

Line Score

Michigan stepped toward the future in November when the state Legislature lifted price controls from the telecommunications industry. This deregulation capped months of effort by Diane S. Katz, the Center's director of science, environment and technology, to educate lawmakers and the public about the benefits of a free market in local calling and Internet services.

Under the new Michigan Telecommunications Act, which took effect on Nov. 22, state regulators can no longer set local telephone rates. With the sole exception of a requirement that service providers offer a "primary" service plan with a minimum of 100 local calls for a regulated flat fee, the pricing of various calling plans and features no longer requires the approval of the Michigan Public Service Commission.

The new law marks the end of Michigan's unpredictable, costly and excessively bureaucratic regulation of telecommunications. As a result, the state is better-positioned to attract



Diane S. Katz testifies to the Michigan House Energy and Technology Committee.

much-needed technology investment. Technology companies are finally free to bundle and price services according to customer demand and competitive forces, making the firms more likely to expand and upgrade their Michigan networks. Consumers can expect better service quality and a new wave of advanced Internet products.

Another encouraging change is that the legislation imposes constraints on the provision of telecom services by government entities, a policy change encouraged by Katz in her published

commentaries and briefings with lawmakers and the media. Among the most successful of Katz's outreach efforts was a May telecom forum for legislators and their staffs featuring former U.S. House Majority Leader Dick Army (see *Impact*, Summer 2005). The forum focused on the importance of telecom deregulation for Michigan's economy, and Army exhorted lawmakers to "bring your legal structure up to the promise of the electronic revolution in the 20th century."

The case for reform was pressed
see "Line Score," Page 9

Law of the Land

In a landslide vote on Dec. 13, the Michigan Legislature approved Senate Joint Resolution E, a landmark property rights ballot initiative. The resolution was informed by significant technical advice from Mackinac Center Senior Legal Analyst Patrick J. Wright. Michigan voters will now have the chance to amend the state constitution in November to prevent key types of eminent domain abuse by state and local governments.

The resolution was crafted in the wake of public outrage over last June's U.S. Supreme Court decision in *Kelo v. New London*, which permitted a local government to seize people's homes (with "just compensation") and redistribute the land to private developers in order to improve local tax revenues. The Michigan resolu-

tion was introduced to prevent such takings, as well as takings for so-called "economic development." But as Wright noted in his September testimony before a state House committee, existing statutes would readily permit government officials to effect similar takings by claiming to remedy "blight" (see *Impact*, Fall 2005). Following this testimony, state legislators frequently requested Wright's technical expertise on the issue, and his views had real impact.

As state Rep. Drolet, who spearheaded passage of SJR E in the state House, observed: "We all recognized that eminent domain was being abused under the guise of 'economic development,' but Patrick really foresaw that overbroad 'blight'"

see "Law of the Land," Page 8

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A Window Into Lawmakers' Souls



Joseph G. Lehman
Executive
Vice President

Legislation can reveal a lot about the lawmakers who propose it and how they regard people.

Take a new ordinance in Bridgeport, Conn., that requires coat hooks in public restrooms. Press reports indicate the mandate's originator, City Councilman Keith Rodgerson, said no one should have to leave belongings on a public restroom floor.

I share his dislike of dirty floors. But I could never support, much less initiate, a legal requirement for coat hooks in a commode without demeaning every citizen who has ever solved a problem on his or her own. It's an insult to

behave as if people lacked sufficient strength to decide which public restrooms to patronize, what to carry inside, when to ask a manager to add coat hooks — or in the worst case, when actually to endure the horror of touching a coat to the floor.

The people I know are stronger than paternalistic lawmakers assume. Let me tell you about a remarkable friend.

He's modest, so I'll call him "Steve" (not his real name). After 10 years on the job, Steve was recently let go. It was a white-collar job that provided a middle-class income for him, his wife and their five children. Given the circumstances of his termination, he might justifiably have sued or demanded special consideration. Instead, he simply cooperated with his successors and departed gracefully.

Rather than sign up for welfare or unemployment, he took the midnight shift at Wal-Mart. He wanted to set an example for his children, draw minimally on his family's savings and continue to pay the mortgage, utility and food bills. He had to swallow his pride more than once, including the times he cheerfully rang up the purchases of old officemates and his former supervisor's wife.

Steve's job search lasted many months. His family stopped going to movies and restaurants and even ate less meat to conserve cash. With difficulty, he accepted charity from friends and family. All the while, he kept his spirits high. Wal-Mart promoted him and asked him to consider management.

Ultimately, Steve uprooted his family and moved out of state to accept a better job than the one he lost. He was so well-liked by his Wal-Mart co-workers that some of them cried the day he left.

Would it ever occur to Steve to demand a government-guaranteed restroom coat hook?

True, not everyone possesses Steve's strength of character. But should lawmakers treat people as if they possessed so little?

Michigan may not yet mandate coat hooks, but paternalistic Lansing Democrats and Republicans alike are proposing new licensing schemes for interior designers, athletic trainers, tanning booths and other less-than-mortal threats to our safety.

A government that encompasses everything is fit only for people incapable of anything. Free societies limit government force. The Mackinac Center helps remind lawmakers of that fact.

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MichiganVotes.org: Change Agent

Sometimes an innovation like C-Span or the Freedom of Information Act changes the way people think about government. MichiganVotes.org is doing exactly that.

In January, for instance, the Detroit Free Press ran a front-page story on the high number of legislative votes missed by several state lawmakers. The article, based on MichiganVotes.org's



KentuckyVotes.org is distributing promotional materials to tell citizens how to keep tabs on the state's legislators.

