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MARCH 2012

WISCONSIN INTEREST

Behind the disorder in the court

BY MICHAEL GABLEMAN

Anatomy of a dysfunctional school district

BY MIKE NICHOLS

A feisty champion for business

BY SUNNY SCHUBERT

The two Wisconsins at war

BY CHARLES J. SYKES

Win, Lose or Draw?

Wisconsin's alternative futures

BY JEFF MAYERS



Editor > CHARLES J. SYKES

The age of uncertainty

What if?

Let's be honest. Nobody knows what lies ahead, except that 2012 will be the biggest, most expensive and consequential political year in Wisconsin history.

Our cover story is an encore of sorts. Back in 2000, we asked WisPolitics.com founder Jeff Mayers to examine the alternative scenarios of that year's elections, and it became one of the most talked about stories of the year. In retrospect, the stakes of that election appear almost quaint compared with the potential for political Armageddon we now face: the recall of a sitting governor; the potential for not one, but two flips in control of the state Senate, an open U.S. Senate seat, and a presidential election.

Adding to the drama are layers of uncertainty ranging from the identity of the candidates, the outcome of a John

Doe investigation, and even the timing of the elections themselves. As Mayers notes, "The most predictable thing is the unpredictability of the what-if scenarios and the political times we're in."

Meanwhile, the narrowly balanced Wisconsin State Supreme Court remains at the center of controversy. In our last issue, we featured an interview with Justice David Prosser. In this issue, embattled Justice Michael Gableman weighs in with a critique of the divisions on the court, adapted from remarks he delivered at the annual dinner of the Wisconsin Policy Research Institute.

I'm delighted to offer an excerpt from my latest book, *A Nation of Moochers*, dealing with the ongoing division of the Two Americas — the public and private sectors — and the struggle right here in Wisconsin.

WPRI

The Wisconsin Policy Research Institute, Inc., established in 1987, is a nonpartisan, not-for-profit institute working to engage and energize Wisconsinites and others in discussions and timely action on key public policy issues critical to the state's future, its growth and prosperity. The institute's research and public education activities are directed to identify and promote public policies in Wisconsin that are fair, accountable and cost effective.

Through original research and analysis and through public opinion polling, the institute's work will focus on such issue arenas as state and local government tax policy and spending and related program accountability, consequences and effectiveness. It will also focus on health care policy and service delivery; education; transportation and economic development; welfare and social services; and other issues currently or likely to significantly impact the quality of life and future of the state.

The institute is guided by a belief that competitive free markets, limited government, private initiative, and personal responsibility are essential to our democratic way of life.

To find more information regarding The Wisconsin Policy Research Institute, any article in this publication or questions and comments, please go to www.wpri.org.



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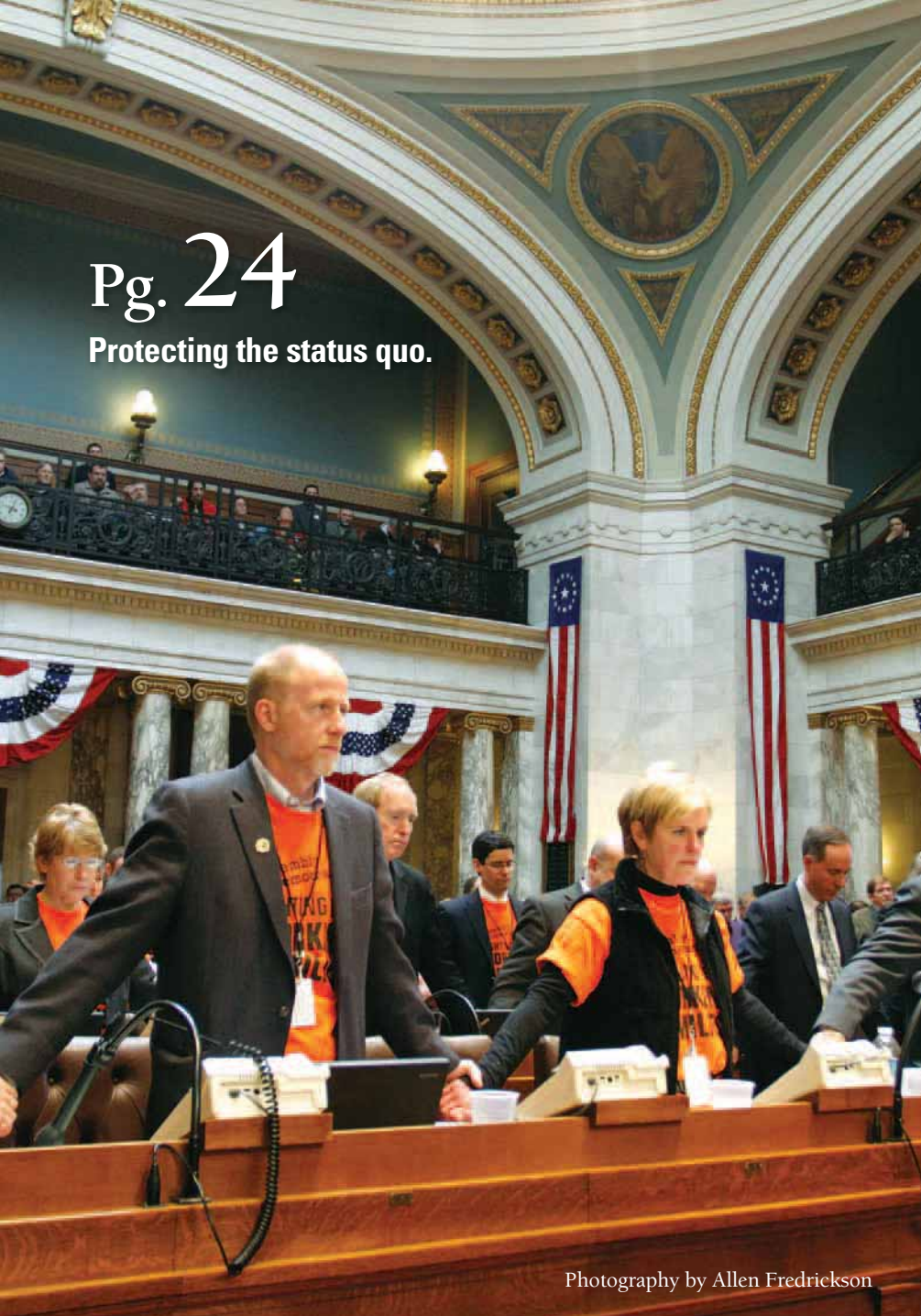
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Protecting the status quo.

Photography by Allen Fredrickson

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MVPs: Rodgers and Walker

Except for an exceptionally mild winter, 2012 began inauspiciously.

National League MVP Ryan Braun faced a 50-game suspension after failing a test for banned substances; the Badgers lost in the Rose Bowl; a magical Packers 15-1 season ended with a playoff clunker and a defeat at the hands of the New York Giants; and union activists claimed they had gathered a million signatures to force a recall of Gov. Scott Walker. But the selection of Aaron Rodgers as the NFL's MVP and the overturning of Braun's suspension may have presaged a turnaround in the fortunes of the Badger State. Let's hope so.

Right Track

In January, Walker delivered his second State of the State address, noting: "When I addressed you in this chamber last January, Wisconsin had suffered through three years of 150,000 of our fellow citizens losing their jobs. The unemployment rate was 7.5%. And after years of tax increases and budget tricks, Wisconsin faced one of the largest budget deficits in the country. Now, our unemployment rate is down from a year ago. In fact, it's the lowest it's been since 2008. We are turning things around. We are heading in the right direction."

The Wall Street Journal commented on the irony of the recall: "If they do make the ballot and cause a recall vote as early as this spring, they'll have to campaign against reforms that have already saved taxpayers tens of millions of dollars and rescued the state from a budget crisis. Game on."

Wrong Track

Meanwhile, south of the border, Illinois tried a different tack: raising spending, taxes and debt. In recognition of those Greece-like economic policies, Moody's downgraded Illinois from A1 to A2, giving it the dubious distinction of having the worst rating of any of the 50 states.

At the federal level, the Congressional Budget Office delivered more bad news, reporting that 2012 will be the fourth straight year the feds would run an annual deficit exceeding \$1 trillion. The CBO projected that economic growth will remain sluggish and the unemployment rate

will remain near 9 percent for the next three years. "The CBO report," wrote Congressman Paul Ryan, "is a harsh indictment of the president's failed economic policies."

All Eyes (and Wallets) on Wisconsin

In other respects, though, Wisconsin remained ground zero of American politics, with words like "Armageddon" applied to a state once best known for cheddar. The focus on Wisconsin, however, reportedly had some Democrats nervous. *The Hill* reported that big labor's plan to spend heavily in Wisconsin "has sparked angst on the left that the effort will come at the expense of Democrats in other states. ... This is a stomach-churning prospect for Democrats and their allies because the labor expenditures could come just months before the general election, when money will be needed for more important battlegrounds such as Ohio and Florida."

Mickey Mouse Politics

The Government Accountability Board helped the set the tone for a year of political upheaval and chaos by announcing that it would not necessarily strike bogus signatures from the recall petitions. Asked whether this would include, say, a signature by "Mickey Mouse," election specialist David Buerger explained: "We will flag them, but we will not strike them without challenge." Ditto for Adolf Hitler. The GAB later doubled down by refusing to take any input from citizen groups who attempted to do the job the GAB refused to do.

As the MacIver Institute quipped, "Apparently the only citizen input accepted by the GAB are those citizens who support the recall."

Did I Say That?

In January, Milwaukee Mayor Tom Barrett endorsed county Supervisor Johnny Thomas to be the city's top financial officer. "The citizens of Milwaukee need a comptroller they can trust to ensure our finance system is stable and secure. Johnny has the right mix of public and

private experience . . . to be an excellent comptroller for Milwaukee.”

Barrett was apparently unaware that several weeks earlier, Thomas had been caught in a sting allegedly accepting a \$500 bribe. In early February, he was charged with two felonies and dropped out of the race.

Civility Update

On the one-year anniversary of the shooting of Arizona Congresswoman Gabrielle Giffords, we had many lectures from the media and the left about the need for more civility. There was, however, apparently an exemption for Wisconsin’s unionistas.

After Walker’s State of the State speech, for example, reported *The Capital Times*, protestors spotted one state legislator in the hallway:

“There’s a live one!” someone shouted as Rep. Joel Kleefisch (R-Oconomowoc, also Lt. Gov. Rebecca Kleefisch’s husband) strode past on his way to the bathroom.

“As Kleefisch passed the crowd again later, a young woman taunted him. ‘Your wife’s a f----- whore!’ she screamed.”

Civility Update II

As they wrapped up their recall efforts, state Democrats held a series of special events to pump up volunteers. In Fond du Lac County, for instance, the local party invited supporters to “meet special guest Ian Murphy of the [Buffalo] Beast, famous for his ‘Fake David Koch’ phone call.”

Murphy was also famous for his May 2008 column titled “F--- the Troops,” which began: “So, 4,000 rubes are dead. Cry me the Tigris. Another 30,000 have been seriously wounded. Boo f----- hoo. They got what they asked for — and cool robotic limbs, too.”

Because of his pranking of Walker, however, all seemed to be forgiven as a Murphy posed for photos with local activists and politicians, including state Sen. Jessica King (D-Oshkosh).

Rules for Wisconsin Radicals

Several times during the year I had to repost something I wrote — with apologies to Saul Alinsky — at the height of the Madison protests.

- Never acknowledge conservative victories as legitimate.

- Never concede defeat in legislative votes. There is always a cloud.
- Litigate everything.
- Rely on Dane County judges whenever possible.
- Elections only matter if liberals win.
- Shut down schools, bring legislative process to a halt, tie up the courts, extort businesses, try to overturn elections . . . and then say, “This is what democracy looks like.”
- Private businesses, families, personal lives are all fair game. Get the mainstream media to say that both sides are equally guilty.
- Create the appearance of scandal and misconduct wherever and whenever possible.
- Chant “shame, shame, shame,” a lot.
- Break laws, ignore rules, commit fraud, flee the state, change standards at will — but hold conservatives to a standard of absolute compliance.
- Use the phrase “Koch brothers,” as often as possible.
- Create chaos whenever possible.
- Demand investigations, even if there is nothing to investigate. It adds to appearance of chaos and misconduct. Media will always bite.
- Bully, intimidate, and threaten, unleash union thugs . . . but repeatedly accuse Scott Walker and the GOP of being bullies.
- Hold many rallies.

