

IMPACT



2019
NETWORK
AWARD

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Mackinac Center
for Public Policy

**Mackinac Wins
2019 State Policy
Network Award**

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“I am forever grateful and FOREVER indebted to you and your team. No words can really express my gratitude, personally and on behalf of our kids and teachers and families.”

— Kyle Smitley

Co-founder of Detroit Prep and Detroit Achievement Academy

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JOHN LAPLANTE Editor
ILIA VANDERHOOF Designer

Six Ideas About Liberty

A group in Midland recently invited me to speak and answer the question: “What is liberty?”

That’s a hard question, as it puts us at risk of offering a circular

definition. While preparing for my talk, I asked my young daughter what “liberty” means. She immediately said, “It’s freedom.” True enough; I should have asked her to define “tautology.”

Liberty has evaded definition for a long time. Abraham Lincoln said in 1864: “The world has never had a good definition of liberty, and the American people, just now, are much in need of one. We all declare for liberty; but in using the same word we do not all mean the same thing.”

Thomas Jefferson provided a good definition: “Rightful liberty is unobstructed action according to our will within limits drawn around us by the equal rights of others.”

Several ideas add dimension to the idea of liberty:

- 1. Liberty is a life-or-death matter.** The founders of the United States staked their lives, fortunes, and sacred honor on it. People are today still willing to risk everything to be free. The absence of liberty comes at a staggering cost; Communism’s death toll is an estimated 100 million lives.
- 2. Liberty enhances the quality of life.** The free enterprise system is credited with pulling one billion people out of extreme poverty in the last 20 years.
- 3. Liberty starts with the individual, not the collective.** Each of us is endowed with unalienable rights.

Voluntary association, economic exchange and personal property — all hallmarks of liberty — assume the high value of the individual.

MICHAEL J. REITZ

- 4. Government is not the source of liberty.** The Michigan Constitution says it well: “All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.”

It is common to hear that a legislature passed a law that “creates” a new right. Beware. What the State gives, the State may take away. Fundamental rights are those rights that do not require an act of government to create them.

- 5. Liberty is best enjoyed by a moral people.** As Madison wrote in Federalist No. 51: “If men were angels, no government would be necessary.” I do not wish to proselytize with this point, only to acknowledge that certain conditions increase our ability to enjoy freedom.

Liberty divorced from duty and responsibility will produce chaos. The words of “America the Beautiful” come to mind: “America, America, God mend thine every flaw / Confirm thy soul in self-control, Thy liberty in law.”

- 6. America and liberty are inseparable.** Margaret Thatcher knew it: “No other nation has been built upon an idea — the idea of liberty.” As a people, we have lurched toward and away from that idea over the last 243 years, but we hold it up as a meaningful and worthy goal. ■



Photo by Ken Lund

Thank You, Governor Whitmer!

When you work at the Mackinac Center, it is easy to find reasons to be grateful, whether it is a holiday season or not. This holiday season, however, the Morey Fiscal Policy Initiative is grateful for what might be an end to some unnecessary spending on corporate and industrial welfare. Gov. Gretchen Whitmer deserves the lion's share of credit here, but other lawmakers deserve applause too.

As of this writing, the state's fiscal year 2020 Pure Michigan budget, dedicated to promoting the interests of Michigan's private, for-profit tourism industry, has been reduced to zero. This is a dramatic cut from the \$37.5 million budget adopted by the Legislature. (The House should get credit for passing a budget that cut spending on the program by \$4 million.) Had that been signed into law, the appropriation would have lifted year-over-year spending by \$1.5 million.

The Pure Michigan program began in 2006 during the administration of Gov. Jennifer Granholm and was designed with the hope of creating jobs in the state by luring tourists to Michigan. More than \$261 million was dedicated to the program through 2016. The problem has been, however, that it is an ineffective use of the state's precious resources.

The state repeatedly bragged early in Pure Michigan's life that the program provided a net positive return for every dollar legislators spent on it. Curious about how return-on-investment calculations were done, we inquired about the methodology used by the state's consultant. Mackinac Center scholars were told it was a proprietary calculation and we'd have to take their word for it. We refused to do so.

Instead, we collected 39 years of publicly available data on government-funded tourism promotion efforts in the

48 contiguous states. We then built a statistical model designed to estimate the impact of such spending. The model looked at several tourism sectors, including hotels and motels, recreation and arts, and amusements.

Our model found that for every \$1 million in increased spending on state-funded tourism promotion, there was a corresponding increase of just \$20,000 in extra economic activity in the accommodations sector. Worse, that was the best return on spending we found. That \$20,000 isn't new tax revenue, mind you, but a small increase in the operations of some tourism businesses. In other words, the program is a huge fiscal loss for the state.

