

*Pre-empting
Public Policy*

Elizabeth Curran

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Outskirts Press, Inc.
<http://www.outskirtspress.com>

ISBN: 978-1-4327-9134-6

Library of Congress Control Number: 2012907020

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PRINTED IN THE UNITED STATES OF AMERICA

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Introduction

One of the questions thoughtful people discuss today is the evident power of corporations and their leaders to influence governmental decisions behind the scenes, decisions that will have far-reaching effects on society. One wonders how corporate leaders penetrate our polity successfully when so many groups are in the arena, lobbying for their interests. Citizens need to feel more comfortable about the policy-making process so that they can detect improper uses of power by elected officials and especially by non-elected people.

The political scene in the early decades of the twenty-first century is afloat in monetary gifts to politicians. Thanks to the United States Supreme Court in *Citizens United v Federal Election Commission* (2010), there is much less legal limitation than in the past on political donations to candidates for governmental office. Candidates use large amounts of money for advertising in the media, written material in handouts, and in all manner of communication to the public. In non-election years, there are also donations to advance causes that are directed to influencing government. Very wealthy people may use these donations to make a lasting impact on society. We remember the myth of the Trojan horse and the warning, “beware of the Greeks bearing gifts.” By this is meant any donation that looks pleasing and generous, but serves some purpose in addition to the apparent purpose. It may be a good purpose, helpful to an eleemosynary institution. Or it may be a purpose intended to have a vast far-reaching effect on society. We may well wonder what the intention of the donor is in such a case, and we may not be sure we want the gift.

This book illustrates how many kinds of gifts have structured several public policy issues of our time in ways that may or may not be desired by the public but are primarily items on the agendas of the donors. There are procedures that lawmakers are supposed to follow: what

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issues, including proposals of the governor, should be taken up in a legislative session, they themselves or independent attorneys they select should craft bills to deal with the issues, they should follow the rules of their respective legislative houses, assign bills to committees and schedule hearings. At the hearings level of the process, and only there, should lobbyists be heard. Legislators debate the issues themselves, in open meetings, and at the appropriate time they should make whatever changes they want to make through amendments and then vote to make final disposition of the bill. As will be seen in several policy areas, the process is far from the proper one for legislative consideration.

Our story begins in Madison, Wisconsin, with the inauguration of a new governor; its ending is not known yet. Many people are looking to Wisconsin to see the shape of political things to come. Will public employee unions recover from the legislation the lawmakers passed in 2011? Will the governor be recalled? Will the status of public education in Wisconsin continue with privatization, that is, to provide for charter schools and vouchers? Will the right to vote in Wisconsin and other states require a document with a picture to prove that a voter is who she says she is? Answers to some of these questions may come from Wisconsin during this year, 2012.

Madison, Wisconsin

Madison, the capital of Wisconsin, is in a beautiful location on two small lakes bordering a large campus where a cluster of buildings houses the University of Wisconsin. The city's major employers are the university and the state government. The white granite capitol building is gracefully set in a large park. The building itself has undergone a restoration and rehabilitation recently: begun in 1988, it was finished in 2003–04. Major work was done to restore the interior art work in the public areas and restore or replace the marble structures.

For several decades, Madison and Dane County have been known for a high quality of education and job opportunities. Forty-eight

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percent of the population over age 25 has at least a B.A. degree. In 2004, *Forbes* reported that the city had the highest percentage of individuals holding Ph.D. degrees in the United States and had an unemployment rate of 3.5 percent. In 2006, the Madison Metropolitan Area was on the list of the top 200 metro areas for business careers; it ranked 31st, and in 2009, the city ranked #1 of the top ten American cities for job growth; it had an unemployment rate of 3.5 percent in a year when the national rate was 6.5 percent.¹

These figures show a high level of academic achievement and job opportunities for Madison and its region in the period before the Great Recession. Much of this resulted from an economic boom that began in the early 1990s with high-tech companies locating in the city. The University fosters the transfer of academic research into real-world biotech applications.² The University has a Biotechnology Center that celebrated its 25th anniversary in 2010. Moreover, the Epic Systems is another innovation in medical technology. Originally a part of the University in downtown Madison, Epic has recently built a large campus just west of the city and will add to this campus in 2012 where it employs 5,200 people and expects to hire 800 more. There will be additional expansion in the coming years. This facility receives electronically and holds huge numbers of medical records from hospitals and medical offices around the United States and abroad, records that can be accessed electronically from those locations. The University of Wisconsin system has several other campuses, including the UW Milwaukee, UW Oshkosh, and UW Green Bay.