Web tools, noted: "In 2001, the first year (MichiganVotes.org) tracked voting records, 23 legislators missed 100 votes or more. Last year, 10 missed at least 100 votes." Paraphrasing MichiganVotes.org Editor Jack McHugh, the article observed

that this number "is on the decline, at least in part because of how easy it has become for voters — and political opponents — to access voting information." As if underscoring this point, a Free Press editorial two days later chided the absentee lawmakers and listed MichiganVotes.org's Web address.

And MichiganVotes.org changes thinking in more subtle ways. For instance, a Nov. 27 Lansing State Journal editorial expressed concern about hazardous leaks from underground storage tanks, but then showed skepticism

about hiking gas taxes to pay for clean-up. As the State Journal noted, in 2004 the Legislature and Gov. Jennifer Granholm "rejiggered the (underground fuel tank) program to use \$43 million in cleanup funds to balance the state budget, according to the Web site michiganvotes.org."

MichiganVotes.org was, in fact, the only news source that had explained that "rejiggering"; neither the House nor Senate Fiscal Agencies had connected the dots. Thus, simply by describing the bill in plain English, MichiganVotes.org helped prompt a call not for higher taxes, but for spending reform.

The MichiganVotes.org approach is catching fire elsewhere. KentuckyVotes.org is operational and already shaking up the political culture in the Bluegrass State. Previously, it was a challenge for Kentucky citizens to learn how their legislators voted, but the advent of KentuckyVotes.org shamed the state Legislature into immediately posting votes on the Internet. KentuckyVotes.org Project Manager Caleb Brown acknowledged the Center's role, saying, "When we launched the site, Jack McHugh spent a week here helping us avoid 'reinventing the wheel' — and of course all the software was originally developed by the Mackinac Center."

It's just a beginning, but it's an innovation that could prove revolutionary. **I**

Sunshine on the Bay

Nothing could have better demonstrated the need for the Mackinac Center's independent voice in education.

After all, one of the biggest stories in Michigan education in the past decade has been the growth of charter schools, and one of the biggest charter school stories has been the 32 schools chartered by Bay Mills Community College, which, due to its unique legal status, faces no cap on how many schools it can authorize. So it should have been front-page news last year when the Michigan Education Association, the state's most powerful teachers union, sued state officials for allegedly violating the Michigan Constitution by funding these (in the union's words) "nonpublic" schools and demanded that the schools, serving more than 10,000 students, be denied state money.

The story didn't even make the papers. Neither the schools nor the union seemed interested in publicizing the suit.

But secrecy breeds bad policy, and the Center could see no reason people shouldn't know of a key legal battle that could affect so many children. Ryan S. Olson, the Center's director of education policy, thus tackled the story head-on with an Aug. 6 Op-Ed in the Grand Rapids Press titled,

"Kids will suffer if MEA wins scorched-earth charter school suit." On Aug. 16, the Center distributed a summary of the commentary to more than 8,500 subscribers of Michigan Education Digest, the Center's weekly electronic newsletter, and on the same day, publicized the suit to nearly 150,000 teachers, parents and policymakers in a lead story in Michigan Education Report, the Center's quarterly education newspaper.

On Dec. 7, when Ingham County Circuit Court Judge Joyce Draganchuk held a hearing on the case, Olson attended with Mackinac Center Senior Legal Analyst Patrick J. Wright. When the judge surprised the courtroom by issuing a bench ruling that dismissed the suit in its entirety, Wright and Olson immediately called the Center, which in turn issued a statewide news release.

This time, the Associated Press, Booth Newspapers and The Detroit News covered the outcome. The News also criticized the MEA in an editorial for continuing to thwart "competition and a free flow of ideas."

The union has appealed the judge's decision, and the Center will continue to monitor the case. The good news is that now, the rest of the state will, too. **I**

David L. Littmann: an American Original

On Feb. 8, David L. Littmann, the Mackinac Center's senior economist, testified before the Michigan House Tax Committee on Restructuring and told the members exactly what they didn't want to hear. "Michigan's economy has earned a solid D," he said, even though the U.S. economy has earned A's and posted "spectacular motor vehicle sales."

That was actually the good news. "The unvarnished reality," Littmann added, "is that Michigan hasn't yet reached rock bottom."

Talk about shock therapy. Moreover, these comments were delivered by someone who spent most of his 40-year career as a bank economist — a profession that suggests Organization Men, gray flannel suits and a "dismal science" that makes accountants yawn.

Yet from that unlikely platform, Littmann has become a pre-eminent market commentator and perhaps the best-known economist in the state. He also has become something more: one of Michigan's foremost freedom fighters, willing to "speak truth to power" and to call repeatedly for lower taxes, deregulation, school choice and privatization. In this light, the House committee probably wasn't surprised by his remarks at all.

Littmann's ability to reach people who might otherwise turn a deaf ear is due partly to his remarkable professional accomplishments.

Under his leadership, the economic forecasts of Detroit's Comerica Bank (and earlier, Manufacturers National Bank) were regularly included in The Wall Street Journal, USA Today, Fortune Magazine and the Blue Chip Economic and Financial Forecast services. Not long before his retirement from Comerica in 2005, Littmann received the prestigious and nationally recognized Lawrence R. Klein Award for Economic Forecasting.

But part of Littmann's effectiveness springs from his reputation as a true gentleman dedicated to Michigan's welfare — a reputation we can vouch for, given his longstanding association with the Center as an author and a scholar. Indeed, Littmann has mentored many who now contribute to the state's limited-government movement, including Lansing-based economist Patrick L. Anderson, Mackinac Center Senior Policy Analyst William T. Wilson, Mackinac Center Senior Editor Thomas A. Shull and Loomis Sayles & Company LP Senior Portfolio Manager David G. Sowerby. All four started their Michigan-based professional careers under Littmann.

