



KENTUCKY

General News



June 2015



Attorney General Conway Victorious in the United States Supreme Court Against the Environmental Protection Agency

The U.S. Supreme Court's recent decision to overturn the EPA's air pollution rules is a direct result of a lawsuit that Attorney General Conway filed with 22 fellow Attorneys Generals.

The Court ruled that the EPA acted "unreasonably" when it failed to consider costs in developing a new regulation that required existing power plants to retrofit their emissions systems at great expense to Kentucky ratepayers and business owners. Simply put, this regulation—known as the MATS regulation—would have cost Kentucky jobs and raised electricity rates for Kentuckians. Evidence presented to the Court by Kentucky and other states indicated that power plants across the country—including those here in Kentucky—would bear costs of \$9.6 billion per year if this regulation went unchecked. Kentucky's historically low energy rates are critical to keeping Kentucky competitive and attracting jobs to the Commonwealth, and that kind of price tag would hurt ratepayers and damage Kentucky's economy and hinder job growth.

Attorney General Conway has repeatedly stood up for Kentucky ratepayers, industry and businesses against the EPA. General Conway was the only Democratic Attorney General in the country to sue the EPA. Attorney General Conway recently announced the bipartisan effort between Kentucky and West Virginia to strike down the EPA's proposed Greenhouse Gas rules that would severely undermine Kentucky's coal economy and the businesses located here because of low energy rates. West Virginia Attorney General Patrick Morrisey and General Conway joined with Attorneys General from 11 other states to ask the U.S. Court of Appeals to stop the EPA from moving forward with these rules that place draconian limits on existing coal-fired power plants. The rules are contrary to law and fly in the face of Kentucky's right to develop its own plan about how to reduce emissions and implement the Clean Air Act. The EPA's role is to make recommendations. The state's role is to implement the plan. Attorney General Conway has shown he will always protect Kentucky's right to make policy choices that are the best fit for this unique and special state.

Read the Supreme Court Opinion: http://www.supremecourt.gov/opinions/14pdf/14-46_10n2.pdf

Attorney General Conway Battles the Environmental Protection Agency Again by Filing Lawsuit to Protect Kentucky Waterways



On June 30, Attorney General Conway, joined by eight other state Attorneys General, filed a lawsuit asking a federal court to strike down a new rule from the U.S. Army Corps of Engineers and Environmental Protection Agency (EPA) that unlawfully expands the federal government's regulatory reach over local streams, lands and farms. The rule, known generally as the "Waters of the United States" (WOTUS) rule, would extend the EPA and Corps of Engineers' regulatory reach to an untold number of small bodies of water in Kentucky; including roadside ditches, short-lived streams and any other area where the agencies believe water may flow once every 100 years.

"In order to best protect the citizens, farmers, and the taxpayers of the Commonwealth, I am challenging this overreaching rule imposed by the EPA," said Attorney General Conway. "This finalized rule, in my opinion, is illegal. This overly burdensome rule flies in the face of the tradition of environmental regulation, which is to allow states to develop their own responses in how they deal with what's required by the Clean Water Act. By challenging this rule, we continue to fight a long-term battle regarding an overreach by the EPA under this administration. I will fight this battle every step of the way."

This rule could have dire consequences for homeowners, farmers and developers by forcing them to navigate a complex federal bureaucracy and obtain costly permits in order to perform everyday tasks like digging ditches, building fences or spraying fertilizers. Failure to comply with these new regulations could result in fines of up to \$37,500 a day.

The complaint alleges that the final rule put forth by the EPA violates the Clean Water Act, the Administrative Procedure Act and the U.S. Constitution, and usurps the states' primary responsibility for the management, protection and care of intrastate waters and lands. The complaint also asks a federal judge to declare the rule illegal and issue an injunction to prevent the agencies from enforcing it. It also asks the judge to order the agencies to draft a new rule that complies with the law.

The complaint may be viewed by visiting: <http://goo.gl/5hgLzz>

United States Supreme Court Rules to Allow Gay Marriage in the United States



On June 26 Attorney General Conway issued a public statement regarding a ruling by the United States Supreme Court allowing gay marriage:

"Today, the United States Supreme Court issued the final word on this issue. The ruling does not tell a minister or congregation what they must do, but it does make clear that the government cannot pick and choose when it comes to issuing marriage licenses and the benefits they confer. It is time to move forward because the good-paying jobs are going to states that are inclusive.

As Attorney General of the Commonwealth of Kentucky, I did my duty and defended Kentucky's constitutional amendment. When Judge Heyburn ruled the amendment was unconstitutional, I agreed with his legal analysis and used the discretion given to me by statute to inform Gov. Beshear and the citizens of the Commonwealth that I would not waste the scarce resources of this office pursuing a costly appeal that would not be successful.

