

# Campaign Finance Talk

The Voice of the Michigan Campaign Finance Network

www.mcfn.org

November 2007

## No Winner in a \$20M Supreme Court Campaign

*In too many states, judicial elections are becoming political prizefights where partisans and special interests seek to install judges who will answer to them instead of the law and the constitution. - Former U.S. Supreme Court Justice Sandra Day O'Connor*

by Rich Robinson

In recent weeks, both Michigan Supreme Court Chief Justice Clifford Taylor and Michigan Democratic Party chairman Mark Brewer have speculated that the 2008 campaign for Chief Justice Taylor's seat on the Michigan Supreme Court could cost \$20 million or more. That is more than twice the current national record for a state supreme court campaign and it would be a highly dubious distinction to double that record.

In fact, the threat of a \$20 million Michigan Supreme Court campaign revives memories of the 2000 campaign, when the six major-party nominees to fill three seats on the court raised \$6.8 million; the Michigan Republican Party and Tom Monaghan's Ann Arbor PAC combined for \$1.5 million in independent expenditures; and the state parties and the Michigan Chamber of Commerce combined to sponsor \$7 million worth of candidate focused issue advertisements. The *Grand Rapids Press* called it "...a political pie fight that would have done Barnum and Bailey proud..."

In the weeks before he was nominated to run in 2000, Justice Robert Young, Jr. put it this way: "My advisers tell me I'll have to raise \$1 million or more to run a Supreme Court race. How can this not be a problem? The public has a right to ask: 'If you have to raise \$1 million, can you really be impartial?'" In fact, Justice Young raised \$1.3 million in 2000 and \$622,000 in 2002 for his reelection campaign. And his question is still a good one.

Monaghan's involvement through the Ann Arbor PAC invites more questions. He gave the Ann Arbor PAC \$655,000, 86 percent of its funds. The PAC gave the campaigns of Justices Markman, Taylor and Young \$34,000 each, and it sponsored a \$200,000 radio advertising campaign supporting the same justices. That is all legal in Michigan because, unlike federal campaign finance law, we have no limits on contributions to PACs or political parties. But what if the court elected to hear a case involving Monaghan? Should the justices he supported have to disqualify themselves from hearing the case?



A different permutation on this scenario played out in 2004, when well-known attorney Geoffrey Fieger was the sole contributor to a PAC called Citizens for Judicial Reform that sponsored a \$450,000 television attack campaign directed at incumbent Justice Stephen Markman. Should Justice Markman have to recuse himself from any future case involving Fieger, because Fieger may have provoked an enduring hostility that could compromise Markman's impartiality? The answer must be 'no,' otherwise the entire system could be manipulated by well-financed potential litigants forcing disqualifications of justices they view as hostile to their interests. But what if Fieger's attack had succeeded? Would the beneficiary of his spending be obligated to recuse herself from a future case involving Fieger? There are no specific standards for the Michigan Supreme Court to provide guidance on such a question.

The third leg of contemporary Supreme Court campaigns, the candidate-focused issue advertisements, is the most insidious element. These ads that avoid direct reference to voting are not considered to be campaign expenditures under Michigan's flaccid campaign finance law. This means that the expenditures are not reported, contributors who pay for the ads are not disclosed and there are no restrictions against contributions from the treasuries of corporations or unions, as there are for contributions directly to candidates' campaign committees or political action committees. Issue ads exist in a black hole in the system of campaign accountability.

The Michigan Campaign Finance Network estimates that since 2000 there have been \$10 million worth of candidate focused issue ads in our Supreme Court campaigns, including \$6 million sponsored by the Michigan Chamber of Commerce in support of the five incumbent Republican nominees on the court. That is \$6 million worth of anonymous influence in campaign marketing that should constitute a major ethical dilemma. How can we evaluate whether justices should have been recusing themselves from cases involving those who have financed their election marketing campaigns if the contributors are never identified?

If history is a good guide, we should expect that about half the money in a

\$20 million Supreme Court campaign would be off the books. We would see huge candidate accounts of the type that disturbed Justice Young in 2000. We could see reported independent expenditures where a wealthy individual might weigh in with seven-figure influence. We would probably see anonymous influence reach eight-figures.

