

Jim Doyle

## Evaluating the Great Lakes Compact After a Decade

Marquette Law School's Water Law and Policy Initiative, directed by Professor David Strifling, presented a half-day conference—"Evaluating the Great Lakes Compact on Its Tenth Anniversary"—in the Lubar Center of Eckstein Hall on October 2, 2018. Experts discussed the landmark agreement that first gained the approval of the governors of the eight Great Lakes states and that Congress then enacted into federal law in 2008. Among other things, the Great Lakes Compact governs diverting water for use outside of the Great Lakes basin. Diversion has received considerable attention in southeastern Wisconsin: In particular, Waukesha, which is just outside of the basin boundary, recently sought to use water from Lake Michigan for its municipal supply after its well water was found to contain high levels of radium. Waukesha's application became the first major legal test of the compact. Jim Doyle, governor of Wisconsin from 2003 to 2011, played a critical role in the negotiations leading to the compact and gave opening remarks at the Law School's conference this past fall. This is an excerpted and edited version of his remarks.

Thank you, Dean Kearney, for the kind introduction. I want to compliment you and Marquette and the Lubar Center—Mike Gousha, the whole team. I have watched this public policy emphasis develop over the years, and it really has become a center for important discussions in the state of Wisconsin and this region and this country. I thank you for that. It was visionary, and it has really been important to the whole state.

I am very pleased to be here on the tenth anniversary of a hallmark moment in the history of the Great Lakes, when President George W. Bush signed the Great Lakes Compact. I am often asked: "Is it successful or not?" And I will say to you that the test is really still to come—when the demands for water grow and grow and grow around the United States, around the world, and the eyes of



Professor David Strifling and Governor Jim Doyle

those who want water become focused on this amazing resource.

It was only back in the 1980s that a Wisconsin governor, Lee S. Dreyfus, compared water with oil. This was around the time when OPEC was at its peak and we had oil shortages; somewhat jokingly he said, in essence, "Water will be the oil of the future, and we ought to think about how we might sell the water of the Great Lakes." We now sort of take it for granted that this is something that we would protect. But as you look at how that idea developed and where the compact came from, it came from a real fear that, I think, is still legitimate and will be out there in decades to come. That is, it involves people looking to do to these lakes what was done in central Asia to the Aral Sea and in other places around the world.

The compact was a significant accomplishment. It really has two main parts that, from my perspective, were critical. One that continues to receive a lot of attention concerns diversion of water. Yet perhaps even more important is the fact that the compact constitutes a framework for the joint management of these lakes. Instead of the Wisconsin DNR and the Michigan DNR and Ohio going their own ways in trying to figure out what to do, the Great Lakes Compact is the framework by which data are collected and the science behind Great Lakes preservation is done—in

cooperation among all of those states and the federal government. That is an incredibly important part of what this was about, and I would assume that, as you talk today, part of the discussion will be on how effective that part of the compact has been. To my mind, that's an area that we have not adequately picked up on.

Let me focus a bit on the history of the compact. My world was political at the time. I saw a lot of wonderful people—some of whom are here in the room today—really working hard at the basic science of this and the basic technical work that had to be done to put the compact together. At the same time, some major political forces were at work. Only when those forces came together in a unique kind of way were we in a position to get this passed through eight states and the Congress of the United States.

There had been a lot of talk in the big picture about the potential threat of

people taking water from the Great Lakes. All of the Great Lakes states understood the importance, but maybe especially Wisconsin. I might argue that, since the Upper Peninsula really should be part of Wisconsin, we have more Great Lakes frontage than anyone else—but, ceding that to Michigan, we're at least number two in the amount of actual Great Lakes exposure. And in Wisconsin, our history, our culture, our economy, where we have come from—all this is tied up in the Great Lakes.

I've always loved the picture of the planet from outer space: Wisconsin is one of the states of which you can actually say, "There it is." That's because of water—because of Lake Superior on the north and Lake Michigan on the east and the Mississippi River on the west. That Illinois border is not from nature, but the others are.

