MICHIGAN AFSCME COUNCIL 25
EXECUTIVE BOARD
LEGISLATIVE REPORT
SEPTEMBER, 2012

Prepared by
NICK CIARAMITARO
Director of Legislation and Public Policy
Michigan AFSCME Council 25
nick@miafscme.org 313-330-5313 (cell)

STATE BUDGET

The Snyder Administration continues to push ill advised efforts at privatization but the Legislature continues to push for more privatization that he recommends. The current issues include a loss in the courts over the continued efforts to privatize the resident care aides at the Grand Rapids Veterans' Home over the strong opposition of veterans and renewed efforts in the Department of Corrections.

The latter has seen a delay in the RFP process for plans to combine and completely outsource medical and mental health care in the State Prisons. We have heard from venders who argue that the process is too much for private control and we continue our efforts to slow down and eventually defeat the effort through the Michigan Civil Service system. A legislatively driven privatization effort among food services remains a threat but both the Department and the Administration are not interested as they understand such a decision would likely lead to higher costs despite a recent change in the law, over AFSCME's strong objection to allow privateers to use prison labor at sub minimum wage levels.

THE MICHIGAN BALLOT PROPOSALS

Emergency Manager Referendum

The Michigan Supreme Court overruled both the State Board of Canvassers and the Court of Appeals and ordered the referendum on PA 4 on the November ballot. The Board of Canvassers obeyed the order of the Court and certified the petition drive. After consultation with both Stand Up for Democracy and the Coalition for Financial Responsibility Elections Director Chris Thomas recommended the following language for the ballot and the Board of Canvassers concurred:

PROPOSAL 12-
A REFERENDUM ON PUBLIC ACT 4 OF 2011 –
THE EMERGENCY MANAGER LAW

Public Act 4 of 2011 would:

- Establish criteria to assess the financial condition of local government units, including school districts.
- Authorize Governor to appoint an emergency manager (EM) upon state finding of a financial emergency, and allow the EM to act in place of local government officials.
- Require EM to develop financial and operating plans, which may include modification or termination of contracts, reorganization of government, and determination of expenditures, services, and use of assets until the emergency is resolved.
- Alternatively, authorize state-appointed review team to enter into a local government approved consent decree.

Should this law be approved?

YES __
NO ____

Protect Our Jobs

The Court of Appeals ordered the Board of Canvassers to certify the proposed constitutional amendment to guarantee the right to collective bargaining in Michigan for ALL employees – public, private and State Civil Service; the right to form unions and collectively bargain with their employer on all matters of wages, hours and working conditions without interference from the Legislature; eliminate restrictions placed in law that interfere with this right, and prevent future Civil Service Commissions from rolling back the clock for state employees. The Board of Canvassers quickly certified but the opposition filed leave to appeal with the Supreme Court. The Court is expected to decide the matter before September 7th.

Supermajority for Tax Increases

The Board of Canvassers also refused to certify a proposal that would amend the State Constitution to require a two thirds vote of both houses of the legislature or a vote of the people for any increase in state taxes AS TO RATE OR BASE. The matter is also before the State Supreme Court. The challenge to the proposal is very similar to the arguments against the Protect Our Jobs proposal.

MPSERS

Labor Day obviously has a different meaning to Governor Snyder. The Governor decided to sign SB 1040 – making major and abhorrent changes to the Michigan Public School Retirement System on the day after Labor Day. The bill will cost all school employees more and eliminate retiree health care benefits for newly hired workers. I have attached an analysis of the new law prepared by our allies at the Coalition for a Secure Retirement to this report.

LEGISLATIVE SESSIONS

Probably the best news I can share is that the Legislature recessed for most of the summer in mid June (earlier than usual) slowing its continued assault on working people and the middle class. Since then it has met only two days (July 18th and August 15th) but still managed to significantly alter the Michigan Public School Retirement System. It will be returning on September 11th and is expected to meet during most of September but only one day in October due to the November election. We need to keep the pressure on in our efforts to change the House as, in addition to creating a firewall for anti-labor legislation next year our efforts could keep the House from taking extreme action.

ELECTION

For the last year and a half, we have had a lot of bad news out of this Legislature. But now it is our turn. The good news is that come the November we can make a big change in the House of Representatives. To be perfectly frank, we have no choice. So all AFSCME members must be on alert and make every effort to elect pro worker members to the next Michigan House of Representatives. There is only a little less than two months' time left to make that happen. Be sure to make your PEOPLE contributions and schedule yourself to help in the campaign. And spread the word to your relatives and neighbors. **Let me be clear, if we do not take the House back and pass POJ the likelihood is that we will lose our collective rights before the end of the next term!**

DEMOCRATIC NATIONAL CONVENTION

I am preparing this report from Charlotte, North Carolina, as an AFSCME delegate to Democratic National Convention (elected from the Michigan 12th District). Serious convention business gets underway tomorrow (Tuesday) and will culminate with the re-nomination of President Barack Obama and Vice-President Joe Biden and their acceptance speeches on Thursday. I'm looking forward to a very busy and exciting week. We will be caucusing with our state delegation every morning at 7 a.m., then with AFSCME delegates, and going to 11 p.m. I won't get back until Friday night so if I'm a little groggy at the Executive Board meeting please understand! AFSCME expects to play a major role in reelecting the President and continue to play a major role in advising the administration for FOUR MORE YEARS.

ATTACHMENTS

Attached are a few items that you may find of interest.

Court of Appeals Rules on School Employees' 3% Health Care Issue

In a 2-1 decision, a three judge panel of the Michigan Court of Appeals upheld a prior Circuit Court ruling that a 2010 law mandating that public school and community college employees (and certain university employees) pay 3% of their pay toward retirement health care is unconstitutional. The ruling was made on August 17, and Governor Snyder has 42 days from that date to appeal the ruling to the Michigan Supreme Court. If the Governor does not appeal, under current law, the money (which currently stands at just over $500 million) would be refunded to these employees. In the meantime, the Office of Retirement Services has told schools and colleges to continue to withhold the 3% contribution from employees.

Judge Douglas B. Shapiro and Jane M. Beckering ruled that the law violated "multiple constitutional rights in both the United States and Michigan Constitutions and is therefore invalid." The protections that were violated included state impairment of contracts, the taking of private property by the government without compensation, and the guarantee of substantive due process. Judge Henry William Saad filed an opinion that dissented from "these key holdings."

Of course, the law on which their decision was based is about to change once again, since the House and Senate recently passed more changes to the Michigan Public School Retirement System in the form of SB 1040. Under the new law, the 3% that has been collected would be used to prefund future retirement health care benefits, rather than pay for current retirement health care, unless the courts determine that these contributions are unconstitutional.

Also, SB 1040 permits each member to elect to opt out of retiree health care. Although this second change may seem minor, it may be enough to cloud the issue, particularly once Governor Snyder signs the bill into law. Attorneys on both sides of this issue are still examining the potential ramifications of the change in state law, and how it will impact any future legal action on this issue.

August 27, 2012

Label Letter

Union Label & Service Trades Department, AFL-CIO

Stockton's Bankruptcy, Michigan Emergency Managers: Destroying Public Services and Collective Bargaining

Stockton, Calif., a city of nearly 300,000, is the largest city in the U.S. to file for bankruptcy. It filed for Chapter 9 in June after lengthy talks with its creditors failed to produce concessions to close its $26 million budget gap. The talks are confidential, but may be made public in late July.

The bankruptcy is especially noteworthy because prior to its filing other cities going into bankruptcy were unable to use Chapter 9 to nullify retiree pensions and benefits. This time is different, as City Manager Bob Deis told USA today that he would use the Chapter 9 filing as a strategy to abandon costly retirement promises just as American Airlines and General Motors did. Former and current police officers, firefighters, and other employees of the city of Stockton could lose a fortune if Deis is successful.

The city had already cut 25 percent of its fire service, 30 percent of its police and 43 percent of its other public service workforce. Stockton City Council and Deis decided before its bankruptcy that it could not cut more and, instead, the knife must be taken to pension and health care benefits of former workers.

Deis had said in an interview last November that he was a fan of the defined benefit pension that the city offers its workforce, but that "several years ago we enhanced these pension plans to the point where they are not sustainable. So I would tend to argue that we should focus on new hires but return to the basic formulas in place before government became the equivalent of drunken sailors."

Now he's going to possibly gut the pension system altogether.

What Changed?

Leading up to its financial downfall, Stockton borrowed heavily during the real estate boom. It financed a large municipal building and worked on revitalizing its downtown area to characterize itself as a bedroom community for the San Francisco area (80 miles away).

Then the real estate industry collapsed. Home values plummeted up to 50 percent and property tax revenues went with them.

In addition, in February, Deis told reporters the city had uncovered accounting errors and fiscal mismanagement that left the city broke. He added that the city needed to cut more than $15 million from its budget to avoid bankruptcy. That number now stands at $26 million.

“We have used every tool in our toolkit to try to resolve our financial situation without going into Chapter 9 (bankruptcy),” says Mayor Ann Johnston. “It truly is bad that we’re in this position, but it’s good that we have a way to resolve our financial situation.”