That is why it is hard not to be anything but grateful for the governor's veto and the lawmakers who agreed to let it stand. The savings can no doubt be used on a higher priority. ■

Free the Lawyers From Forced Association Membership

The Legal Foundation represents Lucille Taylor

The great 19th century observer of the United States, Alexis de Tocqueville, noted that Americans had a tendency to form voluntary associations to provide social coordination and solve the problems in society. He wrote: “Americans of all ages, all stations in life, and all types of disposition are forever forming associations. There are not only commercial and industrial associations in which all take part, but other of a thousand different types — religious, moral, serious, futile, very general and very limited, immensely large and very minute. ... [I]f they want to proclaim a truth or propagate some feeling by the encouragement of a great example, they form an association. In every case, as the head of any new undertaking, where in France you would find the government or in England some territorial magnate, in the United States you are sure to find an association.”

This remains true today of most professionals: They form voluntary associations for their own betterment. One group of professionals, however, has been herded into a mandatory association. Lawyers in Michigan and most other states have been required to join a particular professional association as a condition of practicing. Here, in Michigan, it is the State Bar of Michigan. The bar is, in fact, part of the state government, or in the words of the law, a “public body corporate.” This makes it more akin to what Tocqueville observed in old Europe — a territorial magnate. Lawyers are required to belong and pay fees to a governmental organization which then speaks on their behalf with one voice in public affairs related to the practice of law.

Part of freedom of speech and freedom of association is the right to not be coerced



into funding speech or association that you do not agree with. In the past, the United State Supreme Court has limited what sort of compelled speech bar associations can engage in on behalf of their members.

While generally, speech regarding hot-button political issues is not something a bar association can force its members to fund, it can still force them to fund activities that regulate the legal profession. But different lawyers have different opinions on what will improve the legal profession — some of them diametrically opposed to each other. Nevertheless, the state bar association presumes to speak with one voice for all lawyers in the state. It should not be much comfort to lawyers that their rights to free speech and association are protected when it comes to distant or abstract political issues, but yet they lose their rights to free speech and association on the issues that most affect their careers and practice.

The United States Supreme Court recently, in *Janus v. AFSCME*, curtailed government-compelled speech. The court stated that mandatory union dues or fees paid by public employees, which are similar to the

bar dues at issue here, violated employees’ free speech rights. Lucille Taylor, one of the most accomplished lawyers in the state, is, with the help of the Mackinac Center Legal Foundation, seeking to build on *Janus* and challenge the membership and compulsory fees that are required in Michigan.

It is important to note that what is not being challenged here is the state’s ability to police the legal profession. While most states have a bar association lawyers must support, some of the largest states have no such requirement — including California and New York. So a majority of lawyers in the United States are free from this coercion. Clearly, then, such mandatory membership and payment is not a necessity. Other states manage to regulate the legal profession without infringing on the free speech and association rights in this way.

It’s time to return lawyers’ associations to the voluntary associations that they should be in the American tradition, instead of the mandatory state-controlled monoliths that they have become. ■

You can learn more about Lucille Taylor’s case at: www.mackinac.org/Lucille



Detroit Prep Completes Its Move into New School Building



In 2017, a co-founder of Detroit Achievement Academy, a public charter school, wanted to purchase a new building for a second school, Detroit Prep, which was growing rapidly. A nearby school building was vacant, but there was one problem. The previous owner, Detroit Public Schools Community District, had placed a deed restriction on the building in order to limit school choice. Not only was this an obstacle for Detroit Prep, but it also blocked further development of a crumbling property. Even when the school offered 20% more than the asking price, the district refused to remove the deed restriction and allow the property to be refurbished.

The charter schools' founder, Kyle Smitley, turned to the Mackinac Center for help. After an informational and media campaign, legislators soon began working hard to make sure school districts could no longer prevent the sale of unused buildings. This law has directly helped public school students across Michigan.

Today, Detroit Prep is open and thriving in its beautiful new school building. Credit is due to Smitley's determination, the volunteer legal help she marshaled, friendly lawmakers, and you — our supporters — who made it possible for the Mackinac Center to help this school when it needed it most.

Here's a note from Smitley herself:

Hi Mackinac Center team!

Today was our first day in our new building and I basically just cried all day because WE DID IT.

We (mostly) finished the building on time, passed all inspections with flying colors, and our kids and families were so in awe and grateful as they walked into school today.

It was incredible.

We would not have gotten to this day or even be open anymore as a school (seriously) without you.

I am forever grateful and FOREVER indebted to you and your team. No words can really express my gratitude, personally and on behalf of our kids and teachers and families.

— Kyle Smitley

Rebuffing Restrictions on the Supply of Cancer Treatment

In September, Michigan's Certificate of Need Commission voted to restrict access to a new, potentially lifesaving cancer treatment known as "CAR-T." This FDA-approved procedure programs the body's own T-cells to attack and kill cancerous cells, allowing patients to avoid invasive surgeries, chemotherapy and radiation. Why, then, would an unelected Michigan state board force health care providers and facilities to walk through more bureaucratic red tape that limits access to this treatment for many Michigan cancer patients?

