

The Magazine of the Mackinac Center for Public Policy JANUARY/FEBRUARY 2016

# IMPACT

An illustration of a person in a blue winter suit and helmet riding a snowmobile through a snowy forest. The snowmobile has a large orange and yellow storage box on the back. In the background, two police cars with flashing lights are parked on a snowy road, and a line of evergreen trees stretches across the horizon under a grey sky.

## LIBERTY DEPENDS ON CLEARLY DEFINED LAWS

Obscure rules threaten to put people in jail (like 'unlicensed' snowmobilers)

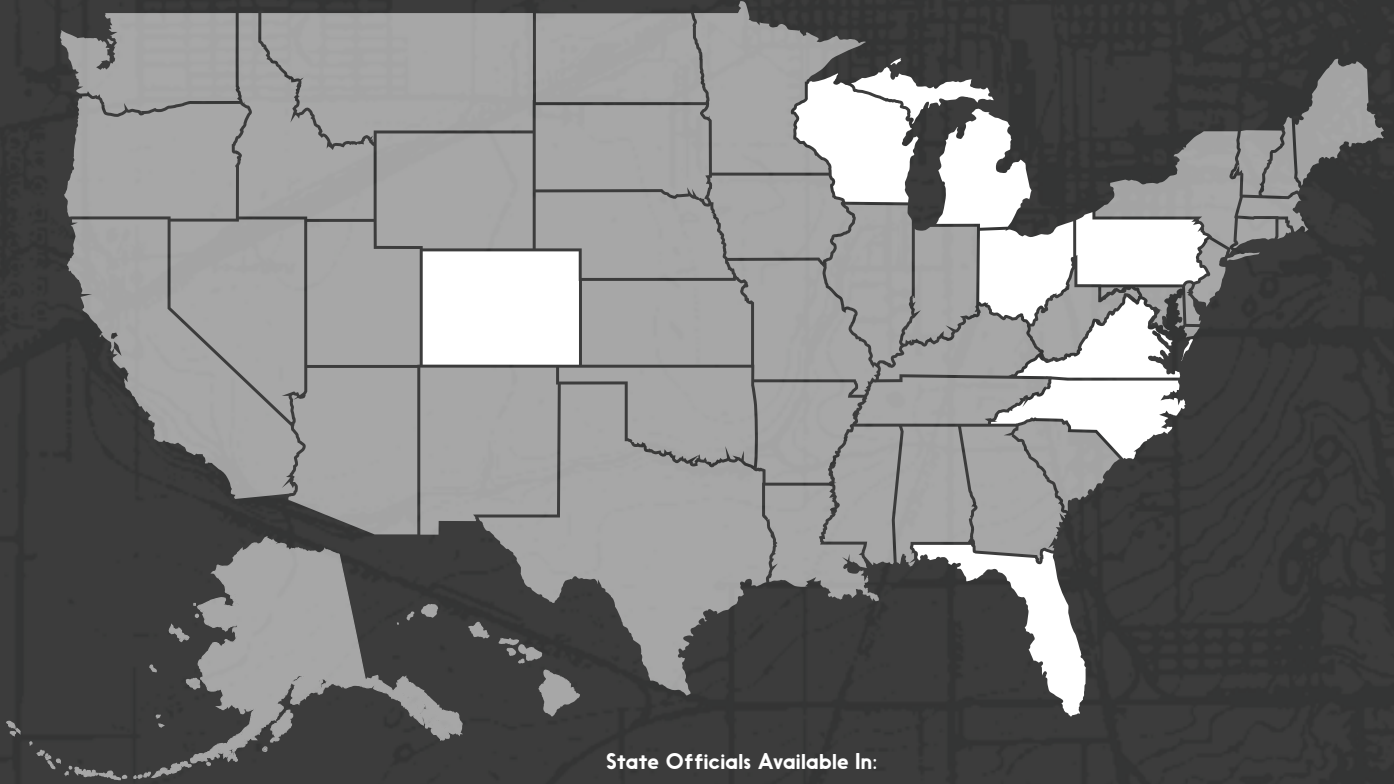
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**Mackinac Center Win Earns Key  
Placement in MEA Magazine**

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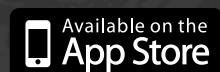
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The November/December article on the State Policy Network Annual Meeting incorrectly stated that Joseph Lehman presented Kristina Rasmussen with the Overton Award. We regret the error.

FROM THE WEB

## Blog

Keep up to date on the latest policy stories from Mackinac Center analysts.

**Mackinac.org/blog**

## MichiganVotes

Want to know what your legislator (and others) have been voting for?

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WHAT FOLKS ARE SAYING ABOUT THE MACKINAC CENTER

**“Mackinac Center: Skip industry breaks, lower all taxes. We agree.”**

— Rich Studley, Michigan Chamber of Commerce CEO

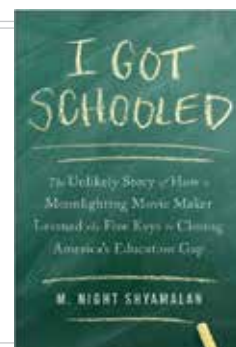


**BEN DEGROW REVIEWS** “I GOT SCHOOLED”: A FILM ON EDUCATION REFORM THAT FALLS SHORT

“I Got Schooled,” a book from filmmaker M. Night Shyamalan, shows plenty of promise. But to borrow the title from one of his films, the author also needs to develop a “Sixth Sense” about reforming education.

The Academy Award-winning director’s venture away from the silver screen reveals a quirky passion to figure out the best way to overcome the nation’s academic achievement gap. Shyamalan broadly examines what fuels top-flight (mostly charter) schools that serve challenging populations. Most of his recommendations for educational success, such as get better teachers, represent sound strategies, but he ultimately falls short, ignoring the strong evidence for school choice.