We are proud to have Dave as our senior economist and to provide him a home where he can continue to achieve exciting gains for freedom. This vigorous friend of liberty is an American Original. **I**



Your estate plans reflect the values you hold dear and hope to perpetuate.

Join the Mackinac Center's Legacy Society by calling Justin W. Marshall at (989) 631-0900 and including the Center in your bequest today.

ADVANCEMENT IMPACT

A Shared Destiny

The future of freedom has never been certain. It never will be. Even when freedom was riding high after the American Revolution, Ben Franklin told Americans that the proposed Constitution would give us "a Republic, if you can keep it."

Yet freedom is our destiny.

More than 225 years ago, the patriots of the Revolutionary War — rarely certain that the war would end in liberty — rejected a powerful king, his taxes and his regulations. Later, these leaders preserved freedom by constitutionally limiting the federal government and allowing free people and communities to address the nation's problems. As a result, the United States became an economic powerhouse.

But success brought new fears and temptations, and our freedoms have been threatened in Michigan and the nation by heavy taxes, endless regulations and an erosion of the limits that the Founders placed on government. That slow weakening of the country's greatest strengths will be reversed only by a long-term revitalization.



Justin W. Marshall,
Director of
Advancement

The need for a determined campaign is precisely what makes the Morey Foundation's recent \$1 million contribution, described on Pages 6 and 7, so pivotal. Lon Morey's generosity to the Center has provided Michael D. LaFaive, our fiscal policy director, with a lasting resource for multiplying Center research and impact in the fields of tax reduction, spending restraint and privatization.

But even with a large contribution of this kind, most of the Mackinac Center's funding comes from the smaller donations of hundreds of other supporters. We rely on every contribution we receive to pursue a destiny of freedom.

The Founders thought this destiny was worth fighting for, despite an uncertain future. So do you, given your generous support of the Center. We hope you'll continue to contribute to the pursuit of that destiny, so that we can keep our freedoms — and expand them. **I**

Blueprinting Economic Growth and Rationalizing Environmental Policy

- Director of Fiscal Policy **Michael D. LaFaive** and **Dr. Michael J. Hicks'** landmark study of the Michigan Economic Growth Authority continues to draw attention. The study's findings were cited in three commentaries skeptical of Michigan's economic planning: a Dec. 12 **Wall Street Journal** editorial entitled "Return of the Rust Belt," a Nov. 30 **Detroit News** column by Thomas Bray and a Feb. 12 **Hartford Courant** Op-Ed. Mackinac Center Adjunct Scholar **Dr. Gary Wolfram** likewise referred to the research in a Dec. 14 **Detroit News** Op-Ed calling for state tax and regulatory reform. A Dec. 19 **Booth Newspapers** report on the Michigan Economic Development Corporation quoted LaFaive and summarized the study's findings.
- Center analysts continued to comment in numerous media stories concerning the "Rapanos" and "Carabell" U.S. Supreme Court cases, in which three Michigan families and their business partners are challenging federal wetlands jurisdiction over their properties. Senior Environmental Policy Analyst **Russ Harding** was interviewed on **News/Talk 760 WJR** radio's "Mitch Albom Show" on Jan. 20, on **Southern California Public Radio** on Feb. 21, and on **WEMU's "Lynn Rivers Show"** on Feb. 24. Senior Legal Analyst **Patrick J. Wright**, who submitted the Center's "friend of the court" brief in the cases, was quoted by the **Associated Press** on Feb. 21 and by **The Detroit News** on Feb. 22. Wright had attended the Supreme Court's Feb. 21 oral arguments and afterwards commented, "The justices clearly recognized that declaring every drainage ditch a potential tributary to a navigable water would give the federal government virtually unlimited control over land use."
- MichiganVotes.org was cited in a Nov. 27 **Lansing State Journal** editorial concerning state lawmakers' unwillingness to cut spending. The Jan. 18 **Detroit Free Press** printed a lengthy front-page story using MichiganVotes.org to detail

the missed legislative votes of several state legislators, and a follow-up **Free Press** editorial listed the Web site's address and implored the legislators to show up for work.

- **The Detroit News** ran a Dec. 28 Op-Ed by Director of Labor Policy **Thomas W. Washburne** highlighting the trend toward defined-contribution pension plans in the private sector and suggesting that a similar approach with public school teachers could keep their pensions from upending the state's finances.

"**Russ Harding** sure knows how to get folks' attention," began a Nov. 1 **Lansing State Journal** editorial discussing an article by Harding in the Fall 2005 edition of the Center's Michigan Privatization Report. Harding had suggested the state sell 14 of Michigan's 97 state parks, since they did not qualify as the "significant natural and historic resources" described under state park law. Although some of the media reaction was alarmist, several news organizations provided dispassionate, analytical coverage, including **Gongwer News Service**, **The Mt. Pleasant Sun** and **The Jackson Citizen-Patriot**. **The Lansing State Journal's** editorial likewise noted, "Even the Department of Natural Resources acknowledges that a look at the viability of the park system is worthwhile." As the controversy subsided, **The Oakland Press** ran a Jan. 19 editorial entitled, "Some state parks should be sold to save the system."

