

Taxing Sugary Beverages to Expand Prekindergarten:

**The Advocacy Lessons of
Philadelphia and Santa Fe**

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Methodology and Acknowledgments

This paper does not endeavor to be an exhaustive review of every article published about the Philadelphia and Santa Fe sugar-sweetened beverage tax advocacy efforts. In Philadelphia alone, hundreds of articles and commentaries about the tax campaign appeared online and in print. This paper instead relied on a review of web-based materials available in 2018, interviews with key leaders and participants in the advocacy coalitions that supported the tax, and an interview at a major media outlet. The authors reached out to the parties who represented the beverage industry in both Philadelphia and Santa Fe, but they declined requests for interviews. The authors also reached out to more than one member of the City Council in Philadelphia and Santa Fe, but did not receive a response from all of them.

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The reflections and opinions expressed in this case study are solely those of the authors.

1 Introduction

Over the last decade, interest in publicly funded preschool opportunities has surged across the United States. Social scientists and children’s advocates, backed by research on the foundational contribution early childhood education can make, have significantly raised public awareness of—and demand for—affordable, high-quality early education.¹ The key political question has now become not whether we should be financing preschool expansion, but how.²

Federal funds for the Child Care and Development Block Grant, Early Head Start and Head Start, Temporary Assistance for Needy Families, and early intervention and preschool grants under the Individuals with Disabilities Education Act provide significant amounts of funds for early childhood education, but funding levels are not keeping pace with the number of eligible children. The majority of states also fund prekindergarten, but only a handful of states provide prekindergarten for all their children who choose to enroll.³

At the local level, meanwhile, early childhood advocates are pursuing additional funding to fill in the gaps to high-quality prekindergarten. This report examines two examples of that advocacy: campaigns in Philadelphia, Pennsylvania, and Santa Fe, New Mexico, to fund the expansion of preschool programs through a local tax on sugar-sweetened beverages.

The idea of taxing particular products and dedicating some or all of the resulting revenue to early childhood education has been under consideration for some time. California already devotes a share of revenue from state taxes on tobacco products to preschool and other children’s programs. Arkansas six years ago dedicated a tax on beer to providing child care assistance to low-income families. More recently, a growing number of localities have been considering a tax on sugar-sweetened beverages. These “soda taxes” have a dual attraction for many child advocates. Taxes on sweetened drinks can both secure needed revenue for early childhood programs *and* decrease the consumption of unhealthy beverages.

Campaigns for these beverage taxes have, for the most part, focused their outreach on the potential public health benefits. In Philadelphia, advocates chose a different course. They centered their arguments for



a sugar-sweetened beverage tax on prekindergarten expansion, not any potential reduction in the consumption of unhealthy drinks. That focus struck a receptive chord. Advocates in Philadelphia went on to win legislation authorizing a tax on sugar-sweetened beverages. One year later, the mayor of Santa Fe attempted to enact a similar local tax on sugar-sweetened beverages. His effort would prove unsuccessful.

Specific campaign outcomes, either positive or negative, never really represent the final word on a new policy—and never end the need for continuing advocacy. Philadelphia’s City Council enacted a tax on sugar-sweetened beverages and implemented additional prekindergarten programs. The Philadelphia tax was challenged in the courts and the state legislature. Those challenges failed. Santa Fe did not enact a beverage tax, but the effort to win that tax has a positive result by increasing the level of local organizing for early childhood programs. The city now has a broader capacity for advocacy, a development that will be crucial in the wake of a July 2018 state court decision that found New Mexico’s school financing to be inequitable and called for any remedy adopted to include full-day pre-K.

This case study analyzes the two campaign efforts in Philadelphia and Santa Fe. Advocates in the two cities shared the same goal and advocated for the same financing mechanism. They operated, by contrast, in substantially different political landscapes and chose differing approaches to everything from campaign financing to messaging. What can advocates learn from the campaigns in Philadelphia and Santa Fe? This report identifies the prime lessons.

¹First Five Years Fund, 2017 national poll of voters retrieved at <https://bit.ly/2O0EckV>

²A new 2018 report from the National Research Council underscores the importance of adequately financing services that meet research-based standards of quality and fairly compensate the early childhood workforce. National Academies of Sciences, Engineering, and Medicine. 2018. Transforming the Financing of Early Care and Education. Washington, DC: The National Academies Press. doi: <https://bit.ly/2PsBw48>

³The State of Preschool 2017, State Preschool Yearbook. National Institute of Early Education Research. Rutgers University, NJ at <https://bit.ly/2O7bxdX>

2 Preemption Law and Advocacy Venue

PHILADELPHIA

Pennsylvania's 1932 Sterling Act⁴ permits certain cities in the state to create taxes, but only under certain conditions:

(T)he council of any city of the first class shall have the authority by ordinance, for general revenue purposes, to levy, assess and collect, or provide for the levying, assessment and collection of, such taxes on persons, transactions, occupations, privileges, subjects and personal property, within the limits of such city of the first class, as it shall determine, except that such council shall not have authority to levy, assess and collect, or provide for the levying, assessment and collection of, any tax on a privilege, transaction, subject or occupation, or on personal property, which is now or may hereafter become subject to a State tax or license fee.

In 2010 and in 2011, Philadelphia Mayor Michael Nutter tried to win City Council approval for a sweetened-beverage tax intended to narrow the school system's budget shortfalls. Both attempts would be unsuccessful. In 2015, council member Bobby Henon, a legislator who had been working on childhood obesity prevention, floated the idea of taxing sweetened beverages to help the underfunded school district budget. The new revenue, Henon proposed, would be dedicated for prekindergarten services and rebuilding community recreation centers, as well as for local libraries, community schools, and strengthening the local pension system. Other cities in the United States had previously pushed for—and even enacted—a sweetened-beverage tax, but no locality had ever dedicated the revenue as council member Henon was proposing.

The Henon proposal placed the tax on the distributors of sugar-sweetened beverages. These distributors had the option not to pass the tax on to merchants and consumers. This approach, noted advocates, would later give their tax campaign a useful talking point—and give their tax proposal itself a better chance of withstanding a legal test in Pennsylvania's Supreme Court.⁵

SANTA FE

The notion of a tax on sugar-sweetened beverages first surfaced in Santa Fe years before Mayor Javier Gonzales began advocating the idea in 2016.⁶ The original tax plan never gained much momentum, but the Navajo Nation, located near Santa Fe, did debate and implement a sugar-sweetened beverage tax in 2014, as part of a larger sales tax levy on unhealthy foods.⁷ The Gonzales 2016 proposal, unlike the earlier attempt at a beverage tax in Santa Fe, would have a significant advocacy campaign behind it. The proposal sought to fund the expansion of prekindergarten programs, and children's advocates rallied around it.