Simply heaping government funds on Shyamalan’s good ideas would do little to truly revolutionize education. School choice is the force multiplier, inspiring skilled education leaders to provide better service to informed, empowered families.







*Joseph G. Lehman*

## Whether Winning or Losing, Stay on Offense

**JOSEPH G. LEHMAN**

There must be something in the conservative disposition that prefers defense to offense. I suppose the root word “conserve” is the most obvious clue.

Beloved conservative political quotes echo verbs like “preserve,” “protect,” “uphold,” “secure” and “defend,” which sound distinctly less assertive than some words leftist groups use to describe themselves, such as “occupy,” “march,” “overcome,” “action,” “advance,” “liberation,” “change,” “move” and “progress.”

Defense may be a winning strategy for the team that’s ahead in the final moments of an athletic contest but it’s suicide for the team that’s behind. Let’s ask ourselves two questions: Are we winning, and is public policy like athletic competition?

I cannot answer yes. As optimistic as I am, it’s far from clear that we are winning more than we are losing. We (and by “we” I mean that happy marriage of conservatives and libertarians who agree on economic policy) have won some great victories but they haven’t yet reversed the growth of the state and the concomitant loss of liberty.

Furthermore, the sports analogy breaks down at a crucial point. There is no game clock, no bottom of the ninth, no sudden death overtime in politics. For in politics, unlike sports, victories and losses are never permanent. They can be erased by whatever happens next.

Every victory is worth celebrating but we can never say, like The Lone Ranger, “my work here is done now.” Have you ever noticed that the Left just stays on offense, no matter what, taking big wins or little ones, whether behind or ahead at the moment?

Here are three ways the Mackinac Center is staying on offense.

- Worker freedom. Making Michigan a right-to-work state has been perhaps

our biggest victory. But we’ve never thought that we can give up, because we know the unions won’t. At every turn it seems that unions and their friends ignore RTW, subvert it, and obstruct workers’ access to its benefits. That’s why we’ve been fighting and winning for workers in court and providing lawmakers with more powerful ideas to make sure that unions retain no special privileges. It’s also why we’ve become a national leader in setting brushfires of freedom in other states where labor reforms are ripening.

- Parental choice. Ground we once held securely – the right of parents to choose a safer or better public school – is being ferociously attacked by anti-charter school forces who want to herd kids back into the failing conventional public schools they fled. We’re correcting misinformation and making the moral case for choice that lawmakers can use not just to reject retrograde ideas but expand options for kids even more.
- Taxpayer protection. The Republican-dominated Legislature has cut precious little spending and constantly flirts with backsliding into tax hikes (on the many) and tax favoritism (for a few big companies). Gov. Snyder has called some corporate welfare deals “the heroin drip of state government” and our research proves he was right. Our comprehensive approach killed the state film subsidies and helped pare back a new deal intended to force all taxpayers to support the fashionable data center industry.

In football, defense can score points and even win the game. Such is not the case in the world of policy, where staying on defense merely delays the moment of defeat. At the very least, we can never give our opponents the luxury of winning without a fight. ■

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GENEVA RUPPERT Editor

ILIA ANDERSON Designer

# Short-Sighted Compassion

In our country, many parents have the means to give their children everything they ask for. But the greatest gift may be something that

money can't buy. And therein lies a lesson for public policy.

## JIM WALKER

I once knew a college student whose parents could have given her everything she needed.

"Sally," I asked her, "Why are you working two jobs?" She explained to me, matter-of-factly, that she had been in a car accident, so she had to pay for the higher premiums that resulted. Though her parents had given her the car, they also insisted that she pay for its upkeep and insurance. At a young age, Sally was learning responsibility, and today, she is a responsible young woman who exercises a lot of leadership.

On the other hand, I also knew another married couple, Bart and Brenda. Not only did they pay for their child's college tuition, they gave him \$50,000 in spending money. They were then distraught and confused when he had drug and alcohol addictions. Their support was not the only factor leading to that troublesome outcome. But the story is an example of what can happen when we just give people whatever we think they want rather than something that will last, which is a sense of responsibility and ownership, and an environment in which they can succeed.

Somewhat like Bart and Brenda, people on the Left may feel that a moral, kind, approach to policy is to use the wealth of the country to build a government that can offer help at every turn. (Think of the Obama administration's advertising campaign featuring "Julia," who receives cradle-to-grave public benefits.) But an overly generous safety net can harm those who would otherwise take care of themselves.

An all-encompassing public sphere, much like an over-indulgent parent, stunts responsibility and robs the dignity of those it claims to help. Freedom is not an abstract concept; it's something essential to the development of children into responsible adults, and essential to a good society. ■

Jim Walker is vice president for advancement at the Mackinac Center.

## Welcome New Staffers!

The Mackinac Center has recently welcomed some excellent new members to our team.



### BETH HANSON

Operations Office Assistant

A veteran of Midland Public Schools, Beth now helps to make sure the Mackinac Center runs smoothly behind the scenes. She started with us in September 2014.



### CHANTAL LOVELL

Media Relations Manager

Chantal joined the Mackinac Center in October from the Nevada Policy Research Institute in Las Vegas, where she served as communications director. She has experience as a journalist and has a master's in political science from the University of Nebraska. As the media liaison, she acts as the point of contact for state and national media.



### GENEVA RUPPERT

Communications Associate

A former Mackinac Center intern, Geneva returned to the center full time last spring. A graduate of Smith College, she serves as the managing editor for IMPACT magazine and the Mackinac Center blog, and picks up plenty of other miscellaneous tasks in the communications department.



### BEN DEGROW

Education Policy Director

Our most recent hire, Ben returns to his native state from Colorado, where he handled education policy at the Independence Institute. A Hillsdale College graduate, he has experience in both journalism and education and has spent the last several years researching school choice, educational employment and collective bargaining. He will now spearhead the Mackinac Center's research into education policy and provide commentary on education issues in Michigan.