“This is a big test case,” says University of Pennsylvania law professor David Skeel. “The conventional wisdom has been until very recently that you can’t touch retirement benefits or labor contracts in bankruptcy court. That conventional wisdom has been rapidly eroding because of the horrendous financial conditions of some cities and the role pensions are playing in the trouble.”

In the past, cities like Central Falls, R.I., and Prichard, Ala. made claims that they couldn’t sustain their pensions but failed to nullify them in bankruptcy court. Other bankruptcies have dealt merely with debts to lenders, not retiree benefits.

Of the nearly 90,000 small governments entities in the U.S., 13 filed for bankruptcy last year and fewer than 700 have filed for bankruptcy since 1937. Many of the bankruptcies have been dealt with specific projects that have failed, like a sports stadium (Stockton’s bad choices were a stadium and a never-used city hall).

Labor unions and local governments—until Stockton—have worked hard to avoid the issue of retirement benefits in bankruptcy court.

In June, the city of Providence worked with unions to cut benefits $23 million next year to avoid a bankruptcy filing.

However, in 2008, Vallejo, Calif., went to court to nullify its labor contracts when it filed for bankruptcy. It was granted the right to do it by a judge.

Vallejo cut retiree health benefits, some bond payments and made other savings during the bankruptcy process. The city negotiated new labor contracts that increased worker payments toward their pensions and gave new hires lower pensions, but after three and a half years in bankruptcy, Vallejo’s pension benefits emerged unscathed, and the cost to the city for its court battle over the pension benefits hovered around $10 million.

Former Stockton city manager Dwane Milnes, now president of the Association of Retired Employees of the City of Stockton, says

Vallejo shows that bankruptcy isn't a good path for financially troubled cities. "You somehow have to find millions of dollars within that broke budget to finance bankruptcy," he says. After Vallejo's bankruptcy, the state legislature in California passed a law mandating a 90-day period during which a government considering bankruptcy must first negotiate with its creditors to resolve its debts before resorting to the filing. Stockton was the first California government to test the law—it failed. The mediation period cost Stockton $3 million. Stockton's problems are different than Vallejo's were. Stockton is dealing with a tremendous unemployment rate, foreclosures and crime has skyrocketed.

What Does Stockton's Situation Mean for Unions?

"Labor has to protect its retirees from bankruptcy haircuts the same way bondholders get protected," said Union Labor and Service Trades Dept. President Rich Kline. "Vallejo's bankruptcy and laws like Michigan's emergency financial manager plan have emboldened public employers to find ways to nullify labor contracts. We have to fight back tooth and nail."

In March 2011, Michigan passed a law allowing the state to appoint emergency financial managers to run troubled local governments. The managers have the power to replace elected officials, sell assets and change union contracts. Emergency managers are currently running four of Michigan's cities and three of its school districts. Detroit may come under emergency management soon and may have to file for bankruptcy.

Rhode Island may put the city of Woonsocket into receivership, a situation similar to Michigan's emergency manager, who would have the power to change or abrogate union contracts as well.

Attempts at destroying public services and public workers' unions—seen in alarmingly increasing numbers throughout the country—are the background machinations of power-hungry conservative organizations. The law in Michigan has been traced back to recommendations by the Mackinac Center for Public Policy—a conservative think tank that frequently recommends privatizing public services and has paired with the American Legislative Exchange Council (ALEC) in writing model legislation.

The move to put Woonsocket into receivership came after two of the town's own state legislators refused to pass revenue enhancements for the town. One of the legislators, Jon Brien, is a national board member of ALEC. Brien said in an interview with the New York Times that the municipal unions "have been given pensions that the city can no longer afford" but he couldn't say how bad Woonsocket's pension problems were, claiming "I'm a state legislator, I don't get into that level of municipal finance."

The Times pointed out that Woonsocket's pensions weren't to blame for the town's financial woes—the previous Governor had cut state aid and the school system struggled with an unanticipated budget shortfall. The truth is, Brien and his ALEC cronies aren't concerned with the minutiae of retiree benefits. ALEC and its partner organizations have advocated destruction of public employee unions and they are using these financial issues as opportunities to go over the heads of elected officials to make the destruction happen. By eliminating public service benefits without recourse, they can privatize services and make local governments completely beholden to speculators.

Michigan is fighting back to get the emergency manager law overturned on November's ballot. California, Pennsylvania and Rhode Island's public workers have the same uphill battle ahead. ■

S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

PROTECT OUR JOBS,
Plaintiff,
UNPUBLISHED
August 27, 2012
v No. 311828
BOARD OF STATE CANVASSERS and
DIRECTOR OF ELECTIONS,
Defendants,
and
CITIZENS PROTECTING MICHIGAN'S
CONSTITUTION,
Intervenor,
and
GOVERNOR OF MICHIGAN and ATTORNEY
GENERAL,
Amici Curiae.

Before: OWENS, P.J., and O'CONNELL and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this original action, plaintiff Protect Our Jobs seeks a writ of mandamus directing defendants to place on the ballot its petition for a constitutional amendment protecting collective bargaining rights. We grant the requested relief.

Plaintiff is a ballot question committee that collected petition signatures for a constitutional amendment proposal to be placed on the November 2012 general election ballot. The proposal would add a new article 1, § 28 to the constitution to provide people with the right to organize and bargain collectively with a public or private employer to the fullest extent not preempted by federal law. The proposal would also add a new paragraph to Const 1963, art 11, § 5 protecting the rights of classified civil service employees to bargain collectively concerning all conditions and aspects of employment except promotions. Intervenor Citizens Protecting Michigan's Constitution (CPMC), another ballot question committee, challenged the proposal on the grounds that it was a general revision of the constitution under article 12, § 3; that electors had not been informed of the statutes or constitutional provisions that might be in conflict with the proposal, and the proposal could not be summarized in a 100 word statement of purpose.

The Board of Canvassers had previously approved the form of the petition, and the Director of Elections found that there were sufficient valid signatures to qualify the proposal. However, the Board of Canvassers subsequently deadlocked on whether the petition should be placed on the ballot, with two members voting to place the proposal on the ballot and two members voting not to place the proposal on the ballot. Under the statute, the proposal therefore did not qualify for the ballot. MCL 268.22d(2).

Our Supreme Court has recently directly established that one of the proposed grounds for excluding the proposal from the ballot is inapplicable. The Supreme Court's order in *Protect MI Constitution v Secretary of State*, ___ Mich ___; ___ NW2d ___ (2012) explained that Const 1963, art 4, § 25[1] applies to amendments of laws, rather than amendments of the constitution, as is the case at bar. Our Supreme Court also held that the proposal is governed by Const 1963, art 12, § 2[2], and found that there was "no showing that there [had] been a failure to comply with [that] provision." The statutes that are potentially affected by the amendment do not have to be identified in the statement. Further, there is no basis for us to speculate in advance of any attempt to do so that the Director of Elections will not be able to properly characterize the proposal within the 100 word limit.

CPMC also argues that the proposal constitutes a general revision of Michigan's constitution. Whether a proposal is a general revision or a mere amendment depends on qualitative and quantitative considerations, including the extent to which it interferes with or modifies the operation of government and the scope of its subject matter. *Citizens Protecting Michigan*'*s Constitution v Secretary of State*, 280 Mich App 273, 298, 305; 761 NW2d 210 (2008). The proposal at issue may have an effect on various provisions and statutes, and it may affect the relationship between Michigan's government and employees. However, it is limited to a single subject matter, and it only directly adds one section to the constitution and changes one other, as identified in the petition. In contrast, the RMGN proposal at issue in *Citizens Protecting Michigan*'*s Const* sought to replace vast portions of the constitution and massively modify the structure and operation of Michigan's government. The initiative proposal here is far

1 "No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length."

2 Const 1963, art 12, § 2 contains a number of potentially pertinent requirements, including a requirement that a proposal republish "existing provisions of the constitution which would be altered or abrogated thereby." This requirement is also addressed by MCL 168.482(3), which we discuss *infra*.

more akin to a correction of detail than a fundamental change, when viewed in the proper context of the constitution as a whole. See *Laing v Kelly*, 259 Mich 212, 217; 242 NW 891 (1932).

Finally, CPMC and the dissent conclude that the petition does not comply with the requirement of MCL 168.482(3) that it identify and publish any existing provisions of the constitution that will be altered or abrogated by the proposal. An existing constitutional provision must be published "*only* where the proposed amendment would directly 'alter or abrogate' ('amend or replace') a specific provision or provisions of the existing Constitution." *Ferency v Secretary of State*, 409 Mich 569, 597; 297 NW2d 544 (1980) (emphasis added). Definitionally, "[a]n existing constitutional provision is altered or abrogated if the proposed amendment would add to, delete from, or change the existing wording of the provision, or would render it wholly inoperative." *Id*. Significantly, the fact that a provision will be *affected* by a proposed amendment does not *ipso facto* mean it is "altered or abrogated." *Id*. at 596-597.[3] This ballot proposal will not in any way "add to, delete from, or change the existing wording" or "render wholly inoperative" any unpublished constitutional provision.

CPMC argues that Article 4, §§ 48 and 49, allowing the Legislature to enact laws providing for resolution of disputes concerning public employees, and relative to hours and conditions of employment, will be altered by the proposal, along with Article 8, §§ 5 and 6, altering the autonomy of public universities. Under the cited provisions of Article 4, the Legislature "may enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service" and "may enact laws relative to the hours and conditions of employment." CPMC argues that the proposal alters these provisions by adding language to the constitution subjugating the powers of the Legislature to the collective bargaining process.

