

LEVIN CENTER AT WAYNE LAW

ADVANCING OVERSIGHT. STRENGTHENING DEMOCRACY.

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Michigan Senate Committee on Oversight Hearing

Testimony by Jim Townsend, Director of the Levin Center at Wayne Law

Mr. Chairman and Members of the Committee, I am Jim Townsend, director of the Levin Center at Wayne State University Law School. I am accompanied today by Ben Eikey who serves as manager of state training and communications at the Levin Center. I had the honor of representing the 26th District in the Michigan House of Representatives from 2011 to 2016 where I served with all but one of the members of this committee. Ben served as a staff member in the Offices of Representatives Joe Graves and Dave Pagel. It is good to see all of you again. Additional information about our backgrounds and the work we do with our Levin Center colleagues at the Law School in Detroit and in our Washington, D.C. office can be found on our website and at the end of this statement.

Thank you for inviting us to appear before you today to discuss the report from the Citizens Research Council of Michigan (CRC) entitled "Imagining What Should Be: Robust Legislative Oversight in Michigan." We at the Levin Center are pleased that the CRC's study drew on research that the Levin Center has funded and conducted in recent years and we agree with many of the findings and recommendations contained in the report. Because of that I'm going to touch on a few of the most important findings and recommendations and then focus on the bigger issue implied by the report – that the Michigan Legislature has a tremendous opportunity to serve the people of Michigan by working across political and ideological difference to get at the facts and bring forward important truths about issues that affect us all.

Many Oversight Resources Already Exist in Michigan

As the CRC report points out, many elements of effective and ongoing legislative oversight are already in place. Most important among these are: a highly regarded and well-resourced Auditor General's office, professional Legislative Council office, professionally staffed House and Senate fiscal agencies that provide non-partisan analysis of critical issues and legislative proposals, and a fairly large number of staff members working in your legislative offices in a full-time legislature.

Ben and I and our colleagues travel the country (either in person or via video) talking with your counterparts in other state legislatures and we find that relatively few of them have the resources to conduct legislative oversight that you have here in Michigan. For example, most state legislatures are part-time and have fewer dedicated staff. Not every state has a strong Office of Auditor General (OAG) that has a constitutionally mandated responsibility to produce dozens of financial and performance audits of state agencies each year. Not every state has an appropriations process that produces extensive reporting requirements on state agencies via boilerplate language inserted into annual funding bills.

Michigan Legislature is Only Moderately Effective in Using its Oversight Resources

The problem is what the Michigan Legislature chooses to do with these resources. In January 2020, the Levin Center with its colleagues at Wayne State's Center for Urban Studies (CUS) presented this committee a 2019 report authored by CUS that examined the oversight capacity and performance of all fifty state legislatures.¹ The CRC referred to our findings in its own study. The CUS report rated the Michigan Legislature as only moderately effective in using its institutional capacity to conduct in-depth, effective legislative oversight. That is the most important point that we hope members of this committee will take away from the CRC report and this testimony. The bones of an effective system of legislative oversight are largely in place in Michigan. Several barriers, however, appear to prevent Michigan from moving to the first tier of states when it comes to the effectiveness of its legislative oversight. These barriers include extreme partisanship, term limits, and a lack of commitment to legislative oversight.

Extreme Partisanship and Oversight Don't Mix

As I indicated in my 2020 testimony before this committee, extreme partisan enmity is antithetical to robust, credible legislative oversight. Members must work across political difference if their oversight efforts are to have credibility and a lasting impact on the government. I will elaborate on this point later when I discuss how Senator Levin approached oversight and the opportunity you have to leverage oversight to solve our state's problems and help its people.

Term Limits are a Challenge but Not a Reason to Abandon Oversight

The CRC did excellent work in its 2019 report examining the effects of term limits on Michigan's government, particularly the functioning of the Michigan Legislature. As they point out their report on oversight, term limits exacerbate the mismatch in knowledge and experience between the executive branch, which can retain veteran staff with expertise in key issues, and term-limited lawmakers who struggle to grasp the complexities of state government.

The CRC report also points out that cuts to staffing in the Legislature have coincided with term limits to make it even more difficult for lawmakers to tackle the myriad of issues that demand fact-finding and oversight. In addition to losing institutional memory necessary for good oversight, term limits encourage short-term thinking among lawmakers who understandably may be disinclined to devote precious time in their legislative careers to in-depth investigations and other oversight activities.

It is difficult to quantify the impact of term limits on the scope or quality of oversight, but it is worth noting that only three (Nevada, Colorado, and California) of the eight states ranked high for Oversight Capacity and Use of Oversight Capacity in the CUS 50-state oversight report have legislative term limits.² But those term limits are less stringent than Michigan's – with Nevada's lifetime limit of 24 years (12 in each house) and Colorado's consecutive limit of 16 years (8 in each house while allowing members to return to the legislature after a single term hiatus). California, which previously had term limits very similar to those in Michigan (lifetime 6-house/8-senate), amended its constitution in 2012 to allow lawmakers up to 12 years total in either house.

