



DIGGINGS

A PUBLICATION OF THE BADGER INSTITUTE

FALL 2017

Our frozen melting pot

...and who's responsible

The left's cultural
appropriation complaints
put a chill on unity

BY AARON RODRIGUEZ

Madison's goofy,
divisive, flag flap

BY MIKE NICHOLS



Act 10 savings
torpedoed

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Daniel Kelly's journey
to the Supreme Court

BY DAVE DALEY

The festering mess
that is Illinois

BY JAY MILLER



EDITOR /Mike Nichols

Badgers persevere — and adapt

We're not the Badger State because of the animal — beloved as it is. We're the Badger State because back in the early 19th century, impatient lead miners burrowed like badgers into the Wisconsin hillsides and slept there instead of taking time to build homes.

They wanted to get to work. They lived in the same ground they mined — a practice that today would no doubt result in visits from HUD, OSHA, the EPA, the DNR, DHS, the Department of Safety and Professional Services, the local building inspector, the Burial Sites Preservation Board and a dozen protesters singing "Solidarity Forever."

Luckily, those "badgers" persevered.

For 30 years, the organization that publishes this magazine has dug deep in a different way. In an age of increasingly superficial tweets and posts, the Wisconsin Policy Research Institute has done the time-consuming, expensive policy analysis that has helped shape the direction of the Badger State. We are recommitting ourselves to that today. But we are also forging ahead in this new age with new initiatives and (you no doubt have already noticed) new names.

"WPRI" has served us well for years — even if we sometimes are confused with a TV station offering "all the coverage you can count on" in Providence, R.I. But it no longer encompasses all that we do, and it doesn't adequately express our deep attachment to the state. WPRI now has transformed itself into the Badger Institute — a name that reaches back to the industrious miners of long ago but also moves us forward in new directions.

The magazine you're holding is part of this reinvention. If you're reading it now, it's likely you used to receive *Wisconsin Interest*, our prior publication.

For decades, the editor of *Wisconsin Interest* was Charlie Sykes — the longtime conservative radio host in Milwaukee and a widely respected and prolific author. In fact, this edition includes an excerpt of Charlie's latest book, "How the Right Lost Its Mind," along with an opposing perspective by Hoover Institution research fellow Bruce Thornton.

Charlie has been a friend to me and WPRI for decades, and all of us here deeply appreciate his long stewardship of *Wisconsin Interest*. He is quite simply one of the smartest and most incisive people I know. Thank you, Charlie, for all that you did here.

This new magazine is, of course, named *Diggings* — and not just because that's what badgers do. Good journalists dig as well.

The difference with us here at the Badger Institute is we're going to try our best to dig straight down instead of — like many of our brethren in the mainstream media — meandering toward the left. I will serve as editor of this new magazine. I'm incredibly lucky to be able to say that Mabel Wong will be our managing editor. Robert Helf, our graphic artist, will make us look good. We will continue to use the best freelance writers in Wisconsin, national voices and, increasingly, Badger Institute journalists and researchers.

Speaking of which, you'll be stunned, aggravated and amused by the reporting, stories and new features you'll find in the pages ahead. If those aren't enough, check out our brand new website, BadgerInstitute.org, for much more reporting and research, our policy papers, as well as information about Badger Institute events.

We hope you enjoy this inaugural edition. Please let us know where else in this great state you'd like us to dig deeper for the next time around.



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Badger Institute

Founded in 1987, the Badger Institute is a nonprofit, nonpartisan 501(c)(3) guided by the belief that free markets, individual initiative, limited and efficient government and educational opportunity are the keys to economic prosperity and human dignity.



ALLEN FREDRICKSON PHOTO

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Cover illustration by Robert Helf





“We need to start thinking about replacing fuel taxes.”

— **Bob Poole**,
director of transportation policy
at the Reason Foundation,
arguing during a Badger
Institute webinar that the shift to
electric and hybrid cars will likely
“devastate” Wisconsin’s current
highway funding system

14

Percentage of Wisconsin public
school officials who said in a
Badger Institute survey this
summer that accountability
would suffer if federal
oversight were relaxed

“The influence the federal government has on our policy, procedure, educational requirements, etc., is disproportionately high.”

— Business manager of a Wisconsin school district, responding to a Badger Institute survey



17

Percentage of child-care providers
that are rated
4s or 5s on a
5-point scale in
Wisconsin’s
YoungStar program,
according to the
Badger Institute’s
Rating YoungStar
report

“I went to school, I paid my dues, I worked hard, no loans, started this business with money out of my own pocket. My hands are tied, and it feels like I’m drowning.”

— **Albert Walker**,

owner of Imago Dei Barber Lounge
in Green Bay, telling the Badger Institute
that the state makes him
pay someone else to
manage his shop and
noting that “a lot of
this red-tape stuff”
restricts former
inmates so that
“we end up going
back to prison”

JEFFREY PHELPS PHOTO



12,000

The net number of people that Wisconsin has lost through out-migration in each of the past three years, according to **Tom Hefty**, writing for the Badger Institute

“What is Wisconsin supposed to do, disarm?”

— Metropolitan Milwaukee Association of Commerce President (and Badger Institute board member) **Tim Sheehy**, arguing that competitive incentives are essential to attracting businesses such as Foxconn Technology Group of Taiwan

FOXCONN

“Venture capital companies spend lavishly to hire the smartest people to help them think about which companies to bet on, and *they* are often wrong.”

— Economist **Ike Brannon**, arguing in a Badger Institute commentary that the State of Wisconsin should not be making the \$3 billion investment in the Foxconn LCD plant



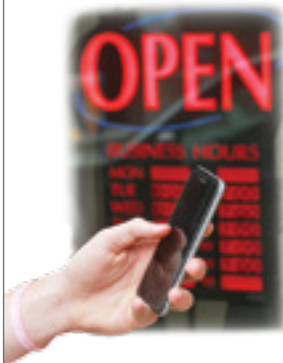
4th highest in the U.S.

Wisconsin's total state-local tax burden per capita as a percentage of income, according to the Tax Foundation's *Facts & Figures 2017* report



1 in 20

Number of male inmates in Wisconsin's prison system who are “lifers,” according to the Badger Institute's *Unlocking Potential* report, which also notes that most inmates will be out in under five years



“I want to stay in Wisconsin after graduating to run Trimm (Haircuts), instead of leaving.”

— University of Wisconsin-Madison economics student **Samuel Haack**, noting in a Badger Institute story that if the Wisconsin Legislature does not approve professional licensure reform he likely will be forced to take his on-demand haircut start-up to a state that allows barbers and stylists to work outside the four walls of a licensed shop

Act 10 savings



The elevator at Oostburg Middle School, installed at a cost of nearly \$60,000, sits largely unused.

Photos by Jeffrey Phelps

torpedoed

Federal regulations force school districts to spend that money or face funding cuts

By Dan Benson and Julie Grace

Savings that Wisconsin taxpayers could have realized through implementation of Act 10 in 2011 — sometimes hundreds of thousands of dollars in a single district — were lost because federal regulations penalize school districts that find ways to spend less money.

The Oostburg School District in Sheboygan County, for example, experienced a “huge reduction in expenses for the special education fund” following the passage of Act 10, says Kristin DeBruine, the district’s business manager.

Special education programs, however, are funded with federal as well as local tax dollars — and full, ongoing federal funding continues only if local and state funding remains constant or increases from year to year.

In order to avoid a federal funding cut, the Oostburg district spent the Act 10 savings in other ways, including almost \$60,000 to install an elevator in its middle school. At the time,

and to this day, the school does not have any students who use wheelchairs. So the elevator sits largely unused, DeBruine says.

While installing the elevator also helped the district meet federal disability compliance rules, “We would not have put it in without the required use of the money, as it is only used for after-school activities, and the cost would not have allowed us to do it otherwise,” DeBruine says. “That simply just doesn’t make sense at all.”

Maintenance of effort rule

The federal requirement that schools continue to spend at least the same amount of local or state tax dollars year after year or face a loss of federal funding is known as “maintenance of effort,” or MOE.

MOE requirements are “seen at the federal level as a way to make sure that federal funds aren’t displacing state and local funds,” says John Debacher, director of library development for the Wisconsin Department of Public Instruc-

tion. Critics say, however, that MOE rules commit districts to continually spend large amounts of money, restricting their ability to address changing circumstances and priorities, and emphasize spending and compliance over educational outcomes.

“We tend to budget money just to meet MOE rather than spending it in the most effective, efficient manner,” says Penny Boileau, admin-

istrator for the Brighton #1 School District in Kansasville in Kenosha County. “We should be able to prove we are meeting the needs of our students by some other means rather than by comparing funding spent in one year compared to the next year.”



FEDERAL GRANT\$TANDING
Project for 21st Century Federalism

More online: Go to badgerinstitute.org to read more stories in this series.

The Badger Institute's Project for 21st Century Federalism is a multi-year investigation of the growth in federal grants and their effect on state and local governance.



The 257 Wisconsin school districts that responded to a Badger Institute open records request this summer said they had spent more than \$1.3 billion on maintenance of effort in 2015-'16, an average of \$2,559 per student. With 424 public school districts in the state, the total is likely hundreds of millions of dollars higher.

The federal government seems to care less about achieving educational goals than it does about counting dollars and satisfying auditors, said one superintendent, responding to a Badger Institute survey conducted this summer.

"There are no conversations about children with special needs and the intense services being provided," he said.

"Rules get in the way of innovation and progress. Rules around maintenance of effort hurt education. Paperwork gets in the way of spending time on students," another superintendent said.

A number of federal grants carry MOE requirements, including those for libraries and school lunch programs. The biggest MOE commitment is to the Individuals with Disabilities Education Act (IDEA), which funds services for disabled students. Even though the state is required by federal law to provide equal educational opportunity to disabled children, states are not required to accept federal money to pay for it. But if officials don't take the money, they must provide those services with local funds and explain to taxpayers why they refused to take "free" federal money.

"The public perception of turning down what the public believes is 'free money' is an even bigger problem" than taking the money, says Jeremy Struss, business manager for the small Swallow School District in Waukesha County. "They often don't understand that the labor costs to receive these funds can be significant, sometimes more than the amount we are receiving."

Jeff Kasuboski, superintendent of the Wautoma School District in central Wisconsin, laments the federal rules that mandate spending. "What is so terribly ridiculous is that maintenance of effort tells you that you must spend at least as much, if not more, on special education as you did the previous year.

"Who are they to dictate how much money we spend? It's absolutely ridiculous. If you find a cheaper way to do it, why wouldn't you?" he adds.

The aftermath of Act 10

Act 10 was passed by the Republican-controlled Legislature and signed into law by Gov. Scott Walker in 2011 to address a projected \$3.6 billion budget deficit. Its most controversial components required most public-sector employees, including teachers, to contribute more to their health care and pension benefits. It also restricted public employee unions' bargaining power.

Other savings were realized in some school districts as the new law excluded health benefits from union contracts. That change allowed some districts to shop for health insurance since their previous contracts often required signing with the union-affiliated WEA Trust.

About a third of Wisconsin school districts switched insurers from WEA Trust in the first year after Act 10's passage, according to news reports. One estimate put the health insurance savings for local districts statewide at \$404.8 million.

Local districts could have conceivably saved millions of dollars more if not for running afoul of maintenance of effort rules and being forced to spend that money or have their federal funding cut.

Following Act 10, the tiny Spooner School District in northwestern Wisconsin reduced special education spending by \$160,000, mostly due to savings on health insurance. Although special education services were not reduced, the district was penalized for not maintaining the same level of spending, causing its federal funding to be cut by \$30,000 the next year.

"We did not change our delivery of (special education services). We just saved money on employee costs," says Michael Markgren, the district's business manager at the time. He is now business manager for the Altoona School District near Eau Claire.

"But we were penalized for that. Districts have to be aware of that when they change insurance carriers now. If you have savings, you have to make sure that you still meet" maintenance of effort requirements, he says.

The problem extends well beyond insurance changes.

When some teachers retired following Act 10, many districts saved money by replacing them with younger teachers earning less. One such district was the Mount Horeb Area School District in Dane County, which — rather than face

The 257 Wisconsin school districts that responded to a Badger Institute open records request said they had spent more than \$1.3 billion on maintenance of effort in 2015-'16, an average of \$2,559 per student.

funding cuts for not meeting federal requirements — spent the savings on lower-priority needs such as supplies.

"It's a waste because if you haven't cut services, then you just have to find things to buy where you could've better re-allocated to a different area," says Wayne Anderson, Mount Horeb's superintendent at the time.

Matching requirements

Another way the feds control local school spending is through "matching" requirements. These apply to meal programs, vocational training and other purposes. In those cases, the federal government provides funding for a particular project and the state or local district is required to "match" that amount on a percentage basis.

One project is GEAR UP — Gaining Early Awareness and Readiness for Undergraduate Programs — meant to increase the number of low-income students entering post-secondary schools. The six-year grant program requires a dollar-for-dollar match. In Wisconsin, the federal government provided \$5 million over the six years. The state's annual match is about \$833,000.