New Mexico law prohibits municipalities from levying sales or excise taxes on a list of specified items that includes tobacco, motor oil, and liquor. On items—such as sugar-sweetened beverages—not specified, the law states:

...any municipality may impose excise taxes of the sales, gross receipts or any other type on specific products and services, other than those enumerated in Paragraph (3) of Subsection C of this section, if the products and services taxed are each named specifically in the ordinance imposing the tax on them.⁸

State law also mandates that a majority of the voters in a locality must approve any new tax.⁹ Early childhood advocates in Santa Fe believed they could build that majority. Santa Fe voters had regularly in the past approved ballot initiatives related to the property tax and gross receipts tax, two major funding streams for local government. In fact, the mayor's team had considered both of these funding streams for its prekindergarten initiative, eventually settling instead on the sugar-sweetened beverage tax. However, Mayor Gonzales needed the City Council to agree to place the beverage tax on the ballot.

On November 10, 2016, the Mayor and Santa Fe's early childhood education advocacy coalition announced a new campaign for prekindergarten expansion, with a sugar-sweetened beverage tax as a revenue stream.¹⁰ Intense lobbying over the next few months would produce lopsided victories in committee and

⁴Sterling Act (First Class City Taxation) Act of Aug. 5, 1932, Special Session 1, P.L. 45, No. 45 Cl. 53 Special Session No. 1 of 1932 No. 1932-45

⁵Decision available at <https://bit.ly/2Slfcbh>

⁶Grimm, Julie Ann. "Councilor Ortiz Won't Seek Reelection." Santa Fe New Mexican, 7 July 2011.

⁷Fonseca, Felicia. "Navajo Nation President Approves Junk Food Tax." Santa Fe New Mexican, 21 Nov. 2014.

⁸2006 New Mexico Statutes - Section 3-18-2 Prohibition on Municipal Taxing Power.

⁹New Mexico Statutes. Chapter 3. Municipalities. Sec. 3-18-2. Prohibition on municipal taxing power.

¹⁰Nott, Robert. "City Leaders Push Soda Tax to Fund Early Childhood Education." Santa Fe New Mexican, 10 Nov. 2016.



Demonstrators gather outside Santa Fe's city hall ahead of Wednesday's City Council meeting, during which the council is expected to vote on placing the proposed sugary-drink tax on the ballot. Clyde Mueller/The New Mexican

council votes,¹¹ and then, after an extensive hearing that ran long into the night, the full council voted 7-1 on March 8, 2017, to put the issue on the ballot.¹² The lone dissenting council member, Ron Trujillo, would later become a prominent leader of the opposition. The council vote set the stage for a May 2 special election on the sugar-sweetened beverage tax. The citizens of Santa Fe would have their say.

3 Philadelphia's Special Situation

Children's advocates in Philadelphia had for years pursued a city-level early childhood strategy. By 2015, they had decided to push this strategy forward with a ballot question that would, if passed, establish a special commission on universal prekindergarten and outline the programmatic requirements and a funding mechanism for a major pre-K expansion.

This ballot question came before Philadelphia voters in a May 2015 special election, as one of four questions up for approval. Ballot Question No. 4 asked voters:

Shall the Philadelphia Home Rule Charter be amended to provide for the creation, appointment, powers and duties of an independent Commission on Universal Pre-Kindergarten which would recommend an implementation and funding plan for achieving universal high quality pre-kindergarten for three- and four-year-olds in Philadelphia without taking away funds used for existing education?

Nearly four out of every five voters in the subsequent election, 78.77 percent, approved Ballot Question 4. In some city wards, the question carried with nearly 90 percent of the vote. In no ward did the favorable response drop below a majority.¹³ Advocates now had a political mandate for publicly funded prekindergarten. The City Council would have to respond.

The Commission on Universal Pre-Kindergarten that Ballot Question 4 called for would soon take shape, with representatives from the early childhood community, academia, city agencies, and the City Council. The commission held hearings and community outreach sessions, mostly focused on requirements for prekindergarten program delivery, and the commissioners examined several financing options. They ultimately forwarded a recommendation for a sweetened-beverage tax, an option the mayor was already considering.

The commission's overall deliberations would span six months¹⁴ and serve several purposes. Commission members outlined for the public and the city's political community a prekindergarten program that could both meet quality standards and deliver access in underserved areas. The commissioners also helped the public better understand the importance of early childhood education. The presence of City Council members on the commission, meanwhile, built buy-in among top city-elected leaders. The work that the City Council members put into the commission left them feeling positive about the panel's final report, even if they did not personally support the tax recommendation.

¹¹The votes went 6-to-1 in a preliminary Business and Quality of Life Committee vote and unanimously, with amendments, in both the Public Works Committee and the Finance Committee. Minutes of committee meetings, including detailed descriptions of the debate, are available from the Santa Fe City Clerk. The meeting of the City Business and Quality of Life Committee took place on February 8, 2017, the Public Works Committee on February 20, 2017, and the Finance Committee on February 27, 2017.

¹²Santa Fe City Council. City Council Meeting Minutes. 8 March, 2017.

¹³<https://bit.ly/2r7zqsO>

¹⁴Commission web page for the list of hearings, public meetings, and transcripts.

4 Political Leadership

PHILADELPHIA

During the commission’s deliberations, in November 2015, Jim Kenney was elected Philadelphia’s new mayor, with prekindergarten playing a leading role in his agenda. Kenney had been a City Council member, and he came into his new office with a resounding 85 percent of the vote.¹⁵ Children’s advocates had worked for years to build up prekindergarten as a popular electoral issue, and Kenney as mayor almost immediately started investing his political capital in making universal pre-K a reality. He spoke about prekindergarten at every opportunity and regularly visited preschool programs with the media in tow.

One of Kenney’s key campaign strategists ran both his transition into the mayoralty and the organization, Philadelphians for a Fair Future, established to advance a pre-K financing strategy. Kenney would move quickly on the financing front once in office, backing a tax on the distributors of sweetened beverages.

