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MICHAEL LAFATTE RECOMMENDS

“For Your Own Good: Taxes, Paternalism, and Fiscal Discrimination in the Twenty-First Century” by Adam Hoffer and Todd Nesbit



The new book, “For Your Own Good: Taxes, Paternalism, and Fiscal Discrimination in the Twenty-First Century” was released by the Mercatus Institute on Jan. 2. It is worth your time. The book is a 19-chapter tour of selective taxation and its consequences for people, often unintended. The 25 scholars contributing to the book (including yours truly) touch upon topics as varied as consumption taxes; public budgeting, including earmarks; and the public choice economics aspects of the Affordable Care Act. You’ll find out more about my chapter on cigarette excise taxes in a future issue, unless you read the book first!

Right: Check out the story of Lake Michigan Academy on page 7 — a school cofounded by one of our supporters.

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LETTER FROM THE PRESIDENT

*Joseph G. Lehman*

# Michigan is Back, No Thanks to Grand Schemes

Michigan's economy is back from the days of a one-state recession. Job growth is up nine years in a row and fewer people leave the state for better opportunities elsewhere.

The Michigan Economic Development Corporation once claimed credit for a full quarter of all the jobs here, but officials are more modest now, perhaps in part because they got called out. The desire to enact targeted policies continues, however. Lawmakers enacted "Good Jobs" legislation last year, prompted by officials such as Gov. Rick Snyder, who cited the prospect of companies providing employment "in the 2,000 job range," adding, "We could lose opportunities if this doesn't take place in the next month or so." More recently, Snyder and Detroit Mayor Mike Duggan oversaw a coalition marshalling "Amazon Field Generals" which failed to lure the online retailer to the state.

To be fair, lawmakers can and have made some good decisions to help the entire economy. They replaced the Michigan Business Tax in 2012 with a simpler and lower corporate income tax, which had replaced the even worse Single Business Tax. They also enacted right-to-work in 2012, and started a phase-out of the personal property tax on commercial and industrial property in 2014.

A hazard of making policy — in addition to making bad choices — is that advocates of all stripes can easily overplay their hand, focusing on one individual or administration. Supporters of President Trump credit him with last year's stock market rise. President Obama's supporters say the former president should get credit for saving the auto industry, and thus, Michigan's economy. Yet the number of automotive jobs is half of what it was in 2000, so there's more to the state's rebound than automakers.

**JOSEPH G. LEHMAN**

Economic changes are wrenching, especially if it's your job that's being disrupted, and it's easy to look for a single cause and a single solution. The most dangerous political movements start when the people, discontented, look to a single policy or, worse, single leader to solve

their problems. At best, they're soon disappointed. At worst, the desire encourages authoritarians who bypass constitutional processes to fix a problem, which often results in others.

The economy is complex, requiring some intellectual humility. The sum of knowledge required to make an economy run is so dispersed, no committee of experts can understand it, let alone plan it. Globalization continues apace, and through Amazon, Etsy and eBay, people can easily engage in commerce across the world. In short, the planners' levers for managing the economy are challenged every day.

The economy moves when individuals, including entrepreneurs, solve their own problems and address their own needs through voluntary, cooperative activity. For its part, government can help by tending to boring, broad-based activity. Support the rule of law; keep the peace; oversee the financing of a limited number of public services; and underwrite it all with low, broad-based taxes.

Bureaucrats can find satisfaction — and politicians can find material for their re-election campaigns — by churning out press releases of the latest plan and its promise of new jobs. But our economic well-being depends on factors too dispersed and numerous for politicians, even our favorite ones, to take credit. That's why we call out elected officials when they push government beyond its competence. Decentralized, voluntary action delivers a better life than any top-down scheme. ■

Editor's note: The author thanks John LaPlante, who provided special assistance for this essay.

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# Michigan's Open Records Law Needs Additional Firm Deadlines

The Mackinac Center Legal Foundation filed a lawsuit concerning documents about the Flint water crisis, and one likely result is that state employees will be quicker to process Freedom of Information Act requests. Still, legislation is probably needed to improve the situation further.

PATRICK  
WRIGHT

The lawsuit began after the Michigan Department of Environmental Quality took over 105 days to provide documents that it said would take four and one-half hours to compile. The request covered emails from two department officials. We wanted to determine if they had been transferred or reassigned as a consequence of their actions related to the water crisis.

The department sought to have the case dismissed, but Court of Claims Judge Cynthia Stephens rejected the attempt. She noted that there was sufficient evidence that the department engaged in arbitrary and capricious conduct, leading to an inordinate delay.

While this lawsuit was proceeding, Rep. Gary Glenn, R-Midland, requested an official opinion from Michigan Attorney General Bill Schuette. Glenn asked him when state agencies must turn over documents requested via FOIA. The FOIA statute is unclear on this issue. Courts that have interpreted the law have said a government agency must "respond" to a FOIA by sending a cost estimate within

5 to 15 business days. They have also said that when agencies send a cost estimate, they must also send a nonbinding estimate of how long it will take to provide the documents. But, courts have said, there is no statutory deadline for when the actual documents themselves must be provided to the requestor.

Seeking an official opinion from the attorney general has several advantages over filing a lawsuit. First, the process is faster. Second, an opinion would bind the entire state government, unlike a lawsuit, whose resolution would be limited to the particular facts of the case and the agency being sued. Further, while a court can impose fines on a government agency for malfeasance, these fines are mostly symbolic since they are deposited in the state government's general fund. Because the attorney general will not issue an opinion on a matter under litigation, on Nov. 8, 2017, the Mackinac Center agreed to dismiss its FOIA suit.

On December 12, 2017, Schuette issued Opinion No. 7300, which stated that government officials must act diligently in fulfilling FOIA requests and without the intent to unnecessarily delay a response:

[A] public body's "best efforts estimate" . . . as to the time it will take to fulfill a request for public records, must be a calculation that contemplates the public body working

diligently to fulfill its obligation to produce the records to the requestor. The estimate must be comparable to what a reasonable person in the same circumstances as the public body would provide for fulfilling a similar public records request. In addition . . . the best efforts estimate must be made in "good faith," that is, it must be made honestly and without the intention to defraud or delay the requestor.

While it is better to have this opinion rather than complete uncertainty, a statutory fix would be preferred. A hard deadline would let both the government and public know when documents must be provided. Further, a statute would apply to all state and local governments as opposed to an attorney general opinion, which is only binding on state entities.