Altogether, DPI spends about \$6.5 million a year in required matching funds. No statewide data is available on how much local districts spend matching federal grants.

Matching and MOE are requirements of federal funding that many taxpayers and even some school officials are unaware of or don't track.

"We don't keep an inventory of (federal) grants" or their related maintenance of effort requirements and other associated costs, says the legal counsel for one large northeastern Wisconsin district, explaining in an email why it could not provide the information to the Badger Institute when asked.

"Those costs are included as line items within each department's budget and are not made available in a consolidated list to school board members or anyone else," she says.

"It doesn't surprise me when I hear that," one regional school administrator says. Since they're not required by state law to create a document with that information, "it's really (local school) board policy that guides their response."

Even though state and federal auditors review matching and MOE spending, the data is not readily available so it is

difficult for taxpayers to get a full picture of the local financial burden that results from accepting federal money.

The Badger Institute survey indicates that, even in districts where administrators and federal regulators keep close tabs on MOE and matching requirements, school board members and their constituents are largely unaware of the fiscal stranglehold forced upon districts by federal regulations.

The survey taken in July and August showed just 17 percent

of school superintendents say school board members in Wisconsin pay "very close attention" to how federal dollars are spent. Almost 28 percent of superintendents, say school board members pay "very little attention" to how they are spent. That contrasts with school board members' attention to local funds — 39 percent of superintendents think school

boards pay "very close attention" and less than 12 percent think they pay "very little attention" to how local dollars are spent.

MOE rules are a way of getting the state and local school districts to spend their money on priorities set in Washington, critics say.

"There's no doubt the feds want to control what's going on at the local level as much as possible," says state Rep. Joe Sanfelippo (R-New Berlin). "That's kind of the position you put yourself in when you sell your soul to the devil. You have to dance to his tune."

Rep. Jeremy Thiesfeldt (R-Fond du Lac) agrees. "One of the problems with the federal government being involved in education is they tell you to maintain certain levels of spending. But if you have a down year, if you cut back

on your dollars, then you're not going to get your (federal) money," says Thiesfeldt, chairman of the Assembly Education Committee and a former teacher. "But if *they* cut back, you still have to maintain your spending" to deliver services.

Sanfelippo concludes, "The best thing would be for the federal government to just lower our taxes and not take so much of our money and then pretend they're doing us a favor when they send it back with all those strings attached."



The school's elevator is used only for after-school activities.

"Who are they (the feds) to dictate how much money we spend? It's absolutely ridiculous. If you find a cheaper way to do it, why wouldn't you?"

— Jeff Kasuboski,
superintendent of the
Wautoma School District

Dan Benson is editor of the Badger Institute's Project for 21st Century Federalism. Julie Grace, a graduate student studying communications at Marquette University, is an intern at the institute. Reporter Dave Daley contributed to this story.

The shameless chase for federal money

Private contractors help states grab more U.S. dollars at the expense of serving children and the poor

By Dave Daley

The federal government is awash in taxpayers' money, billions of dollars that the United States doles out each year to states in grants, food stamps and the huge Medicaid program that funds health care for the poor. Name a program, and the feds have a pot of money for it.

So much money that a booming cottage industry has sprung up — private contractors offering services to states, ever-thirsting for funds, with the pitch that they can capture even more federal dollars. "Revenue maximization,"

the contractors call it. Their proposition: They can deploy state-of-the-art technology to squeeze every available dollar out of federal coffers.

But in too many cases, federal auditors are finding, the services are little more than a computer-driven, high-tech flimflam that ends with states being forced to pay back millions and the needy lost in the shuffle.

Meanwhile, the quest for federal cash at the state level has too often turned legitimate help for the needy into fraudulent claims — raising questions about whether there might be a simpler, better way to help those who truly need it and rein in federal spending.



Widespread trouble

Massachusetts was ripped for “Medicaid money laundering” when the state used gimmicks to divert federal funds to the state treasury. In Missouri, a private contractor advised state officials to shift welfare recipients to federal disability rolls to save state tax dollars. In Maryland, foster care agencies, using recommendations from a private contractor on how to rake in more dollars, are stripping foster kids of Social Security survivor and disability benefits and using the funds to balance agency budgets. That contractor,



Maximus Inc., also operates in Wisconsin.

Daniel Hatcher, a University of Baltimore law professor, encountered this chilling revenue-maximization method firsthand when he represented two foster children in cases heard in the Baltimore courts in 2011.

One was a boy, Alex, placed in foster care when he was 12. The Baltimore County Department of Social Services applied for Alex’s Social Security survivor benefits after his father died, Hatcher says. But the agency did not tell Alex it was applying for the benefits, ostensibly

on his behalf. And when the payments came in, the agency kept all of the money, much of it for their own uses that had nothing to do with Alex.

Seeing dollar signs, the agency then hired Maximus to develop recommendations on how to do more of the same — maximize claims of Social Security survivor and disability benefits from other foster children, Hatcher says.

That's because a child pulled out of a welfare home and put into foster care comes "with money attached," Hatcher says in an interview. He ticks off the multiple federal funding available to a foster child: Social Security survivor benefits if a parent has died, Supplemental Security Income (SSI) if a disability can be found, veterans assistance if a parent died in the military and even child support payments.

In *The Poverty Industry*, Hatcher's 2016 book on how social service agencies are shortchanging the needy just to bring in more revenue, he cited an assessment that Maximus provided to the Maryland Department of Human Resources in 2013: "We will be looking for children with identifiable physical or mental disabilities," making foster children a "revenue-generating mechanism."

Maximus in Wisconsin

Maximus specializes in helping manage government health and social service programs and is the largest provider of Medicaid and children's health insurance services to states. The company, based in Reston, Va., has more than 18,000 employees worldwide and sells its services in all 50 states and five foreign countries. In 2014, Maximus had revenues of \$1.7 billion and profits of \$145 million, according to reports.

In Wisconsin, the company has provided administrative services for foster care since 1996 and currently has two contracts with the Department of Children and Families (DCF) — a two-year \$7.8 million contract for the welfare-to-work W-2 program and a \$2.8 million contract for calendar year 2017 that covers child welfare services. There have been no reported problems with how Maximus provides administrative foster care services in the Badger State. But there were huge problems in a contract between Maximus and the Wisconsin Department of Health Services (DHS) to help the state with reimbursements from Medicaid, the health care program for the poor in which states and the federal government each pay half the cost.

Four years ago, federal auditors slapped DHS for filing

unallowable Medicaid reimbursement claims. The auditors' report noted that Wisconsin used a "reimbursement methodology developed by the consultant (Maximus) it hired to target new revenue that might be available to the state."

That methodology increased the state's Medicaid reimbursement by more than \$18 million in the first year alone, the report noted. One problem, though — the methodology "used estimates that it could not adequately support," the report concluded.

Out of \$41 million the state claimed for mental health services, federal auditors disallowed \$39 million. In one two-

year period, federal auditors found that the state had improperly claimed \$19 out of every \$20 in bills submitted. Under Maximus' contract with Wisconsin, the firm was paid 9 percent of any increased federal payments to the state for those mental health services. Not surprisingly, the state's recovery of

federal Medicaid dollars shot up dramatically — \$67 million over a nine-year period. Maximus itself raked in \$3.4 million in fees. But now the feds want Wisconsin to pay back \$22.8 million — more than half the \$39 million in claims federal auditors disallowed.

Maximus declined to comment for this story.

Maximus elsewhere in America

The company has a checkered history.

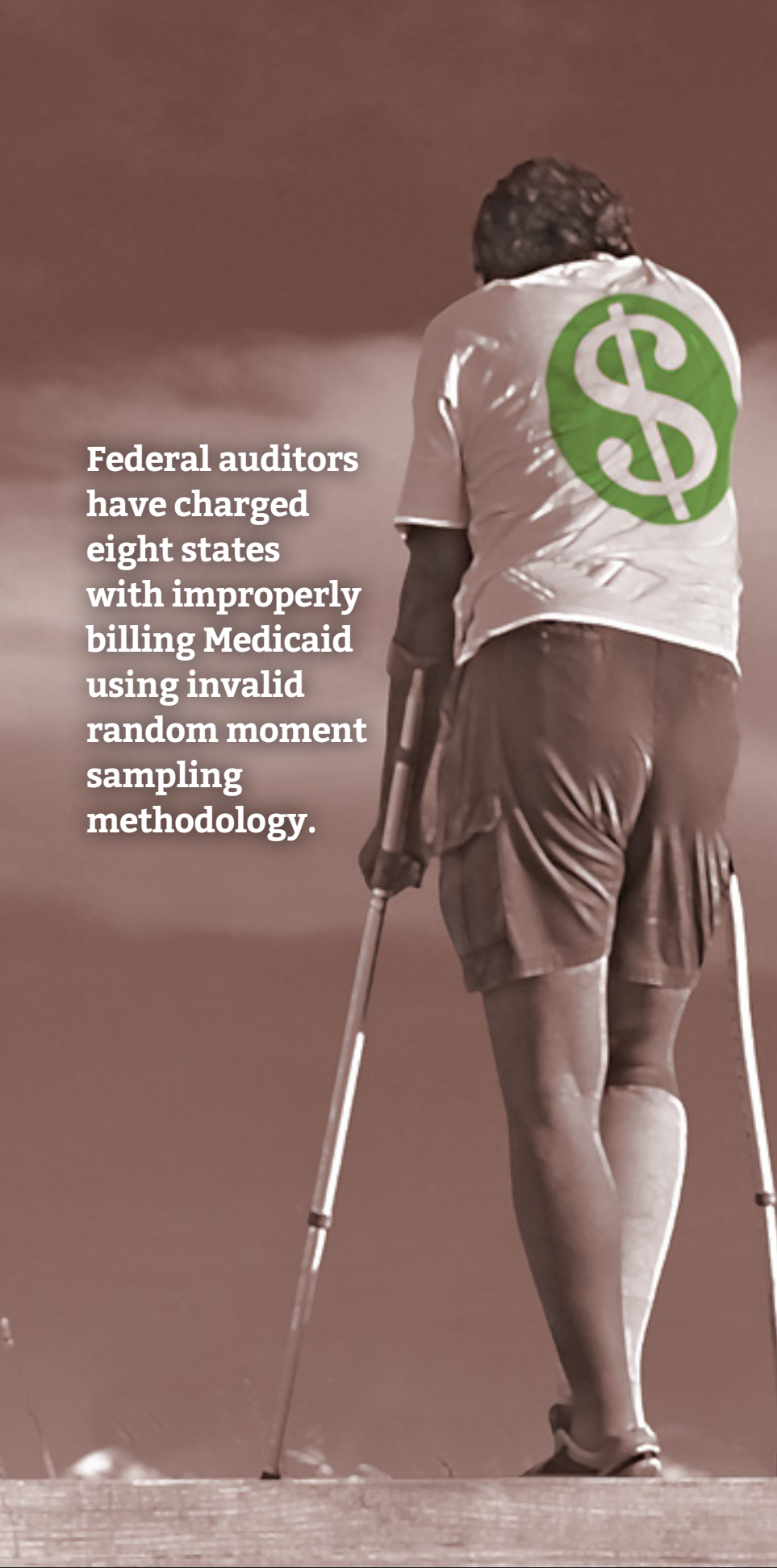
In 2007, Maximus paid \$42.65 million in a settlement to end a criminal investigation that alleged it, under contract to the District of Columbia, bilked the federal government by helping the district file phony Medicaid claims for foster care. The investigation was sparked by a former Maximus executive who alleged that as much as 78 percent of the Medicaid claims made by the company over a six-year period were fraudulent. Federal prosecutors charged that Maximus employees, including a vice president, helped D.C. submit claims for all children in the district's foster care program whether the children received services or not.

Maximus' business model — its very existence — relies on the fact that state governments operate massive programs funded by the federal government. Under that operational model, instead of states using the best and most efficient ways to spend a predetermined amount of federal grant dollars, as in a block grant award, the states submit reimbursement claims for the work of state employees. That reimbursement system offers the potential for virtually unlimited claims — and abuse.

Foster children are viewed as "revenue sources on a conveyer belt."

— Daniel Hatcher,
University of Baltimore law professor





Federal auditors have charged eight states with improperly billing Medicaid using invalid random moment sampling methodology.

Random moment sampling

The high-tech services Maximus and other private contractors offer can sound like techno-babble, with terms such as predictive analytics, data mining and the innovative but sometimes questionable random moment sampling — a cost-effective way to measure the amount of time employees say they are working on a given program.

Maximus introduced random moment sampling (RMS) to Wisconsin in 2002 to monitor how much time Milwaukee County employees work on various programs largely funded by the federal government. Instead of filling out time sheets, a sample of workers receives a random email asking what they are working on at that moment. Each worker responds by using a drop-down box to check off a program.