Leading figures in the pre-K advocacy community would later credit Kenney’s political leadership as an important reason for their success. The mayor’s activity helped sustain the visibility of the prekindergarten issue from the election through the annual city budget address. The mayor would later stay under the radar, but clearly in touch with the City Council, as debates over the beverage tax proceeded. He would emerge as the lead negotiator in efforts to secure needed City Council votes for the beverage-tax proposal.

SANTA FE

Mayor Javier Gonzales hails from a formidable local political family. His father George served as Santa Fe’s mayor from 1968 to 1972 and ran a popular radio station in the area. Gonzales did win his 2014 mayoral bid convincingly, but hard feelings lingered after the election. The competing candidates had traded angry accusations during a bitter campaign that saw the filing of an ethics complaint accusing the Gonzales campaign of illegally coordinating the independent expenditures of local political action committees.

Gonzales campaigned in support of pre-K, but, once elected, two years would pass before he took up the pre-K issue as mayor. Gonzales spent those two years mainly addressing a city budget crunch that would eventually lead to budget cuts. In 2016, with the city

facing a less pressing fiscal situation, Gonzales finally turned toward fulfilling his campaign promise of increasing funding for prekindergarten. Crucial support for his effort would come from Jeannie Oakes, a retired professor and a nationally known figure in early childhood education who had met Gonzales during his campaign. The mayor tasked Oakes with the work of convening Santa Fe’s pre-K advocacy community to develop a plan for a significant expansion of prekindergarten in the city. Oakes and the advocates would proceed to focus on the technical aspects of prekindergarten expansion. Gonzales and his team kept responsibility for the political aspects of the effort—and determining an appropriate revenue source.

5 Coalitions, Grassroots, and Grasstops

PHILADELPHIA

The proponents’ coalition began with the work of several early childhood nonprofits, health advocates and researchers, representatives of libraries and recreation centers, and local trade unions. For years, early childhood advocates had worked together on a statewide prekindergarten funding campaign, and many had also gained advocacy experience promoting funding for other early childhood programs and funding for child care from the federal level. Some of them had worked inside government as well, giving them an understanding of how to move policy with inside-outside relationships.

The media and public generally saw the Philadelphia beverage tax as a proposal for funding prekindergarten. However, the tax had several other beneficiaries, all important to creating and maintaining a diverse coalition and winning final passage with the City Council. Particularly important to the final passage would be a commitment for a portion of the revenues from the tax for renovating community recreation centers and libraries.

On May 16, 2016, Philadelphians for a Fair Future was launched to lead the coalition. The coalition’s members included not only organizations concerned with early childhood and health, but also the faith community, police and firefighter unions, and neighborhood development advocates. As a 501(c)(4), Philadelphians for a Fair Future had some critically important advocacy flexibility, especially with paid media, that the other advocates lacked. A seasoned political and public relations staff, including a member of Mayor Kenney’s transition

¹⁵Office of the City Commissioners of Philadelphia, retrieved at <https://www.philadelphiavotes.com/en/resources-a-data/ballot-box-app>

team, managed the new coalition. The effort had at its disposal enough in the way of contributions, primarily from Michael Bloomberg, to pay for print, radio, and television ads as well as collateral materials. Two of the coalition's organizations, Public Citizens for Children and Youth and the Delaware Valley Association for the Education of Young Children, were key to organizing and mobilizing early childhood providers to meet with City Council members and host events at their program sites that garnered a lot of media attention.

The tax proposal would also provide revenue for meeting other city needs, but the beneficiaries of that other funding had no problem keeping the tax campaign's main focus on pre-K. Health advocates also agreed to keep prekindergarten upfront in all campaign messaging, realizing that they could meet their public health goals without a divisive and distracting public debate on whether the government should be telling individuals what to drink. At the launch of the pro-tax campaign, supporters for the measure presented a united messaging front, with the mayor, NAACP, and city's top Service Employees local union, SEIU 1199C, all prominently in attendance and in support.

The anti-tax coalition included bottlers and distributors, small and large sellers of beverages, and the Teamsters, the union that represents truck drivers working for beverage distributors. The Teamsters had no other significant labor allies. Philadelphia's American Federation of Teachers affiliate and other unions all joined with the prekindergarten coalition.

Opponents did enjoy considerable "grasstop" support from Harold Honickman, a well-known philanthropist in Philadelphia who also happened to own a beverage distributing plant. Honickman would become especially visible at meetings with City Council members and interviews with the media. He regularly urged the council members to, at the least, delay the tax, and even offered to pay for the first year of the prekindergarten program himself. This influential intervention led the pro-tax coalition to start placing more emphasis on the variety of local programs the new tax would support. That move made strategic sense. Honickman's pre-K funding offer would not help those tax coalition members who stood to benefit from increased funding for building renovations, local pensions, and other programs unrelated to pre-K.

SANTA FE

New Mexico had seen activism around prekindergarten at the state level before the 2016 beverage tax campaign, but the Jeannie Oakes effort to convene prekindergarten stakeholders and develop a pre-K plan for Santa Fe marked a first for broad-based coordination at the local level. The pre-K base in Santa Fe would expand significantly after the tax campaign's public launch in November 2016. Early childhood advocates founded an organization, "Pre-K for Santa Fe," to secure passage of their sugar-sweetened beverage tax proposal and gained the support of local progressive groups, immigrant rights advocates, a small number of businesses, and much of the faith community, including late support from the powerful Catholic Archdiocese of Santa Fe. A number of local unions also supported the effort. These unions played a more limited role than Philadelphia's labor supporters, mainly because the labor movement in New Mexico rates as nowhere near as strong as the labor movement in Philadelphia.

Support for the opposition eventually concentrated in a new organization entitled "Better Way for Santa Fe." The city's Chamber of Commerce helped early on to coordinate the opposition. In February 2017, the local Coca-Cola bottling plant became deeply engaged and worked to involve its employees in anti-beverage tax advocacy. Anti-tax messaging would soon appear on the bottling plant's delivery trucks. Many local bars and restaurants became engaged as well, expressing concern about the impact on their bottom line. Better Way for Santa Fe had financial support from the American Beverage Association and a skilled and experienced political organizer. That organizer, a veteran of presidential campaigns, would coordinate opposition efforts across the city.



