$70 Million
Hidden in Plain View

Michigan's Spectacular Failure of Campaign Finance Disclosure, 2000-2010

Michigan
Campaign Finance
Network

The Michigan Campaign Finance Network is a nonprofit, nonpartisan organization that conducts research and provides public education on money in Michigan politics.

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Research Methodology

Estimating the Known Unknowns

The campaign television advertisements that are not disclosed in the State's campaign finance reporting system are commonly described as candidate-focused "issue" advertisements. These ads carefully avoid the language of express advocacy, as it is defined in the 1976 U.S. Supreme Court case of *Buckley v. Valeo*[1]. In federal campaigns, such advertisements are described as electioneering communications.

In general, records of candidate-focused issue advertisements are found in the public files of the state's broadcasters and cable systems. The Michigan Campaign Finance Network has collected records of candidate-focused issue advertisements from broadcasters' public files since the 2000 election cycle. Prior to the passage of the federal Bipartisan Campaign Reform Act of 2002 (BCRA), popularly known as the McCain-Feingold reforms, some broadcasters withheld sales records for their issue advertisements. During that period, values of sales at non-reporting stations were derived from estimates published by the Campaign Media Analysis Group (CMAG). CMAG's estimates were constructed from an application of the stations' advertising rate cards to spot-frequency records collected by satellite.

Subsequent to the passage of BCRA, state broadcasters and cable systems adopted the practice of keeping all records of issue advertisements in their public files, along with those of reported independent expenditures and the candidates' own advertisements. That practice was uninterrupted until the 2010 election cycle.

In the fall of 2010, the Target Enterprises advertising agency, acting on behalf of the Republican Governors Association, requested selected corporate owners of Michigan broadcast licenses to withhold records of its issue ads in support of now-Gov. Rick Snyder. Several broadcasters complied, citing the fact that Federal Communications Commission (FCC) regulations require public access to records on matters of national importance (reference to federal candidates), but they are silent on matters of state concern (featuring state candidates). For those stations that complied with Target's request for secrecy, MCFN assigned values based on market-share estimates developed over a decade of data collection.

The complexity of determining what was spent on behalf of whom varies with the election year. Presidential election years are the simplest because the only non-federal candidates for statewide office are candidates for the Michigan Supreme Court. As a result, records from 2004 and 2008 are very precise.

There were much greater complexities in 2002 and 2010, when issue advertisers, mainly the political parties, were juggling multiple statewide campaigns. Unraveling what amounts were spent on which candidates in those years was accomplished by connecting the candidates to the agencies that produced advertising about them. This was only a minor issue in 2006, when there were heavily favored incumbents running for attorney general, secretary of state and justice of the Supreme Court, and the gubernatorial campaign was absorbing the vast majority of issue-advertising dollars.

It should be noted that the amounts spent for television issue advertisements are a conservative representation of unreported political spending. There are also radio issue advertisements, but there are too many radio broadcasters for MCFN to collect their data. There are unreported direct mail advertisements, but the U.S. Postal Service will not disclose its sales records unless there is a case of mail fraud.

The activity of the Michigan Republican Party in 2010 illustrates the challenge of capturing all unreported spending. A widely circulated nugget of conventional wisdom in Lansing had it that the Michigan Republican Party raised $28 million in the 2010 cycle[2]. Yet, the Michigan Republican Party reported only $9 million to the Federal Election Commission and $9.3 million more to the Michigan Department of State. MCFN found $2.8 million worth of Republican Party Supreme Court issue ads and $2.2 million more in the secretary of state and attorney general campaigns, none of which was reported, but that still leaves $4.7 million more for which there is no accounting.

The Absence of Accountability

On one level, an observer might conclude that campaign finance disclosure is an important value in Michigan politics. After all, candidates for state office must identify every donor who makes a contribution to their campaign, even if the contribution is only one dollar. In contrast, contributors to federal campaigns are not identified unless their financial support is at least $200.

That impression of commitment to campaign finance accountability would be misguided. Beginning with the 2000 Michigan Supreme Court election campaign, interest groups and individuals have spent almost $70 million for campaign television advertisements that were not disclosed in the State's campaign finance reporting system. If you recall any political advertisements from the past decade that sought to define a state candidate's character, qualifications or suitability for office, chances are good that the ads you remember are among those that were never reported.

How can that be? The Michigan Department of State doesn't recognize political advertisements as campaign expenditures unless they explicitly direct a viewer how to vote. If there are no 'magic words' of express advocacy, such as "vote for," "vote against," "support," or "defeat," the Department of State sees an advertisement as merely educational, and its sponsors have no obligation to report whose money paid for the message.

This willful state of ignorance is based on an interpretation of the Michigan Campaign Finance Act that ignores the language of the statute and critical U.S. Supreme Court campaign finance jurisprudence. It is an affront to the citizens of Michigan who have multiple interests in knowing who pays for political campaigns. This interpretation is the reason that $70 million has been able to go missing in plain view.

The first step in correcting this disgraceful situation is to thoroughly understand it. This report, which is the product of ten years of research, is an effort to nurture an understanding of the pathology of campaign finance secrecy that urgently needs to be cured.

Interests in Conflict

The interest groups and elite individuals who provide the majority of money that drives state election campaigns are rational economic actors. Their financial support is an investment, and it is naïve to believe that such investments are made for selfless reasons. Returns on political investment may take the form of a workplace regulation, an environmental deregulation, a no-bid contract, a tax credit, a budget priority, a tax not levied, a public works project or a favorable court decision. The returns on political investment vary. The pursuit of them is consistent.

At this point in history, most citizens still object to a direct political *quid pro quo*. Neither a campaign supporter nor an elected official can afford to be seen as a party to the simple buying and selling of public policy. That is why we have limits on contributions to candidates for public office. Contribution limits are meant to be a way of curbing corruption. But when interest groups want to provide more campaign support than the law allows, or society accepts as benign, secrecy provides a path that does not damage the public standing of the campaign supporter or the object of that support.

Most citizens' interests are not served by campaign finance secrecy. Citizens have a recognized interest in knowing the sources of campaign finance support, so they can properly evaluate a candidate and cast an informed vote.

Citizens' stake in campaign transparency also includes an interest in limiting the opportunity for corrupt conduct. As Justice Louis Brandeis said, "Sunshine is the best disinfectant."[3]

Finally, citizens have a due process interest that is served by campaign transparency. The 2009 U.S. Supreme Court case of *Caperton v. Massey Coal Company* established that extraordinary campaign spending in support of a judicial candidate by a party to a case that will be heard by that judge introduces a probability of bias that requires the judge to recuse himself from hearing his supporter's case.[4] This interest is particularly relevant for Michiganians.