So, generally speaking, Wisconsin is defined by the Great Lakes. It is where our

economy grew in the nineteenth century, where the great cities grew, Milwaukee in particular. But—and here is where the politics come in—when Wisconsin was laying out its political boundaries, nobody was thinking about where the mini-Continental Divide was. Nobody was thinking that the boundary of the Great Lakes Basin was only some 6 or 7 miles west of the shores of Lake Michigan. Those communities that were within 25 miles or so of Lake Michigan all saw themselves as Great Lakes communities. When people were thinking where the county should go and where political boundaries should go and where cities should be located, it wasn't, to my knowledge, in anybody's thinking to say, "You know, we want to have a city in New Berlin, but put only a little bit of it into the Great Lakes basin, and everyone in the rest of the city can look to the Mississippi River and the West for their water."

At the time, we were facing the practical reality of how to get a Great Lakes Compact passed in a political structure in which there was, quite legitimately, a lot of concern about how all this would work. That was one really significant problem that we had and continue to have. And when you talk about the issue of diversion in southeast Wisconsin, that's not because people are more cantankerous in southeast Wisconsin. It's because there are communities that have long seen themselves as Great Lakes communities but may be a mile or two or three to the west of the Great Lakes Basin. That's the geography of this.

I've heard some talk that this issue wasn't so much about partisan politics but rather about where that divide happened to come through. It had to be worked out in a way that, even though it wasn't going to make everybody happy, provided political solutions. The main one is that any water coming out in the so-called straddling communities has to go back in—has to be treated and go back in.

The second big challenge was one that continues to plague our politics today. I'm going to be a little partisan



here, so I apologize to my Republican friends out there. At the time, the Great Lakes Compact was seen by many of the Republican legislators in Wisconsin as sort of do-gooder, liberal, green, Democratic policy. And with a Democratic governor pushing it as hard as I was pushing it, that reaction was just something kind of instinctive: “This is too much regulation, this is too much government interference, the market will take care of it”—you can hear all of the arguments. And then there was a very practical Republican opposition to it, which was that the Republicans largely represented the communities that needed to deal with the straddling-community issue. If I represented Waukesha County, Democrat or Republican, I’d better be trying to make sure that I don’t have radium in the water and that I have a source of water and that I’m working on those kinds of issues. There also were the usual kinds of issues as well—environmentalists demanding everything to be 100 percent correct, some businesspeople saying this is going to be terrible for our business, with our trying to get them somewhere together. I am really amazed at the number of great people—of both parties, of business, among environmentalists—who actually understood in the end what the practicalities of this were and how much they had to get down and work together. And that is what resulted ultimately in a decision being made in favor of the Great Lakes Compact in Wisconsin.

Wisconsin’s approval of this compact was absolutely critical. We had been a key state. Our negotiators were at the center. A lot of very difficult negotiation had to be done in order to get eight different states together. We were really tied up in this. I was fighting this for several years before we ultimately passed it. I would say two big things led to its passage.

One was that the Waukesha people understood in the end—it took a couple of years for this to happen, but they understood in the end—that the DNR was not going to let them off the hook on the radium in the water, that as a

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practical matter they needed to deal with their water source, and that the Great Lakes were the only place in realistic terms to which they could turn. Further, they understood that the largely unstructured process existing before the compact—the one by which you just put out a request and if any governor said “No,” it was over—wasn’t going to work for them.

In the end, they understood that only through an organized process like the Great Lakes Compact could they legitimately, at some point, get approval from the other governors of the Great Lakes states in order to get the diversion. When Waukesha recognized that this was the way they had to go, at that point, the Republican opposition in the state became very different. Approval sort of started to happen at that point. So that change was very important.

Then, in addition, a number of other states started passing this. One of the good things about this was that we had been talking to Republican legislators for two years—not in a big, antagonistic kind of way, but just continuing to talk, to inform them of what was going on, to try to include them in everything that was happening. Patience like that sometimes pays off in the end. When the moment came that the Republicans were moving to the other side, we weren’t starting from scratch. We had a number of good, Republican legislators who had been basically sort of understanding this and getting behind this for a long time—and so who were ready to go. And when Wisconsin went, Ohio had to go. And when Wisconsin and Ohio were there . . . then it all happened.

I still believe that these matters will be a big issue—10, 20, 25 years from now—

and that’s why I think that the real success of the compact has yet to be tested. What will really test this at some point is when there is a huge water shortage in the country and people go to Congress and say, “You have to get rid of this compact in order for us to have the water.”