The Mackinac Center has sued both environmental quality department and the University of Michigan over FOIA matters recently. Our goal is to have the stated purpose of the law fulfilled: "The people shall be informed so that they may fully participate in the democratic process." That purpose is thwarted when government officials bury FOIA requests. If the Legislature fails to fix this matter, we'll continue to do our best to keep those officials in line. ■

Patrick Wright is vice president for legal affairs at the Mackinac Center.



# Fighting to Make Right-to-Work Effective

Left: Joshua Khon teaches art at Armada Middle School and Armada High School.

On Dec. 12, 2017, almost five years to the day that the Michigan Legislature passed right-to-work, the Mackinac Center Legal Foundation filed a lawsuit on behalf of another Michigan teacher who still was not allowed the freedoms guaranteed by that law.

## DERK WILCOX

The suit was filed in the quasi-judicial public body known as the Michigan Employment Relations Commission. Joshua Khon is an arts teacher at Armada Middle School and Armada High School. In 2012, he resigned from the Armada Education Association, the union representing his bargaining unit. The association, MEA-NEA Local 1, is an affiliate of the Michigan Education Association. Khon decided that he did not agree with all the stances the union took or how it spent his dues. Since then, he has been a “service fee” payer, which means that although he is not a member of the union, he is still forced to accept its representation as part of a bargaining unit. Furthermore, he has to pay for that representation — about 75 percent of what full membership dues would cost. The union local claims that he still has to pay this service fee, despite Michigan’s right-to-work law, because of an unusually long and strangely structured agreement made between the union and the school district.

On March 6, 2013, the Armada school district and Armada Education Association entered into a tentative collective bargaining agreement. That was nearly three months after the state’s right-to-work law was enacted on Dec. 11, 2012, and a little more than three weeks before it became effective on March 28, 2013. Most terms of the agreement were to be in effect from 2013-2016. The union and district came to a second agreement, one that required a person in the bargaining unit to pay dues (if a union member) or a service fee (if not a member). This second agreement was to last 10 years, expiring Aug. 31, 2023.

The Armada Board of Education ratified the three-year general agreement on March 19, 2013. But the letter of

agreement for the ten-year union security agreement was not ratified by the board president until Aug. 20, 2013 — well after the effective date of the right-to-work law.

Then, on March 16, 2016, the Armada school district signed a new five-year collective bargaining agreement. Under the right-to-work law, a new agreement should trigger the application of that law to any district, including Armada. The structure of the statute is such that its application could not be avoided by simply revising or renewing existing agreements. The Mackinac Center contends that the letter of agreement was invalid when it was made because it wasn’t ratified until well after right-to-work went into effect. And even if it were effective when it was made, the new collective bargaining agreement in 2016 would mean that right-to-work should apply to Khon’s situation.

Moreover, the two-contract structure, with one contract being unreasonably long at ten years, was created to cheat teachers out of their rights. The Michigan Court of Appeals found such a scheme invalid in a case brought by the Center, *Taylor School District v Steffke*, 318 Mich App 617 (2017). The employment commission subsequently relied on *Steffke* in another case, *Clarkston Community Schools and CEA v. Conwell*, in which it found the district and union had committed illegal unfair labor practices. If the commission follows and applies those cases to Armada, its 10-year security agreement is void and unenforceable.

After five years, you would think that the MEA would have accepted the law and not continued to deny teachers their rights. Yet the union keeps placing its financial position ahead of the teachers’ rights and desires. Since the enactment of right-to-work, the MEA has lost approximately 25 percent of its members. While several factors are behind that decline, it’s clear that many teachers, such as Joshua Khon, simply don’t think the union represents them well or provides value for their money. ■

Derk Wilcox is the senior attorney at the Mackinac Center.



# Lake Michigan Academy

## AND THE RIGHT TO LEARN DIFFERENTLY

For three decades, Mackinac Center supporters have advanced sound education research, policy recommendations and positive changes in Michigan at the state and local level. Charles and Janet Stoddard have been connected with the Center for most of its existence. As parents, they have gone above and beyond to make school choice and accommodations for unique learning styles possible for their own son — and hundreds of other young people. When nongovernment schools have the right to exist and determine who their students will be, they are free to focus on students who learn differently, giving them a specialized

environment that will help them thrive academically and socially.

In 1984, the Stoddards were at a New York airport preparing to send their son to a private school that would accommodate his learning needs when they met John and Kay Lowe. The Lowes were in a similar situation, only they were sending their child to a different school. They all began discussing the amount of time, travel and tuition costs required for their children's education. The four of them concluded that if they could collaborate with a few other parents in similar situations, they could start their own school with what they had been paying for travel and tuition.

This discussion came to fruition when they join four other couples, and Lake Michigan Academy opened its doors in Grand Rapids, Michigan the following fall with five students.

"Enabling students with ADD, ADHD, and dyslexia to overcome learning challenges" is the mission of the school. Before you roam the halls of the academy, check your expectations of a standard brick-and-mortar 8-to-3 school at the door. Instead, you will see active students talking out in lessons and moving about. In the next hall, you will see focus groups that involve teachers and three or four students in laboratory classes. What you won't find



are 35 students sitting for hours on end in the same classroom.

Mornings are focused on content and afternoons are for lab classes. “You saved my life,” a student with both an IQ that’s near-genius level and a diagnosis of dysgraphia once said to Nanette Clatterbuck, the school’s first teacher and current CEO. Stories like hers and the thought of students trapped in schools that are failing them ignite a passion in the staff and founders at the academy.

Enrollment was at a record 50 students in 2016, and held strong at 46 at the beginning of this school year. There’s a limit of eight students in a class, and tuition is below the per pupil state average at Michigan’s taxpayer-funded schools. Most students rely on scholarships made possible by the Stoddard’s foundation and a handful

of generous leaders who see value in a school accommodating learning differences in West Michigan. “Some parents have moved to the area just to attend the school,” Clatterbuck shared. “All grads are career or college ready – nobody lives in the basement!”

Transportation remains the biggest hindrance to reaching more students who are stuck in schools that are not helping them fulfill their academic potential. Clatterbuck was elated to learn that exploring transportation vouchers was a top priority of the Mackinac Center’s education policy work. She shared with me the story of a current student whose parents pay taxes to the government school district but choose to send her to Lake Michigan Academy. A district school bus passes by their home and the academy each day, but it is legally prohibited from giving her a ride.

