

MARCH/APRIL 2024

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PROTECT**  
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**MACKINAC  
IN THE  
MEDIA**

## THE WALL STREET JOURNAL.

### **Roosevelt Elementary Delenda Est**

“If public schools can’t have a complete monopoly, they’d rather raze a beautiful old school building to the ground.”

*Molly Macek, Director of Education Policy*

## NATIONAL REVIEW

### **States Should Stop Subsidizing Hollywood**

“Virtually every analysis concludes that film subsidies are wasteful and ineffective, doing nothing for state economies. Michigan should know this better than most states.”

*James Hohman, Director of Fiscal Policy*

## NEW YORK POST

### **Biden’s war on gas cars will cost Americans a fortune**

“At the same time it abandons the hard-won independence granted by domestically produced oil and gas and forces drivers into unwanted electric vehicles, it is also transitioning the American economy to a reliance on critical minerals produced or refined in China.”

*Jason Hayes, Director of Energy and  
Environmental Policy*



### **Wind and solar power too often leave Americans out in the cold when severe weather hits**

“Energy policy should be based on facts, not hopes and dreams. Our study shows that the best way to pursue a cleaner future – one that’s economically affordable, reliable and clean – is to double down on natural gas and nuclear.”

*Jason Hayes, Director of Energy and  
Environmental Policy, and Timothy Nash,  
Director of Northwood University’s McNair Center*

## The Detroit News

### **Don’t separate teacher effectiveness from student achievement**

“School boards across the state have their work cut out for them. Leading a school district is hard enough, and now they must prepare to bargain with teachers’ unions over subjects that have been off the table for more than 20 years.”

*Molly Macek, Director of Education Policy*



### **College Sports’ March Toward Unionized Madness**

“The simple fact is that unionization isn’t the solution that some people claim it to be, especially not for something as dynamic and competitive as college sports.”

*Patrick J. Wright, Vice President for Legal Affairs*



# As Michigan Stalls, We Move Ahead

“The general who advances without coveting fame and retreats without fearing disgrace” is, according to Sun Tzu, “the jewel of the kingdom.”

Michiganders are retreating more than advancing lately: losing more money to Lansing politicians’ boundless greed, paying more for an onslaught of reckless energy mandates, suffering the sacrifice of children’s educations for the benefit of school unions, and finally, as our flat-to-negative migration numbers indicate, deciding to leave the state entirely.

Total U. S. population grew about four times faster than Michigan’s over the last four decades, and our new barrage of leftist policies is not turning the Great Lake State into a people magnet.

Things won’t turn around without serious work. These pages tell how the Mackinac Center is winning small battles, making big government pay a price for its victories, and laying the groundwork for the time when friends of liberty regain the initiative.

Our most important fight centers on your precious right to keep your own property. Thanks to a 2015 law, state taxpayers received a \$700 million reduction in their personal income tax in 2023. This happened when record-smashing state government revenue soared so high above the



Photo by Adobe Stock

# “We’re standing up to the governor, and for taxpayers, at the Michigan Supreme Court, representing legislators, citizens and business associations.”

inflation-adjusted trigger that the law’s automatic tax cut kicked in.

It was one of the few bright spots in the era of the Democratic trifecta, but even this modest reduction in tax collections was too much for the Whitmer administration, which is fighting relentlessly to clutch back every penny, permanently.

We’re standing up to the governor, and for taxpayers, at the Michigan Supreme Court, representing legislators, citizens and business associations. You can read about our case in Pat Wright and Steve Delie’s story on page 10.

Even if we don’t win today, we’re shaping the ground of future battles. Derk Wilcox (page 24) explains how an unfavorable ruling from the Michigan Court of Appeals in our prevailing wage case nevertheless relied on the major questions doctrine, an originalist constitutional approach that The New York Times calls “the doctrine that threatens Biden’s agenda.”