Here are the challenges that I see ahead. One is that there has been a real change since 2010—and certainly during the last couple of years—in the politics of how people see regulation versus government involvement. There’s just no doubt that that is the truth of the situation. Anybody can look at it, I can be critical of it, other people can applaud it, but we have moved into an era in which nonregulation and criticism of what some call over-involvement by government have been a winning political message in election after election. I think that this has seriously slowed us down in Wisconsin and in the other Great Lakes states in taking care of what is a critical part of this: How do we get the states to work together?

There’s a lot of good work being done, I know. Is it at the level or the intensity that I would like it? Probably not so much. But there is a lot of work that continues to be done, and it is the framework that we have.

When I look back at it, the compact has sort of taken the impetus out of “save the Great Lakes” political fervor. I don’t follow them all, but I have not seen elections in Wisconsin or in other states bring this issue to the fore for many years. I think it has receded some in the public mind. I think it’s critical to test candidates on how committed they are to this compact and to this process and, more importantly, what kind of resources they are willing to put into the effort to make sure that this happens. ■

Joseph D. Kearney

# Bev Franklin Day

On December 14, 2018, Beverly Franklin retired after 40 years of service to Marquette University Law School. Bev—as she prefers to be called—was a longtime administrative assistant to faculty in room 109 of Sensenbrenner Hall. This was the door closest to the Law School’s entrance on Wisconsin Avenue. Upon the move to Eckstein Hall, in 2010, her role as greeter and gatekeeper was formalized: Bev became the primary person at the Welcome Desk, by which all entering and leaving the Law School must pass. She was, in short, central to the community of the Law School. Here is an excerpt from Dean Joseph D. Kearney’s remarks at the Law School’s annual Christmas luncheon—Bev’s last day of work.

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Mostly I want to talk about Bev Franklin. It is Bev Franklin Day, after all. That is the least that we can do after her 40 years or so of service to the Law School. Just to give you a sense of how long this has been, Bev has been with us even longer than Bonnie Thomson. And I say that not in any way to pick on Bonnie, but, rather, because Bonnie typically says that she has been here “longer than Methuselah was old,” or “since the flood,” or something like that.

It’s actually a good thing that Bev has been here longer than Bonnie. Here’s what Bonnie told me last week: “Bev was the first person from the Law School whom I encountered on January 2, 1985—she smiled and put out her hand to help me over a snowbank on 11th Street. That gesture pretty much sums up Bev’s approach to people throughout her tenure.” That is succinctly and well said.



Paul Anderson sent me a note also recalling Bev in Sensenbrenner Hall: “In the old building,” Paul said, “there was a day each week when Bev would make bacon (I believe it was Thursdays). Entering off Wisconsin Avenue, I could smell it from the front door all the way to my office next door. It became a tradition for her to share some with me.” That was part of a food theme in the comments that people sent me: Deborah Darin’s comment to me simply was, “The cakes. The lemon cake.” To that she added only the parenthetical, “Sighing.”

There were some other themes in a few of the comments that I received. One had something to do with Bev’s flirting with people, but I thought it imprudent to explore that, even if it was all G-rated (as it was). Another—to which Melissa Greipp and Bruce Boyden both attested—touched upon Bev’s reception of people’s families. Whether it was hugs for Olivia or help with a bottle for

Ollie, and whether it was Eckstein Hall or Sensenbrenner Hall, their comments reflected Bev’s genuine care and warmth for their children.

The prevailing theme was the way Bev helped build up our community, whether by welcoming people or otherwise. Mike McChrystal was the person responsible for the idea that we formalize Bev’s community-building role by asking her to lead the Welcome Desk when we moved to Eckstein Hall. His comment in recalling that last week was this: “I remember a greeter at the front door of a Ritz-Carlton hotel where I once stayed who warmly engaged each arriving guest and made you feel that your arrival brightened his day. When we were considering the role of the Welcome Desk and the person at it, I wondered who in the Law School could do what that greeter did. Bev was the obvious choice.”

That is all true, but Mike tells us only half the story—or just a bit more than

half. He *also* told me at the time—this would have been 2009 or 2010—that we needed someone at the Welcome Desk who, where appropriate, would take no guff. Bev, I trust that it's not a surprise to you that you scored very high on that measure as well.