The contractor relies on the state employee to truthfully answer the query. The state then tabulates the data from the sample pool and determines what percentage of workers are working on what specific federal program during a three-month period. It then factors in the wages of workers in the pool and makes a reimbursement claim to the federal government for that work.

RMS advocates say that if implemented correctly, the methodology is 95 percent accurate, plus or minus 2 percent, and is quicker and less burdensome than 100 percent time reporting.

The Wisconsin Department of Children and Families has used the methodology since 2008 and has never been asked to return any of the grant funds it received due to RMS sampling, according to DCF spokesman Joe Scialfa.

While Wisconsin has not reported any issues with RMS, which is chiefly used to track the work of county employees in Medicaid programs, several other states have run into problems. Federal auditors have charged eight states with improperly billing Medicaid using invalid RMS sampling.

In March, U.S. Health and Human Ser-

vices Department inspectors charged that the State of Mississippi submitted \$42 million in improper Medicaid claims using invalid RMS models. Inspectors reported finding in the samples duplicate employee names, improperly documented employee schedules and sampling that included holidays, when employees were not working.

The other states claiming millions of dollars in improper Medicaid reimbursements because of statistically invalid RMS are Alabama, over \$100 million; Arizona, \$11.7 million unallowable and another \$18.8 million in questioned costs; Kansas, \$11 million; Massachusetts, \$47 million in questioned costs; Missouri, \$36.6 million; North Carolina, \$53.8 million; and Ohio, \$9.3 million in questioned costs.

Meanwhile, Texas is on the hook for \$58 million following a federal audit. The case involved another private contractor offering revenue-maximization services and RMS expertise, Public Consulting Group (PCG) of Boston. Auditors

found that a PCG-trained state employee miscalculated Medicaid Supplemental Physician payments and determined that the state must repay \$58 million to the federal government.

In Missouri, PCG aggressively moved recipients from state welfare rolls to SSI, which serves the poor and disabled. That saved the state as much as \$80 million but boosted federal costs. PCG earned \$2,300 for every family it shifted from state to federal assistance.

Children as 'revenue sources'

Like Maximus, PCG apparently sees dollar signs on foster children. In his research, Hatcher uncovered a chilling pitch that PCG made to Kentucky officials.

PCG wrote in its 2010 proposal: "All likely foster care candidates are scored and triaged for SSI application. We then track the results of those applications ... and incorporate this information back into our system to modify our analyses and better target potentially eligible children."

PCG simply viewed children in foster care as "revenue sources on a conveyor belt," Hatcher says. "The language is striking — and not in a good way." And too often, the federal funds wrung out of a foster child case do not go to help the child but are diverted to state coffers or the profits of private contractors, Hatcher says.

"PCG is proud of our success in ensuring that our several state clients throughout the country, and the many constituents they serve, secure full access to the federal program benefits to and for which they are entitled and eligible, as

prescribed by regulation and law. These federal programs are complex and challenging for states to navigate, and services such as those provided by PCG help states to be reimbursed for critical services delivered to their most fragile populations," a company representative says.

What about actual outcomes?

Some states are seeing the downside of the emphasis on federal dollars over the quality of their social programs. The Texas Department of Family and Protective Services noted in a 2014 report that the agency needed "to ensure that the focus is on outcomes, not revenue maximization."

Without a clear focus on whether the federal money is actually improving the lives of Americans in need, rather than simply funding state governments, the chase for money is paramount. Accountability, when it exists, is rarely timely. It often takes federal investigators years to find reimbursement errors and then even

more time to get states to return the money.

DHS, for example, stopped using in 2015 the new Medicaid claiming method — the one devised by Maximus to bring more federal dollars to the state — that federal auditors questioned in 2013. But the state is still trying to resolve with the Centers for Medicare & Medicaid Services (CMS), the Medicaid administration office, the 2013 federal audit that disallowed \$39 million out of \$41 million Wisconsin claimed for mental health services.

"A final resolution has not been achieved," Elizabeth Goodstitt, a spokeswoman for DHS, said in September. "CMS has not required DHS to make repayments."

In one state at least, there is an effort underway to halt the odious trend of monetizing children in need: Legislators in Maryland are sponsoring bills that require disability and survivor benefits actually be used to help the foster child.

But the larger systemic issues remain.

In D.C., budget hawks and state policy-makers can only hope for a bigger-picture debate that clearly links federal and state taxpayer dollars to better outcomes for the poor, the elderly and the disabled.

Under the current system of states scrambling for federal bucks based on claims using random moment sampling or data mining of potential grant recipients, those closest to the people have to wonder if America can ever both rein in the ever-growing federal deficit and responsibly alleviate true need.

Dave Daley is a reporter for the Badger Institute's Project for 21st Century Federalism.

In one two-year period, federal auditors found that Wisconsin had improperly claimed \$19 out of every \$20 in bills submitted.

The festering mess that is ILLINOIS

And how tax reform and transportation upgrades can help Wisconsin take full advantage

By Jay Miller

Don't kick 'em when they're down, the adage goes. But when it comes to Illinois — Wisconsin's dysfunctional neighbor to the south, grappling with a \$5 billion tax increase, an unfunded pension crisis and an exodus by businesses and residents alike — it's too tempting to resist.





Kevin Green flips a large display at Pleasant Prairie's Catalyst Exhibits, which makes trade show exhibits.

Photos by Jeffrey Phelps

So, go ahead, gloat for a moment. Then, let's examine more closely what's behind the migration and how the Badger State can more fully take advantage of Illinois' ongoing missteps.

Since 2011 alone, a slew of businesses have moved their corporate offices or their entire operations from Illinois to Wisconsin. Prestige Metals will soon join the list, announcing in March a move from Antioch, Ill., to Bristol.

Uline, distributor of packaging and shipping supplies that continues to rapidly expand and hire, may have sparked the trend in 2010, when it relocated its headquarters from Waukegan, Ill., to Pleasant Prairie.

In addition to the across-the-border moves, large corporations that might once have opted for Illinois instead have chosen southeastern Wisconsin for major facilities. For example, Amazon has opened two sprawling fulfillment centers in Kenosha; German candy-maker Haribo, which originated the gummy bear and whose U.S. headquarters is in Rosemont, Ill., is scheduled to open its first U.S. plant in Pleasant Prairie in 2020; and, of course, Foxconn Technology Group, the Taiwanese electronics giant, is planning to build and operate an LCD factory in Wisconsin by 2020.

Even absent Foxconn, manufactur-

ing jobs in Wisconsin have increased in the past year or so — by approximately 3,000 — according to the federal Bureau of Labor Statistics (BLS). During the same period, Illinois lost 6,500 manufacturing jobs.

When a state loses jobs and businesses, it eventually loses people as well.

Beset by horrific crime, Chicago looks particularly abysmal. The Windy City had the greatest population loss of any major metro area in the nation in 2016 for the second year in a row, losing nearly 20,000 residents. And for the third year in a row, Illinois lost more residents than any other state, over 37,000, according to the U.S. census.

Migration north

Many of those Illinoisans are heading our way. The Land of Lincoln has lost 86,000 people on a net basis to the Badger State over the last decade, according to the Illinois Policy Institute. A study by University of Wisconsin-Madison economist Morris Davis shows a net migration to Wisconsin from Illinois of 7,657 between 2008 and 2012.

Comparing border counties is particularly illuminating.

Between 2014 and 2016, the BLS documented, Illinois counties border-

Moving forward

Companies that relocated headquarters or operations from Illinois to Wisconsin since 2011:

- AccuLynx
- Apak
- Catalyst Exhibits
- Chicago Fittings Corp.
- Colbert Packaging
- Comply365
- EMCO Chemical Distributors Inc.
- FatWallet
- Fire Safety Sales Inc.
- FNA Group
- Grand Appliance and TV
- Quest Products Inc.
- Hanna Cylinders
- Kenall Manufacturing
- L&M Corrugated Container Corp.
- NOARK Electric
- Ta Chen International Inc.
- Toolamation Services Inc.
- Vonco Products

Chief Executive magazine named Wisconsin to its top 10 “2017 Best States for Business,” up from No. 40 in 2010. Illinois’ ranking? Close to last at No. 48.

ing Wisconsin lost businesses, while nearby Wisconsin counties registered a gain. For instance, Lake County Illinois lost 1,043 private establishments on a net basis during that period, while just-across-the-border Kenosha County gained 202 establishments.

James Otterstein, economic development manager for Rock County in southern Wisconsin, says that in “any given calendar year, approximately 25 percent of the ... activity that flows through my office represents (Illinois) businesses that are evaluating their stay-and-grow vs. grow-and-relocate options.”

He points to the many advantages of locating in Wisconsin, including lower worker compensation rates, lower unemployment insurance rates, lower utility rates, cheaper land and robust business development assistance.

Additionally, Wisconsin’s hourly minimum wage is \$7.25, while Chicago’s is \$11, with the rate set to increase to \$13 — almost double Wisconsin’s rate — by 2019 (likewise for Cook County by 2020).

Last, but not least, Wisconsin is now a right-to-work state and bars unions in collective bargaining agreements from requiring workers to pay union fees. Illinois, whose legislature is in the thrall of labor unions, has no such law. It is no secret that businesses tend to favor locating where right-to-work rules apply.

Illinois pension disaster

One of the companies that moved across the border is Catalyst Exhibits, a leading maker of trade show exhibits. The company, which relocated from Crystal Lake, Ill., to Pleasant Prairie in 2011, recovered the expense of moving in just two years and has been booming since, with a workforce that has almost doubled in size, says CEO Tim Roberts.

Wisconsin is on a “different path” than Illinois, he says.



Uline moved from Waukegan, Ill., to Pleasant Prairie in 2010.



Kenall Manufacturing President and COO Patrick Marry cites worker training as one of the factors in the company’s move from Gurnee, Ill., to Kenosha. “All the incentives that we got from the State of Wisconsin were very much tied to training opportunities.” He calls Gateway Technical College “a huge partner for us.”

The move was prompted by Illinois’ chronic inability to solve its pension crisis and the steep costs of doing business there compared to Wisconsin, he adds.

Kenall Manufacturing CEO Jim Hawkins concurs. His company, a leading manufacturer of advanced lighting systems, moved from Gurnee, Ill., to Kenosha in 2014 for a variety of reasons, including lower costs and concerns about Illinois’ pension problems.

Unfunded pensions may seem like an arcane issue, but consider that, despite having recently passed its first budget in two years — with a \$5 billion tax hike — Illinois still has pension plans that are underfunded by \$130 billion, according to that state’s Commission on Government Forecasting and Accountability. That reportedly equates to more than \$10,000 for every Illinois resident.

To compound matters, Illinois has the worst credit rat-



Hawkins

Wisconsin vs. Illinois

Michael Romano works at Kenosha's Kenall Manufacturing, which makes advanced lighting systems.

ing of any state in the nation — one level above junk. And Moody's has warned that a newly in-place budget still might not spare Illinois from junk status, with no game plan to reform its pension system. Chicago faces similar credit-rating challenges.

Since states cannot declare bankruptcy, Illinois' choices are limited. James Paetsch, vice president and head of corporate relocation, expansion and attraction at the Milwaukee 7 economic development group (M-7), says Illinois will reach a day of reckoning, requiring punitive measures to rectify its yawning deficits. Businesses know that.

In contrast, Wisconsin has a fully funded pension fund, one of only two states that can make that claim, and a stellar credit rating.

Paetsch emphasizes that companies looking to set up in, or relocate to, a particular state want fiscal stability. Investing in a new plant or headquarters requires a long-term commitment, and executives making those decisions don't want to worry about a state's long-term fiscal condition. On that score, Wisconsin stomps Illinois.

How Wisconsin can kick a little harder

Illinois' one big historical advantage — lower taxes — is starting to evaporate. Legislators there this summer



increased the personal income tax rate from 3.75 percent to 4.95 percent and the business tax rate from 5.25 percent to 7 percent — spikes of over 30 percent that may be only the first of many. In addition, Illinois enacted an aggressive law in 2015 to collect sales tax from online retailers.

Although taxes in Wisconsin remain comparatively high, with a top personal income tax rate of 7.65 percent and a flat corporate income tax rate of 7.9 percent, there have been encouraging developments on that front. A new batch of tax credits in Wisconsin took effect in 2013 that virtually eliminates the tax burden on manufacturers and agricultural operations. Those credits are responsible for a gain of over 42,000 total jobs here, according to University of Wisconsin-Madison economist Noah Williams.

That said, Wisconsin still faces challenges. For instance, more needs to be done to bring down state income and real property taxes. Even with tax credits and other incentives offered for certain prospective businesses, owners and executives might blanch upon seeing how their personal income would be eaten up by income and property taxes.

Moreover, as Tom Hefty, retired head of Blue Cross-Blue Shield of Wisconsin, points out, a recent survey of corporate executives shows that "highway accessibility" tops the list of corporate site-selection factors.

Wisconsin's transportation fund faces a \$1 billion shortfall, and the Legislature continues to kick the can down the road. The lack of a long-term funding solution threatens much-needed repairs to our highway system.

