

INSIDE MICHIGAN POLITICS

Inside: More Judicial Picks
They Said It

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BIRKHOLZ & WARREN: THEY PROVE WOMEN POLITICIANS CAN MAKE A DIFFERENCE

Three important things about last month's ratification of the Great Lakes-St. Lawrence River Basin Water Resources Compact by the 94th Michigan legislature:

■ With the right people in key positions, the seemingly dysfunctional Legislature can still take the lead away from the executive branch and drive policy;

■ For women everywhere who have gone into politics believing they could make a difference, this was their finest hour. It took two relatively unknown women lawmakers from different political parties, from different chambers, and from wildly different parts of the state to get the state's most important piece of environmental legislation in nearly four decades enacted. Ironically, the least important female in the process was Michigan's governor, but at least she can take credit for signing the bills; and

■ Term limits doesn't have to be an impediment to legislative achievement. One of the two women instrumental in the Compact's approval is a 36-year-old freshman House Democrat from Ann Arbor who found herself thrust into the role of a lifetime with a willowy blonde veteran Senator from Saugatuck whom she didn't even know. That didn't prevent the duo from scoring a major success.

The two women are, of course, state Senator **Patricia D. (Patty) Birkholz** (R-Saugatuck), 64, chair of the Senate Committee on Natural Resources & Environmental Affairs, and state Rep. **Rebekah Warren** (D-Ann Arbor), chair of the House Committee on Great Lakes & Environment.

As recently as a year ago, it appeared that any attempt by 10 different jurisdictions to reach an agreement on how to prevent raids on one-fifth of the world's surface freshwater might be doomed by internecine squabbles. Now, thanks to Warren and Birkholz, winning approval from Congress and the White House is about the only remaining hurdle — and that could be cleared before the end of the year.

One of the main participants in the frenetic behind-the-scenes negotiations on the Compact was 33-year-old **Noah D. Hall**, an assistant professor of law at Wayne State University. A graduate of the University of Michigan Law School, Hall has managed the Great Lakes Water Resources Program for the National Wildlife Federation, the nation's largest conservation organization. He is the author of numerous articles on environmental and water law (see his SSRN author page at <http://ssrn.com/author=582814>). **IMP** asked Hall how he viewed the Legislature's ratification of the Compact:

IMP: *How important were the two women legisla-*

tors — Patty Birkholz and Rebekah Warren — in putting the final agreement together? Were they more important than Gov. Jennifer Granholm?

Noah Hall: *The answers to those two questions are: indispensable, and yes. One of Senator Birkholz's strengths always has been her ability to work across the aisle. Plus, she had held dozens of meetings for several years bringing environmental protection groups such as the National Wildlife Federation, Michigan United Conservation Clubs, Trout Unlimited, and the Michigan Environmental Council together at the same table with water users like the Chamber of Commerce, the Farm Bureau, Michigan Manufacturers Association as well as DTE and Consumers Power. I remember many times that Sen. Birkholz leaned hard on those groups to find common ground. When Rep. Warren, a freshman at the beginning of last year, became chair of the House Great Lakes & Environment Committee, Birkholz found an ideal partner. Warren quickly got up to speed on the complexities of regional water policy, and it was she and Birkholz who took the lead in pushing the Compact through the House and Senate. At key junctures and, at the end, they cleared all aides and special interest lobbyists out of the room, negotiated face-to-face, reached agreement, and then sold their pact to their respective caucuses and chambers. In other states, governors took an active role in pushing the Compact through their legislatures. Not here. Granholm supported the broad concept of a Compact but then, basically, just got out of the way and left it to others to make it happen. Fortunately for her, and for Michigan, they did.*

IMP: *Is Michigan's ratification of the Compact really that significant?*

Hall: *Absolutely. First, it is very significant for water protection. The Great Lakes are the world's largest surface freshwater system, containing 95% of such water in this country. We're talking about protecting a vast drainage basin that reaches from the mouth of the St. Lawrence River to beyond the western edge of Lake Superior near Duluth, Minnesota. This area measures about 900 miles east to west and 700 miles north to south. Water is becoming more scarce and valuable nationally and globally, due to population growth, industrial and agricultural development, and climate change. The Compact will prevent most diversions of Great Lakes water out of the region and establish new water conservation and environmental protection standards for water use within the region. Under this Compact, both surface water and groundwater will be protected and managed pursuant to minimum standards administered primarily by the individual states. Secondly, the Compact sets a precedent for the region*

coming together around our common values and interests. Republican and Democratic governors from eight states (as well as the premiers of the Canadian provinces of Quebec and Ontario) all endorsed the Compact. Lawmakers in seven states have given it nearly unanimous support — only Pennsylvania has yet to ratify it, and that's expected to happen within the next couple of months. Maybe just as important, approval of the Compact by Congress could pave the way for new bipartisan regional efforts on other issues such as economic development and transportation.