That is not a formula that engenders trust and confidence in a fair and impartial Supreme Court. It is a toxic campaign finance environment and an incubator for potential conflicts. It is a system badly in need of reform.

First, we should have objective standards that define when financial relationships between justices and their campaign supporters give the appearance of a conflict that requires disqualification from a case. The American Bar Association (ABA) has developed a new Model Code of Judicial Conduct that recommends that the states address this issue, and 18 states are already doing so.

Secondly, we should require the sponsors of candidate focused issue ads to identify their contributors before Election Day so voters can evaluate the messages they are seeing and hearing in light of the money behind them. This is the law in federal campaigns and other states. It should be the law in Michigan.

Thirdly, we should have limits on contributions to PACs and political

parties so the wealthy are restrained from simply laundering their fingerprints off their unlimited financial support or opposition for a candidate. If someone wants to spend \$1 million to support or oppose a candidate, they should put their own name on the ad.

And finally, we should use the State Campaign Fund that is built from citizens' contributions through their state income tax returns to provide full public financing for Supreme Court campaigns. We can give candidates an opportunity to have a financially viable campaign without having to rely on the partisans and special interests that Justice O'Connor has lamented. The ABA recommends public financing for campaigns in states that select their Supreme Court in competitive elections and the Representative Assembly of the State Bar of Michigan has passed a resolution to support taxpayer-owned campaigns as well.

This is a critical issue because those who serve in our state's courts, particularly the Supreme Court, do not work for interest groups. They are supposed to serve only the law. If we are to have a genuinely shared belief in equal justice for all, our judiciary must be beyond any appearance of conflict. All of us, including the weakest among us, must be able to count on the courts to protect our just rights from tyranny of the powerful and the unjust.

### Summary of Michigan Supreme Court Campaign Finances, 2000 through 2006

	2000	2002	2004	2006
Candidate receipts	\$ 6,825,031	\$ 958,427	\$1,544,278	\$1,087,344
Independent expenditures	\$ 1,587,831	\$ 30,690	\$ 647,393	\$ 1,021
Issue advertising *	\$ 7,500,000	\$ 840,000	\$1,377,000	\$ 800,000
Total spending	\$ 15,912,862	\$1,829,117	\$3,568,671	\$1,888,365
Number of seats	3	2	2	2
<b>Cost per seat</b>	<b>\$ 5,304,287</b>	<b>\$ 914,559</b>	<b>\$1,784,336</b>	<b>\$ 944,183</b>

\* estimated

Source: MI Dept. of State and MI broadcasters' public files

## Lobbyists' Spending Up (Again)

Lansing lobbyists' spending totaled \$17,736,907 from January through July 2007 according to reports filed with the Michigan Department of State. That total is up by four percent compared to the same period in 2006.

Seven of the top ten spenders were multi-client firms, led by Governmental Consultant Services, Inc. at \$779,911. Multi-client firms are required to name their clients in their reports but they do not have to report how much they spent to

represent each of those various clients.

Food and beverages accounted for \$401,636 of the lobbyists' reported spending. However, that is only part of the story. Lobbyists are not required to report food and beverage spending unless it reaches \$53 in a month for a lobbyable official, or \$350 for the calendar year.

Travel and gift reporting thresholds also undermine full transparency of lobbyists' activity. A lobbyist does not have to report paying for travel and

accommodations unless the tab tops \$700. It is illegal for lobbyists to give gifts to lobbyable officials but an item worth less than \$53 is not considered to be a gift. That definition allows for some entertainment freebies to go unreported.

A list of the top 200 Michigan lobbyists through July 2007 with comparative figures for 2006 is online at [www.mcfn.org](http://www.mcfn.org).