As our dissenting colleague points out, the proposed initiative would provide that the Legislature's "power to enact laws relative to the hours and conditions of employment shall not abridge, impair or limit the right to collectively bargain for wages, hours and other terms and conditions of employment that exceed minimum levels established by the legislature." However, the proposed ballot initiative explicitly "does not compel either party to agree to a proposal or make a concession." Consequently, nothing in the proposal in any way alters or abrogates the State's power to make the final decisions as to what terms to accept. Presuming the people of the State of Michigan enact the proposed initiative, the Legislature would remain empowered to "enact laws relative to the hours and conditions of employment," and indeed, the bare fact that employees of the State would have the right to collectively bargain does not in any way force the

Legislature to enact, or decline to enact, any laws whatsoever. The Legislature may find its exercise of its powers practically affected in some way, but neither the language of the constitution nor the Legislature's powers themselves are in any way changed.

[3] See also: *Massey v Secretary of State*, 457 Mich 410, 417-418; 579 NW2d 862 (1998) and *Coalition to Defend Affirmative Action & Integration v Bd of State Canvassers*, 262 Mich App 395, 402-403; 686 NW2d 287 (2004).

The cited provisions of Article 8 provide for boards to govern institutions of higher learning. While CPMC argues that the proposed ballot initiative will interfere with their autonomy, these institutions are already subject to the Public Employees Relations Act, requiring them to bargain collectively with respect to wages, hours, and terms and conditions of employment. *Central Michigan University Faculty Assn v Central Michigan University*, 404 Mich 268, 276; 273 NW2d 21 (1978). Where the Legislature can require institutions of higher learning to participate in collective bargaining without violating the autonomy of the institutions, it is difficult to see how the proposal would alter or abrogate art 8, § § 5 and 6. In any event, again, nothing in the ballot proposal alters or abrogates the boards' power to decide what final terms to accept. While it is conceivable that the operation of these provisions may be *affected* by the proposal, a mere *effect* is insufficient to trigger any republication requirement.

The signature requirement for the initiative process "was not intended to be easy to fulfill." *Woodland v Michigan Citizens Lobby*, 423 Mich 188, 217; 378 NW2d 337 (1985). Otherwise, however, neither the courts nor the Legislature may add "undue burdens" on the people's right to change the law. *Wolverine Golf Club v Secretary of State*, 384 Mich 461,466; 185 NW2d 392 (1971). *Ferency* holds that a proposed initiative need only republish provisions of the constitution that are *altered or abrogated*, not provisions that are merely affected. CPMC has merely identified provisions that may be affected. The dissent seemingly accepts an effect as sufficient, but if an effect is held to be enough to trigger the republication requirement, the courts would be adding an undue burden to the initiative process not mandated by the constitution. The constitution, statutes, and case law control and preclude us from adding an additional hurdle, particularly a requirement never contemplated by the framers, to the people's right to amend their constitution.

The complaint for mandamus is granted, and defendants are directed to take the necessary steps to place the proposal on the ballot for the general election. This opinion is given immediate effect pursuant to MCR 7.215(F). No costs, a public question being involved.

/s/ Donald S. Owens
/s/ Amy Ronayne Krause

The Detroit News
JULY 6, 2012

Businesses declare war on ballot proposals

Group to raise $5M to fight pro-union, other initiatives

BY DANIEL HOWES

A statewide coalition of business groups is planning to raise as much as $5 million — and more, if necessary — to finance a broad campaign to defeat several proposed amendments to the Michigan constitution.

Among the labor-backed initiatives is the ironically named "Protect Our Jobs" ballot question that would enshrine collective bargaining rights in the constitution and pre-emptively bar right-to-work legislation that Republicans in the Legislature have yet to introduce and Gov. Rick Snyder has yet to support.

The looming debate outlines two fundamentally different visions for the future direction of the state, only now emerging from a "Lost Decade" of recession, political drift and anti-business policymaking. It also presents voters across the political spectrum a simple but very consequential choice:

Do they want a Michigan whose bedrock governing document, the constitution, is altered to explicitly favor special business interests, one class of employees and their unions over everyone else? Or do they want a Michigan that continues to allow duly-elected legislators from both parties to set policy and allows businesses, employees and would-be investors to make their own economic choices?

Passage "would be an almost incredible self-inflicted wound," Rich Studley, president of the Michigan Chamber of Commerce, said in an interview Thursday. "We didn't want this fight. But we'll fight back hard and we'll play to win."

Considering what's happening across the Great Lakes states, they don't have much choice. The 2010 elections delivered control of state capitals in Ohio, Wisconsin, Michigan and Pennsylvania to businessminded Republicans and emboldened Indiana's governor, Mitch Daniels, to sign right-to-work legislation.

The move shocked labor leaders, as did the failed attempt last month to recall Wisconsin's governor, Scott Walker.

It's hard to overstate the stakes and just how keenly business groups want to defeat ballot questions that threaten to transform the state constitution into a governmental Frankenstein of favors for unions, casino operators, renewable energy investors, home-health care providers and Ambassador Bridge mogul Matty Moroun.

"It's terrible for the state," Sandy Baruah, CEO of the Detroit Regional Chamber, said in an interview. "Not only is it incredibly bad policy, it's incredibly bad use of the constitution."

Also hard to overstate is what approval of the ballot questions would mean for the rehabilitation of Michigan's image as an up-and-coming place to invest, to do business and to create jobs in partnership with organized labor, not the discredited model of confrontation. What would it mean? Not much good.

That's why eight business groups, including the Michigan, Detroit and Grand Rapids chambers, Business Leaders for Michigan and the Small Business Association of Michigan, formed Citizens Protecting Michigan's Constitution as a bulwark against labor- and corporate-backed constitutional carve-outs and government by referendum.

They don't want to go backward, don't want to see a labor-backed amendment to the constitution gut costsaving reform, don't want the optimistic climb out of Michigan's Malaise imperiled. The auto meltdown and the aftershocks of the national recession presupposed a new, cooperative relationship between management and labor, particularly in the private sector.

One side isn't the enemy of the other, we were told by contrite labor leaders, realistic executives and a new governor, the competition is. Or not.

Bleating that passage of right-to-work legislation would be the cure-all to Michigan's economic ills — which it wouldn't — failed to resonate with a new governor, Republican leaders in the Legislature and leading business groups. Now wasn't right for wasting time on confrontation, they said, for risking a referendum that easily could reinforce Michigan's image as a labor stronghold, not dilute it.

That argument is dead, killed by flailing interests determined to use 30-second sound bites, deceptively named coalitions and the appeal of "let-the-voters-decide" democracy to undermine the results of the last statewide election and shackle the Legislature with constitutional limits to its traditional policymaking prerogatives.

From the United Auto Workers-backed collective bargaining ballot initiative to the Service Employees International Union-backed gambit to ensure dues-flow from the state's home health care workers, the ballot questions amount to a back-door statewide vote on right-to-work that labor fiercely opposes.

The phrase "be careful what you wish for" comes to mind. So do recall results in Wisconsin, Indiana going right-to-work and the tendency of voters to just say no when faced with a welter of self-dealing — and potentially expensive — ballot questions.

On Thursday, supporters of the constitutional amendment to allow home health care workers to unionize said they had collected 550,000 signatures to place the constitutional question on the November ballot, despite a new law that bars their unionization and blocks the dues grab of Medicaid funds earmarked for vulnerable residents.

Stunning, that. This is a divisive battle Snyder and many of the state's top business leaders aimed to avoid, but they won't — and neither will Michigan voters come November.

dchowes@detnews.com

(313) 222-2106

Daniel Howes' column runs Tuesdays, Thursdays and Fridays.

Michigan Supreme Court
Lansing, Michigan

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

____
Clerk

August 3, 2012

Order

August 3, 2012

145387

STAND UP FOR DEMOCRACY,
Plaintiff-Appellee,

SC: 145387

v COA: 310047

SECRETARY OF STATE and BOARD OF STATE CANVASSERS,
Defendants,

and

CITIZENS FOR FISCAL RESPONSIBILITY,
Intervenor-Defendant-Appellant.

____

This cause having been brought to this Court by application for leave to appeal from the decision of the Court of Appeals and having been argued by counsel and due deliberation having been had thereon by the Court, IT IS HEREBY ORDERED that the judgment of the Court of Appeals is REVERSED and a new writ of mandamus is ENTERED directing the Board of State Canvassers to certify plaintiff's petition for the ballot. Pursuant to MCR 7.317 (C)(3), the clerk is directed to issue this judgment forthwith.

June 22, 2012

Companies' Ills Did Not Harm Romney's Firm

By MICHAEL LUO and JULIE CRESWELL

Cambridge Industries, an automotive plastics supplier whose losses had been building for three consecutive years, finally filed for bankruptcy in May 2000 under a mountain of debt that had ballooned to more than $300 million.

Yet Bain Capital, the private equity firm that controlled the Michigan-based company, continued to religiously collect its $950,000-a-year "advisory fee" in quarterly installments, even to the very end, according to court documents.