If They Win

Writing in the *Wall Street Journal*, Stephen Moore suggested that the Walker recall “might be the most important nonpresidential election in a decade.” But our own Christian Schneider laid out the stakes more starkly:

“Wisconsin has become a place where public vulgarity is not only tolerated, but expected. . . . The message is simple: If Walker is recalled, these people win. Their grotesque tactics will be vindicated, further ripping the state apart. Wisconsin will cease being the state its residents love; it will instead be a place where threats and intimidation reign.”

Game on, indeed. ■

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Half-Crazy, Half-True

Alfie Kohn's startling message on schools may be hurting Wisconsin's poorest students By Michael J. Petrilli

One hundred years ago, a progressive populist barnstormed the country, delivering fiery speeches and railing against the gold standard. Today another progressive populist barnstorms the country, delivering fiery speeches and railing against *academic* standards. Meet Alfie Kohn, the William Jennings Bryan of our age.

The Badger State has always been friendly territory for progressive populists; Kohn is a perfect fit. He's been an influential voice in Wisconsin education discussions for nearly 20 years.

Kohn is a frequent guest on Wisconsin Public Radio, and his speeches have carried the imprimatur of everyone from the Wisconsin Association of School Boards to the University of Wisconsin-Madison School of Education to the Wisconsin Education Association Council to the Metropolitan Milwaukee Association of Commerce. Last

November, his talk on the UW-Madison campus drew more than 700 people.

Like most demagogues, Kohn knows how to tap into his audience's raw emotions — anger, feelings of powerlessness and

resentment of a ruling elite. In his case, he puts voice to what many educators already believe: That school reform is a corporate plot to turn young people

into docile employees; that an obsession with standardized testing is crowding out any real intellectual engagement in our schools; and that teachers have no say over what happens inside their own classrooms.

These arguments are half-crazy and half-true, which is what makes Kohn so effective — and so maddening.

Where Kohn gets it right is in his observation that many American schools

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**Like most demagogues, Kohn knows how to tap into his audience's raw emotions — anger, powerlessness and resentment.**  
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are “mindless, soul-killing” institutions, especially the schools serving our most disadvantaged communities. While this has almost certainly been the case for decades, it’s probably true that test-based accountability has made the situation worse, at least in many locales.

Even the most hawkish reformer must blush at depictions of the endless test prep and shamefully narrowed curriculum that is present at too many inner city schools. “That’s not what we intended for them to do,” we reformers say, but the combination of high pressure and low capacity too often leads educators to panic and look for shortcuts to higher test scores. We can’t just look the other way and pretend it’s not happening.

Where Kohn gets it wrong, however, is in his

vision for a better education system. Here he’s an unreconstructed John Dewey acolyte, right down the line. He views all the markers of “traditional” education with suspicion, from grading to lecturing to teachers asserting their authority.

He doesn’t just think that the focus on testing has gone overboard, he actually asserts that rising test scores indicate malevolent behavior. If the scores at your child’s school go up, he claimed at his UW speech, “either it’s meaningless or it’s bad news.”

Really? Kohn refuses to consider the hundreds (maybe thousands) of “traditional” schools that produce great test scores *and* give their students a rich, intellectually stimulating experience. What about Catholic schools, those unabashedly “authoritative” institutions that for 100 years have helped poor,

minority and immigrant children get started on a path to the middle class?

What about the nation's high-flying charter schools, such those in the KIPP network, which boast high student achievement *and* a well-rounded curriculum (including art and music for everybody!)? And what about Finland — the cause célèbre of progressive educators — which boasts “authentic” learning *and* sky-high test scores?

What Kohn refuses to wrestle with is the argument — made by Core Knowledge creator E.D. Hirsch Jr., among others — that progressive education might work well for children of the affluent but tends to be disastrous for children of the poor. Democratic decision-making, self-directed studies, internal motivation and the like are wonderful aspirations. But when it comes to lifting children out of poverty, heavy doses of basic skills, rich content and clear expectations have been proven time and again to be more effective.

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**Where Kohn gets it right  
is in his observation  
that many American schools  
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institutions.**  
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That's not to be mistaken for the “mindless, soul-killing” teaching that Kohn bemoans, but it's also not the progressive utopia he envisions, either.

What Kohn and other reactionaries refuse to acknowledge is that what fuels the modern school reform movement is not acquiescence to Corporate America but outrage at the nation's lack of social mobility.

As Kati Haycock of the (very liberal) Education Trust has argued, “We take the children who need the most and give them the least” — schools with the least resources, least qualified teachers and least challenge. Kohn is right that test scores are most closely related to social class; changing that brutal fact is what the reform movement is all about.

But Kohn would rather spar with boogymen like the “Billionaire Boys Club” — the label Diane Ravitch affixed to reform-minded philanthropists —

than the pro-reform civil rights groups they support. Does Kohn think that these organizations — from Education Trust to the National Council of La Raza to the United Negro College Fund and on and on — are dupes when they equate higher test scores for poor kids with better life opportunities?

Kohn might want to familiarize himself with the recent blockbuster study by Raj Chetty, John Friedman and Jonah Rockoff, which illustrated the enormous impact an effective teacher could have on her students' life chances. But, as the (liberal) Kevin Carey wrote at the time of its release, it also indicated the connection between test scores and outcomes in the real world:

“If you believe standardized tests are worthless or highly flawed or deeply inadequate or even troublingly limited in accuracy and scope — and many reasonable people believe these things —



Alfie Kohn

then you could dismiss or downplay value-added measures of teacher effectiveness, by definition. ...

“But now the [Chetty-Friedman-Rockoff] study says that teachers who are unusually good at helping students score high on standardized tests today aren’t just unusually good at helping students score high on standardized tests tomorrow. They also have an unusual effect on the likelihood of students going to college, going to a good college, earning a good living, living in a nice place and saving for retirement.

“In other words, whatever the limitations of standardized tests may be, test-based value-added scores do, in fact, provide valuable information about the things most people care most about.”

Kohn argues that if test scores don’t matter and are antithetical to real learning, then the entire school-reform movement is built on quicksand. But what if test scores do matter — a lot — especially for our society’s most vulnerable children? Is Kohn



willing to acknowledge that his progressive vision is too dismissive of the importance of basic knowledge and skills?

And if test scores do matter, what message does

Kohn have for the state of Wisconsin — a state whose African-American eighth-graders score *two grade levels* in math below their African-American peers in *Texas* — and on par with blacks in Washington, D.C.? Is it really a good idea for the Badger State to embrace a “test scores don’t matter” mindset?

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**Kohn views the markers of traditional education with suspicion, from grading to lecturing. He actually asserts that rising test scores indicate malevolent behavior.**

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Alfie Kohn isn’t evil, as some social conservatives have implied. He’s right that what passes for education in too many of our schools should be the cause of outrage and fundamental change. But he’s wrong that resisting “reform” is a clear path to a better future for our children.

His progressive vision might do no serious harm in schools serving affluent children — kids who are getting the basic skills, strong vocabulary and internal motivation at home. But backing away from accountability, teacher effectiveness, and academic “rigor” would likely create an even bleaker future for children growing up in poverty — children for whom school matters most.

Kohn’s populism, like William Jennings Bryan’s before him, stirs emotions, but doesn’t point toward a positive program, especially for the poor. There’s plenty to criticize when it comes to testing, merit pay and the rest. Midcourse corrections are called for.

But Mr. Kohn: Education reform shall not be crucified on a cross of “no.” ■



Disorder in the Court

A Supreme Court justice speaks frankly of Wisconsin's tarnished judiciary and points critically at Chief Justice Abrahamson

By Michael Gableman

Editor's note: This essay is adapted from remarks delivered at the annual dinner of the Wisconsin Policy Research Institute in Milwaukee last November.

Recently, Wisconsin and national media outlets have been abuzz with discussions about the Wisconsin Supreme Court. Much of the focus has been on the perceived discord and animosity between certain justices. There can be no doubt that this coverage has tarnished the court's image. The respect many citizens felt for the court has been replaced by feelings of concern that the institution as a whole is faltering.

Disorder in the Court

I've been asked to address whether the people of Wisconsin should have faith in their Supreme Court. Faith in our court, as in any court, rests largely on the quality and integrity of our main work product — that is, our published opinions. There is no more important work that the court undertakes than drafting opinions. They influence the economic and social policy of the state. In short, people should have faith in the Wisconsin Supreme Court. Please allow me to explain.

Justices must, if they wish to bolster confidence in the judiciary, base their decisions not on personal views but on the plain language of the law. When the plain language of the law does not clearly resolve a fact situation, justices must stay as close to the plain language as possible, not make up the law to fit their personal desires. This is not only the essence of fairness, but also the key to instilling confidence in our opinions.

I was firmly committed to that view when I assumed my seat on the Wisconsin Supreme Court in 2008. Thankfully, after my election, we began making great strides in that direction. To illustrate my point, I must provide a short review of the court's recent history and some of its decisions. In 2004, when Justice Diane Sykes was elevated to the U.S. Court of Appeals for the Seventh Circuit by President George W. Bush, Gov. Jim Doyle appointed Louis Butler to the Wisconsin Supreme Court. This appointment changed what was previously a 4-3 judicially conservative majority into a 4-3 liberal activist majority.

In the years following Justice Butler's appointment, the majority made a number of notable decisions that baffled legal observers and

sowed doubt upon the state of the law.

In 2005, in *Thomas v. Mallet*, four members of the court discarded centuries of law that require injured parties to prove who caused their injury and instead allowed a plaintiff to sue manufacturers of lead paint because these manufacturers *may* have made the paint that caused the injury. The dissent noted the error of the majority, cautioning that “lead pigment manufacturers can [now] be held liable for a product they may or may not have produced, which may or may not have caused the plaintiff's injuries, based on conduct that may or may not have occurred over 100 years ago when some of the defendants were not even part of the relevant market.”

In 2006, in *Dairyland Greyhound Park v. Doyle*, four members of the court unilaterally ignored the fact that the court had already decided two years earlier that a constitutional amendment prohibited the governor from expanding gaming. The only thing that changed in the interim — hence the only thing that could

explain the diametrically opposed rulings — was the subtraction from the court of Justice Sykes and the addition of Justice Butler. The rule of law must mean something more than this.

And, in 2007, in *Szleszinski v. Labor & Industry Review Commission*, four members of the court agreed that a 16-wheel semi-truck driver with Wilson's disease, a genetic disorder, could sue his employer for wrongful termination, even though he was driving erratically because of his disease. His medical condition caused tremors and fatigue, among other symptoms. The dissent, written by Justice David Prosser, noted the irrationality of punishing a company for seeking,



Justice Michael Gableman

in the most reasonable way possible, to protect the public from a semi-truck driver who suffers unpredictable tremors and fatigue attributable to Wilson's disease.

All of these cases represent judicial activism at its rawest form — that is, the expansion and rewriting of the law to suit a social, political or philosophical view. These and other decisions were so bad that news agencies began referring to Wisconsin as “Alabama North,” a reference to its reputation as a state where the law had become as transient as the shifting winds, constant only in its unpredictability. I respectfully suggest that nothing has done more to tarnish the image of our court than the rulings that were handed down by the liberal activist majority between 2004 and 2008.

As former Justice Sykes put it in 2006 when she discussed this period in one of her lectures: “The terms ‘modesty’ and ‘restraint’ — the watchwords of today's judicial mainstream — seem to be missing from the Wisconsin Supreme Court's vocabulary. Instead, the court has adopted a more aggressive approach to judging.”

Following Justice Butler's appointment, the majority's decisions baffled legal observers.

The people of Wisconsin agreed with Justice Sykes. Over the past decade, the citizens of our state have consistently demonstrated a preference for judicially conservative justices: one need look no further than the elections of Justice Sykes over Judge Butler in 2000, Justice Patience Roggensack over Judge Edward Brunner in 2003, Justice Annette Ziegler over Linda Clifford in 2007, and

Justice Prosser over JoAnne Kloppenburg in 2011. When I was elected to the court in 2008, the court was returned to a judicially conservative majority.

Appointing justices, rather than electing them, would not remove politics from their selection.