Generous and visionary people of influence like the Stoddards continue to make school choice a reality in spite of government policies that limit the number of lives transformed each year. The school continues to recruit top-tier talent to its staff even though the administrators and teachers could earn more elsewhere. By experience and conviction, the Stoddards know that it’s important to put the needs of students above all else, as Lake Michigan Academy does. That’s why they are passionate about advancing sound public policy that will make such schools more common. ■





# There is No Shortage of Teachers

## But reforms are still worth discussing

Sitting in the large Nashville conference room, I started to develop a strong sense of déjà vu. The title of the panel at the National Summit on Education Reform panel was “The Teacher Shortage: Myths, Realities and Solutions.”

Dan Goldhaber, one of the nation’s foremost experts on education labor markets, kicked things off by reading headlines about teacher shortages from Lansing and Battle Creek newspapers. The punchline was that the headlines were all at least 50 years old.

The reason I’d heard this before is that the examples came directly from a CapCon story published the previous day. They were just as attention-grabbing when read aloud to a national audience of state lawmakers and education reform advocates as they had been online for our faithful Michigan readers to see.

Goldhaber confidently stated that there is no national teacher shortage. Why? Because there is no national teacher labor market. Different geographic regions and teaching subject areas vary in the ratio of qualified candidates for available jobs.

The situation is similarly less than clear-cut in Michigan, despite purveyors of a narrative that Republicans in Lansing have created policies and working conditions that are forcing classroom instructors out in droves.

Unfortunately for the doomsayers, the assertion can’t be supported by evidence. To the extent fewer teachers are available now than five or 10 years ago, it isn’t so clear how many are being scared away or by whom. Labor organizations routinely talk down the state of school finance and teacher pay.

### BEN DEGROW

Interviews of outgoing teachers suggest myriad reasons for teacher departures. In 2016, the Michigan Department of Education surveyed 360 teachers who chose not to renew their state certification. Prominent reasons for leaving included

moving to another state, a family or medical situation, or a decision to pursue more education. More respondents said they couldn’t find or keep a job than claimed they were dismayed by pay and working conditions.

Behind the revived concern about a teacher shortage in Michigan is the declining number of candidates completing a teaching degree and receiving state certification. But the Education Department doesn’t collect information from local districts, which would give a clear statewide picture.

Reports on the ground are mixed, as CapCon has reported. As of December, Detroit Public Schools Community District said it was still 170 teachers short. But Novi received an average of 123 applicants for 66 full-time teaching openings last year. Farther west, Portage schools received an average of 41 applicants for each position being filled. The number of applicants varied widely based on the specific job posting.

I shared those observations in testimony before the Michigan Senate Education Committee. I also provided data we uncovered that shows far more state endorsements being given out for elementary teachers than middle school teachers, and as many English endorsements as those given out for math and science combined.

Any urgent shortage situation ought to prompt local districts to offer greater pay to teachers in harder-to-fill subject

areas. That is one way to send a message to our university education programs: Your students will earn more if they pursue these subject areas. The other immediate way to increase the supply of qualified teachers is to recognize credentials from nontraditional teacher-training institutions. But even that can leave red tape to overcome.

In August, the Education Department finally approved the group Teachers of Tomorrow to approve candidates for schools. This group attracts career-changing professionals to enter teaching. Yet after a few months, the state only considered a tiny handful of them ready to enter the classroom. For hundreds of these prospective alternatively certified teachers, a bureaucratic rule means they would first have to sit in a room with high schoolers and retake the SAT to prove they have the needed basic skills.

Improving the teacher preparation pipeline will be a legislative focus in 2018. But the long-term state of the teaching profession also merits attention. College Board surveys indicate that fewer and fewer college-bound students are considering a career in education. That may be at least in part because the next generation of college graduates face a wider variety of professional opportunities.

Maybe it’s time to transform the old industrial model of schooling and let future teachers innovate beyond classroom walls and district boundaries, and earn bigger rewards for delivering top-notch instruction.

Perhaps it’s time for the talk of teacher shortage to lead to talk of rethinking the possibilities of the teaching profession. ■

Ben DeGrow is director of education policy at the Mackinac Center.



# REPORT ON BARBERSHOPS FINDS REGULATIONS CLIP FREEDOM OF CONSUMERS

Unlike the hundreds of think tanks in Washington, D.C., the Mackinac Center is unique in that it only focuses on policy issues pertaining to the Great Lake State. Nevertheless, our work requires studying policies in other states to better understand what's best for Michigan. And

that's exactly what we did with one of our recent research publications, "Cutting the Competition?: The Effects of Licensing Barbers in Alabama."

**MICHAEL  
VAN BEEK**

The merits of an expansive set of occupational licensing laws — rules that require people to get the government's permission before they can work legally — are coming under more intense scrutiny. Reformers from both the left and right are raising concerns about the negative effects these laws have on people trying to find work in licensed jobs and on the prices you and I pay for these services. Prodded by the Mackinac Center, the Michigan Legislature has made some reforms to licensing, but not nearly enough.

With that in mind, we wanted to research a concrete example of the effects licensing has on workers and consumers. But designing a study that would accomplish this is a challenge, because unlike scientists working in the laboratory, we can't just set up an experiment and see what happens. Instead, we have to take advantage of what researchers call "natural experiments" as they occur, and Alabama happened to be home to just such an experiment concerning occupational licensing. So we decided to study it.

From 1983 to 2012, Alabama was the only state in the country that did not require a license for barbers. Other states forced would-be barbers to endure years of training, pay fees and pass state-administered exams before they could legally be paid to cut someone else's hair. But then in 2013, Alabama lawmakers introduced a new licensing requirement for barbers, and this created the natural experiment for us to study. Specifically, what happened to the barber industry after these licensing requirements were introduced, compared with how it operated before?

To study these effects, we partnered with one of the nation's foremost experts on occupational licensing: Edward Timmons. Timmons is an associate professor of economics at Saint Francis University in Pennsylvania and director of the school's Center for the Study of Occupational Regulation. His research on occupational licensing has been published in some of the leading economics journals in the United States and the United Kingdom.

In studying Alabama's data on barbers, Timmons was testing the long-standing hypothesis — first proposed by economist George Stigler and separately by Milton Friedman — that licensing laws enrich incumbent firms and limit competition. These effects, of course, are harmful to consumers who suffer through higher prices and fewer choices.