- **Michael D. LaFaive's** Jan. 6 news release leveraged the annual publication of United Van Lines interstate moving data to generate coverage of the Center's economic recommendations. Observing that the state's outbound traffic had reached its highest rate since 1982, LaFaive netted citations from the **MIRS Capitol Capsule**, **The Jackson Citizen-Patriot**, the **Lansing State Journal**, Grand Rapids' **WZZM-TV** and the Jan. 15 Sunday column of **Detroit Free Press** Editorial Page Editor Ron Dzwonkowski.
- Director of Education Policy **Ryan S. Olson** was quoted in the Dec. 17

Saginaw News describing educational choice as the best policy for insuring children's safety in schools. The Jan. 6 **Detroit News** published his letter to the editor citing Harvard economist Caroline Hoxby's research linking teachers unions to lower overall student performance. Communications Specialist **Michael D. Jahr** authored an Op-Ed for the Nov. 10 **Harbor Springs Harbor Light** supporting the local school board's attempt to tame the costs of teacher health insurance offered by MESSA, a third-party administrator favored by the Michigan Education Association.

- In a Dec. 28 editorial, **The Oakland Press**, like the Sept. 2 **Detroit News**, endorsed **Michael D. LaFaive's** proposed agenda for returning prosperity to Detroit. LaFaive's agenda was also featured approvingly in a Feb. 3 editorial in **Investor's Business Daily**.
- Legislative Analyst Jack McHugh and Russ Harding co-authored a Nov. 10 **Oakland Press** Op-Ed warning that Gov. Jennifer Granholm's proposed groundwater regulations would harm Michigan's economy, even though the state's water supply wasn't at risk. The Legislature subsequently toned down the governor's plan before passing it on Feb. 9, but as Harding noted in a Feb. 10 **Detroit News** article, lawmakers "crafted a solution for a problem that doesn't exist in most areas of the state."
- Director of Science, Environment and Technology Policy **Diane S. Katz** was cited in a **National Review Online** commentary describing the ineffectiveness of government-sponsored research and development.
- Both **Michael D. LaFaive** and Senior Economist **David L. Littmann** were quoted on economic issues in various outlets, including the **Detroit Free Press**, **Spokane Spokesman-Review**, **Battle Creek Enquirer**, **Livingston County Press & Argus** and **Michigan Daily**. **I**

THE MOREY FISCAL POLICY INITIATIVE

Few people could have looked more relaxed and happy than Lon Morey and Michael D. LaFaive last Nov. 3. That evening the Mackinac Center for Public Policy held a reception at its headquarters to celebrate Morey's generous pledge of \$1 million, granted through the Morey Foundation of Winn, Mich., to the Center's fiscal policy work. LaFaive, director of the Center's newly christened "Morey Fiscal Policy Initiative," was not only immensely grateful to Morey, but also basking in an awareness of how much the contribution would increase his resources. As he'd noted to the media earlier: "The Morey Foundation's donation to the Mackinac Center will have a tremendous impact on our ability to analyze state budget policy, taxation, privatization and economic development. It will virtually double our output on these issues."

Perhaps the best feeling that evening flowed from a recognition that the contribution epitomized the classic virtues of a free society. Mackinac Center President Lawrence W. Reed, observed that day: "The Morey family wants Michigan's citizens to enjoy the same economic freedoms that the Moreys did years ago when they built their family business in Winn. Lon Morey, as president of the Morey Foundation, is acting in the finest tradition of enlightened self-interest by supporting the Center's defense of those freedoms."

Morey, president of Morbark Inc., a wood-chipping equipment company founded by his father in 1957, reinforced that view when he told the assembled guests at the reception: "The Morey family has supported the Mackinac Center for many years, and I'm proud that we're going to continue the tradition here today. ... My father was grateful for the success he enjoyed and always felt that it was important that future generations be allowed, just as he was, to think freely, to pursue their dreams and to find success." Indeed, Morey's father, Norval, was the first person ever to make a \$1 million contribution to the Center.

Morey also explained to the guests that evening the Morey Foundation's choice to contribute spe-



Lon Morey



Lawrence W. Reed



Joseph G. Lehman



Michael D. LaFaive

cifically to the Center's fiscal policy initiative. That decision, he observed, proceeded directly from a desire to "ensure individual liberty and free-market principles are protected and advanced in this great state. The Mackinac Center and Mike have been doing great things on fiscal policy issues for many years here. They've kept their eye on government spending, on state spending. They've fought for lower taxes. They've worked to privatize government services. And they've pushed to make this state a better place to work and to live."

As Reed noted that evening, Morey is a generous person who "doesn't seek attention for the good things he does" and remains "humble" and "down-to-earth." The day's gathering was as much a richly deserved acknowledgement of Morey's munificence as it was a celebration of shared values.

So it was fitting that the reception featured a wide range of people, including friends and relatives of the Morey family, as well as Mackinac Center staff, friends and contributors. It was also fitting that much of the talk focused on the tremendous impact the Morey Fiscal Policy Initiative could have in the months and years to come. For instance, as LaFaive remarked, state budget research is "time-consuming and expensive" in ways that usually aren't understood by the public. "The state budget," he noted, "has about 1,200 line



Joseph G. Lehman, Lon Morey, Lawrence W. Reed and Michael D. LaFaive

INITIATIVE: “Enlightened Self-Interest”

items that often contain generic ‘catch-all’ descriptions about how state dollars are spent. Investigating exactly how money is distributed — and what products and services one line-item funds — can take 20 to 30 hours and cost hundreds, if not thousands, of dollars in research funds.”

FISCAL ENERGY

With much more of that money forthcoming, the key to effective research is energy, something LaFaive has continued to bring to the Center’s fiscal policy work in a variety of areas during the past few months.

- **Moving Opinions.** In early January, when United Van Lines released data on the number of people whose households it moved across various state borders in 2005, LaFaive was ready with an analysis of the data’s significance (see Media Impact, Page 5). Within 24 hours, LaFaive had issued a news release alerting reporters to the finding that, “63.9 percent of the company’s interstate moves involving Michigan were outbound — the second highest outbound flow in the 48 contiguous states. This emigration rate is up from the 2004 figure of 60.9 percent and is just 3 percentage points below the state’s 1981 record.”