**LINDSAY
B. KILLEN**

Thirty-five states and the District of Columbia maintain certificate of need, or CON, laws, which require health care providers to seek permission from the state before they can open their practice, expand it, or invest in new equipment and technologies. Before obtaining this permission slip, the provider's competitors — already operating in the same market space — can come before the state board or commission and challenge their would-be competitor's case. As a result, there is in these states less competition for health care services, causing higher prices, reduced access and poorer patient outcomes. Indeed, CON laws are among the more abhorrent forms of corporate welfare. And thanks to Michigan's CON Commission, this was the process that health care providers were required to walk through to make CAR-T accessible to patients in our state — that is, until the Mackinac Center and our allies successfully appealed to the Legislature to intervene and reverse the commission's ruling.

Within 45 days of a CON Commission ruling, the Legislature has the power to step in and review — and even reverse — the ruling. Mackinac Center policy and government affairs experts met with

lawmakers to discuss the potentially destructive impact that CON laws — and this ruling on CAR-T, in particular — have on patient access and health outcomes in our state. Fortunately, lawmakers acknowledged that the CON Commission overstepped and exceeded its purview of regulating the capital investments of health care facilities and attempted to interfere with patient access to an FDA-approved treatment that can be easily administered through routine blood transfusions.

In October, with just days left to act, the Michigan Legislature approved a joint resolution denouncing the CON Commission's ruling on CAR-T and reversing it. This important victory for cancer patients across the state has set the stage for a broader consideration of CON reform over the coming months. Sweeping reform is certainly needed, as these laws are antiquated and proved to be ineffective — yet, have real consequences on patients' access to critical services. Consider that research by the Mercatus Center estimates that:

- Michigan has approximately 12,900 fewer hospital beds due to CON restrictions.
- The state has between 20 to 40 fewer facilities offering MRI services.
- Between 68 to 85 fewer hospitals offer CT scans.

Should Michigan lawmakers embrace more serious reforms to CON laws over the coming months and year, patients will experience a positive impact on the accessibility, affordability and quality of care options across the state. ■

Lindsay B. Killen is the vice president for strategic outreach and communications at the Mackinac Center.



Another State Acts to Protect Worker Freedom

The effort to secure the right of workers to be free of union coercion took another step forward recently, this time in Alaska. That's when Attorney General Kevin Clarkson issued an opinion which asserts that the state government may not collect union dues from public employees absent evidence of an employee's consent. Clarkson's opinion was almost immediately followed by Gov. Mike Dunleavy's administrative order, which called on the state Department of Administration to develop an opt-in program for state employees to determine whether they wish to continue or begin withdrawal of union dues from their paychecks. Both opinions mark the first examples of state policymakers taking action on behalf of public employees to ensure that the full intent of a major 2018 court ruling is respected.

On June 27, 2018, the United States Supreme Court ruled in *Janus v. AFSCME* that forcing public employees to subsidize labor unions violates their First Amendment rights. Therefore, states must have "clear and compelling evidence" that public sector workers wish to waive these rights before deducting union dues from their paychecks. Clarkson's opinion holds that Alaska's payroll system did not comply with *Janus*; public workers in Alaska must provide clear consent — by opting in annually — before employers withhold union dues.

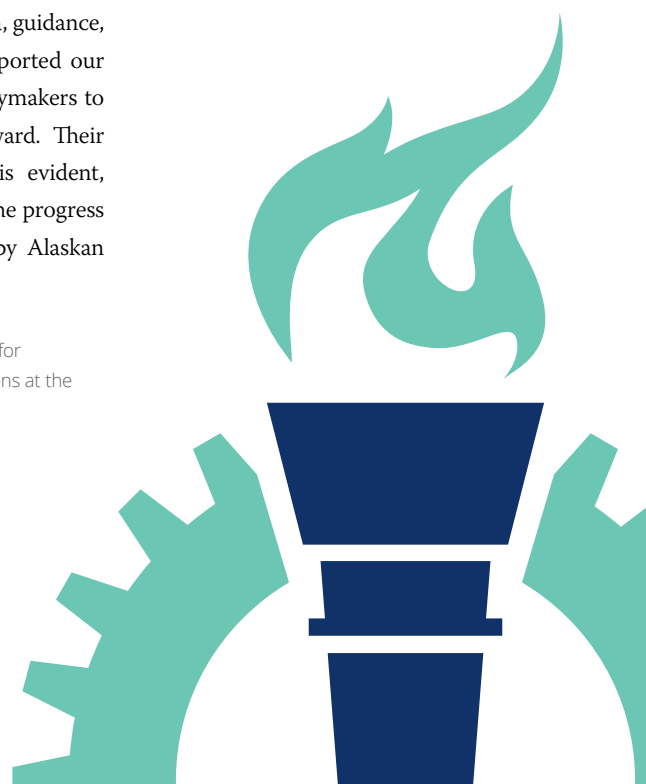
The Mackinac Center's national labor reform organization, Workers for Opportunity, or WFO, has been the leader

in championing this and other labor reforms that follow up on the *Janus* ruling. WFO celebrates this tremendous victory for Alaska's public employees, alongside our state-based partner, the Alaska Policy Forum. Such progress is only made possible by the ongoing research, expertise and support that organizations like WFO and APF provide to lawmakers as they address their responsibilities to properly implement worker freedoms restored by the Supreme Court.