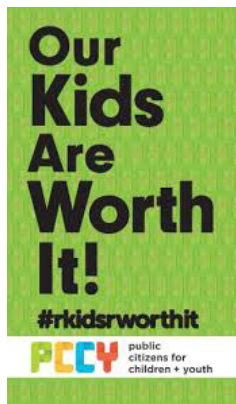
From left, Sarah Vigil, Pamela Miera and Jeanne Sellers hold signs opposing a tax on sugary drinks to fund prekindergarten services in Santa Fe on May 2. Eddie Moore/Albuquerque Journal

6 Competing Messages

PHILADELPHIA

The proponents of the sugar-sweetened beverage tax in Philadelphia made what may be their most important decision early in their campaign. They opted *not* to lead with public health.

The May 2015 ballot question on prekindergarten helped set the stage for what would become the tax campaign's primary message: Philadelphians want high-quality, fully funded prekindergarten. Through-



out the tax campaign, advocates would emphasize that all children need prekindergarten opportunities. Taxing the distributors of sweetened beverages would be the funding solution to create those opportunities. Campaign posters, such as the one at left from Public Citizens for Children (PCCY), cards, and rally signs drove this messaging home with a simple, straightforward slogan: "Our Kids Are Worth It."

Health advocates had no problem with this messaging. Focusing on prekindergarten, after all, had delivered a victory in the May 2015 ballot test. In other cities, a straight public health message on taxing soda had fallen flat.

The name for the beverage-tax campaign coalition, "Philadelphians for a Fair Future," added still more messaging value. This broad focus on the future helped emphasize that the beverage tax would be meeting all sorts of unmet needs in Philadelphia, making funding available for everything from rebuilding recreation centers to strengthening community schools.

An early poll conducted by the tax opposition found that 58 percent of potential voters opposed the tax.¹⁶ They framed their message as a "grocery tax" playing on consumers' concerns of a tax ultimately on them. The message overreached, however, in credibility. The proponents pointed out regularly that the actual tax proposal applied to distributors and mandated no price hikes for consumers.

Opponents also played to fears about potential job loss. The Teamsters and beverage sellers in the opposition's coalition often warned of potential job cuts for their members and even staged an event that surrounded City Hall with large distribution trucks, horns blaring, to make their point.



The American Beverage Association has already spent more than \$1.5 million on an anti-tax campaign. AP Photo/Matt Rourke

While opponents moved forward with an aggressive media campaign, supporters of the tax kept their focus on the message of the benefits of universal prekindergarten Philadelphians had endorsed in the voting on Ballot Question 4. Voters had told the City Council to create a universal pre-K program and find a financing mechanism for it. The tax proposal before the City Council, supporters noted, would provide that financing.

Advocates acknowledge that opponents did make more headway when they called out the beverage tax as regressive, charging that low-income families would be more likely to purchase sweetened beverages and, as a result, more likely to foot the bulk of the new tax burden. The tax proponents saw that this message was making headway locally and in the national media coverage. Bernie Sanders, then campaigning for the Democratic Party's presidential nomination, raised his concerns citing it as a grocery tax and that it would be regressive.¹⁷

Early childhood and other tax supporters, in response, pointed to the overwhelming support pre-K expansion had received from the citizens of Philadelphia on Ballot Question 4. In her testimony on May 18, 2016, before the Committee of the Whole, Public Citizens for Children and Youth Executive Director Donna Cooper, turned around the regressive tax messaging, stating:

"In spite of the fact that Pennsylvania has one of the nation's most regressive tax structures, research makes a convincing case that enacting a 3 cent an ounce soda tax may turn out to be one of the most progressive taxes we will ever have in this state....a tax that will improve the lives of the lowest income children by rebuilding recreation centers, parks and libraries will go a long way to closing the achievement gap for poor children and children of color by dramatically expanding access to high quality pre-K. I ask you...what could be more progressive than that?"¹⁸

¹⁶<https://bit.ly/2Ah86wo>

¹⁷<https://bit.ly/2Sm1wg7>

¹⁸<https://bit.ly/2AsYFLw>

SANTA FE

In New Mexico's capital, advocates focused the early stages of their tax campaign on the educational importance of prekindergarten, with a particular focus on socio-economic disparities in access to prekindergarten. Advocates generally sought to de-emphasize arguments for the tax on the basis of public health, even as some health advocates in the coalition did raise the point that reducing soda consumption would have public health benefits. Mayor Gonzales maintained this education-focused framing in his appearances before the City Council, but the focus on early education would shift dramatically, local activists note, when the tax campaign received a significant influx of campaign funding from billionaire Michael Bloomberg's organizational network and the American Heart Association. Both these funders insisted on emphasizing the health benefits Santa Fe could expect from a tax on sweetened beverages.

Opponents of the sugar-sweetened beverage tax focused all their arguments, right from the start, on the tax itself. Opponents stated publicly and repeatedly that they supported the expansion of prekindergarten, but not the use of the beverage tax as a revenue stream for it. At the tax proposal's first City Council hearing, the Chamber of Commerce positioned its opposition as a reaction to the regressivity of the tax and its likely adverse impact on the city's soda bottling plant, restaurants and bars, and tourist economy.¹⁹ Any imposition of the tax, the Chamber argued, would result in job losses and impose an unfair burden on the poor. These arguments would remain the centerpiece of the business community attack on the tax.

Tax proponents had limited effectiveness blunting this opposition critique. Some proponents would later describe their campaign as constantly on the defensive, always reacting to the opposition's charges. They felt never quite able to seize the messaging initiative.

Opponents of the tax, some pro-tax activists believe, also had a second, parallel message that they used to great effect, a message rooted in the unique demographics of the Santa Fe community. The city encompasses three major groups: a mostly white, more politically progressive community in the downtown and northern parts of the city, a long-settled middle- to lower-middle-class Latino community that traces its roots back centuries, and a newer Latino community of more recent immigrants. The opponents successfully galvanized the older Latino community and stoked resentment toward wealthier, whiter progressives "telling people how to live their lives." In this older Latino community, some tax proponents posit, arguments on the regressivity of the beverage tax tended to resonate

more. In the city neighborhoods this community dominates, particularly the more working-class wards, the ballot question would lose by the widest margins.

Toward the end of the campaign, members of the Santa Fe religious community endorsed the sugar-sweetened beverage tax, emphasizing that revenues from the tax would expand access to educational opportunity. Tax proponents then began to argue that the city had a *moral* imperative to improve educational opportunity, with the implicit message that those who opposed the tax were acting immorally. A number of proponents would later characterize this line of argument as a significant mistake that reinforced the perception that "arrogant" tax proponents were trying to dictate other people's lifestyles.