As LaFaive observed: “Michigan citizens are voting with their feet.” The Center’s news release also referred reporters to a Web article with a more detailed analysis of the data by LaFaive and Mackinac Center Adjunct Scholar Michael J. Hicks. The piece cited a Center econometric analysis that indicated the United Van Lines data was highly reliable in reflecting American migration patterns, and the article also described other research suggesting that Michigan’s high tax burden is contributing to emigration from the state.

- **Status of the ‘State of the State.’** Immediately following Gov. Jennifer Granholm’s Jan. 25 State of the State address, LaFaive was able to inform reporters the same evening that her 20 proposed expansions of state government constituted “a record for an election year and the second highest total” in the Center’s database of Michigan State of the State addresses for the past 38 years. Within a few days, LaFaive had posted two Current Com-

ments to the Center’s Web site, one providing further historical analysis, and the other citing parallels between Gov. Granholm’s remarks and Gov. James Blanchard’s dubious proposals in 1986.

- **Ongoing Coverage: Detroit and MEGA.** LaFaive has had success continuing to generate media coverage for the Center’s five-point agenda for revitalizing Detroit. Endorsed by The Detroit News last September, the agenda was similarly endorsed by The Oakland Press in November and featured in an Investor’s Business Daily editorial in February. The continuing interest led The Detroit News on Feb. 16 to feature LaFaive’s Op-Ed “Detroit must cut taxes, spending, burdensome rules,” regarding what the city should do to feed economic momentum after hosting the Super Bowl.

At the same time, the results of LaFaive and Hicks’ April 2005 research on the effectiveness of the Michigan Economic Growth Authority has recently been cited in The Wall Street Journal, The Hartford Courant and two Op-Eds in the Detroit News (see Media Impact, Page 5). On March 15, The Detroit News published LaFaive’s Op-Ed “Michigan knows how to pick job losers,” which reported the most recent company to declare bankruptcy after being favored by the state’s MEGA grants.

- **State Budget Cutting.** In 2003 and 2004, LaFaive authored a budget study that called for, among other cuts, the state to stop sponsoring the Michigan Department of Agriculture’s Export Market Development Program. LaFaive has continued filing queries with the Michigan Department of Agriculture concerning the program, since the monies have often financed state-sponsored junkets that favored some Michigan producers over others and duplicated the efforts of other for-profit organizations. So far this year, the item has been omitted from the state budget.

These highlights of the Morey Fiscal Policy Initiative’s successes in the past few months bring to mind Aristotle’s maxim, “Well begun is half done.” But in light of the tremendous opportunities lying ahead for the Initiative, it’s clear that the future promises much more progress ahead — an appropriate result for Lon Morey’s generous act of enlightened self-interest. **I**



Law of the Land from Page One

takings would be misused too. His understanding of blight and the differences between state and federal takings law definitely helped us craft the resolution more effectively.” State Sen. Tony Stamas, who sponsored the resolution, commented, “Patrick offered valuable input that helped us insure that Michigan’s citizens would be protected against takings abuse now and in the future.”

Others involved in the bill felt similarly. Lee Schwartz, assistant vice president for policy and legislation for the Michigan Association of Home Builders, said: “The information from the Mackinac Center had a major impact on the shaping of this proposed constitutional amendment. They stood firmly in favor of the private property rights of Michigan’s citizens during the discussions. Their knowledge of constitutional law was invaluable.” Scott Bullock, who was Susette Kelo’s attorney during the Supreme Court litigation and who flew to Michigan to consult and testify in support of SJR E, remarked: “At least the Supreme Court admitted in Kelo that states could pass laws against the use of eminent domain for so-called economic development. It’s been great to see so many states take up that challenge, and Michigan, with significant participation from the Mackinac Center, is in the vanguard with its 2006 ballot proposal. We were very pleased to work with the Center during the passage of this initiative through the Legislature.”

If voters approve the ballot initiative in November, they will achieve a major constitutional victory for private property rights in Michigan — a victory forged in part by Wright’s expertise and hard work.

CONSTITUTIONAL LAND MANAGEMENT

Of course, not every battle ends in a conventional victory. But it’s often worth putting up a tough fight on principle, as the Center did in January by opposing the state’s unconstitutional and preferential sale of a state property in Washtenaw County.

The sale was initiated in 2004 and garnered two bids — one for \$25 million from DPG York LLC, a group of developers, and the other for \$9 million from Toyota Technical Center USA, a firm courted by state officials. The land’s market value had been appraised at \$11.9 million.

The state rejected both bids and the Legislature passed Public Act 326, which allowed sale of the land without competitive bidding, considerations of the property’s market value or meaningful legislative guidance for state executive agencies, which were empowered to determine “the best interests of the state” in selling the property. These and other provisions were openly intended to pave the way for selling the land to Toyota.

Economically, this was a deeply flawed approach that tells potential investors that high-profile competitors will receive preferential treatment in the conduct of state business in Michigan. And as Wright observed in the Center’s Jan. 13 news release, “The state Legislature’s broad, open-ended delegation of authority to (state executive agencies) to sell the property violated



NPR’s Nina Totenberg interviews John Rapanos in front of the U.S. Supreme Court, while his attorney, Pacific Legal Foundation’s Reed Hopper (right), and the Mackinac Center’s Joseph G. Lehman, Russ Harding and Patrick J. Wright look on.

both the separation-of-powers and due-process clauses of the Michigan Constitution.”