### Top Michigan Lobbyists - 2007

Rank	Lobbyist Name or Organization	1/1/07-7/31/07	1/1/06-7/31/06	Change (%)	CY 2006
1	Governmental Consultant Services	\$779,911	\$736,905	5.8%	\$1,308,435
2	James H. Karoub Associates	580,694	583,115	-0.4%	985,129
3	MI Education Assn.	454,140	526,000	-13.7%	852,000
4	Public Affairs Associates Inc.	346,252	334,553	3.5%	580,804
5	Kelley Cawthorne	295,736	140,814	110.0%	249,961
6	Wiener Assoc.	291,913	260,559	12.0%	667,144
7	Venuto & Assoc.	290,095	38,282	657.8%	57,874
8	MI Health & Hospital Assoc.	283,983	255,740	11.0%	422,375
9	Muchmore Harrington Smalley & Assoc.	223,829	254,503	-12.1%	612,077
10	Blue Cross and Blue Shield	208,864	199,024	4.9%	335,591
11	Natl. Federation of Independent Business	179,153	182,727	-2.0%	329,371
12	Kheder Davis & Associates Inc.	177,755	119,024	49.3%	251,995
13	Fraser Consulting LLC	172,056	193,763	-11.2%	318,993
14	AARP	169,105	143,117	18.2%	278,987
15	Cusmano Kandler & Reed Inc.	130,116	166,348	-21.8%	286,408
16	Knight Consulting	128,739	104,492	23.2%	228,329
17	DTE Energy Company	120,840	101,583	19.0%	205,810
18	Aramark	115,000	n/a	n/a	n/a
19	Consumers Energy Co.	109,329	107,137	2.0%	199,065
20	American Federation of Teachers - MI	107,035	97,755	9.5%	167,911

Source: MCFN analysis of Dept. of State records

# Politicians Flex Fundraising Muscle

Michigan's elected leaders have been preoccupied throughout 2007 with the struggle to reach a budget deal. However, that struggle hasn't kept them from raising plenty of campaign cash in the legislative caucuses' political action committees and their own leadership PACs.

As is customary, the legislative caucuses' PACs dominate the top of the fundraising list. However, the Republican caucuses' PACs are still burdened with debt from the 2006

election cycle. The House Republicans and Senate Republicans both have more debt than cash on hand. The net financial position of the House Republicans is \$86,708 in the hole. The Senate Republicans are \$88,740 in the red. The net position of the House Democrats is plus \$651,803. Senate Democrats are \$201,359 in the black.

Gov. Jennifer Granholm's Leadership Fund is the leading elected official's leadership PAC, having raised \$358,345 - more than twice its total at this point in the 2006 cycle. Speaker of

the House Andy Dillon's Leadership Fund is close behind at \$345,051, four times what former Speaker Craig DeRoche had raised at this point in the 2006 cycle. Senate Majority Leader Mike Bishop has raised \$200,685 for his leadership PAC so far this cycle, over four times the total of his predecessor, former Majority Leader Ken Sikkema, from two years ago.

A list of the top 150 Michigan political action committees for January through October 2007 is online at [www.mcfn.org](http://www.mcfn.org).

## Top Michigan Political Action Committees – 2008 Election Cycle

Rank	Name	1/1/07-10/20/07	1/1/05-10/20/05	change (%)	2006 cycle
1	MI House Democratic Fund	\$1,076,534	\$810,852	32.8%	\$2,720,517
2	Senate Republican Campaign Committee	935,783	938,240	-0.3%	2,659,680
3	House Republican Campaign Committee	810,036	1,227,084	-34.0%	4,451,775
4	Coalition for Progress (Jon Stryker)	429,385	n/a	n/a	5,460,077
5	MI Assn. of Realtors / REALTORS PAC	425,499	500,087	-14.9%	1,194,562
6	Senate Democratic Fund	414,408	493,739	-16.1%	2,036,058
7	Blue Cross/Blue Shield of MI / BCBSM PAC	384,735	346,236	11.1%	870,435
8	(Jennifer) Granholm Leadership Fund	358,345	172,400	107.9%	893,815
9	(Andy) Dillon Leadership Fund	345,051	n/a	n/a	79,750
10	MI Education Assn. / MEA PAC	334,523	413,907	-19.2%	1,429,730
11	MI Health & Hospital Assn. / Health PAC	319,529	181,277	76.3%	518,160
12	US Steel PAC MI	251,926	20,190	1147.8%	129,120
13	MI Trial Lawyers Assn. / Justice PAC	231,740	265,306	-12.7%	1,062,264
14	Auto Dealers of Michigan PAC	220,608	226,125	-2.4%	608,800
15	MI Manufactured Housing RV & Campground Assn. PAC	207,290	254,976	-18.7%	534,000
16	(Mike) Bishop Majority Fund	200,685	n/a	n/a	201,525
17	Comerica Inc. PAC	198,159	166,522	19.0%	500,691
18	MI Bankers Assn. PAC / MI BANK PAC	197,052	196,706	0.2%	393,265
19	DTE Energy Co. PAC	184,332	210,032	-12.2%	507,361
20	MI Beer & Wine Wholesalers Assn. PAC	178,448	306,986	-41.9%	722,698