For purposes of comparison, I turn briefly to five examples of decisions published since my arrival. In *Coulee Catholic Schools v. Labor & Industry Review Commission*, we held that a private religious school can make decisions regarding employee termination without governmental interference. In *Star Direct Inc. v. Eugene Dal Pra*, we corrected 50 years of judicial activism related to covenants not to compete, and returned the law to its true statutory framework. In *Horst v. John Deere & Co.*, we restored the fundamental but often overlooked proposition that sometimes accidents really do happen, and just because an accident happens it doesn't mean someone or some company has to pay. In *Covenant Healthcare System Inc. v. City of Wauwatosa*, our opinion checked significant government overreach in the area of taxation.

Finally, last June, in an opinion written collectively by Justices Prosser, Roggensack, Ziegler and myself, *Ozanne v. Fitzgerald* (more commonly referred to as the Budget Repair Bill case), we overturned a circuit court decision by Dane County Judge Maryann Sumi, an opinion that defied nearly 70 years of controlling precedent and thereby produced a legally incorrect result.

By reversing her decision, the majority upheld

Disorder in the Court

the simple but bedrock proposition that governors are entitled to govern, legislatures are entitled to legislate, and no matter how fervent the political beliefs of individual judges, courts are not free to baselessly interfere with either.

The current majority has restored a judicially conservative course that focuses on applying the law rather than molding it to fit our own personal agendas and desires. The application of these sound, judicially conservative principles

The high court continues to lack effective leadership.

has restored confidence in the predictability and stability of the court's primary output, its opinions.

Unfortunately, friction and discord on our court is nothing new, and its root cause is readily discernible by a review of the common denominator present throughout the tumultuous recent history of the court over the past decades.

One need only glance at headlines from around the state over the last 25 years to understand that something went badly wrong with the management of the court:

- “Justice Awry” (*Milwaukee Journal*, March 12, 1987)
- “No Order In This Court” (*The Capital Times*, Feb. 15, 1999)
- “Three Justices Working To Oust Chief Justice” (*Watertown Daily News*, Feb. 4, 1999)
- “Robes And Daggers In Top Court” (*The Capital Times*, Feb. 6-7, 1999)
- “Chief Justice Accused Of Overstepping Bounds Of Authority” (*Wausau Daily Herald*, Feb. 14, 1999)

- “Justices Air Grievances Against High Court Chief” (*La Crosse Tribune*, Feb. 14, 1999)
- “Four Tried To Reduce Powers Of Chief Justice” (*Wisconsin State Journal*, Feb. 13, 1999)
- “Justices Lay Bare Problems With Abrahamson” (*Wisconsin State Journal*, Feb. 14, 1999)

Those headlines are not from last week, last month or even last decade, and the concerns reflected in them are unrelated to partisanship or ideology. As early as 1987, the old *Milwaukee Journal* reported intense hostility among the justices. Later stories indicated that the bad blood was only getting worse. A *Milwaukee Journal Sentinel* article in 1999, for instance, cited a majority of the court consisting of Justices Donald Steinmetz, William Bablitch, Jon Wilcox and Patrick Crooks as criticizing Chief Justice Shirley Abrahamson for making unilateral decisions on administrative matters without court input.

The article highlighted that she had assigned more than \$1.7 million in grants without the approval of the court. These four justices presented her actions as an abuse of her position, with Justice Bablitch, who was described by the newspaper as “a fellow liberal who nearly always vote[d]” with the chief justice on close cases, going so far as to call her administration a “monarchy.”

No institution should be led by an individual selected arbitrarily.

A *Wisconsin State Journal* article from 1999 quotes a statement released by the same majority criticizing Chief Justice Abrahamson's leadership on administrative matters as follows: “The process for dealing with administrative issues ... is far

too often confrontational, chaotic, divisive, and dismissive. Countless hours of justices' time, cumulatively thousands of hours, are spent fighting battles that need not be fought, fighting administrative issues that should have long ago been put to rest."

It was Justices Steinmetz, Bablitch, Wilcox and Crooks who became so concerned with Chief Justice Abrahamson's administration of the court that they introduced a rule that would have limited much of the chief justice's power, creating a chief operating officer of the court — someone other than the chief justice — to manage all of the court's administrative work.

When this failed — because both Chief Justice Abrahamson and Justice Ann Bradley threatened to sue, according to newspaper reports in 1999 — three of the four took the unprecedented step of publicly endorsing Chief Justice Abrahamson's opponent in the 1999 judicial election. The discord that prompted these endorsements was so deep that at least two justices considered resigning from office, as reported by the *Journal Sentinel* that year.

Several recent developments confirm, unfortunately, that the court continues to suffer from a lack of effective leadership. Earlier this year, Chief Justice Abrahamson offered several "proposals for change" under the purported rubric of fostering "civility" on the court and generating greater "public trust and confidence" in it. Among them, she suggested that the court hold all of its opinion conferences in public view.

Let me be frank. The suggestion that

more public scrutiny of the court's internal operations would foster greater civility is at best disingenuous and at worst ludicrous. When animosity arises in legislative bodies, for example, public attention does not foster greater civility,

it polarizes the body and fuels grandstanding. Even more to the point, the recent difficulties at the court cannot plausibly be said to result from a lack of publicity. If anything, it is just the opposite.

A second recent proposal that drew the support of Chief Justice Abrahamson and her allies on the court would have allowed four justices to force the recusal of one of their peers from any given case. As with the proposal for public opinions conferences, this suggestion seemed tailor-made to perpetuate the unfortunate cycle of hostility, recrimination and ill will that has plagued the court.

To be blunt, when a small group of people has to work together closely, as we on the court do, there is simply no substitute for collegiality. If animosity arises, as it unfortunately has in this case, there is a desperate need for leadership which can look forward, not backward, and which can focus on repairing relationships, rather than pouring salt in old wounds.

A proposal that effectively tells the justices (and the public), "We have no faith in you to behave ethically in the execution of your job," as the recusal proposal did, will do nothing to improve the relationships on the court. This is not the leadership that the people of Wisconsin deserve from their highest judicial official.

I have been addressing the personal relationships on the court rather than the



Chief Justice Shirley Abrahamson

ultimate work product. Though that distinction is important, it is far from absolute. The personalities affect the work and vice versa. One area in which the two intersect is in the comments made by the authors of majority opinions directed at those in the dissent and, more frequently, the other way around.

The current majority has restored a judicially conservative course that focuses on applying the law rather than molding it to fit our own personal agendas.

Dissenting opinions are supposed to be an opportunity for a justice to respectfully express an honest difference of opinion about the law. Indeed, there is an old tradition in American judicial history of concluding dissenting opinions with the phrase, “*I respectfully dissent.*”

On our court, however, the words have all too often been used more as lip service than as a genuine sign of respect, as they are often preceded by a series of ad hominem attacks challenging the intelligence, capability and even the good faith of the justices in the majority. It is a shame that some use dissenting opinions as a vehicle for voicing personal grievances.

In 1987, a justice publicly complained that then-Justice Abrahamson “piddles all over our opinions in her dissents.” This practice is possibly even more damaging to the court than anything else, because it trivializes and debases the court’s opinions, which are supposed to be scholarly expositions of the law.

It is particularly troubling in light of the fact

that the court is entrusted with supervising the professionalism and ethics of the entire bar in the state of Wisconsin. Some on our court set an unhelpful example for those attorneys who look to our work product as an exemplar for the profession.

I can illustrate, anecdotally, this point about how the acrimonious climate on the court creeps into its work. I was surprised during my first term on the court when one of my colleagues, whom I have grown to respect, apologized for disagreeing with me about the proper legal outcome of a specific case. I told my colleague I always assumed that people of goodwill could have an open and frank discussion about the law and come to differing final opinions, yet retain their civility and friendship.

How can we come closer to realizing that vision?

I suggest that one way to remediate the problems affecting the court is to change the way in which the chief justice is selected. Currently, the most senior justice automatically becomes the chief justice for the duration of his or her tenure on the court. It was not always so. For a number of years, the chief justice was elected directly by the people. It is difficult to believe that those who changed that method to the current system intended to provide an avenue for a single individual to

The citizens have consistently demonstrated a preference for judicially conservative justices.

dominate the court for decades.

If his or her peers instead selected the chief justice, there would be a built-in institutional incentive for the chief justice to conduct him or

herself in a collegial manner. This, perhaps, may be a good start toward an enhancement of civility and professionalism on the court.

Indeed, our very court has established a system whereby the chief judges in the circuit court districts, as well as their deputies, are appointed to serve in that position for three consecutive two-year terms at a maximum. That method has worked well, as it is based on the sensible principle that no institution should be led by an individual selected arbitrarily and installed indefinitely. We would be well-served if we applied the same sound reasoning to our own administrative procedures.

I am not alone in this suggestion. There are, unsurprisingly, four times as many state supreme courts that select their chief justices through a court vote as opposed to through seniority (20 vs. 5).

Commentators have suggested that appointing justices rather than electing them would deal with the problem. I would remind them that we, the people of Wisconsin, have a constitutional right to elect our judges and justices. Those who would strip us of that right do so for only one reason: They believe in their heart of hearts that they know better than we do.

I submit to you that a small group of politicians, no matter how well intentioned, cannot know better than the people of the state of Wisconsin. Our founding fathers knew this to be the case and so do we. Appointing justices, rather than electing them, would not remove politics from the judicial selection process. It would merely focus

and concentrate the politics on the appointing authority.

Finally, our court must end its current practice of airing in public every disagreement concerning internal matters. Our chief justice has scheduled

an unprecedented volume of these so-called “open administrative conferences,” and I do not think they inspire confidence in the court. I ask you to consider what group of any kind — whether a board of directors or a family — burnishes its image by conducting its internal business in a forum of public spectacle. It is time to curtail these odd, lengthy and counterproductive displays.

So, to the question that you posed to me, whether the state of Wisconsin can have confidence in its judiciary, I answer with a resounding yes. As I have said, the quality of the court’s work and the personal conflicts on the court are interrelated. Since 2008, the court’s opinions have reflected the judicial restraint and conservatism that fosters confidence, predictability and uniformity in the court.

Unfortunately, many tensions among the justices remain, and we have much room for progress. Nevertheless, as we continue to restore confidence in the quality of our work, and as we begin to seriously think about ways to improve the administration and leadership of the court, I remain hopeful that we can, working together, create a collegial environment and get back to doing the job we were elected to do: faithfully apply the law. ■



Before his election to the Wisconsin Supreme Court in 2008, Justice Gableman was a Burnett County circuit judge and the district attorney of Ashland County.



Anatomy of a Troubled School District



Picturesque Bayfield has it all: dreadful student performance, community infighting, a powerful teachers union, outlandish spending. What can be done?

By Mike Nichols

Bayfield — Over 300 miles from the never-ending debates in Madison over how to help struggling schools, in a small, largely impoverished district along the edge of Lake Superior, Liz Woodworth ran unopposed for a spot on the Bayfield School Board this spring.

Woodworth isn't just another parent. She and her husband, Jeff Kriner, are both teachers; she in nearby Ashland and he in the same district that Woodworth will help run. Kriner, in fact, has served as everything from a co-president of the local Bayfield Education Association to a teachers union negotiator and spokesman who appears before the School Board.

In states such as Arizona and Mississippi, conflict-of-interest laws would bar Woodworth from serving. Not here, where the state has long left local schools to sort out their own problems and conflicts. With Woodworth slated to begin a three-year term in late April, critics fear she will help preserve the status quo in schools that desperately need outside intervention.

'We have such a disaster here that DPI has an obligation to step in,' says critic Ed Batton.

Ed Batton, 66, a semi-retired, longtime resident of the area, has been trying for years to bring attention to what he calls "financial mismanagement and overspending."

The Bayfield district spends a whopping \$20,800 educating each of its 430 students, second highest among Wisconsin's K-12 districts, according to 2010-'11 data from the Wisconsin



Ed Batton, 66, is a semi-retired, longtime resident of the area.

Taxpayers Alliance and the state Department of Public Instruction. But he also has another, more fundamental concern: "The real tragedy is the human tragedy."

"I have had a lot of negative reaction from the community because I am messing with their story, and their story is that this is a great little school, and this is the best little town in America," says Batton. That's a "myth." The real story, he argues, is one of "a fundamental failure of government at the state and local level."