We’re also taking back the initiative. Delie (page 26) and Mike Van Beek (page 22) lay out our plans for transparency and education, respectively. Our FOIA coalition helped craft two state Senate bills that would strengthen the state’s Freedom

of Information Act and turn 2024 into a year of government transparency in Michigan. And as new laws designed to enrich school unions take effect, we are contacting every school board member in the state to help them put children first during contract negotiations.

You need great people to do great things. Some great people making news are Tony Daunt (page 18), who brings decades of policy experience to his new job as senior director of our multi-state Workers For Opportunity project. New Director of Advancement Nicole Beck (page 19) tells how she embraced her role at our donor Legacy Society. Jennifer Majorana (page 8) has risen quickly to become our senior director of advancement.

With your help, we will keep defending the people of Michigan against overweening government. And when these tough times are behind us, I look forward to seeing how great we can make Michigan. ■



*Joe*

**By Joseph G. Lehman**

*President of the Mackinac Center*

Poland Honors Lawrence Reed

# FIRST MACKINAC CENTER PRESIDENT RECEIVES GRAND CROSS IN POLAND



## “The history of the late 1980s shows conclusively that Polish courage played a major, indispensable role in the liberation of Eastern Europe.”

The Mackinac Center’s first president received one of the highest honors awarded to foreigners by the Republic of Poland in November.

Lawrence W. Reed, who led the Mackinac Center from shortly after its founding in 1987 until 2008, was awarded the Grand Cross of the Order of Merit from Polish President Andrzej Duda.

The award came “in recognition of outstanding contributions in supporting democratic changes in Poland,” Duda said at a solemn ceremony in Warsaw attended by government, civil and religious dignitaries. Others who received awards at the ceremony included renowned artists, Cold War dissidents and philanthropists.

“I must share this honor with the millions of brave Polish men and women I admire, whose courage inspired me during my first visit to this great country 37 years ago this month,” Reed said in an address after the ceremony. “The history of the late 1980s shows conclusively that Polish courage played a major, indispensable role in the liberation of Eastern Europe.”

Reed’s first visit to Poland occurred in 1986, when the country was still under communist rule. He recounted how during that visit he was harassed and detained by government officials who confiscated his belongings and later expelled him from the country. But Reed maintained his contacts with the anti-communist underground in Poland and returned to the country after the Iron Curtain fell in 1989.



Reed’s successor, Mackinac Center President Joseph G. Lehman, attended the Warsaw event and praised Reed’s support for international freedom.

“Larry Reed played a pivotal role in bringing global awareness to the harsh realities Polish citizens were facing under the oppression of communism,” said Lehman. “His stories and experiences have prompted real change and continue to inspire the next generation of freedom fighters. There are few who have done more to assist the fight for liberty, not only in Poland, but around the globe. I am proud to call him my friend and colleague.” ■



**By Tim Cavanaugh**  
*Senior Editor*

## Meet Jennifer Majorana, senior director of advancement at the Mackinac Center for Public Policy

Growing up in a family of bookworms in Iowa, Jennifer Majorana was destined either to teach college or to work for a think tank. She ended up doing both.

“I didn’t really encounter much free-market philosophy until I was getting my Ph.D. and looking for some responses to what I was confronting at the university level,” Jennifer says. That search sent her on a path toward working at the Mackinac Center, which combines her academic interests and worldview.

Jennifer grew up in a suburb of Des Moines and got degrees in linguistics and music from the University of Iowa.

“I wanted to be an English major, but I really loved books and didn’t want to read them on someone else’s timeline,” she says.

Jennifer left Iowa for Michigan to get a master’s degree at Michigan State University and a doctorate at Central Michigan University. MSU gave her the chance to get experience as a paid teaching assistant.

“I had a really great college experience and taught English as a second language for two years at Michigan State and for three years at Saginaw Valley State University,” she says. Along the way, she met her husband, who got a job as an attorney in the office of the Saginaw County prosecutor, and they moved to Midland. While earning her doctorate, Jennifer worked for a nonprofit, teaching adult literacy and English as a second language. She figured she’d look for an academic job after finishing her degree.