By 2010, the census reports numbers that reflect the downside of the recession when the city and its region did not escape the recent economic decline. In Dane County, the median income fell by 10 percent. The percentage of people living at or below the poverty level was 12 percent in Dane County and 18.7 percent in Madison. The comparative statistic for the state as a whole was 13 percent. The *increases* from 2000 to 2010 in several poverty statistics were dramatic: for Dane

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County the increase was 12.2 percent, for Madison, 18.7 percent, and for Wisconsin, 51.7 percent.³ These figures are discouraging because low incomes are related to poor nutrition and ultimately to the mental and physical development of children. The result is a child's life being negatively affected.

This was the picture at the end of 2010. Then there was an unexpected development. A new governor, elected in November and sworn in early in January 2011, had promised to improve the economy of the state and encourage the creation of jobs. He started his new job by creating a major controversy. His budget for the next two years was designed to reduce the impact of the public employee unions by almost eliminating the practice of collective bargaining whereby the management of state and local governments regularly met with the unions to work out employee pay, benefits, and related matters. There was a strong reaction to the Governor's plan not only by the unions but by the public around the state. The events surrounding this issue received nation-wide attention in the news media, and observers from all walks of life had their opinions about it. Everybody agreed: It was a surprise.

State Government

The people of Wisconsin elect a governor and Senate every four years, and members of the General Assembly every two years. The governor's office in Wisconsin is strong. Not only does he have the power of appointment of his department heads, and therefore, the power to lead the execution of his policies, he has the veto power and the partial veto. The partial veto allows a governor to remove, for example, one or more items from a budget and let the rest stand.

Early in the first year of a biennium, the governor presents his State of the State Address, highlighting his policy proposals and a budget for the next two years. Then the budget must be passed by the legislature. Thus, the governor has the initiative over expenditures.

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As with most state governors, he has the power to call up the state militia in an emergency; he commands the militia unless it is called to active duty by the president. Consistent with a system of checks and balances, a governor of Wisconsin can be impeached for unlawful activity or can be recalled by the people if sufficient signatures on petitions have been gathered to require an election. This matter is important in 2012 in view of the movement in Wisconsin to recall Governor Scott Walker.

A confluence of several forces led to the movement for recall. One was the Governor's plan to make changes in the compensation packages for public employees and to eliminate collective bargaining for most of the issues labor unions and the government traditionally had negotiated at budget time. The response of labor unions to the Governor's initiative was a second force. The third major force was the pressure applied by Charles and David Koch on the governor and on the Fitzgerald brothers who hold key offices in the state legislature. The Kochs have vast wealth, and they spend millions on the candidates they prefer before national and state elections. Koch Industries of Wichita, Kansas, is a worldwide conglomerate whose primary product is oil. Brooding in the background of this picture are the liberal politicians who illustrate Wisconsin's history with their tradition of support for the working man.

The previous governor, Jim Doyle, a Democrat, did not run for the office for a third term in 2010, possibly because he had not been able to erase the state deficit in the recession years, although his administration had succeeded in reducing it from \$3.2 billion to \$2.15 billion.⁴ Most of the states in the recession era were unable to balance their budgets, and in Doyle's second term, he and other governors appealed to the president for substantial federal funds to cover their ever-growing costs. Sufficient money was not available to the federal government to meet these requests. And the recession was well underway by 2010.

The Wisconsin Idea

The University of Wisconsin has been a strong player in the state's governmental affairs. There is a concept of policy-making that stresses truth and reasoned judgments called the "Wisconsin Idea" which relies on the joint efforts of the university and the state government to study issues of public concern in the state and produce proposals for action.

