

OPINION

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EDITORIAL

THUMBS UP TO FIREFIGHTERS, THUMBS DOWN TO LAPTOP THIEF

Thumbs up: To the firefighters who rescued a worker marooned on an 80-foot-high smokestack at a New Castle-area chemical plant. A public information officer called it a "county-wide high-angle rescue response," which is short for "some brave folks had to go way up in a crane to save this guy." They would probably say they're just doing their job, but these first responders went to literal great lengths to save somebody from a harrowing situation.

Thumbs down: To City of Wilmington officials killing the city's ethics commission by "forgetting" to appoint members. Clearly, most of the blame

rests with former mayor Dennis P. Williams' administration, but we also wonder how nobody who's currently in charge thought of this. We deduct extra points for the symbolism of neglecting an anti-corruption group.

Thumbs up: To local breweries going big on canned beer. Cans are safer, more portable, take up less space in the fridge and, crucially, can be brought on the beach. No wonder the Brewers Association says can sales grew by more than 200 percent between 2013 and 2016. Don't let anybody tell you cans ruin the taste — if our IT wizard, Dave, can't tell the difference, neither can you. Trust us on this one.

Thumbs down: To the erstwhile P.E. teacher at John Dickinson High School who is accused of steal-

ing and selling school-owned laptops. At least it appears the suspect gave police the courtesy of making it easy to catch him — he was the last person to log into some of the stolen laptops, he was caught on security cameras and he showed the pawn shop his driver's license, police said.

Thumbs up: To the scientists who say they managed to teleport a photon into space from the Earth. Their experiment could lead to huge breakthroughs in long-distance communications and computing. Maybe we could even get a Star Trek-style teleporter that would let us dodge beach traffic.

Hard fixing 'Rotting carcass' code



GEORGE F. WILL

WASHINGTON - Cynics are said to be people who are prematurely disappointed about the future.

Such dyspepsia is encouraged by watching Republicans struggle to move on from the dog's breakfast they have made of health care reform to the mare's nest of tax reform. Concerning which, House Speaker Paul

Ryan, whose preternatural optimism makes Candide seem morose, says: "If we're going to truly fix our tax code, then we've got to fix all of it."

Trying to fix "all of" immigration in 2013 and health care in 2010 with "comprehensive" legislation left almost everyone irritable. Perhaps the third time is the charm.

Sen. Ron Wyden is skeptical about fixing much this year, even given Senate Majority Leader Mitch McConnell's decision to limit the August recess.

The fourth-most senior Democrat and ranking minority member on the tax-writing Finance Committee, Wyden, 68, is usually relaxed but now is especially so, for two reasons. He was just elected to a fourth term. And for him and other Finance Committee Democrats, tax reform is, so far, an undemanding spectator sport.

This was underscored last weekend when, as he was being driven from one Oregon town hall to another, he read a Wall Street Journal story headlined: "GOP Tax Overhaul's Fate Rests on 'Big Six' Talks."

Five of the six were in an almost taunting photo provided to the Journal by Ryan's office — Ryan, McConnell, House Ways and Means Committee Chairman Kevin Brady, Senate Finance Committee Chairman Orrin Hatch and Treasury Secretary Steven Mnuchin. The missing sixth person was National Economic Council Director Gary Cohn.

No congressional Democrat is included. Evidently, Republicans plan to pass tax reform without Democratic votes, under "reconciliation," which is inherently partisan — 51 votes will suffice — and limits debate to 20 hours.

The 1986 reform, the gold standard of bipartisan tax legislation, was on the Senate floor for more than 100 hours spread over 20 days — after seven days of hearings and 16 days of mark-up.

Ryan and McConnell say tax reform will be "revenue neutral." This might require dynamic scoring — calculating that reformed incentives will stimulate economic growth — to project implausible growth rates.

Plausibility is, however, optional, as it was in April, when Mnuchin's department produced a tax plan that resembled Lincoln's "soup that was made by boiling the shadow of a pigeon that had starved to death."

Last November, Mnuchin told CNBC there would be "no absolute tax cut for the upper class," meaning no net cut after lost deductions. In Mnuchin's January confirmation hearing, Wyden mischievously suggested calling this "the Mnuchin rule," which enthralled Mnuchin, who later said: "I feel like I'm now in good company with the Volcker rule and the Buffett rule."

In a June hearing, however, Mnuchin told Wyden: "You made it a rule, I didn't make it a rule."

No Democrat, says Wyden, likes the status quo. When he recently described the tax code as "a rotting economic carcass," his wife asked him to stop scaring the children.

Wyden knows he sounds like "a one-song juke box" when he keeps stressing "wage growth" but he notes that last week the encouraging number of jobs created in June (222,000) was accompanied by discouraging wage growth (year-over-year, 2.5 percent, barely ahead of inflation).

