

Arlen Christenson

Contributions of state-wide, inter-state, national significance

Arlen leaves a long and distinguished legacy that set established precedents and laws of state-wide, inter-state and national significance. Perhaps more significantly, Arlen is a visionary whose contributions innovated new and more effective ways to protect our natural resources and help citizens stay engaged in democratic processes.

It is no exaggeration to say that Arlen Christenson is the “father of the modern Public Intervenor Office.” Although the office was created in 1967 as part of the Kellett Commission government reorganization law, the PI office initially was an understaffed and under resourced office having limited influence on cases and policies affecting natural resources. *See* Jodi Habush Sinykin, “At a Loss: The State of Wisconsin After Eight Years Without the Public Intervenor's Office,” 88 Marq. L. Rev. 645, 647-649 (2004); Available at: <http://scholarship.law.marquette.edu/mulr/vol88/iss3/3>.

The Wisconsin Department of Administration commissioned the Center for Public Representation, (which Arlen also co-founded), to study the history and actions of the PI office from its creation to that year. As author of the report entitled, *The Public Intervenor in Wisconsin* (November 1975), Arlen wrote:

There is substantial evidence that the function assigned to the Public Intervenor by the legislature – acting as an advocate for such public rights – is as important as it was perceived by the legislature in 1967. Those who pollute water or air, dam streams for a recreational development, and take other actions which affect public rights in water and other natural resources usually have a substantial economic stake in the outcome of administrative and court proceedings affecting their activities. They are represented by counsel and an array of experts. The beneficiaries of “public rights,” on the other hand, are diffuse, often unorganized and have only small economic stakes as individuals.

Public rights will ordinarily go unrepresented unless the Public Intervenor is there.

See also, Arlen Christenson & P. Dubois, *Public Advocacy and Environmental Decision making: The Wisconsin Public Intervenor*, in *Inst. Governmental Aff. & Inst. Ecology, Env'tl. Quality Series No. 26*, at 10 (1977).

As a result of this report, Attorney General Bronson LaFollette implemented the report’s recommendations, including separating the PI office from the environmental protection unit, boosting the office’s staffing to at least two full-time attorneys, appointing “special” public intervenors for particular cases, and appointing a Citizens Advisory Committee to guide the intervenors, create decision-making criteria, select program priorities, select cases, provide a public forum for citizens, and to provide accountability for the office.

After giving birth to the modern PI office, Arlen was involved in selecting, and determining how to select, the cases and issues on which the public intervenors worked including shaping the framework and working the details of those initiatives. Many of those initiatives were taken not only to solve immediate pressing problems, but to shape policies to address similar problems of state-wide and national concern. As examples, the PI Office:

- Pressed and negotiated improved metallic mining laws and rules
- Petitioned for and negotiated several DNR wetland protection policies and rules including:
 - DNR wetland policy – Wis. Admin. Code section NR 1.95
 - Shoreland wetland protection rules
 - DNR wetland water quality certification of federal permit rules

- Participated in national rulemaking on Army Corps of Engineers wetland filling activity on permit criteria and “wetland mitigation”
- Set up a legal intern program to investigate and effectively oppose wetland fill applications to the Army Corps
- Negotiated landmark 1984 groundwater protection law (Act 410) then and now considered a national model
- Negotiated 1994 non-metallic mining and reclamation law
- Successfully petitioned for and negotiated rules to protect surface and ground water from pesticide pollution and provide right to know rules of pesticide use
- Successfully won U.S. Supreme Court decision overturning previous court decisions to ultimately hold that the federal pesticide law does not pre-empt local regulation of pesticide use
- Testified before a federal congressional committee in support of maintaining the Supreme Court precedent on local rights to regulate pesticide use
- Petitioned for and negotiated Wisconsin environmental impact assessment and statement rules for state agencies
- Negotiated local agreement to prevent polluted urban runoff from entering Lowes Creek – establishing model for future policymaking to control stormwater runoff into streams and rivers.
- Intervened into water sand & gravel mining cases and successfully petitioned for improved regulations to protect aquatic resources
- Negotiated state community right-to-know law related to spills and chemical emergencies
- Negotiated strengthened DNR rules on chemical cleanups
- Negotiated standards for providing navigable waters public access
- Successfully sued to keep public accesses to navigable waters open to the public
- Sued and negotiated rules to protect groundwater from on-site sewage pollution
- Successfully sued to prevent destruction of fishery in Green Bay by proposed sediment confined disposal facility expansion

Many of the above cases served as templates of problems that illustrated more widespread regional, state-wide, national, and international problems requiring the development of policy, laws, rules, and best management practices in which the PI office took statewide and national action with Arlen’s leadership and active participation. They include development of the state groundwater protection law and rules, Wisconsin wetland protection rules, Wisconsin waterway and upland non-metallic mining rules, Wisconsin metallic mining legislation and rules, and Wisconsin pesticide laws and rules.

Arlen continued his influence in related conservation and environmental issues by guiding, as a founding board member and President, Midwest Environmental Advocates as a formidable protector of citizen and public rights in the environment. As examples of MEA’s work, with Arlen’s leadership and active participation:

- Protected significant wetlands from industrial extraction of water by Nestle/Perrier for bottling spring water
- Advocated for update to state Groundwater Protection statute and rules
- Advocated for rural families at risk from contaminated wells near confined animal feeding operations (CAFOs)
- Advocated for update to state rules to prevent spreading liquid manure on frozen ground
- Advocated to prevent Milwaukee’s public drinking water utility from passing into private ownership
- Advocated for multi-state and international Great Lakes Compact and Agreement that created a legal framework to keep water in the Great Lakes Basin

- Ensured the people most impacted by illegal pollution had the support they needed to have a say in negotiated settlements with polluters across the state that violated water and air permits, such as industrial laundry, garbage incinerator, paper company, frac sand mines, to name a few.

