



Campaign Finance Talk

The Voice of the Michigan Campaign Finance Network

www.mcfn.org

June 2008

Can a Civil Fine “Correct” a Crime?

The Michigan Department of State and Meijer, Inc. reached a conciliation agreement in May that has Meijer paying a civil fine of \$190,000 for violating the Michigan Campaign Finance Act in connection with two elections in Acme Township, near Traverse City, in 2005 and 2007.

In 2005, Meijer spent corporate funds to oppose a ballot question that would have put a moratorium on the development of ‘big box’ stores in Acme Township. It is within the law to spend corporate funds in a ballot question campaign, but Meijer did not report its corporate spending.

In 2006 and 2007, Meijer secretly paid the Grand Rapids public relations firm Seyferth Spaulding and Tennyson to act as consultants for a recall campaign that targeted several Acme Township officials who refused to surrender local control on zoning issues related to a proposed Meijer store for Acme Township.

It is illegal to use corporate funds in a recall campaign. It is a felony to do so knowingly.

A law for the ‘political class’

The Michigan Campaign Finance Act says the following in regard to resolving state campaign finance violations:

“...if the secretary of state determines that there may be reason to believe that a violation of this act has occurred, the secretary of state shall endeavor to correct the violation or prevent a further violation by using informal methods such as conference, conciliation or persuasion and may enter into a conciliation agreement with the person involved. Unless violated, a conciliation agreement is a complete bar to any further action with respect to matters covered in the conciliation agreement.”

The position of the Department of State in this case was that it was directed by statute to resolve informally the case of Meijer’s illegal political activity, and in doing so they levied the largest fine in the history of the Michigan Campaign Finance Act. According to the Department’s spokesperson, Kelly Chesney, this course had the certainty of a much larger fine than Meijer faced through criminal prosecution and, Chesney noted, it can be very difficult to prove that a violator broke the law knowingly.

Chesney did not address the relatively weak deterrent effect of a civil fine compared to a criminal prosecution.

Grand Traverse County Prosecutor Alan Schneider, who was working with the Michigan State Police to investigate Meijer’s illegal campaign activity, noted on Interlochen Public Radio that there is a problem with State’s interpretation of the statute: If a violation is criminal, can an apparent crime be *corrected* by a civil fine?

Schneider ran into the irrationality of the Campaign Finance Act earlier when he issued subpoenas in the course of his investigation of the Meijer election activity in Acme Township. Meijer refused to respond to the subpoenas, arguing that only the secretary of state has jurisdiction in matters of campaign finance violations, unless she refers a case to the attorney general.

Traverse City Circuit Court Judge Philip Rodgers ruled in April that Meijer was correct about this: Jurisdiction does reside with the secretary of state. But Judge Rodgers also noted what an anomaly the law is. In his opinion, he said, “While all other citizens are subject to the full brunt of the justice system for their alleged crimes, the Legislature has created a ‘political class’ of those who are elected or would be elected to office and exempted their alleged campaign crimes from scrutiny by experienced county prosecutors.”

Prosecutor Schneider has appealed Judge Rodgers’s ruling to the Michigan Court of Appeals and he remains committed to whatever investigation he is allowed to conduct.

Uneven enforcement

Attorney General Mike Cox told the Grand Rapids Press that he was “dumbfounded” by the Department of State’s handling of the case. “We would have said, ‘Let us look at things before you start signing away options,’” Cox said.

This is not the first time the Department of State has gone into a somewhat inexplicable conciliation agreement following a serious violation. In June 2005, the Department reached a conciliation agreement with the recipient of an illegal corporate contribution, the Greater Detroit Leadership PAC, that didn’t require the PAC to return all of the corporate money it had received. The PAC repaid half of a \$25,000 corporate contribution and its conciliation agreement excused it from repaying the balance. The Greater

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Dollar Competition in Michigan Congressional Races

Inter-party campaign finances are looking more competitive in two Michigan congressional districts than they have been at any time in recent years.

In the 7th Congressional District, incumbent Republican Rep. Tim Walberg trailed his Democratic challenger, state Sen. Mark Schauer, in funds raised and cash on hand as of March 31st. Schauer had raised \$884,726 and had \$751,359 in cash on hand. Walberg had raised \$822,652 and had \$604,467 on hand.

In the 9th Congressional District, incumbent Republican Rep. Joe Knollenberg had raised \$1,833,255 and had \$1,336,213 on hand as of March 31st, while his Democratic challenger, former

state senator and lottery commissioner Gary Peters, had raised \$729,537 and had \$644,931 on hand.