As the Court profoundly stated in its opinion regarding the plaintiffs, 'they asked for equal dignity in the eyes of the law'. So under the law the Constitution grants them that right.' "

Read the Supreme Court Opinion: http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf

Inspire Pharmaceuticals to pay \$6 Million in False Claims Settlement



On June 18, Attorney General Jack Conway and 48 attorneys general joined the federal government to reach a settlement with manufacturer Inspire Pharmaceuticals, Inc., a pharmaceutical company with its U.S. headquarters in Illinois. This settles allegations that the company violated the False Claims Act by misleadingly marketing its drug AzaSite. It is alleged that these misleading practices caused doctors to write prescriptions for a non-FDA approved use that resulted in Medicaid and federal healthcare programs paying millions of dollars in false claims.

The FDA only approved AzaSite for the treatment of bacterial conjunctivitis (pink eye). However, Inspire marketed AzaSite for the treatment of blepharitis, the inflammation of eyelash follicles around the edge of the eyelid, for which it had not obtained FDA approval. As a result of the settlement, Inspire will pay the states and the federal government \$6 million. Kentucky's Medicaid share of this settlement was \$51,456.89. The federal share of that amount was \$39,353.97 and the state will receive \$12,102.92.

"Patients have a right to trust they are being prescribed properly tested and effective medicine," said Attorney General Conway. "Pharmaceutical companies like Inspire will not be permitted to skirt FDA rules and regulations to make a profit at the expense of patients. These FDA rules are enforced to ensure patients are only prescribed drugs that are proven to benefit the patient."

Read more here: <http://migration.kentucky.gov/Newsroom/ag/inspirepharm.htm>

Former Montgomery County Master Commissioner Pleads Guilty to Abuse of Public Trust

Myra Chenault, a 40-year old resident of Mt. Sterling, Ky. and former Montgomery County Master Commissioner, pled guilty and was sentenced on a charge of abuse of public trust on June 26. Chenault admitted that she was acting as a public servant in her position as the Montgomery County Master Commissioner. Between the dates of January 2013 and September 2014, an investigation found that she unlawfully obtained \$60,000 in funds administered by the Administrative Office of the Courts located in Franklin County, Ky. As Master Commissioner, she had an obligation to make a specific payment or disposition with those funds and she admitted to intentionally using that public money as her own.

As part of her plea agreement in Franklin Circuit Court, Chenault agrees to serve two years in prison, which will be diverted for a period of three years. Chenault also agreed to pay back \$60,000 in restitution and relinquish her license to practice law.

"I appreciate the hard work of my Office of Special Prosecutions for securing a guilty plea in this case," General Conway said. "These laws are in place to protect the citizens in Kentucky from the illegal mismanagement of resources by public officials and to ensure that there is transparency in the disposition of public funds."

Special Prosecutions Division

Attorney General Conway's Special Prosecutions Division prosecutes criminal cases pursuant to KRS 15.190 to 15.240 and KRS 15.715. Special prosecutors are responsible for assisting local prosecutors in complex or sensitive cases, as well as handle cases in which the local prosecutor disqualifies himself and to prosecute thefts from the Commonwealth by employees or elected officials.

Anyone aware of such illegal activity on the part of an elected or appointed official is encouraged to contact the DCI toll-free hotline at **866-524-3672** or email information to DCIFORCE@ag.ky.gov.

Read more here: <http://migration.kentucky.gov/Newsroom/ag/chenaultplea.htm>





CYBERCRIMES

Former State Employee Distributing Child Pornography Sentenced to 13 Years in Prison



Gordon Bowers, 51-years old of London, Ky., admitted to downloading images of child pornography from the Internet while at work at his state job. This case was investigated by Attorney General Conway's Cybercrimes Unit in February 2014. Earlier this month on June 19, U.S. District Judge Gregory Van Tatenhove sentenced Bowers to 13 years in federal prison for receiving child pornography.

According to Bowers' plea agreement, in February of 2014, Cybercrimes identified several child pornography images and videos being traded online. Investigators traced the source of the images to a computer at the London State Office Building. The Cybercrimes Unit executed a search warrant at Bowers' office and found more than 40,000 images of child pornography on his state-issued computer and other electronic storage devices. The images depicted children engaged in sexually explicit conduct. Bowers pleaded guilty in January of this year. He worked as an environmental scientist.

Under federal law, Bowers must serve at least 85 percent of his prison sentence. Bowers also will be under the supervision of the U.S. Probation Office for 15 years after he serves his 13-year prison sentence. Judge Van Tatenhove ordered Bowers to pay \$35,000, in restitution to multiple victims, for costs associated with psychological counseling services.