Wright’s comments came the day after he filed a “friend of the court” brief making this argument to the state Court of Appeals, which was hearing DPG York’s legal challenge to Public Act 326. Gov. Jennifer Granholm had raised the stakes the same day that Wright filed by requesting the state Supreme Court to wrest the case from the appeals court and decide it quickly. On Jan. 17, the stakes were raised even further when state Democratic Party Chair Mark Brewer called on the Center to withdraw its brief and criticized Republican gubernatorial candidate Dick DeVos for his past support of the Center.

The Center responded by announcing it stood by the brief. But on Jan. 24, the Michigan Supreme Court, which had initially overturned the appeals court’s dismissal of the lawsuit, suddenly ended the case without explanation by ruling against DPG York and prohibiting all further appeals.

The court’s order was a surprise and a disappointment, given the fundamental constitutional and economic issues involved. Nevertheless, as Wright observed afterward: “The Legislature in this case abdicated its constitutional responsibilities to executive agencies — something it does often. Changing this behavior will take time, but it’s a battle worth winning. It’s fundamental to representative government and to better public policy.”

SUPREME COURT LEVEE

Indeed, land policy seems to attract roaming executive agencies that have slipped the leash. Thus did Wright and three of his Mackinac Center colleagues find themselves attending oral arguments at the U.S. Supreme Court on Feb. 21 in the consolidated wetlands cases Rapanos v. United States and Carabell v. United States Army Corps of Engineers. The legal disputes concern challenges by three Michigan families and their business associates to the federal government’s power to regulate wet areas on their properties

under the rubric of protecting “wetlands” — challenges that the Center backed by filing a “friend of the court” brief with the Supreme Court on Dec. 2.

As Wright argued in the brief, federal agencies have overstepped their congressional grant of authority by regulating “wetlands” remote from the nation’s navigable waters. Moreover, as Wright noted, if the court were to conclude that federal agencies have not exceeded their legislative mandate, the court would then have to rule that Congress itself unconstitutionally exceeded its power to regulate interstate commerce.

The Center has followed the Rapanos case since early 2004, when Senior Environmental Policy Analyst Russ Harding’s questions about the dubious “wetlands” status of one of John Rapanos’ properties helped attract state and national media attention, including pieces in *The Wall Street Journal* and *The Washington Times* (see *Impact*, Fall 2004). Harding’s knowledge of wetlands regulatory procedures also provided Wright with a wealth of uniquely telling information that buttressed the brief’s discussion of the corrosive effect this federal overreach has had

on the balance between state and federal power.

The Center’s wide-ranging perspectives on the cases produced numerous media citations in the weeks before the hearing (see *Media Impact*, Page 5). These citations were also spurred by a coordinated media outreach led by Mackinac Center Director of Communications Christopher F. Bachelder and enhanced by Communications Specialist Michael D. Jahr and Executive Vice President Joseph G. Lehman (both Jahr and Lehman, along with Harding and Wright, attended the Feb. 21 Supreme Court hearing). The Center knew that public education on these seminal cases was crucial to long-term shifts in public policy.

As Wright observes: “The Rapanos and Carabell cases are critical to reinvigorating constitutional limits on federal power. If Congress can regulate every drainage ditch, then Congress’ control of land use is virtually unlimited. The result would be a body blow to our federalist system of government, and it would leave average homeowners’ decisions at the mercy of distant and unresponsive federal bureaucracies.” **I**

Line Score from Page One

again in April, when Katz shone in a telecom debate organized by state Rep. Leon Drolet and moderated by state Rep. Mike Nofs, chairman of the Michigan House Energy and Technology Committee. Moreover, throughout 2005 Katz conducted briefings on telecom policy with committees of the Michigan Chamber of Commerce, the Detroit Regional Chamber of Commerce and a variety of other organizations, prompting a prominent chamber official to describe her as a “great resource.”

As the debate over telecom reform intensified last fall, Katz was invited to testify before both the state Senate Technology and Energy Committee and the state House Energy and Technology Committee. In her Oct. 12 testimony in the House, Katz told lawmakers, “Enhancing consumer choices and technological innovation is far more important than preserving regulators’ powers or special-interest advantages.”

This message appears to have got through. Although the legislation included a number of elements that were less than ideal, it did produce important policy improvements that Katz had urged through many months of studies, commentaries, testimony and events. Thanks to her dedication, the Center has helped hardwire Michigan for success.

ROAD VICTORIES

The Center’s telecommunications publications have also extended their impact beyond Michigan’s

borders. As noted in the Summer 2005 *Impact*, other state think tanks have deployed the Center’s research, with Katz adapting her “Telecommunications Primer” for the Texas Public Policy Foundation and her “Crossed Lines: Regulatory Missteps in Telecom Policy” for California’s Pacific Research Institute.

This interstate influence has continued in recent months. Last September, Katz organized and hosted a telecom forum for the State Policy Network’s annual meeting in Charleston, S.C. In October, Katz’s Wisconsin version of the “Telecommunications Primer” was published by the Wisconsin Policy Research Institute, garnering coverage by the *Business Journal of Milwaukee*.

And Katz’s work has drawn praise from participants at major forums hosted by the American Legislative Exchange Council and the National Conference of State Legislatures. A senior vice president of a major trade association characterized Katz’s presentation as “on-target, succinct and understandable,” adding, “I am going to recommend the Senate Commerce Committee consider inviting you to appear when it holds hearings this winter.”

Katz has clearly helped build momentum for opening Michigan’s — and America’s — electronic frontiers. Fewer “crossed lines” will mean new opportunities and greater wealth for citizens and entrepreneurs — a fitting tribute to Katz’s hard work on behalf of the Mackinac Center and free markets. **I**

The Final Phase of the Great Depression

(The following is an edited excerpt of Mackinac Center President Lawrence W. Reed's essay, "Great Myths of the Great Depression," which was updated and reissued by the Center last fall.)