Finally, according to Kenall's Hawkins, Wisconsin needs



Catalyst Exhibits President and CEO Tim Roberts says Wisconsin is on a "different path" than Illinois.



A Kenall Manufacturing employee works in the facility's painting area.

The Land of Lincoln has lost 86,000 people on a net basis to the Badger State over the last decade, according to the Illinois Policy Institute.

to plan for a possible shortage of skilled laborers, especially in light of Foxconn's expected arrival.

The big picture

Nonetheless, Wisconsin Gov. Scott Walker and others have actively promoted the idea that the state is open for business — and many business leaders agree.

Catalyst's Roberts notes that Walker and Lieutenant Gov. Rebecca Kleefisch personally reached out to him when he was weighing the move to Wisconsin. Walker also contacted Kerry Frank, CEO of Comply365, to pitch Wisconsin when she had to make a quick decision about moving her business, which makes software for mobile aviation devices. The presentation that local and state development leaders gave Frank left her "blown away" and led to her decision



Frank

to relocate Comply365 from Roscoe, Ill., to Beloit in 2012.

As Kenall's Hawkins puts it, Wisconsin has a "can do" attitude, while Illinois' is more in the "can't do" category.

These are not just incidental anecdotes. *Chief Executive* magazine named Wisconsin to its top 10 "2017 Best States for Business," up from No. 40 in 2010. Illinois' ranking? Close to last at No. 48.

While many Illinois businesses and residents already have moved to Wisconsin, we may be only at the beginning of that trend — as many Illinois businesses likely don't want to be around when the bill comes due for fixing that state's pension mess and other fiscal problems.

Wisconsin is well-positioned to receive its fair share of those businesses — and to kick Illinois' posterior for many years to come.

Jay Miller of Whitefish Bay is a tax attorney and an adjunct professor at the University of Wisconsin-Milwaukee's Lubar School of Business.



Wisconsin's huge investment
hinges on the ever-evolving world
of display technology

By Robert S. Anthony

The massive investment to bring Foxconn's LCD panel plant to Wisconsin has a lot of analysts gazing into a crystal ball. But the real question in determining whether state taxpayers will recoup their billions 25 years down the road is whether consumers will still be gazing into anything resembling a liquid-crystal display.

"Certainly Foxconn is going to have its work cut out for it," says Rosemary Abowd, a senior analyst and LCD panel expert at PMA Research, a United Kingdom-based firm specializing in display-industry market data.

Abowd says Foxconn Technology Group of Taiwan, the world's largest contract electronics manufacturer that makes iPhones and iPads for Apple, has shown itself to be a smart and agile company when it comes to evolving technologies like LCDs. Those panels are used in everything from TVs to computers to smartphones to auto dashboards.

She notes that the Wisconsin plant — to be built in Racine County and expected to open in 2020 — would face considerable competition from existing LCD panel plants in Mexico, China and elsewhere. She adds, however, that Foxconn knows this and is probably working on technology and efficiency innovations that could give the Wisconsin plant an advantage.

"They're not going to build a plant that works like what we already have," Abowd says.

Alfred Poor, a technology expert who has covered the TV and monitor markets for decades, sees both upsides and downsides in the Wisconsin factory.

"To have a (LCD panel) plant in the U.S. makes sense," he says. "Your supply chain is much shorter."

The Wisconsin plant would allow the latest LCD technologies to go from factory to U.S. consumer products much faster — without the current delay for overseas shipping. This would create a clear marketing advantage for U.S. brands, he says.

However, with two to four new LCD plants in the works in Asia, LCD profit margins in the "single digits" and the fact that LCD-manufacturing efficiency has already maxed out, the Wisconsin plant will have to depend on volume to stay viable, Poor says.

"They've almost wrung out efficiency as far as that goes," he says, adding, "They're building into a flat market."

LCD vs. OLED

Ever since plasma TVs left store shelves in 2014, LCD panels have become extremely popular since they have a clear cost advantage over OLED, a display technology that promises deeper blacks and better contrast, but at a cost.

Unlike LCD televisions (LCD panels backlit with fluorescent lamps) or LED TVs (LCD panels backlit with light-emitting diodes), each pixel in an OLED (organic LED) panel generates its own light and can be controlled individually.

The price differential between OLED and LCD panels is stark, however. The least expensive OLED TV at BestBuy.com in mid-September was a 55-inch LG 4K Ultra HD unit for \$2,000. LED TVs with the same size and resolution — but not totally comparable specs — could be had for less than \$400. Will that wide price delta still exist in 2020? It probably will, says Abowd.

She explains that the OLED panel manufacturing process has hard technological limits, which probably will keep OLED TVs at least twice as expensive as their LCD-paneled cousins for the near

future. That would be good news for the Wisconsin plant since it would keep LCD technology competitive for years. It also would render moot any thought of retrofitting the plant for OLED panels, which would require a major, very costly rebuild.

However, Poor cautions, if manufacturing flexible OLED panels ever gets to the point where the panels can be efficiently produced from large rolls of material — sort of like the process of printing individual newspaper pages from huge rolls of newsprint — the days of LCD panels could be numbered.



"They've almost wrung out efficiency as far as that goes. They're building into a flat market."

— Alfred Poor, technology expert

Other display technology

One new technology that might be timed perfectly for the Wisconsin plant is Samsung's QLED (quantum dot LED), a proprietary LCD panel that promises almost-OLED-quality images with better contrast and wider viewing angles than other LCD types.

QLED TVs could theoretically be built at any current-generation LCD panel plant — including Wisconsin's — with, of course, a licensing agreement with Samsung and relatively minor retrofitting, notes Abowd.

Foxconn's expertise at finding technology partners probably will come into play in Wisconsin, she says. For example, glass — a key component of LCD panels — is brittle, hard to transport and something that Foxconn doesn't make.

If Foxconn has done its homework, it probably already has explored a partnership with a glass-maker such as Corning, for example, to co-locate a plant to supply its LCD panel factory, says Abowd. While no such deals have been announced, news reports say that Corning could set up shop in southeastern Wisconsin, creating another 400 jobs.

Since production in Wisconsin is at least three years away, Foxconn is looking ahead and plans to build 8K-resolution displays that support the faster fifth-generation (5G) high-speed data connections that should be common by 2020.

These 8K displays support a resolution of 7,680 by 4,320 pixels — four times as many pixels as a 4K display and 16 times as many as a “full HD 1080p (FHD)” display. Nestled in the middle, just below the 4K standard, are UHD (ultra-high-definition) screens.

However, 8K display makers may face the same question that has haunted 4K TV manufacturers for years: Where's the high-definition content? Very few content producers are generating 4K movies or TV shows today due to the added cost of production and the amount of bandwidth needed to stream them smoothly.

“Broadcast of 8K images presents a huge data challenge,” Abowd says.

She notes, however, that organizers are planning to broadcast at least part of the 2020 Summer Olympics in Tokyo in 8K and adds that the visual precision of 8K panels will be valuable for medical applications.

“That trend of sports events leading the charge toward better resolution is common. We saw it with 720p, FHD and UHD over the past 10 years,” says Abowd.

The LCD market

Is the market for LCD panels stable? The answer seems to be yes for now as global LCD TV sales, a key indicator, rose 1.6 percent in 2016 to 219.6 million units, according to WitsView, a division of TrendForce, a Taiwan-based market intelligence firm.



Wisconsin's Foxconn LCD plant could create up to 13,000 jobs.

Samsung was the top-selling brand followed by LG, Hisense, TCL and Sony, but even Samsung was affected by shortages in the supply of some LCD panel sizes, the WitsView report says.

But even if the TV market for LCD panels tanks, there are opportunities in growing LCD panel markets such as education, says Abowd, where large, interactive, wireless LCD touch displays

are becoming more popular but are far from common in U.S. classrooms.

On the other hand, the direct-view display market could shrink drastically by 2020, says Abowd, if a new generation of affordable short-throw and ultra-short-throw projectors catch on. These units can cast huge, bright, rich, high-definition TV video on plain walls or screens in small rooms — no display panel needed.

Unlike conventional projectors, which must be placed some distance from screens or walls, an ultra-short-throw projector can cast a distortion-free 60-inch image on a wall from five inches away.

The bottom line, says Abowd, is that when it comes to evolving technologies, Foxconn usually has a plan.

The decision to put an LCD plant in a Rust Belt state like Wisconsin didn't come without concerns but obviously not enough to deter Foxconn, says Abowd, who lives in upstate New York, where nanotechnology has taken a foothold and is attracting new investment.

"These are not dumb people," she says of Foxconn. "They are very smart business minds."

At a minimum, a U.S.-based LCD panel plant solves many of the transportation and distribution issues that Foxconn's many brands and customers suffer from when importing components from overseas.

"I don't think they're going to build a plant right now for a market that's going to be obsolete before it happens," Abowd says.

So, will Foxconn's LCD factory in Wisconsin still be useful 25 years from now? Twenty-five years ago, home TVs had large, low-resolution cathode-ray-tube displays and PC users could still go into electronics stores and walk out with a monochrome-screen laptop. Word to the wise: Stay tuned.

Robert S. Anthony is a New York-based technology journalist.

Details of the Foxconn deal

The \$3 billion incentive package to bring Foxconn's \$10 billion LCD panel factory to Wisconsin and create up to 13,000 jobs includes:

- A payroll tax credit, which can mean cash payments, over 15 years. The maximum payment is \$1.5 billion. Foxconn gets the maximum if it employs 13,000 workers earning at least \$30,000 annually by 2021 and employment remains at that level.
- A capital expenditures credit over seven years. The maximum payment is \$1.35 billion.
- A sales tax exemption of up to \$150 million on construction materials.
- \$10 million in state grants to local governments for development costs related to infrastructure and public safety.
- \$250 million in bonds for the I-94 North-South corridor project.

According to the nonpartisan Legislative Fiscal Bureau, it will take the state up to 25 years to recoup its investment. The bureau relied on jobs and investment projections provided by the state and a Foxconn consultant, and its analysis assumed:

- Average annual employment of about 10,200 construction workers and equipment suppliers earning average total compensation of about \$59,600 (including benefits) annually during the four-year construction.
- Nearly 6,000 indirect and induced jobs created during construction, with an average total compensation of \$48,900 annually.
- Indirect and induced construction-period jobs

generating increased state tax revenues equal to about 6.3 percent of the additional gross wages.

- Indirect and induced jobs totaling 22,000 beginning in 2021. Average annual wages are estimated at \$51,000 annually. Total ongoing wages are estimated at \$1.12 billion annually, and related state taxes are estimated at \$71 million per year. Smaller impacts are estimated through 2020 as the project ramps up. A subsequent report paid for by the Wisconsin Economic Development Corp. adjusted estimates of indirect jobs, with fewer long-term jobs but more short-term jobs during construction.

The Metropolitan Milwaukee Association of Commerce says tax revenue is only one measure — that wages and benefits paid to Wisconsin workers during construction and during operation of the plant should also be considered. The project could have a cumulative impact of \$78 billion to Wisconsin's gross domestic product over 15 years, MMAC says.

- During construction: Based on a \$10 billion capital investment, the project would create over 10,200 jobs for prime and sub-contractors and equipment suppliers; over 1,700 jobs for suppliers and another 4,200 jobs that would result from new household expenditures — a total of over 16,200 jobs with \$3.6 billion in labor income over the four-year construction period, according to an analysis paid for by Foxconn.
- During operation: If Foxconn employment reaches 13,000, the analysis projects over 11,400 jobs among suppliers. The household spending from those direct and indirect jobs would produce another 10,800 jobs. The total ongoing job impact could reach over 35,200 and total annual labor income of \$2 billion.

OUR FROZEN MELTING POT ...AND WHO'S RESPONSIBLE

By Aaron Rodriguez

The left's
complaints
about cultural
appropriation
keep Americans
separated rather
than united

When Michael Sampson organized a taco festival in Milwaukee last year, he had no idea he'd find himself in the middle of a controversy.

He put together the event to promote local businesses, including some of the city's most popular Mexican eateries, but this didn't assuage Mexican chef Gil Amador-Licea.

In an April 2016 blog post titled "Milwaukee Taco Fest, I'm not your sidekick," Amador-Licea accused the organizers of "cultural appropriation" — a term coined by leftist academics to signify when members of a dominant culture borrow traditions from a minority culture. Progressives claim that the borrowing is generally done without consent and without paying credit to the source culture. This was certainly an issue for Amador-Licea.

The chef wrote: "There is nothing more flattering as an immigrant than knowing other people want



ROBERT HELF ILLUSTRATION

MIKE NICHOLS

Madison's goofy, divisive, flag flap

Erecting cultural barriers
ices out the melting pot

Vexillologists say Madison has quite an excellent flag, and — although I had to look up the meaning of vexillologist — I have to agree.

The flag was designed in 1962 by a couple of kids who wanted something to wave during trips with the Madison Scouts Drum and Bugle Corps. It includes a simple, diagonal swath of white representing the isthmus surrounded by two swaths of blue. In the center is a black cross representing the city's four lakes and the Capitol, a symbol of what used to matter most to Madisonians: big government.