Read more here: <http://migration.kentucky.gov/Newsroom/ag/bowersgordon.htm>

Kenton County Man Pleads Guilty to Distribution of Child Pornography

Alan K. Newberry, 43-years old of Park Hills, Ky., pled guilty in federal court to distribution of child pornography on June 25. According to Newberry's plea agreement, investigators with Attorney General Conway's Cybercrimes Unit identified child pornography files that had been made available for download on the internet. They traced the source of the images and videos to Newberry's computer, which was located at his home in Park Hills. Authorities executed a search warrant at Newberry's residence, searched his computer, and found 4,000 images and 700 videos of children engaged in sexually explicit conduct.



Based on his conviction, Newberry will be required to register as a sex offender for the remainder of his life. Newberry will be sentenced on September 24, 2015. He faces a maximum sentence of 20 years in prison.

"I appreciate the hard work of my Cybercrimes Unit in protecting our children and adults in the Commonwealth," General Conway said. "These laws are in place to protect the citizens of Kentucky and to ensure the innocence of childhood is protected from online predators."

Read more here: <http://migration.kentucky.gov/Newsroom/ag/newberry.htm>

General Conway's Cybercrimes Unit



Since its creation in June 2008, Attorney General Conway's Cybercrimes Unit has launched more than 450 child pornography investigations and seized nearly 700,000 child pornographic images and videos from the Internet. The unit is also a member of the U.S. Dept. of Justice's Internet Crimes Against Children Task Force.

For additional information on General Conway's efforts to protect Kentuckians from Internet predators, visit the Attorney General's "Cybersafety in Kentucky" page at ag.ky.gov/cybersafety. To report cyber abuse, visit the CyberTipline or call **800-843-5678**.

Adult Caregivers Sentenced for Patient Abuse in Christian and Franklin Counties

Attorney General Conway's Medicaid Fraud and Abuse Control Unit investigated two cases that recently ended in felony sentences for crimes committed against patients in care facilities. On June 9 in Franklin County Circuit Court, 23-year-old Damon J. Heath pled guilty to five counts of sodomy in the third-degree and four counts of sexual abuse in the first-degree. As part of the plea agreement, the defendant will serve 15 years in prison. On June 23, in Christian County Circuit Court, 28-year old Ashley Burchett of Princeton, Ky. was sentenced for wantonly abusing an adult at an intermediate care facility located in Christian County. As part of her plea agreement, Burchett was sentenced to three years in prison, which will be diverted for two years.

Damon Heath worked as a caregiver at Community Choices Unlimited, which manages a group of Frankfort-area facilities that care for intellectually disabled adults. Heath admitted to investigators that he engaged in sexual conduct with two victims on multiple occasions at various locations in Franklin County from April 2013 until January 2015.



It was alleged that Burchett, while a caregiver at Outwood Intermediate Care Facility in Dawson Springs, abused a non-verbal resident with severe mental disabilities by pushing him into his wheelchair when he tried to stand up and by striking him in the head with a can of chewing tobacco.

"I believe strongly that every patient in a nursing home, Medicaid facility, or personal care home deserves to be treated with dignity and respect and should be free from patient abuse, neglect or exploitation," Attorney General Conway said. "Instances of abuse will be investigated, and when appropriate, prosecuted."

Read more about Heath here: <http://migration.kentucky.gov/Newsroom/ag/heathplea.htm>

Read more about Burchett here: <http://migration.kentucky.gov/Newsroom/ag/burchettchristian.htm>

Medicaid Recoveries

Attorney General Conway has investigated and prosecuted more abuse and neglect cases than any previous Kentucky Attorney General. Since Attorney General Conway took office in January 2008, his Office of Medicaid Fraud and Abuse Control has led or participated in actions which have recovered more than \$300 million on behalf of the state Medicaid program.. These cases range from lawsuits and settlements against pharmaceutical companies to cases against individual providers.

In 2012, General Conway's Medicaid Fraud Unit was named one of the most aggressive in the country by the nonprofit watchdog group Public Citizen. The Attorney General's tip line for reporting allegations of abuse is **877-228-7384**.

American Legion High School Students Take Office for a Day



Earlier this month, future leaders of the Commonwealth chosen as representatives from the American Legion Boys and Girls State programs visited the State Capitol. These programs were designed to expose Kentucky high school students to the rights, privileges and the responsibilities of a franchised citizen. Young men and women from across Kentucky participate in mock governments at the city and state levels. At the state level, participants elect officials and develop the executive and legislative branches of government. The judiciary branch is covered through speaker presentations at the state and lower levels.

American Legion Kentucky Boys and Girls State programs are among the most respected educational programs of government instruction for high school students, and are considered a highly regarded leadership training programs. Our office enjoyed hosting the KY Boys State Attorney General Alexander Grove and the KY Girls State Attorney General Sarah Hoffman. I appreciate their interest in government and public service.

To find out more about Kentucky Girls State, please visit: <https://www.facebook.com/KentuckyGirlsState/info>. For more about Kentucky Boys State, please visit: <http://www.kyboysstate.org/>.