IMP: How long has the effort to ratify the Compact been going on, anyway?

Hall: Gov. **William Milliken** first talked about something like a Compact back in 1982, but recent efforts were kick-started in 1999 when a Canadian company proposed shipping tankers full of Great Lakes water to Asia. The negative reaction was immediate. After four years of intense negotiations, numerous public hearings, and several draft proposals, the governors and (Canadian) premiers proposed the Compact in December 2005. Minnesota was the first state to approve it, in February 2007. We're the seventh. Only Pennsylvania is left. Ontario and Quebec have endorsed a companion agreement.

IMP: Why was Michigan one of the last states to ratify the Compact?

Hall: Because Birkholz and Warren and almost all of the interested parties chose to combine Compact approval with our ongoing effort to reform Michigan's water use laws. The Compact gives states some discretion in how they regulate water use within each respective state. Under the Compact, states must develop water conservation and regulatory programs within a certain time frame (2-5 years from the Compact's enactment). Some states have simply approved the Compact and will develop their state programs later. Other states, including Michigan, passed legislation to develop a state program concurrent with their Compact approval. That's harder, but we did it, and either way is fine.

IMP: What happens next? How likely is it that Congress will balk at accepting what the eight Great Lakes States have done? And how long will it take? Does Congress's action require a presidential signature for it to have legal effect?

Hall: Once the Great Lakes Compact is passed by the Legislature in each state, Congress must approve the deal. The Great Lakes region has been steadily losing seats in Congress for the past few decades, so it is critical to get the Compact approved before we lose more clout. Congress has a long tradition of deferring to regional consensus and cooperation in approving interstate water compacts. But with droughts and water shortages around the country, we can't take Congress's approval for granted. This Compact has strong support in Congress from both Democratic and Republican leaders. It would also require the President's signature, and both **Barack Obama** and **John McCain** have stated their support. I'm confident President **George W. Bush** would sign it if it reaches his desk before his term is up. It could be approved later this year or early next year under a new administration — the sooner the better.

IMP: U.S. Rep. **Bart Stupak** (D-Menominee) has indicated he's still "undecided" whether he'll vote for the Compact, at least in part because of concerns he has over the commercialization of bottled water that can be shipped and sold out of state. How significant would Stupak's opposition be?

Hall: Rep. Stupak has a strong record on Great Lakes protection, so I'm disappointed to see him on the fence on this issue. I'd just point out that, today, water can be bottled and shipped away under current law — spring water has been bottled and exported from the region for over a century, although not on the scale we are currently experiencing. The Compact only strengthens protections against the pumping of bottled water, or any other water use. Opposing the Compact seems an odd way to better protect the Great Lakes.

MORE JUDICIAL PICKS

Michigan's judges keep screwing up — both inside and outside the courtroom.

Most recently, two Macomb Co. judges have come under fire for, in one case, drunk driving, and, in the other, for allegedly assigning an inordinate number of cases to a conservator and guardianship agency that has mishandled the estates of people for which the agency was charged to care.

On June 11, the Michigan Supreme Court unanimously removed **Kathryn A. George** as Macomb County's chief probate judge just months after the high bench had appointed her. Retired Macomb Co. Probate and Circuit Judge **Kenneth Sanborn**, a former state lawmaker who is the father of a current Republican state senator, was named by the Supremes as acting chief judge.

One of Sanborn's duties will be to look into charges that George, who remains on the bench, steered an inappropriate amount of business to Shelby Township-based ADDMS Guardianship Services. A recent audit by a fraud investigation firm found "flagrant violations of both law and practice" by ADDMS (*Detroit News*, 6/12).

A few days earlier, Roseville District Court Judge **Catherine B. Steenland**, 41, was arrested on suspicion of drunk driving after State Police were called to haul the car she was driving out of a ditch in Ogemaw County's Mills Township. She'll be arraigned before 82nd District Chief Judge **Richard E. Noble** on July 24 in West Branch.