### AMY KELLOGG

Assistant to the President

With the recent retirement of Kendra Shrode, the Center looked to former staffer Amy Kellogg to fill the void. Amy first worked for Mackinac in the 90s, and "retired" in 2002 to focus on her young family.

Highlights of her initial tenure include facilitating the move into our current building and serving as Joe Overton's assistant. She returned to the Mackinac Center in September and is doing an admirable job filling Kendra's shoes.





## INTERVIEW WITH A SUPPORTER

The Mackinac Center for Public Policy is funded solely by freedom-loving individuals and organizations that find value in its conviction of free-market principles. For this issue of IMPACT, we hear from Franklin Holwerda.

Franklin Holwerda grew up as the youngest of three children in a home where his mother was a Democrat and his father was a Republican. He suspects he is a namesake of the 32nd president, and that his mother made that decision.

“Of the three children, I was the only one that my parents didn’t have the resources for my mother to deliver me at a hospital, so she had me at home with a midwife. However, they were able to send my siblings and [me] to a Christian school all the way through graduation.”

Education, and continuing education, has been a passion for Holwerda. He is inspired by the words of Henry Adams: “A teacher affects eternity; he can never tell where his influence stops.”

“I remember in the late 1960s while working on a six-story building in Grand Rapids, a Davenport University professor said while looking at the construction, ‘The deeper the foundation, the taller the building.’ That has really stuck with me. I believe education broadens the individual and provides value that can’t be measured.”

But his goal of attending college was delayed by his family’s heating and air conditioning business. He worked for it for several years and eventually purchased it in 1963 when he was 30 years old. He renamed it the Franklin Holwerda Company, which is still its name today, even though he sold the company in 1981.

At 48 years old, after selling a successful company and retiring, he fulfilled his dream of attending college.

His retirement wouldn’t last, however. Seven years after selling his company and initially retiring, Holwerda jumped back into the workforce in 1988 at Quality Air, a Western Michigan company, as a vice president for service. He became a stockholder and part owner.

“Some tell me that I was lucky, but I don’t believe that,” says Holwerda. “I’ve have the good fortune of having good people surround me my entire life, and that’s no accident.”

He left Quality Air in the late 90s, before a life-changing experience in April 2003. A near-fatal auto accident gave him more perspective on how delicate and precious life is. “We often feel that we are 10 feet tall and bulletproof, but a situation like that makes you more circumspect.”

Holwerda believes in the Mackinac Center because he shares its passion for civil liberties, freedom, free markets and independence from politics. He believes individuals make better decisions for themselves and their communities than a government can do through central planning.

“The reason why I stay in Michigan is because I was born here. I have an attachment with family and friends. My wife and I already have our burial stone ready here. We have a home in Florida, too, for the winter, but I am a resident of Michigan and intend to stay for the rest of my life and help improve our state. Right-to-work was a leap forward for our state. I have no regrets being a union member earlier in my career and working closely with union organizations, but I believe workers should have the choice whether to financially support the organization.”

Franklin Holwerda and his wife Gerri have six grown children. He plans on building a home north of Lowell in the coming months. ■



Dan Crane, a member of the Mackinac Center Board of Scholars, spoke at an Issues & Ideas forum in December.

In early December, the Mackinac Center hosted an event in Lansing featuring Dan Crane, the associate dean for faculty and research at the University of Michigan and a member of the Mackinac Center Board of Scholars. Crane has been an outspoken opponent of laws that prohibit Tesla and any other manufacturer from selling cars directly to consumers.

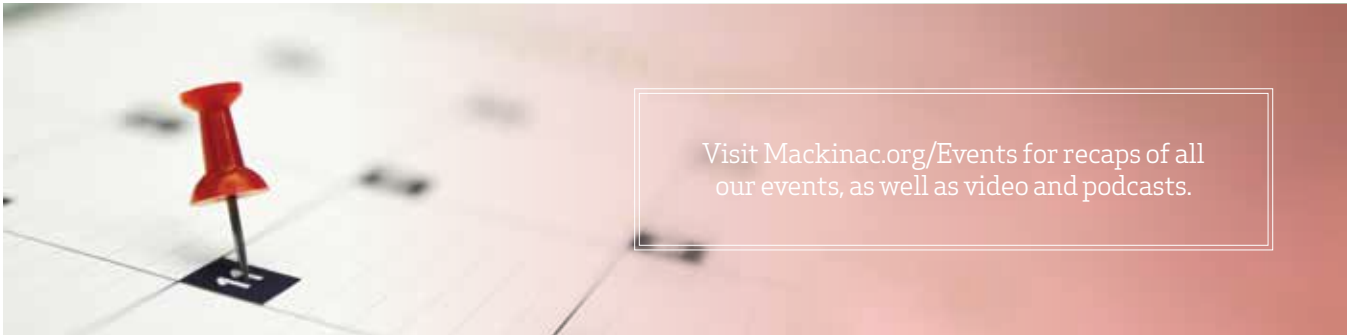
Addressing a packed room, Crane explained the history of automobile sales in Michigan, and how dealerships became mandatory. Organizations that represent auto dealers alleged that direct sales were unsafe and bad for consumers. Independent research, though, shows that allowing consumers to

buy cars directly from the manufacturer brings down prices and has no impact on vehicle safety.

The concept of direct automobile sales isn't just better for consumers, it is also supported by an array of groups across the political spectrum: Free marketers embrace open competition, environmentalists support making energy-efficient vehicles widely available and technology gurus appreciate the opportunity to revolutionize the auto industry. Organizations in favor of those ideas and more signed onto an open letter to policymakers in support of direct distribution.

The issue does not only concern Tesla Motors. This prohibition makes it impossible for any manufacturer to sell cars to individuals rather than dealers. Crane pointed to Elio Motors, another startup that hopes to market cars directly. With a base price of less than \$7,000, the tiny, three-wheeled Elio has room for a driver and one passenger and can achieve 84 miles per gallon on the highway.