That’s when she ran into the Mackinac Center. Almost literally.

“I was walking in downtown Midland and saw this beautiful limestone building and thought, ‘What is that?’” she says. “My husband had heard a little about it and been to a few events. I looked up the Mackinac Center’s website and read a bunch of the publications.”





# e Me ... lone!"



“I thought: These are people like me! I’m not alone!” she says with a laugh.

Jennifer reached out, asking about potential positions. She ended up getting an opportunity to write about an issue she knew about in education policy. This led to a job in the fundraising department, writing grants while also getting the chance to write on different policy issues she cares about.

“My main job is communicating the Mackinac Center’s impact to our supporters,” she says. “I get to do some policy writing as well, especially on higher education. I love it here.”

Jennifer lives in Midland with her husband Aaron, a Michigan native. They enjoy bike riding together. ■



## By Jarrett Skorup

*Vice President for Marketing and Communications*



Photos provided by Jennifer Majorana



The Mackinac Center is  
**FIGHTING TO  
PROTECT**  
**YOUR INCOME TAX CUT**

# “Since the first of the year, taxpayers have been paying a higher tax rate than they should.”

Michigan’s Court of Appeals issued an opinion on March 8 concluding that the 2023 income tax cut was only valid for one year. The Mackinac Center appealed this decision to the Michigan Supreme Court on March 25.

The core issue of this case is whether the 5% tax cut that applied in 2023 should be made permanent. That cut was passed by the Legislature in 2015, with lawmakers clearly intending that it be applied permanently when certain triggering events occur. Unfortunately, the Department of Treasury, acting on the advice of Attorney General Dana Nessel, concluded that this cut could only apply on a year-by-year basis.

The Court of Appeals rejected the Court of Claims’ earlier conclusion that the plaintiffs in the case lacked standing as well as the lower court’s conclusion that their claims had been brought prematurely. But the court agreed that the stronger

interpretation of the income tax statute required an annual income tax cut based on a fixed 4.25% rate. As a result, the income tax will only be cut in those years when an extraordinary revenue event occurs.

While the Mackinac Center is appealing this decision, some damage has already been done. Since the first of the year, taxpayers have been paying a higher tax rate than they should. The state will collect \$714 million more in taxpayer dollars. At the same time, the Legislature is preparing a state budget that incorporates these improper taxes.

The Mackinac Center will continue to fight for the proper interpretation of Michigan’s income tax statute, and we hope that the Supreme Court will agree with our interpretation. If it does, Michigan’s taxpayers will enjoy some much-needed tax relief in difficult economic times. ■



**By Patrick J. Wright**

*Vice President for  
Legal Affairs*



**By Stephen Delie**

*Director of Labor Policy*



Photo by Adobe Stock



# Reaching the World Through an

The Mackinac Center reaches people through various means, including the media.

Our communications team and policy staff share their research findings and views with reporters, editors and producers. We reach new audiences each day, whether by giving a quote for a story in *The Detroit News*, providing background information for a *Wall Street Journal* editorial, or doing a live radio interview on Michigan's Big Show with Michael Patrick Shiels.

Many people also learn about the Mackinac Center from seeing us on TV!

The television landscape is evolving. Gone are the days of driving to a studio in Flint or Detroit to do a five-minute interview. Many shows were starting to shift away from in-person interviews before the pandemic, favoring the convenience of virtual interviews. Since then, interviews via Zoom or Skype have become the norm for most news stations.

Over the last few years, it became clear that we needed a higher-quality setup to do these interviews.

The Mackinac Center had explored the idea of building a studio for years, and thanks to the generosity of supporters of the Frank Beckmann Center for Journalism, we were finally able to make that dream a reality.

In fall 2023, we started to transform a publication and mail supplies storage room into a studio. Keeping external noise out of the studio was important, so we walled off a window, installed sound-proofing materials in the drywall and added a door that blocked out the sounds of a busy hallway. To make sure everyone looks good on camera, we replaced harsh fluorescent lights with adjustable ceiling lights, as well as some stand-based lights.