Today, there's a new priority on the left: making sure no one in America can claim they have anything meaningful in common with anyone else who doesn't look exactly like them.

This became clear shortly after Alder Arvina Martin was elected in April. In Madison, unlike the rest of the world, an alder is not a tree or a shrub. An alder in Madison is what other communities call an alderman or an alderwoman.

Anyway, not long after being elected, Martin suggested that Madison's 55-year-old flag needs to be redesigned because of concerns over "cultural appropriation" — the inevitable extension of identity politics. The problem with the flag, it seems, is that the kids who designed it included a yellow design on top of the representation of the Capitol that, little did they know, is linked to



**WE ARE THE POT
BY WHICH MANY
NATIONS WERE
MELED, AND WE
THRIVED BECAUSE
WE TOOK THE BEST
OF OUR DISPARATE
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TRANSFORMED THEM
INTO SOMETHING
TRULY GREAT.**

See **NICHOLS** on Page 24

to know about my culture and traditions, trying to learn our language and our recipes, here's when it starts to become ambiguous and disputable, when a person with a default privilege captures whatever it learned from that culture, puts it in a box and without connecting any dots or even

knowing or caring for knowing the significance of those newly possessed items, it modifies them and then shares them as their own."

He continued: "So, when you have one-third of Milwaukee's area full of places selling tacos made by Mexicans, by businesses owned by Mexicans with a very strong inheritance, but a white dude who thinks it's OK to organize a taco fest for other white people in a safe environment because they are scared of entering a 'bad' neighborhood, all I can think of is Christopher Columbus 'discovering' a place with people living there already but taking their knowledge and essence into a protected place."

While it's true that the third annual taco fest was held in the "safe environment" of the Harley-Davidson Museum last June, Sampson disputes the notion that Hispanics were somehow left out of the process.



SWARMM EVENTS PHOTO

The Milwaukee Taco Fest, which began four years ago, features a taco competition. This year's event was held at the Harley-Davidson Museum.

"We have had many Hispanic-owned restaurants involved in our event including La Fuente, Tu Casa, Senor Sol and Guanajuato," Sampson, owner of SWARMM Events, said in an email. Organizers received input from Mexican-Americans and even donated some of the festival's proceeds to the

Hispanic Professionals of Greater Milwaukee, he said.

Sampson said he invited Amador-Licea to participate in the taco competition, but the chef declined. Sampson added, "Gil is entitled to his beliefs. Our event exists in order to find Milwaukee's best tacos regardless of origin." Amador-Licea did not respond to a request for comment.

Cultural sharing done right

The idea that we should be erecting barriers to keep people in their own cultural lanes is entirely alien to the character and history of our nation. We are a nation born of immigrants, drawn to this land by an insatiable appetite for freedom and prosperity.

No country in modern history has a better track record with pluralism than the United States. We are the pot by which many nations were melded, and we thrived because we took the best of our disparate cultures and transformed

NICHOLS from Page 23

the Zia Pueblo people of New Mexico.

The Zia Pueblo are not the only ones who use that sun symbol. It's on New Mexico's state flag. It has been used commercially to sell all kinds of stuff, in some instances with the direct permission of the Zia Pueblo. No one questions that it originated with the Zia — a fact New Mexicans not only readily acknowledge but embrace. In fact, New Mexicans say it is a "symbol of perfect friendship among united cultures."

I don't know why exactly this bothers people in Madison, where one of the newspapers actually held a contest to design a new flag. I didn't get a chance to ask Martin, a member of the Ho-Chunk Nation, because she didn't call me back. But critics seem bothered by the fact that there is something on the flag that might unite people, might make us less divisible.

That's why it was so refreshing to talk to Felicia Parnes, who also goes by the Native American name Flys with Owls, at Milwaukee's Indian Summer Festival the other day. A

Critics seem bothered by the fact that there is something on the flag that might unite people.

Blackfoot and Cree artist from Milton, she sells an array of Native American jewelry and art, among other things.

Turns out that Flys with Owls is a lot like the rest of America, a living conglomeration of ancestors from a variety of cultures but who identifies most clearly with one — for her, Native American. Part Irish and raised in a Jewish household, she says she

didn't realize she was Native American until she was well into her 30s and met her birth mother.

The day I met Flys with Owl, she was sitting next to a booth

“I wish our community had come up with taco fest first, but (Michael Sampson) has a right to compete in the marketplace like anyone else.”

– Victor Huyke,
publisher of Milwaukee’s
El Conquistador Latino Newspaper

them into something truly great.

Nate Holton, an African-American attorney in the Milwaukee area, believes cultural sharing can be done the right way by “paying homage to a culture, and creatively working with it, out of respect, when creating or impacting another culture,” and that at its best, “the sharing of cultures can bring people together.”

Victor Huyke, publisher of *El Conquistador Latino Newspaper* in Milwaukee, says, “I wish our community had come up with taco fest first, but (Sampson) has a right to compete in the marketplace like anyone else.”

Asked whether he has a problem with white people profiting from Hispanic food traditions, Huyke says, “This is nothing new. It has been going on for years. Taco Bell is not Mexican-owned; neither is Chipotle.”

Appropriation complaints spread

The taco fest dustup is just one of an increasing number of cultural appropriation disputes arising recently in Wisconsin and across the nation. They include:

- *Madison is considering redesigning its decades-old flag*

of beautiful Native American jewelry, keychains and other trinkets that she sells through her business, A Wing & A Prayer. She also sells shamrock earrings, although you’d have to look hard to find them.

She’s not a person forever seeking out ways to divide us — quite the opposite. I know because I’m a white guy, but she let me buy some really cool earrings with Native American symbols on them anyway.

So, I asked, when is it OK to borrow part of another culture?

If a part of another culture is borrowed or copied in a disrespectful manner, or in a deceitful way, if it is used to cause harm, then that’s clearly wrong and unacceptable. Native Americans, for instance, rightly take offense at other people parading around in headdresses that carry meanings and histories they don’t understand, she says.

But, she also says, it’s OK to go to an authentic Mexican restaurant. It’s OK, I found, to buy and wear Native American

because it includes an ancient sun symbol of the Zia Pueblo people of New Mexico.

- *The University of Wisconsin-Madison held a “Hijabi for a Day” event in December, meant to show solidarity with Muslim women. Some students, however, felt that non-Muslims wearing hijabis was cultural appropriation.*

- *In Portland, Ore., a burrito cart run by two white women closed in May amid accusations of cultural appropriation because they gleaned recipes from tortilla-makers in Mexico.*

- *At Pitzer College in California in March, “White girl, take off your hoops” was scrawled on a free-speech wall. Latina students explained that white women wearing hoop earrings is cultural appropriation.*

- *At the Whitney Museum in New York, protests erupted this spring over a painting by a white artist that depicted the body of Emmett Till, the black teenager lynched in 1955. A petition called for the artwork to be destroyed.*

Culture as private property

All cultural appropriation arguments share a common thread: They presuppose ownership. Progressives claim



jewelry even if you’re white.

Borrowing from another culture is fine if “it’s in your heart and done in a good way,” she says. Sharing one’s culture, she emphasizes, is a way of breaking down barriers — a way of uniting people.

“It’s an important part of our culture,” she says of Native Americans. “We share.”

We have enough stuff in America that divides us, enough real racism and offensive behavior, enough mockery.

Some folks, while clearly acknowledging that and working to preserve essential parts of individual cultures, find ways to unite an indivisible country, to melt us together into the proverbial pot. Others search assiduously for ways to be offended by somebody selling tacos or wearing hoop earrings, or even by an old flag.

Mike Nichols is president of the Badger Institute and editor of Diggings.



SWARMM EVENTS PHOTO

Some of Milwaukee's most popular Mexican restaurants are represented at the taco fest.

culture isn't just something you practice; it's something you own — a private property.

But treating culture as private property is problematic and raises many difficult questions. If culture is property, do we need consent to borrow it? Who has the authority to give this consent? What are the consequences of borrowing culture without consent? Should the culture in question receive compensation? Who adjudicates that? Are cultural ownership claims based on a people's bloodline or their homeland? If it's ethnicity, what happens when children are born to couples of different ethnicities? Can the children practice their parents' traditions without being accused of cultural appropriation?

Another problem lies in the very nature of what culture is and its incredible fluidity. In sociology, culture is the totality of a group's beliefs, practices and artifacts. It's literally everything we produce — our ideas, languages, customs, arts, sciences, technologies, institutions, laws, education, religious beliefs and rituals, trade, fashion, political systems and so on. Setting up rules to protect something so vast and fluid and to restrict the flow of trans-cultural borrowing is like trying to run through a rainstorm without getting hit by a raindrop. There's just too much happening at once, and it's not a realistic goal.

In fact, the taco fest controversy in Milwaukee underscores the problem of trying to control something so expansive and fluid. In his blog post, Amador-Licea wrote, "Food is a tricky field when it comes to cultural appropriation and culture purity." He also conceded that Mexican cuisine is the conglomeration of Jewish, Arabic and Spanish food traditions, but he

omitted an important detail of its history.

The Spanish conquistadors conquered and colonized the native Aztec population in Mesoamerica. In progressive speak, the conquistadors were the dominant culture, borrowing food staples such as corn tortillas, tamales, guacamole and tacos from the Aztecs, the minority culture.

This exchange of traditions is what eventually gave rise to modern Mexican cuisine. In other words, Amador-Licea is fighting to preserve and protect a cuisine that itself was the result of cultural appropriation.

But to the broader point, progressives who argue that cultural appropriation occurs when a dominant culture borrows from a minority culture also argue that it's not really appropriation when it's done in reverse — that is, when a minority culture does the borrowing. Why the double standard?

Progressives say it's because of "unequal power dynamics." When the Aztecs borrowed culture from the conquistadors, it wasn't stealing because the Aztecs didn't have a choice — they did it to survive.

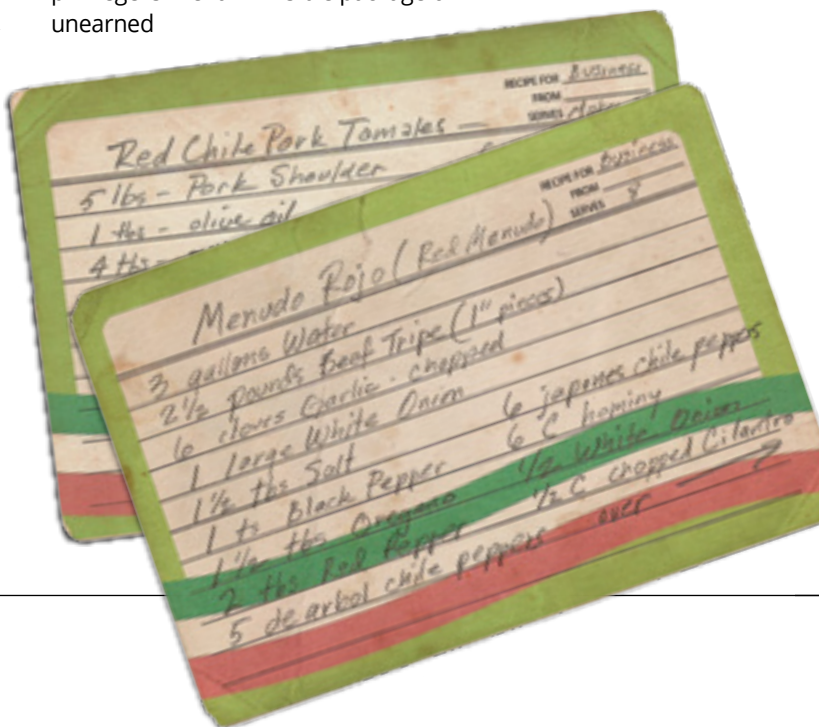
But in modern-day America, thankfully, there are no colonial powers conquering and enslaving populations. Minority cultures don't borrow to survive; they borrow to succeed. The unequal power dynamics that existed between the colonizers and the colonized don't exist in America today. This is where the idea of "white privilege" emerges.

White privilege and unearned assets

According to liberal academic Peggy McIntosh, white privilege is like "an invisible package of unearned

"The sharing of cultures can bring people together."

— Nate Holton,
Milwaukee-area
African-American attorney



THERE'S A DIFFERENCE BETWEEN CULTURAL MOCKERY AND BORROWING TRADITIONS OUT OF APPRECIATION.

assets" that white people can "cash in" to gain an advantage in society. It's an invisible inequality that's baked into the cake of Western society and reinforces the power imbalance between whites and non-whites. To overcome these systemic disadvantages, progressives argue, minorities have no choice but to borrow from white culture.

Setting aside the obvious difficulties of defining whiteness or non-whiteness, the white privilege argument ignores how property claims generally work. Property doesn't become any less a property because the owner is white or because she has "unearned assets." And it certainly doesn't become any less a property because a minority is borrowing in order to succeed.