Maybe that's why surveys show that most Michigan voters want to retain the power to elect their judges. A statewide poll commissioned by **IMP** back in 1990 revealed that two-thirds of the electorate demand that they continue to be able elect judges, rather than allow them to be appointed by a governor.

Ironically, Steenland got on the bench back in 2002 by defeating a **John Engler**-appointed incumbent. Steenland isn't scheduled to face voters again until 2010, but George will be on the ballot this coming November facing one female challenger.

IMP has already assessed races for 10 seats on the bench, both encumbered and open, where there are more than double the number of candidates to be elected, thus precipitating an Aug. 5 primary (see Vol. XI, Nos. 38 & 39). Here are **IMP**'s picks for 11 more:

● **3rd Circuit Court** (Wayne County). Because of a last-minute unexpected retirement by incumbent **Helen**

Brown, there will be not just two openings on the state's longest bench, but three. Predictably, 11 candidates filed for the chance to make the 8/5 cut; they all realize that only six of them will survive to fight again in November. Shortest odds are on: **1) Connie Kelley** (wife of former Redford Twp Supervisor **Kevin Kelley** and daughter-in-law of the late Detroit councilman **Jack Kelley**), who should snare some key union and Democratic Party support; and **2) Allen Park attorney Daniel Hathaway**, scion of one of the county's most prominent judicial families; and **3) Grosse Pointe Woods Municipal Judge Lynne Pierce**, who has run before (and come close) and should get a lot of the major endorsements again. Who else? Maybe **Corbett Edge O'Meara**, former Democratic Party activist and son of a federal district judge, and **Wanda Cal** of Detroit, an African-American attorney who is racking up many union and Democratic endorsements and is clearly the strongest Motown candidate in this countywide race. The last spot will likely be a battle between previous also-rans: Wyandotte attorney **Neil Sawicki**; former Democratic County Commissioner **John Sullivan** of Canton; and Dearborn's **Susan Hubbard**, another ex-county legislator who has lost badly in her last couple of races.

● **25th Circuit** (Marquette County). Hey! Things are really getting serious in the U.P.'s biggest county when Negaunee attorney **Kevin Koch** cuts off his pony tail. Koch (pronounced "Cook") is one of four candidates for an open judgeship created by the retirement of incumbent **John R. Weber**. Koch is campaigning hard, but his biggest obstacle may be that he's a "west-ender" while his three rivals are from in or around the hub city of Marquette. That means that the two most likely aspirants to make the Aug. 5 cut are **Karl Weber**, son of the outgoing incumbent, who will have a lot of GOP backing, and probably assistant prosecutor **Jennifer A. Mazzuchi**, whose father is a prominent local physician. A fourth candidate, Marquette attorney **Timothy C. Quinnell**, is also the son of a former judge and thus can't be taken lightly.

● **8th District Court** (Kalamazoo). Many of this year's races come in fours — like, there are four candidates (two men, two women) running for this open seat in southwest Michigan's largest county. Which two will survive the Aug. 5 primary? Give an edge to Kalamazoo attorney **Bill Murphy**, who has been endorsed by Probate Judge **Curtis Bell**; Murphy's law partner is outspoken state Supreme Court critic **Jim Ford**. Who else? Kalamazoo lawyer **Julie K. Phillips** will probably draw from a completely different (and more conservative) set of voters, but that's usually all it takes to make it into the general election runoff.

● **65B District** (Gratiot County). Still another quartet of lawyers are running to succeed retiring Judge **James B. Mackie** — again, two men and two women. Two veteran Alma politicians — former mayors **Nancy E. Gallagher** and **Stewart D. McDonald** — are strong contenders. Gratiot Co. Democrats aren't noted as a potent force, but whatever clout they have may go to Gallagher. McDonald, a former county Republican chairman, probably has the best chance of the four to make the cut, possibly as the leading vote-getter. Chief assistant prosecutor **Anne Marie Bakker**, also of Alma, has Ithaca ties through her husband that give her a shot. A rel-

ative newcomer can't be overlooked, either: **Eric St. Onge** of St. Louis, another ex-county GOP chairman who runs the Okemos office of the law firm ranked 12th largest in the state, Detroit-based Kitch Drutchas.

