

Many prominent Democrats as well as Republicans have lambasted Wisconsin's minimum markup law

A history of bipartisanship to repeal

By Tom Tolan

For years, the debate over Wisconsin's minimum markup law was not defined by which side of the aisle one sat on.

State senators John Norquist, a Democrat who later became the mayor of Milwaukee, and Scott McCallum, a Republican who later became governor, both favored repeal in the 1980s. GOP Assembly Speaker Scott Jensen and Democratic Minority Leader Shirley Krug pursued repeal in 1995 and in subsequent legislative sessions.

In a recent interview, Jensen says he had attempted to get the minimum markup law repealed since he worked for the Assembly's Republican Caucus in 1987, and throughout his time in the Assembly, with bipartisan cooperation from Krug.

Early on, as a believer in free-market economics, Jensen says, "I was just stunned we had a law like that." But even as speaker, it was hard to get his whole caucus behind repeal. "A lot of rural members didn't like it," he says of the repeal effort.

Norquist was particularly vociferous in 1986 after the state



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— **John Norquist**, then state senator, speaking in 1986

sued the owners of three gas stations in Beloit for selling gas too cheaply — an action opponents of the law called anti-consumer. He called it "a selfish, special-interest law" and "an awful law that punishes people for having low prices." He told the Chicago Tribune that there was "no public interest in the law at all."

He argued that the free market should determine prices, not the state, and went on to sponsor legislation that ended up amending part of the law but left intact mandated markups on tobacco, alcohol and gasoline.

A unique coalition

In a 1986 Milwaukee Sentinel article about a repeal effort, Republican state Rep. Betty Jo Nelsen said, "We're trying to build a strong coalition to convince the Legislature that there is really no need for having this law on the books."



Jensen



"I believe we ought to have a competitive market, and we should let the market take prices where it will take them."

— **Jim Doyle**, then governor, speaking in 2001

That coalition included the Wisconsin Merchants Federation, the United Auto Workers and the Wisconsin Consumers League.

Norquist, who had introduced a companion bill seeking repeal, said, "What we really need to do is have the public become more aware of this ridiculous law. If the public knew that we have a law that requires a 9.1% markup ... they would demand the repeal of that law."

He blasted an Assembly proposal to add three enforcement positions at a cost of \$100,000 to the Department of Agriculture, asking, "Should the public have to pay taxes to have somebody go around and make sure prices are marked up?"

Wisconsin Attorney General Bronson La Follette, a Democrat, also supported repeal. "Where markets have a sufficient number of sellers to be competitive, there is absolutely no need for a minimum markup law," he said then.

In 1997, the Legislature approved a bill revising the law to allow businesses to sue competitors over alleged violations.

Democratic state Sen. Lynn Adelman — now a federal judge appointed by Democratic President Bill Clinton — objected to the change, saying it was "social engineering" that would guarantee high prices for consumers,

according to a Milwaukee Journal Sentinel article.

In 2001, state Senate Majority Leader Chuck Chvala, a Madison Democrat, tacked repeal of the minimum markup law onto the state budget bill. But lobbying from supporters of the law got it removed.

Former Democratic Gov. Jim Doyle long favored repeal as well, saying the law had outlived its usefulness.

"I believe we ought to have a competitive market, and we

should let the market take prices where it will take them," he told the Milwaukee Business Journal in 2001.

Laws that require retailers to artificially raise prices are "absurd," he said.

In 2009, after Federal Judge Rudolph Randa ruled the law unconstitutional, Democratic state Sen. Tim Carpenter applauded the decision.

"I have fought to eliminate this unfair and outdated rule that forces Wisconsin consumers to pay more for gasoline than our neighbors," he told the Minocqua Lakeland Times. Carpenter was the lead Senate author of a bill to repeal the law.

Both Doyle and Wisconsin Attorney General J.B. Van Hollen, a Republican, decided not to appeal the Randa ruling. However, the Wisconsin Petroleum Marketers & Convenience Store Association appealed, and the ruling was overturned in 2010 by a federal appeals court.

According to a 2008 WPRI report, the most recent attempt to repeal the minimum markup law on gasoline occurred in 2006, when a bill authored by Republican state Sen. Dave Zien made it to the Senate floor.

It eventually was sent back to committee, however, and died there. While support for repeal has been bipartisan over the years, it turns out opposition has been bipartisan as well. The vote that killed the repeal bill included 12 Democrats and seven Republicans.

Tom Tolan is a Milwaukee freelance writer. He was a reporter and editor at The Milwaukee Journal and the Milwaukee Journal Sentinel for 24 years.



Adelman



McCallum