And this is exactly what Timmons found as an effect of Alabama's new requirements of 2013. After the license law went into effect, revenue per barber shop that was already licensed — or grandfathered in — increased faster than was common before the licensing requirement. It also increased

faster than the revenue of beauty shops that offered similar services but were not subject to licensing. Finally, it grew faster than that of barber shops operating in border counties in neighboring states which did not change their licensing requirements.

Additionally, Timmons looked at what happened to the number of barbershops per person in Alabama after licensing was enacted. He compared the barbershop industry to beauty shops in the state as well as to barber shops in nearby states. He found that barber shops in Alabama experienced little growth compared to beauty shops and barbers in nearby states, suggesting that the introduction of the license contributed to limited competition for existing barbers.

Occupational licensing reform is going to be a key issue in the near future. We think this research on Alabama's barbers provides more evidence that suggests the harmful economic effects of these laws. We hope that public officials in Michigan and other states will start to roll back many of them for the benefit of workers and consumers. ■

Michael Van Beek is director of research at the Mackinac Center.



This study is available online soon at  
[mackinac.org/studies](http://mackinac.org/studies).



# What You Should Know About The Local Government Pension and Retiree Health Insurance Package

Government employees tend to be the largest creditors of governments in Michigan. This is because the state and its local governments push the costs of today's government onto tomorrow's taxpayers through their retirement systems. By underfunding pension systems and offering to pay for employees' health insurance when they retire, governments have racked up billions in debt and more billions in something less than debt. While the state has done a lot to try to stop this practice, lawmakers whiffed on their latest attempt to stop kicking to future taxpayers the costs of local government pensions and retiree health insurance benefits.

And they made a mistake by conflating the two obligations. The differences matter.

When an employee earns pension benefits, the employer is supposed to contribute money into a pension system where the money is invested, grows and pays for the full amount of the pension the employee has earned. If governments put less in the pension systems than is needed to pay for earned pensions, they need to correct that deficiency and contribute more money. Pension debt is real debt.

Retiree health insurance is different. The benefits are not legal obligations, and government employers tend not to set aside money to pay for them. They instead write checks to insurers to cover retirees once the bills are due. This means that the payments taxpayers make for health benefits today are for an employee's service that could have happened 40 years or so ago.

Because these payments are not legal obligations, retirees cannot trust that they will continue. Employers could have set aside money to pay for benefits to ensure that they are secured, since legal protections are absent. It would cost local governments at least \$12 billion to prefund these benefits, but they've only saved \$3 billion. Taxpayers, though, must keep paying the bills until government managers decide to exercise their option to reduce costs by cutting benefits. So it's

a bad deal for government workers and taxpayers alike.

The lack of a legal obligation, high costs and the fact that people are covered by Medicare when they reach 65 anyway make retiree health benefits an area ripe for cost-cutting. Besides, it's something that few people receive in the private sector.

Because pensions and retiree health insurance aren't the same, lawmakers have different obligations in funding them. Pensions are promises and debt, and local government managers need to honor those promises. Retiree health care is a mismanaged benefit that needs to be cut.

State officials could have passed a law to encourage local governments to restrict eligibility to career employees or offer

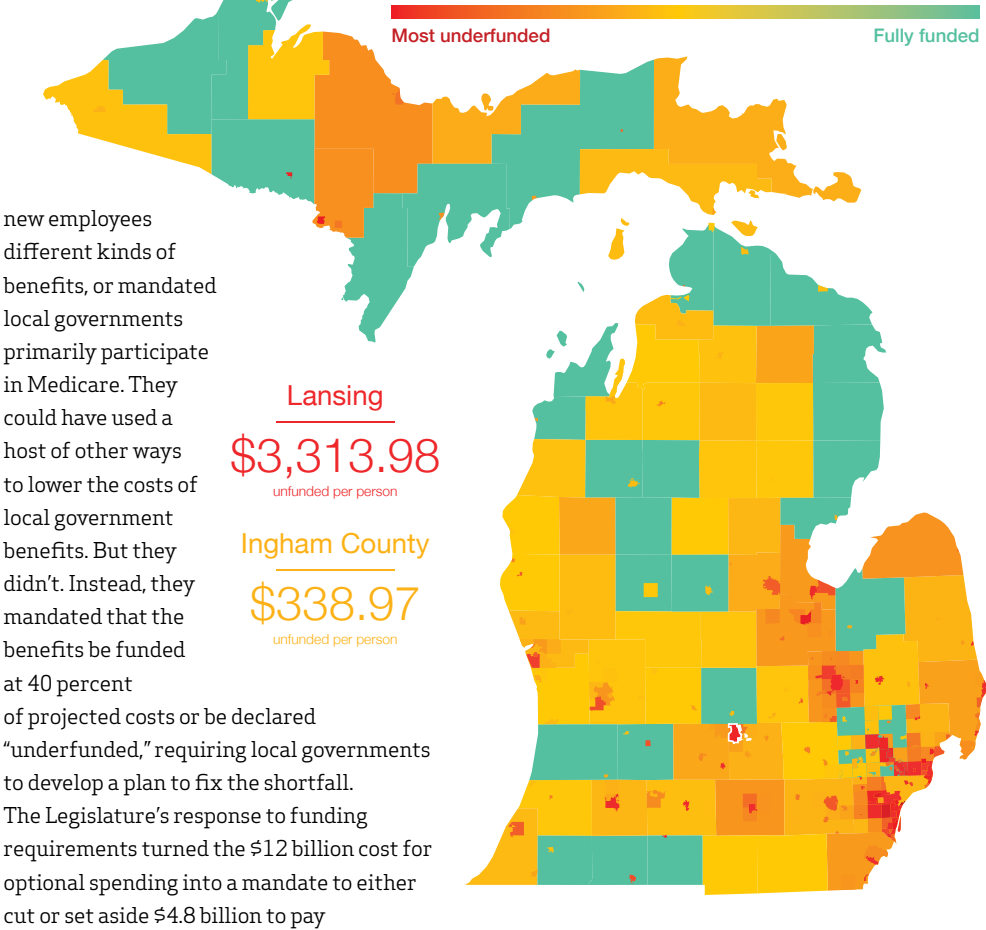
for it. In other words, lawmakers made matters worse, not better.

In 1996, Michigan was the first state to offer new state employees participation in a 401(k)-style retirement plan instead of conventional government pensions. In 2011, it offered new employees in the state system retiree health care benefits that are paid up front instead of pushed onto future taxpayers, in addition to trimming costs for benefits. It followed through in 2012 with similar reforms for school employees. A number of local government managers have followed the state and offer new employees retiree health care benefits that are paid up front.

