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The reformer's dilemma

Lawrence making progress under Mayor Dan Rivera, but support for him is tepid

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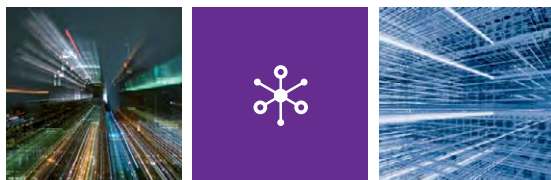
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P27472

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> Full contents, as well as online exclusives, are available at www.commonwealthmagazine.org

CommonWealth (ISSN pending) is published quarterly by the Massachusetts Institute for a New Commonwealth (MassINC), 11 Beacon St., Suite 500, Boston, MA 02108. Telephone: 617-742-6800 ext. 109, fax: 617-589-0929. Volume 22, Number 3, Summer 2017. Third Class postage paid at Holliston, MA. To subscribe to *CommonWealth*, become a Friend of MassINC for \$75 per year and receive discounts on MassINC research reports and invitations to MassINC forums and events. Postmaster: Send address changes to Circulation Director, MassINC, 11 Beacon St., Suite 500, Boston, MA 02108. Letters to the editor accepted by email at editor@massinc.org. The views expressed in this publication are those of the authors and not necessarily those of MassINC's directors, advisors, or staff. *CommonWealth* is a registered federal trademark.

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CommonWealth magazine is printed on FSC-certified recycled paper, manufactured with an elemental chlorine free process, using soy inks and 100% certified wind-energy credits for production.





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PREP SCHOOL CLAIM SPECIOUS

While I applaud Michael Jonas's commitment to presenting all sides of the ongoing debate that surrounds the operation and performance of Massachusetts's public vocational technical high schools, I must respond to some of the opinions shared in the article ("Voc-tech tension," Spring 2017).

The idea that the Commonwealth's public vocational schools are operating like "elite prep schools" is both specious and misleading. The statement not only reinforces the classist notion that vocational-technical schools are, in fact, for those students who do not excel at "book learning," but it overlooks a primary challenge facing our vocational-technical schools: capacity.

This year, Diman Regional Vocational Technical High School, which serves the South Coast communities of Fall River, Somerset, Swansea, and Westport, received 654 applications for admission to the graduating class of 2021. Close to 300 of those applicants were turned away, as so many are each year, for one reason only: our 49-year-old school building can no longer accommodate the volume of students interested in multi-disciplinary education.

As Jonas points out, the model of professional education is working. Rather than frame the discussion as vocational schools being the "victims of their own success," let us remove barriers to inclusion and increase capacity to deliver high-quality education to all interested students.

Let me be clear: increasing capacity does not mean diffusion. Comprehensive schools play a critical role

in our educational eco-system, but they should not be used to seemingly expand access to vocational education, when these investments merely dilute the resources available to specialized, professionally staffed vocational schools whose students graduate with industry-standard certifications.

There is no right or wrong type of vocational-technical student, and education is not a one-size-fits-all endeavor. I urge my colleagues at all levels of the Commonwealth to align investment with demand and to empower our vocational experts to make good on their promise to provide professional education to all students.

*Thomas F. Aubin
Superintendent-Director,
Diman Regional Vocational
Technical High School
Fall River*

MORE SEATS FOR VOC SCHOOLS

Thank you for the thoughtful, complex coverage of vocational high schools. This is an important issue for the Commonwealth and it is encouraging to see it getting the attention it deserves. The trends and dynamics you describe are consistent with what I have observed over the past eight years serving as an assistant principal at Hudson High School.

At the end of the article, you quote Tim Murray of the Worcester



Regional Chamber of Commerce, who asks, "How do we increase access rather than continue fighting over a limited number of seats?" It is the right question and should prompt us to consider increasing the number of seats at vocational schools. For the reasons discussed in the article, adding more career and technical programs to traditional high schools is probably not a sufficient response to the problem. Most vocational schools offer an alternative model from traditional schools, not just the different program offerings.

If the demand for the vocational schools (and their alternative model) exceeds current supply, why not expand supply? This is no doubt costly but the return on investments in vocational education may be very high. The costs of failing to do so are likely higher. When young people enter the labor market after high school having not received adequate vocational training, their individual prospects are typically very poor and the impacts on communities and future generations can be profoundly negative.

*Joshua Otlín
Assistant Principal,
Hudson High School*

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Tough to say no

IN THIS ISSUE of *CommonWealth*, we by happenstance ended up with three features that take an in-depth look at three forms of government intervention in the state economy. All of them are well-meaning and designed to create jobs and spur the state's economy to greater heights. But the stories also demonstrate the limitations of government intervention and the potential for unintended consequences.

Freelance writer Linda Enerson looks at a government intervention from years ago, the decision by state officials in 1999 to invest \$35 million in the Museum of Contemporary Art, or MASS MoCA, in North Adams. More recently, the state pumped another \$25 million into the project for a major expansion of the museum.

Enerson reports that the museum is a critical and commercial success, but the hoped-for turnaround of North Adams remains a work in progress. There are some positive signs in the community and more change is in the air, but this investment clearly had no quick payoff.

Jack Sullivan reports on the looming casino war between Connecticut and Massachusetts. Connecticut was the first to get into the act, first with Foxwoods in 1993 and Mohegan Sun four years later. In fiscal 1998, the first full year both casinos were operating at the same time, bettors bet \$13.1 billion at the two facilities, and the state's take was \$256 million. The numbers soared higher and higher for Connecticut and its casinos for a decade, but then started heading in the other direction as casinos in Rhode Island and New York got into the game.

Now Massachusetts is coming to the table. One slots parlor in Plainville is already open and two casinos in Everett and Springfield are under construction. Connecticut, faced with the loss of more revenue and jobs, granted Foxwoods and Mohegan Sun a license to open a jointly run casino 12 miles from MGM Springfield's front door. "We knew 9,000 jobs would be lost if we did nothing," says Kevin

Brown, the chairman of the Mohegan tribe. Connecticut lawmakers, hooked on gambling revenue, decided they had no choice but to go along, raising questions about where it will all end. Can anyone say Atlantic City?

Finally, I took a look at horse racing in Massachusetts. It's an industry that the Legislature decided to subsidize in the 2011 gaming law, directing a percentage of casino revenues to racing purses. The state's harness racing track got another boost in 2014, when the Massachusetts Gaming Commission awarded a slots parlor license to the company operating the Plainridge Racecourse in Plainville. The Gaming Commission, however, gave the Greater Boston casino license to Wynn Resorts and not the Suffolk Downs-Mohegan Sun partnership, a decision that subsequently proved fatal to Suffolk Downs, which was sold to a developer in May.

Interestingly, the Gaming Commission is now pushing the Legislature to give it the power to use a portion of the horse racing industry's casino proceeds to pursue the development of a new thoroughbred track. Stephen Crosby, the chairman of the Gaming Commission, says the agency is only trying to fulfill the mandate of the Legislature. "If the Legislature wants to change its public policy position, that it no longer wants to sustain the thoroughbred racing industry, that's their business. We'll do what they say. But until they've changed the mandate, we're operating under that mandate."

When he was running for office, Gov. Charlie Baker said he didn't want government to get into the business of picking economic winners and losers. In June, however, he announced he was supporting a \$500 million extension of his predecessor's life sciences initiative, which is designed to buttress a specific industry and specific companies within that industry. It was testament to the fact that even a pro-free market politician will often succumb to the siren call of government intervention. **CW**



BRUCE MOHL

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Found money

There's another unclaimed money fund in the state treasurer's office that most people have never heard of.

Unlike the traditional abandoned property fund, which consists of money left behind by people in bank accounts, lapsed insurance policies, and safe deposit boxes, this other fund is filled with unclaimed checks from eminent domain land-takings by the state. The money is parked in a trust fund, and is paid out when owners step forward to claim their cash.

More than \$8 million has been claimed since 2010. The highest total the state paid out was \$2 million in fiscal year 2010 and the lowest was \$265,147 in 2012. The 229 checks issued in the last seven years range from \$168 to just over \$1 million, with the average being \$34,956.

Unlike the abandoned property fund, the names of people owed unclaimed money from eminent domain takings are not released publicly, although the treasurer's office says it makes attempts to find them. Some who have recovered their checks, including Coca-Cola and Ernie Boch Jr., are easy to find. Others are limited liability companies, which shield the names of owners.

The list of those who were issued checks includes at least one recipient who didn't initially recall receiving the money. "We did?" the Rev. Jennifer Valentine of the First Congregational Church in Southampton asked. She later confirmed the state contacted the church and sent the \$500 check last August for a sidewalk easement. "We are glad they did," she said. "We're a small church and we could certainly use it."

► JACK SULLIVAN

Walsh plays hardball at Quincy Market

► COLMAN M. HERMAN

BOSTON MAYOR MARTY WALSH is trying to play hardball with the company that owns the lease on Faneuil Hall Marketplace.

City officials and heavily redacted emails obtained under the Public Records Law confirm that the city, which owns the marketplace, is attempting to renegotiate the terms of the lease, which dates back to 1975 and still has 57 years to run.

To secure a better deal, the mayor's office is leveraging its power to approve changes at the marketplace being sought by the leaseholder, the New York City-based Ashkenazy Acquisition Corporation. Ashkenazy is reportedly exploring the possibility of putting up a boutique hotel and adding more restaurants.

Negotiations have been going on for at least a year, and none of the parties—the city, the Boston Planning & Development Agency, and Ashkenazy—are talking. City records indicate the Boston Planning & Development Agency hired an outside consultant to conduct a financial analysis of Faneuil Hall Marketplace, and for a short time retained an outside law firm at \$395 an hour to provide advice on how to deal with Ashkenazy.

The lease was originally negotiated when Faneuil Hall Marketplace was on the skids and some of the dilapidated buildings were tagged for demolition. Former mayor Kevin White brought in the visionary Maryland-based real estate developer, James Rouse, to revitalize the three-building Greek Revival-style complex comprising Faneuil Hall Marketplace—Quincy Market, the North Market to one side, and the South Market to the other side—and then run it for the city. (Faneuil Hall sits next to the marketplace, but the city runs it on its own.)

In return for letting Rouse pocket all the rent from the merchants, the lease called for the company to pay the city each year the equivalent of what would be the real estate taxes if the marketplace were in private hands. Rouse also had to pay the Boston Redevelopment Authority, the predecessor to the Boston Planning & Development Agency, \$10 a year.

Today, the terms of the lease no longer look that good for the city, largely because the marketplace has become such a huge magnet for tourists, attracting more than 18 million visitors a year.

Ashkenazy will pay the city a little over \$4 million this year, while keeping the rents paid by the 49 specialty shops, 18 restaurants and pubs, 29 food stalls, 47 pushcarts, assorted pop-up stores, and 40 office tenants that occupy the 360,000 square-foot marketplace. Ashkenazy also takes in



money by renting out the market for special events.

Ashkenazy doesn't disclose its revenue from the marketplace, but one indication of the value of the lease is that the company purchased it from the previous leaseholder, a company called General Growth Corporation, for \$140 million.

Sam Tyler, president of the Boston Municipal Research Bureau, a business-backed watchdog that monitors city finances, says the city is in a good position to get more money out of Ashkenazy. "Since the company wants to make some big changes, it presents an opportunity for the city to push to get a better financial deal for itself," Tyler says. "The timing is just right."

Public records harassment tough sell

► COLMAN M. HERMAN

WELLESLEY RESIDENT RONALD ALEXANDER seems to be exactly the sort of guy lawmakers had in mind when they included a harassment provision in the new Public Records Law.

Alexander has filed more than 200 public records requests with Wellesley since 2013. He has filed 162 requests with the school department and school committee, 40 with the Board of Selectmen, and seven with the police department. More than half of the requests have been filed since last August.

"Mr. Alexander utilizes the Public Records Law to target and harass specific employees," school official Judith Belliveau and town executive Meghan Jop wrote in a 10-page petition to Secretary of State William Galvin's public records office in April. "Mr. Alexander's pointed requests have typically been preceded by some action taken by an employee by which Mr. Alexander seemingly feels aggrieved."

The town's petition said Alexander "regularly files multiple requests on a single day all pertaining to the same matter" and makes public records requests for records that he himself created.

Alexander had six public records requests for budget information pending when Wellesley officials petitioned Galvin's office for permission to ignore the requests or, alternatively, be granted more time to respond. The officials said Alexander's requests fit the parameters of the harassment provision of law, which states that they must be "frivolous or designed to intimidate or harass, and the requests are not intended for broad dissemination of information to the public about actual or alleged govern-

ment activity.”

Rebecca Murray, Galvin’s supervisor of records, disagreed. In a May ruling, she chose not to void Alexander’s requests, instead giving the town a total of 30 business days to respond.

Murray has yet to approve any harassment requests. Since the Public Records Law took effect in January, 11 cities and towns—including Attleboro, Marlborough, Norwood, Sherborn, and Waltham—have filed petitions asking Galvin’s office for relief from having to produce requested records. Two of the municipal petitions never reached the ruling stage, but the remaining nine were all rejected, although some of the communities were granted extra time to respond. No state agencies have sought relief under the harassment provision in the law.

In April, the city of Attleboro filed a harassment petition in connection with Nora Chorover, a Boston environmental attorney. The city alleged that Chorover’s requests are “part of a series intended to harass private businesses within the city for the purpose of generating revenue by threatening litigation.”

Murray rejected Attleboro’s request.

Wellesley’s petition involving Alexander was the most detailed of those filed so far. It even cited alleged past instances of harassment. In 2013, according to the petition, Alexander signed a settlement agreement with Elizabeth Perry, the Wellesley school department’s performing arts director, in which he apologized and agreed to “immediately cease...any and all efforts to challenge, criticize, disparage, or otherwise inquire about the qualifications, education, and work experience of Ms. Perry, any Wellesley administrator, and any faculty or staff member in the performing arts department.”

Nonetheless, the town found it necessary last November to send a cease-and-desist letter to Alexander to leave Perry alone.

Both Murray and Galvin declined requests for an interview. Alexander could not be reached for comment, and the two Wellesley town officials did not respond to requests for an interview.

The high toll of inmate phone calls

► CONNOR LENTZ

IT’S EASY TO take ordinary conveniences like making a telephone call for granted. Advances in technology have

made communication cheaper and higher quality than ever before. But one group has been excluded from enjoying the benefits of the falling cost of this modern amenity: inmates.

For years, inmates and their families across the nation have railed against exorbitant charges for placing phone calls from prison, which used to run as high as \$10 per minute. What’s more, inmates say they sometimes pay hundreds of dollars a month for poor quality service, with bad connections and frequently dropped calls.

Years of litigation and advocacy pressure have made a dent in the costs. In 2013, the Federal Communications Commission capped charges for interstate calls from prisons at 25 cents per minute. In Massachusetts, the Department of Telecommunications and Cable has capped the rate for within-state calls at 10 cents per minute. But inmates face a set of additional fees for phone service that can still leave them and their families with hundreds of dollars of charges beyond the per-minute tariffs.

Advocates want to see the high cost of prisoner phone calls addressed as part of the broader push for criminal justice reform legislation now underway on Beacon Hill.

Prisoner phone services are provided by private companies that contract with the state Department of Correction and county houses of correction. Two companies handle all inmate calling services in Massachusetts, Global Tel Link and Securus Technologies. Global Tel Link has an exclusive contract with the Department of Corrections to handle all state prisoner calls as well as contracts with some county sheriffs, while Securus Technologies services the remaining county corrections facilities.

The companies pay the state and county facilities a percentage of their revenue in exchange for exclusive contracts. In fiscal year 2015, Global Tel Link paid more than \$3.5 million to the state.

Making a phone call from a Massachusetts prison or county correctional facility is a complicated and costly undertaking. Inmates can be hit with a charge to set up an initial phone account, monthly account maintenance charges, and fees for subsequent deposits into the account. Advocates say inmates can also be assessed per-call surcharges of up to \$3, levies that are applied each time a call connects, even if an inmate has to redial a number after a dropped call, and are sometimes charged for an attempted call that is not answered.

Elizabeth Matos, an attorney with Prisoners’ Legal Services of Massachusetts, said the state and federal caps on per-minute fees were welcome news, but the huge surcharges and other fees mean inmates and their families have received little overall relief from the high cost of stay-

CONS’ COSTLY CALLS



ing in touch. “The surcharges are really what gets people,” said Matos, whose organization has been battling for years to lower the high cost of inmate calling services.

Matos said the payments to the state and county corrections facilities from companies providing inmate phone services only compound the problem because the state and the facilities earn more if inmates are charged more.

The cost of inmate calls are not just a financial burden for inmates and their families, who are often struggling to make ends meet, say advocates. They are also making it harder for inmates to maintain contact with family members, something that Matos says is crucial to inmates’ stability while incarcerated and their chances of getting on track and not returning to prison after their release.

“Being able to maintain positive relationships is paramount to having a chance of success” on the outside, said Matos. “Maintaining ties with loved ones while incarcerated positively impacts reentry and lower recidivism rates.”

A 1972 study of inmates released from the California corrections system reported that maintaining family ties increased the rate of parole success, and claimed that “it might be well to view an inmate’s family as a prime treatment agent and family contacts as a major correctional technique.” A 2011 study by the Minnesota Department of Corrections found that prisoners who received visitors had a 13 percent lower rate of conviction on a new felony charge following their release.

When the FCC voted in 2013 to cap interstate calling rates for prison inmates, the acting chairwoman of the commission, Mignon Clyburn, pointed to the benefits of inmates having regular contact with those outside prison. “Studies have shown that having meaningful contact beyond prison walls can make a real difference in maintaining community ties, promoting rehabilitation, and reducing recidivism. Making these calls more affordable

can facilitate all of these objectives and more,” Clyburn said in a statement at the time.

Sen. Will Brownsberger, cochairman of the Legislature’s Joint Committee on the Judiciary, said the issue of inmate calling charges should be on the criminal justice reform agenda. “I am convinced they are way too high, and I would like to see us limit them,” he said.

State Rep. Chynah Tyler, a Roxbury Democrat, has filed legislation that would prohibit the state and county corrections facilities from receiving commission payments from companies providing inmate phone services. Her bill would also require the Department of Correction and county houses of correction to negotiate phone service contracts that don’t include per-call surcharges, account set-up fees, or other similar add-ons.

“The communities that are most affected are low income and people of color,” Tyler said of the high cost of inmate phone services. “This is not a financial burden that should be falling on these families.”

It’s unclear, however, how companies could structure calling services for inmates that only include per-minute charges that are limited by the recent caps put on those rates.

A spokesman for the Department of Correction said the agency did not have a position on the bill. Global Tel Link and Securus Technologies did not respond to an inquiry seeking comment.

Financial insecurity hits Mass. seniors hard

► OONA SULLIVAN

MASSACHUSETTS MAY HAVE come out on top in a recent *US News & World Report* ranking of states, but it’s a different story when it comes to economic security for senior citizens here.

On a measure of the ability of single older residents to pay for basic needs, Massachusetts ranks as the second-worst state in the country, only ahead of Mississippi, according to an index developed at the University of Massachusetts Boston. For older couples, the Bay State ranked ninth worst.

The Elder Economic Security Standard Index, developed by researchers at the Center for Social and Demographic Research on Aging at UMass Boston, measures the percentage of adults over 65 who lack the money needed to pay for basic needs, including housing, food, transporta-

tion, and health care.

Six out of 10 older single residents in the state have incomes that fall below the center's benchmark, which ranges from \$24,120 to \$36,756 in annual income. The index sets a higher income benchmark for renters or seniors who own their home but still have a mortgage as opposed to those with homes owned outright. It is also adjusted for costs in different regions of the state.

Nationally, half of all single seniors and one out of four older adults in two-elder households don't meet the benchmark for paying for basic needs.

States in the Northeast and the South tend to do the worst on the index. In the South, the cost of living is generally low but income levels are among the lowest in the nation. In the Northeast, the cost of living is high but incomes fail to keep pace.

Jan Mutchler, director of the UMass research center that developed the index, says economic insecurity among the elderly is common throughout the state, but worse in the eastern part of the state.

"The Cape is expensive, the Boston area [is expensive], really the whole eastern part of Massachusetts [is costly]," says Mutchler. It's not as bad "when you're out towards Worcester and then beyond into the Berkshires, but on

average, the cost of living is quite high compared to the national numbers."

The problem reaches into even some of the state's wealthiest communities. Ruthann Dobek, director of the Council on Aging for the Town of Brookline, says it's a myth that everyone in the pricey Boston suburb is well off.

"At least 7 percent of [the town's] population is below the poverty line," says Dobek. "We have people that say they need help for fuel, food, property tax, or buying clothes—very specific kinds of requests."

ELDER CASH CRUNCH

Although there are a lot of resources available in communities like Brookline to help, those in need don't always reach out. "A lot of people are afraid to speak up. When you're not paying very much for something, you kind of feel like you don't have as many rights," says one gray-haired woman at the Brookline Senior Center on a recent weekday. "I have a friend that says, 'Brookline will tolerate some poor people, but they don't want a lot of poor people,'" she says. "It says in the Bible that the poor will always be with us. It's an indicator of the society that you're in how you treat the elderly and the poor."