Wide range of natural resources and their use

Arlen was integrally involved, actively participated in, and provided guidance and leadership in every natural resource issue in which the PI and MEA have been involved including, but not limited to, navigable and non-navigable surface waters, wetlands, groundwater, pesticide pollution, hazardous materials threats to land and water resources at the local, state, and national environmental policy, legislative, and rulemaking levels, including successful advocacy in the U.S. Supreme Court. Arlen was the lead advisor and editor with respect to the briefs the PI Office filed in the U.S. Supreme Court case and was successful in helping to convince the Court to take the case, and later restore power to local governments to protect their citizens and environments from pesticide use.

Measurement of contributions against other inductees in historical setting

Like so many deserving inductees, Arlen's legacy is one of a very wide range of involvement and effective advocacy in a plethora of environmental and conservation issues. Arlen has not only the dedication and leadership qualities that recognize environmental threats before they are addressed at the state and national levels, but the intellect and savvy to offer effective solutions as a model for the state and nation. Arlen exercised his intellect and leadership over five decades of formative years of environmental and conservation advocacy in the state – the 1970s to mid-2010s – growing the state's and nation's environmental awareness.

Arlen played a key role in shaping the direction of the PI during its most formative and effective years, turning it from a local natural resource advocate into an effective statewide and national conservation advocate that effected state-wide and sometimes national policy, as described above. He then went on to do the same for MEA, helping it grow from a startup non-profit to one with a strong 20 year track record and bright future.

In addition, Arlen won the Wisconsin Idea Award in March 1994 for applying the "Wisconsin Idea" to natural resource policy development and implementation. The award honors those who have made significant contributions in the area of natural resource policy and whose efforts exemplify the "Wisconsin Idea" of communication and cooperation between the university and government for the benefit of the people of the state.

Significant ties to Wisconsin

Arlen was born and raised in Wisconsin. Arlen Christenson, Emeritus Professor of Law and Environmental Studies, taught environmental law at the University of Wisconsin-Madison from 1963 until taking emeritus status in 1995. The areas he taught, Local Government Law, Administrative Law, Environmental Law, and Land Use Regulation made him a perfect fit for the 1000 Friends Board. In addition to his service at the PI Office and MEA, Arlen was a founding board member and served as board president of the non-profit land use organization, 1,000 Friends of Wisconsin. He helped found the Center for Public Representation – the oldest non-profit public interest law firm advocating for consumers and low-income families through education. Arlen was an original board member on the Public Intervenor Board and served as chair of the Citizen's Advisory committee. He is a founding board member who served as board president of Midwest Environmental Advocates from 1999-2013.

Arlen's education includes University of Wisconsin-River Falls, Bachelor of Science (1958) and University of Wisconsin-Madison, Juris Doctor (1960). His employment history includes Professor and Emeritus Professor of Law, University of Wisconsin Law School and faculty member since 1963. He was

Associate Dean, University of Wisconsin Law School 1972-1974); Assistant to the Chancellor (Legal Advisor), University of Wisconsin-Madison (1969-1971); Deputy Attorney General, State of Wisconsin (1966-1968); Executive Assistant Attorney General (1968-1969). Arlen was Co-Director, Center for Public Representation, Madison, Wisconsin (1974-75, 1977).

Arlen, and his supporting wife Judy, own a cabin on a lake in northern Wisconsin where they enjoy the loons and tranquility of Wisconsin's natural environment. Arlen has mixed his law career with his love of the environment and his commitment to civic responsibility to make Wisconsin a better place to live.

Sustained and outstanding contribution of at least one and preferably several kinds

Arlen is known to these nominators to have been actively involved in environmental and conservation struggles and problem-solving since the late 1970s to the present day. While the above information supports the criterion of Arlen's contribution to environmental policy formation, legislation and public leadership, Arlen meets other criteria in this category.

In the area of "environmental law enforcement" and development, Arlen is keenly aware that our environmental protection laws are not effective unless enforced. Arlen is quick to point out: "Underlying every act of the Legislature and the DNR is the fundamental fact that they act, not as owners, but as trustees for the true owners: We the People." Arlen led the way in advocating the enforcement of our existing laws and standards by directing PI office administrative and court actions to hold state agencies and polluters to the laws and standards they are required to administer and obey. The failure of agencies to enforce the law led to the PI's advocacy of the landmark provision in the Wisconsin groundwater law of 1984 that takes away from state agencies the authority to do nothing when groundwater pollution is detected.

These are the "prevention action levels" and "enforcement standards" that require, not merely "authorize", agency action to prevent further contamination and to order cleanup of existing pollution. In another key area, Arlen recognized the potential for state agencies to fulfill their roles in protecting the environment by directing the PIs to petition state agencies to adopt rules within their authority and jurisdiction to create standards and criteria for permit and other types of decision-making that affect the environment.

Arlen and fellow law professor James MacDonald were the creators and mentors over the years of hundreds of law students who were clinical interns in the PI office. The interns practiced environmental law and advocacy, and helped citizen advocates, under the tutorage of Arlen and Jim. In addition, Arlen taught and inspired hundreds more of his law school students over the many years of his tenure as a law school professor. As a result, students contributed to environmental protection in the short-term, and in the long-term there are now hundreds of lawyers throughout the country educated in environmental issues and prepared to carry the torch forward in support of respect for our environmental laws.

Prepared by Tom Dawson and Melissa K. Scanlan