Unfortunately, when the Elio makes it to market next year, Michiganders will have to travel to neighboring states like Ohio to purchase one, as they must now do for a Tesla, unless the Legislature moves to end the dealership monopoly. ■



Visit [Mackinac.org/Events](https://Mackinac.org/Events) for recaps of all our events, as well as video and podcasts.





## New Study Says Pure Michigan Campaign Not As Advertised

The Mackinac Center is scheduled to release its study, “Pure Michigan: State Promotion Generates Negative Return on Investment” in March.

The early results were released last year and found that state promotion efforts do have a tiny, positive impact in one respect, but on balance remain a net negative for Michigan. The authors make a number of recommendations; chief among them is ending the program altogether.

The Pure Michigan campaign — which marks its 10th anniversary this year — is a taxpayer-funded effort to promote the Great Lake State. As part of its advertising effort it runs attractive television commercials featuring narration by Michigan-born actor Tim Allen. The idea behind the program is to spur more tourism in and to the state and thus encourage economic development. The program

is operated by Travel Michigan, a government agency inside the state’s “jobs” department, otherwise known as the Michigan Economic Development Corporation.

### MICHAEL LAFAlVE

To measure the impact that state-subsidized promotion has on the state’s economic fortunes, scholars

Michael Hicks and Michael LaFaive built a statistical model around 39 years of data about spending by the 48 contiguous states to promote tourism. The model attempts to take into account other factors that might drive tourism spending. These include geographic features such as distances to a large body of water or mountains, as well as recessions, changes to population and trends in tourism.

Hicks and LaFaive found that every additional \$1 million the state of Michigan spent on promoting tourism generated the state’s hotel and

motel (accommodations) industry a miniscule amount of additional economic activity, or revenue. In fact, the benefit was so small that it is absolutely swamped by the cost of obtaining it. In other words, the cost of the program cannot justify the benefits. The Pure Michigan advertising campaign is even less impressive if one remembers that the money used to fund the campaign would likely have been spent more profitably had it been retained by taxpayers, or even used for a different public program such as road maintenance.

Unlike the official reports used to justify the Pure Michigan campaign, the Mackinac Center’s analysis is 100 percent transparent. The model will be explained in detail in the study’s appendix and its related dataset made available on the center’s website. ■

## Time to End the Use of Public Pension Plans for Private Gain

Michigan citizens expect that the money they pay in taxes will be used for the core government services that are supposed to be provided. Education dollars are supposed to be used to educate students. Money spent on pensions is supposed to provide a retirement for government workers.

That’s not the case today.

In 2015, the Mackinac Center broke two stories about an abuse of tax dollars happening in Michigan, one dealing with union release time and the other with union executives spiking the pensions they earned while working as government employees. There are two bills that would fix these issues.

More than 70 school districts are currently providing “release time” to local union presidents. The way it typically works is that the head of a local union for a school district gets paid to work on union business, rather than taxpayer business. All the while, they receive all or part of their salary and benefits from the public school district — paid for by taxpayers. The direct cost of this practice is at least \$3 million per year across the state, though the actual cost is much higher since schools then have to hire a teacher to replace the union president who is no longer teaching.



Senate Bill 280 would end these special arrangements. It has passed the state Senate and now sits in the Michigan House.

The current and past heads of the state’s largest teachers union are also taking advantage of taxpayers. At least 50 people, including the last three presidents of the Michigan Education Association, are using their union salaries to increase their public pensions. In the case of the MEA presidents, salaries top out at over \$200,000. Senate Bill 279 would prevent this going forward. It has passed the Senate and is now in the state House.

Taxpayers have better uses for their money and these deals should end. ■



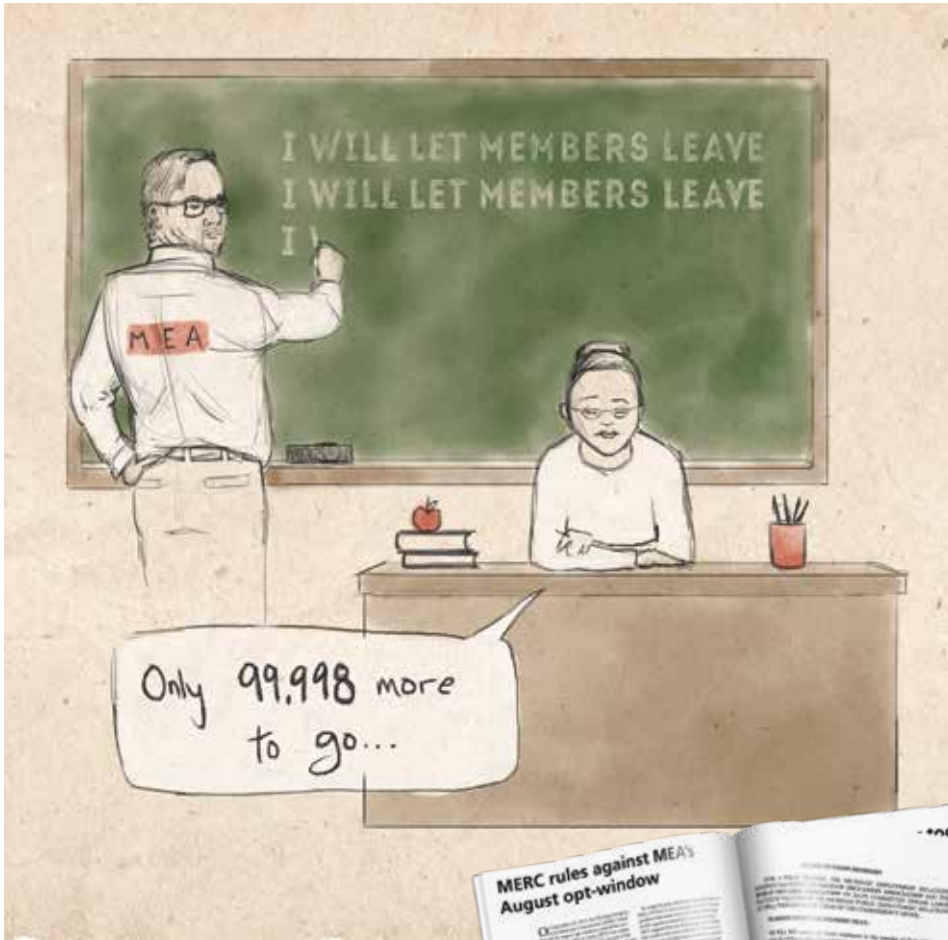
# Mackinac Center Win Earns Key Placement in MEA Magazine