So it's disappointing that lawmakers caved in to union demands and did not encourage local governments to reduce costs for benefits. ■

**JAMES  
HOHMAN**

To see how your county ranks, check out our interactive map at [mackinac.org/OPEB](http://mackinac.org/OPEB).



James Hohman is director of fiscal policy at the Mackinac Center.





# The (Un)Virtuous Cycle

**Criminal Justice Reform = Workforce Development = Job Creation**

Why send a criminal justice expert to attend a meeting of free-market advocates to discuss job creation and workforce development? Because, increasingly, employers have come to see these issues as closely related – and maybe even the same thing.

Prominent Michigan businessman Michael Jandernoa recently penned an opinion piece for Fox News titled “Why hiring people with criminal records benefits all of us.” This former CEO of a

10,000-person company doesn’t mince words. “I have one message for America: we can no longer exclude this vital component of our workforce.”

Jandernoa’s admonition echoes conclusions that the Mackinac Center has been promoting since we launched our criminal justice policy initiative in 2016. Steady employment is a key factor in reducing the likelihood that an offender who leaves prison will commit another crime. This makes us all safer. Innovative programs

**KAHRYN RILEY**

like the in-prison vocational schools that the Department of Corrections has named “Vocational Villages” seek to prepare inmates for gainful employment. This has had the added benefit of providing a fresh infusion of talent in an industry where it’s desperately needed: the skilled trades.

Michigan-based employers, including Alta Equipment, Sakthi Automotive Group and others, have specifically sought out ex-offenders to fill open positions. Hiring managers note that these workers exhibit extra motivation because they

understand the value of a second chance and rise to meet expectations.

These employees were on the minds of a dozen free-market policy experts who gathered outside Washington, D.C., in early December to discuss policies that promote a healthy workforce. The meeting was organized by State Policy Network, a Virginia-based organization that links state-based free-market think tanks to a network of ideas, people and resources to support the liberty movement nationwide.

Over three days, attendees spent time sharing ideas, experiences and best practices among themselves. They also met with representatives from the White House Domestic Policy Council, the White House Office of Information and Regulatory Affairs, the Department of Labor, the Federal Trade Commission, the Republican Study Group and the staff of U.S. Sen. Mike Lee, R-Utah. Many of the individuals we met had come from the free-market think tank network, and all were ready to consult with and assist members of that network.

The most frequently raised issue — during both the attendee knowledge-sharing sessions and meetings with government staff — was occupational licensing. Mackinac Center researcher Jarrett Skorup has written prolifically about the barriers to employment that arise when the state requires people entering a profession to obtain extensive and expensive training and education. These requirements are touted as promoting public safety, which masks the reality that they are frequently adopted to

**Steady employment is a key factor in reducing the likelihood that an offender who leaves prison will commit another crime.**

**This makes us all safer.**

allow incumbent professionals to keep a cartel-like hold on an industry, raising prices for consumers as a result. Skorup has highlighted licensing's inconsistencies and absurdities. (In Michigan, for example, you must be licensed to paint but not to hang drywall, and to lay tile but not to lay carpet. Cosmetologists require more hours of training than commercial pilots). For my part, I write about the implications for criminal justice of using licensing to bar

is no wonder that one in four Americans now has a criminal record. Michigan law alone contains over 3,100 crimes. That doesn't count federal laws or an untold and growing number of state and federal regulations and administrative rules that carry criminal sanctions. Little wonder, then, that some observers assert that the average American probably commits three felonies per day without even realizing it.

anyone with a criminal record from an industry — even one wholly unrelated to the nature of their crime.

As Jandernoa observes, Michigan firms can little afford to bar an entire — and, unfortunately, growing — segment of the population from employment. As state and federal politicians and bureaucrats continue to pack new crimes into already-bloated penal codes and rule books, it

But employers need skilled laborers, and people returning from prison need steady employment. With businesspeople now taking the lead in reducing the workplace stigma of having a criminal past, perhaps politicians will finally take steps to adopt policies that make us all safer and prosperous. ■

Kahryn Riley is a policy analyst at the Mackinac Center.



The group of policy experts gathering to discuss criminal justice reform.

# QUIXOTIC

Government incentives for wind energy  
are foolishly impractical

## Quixotic

adjective | quix-o-tic | /kwik-'sä-tik/

Foolishly impractical, especially in the pursuit of ideals (Merriam-Webster)

*"The government's incentives for wind energy production are quixotic."*

In the pursuit of clean energy ideals, state and federal governments have enacted some foolishly impractical restrictions and requirements in the electricity market. But now the list of special favors extended to politically privileged energy sources is roiling communities.

JASON  
HAYES

Wind energy is regularly touted as cost competitive with other energy sources. And, in a way, it is. But only if you deal with its intermittent and unpredictable nature. Wind can't produce electricity reliably, like nuclear energy or fossil fuels. So, during the more than 65 percent of the time that it just sits there, a wind facility must be backed up by natural gas generators that can quickly be brought online to account for wind's unpredictable nature.

Then there are the hundreds of millions spent building new transmission lines to connect distant wind developments to the grid. Add to that the special market carve-outs like the state's renewable portfolio standard that mandates Michigan get 15 percent of its electricity from renewable sources by 2021.

After all that, there still are lavish federal government handouts like the production tax credit, which gives wind developers a subsidy amounting to almost 70 percent of the 2016 wholesale price of electricity in the Midwest. Although the industry tries to deny it, it is dependent on this tax credit, and the construction of new wind generation has always been tied to its existence. When political maneuvering allows the credit



to wane or decrease, wind construction plummets. When Congress renews the subsidy, construction resumes.

But cost and reliability aren't the only issues. Michigan's energy policy is also sowing discord at the community level. For example, Heritage Sustainable Energy is seeking to expand its Garden Wind project near the Upper Peninsula community of Garden.

The development already has 14 wind turbines, but Heritage wants to build another 21. The people of Garden, conservation groups like the American Bird Conservatory, and even the federal and state government have all voiced concerns;

some have even begun litigation to stop any further turbine development. The largest concern has focused on birds.

The construction site is a peninsula that extends 22 miles into Lake Michigan. It is a home to bald eagles, is surrounded by wetlands, and serves as a rest stop for migrating birds and bats.

As early as 2007, the U.S. Fish and Wildlife Service said it "expressed significant concerns" with Heritage Energy's plans to "construct a commercial wind energy development" on the Garden Peninsula, warning it "could result in high levels of avian mortality." As a remedy, agency staff recommended that windmills not be constructed within three miles of the shoreline. Heritage responded that a three-mile setback would leave little to no space for development.