In summary, interest groups and the individuals who have the financial wherewithal to steer election outcomes and, subsequently, the course of public policy, frequently find their interests served by the absence of campaign accountability. The public interest is always served by campaign transparency. In the middle sit the officeholders, dependent on both interest groups and voters. In the absence of pressure from citizens for transparency, the officeholders' inaction on campaign disclosure serves the cause of the interest groups at the expense of the public interest.

Michigan Supreme Court Campaigns, 2000-2010:
The Invisible Hand in Judicial Campaigns

The trajectory of Michigan Supreme Court campaigns has evolved over the last quarter-century from low key, low-dollar contests, to highly financed, coarse-toned, highly secretive contests. The Michigan Supreme Court campaign in 2000 represented a point of radical change.

The data in Table 1 show a pre-modern era, prior to the 2000 campaign, when the candidate committees did 90 percent of the campaign spending, virtually all spending was disclosed, and the average spent per seat by all parties was less than $770,000. Review of the individual campaign years' summaries that are shown in Appendix A of this report shows that candidates with greater financial backing won 10 of 18 contests in the pre-modern era, a success rate of 56 percent for the better-funded candidates.

In the modern era, beginning with the 2000 campaign, the nature of campaign finances has been dramatically different. For the period from 2000 through 2010, the candidate committees accounted for just 37 percent of overall campaign spending. Just 50.5 percent of all spending was reported in the State's disclosure system. And the candidates with greater financial backing won 11 of 12 races, a success rate of 92 percent. In the modern era, average spending per seat topped $3.5 million.

Some elements of the modern era of Michigan Supreme Court campaigns:

- The 2000 campaign featured six major party candidates collectively raising $6.8 million. Reported independent expenditures totaled $1.5 million. Unreported issue advertising sponsored by the Michigan Democratic Party, the Michigan Chamber of Commerce and the Michigan Republican Party totaled $7.5 million.
- In 2002, the candidates raised a combined total of $964,000 and reported independent expenditures totaled $27,000. The only television issue ad buyer that year, the Michigan Chamber of Commerce, outspent the field of candidates with $1 million in unreported ads.
- In 2004, the candidates raised $1.5 million. Reported independent expenditures totaled just less than $700,000, including $440,000 spent by Geoffrey Fieger to attack incumbent Justice Stephen Markman in a flight of advertisements that were attributed until months after the election to a phony committee called Citizens for Judicial Reform.[5] The Michigan Chamber of Commerce, again, was the only issue advertiser with $1.4 million in ads.
- In 2006, the candidates raised $1.1 million, reported independent expenditures totaled $5,000 and the Michigan Chamber of Commerce was the only issue advertiser, spending $844,000.

Table 1. **Michigan Supreme Court**

Pre-Modern Era

1984	1986	1988	1990	1992	1994	1996	1998	Total 1984-1998
$1,181,321	$1,462,306	$295,076	$1,025,046	$1,091,924	$1,353,115	$2,354,106	$3,732,621	$12,495,515
$ -	$ -	$ -	$ -	$ -	$50,667	$1,193,232	$76,960	$1,320,859
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$1,181,321	$1,473,650	$295,076	$1,025,046	$1,091,924	$1,403,782	$3,547,338	$3,809,581	$13,827,718
3	2	2	2	2	2	2	3	18
$393,774	$736,825	$147,538	$512,523	$545,962	$701,891	$1,773,669	$1,269,860	$768,207

Source: Candidate Committees and Independent Expenditures: Michigan Department of State campaign finance records
Electioneering TV Ads: MCFN TV study/Public files of Michigan broadcasters and cable systems

- The 2008 campaign was the only time in the modern era when a candidate with greater financial backing did not win: Then-Third Circuit Court Judge Diane Hathaway defeated incumbent Chief Justice Clifford Taylor. Taylor raised more in his campaign account than Hathaway, $1.9 million to $750,000. Reported independent expenditures narrowly favored Hathaway, $522,000 to $491,000. Issue advertising by the Michigan Republican Party and the Michigan Chamber of Commerce totaled $2.4 million, compared to $1.4 million by the Michigan Democratic Party. Unreported spending was greater than that which was reported, $3.8 million to $3.7 million.
- The 2010 campaign represented a culmination of a sort in the television-dominated modern era of Michigan Supreme Court campaigns: Third Circuit Judge Mary Beth Kelly was the top vote-getter in 2010, and she was the only major party nominee who did not buy television advertising with her own campaign account. The Michigan Republican Party spent $3.4 million for television advertisements supporting Kelly and her fellow Republican nominee, Justice Robert Young, and reported only $650,000 of that amount. Judge Kelly's campaign committee reported raising just $411,000. The Michigan Republican Party and Michigan Association of Realtors reported independent expenditures of $2.4 million supporting Kelly and Young, compared to $183,000 reported by the Michigan Democratic Party. The Democratic Party spent $2.4 million for unreported attack issue ads directed at Kelly and Young. Overall, unreported spending topped that which was reported, $6.2 million to $5.2 million.

The secrecy of campaign finances in the modern era of Supreme Court campaigns matters because it runs contrary to citizens' interests in being able to evaluate candidates in light of their financial supporters. But that interest exists for all elections. What is unique about Supreme Court elections is the citizens' interest in due process of law. In *Caperton v. Massey Coal Company*, the United States Supreme Court ruled that extraordinary campaign spending in support of a judicial candidate by a party whose litigation will come before the judge he has supported introduces a probability of bias that requires the judge to recuse himself from his campaign supporter's litigation. But how can a party to a case where due process has been compromised by extraordinary spending even know to ask a justice to recuse if the spending is unreported? The *Caperton* case illustrates that this is no mere theoretical problem. Campaign spenders are rational economic actors, and no one has greater reason to provide extraordinary support to a justice's campaign than a party to a high-stakes case in the appeals pipeline.[6]