In the words of the Wisconsin Blue Book, "A distinguished historian recently attributed the Wisconsin Idea in part to such characteristic Midwestern values as decency and egalitarianism, 'which come together in a remarkable tradition of clean government (despite occasional problems along the way) and a strong tradition of service and cooperation.'"⁵

A paper written by Alan B. Knox and Joe Corry discusses the subject: "The Wisconsin Idea for the 21st Century."⁶ The message of this paper is that the university must expand its concept of education to include more partnerships between the university and the government for research and study, with the use of new means of communication and technology. The emphasis in education is now "lifelong learning," which means that education does not end with the student's graduation with a university degree but rather, continues throughout life. This means that educational institutions must be able to offer the means of communication and technology for distant or specialized research. So education at all levels requires more attention to using the new technology and to broadening the reach of learning to include even people who were never exposed to higher education.

The Wisconsin Idea is taken seriously not only by the state and the university but by people in various professions and the man on the street. It comes up in conversations when people want to express an important part of the state's culture. It is discussed today as people try to grapple with the serious problems the state and the nation must address.

1

A Costly Initiative



It could have been a story out of the 1880s when the news broke that Governor Walker told the press that he had advised the Wisconsin National Guard to be prepared for “labor unrest.”¹ He was gearing up to propose his “budget repair” bill to the General Assembly in February 2011, a piece of legislation that expressed his own conservative views about public employee unions and the financial condition of the state. The issues were not only the cost of state government but a perception that over the years public employee unions had been demanding too much from their employer, the State of Wisconsin. The vehicle for such demands was collective bargaining, the practice of employers and unions negotiating employee contract terms, long allowed by law in Wisconsin. Walker was also expressing the views of many Americans who disapproved of public employee unions or, for that matter, unions that worked for private businesses.

Scott Walker, the son of Llewellyn and Patricia Walker, was born in Colorado Springs, Colorado, in 1967. He grew up in Delavan, Wisconsin, after the family moved there from Plainfield, Iowa. His father was a Baptist minister and his mother a bookkeeper. Delavan is a small town of about 8,000 people in the southeastern part of the state. The family lived in modest circumstances, and the boy learned to save

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money; he learned from his parents the value of working for a living.

Scott became interested in government in his teens when he went to Washington, D.C., with Boys Nation, and met President Reagan. Scott had been active in Boy Scouts and worked through the Scouts program to become an Eagle Scout, the highest rank in the organization and one that requires a special project involving community service for the final badge. These various experiences made an impression on the young boy, particularly the meeting with President Reagan who became a role model to him.

After finishing high school in Delavan, Scott went to Marquette University in 1986. He spent four years there but did not finish college. During those years he gained some business experience selling warranties for IBM. After leaving college, Walker got a full-time job with the Red Cross doing marketing and fundraising.

In 1990, he decided to run for public office, still a young man of 22 but following his dream. Running for a seat in the Wisconsin General Assembly, he won the Republican primary but lost in the general election that year. In 1993, though, he won a seat in a special election and also won the hand of Tonette in February 1993. He and his wife have two children, and they attend a non-denominational evangelical Christian church in Wauwatosa.

Walker's political views were settled early in his political life. He supported welfare-reform, which, in the 1990s, was a hot topic in Washington where President Clinton was pursuing reform. Democrats agreed with Republicans that the welfare program was not promoting responsibility or independence on the part of recipients. So they created the program called "workfare" so that recipients worked for an income and received some federal assistance. On other policy matters, Walker as a legislator opposed an expansion of mass transit, supported limitations on state spending, and, in a portent of his position on dealings with public employee unions in 2011, he believed there should be a reform of the law governing labor disputes between the state and the

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unions. He served in the state legislature for eight years. Walker's views about unions were negative, but he had to live with them as county executive of Milwaukee County.

As county executive for eight years, he followed a very conservative Republican philosophy. Sometimes it appeared that money management was hard for him. He presented budgets to the County board that included revenue figures that were unrealistic, and he cut back on popular programs and employees to save money. He under-budgeted the costs of snow-plowing in 2003, but was lucky that the County had a smaller than usual snowfall that winter. He cut back on swimming pool openings or closed them earlier in the summer than appropriate in order to reduce costs. He cut funds for alcohol and drug abuse programs in 2003; the County Board restored some of that funding, which Walker wisely did not veto. In 2004, he cut funding for the General Assistance Medical Program which provided health care to poor people. His choices for funding cuts reached a low point when he cut funds for battered women shelters. The County Board restored some of the funding but not before this particular cut aroused public outrage² So Walker's political orientation was well known in Milwaukee and the state before he ran for governor.