"Working with the Mackinac Center for Public Policy on our worker freedom efforts is a true pleasure," explains Bethany Marcum, president of the Alaska Policy Forum. "As a very small think tank, APF has limited capacity, while the opportunities for positive reforms in Alaska are enormous. It has been a natural fit for us to partner with Mackinac's WFO to leverage the policy expertise they provide on labor issues. Mackinac provided us with data, guidance, and legal counsel that has supported our work on the ground with policymakers to move significant reforms forward. Their passion for worker freedom is evident, and together, we are proud of the progress and leadership demonstrated by Alaskan state lawmakers." ■

Lindsay B. Killen is the vice president for strategic outreach and communications at the Mackinac Center.

**LINDSAY
B. KILLEN**





Detroit Farm Offers Second Chance to Ex-offenders

Stark contrasts confront the person who drives through Detroit. New restaurants and sports arenas have revitalized pockets of the city, but there is an abundant supply of abandoned factories, with unused land around them. One endeavor, however, is putting some of that land to use, harvesting food for diners and social good for everyone else.

Less than one mile outside downtown Detroit is a collection of tall greenhouses that belong to RecoveryPark Farms. There, an unusual workforce plants high-end produce, harvests it, and then delivers it within 24 hours to local restaurants, putting a new spin on “locally grown.”

While large cities and farms don’t often go hand in hand, Detroit is unique in that no other city has the same amount of land available for farming.

The farms are the first of several for-profit companies being launched by RecoveryPark, a Detroit-based nonprofit that seeks to create jobs for people returning to society from the criminal justice system or with other barriers to employment.

RecoveryPark was founded by Gary Wozniak, who began his career as a stockbroker in the 1980s. During the first few years of his career, Wozniak developed a drug habit and later served three years in federal prison for wire fraud after using

clients’ money to support his addiction. Upon his release in 1991, he moved back in with his parents and began looking for a new job. After being rejected for an entry-level position, Wozniak took matters into his own hands. “I went home, looked in the mirror and promised myself that I’d never let anyone tell me no again,” he said.

Within six months, he opened a Jet’s Pizza restaurant in Hamtramck.

Over the next two decades, he started seven different businesses before launching RecoveryPark in 2008. Wozniak knew that the factories in Detroit weren’t coming back, and people in the area, especially those with a record, needed new employment opportunities.

As Wozniak knows all too well, the statistics for returning citizens can be grim. For the person who finds a job within the first three months of returning, the chances of recidivism are extremely low. But after six months without employment, the recidivism rate increases to 30%. And after 12 months without work, the returning citizen is almost guaranteed to land back in prison. So, it’s critical that returning citizens find employment quickly.

RecoveryPark provides employment, but also much more. In addition to earning a starting salary of \$11 per hour, employees have 100% of their health insurance

covered. They can also get housing support, assistance in setting up a bank account and transportation to and from work during their first 90 days on the job.

“I want people who have never been in the system to hear our story,” said Wozniak while speaking at an America’s Future Foundation event in Midland. People across the state continue to hear his story, and through partnerships and outreach efforts, more are getting involved, hoping to change the future for former offenders. In October, Wozniak testified in front of the U.S. House Committee on Small Business, urging Congress to support legislation that would help them.

A job is the essential component to rehabilitating former offenders into society. And while groups like RecoveryPark are doing great work, they are often stymied by government rules and overregulation. But there’s hope. In recent months, Michigan has passed bills providing those who’ve committed a crime in the past but stayed out of trouble a chance to expunge their record. Lawmakers have lessened penalties for lower-level teenage offenders, giving them a better chance to stay out of prison and more easily reintegrate into society. And a bill package supported by the Mackinac Center would make Michigan a leader in providing second-chance opportunities by allowing individuals and businesses in licensed industries to hire people with criminal records. These steps would protect the public while giving everyone a fair shot. ■



Love for Life and Liberty

A DONOR SPOTLIGHT OF
DR. JOHN & MARTHA PAFFORD

The unwavering faith and love John and Martha Pafford have for each other and the liberty of all people is evident to all who enter their Catalogue English Tudor home in Midland, Michigan. The shared principles and varied interests of the thoughtful but straight-shooting academic and his animated, ever-ladylike interior designer wife leave all who pass through the home with a renewed vigor for life. In many ways, a successful free-market think tank seeks to blend unique talents and foundational principles in a similar fashion.

John grew up on Cape Cod, Massachusetts; Martha is from Washington state but lived much of her life in Oregon. They met in Washington shortly after the Martha's first husband passed away unexpectedly and she was left widowed with three children. John had recently moved to the Pacific Northwest and was working in ministry to evangelize and promote church growth. The two grew very strong in their Christian faith, which is evident in all that they do. Martha had a career in modeling with three major clothing brands, and never took a union job. Being nonunion gave her the opportunity to be in national ad campaigns that unionized East Coast models, particularly those in New York, were priced out of. John grew up close to the historic home of President Grover Cleveland, but more distant and seemingly more adventurous history intrigued him early on; this turned out to be ironic, as he grew to admire and publish a book on Cleveland years later.