Economic insecurity is a particular problem for women, who earn less than men over their lifetimes and live

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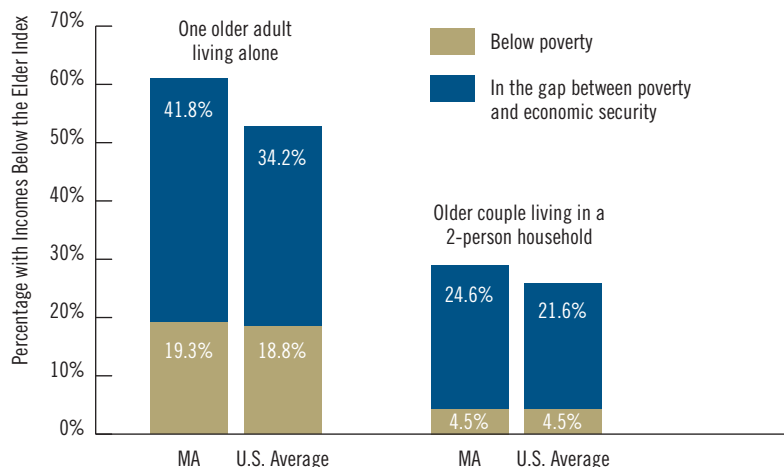
longer. In Massachusetts, 65 percent of single older women have incomes that fall below the economic insecurity benchmark compared with 54 percent of single men.

Dobek says she sees the financial struggles of elderly single women in Brookline every day. “Some live to 97, 98, 99, 100,” she says. “And some of those women may have retired at age 60, and they’re needing to have enough money to survive 37 to 40 years, which is almost the whole time that they worked.”

When older adults mention the high cost of living in Boston and the surrounding areas, “people will just say, ‘well, sell your house,’” says Dobek. “Our seniors might have lived there 40, 50, 60 years. They will say very directly, ‘where am I supposed to go? I like my house, I don’t want to have to move, and if I move within [Brookline], it’s still going to cost me a lot of money.’”

The problems of economic insecurity among the elderly may only worsen as baby boomers age, straining public

ELDER ECONOMIC INSECURITY RATES FOR MASSACHUSETTS AND THE U.S. AVERAGE



SOURCE: Center for Social and Demographic Research on Aging, University of Massachusetts Boston

and private programs that have been established to help older residents. Between 2010 and 2030, Massachusetts’s population of those ages 65 and is expected to increase by 61 percent. **CW**



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Changing of the guard

Jessica Tang says she'll bring a different style, but no change in values, as the new president of the Boston Teachers Union.

BY MICHAEL JONAS | PHOTOGRAPH BY FRANK CURRAN

What will be different about the Boston Teachers Union under your leadership? One thing that I've brought to the union is a focus on organizing and working with students, families, community members and coalition building. But we'll also continue to do a lot of what I guess you would call the important bread-and-butter things. We're still committed to public education, we're still committed to fighting for a strong contract that's good for students and fair to teachers. So it'll be different in that my predecessor and I have different leadership styles, but we also share a lot of the same values and that doesn't change.

What is the biggest challenge you'll face? Right now I think there are two major challenges. One is getting our contract settled, of course. The second one is what's happening on the federal level in terms of anti-union legislation and what impact that will have on public sector unions.

Do you favor legislation filed on Beacon Hill that would end the requirement that students pass a statewide standardized test to graduate from high school? Yes, we have endorsed that. It's very comprehensive—from addressing concerns of the Foundation Budget Review Commission to also taking a more holistic look at what type of education we want for our students that's not narrowly focused on high-stakes tests. Not being in favor of a high-stakes test does not mean that teachers are not in favor of accountability. We just think that if we're going to have a measure of student growth and learning, it should actually be

an accurate and valid measure of student growth and learning, and high-stakes tests do not do that.

There's been a lot made of the fact that you're the first person of color to lead the BTU and you're the first member of the LGBTQ community to do so. I was struck by the fact that you may be the first person to lead the union who didn't grow up in Boston. That also seems to say a lot about ways that the city and its institutions are changing. I think that might be a reflection of the changing demographics. But I took the time to grow roots in Boston and learn the history and learn from people who I call elders, who've been activists in this community for such a long time. I've lived in Boston for 17 years, and it's far longer than any other place I've lived.

The *Globe* and *Herald* both had editorials recently criticizing the "excess pool" in which some Boston public school teachers who lose positions due to school restructuring or other changes are continuing to earn their regular salaries even though they have not been hired in another school for a classroom position. Are they wrong to criticize that? They are not criticizing us based on the facts. Both of those editorials had statements that showed me that they didn't understand the issue. We have actually given thoughtful responses to the situation. On the record, I can't get into the details [because they are the subject of contract negotiations].

One of the editorials said that last fall there were 82 teachers in the excess pool and that about a quarter of them didn't apply for any positions. Why should we continue to pay people who



haven't applied for a single position? A lot of these teachers can't apply for positions because there's not an opening for them. They have to apply in their licensure. If you've been a computer teacher for 20 years, you can't apply for an ESL [English as a second language] job, for example, or a special needs job. Part of our solution has been to give opportunities for some of these teachers to get new licensures. A lot of these teachers have also applied for jobs and have gotten zero interviews. I think this population has been stigmatized. The vast majority of these teachers have gotten proficient or exemplary evaluations their whole career, and now are having a really hard time getting a permanent position in the district, and it's not because they're not really good teachers.

In 2011, school leaders in the city formed something called the Boston Compact. The idea was a commitment to sharing effective practices and cooperation around facilities planning among the city's district schools, charter schools, and Catholic schools. Are you committed to that effort? Well, in the past, a number of our teachers have been involved in some of the best-practice professional development collaboration, and from what I've heard those have been very helpful. But I am concerned with some of the new initiatives that the Compact has been working on.

Such as? Unified enrollment. I look at everything through a lens of equity and access and opportunity. Is this going to help the majority of students? Is this going to help our most vulnerable students? Or is this going to end up limiting opportunities for some of our most vulnerable, high-needs students?

Why wouldn't it be good? My understanding of unified enrollment is that families could, through a single application, rank their school choices from options that include district or charter schools. It addresses the criticism that charter schools draw from more involved families and evens the playing field in that way. How does it harm equity? Well, it gives the charter schools more access to our students. Is this then going to be a situation where later on the charter schools are going to inflate their waiting list numbers again and say, look, see, there's all this demand for more charter schools. That's one way that it could be used politically to advance the expansion of charter schools' agenda versus how do we serve all students and make sure all students have what they need. I'm always trying to focus on what are the policies that impact all students and help all students, particularly our most high-needs, vulnerable students, and I'm not sure that that's the answer. **CW**



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It's not my party, but I'll vote if I want to

Party primaries are increasingly non-partisan as party registration fades

BY STEVE KOCZELA AND HANNAH CHANATRY

AN EVER-GROWING WAVE of unenrolled voters is slowly overtaking Massachusetts political parties. Old Massachusetts Democrats and Republicans are dying off and more and more of their grandkids are ditching the two-party structure. As the overall number of voters keeps rising, the percent of undeclared voters climbs, while the share of both Democrats and Republicans shrinks modestly. This gradual change has been underway for several decades now, and shows no signs of letting up.

Unenrolled voters became the largest group in 1990, and an outright majority by 2008. The major parties have continued to dwindle in percentage terms. Among voters 18 to 22, for whom this was their first presidential cycle, just 29 percent are registered Democrats, and 9 percent Republican. With younger voters far less likely to choose a party, the relative share of voters who are unenrolled is likely to continue growing.

The Massachusetts primary system may be at least partly to blame. In some states, voters must register with the party to participate in the party primary. But in Massachusetts, unenrolled voters can participate in either the Democratic or Republican primary, simply by choosing that party's ballot on primary day. Because of this approach, registering for a party confers no benefit other than the opportunity to participate in a few low turnout processes such as party caucuses and nominating conventions. And, in return for this rarely exercised privilege, voters are denied the flexibility to vote in the other party's primary.

For registered Republican voters in Massachusetts, the current system is particularly problematic. They show up on primary day and are typically treated to a chance to endorse the only candidate available for each office, if there is any candidate at all.

The institutions of the party continue to per-

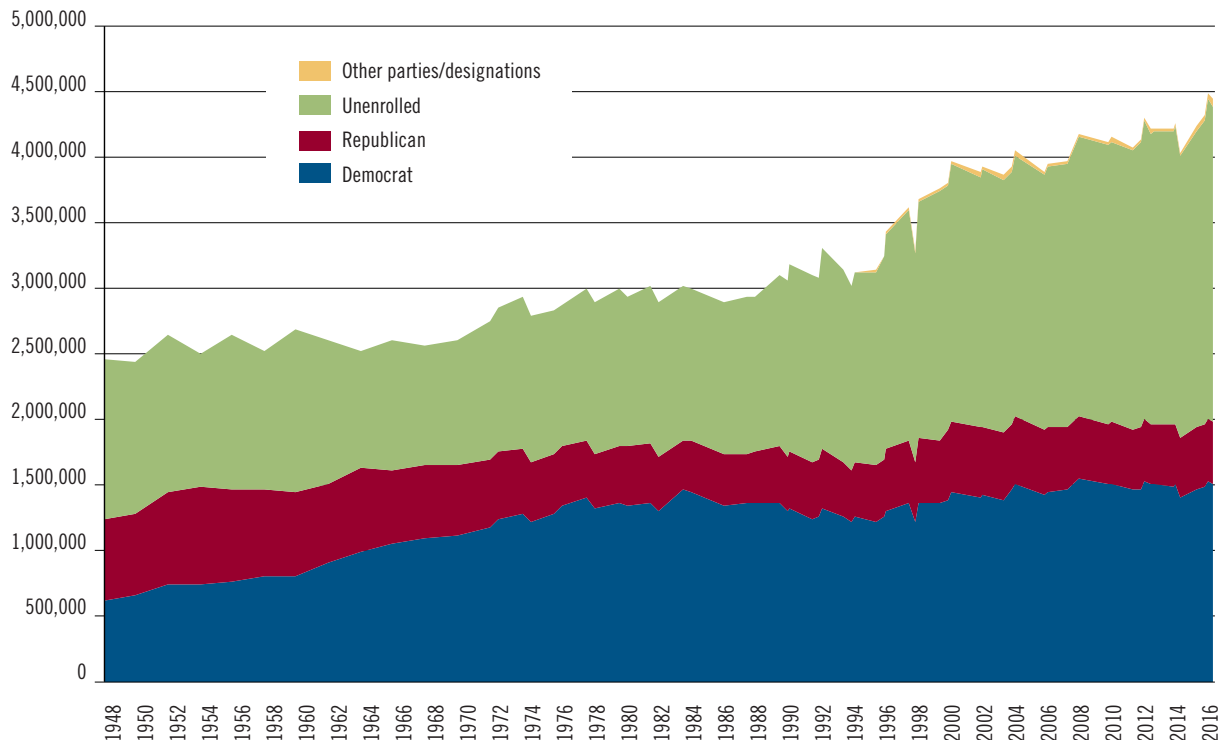
form critical functions such as nominating candidates, raising funds, and maintaining the legal and organizational infrastructure needed to participate effectively in state and legislative elections. They confer major advantages to candidates over those choosing to go it alone. Third-party runs in Massachusetts tend to yield the chance to participate in a few debates and voter support in the low-to mid-single digits, at best. The highest profile attempt to start a new party ended earlier this year with its founder, Evan Falchuk, throwing in his lot with the Democrats.

Falchuk's failure to launch, combined with the lack of success of third-party hopefuls, leads to the inescapable conclusion that, for better or worse, the path to elected office is partisan. In addition to the legal, fundraising, and organizational advantages parties offer, candidates also get votes. For many voters, even many who are ostensibly independent, the party label is still the most important feature of a candidate. Both Bernie Sanders and Donald Trump took the easier road, hitching up with parties with which neither of them had much history. Compare their relative success with Gary Johnson and Bill Weld, both respected former Republican governors who ditched the two-party system to run for president and vice president, going nowhere.

Parties are the vehicles for putting up successful candidates, but larger and larger shares of the voters voting in state elections are not registered members of any party. In the 2016 presidential election, 66 percent of voters in the Massachusetts Republican primary were unenrolled, not an unusual total in the few recent primaries the party has managed to muster. On the Democratic side, registered partisans made up a bare, 57 percent majority. If registration trends continue as they have been, the day may not be far off when the majority of voters in both primaries will be unenrolled.

RISING TIDE OF UNENROLLED VOTERS IN MASSACHUSETTS

Count of Massachusetts voters registered with each party, 1948 - 2017



SOURCE: Source: Massachusetts Secretary of State website, accessed June 2017

One possible response to this is a great big shrug. Despite the fact that fewer and fewer voters are registered with a party, the vast majority of voters still identify themselves as aligned with a party when asked in a poll. They will fairly and reliably choose the same party when offered a choice, though affiliations do shift over time among some voters. Looking at parties in terms of transient feelings is appealing as a sort of post-modern tribalism, where membership is easily changeable based on your mood at the moment.

The relatively few remaining members of the parties, and really the smaller subset of activists within them, act as *de facto* gatekeepers to ballot access, culling the herd of candidates from which voters are allowed to choose. The members of each party trim out potential candidates in caucuses and conventions, exercises in durable and profound arcanity of which most voters are not even aware. This likely made more sense when the machinery of the party was of greater import, and membership more universal.

Now, if we accept the parties as centers of political gravity, rather than organized bodies with consistent

membership, it makes it harder to defend their role in candidate screening. Unless the two parties can show they are able to regain membership, the changeable mass of voters who flock to each party should get more control of the candidates who make it through.

The heyday of party membership is likely over, at least for the foreseeable future. Across the county, people

People are affiliating less with institutions, including political parties.

are choosing to affiliate less and less with institutions of many kinds. Massachusetts political parties are no different. They still serve many useful purposes, but some aspects of their roles should be reexamined. **CW**

Steve Koczela is the president and Hannah Chanatry is a research assistant at the MassINC Polling Group. The polling group is a subsidiary of MassINC, which publishes Commonwealth.



Clark takes on Purdue's opioid marketing

Says pharmaceutical company's 'greed and recklessness' spawned crisis

BY SHAWN ZELLER

LATE LAST YEAR, an article in the *Los Angeles Times* caught the eye of US Rep. Katherine Clark of Melrose. The article alleged that Connecticut-based Purdue Pharma, the maker of Oxycontin, was moving aggressively to sell its signature drug abroad now that sales in the United States are on the decline.

The *Times* article said that Purdue's network of foreign companies, known as Mundipharma, was running seminars in countries from Brazil to China urging doctors to fight "opiophobia" and prescribe painkillers. The *Times* found that the firms were advertising to encourage people to seek treatment for chronic pain and offering discounts for new opioid prescriptions.

Abroad, opioid abuse is not nearly the problem it is in the United States, but Clark thinks that's because foreigners have not yet been hit with the full force of drug industry marketing. What she read in the *Times* sounded to her a lot like the game plan Purdue has followed in the United States. So Clark, whose district includes suburbs north and west of Boston that have been hard hit by opioid addiction, is taking the fight to Purdue and other pharmaceutical companies. She's challenging their marketing practices and trying to shame them into doing more to warn doctors and patients of the risks.

In the United States, Purdue "created a huge problem for many people with devastating consequences. It led to addiction and, at the same time, the bottom line for Purdue Pharma continued to rise," Clark says. "We are now watching as they pursue the very same marketing strategies in international markets."

Clark took on Purdue and Mundipharma in a May letter to Margaret Chan, then the director-

general of the United Nations' World Health Organization, to make the case that opioid marketing qualifies as a global health emergency. "The greed and recklessness of one company and its partners helped spark a public health crisis in the United States that will take generations to fully repair," Clark wrote.

The accusations of a junior House Democrat might not carry much weight but for Clark's co-signatory, Hal Rogers, the Kentucky Republican who is the former chairman of the House Appropriations Committee and remains that panel's most senior member. He represents an impoverished coal-country district on the West Virginia border where opioid abuse is epidemic.

Three of Clark's Massachusetts colleagues in the House—James McGovern, William Keating, and Stephen Lynch—also signed.

Both Purdue and Mundipharma are taking it seriously. In a prepared statement offered in response to Clark's letter, Purdue says it is an "industry leader in the development of abuse-deterrent technology and advocating for the use of prescription drug monitoring programs." The company has redesigned its pills in an effort to prevent addicts from crushing and snorting them, subverting the pills' slow-release mechanism, in order to get high.

Mundipharma's statement says "the situation in Europe is very different to that in the US, with far fewer people misusing and abusing opioid medicines." Nonetheless, the statement says, the company continues "to take active preventative measures, drawing on the experiences and insights of the US in tackling this issue." Among those, it said, were "comprehensive monitoring programs, enabling a secure supply chain, and

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working with regulatory agencies to implement risk management plans.”

Clark's attempt to shame Purdue comes at a crucial moment in the company's campaign to protect its brand. The last several months have seen a spate of lawsuits targeting Purdue as well as distributors of prescription opioids, arguing that they misinformed doctors of the drugs' addictive qualities which led to overprescribing and, ultimately, thousands of overdose deaths.

In the midst of litigation, brand reputation is crucial and it doesn't help when members of Congress, from both parties, are tarring the company.

Clark has exploited the fact that opioid abuse has cut across political lines, affecting Republican states such as Kentucky and West Virginia as well as Democratic ones, such as Massachusetts. “This crisis doesn't care whether you're in a red state or a blue state and, fortunately, champions on this like Hal Rogers don't care either,” she says.

Opioid addiction in the United States has cost 200,000 lives since 1999, including more than 1,700 in Massachusetts just in 2015, the most recent year for which Centers for Disease Control and Prevention data are available. That's more than in either Kentucky (1,273) or West Virginia (725).

In the last Congress, Clark worked with Rogers' fellow Kentuckian, Senate Republican Leader Mitch McConnell, on legislation to task the Health and Human Services Department in Washington with developing treatment strategies for babies born with opioids in their systems, and to offer technical assistance to the states to help them respond. It was enacted in November 2015.

It was that bill that connected her with Rogers, who then invited Clark to the National Drug Abuse and Heroin Summit in Atlanta, an annual event that Rogers founded in 2012 in response to the scourge. Clark learned at that event about Rogers' feelings about pharmaceutical company complicity and figured, rightly, that he would be an ally in going after their marketing strategies.

Clark's efforts to cultivate Republicans on the issue are critical to her efforts to help addicts in the United States. That's not only because Republicans control both the House and Senate, but also because President Trump has proposed big cuts to the budget of the Department of Health and Human Services, which not only leads the effort to treat addicted infants but also manages the government's opioid grant money.

Trump would cut its discretionary budget \$12.4 billion in fiscal 2018. The president also wants to cut by 5 percent the budget of the Office of National Drug Control Policy, which coordinates the fight against drug abuse. And his budget asks Congress to approve \$800 billion in cuts over 10 years to Medicaid, the health care program for low-income households.

The opioid problem, which started with abuse of prescription painkillers, has led to increases in abuse of related street drugs, such as heroin and fentanyl. The Drug Enforcement Administration, the federal agency charged with policing illegal drugs, says 80 percent of newly addicted heroin users were once abusing prescription opioids.

Clark is cultivating like-minded Republicans.

Keeping the money flowing, both through Medicaid and grants specifically targeting opioid abuse, is crucial, says Clark. “We want to be able to address the need for more treatment beds for treating addiction and substance abuse as chronic disease that includes long term management, like with diabetes, and to be able to have prevention programs, school screenings, education programs,” she says.

In the meantime, she continues to seek out GOP allies. For example, she’s working with Evan Jenkins, who represents the West Virginia House district that borders Rogers’, on legislation that would provide grants to states

to better train doctors on the risks of prescribing opioids.

Physicians exacerbated opioid abuse, many believe, by giving people with relatively minor pain problems highly addictive drugs. Clark is also looking to push legislation to increase the use of trackable, electronic prescriptions and is working with medical schools to ensure they stress the dangers of prescribing opioids. “We are hoping to see the end of the days where people went home after having a wisdom tooth removed with a 30- or 60-day supply” of a prescription opioid, Clark says.

The concerns of Clark and others are having an impact. In May, Scott Gottlieb, who heads the Food and Drug Administration for Trump, announced that he was considering new protocols whereby doctors would have to receive training on opioid prescribing as well as possible limits on dosing. State legislation signed by Gov. Charlie Baker last year made such training mandatory in Massachusetts.

Gottlieb also says he’s going to consider adding a cost-benefit analysis component to the opioid drug approval process, examining the painkilling benefits against the potential for addiction. For the drug companies, that’s a most unwelcome prospect. **CW**



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The reformer's dilemma

BY TED SIEFER | PHOTOGRAPHS BY MEGHAN MOORE



Lawrence Mayor
Daniel Rivera walks in the
Semana Hispana parade.

Under Mayor Daniel Rivera, Lawrence is showing signs of progress, but his tepid support and concerns about crime make him vulnerable.

THE MARCHERS PLOD along, wearing matching maroon shirts and holding campaign signs, fronted by the candidate himself, Mayor Daniel Rivera, who waves to onlookers, his gut hanging over pressed khakis. It's not a very enthusiastic display in a parade that features, by turns, synchronized Latin dancing,



William Lantigua greets a friend during the Semana Hispana parade.

beauty queens in chiffon, and souped-up cars blasting Dominican dance music from stacks of speakers fastened to their roofs. The occasion is the annual June parade through downtown Lawrence that crowns the city's Semana Hispana (Hispanic Week).