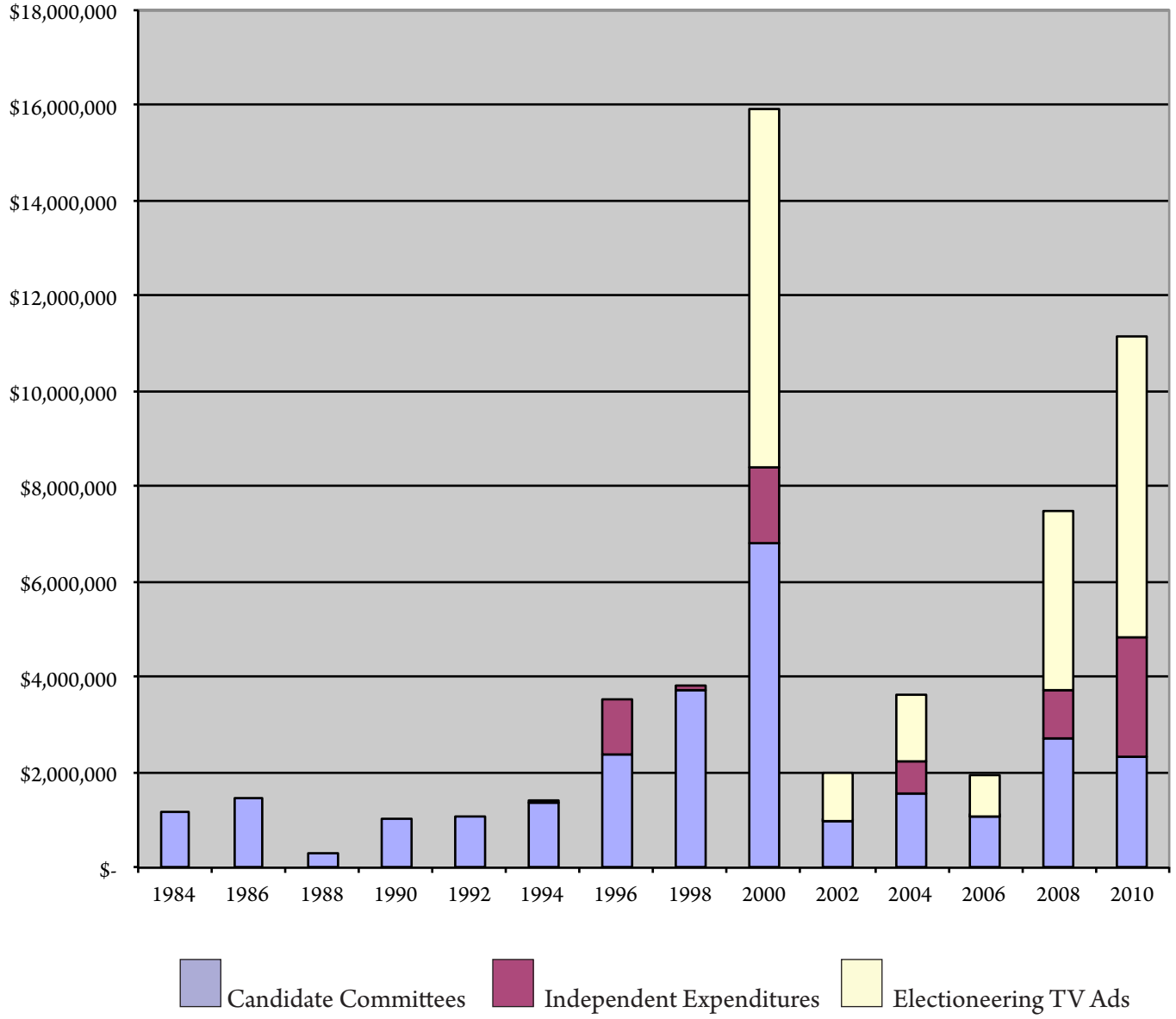
Campaign Finance Summary, 1984-2010

	Modern Era						
	2000	**2002**	**2004**	**2006**	**2008**	**2010**	**Total 2000-2010**
Candidate Committees	$6,824,311	$964,342	$1,544,278	$1,087,344	$2,690,495	$2,351,329	$15,462,099
Independent Expenditures	$1,587,829	$27,408	$694,700	$5,223	$1,012,000	$2,485,885	$5,813,045
Electioneering TV Ads	$7,500,000	$1,020,000	$1,377,000	$844,500	$3,804,000	$6,295,000	$20,840,500
Total Spending	$15,912,140	$2,011,750	$3,615,978	$1,937,067	$7,506,495	$11,132,214	$42,115,644
Number of Seats	3	2	2	2	1	2	12
Spending per Seat	$5,304,047	$1,005,875	$1,807,989	$968,534	$7,506,495	$5,566,107	$3,509,637
Percent Disclosed	52.9%	49.3%	61.9%	56.4%	49.3%	43.5%	50.5%

The gross failure of campaign disclosure in Michigan Supreme Court campaigns creates a toxic cloud that shadows the court's presumed impartiality. More than anywhere else in Michigan politics, campaign transparency is urgently needed in Supreme Court campaigns.

Figure 1 provides a graphical illustration of how campaign finances have changed in Michigan Supreme Court campaigns from the pre-modern era, 1984-1998, to the modern era, 2000-2010.

Figure 1. **Michigan Supreme Court Campaign Finance Summary, 1984 - 2010**



Michigan Gubernatorial Campaigns, 2002-2010:
$42 Million Off the Books

Candidate-focused issue advertising first appeared in a Michigan gubernatorial campaign in the 2002 Democratic primary. The St. Clair County Democratic Party bought $1.85 million in ads that sought to define former Gov. James Blanchard and then-Attorney General Jennifer Granholm as unsuitable alternatives to Congressman David Bonior. The ads carefully avoided any reference to voting, and the St. Clair County committee filed campaign finance reports that said that it had neither raised, nor spent, any money to support or oppose a candidate.

The data in Table 2 show that issue ads have been an important feature of every gubernatorial campaign since they were introduced. Overall, they have accounted for $42.1 million of $152.8 million spent, or 27.6 percent.

By election:

- In the 2002 general election, spending for undisclosed issue ads exceeded reported independent expenditures and candidate spending: $9.8 million to $8.7 million.
- In the 2006 cycle, when neither major party candidate had a primary challenger, issue advertising totaled $18.3 million, including $12.8 million spent by the Michigan Democratic Party.
- In the 2010 Democratic primary, the eventual nominee, Lansing Mayor Virg Bernero, won by 20 points without buying any television advertising from his campaign account. In action reminiscent of 2002, the Genesee County Democratic Party spent $2 million touting Bernero and attacking his opponent, then-House Speaker Andy Dillon. Dillon had $870,000 in issue ad support from groups called Northern Michigan Education Fund and Advance Michigan Now.
- In the 2010 Republican primary, there was $1.2 million of undisclosed television issue advertising supporting then-Attorney General Mike Cox and opposing Mr. Cox's opponents, particularly Congressman Pete Hoekstra; and $212,000 spent for unreported issue ads to attack Mr. Cox.
- In the 2010 general election, undisclosed television issue advertising exceeded reported independent expenditures and candidate spending, $7.5 million to $6.6 million. The Michigan Democratic Party spent $4.3 million on behalf of Virg Bernero and the Republican Governors Association spent $3.6 million on behalf of now-Gov. Rick Snyder.