When no one is using the room for television, it is available for sit-down interviews, episodes of



Photos by MCPP

# In-House Studio

the Overton Window podcast and even virtual events. It's equipped with two 4k cameras, wireless microphones, IFB earpieces and a control panel that pulls everything together. With our HD TV, we can put up any background, whether it be the state Capitol, the Detroit skyline, or the Midland Tridge.

In the past month, we've used the studio for appearances on ABC 12, CBS Detroit, Mid-Michigan Now, WOOD-TV and WXYZ. We're continuing to expand our television outreach, so be on the lookout next time you turn on the news. You might just see a familiar face from the Mackinac Center. ■



**By Holly Wetzel**  
*Director of Public Relations*

The Mackinac Center's work, including this magazine, is made possible by the Mackinac Center Board of Directors:

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# REPORT CARD

**ENERGY SOURCE**    Capacity    Reliability    Cost    Market Feasibility

Natural Gas	9	9	10	10	9	A
Coal	8	7	9	9	7	B-
Petroleum	6	7	8	8	6	C-
Nuclear	10	10	7	10	7	B+
Hydroelectric	10	8	8	8	6	B-
Wind	5	6	5	6	6	F
Solar	5	5	5	8	6	F
Geothermal	6	9	5	8	5	D+

Environmental/Human Impact

Technology/Innovation

Final Grade



# GRADING THE GRID:

## A NATIONAL ENERGY REPORT CARD

As activists and politicians push Western society to give up reliable energy sources in pursuit of a renewable energy future, the Mackinac Center is testing whether alternative sources can take a primary role in powering the United States.

Northwood University's McNair Center for the Advancement of Free Enterprise and Entrepreneurship partnered with the Mackinac Center to produce an energy report card that grades eight energy sources by how well they meet society's needs.

We reviewed natural gas, coal, petroleum fuels, nuclear, hydroelectric, wind, solar and geothermal. We ranked each source's reliability, environmental impacts, costs, technological innovation and market feasibility on a scale of 1 (lowest) to 10 (highest). From these, we derived a grade for each energy source.

Natural gas is the nation's best energy source, earning an A for reliable performance, competitive cost and role in reducing emissions.

Nuclear follows closely with a B+, thanks to its rock-solid reliability and safety record, as well as minimal environmental impact. Nuclear energy's higher cost and lower market feasibility are driven by deliberate policy decisions rather than inherent qualities.

Coal gets a B- for low cost the availability of technologies to address its environmental impacts, and consistent reliability. Coal has higher environmental impacts, but its problems are primarily policy-based.

Petroleum fuels received a C- because they fill a niche market, have higher costs than gas and have little potential for growth.

On the "renewables" side, hydroelectric received a B-, thanks to consistent reliability and availability when needed. Hydro's market is restricted by a limited potential for new developments.

Geothermal received a D+. While it is a clean energy source, its growth is heavily limited by cost and geography.

Wind and solar each received an F. Both require mining vast quantities of minerals and metals like lithium, cobalt, copper and rare earth elements. The industrial operations and energy sources required to build wind and solar capacity raise doubts that these sources should be considered "renewable" or clean at all.

A modern industrial society cannot replace conventional power plants with wind and solar without doing serious and potentially fatal harm to the electric grid. Premature plant closures and overreliance on wind and solar jeopardize electric reliability.

Policymakers should support the reliable and affordable power sources our society needs. Forcing an extreme renewable overhaul based on dubious claims of environmental benefits is a recipe for energy insecurity and economic hardship. ■



**By Jason Hayes**

*Director of Energy and Environmental Policy*



**By Tim Nash**

*Director of Northwood University's McNair Center*

# Major Thomas Jenks

Major Thomas Jenks has led a life of service from the oil fields of Kuwait to classrooms in America. He dedicated himself to helping the people around him as a U.S. Army officer and later as a teacher, and now he is carrying on that commitment by joining the Mackinac Center Legacy Society.