Political opposition to New Deal programs and government spending were regular

discussions at home when John was growing up, but his own study and education led to his free-market perspective. "I dabbled into socialism in college, but once I began reading for myself, I learned that dad was right!" He went on to support Barry Goldwater's 1964 presidential campaign and understood that the implications of his loss were grim, but John always remained an optimist, believing in the power of the American spirit. John and Martha saw that spirit and the prevailing freedom — which came at great cost — following the attack on Pearl Harbor when they were very young and after the Sept. 11, 2001, terrorist attacks. They are reminded that the right policies, educating the next generation and defending freedom have seen the United States through tumultuous times.

John realized he was an ideas man after working in real estate management and at a bowling center, both of which were successful family businesses. He went on to work in ministry at the Christian Freedom Foundation, had a full career in academia, and has published noteworthy titles since his retirement from Northwood University.

The Paffords moved to Midland in 1976 when John accepted a teaching job at Northwood. John was student of Russell Kirk when he earned his doctorate, and the conservative icon was the subject of his early books. In 1980, John was a candidate for Congress in the Republican primary. John worked alongside fellow Northwood professor Larry Reed, who went on to be the first president of the Mackinac Center. During his career, he taught a number of future Mackinac Center staff members,

and he assured us that director of fiscal policy James Hohman did in fact earn an A.

Coming from free-market minded families and arriving at that life philosophy independently made John and Martha natural partners with the Mackinac Center, but their connection runs much deeper. John and Martha made their first gift in the form of wicker chairs when it opened its doors behind Pizza Sam's in Midland. As an interior designer, Martha saw it as her duty to ensure that the humble office had a functional but professional appearance, so she and her daughter purchased a few chairs for guests and created a welcoming environment.

John and Martha admire the Mackinac Center's commitment to principle and its efforts to use multiple means and styles of communication. They believe finding the right style is important; Ronald Reagan's ability to speak personably, along with his charisma, is what, in their minds, set him apart from Goldwater. Martha's charming tenacity got her, along with John and their daughter, into a venue to see Reagan's charisma on display. John's leadership in conservative politics earned him an invitation to a small group meeting with Reagan when he was president, and there was a mix up on the guest list, which Martha was able to solve; the inspiring interactions and memory of the day sticks with them.

John believes in the political philosophy expressed by Russell Kirk, of "the expansion of order, justice and freedom." His tenure and Northwood and understanding of the



Mackinac Center's effort to advance liberty as an educational research institution have put that belief into practice. In many ways, people who support the Mackinac Center shape public opinion and advance free-market ideas through their giving, volunteerism and participation at events, and by advancing the mission through word-of-mouth and sharing publications. That's why John and Martha support free-market research and education, worked diligently to connect with a major publisher years ago, and have maintained that relationship as John published his latest book on President Chester Arthur earlier this year.

The Paffords think the rhetoric and radical policy proposals of national leaders on the political left reflect their fear of individuals who understand and are equipped to defend

free-market ideas. In John's words, "There are no perfect times or countries, and there hasn't been since Eden." Reflecting on his past experiences, from having German prisoners of war in his hometown to life in the present, John remains a believer in American Exceptionalism. Though the country isn't and has never been perfect, he has maintained an optimistic view that free-market ideas will prevail. Defending Michigan's right-to-work law and effectively fighting new taxes and spending are key priorities that John and Martha see the Mackinac Center leading the charge on.

John and Martha think that the sound research and voice the Mackinac Center provides has made wins like right-to-work, ending the dues skim, and advancing school choice possible by networking individuals

and providing them with intellectual ammunition. In the end, protecting and enlightening others on the fundamentals of a free society is what continues to bond John and Martha to the Mackinac Center more than 30 years after the gift of wicker chairs. "Law shouldn't have to cover everything, but we must protect life, liberty and property."

To learn more about becoming a Mackinac Center supporter, contact Caleb Hortop or a member of the Advancement team any time. Our growing donor clubs, event tracks and the Opportunity Michigan network make it a great time to join a community committed to advancing liberty. ■

Sept.
26

An Evening with the Mackinac Center

In late September, the Mackinac Center welcomed over 120 guests to the Bloomfield Hills Country Club for “An Evening with the Mackinac Center.” The keynote speaker was Mat Ishbia, president and CEO of United Shore and United Wholesale Mortgage. Mark Janus, the plaintiff of *Janus v. AFSCME*, was the special guest.

Oct.
8

Dr. Paul Kengor at Northwood University

The Mackinac Center was pleased to welcome Dr. Paul Kengor to Midland for a second time. Kengor, a professor of political science at Grove City College, talked about the differences between communism, socialism and democratic socialism. The event was well attended by both Mackinac Center supporters and Northwood University students.

Oct.
17

Are There Better Options for Underperforming Schools?

Another popular October event was an Issues & Ideas forum on better options for students in Michigan’s underperforming schools. Ben DeGrow, director of education policy at the Mackinac Center, was joined by Donald Weatherspoon, an MSU alumnus with years of experience in educational administration, and Kevin Teasley, president and founder of the Greater Educational Opportunities Foundation.