In the end, the vote on the tax proposal would not be close. In a relatively high turnout for a special election, 58 percent of voters rejected the sugar-sweetened beverage tax.

Many pro-tax activists now look back on their campaign and see an effort that at times became bitterly personal for voters. They also uniformly credit the campaign with raising the profile of the issue of prekindergarten. The positive developments in prekindergarten advocacy that surfaced statewide in the months after the campaign, activists suggest, owe their success, in part, to the sugar-sweetened beverage tax fight in Santa Fe.

The Santa Fe campaign has another interesting coda. Following the failure of the beverage-tax effort, Mayor Gonzales acknowledged in a *Santa Fe Reporter* interview that dissatisfaction with the regressive nature of sugar-sweetened beverage taxes contributed significantly to its failure. Added the mayor, after noting the increases in city fees and challenges in city finances that preceded the sugar-sweetened beverage tax effort: "I think... I think the public got it right on this."²⁰

7 Council Deliberations, Alternatives, and Decisions

PHILADELPHIA

In 2010 and 2011, then-council member Kenney had voted *against* the tax on sweetened beverages that then-Mayor Nutter had proposed. By 2016, all the political dynamics had changed. Kenney, now mayor, had won a sweeping majority in his election and had placed prekindergarten high on his policy agenda.

¹⁹Santa Fe City Business and Quality of Life Committee. Meeting Minutes. February 8, 2017.

²⁰Grubs, Matt. "Sugar Crash." *Santa Fe Reporter*, Arc Publishing, 9 May 2017, <https://bit.ly/2Sm9bLJ>

Ballot Question 4, passed in 2015, in essence required the City Council to act on the Commission on Universal Pre-Kindergarten's recommendations. Most of the attention on the new sugar-sweetened beverage tax would focus on the prekindergarten connection. The City Council had other reasons to support the tax as well. Revenues from it would also help rebuild recreation centers and libraries for their constituents.

Some City Council members, even so, circled warily around the "soda tax." Several Council members representing low-income areas of the city raised concerns that the tax would hit the pocketbooks of their constituents the hardest. Other Council members argued that targeting only one industry to pay for pre-K would be unfair.

The tax-burden issue also had racial implications. Some members of the City Council, representing neighborhoods with large low-income, African American populations, charged that people of color would bear the biggest relative tax burden. Another City Council member who had supported prekindergarten education firmly opposed the tax because small Latino-owned merchants in her district would bear an unfair burden.

Those sensitivities sparked a search for alternate funding mechanisms. The City Council president and another member proposed a tax on containers, exempting milk products and infant formula, a move that would spread the tax burden over more products and thus undercut the one-industry burden argument. However, this container tax would not raise as much revenue as the mayor's beverage tax proposal. Another City Council member proposed a container tax credit for merchants who sold "healthy" alternatives (which did pass as part of the package).²¹ Opponents of the sugar-sweetened beverage tax, news reports indicated, might be willing to accept the container tax, but they would not give the container tax their approval publicly.

With the City Council president opposing the tax proposal's 3-cents-per-3-ounces beverage levy as too large²² and expressing interest in the alternate container tax, the mayor in late May signaled he would accept something less than the original 3-cent rate. The mayor also pushed back on the container tax, arguing that the revenues from it would simply be insufficient compared to a sugar-sweetened beverage tax.²³

Testimony before the City Council on the mayor's tax proposal would run the gamut, from merchants to library and health advocates. Repeatedly, witnesses would argue over exactly *who* would be taxed. Beverage distributors? Storeowners? Consumers? The ques-

tions went beyond whether distributors would pass on the tax burden. City Council members also had serious questions about the legal legitimacy of the beverage tax. One hearing early in the deliberations debated why the City Council should move forward on a tax that could end up in the courts. The city's counsel firmly opined that the sugar-sweetened beverage tax would survive any lawsuit.

Prekindergarten advocates worked to keep the pressure on City Council members. Advocates held events with children in the halls outside member chambers. Opponents did the same. The Teamsters held a truck rally encircling City Hall, but, visually, proponents were more effective. Their events had racial diversity among the early childhood providers and children. Opponent events primarily involved white men and lobbyists.

Throughout this advocacy activity, negotiations continued behind closed doors with the mayor and his staff meeting with City Council members right up until their vote. The negotiations dropped the beverage tax rate to 1.5 cents per three ounces and added diet soda to the list of taxable products.²⁴ Negotiators withdrew the container tax but retained the tax credit for healthy beverages.

On the day of the City Council vote, members learned to their surprise that the mayor also intended to use a portion of the tax revenue to reduce the general fund debt. The mayor's office claimed that this had been an earlier part of its plan. Observers differed over whether an open debate on this additional use of the revenue would have swayed the final negotiations in a different direction.

SANTA FE

Informal deliberations with city councilors over the Santa Fe tax proposal began soon after Mayor Gonzales announced the initiative in fall 2016. Not until February 2017, however, did City Council committees begin to debate the proposal in any detail. The proposal came before the Council in two separate components: a resolution creating the new early childhood programs and a resolution placing a referendum on the ballot to levy a sugar-sweetened beverage tax to pay for it. The resulting committee debate centered on the sugar-sweetened beverage tax, not the proposal to expand pre-K. In fact, a number of the witnesses who testified against the legislation specified that they did not oppose an expansion of prekindergarten at all. They simply opposed the

²¹Bill No. 160552, entitled "An Stated Meeting June 9, 2016 ordinance amending Chapter 19-2600 of The Philadelphia Code, entitled 'Business Income and Receipts Taxes,' by creating a tax credit to encourage certain merchants to provide healthy beverage alternatives in their stores"

²²May 26 2016 Council hearing

²³Philadelphia Inquirer retrieved at <https://bit.ly/2EO5L1p>

²⁴<https://bit.ly/21d0pwG>

method Mayor Gonzales was proposing to pay for it. Opponents of the tax made this same argument central to their messaging throughout the City Council deliberations and the referendum campaign.

The first discussions on the beverage tax proposal took place before the Council's Business and Quality of Life Committee, an advisory panel that serves to move proposals forward for deliberation by the full City Council. This committee heard public testimony almost evenly split between proponents and opponents. Opponents stressed two main points: the adverse economic impact on bars, restaurants, and the local Coca-Cola bottling facility and the unreliability of a sugar-sweetened beverage tax as a long-term funding mechanism. The tax, opponents argued, would decrease consumption over time and, in the process, result in a shrinking revenue stream.