Major Jenks grew up in Sanford with five siblings and attended Meridian schools before joining the ROTC program at Central Michigan University. He went on to serve his country for two decades as an active duty soldier, deploying with the 3rd Armored Division in the Gulf War and seeing firsthand the realities of conflict and sacrifice.

Following his military service, Major Jenks undertook a career in education, spending 20 years teaching in the Junior ROTC program at Cleveland's Collinwood High School from 1995-2014. His exemplary military career, devotion to serving as a JROTC senior army

instructor and extensive involvement in veterans organizations earned him induction into both the Central Michigan University ROTC Hall of Fame (2012) and the Ohio Veterans Hall of Fame (2020).

Major Jenks now enjoys his time as a substitute teacher for the local schools in Bath. When he isn't working on his professional pursuits, he enjoys riding motorcycles. His love for riding developed at the age of 14, and he shares his enthusiasm with a new generation. His students like it when he arrives at school on a Harley.

Throughout his life, Major Jenks has been a fervent advocate for the causes he believes in, including veterans benefits and the free-market principles championed by the Mackinac Center.

"I appreciate what the Mackinac Center is doing on policy," he says. "I've been involved in many





# A Veteran's Legacy of Service and Support



“I appreciate what the Mackinac Center is doing on policy.”

military veterans organizations, and I understand the importance of advocating for policies rather than individuals in politics.”

By establishing a charitable gift annuity with the Legacy Society, Major Thomas Jenks can be sure that his tradition of service and generosity will be felt for generations to come. We can all find inspiration in his advocacy for meaningful policy change and dedication to the principles of freedom. ■



**By Victoria Hoffman**

*Donor Relations*





# An Update from TONY DAUNT



**Senior Director  
of Workers for  
Opportunity**



Photo by Pixabay

My name is Tony Daunt, and I'm the new senior director of Workers for Opportunity. I've had the privilege of working closely with numerous Mackinac Center team members during my career in and around Michigan's state government, and it's an honor to join this incredible team!

Before coming to WFO, I was the executive director of FAIR Maps, a nonprofit advocacy group that focused on redistricting. Before that, I served as the executive director of the Michigan Freedom Fund, an ally of the Mackinac Center in the policy battles surrounding right-to-work, electric choice, and pension reform, among others. I'm a 2001 graduate of Michigan State University and root for Ohio State on the side because it annoys my Wolverine friends.

Workers for Opportunity has enjoyed significant successes this year, with more still to come. As this issue of IMPACT was heading to print, Georgia joined Tennessee and became the second state in the nation to make workers' right to a secret ballot vote on unionization a prerequisite for companies receiving taxpayer-funded incentives. WFO's success in neighboring Tennessee helped make reform a key priority for Georgia Gov. Brian Kemp, and we are

honored to have been a part of this victory for Georgia's workers.

Our friends at the Georgia Public Policy Foundation have been great partners on the ground. They kept us informed on their progress, providing detailed updates at each phase, and were an essential resource for legislators and stakeholders. We truly appreciated their work.

Now it's time to bring our campaign for worker freedom to other states. Alabama's legislature recently introduced a similar secret ballot bill, and we hope to see it adopted. In Louisiana, our friends at the Pelican Institute helped see multiple bills focused on labor reforms introduced. The legislation would ensure workers are free to leave their unions, protect paychecks, limit the use of taxpayer dollars to support union activities, and provide greater accountability for union members. We will continue to support these important reforms, and I look forward to making 2024 one of Workers for Opportunity's most successful years to date. ■



**By Tony Daunt**

*Senior Director of Workers for Opportunity*

# Embracing the Legacy Society at the Mackinac Center

Photo by Adobe Stock

I started at the Mackinac Center at the end of 2023 and my first assignment was to lead the Legacy Society. I hesitated. Unsure of the unfamiliar territory of the nonprofit world, I didn't know if this was a challenge worth tackling. But after digging into the program, I realized something: The Mackinac Center Legacy Society offers a unique chance for anyone, even me, to navigate the often confusing realm of philanthropy.