There were other interests Scott Walker pursued while in the assembly. He was very interested in criminal justice, became the chairman of the committees on correctional facilities and corrections and the courts. He worked on a truth-in-sentencing bill in 1999 to bring an end to the "good behavior" reason for taking time off of sentences of prisoners. He was also a supporter of legislation requiring voters to present a photo identification at the polling place in order to vote in elections. This also would come back to haunt voters in 2011.³

In 2002, Walker's fiscal conservatism earned him the approval of voters for the job of Milwaukee County Executive, and he served in that office for eight years. Over those years he took steps to reduce the County's costs by reducing the number of employees by 20 percent,

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and he reduced the County's debt by 10%. However, as reported by the Associated Press, "overall county spending . . . increased 35 percent over his tenure" as County Executive. The conservative Greater Milwaukee Committee reported that during his tenure, the County came to be "in such dire financial shape that state lawmakers should push through legislation that would allow it and other local governments to file for bankruptcy."⁴ Nevertheless, Walker succeeded in capturing the attention of the Wisconsin electorate when he ran for governor of the state in 2010, promising to create 250,000 jobs and roll back the 2009 tax increases on small business and capital gains. At the same time, he promised that he would cut the wages and benefits of state employees. He won the election by 52 percent of the total vote.⁵ It was a year of conservative dominance in elections nationwide.

Soon after his inauguration as governor on February 1, 2011, on the night of a blizzard with the wind howling outside the capitol, Walker gave his State of the State Address. Attendance by legislators was sparse. In the message, he warned that the state was facing a shortfall and had to reduce costs. He suggested significant cuts in entitlement programs, in the responsibility of state employees to cover more of their health care and pension costs, and in reforms of the state's relationship to local governments. He said,

...The difficult reality is that healthcare costs and pension costs have risen dramatically and that has created a benefit system that is simply unsustainable. Government benefits have grown while so many others in the private sector have seen their benefits adjusted in order to protect jobs.

Currently, most state employees pay next to nothing from their salaries toward their pension, while the state's taxpayers pay more than \$190 million each year on state employees' behalf.

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Asking public employees to make a pension payment of just over 5% percent (which is about the national average) and a health insurance premium payment of 12 percent (which is about half the national average) would save the state more than \$30 million over three months. Most workers outside of government would love a deal like that—particularly if it means saving jobs.

Summarizing these points, the governor said, “Our upcoming budget is built on the premise that we must right size our government. That means reforming public employee benefits— – as well as reforming entitlement programs and reforming the state’s relationship with local governments.”⁶ There was no mention of revising the decades-old collective bargaining law in Wisconsin.

Just before he presented his plan about collective bargaining to the legislature, the governor called key leaders to a closed-door meeting with him where he told them about the changes to collective bargaining that he intended to present in the formal session. The day before this, there had been a news item in the local paper about the 1981 firing of the air traffic controllers by President Reagan when they went out on strike. Joseph A. McCartin has written a book about the PATCO strike; his observations are relevant in the light of Governor Walker’s action in 2011. McCartin writes:

In the spring, Governor Scott Walker of Wisconsin invoked Reagan’s handling of Patco (sic) as he prepared to ‘change history by stripping public employees of collective bargaining rights in a party-line vote. “I’m not negotiating,” Mr. Walker said. By then the world had seemingly forgotten that unlike Mr. Walker, Reagan had not challenged public employees’ right to bargain— only their right to strike.

With Mr. Walker’s militant anti-union views now ascendant within the party of a onetime union leader, with workers less

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able to defend their interests in the workplace than at any time since the Depression, the long-term consequences continue to unfold in ways Reagan could not have predicted – producing outcomes for which he never advocated.⁷

While it is not known what was in Governor Walker’s mind at the time, the news item was fortuitous in illustrating how unions sometimes take extreme action like an illegal strike. His admiration for the former President was well-known. He may have thought that his proposed action to drastically weaken collective bargaining was similar to Reagan’s action thirty years ago.