¹ *Checks and Balances in Action: Legislative Oversight Across the State*, Wayne State University, 2019, Lyke Thompson and Marjorie Sarbaugh-Thompson, with others, (https://www.levin-center.org/wp-content/uploads/2021/11/Accessible-CUS-Full-Report-07-08-19_updated-2021.pdf).

² California, Colorado, Hawaii, Illinois, Maryland, Minnesota, New Jersey, and Nevada.



Lawmakers and staff we interviewed stated that the lengthening of California's term limits has increased the legislature's interest in conducting in-depth oversight.

While term limits undermine good legislative oversight, their presence should not be a reason to abandon oversight in Michigan. If anything, the relative brevity of your legislative careers is an argument for doing more oversight because, as I argue a bit later, oversight offers legislators a wide variety of ways to accomplish the things you most likely came to Lansing to achieve.

Excelling in Oversight Requires a Strong Commitment

Overcoming the barriers of tribalism and term limits will require the Michigan Legislature to commit itself to doing the hard work of legislative oversight. The hardest part may be committing to the structures that can make legislative oversight effective and credible. It will not be easy to convince your colleagues to reform your oversight committee structure so that it provides minority members a strong or even equal voice in shaping the Legislature's oversight agenda. It will be difficult to persuade your colleagues that the minority should have a strong or even equal say in deciding what information or witnesses to seek. But enacting rules to mandate such an arrangement would transform how oversight is conducted in Michigan and how the public perceives the results of your oversight work.

The CRC report proposes several ideas that the Levin Center also recommends in its online tutorials, trainings, workshops, and other sessions that we provide to Congress, state legislatures, and parliaments overseas. These include ensuring that minority members of oversight committees have a strong or equal say in guiding and conducting oversight inquiries. We also endorse the idea of establishing a clear, institutionalized structure of legislative oversight that outlasts the limitations of term limits.

As is often the case, the effectiveness of Michigan's legislative oversight will depend on the individual lawmakers and staff members charged with carrying out this function. However, if the Michigan Legislature passes a statute or the people of Michigan amend the Michigan Constitution setting forth an institutional commitment to legislative oversight, the chances of a successful oversight program will be significantly increased. That commitment could, for example, establish bipartisan and bicameral oversight committee with equal representation from both political parties. It could call for members to serve on such a committee for an extended period, and it could require that bills include statements of purpose to provide a clearer set of criteria against which future oversight committees may evaluate a given policy, program, or agency.

Sunset Provisions: Be Careful What You Wish For

The CRC report analyzes the historical roots of enacting time limits on government programs, so-called "sunset provisions," and their effect on legislative oversight and certain issues, such as overall government spending. Sunset provisions have an intuitive appeal for people across the political spectrum who care about transparency and accountability in government. If the law forces a decision about whether to keep a program in place, the thinking goes, then executive branch officials and lawmakers are more likely to have a robust conversation about whether a program is achieving its goals and only better performing programs or agencies will continue to exist.



We appreciate this logic, but we warn against placing too much emphasis on sunset provisions, either as a means of spurring more robust legislative oversight or achieving better policy outcomes. As the CRC report points out, not a great deal is known about the impact of sunset provisions across the country on the quality or scope of legislative oversight.

To attempt to get a better handle on this question, the Levin Center again looked at which state legislatures ranked high for Oversight Capacity and Use of Oversight Capacity in the CUS 50-state oversight report. They were California, Colorado, Hawaii, Illinois, Maryland, Minnesota, New Jersey, and Nevada. None of those states is listed as having “comprehensive” sunset laws in Council of State Government’s analysis of states’ sunset laws.³ Among the states that ranked highest on either Oversight Capacity or Use of Oversight Capacity, but not both, only Alaska and Ohio had comprehensive sunset laws.

This is not to say that sunset laws don’t spur administrative or legislative reviews of program or agency performance. As the CRS report points out, in quite a few states the imminent sunset of a program appears to trigger some oversight action by the legislature. But the research we have seen does not show that comprehensive sunset laws are associated with robust legislative oversight. In other words, you don’t get strong legislative oversight just because you have a blanket law that sunsets programs and agencies across the government.

In fact, if Michigan were to enact a comprehensive sunset law covering most or all agencies of state government, the quality and impact of legislative oversight could go down because state legislators and their staff could be overwhelmed by having to conduct or review dozens of performance evaluations each year, rather than focusing on high-priority programs and agencies or issues that cry out for legislative fact-finding and oversight.

Using Oversight to Achieve What Most Lawmakers Want to do

Most legislators come to the State Capitol to represent their constituents and their values, to help people, and to solve problems. Engaging in fact-based, bipartisan oversight is a much more effective means of accomplishing those ends than trying to pass a few bills during your short time in office. That is true, even if you chair a powerful committee or serve in leadership.

Oversight is the most effective tool for addressing concerns that all members share, for example, rooting out fraud or malfeasance in government or private sector entities that hold a public trust. It also can advance your values, regardless of what part of the political or ideological spectrum you inhabit.