In all, Bain garnered more than $10 million in fees from Cambridge over five years, including a $2.25 million payment just for buying the company, according to bankruptcy records and filings with the Securities and Exchange Commission. Meanwhile, Bain's investors saw their $16 million investment in Cambridge wiped out.

That Bain was able to reap revenue from Cambridge, even as it foundered, was hardly unusual.

The private equity firm, co-founded and run by Mitt Romney, held a majority stake in more than 40 United States-based companies from its inception in 1984 to early 1999, when Mr. Romney left Bain to lead the Salt Lake City Olympics. Of those companies, at least seven eventually filed for bankruptcy while Bain remained involved, or shortly afterward, according to a review by The New York Times. In some instances, hundreds of employees lost their jobs. In most of those cases, however, records and interviews suggest that Bain and its executives still found a way to make money.

Mr. Romney's experience at Bain is at the heart of his case for the presidency. He has repeatedly promoted his years working in the "real economy," arguing that his success turning around troubled companies and helping to start new ones, producing jobs in the process, has prepared him to revive the country's economy. He has fended off attacks about job losses at companies Bain owned, saying, "Sometimes investments don't work and you're not successful." But an examination of what happened when companies Bain controlled

wound up in bankruptcy highlights just how different Bain and other private equity firms are from typical denizens of the real economy, from mom-and-pop stores to bootstrapping entrepreneurial ventures.

Bain structured deals so that it was difficult for the firm and its executives to ever really lose, even if practically everyone else involved with the company that Bain owned did, including its employees, creditors and even, at times, investors in Bain's funds.

Bain officials vigorously disputed any notion that the firm had profited when its investors lost, arguing that a full accounting of their costs across their business would show otherwise. They also pointed out that Bain employees put their own money at risk in all of the firm's deals.

"Bain Capital does not make money on investments when our investors lose money," the company said in a statement. "Any suggestion to the contrary is based on a misleading analysis that examines the income of a business without taking account of expenses."

To a large extent, however, this is simply the way private equity works, offering its practitioners myriad ways to extract income and limit their risk. Mr. Romney's candidacy has helped cast a spotlight on an often-opaque industry.

In four of the seven Bain-owned companies that went bankrupt, Bain investors also profited, amassing more than $400 million in gains before the companies ran aground, The Times found. All four, however, later became mired in debt incurred, at least in part, to repay Bain investors or to carry out a Bain-led acquisition strategy.

Perhaps most revealing are the few occasions, like with Cambridge Industries, when Bain's investors lost. Lucrative fees helped insulate Bain and its executives, records and interviews showed.

Piling On Debt

Having spun off from a management consulting firm, Bain has always been known for its data-driven, analytical approach. Under Mr. Romney, the firm scored some remarkable successes, enabling its investors — wealthy individuals and institutions like pension funds — to collect stellar returns.

The companies that fell into bankruptcy were clearly the exception, and the causes were also often multilayered. Some companies proved too troubled to rescue, and others were hit by broader economic or industrywide downturns.

In at least three of the seven bankruptcies, however, companies appear to have been made more vulnerable by debt taken on to return money to Bain and its investors in the form of dividends or share redemptions.

That was arguably the case with GS Industries, a troubled Midwest steel manufacturer that Bain acquired in 1993, investing $8.3 million. The private equity firm took steps to modernize the steelmaker. A year later, the company issued $125 million in debt, some of which was used to pay a $33.9 million dividend to Bain, securities filings show.

The private equity firm plowed an additional $16.2 million into the steelmaker, but when the industry experienced a downturn in the late 1990s, the company could not manage its heavy debt. It filed for bankruptcy in 2001, but Bain's investors still earned at least $9 million.

Debt from acquisitions, usually part of a "roll-up" strategy of buying competitors, played a role in at least five of the seven bankruptcies The Times examined. In most of these cases, Bain investors garnered some initial gains before the companies faltered.

For example, after Bain acquired Ampad, a paper products company, in 1992, the company grew through a series of acquisitions. Sales jumped, but its debt climbed to nearly $400 million, and it found itself squeezed by "big box" office retailers. It filed for bankruptcy in 2000. Bain and its investors walked away with a profit of more than $100 million on their $5 million investment, on top of at least $17 million in fees for Bain itself, according to securities filings and investor prospectuses.

A similar phenomenon unfolded with DDi, a Bain-owned circuit board maker that expanded aggressively in the late 1990s. Sales soared, but so did its debt. The bursting of the tech bubble forced it to scale back. It filed for bankruptcy in 2003. The gains for Bain's investors easily exceeded $100 million. Bain also collected more than $10 million in fees.

Substantial Fees

The numerous fees collected by private equity firms have been a frequent lightning rod for the industry. First, the firms charge their investors a percentage of the fund as a management fee, meant to cover its overhead. During Mr. Romney's tenure, this was initially 2.5 percent and then dropped to 2 percent. Private equity firms also collect transaction or deal fees, ostensibly for advisory work, from companies they buy. These fees are generally collected for major transactions, like the purchase of another company, a public stock offering or even the initial acquisition of the company. A third fee stream comes from annual monitoring or advisory fees that portfolio companies typically pay to their owners, the buyout firms.

These fees can be substantial. In the case of Dade International, a medical supply company in which Bain acquired a stake in 1994, Bain and other investment firms piled up nearly $90 million in fees over seven years. The company filed for bankruptcy in 2003 but not before it had borrowed heavily to pay $420 million to Bain and other investors several years earlier.

In 1998 alone, Mr. Romney's final full year at Bain, The Times was able to identify roughly $90 million in fees collected by the firm across its various funds, a figure that is probably low because most companies in Bain's portfolio did not have to file financial disclosures.
These fees covered Bain's expenses — like rent, salaries and lawyers — and the bulk of the remaining money was awarded to Bain employees as annual bonuses.
Bonuses were relatively small some years, like from 1989 to 1991, when the savings and loan crisis and other events slowed business. In that period, Bain managing directors made roughly $300,000 to $400,000 a year, mainly from their salaries, excluding gains from investments, according to an executive familiar with Bain's compensation. By the mid-1990s, as Bain grew, managing directors' annual incomes, again excluding investment returns, had swollen to $3 million to $5 million, mainly thanks to bonuses derived from fees.
Bonuses were not the main drivers of the immense wealth accumulated by Mr. Romney and other Bain executives. That came from their share of Bain's "carried interest," the firm's cut of its funds' investment profits, as well as the returns from personal investments in Bain deals.
Bain officials insist that fees were never a way for the company to garner much in the way of profits and pointed out fee structures for every fund are agreed-upon in advance by investors. They said fees supported the firm's staff-intensive approach to managing companies. Totaling up the hours Bain employees put into deals at standard consulting rates, they said, would far exceed what the firm actually collected. They said fees also covered the costs of hundreds of deals researched every year and not pursued or completed.
Investors have succeeded in the past decade in pressing private equity firms for a greater share of these fees. In 2009, a trade group representing institutional investors issued guidelines it believed firms should follow, including turning over all advisory and deal fees to investors, also known as limited partners. "The battle over fees is right now going in the limited partners' direction," said Steven N. Kaplan, a University of Chicago finance professor.
Bain began splitting some fees with its investors in 2000. In the firm's newest fund, Bain officials said they would funnel all deal fees to their limited partners.

Bain prides itself on the personal money its employees put into deals, saying its coinvestment rate is among the highest in the industry. The percentage during Mr. Romney's tenure sometimes ran to nearly 30 percent but was usually less, according to records and interviews.
"We are collectively the single largest investor in every portfolio company and every fund," the company's statement said. "When our portfolio companies grow and perform, investors and Bain Capital do well. In rare instances when a business fails, Bain Capital employees share in the negative economic consequences of those losses."
Offsetting Losses
When deals sour, however, fees can provide a hedge.
Toward the end of Mr. Romney's tenure, Bain bought Anthony Crane, a crane rental company, which then acquired a slew of smaller competitors, financed by debt. But a building slowdown hit the company hard, and it filed for bankruptcy in 2004, wiping out $25.6 million from Bain's investors, along with $9.5 million from Bain employees. The firm, however, collected $12 million in fees over the life of the deal.
Bain officials maintained they still lost money on Crane because it also cost them $5.1 million in carried interest that they otherwise would have garnered from gains in the rest of the fund.
When Bain bought a troubled chain of maternity stores called Mothercare in 1991, its investors put $1.24 million into the deal. Bain repositioned the company and upgraded its merchandise, but the stores still struggled. Bain offloaded the chain in 1993 at a total loss,

and the new owners put it into bankruptcy. Bain still collected $1.5 million in fees while it owned the company, bankruptcy records show.

In the case of Cambridge Industries, Bain first acquired a stake in the manufacturer of plastic automotive parts in 1995. Bain employees personally invested $2.2 million, according to bankruptcy records, alongside $15.7 million from outside investors.

Bain immediately collected $2.25 million from Cambridge as a transaction fee for investing in the company. Cambridge then acquired several companies in rapid succession, and each time, Bain earned 0.75 percent of the purchase price as a transaction fee. The rest of Bain's $10 million in fees came through advisory fees and payments for a debt refinancing completed by Cambridge in 1997.