Governor Walker arranged to have his legislation drafted by a local well-respected law firm; it was not drawn up by the state’s legal staff, though that would have cost less. By the time he was ready to introduce “his budget repair bill” to the General Assembly on February 11, he may have had wind of a likely reaction to his plans about employee pensions and health-care costs that would be building in Madison and around the state. The day after the presentation of the bill, the press was full of the statements by Democrats in the legislature and union leaders that expressed surprise and dismay about the Governor’s intentions in dealing with the expected budget shortfall.⁸

The Governor projected a shortfall of \$137 million, and he called upon the legislators to vote in favor of new contributions that public employees would have to make to their pensions, and the new share of their healthcare costs that they would be required to pay. He also described the major changes that his proposed legislation would make in collective bargaining rules. Collective bargaining would be eliminated from all the types of agreements the union had been accustomed to dealing with, like pensions and health-care contributions, but the bill also eliminated a number of other subjects that were standard subjects for negotiation like personnel issues. The only issue for collective bargaining negotiation henceforth would be base wages. Any requests for

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increases over the base wage as adjusted by the consumer price index in a particular year would be subject to a referendum of the people.⁹

A month before the Governor made his proposal, the state's fiscal bureau reported that the State of Wisconsin would conclude its fiscal year with a surplus. The bureau said that austerity was not needed. As reported in the "Talking Points Memo" of February 17, "the current budget shortfall is a direct result of tax cut policies Walker enacted in his first days in office." Jack Norman, Research Director for the Institute for Wisconsin Future, a public interest think tank, noted the fiscal bureau's report to the legislature, and commented that "Walker was not forced into a budget repair bill by circumstances beyond his control . . . He wanted a budget repair bill and forced it by pushing through tax cuts . . . so he could rush through these other changes. The state of Wisconsin has not reached the point at which austerity measures are needed."¹⁰

The fiscal bureau's report itemized three initiatives by the Governor: \$25 million for an economic development fund, \$48 million for private health savings accounts, and \$67 million for a tax incentive plan that benefits employers. The tax incentive plan was set at levels too low to encourage hiring. These three programs held more than half of the "shortfall" upon which the Governor had based his austerity judgment. Norman said, "The provisions in his bill do two things simultaneously. They remove bargaining rights, and having accomplished that, make changes in the benefit packages."¹¹ Thus, public employees would not only have reduced income, their bargaining rights would be significantly limited.

The Fallout

The public reaction to the Governor's proposals was dramatic. Demonstrations were planned for the capitol, both inside the building and outside, in spite of the February cold. Union leaders and organizers from around the state arranged to come to Madison and to stay there,

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finding room as they could or planning to sleep in the capitol building at night. They brought their own food or bought it from vendors around the capitol. A pizza place sold out at night but would stock up with the necessary ingredients the next day. Soon there were orders from around the state for pizza for the demonstrators, and then, as word spread via the Internet, orders for pizza came from some 50 countries around the world.

Farmers from around Wisconsin drove their tractors to Madison and turned on to John Nolen Drive, an accommodating roadway where people could see them in a long line making their statement for the public employees. The protesters staged their presence at the capitol for about two weeks, though some stayed well into the summer. Videos were made of the crowds singing and carrying signs. Some of those attending were impressed by the dignity of the protesters as they spoke to each other and to residents and visitors. People supporting the governor's proposals also came to Madison, and they too carried their signs stating their views. Lobbyists for the Republican position on the legislation were also insistent.

When the Senate Democrats tried to get the governor to meet with them and negotiate some of the terms in his bill by offering to accept the provisions dealing with employee health care and pensions, he refused, saying that "people must have been in a coma not to have known what he intended in his cost-cutting plan for the state"¹² What the Democrats wanted was an agreement by the governor to modify the bill regarding the collective bargaining provisions. The largest of the unions filed an unfair labor practices complaint against the governor with the Wisconsin fair labor relations board, arguing that the governor had a duty to negotiate but declined to do so. Perhaps in response to that complaint, the governor did discuss with Democratic senators some provisions regarding collective bargaining that he would be willing to negotiate with them, but these communications were informal, using email for some exchanges, and in the end no agreement was reached. The lack of an

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agreement between the two sides on these matters may have been the spur that caused 14 Democratic senators to leave town on February 21 so as to stall any opportunity for a vote on the budget. They did say they would not return to the state until the governor removed the limitations on collective bargaining in the bill.¹³ In their absence, the senate lacked a quorum to do business. The absent senators conducted other business by phone or electronically with their legislative colleagues in Madison. Meanwhile, the bill was not acted upon in the assembly.