Oct.
23

Screening of the Movie “Miss Virginia”

The Mackinac Center hosted an exclusive screening of the new movie “Miss Virginia” on Oct. 23. The movie is based on the true story of Virginia Walden Ford, who fought for the right to provide her child with an education that worked for him — not for the state.

WANT TO JOIN US?

If you are interested in attending future Mackinac Center events, please visit our events page at Mackinac.org/Events. We’d love to see you!





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Mackinac Wins 2019 State Policy Network Award

The Mackinac Center for Public Policy is honored to be one of five organizations given the 2019 Network Award by State Policy Network for its work on ending the dues skim. Other recipients include the Center of the American Experiment, Freedom Foundation, Illinois Policy Institute and the National Right to Work Legal Defense Foundation.

The Mackinac Center first coined the term “dues skim” after the Mackinac Center Legal Foundation discovered that the Service Employees International Union was automatically deducting union dues from home-based caregivers’ Medicaid payments. The SEIU had unionized thousands of home health care workers, unbeknownst to them, and siphoned tens of millions of dollars into its

coffers. The Mackinac Center successfully ended the practice of dues skimming in Michigan, but the fight wasn’t over. Unions found a loophole and began skimming dues in other states. In May, the U.S. Department of Health and Human Services ruled that unions cannot automatically deduct union dues from home health care workers, a move that closed the loophole. The Mackinac Center is proud to have played a part in this achievement, which will protect the rights of hundreds of thousands of people across the country. ■



Mackinac Center Speakers at SPN

Michael Reitz (pictured top right), executive vice president, gave a talk in a session on professional development for young free marketeers. In a separate session about the one-year anniversary of Janus, he addressed the future of labor reform.

Lindsay Killen, vice president for strategic communications, gave a presentation about two Mackinac Center projects, My Pay My Say and Workers for Opportunity. Both work with state partners across the country to inform public employees of their Janus rights and advance policy reforms that expand worker freedom. Additionally, Killen moderated a panel on innovation waivers of the Affordable Act. Otherwise known as 1332 waivers, they allow policymakers to develop and pursue market-based solutions to address mounting concerns over the access, quality, and affordability of health care in their states.

Jason Hayes (pictured bottom right), director of environmental policy, moderated a panel titled “Fiddling While Our Forests Burn.” This panel was based on his research study “Conflict to Collaboration,” which can be read online at mackinac.org/s2018-07. Participants discussed ways to encourage federal and state governments to cooperate in actively managing our national forests. Hayes also spoke at another session in which representatives of various think tanks considered monopoly utilities’ plans to close reliable, affordable electricity generation plants and replace them with unreliable and expensive renewable energy options. In this session, Hayes led two separate breakout discussions with assembled think tank leaders, helping them to determine the next steps they can take in their states to address these flawed energy policies.





Michael LaFaive (pictured top left), senior director of the Morey Fiscal Policy Initiative at the Mackinac Center, had the pleasure of participating in a roundtable panel titled “All’s Not Fair in Corporate Welfare: Ending the Economic Development War.” LaFaive’s talk covered a quarter century of reforms, including reform attempts and strategies coming from both inside the public sector and from without. These included new programs, “but for” mandates and clawback requirements, all of which, people were told, would protect taxpayers. LaFaive argued, however, that they were largely ineffective.



Holly Wetzel (pictured bottom left), communications coordinator, spoke to the Generation Liberty fellows at the close of their program. The Generation Liberty program provides young professionals who are interested in or are currently working in the liberty movement the chance to attend SPN’s annual meeting. In addition to attending the annual meeting, fellows participate in other programs to help them grow personally and professionally. As a past fellow, Wetzel was invited to speak on a panel to discuss the best way to use the annual meeting.

David Guenther, senior strategist for state affairs, participated in a panel sponsored by the Pacific Legal Foundation on using strategic litigation to work for better public policy. Guenther shared his experience at the Texas Public Policy Foundation of pairing a legislative proposal with a litigation strategy to pursue a repeal of Obamacare. In a roundtable discussion, Guenther and other policy leaders discussed the progress and direction of criminal justice reform efforts across the country. ■



Continuing to Fight for Freedom and Liberty Across the Nation

Last year, the United States Supreme Court held in *Janus v. AFSCME* that public employees could not be forced to pay agency fees to public employee unions. Decades earlier, the court had held that the Constitution applied to actions by railway and airline unions that limited their members' speech, even if the employer and the union were both private entities. Thus, the question after *Janus* is whether the holding banning mandatory agency fees would now apply to the airline and railway unions. In its *Janus* ruling, the court itself noted that this was an open question. In January, then, the Mackinac Center Legal Foundation filed a lawsuit seeking an answer: *Rizzo-Rupon v. International Association of Machinists*.

Three United Airlines ticket agents from New Jersey, Linda Rizzo-Rupon, Susan Marshall, and Noemio Oliveira, contend that, like public sector employees, they should not be forced to pay an agency fee to keep their job. In its *Janus* holding, the Supreme Court noted, "As [Thomas] Jefferson famously put it, 'to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical.'" The *Rizzo-Rupon* plaintiffs contend that their personal beliefs as private employees are no less valuable than those of public employees.