And then a familiar figure—slim athletic build, shaved head, cocksure grin, colorful tie—can be seen darting around the Rivera procession, reaching deftly into the crowd to grasp hands and offer hearty hugs, at times doing a shimmy step to the beat. Willy is back. William Lantigua, that is, the city's colorful—and controversial—former mayor. And judging by the many warm embraces he received at the parade, many in Lawrence are glad to see him.

Whether Lantigua working the crowd alongside the Rivera camp was a calculated bit of trolling or just a coincidence, a rematch may be looming between these two fundamentally contrasting candidates.

In the election four years ago, Rivera received a mere 81 votes more than Lantigua, whose term as mayor was marked by a seemingly never-ending stream of foibles and outright scandals. Three members of Lantigua's administration were indicted, including a top aide accused of pressuring a city contractor to donate a garbage truck to

the town of Tenares in the Dominican Republic, where many Lawrence residents hail from.

But Lantigua is not the only one taking on Rivera. There are currently seven challengers, and political insiders say at least a few of them have a legitimate shot at unseating the mayor—including Lantigua.

This may come as a surprise to outsiders. Not only has Rivera managed to make it through most of his term without any major scandals, but the city has shown some real signs of progress. The school district, which is under state control, has seen a substantial improvement in its graduation rate and test scores. While the city remains among the poorest in the state, the unemployment rate has dropped to about 7.5 percent, still a few points higher than the state average but the gap has narrowed since 2014. Tax collections in the city are up, thanks in large part to tougher enforcement against scofflaws, and its credit rating has been bumped up twice, to A levels, during Rivera's term.

And yet one would be hard pressed to find many in Lawrence these days who offer anything more than tepid support for Rivera. In a city that is roughly 80 percent Hispanic, Rivera, the city's second Hispanic mayor, is sometimes seen as being more comfortable in photo-ops

with Republican Gov. Charlie Baker than at the neighborhood bodega.

This might be considered a minor liability were it not for a stark reality in Lawrence, one that was masked during the June parade: a sense that violence has spiraled out of control. One now hears immigrants who came to Lawrence seeking stability and opportunity expressing a desire to escape the city. It doesn't take a skilled political advisor—although Rivera has had plenty of them—to know that such concerns spell trouble for an incumbent mayor.

SECURITY CAMERAS PROLIFERATE

It's the kind of thing you might expect to find a security guard perched in front of—a massive flat screen divided into boxes, each displaying a live feed from a network of cameras. But this monitor is in the living room of Gustavo Paulino, and the cameras are strategically positioned all around his Lawrence house.

Paulino and his wife, Ivelisse Cornielle, installed the cameras not long after the body of their 16-year-old grandson, Lee Manuel, was found decapitated near the bank of the Merrimack River last November. The media briefly descended on the city to report on what was, even

Rivera says violence has intensified in Lawrence because of the epidemic of opioid overdoses.

within the established genre of Lawrence crime, a horrific murder. But in Lawrence, Lee Manuel's killing has had lasting reverberations.

"What happened to us can happen to any other family," Paulino says. "We are a family that doesn't have enemies here."

Both Paulino and his wife taught for decades in Lawrence public schools, and they are well-known and respected in the community.

The sense that the mayor and the police could have done more to find Lee Manuel, who lived with the couple and whom they regarded as their son, still weighs heavily on Ivelisse. "I think with this mayor there isn't a lot of control. That's my feeling," she says. "Even the police, I don't think they respect him at all."

A high school acquaintance of Lee Manuel has been

charged in the murder, although rumors persist that there's more to the case than authorities have disclosed.

The Paulinos aren't the only ones who have taken to installing security cameras. They can be seen all over Lawrence these days, even on rundown houses. The anxiety over public safety intensified in April, when there were nine shootings in six days, including two deaths on Easter weekend. That brought the number of homicides for 2017 to six—the number the city typically averages in a full year.

At the next meeting of the Lawrence City Council, a procession of impassioned speakers spoke out against the violence. One was a cousin of a young woman who was fatally shot outside a nightclub a few days earlier. Calling out Rivera by name, the woman said between sobs and in Spanish, "Who is going to give us a hand? It is unjust... We are still waiting on the case of Lee Manuel. They haven't said anything."

While two city councilors took the opportunity to address some of the residents' concerns during the public comment period, Rivera only spoke at the end of the meeting, to request that the council meet behind closed doors to discuss a couple of pending legal matters.

TONE DEAFNESS

To his critics, Rivera's response in such situations bespeaks a degree of tone deafness. But he insists he understands the community's concern on a personal level. "I really see the problems of this community through the eyes of a Lawrence kid who grew up here, who knows the struggles, who knows where the problems are. And I don't need to know the reasons the problems exist because I've lived it," he says.

Rivera, who was raised in Lawrence by a single mother who immigrated from the Dominican Republic, acknowledges that the spate of violence has people unnerved, even if, as he points out, FBI statistics show the city's overall crime rate has declined during his time in office.

"I think people probably feel less safe today than when I became mayor," he says. "But it's not whether or not you're going to have problems; it's how we manage those problems day-to-day."

Rivera points to the hiring of 23 cops, including the first class of all Spanish-speaking officers, during his term. The force remains understaffed, a legacy, Rivera says, of Lantigua's decision to slash more than 30 positions. "We were given a police department that was decimated in number and demoralized," he says.

As for the killing of Lee Manuel, Rivera says a review he ordered did find shortcomings in how the department handles missing-person cases. The review itself was



Gustavo Paulino and his wife, Ivelisse Cornielle, in front of their flat-screen security feed.

cut short after the district attorney raised concerns that it would impede the investigation. “I think everybody’s goal now is to get justice for Lee Manuel,” Rivera says.

Rivera has a strong theory for why the violence has intensified of late: the opioid epidemic. He notes that there were 13 overdoses in the city in 2013; the number grew by nearly 400 percent last year. “And a good majority of them are people who don’t live in our community, are people who come here to buy and use, and they O.D. here and they die here,” he says.

But there’s a reason those people are coming to Lawrence. In late May, federal agents led a raid on what prosecutors say was the largest fentanyl ring in the state, which also trafficked in heroin and cocaine. The vast majority of the nearly two dozen people indicted were immigrants living in Lawrence. One of the alleged dealers could be heard on a wiretap discussing pills, saying, “A friend of mine told me the blue one is good, but it kills a lot of people,” and then chuckling, according to a court document.

NEVER CHARGED

William Lantigua points out a trio of sketchy characters who linger near a strip mall on Broadway, the city’s main commercial strip. Drug dealers, he suspects.

Both Rivera and Lantigua see drugs as one of the main drivers of violence in the city, but Lantigua comes across as the guy with his ear to the ground, who can pick out the dealers with his own eyes.

“Public safety affects every aspect of a community,” Lantigua says. “If you don’t have public safety, people don’t feel secure. People don’t come out, they don’t go to businesses; businesses from the outside are not going to come in.”

But Lantigua does not offer detailed policy prescriptions to deal with the crime problem. This was never his specialty; rather it’s the charismatic bond he has with his “familia,” as he often addresses his supporters in Lawrence. More than once during our time together, he was interrupted by people welcoming him back and professing their support for him.

Many in Lawrence believe Lantigua got a bad rap, that



Lawrence overall has shown signs of progress, but there are also rundown homes and no trespassing signs.



he was unfairly targeted by the political establishment within the city and beyond from the first day of his mayoral administration.

“He’s been out of office and there have been no charges against him,” says Dalia Diaz, the editor and publisher of the local bilingual newspaper *Rumbo*. She counts Lantigua as a friend.

Besides the fact that he was never charged, Lantigua

Lantigua was never indicted, but some of his personal decisions since leaving office have raised eyebrows.

and his backers note that of the three indictments during his administration, only the aide involved in the garbage truck scheme was found guilty.

Still, some of Lantigua’s personal decisions since he left office have again raised eyebrows. There’s the fact that he up and left Lawrence shortly after his loss to Rivera to go back to his native Dominican Republic. And then he returned with a young woman—his fiancé, he says—and their 1-year-old baby. The last we heard, Lantigua had married his longtime girlfriend, Lorenza Ortega, shortly after he left office, a move some critics alleged was aimed

at preventing her from having to testify against him.

Lantigua offers a somewhat more heroic version of the latest chapter of his life. He says he left Lawrence to give Rivera a fair chance to succeed, and that his visit to the Dominican Republic ended up being longer than he anticipated after he badly injured his ankle. He stayed in a rural area in the hills near Tenares, which gave him time to recuperate and reflect.

“In the beginning it was tough, but then it helped me to meditate a lot, to read a lot, and also to look within myself,” he says. “I feel blessed. I’ve been through a rough time, very, very rough, but I’m still happy to be back.”

As for his relationship with Ortega, Lantigua said it ended about a month after they were married and that they’re in the process of getting a divorce.

In many ways, Lantigua is back in full form, as his performance at the parade in June made clear. But his campaign is a pretty paltry affair. Unlike other candidates at the parade, with their phalanxes of supporters holding signs, Lantigua was pretty much a one-man show.

The low-key nature of his campaign is probably by design. He still owes a fine to the state for past campaign finance violations. And, unlike several of his rivals, he has yet to file any reports as a 2017 mayoral candidate. He’s obligated to do so as soon he spends any amount of money on his campaign.

“I don’t think I have anything to file because I haven’t had any financial activity,” he says, noting that the few signs and other materials he’s been using are from his previous campaign. “I’m going to open the account once I get clear with the other issue”—the outstanding fine.



City Councilor Modesto Maldonado could pose a serious challenge to Mayor Daniel Rivera.

NOT AS DOMINICAN

The Merrimack River that runs through the middle of Lawrence has been seen as a socioeconomic boundary between the poorer, grittier north side, where downtown is located, and the south side, which is more suburban and (slightly) wealthier and whiter. That's where Rivera and his family live, in the Mt. Vernon neighborhood, in a house a stone's throw from Andover.

For his detractors, Rivera's remove from the central city is emblematic of a larger disconnect with the struggles of everyday residents—which, of course, is thrown into relief by Lantigua's common touch.

"He's very political, very close to Senator [Elizabeth] Warren to (Congresswoman Niki) Tsongas and the governor, and that's where he likes to associate," says Diaz, the *Rumbo* editor, who is a longtime Rivera critic.

The suggestion that Rivera lacks street cred, that he's not as connected to the Hispanic culture of the city as some of the other candidates, can be heard often in Lawrence. It's something the mayor acknowledges to an extent. "You know, I'm not as Dominican as everyone is," he says. "I

don't hang out at the clubs as much as these other politicians do. I don't go to casinos. I don't do any of that stuff. At the end of work, I go home and hang out with my family."

He adds that relationships with outside leaders are vital to the city. "Shame on anyone who wants this job who won't bring the resources to this community that needs them," he says.

But while Rivera dismisses the significance of the north-south divide as outmoded, his political fortunes have depended on them. In Rivera's narrow 2013 victory, he lost in a majority of precincts, but won in the southern neighborhoods, where turnout is far higher than it is elsewhere. In a city where barely more than half of the residents are registered to vote, support in this area counts for a lot.

Former Lawrence mayor Michael Sullivan, who still lives in Lawrence and remains politically plugged-in, agrees that Rivera will have to work hard to win re-election this year. But he maintains that he's still the odds-on favorite. "I think he's done a great job, and he's going to be a very strong incumbent to beat," he says.

As for Lantigua, Sullivan was more dubious. “I think he’s lost a lot of his support by moving away from Lawrence,” he says.

HISPANIC DOMINATION

There is at least one other candidate who could pose a serious challenge to Rivera: Modesto Maldonado, a well-known community leader who was a longtime administrator at the Greater Lawrence Technical School and who has served as a city councilor since 2011. Maldonado speaks a flawless and eloquent English with a rich accent, having grown up in the Dominican Republic and immigrated to the United States with his family in 1964.

“One of the biggest problems of previous mayors is that they have dedicated a lot of time to one particular sector of the city,” Maldonado says. “I believe that all mayors should provide equal service to every part of the city regardless to how politically strong any part of the city is.”

Maldonado, who is close friends with Lantigua, has been a consistent thorn in the side of Rivera, faulting him for arrogance, for alienating city workers, and costing the city millions of dollars in lawsuits brought by former city employees who claimed they were unjustly terminated.

Other candidates in the race may have dimmer chances, but this year’s election underscores the degree to which Hispanics have come to dominate Lawrence politics. Barring any late entrants in the race, the 2017 election will mark the first time in the city’s history that there

No Caucasians are running for mayor in Lawrence, the first time that’s happened in the city’s history.

isn’t a single Caucasian candidate for mayor.

One political newcomer is Jorge Jaime, who came to the United States barely a decade ago from the Dominican Republic. A manager in the city’s public works department, he is taking the admittedly risky step of running against his boss, Rivera. “I think he would like to fire me at this time,” says Jaime, who speaks fluent if imperfect English. “A lot of people think the city deserves someone with a new vision...someone who don’t have nothing to do with the old politics of the city.”

There is one non-Hispanic candidate in the race:

William Green, a former city police officer who breaks the mold for candidates in Lawrence—and perhaps anywhere else in America. During his time on the force Green got in the habit of posting YouTube videos of himself decrying corruption in the department and tweaking Rivera. (After multiple attempts, the brass and Rivera were able to oust Green in May over several allegations of misconduct on the job; Green continues to fight his firing.)

Green, who is half-African American and is often taken for Hispanic (he speaks Spanish and is married to a Latina), is running as a Republican in a nonpartisan election. He’s a fierce critic of the city’s status as a sanctuary city and he derides local pols for lacking an appreciation for American values, singling out what he calls the “Dominican political mafia” around Lantigua.

“I’ve been a cop. I’ve bled here,” he says. “These are guys who want to bring a third-world style of government.”

THE WORD ON THE STREET

Mayoral candidates have until August 8 to submit their signatures to get on the ballot ahead of the preliminary election September 26; the two top vote-getters will face off in November. At this stage, many residents are unfamiliar with the multitude of candidates, beyond the two with top billing, Rivera and Lantigua.

At one of the many barber shops on Broadway on a recent Friday afternoon, Robert Brito was awaiting his next customer. Among his patrons he discerned a preference for Lantigua over Rivera, a sentiment he shared.

“When Lantigua was mayor, a lot of people used to see him. You could just talk to him if you see something. You can say only, ‘Mayor, this is happening,’” Brito says. “But Rivera, I only saw him like once and it was in the Andover Market Basket.”

But not all residents are willing to give Lantigua another chance.

“He’s the worst one, he ruined this place,” Luis Colon says. “That’s why everything is like this.”

Colon was sitting on a swing chair in the front yard of the downtown house where he lives, a perch that afforded him a regular view of junkies looking for—and scoring—their fix. He says he has to pick up dozens of used needles everyday around the property.

But Colon doesn’t fault Rivera for the wider societal problem of drug addiction. On the contrary, he feels that Rivera is making a sincere effort, that he just needs to “step up.”

“Rivera is doing real, real good, and hopefully he’s going to win and make it better,” he says.

As it happens, that’s Rivera’s modest campaign slogan: make Lawrence better. **CW**



Yogi, a 2-year-old thoroughbred who is about to start racing, with groom Rudolpho Sanchez, who is called Papo, at Briar Hill Farm in Rehoboth.

A good bet?

Beacon Hill is trying to decide how far Massachusetts should go in subsidizing the sport of kings

BY BRUCE MOHL | PHOTOGRAPHS BY WEBB CHAPPELL

TEN HORSES SHOOT out of the gate with Simply Mas moving quickly to take the lead. The pack bunches up at the first turn, with Worth the Worry moving up on the inside and Goodbyequinessbok gaining ground on the outside. As they head down the stretch, Simply Mas fades and Worth the Worry surges to the lead. Dr. Blarney and Grady make a late charge, but neither can overtake Worth the Worry.

The exciting finish doesn't hide the fact that this is a strange race in an odd place. Only horses bred in Massachusetts are allowed to compete, and the \$30,000 purse comes from a tax on casi-

no revenues in the Bay State. But here's the real kicker. The race itself is taking place in New York, not Massachusetts, at a track called Finger Lakes, which is about a six-hour drive from Boston.

The fact that Bay State taxpayers are financially supporting a horse race in New York is a reflection of the desperate times for Massachusetts thoroughbred racing—desperate times that have come about despite strong financial support from the Legislature.

The state's 2011 gaming law affected the state's horse tracks in two ways. It set aside millions of dollars annually in casino revenues for



the purses of horse races, and it allowed tracks to apply for casino licenses. Penn National and Plainridge Racecourse, the state's harness racing track in Plainville, teamed up and won the slots parlor license in February 2014. Plainridge has been on an upward trajectory ever since. Suffolk Downs in East Boston, the state's thoroughbred track, teamed up with Mohegan Sun but failed to win the Greater Boston casino license in September 2014. Since then, Suffolk Downs has been winding down its operations. The track was sold to a developer in May and only six race days are planned for this summer.

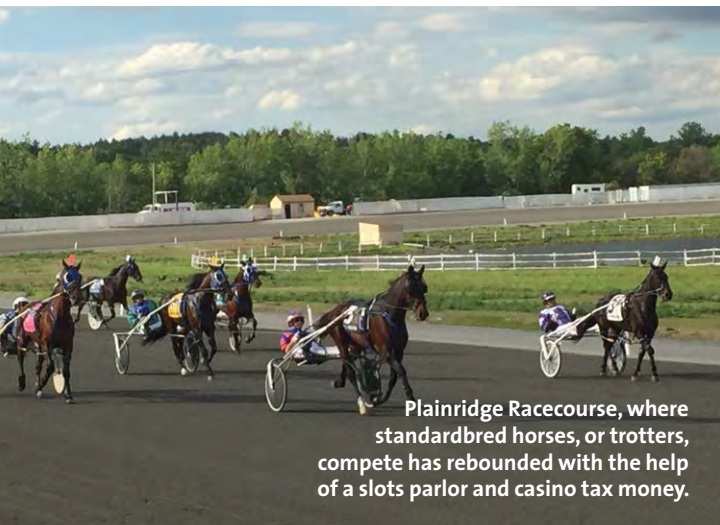
Yet even as the number of thoroughbred races dwindles, the casino money keeps coming—an estimated \$16 million annually, and possibly more once the gambling palaces in Everett and Springfield open for business over the next few years. On Beacon Hill, where lawmakers abhor unused money, bills are being filed to steer the casino funds to other needs—balancing the budget, promoting conservation, and on and on. None of those seeking to raid the casino funds set aside for horse racing come right out and say thoroughbred racing is dead in Massachusetts, yet that's what their actions suggest.

The people who raise and race thoroughbred horses in Massachusetts are not giving up without a fight. They want lawmakers to let them use a portion of the casino money to study the feasibility of building a \$150 million horse farm in central Massachusetts featuring a race

track, an equestrian center, and an agri-tourism village. If the study indicates the horse farm makes sense (and they are sure it will), then they want to borrow against the casino revenues to finance the farm's construction.

Their rationale is much like any other business coming to Beacon Hill for a hand out—give us some money and the benefits will trickle down in the form of jobs and tax revenue. The thoroughbred industry in this case is looking for money to build a race track to replace Suffolk Downs. With a track, the argument goes, the well-to-do people who purchase race horses (most of whom do it as a hobby) will have an incentive to breed their horses in Massachusetts, creating jobs for trainers, stable hands, veterinarians, and the like, while also preserving open space by supporting horse farms and agricultural operations.

The local horsemen have a powerful ally in the Massachusetts Gaming Commission, which is a bit ironic since it was the commission that dealt a fatal blow to Suffolk Downs when it awarded the Greater Boston casino license to Wynn Resorts. The commissioners say they don't know whether thoroughbred horse racing can be resuscitated in Massachusetts; they don't even know that much about horse racing. But they are urging lawmakers to give them the running room and the casino tax dollars necessary to pursue every avenue of support for an industry that has been a strategic priority for Beacon Hill. "We are the stewards of that strategy until someone changes the strat-



Plainridge Racecourse, where standardbred horses, or trotters, compete has rebounded with the help of a slots parlor and casino tax money.

egy,” says Stephen Crosby, the chairman of the Gaming Commission.

While lawmakers try to decide what to do, thoroughbred owners in Massachusetts are trying to hang on. One way they are doing that is by competing against each other in New York. The New York races keep their horses in shape and give them a chance at earning some prize money, but most of the jobs and other benefits of horse racing flow out of state.

“This is a stopgap measure because we need a place to race and train,” says Anthony Zizza, the owner of Plausible, one of the horses in the Finger Lakes race. “When we get a racetrack, we will be racing in Massachusetts.”

BET FROM ANYWHERE

I didn’t travel to New York to watch Worth the Worry edge out Grady. I watched on my computer. In fact, I can watch virtually any horse race in the world on my computer. I can also bet on the races using my computer, my phone, or other electronic devices.

Online betting offers enormous convenience but it doesn’t change the fact that gambling on horses is slipping.

It’s estimated that 35 to 40 percent of the money bet on horse racing in America is done through advanced deposit wagering, a system that requires the bettor to deposit money into an account and then place bets electronically drawing on that account. Michele Fischer, a vice president at Sportech, a company that processes bil-

lions of dollars of wagers a year, predicted at an industry conference in March that the percentage of horse-racing bets placed via computer will rise to 60 percent, and possibly 75 percent, over the next few years.

“I’d say in the next year or two you might see an app where you ask your digital assistant like Siri or Alexa, ‘Alexa, please bet \$5 on this track, this race,’ and she confirms your bet. It’s just going to grow,” says Fischer.