- If you think government is too large and tries to do too much, then there is no better tool than legislative oversight to expose government inefficiency or ineffectiveness and areas where certain functions or sectors should be left to the private or nonprofit sectors.
- If you are concerned about the size and scope of executive branch power, fact-based oversight investigations are the best means of holding the executive branch accountable and asserting the powers and prerogatives of the first branch of government, the legislative branch.

³ Book of the States 2019, Council of State Governments, Table 3.27 Summary of Sunset Legislation, (https://issuu.com/csg.publications/docs/bos_2021_issuu).



To Find the Truth, Leave the Echo Chamber Behind

Most importantly, if you are concerned about democracy in this country, you have it within your power to take a stand for fact-based governance and civil discourse in America by working across political difference to arrive at the facts and present them to the people of Michigan. That is what the Levin Center's namesake and founder, the late Senator Carl Levin, did throughout his career in public life – as president of the Detroit City Council and later in the U.S. Senate as Michigan's longest-serving Senator. Often, Senator Levin's closest collaborators were his conservative Republican colleagues – people like Tom Coburn of Oklahoma or John McCain of Arizona.

While they strongly disagreed on the role of government in American life and most all policy questions, they agreed on the importance of seeking the truth in a democracy and they knew that the best way to do that was to bring members with widely divergent viewpoints and philosophies together to get to the bottom of an issue. Senator Levin and his Republican colleagues did not just play lip service to diversity, they lived it in the way they approached oversight. That meant giving minority members of the oversight committee the opportunity to participate fully in setting the oversight agenda and carrying out oversight investigations, including deciding what issues to investigate and what documents and witnesses to seek.

Senator Levin and his colleagues did this because they valued the truth and they knew that they would get a lot closer to finding the truth if they worked with people with whom they disagreed. Fact-finding in an echo chamber rarely produces investigative results worthy of the time and money spent on them. On the other hand, an investigation led by a group that includes people with dramatically different world views causes everyone on the team to raise their game, question their assumptions, and challenge the received wisdom.

If Trial Juries Can Do It, So Can Lawmakers

Partisan oversight investigations are not per se invalid but the public viewing a report from a committee signed only by members of the majority or the minority naturally tends to question the process used to arrive at the findings and the reliability of those findings. The public intuitively understands that there are no Republican or Democratic facts; there are just facts. People can differ about which facts should receive the most attention and how sets of facts should be interpreted but they expect that their leaders can come together, in good faith, and hash out those differences and produce a report that members of both political parties can sign. If every single day across this state and nation trial juries, made up of ordinary Americans from countless backgrounds and belief systems, can come to consensus on the facts, then our elected representatives ought to be able to do the same thing on the questions that matter most.

All it takes is a set of structural arrangements that encourage bipartisan, fact-based oversight, a belief in the importance of oversight, and good faith on the part of the lawmakers. The CRC report and the recommendations made by the Levin Center offer ways that the Michigan Legislature can improve its structures to enable good legislative oversight. The importance of fact-based public institutions and lawmaking should be obvious. As should the assumption that members come to Lansing in good faith, wanting to make government work for all the state's residents and believing that democracy can only function in an environment where our leaders place respect for facts above politics.



It's been said that the truth will set us free. Without a commitment to pursuing the truth in a democratic society, there can be no freedom because there can be no democracy. That is what is at stake here in Michigan and around the United States and what each of you is privileged and burdened to address as lawmakers. The Levin Center is committed to supporting your efforts in this regard. We would be glad to answer any of your questions. Thank You.

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James H. (Jim) Townsend, a former member of the Michigan legislature, was named director of the Levin Center at Wayne Law in November 2019. Previously, Townsend practiced law in the Detroit office of Butzel Long as a member of its Corporate and Real Estate Practice Group.

Prior to joining the firm, he represented the 26th District in the Michigan House of Representatives. He serves on the Michigan Economic Development Corporation's advisory council of the Redevelopment Ready Communities® program.

Before his career in law, Townsend was legislative director for the office of U.S. Representative Nita M. Lowey and worked for U.S. Sen. Frank R. Lautenberg. Townsend's private sector experience includes working as a brand manager at Ford Motor Company, founding and directing the Michigan Suburbs Alliance, and leading economic development at the Detroit Metro Convention & Visitors Bureau.

Townsend earned his J.D. at Wayne Law, his bachelor's at the University of North Carolina at Chapel Hill and an M.B.A. and Master of Public Policy at the University of Michigan.

Ben Eikey is the Manager of State Training and Communications for the Levin Center at Wayne State Law School. He specializes in legislative oversight and has traveled across the United States to conduct oversight workshops and panel discussions in state legislatures and with partner organizations. He leads the communications efforts of the Levin Center, and is the host of Oversight Matters, a podcast on legislative oversight.

The Levin Center at Wayne Law is named in honor of former U.S. Sen. Carl Levin, Michigan's longest-serving U.S. senator who retired in 2015 after 36 years in the Senate conducting fact-based, bipartisan oversight investigations. The center's mission is to promote high quality oversight in Congress and the 50 state legislatures through oversight workshops, research, events, commentary, and other activities. While the Levin Center is affiliated with Wayne State University Law School, its views do not present the institutional views, if any, of Wayne State University or the Law School.

