

the SOURCE

Calling the bully's bluff

■ Institute for Justice & Mackinac Center team up to beat Michigan Teachers' Union.

By JOHN KRAMER

It is not every day you see a bully humbled with a bloody nose. But take a look at what the Institute for Justice and the Mackinac Center for Public Policy recently achieved when the Michigan Education Association took to the courts to silence its most effective rival.

On Sept. 27, 2001, MEA President Luigi Battaglieri held a press conference to announce the formation of a union-funded "think tank" to counter the Mackinac Center, which has rightfully dominated education reform in Michigan for almost all of the Center's 16-year history. At the event, Battaglieri said, "... quite frankly, I admire what they (the Mackinac Center) have done over the last couple of years entering into the field as they have and being pretty much the sole provider of research to the community, to the public, to our members, to legislators ..."

The Mackinac Center did what any smart organization would do when an archrival praises it; it shared the news in a letter to its donors and prospective donors, pointing out that even an individual who usually disagrees with the Center has recognized its effectiveness.

The MEA's response? Drag the Mackinac Center into court with the goals of bleeding the Center dry with legal bills, and distracting the free market think tank from its task of keeping the union in line and creating real education reform. (Keep in mind that the MEA has a \$73-plus million budget, most of which comes from compulsory dues, whereas the Mackinac Center's budget is \$3 million, all of which is raised from voluntary contributions. But the MEA didn't go after the Mackinac Center because it is small; it went after the think tank because it is so effective.)

The MEA's underhanded plans might have succeeded, too, had the Mackinac Center's Executive Vice President Joe Lehman not called IJ and asked for guidance on how they

GUEST COLUMN

could defend themselves from the challenge. But thankfully, Joe made that call and within days IJ was officially representing the Mackinac Center for free, defending its right to communicate truthful information to its supporters.

Lehman recalls, "I called the Institute for Justice for two reasons. I wanted advice on how to handle the PR aspects of being frivolously sued by Michigan's most powerful labor union, and I wanted to know if IJ knew any good First Amendment attorneys in Michigan. From the moment the Institute called back to say they wanted to defend us, we knew we were in the best possible hands."

As Lawrence Reed, president of the Mackinac Center recalls, "We did not doubt we would ultimately prevail against the union's frivolous lawsuit. But unlike the MEA, we didn't have tens of millions of dollars of compulsory union dues to play with. Free legal defense from the Institute for Justice meant we could actually ratchet up our education policy research, which meant that the union's plan backfired from day one."

Rather than take a more cautious approach, the Mackinac Center and IJ joined together with an aggressive strategy to hoist the MEA and its president with their own petards; the free-market organizations sought not only to win quickly in court and get the case thrown out, but also to have Battaglieri's quote repeated back to him (and to the public) as many times as possible in the court of public opinion.

IJ Senior Attorney Clark Neily headed up IJ's legal effort. With laser-sharp focus, Neily deposed the union officials and laid the foundation for a legal victory. (Among the highlights Neily secured was Battaglieri's admission that he and the MEA had used the names of Tiger Woods, Arnold Palmer and Jack Nicklaus for a union fund-raiser without the golf legends' permission — precisely the same "misconduct" of which the MEA was accusing the Mackinac Center.) Undeterred by an ill-considered lower court decision that would have let the case proceed to trial, Neily brought together the entire team in typical IJ fashion for a rigorous moot

court in preparation for the appeals court argument in which the Mackinac Center and IJ would ultimately prevail. Clark demonstrated to the court that while the union's claims were meritless, the implications of the case were extremely important: either vindicating the Mackinac Center's First Amendment rights if the court threw out the case, or quashing vibrant public debate if it allowed the case to continue. In the end, the Michigan Court of Appeals issued a unanimous decision throwing out the case, a decision the MEA did not appeal to the Michigan Supreme Court.

And as for our success in the media, IJ and the Mackinac Center's side was supported by editorials in the *Detroit Free Press*, *Detroit News*, *Oakland Press*, *Lansing State Journal* and *Traverse City Record-Eagle* that condemned the union's decision to sue, calling it an "intimidation tactic," "questionable use of the union's resources," "frivolous" and "frantic recklessness." Over the course of the two-year lawsuit, the case drew national attention to free speech rights by syndicated columnists, including George Will, *The Boston Globe's* Jeff Jacoby as well as *The Wall Street Journal's* John Fund.

In addition, Battaglieri's glowing remark about the Mackinac Center ("... quite frankly, I admire what they (the Mackinac Center) have done over the last couple of years") was quoted or closely paraphrased more than 40 times in mainstream media throughout the fight.

This lawsuit showcased how the teachers' unions rely on force; they force their members to pay dues and here they were asking the courts to force their opposition into silence. Rather than trying to out-think, out-work or out-perform the Mackinac Center, the Michigan Education Association just wanted to keep the Center quiet. The case also underscores that the Institute for Justice and the Mackinac Center believe in the marketplace of ideas and, as such, are ready, willing and most certainly able to fight for that principle wherever it is threatened.

Here's wishing the Mackinac Center continued success. And like MEA President Luigi Battaglieri, we, too, admire what they have done.

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