Online betting offers enormous convenience, but it doesn’t change the fact that gambling on horse races is slipping in popularity. Picking a winning horse is a lot more complicated than scratching a lottery ticket or taking the over or under in football, which explains why tracks that have enjoyed success have turned a trip to the races into a social event. The mint juleps and hats at Churchill Downs. The horse path to the paddock at the Saratoga Race Course in New York. These are places where the setting and the people are as big a draw as the betting.

According to statistics compiled by the Jockey Club, Americans bet \$10.7 billion on horse races last year. That betting total has risen very slightly the last two years, but it’s down 27 percent from a decade ago. Other forms of gambling have muscled their way on to horse racing’s turf. Casino gambling took in \$73 billion last year. The Massachusetts Lottery reported sales of \$5.2 billion in fiscal 2016. And, as a point of reference, Wynn Resorts is spending \$2.4 billion just to build its casino in Everett.

The bigger problem for thoroughbred horse racing is that there aren’t enough quality horses, and those that are available are running fewer and fewer races. The number of foals born to thoroughbreds in North America in 2015 was 22,500, which was down 41 percent from a decade before. The number of horse races is down 26 percent over that time period. Tracks in Los Angeles, San Francisco, and Miami have shut down, and many others have cut back their racing schedule. Santa Anita Park in Los Angeles County canceled some races for lack of entries this year; a \$400,000 race in June attracted only three horses.

The number of thoroughbred races in Massachusetts has plunged from 956 in 2006 to 63 last year, and the number of race days has fallen from 103 to 6. The number of Massachusetts-bred foals has dropped from 50 to 9.

Many hoped casino gambling would save horse racing in Massachusetts, both by funneling money from a tax on casino revenues into horse race purses and by partnering casinos with tracks. That approach appears to be working at the Plainridge Racecourse harness track in Plainville, where Penn National won a license to open a slots parlor. Penn has invested in improvements to the property, and the bigger purses are attracting more standardbred horses, the industry term for trotters.

Plainridge is running 125 race days this year, up from 80 in 2014. Purses have increased from \$2.6 million in

2014 to \$7.4 million in 2017. Wagers have risen from nearly \$7.6 million in 2014 to \$18 million last year. And a \$250,000 race open to trotters from across the country is planned for July.

The story at the Suffolk Downs thoroughbred track has been very different. The track's owners and Mohegan Sun had pledged to keep the track open for at least a decade if they won the Greater Boston casino license, but the Gaming Commission chose Wynn Resorts instead. Six days of racing are planned this summer, but after that no one knows.

The future of thoroughbred racing in Massachusetts is up in the air. Some think the industry can stage a comeback, but others say it's time to put a fork in it. Even among those who think thoroughbred racing can be revived, there is no clear consensus on how to do it, which is a major liability when asking the Legislature for help.

THE RACING FACTIONS

At the top of the horse racing food chain in Massachusetts are the heavy hitters who live in Massachusetts but have ambitions far beyond the state's borders. Lawrence Best, the former Boston Scientific executive and OXO Capital founder, exemplifies this group. He spent \$2.6 million in March to purchase two thoroughbreds at an auction in Florida. His horses are being trained at Saratoga in New York.

Then there is Don Little Jr., a former professional polo player who runs Centennial Farms in Beverly. Over lunch at the Myopia Hunt Club in South Hamilton, he explains how he assembles investor syndicates to buy promising race horses. One of his investor groups paid \$375,000 for Kentucky-bred Moyne Spun, renamed him Wicked Strong, and raced him in the 2014 Kentucky Derby and Belmont Stakes.

Little says he tells anyone interested in investing in a race horse that the odds are not good. "It's like buying a lottery ticket, but it's a lot more fun," he says. "They call it the sport of kings for a reason."

Nationally, Little says, there are too many tracks and not enough quality horses, a mixture that he believes leaves little room for a new track in Massachusetts. "It's going to be next to impossible," he says.

The next rung down on the state's horse racing ladder is occupied by the people who breed, train, race, and take care of thoroughbreds in Massachusetts. These are the true believers in the future of Massachusetts horse racing. They are represented by the New England Horsemen's Benevolent and Protective Association and the Massachusetts Thoroughbred Breeders Association, and they are the driving force behind the horse park. They have lots of political connections and a lobbyist on retainer.

Arlene Brown, who with her husband runs Briar Hill Farm in Rehoboth, says time is running short for those

in the horse racing business in Massachusetts. She says it typically takes three years from a horse's birth until it can get on a track and make some money. That's three years of expenses before any chance of income. With all the uncertainty over thoroughbred racing, Brown says, few are willing to make that investment without a better sense of what the future holds. In the meantime, farms like hers are struggling to survive. "We're hanging on, but it's not going to be long with all the ups and downs," she says.

Most Massachusetts thoroughbred owners have scaled back their operations and some have shipped their horses out of state. For most of them, racing is their passion, not their livelihood. Still, there is money to be made as their horses compete for purses provided by casino tax revenues. Joe DiRico, an executive with Hub Folding Box in Mansfield, made \$266,800 in 2015 and 2016, according to Equibase, a website that compiles information on horse racing. Theresa Horky, the founder of Pegasus Solutions in Franklin, collected \$158,625 over that two-year period. And Patricia Moseley, the widow of former Suffolk Downs owner James Moseley, won \$145,050.

Anthony Zizza is much further down the money list, but he is a big advocate for horse racing in Massachusetts. For Zizza, a physician specializing in geriatrics and internal medicine, horse racing is a family affair, with his young daughter actively involved. He says a state investment in a horse park will pay big dividends. "This is going to create jobs and fuel the economy in an area that needs

'It's like buying a lottery ticket, but it's a lot more fun. They call it the sport of kings for a reason.'

it," he says. "I don't see how anybody can say no to that."

William Lagorio, a horse trainer, is a maverick within the Massachusetts horse community. He broke away from the New England Horsemen's Benevolent and Protective Association and formed the Massachusetts Thoroughbred Horsemen's Association. He thinks the horse park is never going to happen. He criticizes the Gaming Commission for giving Suffolk Downs a license to host a few race days a year, a license that allows the track to simulcast races from around the country all year long and collect a slice of online bets placed in Massachusetts. And he is convinced the key to getting a track up and running in Massachusetts is to use state funds to build a new track or refurbish an old

Shortly after her birth, the unnamed daughter of RunintheFastlane at Briar Hill Farm in Rehoboth.



one and bring in a national track operator like the Stronach Group to operate it.

Suffolk Downs is on its way out of the live racing business, but it's not going away. Chip Tuttle, the chief operating officer of the track, has made it known that he wants to continue simulcasting horse races from around the country at a restaurant/sports bar once the track is gone. He says Lagorio's claim that the state should shut down existing wagering operations and consolidate them with

a new track operator is "preposterous on its face." Many states allow off-track betting at non-racing sites as long as fees are paid to the venue operating live races, he says.

"We have 100 people working at our facility year-round even without live racing and a significant population base from which to draw for wagering," he says. "The horse park concept and continued simulcast at Suffolk Downs continue to work hand in hand."

Then there are the standardbred horse owners, who

always get short shrift in any discussion of horse racing. Standardbreds are not as popular as thoroughbreds and have far fewer fans, but they could play a key role in deciding the fate of thoroughbred horse racing in Massachusetts. The trotters are doing well under the existing regulatory system, and don't want it to change. In short, they don't want casino tax revenues that could be going to their business going instead to schemes for building a track for thoroughbreds.

"That would be an affront to the horse racing industry as a whole in Massachusetts," says Peter Goldberg, who represents the harness racing community on a committee that decides how casino money should be apportioned between the two types of horse racing. "All the articles about horse racing being dead in Massachusetts, they're just plain wrong. Horse racing is not dead in Massachusetts. It's alive and well. Thoroughbred racing is having some issues, but standardbred racing is thriving. Everything that the Legislature intended is being done in the standardbred industry."

CROSBY TO THE RESCUE

Stephen Crosby, the chairman of the Massachusetts Gaming Commission, is an unlikely hero for the state's horse racing industry. He voted against giving the slots parlor license to Penn National, which helped resurrect harness racing at Plainridge. And while he recused himself from the Greater Boston casino license decision, he has no regrets about his colleagues issuing the license to Wynn Resorts rather than Mohegan Sun, which could have breathed new life into Suffolk Downs.

Yet now, years later, Crosby is pressing the Legislature on behalf of his colleagues for the authority to take full control of the horse racing regulatory apparatus and the flexibility to use the casino revenues flowing to the industry to rebuild an existing horse track or build a new one.

A bill filed by the commission unequivocally spells out the need to "to utilize best efforts to ensure that the horse racing industry be preserved and sustained for, amongst other reasons, the preservation of open space, the agricultural benefits associated with horse racing, and the creation and preservation of jobs and businesses associated with horse racing."

The bill would give the commission the power to use 50 percent of the casino revenues flowing to horse racing for basically anything the agency sees fit, but presumably the money would go for a horse park study. It could also be used to finance a horse park, the development of a new track, or the refurbishment of an existing one. The bill would also give the commission full control of simulcasting licenses. Right now, the Legislature doles several of them out, including two to dog tracks that were closed

by a voter referendum in 2008. The dog tracks simulcast and collect bets on dog and horse races from around the country, earning a percentage for their role.

Crosby characterizes the commission as a neutral party merely carrying out the wishes of the Legislature. "If the Legislature wants to change its public policy position, that it no longer wants to try to sustain the thoroughbred racing industry, that's their business. That's fine with us. We'll do what they say. But until they've changed the mandate, we're operating under that mandate," he says.

He talks about convening meetings of all interested parties to determine what, if anything, should be done to

'Horse racing is not dead in Massachusetts. It's alive and well. Thoroughbred racing is having some issues.'

rescue thoroughbred racing. But he says the commission won't do anything until it has full regulatory control of the industry and the resources flowing to it. That will give the commission leverage to get all the parties to the table. "What I do know is money talks, nobody walks," he says.

"Does this equine park make sense?" he asks. "I have no idea. I don't know a thing about the economics of a racetrack. But if we were in control we could spend some money to do a serious feasibility study."

Tuttle, the Suffolk Downs official, says the commission had its chance to save thoroughbred racing and didn't. "We worked incredibly hard from 2007 to 2014 to save thoroughbred horse racing in Massachusetts and there was a clear path to do that," he says. "The Gaming Commission chose to go in another direction. I have no doubt they are genuinely sympathetic to the plight of the horsemen and a lot of people who worked at our facility. But I also think that, realistically, there's very little chance of horse racing coming back in Massachusetts in any substantial way. And that is due mostly to national trends beyond anyone's control in this market. It's the equivalent of bringing back print media and Blockbuster stores."

Ray Paulick, the Kentucky-based publisher of the Paulick Report and the former editor of *Blood Horse Magazine*, has been covering the horse racing industry for nearly 30 years. He is skeptical that a new thoroughbred track will emerge in Massachusetts, largely because horse racing is a low-margin, low-profit business.

"It doesn't make a lot of sense to invest \$100 million in

Battenkill and her son
Donald at Briar Hill Farm
in Rehoboth.



a new race track,” he said. “I don’t know where they’d get the horses. There’s a shortage of horses, which is really a shortage of owners, throughout the country. Every track on the East Coast right now is having a hard time getting enough horses to sustain their program.”

As for the horse park concept, he thinks that’s a long shot. “I’m from Kentucky, so I’m familiar with the horse park there. And that place struggles even though it’s in the middle of horse country,” he says. “The idea that people are going to go there [central Massachusetts]—I

don’t want to say it’s preposterous, but it’s a real long shot. It’s a pipe dream.”

The Legislature has been kicking the can down the road on horse racing for years, extending the existing fragmented regulatory framework one year at a time, never really making a decision. With so much left to do in the current regulatory session, the likelihood is that the status quo will prevail once again. But it won’t be long before no action becomes a decision that could be the death knell of thoroughbred racing in Massachusetts. **CW**

The promise of



A maze-like work by artist Robert Rauschenberg is featured in the museum's recently expanded gallery space in Building 6.

BY LINDA ENERSON | PHOTOGRAPHS BY MICHAEL MANNING

TWO YOUNG MEN from Brooklyn tentatively inch down the hallway, holding onto a handrail because it's so dark. They turn a corner and the room in front of them opens up, filled with intense light of different colors. They make their way to a bench and sit down, mesmerized by a large screen, the light source, at the front of the room. It's one in a series of dazzling light compositions by the artist James Turrell in the

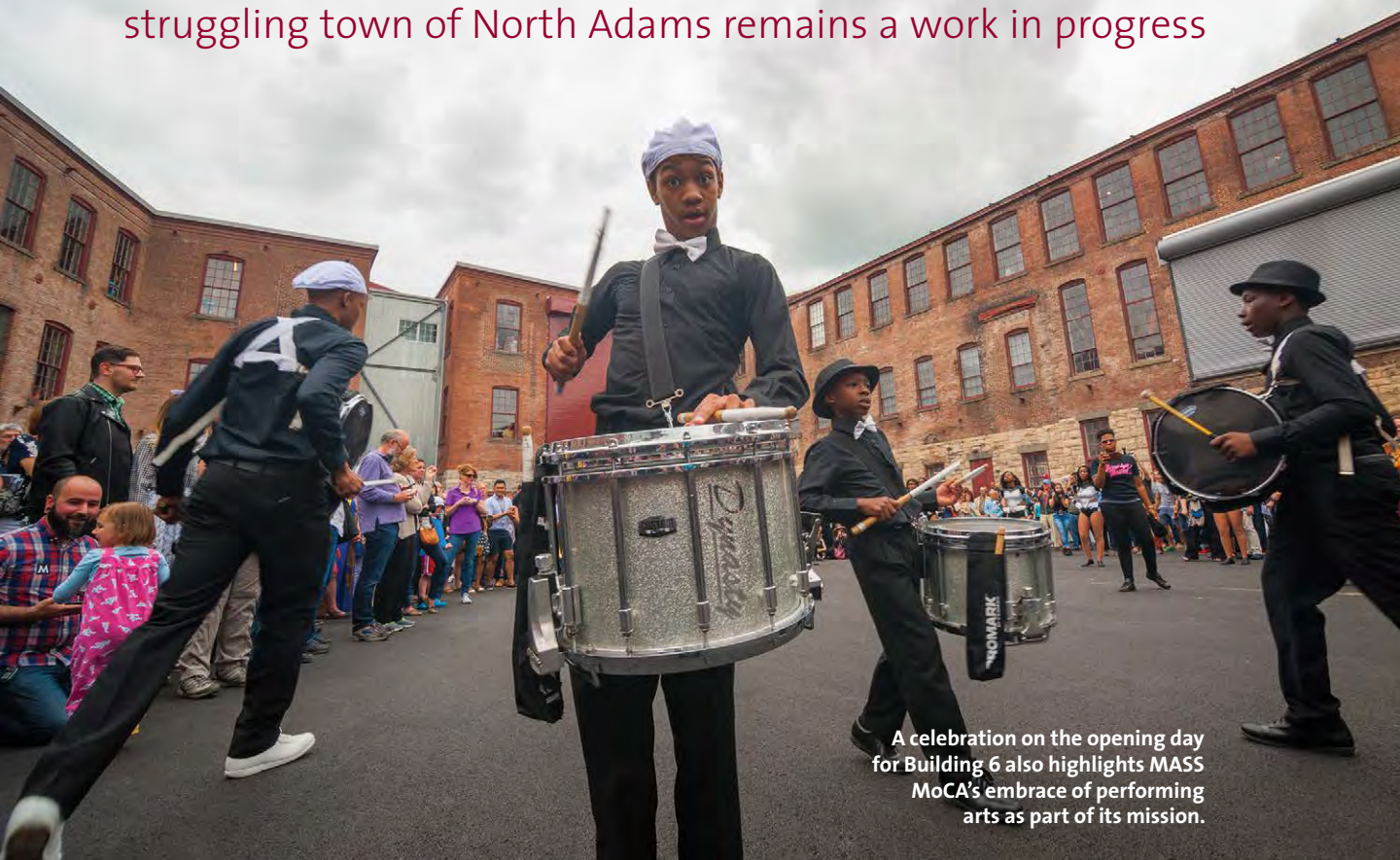
new Building 6 at MASS MoCA, the Massachusetts Museum of Contemporary Art in North Adams.

"I really, really, really, really love it," says Charles Quittner. "I walk in and the light just engulfs me." His pal, Nick Giordane, is equally enthusiastic. "It's primordial, electronic," he says. "It's fun."

The new Building 6 is most definitely lots of fun, and drawing large crowds and rave reviews. It's also

MASS MoCA

The museum's latest expansion is a hit, but its impact on the struggling town of North Adams remains a work in progress



A celebration on the opening day for Building 6 also highlights MASS MoCA's embrace of performing arts as part of its mission.

validation of a vision that factory buildings once known for producing components for the atom bomb and lunar space missions can be repurposed as a home for art, drawing visitors from all over the country and world. The other part of that vision—that an art museum can be an economic catalyst for a declining mill town in the northwest corner of Massachusetts—is a work in progress.

MASS MoCA may have put North Adams on the map, but it hasn't turned around the town's economy, at least not yet. Looking around the city, there are some promising signs—more hotel rooms, more jobs, and some optimism about the future with new projects in the offing. But the evidence suggests the state's \$60 million investment in MASS MoCa hasn't paid off yet for North Adams. Job growth has lagged

behind projections. Storefronts downtown remain empty. And even though MASS MoCA is attracting a lot of visitors, relatively few of them leave the museum to explore North Adams.

Museum officials are sensitive to the issue. They secured a \$150,000 grant from the Barr Foundation to develop ways to entice museum crowds downtown. And they are promoting Building 6 as a way to do just that. The theory is that with Building 6, MASS MoCA is now so big that visitors can't get through it in a single day.

"We want to make it impossible for people to visit MASS MoCA and the northern Berkshires and to leave after a few hours or even a day," says MASS MoCA's founding director, Joseph Thompson. "We want them to take the time to stay and shop around town and buy two to three meals before heading back home."

Marcia Halio, who drove up from Delaware with her husband to visit their daughter at Williams College in neighboring Williamstown, says she is very impressed by the level of art in Building 6. "This one is about social justice," she says, staring at a piece featuring a gun rack mounted on the outside of a voting booth. The gun barrel is angled toward a would-be voter's head. Halio says she and her husband plan to eat at the museum café on this visit, but maybe they'll eat downtown on their next.

Thompson takes the long view. He is confident the museum will not only attract more tourists who will spend money in other areas of the city, but will act as a catalyst for other arts-related businesses that will call North Adams home. He says the shift from a manufacturing to an arts community is as much cultural as it is economic, and takes time. "I see this as a generational shift," he says.

SYNERGISTIC RELATIONSHIP

The grand plan for MASS MoCA has always been to create a synergistic relationship with its host city. Twenty years ago, MASS MoCA opened its doors with the help of \$35 million in state funding and a promise to bring much-needed jobs and visitors to North Adams.

Situated at the confluence of two branches of the Hoosic River, North Adams was once a booming milltown, churning out shoes, pig iron, hats, cabinets, wagons, and sleighs. The buildings now occupied by MASS MoCA first housed the Arnold Print Works, one of the world's largest manufacturers of printed fabrics. Sprague Electric Company bought the complex in the 1940s to headquarter its burgeoning trade of capacitors, semiconductors, and other electronic components. The company brought thousands of jobs to North Adams.

"Nobody got rich, but everyone did ok. And if you lost your job, you could get a new one tomorrow," says Mayor Richard Alcombright, who grew up in North Adams.



MASS MoCA Director Joe Thompson speaking at opening day of Building 6.

In the 1970s, sales continued to rise for Sprague components, but profits sagged due to overseas competition. The company's payroll, which supported 4,000 workers at its peak in the mid-1960s, started to decline over the next two decades and in 1985, the company finally shut its doors. Unemployment in North Adams soared as the last 2,000 workers were pink-slipped. Residents left in droves in search of jobs. Business in the city's center, which had already suffered when several older, prominent buildings were bulldozed by the federal government's urban renewal program, started to wane.

A year after Sprague shut its gates, Thomas Krens, then director of the Williams College Art Museum, went looking for spaces to exhibit contemporary art. John Barrett III, the former mayor of North Adams, suggested the vacant factory, and the idea of revitalizing the city by turning the old factory into an art museum began to hatch. Krens went on to become director of the Guggenheim Museum in New York, so Joseph Thompson, his young colleague, took over, gathering the support and funding needed to open the museum in 1999.

With the \$35 million state grant and additional private funds, the rambling old factory buildings were remodeled to showcase the work of contemporary artists who like the challenge of exhibiting their work in spaces that are as large as a football field. Nick Cave is one of those artists. Cave's recent work, "Until," is now on display in the museum's largest room. Visitors enter the exhibit by walking through hundreds of circular foil shapes dangling from the ceiling. They then climb up ladders to an overhead platform constructed of millions of chandelier crystals and covered on



Mayor Richard Alcombright shakes hands with former governor Jane Swift, a North Adams resident who also spoke at the Building 6 opening.

top with bric-a-brac seemingly collected from a thousand basements and backyards. Black-faced lawn jockeys are wedged in between the other objects, asking visitors to consider the question that popped into Cave's head one day—is there racism in heaven?