Both Walberg and Knollenberg won relatively narrow electoral victories in November 2006: Walberg by 3.9% of the vote, and Knollenberg by 5.4% of the vote. In 2006, Walberg raised 20 times as much money as Democratic challenger Sharon Renier, and Knollenberg raised more than six times as much as Democratic challenger Nancy Skinner.

The political parties are certain to be a factor in these targeted races. The Democratic Congressional Campaign Committee has a wide advantage over the National Republican Congressional

Committee in cash on hand as of April 30th: \$45.3 million to \$6.7 million.

Other interest groups, such as the League for Conservation Voters and the anti-tax Club for Growth, are sure to weigh in, as well. Club for Growth has played hard in the 7th District the last two elections. In 2006, it made \$514,000 in independent expenditures supporting Walberg and opposing then-incumbent Joe Schwarz in the Republican primary. The Club also bundled \$607,000 in individual contributions for the primary. Overall, Club for Growth accounted for 90% of the money behind Walberg's primary win.

Presidential Campaign - 2008: \$980 Million and Counting

The 2008 presidential campaign continues to set campaign finance records. As of April 30th, the entire field of candidates had raised \$980.5 million. Contributions from individuals for the primaries have totaled \$784.3 million, nearly twice the total at this point in the 2004 campaign (\$434.6 million) and nearly four-times the

total from 2000 (\$200.5 million).

Of the three remaining candidates, Sen. Barack Obama was the leading fundraiser for April at \$31.9 million. Sen. Hillary Clinton raised \$26.9 million, and Sen. John McCain raised \$18.5 million, his best month of the campaign so far.

Probably the most dramatic trend within the record-setting fundraising is the

increase of small contributions less than \$200. Since 2000, small contributions are up by nearly 500 percent, from \$46.4 million to \$277.1 million. Barack Obama raised \$19.7 million in small contributions in April, 62 percent of his total. April was the third straight month in which Obama and Clinton raised more than half their campaign cash in small contributions.

Presidential Fundraising, through April 30, 2008

Primary Receipts Only

Candidate	Primary Receipts	Small Contrib < \$200	Large Contrib > \$1,000	Cash on Hand 4/30/08	Debt 4/30/08
Obama	\$263,321,623	\$120,861,944	\$87,800,407	\$37,778,705	\$2,037,802
Clinton	198,370,319	56,376,903	85,998,958	6,317,704	19,480,893
Dem Total	571,616,648	198,276,931	215,327,996		
McCain	97,258,274	20,454,345	55,904,592	21,755,092	-
Rep Total	357,200,361	78,829,799	170,670,064		
Grand Total	\$928,817,009	\$277,106,730	\$385,998,060		

Clinton receipts include \$10 million loan from the candidate
Source: Campaign Finance Institute analysis of FEC data

Top Michigan PACs Have Raised \$21.8 Million So Far

Michigan's top 150 political action committees (PACs) have raised \$21.8 million so far this election cycle, according to reports filed with the Michigan Bureau of Elections in April.

That total is down by 6 percent compared to funds raised by the top 150 PACs at this point in the record-setting 2006 election cycle, but up by 17 percent compared to the 2004 cycle.

As usual, the legislative caucuses' PACs top the list. The House Democratic Fund is the pacesetter, having raised \$1,685,900 and having \$1.15 million in cash on hand.

The Senate Republicans and House Republicans are second and third, but most of what they have raised this cycle has gone to retire debts from the 2006 cycle. The Senate Republicans have raised \$1,497,128 and have \$375,000 in cash on hand; and the House Republicans have raised \$1,259,491 and have \$251,000 on hand. The Senate Democrats are eighth

in fundraising at \$640,009 but their cash balance is competitive with their Republican counterparts at \$333,000.

The Michigan Education Association and the Michigan Association of Realtors are fourth and fifth on the list at \$759,371 and \$696,814, respectively, but both are running behind their fundraising pace of 2006.

Jon Stryker's Coalition for Progress is sixth at \$679,385. Coalition for Progress became the biggest PAC in Michigan history in the 2006 cycle with \$5.46 million raised.

Blue Cross/Blue Shield of Michigan is seventh so far this cycle, up by 51 percent at \$657,371. Blue Cross gave more than \$190,000 to officeholders' committees and leadership PACs during the six-months covered by the April report.

Prominent officeholders' leadership PACs showed robust performance during the reporting period. Gov. Jennifer Granholm's Leadership Fund has raised \$626,119, up

by 30 percent compared to last cycle.

Speaker Andy Dillon's leadership PAC has raised \$515,426, already more than any previous speaker of the house for an entire election cycle. Senate Majority Leader Mike Bishop has raised \$316,950 for his PAC, 74 percent ahead of his pace in the 2006 cycle when he was competing to lead the Senate Republican caucus.