MEA Voice isn't a magazine we would normally recommend as reading material, but we're happy to make an exception for the December 2015 issue.

When the Michigan Employment Relations Commission unanimously sided with the Mackinac Center against the Michigan Education Association's "August Window" policy, the union appealed the decision and requested a stay. It wanted to continue denying teachers the opportunity to exercise right-to-work freedoms until it exhausted every legal avenue.

Fortunately, the Court of Appeals did not agree. It required the MEA to notify its members of the MERC decision and inform them that it found the MEA had committed an unfair labor practice by refusing to accept the resignations of four Saginaw teachers. The MEA complied with this order in the December 2015 edition of its magazine, MEA Voice.

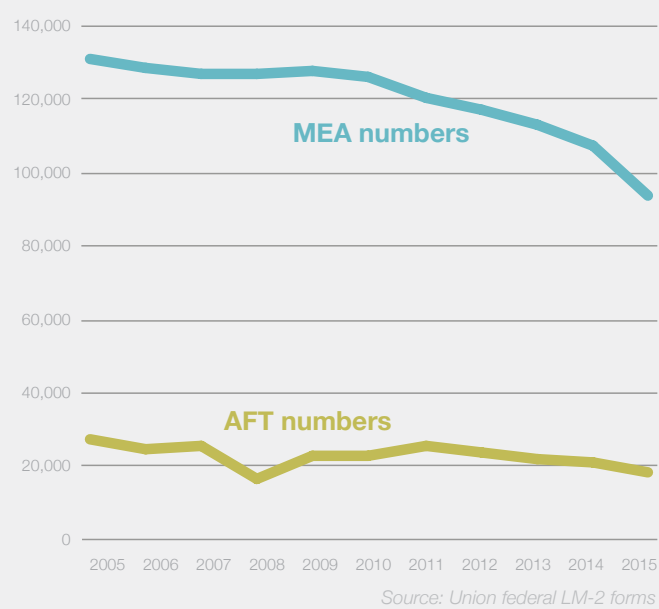
The legal battle over the August window isn't over yet — a final ruling in the case is still a few years off — but this is a big win for teachers and right-to-work. ■



MEA Voice Magazine featured a two-page spread informing its members of the MERC decision.



## Teacher Union Membership in Michigan Continues to Decline



In March of 2013, Michigan's right-to-work law went into effect and for the first time in decades, most government employees could no longer be forced to pay money to a union in order to keep their jobs.

The Mackinac Center has been educating workers about these new rights. School employees and private sector workers who favor the right-to-work law have also been reaching out to their colleagues, sending emails and writing articles. Over the past few years, thousands of workers have fled from the state's largest teachers union, the Michigan Education Association.

In January of 2015, director of communications and public policy for the MEA, Nancy Knight, was quoted saying their membership decline was over.

"We feel that all of those members that intended to leave did leave," Knight told the Detroit Free Press. "We do not anticipate a future decline in membership."

In a yearly report filed with the federal government, it was revealed that the union lost another 13,300 members from 2014 to 2015. ■



## Bringing Entrepreneurship to the Next Generation

Encouraging the entrepreneurial spirit among young people can teach valuable lessons, yield valuable experiences and produce a lot of fun.

Those are the goals of an effort the Mackinac Center is spearheading in late summer 2016. It's called the Acton Children's Business Fair (not affiliated with our friends at the Acton Institute).

At a business fair, kids put together their own business plans, produce

products and sell them at a market. The Mackinac Center is bringing this program to downtown Detroit.

Imagine the city's youth showing off their creativity and business skills by learning through hands-on experience how to produce goods and services. The Mackinac Center is partnering with Junior Achievement to bring this event to the Motor City.

Many more details will be announced in the coming months. ■

## Balanced Budget Amendments on Balance: Center Analyst Testifies with a Memoir

The Mackinac Center's primary focus is state policy. But when the federal government has gone off the rails with its spending, debt and monumental overreach, states and state think tanks have a duty to help rein it in.

So it was that the center's senior legislative analyst, Jack McHugh, gave testimony at a recent hearing of the House Financial Liability Reform Committee, which was considering an innovative proposal to give states a veto over further expansions of the federal debt. It's an amendment to the U.S. Constitution, to be advanced through a process known as an "Article Five" convention of the states.

One shortcoming of the Article Five process is its daunting procedural obstacles, which the proposal constructively addresses through a multistate compact. The measure before the committee was Senate Bill 306, which would make Michigan a member of this compact. It already passed the state Senate in a 26-11 party line vote last September.

McHugh says he wanted to add value to the committee deliberations rather than be one

of "the usual people saying the usual things." So he gave a personal view from inside the freedom movement based on 40 years of observing previous attempts to enact a balanced budget amendment. The Compact for a Balanced Budget, he said, is unique.

He explained that the movement has regarded most balanced-budget proposals as invitations to raise taxes rather than cut spending. Moreover, the idea of an Article Five convention has generated a good deal of angst among traditionalists who fear what they call a "runaway" constitutional convention.

