

Mackinac Center wins, teachers union loses

BY STUART FROHM
of the Daily News

The Michigan Court of Appeals threw out a lawsuit the Michigan Education Association filed against the Midland-based Mackinac Center for Public Policy.

The Mackinac Center is a research and advocacy organization — also called a think tank — with a free enterprise orientation.

MEA, the state's largest teachers union, sued the Mackinac Center in 2002 for what the union said was improper use in a Mackinac Center fund-raising letter of a comment union president Luigi Battaglieri made at a news conference.

The decision says the case should have been dismissed by an Ingham County court.

The appeals court ruling said the Mackinac Center's publication was a matter of free speech because its subject was of legitimate public concern.

No appeal planned

The MEA does not plan an appeal to the state Supreme Court, said Margaret Trimer-Hartley, MEA director of communications.

"We believe with the conservative nature of that court we'll be unlikely to prevail," she said.

The ruling suggests the MEA or other organizations (See "Mackinac," page A2)

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could mine news reports or public documents to find statements that could be perceived as beneficial for promotional purposes, even from groups that typically oppose them, Trimer-Hartley said. "It leaves a lot of leeway," she said. "We see a door opening here."

The MEA and the Mackinac Center often have been at odds on issues such as charter schools and using tax money to help students attend private schools.

The fund-raising letter, which reportedly brought in \$26,000 and was sent to 20,000 addresses, said: "This fall, Luigi Battaglieri ... stated, 'Frankly, I admire what the Mackinac Center has done.' Mr. Battaglieri, whose union is generally at odds with the Mackinac Center, said this with respect to how Mackinac Center research has shaped education reform in Michigan and around the nation."

The MEA claimed the Mackinac Center's use of the comment was improper use of Battaglieri's name for commercial benefit.

"We're disappointed the Court of Appeals did not appear to weigh heavily" the MEA's argument, Trimer-

Hartley said.

The appeals court acknowledged the fund-raising letter's purpose, but said the letter also addressed issues of public interest.

The court ruling dismissed the MEA's claim that the letter implied Battaglieri endorsed Mackinac Center findings.

"It is highly unlikely that the recipients of the letter would conclude that Battaglieri was suddenly supportive of Mackinac's positions notwithstanding the longstanding, well-known and sharp differences of opinion between Mackinac and the MEA in the past."

At the news conference, Battaglieri had announced a rival think tank to research education policy, the appeals court ruling said.

Decision on sanctions not yet made

Not yet decided is whether the Mackinac Center will seek sanctions to deter the MEA "from wasting their members' money in the future" by filing any "frivolous lawsuits," said Lawrence W. Reed, Mackinac Center president.

"To each and every one of its dues-paying members who asks, we hope the MEA

will disclose exactly how much of their compulsory dues money was spent in this frivolous attempt to undermine the First Amendment," Reed said in a written statement Friday after he got word that the MEA's lawsuit was thrown out.

"At a time when education requires everyone's serious attention, you'd think the MEA could find better things to do" than sue the Mackinac Center over the fund-raising letter, Reed added.

"Celebrations of this victory will be held here in Michigan, in Washington, D.C., and perhaps elsewhere. This is a big one, and it will reverberate for years. We will make sure the MEA doesn't forget an important lesson, namely, that they picked on the wrong outfit when they thought a ridiculous lawsuit would intimidate or silence us," Reed wrote.

Reed said:

• The Mackinac Center is not claiming monetary damages. The Institute for Justice, which represented the Mackinac Center without charge, describes itself as a nonprofit public interest law firm that litigates in defense of free speech and other constitutional rights. It is in Washington, D.C.

• A possible outgrowth of the case is an essay contest "on the benefits of free speech and attempts to erode it, such as frivolous lawsuits."

Joseph G. Lehman, Mackinac Center executive vice president, said it's ironic that because of the lawsuit, Battaglieri's comment received far more attention nationwide "then we ever could have generated."

Before the appeals court ruled, the Washington Post published a column by George Will concerning the case, and other authors wrote in the Boston Globe and elsewhere.

Lehman said the lawsuit is the only one filed against the 16-year-old Mackinac Center.

The Mackinac Center rejected a suggestion that the think tank settle the case by paying the MEA \$70,000, Lehman said. The Mackinac Center wouldn't pay even a dollar "because we haven't done anything wrong," Lehman said.

"We have said from day one this was a totally frivolous lawsuit," said Clark Neily, an Institute for Justice attorney representing the Mackinac Center. "It had no merit."

Judges deciding the case

were David H. Sawyer, former Kent County prosecuting attorney; Patrick M. Meter, formerly prosecuting attorney and circuit court judge in Saginaw County; and Richard A. Banstra, a former state House member from Grand Rapids.

The Associated Press contributed to this story.

On the Net:
Mackinac Center for Public Policy, <http://www.mackinac.org>

Michigan Education Association, <http://www.mea.org>