When the chance to lead the program came around again, I said yes right away.

At the Mackinac Center, our work transcends the ordinary. It embodies a dedication to the fundamental values of individual liberty, free markets and limited government. The Legacy Society opens the door for people from all walks of life to connect with the Mackinac Center's work on a personal level and leave a more prosperous Michigan for future generations.

The opportunity to connect with our Legacy Society members, on both a professional and personal level, has meant the world to me. Legacy Society members enable the Mackinac Center to make a tangible and lasting impact on Michigan.

For those yet to take the plunge, joining our Legacy Society is simple. Anyone who makes a gift to the Mackinac Center through a will or estate plan, no matter the dollar amount, is automatically enrolled in the program. Our Legacy Society donors receive special benefits, including reserved seating at Mackinac Center events, invitations to financial planning seminars, and a special thank-you delivery during the holiday season, just to name a few. The main benefit, however, is the peace of mind that comes from knowing that your hard-earned assets will support the values you cherished during your lifetime – liberty, self-reliance and a limited, accountable government.

For those seeking to leave a lasting and profound impact on the world, our Legacy Society is the perfect avenue. Please don't hesitate to reach out to me, Nicole Beck, at 989-698-1940 or [beck@mackinac.org](mailto:beck@mackinac.org) with any questions. I will be honored to walk alongside you on this journey. Together we'll leave a legacy that reflects our commitments and shapes a better tomorrow. ■



**By Nicole Beck**

*Director of Advancement*



# There are **NO FREE E** School Buses

The electric school bus costs four times more than a diesel bus and loses one-third of its range on cold days. Naturally, school districts across Michigan have said, “Sign me up!”

Why would they do this? Why pursue an early-stage technology with known problems and rely on it to transport children?

Because, thanks to federal grants, the price is right. What appears to be free money will entice school districts to make choices they should not.

This year Michigan will dole out \$125 million for poor schools in rural and urban areas to buy the electric school buses they could not otherwise afford.

Between the bus and chargers, the start-up fees to get one electric school bus on the road can run about \$400,000. Few public schools have that kind of money lying around for school buses. Not without large-scale grants.

Michigan got the money from the Environmental Protection Agency’s \$5 billion Clean School Bus Program. President Joe Biden’s 2021 infrastructure law contains \$30 billion to boost demand for the electric vehicle. This includes funds for electric school and municipal buses, as well as grants for states to build a nationwide network of chargers.



Photo by Adobe Stock

# LECTRIC es



The EPA attributes magical qualities to the electric school bus. It claims the buses lower childhood asthma rates and boost learning, as students miss fewer sick days. School districts have heard that sales pitch for years but still balked at the price tag.

Now with all the federal money floating around, they don't have to. Michigan schools will learn the moral of this story the hard way: There are no free electric school buses. If it sounds too good to be true, it usually is.

Electric school buses cannot stand on their own in the marketplace. Are they ready to transport your child? ■



**By James Dickson**

*Managing Editor of Michigan Capitol Confidential*

## ONLINE RESOURCES



### **MichCapCon.com**

Michigan Capitol Confidential reports with a free-market news perspective.



### **WorkersForOpportunity.org**

Advancing the liberty of employees across the country and protecting First Amendment rights.



### **Mackinac.org/MCLF**

Our public interest law firm advances individual freedom and the rule of law in Michigan.



### **OpportunityMichigan.org**

Want to get more engaged with public policy in Michigan? Opportunity Michigan is right for you.



### **FrankBeckmannCenterForJournalism.com**

Keeping citizens informed with news and analysis that expose government overreach and abuse.



### **MichiganVotes.org**

Track every bill, amendment and roll call vote in the Michigan Legislature from 2001 to today.