The stage was set for the 1937-38 collapse — the fourth and final phase of the Great Depression — with the passage in 1935 of the National Labor Relations Act, better known as the "Wagner Act." To quote professor Hans Sennholz:

"This law revolutionized American labor relations. It took labor disputes out of the courts of law and brought them under a newly created Federal agency, the National Labor Relations Board, which became prosecutor, judge, and jury, all in one. Labor union sympathizers on the Board further perverted this law, which already afforded legal immunities and privileges to labor unions. The U.S. thereby abandoned a great achievement of Western civilization, equality under the law."

Armed with sweeping new powers, labor unions went on a militant organizing frenzy. Threats, boycotts, strikes, seizures of plants and widespread violence pushed productivity down sharply and unemployment up dramatically. Historian William E. Leuchtenburg, no friend of free enterprise, observed, "Property-minded citizens were scared by the seizure of factories, incensed when strikers interfered with the mails, vexed by the intimidation of nonunionists, and alarmed by flying squadrons of workers who marched, or threatened to march, from city to city."

AN UNFRIENDLY CLIMATE FOR BUSINESS

From the White House on the heels of the Wagner Act came a thunderous barrage of insults against business. Businessmen, President Roosevelt fumed, were obstacles on the road to recovery. He blasted them as "economic royalists" and said that businessmen as a class were "stupid." He followed up the insults with a rash of new punitive measures. New strictures on the stock market were imposed. A tax on corporate retained earnings, called the "undistributed profits tax," was levied. The top (marginal income tax) rate was raised at first to 79 percent and then later to 90 percent. Economic historian Burton Folsom notes that in 1941 Roosevelt even proposed a whopping 99.5 percent marginal rate on all incomes over \$100,000. "Why not?" he said when an advisor questioned the idea.

After that confiscatory proposal failed, Roosevelt issued an executive order to tax all income over \$25,000 at the astonishing rate of 100 percent. He also promoted the lowering of the personal exemption to only \$600, a tactic that pushed most American families into paying at

least some income tax for the first time. Shortly thereafter, Congress rescinded the executive order, but went along with the reduction of the personal exemption.

Economist Robert Higgs notes that when a nationally representative poll in the spring of 1939 asked, "Do you think the attitude of the Roosevelt administration toward business is delaying business recovery?" the American people responded "yes" by a ratio of more than 2-to-1. The business community felt even more strongly so.

Meanwhile, the Federal Reserve again seesawed its monetary policy in the mid-'30s, first up then down, then up sharply through America's entry into World War II. Contributing to the economic slide of 1937, the Fed doubled reserve requirements on the nation's banks. Experience has shown that a roller-coaster monetary policy is enough by itself to produce a roller-coaster economy.

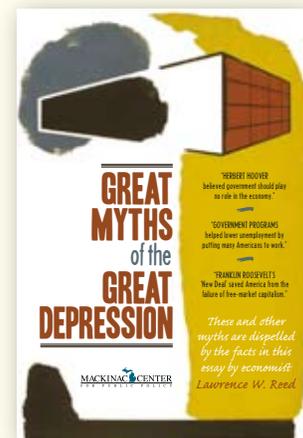
In his private diary, Henry Morgenthau, Roosevelt's Treasury Secretary, wrote: "We have tried spending money. We are spending more than we have ever spent before and it does not work. ... We have never made good on our promises. ... I say after eight years of this Administration we have just as much unemployment as when we started ... and an enormous debt to boot!"

At the end of the decade and 12 years after the stock market crash of Black Thursday, 10 million Americans were jobless. The unemployment rate was in excess of 17 percent.

WHITHER FREE ENTERPRISE?

Along with the holocaust of World War II came a revival of trade with America's allies. The war's destruction of people and resources did not help the U.S. economy, but this renewed trade did. A reflation of the nation's money supply counteracted the high costs of the New Deal, but brought with it a problem that plagues us to this day: a dollar that buys less and less in goods and services year after year. Most importantly, the Truman administration that followed Roosevelt was decidedly less eager to berate and bludgeon private investors, and as a result, those investors re-entered the economy and fueled a powerful postwar boom.

The Great Depression should linger in our minds today as one of the most colossal and tragic failures of government and public policy in American history. The nation managed to survive, but now the American heritage of freedom awaits a rediscovery by a new generation of citizens. This time we have nothing to fear but myths and misconceptions. **I**



Lawrence W. Reed is president of the Mackinac Center for Public Policy. His complete, updated, 16-page essay "Great Myths of the Great Depression" is now available from the Center.

Viewpoints

Does the Headlee Tax Cap Need To Be Tightened?

November 2005 V2005-31

The Headlee constitutional amendment, passed in 1978 to limit state spending and taxes, is not restraining the growth of state government.



Federal Regulations of Mercury Emissions Appear Adequate

November 2005 V2005-32

Gov. Granholm's Mercury Electric Utility Workgroup has published a report in which some propose adding a layer of state regulation on top of federal controls.

This is unlikely to significantly reduce mercury levels.

Is There a Statesman in the House?

November 2005 V2005-33

The Gulf Coast hurricanes illuminated a critical shortage of statesmanship in America. Our politicians vociferously defend their spending interests, but true statesmen would pursue the general welfare.

Insurance Demagoguery Drives Rates Higher, Not Lower

December 2005 V2005-34

The sponsors of bills recently introduced in the Legislature claim that their proposals would lower insurance rates. But measures that prevent insurance companies from pricing their products competitively or managing their costs will reduce the supply of insurance and tend to increase rates.

Globalization: What a Wonderful World

December 2005 V2005-35

The phenomenon commonly described as "globalization" reflects an increasing degree of economic and political interdependence among the world's nations. Though critics focus on the dislocations associated with globalization, it also creates prosperity.