According to the *Daily Reporter*, the unions appeared before the legislative committee to provide testimony on February 15. A meeting of the Joint Finance Committee ran through the night until 8:00 a.m. the 16th. It resumed at 9:00 a.m. as workers and union supporters opposed to the budget gave their statements. This session went until 3:00 a.m. Wednesday. The Republicans stopped the meeting of the Joint Finance Committee after 22 hours of testimony¹⁴

On February 21, there was a report that fourteen Democratic senators were out of town and would not be present at meetings of the Senate; they were found in Illinois, across the state line. On the 23rd, it was reported that the Wisconsin budget bill put federal transit money at risk because there was a stipulation in the federal transit aid law that transit workers must be able to collectively bargain. Walker's bill would apparently strip those rights from the transit unions.¹⁵ Unfortunately, the governor had announced even before his inauguration that he rejected an \$8 million aid package offered by the Obama administration for new, improved train service between Milwaukee and Chicago. However, there was still alive a smaller federal aid package for transit in Wisconsin, so the concern about transit workers was valid.

Events in Wisconsin continued apace. On the 24th, there was a prank phone call made to Governor Walker that ran on for about 20 minutes, a call from a man pretending to be David Koch. Governor Walker did not know that the man on the phone was not David Koch. So he expressed very freely about how he felt matters were going with

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his new budget repair bill. The reporter, James Riggs, commented that Walker “hates bargaining” and is not good at it. The poser, who turned out to be Ian Murphy, editor of the *Daily Beast*, made the phone conversation available to the press.

Murphy-Koch responding to Walker’s greeting, “I’m a little disheartened by the situation there, but, uh, what’s the latest?” Walker reported a plan to stop direct deposits of the paychecks of the 14 absent senators. “. . . you still get a check, but the check has to be personally picked up and [the chief clerk is] instructing them—which we just loved—to lock them in their desk on the floor of the state Senate.” Walker tells Murphy-Koch that “the Assembly is taking the bill up but the Democrats have about a hundred amendments they’re going to go through.”

Murphy-Koch thought the plan “beautiful.” Then he asked, “Now who can we get to budge on this collective bargaining?”

Walker said, “I think the paycheck will have an impact . . . secondly, one of the things we’re looking at next . . . we’re still waiting on an opinion to see if the unions have been paying to put these guys up out of state. We think there’s at minimum an ethics violation if not an outright felony.”

Murphy-Koch: “Well, they’re probably putting hobos in suits.”

Walker: “Yeah.”

Murphy-Koch: “That’s what we do. Sometimes.”

Walker: “I’ve got layoff notices ready . . .”

Murphy-Koch: “Beautiful; beautiful. Gotta crush that union.”

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Walker: “[bragging that he doesn’t budge] I would be willing to sit down and talk to him, the assembly Democrat leader, plus the other two Republican leaders—talk, not negotiate and listen to what they have to say if they will in turn—but I’ll only do it if all 14 of them will come back and sit down in the state assembly . . . Legally, we believe, once they’ve gone into session, they don’t physically have to be there. If they’re actually in session for that day, and they take a recess, the 19 Senate Republicans could then go into action and they’d have quorum . . . so we’re double-checking that. If you heard I was going to talk to them that’s the only reason why. We’d only do it if they came back to the capital with all 14 of them.”