By then, interest payments from the company's expansion were outstripping operating income. As part of the refinancing, aimed at lowering interest payments, Cambridge repaid $17 million it owed to a debt fund run by Bain. This involved paying it a $2 million prepayment penalty.

Cambridge was finally forced into bankruptcy in 2000, when Bain declined to provide the company with an infusion of capital needed to fulfill a major new order, according to former company officials. During bankruptcy proceedings, lawyers for some of Cambridge's creditors leveled scathing criticism at Bain, zeroing in on the fees extracted while they said Cambridge was insolvent, as well as the prepayment to Bain's debt fund.

Eventually, Bain settled the dispute by paying $1.5 million to the bankruptcy trustee.

"We have been unable to identify what, if any, 'reasonably equivalent value' the Company received in exchanges for these exorbitant fees," Michael Stamer, a lawyer for the unsecured creditors committee, wrote to Bain's lawyers. "It appears, instead, these fees were nothing more than a device used by Bain to provide a return on its equity."

Mike McIntire contributed reporting.

AP Photo
Republican presidential candidate former Massachusetts Gov. Mitt Romney speaks during a Republican Presidential Debate at Oakland University in Auburn Hills, Wednesday, Nov. 9, 2011. (AP Photo/Paul Sancya)

Fact Check: Mitt Romney gets it wrong on auto bailout during GOP debate at Oakland University

Published: Thursday, November 10, 2011, 7:15 AM Updated: Thursday, November 10, 2011, 7:44 AM

By

The Associated Press

Mitt Romney's claim that President Barack Obama "gave GM" to the United Auto Workers stood as one of the overstatements of the night Wednesday when Republican presidential candidates grappled with the economy in their latest debate. Several drifted from reality too in portraying regulations as a killer of jobs, if not the country itself.

A look at some of the claims in the debate and how they compare with the facts:

ROMNEY: President Barack Obama "gave GM to UAW, he gave Chrysler to Fiat."

THE FACTS: That's not what happened in the bailout.

A trust owned by the United Auto Workers received a 17.5 percent ownership stake in GM to help that trust pay for its retirees' health care. That stake has declined since then, after the company went public in November 2010. The trust now owns about 10 percent of General Motors. That's much smaller than the government's stake of about 30 percent, and it doesn't support the notion that the government "gave" the company to the union.

Moreover, the union did not get free rein in return for its share. It was barred from going on strike over wage issues during recent contract talks with GM and Chrysler, as a condition of the bailouts.

Nor did Obama give Chrysler to Fiat.

The Italian automaker Fiat received an initial 20 percent stake in Chrysler as Chrysler emerged from bankruptcy in 2009 in exchange for only management expertise and technology. Since then, Fiat has paid $1.8 billion to boost its stake to 53.3 percent, including a $500 million payment to the U.S. Treasury to purchase the government's 6 percent share of the company.

Debating in Michigan, where the bailout was popular and credited with helping to save automakers, Republican candidates struggled at times to explain why they opposed the deal.

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RICK PERRY: "Pull back all the regulations. It's the regulatory world that is killing America. ... It doesn't make any difference whether it's the EPA or whether it's the federal banking, the Dodd-Frank or Obamacare, that's what's killing America."

MICHELE BACHMANN: "Our biggest problem right now is our regulatory burden. The biggest regulatory problem we have is Obamacare and Dodd-Frank (financial regulations). I will repeal those bills."

NEWT GINGRICH: "If the Republican House next week would repeal Dodd-Frank and allow us to put pressure on the Senate to repeal Dodd-Frank, you'd see the housing market start to improve overnight."

THE FACTS: It has become an article of faith in the GOP field that regulations are a leading drag on jobs, but Labor Department data show that few companies where large layoffs occur say government regulation was the reason. Just two-tenths of 1 percent of layoffs since Obama took office have been due to government regulation, the data show.

Moreover, there is little evidence that the regulatory burden is any worse now than in the past or that it is costing significant numbers of jobs. Most economists believe there is a simpler explanation: Companies aren't hiring because there isn't enough consumer demand. And economists believe high levels of economic uncertainty are a leading complication for business, arising more from struggles over taxes and spending in Washington than from regulations — an unwelcome quantity, for sure, but a known one.

The National Federation of Independent Business asks its small-business membership each month to name the single most important problem they're facing. Last month, the most common response was "poor sales," cited by 26 percent. Government regulation came in second, at 19 percent.

Bachmann has plenty of company in the GOP field in blaming the regulatory burden of Obama's health care law for economic ills. But the evidence so far is thin; most of the law's provisions don't take effect until 2014.

Indeed, the health care industry has been one of the few reliable sources of hiring during the recession and its aftermath. The industry has added 313,000 jobs in the past year.

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ROMNEY: "If we stay on the course we're on, with the level of borrowing this administration is carrying out, if we don't get serious about cutting and capping our spending and balancing our budget, you're going to find America in the same position Italy is in four or five years from now, and that is unacceptable."

THE FACTS: To be sure, calamity can spread from Europe's debt crisis in any number of ways. Americans are already seeing the effects from losses in their international investments, and governments are swimming in debt on both sides of the Atlantic. There are some important differences, though, between the troubles of Greece, Italy and Europe at large, and the United States.

For one thing, while creditors keep demanding higher and higher interest rate levels from troubled European countries to justify the added risk of such loans, U.S. debt in the form of Treasury bonds and other securities remains among the safest havens of all international investment.

Even the Standard and Poor's downgrade of the U.S. credit rating in August did not result in the United States being forced to pay higher interest rates. Instead, demand for Treasury bonds increased, pushing rates down more.

Also, the United States deals with its debt in part by printing money, if the Federal Reserve so desires. While that might cause inflation down the road, it also can make the debt proportionally smaller. In sharing a common currency, the euro, the 17 members of the euro zone do not have that flexibility.

And while there are doubts about the outcome, a special congressional committee is working toward a trillion-dollar-plus reduction in the U.S. deficit, with a deadline for a deal of Nov. 23.

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GINGRICH: "Dodd-Frank kills small banks; it kills small business."

HERMAN CAIN: "Then you get the regulators off of the backs of the banks ... get the regulators out of the way, such that the small banks and the medium-sized banks aren't being forced out of the business."

THE FACTS: The financial regulation overhaul known as Dodd-Frank is mostly targeted at large banks and Wall Street firms, which got billions of dollars in 2009 from the government's bailout. Small banks are exempted from many of the requirements.

Also, community banks, which have less than $10 billion in assets and make up 98 percent of U.S. banks, lobbied and received an exemption from the new Consumer Financial Protection Bureau. While they have to follow the rules the new agency sets, they aren't subject to its enforcement authority. Instead, existing regulators will oversee the community banks' compliance.

That hasn't stopped most of the candidates from criticizing the regulations as a drain on small institutions. Their point that regulators are holding back lending doesn't square with surveys, mostly of larger banks, by the Federal Reserve. Those surveys have found that banks have been easing their credit standards for business loans for the past year.

The survey also found that loan demand fell in the third quarter. Paul Dales, an economist at Capital Economics, wrote Monday that the findings "suggest it is not the supply of credit that's holding the economy back. Instead, the problem is demand for credit."

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Associated Press writers Tom Raum and Marcy Gordon contributed to this report.

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Education Aid Emerging as Campaign Issue

Presidential candidate Mitt Romney campaigns with Rep. Paul Ryan in Waukesha, Wis. The choice of Mr. Ryan for the GOP ticket has elevated education spending as an issue.
—Jeffrey Phelps/AP

Democrats attack Paul Ryan's budget plan

By Alyson Klein

U.S. Rep. Paul Ryan's selection as the Republican vice-presidential candidate could spark a national debate about the future of education spending, an issue that's gotten short shrift in the presidential campaign so far.

As the two national party conventions approach, Democrats are already charging that the Wisconsin lawmaker's controversial budget blueprint, which presumptive GOP nominee Mitt Romney has largely endorsed, would scale back college financial aid and slash other funding for education.

Rep. Ryan's plan seeks to put the nation on a firmer financial footing in part by dramatically curbing domestic spending. But it also sets up a clear contrast with the record of President Barack Obama, who has pumped unprecedented sums of money into education programs. That record is due in large part to the big, but time-limited, infusion of money through the 2009 economic-stimulus package.

"Having Ryan on the ticket really forces a discussion: Do we think the federal government has a role in propping up education spending in the face of cutbacks, or do we think that's better placed in the hands of district and state officials?" said Arnold Shober, who has studied politics and education as an assistant professor of government at Lawrence University in Appleton, Wis.

Mr. Romney's choice of Rep. Ryan, the chairman of the House Budget Committee, for the No. 2 spot on the ticket means that the seven-term congressman's fiscal plan is likely to get a lot of airtime at both national conventions. The Republicans will gather next week in Tampa, Fla., to nominate Mr. Romney, a former governor of Massachusetts, for president. The Democrats will convene in Charlotte, N.C., the first week in September to again select Mr. Obama as their standard-bearer.

'Disastrous' Impact?

Contrasts in Education Spending

Presumptive GOP nominee Mitt Romney's decision to tap U.S. Rep. Paul Ryan of Wisconsin as his running mate is likely to put a spotlight on education spending. Mr. Ryan is the author of a controversial budget blueprint that seeks to rein in domestic discretionary spending, the category that includes K-12 schools.