It's understandable that people are intimately connected to their cultural heritage. For many immigrants, it's a vital source of strength and refuge while they're trying to navigate a new culture. It's that much more frus-

trating when the majority culture mocks their traditions or caricatures their people. Obviously, that is wrong.

Part of why cultural appropriation is a difficult issue is that for many, it boils down to a person's intent. There's a difference between cultural mockery — such as wearing blackface or mimicking Chinese accents — and borrowing traditions out of appreciation, such as what's seen at every Milwaukee Holiday Folk Fair and at the city's famous ethnic festivals.

A slippery slope

Attorney Holton thinks the argument of culture as property creates a "steep slippery slope." And he splashes cold water on the idea of requiring consent to borrow from a minority culture. "Who would they seek permission from? A random member of the oppressed culture?" he asks.

"I've always taken offense to members of any culture being considered, whether by themselves or by the dominant culture, to be capable of speaking for the entire culture," he adds.

While Holton is careful not to commit to culture being property, there are some influential organizations that don't share that caution.

In 2008, the United Nations issued a declaration that indigenous peoples have "a right to maintain, protect and develop the past, present and future manifestations of their cultures," which may also include restitution when their property is "taken without their free, prior and informed consent."

How restitution would work is unclear. Culture is not a bounded or fixed entity. It's a vast and fluid set of ideas, principles, values, attitudes, behaviors, practices, discoveries and products that are constantly being revised and reshaped as they come into contact with other cultures.

Our copyright laws, for instance, apply only to things that are "fixed in a tangible medium of expression" or "sufficiently permanent or stable." Part of the reason for that is it's impossible

to copyright things that can change wholly into other things. For property rights to mean anything, there needs to be some sense of permanence to the thing being protected. But culture is anything but permanent.

When progressives make a big deal about cultural appropriation, they overplay their hand. Instead of emphasizing that we should give credit to cultures for their traditions and not mock them for their uniqueness, progressives are advocating exclusionary practices, keeping diverse people separated rather than united.

Whether it's a "white dude" organizing a taco fest or a white college student wearing hoop earrings, when we start treating culture as private property, it creates needless divisions.

"Sometimes people go over the top in looking for something to be offended by," Holton says.



SWARM Events PHOTO

The taco fest features a Mariachi band as well as other entertainment.

Aaron Rodriguez of Oak Creek is a freelance writer who blogs at The Hispanic Conservative.

THE AGE OF

TRU

Contrarians must push
back against nativist
authoritarianism and
return to conservative
principles

Excerpts from "How the Right Lost Its Mind"

By Charles J. Sykes

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The day in late March (2016) when Trump called in to my radio show, I had posted an article giving him fair warning: "Donald Trump is about to find out that Wisconsin is different. And one of the reasons is conservative talk radio." Along with five other conservative talk show hosts in the state, I had been critical of Trump for months, and it had taken its toll on the front-runner's popularity. Polls showed that in the vote-rich WOW counties around Milwaukee — Waukesha, Ozaukee, Washington — Trump was viewed positively by only 25 percent of GOP voters; 64 percent said they disapproved of the Manhattan billionaire. In other words, when Trump was subjected to a sustained critique, conservative voters responded. But in 2016, Wisconsin's media culture was the exception to the trend in the Right media's ecosystem.

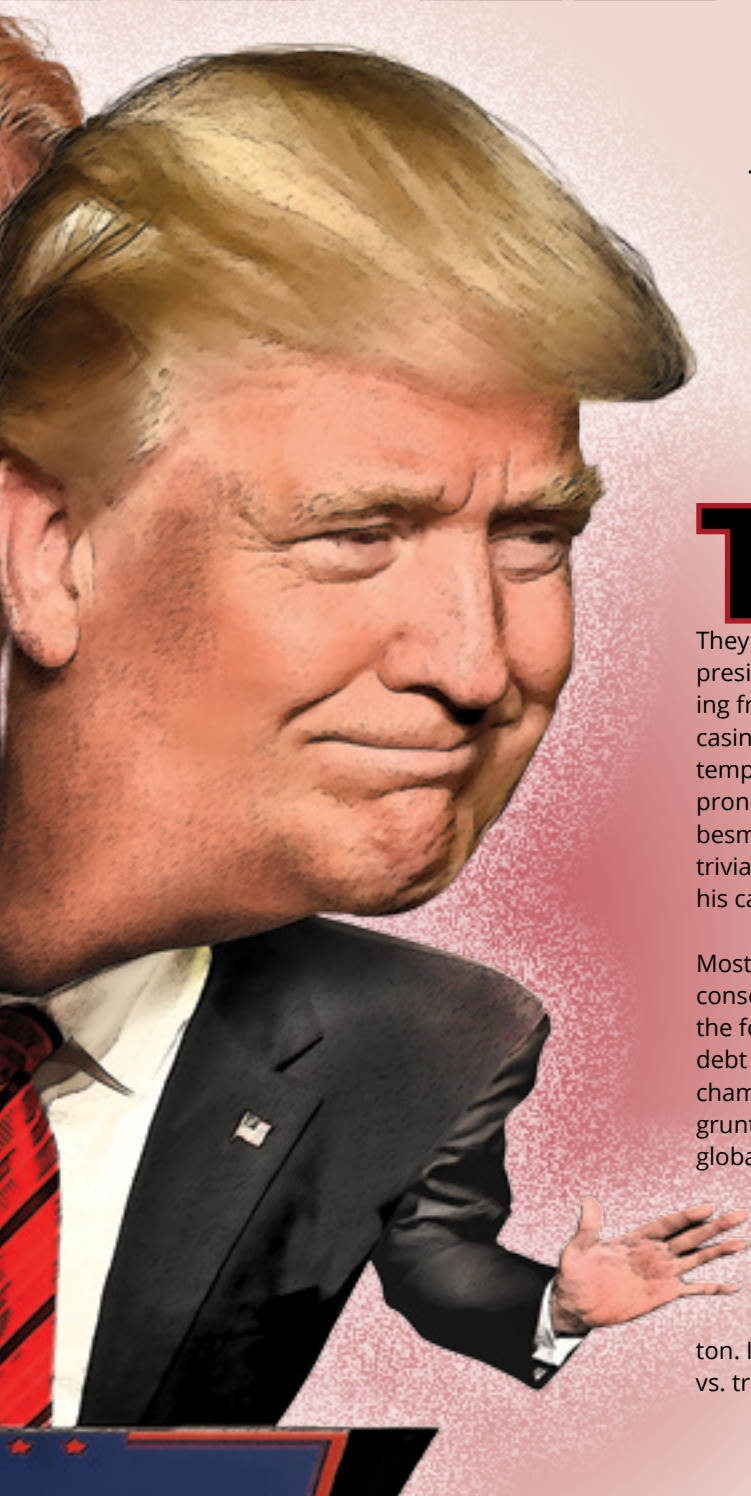
Wisconsin was also an outlier for a number of other reasons, including its Midwestern sensibilities and a culture that valued certain norms of civility (although the concept of "Wisconsin nice" may have been overplayed). Conservative voters there had been exposed to substantive, reform-minded conservatives like Paul Ryan for years, and had been battle-tested by recent political fights, including the high-profile attempt to recall Gov. Scott Walker.

A few weeks before the primary, I tried to explain what made Wisconsin different. "There's kind of a fundamental decency about Wisconsinites

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ROBERT HELF ILLUSTRATION

JUMP



Never Trumpers' myopia keeps them from seeing the greater danger that a Clinton presidency would have created

By Bruce S. Thornton

The Never Trump Republicans have been adamantly opposed to Donald Trump since the day in June 2015 that he announced his candidacy.

They argue that the New York mogul is singularly unfit for the presidency, that he has no experience in government, coming from the somewhat unseemly world of N.Y. construction, casino development and reality TV. They say his character and temperament are decidedly unpresidential -- vulgar, bombastic, prone to outbursts and loose with the truth. And, they argue, he besmirches the dignity of the office, tweeting promiscuously over trivial slights and announcing policy changes not discussed with his cabinet.

Most important, the Never Trumpers claim, he is not a true conservative — seemingly indifferent to the problems caused by the federal leviathan, especially runaway entitlement spending, debt and deficits. Rather, they say, he is a populist chameleon, championing those positions and policies that please his disgruntled base of working- and middle-class whites left behind by globalization and the tech revolution. More darkly, they claim, he shows authoritarian and nativist inclinations that could tar legitimate conservatism with a sinister brush.

To them, last November's election was not a binary choice between a bad Donald Trump and a worse Hillary Clinton. It was opportunistic populism and exclusionary nationalism vs. traditional conservatism and its defining principles of small

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Charles J. Sykes

is an author and political commentator. Sykes, founder of the Right Wisconsin website, hosted a radio talk show on AM 620 TMJ in Milwaukee for over two decades and was the longtime editor of *Wisconsin Interest*.



"How the Right Lost Its Mind" went on sale on Oct. 3.

OPPOSITION IN THE FACE OF POWER IS NOT A SIGN OF WEAKNESS, BUT RATHER AN INDICATION OF THE ONGOING INTELLECTUAL VIGOR OF THE CONSERVATIVE IDEA.

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that you can't downplay," I told *The Washington Post's* Dave Weigel. "We've never had a huge division between the Tea Party and the establishment. We've got think tanks and radio talk shows that have been through the fire and are really intellectually driven. And you don't get that elsewhere. I was driving here listening to Sean Hannity, and after 15 seconds, I could feel myself getting dumber."

In contrast to Trump, Ryan's approach reflected the distinctive sort of conservatism that had flourished in Wisconsin: principled, pragmatic, reformist, but not afraid of taking on tough, controversial issues. While the GOP in Washington, D.C., had been frustrated and blocked, the record in Wisconsin was markedly different. Not only did conservatives dominate all three branches of government in Wisconsin, they used that dominance to enact an impressive array of reforms and initiatives, from Act 10, Right to Work, and prevailing wage reform to tax cuts, tort reform, and the expansion of school choice. (Voters also noticed that Trump had lied about the success of the conservative reforms there.) In other words, conservatives in Wisconsin took ideas seriously, at least during the primary season.

Beyond binary

For many conservatives steeped in the Right's alternative reality media ecosystem, politics had come down to a starkly binary choice. This reflects our new politics: As the essential loyalties shift from ideas to parties to individuals, choices are increasingly framed as us vs. them; red vs. blue; good vs. evil.

In this binary world, where everything is at stake, everything is in play, there is no room for quibbles about character, or truth, or principles. If everything — the Supreme Court, the fate of Western civilization, the Constitution, the survival of the planet — depends on tribal victory, then nothing

else really matters. In a binary political world, voters are told they must not merely surrender their principles, but must also accept bizarre behavior, dishonesty, crudity, and cruelty. The other side is always worse; the stakes require everything to

be sacrificed or subsumed in the service of the greater cause. ...

This argument that the choice was strictly binary had powerful appeal among conservatives, including some conservative intellectuals who insisted that the danger to the country was too ominous to sweat the details about "principles," or questions of "character." One of the more thoughtful conservative talk show hosts, author and ethicist Dennis Prager, argued that a Democratic victory in 2016 meant the country might not "survive as the country it was founded to be. In that regard we are at the most perilous tipping point of American history." More perilous, apparently, than the Civil War, the Great Depression, or two World Wars. "Leftism is a terminal cancer in the American bloodstream and soul," Prager argued. "So our first and greatest principle is to destroy this cancer before it destroys us. We therefore see voting for Donald Trump as political chemotherapy needed to prevent our demise. And at this time, that is, by far, the greatest principle."

Perhaps the most startling reversal was former education secretary and drug czar Bill Bennett, who had once written that it is "our character that supports the promise of our future — far more than particular government programs or policies," but now derided concerns about Trump's character as a sign of "vanity."

Historian Victor Davis Hanson similarly acknowledged that Trump was crude and "mercurial," but argued that his defeat would lead to left-wing control of the Supreme Court and a \$40 trillion national debt. Like other West Coast thinkers, he

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Bruce S. Thornton

is a research fellow at Stanford University's Hoover Institution. His latest book is "Democracy's Dangers and Discontents: The Tyranny of the Majority from the Greeks to Obama."

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government and free markets; personal responsibility, character and virtue; and public dignity, decorum and decency. If true conservatism is to survive, they believe, conservatives must resist Trumpism and all its works.

These arguments, however, rest on questionable assumptions: that Trump is a politician unprecedented in his lack of experience, ignorance of policy and bad character and that, for all her flaws, Clinton would not have done as much damage to the conservative cause as Trump is likely to do as president.

This contrast is tendentious and blind both to the historical reality of a democratic polity that empowers the masses and to the greater dangers that eight more years of progressive policies a Clinton presidency would have created.

Presidential dignity

The complaints about Trump's vulgarity and character flaws raise the question: compared to whom?