Murphy-Koch: “Bring a baseball bat. That’s what I’d do.”¹⁶

The demonstrations continued. Teachers around the state who wanted to come to Madison to lobby cancelled classes or called in sick. School administrations in many cases did not penalize them, but in November, seven doctors who wrote “sick notes” for demonstrators received reprimands from the Medical Examining Board long after the protests were over. The issues raised in this matter were serious. A reprimand is a permanent blemish on a doctor’s license to practice medicine. The specific cause stated for this disciplinary action was the doctors’ failure to keep adequate records on their reports. More of the distress of the protestors became public with the statement of the attorney for two of the doctors that some of the teachers, nurses, and others were “in extreme distress, insomnia, emotional distress.” “The doctors ‘truly viewed this as a public health and community outreach effort. They never anticipated the negative media attention.’” Another attorney representing five other doctors said that “the doctors had never been disciplined by the Board before. They have long careers full of good work. The reprimands are for an hour and a half of time and 18 sick notes, all of which were true and well-intentioned. These are harsh, harsh consequences indeed.”¹⁷ At least a dozen doctors were

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disciplined for writing sick notes.

The Madison School District said “84 teachers submitted fraudulent sick notes during the protests. The district has refused to release copies of the more than 1,000 sick notes it received.” The newspaper filed a lawsuit to have records released, according to the *Wisconsin State Journal*.¹⁸ The copies of the sick notes were made available in response to the court’s decision November 21.

There was a second gathering at the capitol when the bill was finally voted on March 10; after everybody had gone home it was determined that the costs to the state resulting from the weeks of demonstrations and public argument was \$8 million. Repairs are still being made on the significant damage made to the interior of the capitol building. The second floor of the rotunda has boards covering the damaged marble walkway. The men’s room on that floor is closed for repairs.

Governor Walker got his way about the budget repair bill: it was passed when the Democratic senators came back to town. In the recesses of the bill, however, was a provision that allows the sale or contractual operation of state-owned power plants to a private entity with or without a solicitation of bids. This was a matter of interest to the Koch Industries because they own a pipeline system that crosses Wisconsin and operates subsidiaries that refine gasoline and other products.¹⁹ That provision did not appear in the final law that was passed by both houses. At this writing, it is not known whether alternative action was taken by the legislature to provide for that law separately, but the provision itself was important to the issue at hand because it showed the financial strength of Koch Industries in Wisconsin.

Wisconsin, like many of the American states, has an Open Meetings Law whose intent is to prevent action on proposed legislation in haste or without providing time for opposing arguments to be made before legislative bodies. The law applies to the work of committees as well as to both houses of the legislature. The Democrats appealed to the state court about the legality of the budget repair bill based on the

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procedural issue that the open meetings act had been violated when the chairman of the Joint Finance Committee considering the bill had not made a public announcement scheduling a final vote on the bill in committee at a specific time, and allowing a certain number of hours to pass before that vote. The judge found that the open meetings rule had been violated, but the Supreme Court voided her decision arguing that it was not related to the substance of the bill. The membership on the State Supreme Court was soon to be voted upon in a statewide election; the challenger was defeated in the subsequent election.

The law was appealed to the Federal courts at the instance of the Wisconsin Education Association with the argument that the Budget Repair bill created discrimination among the employees based on the nature of their work. Firefighters and police were not covered by the new collective bargaining law, but other public employees were covered. The case to be decided at the Federal level is whether a distinction could be made between kinds of employees based on the nature of their work. The case was filed in the United States District Court for the Western District of Wisconsin.²⁰

Democratic leaders around the state decided that something had to be done to put an end to the work of the Republicans. They decided to seek to recall six of the Republican senators who had voted to support the governor's bill and to organize a petition drive to get enough signatures so that a recall election could be held. There was an intention to recall Governor Walker too, but under the law, the petitions for signature had to be delayed until he had been in office for at least a year.

By the time recall elections of Republican senators had taken place in July and August, the Democrats wondered whether to continue with the effort to recall the Governor. Volunteers were exhausted. The Democrats, felt that they had accomplished much of their goal by winning the recall of two of the six Republican senators. The Republicans for their part tried to recall three Democratic senators but that failed at the polls. Hence, the Democrats felt that they had a victory. Now,

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the Wisconsin Senate had a narrow split of 16 Democrats and 17 Republicans, which would strengthen the Democrats' hand. Finally, in November, the Democratic Party of Wisconsin decided to pursue the recall of Governor Walker.