The Ryan budget offers a sharp contrast with President Barack Obama's budget, also unveiled this year.

The Ryan long-term budget would:

• Cut domestic discretionary spending by 22 percent in fiscal year 2014, according to an analysis by the Center for Budget and Policy Priorities;

• Change the eligibility rules for Pell Grants; and

• Potentially cut the $14.5 billion Title I program for disadvantaged students by $2.7 billion, according to an analysis by the U.S. Department of Education that Republicans dispute.

The Obama budget for fiscal 2013 would:

• Slightly boost education spending overall, including a continuation of competitive grants such as the Race to the Top; and

• Provide flat funding for key formula programs, such as Title I grants for districts and state grants for special education.

SOURCES: Center for Budget and Policy Priorities; New America Foundation; Education Week

Mr. Ryan's budget plan would significantly slash domestic discretionary spending, a broad category that includes education, health, environmental, public-safety, and other programs. Taken as a whole, those programs could be cut by as much as 22 percent in fiscal year 2014, according to an analysis by the Center for Budget and Policy Priorities, a Washington organization that analyzes the effect of government policies on low- and moderate-income Americans.

The House of Representatives initially passed the plan in April 2011 by a vote of 235-193, with no Democratic support. A second vote this year on a similar proposal yielded similar results. The plan aims to cut spending by more than $5 trillion over the next decade, relative to the **Obama administration's budget** blueprint, while reducing tax rates, according to an analysis by the House Budget Committee.

It also seeks big changes to rein in spending on entitlement programs, including Medicare, while at the same time seeking to protect the Pentagon from big cuts, the Budget Committee's analysis says.

Under the Ryan plan, the federal budget would show a slight surplus in 2040, according to an analysis by the nonpartisan Congressional Budget Office.

The plan, which failed to pass last year in the Democratic-controlled Senate, where it received support from most Republicans, calls for getting rid of "duplicative" K-12 programs, but doesn't specify which ones would be scrapped.

It's hard to say just how key education programs—such as Title I grants to help school districts cover the cost of educating disadvantaged students—would fare under the Ryan plan, since the broad budget blueprint doesn't include a program-by-program breakdown of education spending.

But that hasn't stopped the Obama administration from trying to attach eye-popping numbers to the potential cuts.

U.S. Secretary of Education Arne Duncan said in testimony before a House panel in March that the Ryan budget would have a "disastrous" impact on K-12 funding. For instance, he said, the Title I program, which is now funded at $14.5 billion, could be cut by as much as $2.7 billion.

And just hours after Mr. Romney's Aug. 11 announcement of his choice of a running mate, the Obama campaign released a statement saying that Rep. Ryan's budget would make "deep cuts" in education from early childhood to college.

Mr. Obama, for his part, signed into law the American Recovery and Reinvestment Act the month after he took office in 2009. The stimulus measure provided about $100 billion for education programs, the largest boost in history. In the summer of 2010, with Democrats still in control of both houses of Congress, the administration pushed for—and got—an additional $10 billion to help stave off education job losses.

President Barack Obama is greeted by a supporter while campaigning in Waterloo, Iowa last week. Despite securing more than $100 billion in additional federal funding for K-12 education during his term and creating the Race to the Top program, Mr. Obama does not focus much on his K-12 record while on the campaign trail.
—Carolyn Kaster/AP

Earlier this year, the president also asked Congress for $55 billion to avert teacher layoffs and fix up schools, but the proposal failed to garner sufficient support.

Martin West, who serves as one of the Romney campaign's co-chairs on K-12 issues, thinks that the increased education spending could actually be an electoral liability for President Obama.

"The vast majority of that funding has gone into maintaining the status quo," said Mr. West, an assistant professor at the Harvard Graduate School of Education.

But Patrick Riccards, who has worked on a number of Democratic congressional campaigns, said Rep. Ryan's selection as Mr. Romney's running mate will give educators—who have clashed with Mr. Obama on such issues as basing teacher evaluations in part on student test scores—a reason to turn out for the president in the fall.

"I think there's no question that this is going to help him with the part of his base that deals with education," said Mr. Riccards, who is now the executive director of the Connecticut Coalition for Achievement Now, an advocacy group based in New Haven.

Even though Rep. Ryan's budget plan doesn't include specific levels for education spending, Mr. Riccards expects that Obama supporters will contend that Mr. Romney and Mr. Ryan want to get rid of the U.S. Department of Education.

"Campaigns are not doctoral theses. You don't have to have incontrovertible proof. …. It's not that large of a rhetorical leap, if you look at the cuts he's proposing, that he wants to put 400 Maryland Avenue out of business," he said, referring to the address of the U.S. Education Department.

Mr. Romney has said that he'd like to significantly shrink the Education Department, but has stopped short of calling for eliminating it.

Pell Grant Debate

Already, the Ryan pick has put education more into focus in the race—and into campaign ads.

Soon after the selection, the Obama campaign released a television ad highlighting the cuts to higher education spending that are included in the Ryan budget plan.

Mr. Ryan's proposal would make big changes to the Pell Grant program, which would ultimately result in fewer students' meeting the eligibility requirements of those grants for low-income college students. It would also eliminate interest-free benefits on subsidized Stafford Loans, according to an analysis by the New America Foundation, a think tank in Washington.

The Obama campaign ad doesn't go into all those specifics. But it accuses Mr. Romney of seeking to "cut college aid for nearly 10 million students." And it points to the administration's record on higher education, including the successful push to eliminate the Federal Family Education Loan Program, which relied on subsidized private lenders to make loans to students.

Mr. Shober, the Lawrence University professor, expects to hear more attacks along those lines from the Obama campaign.

"Ryan is perhaps a vulnerability on that score," Mr. Shober said. The congressman's budget, he said, "will not garner the good will of 20-year-olds who are deeply in debt."

But Jason Delisle, the director of the New America Foundation's education budget project, gave Mr. Ryan high marks for acknowledging long-term sustainability problems with the Pell Grant program, even if his solutions aren't as clear as they could be. The Pell Grant program has grown quickly in recent years, in part because Congress increased the size of the maximum grant when Democrats took control of Congress in 2007, and in part because there has been much higher demand for the grants during the economic slowdown.

The Economy Dominates

Mr. Delisle said the vague nature of a budget blueprint will make it harder for Democrats to go after Rep. Ryan on specific spending cuts.

"All they can say is 'You're going to put downward pressure on the future funding for these programs,' " said Mr. Delisle, who worked as an aide to then-Sen. Judd Gregg, R-N.H., when he served as the chairman of the Senate Budget Committee. "It doesn't make for a great sound bite."

No matter who wins in November, fiscal issues are likely to take center stage later this year. Shortly after the elections, Congress is expected to return to Washington to tackle significant long-term deficit issues in a lame-duck session, including whether to avert across-the-board trigger cuts known as "sequestration." (**Advocates Raise Concerns on Looming 'Sequester' Cuts**, Aug. 8, 2012.)

The cuts, which were put in place last summer as part of a deal to raise the federal debt ceiling, could mean a 7.8 percent reduction to a host of military and domestic programs, including education.

President Obama's budget proposal for fiscal year 2013 seeks to avert some of the cuts through a mix of other spending reductions and tax increases.

Mr. Romney has said that if he's elected, he'd like Congress to come up with a short-term deal on the cuts so that he could help lawmakers craft a long-term plan for the nation's fiscal future after taking office in January. By making Rep. Ryan his vice-presidential choice, Mr. Romney appears to be sending a major signal about where he'd like those budget talks to go.

President Obama's first term has seen some major developments on K-12 policy—including the Obama administration's Race to the Top program, which encouraged states to embrace controversial new teacher-evaluation systems, charter schools, higher academic standards, and dramatic interventions for the lowest-performing schools. But there's been little discussion of his education record on the campaign trail.

"I think with the economy the way it is, that will continue to be the primary issue," said Craig Jerald, an independent consultant who served as the policy director of Ed in '08, a Washington-based nonpartisan campaign to make education a top issue in the 2008 presidential race. "I would be shocked if it got much play at either of the conventions. …. The candidates need to check the box, but they're not really going to give it much weight."

Mr. Romney unveiled his own education proposal earlier this summer, including a plan to allow parents of special education and disadvantaged students to take their federal aid to the school or program of their choice, including a private or religious school. But he's been virtually silent on K-12 policy since then.

Policy Record

Rep. Ryan doesn't have a long record on education policy, but his recent stances are aligned with those of most other House Republicans. As a junior member of Congress in 2001, he **voted for** the No Child Left Behind Act, which passed with overwhelming bipartisan support.

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But since then, he's changed his mind about the federal accountability system at the heart of the law. He has become a co-sponsor of the A-Plus Act, which would allow states to opt out of many of the mandates of the NCLB law, as long as they agreed to show student-achievement gains.

David Parr, the president of the Janesville Education Association, a 735-member union in Rep. Ryan's Wisconsin hometown and congressional district, described the congressman as "very polite and approachable." Rep. Ryan has helped students from Janesville, including Mr. Parr's own children, with public policy research projects, he said.

But Mr. Parr, a teacher at Janesville Virtual Academy, an online public school, is not a fan of Rep. Ryan's budget proposal.