Over time, Thompson has wrestled with how to build and sustain a museum with such delightfully spacious exhibition halls in such a remote location. The museum's provocative and lively exhibitions quickly made a splash among critics and attracted visitors from all over. But financial sustainability has been a challenge.

Renting out some buildings on MASS MoCA's 26-building campus to a wide range of other businesses both diversified and stabilized the museum's revenue. In order to build a more robust gate, MoCA expanded its mission

The grand plan for MASS MoCA has been to create a synergistic bond with its host city.

to include performance art, music concerts, and festivals, attracting a steady stream of visitors even in off-peak seasons. The museum also built up an endowment and

focused on developing high-profile exhibitions, such as Sol Lewitt's famous wall-size drawing, that stay in place much longer.

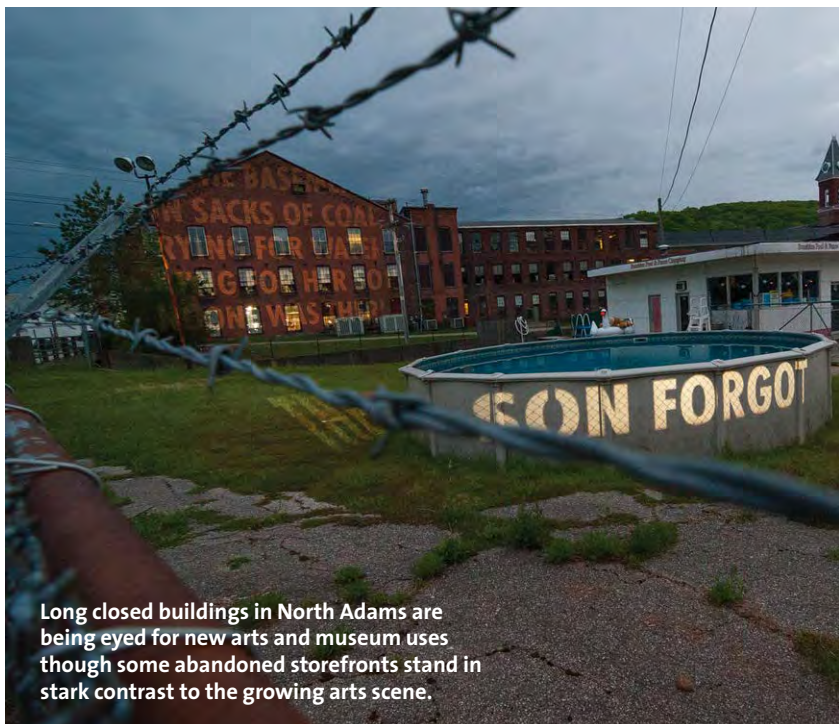
All of these strategies proved effective in stabilizing and growing the museum. The number of visitors has doubled since the museum opened. In 2016, more than 160,000 people attended visual or performing art shows and festivals. Thompson expects the new expansion will attract an additional 20,000 visitors this year.

MIXED BAG FOR NORTH ADAMS

By most indicators, North Adams is a troubled community. It's one of the poorest towns in the Commonwealth, with over 21 percent of the population living in poverty. The current unemployment rate is 6.6 percent, significantly higher than the state and national averages and fifth highest among all cities and towns in the state. Census estimates for 2016 put the population at 13,000 residents, down about a third from when Sprague closed its doors.

Still, there are some promising signs. Thompson says the hospitality industry is one area that has grown. "Fifteen years ago, there were 17 hotel rooms, and many of them were pretty rough. Today there are 185 and another 48 under construction," he says.

One of the most successful ventures is Porches, a row of dilapidated row houses directly across from the museum that were remodeled to create hotel suites, providing upscale accommodations for out-of-town visitors to MASS MoCA as well as parents, alumni, and others visiting



Long closed buildings in North Adams are being eyed for new arts and museum uses though some abandoned storefronts stand in stark contrast to the growing arts scene.

Williams College in nearby Williamstown.

The Tourists project is a similar initiative, an effort to remodel an old motel court and a nearby farmhouse and mill to create a multi-service recreational resort and spa that takes advantage of its natural setting along the Hoosic River. Greylock Works is yet another project transforming an old cotton mill into a boutique hotel, as well as space for events and artisanal food production.

Thompson says that the opening of Building 6 in combination with the recent expansion of the Clark Art Museum in nearby Williamstown is driving more people to not just visit but move to North Adams.

Brian Miksic is one of those people. He and his wife, Suzy Helme, moved to North Adams from New York City four years after MASS MoCA opened. Both have been actively involved in promoting the city and region ever since. Miksic, who works in information technology, has served on several civic and community boards. Helme works for the city's tourism office.

Miksic says that he and Helme developed a list of qualities they wanted in a home town—small but not too small, with an ample supply of culture, colleges, and natural beauty. North Adams had it all. "We probably wouldn't have moved here if it wasn't for MASS MoCA. We wouldn't have come to some little town in some little corner in Massachusetts," he says.

Stephen Sheppard, an economist at nearby Williams College, says that MASS MoCA has fallen short of its projected impact on job growth. For more than a decade, Sheppard has analyzed the impact of MASS MoCA and other cultural organizations on local economies. He says that the museum has stimulated development of 385 jobs

to date. That's about two-thirds of the 600 jobs initially projected by the museum founders. Of the 385, he says, about 274 are direct employment at the museum or in related sectors of the economy, such as the performing arts, restaurant, hospitality, and retail sectors. The remaining 111 jobs result from either indirect or induced effects in other sectors of the economy. Indirect effects reflect business-to-business spending, and induced effects are caused by local spending of employees.

Sheppard says the museum's total impact on the economy is approximately \$35 million per year. Of that amount, he says, \$21 million is generated by direct impacts, and

It's all too easy for people to view art exhibits, eat, and shop without leaving the MASS MoCA campus.

\$14 million is generated by indirect and induced impacts.

Thompson says that the expanded gallery space, which opened at the end of May with another \$25 million in state funds, has already boosted the number of direct jobs by adding to the museum payroll. MASS MoCA has significantly expanded its staff from about 100 to 150 total employees, including 120 full-time staff members and 25 to 35 permanent part-time staff, he says. As the



Tourists and Greylock Works projects get underway, that will bring more construction, hospitality, culinary, and other jobs to the area, Thompson says. He estimates that in the next few years, the museum will far exceed the initial projection of stimulating 600 jobs.

GETTING PEOPLE TO STAY

One of the biggest challenges is getting visitors to MASS MoCA to spend money in the city center of North Adams, just a few blocks away from the museum.

Ralph Brill, owner of Brill Art Gallery, which is located in the Eclipse Mill, another renovated factory building just down the road from MASS MoCA, says the museum has inadvertently added to the woes of downtown stores by developing what amounts to an alternative business center. "If you're a museum visitor or an employee in the Mass MoCA campus, you have all these choices. With a restaurant, two coffee shops, and a brewery on the campus, there is absolutely no reason to go downtown," he says.

MASS MoCA leases its buildings from the city of North Adams at no cost and pays taxes on any commercial income it receives from renting space out. Brill says this arrangement allows the museum to rent out commercial space at lower rates than building owners downtown. "MoCA has sucked the life blood out of Main Street," he says.

Sheppard agrees the downtown retail space is far more expensive than what's available on the MoCA campus, but he questions why downtown landlords don't respond to the competition by reducing their rents. "Don't you think it makes more sense to get less money per month but at

least rent the space?" he asks. He argues the rents, many of which are more than \$1,000 per month, are disproportionately high compared to the price of housing stock in town.

Part of the problem with trying to lure museum visitors downtown is the original urban design of North Adams, says Sheppard. The factories were originally built along what is now Route 2 to keep traffic, factory smells, and byproducts away from the city's main drag. But now that the site is a museum, it's all too easy for people to view art exhibits, eat, and shop without leaving the campus. "In order for people to go downtown, they have to walk past their cars in the parking lot," he says. "That, by the way, right there is the thing that's very hard for Americans to do, then go under a viaduct and cross a busy street."

Thompson admits that encouraging visitors to venture downtown has been a hard sell. The Barr foundation grant is supposed to help with that. It supports the North Adams Exchange Initiative, an initiative of the museum and the city that has installed pop-up retail and art exhibits in the empty store fronts and scheduled pop-up food vendors. An artsy light show was installed to display at sunset from the steeples of downtown churches, spelling out a poem by Thoreau in Morse code. Thompson says the museum has also cleaned up the area along the back of its parking lot, removing an old chain link fence and making the path to downtown more accessible and attractive.

But few of these initiatives seemed to be having much impact on the downtown of North Adams on a Sunday afternoon in June. Main Street itself was nearly empty, in stark contrast to the museum, which bustled with visitors a few blocks away. A pizza place, a café, and a dollar store were open. Other businesses in town, including banks,

real estate firms, and insurance agencies, which don't cater to tourists, were closed for the weekend. About half a dozen storefronts were vacant.

"You can't blame it all on MoCA," says Judy Grinnell, founder of the Hoosic River Revival, a community-based effort to revitalize the North Adams riverfront by redesigning the city's flood control system, returning the river to a more natural state. "You've got Amazon and other retailers online and Walmart is a couple blocks away, so it's complicated," she says, adding the lack of traffic downtown has led to a downward cycle for Main Street, "You have to look at the quality of what is there. We don't have stores that can pull in the tourists."

LOOKING TO THE FUTURE

On the north end of Main Street, the old Mohawk Cinema is open, but not for showing the latest Hollywood offerings. The iconic cinema, which has been dark since the 1980s, is open this weekend just to display plans for a future Extreme Model Railroad and Contemporary Architecture Museum. Spearheaded again by Thomas Krens, now retired from the Guggenheim, the privately-funded project also includes a "museum of time," as well as a cafe, a retail store, and a boutique distillery. Supporters say it would add significantly to the region's reputation as a corridor of cultural attractions and bring hundreds of thousands of visitors downtown. Krens and other museum backers have negotiated to locate the sprawling museum complex along the river in the Heritage State Park and in a vacant old building across the river.

The main room of the cinema, once packed with moviegoers, seems oddly quiet. A large model of the Empire State Building stands alone in the center of the cavernous space. Several large poster boards describing the proposed museum and displaying drawings of it are propped up on tables and chairs, highlighting the inchoate nature of Krens's new project. In large letters across the top of one of the poster boards, Thompson is quoted as saying that a small portion of the population enjoys contemporary art, but everyone loves railroads.

Firefighter Pete Robare, who is on a detail to watch over the display, wholeheartedly agrees. A long-time resident, he has seen enough unlikely projects get off the ground to wave away the idea the railroad museum will be anything but a smashing success. "There's a railroad

A crowd gathers for Opening Day of the museum's expansion.



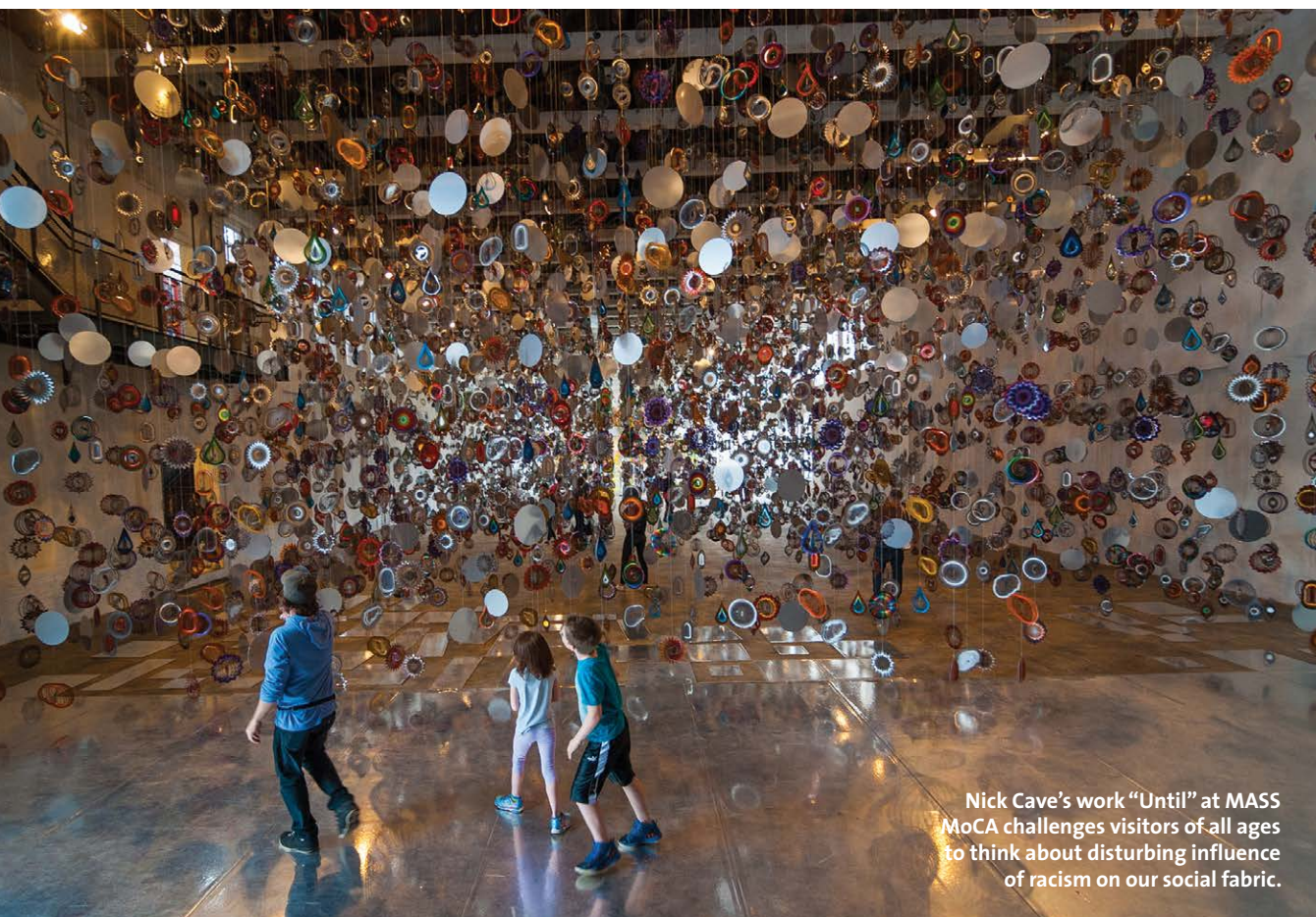
museum in another part of the world and it's one of the most visited places around," he says. "Nobody thought Porches was going to make it either, but look at it now, it's busy all the time."

Hopeful as he is about the future of North Adams, Robare remembers brighter, if more raucous days, on Main Street. When Sprague was open, he says, "There were 26 barrooms here on this street. That tells you a lot." After high school, Robare worked at Sprague along with most of his friends and neighbors. His father, who was also a firefighter, realized Sprague was in danger and encouraged his son to join the fire department. Not long after Robare was hired by the city, Sprague shuttered its doors. "People thought it was the end of the world," he recalls.

While MASS MoCA can't be expected to solve the complexity of all the city's problems, Grinnell, Brill, and others believe that lawmakers have leaned too heavily on the museum as an economic driver. They say the level of unemployment and poverty in town call for a more wide-ranging proactive approach to support and retain basic services. "MASS MoCA is a catalyst for economic recovery, it's not a savior," says Grinnell.

"I love MASS MoCA," says Brill, "I love the whole experience. But there's a disconnect between what goes on inside the MASS MoCA campus and what happens outside. There are huge numbers of food deserts, unemployment, and opioid addiction in North Adams."

Even maintaining basic medical services in North Adams in recent years has been a struggle. Three years ago, North Adams Regional Hospital went bankrupt, shutting its doors with three days' notice, and laying off about 500 workers. Berkshire Medical Center (BMC) bought the property, and rehired over half of the workforce, opening the North Adams campus of BMC. The new facility has an emergency room and many diagnostic and outpatient surgical services, but the area lost all of its inpatient hospital beds, including the maternity ward. Maynard Seider, a



Nick Cave's work "Until" at MASS MoCA challenges visitors of all ages to think about disturbing influence of racism on our social fabric.

retired professor from the city's Massachusetts College of Liberal Arts, says that more state funding should have been invested in retaining a full service community hospital.

"That's not a big deal for many people, but if you're poor and you don't have access to a car and you have to travel down to Pittsfield or Albany to have a baby or visit your family member in the ICU, that's a problem," Seider says.

Keeping medical services in the North Berkshire area is "a very real concern," says state Sen. Adam Hinds, who represents the city. "But it's not an either-or. When it comes to making the decision of what the state is going to invest in, we are going to invest in what seems to be demonstrating the most promise." MASS MoCA adds significantly to a growing network of cultural attractions supporting a wide variety of industries in the region, he says. "They have created the buzz—you see that in other new projects and new investments coming in from outside Massachusetts. Every project has a critical juncture and MASS MoCA has reached that juncture," he says.

Alcombright, the North Adams mayor, sees the same transformation starting to take place. He says the town has been successful in attracting new businesses and investors, which is made easier through the presence of the museum and the prospect of future projects such as the model railroad museum complex, the Tourists resort and hotel,

and Greylock Works. Krens has moved forward on plans for another cultural attraction, the Global Contemporary Art Museum, funded by international art collectors. As every small- and medium-sized business opens its doors, it attracts others, creating an incoming tide of new industry, jobs, and consumers. "We're looking for companies that bring in seven jobs, 10 jobs," says Alcombright.

John Sprague, son of the founder of the Sprague Electric Company, says the jobs MoCA has brought to the area cannot possibly make up for the thousands that were lost and the ripple effect that loss has had on the economy over the past 30 years. Sprague, who worked first as research director for Sprague Electric before leading the company in the decade before it closed, says that no one entity can be expected to revitalize a region's economy as modern manufacturers rely heavily on robotics and automation now. "Even if a company like Sprague were to open its doors in North Adams, it would bring 200 jobs to town, tops," he says.

Like Alcombright, Sprague argues the only way to revive the city is to build a diverse mix of smaller entities that can operate in a remote location, such as publishing or customer service companies. "MASS MoCA is not enough for North Adams. It's never been enough," says Sprague. "But let's face it, at this point, MASS MoCA is all we have." **CW**

Beating the craps out of each other

A Massachusetts-Connecticut border war over gambling stirs fears of an Atlantic City meltdown

BY JACK SULLIVAN | ILLUSTRATION BY PHIL FOSTER

CASINOS ARE ABOUT GAMBLING. Take away the restaurants, the shops, and the entertainment and what remains is the foundational reason for a casino's existence—getting people to come and leave their money behind, lured by the slim chance they might walk away with a fatter wallet.

Those who build and operate the glitzy gaming halls are also gamblers, betting billions that they can draw enough customers—and their cash—to pay the millions to state and local governments that are required to operate and turn a healthy profit to justify their investments and placate shareholders. The question they are now facing is whether oversaturation of the casino market





Massachusetts Gaming Commissioner Stephen Crosby says casino competition between states is “a fact of life” of which little can be done.

could tilt the odds so much against them that opening a new gambling facility seems as much of a sucker's bet as those placed by customers frantically working the slot machines inside them. A battle now unfolding between Massachusetts and Connecticut will be the latest test of the question.

A key to casino success is tamping down competition and forging as much of a regional monopoly as possible. But that variable ultimately is out of the control of most casino operators, especially those in states abutting other states that also have legalized gambling. It is a dilemma now facing MGM Resorts International as it nears completion of its lavish \$950 million casino in Springfield with competition sprouting up even before the first croupier spins the first roulette wheel.

Connecticut, where revenue from Foxwoods and Mohegan Sun has been in steady decline—and with more losses projected once Massachusetts casinos are up and running—decided that holding pat was not an option. Two years ago, state leaders there approved an initial plan to allow the two Native American tribes that run Foxwoods and Mohegan Sun, New England's first and oldest casinos, to form a commercial partnership to open up a third facility in East Windsor, a mere 12 miles down Interstate 91 from the MGM complex now rising in Springfield.

“It's primarily a response to Springfield because that's what's on the immediate horizon,” says Clyde Barrow, a

University of Texas professor and former New Englander who has studied the gaming industry for decades and is a consultant to the new tribal casino partnership in Connecticut. “On a larger scale, it's a response to a whole set of issues [Connecticut officials] have not responded to in a long time.”

That set of issues ranges from casino market competition to saturation as the Nutmeg State watches gambling revenue in a free-fall, a slide that means a major drop in money going into state coffers from the exclusive agreement with the Mashantucket Pequot and the Mohegan tribes.

Connecticut's struggles look like a cautionary tale for the nascent gambling industry in Massachusetts, where two approved resort casinos have yet to even swing open their doors. With a new Connecticut facility, revenue the Massachusetts gaming facilities projected would come from Connecticut and New York, especially to MGM in Springfield, could now stop at the border, cutting into the take the global resort and entertainment giant counted on to justify its investment.

MGM officials claim they are not worried. “We know how to drive traffic,” says Uri Clinton, senior vice president and general counsel for MGM Resorts International, dismissing concerns about depleted gambling revenues. “We don't shy away from competition. We already knew we'd be competing with Foxwoods and Mohegan Sun.”

But MGM was concerned enough about a third Con-

necticut casino that the company tried to derail the statutory handout to the tribes through lobbying, legislation, and litigation. That included an MGM pitch—some say a show—to open up the process to commercial bidders and a proposal to build a Connecticut resort casino in Bridgeport.