Many in Bayfield, as Batton suggests, tell a different story altogether. Woodworth is among them. She didn't return calls from Wisconsin Interest, but has stated that the district is doing

"an excellent job," and that "Bayfield taxpayers aren't really paying any more than folks in other parts of the state and, in some cases, are paying less per student."

It's unclear what she based the assertion upon since local property taxpayers pick up the lion's share of the expenditures. But in an effort to refute Batton's persistent criticisms, she has noted that Bayfield High School was part of a group that received a bronze medal from U.S. News and World Report, which considered both student demographics and test results from the 2007-'08 school year. A more comprehensive look at years of Wisconsin Knowledge and Concepts Exam results for the district is not as heartening.

An average of all WKCE test scores taken by Bayfield's high school sophomores in five different subjects over three recent years placed them 365th out of 378 districts in the state. There are bright spots. But there are also numerous instances of classes of Bayfield students in recent years coming in dead last in Wisconsin on various tests. One of the very highest spending districts in Wisconsin, Bayfield often has one of the very lowest levels of achievement.

"When I first started to ask questions, I would get two answers," says Batton. "One was, 'We have the greatest school district in the world,' and the other was, 'We have one of the worst.'" Then he realized, he said, that the people saying it was one of the best were "the ones feeding at the trough."

"They," he charges, "have made a beautiful nest for themselves."

Most of the district's 430 kids go to school in the same building in Bayfield, while eight attend a tiny school on Madeline Island. The district —

which also encompasses the sprawling and largely impoverished reservation of the Red Cliff Band of Lake Superior Chippewa — has high transportation and food service costs. High levels of poverty can also mean extra health and counseling expenditures.

But a primary reason for high spending, according to Wisconsin Taxpayers Alliance statistics, is the money funneled toward salaries and fringe benefits in a district with more employees per student than any other district its size or larger in Wisconsin. During the 2010-'11 school year, there was one staff member — including administrators, teachers and others — for every 4.8 students. Many are teachers — one for every 10 children — who have higher than average salaries.

Like Woodworth and Kriner, Dave Doering, the current head of the Bayfield Education Association, declined to comment. But community members and Jay Mitchell, the district's interim superintendent, come to the teachers' defense.

Mitchell is the longtime Superior superintendent who accepted a short-term contract in Bayfield after former superintendent Linda Kunelius was forced out by the School Board in 2011. He says that WKCE scores are misleading because they don't measure student growth over time. You have to "look at where they're coming in and where they are five years later," to accurately gauge the school's impact on students, and "you don't have that," says Mitchell.

"I think when we get to that point, it will show that each year these kids move in the right direction."

Mitchell has little patience for Batton. "In fact, you teach the damn class and see how well you do," he said, sitting in his office in the main Bayfield school building. "I'll take him up to a special ed class. I had to be there this morning because there was a knife incident."

About 80% of kids in the district, which draws most of its children from the reservation, receive free or reduced-price lunch and about a fourth are classified as having disabilities. The challenges are daunting.

Kunelius, the former superintendent who left amid considerable conflict with the board, fully acknowledges that. But she believes there is also a deeply entrenched institutional racism that fosters low expectations. It's evident, she says, in the mantra you hear from some that "the teachers are really great," and the belief that problems stem only from "the kids, the families, the historic trauma."

The first year she was in Bayfield, she recalls, there were 1,400 disciplinary referrals of K-8 kids to the office. Some of those students were being placed in "cubicles with doors," called time-out rooms, for extended periods of time. A new elementary school principal, Sheila Everhart, quickly eliminated the practice, increased parent involvement, pushed classroom management strategies, rearranged

Bayfield Schools' Record of Failure

	4th Grade		5th Grade		6th Grade		7th Grade		8th Grade		10th Grade	
2010-11 School Year	Reading	Math	Reading	Math	Reading	Math	Reading	Math	Reading	Math	Reading	Math
Bayfield's Ranking	411	410	401	393	393	411	397	381	344	102	372	349
# of Wis. Districts	411	411	413	413	412	412	412	412	411	411	377	377

SOURCE: STATE DEPARTMENT OF PUBLIC INSTRUCTION, WISCONSIN TAXPAYERS ALLIANCE

The district's students have some of the worst scores in the state on the annual Wisconsin Knowledge and Concepts Exam.

The Bayfield district spends a whopping \$20,800 educating each of its 430 students.

schedules in order to provide more uninterrupted blocks of reading and writing instruction, and held staff accountable, according to Kunelius. At least for a while.

The School Board recently notified Everhart that she is being let go, ostensibly for economic and organizational reasons.

Kunelius doesn't buy it.

"Let's be honest," she wrote in a Jan. 31 letter to some members of the School Board. "Those reasons are a sham."

Kunelius says disgruntled teachers fomenting discontent play a key role in pushing out administrators. By her count, there have been six different district administrators — including three interim administrators — in the last 10 years and yet another one is expected to begin work over the summer. There are myriad stories of friendships and relationships between board members and district employees that, from Kunelius' perspective, make change extremely difficult.

"It almost appears as though the union is running the district," she wrote in an April 25, 2011, open letter that was made part of her file after she was pressured to leave.

The decision to get rid of Everhart and

Woodworth's desire to join the board have soured some who thought things were on the right track. Frank Graves is a retired Ecolab executive from St. Paul who founded the Bayfield Community Education Association in the mid-1990s and, when initially interviewed in December, he said he disagreed with Batton.

"Ed is a good guy, but he is so narrow all he can do is look at the stats," said Graves at the time, adding that he believes teachers in the district

are "doing a conscientious job." In early February he called back, mentioned both the Everhart and Woodworth developments, spoke more highly of Batton and added that he was no longer so optimistic about the direction of the district.

"The teachers," says Graves, "are getting very arrogant."

"The union thinks it is in charge and thinks they can run the school, and I don't think the School Board is experienced enough to tell them that they can't.

"The community," he added, "is more divided now than I have ever seen it."

Some business owners say they are pleased with the schools. "The schools are doing great," says Dana Noteboom, the co-owner of a construction company who is also active in the local chamber of commerce. "I would expect you to hear quite a bit of positive" reaction.

Graves, who owns a local hardware store with his son, is less optimistic.

"The school is the glue that holds the greater community together," he says. "If the school fails, the greater community fails.

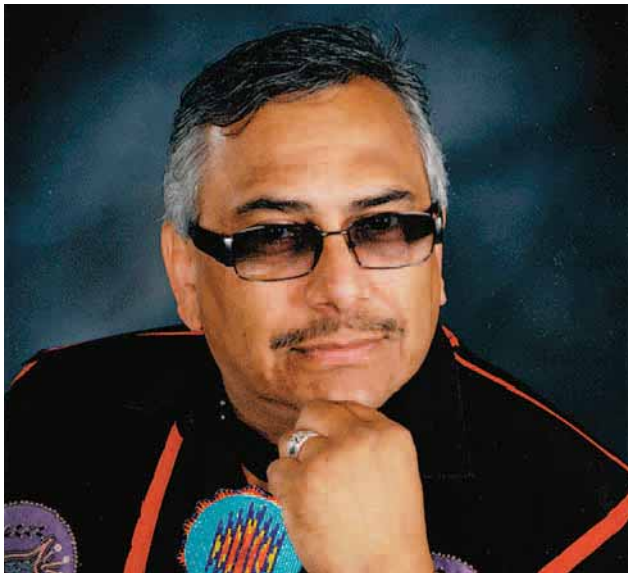
"I don't think people want to sit back and surrender and let the town go to hell," adds Graves.

Problems extend far beyond test scores and

individual administrators. More than 40 kids leave the district each year through open enrollment, while only a handful, if that, transfer in. During the 2010-'11 school year, 22 kids were also home-schooled, about double the number in the early 2000s. While the number of minority students has held steady, the non-minority student population has plummeted from approximately 170 to fewer than 90. Bayfield has suffered from a debilitating phenomenon most often associated with large

urban districts in the 1960s and '70s: white flight.

Tribal leaders declined to comment about concerns with the schools because they are involved in "mediation" with the district, says Dee Gokee-Rindal, administrator of the education division of the Red Cliff Tribe. The mediation appears to involve the county more than the school district. But Bayfield County Administrator Mark Abeles-Allison, like others, was tight-lipped, saying only that discussions



Red Cliff member Jim Pete likes the fact the schools have focused on preserving tribal traditions.

have been held in confidence. "There is no formal complaint. There are concerns that have been raised that we're trying to see if we can address."

There is what Mitchell readily acknowledges is a "huge cultural schism" in the district stemming partly from the fact the Red Cliff often "look at education quite differently."

Jim Pete, a Red Cliff tribal member who attended school in the district, went on to earn a doctorate in business administration, and has been active in the schools in Bayfield, emphasizes what he sees as

the importance of preserving the Ojibwa language and culture.

"The teachers that are currently in the school have been very supportive and willing to integrate the cultural and language efforts. I really want to mention that," he says, stressing that he speaks only for himself.

The tribe cannot flourish in isolation, however. It recently opened a new casino overlooking the Apostle Islands that could be an economic boon, but, for now, the tribe is still one of Wisconsin's poorest.

Kunelius started out on what was widely acknowledged as a very positive footing with the tribe in 2007. With the help of a tribal member on the School Board, she visited almost every home of every child throughout the entire district.

In an effort to determine just how and why things later went bad, Wisconsin Interest made an open-records request. A tedious litany of School Board concerns with the former administrator focused on minutia such as Kunelius' interaction with students who sent her a letter asking her to limit her comments during graduation, according to a preliminary notice of non-renewal issued in early 2011 and then withdrawn shortly before she resigned.

Basically, though, the board said it thought members of the community had lost confidence in the superintendent. In a 12-page response, Kunelius called the various concerns "analogous to throwing spaghetti at the ceiling," said the allegation that she had lost the confidence of the public was a "gross generalization" lacking any objective evidence, and lamented the influence of the union on the board.

"Like a lot of districts, you have a lot of really good teachers, and a few who are toxic and stir the pot," Kunelius said in the interview. Because

'The teachers are getting very arrogant,' says businessman Frank Graves. 'The union thinks it is in charge.'

of "small-town politics, it is virtually impossible to remove" them.

School Board member Brian Goodwin declines to criticize Kunelius or Batton. "We have a serious, chronic, health crisis going on here and that is what we need to focus on," he says. "I am not going to criticize Linda as someone who failed. ... We have to live together here."

Batton, he adds, "is entitled to his opinion." But the story, he insists, is "not just the grades and the numbers. ... There are all these other variables and intangibles," social issues that need to be dealt with so teachers can teach.

Kriner, the teacher who is married to the incoming School Board member, declined to comment.

Reached by phone, he wondered out loud why he should "talk to a statewide conservative think tank (about) a local office."

"No comment, sir," he said. "Adios."

The office his wife ran for is a local one. But state taxpayers contribute over \$4,300 per student to the district, according to 2010-'11 figures, and federal taxpayers provide considerable support, as well. Like many property taxpayers who own vacation homes in the district but spend most of their time elsewhere, they have no ballot power over board members facing a pivotal spring.

Woodworth will soon take her seat. A new superintendent is slated to start this summer just as a teachers contract — one extended at the behest of union leaders shortly before Act 10 became law — expires.

After that, teachers will have very limited rights to bargain collectively, and the board will have the latitude to make changes. Long flush with money, there is now a little less to go around. After approving

a 2010-'11 budget of \$9.6 million and a local tax levy of \$5.9 million, the 2011-'12 budget is down to \$8.4 million with a local tax levy of \$5.8 million.

Woodworth acknowledged in an interview with a local paper that "more cuts are coming, and there will be difficult decisions that will have to be made."

If she follows state law, she will be precluded from voting on anything that could substantially benefit, either directly or indirectly, her husband. Amid a landscape rife with personal relationships, strong personalities and potential conflicts of interest, there will almost invariably be judgment calls and questions about whether she should even be allowed to sit in on certain discussions.

In the meantime, there are larger issues complicated by an unusually influential group of teachers, poverty, cultural differences and high numbers of special education students.

Mitchell, the interim superintendent, resists the notion that the solution lies in a tribal charter school or smaller district just for the reservation.

"You can do all those things," said Mitchell. "But I would be careful of the motivation. Do those things, and you will take away any chance they have of being successful."