So well it should be Bev Franklin Day at the Law School. Some of you may think that to declare this to be the case is to exceed my authority as dean. Perhaps I should have put the matter forward for some sort of community resolution. And if necessary, I'm sure that I could do so here, by unanimous consent or acclamation, as is said. Yet I think that to be unnecessary.

For we have here a proclamation from the Wisconsin Supreme Court—specifically, signed by Chief Justice Patience Roggensack—noting Bev's "leadership, faithful service, and excellence" on behalf of the Law School. The chief justice notes everything from Bev's attention for students and guests to her ensuring that no one's car—and I mean no one's—was permitted to block the road outside the building. It is a generous citation, commending and congratulating Bev.

Now we at the Law School are part of the legal profession, so I think this to be pretty good authority. At the same time, some may think, "Well, that's the court system. Judges are not supposed to make laws, only interpret them—you know, the whole baseball-umpire thing." Anticipating that objection, we also have here a proclamation from Mayor Tom Barrett, on behalf of the City of Milwaukee.

The mayor's proclamation is warm and expansive. It is the conclusion upon which I wish to focus here: He concludes by declaring today to be "Bev Franklin Day" in the City of Milwaukee. Quite what the rights and prerogatives appurtenant to this proclamation are, I'm not sure. But whatever they are, they extend to the rest of Milwaukee County, as we have a similar proclamation from Chris Abele, the Milwaukee County

executive. So if you're inclined to go crazy, Bev, let it be today, and know that you'll be in as good shape in, say, Wauwatosa or Franklin as you will be, at home, in Milwaukee. And if you get into big trouble, know that you have the Wisconsin Supreme Court in your back pocket.

And, more than anything, know that, while these tickets apparently are good for this day only, you'll always be part of us at Marquette Law School. In that regard, this package, also, is for you. I don't think that it is spoiling any surprise to say that in it are some photos capturing just some aspects of your time here.

For my final words on this matter, I'm going to defer to our students—or former students, which is to say Marquette lawyers. Many of us, including Steve Nelson (who sent me the link), will remember that when Judge Derek Mosley received the Howard B. Eisenberg Service Award from us a few years ago, he asked two people to be there that evening. One was Robin Cork, who (happily) has not yet retired from our library. The other, of course, was Bev Franklin. He described her importance to him during law school in part by saying, "Not a day went by when I did not go and talk to Bev."

More recently (just last night in fact), another former student, who is here today, described for us Bev's importance to her: This was Phoebe Williams, whom

## EXECUTIVE PROCLAMATION

*WHEREAS*, Bev Franklin has dedicated her life in service to Marquette University for nearly forty years and specifically to improve the lives of the Marquette Law School's faculty, staff, and students since 1985; and

*WHEREAS*, Franklin has been a positive force for good in Sensenbrenner Hall supporting nine full-time faculty with their research and classes for more than 29 years; and

*WHEREAS*, Franklin has served as the public face of the Marquette Law School by welcoming close to 2,000 students and more than 27,000 *On the Issues with Mike Gousha* guests, to Ray & Kay Eckstein Hall since 2010; and

*WHEREAS*, she warmly greets guests with her big smile and a unique ability to call everyone "sweetie"—from a first-time guest to the University Provost; and

*WHEREAS*, Franklin is known by her friends and colleagues for her tasty and scrumptious baked cakes and cupcakes which she graciously shared; now, therefore

I, *CHRIS ABELE*, County Executive of Milwaukee County, do hereby congratulate,

*Bev Franklin*

On her retirement from the Marquette University Law School on December 14, 2018.



*Chris Abele*  
Milwaukee County Executive

Bev Franklin Day Proclamation

we may think of as a faculty member but who, of course, once walked the halls of Sensenbrenner as a student. Here's what Phoebe told her (in part):

"Bev, as a law student at Marquette from 1978 to 1981, I was nurtured by your warm and friendly presence. As a faculty member since 1985, I knew I could count on you to support my work at the Law School. I have benefited immensely from our conversations and friendship. Yet, I have always admired your professionalism. I knew that even though you liked me a lot, I still had to follow the rules."

I cannot improve upon those words—whether those of the chief justice, the mayor, Phoebe, or anyone else. We love you, Bev. ■

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Mike McChrystal