● **73A District** (Sanilac County). This race has taken some unusual twists. For the past two months, it seemed to be simply four male attorneys running to succeed retiring incumbent **James A. Marcus**. One of the aspirants was Lexington lawyer **James A. Metz**, a former Wayne Co. assistant prosecutor who was the only candidate from the more densely-populated southeastern corner of the county with spillover suburban population from Port Huron. Then, last Tuesday, the 59-year-old Metz dropped dead while jogging at the Detroit police athletic gym. Ironically, he was working at the time as an associate counsel at the state's Attorney Grievance Commission, which had suspended one of his opponents, Sandusky divorce lawyer **Dennis W. Reid**, back in 2004-05 for misappropriating a client's funds. Meanwhile, Reid, who has been reinstated by the Bar, is running on a "year of reform" platform and has led a petition drive that forced a referendum on Sanilac County's plan for a \$16.5 million jail project in the 8/5 primary. What about the other two candidates? One of them is a longtime, well-known Sandusky attorney named **Gary S. Ross**, who probably must now be considered the favorite. The other is Friend of the Court **David G. Myers**, who is likely to vie with Reid for the other runoff slot. It's too late to get Metz's name off the ballot.

● **80th District** (Clare & Gladwin Counties). Here is still another race involving four male attorneys running for an open seat, in this case a two-county enclave in almost the exact center of the Lower Peninsula. Three of them hail from the slightly larger county (Clare), while one — **Anthony Jenkins** — resides in Gladwin, but with a law office in Harrison, Clare's county seat. Look for Jenkins and another Clare Co. lawyer, **Joshua M. Farrell** of Harrison, to make the runoff. They're the two youngest candidates, and they're working the hardest.

● **89th District** (Cheboygan & Presque Isle Counties). Incumbent **Harold A. Johnson, Jr.**, can't run again because of age, so this seat is open for the first time in 24 years. Four men and a single woman are running, and they all hail from either the city of Cheboygan or Indian River in Cheboygan County, which is twice as large as Presque Isle. The female is **Maria Barton** of Indian River, an assistant county prosecutor who has support from many law enforcement officers. The four men are all in private practice: **1) Gregory Rotter**, who just snared the Right to Life endorsement and is the immediate past president of the Cheboygan Co. Republicans, although some blame him for the GOP's poor performance in the 2006 election; **2) James Gilbert**, a known conservative who appears to be doing well with the Republican establishment in both counties; **3) Chuck Hoffman**, who has family roots in the area going back 130 years + credentials as Cheboygan's city attorney for 30 years, vice president of the local school board, and his successful real estate business; and **4) Daniel Martin**, who has been on the campaign trail since last fall and is known for pro-bono work with various charitable and civic organizations ranging from the Salvation Army to the Humane Society. High turnout is expected, especially in Cheboygan, where

many townships have millages on the 8/5 ballot + five of the larger townships that are asking to raise taxes by \$400,000 to fund a controversial countywide recycling program. Who will make the cut? Hoffman and Gilbert appear to have an edge, but don't overlook Barton, the only female in the field.

● **91st District** (Chippewa County). Longtime incumbent **Mike MacDonald** is hanging it up early, even though he could seek re-election again. He's off to run an apple orchard on Drummond Island. That creates a rare opening in this huge enclave, which covers most of the eastern tip of the Upper Peninsula. Five strong candidates will be on the Aug. 5 ballot, all of them from Sault Ste. Marie: **1)** City attorney **Steven J. Cannello**, a partner in a prominent local law firm; **2)** Public defender **Elizabeth L. Church**, whose name may evoke memories of a longtime probate judge from days gone by, even though they're not related; **3)** **Leanne Barnes Deuman**, who (with Cannello) qualifies as one of the two hardest-working aspirants; **4)** Personable, politically savvy lawyer **Mark Dobias**; and **5)** **Charles J. Palmer**, who ran an energetic campaign as the Republican nominee for county prosecuting attorney back in 2000 but came up just short. This is a tough call, but give the edge to Cannello and Deuman to make the 8/5 cut.

● **97th District** (Houghton/Baraga/Keweenaw Counties). Three male attorneys are running for an open seat in this three-county enclave in the extreme northwest reaches of the Upper Peninsula, and all of them are from Houghton, which, with less than 40,000 citizens, is far and away the largest of the trio. The two favorites to make the 8/5 cut for this open seat have got to be Houghton attorney **Mark A. Wisti**, son of a longtime prominent defense attorney, and former Houghton Co. Prosecuting Attorney **Douglas S. Edwards** of Lake Linden.