"The answer lies in the hearts and minds of the people that work with these kids," he said.

People like Batton and Kunelius disagree. Normally, says Batton, he "would be more inclined to believe that local control is sacred." But, he adds, "I think you could make the argument that we have such a disaster here that DPI has an obligation to step in and take a hard look at what is going on. It has been demonstrated that local control has failed."

Problems are too big, too insidious and too ingrained, he and Kunelius believe, for anyone local to fundamentally change things.

Help may not be on the way

What should be the role of the state Department of Public Instruction in sorting out Bayfield's school woes?

"It seems to me there needs to be a SWAT team or management group from DPI" coming into the district, argues Ed Batton, an outspoken critic of the district.

Bayfield does receive DPI help in the form of modest grants meant to improve school safety and learning conditions, for example. But the department hasn't asserted itself in any substantial way in Bayfield in years.

Linda Kunelius, the former Bayfield superintendent who also worked for DPI, says the department is not inclined to intervene in local districts. Nor does it have the legal authority. DPI's feet really cannot be held to the fire to make the department more proactive, she says.

"I wish they could be," she says. "But as a state we have this concept of local control."

The Wisconsin Constitution is perplexingly vague about DPI's purpose; it states only that the Wisconsin superintendent of schools shall have those "qualifications, powers, duties and compensation . . . prescribed by law."

And "there is no teeth in [the current law] for them to really come in and look at the district," says Kunelius.

Bob Butler, an attorney for the Wisconsin Association of School Boards, concurs that DPI can only intervene with so-called "broad powers" under specific circumstances.

Intervention would have to be triggered by a violation of the federal Individuals with Disabilities Education Act, provisions of the No Child Left Behind law that govern districts failing to make so-called "adequate yearly progress," or a state statute that gives the head of DPI special powers only under circumstances ultimately tied to those same yearly progress requirements — which Bayfield consistently meets.

Aware of the NCLB and yearly progress deficiencies, DPI is applying for an NCLB waiver that would create new accountability measures. In late January, DPI made public a first draft of the waiver request that would enable the state to set up better assessments of school personnel, provide more support and, ultimately, the ability in extreme circumstances to appoint a "special master" who would supersede the local school board in struggling districts.

If granted, the NCLB waiver will bring what DPI spokesman Patrick Gasper suggests will be "more clarity" to the issue of what "DPI's point of intervention will be" with local schools and districts throughout the state.

"I am very optimistic that if it does get put in place it will be a significant improvement" over the current system, says Adam Gamoran, director of the Wisconsin Center for Education Research.

DPI, though, didn't expect an initial response to the waiver request until late spring, according to Gasper. The department doesn't anticipate outright rejection or acceptance. More likely, it will have to work with federal officials to develop an acceptable plan over the next year, he says.

Kunelius, the former Bayfield superintendent, worries about the delays.

"It will take forever to implement that [waiver request] and get districts identified" that need help, even with the waiver, says Kunelius. And even then, she suspects, DPI will not forcefully intervene. Gasper does not contradict her.

Batton has no expectation that real change is coming to the Bayfield schools. "We are going to continue to impose pain and suffering on those kids and the taxpayers," he says. "It is ultimately a really sad story."

— M.N.

Gov. Jim Doyle did sign a law two years ago giving the state schools superintendent the ability to step in under some circumstances. But that law gave teachers what then-Milwaukee Public Schools Superintendent William Andrekopoulos called so many "excuses for not performing" that the MPS leader — who thought the teachers would be held to higher standards if the kids at issue were white — called it "a bit racist."

State and federal authorities, in the meantime, are far more focused on trying to develop new accountability systems and figuring out how to sidestep antiquated No Child Left Behind requirements than on examining small districts like Bayfield.

"What is disconcerting in this district is it has everything going for it," says Kunelius. That includes many good teachers, decent salaries and benefits, low student/teacher ratios and, despite impending cuts, a lot more money than most.

"The kids deal with horrific family issues, but that should not be an excuse. The kids can succeed," she says. She thinks ambitious legislation is needed that could, for instance, give DPI the authority to more easily come in, evaluate staff and dismiss those who are toxic or ineffective in the classroom.

"We are squandering an opportunity to make a difference in the lives of these kids."

Goodwin, for his part, doesn't sound much more sanguine. The district needs help from someone, somewhere, focused on the social ills that preclude good teachers from teaching, he said.

"I don't think anybody will disagree with that — Ed Batton or Linda or anyone else — because we are stressed," he said. "We are tapped out." ■

Mike Nichols is a Senior Fellow at the Wisconsin Policy Research Institute.



The Empire **Strikes** Back

As the Wisconsin protests show, public unions remain a powerful barrier to innovation as they defend their own perks and privileges

By Charles J. Sykes

Among the many tales of woe that appeared in the media in the wake of the Wisconsin protests was the melancholy tale of two public school teachers from Oshkosh who put in their retirement papers in the wake of the union reforms.

“Not only am I losing salary and benefits and facing a bigger work load, but now they are taking away my rights,” a 56-year-old elementary school teacher named Mary Herricks told the *Wall Street Journal*. “Retirement was supposed to be something happy. I’m so sad.”

But a quick search of online databases takes some of the edge off the gloom. Herricks earned a salary of \$68,423. The paper noted that even though she was retiring at 56, she would be able to collect “nearly her former salary” in pension benefits. It got better. Her husband, the local head of the teachers union, was also retiring from a position that paid him \$75,916 a year; between the two of them, they made more than \$140,000 a year. When generous fringe benefits are added in, the couple earned more than \$190,000 in salary and fringe benefits.

Nor would their decision to retire pinch very much at all. Both of them will receive taxpayer-funded health insurance until they turn 65; as well as a payment worth about \$600 per year of

service, which would amount to about \$43,000 on top of their pensions. They will also be able to earn additional income by working as substitute teachers. “Given that pensions are off-limits to certain taxes,” noted *The Journal*, “Mr. Herricks says they will bring home close to what they did before.”

During his 2008 presidential run, candidate John Edwards frequently cited what he called the “Two Americas,” a reference to what he saw as the gap between the rich and the poor. But the term applies equally to the gap between average America and the new privileged class of public employees like the Herricks, who enjoy expensive fringe benefits and lavish pensions that increasingly define a growing divide among Americans.

Even as private sector workers struggle to find and keep jobs, and pay their bills, politicians have lavished expensive perks on public employees under the baleful eyes of ever-more-powerful public employee unions.

As a result, one America (generally private sector taxpayers) is now tasked with saving and funding their own retirements while also paying into the pensions of public employees, many of whom can retire in their 50s sometimes with six-figure pensions. In California, more than 15,000 former government workers have pensions that pay them more than \$100,000 a year, a number that is growing by 40% a year. To match

a pension of that size, a private sector worker would have to accumulate roughly \$2.5 million in savings

As he wages his own quixotic war against bloated public pensions, New Jersey Gov. Chris Christie relates the story of one 49-year-old retiree who had paid a total of \$124,000 toward his retirement pension and health benefits. “What will we pay him?”



Mary and Len Herricks will enjoy comfortable teacher pensions.

asked Christie. “Three point three million dollars in pension payments and health benefits.” A retired teacher who contributed \$62,000, says Christie, will get \$1.4 million in pension benefits plus \$215,000 in health care benefit premiums over her lifetime.

“(There are) two classes of people in New Jersey: Public employees who receive rich benefits and those who pay for them,” said Christie.

As compelling as the anecdotes of excess are, they do not begin to capture the full picture of the public pension tsunami bearing down on taxpayers. The unfunded liabilities for bloated state pensions are generally a mystery, but Joshua Rauh, a professor of finance at Northwestern University’s Kellogg School, sees deficits of between \$3.2 trillion and \$5.2 trillion — a massive burden that will inevitably be shifted onto the taxpayers and perhaps lead to a new round of bailouts.

How have we gotten here?

During flush times, politicians have rushed to fatten benefits, with the argument that higher stock prices will pay for the increased pensions and that taxpayers have nothing to worry about. By the time the public is faced with massive unfunded liabilities and escalating contributions, it is often too late to stop the hemorrhaging.

When, for example, the California legislators voted to jack up state pensions in 1999, they were told in a brochure from the California Public Employees’ Retirement System that the increase wouldn’t cost the state any additional money. They were assured that the pension increases would all be covered by investment earnings.

At the same time, the system’s own actuaries tried to warn that if the markets did not follow the rose-colored scenario, the cost to the state could explode, from \$159 million in 1999 to more than \$3.9 billion in 2010-2011. As blogger Ed Mendel points out, that forecast “scored a near bull’s-eye” on the \$3.888 billion state payment for a recent fiscal year. Unfortunately those warnings were ignored, as they were in states and cities across the country.

As fringe benefit and pension costs balloon, government budgets are eaten from within, sucking up money that is no longer available to fund police officers on the street or teachers in the classrooms.

There are several reasons for this. Government is the most heavily unionized sector in the American economy, and the public employee unions have become adept at making their

political influence felt at the polls, with the effect of making many of the decision-makers actually beholden to the unions with whom they are ostensibly negotiating. Adding to the conflict of interest, many officeholders share in the generous benefits they grant to other public employees.

During the 2010 midterm election cycle, for example, the largest public employee union, AFSCME, spent more than \$87 million to back Democratic candidates; the union’s expenditures amounted to nearly a third of the pro-Democrat independent spending in that year’s campaign. The ballooning expenditures — up from just \$19 million in 1997-1998 — reflect both the growing number of government jobs and the higher stakes in preserving unions gains. “We’re the big dog,” boasted the head of AFSCME’s political operations.

It would be unfair to blame all of this on public employees, many of whom work hard at difficult and crucial jobs. The same cannot be said of the public employee unions and their incestuous nexus with the politicians who have abetted their

rise and bloat. The public union experiment over the last half century has been a disaster: The unions have become an entrenched, obdurate and grasping special interest devoted to expanding government spending and employment, even at the expense of public services.

Ironically, the public employee unions bear only a passing resemblance to their private counterparts: government is a monopoly. Unlike private unions, there is no competition that limits their appetites or against which their demands can be measured. Public employees also enjoy civil service protections that are largely unknown in the private sector, and despite the size and clout of the public employee unions, most of them cannot legally strike.

But even in times of economic distress, the unions remain a powerful barrier to reform and innovation, protecting the status quo as they protect their own powers, privileges and perks no matter how unsustainable. The result is that public employees have become a new class of takers, increasingly mooching off taxpayers even as services are curtailed, especially at the local and state level.

The War in Wisconsin demonstrated just how far they are willing to go to hold onto their claim on other people’s money.

In early 2011, traditionally progressive Wisconsin became

As fringe benefit and pension costs balloon, government budgets are eaten from within, sucking up money that could fund police officers or teachers.

The Empire **Strikes** Back

Ground Zero for the fight over public employee privileges. When Gov. Scott Walker proposed curtailing public employee union power, the Capitol was besieged by hundreds of thousands of protestors and gripped by weeks of legislative gridlock and legal wrangling. Teachers staged illegal sick-outs, legislators received death threats, businesses were threatened with boycotts, and civil rights leaders descended on Madison, trailing clouds of apocalyptic rhetoric unheard since the heady days of the '60s.

The Reverend Jesse Jackson compared the struggle to preserve union power not only to the civil rights movement, but to the Exodus, comparing the mild-mannered and somewhat wonkish Walker to “a modern-day Pharaoh.” This was relatively mild compared to protest signs that compared the governor to deposed Egyptian dictator Hosni Mubarak and Adolf Hitler.

Ironically, the protests had been launched by some of the most generously compensated public employees in the country who were being asked to make relatively modest contributions to the state's massive deficit.

Wisconsin had lost more than 170,000 jobs in the Great Recession — almost all in the private sector — and the state's per capita income had fallen below the national average.

Even so, Wisconsin's overall tax burden continued to be among the heaviest in the nation, in part because government workers had been shielded from the economic tribulations. State employees, for instance, enjoyed one of the best pension systems in the country. Those pensions were funded by contributions from the state and from the employees themselves — *except that the state also paid the “employee” portion of the pensions.*

As a result, while taxpayers contributed \$1.37 billion a year into the state's pension fund in 2009, most state employees paid precisely nothing toward their own retirements.