As in all elections where there is a failure of campaign finance disclosure, the lack of transparency in recent Michigan gubernatorial campaigns deprives voters of an ability to evaluate candidates in light of who is providing their financial support. In addition, there is the unknown effect that unidentified campaign supporters have on an administration's policy agenda. In one of her final interviews before leaving office, former Gov. Jennifer Granholm told Michigan Public Radio, "It is utterly ridiculous that there is no disclosure of these third party donations to secret groups that are flooding the airwaves." She said the unreported spending "will have incredible sway on the political system, like it or not."[7]

As the beneficiary of $20 million worth of undisclosed advertising sponsored by the Michigan Democratic Party, Ms. Granholm's authority on this matter should not be questioned. She benefitted more from the invisible hand of unreported campaign spending than anyone in the history of Michigan politics.

Summaries of 2002, 2006 and 2010 gubernatorial campaigns are displayed in Appendix B of this report.

Table 2. **Michigan Gubernatorial Campaign Finance Summary, 2002 - 2010**

	2002 Republican Primary	2002 Democratic Primary	2002 General	2006 Primaries & General	2010 Republican Primary	2010 Democratic Primary	2010 General Election	Total
Candidate Committees	$3,038,811	$11,520,242	$4,717,849	$57,653,709	$15,504,951	$2,593,108	$6,556,423	$101,585,093
Independent Expenditures	-	1,222,040	4,005,848	3,089,164	390,841	-	298,568	9,006,461
Electioneering TV Ads	-	1,850,000	9,800,000	18,330,000	1,403,000	2,900,000	7,900,000	42,183,000
Total	$3,038,811	$14,592,282	$18,523,697	$79,072,873	$17,298,792	$5,493,108	$14,754,991	$152,774,554
Percent Disclosed	100.0%	87.3%	47.1%	76.8%	91.9%	47.2%	46.5%	72.4%

Sources: MI Dept of State, MCFN analysis of broadcasters' public files

Attorney General and Secretary of State Campaigns:
$5.9 Million that Made a Difference

Undisclosed issue advertising was an important factor in the 2002 attorney general campaign. The candidates, Democrat Gary Peters and Republican Mike Cox, had similar reported financial backing: $1.1 million for Peters and $1 million for Cox. The Michigan Democratic Party spent $500,000 for issue ads in support of Peters' campaign but, arguably, it was an undisclosed $485,000 ad blitz in the final days of the campaign by the Michigan Chamber of Commerce that boosted Cox to a 5,200-vote win out of three million votes cast.

The 2006 attorney general race was not close. Attorney General Mike Cox had almost three times as much campaign cash as his Democratic challenger, Amos Williams: $1.9 million to $700,000. The Michigan Chamber of Commerce spent $500,000 for television issue ads to assist Cox. Cox won that election by more than 10 percentage points.

The 2010 attorney general campaign was one that featured extravagant spending on issue ads, even though the eventual winner, Republican Bill Schuette, had a three-to-one fundraising advantage over his Democratic opponent, David Leyton. The candidates raised $2.9 million, reported independent expenditures totaled $209,000, and the political parties and two groups previously unknown in Michigan campaigns, Michigan Advocacy Trust and Law Enforcement Alliance of America, spent $2.6 million for undisclosed issue ads.

The 2010 secretary of state campaign was another instance where a winning candidate, Republican Ruth Johnson, won a television-driven campaign without buying any television advertising from her own campaign account. The Michigan Republican Party spent $1.35 million for unreported issue ads attacking Johnson's Democratic opponent, Jocelyn Benson. Johnson's campaign account and reported independent expenditures totaled just $755,000. Benson raised $1.1 million in her campaign account and the Michigan Democratic Party spent $465,000 for undisclosed issue ads attacking Johnson. Overall, half the money spent in the campaign was off the books.

Campaign finance summaries of attorney general and secretary of state campaigns from 2002, 2006 and 2010 are shown in Appendix C.

Ignoring the Blunt Instrument of Michigan Campaigns

As electioneering television advertisements have become the blunt instrument of choice in Michigan political campaigns, the Department of State has relied on Supreme Court jurisprudence of the bygone century to steadfastly ignore them. In a position expressed in an interpretive statement issued to Robert LaBrant of the Michigan Chamber of Commerce on April 20, 2004, the Department stated that it does not have the authority to regulate issue ads. It said, it "…must apply the express advocacy standard to avoid constitutional problems,"[8] associated with the definition of an expenditure in the Michigan Campaign Finance Act (MCFA).

The MCFA defines an expenditure as a "[A] payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, material, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question. "The MCFA makes an exclusion in the definition of an expenditure for "… communication on a subject or issue if the communication does not support or oppose a ballot question or candidate by name or clear inference."[9]

To give an example of what this means in practice, consider two examples of advertisements from the 2008 Michigan Supreme Court campaign. The Michigan Republican Party ran an ad that began by saying, "Newspapers call Diane Hathaway unqualified for the Supreme Court."[10] The Michigan Democratic Party ran ads that said, "Taylor was voted the worst judge on the state Supreme Court."[11] In the view of the Department of State, neither advertisement carried clear inference of support or opposition of a candidate. There was no reporting of either expenditure, nor reporting by either political party of whose money was used to pay for those ads.