The top new PACs so far this cycle are Rep. Robert Jones' (D-Kalamazoo) JAM PAC, at \$119,350, and the Michigan Recall Organization at \$103,192. The Michigan Recall Organization is the funding vehicle for attempted recalls of Speaker Andy Dillon and Rep. Robert Dean of Grand Rapids.

The reports that provided the data for this report were the first filed by the state PACs in six months. Federal PACs never go longer than three months between reports.

The complete list of the top 150 Michigan PACs is online at www.mcfn.org.

Top Michigan PACs, Jan.07-Apr.08

Rank	Name	01/07-4/08	01/05-4/06	change (%)	2006 cycle
1	MI House Democratic Fund	\$1,685,900	\$1,573,056	7.2	\$2,720,517
2	Senate Republican Campaign Committee	1,497,128	1,645,445	(9.0)	2,659,680
3	House Republican Campaign Committee	1,259,491	2,202,499	(42.8)	4,451,775
4	MI Education Assn. / MEA PAC	759,371	896,542	(15.3)	1,429,730
5	MI Assn. of Realtors / REALTORS PAC	696,814	803,170	(13.2)	1,194,562
6	Coalition for Progress (Jon Stryker)	679,385	n/a	n/a	5,460,077
7	Blue Cross/Blue Shield of MI / BCBSM PAC	657,371	433,234	51.7	870,435
8	Senate Democratic Fund	640,009	870,720	(26.5)	2,036,358
9	(Jennifer) Granholm Leadership Fund	626,119	482,960	29.6	893,815
10	(Andy) Dillon Leadership Fund	515,426	1,250	41,134.1	79,750
11	United Auto Workers / UAW MI Voluntary PAC	500,000	600,000	(16.7)	3,552,432
12	MI Beer & Wine Wholesalers Assn. PAC	496,451	436,160	13.8	722,698
13	MI Health & Hospital Assn. / Health PAC	408,777	309,901	31.9	518,160
14	MI Trial Lawyers Assn. / Justice PAC	386,399	512,851	(24.7)	1,062,264
15	Auto Dealers of Michigan PAC 1	382,652	337,438	13.4	608,800
16	MI Bankers Assn. PAC / MI BANK PAC	342,391	230,016	48.9	393,265
17	(Mike) Bishop Majority Fund	316,950	57,900	447.4	201,525
18	Comerica Inc. PAC	316,025	306,633	3.1	500,691
19	DTE Energy Co. PAC	301,723	328,122	(8.0)	507,361
20	MI Farm Bureau PAC	266,282	144,684	84.0	243,206

Source: MCFN analysis of Dept. of State records

Money Driving Policy

Blues, utilities pursue similar tactics to achieve policy goals

Two of the major policy initiatives in Lansing this legislative session have been driven by seven-figure advertising campaigns, more than \$700,000 in political contributions to legislators so far this election cycle and hefty lobbying campaigns, the extent of which will never be known with any real accuracy.

Blue Cross/Blue Shield of Michigan ran a \$1.4 million statewide television ad blitz from mid-January through mid-February touting its proposal to remake the individual health insurance market in Michigan. It has backed that effort with \$352,000 in contributions to legislators and their political action committees (PACs) so far this election cycle.

Blue Cross reported \$412,000 in lobbying expenditures in 2007, 10th on the MCFN list of Michigan's top 200 lobbyists

for 2007.

Blue Cross is not required to report any lobbying expenditures for 2008 until the end of August, when reports are due for the first seven months of the year.

Any lobbying done on behalf of the Blues by multi-client firms is indiscernible. Multi-client firms are required to report their gross spending and the identity of their clients, but they are not required to report how much was spent on behalf of whom, or which bills they were advocating.

The Michigan Jobs and Energy Coalition ran a \$1.9 million statewide television ad campaign that began in early April and continued through the end of May to promote the coalition's agenda for "comprehensive" energy policy. DTE

Energy and Consumers Energy, the two most prominent members of the Jobs and Energy Coalition, have combined to give legislators and their PACs \$366,000 so far this election cycle.

Consumers and DTE were 13th and 19th, respectively, on MCFN's list of the top 200 Michigan lobbyists for 2007. Consumers reported spending \$301,000 in 2007, up by 51 percent compared to 2006, and DTE reported spending \$224,000. Consumers and DTE are not required to disclose 2008 lobbying expenditures until August, and their expenditures through multi-client firms will be indiscernible, in the same way as those of Blue Cross.

Consumers and DTE combined gave \$222,455 to representatives and their PACs and \$144,115 to senators and their PACs.

The Blues and utilities each directed more money to the majority caucuses in the Legislature. The Blues steered 70 percent of their House contributions to Democrats and 58 percent of their Senate contributions to Republicans.