Walker's proposal would have required them to contribute 5.8% of their salaries toward those pensions, as well as 12.6% of the cost of their increasingly expensive health care premiums. Even with the additional health care costs, government workers would be paying less than half of the national average for health insurance.

Before Walker's proposal, Wisconsin taxpayers were paying \$19,128 toward the average employee's family premium. The average employee contributed a mere \$936. Under Walker's plan, employee contributions would have averaged about \$2,500, still far less than the average private-sector employee's contribution.

Taxpayers had been contributing \$1 billion a year to employee health insurance, while Wisconsin's pampered public employees paid a mere \$64 million.

The dramatic backlash exposed not only the gap between the benefits of the public and private sectors, but also the depth of the sense of entitlement among well-heeled public employees who had drunk deep from the cup of victimism. In some respects, Madison may have represented the first Greece-like moocher rebellion.

As the battle over the two Americas escalated in Wisconsin, union leaders executed a tactical pivot, insisting that the uproar was not really about money at all, but rather about “rights.” Walker's proposal included sharply curtailing the ability of

government unions to bargain for anything other than wages and eliminated both mandatory union membership and the automatic deduction of union dues from public employee paychecks.

Some of the government unions said they would agree to the increased

pension and health care contributions, but insisted that they be able to retain all of their collective bargaining rights. Protestors insisted that those “rights” to bargain were fundamental civil rights. This was, of course errant nonsense.

There is no “right” to collectively bargaining. Most federal employees are not permitted to collectively bargain for either wages or benefits — and have never been allowed to do so under either Republican or Democratic presidents.

In fact, the concept of government unions is of quite recent provenance. No less a giant of progressivism than Franklin Delano Roosevelt had opposed the idea of public employee unions. “The process of collective bargaining, as usually understood, cannot be transplanted into the public service,” wrote FDR. “I want to emphasize my conviction that militant tactics have no place” in the public sector. “[A] strike of public employees manifests nothing less than an intent on their part to obstruct the operations of government until their demands are satisfied. Such action looking toward the paralysis of government by those who have sworn to support it is unthinkable and intolerable.”

Even George Meany, the president of the AFL-CIO, turned a baleful eye on the idea of public employee unions. “The main function of American trade unions is collective bargaining,” he wrote in 1955. “It is impossible to bargain collectively with

The public union experiment over the last half century has been a disaster. The unions have become an entrenched, obdurate and grasping special interest.

the government.”

Even today, government workers are allowed to collectively bargain in only roughly half the states, while others sharply limit who is allowed to come to the bargaining table. Indiana, Texas and North Carolina do not permit public employee bargaining at all. “At last report,” quipped columnist Jeff Jacoby, “democracy, fundamental rights and freedom were doing just fine in all of them.”

In practice, collective bargaining is less about rights and more about power as over time governments have ceded their authority to unions. In the voluminous teachers’ contract in Madison, for example, the list of items subject to collective bargaining includes everything from the size of bulletin boards to lighting, noise, chairs, footrests, adjustable terminals and keyboards, wall coverings and carpets, and room temperature. So great was the clout of teachers unions that they were able to insist that school districts throughout the state contract with their *parent union’s own insurance company* to purchase health insurance, even though it often cost far more than comparable policies.

After years of collective bargaining and growing union power, state and local government in Wisconsin were rife with stories of bloated salaries and benefits. The highest paid municipal employee in Madison was a bus driver who pulled down a salary \$159,258 in 2009. That total included more than \$109,000 in overtime that he was required to be paid through the union contract. More than a dozen state prison guards also made more than \$100,000 in 2009, using generous overtime provisions. In a practice known as “sick-leave stacking,” guards could call in sick for one shift but show up for the next shift and be paid time and a half. As Walker’s office later noted, “This results in the officer receiving 2.5 times his or her rate of pay while still only working eight hours.”

Riding the collective bargaining gravy train, some Wisconsin teachers were able to get a full year’s worth of salary for just 30 days of actual work. In Green Bay, for example, the teachers’ union contract created an “emeritus program,” under which teachers were paid a full year’s salary — in addition to their already generous pensions — for showing up just 30 days over a three year period.

Madison’s teachers had an even sweeter deal, since they had

collectively bargained for an “emeritus program” that paid retirees nearly \$10,000 a year on top of their pensions. Unlike the Green Bay deal, Madison teachers were not required to show up for a single day of work to receive the benefit.

In another school district, teachers enjoyed a staggering 90 paid sick days a year. Because the school year in Wisconsin was 180 days long, this meant that they could be paid a full year’s salary for just 90 days of work. In Milwaukee, the teachers union convinced the district to pay health care premiums for retirees, a benefit that in 2016 will cost \$4.9 billion, four times the Milwaukee school system’s entire current annual budget.

Ultimately, the ferocity of the union backlash can be explained

simply: It was not about rights. It was not even about the bloated salaries and benefits. It was about power and the threat posed to that power by proposals to end forced union membership and the automatic collection of dues.

The power of labor rests increasingly on the power of public

sector unions, and the mother’s milk of their power and political influence is their access to millions of dollars of mandatory, government-collected union dues.

For the unions and their political allies, there is no threat more dire than the prospect of letting government workers voluntarily choose whether they will fund the union’s coffers. In that respect, the story of Indiana Gov. Mitch Daniels is telling. Daniels wasted little time in cutting off the power of the government unions, eliminating their right to collectively bargaining on his second day in office.

“On the second day, we discontinued it, and I held my breath,” Daniels recalled. “And we didn’t have a Madison at all. I often say the only two things that happened were, one, we got the freedom to change things in a major way and, two, 95 percent of the employees, once it was their free choice, quit paying the dues to the union.”

When Daniels became governor, 16,408 government workers paid dues to the public employee unions. Six years later, just 1,490 did. ■



Charles J. Sykes is editor of Wisconsin Interest. His story is excerpted from his new book, A Nation of Moochers: America’s Addiction to Getting Something for Nothing (St. Martin’s Press)



What If?

Oddsmakers lay out the scenarios for a wild and crazy campaign year

By Jeff Mayers

This is the question pondered by prognosticators. And given the biggest political year in Wisconsin history, this is a question that will be asked again and again: What if?

What if recall elections against Gov. Scott Walker, Lt. Gov. Rebecca Kleefisch and several GOP state senators go forward?

How will those recall elections impact an already important election year that features an open U.S. Senate seat for the first time since 1988, regular legislative elections and a pivotal presidential contest?

The most predictable thing is the unpredictability of the what-if scenarios and the political times we're in. Remember the chaos surrounding the nine state Senate recall elections last year, the "fake" primaries, massive advertising spending and accusations of cheating and political skullduggery from both sides. Who could have predicted that in early 2011?

The result was two election dates in August and Democrats falling short of their goal to take control of the state Senate. In 2012, the stakes are much higher,

and so the maneuvering, the nasty ads and the spending will be unprecedented for Wisconsin politics. Some have predicted spending of close to \$100 million by year's end. As the Bachman Turner Overdrive song says, "You ain't seen nothing yet."

The Assembly, with a 20-seat Republican majority, is seen as highly unlikely to switch to Democratic control, even if a federal court redraws Republican redistricting maps after a trial in mid-February.

And legal challenges may throw off the timing of events and how they play out. While the Government Accountability Board wants all the recall elections on one date, that may not happen because of deadline extensions, primaries and legal challenges — already in motion by March 1 when this article was put to bed.

A recall election for Walker appears inevitable after the governor's campaign unexpectedly decided to forgo challenges to specific signatures, declaring it simply didn't have the time and that the GAB should follow a circuit court decision to "take affirmative steps to remove duplicative, invalid or fraudulent signatures."

That disappointed the conservative groups that had worked overtime scoping out what they said were thousands of faulty signatures. The development has insiders buzzing about whether Walker wants to speed up the election timetable. It's still unclear when a midterm gubernatorial election — the first one in state history — might take place.

But while likely, recall elections for Kleefisch and at least three GOP state senators are less certain. And as with the governor's race, their timing is up in the air because of potential primaries and legal challenges. Critics raise the specter of six separate general election recall dates, raising the cost of staging these elections into tens of millions of dollars.

Insiders predict a gubernatorial election sometime this summer, which would appear to benefit Walker because college students will be out of school and not so easily organized to campaign and vote.

But what if — here we go again! — a Democratic primary for governor, various legal challenges and other delays push the general election into August or September, perhaps even to the date of the statewide primary that used to be held after Labor Day?

Given a robust GOP U.S. Senate primary, that would seem to help Walker, who'd get an extra dose of conservative turnout as primary voters choose among Jeff Fitzgerald, the Assembly speaker; Mark Neumann, the homebuilder and former congressman; and Tommy Thompson, the former governor and George



The robust GOP senate primary features the return of former Gov. Tommy Thompson.

W. Bush's first health secretary. Eric Hovde, a wealthy businessman with ties to the Madison area, also is seen as a possible GOP candidate. The winner of the August primary will face Tammy Baldwin.

But the Democratic candidate also might get a boost from a primary in the liberal-leaning 2nd Congressional District, which encompasses Madison and Dane County. That's where Baldwin is giving up her longtime seat. Her bid for Herb Kohl's U.S. Senate seat leaves several Democrats to vie for that relatively safe congressional seat: state Reps. Mark Pocan and Kelda Helen Roys, and Dane County Treasurer Dave Worzala.

As you can see, the what-ifs are just starting. What does it all mean for the 2012 election season? Gleaned from election-watchers from across the political spectrum, here are some of the what-if scenarios that could arise.

What if Republicans sweep the recalls, with Walker winning, Kleefisch winning and GOP senators scoring victories?

This would be billed as the ultimate “silent majority” victory, a huge victory for conservatives in Wisconsin and nationally and a blow to President Obama’s re-election. If this happened, some Democrats fear, Obama would be left with a dejected base as he seeks to win a key upper Midwestern state. Obama won by double-digits over John McCain in Wisconsin in 2008, carrying a lot of Democratic legislators into office and extending a Democratic top-of-the-ticket winning streak in Wisconsin that dates to 1988.

But conservatives say passions are running high because of the recall, so getting their troops motivated won’t be difficult. The problem may be that the recalls are so dominating that other campaigns — even the U.S. Senate ones and Republican presidential campaigns that will come to Wisconsin for the April primary — won’t get their usual attention. It’s all recalls all the time. But whether that intensity can hold for months remains to be seen.

Politicos don’t rule out a Republican sweep, but many consider it unlikely because of the precarious state of the Republican Senate. The GOP majority in the state Senate was cut to 17-16 after Dan Kapanke of La Crosse and Randy Hopper of Fond du Lac were knocked off in the summer 2011 recall elections.

Now, three of the four recall targets (all but Senate Majority Leader Scott Fitzgerald) are viewed as vulnerable — in part because Republicans and influential third-party groups are going to the wall for Walker in terms of money, advertising and organizing. If their elections are on the same day as Walker’s, that could help them and the GOP majority survive.

If not, many see the odds rising that Democrats would take over the chamber for the summer and maybe into the next two-year session if a federal judicial panel in Milwaukee tosses Republican-drawn maps. That’s because

only one of three vulnerable GOP freshmen targeted — Terry Moulton of the Eau Claire area, Pam Galloway of the Wausau area and Van Wanggaard of the Racine area — would have to lose.

But with that big majority in the Assembly, many Republicans say the odds are good that the big conservative agenda items enacted in 2011 will survive for years to come.



Former U.S. Rep. Mark Neumann is another contender in the GOP senate primary.

What if there’s a split decision, with Walker and Kleefisch winning and Democrats gaining control of the state Senate?

This is viewed by election-watchers as a much more probable scenario, given the vulnerabilities of three of four GOP state senators.

For Republicans this could be tolerable. Analysts point out that even if Democrats take control of the Senate, the GOP could win it right back in the fall elections. And they ask what does it matter if Democrats run the Senate for a few months but Walker still occupies the East Wing and Assembly Republicans are still in power?

For Democrats, winning the Senate but losing the Walker race would be a big disappointment. How could Democrats and Walker opponents, who announced with great flourish that they had gathered about 1 million recall signatures, lose?

Experts say it could be a combination of things, including aggressive fundraising and early advertising by Walker and his allies when his opponents were absent from the airwaves, an election months away from the excitement of turning in the recall signatures, an improving state economy, and the emergence of a real opponent.