"He's not anti-education," Mr. Parr said. "He's just anti-paying-for-it."

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Austerity Is Hammering State Economies

States that Cut Spending in Response to the Recession Fare Worse Economically

Adam S. Hersh June 21, 2012

Public spending cuts, while on the rise worldwide, are bad for the U.S. economy. U.S. states provide a good illustration of this principle. Since the start of the Great Recession 20 states have cut public spending while 30 states expanded spending.[1] Those that cut spending have fared worse economically than those that expanded spending.

The median "spending cut" state saw the following results:

- The unemployment rate is 4.1 percentage points higher
- There are 6 percent fewer private-sector jobs
- The state economy is growing 2.7 percentage points slower than before the recession

On average, states that resisted cuts and expanded public expenditures saw the following results:

- Unemployment is 3.5 percentage points higher than before the recession
- Lost private-sector jobs are only two-thirds the rate of the average spending cut state.
- The economy is growing 2.6 percentage points faster than before the recession.

This column digs deeper into these numbers to see why slashing public spending makes a fragile economy worse. We argue that a strong and sustained economic recovery hinges on government investment.

Misguided beliefs in austerity

Governments around the world are zealously pursuing public-spending cuts. They believe that fiscal austerity is a cure for their increasingly fragile home economies.

But economists have long known that when an economy turns south, public spending on investments and services can make all the difference between robust recovery and prolonged

stagnation. A fragile economy can be buttressed and boosted by increased public spending on investments like education, infrastructure, energy efficiency, and putting money in people's pockets through safety-net programs like unemployment insurance and Medicaid.

The government—like families and businesses—also buys a tremendous volume of goods and services from the private market. As businesses see more sales and potential customers, they will have confidence in the economy to add jobs and crank up the economy's private-sector engine.

Dramatically cutting spending in a fragile economy, however, can pull the rug out from nascent economic growth, as we are seeing now here in the United States and around the world.

The economics of this fact have not changed, but the politics have. And Americans are worse off for it.

Public spending helped generate an economic recovery

As the U.S. economy plunged into recession throughout 2008 and early 2009, government expenditures at all levels expanded to offset and buttress the falling private-sector economy. (see Figure 1) From the fourth quarter of 2007 through mid-2010, government expenditures increased by 4 percent after adjusting for inflation.

The increased government spending helped reverse the doubledigit contraction in the private economy caused by the real estate bubble collapse and ensuing financial crisis. By late 2009 increased public spending had helped restore the private sector to sustained positive economic growth. Private-sector employment, which had been shrinking at 839,000 jobs per month in January 2009, was again adding net new jobs by March 2010.

FIGURE 1

Private economy stalls when government spending cuts back

4.4 percent total spending cut associated with flatlining private growth

FIGURE 1

XX Title XX

XX Subtitle XX

$2,450
$2,490
$2,510
$2,530
$2,550
$2,570
-14%
-12%
-10%
-8%
-6%
-4%
-2%
0
2%
4%
6%
2007q4
2008q1
2008q2
2008q3
2008q4
2009q1
2009q2
2009q3
2009q4
2010q1
2010q2
2010q3
2010q4
2011q1
2011q2
2011q3
2011q4
2012q1
$2,470
Private GDP growth rate
Government expenditures
Real private GDP growth rate
Total government consumption
and investment, $ billion (real)

Source: Author's analysis of Bureau of Economic Analysis data.
Source: Author’s analysis of Bureau of Economic Analysis data.

States pull back spending, threaten recovery

But in the second half of 2010, combined government spending in the U.S. contracted sharply—from $2.6 trillion down to $2.5 trillion in the fourth quarter of 2011, a 4.4 percent cut.

The private economy felt the impact in short order. Private-sector growth fell from more than 5 percent in early 2010 to less than 2 percent by the second quarter of 2011. Private growth strengthened to an extent in late 2011 after uncertainty subsided over whether conservatives in Congress would push the U.S. government to default on its debts. But private-sector growth is slowing again as government withdraws its support for services and investment that provide a foundation for private economic activity.

Most of the expenditure cuts in the United States can be traced to state and local governments, where balanced budget rules and so-called "taxpayer bills of rights" limiting public-expenditure increases both constrain state governments' abilities to pursue economic policies to counteract the effects of downturns and return affected economies to stronger footing. The fiscal crunch occurs at a time when state and local services are most needed to help families and businesses weather the economic storm.

Because it is more difficult for states to adjust their fiscal positions, Congress routinely makes aid to state and local governments a key component of measures to strengthen the economy during a downturn. This aid remains one of the policies with the biggest bang for the buck in countering a weak economy. Relieving the fiscal strain on state and local governments should be part of the policy mix if Congress is able to overcome conservative obstruction to growth-enhancing public expenditures.

Constraints on their budgets do not fate state governments to spending cuts, as the analysis below shows. By drawing on "rainy day funds," expanding expenditures on the state capital budget for big-ticket public investments, and shifting tax burdens away from middle-class and low-income families onto those more able to pay, states can increase expenditures and are seeing remarkably different consequences than states that cut.

Effects of different spending paths

To see how state spending affects economic outcomes, we divided U.S. states into two groups based on whether they had expanded or contracted public spending since the start of the Great Recession in December 2007, adjusted for inflation.[2]

Figure 2 shows the different economic trajectories of states cutting spending and states expanding spending. The lines plot the median of each group of states—the point where half of states are higher and half are lower—for each economic indicator. The median

measures the average tendency of the state groups, but unlike the simple arithmetic average (or mean) it is not skewed by extreme outlying cases such as North Dakota, where a recent fossil-fuel boom has set it apart from the national economy, or Florida, which is suffering one of the worst real-estate hangovers.

Overall, states cutting spending cut expenditures on public services and investments by an average of 9.1 percent over the course of the recession and recovery, from 2007 through 2011. States that expanded expenditures did so by an average of 8 percent. Now we examine how these choices affected the states' unemployment, private-sector jobs, and economic growth.

Economic growth

These states showed perhaps the greatest divergence on economic growth. Expanding states accelerated well ahead of their prerecession growth rates while cutting states languished with growth much slower than before the recession.

At the worst of the recession in 2009, GDP growth in expenditure-expanding states was on average 2.4 percentage points below the prerecession pace of growth. Expenditure-cutting states fell much deeper into the recession hole, with their GDP growth rates on average falling 4.6 percentage points below their prerecession level.

Coming out of the depths of the recession, states that increased

spending accelerated and pulled
away from expenditure-cutting
states. Recovery in the expenditure-
cutting states improved in 2010 but then stagnated in 2011, still growing on average at a rate 2.7 percentage points slower than prior to the recession. In contrast, expenditure-

Figure 2

States cutting spending picked wrong economic track

Group median, cumulative change since business cycle peak

Source: Author's analysis of National Association of State Budget Offices, Bureau of Labor Statistics, and Bureau of Economic Analysis data.

2007 2008 2009 2010
State government spending
-10
-5
5
10
0
Percent change
Unemployment rate
1
2
4
5
3
0
PPT change
Private sector employment
-8
-6
-2
0
-4
Percent change
Real GDP growth rate
-4
-2
2
4
0
-6
PPT change
States expanding spending States cutting spending
2011 2007 2008 2009 2010 2011
2007 2008 2009 2010 2011 2007 2008 2009 2010 2011

Source: Author's analysis of National Association of State Budget Offices, Bureau of Labor Statistics, and Bureau of Economic Analysis data.

expanding states sped up to surpass their prerecession growth rates. In 2011 they were growing on average 2.6 percentage points *faster* than they were before the recession.

Unemployment

Though both expenditure-cutting and expenditure-expanding states saw dramatic rises in unemployment rates, Figure 2 shows that on average states cutting expenditures fared substantially worse, with unemployment rates rising faster and higher than in states expanding expenditures.

On an annual basis, expenditure-cutting states saw unemployment rates increase by 4.9 percentage points over prerecession levels by 2010. In contrast, expenditure-expanding states saw more contained increases in unemployment, with unemployment rates rising on average by 3.8 percentage points.

As the economy improved in 2011, both expenditure-cutting and expenditure-expanding states saw unemployment rates fall relative to the start of the recession. But by the close of 2011, unemployment in cutting states stood an average 4.1 percentage points above the pre-recession level. Unemployment remained only 3.5 percentage points above prerecession levels for expenditure-expanding states.

Private-sector jobs

Expenditure-expanding states' better employment picture was not due to padding public payrolls with government spending. Their increased spending on public services and investments delivered a palpable boost to the private sector that helped private employment better weather the economic storm, as seen in Figure 2.

Private employment in states that cut spending fell faster on average and further than states that increased spending. By 2010 private-sector employment in expenditurecutting states fell more than 7 percent below its prerecession level, while expenditureexpanding states' private employment fell by only 5 percent.

As the national economic recovery took hold, private employment recovered faster in expenditure-expanding states than in cutting states. By 2011 the rate of private job losses in cutting states was 50 percent larger than that in expanding states, relative to their prerecession private employment levels.

Conclusion

No laws of man or nature say that policymakers must cut spending. Even before President Barack Obama and the American Recovery and Reinvestment Act of 2009, U.S. policymakers met the recession and financial crisis with an additional $65 billion, or 3 percent, of fiscal support.