Advocates and opponents both seemed to agree that the city needed funding for increasing access to prekindergarten, and the full committee unanimously endorsed the resolution setting up a new pre-K program through the local community college. The resolution identifying the sugar-sweetened beverage tax as the revenue source for that expansion and putting that proposed tax on the ballot did draw one negative vote and one abstention. The abstention came from a committee member who owned a restaurant that the tax would impact.

Two weeks later, the City Council's Public Works Committee took up the resolutions and gave the city's elected leaders their first opportunity to publicly discuss their support or opposition and hash out potential amendments. The mayor proposed an amendment that would limit the tax to drinks with 5 grams or more of sugar, a change that would limit the impact on kombucha and other lower-sugar drinks produced in the city. This amendment derived from direct conversations between local business people and Mayor Gonzales. Council members also raised various technical issues. Among them: How could the city begin collecting a new tax when it was already having trouble collecting parking fines and the local lodging tax in a timely and efficient manner?

The full City Council deliberations on the proposal took place on March 8, 2017. Mayor Gonzales began the discussion by addressing many of the points that had been raised in committee. He brought with him an economist who had written a report on the potential impact of a sugar-sweetened beverage tax in Santa Fe and asked this economist to speak to concerns about economic impact. The mayor also brought in the local superintendent of schools to speak to potential educational benefits. Together, these two speakers addressed

many of the concerns that had been raised in committee, particularly the potential for reduced consumption to reduce revenues from the beverage tax over time. Most of the evening went to public input, with so many people eager to testify that council members had to take a formal vote to extend their meeting past midnight to finish their work.

Council members eventually proposed a number of amendments that would be accepted as friendly, mostly dealing with fiscal issues. One amendment would have allowed sugar-sweetened beverage tax funds to be used for capital investments in expanding prekindergarten facilities. Others made clear that city residents and lower-income children would get priority status for services under the expanded pre-K programming. Only one amendment did not receive a vote, a measure that would have delayed voting on the referendum question, as a cost-saving gesture, until the next regular city election in March 2018. A compromise kept the referendum on schedule by pledging to pay the costs of the special election out of potential revenues. In the end, the tax proposal passed the City Council by an overwhelming majority, with only one council member opposing. The residents of Santa Fe would soon have the final say.

8 Financing Advocacy

PHILADELPHIA

Advocacy has costs: for paid media, for staff, for campaign literature, even for the general costs of running coalition meetings. Advocacy organizations bear some of these costs as part of their ongoing day-to-day work. Other financing may come from individual and corporate donors.

In Philadelphia, the anti-tax effort raised and spent substantially more than the pro-tax campaign. In large part, the expenditures reflect Philadelphia's status as an expensive media market. In the first quarter of 2016, according to the City of Philadelphia Board of Ethics lobby expense filings,²⁵ the American Beverage Association spent \$1,423,120 on the tax campaign. The pro-tax Philadelphians for a Fair Future did not yet exist in the first quarter. In the second quarter, the American Beverage Association reported spending \$9,201,210 and Philadelphians for a Fair Future reported \$2,185,944. Both sides listed outlays for making direct contact with City

²⁵Filings can be searched at <https://bit.ly/2GHaa3l>

Council members, connecting and organizing communications with their coalition allies, telephone banking, and advertising via radio, television, and print.

Philadelphians for a Fair Future had contributions from a mix of individuals, local business, and the mayor's political action committee, with the greatest share of funds from Action Initiative Now, an organization close to the Laura and John Arnold Foundation and Michael Bloomberg. The American Beverage Association had three reported contributors: the Coca-Cola Company, the Dr. Pepper Snapple Group, and PepsiCo Americas Beverages.

Anti-tax forces may have had the dollar edge, particularly for television and other advertising, but tax supporters, many observers believe, simply "outworked" their opposition.

SANTA FE

In Santa Fe, opponents outspent proponents by more than a 2-to-1 margin, with Better Way for Santa Fe raising and spending more than \$1.9 million and Pre-Kindergarten for Santa Fe raising and spending a little less than \$900,000. A third organization largely funded by the local Coca-Cola bottling plant, Smart Progress Santa Fe, spent less than \$20,000 on the effort.²⁶

In Santa Fe, as in Philadelphia, billionaire Michael Bloomberg emerged as the largest single donor to the campaign for a sugar-sweetened beverage tax campaign. Somewhat lesser amounts came from the American Heart Association.

Bloomberg's involvement would have a significant impact on the pro-tax effort. Opponents of the sugar-sweetened beverage tax cited that involvement to reinforce their assertion that wealthier areas of Santa Fe were trying to dictate how people should live their lives. They characterized local tax supporters as little more than puppets for Bloomberg and Eastern liberal elites. The Bloomberg funding also came with strings attached that shifted how the pro-tax campaign would unfold. Bloomberg insisted on a messaging that focused on the public health benefits of a tax on sugar-sweetened beverages. And Bloomberg did not want significant funds spent on radio ads, a preference that essentially ceded Spanish-language radio to opponents.

The tax proposal's opponents in Santa Fe drew their funding mostly from the American Beverage Association, just as in Philadelphia. These funds enabled the hiring of an experienced national organizer and helped pay for significant media outreach, including radio advertising. Paid anti-tax canvassers fanned out across the

city during the campaign, and polling helped test the anti-tax campaign's messages. The opposition effort, in other words, featured all the attributes of a modern political campaign.

9 Lessons Learned

On their face, the Philadelphia and Santa Fe advocacy efforts look similar. Each city had a mayor committed to expanding pre-K and state law that allows localities to tax sugar-sweetened beverages at the distributor level. Activists in each city could draw on financial backing from outside of the state. The advocacy landscape, shaped in large measure by ballot versus City Council passage, the existing depth of public support for prekindergarten expansion, the advocacy capacity at the time, and the capital of political leaders for this issue at the time were not similar. The comparison of those differences leads to the following reflections.

The state's preemption law is a key determinant in the type of advocacy that is needed to be successful.

Does the local electorate have to approve a proposed new tax at the ballot box, and what would that take? Or will that approval decision be solely the province of a local policymaking body? The answers to these questions could be significant in determining strategies and tactics. In Pennsylvania, a state preemption law gave authority to the 17-member Philadelphia City Council. In New Mexico, the law required two-thirds of the voting public to approve the proposed new beverage tax.