"Having observed these proposals for 40 years," he said, "I approach each new one with a list of potential concerns."

"But each of those concerns were crossed off here with specific provisions that plausibly eliminate or mitigate them," McHugh continued. "My conclusion, and based on extensive conversations with others in the movement, is that this version is worth trying. The biggest risk is for the nation to proceed on its present course unchecked." ■

## ChoosingCharters.com Informs Thousands About the Benefits of Charter Schools

Thousands of Michiganders now have a better understanding of how charter schools improve the lives of students and families, thanks to the Mackinac Center's new website, ChoosingCharters.com.

The center unveiled the website and a series of videos in November to educate lawmakers, the public and members of the media about the benefits of charter schools and highlight some of the best ones in the state.

"The new 'Choosing Charters' website is a fantastic resource for parents, media, policymakers and others looking to learn more about Michigan's charter public schools," said Gary Naeyaert, the executive director of the Great Lakes Education Project. "The site comes alive with facts, personal stories and videos that captures the unique and diverse tapestry of the state's charter school movement. This is a 'must bookmark' site for K-12 education."

In a matter of weeks, videos from the site reached over 20,000 people who caught a glimpse into the lives of children who are succeeding because of their schools.

"In a charter school, they always are trying to help you succeed and be better than you think you can be," Briana Smith, a senior at Grand River Preparatory in Kentwood, said in one of the videos. "Because Grand River requires you to take AP classes, it gives you an insight of what college would be like."

Schools like Grand River Prep and Star International Academy in Dearborn Heights — where 100 percent of its seniors graduate and are accepted into college — are just two of Michigan's exceptional charter schools featured on the site. They redefine education and give parents the ability to choose the education that is best for their children.

The website and videos were released a month after Denno Research conducted a poll finding that Detroit residents overwhelmingly believe parents need more choices in education, and just in time for legislators' discussions on how to fix Detroit Public Schools. ■

*Choosing*  
**CHARTERS**



# Disclosure Requirements Would Promote Accountability of Public Sector Unions



Nathan Mehrens speaking at a Mackinac Center event.

the job. One reason employees might choose this option is if they believe their union is mispending their hard-earned dues money. But how could a union member determine if this were the case?

Financial information about private sector unions is easily obtainable, since the U.S. Department of Labor requires them to file annual financial disclosure reports. These reports are posted online, and unionized employees can see exactly how their union is spending their dues.

But it's an entirely different story for public sector union members, because their unions are not required to disclose similar information. To shed light on the lack of accountability in government-employee unions, the Mackinac Center



Nathan Mehrens' study is available online at [Mackinac.org/s2015-04](http://Mackinac.org/s2015-04)

spearheaded by both Robert F. Kennedy and John F. Kennedy. It was a bipartisan policy reform that was even supported by the president of the AFL-CIO, George Meany.

Mehrens described how easy it would be for Michigan to implement transparency requirements for its public sector unions: All the Legislature would need to do is copy the rules already in use by the U.S. Department of Labor.

All union members should have full access to financial information about the unions they choose to support. This will allow them to make informed decisions about their elected union officers and about whether they want to exercise their new opportunities under right-to-work. ■

Now that Michigan is a right-to-work state, unionized workers can hold their union accountable by exercising their right to opt out of membership and paying agency fees, meaning they no longer have to fund a union to stay on

published "Bringing Financial Transparency to Michigan's Public Sector Unions" in June 2015. Nathan Mehrens, a labor expert who helped implement the financial reporting requirements at the U.S. Department of Labor, authored the study. And later in October, the center hosted an event in Lansing with Mehrens as the featured speaker.

Mehrens explained that efforts to require unions to disclose their finances began in the 1950s and were

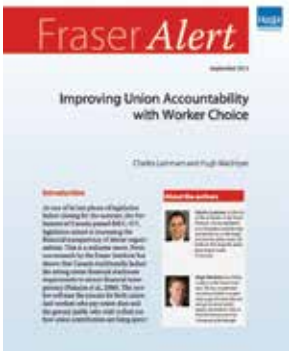
# Canadian Report Uses Mackinac Center Research

Ideas from the Mackinac Center extend not only beyond Michigan and into other states but even into other countries, such as Canada. In September, the Vancouver, British Columbia-based Fraser Institute cited Mackinac Center experts and publications in a report on employment policy.

The report, "Improving Union Accountability with Worker Choice," highlights two ways that Canadian policymakers can advance worker freedom. The first, ensuring union transparency, is the subject of the Mackinac Center's publication, "Bringing Financial Transparency to Michigan's

Public Sector Unions." That June 2015 report by Nathan Mehrens recommends making Michigan's government unions subject to the same disclosure requirements that private sector unions face.

Earlier this year, Canada enacted a requirement that labor organizations account for the time and money they spend on lobbying and political action. As Fraser Institute



The Fraser Institute's study is available online at <https://goo.gl/k2sO98>.

authors Charles Lammam and Hugh MacIntyre explain, "Unions often spend money on political and other causes that are outside of the confines of their responsibilities in collective bargaining and with which dues-paying workers may not necessarily agree. Bill C-377 enables unionized workers to more readily determine how much of their dues are going to these causes."

The second way to advance worker freedom, the Canadian think tank says, is to bring right-to-work to the country's private sector unions. Drawing on the work of U.S.-based experts, including the Mackinac Center's Michael LaFaive, Lammam and MacIntyre write that worker freedom fosters economic growth. They also mention F. Vincent Vernuccio's report, "Worker's Choice," when discussing the incentives unions face. The authors conclude that after ensuring union transparency, "The next step is to guarantee workers a choice about whether or not they wish to become a union member or pay union dues."

The Fraser report also explains that under worker's choice, "Unions cannot take financial support from workers for granted and must continually convince workers of the value of having a union represent them."