The politics of public expenditures may have changed since then, but the economics has not. Nor has the situation faced by millions of unemployed workers and financially stressed middle-class families still waiting for the economic recovery that policymakers can deliver with expanded fiscal policy.

Data sources

State spending cuts: National Association of State Budget Offices, "State Expenditures Survey," various years. Includes all expenditures less federal transfers. Adjusted for inflation using U.S. Bureau of Economic Analysis, "GDP price deflator, National Income and Product Accounts Table 1.1.4."

Unemployment rates: U.S. Bureau of Labor Statistics, "Current Population Survey," multiple years.

Private employment: U.S. Bureau of Labor Statistics, "Current Establishment Survey," multiple years.

Real state gross domestic product: U.S. Bureau of Economic Analysis, "Regional Data, GDP & Personal Income Accounts," multiple years.

Adam Hersh is an Economist at the Center for American Progress.

Endnotes

1 Author's analysis of National Association of State Budget Offices and U.S. Bureau of Economic Analysis data.

2 Expenditure-cutting states are: Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Kentucky, Maine, Michigan, Missouri, New Jersey, New Mexico, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, and Washington. Expenditure-expanding states are: Alaska, Arizona, Arkansas, Idaho, Illinois, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

Taxes, economic growth and budget deficits

By Lou Glazer • on July 26, 2012

Another great New York Times Economix blog from Bruce Bartlett. Highly recommended! Bartlett, as you will recall, is one of the original supply side tax cutters. He served as senior staff to, among others, Jack Kemp, Ronald Reagan and Ron Paul. (By the way, his new book *"The Benefit and The Burden: Tax Reform-Why We Need It and What It Will Take"* is a terrific primer on federal taxes.)

Bartlett writing about a new report from the Congressional Budget Office makes clear that the Bush era tax cuts (kept in place by the Obama Administration) have been associated with economic decline and are a big reason for the huge federal budget deficit. That, in fact, it is the Clinton Administration with its tax increase that gave us not only economic growth and low unemployment but also federal budget surpluses. Turns out the story we are told over and over again about how higher taxes lead to economic decline and have nothing to do with government deficits is nonsense.

As Bartlett writes the key to the Clinton era success was the combination of a tax increase and control of federal spending. He writes:

The … surplus was primarily the result of two factors. First was a big tax increase in 1993 that every Republican in Congress voted against, saying that it would tank the economy. This belief was wrong. The economy boomed in 1994, growing 4.1 percent that year and strongly throughout the Clinton administration. The second major contributor to budget surpluses that emerged in 1998 was tough budget controls that were part of the 1990 and 1993 budget deals. The main one was a requirement that spending could not be increased or taxes cut unless offset by spending cuts or tax increases. This was known as Paygo, for pay as you go.

He contrasts that to what happened after the Bush tax cuts were enacted:

The 2001 tax cut did nothing to stimulate the economy, yet Republicans pushed for additional tax cuts in 2002, 2003, 2004, 2006 and 2008. The economy continued to languish even as the Treasury hemorrhaged revenue, which fell to 17.5 percent of the gross domestic product in 2008 from 20.6 percent in 2000. Republicans abolished Paygo in 2002, and spending rose to 20.7 percent of G.D.P. in 2008 from 18.2 percent in 2001. According to the C.B.O., by the end of the Bush administration, legislated tax cuts reduced revenues and increased the national debt by $1.6 trillion. Slower-thanexpected growth further reduced revenues by $1.4 trillion. However, the Bush tax cuts continued through 2010, well into the Obama administration. These reduced revenues by another $369 billion, adding that much to the debt. Legislated tax cuts enacted by President Obama and Democrats in Congress reduced revenues by an additional $407 billion in 2009 and 2010.

Bartlett concludes: *Putting all the numbers in the C.B.O. report together, we see that continuation of tax and budget policies and economic conditions in place at the end of the Clinton administration would have led to a cumulative budget surplus of $5.6 trillion through 2011 – enough to pay off the $5.6 trillion national debt at the end of 2000. …* ***Republicans continue to insist that tax cuts are highly stimulative, often saying that they add nothing to the debt, when this is obviously ridiculous. Conversely, they are adamant that tax increases must not be part of any deficit-reduction package***

because they never reduce deficits and instead are spent. This is also ridiculous, as the experience of the Clinton administration clearly shows. *(Emphasis added.) The new C.B.O. data confirm these facts.*

How we have let the story that higher taxes destroy the economy and have nothing to do with budget deficits become conventional wisdom is beyond me. The Nineties were arguably the best economy in American history, certainly the best decade since World War II. And we not only had a great economy – one with labor shortages – but we also had a federal budget that was balanced long term.

The policy regime that led to those two outcomes that everyone in America wants was higher taxes –

particularly on upper income Americans – and government spending constraint (not cuts). This formula gave us growth, budget surpluses and the ability to provide a decent safety net and make public investments that grow the economy long term in education, infrastructure and science and innovation. We need to get back to that formula as quickly as possible.

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Jim Blanchard, taxes and jobs

By Lou Glazer • on August 6, 2012

As many of you know I worked for Governor Blanchard, I thought then – and even more so now – he was real good for the people of Michigan. His administration was about one thing: jobs. His record is exemplary.

What follows are the facts on the economic results during his eight years in office and the fiscal policies he put in place to grow the Michigan economy. (The jobs related data in this post come from the Labor Market Information division of the Michigan Department of Technology, Management and Budget. The data can found at their data explorer page. Its a terrific resource!)

First, Governor Blanchard inherited a Michigan economy in worse shape – one can make a strong case far worse shape – than Governor Snyder. We have short memories. The story we have told ourselves over and over again that Governor Snyder inherited the worse economy in Michigan since the Great Depression is not true.

Jim Blanchard took office in January 1983. The month before (December, 1982) the state's unemployment rate was 16.8%. And going up. That month was the peak unemployment rate during the serve downturn of the early Eighties. For all of 1982 the unemployment rate was 15.6%.

Rick Snyder took office in January 2011. The month before (December, 2010) the state's unemployment rate was 11.2%. And going down. The peak Michigan unemployment rate during the Great Recession was 14.2% in August, 2009. When Governor Snyder took office the Michigan unemployment rate had been falling for 16 consecutive months. For all of 2010 the unemployment rate was 12.7%.

Lets turn our attention to what Governor Blanchard did to grow the Michigan economy and what the results were. First and foremost Jim Blanchard raised taxes. He cut spending as well to deal with a huge budget deficit he inherited along with a horrible economy. Governor Blanchard defied the conventional wisdom of his day – and far more so today – that believed low tax states have the best economies and, even more so, you never raise taxes in an economic downturn.

The income tax went from 4.6% to 6.35%. You read that right: 6.35%. Only one Republican in the state House and Senate – State Senator Harry DeMaso – voted for the tax increase. The rest predicted economic ruin. The income tax rate was 6.35% for calendar year 1983 and through August, 1984. When it was reduced to 5.35% through March 1986. When it went back to 4.6% for the remainder of the Blanchard Administration. (The income tax history comes from the Citizens Research Council.)

This was a period not only of higher income tax rates, but the dreaded Single Business Tax – the socalled job killer – was in full force with a rate of 2.35% for the entire Blanchard Administration.

Economic ruin? Hardly! During the eight years of the Blanchard Administration employment in Michigan went from 3,595,000 in 1982 (the year before he took office) to 4,262,000 in 1990 (the year he left office). An increase of 667,000 jobs. The biggest annual job gains occurred in the three years when the higher income tax rates were in full effect: 1983-5. Job growth in those three years was from

3,595,000 to 3,924,000. An increase of 329,000, an average of almost 110,00 per year. Over the eight years the state's annual average unemployment rate went from 15.6% in 1982 to 7.7% in 1990.

To put the Blanchard record in context, lets compare what happened during his eight years in office to the twelve years Governor Engler was in office. Engler has a well earned reputation as a job creator and a tax cutter. In the eight Blanchard years Michigan employment grew by 667,000, in the Engler twelve years (from 1990 the year before he took office through 2002 the year he left office) Michigan employment up 463,000. An annual increase in the Blanchard years of a little more than 83,000 compared to a little less than 39,000 in the Engler years. Once again, you read that right: annual job growth in the Blanchard years 83,000 more than double the annual increase of 39,000 in the Engler years.

The unemployment rate fell from 15.6% to 7.7% in the Blanchard years. In the Engler years it went from 7.7% to 6.2% in 2002.

So much for you can't raise taxes and get job and economic growth! Having said that I don't believe that the Blanchard tax increases were a major reason for Michigan's growth in the Eighties. Anymore than I believe the Engler tax cuts were a major reason for Michigan's economic growth in the Nineties. Or the Snyder business tax cuts have much of anything to do with the growth we are now experiencing that started at the end of the Granholm Administration. As we have explored previously the evidence is overwhelming that what drives Michigan's economy is the national economy and, most importantly, the domestic auto industry. State policy is at best a weak lever in driving the economy.

But what the Blanchard years demonstrates is that you can raise taxes and have strong growth. And as we will explore in future posts when you both raise taxes and control spending you can improve the standard of living and quality of life of Michiganders by having adequate funds for a decent safety net and public investments in education, quality of place and infrastructure.

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