement or agreements with the Secretary of Housing and Urban Development as may be necessary to ensure the implementation of a Disaster Housing Assistance Program to provide temporary rental assistance to individuals and households displaced from their residences by any major disaster

In light of the major displacements of population after natural disasters, this seems like a logical administrative step. Please consider calling Senator Casey to thank him for supporting this effort.

### **H.R. 5989: Louise Slaughter Weekend Voting Act**

<https://www.govtrack.us/congress/bills/115/hr5989/text>

This bill was introduced by Rep. Brendan Boyle (D-Penn.) on 06/01/18. It is pending in the House Administration Committee and it has one Democrat co-sponsor. The bill would officially change election day nationwide and statewide to the weekend after the first Friday in November. The Representative offered an [explanation](#) of this effort:

Countless other developed nations around the world currently hold elections on weekends. We have seen time and again, how low voter turnout results in disenfranchisement, frustration and civic apathy. Weekend voting is a proven method that increases accessibility, engagement, and turnout. If work, school or other responsibilities become a roadblock for citizens wishing to exercise their right to vote, then it is the government's obligation to take steps to ease that burden. It can, and must, create a path to the voting booth for those American citizens who live with such challenges. Weekend voting makes sense, and would only serve to create an unmitigated path to the voting booth that ultimately benefits our democracy.

The bill is named after Congresswoman Louise Slaughter (D-N.Y.) who died earlier this term after serving in Congress from 1987 to 2017. She had introduced similar legislation before her passing, so this newly introduced effort now carries her name in honor of her efforts. Representative Fitzpatrick has been a past supporter of 'better government' and 'government reform' efforts. Please consider asking him to co-sponsor this legislation.

### **H.Res. 922: Defining presidential wars not declared by Congress under Article I, section 8, clause 11 (Declare War Clause) as impeachable "high crimes and misdemeanors" within the meaning of Article II, section 4 of the Constitution...**

<https://www.govtrack.us/congress/bills/115/hres922/text>

This bill was introduced by Rep. Walter Jones (R-N.C.) on 06/06/18. It is pending in the House Judiciary Committee and it has one co-sponsor, Rep. Tulsi Gabbard (D-Hawaii). This is a delightful bit of legislative writing, designed to both infuriate the President and to inspire the Congress to reassert its authority as a co-equal branch of government.

The resolution first establishes that "presidential wars not declared by Congress under Article I, section 8, clause 11 are the most flagrant and dangerous of presidential usurpations" and provides examples from the time of the Founders that support the importance of Congress's role in deliberating over declarations of war. It then notes that "the absence of impeachment standards creates an appearance that impeachment is a partisan exercise, which undermines its legitimacy and deters its use," and follows that with an extensive analysis of how the Founders debated what acts should be considered for impeachment. It illustrates this point by adding "Alexander Hamilton in Federalist 65 explained that impeachable offenses 'proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself' and includes additional support from the Constitution. The text concludes with a pair of resolutions: that 'initiating wars against state or non-state actors without prior congressional declarations' is an impeachable offense; that 'nothing in this resolution shall be interpreted to prohibit the President from responding with proportionate military



force in the exercise of national self-defense to actual or imminent aggression or a declaration of war against the United States.”

It is rare enough to see bipartisanship in this congress. To see it on this issue, coming from a veteran (Gabbard) and a senior member of the Armed Services Committee (Jones), is startling. It would be fascinating to see what Rep. Fitzpatrick, the self-appointed champion of bipartisanship, makes of this resolution. Please consider calling to ask him to join this effort as a co-sponsor.

This report brought to you by the PA-08 MoCTrack team...

Gary Garb

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We are seeking additional assistance. Our Congresspeople are always busy and there is always more for us to cover — tasks big and small to fit any level of time commitment or experience. Can you help us out? Please email [KierstynPZ@gmail.com](mailto:KierstynPZ@gmail.com) and put "MoCTrack Help" in the subject. Thanks!