Massachusetts officials say the border competition is a “fact of life,” something they always anticipated could happen, but which they say they can do very little about. But they acknowledge that continuing to dot the landscape with casinos and slot parlors at some point reaches a level that can’t be sustained. And there’s an easy example to point to.

“Nobody in this business who has seen what happened down in Atlantic City can’t not see what expanding regional competition does to the industry,” says Stephen Crosby, chairman of the Massachusetts Gaming Commission. “But there’s nothing we can do, there’s nothing we should do. It is what it is. It’s one of those competitive facts of life.”

That may be the case. But declaring now that it’s an unavoidable fact of life will do nothing to lessen the bite if fears of a casino overload come true.

POINT OF NO RETURNS

For a quarter century, Connecticut has had a stranglehold on the New England gambling industry, a bit of Las Vegas in the woods. While the state enjoyed a *de facto* monopoly on the region’s gambling dollars, the two tribes running the casinos had huge leverage over any expansion of gaming in Connecticut.

When Foxwoods opened in 1993, and then Mohegan

gaming industry. That resulted in \$256.1 million for the state.

For the next 10 years, the good times continued to roll, with revenues for the casinos and new money for the state coffers pouring in, not to mention the thousands of jobs the industry created for the state’s residents.

“About 140 towns in Connecticut send workers down to both casinos,” says Connecticut state Sen. Catherine Osten, whose district includes both Foxwoods and Mohegan Sun, which together employ nearly 10,000 people.

But the easy money the two casinos have brought in to support all those jobs has been on a downward slide. In fiscal year 2007, the two casinos combined for their all-time high of \$19.8 billion in gross gambling receipts with more than \$411 million siphoned off into the state’s general fund. But, between the recession that hit the following year and the opening of slots in Rhode Island as well as casinos in New York, those numbers took a big hit.

The gross revenues—and Connecticut’s share—have both fallen every year in the last decade. Gross revenues for fiscal 2016 were down more than 35 percent from 10 years earlier, to \$12.9 billion, and the slots contribution to the state, in turn, dropped to \$266 million. Incomplete data for the fiscal year that just ended look no brighter, with revenue and payments to the state relatively flat for the first 11 months of fiscal 2018.

With the impending opening of two high-end resort casinos in Massachusetts as well as the slots parlor already operating in Plainville, the outlook looked even grimmer for the once-booming Connecticut gambling market. Projections for MGM and Wynn Resorts, which is building a \$2 billion complex in Everett, as well as those of consultants to Connecticut gaming officials, showed that 45 percent of gambling revenue at MGM Springfield and 15 percent of revenue at the Wynn casino in Everett would come from Connecticut gamblers.

Connecticut’s elected officials, watching the bleeding about to turn into a hemorrhage, knew they had to do something or the state

would lose money and jobs.

Expanding gambling to include a commercial venture would have threatened the revenues from the two Indian casinos. Under the state’s compact with the tribes, only the Pequot and the Mohegan could run slots. If the state opened the gambling door to any other entity, it would terminate the tribes’ deal and Connecticut would get nothing from their casinos. That \$266 million in state revenue that had been trending down would plummet to zero, and Connecticut would be hard-pressed to replace

For the first 15 years of their operations, gross gambling revenues at Connecticut’s two casinos rose like the sun—predictably and regularly.

Sun four years later, it was a mutually beneficial partnership between the tribes and Connecticut taxpayers. In exchange for the casinos paying 25 percent of their gross slot revenues to the state, the two tribes were granted the exclusive right to operate slot machines in Connecticut.

For the first 15 years, those numbers rose like the sun—predictably and regularly. In fiscal year 1998, the first full year of operations for both casinos at the same time, bettors laid down \$13.1 billion, according to the Connecticut Department of Consumer Protection, which oversees the

it, never mind add to it, with a new commercial casino.

“The exclusive right is truly exclusive,” says Chuck Bunnell, a spokesman for the Mohegan tribe. “In order to preserve the agreement, [a third casino] would have to be owned and operated by the two tribes or a joint venture.”

Connecticut lawmakers devised a plan in 2015 to allow the two tribes to form a partnership and build a casino on non-reservation land, a deal that retained the tribes’ exclusive control of the gambling market and kept the cash flowing into state coffers. That plan, though, was fraught with an equal number of obstacles, not the least of which were legal and legislative challenges by MGM to open up the process to bidding among commercial entities.

MGM, which is prohibited by agreement with Springfield from building another casino within 50 miles, had told Connecticut officials it was eyeing a site in the southwest seaport city of Bridgeport, a facility company officials said would be aimed at drawing gamblers from New York.

Lawmakers, tribal officials, and Gov. Dannel Malloy said the numbers wouldn’t add up and that a commercial casino could not make up the revenue lost by breaking the pact with Foxwoods and Mohegan Sun.

“If you were to build another large resort casino, it would be cannibalizing other casino resorts,” says Barrow, the University of Texas professor and consultant to the tribal partnership who previously spent years studying the industry at the University of Massachusetts Dartmouth. “That would have been a mess.”

If Connecticut were to put a commercial casino license out to bid and give up its tribal gambling revenue, Barrow says, it would come out \$85 million or more behind current gaming revenue based on a 25 percent tax on gross revenue. Even at a higher 35 percent tax rate, he says, a new commercial casino would leave the state with a loss of \$15 million compared with its current take.

MGM also filed a suit in federal court claiming the giveaway to the tribes was unconstitutional. That suit was rejected in district court and, again in June, by a federal Appeals Court, though MGM has vowed to fight on.

In the end, the Connecticut legislature approved a bill allowing the tribal partnership to build a \$300 million



Connecticut state Sen. Catherine Osten, whose district includes Foxwoods and Mohegan Sun casinos, is a supporter of a third casino in the Nutmeg State.



casino on the site of a shuttered Showcase Cinema in East Windsor, an effort to stop day-trip gamblers from crossing the border into Massachusetts.

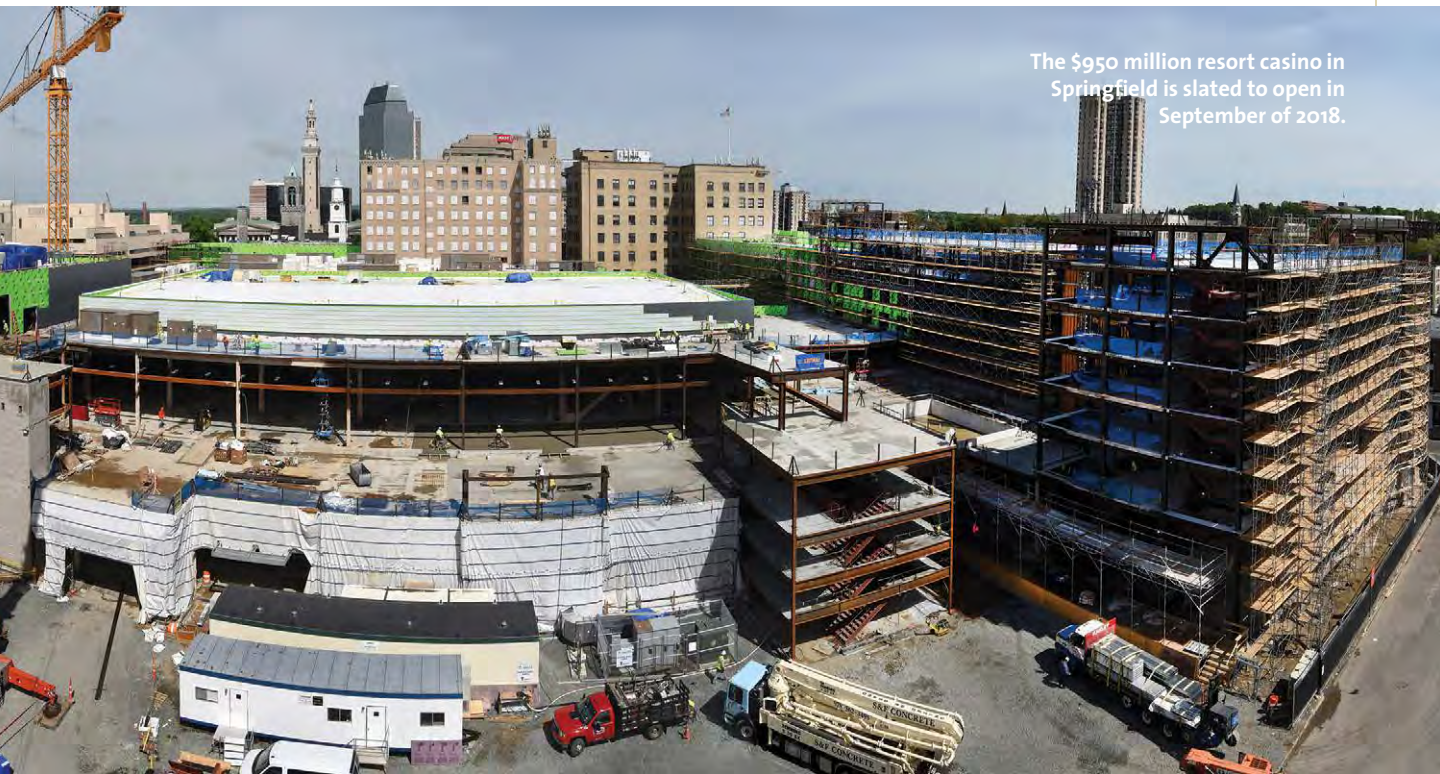
“The casino is all about saving jobs in the district that I represent,” says Osten, the Connecticut state senator. “I have a feeling we would have lost north of 6,000 jobs.”

But even some within Connecticut government are unsure whether it’s legal to give a Native American busi-

MGM, barred from building a casino within 50 miles of Springfield, said it was eyeing the southwest Connecticut seaport city of Bridgeport.

ness entity a license to open a casino off its recognized tribal land without any competitive process.

“All men when they form a social compact are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community,” the Connecticut Constitution states in its first section. That language, according to the state’s attorney general as well as the nonpartisan Office of Legislative Research, which



The \$950 million resort casino in Springfield is slated to open in September of 2018.

performs analysis for the General Assembly, could be the basis for an unraveling of the East Windsor casino license.

“The bill could conceivably raise constitutional questions in that it appears to provide what may amount to an exclusive public emolument to the Mashantucket Pequot and the Mohegans,” the research office wrote in its analysis when the bill came out of committee in May before the Senate and House voted on it. “The Connecticut Supreme Court has held that this constitutional provision invalidates state laws that grant emoluments or privileges to individuals unless there is a valid public purpose.”

Both state and tribal officials argue the casino license fulfills a “valid public purpose”—keeping an estimated \$200 million a year and thousands of jobs from fleeing the state.

“We knew 9,000 jobs would be lost if we did nothing, and had the obligation to our employees to act,” says Kevin Brown, chairman of the Mohegan tribe. “We appreciate that the governor, House, and Senate came together to advance the project.”

ROVING EYE

MGM “hearts” Springfield, and vice versa. That’s the kind of love a \$950 million private investment as part of a \$3 billion revitalization of a tired downtown will bring.

In addition to the casino, MGM is planning hotel, retail, entertainment, and restaurant space as part of

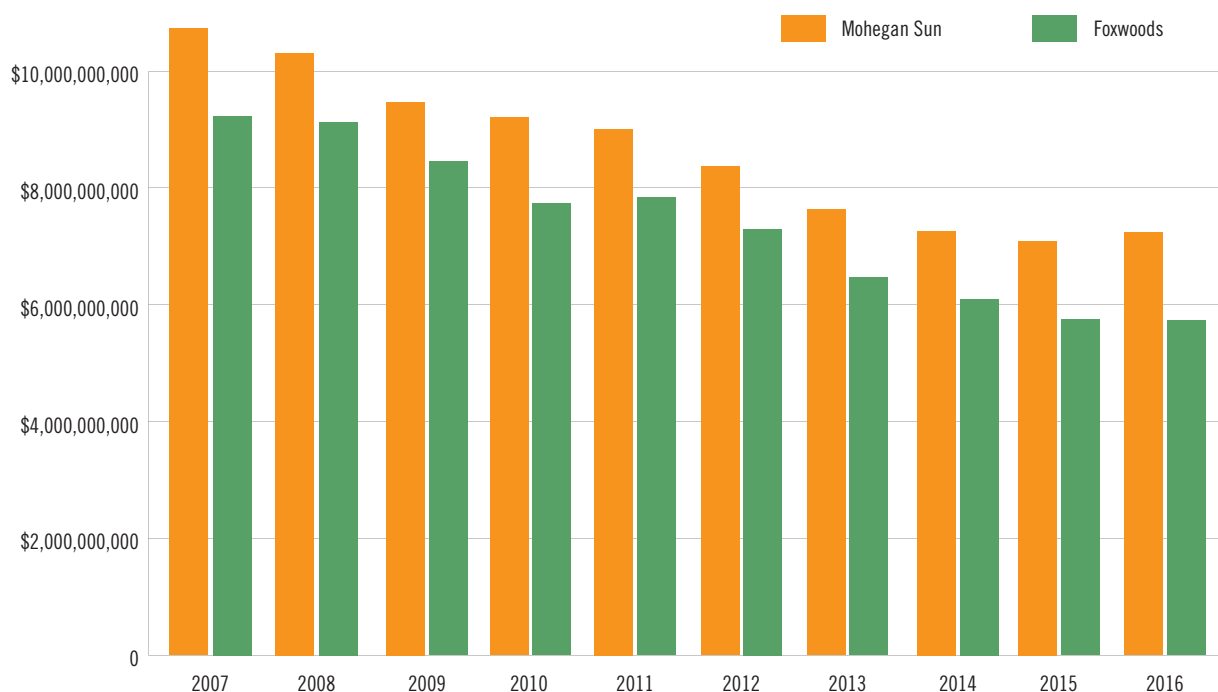
the complex, scheduled for opening in the fall of 2018. While those amenities offer the promise of helping to revive Springfield’s economy, a guaranteed \$17.9 million a year in direct payments to the city as part of the host agreement will also go a long way to easing the municipal budget crunch.

But much of that hinges on the rosy gambling predictions for the casino—an estimated \$512 million in gross revenues after the third year of operations, according to MGM data presented in its license application. Even though the payouts aren’t tied to gambling receipts, a drop in cash flow will certainly hit MGM and Springfield where it hurts—in the wallet. While the payout to the city is a set amount, fewer bettors mean fewer consumers in shops and restaurants and a reduction in the need for workers.

In an effort to help ensure a healthy revenue picture at the new casino, Springfield officials got a concession from MGM that even if neighboring states opened up their doors to more casinos, the company would be prohibited from building a gambling facility within 50 miles of the western Massachusetts city to avoid eating its own.

State officials had a similar concern when Mohegan Sun entered into a pact with Suffolk Downs in 2013 to try to win the Region A license in eastern Massachusetts. That deal came after Mohegan Sun failed to woo voters in Palmer, another town near the Connecticut border, to win the western Massachusetts casino license. State gaming officials required Mohegan Sun to sign an agreement

FALLING REVENUES IN CONNECTICUT CASINOS



SOURCE: Connecticut Department of Consumer Protection

stating the company would not market the Connecticut casino in Massachusetts or low-ball the Boston facility, in effect making it the ugly stepchild and gain the license only to protect Mohegan Sun's interests to the south.

Similar to Mohegan Sun, MGM sees the threat of cross-border competition, despite the bravado from company executives and from state and local officials. While MGM is prohibited from operating within 50 miles of downtown Springfield, mile 51 and beyond is open for business.

MGM made a strong lobbying push—spending more than \$3 million since 2015, according to the Connecticut Office of State Ethics—to get the General Assembly to either scuttle the Foxwoods-Mohegan Sun tribal partnership bill or alter the measure to open it up to competition.

MGM's CEO James Murren even played up his Nutmeg State roots in an op-ed in a local paper to convince lawmakers of the company's sincerity in pursuing a license for a Bridgeport casino.

"For me, our interest in Connecticut is about seizing an exceptional business opportunity, to be sure, but it is also quite personal," Murren wrote in the *Connecticut Post* in June, just ahead of the House vote. "That's because Bridgeport welcomed my family when they emigrated from Ireland in the late 1800s and early 1900s. It is the city where I was born, and where a work ethic took root that has helped to advance my career."

Mohegan Sun officials grouse that the Massachusetts Gaming Commission and local officials were holding

MGM to a different standard, allowing MGM to dabble in Connecticut even as it was building a casino in Springfield. The Mohegan Sun officials say they were forced to pledge not to use a Boston-area gaming license to protect their Connecticut casino revenue, while the Massachusetts commission never publicly addressed MGM's foray into Connecticut.

But Crosby, the chair of the Massachusetts Gaming Commission, threw up his hands and asked: "What would you have me do? I've never talked to anybody at MGM about it. Everybody does everything they can to protect their own operations and interests. We know they're very concerned about the Connecticut casino but there's been no ripple about that concern into our project."

Springfield Mayor Dominic Sarno echoed that sentiment. Sarno said from the day Massachusetts passed its casino law in 2011, he knew Connecticut would respond. He said the response he sees will have minimal effect on the project or his city's downtown redevelopment. He points to the renovated Basketball Hall of Fame, the newly opened Dr. Seuss Museum, the strengthened housing market, and the burgeoning restaurant and entertainment scene as a result of MGM's investment.

"I'm not going to waste my time worrying about what Connecticut is doing," he says, dismissing the East Windsor project as a pared-down gambling hall with few amenities. "There's nothing we can do. What we have here is a world-class facility, not a glorified slot parlor. It might

draw away from [MGM's] customer who gambles and goes home. MGM derives 28 or 32 percent [of their revenue] from gaming. You're going to get the full experience here in the city of Springfield."

Sarno dismissed MGM's dalliance with Connecticut, passing it off as due diligence from a responsible corporation.

"My concern was to keep the eye on the ball in Springfield," he says. The Bridgeport proposal "would be drawing from a completely different territorial area. Every businessman or businesswoman deserves to make a dollar. MGM will do whatever they feel is best for their business model."

MGM officials say they intend to pursue litigation to kill the Connecticut law and the competition it could bring, but they also insist the competition does not change their project or their prospects in Springfield.

"You don't stop that massive investment because someone across the street decides to remodel a movie theater," says MGM's Uri Clinton.

LESSONS LEARNED?

There's a lot to learn from the experience of casino gambling in Atlantic City. The oceanfront city, which had fallen into disrepair and disarray, saw casino gambling as a savior and voters and lawmakers, with visions of gold dust clouding their eyes, swung open the doors in the mid-1970s. Tower after tower shot up along the boardwalk in short order and East Coast gamblers, who had only Las Vegas and Reno as an option, started losing their money closer to home.

Four decades later, just seven casinos remain in Atlantic City and the city has fallen back to its destitute ways. Nine

non-competitive market at the time," says Barrow, the gambling company consultant and University of Texas professor. "The thought process was, 'just build it and they will come.'"

But market saturation and competition have taken a huge toll on the gambling industry in both states. The cross-border war between Massachusetts and Connecticut has the potential to do the same.

Crosby, the gaming commission chair in Massachusetts, says watching Massachusetts residents gamble away elsewhere was the spur for the casino law. "Our people are gambling, they're just not gambling in Massachusetts," he says, summarizing the rationale many put forward in favor of the state entering the casino sweepstakes. "We picked probably two of the three strongest, most impressive, most stable operators in the world in part so they would repatriate Massachusetts dollars and compete with whatever competition came up."

Crosby says industrial and state competition takes place in every sector; it's just that casinos are a sexier topic and attract more attention.

"Banks are at war, too," says Crosby. "The insurance companies are at war. It's just a fact of life."

Osten, the Connecticut state senator, says competition is healthy, but when it comes to the finite revenues available for gambling, it shows states they need to wean themselves from reliance on found money.

"I always think we should diversify our revenue base in all states," she says. "I think we should be cognizant about what's going on in the gaming world. Massachusetts clearly does think about it."

States find it hard to resist what looks like the easy money of casinos. The danger is that the growing competition could

water down the initial returns and turn the entire northeast into a sprawling Atlantic City. In addition to the three Massachusetts casinos, there is the potential First Light casino in Taunton, run by the Mashpee Wampanoag. There is a casino going up in Tiverton, Rhode Island. Foxwoods, Mohegan Sun, and the proposed East Windsor gambling hall are in Connecticut. And there are four newly approved casinos in New York, within a few hours drive of the three New England states, to further tax the loyalty and wallets of northeast gamblers. Finally, on the horizon several years

out and approved by the New York legislature is a potential mega-casino in New York City, one that could completely disrupt the whole landscape.

Something has to give, doesn't it?

"Once you build out all of the facilities that have been planned or proposed, you would be at or near the saturation point," says Barrow. "There are very few parts of the United States left where you're going to see gaming expansion." **CW**

"There are very few parts of the United States left where you're going to see gaming expansion," says Prof. Clyde Barrow.

casinos have opened and closed, and another 12 that were once on the drawing board were canceled.

In 1981, gross gaming revenue in Atlantic City was \$1.1 billion and began a steady rise year over year for the next 15 years, hitting a peak of \$5.2 billion in 2006. But, like in Connecticut, that has taken a slide back each year since, with gross revenues now at \$2.6 billion, half of what it was a decade ago.

"Both Connecticut and New Jersey had the luxury of a

Progressive politics from the ground up

Heather Gerken has spent years making the case that state and local government is the place for liberals and marginalized minority groups to push change and build power. With the election of Donald Trump, progressive federalism's moment may have arrived.