Presidential dignity left the White House during the presidency of Bill Clinton. His sordid affair with intern Monica Lewinsky, with its stained blue dress and abused cigars, marked a radical decline in what the American people expected of their presidents. Clinton's bold lie under oath that "I did not have sexual relations with that woman" led to articles of impeachment and disbarment. That lie was more consequential for the debasement of presidential dignity than all of Trump's exaggerations and casual relationships with the truth put together.

As for vulgarity, how about when President Barack Obama called tea party activists "tea baggers," a vulgar reference to a sexual act? And how much more undignified can the nation's leader get than hanging out at the White House with rappers whose songs are filled with misogynistic sexual vulgarity and casual violence?

For many Trump supporters, the Never Trumpers' talk of decorum smells of the anti-democratic elitism that politicians of both parties have always

indulged in about the masses. Thus, the Never Trumpers don't realize that their criticisms of Trump are criticisms of his supporters and that they reinforce the perception of a snooty elite looking down their noses at the common man.

Trump's appeal rests in large part on the perception that the Republican establishment has more in common with Democrats than with the people—sharing the same ZIP codes, the same top 20 university educations, the same tastes in consumption and entertainment, the same amenities of celebrity and wealth, the same obeisance to political correctness and, ultimately, the same interests: keeping themselves

in charge of a bloated federal government from which both sides get their power and wealth.

It's no wonder that enough voters picked Trump, a vulgar, plain-talking outsider who gave voice to their discontent with Republicans.

Moreover, Trump supporters see the gross discrepancy between the vehement attacks on



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expressed impatience with traditional conservatives who were reluctant to back the nominee.

The new culture of intimidation

As the Age of Trump dawns, conservatives should realize that politics is no longer a binary choice. To be sure, Democrats and their Hollywood allies will continue to overreach and overreact, making them an easy foil. The boycotts, protests, and assorted hysterical tantrums remind us why voters have turned against the fashionable Left. But on a host of issues, the lines will be blurrier. Ideologically, Trump has made it clear that he intends to break with the long-standing conservative consensus over free trade and limited government. (He mentioned the word “freedom” just a single time in his inaugural speech. Reagan had used the word eight times; George W. Bush twenty-seven times in his second inaugural.) That creates room for contrarian conservatives, who refuse to march in lockstep with the new administration.

The contrarian conservative

As difficult as it may be, conservatives need to stand athwart history once again — this time recognizing that Trumpism poses an existential threat to the conservative vision of ordered liberty.

This will be a complicated undertaking, given the pressures of political tribalism and the reality that conservatives will actually applaud much of the Trump agenda. At times, they will be impelled to mount the barricades against the overreach of the Left and will align themselves with Trump on issues like the judiciary.

But despite the clamorous demands that conservatives now fall into line with the new regime, precisely the opposite is needed. Rather than conformity, conservatism needs dissidents who are willing to push back — in other words, contrarian conservatives, who recognize that conservatism now finds itself reduced to a remnant in the wilderness. But the wilderness is a good place for any movement to rethink its first principles, rediscover its forgotten values, and ask: Who are we, really?

Contrarian conservatives will answer: We’re conservatives who believe in things like liberty, free markets, limited government, personal responsibility, constitutionalism, growth and opportunity, the defense of American ideas and institutions at home and abroad, modesty, prudence, aspiration, and inclusion. We are conservatives in the great

tradition that stretches back to Burke, Tocqueville, Buckley and Reagan. But that means that we are not part of what the conservative movement or the GOP has become.

What does it mean to be a contrarian? It does not mean mindless opposition. When the Trump Administration or congressional Republicans are right, we should support them; when possible, we’ll nudge them to do the right thing. But we will have no problem adopting a spirit of contradiction when they go wrong or lose their way.

Contrarians have no obligation to defend the indefensible or reverse their positions based on The Leader’s whims or tweets. They can step out of the Alternative Reality silos and look at things as they actually are, rather than relying on what Trump aide Kellyanne Conway called “alternative facts.” These independent conservatives can affirm that Trump won the election fairly and freely, but also recognize the gravity and implications of Russia’s interference in the campaign. They can support tougher border controls and still be appalled by the cruelty and incompetence of his immigration bans. Independent conservatives can applaud Trump’s support for Israel and still be thoroughly appalled by his slavish adulation of Vladimir Putin and terrified by his attitude toward our NATO allies. Most important of all, we will take the long view, recognizing that electoral victories do not change eternal verities or the essential correctness of traditionally conservative insights into man and society.



Opposition in the face of power is not a sign of weakness, but rather an indication of the ongoing intellectual vigor of the conservative idea.

Can conservatives save America?

A Venn diagram of conservatism and modern Liberalism would show only a small overlap; but, however limited, a handful of commentators have noticed that common ground does exist and that it is crucial. “Unfortunately, few people properly understand conservatives,” Conor Friedersdorf admitted after the election. “In fact, many errone-

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TRUMP'S SINS ARE MOSTLY THOSE AGAINST DECORUM AND MANNERS, A REJECTION OF THE ESTABLISHMENT'S AGREED UPON PROTOCOLS OF POLITICAL CONDUCT.

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Trump's style and the more restrained criticisms of Hillary Clinton's substantial misdeeds. Trump's sins are mostly those against decorum and manners, a rejection of the establishment's agreed upon protocols of political conduct. Clinton's sins were those against our political order and the responsibilities of a public servant.

Trump's critics seemingly could not distinguish between the flaws and mistakes of a private citizen and the likely crimes and corruption of a public servant sworn to defend the Constitution. The average Republican voter saw this failure of discernment as further evidence of a bipartisan D.C. elite.



Accusations of nativism

Another example of this appearance of collusion is the Never Trumpers' eagerness to smear the president and his supporters as exclusionary nativists, redefining conservatism as authoritarian and even proto-fascist. But this irrational fear of fascism, a staple of the progressive lexicon of smears, is preposterous and depends on a historically shallow understanding of fascism. It also ignores the genius of our divided government and balance of powers.

No matter how expansionary executive power has become over the years, Trump's struggle to get his policy preferences into law so far shows that our constitutional order remains resilient and continues, as James Madison wrote in *Federalist No. 51*, to pit ambition against ambition.

As for nativism, it is stunning to hear so-called conservatives branding the desire to reform our out-of-control immigration policies or calls to put "America first" as nativist. The fiscal and social costs of 11 million illegal aliens and feckless family reunification and visa policies are real, though seldom experienced firsthand by well-heeled champions of amnesty or continued unregulated immigration. Nor is it nativist or exclusionary to express pride in

our country and its goodness or to desire to protect the integrity of its exceptional character.

For Trump supporters, smearing such feelings as "racist" or "xenophobic" is once again evidence that, no matter what it says, the

Republican establishment reinforces the progressives' animus against a unique American identity and way of life superior to others.

A Clinton presidency

Finally, there is no calculus whereby our country would be better off with Hillary Clinton as president.

Her long record of shady, self-serving money-grubbing from Whitewater to the scandal-ridden Clinton Foundation raises questions of ethics and character much more serious than Trump's vulgarity.

Her record in the Senate was inconsequential. Her conduct as secretary of state was a disaster: her despicable lying to the parents of the four Americans killed in the Benghazi attack, something far beyond Trump's petty exaggerations; her private email server that endangered national security; her pay-to-play State Department; the botched Russian "reset"; the dangerous Iran deal; the overthrow of Moammar Gadhafi that turned Libya into a jihadist arms depot; the dithering over Syria; and the general retreat of American power. All of this happened on her watch.

Finally, Clinton's contempt for the ordinary Americans whom she said could be placed in a "basket of deplorables" and whom she labeled as "racist, sexist, homophobic, xenophobic, Islamophobic" bespeaks an elitist disdain for the millions of citizens who have been hurt by her party's policies.

A Clinton presidency would have meant a continuation of the radical progressive policies of Obama's two terms. It is unlikely that the policies that have stymied economic growth — particularly overregulation and punitive taxes — would have been changed. The expansion of entitlement and welfare spending under Obama also would have continued.

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ously conflate them with authoritarians. And that is a very dangerous mistake."

Imagining that all conservatives share a common vision is especially dangerous because it precludes the sort of ad hoc alliance that may be urgently needed in the new political era. As previously noted, political scientist Karen Stenner has noted that "if properly understood and marshaled," conservatives "can be a liberal democracy's strongest bulwark against the dangers posed by intolerant social movements." Stenner urged critics on the Left to get over their belief "that distaste for change implies distaste for other races, or that commitment to economic freedom somehow suggests an interest in moral regulation and political repression."

Clinging to cartoon images of conservatives has "significant implications," she wrote. "It can drive those who are merely averse to change into unnatural and unnecessary political alliances with the hateful and intolerant, when they could be rallied behind tolerance and respect for difference under the right conditions." Those "right conditions," include a respect for the rule of law and a sense of stability and responsibility. ...

Admittedly, it seems naive to suggest that there is any meaningful left-right common ground left, but it is also worth noting that Trumpism will only succeed if both the right and the left fail to understand the tenuous relationship between conservatism and the nativist authoritarianism with which it has become temporarily allied.

What possible common ground could they find? We could start with a renewed appreciation for a reality-based politics, truth, ethics, checks and balances, civil liberties, and the constitutional limits on executive power. However tenuous, there should also be a mutual acknowledgment of the importance of diversity (of ideas as well as identity), tolerance (which needs to go both ways) and a commitment to America as an idea rather than a walled and isolated city.

But this will also require a period of serious introspection for conservatives, especially as they deal with the temptations, compromises, and challenges of the Age of Trump.

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Despite the dreams of some Never Trump conservatives that she would be more hawkish than Obama, a President Clinton would not alienate her hard-core antiwar base, nor stop America's disastrous retreat from global affairs that has emboldened our rivals and enemies. A divisive identity politics and political correctness would continue to weaken our national solidarity and to perpetuate the injustices that follow from privileging some identities over others.

Unrestrained immigration, both legal and illegal, would have continued. The threat of Islamic jihad still would be downplayed and misunderstood, as porous immigration controls increased the probability of more terror attacks. Loretta Lynch would still likely be attorney general, the Department of Justice would still violate the rights of the states for partisan purposes, the Environmental Protection Agency would still be issuing outrageous regulations that weaken private property rights and hinder economic growth, and the Paris Climate Accord would damage our economy for the benefit of our economic rivals and the green-energy lobby.

Most critically, Neil Gorsuch, a constitutional originalist, would not be sitting on the U.S. Supreme Court to slow the deconstruction of our constitutional order and to stop the overweening usurpation of congressional powers by the judicial branch.

Only the blind cannot see that the election was indeed a stark binary choice: between a crass, vulgar businessman whose sins so far are all ones of style and decorum and a longtime entrenched pol whose sins of substance were committed while entrusted with offices that were supposed to serve the sovereign people and the Constitution to which she swore an oath.

Conservatism and its principles will survive Trump, just as they survived their years in the wilderness before Ronald Reagan. But they might not have survived another eight years of emboldened progressivism.

Taking a seat

How
Daniel Kelly
went from
relatively
unknown
lawyer to a
justice on
Wisconsin's
highest court

**ON THE
FRONTLINES**

by Dave Daley

Photos by Allen Fredrickson

Madison — Meet Daniel Kelly, the most improbable candidate to land a seat on the Wisconsin Supreme Court.

A Colorado boy, Kelly did not grow up in Wisconsin. He didn't attend either of the state's two law schools,

the legal factories that stamp out most of the top judges in Wisconsin. In the two decades that Kelly worked as a lawyer in the Badger State, it was largely out of the public spotlight on complex commercial litigation.



Wisconsin Supreme Court Justice Daniel Kelly says the state's citizens are the court's ultimate authority.

And when his name surfaced last year as one of three finalists to replace retiring Justice David Prosser, Kelly was excoriated as an extremist by lefties horrified at the high court's rightward tilt. He was far from the odds-on favorite to earn the governor's appointment.

So how did Kelly, 52, beat out 10 other lawyers including appeals court judges, high-profile Republicans and long-time supporters of Gov. Scott Walker? Just what did Walker see in Kelly?

Put a little differently, how did a kid from Colorado who spent his first nights in Wisconsin sleeping in the back seat

of his car end up three decades later with a different sort of seat on the state's highest court?

From the West to Wisconsin

Born in California, Kelly spent much of his childhood in Arvada, Colo., a suburb of 110,000 northwest of Denver. His parents had limited means, and his father, a cowboy in his younger days, worked as many as three jobs to provide for Kelly, his three brothers and three sisters. Kelly spent his summers fishing in Rocky Mountain streams, biking in foothill towns and tinkering on cars.

His introduction to Wisconsin came in 1982 when Car-

roll College in Waukesha offered him the financial aid he needed to attend college. A few days before school started, Kelly drove to Wisconsin, all of his belongings packed into his 11-year-old Chevy Chevelle, to get in some fishing at Lake Nagawicka in Delafield.

Short on money, Kelly was sleeping in his car. A Sheboygan Falls couple with two young children camping nearby invited him to share their dinner and campfire. The next

day, they invited him sailing. That weekend, Kelly says in an interview, he fell in love with Wisconsin and its people.