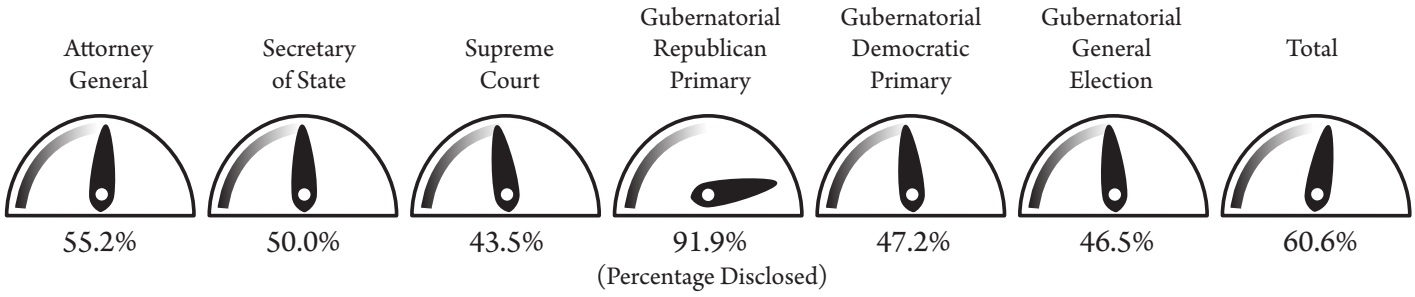
The Department of State's interpretation that clings to the presence of 'magic words' from *Buckley* to define a campaign expenditure ignores the pivotal 2007 U.S. Supreme Court case of *Federal Election Commission (FEC) v. Wisconsin Right to Life (WRTL)*.[12] That case, which was developed to challenge the McCain-Feingold ban against corporate spending on advertisements naming a federal candidate in the weeks immediately preceding an election, also had the effect of recognizing that there is a functional equivalent of express advocacy. The U.S. Supreme Court ruled that there can be advertising that names a political candidate that is authentic issue advocacy and not a back-door campaign ad. The court also acknowledged that an authentic campaign ad doesn't have to have 'magic words.'

In reaching its decision in *FEC v WRTL*, the U.S. Supreme Court considered what constitutes genuine issue advocacy. They asked: Is there a genuine policy matter at stake? Is the advertisement an authentic effort to mobilize grassroots lobbying of a candidate who can affect the policy matter? Is the advertisement an attempt to characterize the candidate's suitability to hold office? In the case at hand, the court said that the answer to the first two questions was, 'yes,' and the answer to the third question was, 'no.' That made clear that the advertisement was authentic issue advocacy.[13]

Returning to the previously cited examples from the 2008 Michigan Supreme Court campaign, those advertisements fail the test of authentic issue advocacy on all counts. In Michigan, judges are not lobbyable officials, and the ads most certainly set out to define the candidates' suitability for office. The Department of State's slavish reliance on *Buckley's* magic words of express advocacy as a standard to determine what is, or, is not, a campaign expenditure, creates an enormous failure in the system of campaign finance accountability. U.S. Supreme Court campaign finance jurisprudence has moved forward in the direction of realism. The Michigan Department of State is stuck in the last century.

The Cost of Willful Ignorance

Figure 2. **Dashboard of Campaign Finance Accountability, 2010**



The cost to Michigan voters of ignoring candidate-focused advertising that doesn't include 'magic words' is represented in Figure 2, the Dashboard of Campaign Finance Accountability, 2010. Overall, just 61 percent of campaign spending for statewide offices was disclosed in 2010, and that average is heavily weighted by the Republican gubernatorial primary that included disclosure of $7 million from just two entities: $6 million in self-funding from Rick Snyder and $1 million in public campaign funds. If the Republican gubernatorial primary is set aside, less than half the spending in statewide campaigns in 2010 was disclosed. The Dashboard of Campaign Finance Accountability clearly shows a civic culture that has sunk to a disgraceful level of ignorance.

Table 3. **Statewide Offices' Campaign Finance Summaries, 2010**

	Attorney General	Secretary of State	Supreme Court	Gubernatorial Republican Primary	Gubernatorial Democratic Primary	Gubernatorial General Election	Total
Candidate Committees	$2,935,092	$1,799,767	$2,351,329	$15,504,951	$2,593,108	$6,556,423	$31,740,670
Independent Expenditures	$209,381	$15,945	$2,485,885	$390,841	$ -	$298,568	$3,400,620
Electioneering TV Ads	$2,550,000	$1,815,000	$6,295,000	$1,403,000	$2,900,000	$7,900,000	$22,863,000
Total	$5,694,473	$3,630,712	$11,132,214	$17,298,792	$5,493,108	$14,754,991	$58,004,290

Sources: MI Dept of State, MCFN analysis of broadcasters' public files

A Simple Fix to Restore Integrity

Repairing Michigan's conspicuously failing system of campaign accountability is conceptually simple. The definition of an expenditure in the Michigan Campaign Finance Act must be amended to include electioneering communications. Electioneering communications should be defined to include any broadcast, cable, Internet or telephonic communication that features the name or image of a candidate for state or local office within 60 days of an election involving that candidate. Any committee or corporation that sponsors electioneering communications must disclose the donors whose funds the sponsor is aggregating to pay for its communications. Any committee or corporation that is a contributor to a sponsor of electioneering communications, or a contributor to a contributor, must, in turn, report its donors. No allowance can be given for the "Russian doll" strategy of hiding donors inside shells.

Would this solution have constitutional problems? Absolutely not. The 2010 case of *Citizens United v. Federal Election Commission*[14] established unequivocally that the Congress, a state legislature or, in a ballot initiative state, the people of a state may require disclosure of donors, whether the communication is express advocacy, the functional equivalent of express advocacy or issue advocacy. The Supreme Court recognized that citizens have an interest in knowing whose money is behind all such communications.

Is political accountability a threat to freedom of association? This is a desperate straw that the opponents of political accountability are grasping. They cite the 1958 case of *NAACP v. Alabama*[15] to attempt to justify anonymity for the masters of the campaign finance universe. This argument is clear indication that contemporary politics has no shame. To compare a case where anonymity was needed to protect lives when civil rights workers were being lynched and murdered with campaign spenders' desire to wipe their fingerprints off their expenditures is pathetic, cowardly and entirely inappropriate.

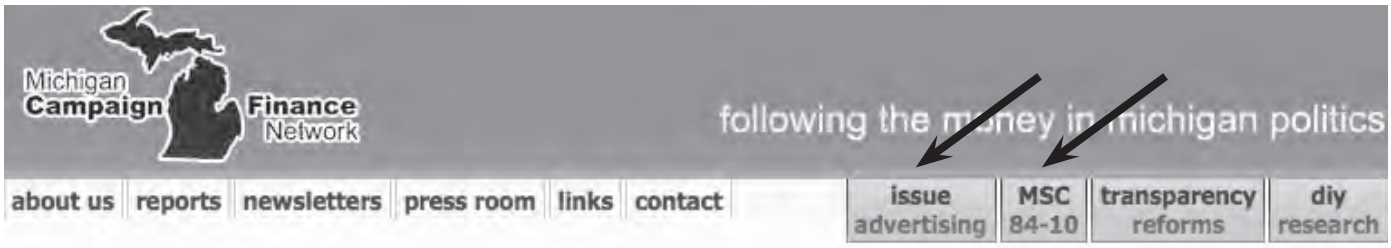
The challenge to achieving transparency and accountability for campaign spending is not a matter of ambiguous voters' values. Officeholders know that citizens want campaign transparency. A poll conducted for Inside Michigan Politics by Marketing Resource Group in March 2011 found that 81 percent of Michigan voters favor full disclosure of all electioneering spending and 12 percent oppose disclosure.[16] A 2009 poll by Denno-Noor Research commissioned by the Michigan Campaign Finance Network asked voters about the specific case of electioneering disclosure in Supreme Court campaigns and found that 96 percent favor disclosure and only 3 percent oppose it.[17] Transparency and accountability are conservative values and they are progressive values. There is no controversy.