The report also cites work from Paul Kersey, a labor policy expert formerly with the Mackinac Center, and Dr. Michael J. Hicks, a member of the Center's Board of Scholars. ■



# LIBERTY DEPENDS ON CLEARLY DEFINED LAWS

After weeks of deliberation, lawmakers unanimously tackled an issue that the Mackinac Center brought to the forefront, that of Michigan's criminal justice system and its ambiguity about what constitutes a crime. A number of criminal statutes failed to define personal culpability and often the job was left to the courts, leaving the door wide open for inconsistency.

Consider the case of Kevin Willcome. In February 2015, the Ottawa County Sheriff's Department charged him with the crime of driving a snowmobile with a suspended motor vehicle license. Willcome had no idea what he was doing was crime because Michigan does not require a license of any kind to drive a snowmobile. The law tying snowmobile use to a person's motor vehicle license went into effect years after Willcome took a required safety class at the age of 12. Since that time, Willcome was an infrequent user of snowmobiles and had little reason to mine the Department of Natural Resources website for changes in snowmobile rules.

He hired an attorney and the prosecutor agreed to reduce the charge to a civil infraction, which was accepted by the court. Had Willcome

been charged in another jurisdiction, the outcome could have been far different — he could have faced a large fine and even time in jail.

**MICHAEL J. REITZ**

**ANNE SCHIEBER**

Michigan Supreme Court Justice Stephen Markham made note of statutes failing to define criminal culpability in another case, that of Alan Taylor, a Michigan business owner who was criminally charged for expanding his company's parking lot into a wetland he didn't recognize.

"Our Legislature might wish to take care in defining critical terms and elements with as much specificity as possible and in terms that are as accessible to ordinary citizens as possible so that they might readily understand what course of conduct it is lawful, and unlawful to pursue."

Two bills emerged this session to show that legislators were ready to do just that. Lawmakers were guided by two reports published by the Mackinac Center, "Criminal Minds: Defining Culpability in Michigan Criminal Law," and "Overcriminalizing the Wolverine State: A Primer and Possible Reforms for Michigan."

In the latter, Mackinac Center for Public Policy Executive Vice President Michael Reitz, along with coauthors James R. Copland and Isaac Gorodetski of the Manhattan Institute, examined

Michigan's penal code and noted it is significantly larger than that of its neighboring states and eight times larger than the Model Penal Code. With that many criminal laws, they argue, it is essential that the state create a "default mens rea safeguard."

"Mens rea" is the Latin term for culpable state of mind and one of two components, the authors point out, that should be specified in criminal statutes under legal tradition. The other is "actus reus," the wrongful act itself. In Michigan, when there is no mention of criminal intent, the courts have no choice but to fall back on "strict liability," meaning all a prosecutor needs to prove is that you committed a wrongful act, not whether you intended to do so.

The Michigan Senate and the House took two approaches in tackling criminal intent reform. State Sen. Mike Shirkey introduced SB 20, which created a default standard of "knowingly" if a criminal law failed to state culpability, and would apply only to new laws. House Bill 4713, introduced by State Rep. Edward McBroom, creates three defaults, "knowingly," "purposely" or "recklessly," and applies to bills old and new with some exceptions, such as those applying to the health, vehicle or penal codes. Under both bills, lawmakers



would be free to incorporate strict liability into a law, but they would have to state so explicitly.

The Senate Judiciary Committee approved HB 4713 with some substitutes.

It added the exception of the Identity Theft Protection Act, and clarifies what happens when a criminal statute includes several elements but fails to spell out culpability for each one. State senators agreed to apply a default to existing laws but only those that are ambiguous. Additionally, the reform would not be retroactive, so past offenders would not be able to re-open their cases.

Getting to this point was no easy task. Prosecutors expressed concern about the impact and how it would apply to current laws. Proponents of reform pointed out support from notable law-and-order figures, such as Sen. Orrin Hatch of Utah and Ed Meese, who was U.S. attorney general for President Ronald Reagan. Reform, legislators were told, was also taking place in other states, particularly next door to Michigan, in Ohio.

In December 2014, Ohio passed what seems to be the most sweeping criminal intent reform in the country: If lawmakers fail to include criminal culpability language in any new act, the act would be void. For existing crimes, the reform enacted a 'reckless' default standard, meaning knowledge of the law would be immaterial if an offender acted in a reckless manner.

Ohio State Sen. Bill Seitz spearheaded the reform. An attorney, he was frustrated by the vague language he would frequently notice in Ohio laws. He uses the example of Ohio's law on

assault, which is a misdemeanor unless you strike a someone in a particular class, such as a nurse, judge or service animal. The word 'knowingly' was stated in the laws but it was unclear what it modified.

"What if you didn't know the person you hit was a nurse, for example? Then you'd be guilty of a felony," he said.

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**In Michigan, when there is no mention of criminal intent, the courts have no choice but to fall back on "strict liability," meaning all a prosecutor needs to prove is that you committed a wrongful act, not whether you intended to do so.**

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Seitz says that as in Michigan, prosecutors in Ohio were resistant to criminal intent reform. It was only at the witching hour, shortly before the legislature ended its session, that prosecutors came around. Similar to the Mackinac Center, Ohio's Buckeye Institute became involved in the policy debate. Together they and others worked with a legislative

sponsor to find some common ground with prosecutors.

For prosecutors in Ohio, the key issue was the definition of "reckless." Ohio's legal definition contained the word "perverse" and it was something that would make prosecutors wince every time that word was stated in jury instructions. Seitz said many jurors thought that it meant sexual deviancy and often struggled in deliberations.

As part of reform, lawmakers agreed to refine the definition of reckless to a manner that was satisfying to prosecutors. The bill was then passed.

On Dec. 22, Gov. Rick Snyder signed House Bill 4713, which is now Public Act 250 of 2015. The debate last year has shed light on what many considered an issue of justice and fairness. Criminal records can damage job prospects, chances for enlisting in the armed services, securing credit or enrolling in school.