PHOTOGRAPHS BY FRANK CURRAN



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“STATES’ RIGHTS” HAS a long and ugly history in this country. The phrase has often served as code for the segregationist Jim Crow policies that southern states clung to in the face of federal pressure in the 1950s and ’60s. It made progressives wary of a bigger role for states in our system of federalism, and they reflexively supported a strong national government. But that’s an outmoded way to think about the balance between state and federal power, says Yale legal scholar Heather Gerken.

Today’s much more muscular federal government has plenty of power to protect racial minorities and other groups, she argues. What’s needed is the political will to do so. That can come at the federal level. But lots of the pressure these days to adopt progressive policies, says Gerken, comes from efforts that start at the state or even municipal level.

Consider the 2015 US Supreme Court decision legalizing same-sex marriage or the Affordable Care Act, which greatly expanded access to health care coverage for Americans. Both grew out of the proving grounds of state policy in Massachusetts, and are important examples of what’s been dubbed “progressive federalism,” an embrace of state-level power by the left that Gerken has been pushing for more than a decade.

National buy-in is needed to enshrine policies at the federal level, says Gerken, but the road to those changes often runs through city halls and state capitols. “Local decisions can serve as a much-needed catalyst for national debates,” she wrote in a 2012 essay in the journal *Democracy*. “Local politics don’t undermine national politics; they fuel it.”

It’s an idea that upends conventional thinking that the federal government is the backstop for maintaining progressive policy. Gerken was used to getting pushback from progressives when she argued that state and local government were the places to advance their cause—or to do battle against federal policies they oppose. The election of Donald Trump has gone a long way toward helping her make the case.

“I find that progressives are much more attuned to the argument in recent months, for reasons that you might imagine,” she noted wryly at the national convention in June of the American Constitution Society, a liberal legal organization. As one of the leading thinkers on progressive federalism, Gerken’s ideas are providing the framework for battle for those opposing Trump and the Republican takeover in Washington.

Signs of progressive federalism are everywhere these days, from declarations by mayors that they won’t cooperate with crackdowns by federal immigration authorities to the alliance formed by several governors, including Charlie Baker, pledging to honor the commitments of the Paris climate accord, despite Trump’s announcement that

the US would withdraw from the agreement.

Gerken doesn’t just talk the progressive federalism talk from the ivory tower. She oversees a legal clinic that works to demonstrate its power on the ground to influence broader national policy. In April, the San Francisco Affirmative Litigation Project, a partnership between Yale Law School and the San Francisco city attorney’s office, helped win a temporary nationwide order from a federal judge that blocks an executive order Trump issued in January to hold back federal aid to communities that limit their cooperation with immigration authorities.

Gerken’s work on the role of policy-making at the state and local level also extends to a view of politics and power that differs from that of some other liberals. She faults the idea of simply calling for governing bodies or institutions to mirror the diversity of society, arguing such arrangements “relentlessly reproduce the same inequalities on every decision-making body that exist everywhere.” Gerken says state and local government have been the places where racial minorities or other “dissidents” have been able to wield actual power, not simply have their voices heard.

“In place of what some call the ‘politics of presence,’ we have the politics of power. In place of the dignity of voice, we have the dignity of decisions,” she wrote in her *Democracy* essay.

While Gerken sees great opportunity for progressives who use the tool of federalism, especially under the current GOP hold on federal power, she says “federalism does not have a political valence.” Conservatives can also

Gerken’s ideas are providing the framework for those opposing Trump and the GOP takeover in DC.

engage and push their agenda at the state and local level, something that Gerken says makes for healthy debate. “If progressives are simply looking for guaranteed wins, it’s not decentralization that they should worry about—it’s democracy,” she wrote.

Gerken, whose early work focused on election law, is a lively conversationalist and is refreshingly down to earth for someone now at the pinnacle of legal scholarship in this country. She clerked after law school for US Supreme Court Justice David Souter and then spent several years in practice. She started her academic career at Harvard Law School in 2000. In 2006, she joined the faculty at

Yale. In February, Gerken was named dean of its law school—the first woman to hold the position—putting her in the top post at what is often ranked the country’s top law school.

A high-energy, ambitious multitasker, Gerken has supplemented her teaching, speaking engagements, and prodigious output of legal scholarship with a decidedly different kind of writing. Several years ago, she started writing vampire novels for her daughter, Anna. Gerken, writing in the *New York Times* in 2015, when Anna was 12 years old, described the unpublished novels as an effort to protect her daughter “from the future onslaught of

hormones, heartbreaks, and house parties.” Anna is cast in the stories as the strong heroine “in the hope that she will feel the tug of her own heroism inside her,” Gerken wrote. Next up: Novels for her son, who has requested a focus on baseball and zombies. It is exhausting just listening to Gerken describe how she finds time for her sideline work as a fiction writer.

Gerken was generously accommodating of an interview request, but it took some creative scheduling to work it into her packed calendar. We spoke by phone in mid-June as she was being driven by car service from Hartford, where she had just delivered a talk to the Connecticut Bar Association, back to her office in New Haven. What follows is an edited transcript of our conversation.

— MICHAEL JONAS

COMMONWEALTH: I’ll start with what I’m sure is often one of the first questions put to you about the idea of progressive federalism, and that is, hasn’t stronger national power often been the last defense for vulnerable groups and minorities, while states’ rights—the term alone conjures up certain ugly images—has been identified with some of the worst chapters in our history?

HEATHER GERKEN: That is the old understanding of federalism. But this is not your father’s federalism anymore. There are two crucial differences between our father’s federalism and today’s federalism. The first is that if the federal government wants to regulate to protect minorities, it can. Despite the best efforts of the Rehnquist and Roberts courts, the federal government retains plenty of power to play its traditional role of protecting racial minorities if it wants to do so. The problem these days isn’t that the law blocks those efforts; it’s that our politics blocks those efforts. The second key difference is that nowadays an enormous amount of the work on equality, an enormous amount of the work pushing forward racial progress, is happening at the state and local level. If you want to continue those efforts, if you want to build strong national equality norms, you have to start with the states and localities, because that’s where the conversation is now. If you think about policing, if you think about minimum wage efforts, if you think about almost any piece of the equality project [the

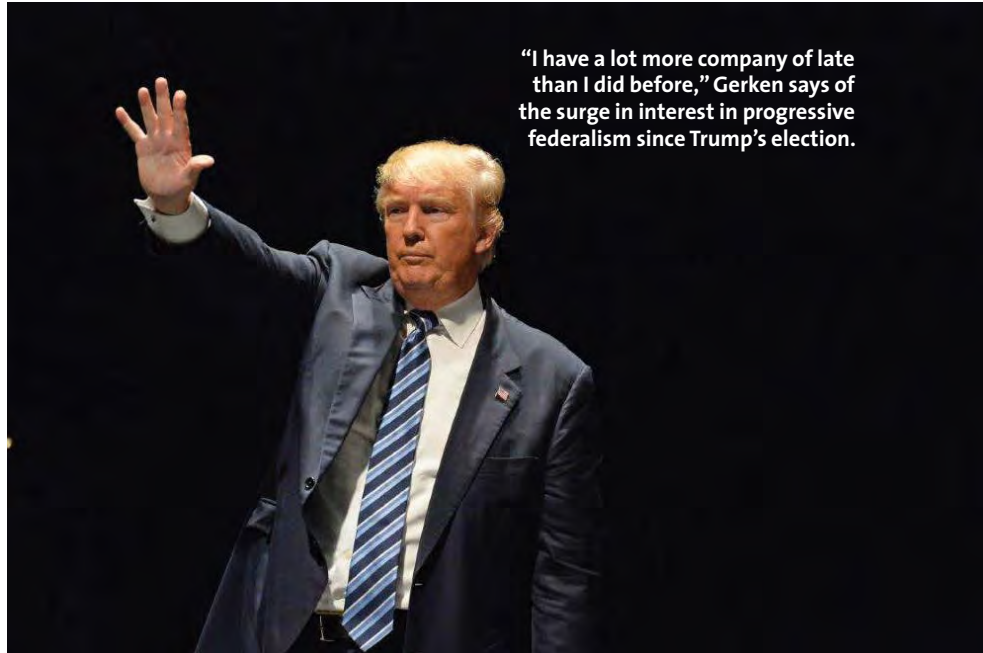


goal of equality, broadly speaking], it's happening now at the state and local level. And that is the key thing about today's federalism as opposed to your father's federalism. As the same-sex marriage movement makes really clear, if you want to build a national movement, you have to start by building state and local ones first. So it would be foolish for progressives who care about those issues to ignore the important work that's being done, even if their aim is national politics and national power and national norms.

CW: Can you settle one terminology and language issue that keeps bothering me. Alexander Hamilton was a founder of the Federalist Party but he was a proponent of a strong national government, and Jefferson was the decentralization advocate of what we now seem to call federalism.

GERKEN: As someone who is a nationalist in the spirit of Alexander Hamilton—and by that I mean a New Deal nationalist—it is perfectly plausible to imagine the states and localities playing an important role in a national democracy. We oftentimes think that it's a one-way ratchet—you have to be for or against state and local power. The right way to think about it today is that states and localities are part of a thriving national democracy, and they can be the tools for achieving centralization. That's the part that people have the hardest time thinking about. But decentralization can be a tool to achieve centralization. If you just think about the same-sex marriage movement, why did we get a national rule? We got a national rule because we worked it out in states and local governments first. Why do we have Obamacare? Because San Francisco and Massachusetts began experimenting with the kinds of health care programs that Obamacare eventually emerged as. The key to remember is, you can be a nationalist, and you can still think we don't want to centralize everything. You can even think we want to centralize many things, but still think that states and localities play an important role in working through that process.

CW: Shortly after the election, Mike Pence went to a performance of *Hamilton* on Broadway after which the cast pleaded with him to “work on behalf of all of us.” There was some talk about the irony of the scene, since Trump



“I have a lot more company of late than I did before,” Gerken says of the surge in interest in progressive federalism since Trump's election.

and Pence are now in the role of the Hamilton—they're part of an effort to assert strong national policy on a range of issues.

GERKEN: It's true that Republicans have often been more clearly associated with federalism. But both sides are fair-weather federalists. Both sides will, depending on the politics of the moment, prefer state or national power, depending on where they're in control. People ought to have a more enduring commitment to federalism for democratic reasons—that's the aim of my research agenda.

CW: It's that old saying that where you stand depends on where you sit?

GERKEN: Exactly. But my hope is to give people like me—who believe in a national politics and a national democracy and national norms—reason to think that it's still possible to think that states and localities are important.

CW: How did this subject become the focus of your work. I read one account several years ago that said a lot of your thinking about this almost came to you as a sort of epiphany as you were listening to a lecture by Cass Sunstein, who was then at the University of Chicago and is now at Harvard. Was it really that sudden?

GERKEN: Here is how I would describe it. I started out as an election law scholar. And election law is a place where you use majority-minority institutions in order to empower racial minorities and political outliers. And then I realized that the one other part of the academy where

that was true—where majority-minority institutions were used as a tool of empowerment—is federalism. It’s the only other intellectual arena to think about majority-minority institutions in a serious way. But the difference is, whereas in election law majority-minority institutions are thought to empower racial minorities and political outliers, in federalism those things aren’t much discussed. And I realized that there was actually a lot of work to do, particularly if you think about federalism as including cities and localities and juries and all the organizations that come from looking at “federalism all the way down.” If you think about all of those institutions, you realize that actually racial minorities and political outliers enjoy majorities all over the country, the same kind of majorities that an election lawyer would contemplate as sources of power. So that’s where the work began. Cass Sunstein had a different view. His view was that every institution should mirror the population – one dissenter on every decision-making body. My view is that it’s helpful to have institutions that vary in their composition. There’s a form of power that comes from actually having dissenters, not just the one person getting outvoted every time, but dissenters with the ability to put their ideas into play. For instance, when [San Francisco mayor] Gavin Newsom started marrying same-sex couples, where he was a dissenter, he was also able to make a policy decision. That’s a different kind of dissent. I call it “dissenting by deciding.”

“If you want to build
a national movement,
you have to start by
building state and
local ones first.”

CW: So that’s the distinction you talk about between “voice” and “power”? In your 2012 essay in *Democracy*, you wrote, “We expect dissenters to speak truth *to* power, not *with* it.”

GERKEN: That’s exactly right. Speech is really important, but social movements also know that it’s really important to speak truth *with* power.

CW: “Second-order diversity” is the term you use to describe that.

GERKEN: Usually, when you say diversity, people have an image in their head—mirroring. When Bill Clinton said he wanted a cabinet that would look like America, he wanted it to resemble in its demographics the entire pop-

ulation of the United States. That’s first-order diversity. When I think of second-order diversity, I imagine what we have in the rest of the country—institutions that vary dramatically in their composition. Some are black majority, some are Catholic majority, some are Polish majority. You find these institutions everywhere. I look at these as sources of empowerment. If every institution mirrored the population, then we would relentlessly reproduce the same inequalities on every decision-making body that exist everywhere else, and that doesn’t strike me as a particularly good empowerment strategy.

CW: When you wrote about San Francisco issuing marriage licenses before there was really state law authorizing that or you talked about some Texas schools changing their curriculum to teach intelligent design, it gives a picture of something that’s kind of messy, this cacophony of voices and actors. They’re certainly not all necessarily rowing in the same direction. You said in one interview that federalism can look “kind of ugly. It’s not neat and easy.”

GERKEN: I think the worst thing we can do is retreat to our red and blue enclaves and never speak to one another again. The thing about our system is that it ensures that people knock into each other, and that’s, I think, a really helpful thing in the long term for democracy. But it is messy on both sides. One of the things I always say to people is that federalism is for everybody. Everyone needs to suit up and get in the game, and it would be foolish if the system were to tilt one way or the other. Just as progressives are using states and localities to protect immigrants and to protect the environment and to pursue a variety of other causes, so, too, are conservatives using it to change the conversation on abortion or talking about religion in the schools or thinking about gun rights. Both sides are using federalism. The only question is whether you’re going to take advantage of that opportunity.

CW: You wrote recently in a piece in *Vox* that “federalism does not have a political valence” —a clear liberal or conservative orientation. I can see how that is true over the long term, but doesn’t it take more of a certain tilt depending on the time we’re in or what forces are in power nationally?

GERKEN: It definitely depends on who’s in power nationally because this is interactive. It’s not like the states and localities are just doing this on their own. But what I would say is federalism and localism can be both a tool of change and a tool of preservation—it just depends on how you use them. It doesn’t have a valence even in terms of which direction change goes. Not just between one side

or another but whether we change at all. Decentralization can slow down change and it can speed up change, depending on how it's used.

CW: You've been working in this area for more than a decade. A lot of that time was during the Obama presidency—and you served as an advisor in both of his campaigns. So this certainly was not driven by any sense of the moment to a progressive like you that the reins of federal power were being pulled dangerously to the right. Now, however, it seems to be such a different matter. It almost feels like the idea of progressive federalism anticipated the arrival of someone like Trump. Everywhere you turn there are stories touching on that. Bruce Katz from the Brookings Institution had a piece titled, "Why Cities and Metros Must Lead in Trump's America." "Liberals are Learning to Love States' Rights," was the headline on a *Washington Post* piece by Charles Lane. "States' Rights for the Left," was the headline on a piece by Jeffrey Rosen in the *New York Times*. Is this *the* moment for progressive federalism?

GERKEN: Well, I've been working on this for 15 years, so I'm clean on this one. I'm delighted to have people come late to the party. And I hope to convince them that this

shouldn't be a short-term commitment because they don't like the politics of the moment. A commitment to federalism should really be a long-term commitment based on the importance of democratic design. But I will just say, yes, I have a lot more company of late than I did before.

"I've been working on this for 15 years. I'm delighted to have people come late to the party."

CW: What do you think the Trump election means for this whole effort and for efforts to get people thinking more creatively or maybe differently than they had?

GERKEN: In some ways, the only chance of forcing the administration to compromise is federalism and localism. Right now Donald Trump does not need the votes of any Democrats to get his agenda through Congress. But if

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he wants to make change in many of the areas throughout the country, the federal government is heavily dependent on the states and localities. If Trump wants to get things done, he's going to have to get blue states and cities to cooperate with him. You see that already with regard to the battle over sanctuary cities and immigration. You're going to see it in a bunch of different areas. President Trump may not have to talk to anyone from the Democratic side in Washington, but he will have to talk to people from the Democratic side in California and New York and Massachusetts.

CW: You wrote recently that any federal program that doesn't touch California or New York or Illinois won't affect a large swath of the American economy. "That should create a healthy incentive for moderation going forward," you wrote. When I read that I couldn't help but be reminded of the famous proclamation by Barry Goldwater that "extremism in the defense of liberty is no vice, and moderation in the pursuit of justice is no virtue." So what does federalism, or progressive federalism, say to Goldwater? He was certainly a strong states' rights guy of the kind that was around in the early '60s. But it seems like federalism today, you're arguing, is actually a hedge against extremism in a way that's very healthy and we should be welcoming.

GERKEN: Because this is not your father's federalism, this is not a federalism where one side or the other gets a trump card. That's the old federalism. This is the new federalism, in which if either side has a trump card, then—as one other scholar put it—it's a jack, not an ace. We're so interdependent on one another that, in fact, neither side can force its agenda on the other. And that's actually healthy for politics and it comes, I should just emphasize, not from states' rights embedded in the Constitution, but from politics and administrative interdependence. I think there's a way in which people always frame this fight as a constitutional question. It's not a constitutional question; it's a political one. And the right opportunities for compromise exist when both sides depend on one another to get what they want. In that sense, because this is not your father's federalism, it's not Goldwater's federalism. It's a very different federalism. And that sort of mutual interdependence really matters if you want people to compromise.

CW: I'm struck that you talk about how a lot of these issues are really playing out in the political realm and that is what shapes the law. I don't know if there's a school of legal theory that that is part of, but you seem to not view things through an overly legalistic lens, but instead see how they play out on the ground, and that's what gives rise to how laws get shaped and made.

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GERKEN: The crude phrase to describe that idea is “law on the books” versus “law on the ground.” Lawyers and law professors, and particularly constitutional law professors, like the neatness that comes from having clear lines and trump cards to play and things that are legible because you can read them in an opinion or statute. But when you really look at how federalism works in practice, it looks not like anything that you see in the case law. Our model of federalism is what you read in a case. But when federalism plays out, it’s messy and it’s not easy to trace. But it matters enormously to see how it actually works.

CW: You’ve not spent your entire career in academia. You practiced at some point and you still have a foot in that world through the legal clinic in San Francisco that you co-founded and are the adviser to, a partnership between Yale Law School and the city attorney there. Is that an example of a place that’s doing “federalism all the way down”?

GERKEN: It is, and it’s actually been incredibly helpful to me. Very few law professors run clinics. Very few law professors do anything with state and local law, so it’s been a window for me on a world you don’t often see when you teach at a law school.

CW: How have things played out there on specific issues?

GERKEN: One of the things you see is that law has less to do with the Constitution and more to do with statutes. That is something constitutional law sometimes forgets. My clinic helped win the nationwide injunction [in April] against the [Trump administration’s] sanctuary city order. That was thrilling as a lawyer, but it was also incredibly interesting as a law professor to watch that case unfold. And it perfectly embodied what I’ve been writing about for a long time, which is that if the Trump administration wants to enforce immigration law in the fashion that it wants to, it’s going to have to get states like California and cities like San Francisco to do what it wants them to do. You really see the federal-state interdependence in this context.

CW: You grew up in Massachusetts, and you later spent a number of years teaching at Harvard Law School. Same-sex marriage and health care reform have been frequently cited as two enormous issues that first played out here in Massachusetts but very quickly made their way to the federal level.

GERKEN: Massachusetts is a perfect example of a state that drives the debate, because it’s one of the leaders in moving forward policy. The moment when Massachusetts and San Francisco started issuing marriage licenses to same-

sex couples is the moment when that debate changed dramatically. For the first time, you had people who were actually married in front of you. Having those pictures beamed into the televisions of people across the country, forcing people in other states to decide what they thought about those marriages and whether they were going to recognize them or not, it was just a game-changer in terms of setting the agenda. And Massachusetts has done that over and over again across a variety of issues. It’s almost always been at the lead of some of these efforts.

CW: Are we, if not the epicenter, one of the main centers for this idea of progressive federalism?

GERKEN: I would say that. There’s also a part of my work that’s about the participatory dimensions of federalism and localism. That really came through to me because I come from a tiny town, Bolton, that’s run by a town meeting system. When I think about where it is that people can have a chance to influence things, they can do it in cities and towns like that. So it makes a difference in a personal way to people, not just in terms of policies.

“Massachusetts is a perfect example of a state that drives the debate. It’s almost always in the lead.”

CW: Another Massachusetts tie-in to your work seems to be Louis Brandeis. You wrote in your piece in *Vox*, “Social movements have long used state and local policymaking as an organizing tool, a rallying cry, a testing ground for their ideas.” There certainly seemed an echo in that of Brandeis and his talk about states as laboratories for democracy. But did he have a vision of progressive federalism, or was it just federalism? I don’t feel like he was talking about minority groups or others who are shut out of power.