Republicans stress that this election is not a pure referendum on the governor. Rather, it’s a choice between Walker and a Democrat, whose flaws would be fully

exploited by Walker and allied groups through a searing negative campaign.

Conservatives were busy preparing their opposition research books even as Democrats maneuvered for what was considered a likely primary.

Some Democrats hold out the hope that Herb Kohl would come to the rescue, offering himself up as a two-year caretaker, moving the state back to the middle and then stepping aside. Kohl stepped out of a U.S. Senate re-election race because of the bitter political environment. Politicos are skeptical he'd jump back into the frying pan. But there are a few who think Kohl, a one-time state Democratic Party chair, could be convinced to think of it as a burden to carry for Democrats.

Without Kohl, Democrats likely would be left with a set of flawed front-runners, election watchers say. The front-runners, as of mid-February, are Kathleen Falk and Tom Barrett, but both are two-time statewide losers. Falk lost a previous gubernatorial bid in a primary with Jim Doyle and then lost an attorney general race; Barrett lost in the same gubernatorial primary in 2002 and then in 2010 against Walker.

Falk is a declared candidate and the favorite of key public-sector unions. But being branded with the union label can be risky — as evidenced by her endorsement by the Wisconsin Education Association Council and the perception, though denied by the teachers' union, that Falk had taken a union pledge to veto any budget that didn't contain a return to full collective bargaining rights. Analysts say the episode will likely be a turnoff for independent voters

Barrett has his own delicate situation. He has to first run for re-election as mayor of Milwaukee in April and mend fences with union activists angry over his

threatened takeover of Milwaukee Public Schools in 2010 and his use of Walker-backed collective-bargaining changes in balancing the city budget.

In an interview, Barrett said a primary could be a good thing for Democrats in a recall against Walker. Or not. "If it were a firing squad and everybody lined up in a circle, it would be bad," Barrett said. But if the Democrats

traveled around the state "talking about the failures of the Walker administration, in terms of his sleight of hand on collective bargaining, something he never talked about during the campaign," that could be a positive.

The more the voters are reminded of that story, Barrett said, "the more they recognize that the [budget] savings [Walker] sought ... could have been achieved

without going after his political opponents."

Republicans, meanwhile, have prepared a host of talking points aimed at Falk, calling her the candidate of big labor bosses and an environmental extremist on the issue of the proposed iron ore mine in northern Wisconsin.

Republican pollster Gene Ulm, of Public Opinion Strategies, maintains that conservative voters outnumber others in Wisconsin. Although he called the state unusually polarized lately — "There's nothing but love or hate, there's no 'like' going on in Wisconsin" — the percentage who approve of Walker's job performance will figure highly, he said.

"The rest is how well, to be crass about it, how well Kathleen Falk is disqualified to being governor of this state," Ulm told a WisPolitics.com luncheon in January.

Also at the luncheon, Paul Maslin, a Democratic pollster based in Madison who's working for Falk's campaign, said the winning candidate will need to appeal to independent voters in Wisconsin and that collective bargaining rights shouldn't be the candidate's only focus.



The U.S. Senate race of Rep. Tammy Baldwin (pictured with Jesse Jackson) could prompt a big Democratic turnout to choose her successor in liberal Dane County.

He said Falk could do that.

“I think for any Democrat, there’s going to be a question about, ‘Can you be a governor, can you handle this job, can you deal with the Legislature, can you negotiate with everybody — workers, business, union, etc.?’ I think she has a tremendous amount of credibility in that.”

Backers also see Falk as the candidate who could best keep the liberal passions burning and Walker’s gender gap intact. Falk, however, talks about a return to a nicer state of politics. She says that Walker’s confrontational approach “has torn our state apart, and that’s why a million people are recalling this governor.”

She touts what she says is her record of negotiating with unions to save taxpayers money without cutting workers rights.

The other candidate of note to declare early is state Sen. Kathleen Vinehout, a western Wisconsin Democrat who hasn’t always toed the party line.

What if there’s a Democratic sweep, with Walker and Kleefisch losing, and the GOP Senate switching over to Democrats?

Democrats contend there is a recipe for a sweep: First, a friendly primary that remains focused on Walker and gives the winner a boost into the general election (as Walker got a lift after his victory over Mark Neumann in the 2010 GOP gubernatorial primary); then add in a sputtering economy and the mystery ingredient — a Milwaukee County John Doe investigation that seemingly gets closer and closer to Walker.

More on the John Doe to come, but first the economy.

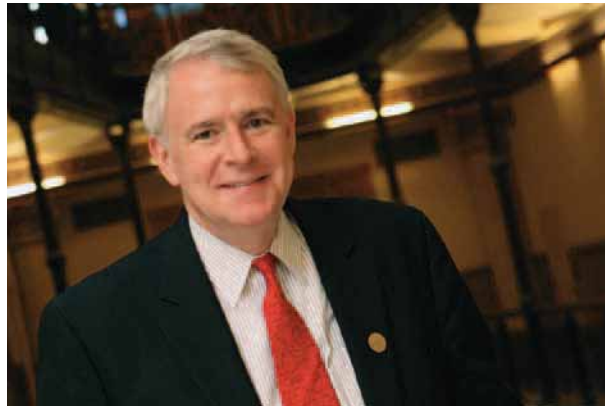
Analysts say Walker was elected because of voter discontent with the state’s economic malaise. While economists say the recession has ended, it sure hasn’t felt that way in Wisconsin, where job growth has been

largely stagnant.

Walker promised an improved business climate and 250,000 new jobs in four years — a pledge that seemed pretty safe to most experts in 2010. The jobs bounce-back from the downturn in the early 1980s, for example, helped propel Tommy Thompson into the East Wing of the Capitol and into the longest gubernatorial tenure in state history.

But while the unemployment rate dropped in Walker’s first year, from 7.5 percent to 7.1 percent, and the rate remained below the national average, the governor hardly made a dent in his 250,000 new-jobs pledge. So like Obama, Walker needs to show economic improvement to win back the independent-minded voters who put him into office, political vets say.

This is why Walker spent so much time on the “turning around Wisconsin” theme in his second State of the State message, those vets say, and this is why he went outstate to sell that message.



Milwaukee Mayor Tom Barrett may seek a rematch against Gov. Scott Walker.

The governor is arguing that his reforms are working and that Wisconsin’s business climate has improved dramatically.

But Assembly Minority Leader Peter Barca (D-Kenosha) counters that Walker is failing in his most important campaign pledge, pointing out that the state had lost jobs for six straight months. “He said [that job creation] was so vital, he was going to tattoo it on the foreheads of his cabinet secretaries. I didn’t see that tattoo,” Barca said.

Finally, there’s debate over the fallout from an all-Democratic victory this year. Would it mean all of the changes forced through by Walker and Republicans would be rolled back?

The short answer is no, assuming Assembly Republicans maintain their majority in the regular fall elections. Even if a Democrat sits in the East Wing of the Capitol,

and Democrats win the Senate in the summer and then maintain it in the fall, a GOP Assembly could be Republicans' firewall against a policy rollback.

What if the Milwaukee County John Doe probe snares more Republicans close to Walker or directly targets Walker?

Insiders think the John Doe probe may be the biggest threat to Walker, in part because it's unknown exactly where the investigation is going. Walker defenders attack it as "selective prosecution" by Democratic Milwaukee County District Attorney John Chisholm. But those who remember Dane County District Attorney Brian Blanchard's prosecutions in the "caucus scandal" say the motivation of the prosecutor doesn't matter, only how far he reaches. Blanchard's reach toppled legislative leaders Chuck Chvala and Scott Jensen.

A link to the caucus scandal is Kelly Rindfleisch. She is a longtime Republican campaign and legislative aide who was granted immunity in the caucus scandal only to be charged recently by Milwaukee County prosecutors for doing campaign work for then-lieutenant governor candidate and legislator Brett Davis (now an official in Walker's health department) while she was Walker's deputy chief of staff at the Milwaukee County executive's office in 2010.

The charges against Rindfleisch and Darlene Wink provided new ammo for Democrats and new worries for Republicans. Speculation is rampant that there's more to come, especially given the revelations of a secret email system and suggestions that digital evidence was destroyed and that others may be implicated.

Walker has told reporters: "I have every confidence that when this is completed, people will see that our

integrity remains intact." He says his campaign has been cooperating with the investigation. But in early February, Walker revealed that he had hired criminal defense attorneys and would meet with prosecutors. "They would like to talk to us about it, but we voluntarily set it up," he said.

State Democratic Party Chair Mike Tate says Walker's voluntary meeting with prosecutors "was not as 'voluntary' as he has made it seem." He further charges: "Even when the public has become newly focused on allegations of crimes committed on his behalf, Scott Walker cannot

muster a plain and honest explanation of things."

Observers conclude that even if Walker isn't a target of the investigation, opponents will certainly tie him to it with the aim of hurting his ability to win back those independent voters who helped put him in office.



Insiders say the John Doe probe may be the biggest threat to Gov. Scott Walker.

National forces are pondering these what-if scenarios with nervous anticipation.

They know that when "what if" becomes "what is," the consequences will likely be major for the Obama campaign, other Republican governors, unions and the warring congressional factions in Washington, D.C.

Wisconsin has long been a bellwether state for politics in the rest of the country. In 2006 and 2008, Wisconsin swung left. In 2010, the state went way right. Which direction will the Wisconsin electorate turn in 2012 — right, left or down the middle?

The winds are swirling right now and then will increase to hurricane force. Even after the storm, there may not be clear sailing for either party.

Hold on. We're all in for quite a ride. ■

Jeff Mayers is president of WisPolitics.com and WisBusiness.com, non-partisan web sites and news services based in Madison

Walker Had No Choice

To refloat the state budget and to save education, he had to break the power of the unions

By Richard Esenberg

I once argued that Gov. Scott Walker and President Barack Obama were the same type of politician. It's not that they aren't from Venus and Mars on policy, but both wanted to get something done. Their ambitions — or so I thought — were not only personal but also programmatic. They could think big.

Those days seem to be gone. While Obama may still dream of making the world anew, the reconstruction is clearly not shovel-ready. Chastened by the midterm elections, he now plays small ball. His case for re-election rests on a demagogic rant against a small number of wealthy people who should, damn it, pay another 4.6 percent of their income in taxes. That increase, along with the so-called Buffet rule, would reduce the deficit by less than 5 percent.

If our president has bold plans for the economy, the looming entitlement crisis, the smoldering Middle East or anything else, he's not telling. While I have no doubt he still longs for Stockholm on the Potomac, all he currently has to offer are more active truancy

officers and a renewed commitment to solar panels.

This is not, to say the least, the case with our governor. His attempt to fundamentally restructure state government has certainly stirred a whirlwind of opposition, but he's sailing head to the wind. No tax increases, no collective bargaining and no apologies.

The governor has been criticized for moving too fast and too far. Some of his critics suggest that, in this, he has failed to be truly conservative. They invoke the English statesman and political philosopher Edmund Burke who, they say, understood the complexity and organic nature of change. Burke, they say, would never have countenanced such revolutionary change.

I am generally amused when progressives cite Burke, because progressivism is a decidedly un-Burkean project both in its ambition and optimism about the capacity of elites to restructure the world and in its tendency to reduce society to the state and individuals on whom the state acts and to whom it



ministers. For the left, Burke is a firewall, someone who is invoked to make past gains permanent but who has nothing to say about extension of progressive ambition.

But do they have a point? Did Walker try to get too much too quickly?

Such criticisms of the governor point to

collective-bargaining reform. Why did he have to go after the unions when they said they would make financial concessions? Why was it necessary to end compulsory financial support of unions and state facilitation of the collection of dues? Why not proceed incrementally?

There is an old saying, said to have originated with Ralph Waldo Emerson but recently stated most succinctly by the character Omar on HBO's award-winning drama *The Wire*.

"If you come at the king, you best not miss."

Public-employee unions had become one of the kings of state politics. While they certainly did not win every battle, they had come to control the Democratic caucus in a way that public-choice theorists and midcentury skeptics on public-employee unionization such as Franklin Roosevelt and Fiorello LaGuardia would have come to expect.

The unions were intensely interested, highly motivated and well-funded, stemming, in part, from legally compelled dues from state and local employees. And they had become an enormous obstacle to reform.