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# School Boards **Will Get Help** New Pro-Union Labor Law

The Mackinac Center has launched a program to help local school board members and other public school officials respond to policy changes made by Gov. Whitmer and the Michigan Legislature. Last year lawmakers turned back the clock by repealing the bipartisan reforms Michigan enacted during President Obama's push for school reforms. These policies empowered school officials to hire, promote and reward excellent teachers. But unions opposed giving administrators this authority and urged lawmakers to revoke it, which they did in 2023.

This is disappointing, because research shows that filling classrooms with high-quality teachers is the most promising way to improve student achievement. School boards and administrators will, under the new policies, be hampered in hiring, evaluating and placing teachers. Unions will demand to bargain over these procedures and

push for seniority-based policies. Decisions about pay, placement, promotion and layoffs could once again be determined solely by how long a teacher's been on the job.

That might be a convenient way to make personnel decisions, but it does nothing to help kids learn.

The Mackinac Center will help school board members and other school officials by giving them resources to manage these changes. The Center has decades of experience analyzing state labor law and local collective bargaining policies.

Unions will urge school officials to put back everything the way it was before the Obama-era reforms. But there have been significant changes to public sector labor law since that era. School boards must be careful not to let unions circumvent the U.S. Supreme Court's



Photo by Adobe Stock

# p Navigating /S

Janus decision, which provides all public school employees the First Amendment right not to be forced to be a member of or pay a union.

The Center will deliver guidance and recommendations to school board members as they renegotiate their union contracts. We hope to help them better understand the impact of seniority-based policies and why the Obama administration pushed for reform. Unions want to copy and paste their antiquated contract rules, but officials should stand firm in advocating for policies that put kids first. ▀



**By Michael Van Beek**  
*Director of Research*

## BY THE NUMBERS

# 53%

Proportion of Michigan school districts with teacher contracts that contained prohibited and legally suspect language restricting discipline of teachers.

# \$1

Amount some school districts provided as a bonus when they were required by law to pay teachers based on performance.

# 373

Number of Michigan districts that contract out for food, custodial or transportation services. Unions can negotiate to stop service privatization under new state laws.





# A LOSS THAT BROUGHT GREAT GAIN:

## MACKINAC CENTER LEGAL FOUNDATION

The Mackinac Center Legal Foundation recently lost a case but still won a long-term victory. The Michigan Court of Appeals ruled against us in a case that became moot when the Legislature acted. In its ruling, however, the court announced that it was following the major questions doctrine, which is associated with Clarence Thomas and the originalist members of the U.S. Supreme Court.

One of the most pressing problems of government today is that many of our laws can be made by unelected bureaucrats. At all levels of government, administrative agencies make most of the laws that we must obey. In 2023, federal agencies enacted 46 rules for every law enacted by Congress and the president, according to the Competitive Enterprise Institute.

Defenders of these administrative laws say they deal with matters too complicated for the democratic process. But national and state constitutions require legislatures, not agencies, to write the laws that govern us, no matter how complicated the topic.

Our system of government relies on the separation of powers. The legislative branch writes the laws, the executive branch enforces them, and the judicial branch settles disputes about the meaning of the laws. This system keeps power from being consolidated in the hands of one branch. Administrative law, however, shares power between the branches and allows an agency to police itself without answering to the courts or the electorate. Under the major questions doctrine, legislators and courts, not agencies, have final say on rules and regulations with large economic impacts.





## COURT OF APPEALS AFFIRMS MAJOR QUESTIONS DOCTRINE

The problem of unaccountability is a national one. But thanks to the Mackinac Center and this Court of Appeals ruling, the judicial branch has kept the administrative state in check. The Legal Foundation persuaded our courts to follow the major questions doctrine. The United States Supreme Court has adopted this doctrine in a series of opinions, striking down major changes to laws by administrative bureaucracies. Examples include agencies forgiving student loans, treating nicotine as an FDA-controlled drug, and restructuring the electric grid to fight climate change.

Supporters of the administrative state have reacted to this doctrine with alarm. The New York Times legal columnist dubs it “the doctrine that threatens Biden’s agenda.”