City councils address tax and revenue issues all the time, mostly by deciding to raise or not raise an existing tax or fee. In Philadelphia, the proposed new tax on sweetened beverages did pose challenges for advocates and policymakers as a new tax. Placing a tax proposal on a general election ballot, as advocates had to do in Santa Fe, has its own challenges. Many if not most people do not face a tax question positively disposed to give their approval, even if the revenue from the new tax would go toward a highly popular use.

That said, advocates have been able to prevail on public balloting over new tax proposals. Successful advocacy efforts in these circumstances, however, require a popular and dogged political leader, coupled with ample existing advocacy capacity in both organizing the grassroots and providing strategic leadership.

²⁶Campaign finance statements filed with the City of Santa Fe during the election are available at https://www.santafenm.gov/campaign_finance_statements

A strong foundation of public support for the intended use of the revenue needs to be laid well in advance of the new tax campaign.

Early childhood advocates had participated for many years not only in local, but also state and federal advocacy for prekindergarten and other programs. Public awareness was high; political support for the issue was strong when there were uphill battles getting additional funding. In Philadelphia, there already were champions for early childhood education on the City Council. The ballot to affirm the public's support for prekindergarten—in the form of a question about a commission—was instrumental in moving the issue from “awareness” to “will.” They continued to reiterate, all throughout their campaign, the evidence of prekindergarten's importance. That evidence helped them argue that the benefits from the proposed new tax would be far greater than the potential burden from any tax.

Organizing the grassroots is better done in advance than simultaneous with the campaign.

The early childhood providers were robust advocates and were organized by their professional as well as advocacy organizations. Leaders of the grassroots effort had strong backgrounds in political campaigns, which gave them experiences on which to draw for this advocacy. A multi-issue and sector coalition also meant an expanded grassroots and relationships with council members. The tax proposal's opponents had grassroots presence as well, but much of the direct advocacy appears to have been conducted by the industry's lobbyists with a campaign that focused heavily on paid media.

In New Mexico, deeper and bigger early childhood organizing efforts had always centered in Albuquerque, not Santa Fe. As a result, proponents of the Santa Fe beverage tax had little grassroots capacity to build upon. They had no choice but to work at building an advocacy foundation at the same time as they were waging their pro-tax campaign.

Coalition partners need to understand that not everyone can have their particular issue be a campaign's leading message.

In Philadelphia, the health community agreed to a less visible campaign role and let the messaging emphasis fall on expanding prekindergarten, rebuilding community centers and schools, and strengthening pension security. Health activists understood they would gain nothing if the tax on sugar-sweetened beverages failed. They did everything possible to help the proposal pass, including taking a backseat role in the campaign messaging. This willingness to place coalition success first enabled the tax campaign to overcome the massive advertising of a much-better-funded opposition.

In Santa Fe, an initially viable coalition strategy

could not overcome the strategic preferences of the campaign's major funders.

Messages about regressive taxation resonate.

People do care about tax fairness. Tax proposals that appear to be regressive will always struggle to gain public support.

In Philadelphia, tax proposal proponents did not spend their time arguing tax policy and tax fairness in isolation. Instead, they turned the regressive-progressive tax argument on its head. They pointed out that low-income households may pay more with a tax on sweetened beverages in effect, but their overall household expenditures would be less. With universal pre-K, they would no longer have to be paying for prekindergarten care. Tax proponents did not rely on research studies to make this case. They painted a dramatic contrast: a couple cents more for beverages against thousands of dollars more spent on prekindergarten.

People also care about the job impact that tax proposals may have. In Philadelphia, the opposition's job-loss message had some resonance, especially for lawmakers representing low-income neighborhoods with small merchants. Overcoming the job-loss argument would prove to be difficult in Philadelphia—and will remain difficult until the beverage tax takes effect and researchers and communities alike can assess the actual impact.

For successful paid-media outreach, campaigns need a 501(c)(4) capacity.

In Philadelphia and Santa Fe, 501(c)(3) organizations provided grassroots and lobbying support. In both cities, activists established new 501(c)(4) organizations to manage the coalitions and, importantly, to receive the financial backing necessary to run television and radio ad campaigns.

Overreaching on the facts is a mistake.

In Philadelphia, the opposition labeled the proposed tax on soda distributors a “grocery tax” and earned a deserved backlash from local media outlets and City Council members. Tax proponents could easily debunk the opposition “grocery tax” label. They had the facts on their side. By overreaching on the tax, opposition skepticism developed about other facts they were presenting, including the scale of potential job loss for distributors and merchants.

Even a “win” is not necessarily the end of the advocacy effort.

When the Philadelphia City Council passed the tax, opponents of the tax took to the courts to challenge the authority and when that failed, went to the state legislature to try to carve out a protection in the preemption law. Philadelphia's experience should remind advo-

cates for a local tax that they may face a well-financed opposition that refuses to concede an initial defeat. On the upside for the proponents, there are 2,000 more children attending publicly funded prekindergarten.

Even a loss is not a complete defeat.

Although the sugary beverage tax did not get enacted, the effort made real gains in raising public awareness and increasing the advocacy capacity in Santa Fe. The advocates' next policy push will begin from a position of greater strength than if this effort had never been undertaken.

10 Timeline of the Advocacy in Philadelphia and Santa Fe

PHILADELPHIA

2010 and 2011

May 2010—The City Council rejects a proposal by Mayor Nutter to tax soda. The revenues would have been used to reduce the school budget gap.

<https://reut.rs/2F5WqCp>

Mayor Nutter made another attempt in 2011, but again the Council rejected the tax on sugar-sweetened beverages and adopted other tax and fee increases.

<https://bit.ly/2D4rjEx>

2014

A coalition of diverse organizations launches the campaign, Pre-K for PA. The goal is state investment in high-quality preschool for all three- and four-year-olds in the state. <http://www.prekforpa.org/>

2015

May 19, 2015—Ballot Question 4—Shall the Philadelphia Home Rule Charter be amended to provide for the creation, appointment, powers and duties of an independent Commission on Universal Pre-Kindergarten which would recommend an implementation and funding plan for achieving universal high quality pre-kindergarten for three- and four-year-olds in Philadelphia without taking away funds used for existing education? Nearly 80% of the voters answer Yes.

The Commission begins its work. Its first meeting is June 30, with several other meetings, hearings, and community outreach through 2015.