The challenge is political courage. Officeholders are caught between voters' values and big-money donors' desire for anonymity. Will elected officials of the term limits era stand with citizens against the interest groups who pay their way to the big dance in Lansing? So far, the answer to that $70 million question is, 'No.' Now, the question is, what will the citizens do about it?

View Examples of Unreported Campaign Advertisements

The Michigan Campaign Finance Network has compiled a small collection of candidate-focused issue ads, so you can see examples of campaign advertistements that were never reported to the Michigan Department of State.

Go to www.mcfn.org



Endnotes

1 *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976)

2 Gongwer News Service, Volume 50, Report 15, Article 6, 1/21/2011

3 Brandeis, Louis D., Other People's Money—And How the Bankers Use It (1914), Chapter V, par. 1. The famous saying is quoted here as it is most often used. In fact, the original text read "Sunlight is said to be the best of disinfectants."

4 *Caperton v. Massey Coal Company*, 129 S.Ct. at 2264

5 The committee Citizens for Judicial Reform was registered at a nonexistent address with an untraceable treasurer.

6 Massey CEO Don Blankenship provided $3 million to an independent committee called And for the Sake of the Children, which was the main advertising entity in a campaign that resulted in the election of Brent Benjamin to the West Virginia Supreme Court. Benjamin subsequently refused to recuse himself from the Caperton suit and cast the deciding vote in reversing a $50 million damage judgment against Massey.

7 Michigan Public Radio transcript provided by Rick Pluta.

8 http://www.michigan.gov/documents/2004_126239_7.pdf

9 Michigan Compiled Laws 169.206

10 See http://www.mcfn.org/MSC84_10.php, "Dangerous Rulings"

11 See http://www.mcfn.org/MSC84_10.php, "The Sleeping Judge"

12 Federal Election Commission v. Wisconsin Right to Life, 551 U.S. 449 (2007)

13 *FEC v. WRTL*, 551 U.S. at 470

14 *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010)

15 *NAACP v. Alabama*, 357 U.S. 449 (1958)

16 Inside Michigan Politics, Vol. XIII, No. 11. March 28,2011

17 Unpublished poll conducted March 9-12, 2009. 600 sample. Margin or error: plus/minus 4%.

Appendix A.

Summaries of Michigan Supreme Court Campaigns, 1984 - 2010

2010

Candidate	Receipts	Independent Spenders	Amount	Electioneering Television	Amount
Davis, Alton (I)	$988,187	MI Democratic Party	$106,034	MI Republican Party	$2,760,000
Kelly, Mary Beth	418,262	MI Republican Party	1,919,315	Law Enforcement Alliance of America	930,000
Morris, Denise Langford	101,626	MI Assn of Realtors	450,000	MI Democratic Party	2,450,000
Roddis, Bob	-	RTL of MI	10,536	21 Century Leadership Fund	155,000
Young Jr., Robert P.	843,254	Total	$2,485,885	Total	$6,295,000
Total	$2,351,329	Source: MI Dept of State		Source: MCFN analysis of broadcasters' public files	
Source: MI Dept of State					

2008

Candidate	Receipts	Independent Spenders	Amount	Electioneering Television	Amount
Hathaway, Diane Marie	$752,736	MI Democratic Party	$522,203	MI Democratic Party	$1,432,000
Roddis, Robert	-	MI Republican Party	264,797	MI Chamber of Commerce	1,671,000
Taylor, Clifford W.	1,937,759	Great Lakes Educ Proj	225,000	MI Republican Party	701,000
Total	$2,690,495	Total	$1,012,000	Total	$3,804,000
Source: MI Dept of State		Source: MI Dept of State		Source: MCFN analysis of broadcasters' public files	

2006

Candidate	Receipts	Independent Spenders	Amount	Electioneering Television	Amount
Beckering, Jane	$61,269	Republican County Cmtes	$1,334	MI Chamber of Commerce	$844,500
Cavanagh, Michael F.	316,799	Democratic County Cmtes	1,218	Source: MCFN analysis of broadcasters' public files	
Corrigan, Maura D.	679,286	RTL of MI	2,671		
Morgan, Kerry L.	-	Total	$5,223		
Shulman, Marc	29,989	Source: MI Dept of State			
Total	$1,087,343				
Source: MI Dept of State					

2004

Candidate	Receipts	Independent Spenders	Amount	Electioneering Television	Amount
Kelly, Marilyn	$728,800	MI Democratic Party	$36,862	MI Chamber of Commerce	$1,377,000
Markman, Stephen J	721,978	Geoffrey Fieger (CJR)	440,000	Source: MCFN analysis of broadcasters' public files	
Schwartz, Leonard	2,847	MI Republican Party	177,032		
Thomas, Deborah	68,374	Republican County Cmtes	1616		
Zahra, Brian	22,279	RTL of MI	39,190		
Total	$1,544,278	Total	$694,700		
Source: MI Dept of State		Source: MI Dept of State			

2002

Candidate	Receipts	Independent Spenders	Amount	Electioneering Television	Amount
Brennan, J. Martin	$11,549	MI Democratic Party	$15,594	MI Chamber of Commerce	$1,020,000
Donahue, Michael	-	MI Republican Party	6,480	Source: MCFN analysis of broadcasters' public files	
Drake, Maggie	44,025	Republican County Cmtes	424		
Hadden, Donnelly	5,915	RTL of MI	4,910		
Weaver, Elizabeth A.	280,440	Total	$27,408		
Young, Robert P., Jr.	622,413	Source: MI Dept of State			
Yuille, Bruce	-				
Total	$964,342				
Source: MI Dept of State					