Source: MCFN analysis of Dept. of State records

# The \$1 Billion Presidential Campaign

The field of presidential candidates for 2008 has already raised a collective total of \$387.2 million for the primaries, through September 30, 2007. That is more than twice the total from this point in the 2000 or 2004 election cycles.

The current candidates already have raised \$338.5 million from individuals. The whole field of candidates in the 2000 cycle (Bush, Gore, McCain, Bradley, et al) raised \$350 million from individuals for the entire cycle. All the candidates

combined raised \$684 million from individuals in the 2004 cycle.

Overall the Democratic candidates have raised \$218.8 million, compared to \$168.4 million for the Republicans. In the most recent quarter, ending September 30th, the Republicans raised \$54.7 million, compared to \$52.9 million for the Democrats, but \$8.5 million of the Republican total for the quarter was a loan from Mitt Romney to his own campaign.

The nonpartisan Campaign Finance Institute notes that if John Edwards and

John McCain apply for public matching funds, as both have said they may do, they would close the gap significantly between them and their parties' respective front-runners in terms of cash on hand. CFI has calculated that Edwards would be entitled to about \$13.6 million and McCain \$10.9 million, based on funds already raised. If they accept public funds they must also observe state-by-state spending limits.

It appears that a \$1 billion presidential campaign is all but a certainty.

**Presidential Candidates' Primary Fundraising through 9/30/2007 (\$ millions)**

	<b>Candidate</b>	<b>All Primary Receipts</b>	<b>Indiv. Contribs.</b>	<b>Cash on Hand</b>	<b>Debt*</b>
<b>Democrat</b>	Obama	76.1	74.7	31.9	1.4
	Clinton	75.0	62.0	34.6	2.3
	Edwards	27.9	27.5	10.0	0.0
	Richardson	18.0	17.6	5.1	0.1
	Dodd	12.1	6.7	2.4	0.0
	Biden	7.2	5.0	0.8	0.1
	Kucinich	2.1	2.1	0.3	0.0
	Gravel	0.4	0.3	0.0	0.0
	<b>Dem. Subtotal</b>	<b>218.8</b>	<b>195.9</b>	<b>85.1</b>	<b>4.0</b>
	<b>Republican</b>	Romney	62.8	43.7	9.2
Guilliani		42.2	39.2	11.6	0.2
McCain		30.3	28.0	1.6	1.7
Thompson		12.8	12.6	7.1	0.7
Paul		8.3	8.2	5.4	0.0
Brownback		4.2	3.4	0.1	0.0
Tancredo		3.6	3.4	0.1	0.3
Huckabee		2.3	2.3	0.7	0.0
Hunter		1.9	1.7	0.1	0.0
<b>Rep. Subtotal</b>		<b>168.4</b>	<b>142.6</b>	<b>36.0</b>	<b>2.9</b>
<b>Total 2007</b>	<b>387.2</b>	<b>338.5</b>	<b>121.1</b>	<b>7.0</b>	

\*Excludes candidate loans. Source: Campaign Finance Institute analysis of F.E.C. reports; www.cfinst.org

# Campaign Finance Talk

The voice of the



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All articles were written by Rich Robinson, executive director of the Michigan Campaign Finance Network.

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