THEY SAID IT

■ "The women won — write that!" — *State Rep. Tonya Schuitmaker* (R-Lawton), talking up state House female lawmakers' victory in an ad hoc "Seersucker Sweepstakes" June 19. Schuitmaker and sister state Rep. **Pam Byrnes** (D-Chelsea) were the only two women who showed up on the House floor in the spiffy summer garb, but that was enough for a gender win over Speaker Pro Tem **Michael Sak** (D-Grand Rapids), who organized the fashion show, and Rep. **Chuck Moss** (R-Birmingham), who managed half an outfit.

■ "As a lifelong Republican involved in Reform Michigan Government Now (RMGN), (*Detroit News* columnist) **Nolan Finley's** description of it as a "sleazy" Democratic attempt to "hijack" Michigan's Constitution is mistaken ... Finley is wrong to call our grassroots, bipartisan effort to fix Michigan's broken government a "wholesale rewrite" of the Constitution. Our reforms are specifically affecting only four of the 13 articles in the Constitution... The special interests will likely obstruct us in court. Should that happen, every Michigan judge, all the way to the Supreme Court, will have a conflict of interest and should not sit in judgment of this proposal. Michigan voters demand change, and Finley's smear tactics won't stop them." — *Hastings grassroots activist Harland Nye*, treasurer of

the group calling itself Reform Michigan Government Now, which has been collecting signatures on petitions due today that would place the RMGN proposal on the Nov. 4 general election ballot (*Detroit News*, 6/25).

■ "As part of its campaign to unseat Michigan Supreme Court Justice **Clifford W. Taylor** ... the Michigan Democratic Party and (Chairman **Mark**) **Brewer** are targeting certain Supreme Court cases in which Taylor has participated. The cases are evidence, say the MDP and Brewer, that Taylor's decisions on the Supreme Court have made it easier for terrorists to commit their crimes, protected sexual predators and drunk drivers, and taken away critical consumer protections ... The problem with at least some of those cases is (that) Taylor is being joined by one of the MDP's most-favored justices in voting the way he did: Justice **Michael D. Cavanagh**. And, in one of the cases Brewer identified, Taylor's vote was seconded by a justice who repeatedly (has) called (Taylor) "unprofessional" and accused him of "abuse of power": Justice **Elizabeth A. Weaver** ... And, finally, Democratic Justice **Marilyn Kelly**, who (like Taylor) concurred in the (*People v.*) *Osankowski* result, must also be making it "easier for terrorists to commit their crimes." — *Michigan Lawyers Weekly* editor **Todd C. Berg** (6/16).

■ "... Ask an attorney who practices outside the personal injury or criminal defense areas, and you invariably find one who supports Chief Justice (Cliff) Taylor and the other three "originalists" on the Supreme Court. While I, as a personal injury attorney, do not always agree with the decisions that come down, personal injury is one small area of the law, and I don't believe we should elect a justice solely on the basis of his or her reading of tort laws. When I review Chief Justice Taylor's ... decisions in other areas of the law, I find myself in near total agreement, and base my vote on the total package ..." — *Grand Blanc lawyer Michael B. Rizik, Jr.*, in a "Letter to the Editor" of *Michigan Lawyers Weekly* (6/17).

■ "It's time to move on." — **Genna Gent**, *Gov. Jennifer Granholm's* deputy chief of staff who last month left Lansing, where she had been Granholm's longtime speechwriter, to become director of Michigan's Washington, D.C., office. But the quote above wasn't from May 20, when Granholm announced Gent would be assuming her new post; rather, it was Gent speaking to reporters in late January, 2003, at a Democratic state convention in Detroit's Cobo Hall, where Gent was urging the media to recognize that Gov. **John Engler** had finally left office after a dozen years and that "a bright new day" had arrived with the accession of Granholm.

■ "When I talk about our Democratic Party, we're mad, we're proud, and we're determined. We're mad as hell, as Democrats in this state, about being the poster child of this global shift in manufacturing jobs, we are mad as hell, are we not? Are you mad? I'm mad, and I hope you're mad about it, too... And we figure the best person to be mad at is **George Bush**, and the Republicans, and the best way to channel our anger to constructive purposes is to elect a Democrat, right?" — *Gov. Jennifer Granholm*, in heretofore unreported remarks at Michigan Democrats' Jefferson-Jackson Day Dinner, in Detroit's Cobo Hall back on April 5.