2000

Candidate	Receipts	Independent Spenders	Amount	Electioneering Television	Amount
Robinson, Marietta S.	$1,195,683	MI Democratic Party	$366	MI Chamber of Commerce	$3,400,000
Roddis, Robert	-	MI Republican Party	1,350,385	MI Democratic Party	3,400,000
Taylor, Clifford W.	1,332,975	Ann Arbor PAC	208,200	MI Republican Party	700,000
Markman, Stephen J.	1,244,502	Dem. Justice Caucus	28,878	Total	$7,500,000
Raaflaub, David	-	Total	$1,587,829	Source: MCFN television advertising study	
Thomas, Edward M.	1,008,420	Source: MI Dept of State			
Fitzgerald, E. Thomas	750,539				
Kaufman, Jerry	-				
Young, Robert P., Jr.	1,292,192				
Total	$6,824,311				
Source: MI Dept of State					

1998

Candidate	Receipts	Independent Spenders	Amount
Abel, Mathew	$-	MI Democratic Party	$33,036
Borman, Susan D.	663,183	MI Republican Party	43,924
Cavanagh, Michael F.	255,073	Total	$76,960
Collins, Jeffrey G.	202,163	Source: MI Dept of State	
Corrigan, Maura D.	1,033,339		
Kaufman, Jerry J.	-		
Raaflaub, David H.	-		
Taylor, Clifford W.	986,566		
Youngblood, Carole F.	592,297		
Total	$3,732,621		
Source: MI Dept of State			

Election winners in bold type.

Summaries of Michigan Supreme Court Campaigns, 1984 - 2010

1996

Candidate	Receipts
Brickley, James H.	$228,977
Cooper, Jessica	148,931
Gage, Hilda R.	723,570
Kaufman, Jerry J.	-
Kelly, Marilyn	553,274
Murphy, William B.	699,354
Raaflaub, David H.	-
Total	$2,354,106

Source: MI Dept of State

Independent Spenders	Amount
MI Democratic Party	$387,785
MI Republican Party	551,273
Justice for MI Citizens	103,788
MI State Victory Cmte	150,386
Total	$1,193,232

Source: MI Dept of State

1994

Candidate	Receipts
Griffin, Richard A.	$198,178
Killeen, George	63,940
Mallett, Conrad L., Jr.	374,101
Shelton, Donald E.	519,901
Weaver, Elizabeth A.	196,995
Total	$1,353,115

Source: MI Dept of State

Independent Spenders	Amount
MI Democratic Party	$50,668

Source: MI Dept of State

1992

Candidate	Receipts
Kelly, Marilyn	$108,949
Riley, Dorothy Comstock	241,038
Roddis, Robert W.	-
Kaufman, Jerry J.	-
Mallett, Conrad L., Jr.	451,776
Talbot Michael	290,162
Total	$1,091,925

Source: MI Dept of State

1990

Candidate	Receipts
Boyle, Patricia J.	$430,388
Cavanagh, Michael F.	263,926
Durant, Clark	314,842
Hahn, Charles	-
Hughes, Judy M.	15,890
Kaufman, Jerry J.	-
Total	$1,025,046

Source: MI Dept of State

1988

Candidate	Receipts
Brickley, James H.	$120,492
Johnston, Richard	3,025
Kaufman, Jerry J.	1,500
Levin, Charles L.	82,664
Stempien, Marvin	87,395
Warbier, Donald	-
Total	$295,076

Source: MI Dept of State

1986

Candidate	Receipts
Archer, Dennis W.	$450,817
Carras, James J.	-
Clay, Henry	-
Collison, Jeffrey C.	-
Ferency, Zolton	19,397
Ferrara, Andrea J.	-
Fitzgerald, E. Thomas	17,193
Griffin, Robert P.	320,007
Howarth, E. Leonard	-
Kallman, James T.	74,323
Kaufman, Jerry J.	945
Kelley, James J.	16,875
Korn, Stephen P.	-
MacKenzie, Barbara B.	15,151
Marutiak, Michael Joseph	-
McDonough, John J.	-
Mikesell, Willard L	575
O'Hara, John P., Jr.	1,050
Paunovich, Melvin L.	-
Robb, Dean	488,600
Simon, Caleb M.	-
Simon, Michael F.	-
Stelt, James R.	-
Weiss, Robert E.*	68,717
Total	$1,473,650

Source: MI Dept of State

1984

Candidate	Receipts
Boyle, Patricia J.	$347,634
Brickley, James H.	145,830
Griffin, Robert P.	209,542
Hathaway, James A.	121,407
Kavanagh, Thomas Giles	109,542
Raaflaub, David H.	-
Riley, Dorothy Comstock	247,366
Roddis, Robert W.	-
Total	$1,181,321

Source: MI Dept of State

Election winners in bold type.

Appendix B.

Summaries of Michigan Gubernatorial Campaigns, 2002 - 2010

2010 General

Candidate	Receipts
Bernero, Virg	$2,215,193
Snyder, Rick	4,341,230
Total	$6,556,423

Source: MI Dept of State

Independent Spenders	Amount
MI Republican Party	$241,195
MI Democratic Party	17,949
Working America	39,424
Total	$298,568

Source: MI Dept of State

Electionering Television	Amount
Republican Governors Assn	$3,600,000
MI Democratic Party	$4,300,000
Total	$7,900,000

Source: MCFN analysis of broadcasters' public files

2010 Republican Primary

Candidate	Receipts
Bouchard, Mike	$1,420,260
Cox, Mike	3,641,486
George, Tom	472,802
Hoekstra, Pete	1,927,288
Snyder, Rick	8,043,115
Total	$15,504,951

Source: MI Dept of State

Independent Spenders	Amount
RTL MI PAC	$75,241
MI Businesses United	315,600
Total	$390,841

Source: MI Dept of State

Electionering Television	Amount
Americans for Job Security	$755,000
Fdn. for Secure & Prosperous Am.	$215,000
MI Chamber of Commerce	$268,000
MI Taxpayers Alert	$165,000
Total	$1,403,000

Source: MCFN analysis of broadcasters' public files

2010 Democratic Primary

Candidate	Receipts
Bernero, Virg	$1,166,656
Dillon, Andy	1,426,452
Total	$ 2,593,108

Source: MI Dept of State

Independent Spenders	Amount

Electionering Television	Amount
Genesee County Democratic Party	$2,025,000
Advance Michigan Now	$445,000
Northern Michigan Education Fund	$430,000
Total	$2,900,000