Can Detroit's Problems Be Corrected by an Emergency Financial Manager?

December 2005 V2005-36

The appointment of an "emergency financial manager" for Detroit is often discussed as a solution for the city's fiscal problems. That won't work, however, unless Public Act 72 is reformed.

Michigan Landowners To Be Heard at U.S. Supreme Court

January 2006 V2006-01

Two Michigan wetlands cases will be heard in February by the U.S. Supreme Court. These cases provide the court with an opportunity to restore some rationality to wetlands regulation.

Public Pension Plans Need To Reflect Reality

January 2006 V2006-02

As "defined benefit" pensions become problematic for companies like General Motors, more orga-

nizations are moving to a "defined contribution" approach. The Michigan Legislature should implement similar reforms for public school staff.

Hope in State Graduation Standards Misplaced

January 2006 V2006-03

In assessing the excited claim that stringent high school graduation requirements will boost the economy, Michigianians should note that the state has not effectively implemented the current graduation requirement for civics.

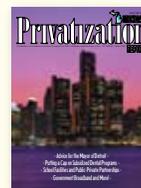
Journals



Michigan Education Report

Fall 2005 \$3.00

Key stories: Detroit Public Schools' credit rating falls after \$259 million tax error. Philanthropist Bob Thompson renews his offer of \$200 million to build charter schools in Detroit. A growing number of districts seek solutions to costly health insurance. A Pro-Con debate: Are mandatory funding increases for public schools the key to student success? These topics appear with numerous others. 12 pages.

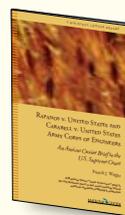


Michigan Privatization Report

MPR2005-02 \$3.00

What should the mayor of Detroit do to return prosperity to the city? How can the state of Michigan improve the process of granting air emissions permits? How can school districts save money on school construction? Could the state rely on Michigan's dental community to provide dental care to the needy? These and other questions are answered in this issue. 16 pages.

Studies & Reports



Rapanos v. United States and Carabell v. U.S. Army Corps of Engineers

December 2005 \$10.00

This study reproduces a "friend of the court" brief filed by the Mackinac Center to the U.S. Supreme Court in two cases involving federal wetlands regulation of Michigan properties.



DPG York v. State of Michigan

January 2006 \$10.00

This study reproduces a "friend of the court" brief filed by the Mackinac Center to the Michigan Court of Appeals challenging the constitutionality of a state law designed to encourage the preferential sale of state land.

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Russ Harding's Environmental Diversity

Russ Harding values “environmental diversity” in the traditional sense of the words. But as the Mackinac Center’s senior environmental policy analyst, Harding has given the phrase new meaning by producing impact on a diversity of environmental issues.

Last November, for instance, versions of three of Harding’s air policy recommendations were introduced by state Rep. Fulton Sheen in House Bills 5384 and 5385. One provision would require the Michigan Department of Environmental Quality to grant or deny requests for major air emissions permits within four months of receiving a complete application, while a second would mandate that the MDEQ contract with private firms to process at least 35 percent of these permits — a privatization that has saved time, money and resources in other states. A third reform would end Michigan’s unique and convoluted pro-

Environmental diversity can promote ecological stability and adaptability. When it comes to the state’s policy climate, Harding’s environmental diversity is helping to do just that.

cess for generating varying air emissions standards and replace that system with federal emissions standards, putting Michigan on an equal footing with the rest of the nation.

All three provisions would be particularly helpful during state economic booms, when permit requests climb. Harding has been invited to testify on the proposals to a commerce subcom-



Russ Harding comments on *Rapanos v. United States* in a short video about the case.

mittee of the Michigan House.

Harding’s prescriptions have made legislative headway before. In December, the state Legislature passed House Bill 4617, which required that private property be tested for contaminants like dioxin before being labeled toxic by the state, and that clean-up actions be based on tests of actual — not presumed — threats to human health. These provisions reflected insights that Harding outlined in a June 5 Saginaw News Op-Ed, and the bill’s sponsor, state Rep. John Moolenaar, had earlier consulted Harding for his professional expertise. Unfortunately, Gov. Jennifer Granholm vetoed the bill on Dec. 27. Still, the proposal drew attention to the shortcomings of the state’s current approach to toxic clean-ups, and legislators may reintroduce some provisions of the bill this year.

Harding has also sparked a boisterous media debate (see *Media Impact*, Page 5) over his suggestion in Michi-

gan Privatization Report last October that the state consider selling 14 of Michigan’s 97 state parks. Harding, a former state parks chief, observed that although the system’s purpose under the law is to “preserve and protect Michigan’s significant natural and historic resources,” some state parks are unexceptional and merely compete with private parks. Harding’s recommendation was given a respectful hearing in major media outlets like the *Lansing State Journal* and *The*

Oakland Press, which cited the park system’s current financial difficulties.

Harding has been generating impact on other issues, as well. In groundwater regulation, a proposal passed the Legislature in December that, though flawed, was considerably better than it might have been without Harding’s ongoing advancement of his groundwater research (see “A Contested Water Legacy,” *Impact*, Summer 2005). Harding also continued to focus media attention on abusive federal wetlands regulations (see “Supreme Court Levee,” Page 9), while penning unique commentaries on uncompensated regulatory takings, new regulations of mercury emissions and reducing gasoline prices by welcoming new refineries to Michigan.

Environmental diversity can promote ecological stability and adaptability. When it comes to the state’s policy climate, Harding’s environmental diversity is helping to do just that. **I**



Don't miss this seminal U.S. Supreme Court brief on wetlands overreach.

See Page 11, or go online to www.mackinac.org/7454