The case may turn on a legal test known as the state-action doctrine. Generally,

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constitutional limitations constrain governmental conduct, not private conduct. But, where government's influence in private matters is sufficient (i.e. constitutes "state action"), the Constitution can apply, although the Supreme Court has recently been attempting to limit situations where state action is found.

Railway unions and airline unions both get their collective bargaining power from the Railway Labor Act, which was enacted in 1926 and eventually amended to include airline employees. The Supreme Court has long presumed that the Constitution applied to railway unions. For instance, starting in the 1940s, there were a series of cases concerning collective bargaining agreements that treated black and white employees differently. The black employees alleged this was a violation of the equal protection clause of the Constitution. Tellingly, the court did not summarily dismiss those cases as involving private actors and thus not subject to constitutional restraints. Rather, it construed the RLA to require fair treatment of all employees by the union and thereby avoided the constitutional question.

In 1956, the Supreme Court first examined the free speech rights of railway employees. In *Railway Employees Department v. Hanson*, the court noted that from at least 1934 to 1951, railway unions did not seek fees from nonmembers, and still,

75%-80% of employee chose to join the union and pay dues. In 1951, Congress gave these unions, at their request, the power to negotiate a requirement in labor contracts that nonmembers pay fees or be fired. The Supreme Court held this 1951 amendment was the governmental influence that triggered constitutional protections for workers. But it also said there were no constitutional violation in that particular lawsuit. In 1961, the court held in *International Association of Machinists v. Street* that it was possible to determine what portion of dues were political. Nonmembers, it said, could not be charged for these.

Now that *Janus* has held that all compelled fees can be considered political and therefore not required of nonmembers, the question is set: Will *Janus* apply to railway and airline unions? The *Rizzo-Rupon* case has gotten off to a slow start, since the United States government had to be given a chance to intervene to defend the Railway Labor Act if it so chose. Having not done so yet, the plaintiffs represented by the Mackinac Center and the unions have set forth their positions to the district court judge. A decision in the plaintiff's favor could help free hundreds of thousands of railway and airline employees — if it eventually finds a way to the Supreme Court. ■

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



Mackinac in the Media



Holly Wetzel
Communications Coordinator

Between some very high-profile scandals and a strike, the United Auto Workers was in the news quite a bit this fall. Thanks to Michigan being a right-to-work state, workers don't have to support a union whose actions they may not agree with. As Jarrett Skorup and James Hohman wrote in The Wall Street Journal, "Workers have options these days. The UAW can no longer rely on their compelled support, and it would do well to listen more closely to the concerns of its members and represent those interests above all else." Unfortunately, this strike demonstrated that UAW leaders weren't really looking out for workers, as the average GM worker had very little to gain from it. E. Vincent Vernuccio, a senior fellow with the Mackinac Center, covered this point in an op-ed published by CNN, and in an op-ed for The Detroit News, he examined how Congress was trying to protect UAW members. Chris Douglas, a member of the Mackinac Center Board of Scholars, wrote two pieces for CNN, detailing the effect the strike had on workers. After the strike ended, James Hohman appeared on Fox Business to talk about Michigan's economy and whether it took a toll on the state.

New reforms in Michigan will make expungement — the process of getting a past criminal offense off or sealed from the public record — a bit easier. In an op-ed in The Detroit News, Jarrett Skorup wrote about how these reforms would not only benefit individuals, but also taxpayers. And as David Guenther was quoted as saying in a Detroit News article, "[O]nce people have completed their sentences and shown

over time that they are dedicated to a law-abiding path, they deserve the opportunity to get out from under their past mistakes." Guenther was also quoted by the Detroit Free Press, and he wrote an op-ed about the importance of these reforms for The Hill.

Gov. Gretchen Whitmer's line-item veto of Pure Michigan funding sparked a flurry of important discussions on state-funded subsidies. The Mackinac Center has long advocated ending them, and within hours after the veto, several media outlets turned to us for comment. Michael LaFaive was quoted by the Detroit Free Press, NPR, WKFR, Bridge Magazine, Michigan Advance and MLive.

The Lansing State Journal published an op-ed by Jason Hayes on the Line 5 debate. In the piece, Hayes discussed the "Green-Blue Divide," a new schism in progressive ranks. The Line 5 debate makes it clear that Democrats must deal with competing interests in their party, namely blue collar workers and green activists. Hayes, who was born in Western Canada, co-authored a piece in The Hill that suggested offering statehood to Alberta, Saskatchewan, Manitoba and the interior of British Columbia. These provinces depend on natural resources such as oil and gas to survive, and unfortunately, the October Canadian election threatens their very livelihood. While it's a stretch to think the U.S. would offer them statehood, it's important for governments to recognize a the needs of their citizens. ■

Looking at 2019 with Gratitude

Our staff — and readers — live in one of the wealthiest countries in the world at the most prosperous time in human history. And it's not just economic prosperity that counts. From a global perspective, the United States has a strong rule of law, low political corruption and sturdy protection of rights for individual speech and private property.