GERKEN: Progressive meant something different back then than it does now. Brandeis definitely was a progressive of the old type. The thing that’s really different is that Brandeis imagined that there would be 50 laboratories of democracy, each trying to adapt to local circumstances and generate new ideas. But what we, in fact, actually see is there aren’t 50 labs, there are two. One is red and one is blue. They’re highly networked with one another. They are connected in ways that Brandeis didn’t really contemplate, and that’s important if you think about how to encourage innovation, because it’s not happening in the

way he thought it would.

CW: And he didn't have this same conception of pushing authority or control further down. In some ways, the way you talk about it, it's a matter of demography and math: The smaller the scale you're operating on, the more chances there are for people who are shut out in the bigger picture to have some actual power. So that wasn't really on Brandeis's mind—those ideas, per se?

GERKEN: No, not in the same way that I'm describing here. But these ideas all have roots in those initial conceptions, so you should give him his due.

CW: The Massachusetts House of Representatives has actually formed a working group whose focus is keeping tabs on and reckoning with what's going on with the Trump administration and how the state might respond. One of the representatives who's heading up the committee said recently that he was worried that "we might be going to a gunfight with a knife." You'd probably say he is selling himself and his fellow state legislators short.

GERKEN: I think that sometimes states and localities think

so much about how big the federal government is that they forget how much the federal government depends on them.

CW: You're taking the dean's position on July 1, and you're so prolific as legal scholar, writer, and speaker. But you also somehow squeezed in time to write this whole series of vampire novels for your daughter. How did you manage to do that?

GERKEN: I am a relentless multitasker. When I would exercise and listen to music in the morning, I'd make up the story in my head, and then when it was too late at night to send any more email and I was too tired to read anything, I would write the story and then read it to her the next day. That's how I eventually pieced them together.

CW: You came out with eight or nine novels?

GERKEN: I finished nine and I'm now working on my son's first book, which he specified had to be about baseball and zombies.

CW: I read a piece you wrote in the *New York Times* about

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this and you said you were trying to weave into the vampire stories for your daughter “every bit of practical wisdom” that you have. You said that included how to have a male best friend and also how to be a “high-functioning introvert.” That last quality is something that you list about yourself on your Twitter profile. How do you manage that, given all the extrovert demands on your work, which I guess will only increase as you take on the dean’s role?

GERKEN: My greatest fear is a cocktail party. I don’t like people in the aggregate, but I like *my* people. Much of my work is for *my* people. It’s my students and my faculty and my alumni—those are people I feel in community with. Interacting with them is not hard. It’s the random strangers out in the world that I find somewhat tiring. One of my best friends is a low-functioning extrovert, so we make a good pair together.

CW: I was going to ask about the books for your son, who asked for novels on baseball and zombies. Given that you grew up here, are the Red Sox going to figure here?

GERKEN: They are, indeed. In the first book, the hero gets to relive the first season when the Red Sox won the World

Series. That’s his reward for fighting zombies.

CW: Their first win back in the early 1900s? Or are you talking about in the recent era, in 2004?

GERKEN: No, the recent one. My knowledge of baseball is so limited I can barely master the recent era. It’s a little

**Gerken calls herself
a “high-functioning
introvert” — an
overachiever with an
aversion to cocktail parties.**

bit of work for me. I have to do research on both baseball and zombies to write this book properly.

CW: And that’s on top of your legal research.

GERKEN: Exactly. But it’s a little bit easier. This stuff can be Googled. **CW**



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Deregulated health care not the answer

Analysis shows medical capitalism works for investors, not patients

BY EDWARD M. MURPHY

THE UNITED STATES has by far the most expensive health care system in the world. We spent \$3.35 trillion, almost 18 percent of GDP and more than \$10,000 per person, on health costs last year. The next highest country, Switzerland, spends approximately \$7,000 per capita. France, Canada, Australia, and the UK spend about half of the US average on each person and produce outcomes that are no worse and in some cases better. This is not news. The US has maintained its outsized health-cost growth for years and, given our aging population, continuing on this path will choke off other important spending and constitute an economic drag for decades. We are dramatically less efficient at delivering this service than any other industrialized country. Things have to change.

The policy makers now in charge in Washington believe they have the answer and the House-passed American Health Care Act is an attempt to advance it. Republicans advocate market-driven health care with fewer government mandates on employers, insurers, providers, and consumers. House Speaker Paul Ryan and others argue that the government's oversized role in health care has impeded the development of real market competition. Conservatives point to significant deregulation in the airline and trucking industries that led to greater competition, lower costs, and more price transparency. They think that deregulated, market-driven health care can achieve a similar outcome if government would get out of the way.

But evidence indicates that unbridled market forces will not make health care less expensive and more efficient. Hundreds of health-related companies are listed on stock exchanges and face the cold-hearted judgment of investors every day. Analysis of information disclosed by those

companies suggests that market forces will only accelerate cost pressures and divert more money away from patient care.

There are 60 large health care companies included in the S&P 500. The total revenue of those companies last year was \$1.68 trillion with net profit of more than \$150 billion. There are 10 other categories of companies in the S&P 500 ranging from energy to financials to telecommunications. The health care sector has more revenue than any other category except "consumer discretionary" companies, an enormous group that includes durable goods, apparel, automobiles, entertainment, and leisure. At the same time, the S&P 500 health care companies collectively generate more profit than any other sector except information technology and financial services.

The revenue and profitability captured by those 60 health care companies can be further divided into 10 subsectors to show where the money goes within the health economy.

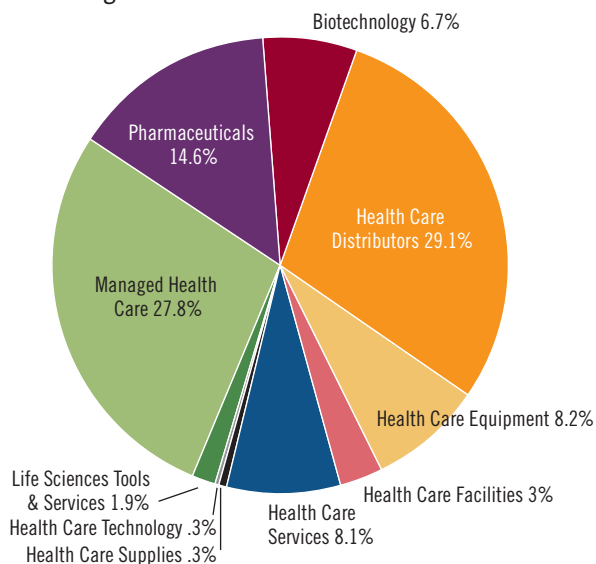
The two largest slices of revenue go to distributors and managed care companies. Distributors are intermediaries who help manage the supply chain of specialized products for hospitals, clinics, doctor offices, and nursing homes. Managed health care refers to insurance companies and HMOs that collect billions in premiums from employers, individuals, and governments and reimburse providers who deliver care to their insured populations. But in this health care market, there is less symmetry than one might think between revenue and profit.

When measured by profit, distributors and managed care companies shrink substantially

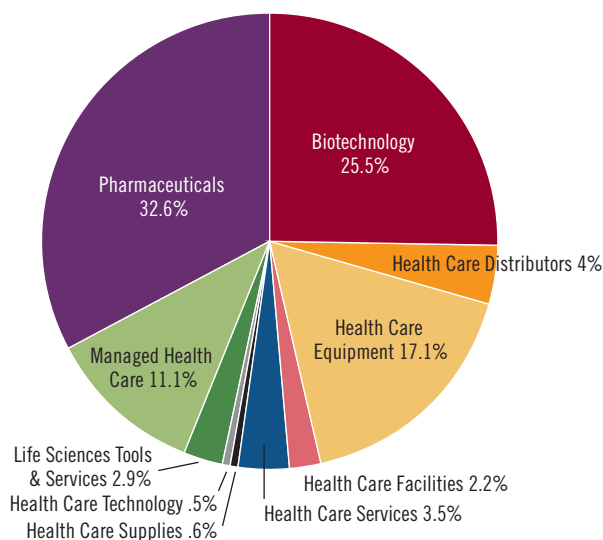


S&P 500 HEALTH CARE COMPANIES, BREAKDOWN BY SUB-SECTOR 2016

Percentage of Revenue



Percentage of Profit



SOURCE: Derived from Bloomberg LP database and company SEC filings

compared to biotechnology, pharmaceutical, and equipment companies. The biotech and pharma businesses are particularly eye-catching because they captured a combined 58.1 percent of the S&P 500 health care profit with only 21.3 percent of the corresponding revenue. Both biotech and pharma companies are in the business of producing medicines. The difference is that pharma companies do it based on chemistry while biotech firms produce medicine from organisms such as bacteria or enzymes. Their extremely high relative profitability echoes almost daily newspaper stories about skyrocketing drug prices.

When one drills down into the information filed by individual companies, the trends seen in the overall industry are reinforced. For example, the 10 most profitable health care companies in the S&P 500, as measured by profit margin, are listed in the chart on the next page.

All of these companies except Intuitive Surgical (a manufacturer of robotic surgery technology) make prescription medicines. The very high profitability of biotech and pharma companies offers insight into the marketplace in which they operate. They produce important, sometimes life-saving, medications. For example, Gilead Sciences, the most profitable of these companies, makes anti-viral products that treat HIV and Hepatitis B. Biogen, based in Cambridge, produces therapies for neurological and neurodegenerative diseases. Almost two-thirds of the revenue of AbbVie comes from sales of a single anti-inflammatory drug called Humira that treats rheumatoid arthritis, ulcerative colitis, and similar conditions. Well over half of Celgene's revenue derives from the sale of

Revlimid, a treatment for anemia and multiple myeloma. Highly concentrated revenue sources and the limited life of patents places enormous pressure on these companies to create new products to sustain their business.

The need for heavy spending on research and development is the traditional rationale used by biotech and pharma companies to justify high drug prices. Indeed, these companies do invest a lot of money in R&D. According to their filings, Gilead spent \$5 billion in 2016; Biogen \$1.97 billion; Amgen \$3.84 billion; Celgene \$4.4 billion; AbbVie \$4.3 billion; and Johnson & Johnson \$9 billion. The other firms made similar expenditures. But, as the chart shows, these companies have very impressive profit margins even after accounting for R&D expenses, a fact that undermines the argument for high pricing.

Another element of the high profitability of biotech and pharma companies derives from the unusual market conditions in which they operate. Their biggest customer, Medicare, is prohibited from negotiating for lower prices even though the program accounted for 29 percent of all retail drug spending in 2015. When Congress expanded the Medicare drug benefit in 2003, the price of getting the law passed was a concession to the powerful pharmaceutical lobby. In a classic example of what economists call rent-seeking, the federal government was prohibited from negotiating or setting drug prices reimbursed by Medicare. This has produced a bizarre situation in which other federal programs such as Medicaid and the Veterans Administration pay substantially less than Medicare for the same drugs.

S&P 500 HEALTH CARE COMPANIES WITH TOP 2016 PROFIT MARGINS (values in \$ millions)

NAME	SUB-INDUSTRY	REVENUE	NET PROFIT	NET PROFIT MARGIN
Gilead Sciences Inc	Biotechnology	30,390	14,377	47.31%
Biogen Inc	Biotechnology	11,449	4,138	36.15%
Amgen Inc	Biotechnology	22,991	8,038	34.96%
Celgene Corp	Biotechnology	11,229	3,226	28.73%
AbbVie Inc	Biotechnology	25,638	7,254	28.29%
Intuitive Surgical Inc	Health Care Equipment	2,704	728	26.94%
Bristol-Myers Squibb Co	Pharmaceuticals	19,427	4,680	24.09%
Johnson & Johnson	Pharmaceuticals	71,890	17,258	24.01%
Pfizer Inc	Pharmaceuticals	52,824	11,511	21.79%
Merck & Co Inc	Pharmaceuticals	39,807	8,433	21.18%

SOURCE: Derived from Bloomberg LP database and company SEC filings

The broader array of health care companies have lower margins than the biotech and pharma businesses. That is not to say they are unprofitable. The chart on the top of page 71 displays the 2016 financial performance of a sample of the largest companies in each of the health care subsectors. Note that the subsector boundaries are not perfect and some companies are in more than one. For example, Johnson & Johnson, which one might associate with Band-Aids and baby products, receives 46 percent of its revenue from pharmaceuticals, 35 percent from medical devices, and 19 percent from consumer products.

While all of these companies sell things aimed at patient service, it is striking how few of them have direct interaction with health care consumers. Only businesses in three of the categories routinely encounter a patient: retail pharmacies, facilities, and to some extent managed

120 hospitals and 118 surgery centers concentrated in the southern and western parts of the United States. (The company has two hospitals in New Hampshire.) HCA is known for very strong cash flow and its 2016 profit was just under \$2.7 billion. The company also spent \$3.2 billion in special shareholder dividends plus \$8.9 billion in share buybacks to elevate its stock price. It is notable to taxpayers that 41.7 percent of HCA's revenue came from Medicare and Medicaid.

The other consumer-facing health care companies on the list are insurers and managed care organizations. United Healthcare Group is the biggest—so big that it joined two other health care companies (McKesson and CVS) in the top 10 of last year's Fortune 500. All three of them were bigger in terms of revenue than General Motors, Ford, and AT&T. Managed care organizations have relatively low profit margins. Their revenue balloons because of the premiums paid by their customers, but they serve largely as transfer agents to providers who treat the patients. Their inventory is money.

United exploits its size and aggressively navigates the regulatory environment in which insurers work. One of the main issues facing insurers since the passage of Obamacare is what's called the medical loss ratio, which requires insurers to spend a certain minimum percentage of premium dollars on actual medical costs for their covered population. The minimum is 80 percent for small group plans and 85 percent for large group plans. If insurers fall below these levels, they must rebate the difference to their customers. This means that United and similar companies can use 15 to 20 percent of the premiums they collect for marketing, overhead, executive salaries, and profit. United's medical loss ratio for 2016 was 81.2 percent, which is about as low as it can get

Few health care firms sell direct to customers.

care companies. In all the other cases, someone else is buying the product or service before it gets to the patient needing care.

The large retail pharmacy companies CVS and Walgreens are the places most familiar to customers and, because of their multiple locations and easy access, might be sites where patients could make market decisions based on price. But as anyone who has purchased a prescription knows, the price is normally determined by the patient's insurance provider, not by the drug store. Customers might see price competition for toothpaste in the front of the store but not for prescriptions.

HCA Holdings, formerly known as Hospital Corporation of America, is the largest facility operator with

and the envy of its competitors. The US Department of Justice alleges that United is too aggressive and has sued the company to recover hundreds of millions of dollars billed to the Medicare Advantage program.

Company filings make it clear that some health care firms have enormous profits and almost all of them do very well in spite of the significant competition they face from other market participants. The disclosures are useful to the companies' investors but less so for patients trying to make better informed purchasing decisions. The market is effectively opaque from the point of view of an individual trying to decide where to seek treatment or what type of prescription to take.

The large and aggressive market in which health care companies operate has produced more than ample profit but has not effectively restrained the cost of our health care system. The reason is simple. The goal of those companies is to benefit their shareholders and they are free to do so when their customers cannot function as an effective counterweight.

The Republican majority in Congress and many right-wing think tanks want to double down on this approach,

further reduce government involvement, and hope for the kind of efficiency produced by deregulated airlines. Few Americans would object to companies earning reasonable profit in the service of an efficient and effective health care system. Governments are capable of purchasing health care efficiently if they can avoid self-imposed restraints. Washington conservatives want to repeal the medical loss ratio provision of Obamacare because it lim-

The health care market is opaque to patients.

its the profitability of insurance companies and is viewed as excessive government interference in the marketplace. For the same reason, the conservatives want to retain the law precluding Medicare from negotiating drug prices, which has the effect of increasing the profits of pharma and biotech companies.

Knee-jerk opposition to government involvement in the health care marketplace is misplaced for two reasons. First, government can't get out of the market. Even in the supposedly ideal deregulated health care world, the government would remain a dominating presence. In

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SAMPLE OF S&P 500 HEALTH CARE COMPANIES 2016 FINANCIAL PERFORMANCE (revenue and profit in millions)

COMPANY NAME	SUB-SECTOR	REVENUE	NET PROFIT	PROFIT MARGIN
Gilead Sciences Inc	Biotechnology	30,390	14,377	47.31%
AbbVie Inc	Biotechnology	25,638	7,254	28.29%
Amgen Inc	Biotechnology	22,991	8,038	34.96%
McKesson Corp	Health Care Distributors	196,498	2,592	1.32%
AmerisourceBergen Corp	Health Care Distributors	148,310	1,340	0.90%
Cardinal Health Inc	Health Care Distributors	127,235	1,416	1.11%
Medtronic PLC	Health Care Equipment	29,361	4,872	16.59%
Abbott Laboratories	Health Care Equipment	20,853	2,242	10.75%
Danaher Corp	Health Care Equipment	17,000	2,489	14.1%
HCA Holdings Inc	Health Care Facilities	41,490	2,641	6.37%
Universal Health Services Inc	Health Care Facilities	9,766	702	7.19%
HealthSouth Corp	Health Care Facilities	3,575	229	6.41%
Express Scripts Holding Co	Health Care Services	100,287	3,400	3.4%
DaVita Inc	Health Care Services	14,745	776	5.26%
Laboratory Corp of America Holdings	Health Care Services	9,642	781	8.10%
Cerner Corp	Health Care Technology	4,796	679	14.15%
Thermo Fisher Scientific Inc	Life Sciences Tools & Services	18,274	2,000	11.1%
VWR Corp	Life Sciences Tools & Services	4,514	167	3.70%
UnitedHealth Group Inc	Managed Health Care	184,828	7,200	3.9%
Anthem Inc	Managed Health Care	84,863	2,873	3.39%
Aetna Inc	Managed Health Care	63,154	2,920	4.62%
Johnson & Johnson	Pharmaceuticals	71,890	17,258	24.01%
Pfizer Inc	Pharmaceuticals	52,824	11,511	21.79%
Merck & Co Inc	Pharmaceuticals	39,807	8,433	21.18%
CVS Health Corp	Pharmacies	177,526	5,892	3.32%
Walgreens Boots Alliance Inc	Pharmacies	117,351	4,404	3.75%

SOURCE: Derived from Bloomberg LP database and company SEC filings

2015, the federal government was the source of 28.7 percent of all the health care dollars spent in the country. State and local governments provided another 17.1 percent. That's almost 46 percent of health care dollars which governments, as customers, have an obligation to spend well. Second, no one else can effectively negotiate with S&P 500 corporations, especially considering that another 27.7 percent of health care spending comes out of the pockets of individual households. Only about a quarter of the spending comes from businesses or other private sources. The inefficiency of our system compared to the rest of the developed world may arise not from government interference but from our government's self-imposed inability to act like a sensible buyer.

The argument that health care should become a true market rests on the classical economic theory that competition is the primary regulatory mechanism in a market

system. That mechanism can indeed work if certain pre-conditions are met: numerous competitive firms doing the selling; identical products offered by multiple sellers; and accurate knowledge of prices by the consumer. Those conditions exist in air travel but not in health care, nor will they in the event of massive deregulation. *Laissez-faire* capitalism is by its nature Darwinian, a concept that works in many industries but is ill-suited for health care. How likely is it that a patient needing the medicine produced by Gilead Sciences will choose to die rather than support their 47 percent profit margin?

In 1963, Nobel prize winner Kenneth Arrow published an article in the *American Economic Review* called "Uncertainty and The Welfare Economics of Medical Care," in which he argued that, because of its peculiar nature, health care could not function as a normal market. He predicted that "when the market fails to achieve

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PERSPECTIVES

an optimal state, society will, to some extent at least, recognize the gap, and nonmarket social institutions will arise attempting to bridge it.” His identification of the need for a bridge is not an argument that all physicians should report to bureaucrats or that the federal government should control everything. It is a recognition that some social institution must mediate between patients and the other market participants who have multiple goals of which the patient’s well-being is only one.

Arrow’s advice has value today if we want to provide adequate health care without destroying our economy. But to accomplish that goal we need to contain the uncontrolled market forces that have allowed for disproportionate profitability on the part of some health care companies. Rather than trying to restrain markets even less, conservatives should work to design the social institutions that can moderate greed while encouraging creativity and reasonable returns. The American health care system needs a hybrid design to manage conflicting goals. It should use market forces to encourage efficiency and innovation while using government purchasing power to limit exploitation.

If policy makers choose to make rules that benefit investors at the expense of patients, the system won’t last long before it transforms into something conservatives like even less, complete government control. Writing recently in the *New York Times*, another Nobel economist, Angus Deaton of Princeton, called for a single-payer health system “not because I am in favor of socialized medicine but because the artificially inflated costs of healthcare are powering up inequality...commanding an ever-larger share of GDP, and funneling resources to the top of the income distribution.”

The current system is not sustainable and a fully deregulated market-driven approach is less so. The right policy goal is to create a hybrid public-private system capable of evolving quickly in pursuit of its singular mission to serve patients effectively and efficiently. The market shows that much of our current health care system is structured to serve investors rather than patients. The correct way to reform the system is to realign those priorities so that investors are only a means to an end.

[Additional financial information is available on *CommonWealth’s* website.] **CW**

Edward M. Murphy was head of three state agencies between 1979 and 1995: the Department of Youth Services, the Department of Mental Health, and the Health and Educational Facilities Authority. He subsequently ran several health care companies in the private sector and recently retired.

John Frechette and Hunter Fogarty, recent graduates of the business school at Bridgewater State University, gathered financial information for this article. Murphy is a trustee at BSU.

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