The American Bird Conservatory raised similar issues in written correspondence, saying that "hundreds of thousands of birds and bats are killed annually through collisions with the fast-moving turbine blades." The group's estimate balloons to tens of millions when electrocutions and collisions with other wind infrastructure are included. It also raised concerns about the development displacing migration patterns and disrupting the bird-watching industry.

Heritage argued that its studies show "a single barnyard cat is more of a threat to birds than the entire Garden Wind Farm" and that windmills won't kill any more birds than a home will. It also pointed to substantial economic benefits from wind development for local communities, such as



job growth and tax revenue for the township and surrounding region.

But an Institute for Energy Research report estimated the net impact of federal wind subsidies in Michigan at almost minus \$240 million from 2005 to 2014. So, wind developers and monopoly utilities might enjoy the windfall, but the rest of Michigan’s residents foot the bill. Economic benefits claimed for the project only exist because taxes are increased and renewable energy surcharges are added to monthly electric bills. Those “benefits” are extracted from everyone and then redistributed to wind developers, monopoly utilities and individual wind leaseholders in communities like Garden.

Looking beyond birds and economics, the people of Garden raise concerns about turbine noise, visual blight, property rights infringements and health risks from windmills. Those concerns inspired the Garden Township board to pass a noise ordinance in December 2014, restricting wind development. Heritage argued that independent studies have “consistently found wind farms have no direct impact on physical health” and sued the township.

In November 2016, the two reached a settlement: The township amended the ordinance and the company dropped its lawsuit.

Heritage and Garden have yet another point of contention, however: Federal and state incentives for renewable energy cause strife in communities targeted for wind generation. Garden residents explained that when people are offered money in exchange for allowing windmills on their property, they often accept. The expectation is that if they don’t, someone else will, and if they’re going to be forced to live with the windmills, why not get paid for the trouble?

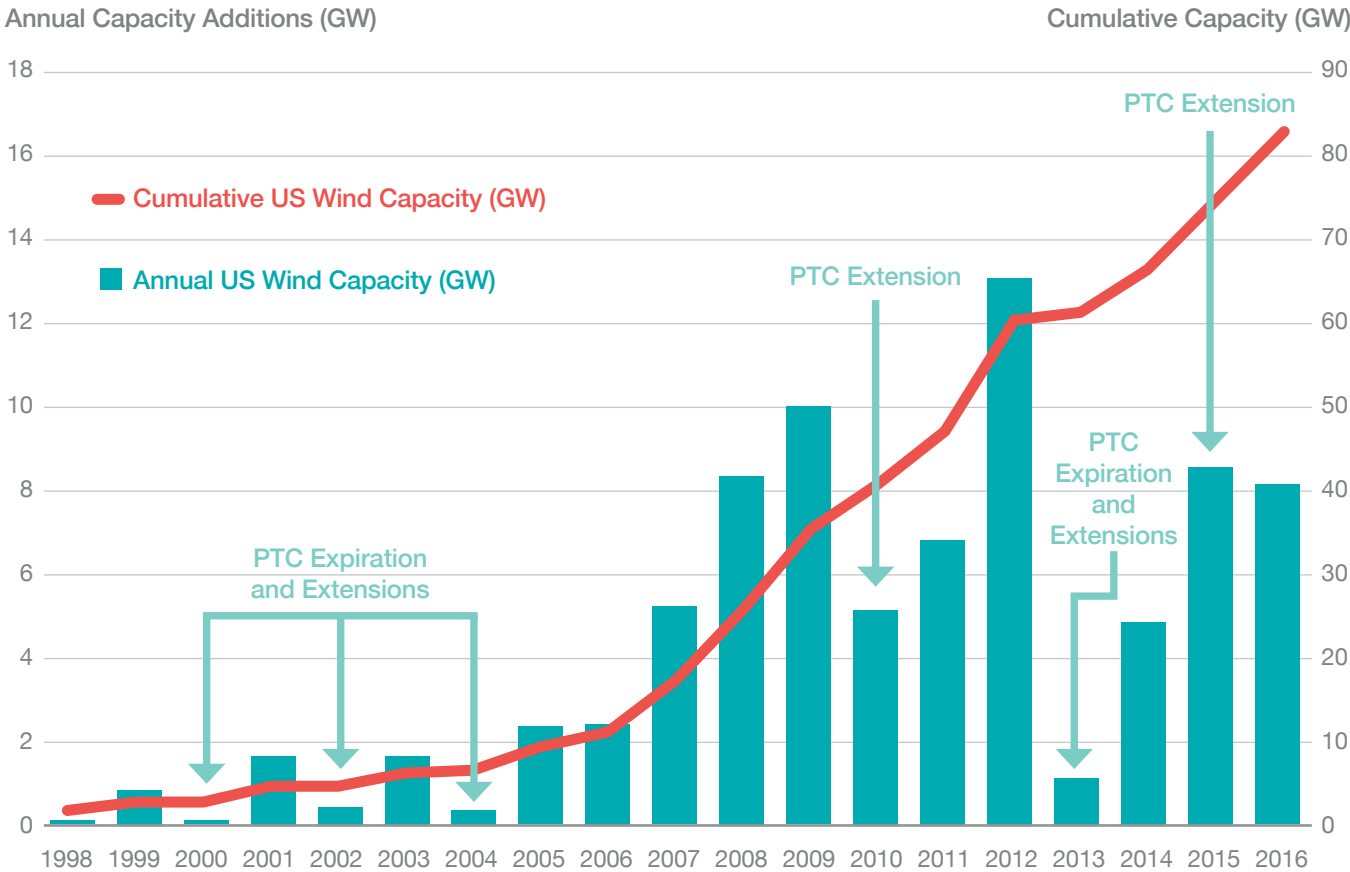
But decisions like this cause rifts in the community. Some residents will not allow turbines on their property for any reason or for any amount of money. They do not want the added nuisance and decreasing property values that are part of having even more of them in their community. Others choose to accept the money and the turbines. As the two factions debate, resentment builds and town meetings become heated and tense. One Garden resident described how a cousin, who favors wind development, now refuses to speak to him. Others have described

how, when driving down the town’s streets, they no longer point out a friend or family member’s home; they point out, “for wind,” or “against wind.”