Many economists are puzzled that low unemployment (4.4 percent) is not forcing employers to bid up the price of labor. Wyden says he is puzzled by neither the cause (persistent slow growth, limping at around 2 percent) nor the cause of this cause — insufficient money in middle-class paychecks to power an economy where 70 percent of the fuel comes from consumer spending.

He favors, for example, doubling the earned income tax credit. He seems, however, to be prematurely, but not prematurely, disappointed about a legislative process that will fall somewhat short of fixing "all of" what ails the rotting carcass.

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TransPerfect bill is misguided; supporters using misinformation

NORMAN M. MONHAIT AND
HENRY E. GALLAGHER JR.

Campaign organizer Chris Coffey's July 2 op-ed resorted to hyperbole, fearmongering and misinformation in support of his clients' efforts to undermine Delaware court decisions his clients do not like.

We are members of the Delaware corporate bar that Mr. Coffey's op-ed denigrates. As members of the Corporation Law Section of the Delaware State Bar Association, we were part of the section's committee that considered the proposal that became SB 53, which Mr. Coffey calls the TransPerfect bill.

That bill stems directly from litigation arising out of the bitter, adversarial relationship between TransPerfect's principal owners, Elizabeth Elting and Philip Shawe. Based on extensive evidence submitted at trial, Chancellor Bouchard concluded that the dysfunctional relationship between Ms. Elting and Mr. Shawe was threatening TransPerfect's business sufficiently that it should be sold to the highest bidder.

The Delaware Supreme Court agreed. Both Ms. Elting and Mr. Shawe may participate as potential buyers in the sale process.

With no factual support, Mr. Coffey posits that the TransPerfect sale puts the jobs of the company's 4,000 employees on the "chopping block." It has been reported that Mr. Shawe offered Ms. Elting \$300 million for her half interest in the company.

TransPerfect's business is translation services and litigation support. Its primary assets are skilled employees. It is inconceivable that a purchaser would spend hundreds of millions of dollars and then terminate the thousands of employees who make the company worth buying.

But more importantly, the Court of Chancery determined from the trial evidence that the dysfunctional relationship between Ms. Elting and Mr. Shawe risked the company's loss of clients to competitors, had harmed employee morale and had caused the departure of talented employees. Thus, the threat to TransPerfect's jobs results from the dispute between the principal owners, not the Court of Chancery's decision.

SB 53 seeks to impose a three-year waiting period on any court-ordered sale of a Delaware corporation after a finding of shareholder deadlock. Mr. Coffey characterizes this requirement as providing opportunity for "remediation, reconciliation and reinforcement."

There is evidence in the TransPerfect litigation that Ms. Elting and Mr. Shawe have been feuding since at least 2012, and several efforts at negotiation and mediation have failed. Most recently, Chancellor Bouchard ordered mediation again.

If this mediation effort also fails, Ms. Elting and Mr. Shawe will have had multiple unsuccessful opportunities for remediation, reconciliation and reinforcement. There is no reason to believe that another three years would facilitate agreement.

Mr. Coffey claims that the TransPerfect decision has adversely affected Delaware's reputation as a favored jurisdiction for business formation. That is fake news.

Members of the Delaware corporate bar regularly communicate with lawyers throughout the country who advise their clients on business entity formation. We have not heard from lawyers in other states concerns arising from the decisions in the TransPerfect litigation.

The Delaware Division of Corporations has told us that they also have not heard concerns about the TransPerfect decision or perceived any decline in business entity formation in Delaware. Lawyers outside Delaware to whom Mr. Monhait has spoken about the TransPerfect case either are unaware of it or regard it as an ordinary application of established law to facts determined from trial evidence.

The most disingenuous aspect of the advocacy for the TransPerfect bill is the effort to portray it as beneficial to Delaware. Mr. Coffey and the so-called Citizens for a Pro-Business Delaware — few, if any of whom are Delaware residents and taxpayers — are sympathetic to Mr. Shawe, who, Chancellor Bouchard concluded from the evidence, had surreptitiously obtained Ms. Elting's emails from her computer, had sought to destroy potential evidence, and had repeatedly lied under oath.

The "Citizens" group has made clear that it seeks to reverse legislatively the Delaware courts' decisions, or to enhance Mr. Shawe's negotiating leverage with Ms. Elting.

But these litigation-based goals have nothing to do with the interests of the state of Delaware.

Mr. Coffey's and his clients' advocacy for the TransPerfect bill is facile rhetoric designed to create the false appearance of public benefit in order to advance a private agenda.

Delaware's citizens should applaud members of the General Assembly who have refused to support the TransPerfect bill.

Norman M. Monhait chaired the Corporation Law Section of the Delaware State Bar Association from 2012 to 2015. Henry E. Gallagher, Jr. is the current vice chair of the section.