Collectively, Americans have a lot to be grateful for.

As an institution, the Mackinac Center also has a lot to be thankful for on the policy front. The following is a summary.

Fiscal policy

- The state Legislature found more money for roads without raising taxes.
- Gov. Gretchen Whitmer and the state House proposed rolling back subsidies for Pure Michigan.
- Elected officials approved other spending cuts to Michigan's corporate welfare apparatus.
- Michigan finally rolled back its expensive auto insurance regulations, passing legislation that gives drivers a choice and allows them to save money.

Environment policy

- Fracking technologies have allowed America to become the world's leading producer of clean, low-cost natural gas.
- The development of new Generation 4 nuclear technologies will allow for the production of abundant, emissions-free, reliable and affordable electricity.
- Private conservation efforts ensure the protection of important natural areas and ecosystems without spending additional tax dollars.

- Good Neighbor Authority projects help ensure Michigan's public lands and national forests are being properly managed.

Education policy

- The U.S. Supreme Court agreed to hear the Espinoza case, giving hope that state Blaine amendments — major barriers to expanding educational freedom — might be struck down in 2020.
- The state Legislature once again has stood up to defend the principle that some K-12 students should not get less money from the state funding formula simply because their parents choose to send them to a charter school, including an online school.
- A new state law prevented the Detroit district from using deed restrictions to block a high-performing charter school from opening its doors in a new building.

Labor policy

- The U.S. Department of Health and Human Services issued a rule

prohibiting unions from automatically deducting hundreds of millions of dollars from payments due caregivers. The White House thanked the Mackinac Center for our “fantastic report,” which provided a roadmap for the federal government to end the dues skim.

- A host of bills moving through the Legislature gets rid of unnecessarily licensing regulations and will make it easier for people to find work.

Criminal Justice reform

- A new state law requires a criminal conviction before the government can take and permanently keep a person's assets.
- Recently passed legislation makes it easier and less expensive for well-behaved ex-offenders to have crimes removed from their criminal record.
- The passage of “raise the age” legislation means that teenagers will no longer be automatically sent to adult prisons.

So much of our feelings and attitudes depend on how we choose to respond to life's circumstances. So, as we celebrate with our families, let's remember all that we have to be thankful for. As H.U. Westermayer said, “The Pilgrims made seven times more graves than huts. No Americans have been more impoverished than these who, nevertheless, set aside a day of thanksgiving.”

Hundreds Respond to Mackinac Center Survey

“You focus on results, not activities.”

“I’d like to counter the left-leaning education our kids are getting.”

“Mackinac Center has been effective, but challenge lies ahead.”

These are just a few of the hundreds of comments you shared with us in the Mackinac Center 2019 Partners Survey, which we conducted by mail and online in June. We had an overwhelming response — more than 700 people participated — and those responses have helped to confirm what we are doing right and where we can improve.

The survey asked for your thoughts on public policies and your experience with the Mackinac Center and our programs.

Given a choice of 10 policy areas and Mackinac Center activities, our survey respondents picked fiscal, education and labor policy as having the highest importance, with being a voice for free markets in the media and educating state lawmakers as the highest-ranking activities.

But as several respondents added, “All are important!”

Regarding your experience with the Mackinac Center, nearly all respondents gave us high marks overall, with 61%

saying they are “very satisfied” with their experience and 37% “satisfied.” Similarly, more than 90% of our respondents rated the Mackinac Center as “Excellent” or “Above Average” at thanking donors for their gifts, managing funds prudently, spending donations in the manner agreed upon, and making you feel like a valued contributor.

More than 80% of donors also rated the Center as excellent or above average at keeping donors informed of the impact their gifts have and responding to questions or concerns they have raised.

While the majority of respondents said that the Mackinac Center sends an appropriate amount of mail, some said they would like to customize their mail or email preferences. (If you feel the same, please don’t hesitate to contact us so we can work together to meet your needs.)

Others asked the Center to host more events in their communities, a request that fits perfectly with our new Policy Forum event series, which took us to Troy, Portage, Bay City and Traverse City this year and will add more locales around the state in 2020.

On another front, we learned from the survey that the Mackinac Center’s partners are highly engaged in civic affairs.

Nearly 99% said they vote regularly in local, state and national elections, and more than half say they contact their state lawmakers on issues of concern to them. Nearly 20% write letters to the editors, and about 15% of respondents have served on a government board or commission.

Many others reported that they serve as election workers or nonprofit board members or volunteers, participate in political or civic engagement organizations, and spread free-market ideas, including Mackinac Center publications, to their family, friends and co-workers.

Finally, many respondents asked to learn more about Opportunity Michigan, our new project to build a network of free-market enthusiasts throughout the state who work for positive change. You can learn more about that, and sign up, at www.opportunitymichigan.org.

Thank you again for all of the support you showed the Mackinac Center by taking the survey and sharing your feedback. We will continue to use your input as we make plans for the year ahead. If you have any questions about the survey or would like to follow up on this article, please feel free to contact Lorie Shane at 989-698-1909 or shane@mackinac.org. ■