The federal and state mandates to build wind have forced these challenges into Garden and other Michigan communities. Local opposition to windmills is faring better than Don Quixote’s anti-windmill crusade, but Michigan residents are still forced to tilt against windmills because of quixotic state and federal policies. Instead of fighting Quixote’s imaginary foes, they’re fighting real foes who are acting for imaginary ideals. ■

Jason Hayes is the director of environmental policy at the Mackinac Center.

# Relationship between the Production Tax Credit and Annual Wind Capacity Additions





*Engaging the future*

# CAPITOL LEADERS

The Mackinac Center launched the Capitol Leaders Program in 2017 for legislative staffers, the hardworking folks who do all the behind-the-scenes tasks for state politicians. They spend a lot of their time handling constituent relations, crafting communication messages and managing the busy calendar of their state senator or representative.

Although staffers have a love for good public policy, it's easy for them to get caught up in the day-to-day shuffle of running a legislative office in Lansing. That's where the Mackinac Center came in. We wanted to provide staffers with a forum to learn more about free-market principles and sound public policy so that they could improve their ability, as staffers, to protect and expand liberty for Michiganders.

To that end, we hosted a monthly meeting in Lansing for 15 program participants. The topic of these sessions — ranging from detailed descriptions of complex policy phenomena to life lessons to economic theories about political incentives — were geared to help participants become more knowledgeable and effective legislative staffers.

Participants in the program were impressed with the lineup of speakers we arranged to present at these monthly meetings. They included newspaper editorialists, economists from large Michigan public universities, longtime Lansing insiders, former state politicians, legislative leaders and more.

In addition to learning more about important policy issues, participants could use these monthly meetups to share ideas and challenges with their colleagues in other legislative offices. With their busy schedules, it's often difficult for these staffers to find time to collaborate with others, but the Capitol Leaders Program provided them some.

Legislative staffers are often overlooked in the political world, but the work they do is nevertheless extremely important. The Capitol Leaders Program is helping develop effective staffers who are principled for the causes of limited government, free markets and the rule of law. ■





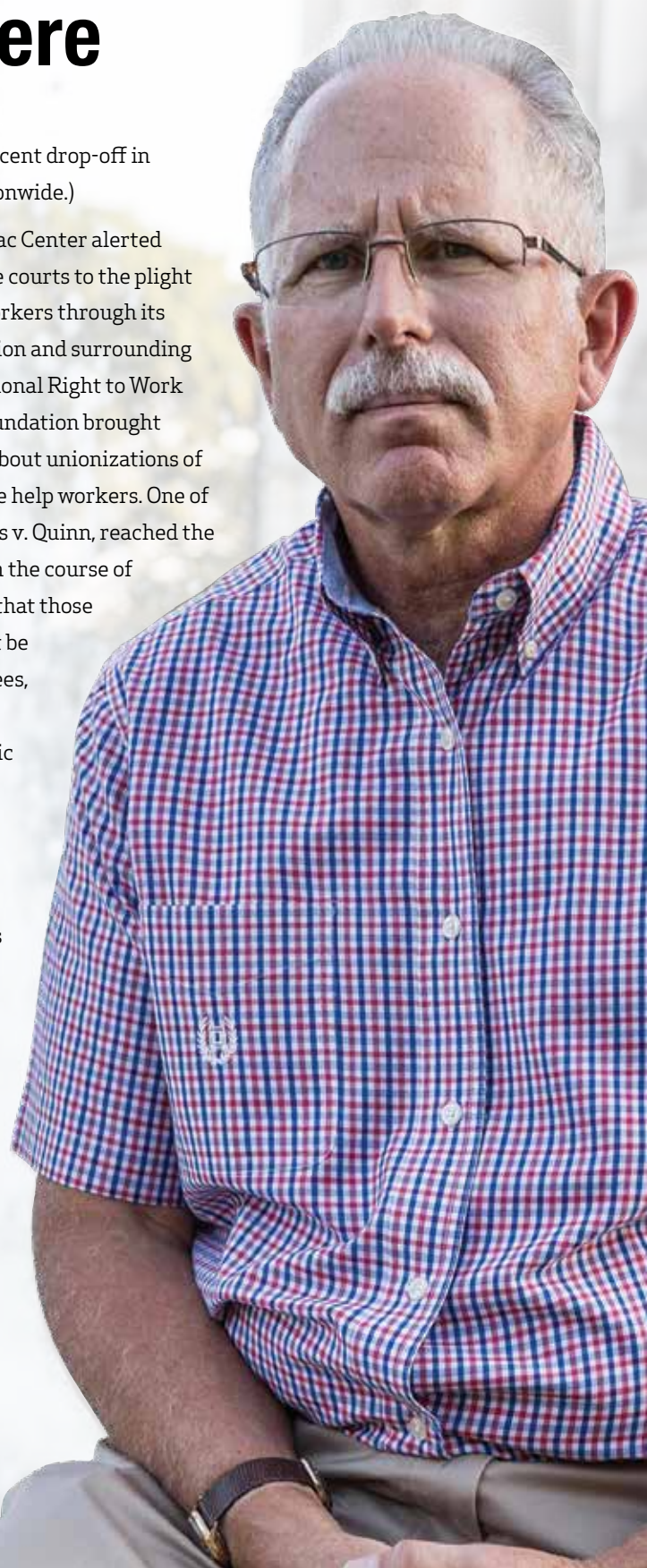
# Right-to-Work May Soon Come to Public Sector Workers Everywhere

In September 2009, the Mackinac Center Legal Foundation filed its first case, and it created a national stir. The subject was the illegal dues skim from private day care providers who were improperly designated as public employees so that they could be unionized. We used state law to challenge that action but recognized that because similar schemes had occurred in other states, the United States Supreme Court might act. That is, the court might move to re-evaluate whether it was constitutional for public employees to be forced to pay dues or fees to a union to keep their job. Nearly nine years later, the court appears poised to end these forced payments in a case called *Janus v. AFSCME*. This would have the practical effect of making all public employees right-to-work.

The potential impact of the case is immense. Around 4.8 million public employees are forced to pay dues or fees. In the years since Michigan went right-to-work, the Michigan Education Association has lost 25 percent of its membership. If the Supreme Court were to hold forced dues and fees unconstitutional, public sector unions would see a drop in their fees and dues revenue from \$3.1 billion to \$2.4 billion. (That calculation assumes a conservative estimate of \$660 per employee in dues or fees,

as well as a 25 percent drop-off in membership nationwide.)