Most Michigan citizens want to respect the law. If they are brought before a judge, the criminal offense should be very clear. ■

Michael J. Reitz is executive vice president and Anne Schieber is senior investigative analyst at the Mackinac Center.





Vice President for Legal Affairs Patrick Wright defends the merits of Rebecca Friedrichs' case against the California Teachers Association at a debate with the AFL-CIO.

## Mackinac Center Lawyer Debates AFL-CIO General Counsel

An email from Mark Cousens to Mackinac Center Legal Foundation Director Patrick Wright was a somewhat surprising compliment. Cousens is a lawyer who has been representing union interests for over four decades, including in several Mackinac Center legal battles. Wright and Cousens appeared on separate sides of the bargaining table over wording of various ballot initiatives that were on the 2012 ballot. Their interactions have always been courteous and cordial no matter the stakes or the outcome of any particular hearing.

Cousens sent his email in his capacity as the treasurer of the Detroit Area Chapter of the Labor and Employment Relations Association, a trade group of professionals who work in employment relations. Cousens, aware of the foundation's interest and amicus brief in the Supreme Court case of *Friedrichs v. California Teachers Association*, sought to set up a panel discussion on the *Friedrichs* case with Wright and Lynn Rhinehart, who is the Co-General Counsel of the AFL-CIO.

Many legal observers predict that *Friedrichs v. California Teachers Association* will be one of the most important cases of the United States Supreme Court's current term. It addresses the question of whether public sector unions can impose agency fees on nonmembers who are in the bargaining unit or whether this conduct violates the First Amendment. The Mackinac Center Legal Foundation has filed two amicus briefs — one asking the Supreme Court to take the case (it did) and a second on the merits. Both of those briefs have drawn the attention of legal professionals and interested observers.

The panel discussion occurred on Nov. 19, 2015, before 30-40 labor specialists from southeast Michigan. Wright and Rhinehart pleasantly and passionately discussed the strengths and weaknesses of both sides of the *Friedrichs* case and agreed on a number of issues that would be important in the oral arguments. They both believed that Justice Scalia would likely be the fifth vote for the winning side, that the

question of whether the government was acting as an employer would be important in ultimately determining whether agency fees were permissible.

Not surprisingly, there were many differences as well. A spirited question-and-answer session with the audience occurred after their remarks. Many audience members, regardless of their rooting interests, made it a point to thank both speakers at the conclusion of the event. The evening ended with Rhinehart and Wright exchanging signed copies of their respective briefs.

Cousens and LERA President Steve Schwartz sent Wright some chocolates and a thank you letter following the November event. At a court hearing soon thereafter, Cousens jokingly requested that MCLF lawyer Derk Wilcox make certain the Mackinac Center staff knew those were union provided chocolates. If he had only told us earlier, they would have been divided by the Center staff on the basis of seniority. ■

Stay up to date with what we are working on and follow legislative issues more closely in Michigan by signing up to receive emails.

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Send us an email at [info@mackinac.org](mailto:info@mackinac.org) or go to [www.mackinac.org/subscribe](http://www.mackinac.org/subscribe).





## My Favorite Things

I love Julie Andrews. There, I said it. Mary Poppins and the Sound of Music are two of my favorite movies, and Julie Andrews is a big reason why. She made the characters she played compelling and memorable. Throughout the year, you may hear me humming or singing in my terrible impression of Fraulein Maria, “My Favorite Things,” especially around Christmastime. It’s not simply an anthem listing items that bring good feelings, but rather the savoring of life’s simple pleasures and not getting caught up in its speed.

Throughout my three and a half years at the Mackinac Center, I’ve been able to closely observe the freedom movement and see from the inside what makes the Mackinac Center and other liberty-minded organizations work. I’ve also gotten to know the leaders of these organizations and what drives them, what excites them, what disappoints them and why they do what they do.

So these are my favorite things about the liberty movement.

### 1. Innovation

This may seem counterintuitive. After all, nonprofits don’t have the same pressures that for-profit businesses have, right? Not exactly. Organizations that do not recognize needs and fill them will not be effective, and may not stay in business. The Mackinac Center Legal Foundation and VoteSpotter are just two successful examples of recognizing a gap and filling it.

### 2. Intelligence

When asked what I enjoy most about working at the Mackinac Center, I often tell people that I get smarter every day by working next to smart people. Much like improving one’s athletic skills by playing in a more challenging sports league, I gain personal improvement from being around coworkers that challenge my assumptions and test various theories.

### 3. Inclusion

There’s a broad spectrum of personal beliefs among those who value free markets. Their social views may differ dramatically from each other, but there’s an agreement that

personal responsibility and individual rights are better than government force; there’s a mutual respect of the person even if there is disagreement. The camaraderie among colleagues is refreshing, and it’s thrilling to see those freedom-fighters here and in other states gain victories for liberty.



Christopher Plummer and Julie Andrews on location in Salzburg during the filming of *The Sound of Music*, 1964.

### 4. Involvement

For the most part, those who support the Mackinac Center are involved in their communities. They may serve on various boards, councils, commissions and charities, but they gain energy from serving other people. They believe that taking care of themselves and others is their responsibility – and they take it seriously.

I could go on for a long time about how wonderful this movement is, but I have only so much space and so many I-words I can think of. I hope you also can reflect on how precious liberty is and how vigorously it should be defended. ■

## BY THE NUMBERS

**93 percent**

The average percentage of union-represented private sector employees who were full union members in forced unionization states.

**20 percent**

The reduction in membership in the Michigan Education Association since the passage of right-to-work. Growing enrollment in charter schools and school privatization also probably contributed to this decline.

**84 percent**

The percentage of union-represented private sector employees who were full union members in right-to-work states.



## GOT THE WINTER BLUES?

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wallpapers to brighten up your devices.