The Court of Appeals announcement is another of many victories by the Mackinac Center Legal Foundation in our fight against the

governmental overreach that is inevitable when administrative bureaucracies make laws. The Legal Foundation persuaded the courts that the governor’s emergency orders during COVID were unconstitutional. Before that, we persuaded the Michigan Supreme Court to adopt the policy that courts need not defer to administrative agencies’ interpretations of ambiguous statutes.

Michigan is now the first state to recognize and follow the major questions doctrine. This shows the power of challenging government overreach in the courts. Even when the Legal Foundation lost a battle, we still won a major victory. ■



**By Derk Wilcox**  
*Senior Attorney*



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**2024 IS THE YEAR TO**

# PROMOTE GOVERNMENT TRANSPARENCY IN MICHIGAN

Michigan consistently ranks as one of the worst states in the nation in government transparency. A key reason is that neither the governor nor the Legislature is subject to our open records law, the Freedom of Information Act. FOIA allows citizens to request public records so they can better understand the inner workings of government. Extending the Freedom of Information Act to the governor and Legislature would empower citizens and provide greater transparency.

The most recent attempts to expand FOIA law have failed. This year might be different. Senate bills 669 and 670 have bipartisan support, and it appears legislators have already negotiated them with the governor. These bills are not perfect, but they are a step in the right direction.

SB 669 and SB 670 expand the open records law to cover the governor's office and the Legislature, opening a new avenue for holding government officials accountable. But new branch-specific exemptions in these bills threaten to weaken gains for transparency. Many of these exemptions are unnecessary and could be handled by existing exemptions. Still, the bills improve FOIA law by allowing citizens access to information previously unavailable to them.

The bills are supported by a broad coalition of transparency advocates, including the Mackinac Center, the Michigan Coalition

of Open Government, the Michigan Press Association, the ACLU of Michigan, and Voters Not Politicians. Each of these organizations testified in favor of these bills when they were considered at a recent committee hearing. While the advocates had various concerns, they reached the same conclusion: The bills, though imperfect, are a step in the right direction.

The bills have not yet received a vote, but the Mackinac Center will follow their progress closely.

Legislators have proposed other FOIA reforms this session. A House bill package (HB 5422-5427) suggests even broader reforms. It would completely close loopholes and promote a more pro-transparency approach to open records requests. Many of the changes in these bills echo suggestions from a Mackinac Center study published last year.

Michigan has long needed better transparency laws. With luck, 2024 could be the year we get them. ■



**By Stephen Delie**

*Director of Transparency and  
Open Government*

## Secure Your Financial Future and Ours with a Mackinac Center Gift Annuity

You can support free-market ideas by establishing a legacy gift annuity from the Mackinac Center. The annuity makes it possible for donors to support freedom while receiving a reliable lifetime income stream.

Let's look at some of the benefits of gift annuities.

**Steady Income.** A gift annuity provides predictable payments, bringing stability to your financial planning.

**Tax benefits.** When you establish a charitable gift annuity, you get immediate charitable tax deductions for a portion of your gift. You can reduce your capital gains taxes by funding the annuity with appreciated assets like stocks or real estate.

**Simplicity.** You typically only need to complete a simple agreement with the charity administering the annuity, making for a streamlined option.

**Long-term planning.** Gift annuities are ideal for securing a reliable income stream while making a lasting impact. A gift annuity helps you ensure financial stability for yourself or your loved ones while supporting causes you believe in.

Donors who choose gift annuities support causes they are passionate about while also ensuring a steady income stream. By including the Mackinac Center in your legacy plans, you can ensure that principles of freedom, free markets, and limited government continue to flourish for generations to come. The tax benefits, reliable payments, and the power to leave a legacy make gift annuities an attractive choice. Every individual's financial plan is different. The Mackinac Center recommends you talk with your financial planner before making any changes. ■



**By Nicole Beck**

*Director of Advancement*