Source: MCFN analysis of broadcasters' public files

2006 Primary & General

Candidate	Receipts
DeVos, Dick	$42,550,955
Granholm, Jennifer	15,718,935
Total	$58,269,890

Source: MI Dept of State

Independent Spenders	Amount
MI Democratic Party	$319,687
Coalition for Progress	1,655,543
Emily's List	965,390
America Votes	5,164
MI Republican Party	2,980
National RTL - MI	130,986
RTL MI	9,414
Total	$3,089,164

Source: MI Dept of State

Electionering Television	Amount
MI Democratic Party	$12,840,000
MI Republican Party	$1,300,000
Republican Governors Assn	$2,620,000
MI Chamber of Commerce	$1,000,000
Coalition for Traditional Values	$570,000
Total	$18,330,000

Source: MCFN analysis of broadcasters' public files

2002 General Election

Candidate	Receipts
Granholm, Jennifer	$2,494,734
Posthumus, Dick	2,223,115
Total	$4,717,849

Source: MI Dept of State

Independent Spenders	Amount
MI Republican Party	$3,494,542
RTL MI	237,955
Safari Club Int'l	14,897
Nat'l Rifle Assn	3,998
Citizens for Trad. Values	8,501
MI Democratic Party	203,799
Planned Parenthood	6,895
MI Education Assn	12,238
Citizens for Public Educ.	23,023
Total	$4,005,848

Source: MI Dept of State

Electionering Television	Amount
MI Democratic Party	$7,200,000
MI Republican Party	$1,100,000
MI Chamber of Commerce	$1,100,000
Total	$9,400,000

Source: MCFN analysis of broadcasters' public files

2002 Republican Primary

Candidate	Receipts
Posthumus, Dick	$2,722,154
Schwarz, Joe	518,657
Total	$3,240,811

Source: MI Dept of State

Independent Spenders	Amount

Electionering Television	Amount

2002 Democratic Primary

Candidate	Receipts
Blanchard, Jim	$2,180,527
Bonior, David	2,258,129
Granholm, Jennifer	7,081,586
Total	$11,520,242

Source: MI Dept of State

Independent Spenders	Amount
Citizens for Responsible Leadership	$1,220,362
10th Dist Dem Cmte	3,678
Total	$1,224,040

Source: MI Dept of State

Electionering Television	Amount
St. Clair County Democratic Party	$1,850,000

Source: MCFN analysis of broadcasters' public files

Election winners in bold type.

Summaries of Michigan Attorney General and Secretary of State Campaigns, 2002 - 2010

2010 Attorney General

Candidate	Receipts
Leyton, David	$714,080
Schuette, Bill	2,221,012
Total	$2,935,092

Source: MI Dept of State

Independent Spenders	Amount
MI Republican Party	$200,580
RTL MI	5,300
MI Democratic Party	1,381
Coalition for Progress	2,120
Total	$209,381

Source: MI Dept of State

Electionering Television	Amount
MI Democratic Party	$450,000
MI Republican Party	800,000
MI Advocacy Trust	1,000,000
Law Enforcement Alliance Am	300,000
Total	$2,550,000

Source: MCFN analysis of broadcasters' public files

2010 Secretary of State

Candidate	Receipts
Benson, Jocelyn	$1,084,817
Johnson, Ruth	714,950
Total	$1,799,767

Source: MI Dept of State

Independent Spenders	Amount
MI Republican Party	$9,262
RTL MI	5,302
MI Democratic Party	1,381
Total	$15,945

Source: MI Dept of State

Electionering Television	Amount
MI Democratic Party	$465,000
MI Republican Party	1,350,000
Total	$1,815,000

Source: MCFN analysis of broadcasters' public files

2006 Attorney General

Candidate	Receipts
Cox, Mike	$1,938,740
Williams, Amos	671,083
Total	$2,609,823

Source: MI Dept of State

Independent Spenders	Amount
MI Republican Party	$743
MI Democratic Party	28,206
Total	$28,949

Source: MI Dept of State

Electionering Television	Amount
MI Chamber of Commerce	$500,000

Source: MCFN analysis of broadcasters' public files

2006 Secretary of State

Candidate	Receipts
Land, Terri Lynn	$1,218,193
Sabaugh, Carmella	192,528
Total	$1,410,721

Source: MI Dept of State

Independent Spenders	Amount
Republican Party Cmtes	$1,697
MI Democratic Party	41,737
Secretary of State Project	4,647
Total	$48,081

Source: MI Dept of State

Electionering Television	Amount

2002 Attorney General

Candidate	Receipts
Cox, Mike	$915,042
Peters, Gary	1,136,366
Total	$2,051,408

Source: MI Dept of State

Independent Spenders	Amount
MI Republican Party	$3,289
RTL - MI	2,296
Great Lakes Educ. Project	63,419
Nat'l Rifle Ass.	2,371
MI Democratic Party	7,797
Total	$79,172

Source: MI Dept of State

Electionering Television	Amount
MI Chamber of Commerce	$485,000
MI Democratic Party	500,000
Total	$985,000

Source: MCFN analysis of broadcasters' public files

2002 Secretary of State

Candidate	Receipts
Hollowell, Butch	$696,040
Land, Terri Lynn	2,092,829
Total	$2,788,869

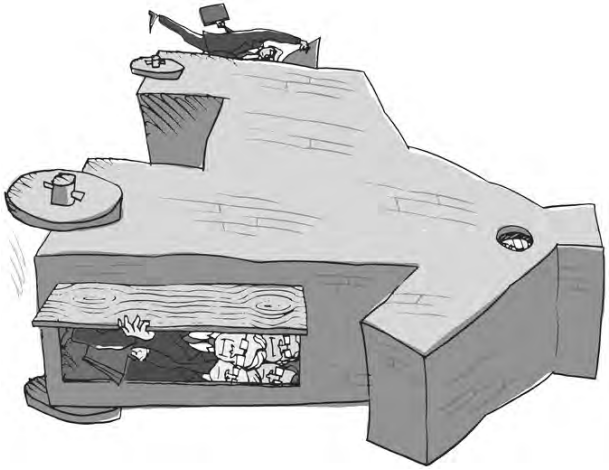
Source: MI Dept of State

Independent Spenders	Amount
West MI Leadership Caucus	$359,880
MI Republican Party	2,513
RTL - MI	2,296
MI Democratic Party	7,797
Total	$372,486

Source: MI Dept of State

Electionering Television	Amount

Election winners in bold type.



"Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed."

Justice Antonin Scalia, *Doe v. Reed* (2010)

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