Meanwhile, the Wisconsin State Employees Union became decertified as the official bargaining unit for 23,000 members.²¹ Certification by a vote of the members must be done every year to validate a union's authority to negotiate with management on behalf of its members. The WSEU leaders saw no benefit to undertaking future negotiations with management since the issues they could discuss had been reduced drastically by the new law.²² However, by November, some unions held elections and six of them voted to recertify.²³ This will give them the opportunity to bargain collectively with the state for cost-of-living wage increases.

Just before the Labor Day week-end, the President requested a joint House-Senate meeting so that he could address the Congress and recommend a policy to deal with the unemployment situation. After scheduling difficulties, it was agreed between the White House and the Speaker of the House of Representatives that the date would be September 8. The President made a strong speech urging Congress to pass his jobs bill. By Thanksgiving, however, the "super committee" of 12 senators and congressmen concluded its work with no plan for reducing the deficit. This, in turn, gave no impetus to hiring.

Other cities in the nation were facing high pension costs for their employees. Some but not all were the result of union pressures over the years. These costs, and, indeed, costs to run municipal governments as a whole, had become too much for local communities to sustain, as in Republican Orange County, California, where people who did not like unions seized upon the unions' part in the high costs of running a city or village. Unbalanced budgets had become endemic across the country. In a *The New Yorker* magazine article, Tad Friend described the hostility that suffused the town of Costa Mesa about the cost of

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pensions for employees that ended in a suicide of a trusted employee whose work skills were depended upon by fellow workers and by his superiors.²⁴

The United States was going through a time of great trial in these early years of the Obama Presidency. In 2011, alone, there were problems concerning the debt ceiling, Hurricane Irene, and the costs of several other disasters: the tornadoes in the Southeast, and wildfires in the Southwest, particularly in Texas and Arizona. Republicans began their intense campaigns for an ever-growing list of presidential candidates looking to primary elections early in 2012. The impact on the American government of the Arab Spring, with three Arab countries overthrowing their autocratic leaders, and the continuing unemployment rate of more than 9 percent were continuing challenges. To cap it all off, the behavior of Congress apparently caused the Standard and Poor's officers to reduce the borrowing rate of the United States from triple A to double A+. By Labor Day, the United States had had a bad year.

It was difficult to understand why the Republicans and other conservatives took such a negative position toward everything that the President proposed, much less help find a compromise about the health-care bill in 2009–2010 or the national budget in 2011. Observers said the government was dysfunctional. A pledge had been taken by Tea Party members and some Republicans before the 2010 election that they would never vote to raise taxes under any circumstances. Some people wondered if they did not know that government is all about working through problems together and compromising as necessary for the good of the country.

Some of the unwillingness to resolve problems together emerged in anger toward the Wisconsin Governor by the Democrats in the Legislature and the public employee unions. They had not forgotten the Governor's actions of the previous winter and spring as he took what they considered radical actions without warning and did not

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pursue a compromise with the Democrats who hoped to develop some sort of agreement with him. During the summer, when they sought the recall of six Republican senators, the Democrats began to consider whether to seek a recall election to remove the Governor.

In November 2011, with the state under the new law governing labor-management relations for public employees, state employees asked for raises in the base wage which formerly would have been subject to negotiation. There was no negotiation; the Governor proposed a pay plan to the Legislature's Joint Committee on Employee Relations, a plan that provided for no raises for two years.²⁵ The plan was passed, much to the frustration of the union.

In January 2012, the *Wisconsin State Journal* reported that a substantial number of public employees took their retirements during 2011: in 2010, there were 11,750 retirees, but in 2011, 18,780 state and local government employees, including school district employees, retired. Executive Director Marty Beil of the Wisconsin State Employees Union attributed this record number of retirees to the new law and to the fact that employees were concerned about what other rules and pay decisions may occur in the coming years without the protection of a union contract.²⁶ A spokesman for the Governor, Cullen Werwie, said "Workers are protected by one of the nation's oldest civil service systems in the country and are now able to work directly with their supervisors on improving services."²⁷ If that were the case, one might wonder why so many employees retired in 2011.

On February 9, 2012, the Legislative Fiscal Bureau reported that the State had a shortfall of more than \$143 million in its 2011–2013 budget.²⁸ Tax revenues were lower than expected, and there were debts outstanding. There was also the cost of new legislation. It was hoped that improvements in the national economy would help the states recover.