<https://bit.ly/2q58SaU>

November 2015—Jim Kenney wins the mayoral race in Philadelphia. Expanding prekindergarten opportunities in the city is a key part of his agenda.

<https://bit.ly/2SO1i1S>

2016

The Commission on Universal Pre-Kindergarten continues its meetings to develop a plan for high-quality prekindergarten and its financing.

March 3—Mayor Kenney presents his Budget Address and proposed Fiscal Year 2017 Operating Budget. It includes a 3-cent-per-ounce tax on sugar-sweetened beverages. <https://bit.ly/2q19FK9>

March 16—Philadelphians for a Fair Future announces its launch as a coalition in support of the proposed tax. The new organization manages the coalition. It is led by seasoned political and public relations professionals, including former staff to the Kenney transition team.

March 29—FY17 Operating Budget and FY17–FY21 Five Year Plan Testimony, Jane Slusser, Chief of Staff, Office of the Mayor, Presented before the City Council Committee of the Whole

April 15, 2016—Final Recommendations Report of the Philadelphia Commission on Universal Pre-Kindergarten released, including a recommendation for a tax on soda and why other taxes were considered but ultimately not selected. <https://bit.ly/2PqYpBX>

May 19–26, 2016—City Council holds a hearing with public witnesses. At the May 26 meeting, council member Brown introduces a bill to create a tax credit to encourage certain merchants to provide healthy beverage alternatives in their stores.

<https://bit.ly/2RCW9Z4>

June 9—Committee of the Whole reports out favorably the bill to tax distributors of sweetened-sweetened beverages and the bill to provide a tax credit to merchants selling healthy alternatives. Both are placed on Final Passage Calendar for the following week, June 16, 2016. <https://bit.ly/2q1SKHk>

June 16, 2016—Second Reading and final passage. Sugar-Sweetened Beverage Tax roll call 13 to 4 in favor; Tax credit for healthy beverage alternatives roll call 17 to 0 in favor. <https://bit.ly/2yW6qIG>

SANTA FE

2011

Before July 2011—First discussion of sugar-sweetened beverage tax as a formal proposal in Santa Fe, introduced unsuccessfully by Councilor Matthew Ortiz.

<https://bit.ly/2n70uX5>

2014

November 2014—The Navajo Nation, located near Santa Fe, becomes the first governmental entity in the southwest to approve a sugar-sweetened beverage tax, as part of a larger junk food tax aimed explicitly at reducing diabetes and obesity among the Diné.

<https://bit.ly/2MguQ4v>

March 4, 2014—Mayor Javier Gonzales elected in contested and controversial election that includes accusations of campaign finance improprieties, attacks on Gonzales' record, attempts to smear another candidate's campaign manager. During the campaign Gonzales promises to expand prekindergarten programs.

2016

October 2016—*Santa Fe New Mexican* discussed mayoral resolution asking the City Manager to actively explore ways to reduce sugar consumption—no record with City Clerk of resolution having been formally introduced. <https://bit.ly/2ADEQDx>

November 10, 2016—Mayor Javier Gonzales publicly announces effort to expand early childhood education in Santa Fe using revenue from a new 2-cent-per-ounce sugar-sweetened beverage tax, which will be put on the ballot. <https://bit.ly/2fu9MeA>

2017

February 8, 2017—Santa Fe City Council Business and Quality of Life Committee, an advisory committee which offers preliminary approval to resolutions, holds a public hearing and considers two resolutions. Public testimony is about even, 8 testify in favor, 7 opposed.

Many of those opposed say they do not oppose prekindergarten but rather the sugar-sweetened beverage tax. Many supporters mention not just pre-kindergarten but health impacts of sugar consumption. By a 6 to 1 vote they approve resolution 2017-25, which authorizes a new sugar-sweetened beverage tax to fund prekindergarten. By a unanimous vote they approve resolution 2017-24, which authorizes the creation of a new prekindergarten fund and the development of guidelines for an expanded public prekindergarten program in the city.

February 20, 2017—Santa Fe City Council Public Works Committee gives unanimous approval to resolutions 2017-25 and 2017-24, with some amendments added to the resolutions and further amendments discussed. The committee deferred offering those amendments until more information was available in full Council voting session. (Public Works Committee Agenda and Minutes, <https://bit.ly/2M1dwDB>)

February 27, 2017—Santa Fe City Council Finance Committee gives unanimous approval to resolution 2017-25 (Finance Committee Agenda and Minutes, <https://bit.ly/2M1dwDB>)

March 8, 2017—City Council holds a public hearing and vote on the resolutions. Extensive public testimony from dozens of witnesses. Supporters focus on importance of expanding prekindergarten. Opponents express concerns about economic implications of the sugar-sweetened beverage tax. City Council votes 7 to 1 in favor of Resolutions 2017-24 and 2017-25, putting the ballot question on the ballot on May 2. Council member Ron Trujillo, who would go on to be a prominent opponent, is the lone dissenting vote.

May 2, 2017—Election Day—Ballot question is overwhelmingly defeated, with a strong negative vote from less wealthy, southern Santa Fe, Council Districts 3 and 4.

11 About the Authors

Adele Robinson is the Karabelle Pizzigati Endowed Clinical Professor in Advocacy for Children, Youth and Families. Her policy work has focused on helping create conditions for educational and life success for children from birth through school with attention to low-income families and communities of color and diverse ethnicities. Previously she was the Deputy Executive Director for Public Policy at the National Association for the Education of Young Children, a lobbyist for the National Education Association and the National Association of State Boards of Education, a consultant to the U.S. Administration on Children and Families on child care, and a legislative assistant on the U.S. Senate's Committee handling education legislation and funding. She has published articles on policy and advocacy, presented at national and state conferences for policymakers and advocates, and testified before state legislatures and boards.

Eric Luedtke is a Delegate for Maryland's District 14. As a high school student, he co-founded the first countywide network of student environments. After college, he taught in two high-poverty middle schools in Montgomery County Public Schools. First elected to the Maryland House of Delegates in 2010, he is an effective voice on special education laws, child abuse prevention, environmental protection, and the Maryland Dream Act to permit undocumented immigrants attending Maryland high schools for at least three years to be eligible for in-state tuition at public colleges. He became the youngest subcommittee chair in a generation and a key member of the powerful House Ways and Means Committee. In addition to his elected position, he teaches public policy at the University of Maryland College Park and is working to complete his PhD in public policy.