Public employees are not synonymous with their unions. The latter inevitably increase the cost of labor (that is their purpose) and, in the public sector, this can only increase the cost of government services over what they would otherwise be. In a high-tax state facing a huge budget deficit, that was a problem.

But it was not the only problem. Particularly in the area of education, unions — at least as presently constituted — had become an enemy

of reform, protecting poor teachers, hollowing out education budgets and preventing new and innovative techniques. Just as unions had helped turn the American auto industry into a lumbering dinosaur, they served as a significant obstacle to bringing an analog government into a digital world.

The battle was essential and the opponent well-entrenched. You can sit down with an 800-pound gorilla to negotiate its surrender, but it is generally a bad idea to let it leave the table. If Walker

The problem cannot be that he went too far and too fast. Anything less would have been doomed to defeat.

wanted fundamental change, he had to act swiftly, decisively and comprehensively. Organized privilege does not go easily or gradually.

If you don't like the governor's reform,

fair enough. But the problem cannot be that he went too far and too fast. Anything less would have been incoherent, ineffective and doomed to defeat.

What remains to be seen is the political wages of comprehensive and bold reform. Obama is chastened and, at least for now, absorbed in trivialities and parlor tricks. He may win re-election.

Walker faces recall. I don't think it will succeed, but, if it does, we will not soon see his like again — on either the left or the right. If we don't usher in an era of frequent recalls, it will be because future governors will go along to get along. The future of our state may be triangulation — Jim Doyles all the way down. ■

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New Guy, Same Agenda

WMC's Kurt Bauer keeps the focus on politics, job growth

Kurt Bauer grew up in Beloit and vividly remembers the first time he set foot inside the Ingersoll Milling Machine factory in Rockford, Ill., where his father was an engineer.

"I remember being awed by the activity," he says. "I thought it was cool because I had to wear a hard hat, eye and ear protection.

"There was a huge crane on rails along the ceiling that traveled the length of what seemed like a massive factory. It carried heavy pieces of machinery. There was the sound of machines operating. The floors were painted battleship gray and were spotlessly clean, as were the windows. My father, who was an electronic engineer, told me that the plant owner insisted on clean windows.

"The smell was distinctive; a combination of oil, electrical ozone and drilled metal. Most of the plants and factories I tour today have the exact same smell," he says.

"I remember how my dad swelled with pride when he showed me the machine he had helped design. He would enthusiastically explain every part of the machine, which was far beyond my comprehension and interest at that age.

"But the sense of accomplishment and achievement was clear. I sense that same pride when I tour plants today," he adds.

Bauer wasn't aware of it at the time — he was, after all, only in grade school — but that visit to the factory was a turning point in his life.

Today, Bauer is president and CEO of Wisconsin Manufacturers & Commerce, the state's largest

business advocacy organization. Just 44 years old and only the fourth president in WMC's 100-year history, Bauer is determined to ensure that manufacturing remains a vital part of the Wisconsin economy.

That may be a difficult task: Since 1990, the state once known for making everything from submarines to musical instruments has shed more than 87,000 manufacturing jobs. At times, as state Sen. Leah Vukmir (R-Wauwatosa) noted last year, there are more government jobs in Wisconsin than factory jobs.

Bauer is undaunted. "There are three ways to create wealth: Manufacturing, mining and agriculture," he says flatly. "We need manufacturing for the economic health of Milwaukee and the rest the state."

Should this be Wisconsin? Milwaukee, historically known as "the nation's machine shop," still has the second-highest concentration of manufacturing jobs in the United States, according to the website NewGeography.com. (Houston is first.) WMC's job, Bauer says, is to persuade state government to adopt policies to keep manufacturing in Wisconsin healthy.

That makes job one keeping Gov. Scott Walker in the Statehouse and Republicans in control of the Legislature. Under Walker, Bauer says, "We accomplished eight years' worth of our legislative agenda in one year."

Next on the horizon: Working to achieve even more regulatory reform, lawsuit reform and tax reform for WMC's 3,500 member companies.

Noting that despite last year's reductions in corporate taxes, Wisconsin's business taxes are still higher than those in Illinois, Bauer says, "We're hoping to zero-out corporate taxes altogether."

Those are fightin' words to Democrats and to many public employees, who depend on tax money for their own salaries. They argue that companies aren't taxed enough.

To Bauer, that belief shows ignorance of how capitalism and the free-enterprise system work.

"The protesters accuse us of destroying the middle class, but we're all about the middle class," he says. "We're all about keeping and increasing the number of good-paying manufacturing jobs that support the middle class.

"Yes, there have been abuses in capitalism," Bauer adds. "But tell me what other economic system has produced the opportunities that capitalism has.

"We have two coalitions in Wisconsin today: People who are pro-business versus government employees and environmentalists," he says.

"We have differing visions of what creates opportunity," Bauer says.

Take the proposed iron ore mine near Hurley in northern Wisconsin, for instance.

"We want that mine. Ashland and Iron counties want that mine. The opposition is from environmentalists in Madison, not people trying to live up north and support themselves. They want jobs. Shame on the people down here telling the people up there how to live!"

He does not deny that the mine will alter the landscape. "After remediation, the landscape will be different — but not necessarily worse."

If the mine can operate in a safe and environmentally sound manner — and Bauer believes it can — it could revitalize the state's mining industry.

"We've got copper, zinc, even gold," he adds. "And mining jobs pay a lot better than tourism jobs."

Bauer shrugs off criticism that, compared to business organizations in other states, WMC is too political.

"This is Wisconsin!" he says with a grin. "Everything IS political."

That includes Bauer's background. He majored in political science and history at the University of Wisconsin-Madison, and right out of college went to work for businessman (and current U.S. Senate candidate) Mark Neumann, a Republican who was trying to unseat longtime U.S. Rep. Les Aspin. By 2002, Bauer had become vice president of

government relations for the Wisconsin Bankers Association. Harry Argue, longtime president of the bankers group, says Bauer may be "the smartest guy I ever met."

Bauer left Wisconsin to move to Phoenix, Ariz., to head up the Arizona Bankers Association. He met his wife, Anne — coincidentally, also a Wisconsin native — in Arizona, and says they never expected to return to Wisconsin.

But in 2004, the Wisconsin Bankers Association lured him back with an offer to become its president. Last year, he was hired to head up the WMC, replacing Jim Haney, who retired.

He hadn't even started work yet when left-wing and public employee protesters began picketing his home, much to Anne's displeasure.

Ironically, she is a public employee, a special education teacher.

"We've had some interesting conversations" since Gov. Walker proposed forcing public employees to pay a portion of their health insurance and retirement costs, he admits with a wry smile.

*Under Gov. Walker,
'We accomplished eight years'
worth of our legislative agenda
in one year.'*

"Fortunately, she understands what a mess the state budget was in and why Act 10 was necessary. She was actually more upset by the protesters in front of our house than by the pay cut."

He's also used Anne as a sounding board for some of his ideas about educating the next generation of Wisconsin workers.

He believes public schools wrongly disparage manufacturing jobs. "Almost all K-12 schools in Wisconsin are college prep, but 70 percent of jobs don't require a college degree," he says. Students who are turned off by what they are forced to learn in school don't develop the skills they need to succeed in the workforce, he says.

And without skilled workers, the state's manufacturing industry will have a hard time holding its ground, he adds.

Bauer is bemused by the attitudes that manufacturers encounter at many of the state's colleges and universities.

For example, in 2008, UW-Madison's outgoing chancellor, John Wiley, said, "WMC routinely opposes most measures favored by labor unions and most measures aimed at improving the lot of entry-level and low-income workers who are essential to our economy. But this opposition is not a business or an economic position; it is a political position based on an era and an economy that no longer exist."

Says Bauer: "Obviously, I wasn't at WMC then. I also don't know Wiley. I find his comment about manufacturing being passé [as the old economy] odd and familiar all at once. Despite the facts proving otherwise, Wiley's view seems to be widely held by many in Madison.

"Manufacturing is part of our past, present and

must be part of our future. It is our largest business sector and continues to be the bedrock of middle class jobs, many of them unionized. We sometimes refer to it as Wisconsin's 'super sector' because it is so foundational to local economies. Manufacturing doesn't just create jobs in factories. It also creates them in multiple other industries, like banking, health care, education, retail and government," he says.

"It is shortsighted and ill-informed to dismiss it as a dead or dying industry. "Contrary to what

Wiley said, we have to make things in America. I am not a fan of the term 'knowledge economy.' I don't know how that works. Who buys the knowledge and for what purpose?" he asks.

"To me, a better definition is an economy

where cutting-edge research and innovation result in new products being manufactured in the U.S. by highly educated engineers and well-trained workers. That is a powerful formula for economic growth and jobs.

"In many ways, it is already here. Manufacturing in the U.S. is already 'advanced,' which means it requires a highly trained workforce. Simple manufacturing and assembling, which requires fewer skills, has largely already moved to places where labor is cheap," Bauer says.

"That's why addressing the skilled worker shortage and skills gap is so critical to protecting Wisconsin's manufacturing base," he says. "If Wisconsin can't produce or attract highly trained workers to support advanced manufacturing, those employers will be forced to go somewhere else." ■

'We want that mine. Ashland and Iron counties want that mine. The opposition is from environmentalists in Madison.'

Sunny Schubert is a Monona freelance writer and a former editorial writer for the Wisconsin State Journal.



Hiding behind the kids

Citing family, too many pols duck electoral duty

Last August, Congressman Paul Ryan announced for the 43rd time that he would not run for president. He's always maintained that the ages of his children — three kids between the ages of 6 and 9 — are a factor in his decision. His standard line? "My head isn't big enough, and my kids are too small."

Indiana Gov. Mitch Daniels begged off, saying he didn't want to subject his family to the scrutiny of a presidential campaign. "In the end, I was able to resolve every competing consideration," he said, except for the most important consideration of all — "the interests and wishes of my family." And when irascible New Jersey Gov. Chris Christie bowed out of the race, he deemed it a "family decision."

All of these family considerations have left Republican presidential voters with a choice of C-list emetics for candidates. Mitt Romney is a Republican when he deems it necessary to win Republican elections. Herman Cain, Michele Bachmann, Jon Huntsman and Rick Perry all flamed out before the primaries were even held. Newt Gingrich is so toxic, he should wear a Mr. Yuk sticker on his lapel. (Poor Mitch Daniels: He hesitated to run because his wife once left him and returned to remarry him. Yet GOP voters warmed up to Gingrich, who changes wives more often than he flosses.)

And while "do it for the kids" is an aphorism in politics, more and more politicians are deciding not to do it for the kids. They want to protect their children from the Palin-ization of presidential politics, where every offspring's missteps could translate into blogging frenzy.

But exactly how many of these kids are pleading with their parents to eschew a run for president? Think any politician's

10-year-old-son wouldn't love to say, "Hey, Dad, I'm having trouble with my footwork — can you call Peyton Manning and have him come over and show me the three-step drop?" You think "My dad is president" might be a good icebreaker with the ladies at high school parties?

The whole "I want to spend more time with my family" excuse is worn out and meaningless. Ambitious men have always run for office to get away from their families — generally, they only rediscover their progeny when it seems like they can't win again. But that's the beauty of being president —

Suddenly, your kids become impediments to the realization of America's greatness.

you get to take your whole family with you and live in the same house.

Furthermore, blaming the family when you decide not to run is a bit unseemly. Suddenly, your kids become impediments to the realization of America's greatness. Suppose you spend all your time talking about how America is going to implode without changes to its entitlement programs — and then decide not to change those programs because you might miss some T-ball games?

How does that sound to military families, who have to do without fathers and mothers for extended periods of time (and sometimes forever) to preserve the American idea?

Sasha and Malia. The Bush daughters. Chelsea Clinton. All of us would be proud to have children as happy and well-adjusted as these kids — and every one has lived through the apparent horrors of growing up in the coolest house in America. We know politicians love their kids — but so do hundreds of millions of other American families that are looking for visionary and inspiring presidential candidates. We'll chip in for baby-sitting, we promise. ■

Christian Schneider is a senior fellow at the Wisconsin Policy Research Institute whose kids are begging him to run for Congress so he'll get out of the house more.

AUTHOR OF *A NATION OF VICTIMS AND DUMBING DOWN OUR KIDS*

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A NATION of MOOCHERS

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– Paul Ryan, Member of Congress

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