After the Mackinac Center alerted the nation and the courts to the plight of the day care workers through its state court litigation and surrounding publicity, the National Right to Work Legal Defense Foundation brought federal lawsuits about unionizations of day care and home help workers. One of these cases, *Harris v. Quinn*, reached the Supreme Court. In the course of their 5-4 holding that those workers could not be charged agency fees, justices discussed whether any public employees could be forced to pay fees, but they did not resolve the issue. Some states have argued that they prefer the convenience of negotiating with a single bargaining representative. Justices examined the contention that if a union cannot force dues or fees payments from



Right: Mark Janus, of *Janus v. AFSCME*



everyone in the bargaining unit, it won't survive — thereby depriving the state of its preference.

This survivability issue arose directly in *Friedrichs v. California Teachers Association*, which was briefed and argued in 2016. The Mackinac Center filed briefs that looked at government data on unions in right-to-work states to

being represented by National Right to Work Legal Defense Foundation and the Liberty Justice Center. The Mackinac Center has filed two amicus briefs in his support. Continuing research into union survivability, and in anticipation of *Janus*, the Center engaged in a 50-state survey of state employee payrolls to help analyze union membership trends.



Supporters of right-to-work rally outside the Supreme Court in 2016.

prove that unions in that legal environment would continue to exist. The work drew the attention of libertarian legal scholar Richard Epstein of the University of Chicago. He arranged to have Patrick Wright, director of the Center's legal foundation, present a paper on the research for the University of Chicago Legal Forum. (The paper will be formally released in that publication soon.) The *Friedrichs* case ended in a 4-4 tie after Justice Antonin Scalia's passing. The Supreme Court later agreed to hear the *Janus* case. Mark Janus, a child care support specialist in Illinois who claims that being forced to pay an agency fee is unconstitutional, is

The findings were part of Wright's academic paper and the amicus briefs.

The Mackinac Center Legal Foundation's leadership and expertise in this field led to it also being asked to write a symposium article on the case for *Scotusblog*, a leading website on the United States Supreme Court.

Oral argument in *Janus* will occur on Feb. 26, and the case is likely to be decided in late June. If the Supreme Court were to rule in *Janus'* favor, then the hard work of implementing that decision would begin. ■



# Finding the Courage to Learn

Change is hard. Yet it's the stuff of New Year's resolutions — did you forget yours already? — and an inescapable fact of life.

Early January is hardly my favorite time of the year. I prefer the middle of May, when the weather is finally starting to warm up, trees are in bloom and New Year's resolutions are finally paying off, if I've managed to stick to them. But I do like the way January gives me time to reflect on the year just finished and think about what lies ahead.

One thing I'd like to do is keep my commitment to lifelong learning. My husband and I both recently started new positions at work that have put us back into growth mode.

Being able to learn, even after school days are long gone, isn't always easy. But it's essential to a meaningful, satisfying life. The economy, to say nothing of cultural values or other parts of the world around us, changes all the time.

Sure, it's tempting to burrow into the status quo; go into ostrich mode. That's part of the appeal of some political movements: Let's return to an earlier, more predictable and stable time. Trying to adjust to change and acquire new skills, knowledge or attitudes can be a humbling and often uncomfortable experience.

I've decided this is the year I take fitness seriously. As with any new endeavor, I started off excited, and I enthusiastically looked forward to swimsuit season. But on the third day, I hit a wall. Hard. Completing the day's workout required doing four different types of sit-ups —

30 of each. It probably should not have surprised me to learn that 120 sit-ups were beyond the reach of my core muscles. I hadn't done a sit-up in at least two years! But the realization was discouraging. Maybe I just wasn't cut out to be the type of person who could do 120 sit-ups in one go. Perhaps thinking I could be would turn out to be a very painful mistake.

And ... it was painful. I spent the next 48 hours dreading my next core workout. I still felt sore when I went for my next round of sit-ups on day five, and was shocked to find that they were already noticeably easier than they were on day three. If I had quit after that first failure, I would have never have realized how much progress I had already made — progress that allowed me to succeed. How many other times have I made the mistake of quitting too soon?

This world wasn't built by people who retreated in the face of personal difficulties. As supporters of liberty, we respect and admire people who invest in challenging themselves — the people who seize opportunities to grow and learn wherever they find them. They also, perhaps not coincidentally, benefit many others as well. Think of Steve Jobs or Oprah Winfrey or any number of other people who have faced troubles, met them and brought some measure of delight or joy to many others.

Liberty is great. It's what we rely on to pursue our quest for a better life for Michiganders and for that matter, all people. Our pursuit of a better life isn't limited to better public policies. It starts at home. With me. With you.

The year is still young. How will you change? ■

## BY THE NUMBERS LICENSING

6

Number of education hours it takes to meet licensure requirements for auto mechanics.

30

Number of education hours it takes to meet licensure requirements for paramedics.

1,500

Number of education hours it takes to meet licensure requirements in order to shampoo hair.

21

Percentage of workforce that operate in licensed occupations in Michigan.

# THE POWER OF PHILANTHROPY

I still remember the first day on the job like it was yesterday. I had no idea what to expect. After speaking with the donor about our upcoming visit, I drove to his house wondering what we would talk about. Upon arriving, I was graciously greeted and my nerves began to settle. We began talking about our interests, passions and the current issues facing Michigan. I got lost in conversation. I remember thinking to myself how amazing this person was. I wanted to remember every detail of that visit and share it with the world.

After that, I was hooked. I realized something powerful happened in that conversation – and could happen in future donor meetings. I always believed that the issues that we see in our communities should be resolved not by the government but by the people. I knew this in theory, but it wasn't until I started my job in philanthropy that I began to know this through experience.

Every day, I have the privilege of meeting ordinary people who resolve to be part of the solution. These people, young and old, women and men, identify the issues plaguing our state and use their time and money to create a better alternative. I became more interested in philanthropy and I wondered more about its rich tradition in America and the power it holds. I learned from the National Philanthropic Trust that this practice dates back as early as the 1500s and came to North America in 1630. Originally defined as “love for mankind,” philanthropy has evolved and is practiced widely by generous Americans like the ones I meet daily. According to the Philanthropy Roundtable, 71 percent of charitable contributions come from individuals, thus showing how powerful personal giving can be. If you are one of the phenomenal people who give of your resources to noble causes like freedom and individual liberty, I would like to personally thank you for partaking in a rich tradition that has changed the world around us – and will continue to do so.

Ashley Keimach is a regional director of strategic partnerships at the Mackinac Center