"Here I am, newly arrived in Wisconsin, and the very first people I meet are the most open and generous family imaginable," Kelly says. "This is who Wisconsinites are."

At Carroll, Kelly met his wife, Elisa, a Milwaukee native who later became a nurse. They married after four years of dating. In 1986, Kelly graduated with a degree in political science and Spanish, and in 1991, he graduated from what's now Regent University School of Law in Virginia, ranking third in his class and winning the school's overall top law student award.

He worked for a year as a law clerk for Wisconsin Appeals Court Judge Ralph Adam Fine, then for four years at the U.S. Court of Federal Claims in Washington, D.C. He and his wife wanted to start a family, but not in D.C.'s rat-race atmosphere.

Picking the best place to raise their family was a no-brainer — they came back to Wisconsin. Over the next 20 years, the couple raised five children — a son, now 22, and four daughters, 20, 18, 16 and 10.

Family is at the heart of Kelly's life, so he knows well the role

of a father and the mindset of children. Children, he has written, are "all about fairness — I know this because they tell me so with some frequency."

Jurists on the other hand, he emphasizes, have a more limited purview.

Some judges view an interpretation of a law that reaches an unjust conclusion as wrong, and they tinker with the law to reach an end they believe is just, Kelly says. "There's an

impulse to say, we're a court of justice and we want just conclusions, so we'll bend the meaning. It's a very narrow role that we have. We're not here to judge whether the policy was wise or not," he says. "That's not our role. That's the Legislature's role."

Judicial authority and restraint

A quizzical look on his face, the 13-year-old boy stared up at Kelly. "Who's *your* boss?" the teen blurted out.

"Your parents," the justice replied, recounting the exchange that occurred during a tour of the Supreme Court offices by middle-schoolers. "And *their* parents — *they're* my boss. And in five years, when you turn 18, *you're* going to be my boss," he added.

For Kelly, Wisconsin's citizens are the justices' ultimate authority.

"I don't have any inherent authority in this office. And the judiciary does not have inherent authority. It all comes from the people who have created the office," Kelly says.

"I exercise borrowed authority. I borrowed it from that young man's parents and all of the other adults" in Wisconsin, he adds.

Kelly, who served as president of the Milwaukee chapter of the Federalist Society, says

"There's an impulse to say, we're a court of justice and we want just conclusions, so we'll bend the meaning. It's a very narrow role that we have. We're not here to judge whether the policy was wise or not."

— Daniel Kelly



his judicial philosophy hews closely to the basic principles of that society, founded by prominent American conservatives and which emphasizes judicial restraint.

Appointment scrutinized

Not everyone agrees with his philosophy, of course.

Kelly's appointment in July 2016 cemented the 5-2 conservative majority on the court and sent the left into a minor frenzy.

"Too extreme to be Supreme?" questioned Madison's alternative weekly *Isthmus*. National left-wing bloggers were harsher. "Scott Walker Just Put An Insane Person On His State's Supreme Court," blared a headline at ThinkProgress. The story labeled Kelly an "obscure lawyer with highly idiosyncratic views."

The uproar centered on a chapter Kelly wrote for a 2014 book that compared affirmative action to slavery and said that allowing same-sex marriages robbed the institution of marriage of any recognizable meaning. Ironically, Kelly says, he was simply paraphrasing the comparison made by others in the legal community, including U.S. Supreme Court Justice Clarence Thomas, whom he admires.

In *John Rawls and Christian Social Engagement: Justice as Unfairness*, Kelly wrote: "Affirmative action and slavery differ, obviously, in significant ways. But it's more a question of degree than principle, for they both spring from the same taproot. Neither can exist without the foundational principle that it is acceptable to force someone into an unwanted economic relationship."

Kelly shrugs off the criticism. "It was an introduction to the hyperbole that comes of being in the public eye," he says. "I'm a big boy."

He declines to discuss the comparison further, explaining that as a sitting justice, any talk of political issues is inappropriate. "I think it is so important for the public to under-



Daniel Kelly will face voters for the first time in 2020.

stand that politics simply does not come into this role."

A relatively unknown lawyer

While critics are not exactly accurate in calling him "obscure," Kelly certainly was lower profile than some of the other Supreme Court applicants.

Kelly worked largely out of the spotlight in the nearly 20 years he practiced law, first in a big Milwaukee law firm, then as vice president and general counsel at the philanthropic Kern Family Foundation and finally as a partner in a small Waukesha practice. His clients included manufacturers, developers, investors, financial institutions and tech companies, and he became known as "a lawyer's lawyer."

He is, however, much more than that. Kelly's religion is a key part of who he is as a person — if not as a jurist. Raised a Catholic, Kelly began in college exploring the broad spectrum of Christianity and became a born-again Christian.

Christianity is a set of principles, how one relates to others and lives his life, he explains, with “a horizontal plane” on how one relates to his or her family and members of the community. But Christianity also has a “vertical plane,” how one relates to God.

“I don’t think that the vertical plane can be put on you,” Kelly continues. “So you can be raised in the principles of Christianity and how that governs our relationships with each other. And I certainly was in my (life) — and I admire my mom and my dad, and I am extraordinarily grateful for how they raised me.”

“But, there comes a point in everyone’s life where they need to consider for their own, on their own, what is that vertical plane and how do you respond to that,” Kelly adds. “I became aware of the need to explore that vertical plane when I was in college. And I think that’s when I fully became a Christian.”

So why did he get the nod?

Though Kelly emphasizes that his religious beliefs will play no role in his judicial decisions, they do form part of the core of the man whom Walker was clearly impressed with. In fact, the two have much in common on the personal front.

Like Kelly, Walker talks freely about his faith. The son of a Baptist preacher, the governor also lived in Colorado as a child before his father moved the family to Plainfield, Iowa, and then to Delavan.

Walker, too, is used to being savaged by the left for his views on affirmative action and same-sex marriage. Such criticisms would not likely dissuade a governor who himself has been the target of left-wing ire not only over his politics but his faith. In fact, the attacks may have helped convince Walker that Kelly would not be afraid to take a controversial stand.

Governors often see Supreme Court picks as part of their legacy — and here, too, Kelly was an attractive choice. He is relatively young and, though not overly active politically, is not a neophyte, either.

In the past decade, Kelly moved into political circles, developing a practice in campaign law and providing counsel

to candidates, office-holders and contributors. In the fractious fight in 2011 when Republicans redrew district maps for the Wisconsin Legislature, Kelly was one of the lead attorneys defending the redrawn lines in a lawsuit brought by Democrats. He also helped direct an ad hoc group of 300 volunteer attorneys monitoring the 2011 recount in Prosser’s election victory over JoAnne Kloppenburg. Such experience could come in handy when Kelly wages an election campaign of his own. He would first face voters in 2020.

Political involvement alone, however, did not earn him the seat. Nor would a simple personal bond with the governor have likely been enough to seal the deal. In the end, Kelly points to a lengthy discussion that he and Walker had during the appointment process about judicial philosophy.

“He described what was it that he was looking for — and that is a jurist who would apply the law as it’s written, who would not make it up, who would not (substitute) his own political views and instincts and what he believes to be wise policy,” Kelly says.

That approach clearly reflects the conservative philosophies at the heart of Walker’s view of law and government. The governor was looking for someone who would “respect the limits of the office and the prerogatives of the other branches of government,” Kelly adds.

“And whether that was me or one of the other applicants, the most important part was that those principles and ideas find expression in this office,” he says.

“So I didn’t approach any of the interviews as selling me so much as saying this is what I believe, and this is what I intend to do should I be appointed. And if that matches up with what you’re looking for, then I’d be happy to take the appointment.”

In the governor’s eyes, Daniel Kelly — the deeply religious, family-centered, politically incorrect Western boy from Colorado who fell in love with Wisconsin, the improbable candidate — clearly fit the bill.



Daniel Kelly dresses like the quintessential big law firm attorney: dark, tailored, pinstripe suit and polished wingtips. But there is a splash of flamboyance: a necktie fastened in the elaborate, 15-step Eldredge knot that’s a hit with millennials. His 22-year-old son taught him the technique.

Dave Daley is the reporter for the Badger Institute’s Project for 21st Century Federalism.



How times have changed for conservatives in America

10 years ago, shaken Republicans thought the future pointed to Hayek and Reagan, not to Bannon and Le Pen

By Richard Esenberg

Ten years ago, this magazine published a series of essays responding to the question: Is conservatism out of gas? The occasion for the collection was the 2006 midterm election debacle in which, both in Wisconsin and nationally, Republicans suffered catastrophic losses. We know now what we did not know then.

First, things would get worse for the GOP. The financial crisis that was just around the corner would lead to the election of

Barack Obama and mid-century level Democratic majorities in 2008. But the Obama administration's overreach would lead to the rise of the tea party, GOP majorities in Congress and, eventually, the unlikely election of Donald Trump. The Republican Party, it turns out, had plenty of gas left.

But what of conservatism itself? Has it reasserted itself and, if so, who among the 2007 magazine contributors — which included Scott Walker, Paul Ryan, Leah Vukmir and Charlie Sykes — was most prescient? The answer is humbling.

There is almost an aching innocence and earnestness about these essays. Most thought that we simply needed to reassert first principles. Sykes observed confidently that “the reality is that we are all capitalists now.” Ryan and former WPRI President George Lightbourn urged a recommitment to Hayekian principles and solutions grounded in individual liberty and opportunity. Walker warned that too many

There was once broad agreement on just what conservatism should be.

Republicans had forgotten that “we are the party of Reagan” committed to “limited government, lower taxes and a strong national defense.”

Other essayists — Mark Green, Jim Sensenbrenner, Mark Neumann — echoed Vukmir’s call for a return to “Reagan’s vision of limited government and individual responsibility. One writer, in a touching elevation of hope over experience, urged that the “shouting matches featured on the Bill O’Reilly and Hannity and Colmes programs on Fox News should serve as models of what serious and responsible discussion should not be.”

In other words, dear reader, we never saw it coming.

Ten years ago, we thought that the future would be some version of the American right’s traditional three-legged stool — a commitment to limited government and free markets, a recognition of the social conservatism that creates the culture of responsibility necessary for individual liberty and an acknowledgement of America’s role in the world as a beacon of security and a force for peace.

There was no hint that the American right would ever borrow from the quite different rightist parties of Europe. The writers did not emphasize immigration or “globalism.” While Glenn Grothman criticized affirmative action, there was no notion that *conservatives* might adopt their own brand of identity politics or that a nationalist solidarity should, no pun intended, trump free-market principles.

From the evidence of these essays, we thought the future pointed back to Hayek, Reagan, Friedman and Goldwater. The writers did not invoke Wallace, Thurmond or dream of Steve Bannon and Marine Le Pen. We knew where the arc of history bent, and it was in the direction of classical liberalism.

In this moment of electoral triumph, it seems as though the question of 10 years should be rephrased. Conservatism is clearly not out of gas. But where is it going?

One gets the sense, in reviewing the 2007 essays, that there was once broad agreement on just what conservatism should be. We now have power that we only dreamed of regaining in 2007. But it’s less clear that we are able to agree on what to do with it.

In 2017, officials in a Republican White House float raising tax rates on high-income taxpayers. A new journal of conservative thought, *American Affairs*, announces its support

for single-payer health care. A scholar at the peerless Ethics & Public Policy Center writes a book about how the genius of Ronald Reagan was to interpret — but leave fundamentally unaltered — the New Deal’s promise of a vigorous federal government and “Life of Julia” welfare state. It turns out, according to Henry Olsen, that we’ve been getting the Gipper wrong all these years.

Writing in *The New York Times*, columnist David Brooks suggests that the Republican Party is now divided between what he calls traditional conservatives and conservative “white identitarians.” For the latter group, conservative principles are secondary to a sense of white identity and solidarity.

Although Brooks, unlike most of his *Times* colleagues, is nuanced enough to distinguish between white identity politics and racism, he misses the nature of the divide.

While I would never suggest that race is completely irrelevant, I suspect that the split is not between two groups with a commonly held set of conservative principles divided by racial attitudes or a willingness to identify as white. Instead, it reflects a difference of opinion about what conservatism entails. Is it about a society in which government is limited,

individual rights are paramount and the culture that brings us together is organic and fostered outside the state? Or is it an ideology that seeks a more vigorous state that itself promotes a common culture and ensures security and some measure of equality among those who share it?

To be sure, the tension between these views was always present in the conservative movement, and, at its best, the rise of a conservatism more concerned with solidarity and equality of outcome, not merely opportunity, can serve as a foil to the more classically liberal American version of conservatism. It can interrogate the values and assumptions of 2007. It can insist that it produce results, not just theory.

But something — political correctness, the Democrats’ focus on the “ascendant” coalition of minorities and cognitive elites, economic stagnation — has brought about a force in American conservatism that we did not see in 2007 and that differs with the Reaganite settlement on more than just style and emphasis. We have come back in the last 10 years. But it is unclear where we are headed.



Reagan



Bannon

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