Consumers and DTE gave 61 percent of their combined House contributions to Democrats and 66 percent of their Senate contributions to Republicans.

Speaker of the House Andy Dillon and Senate Majority Leader Mike Bishop were the top individual recipients of the interest groups' campaign largesse. Dillon's leadership PAC and campaign committee took in \$20,000 from the Blues, and his leadership PAC alone took in \$16,000 from the two utilities.

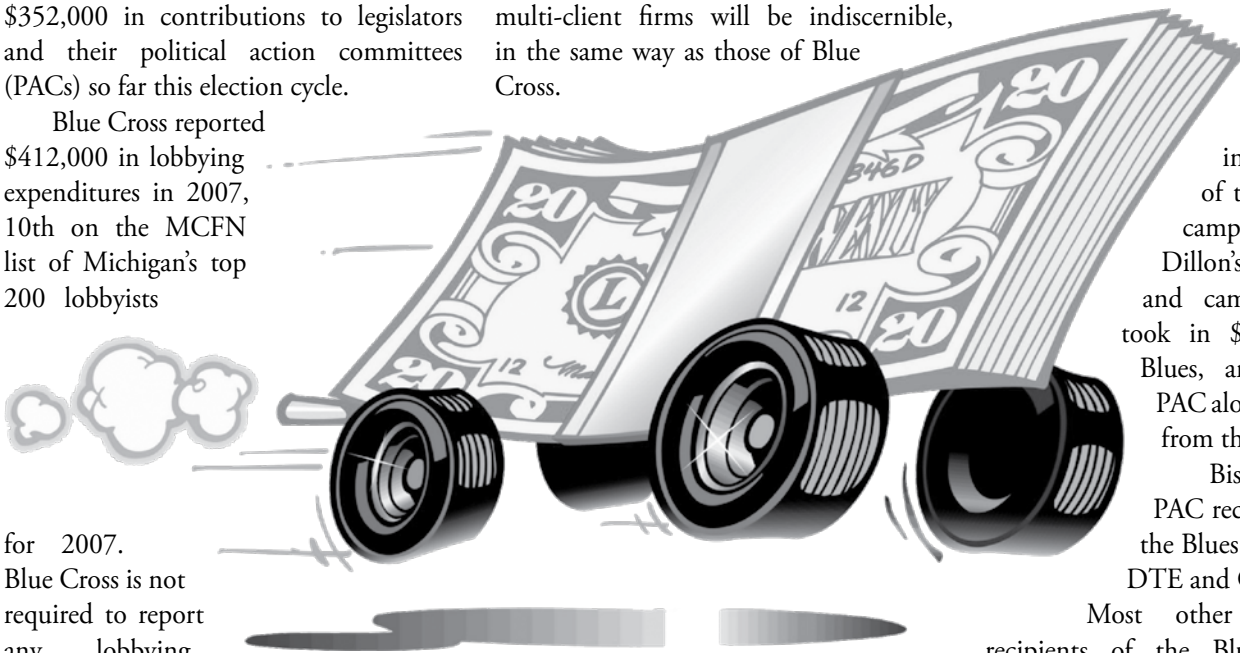
Bishop's leadership PAC received \$9,300 from the Blues and \$11,200 from DTE and Consumers.

Most other top individual recipients of the Blues' money were members of the respective Health Policy Committees. Ninety-nine of the 110 representatives received money from the Blues, and 37 of 38 senators.

Other top individual recipients of the utilities' contributions were mainly members of the respective Energy and Technology Committees. Ninety-two of 110 House members received money from Consumers and/or DTE, and 37 of 38 senators.

Lists of individual recipients are available online at <http://www.mcfn.org>.

Data on the respective television marketing efforts were collected from the public files of the state's commercial broadcasters and cable systems.



All of this matters because interest groups that spend money in politics are rational economic actors. They don't spend their money for selfless or altruistic reasons. They are making investments and seeking a return on their investments. Since the health of Michigan's people, environment and economy for years or decades to come is at stake, we should be able to know the details of who is pushing for what, and how hard they are pushing.

The interest groups' contributions to legislators followed parallel patterns. The Blues gave \$213,150 to House members and their PACs and \$138,950 to senators and their PACs.

What Role for 527s in 2008?

With presidential candidates breaking all campaign fundraising records, curious minds are left to wonder about the role of federally oriented 527 committees in Campaign 2008. These committees have been around for several years, but they took on extraordinary prominence in 2004 when committees such as Swift Boat Veterans for Truth and America Coming Together combined to spend more than \$440 million.

The nonpartisan Campaign Finance Institute reports that federal 527s had raised \$76.9 million by the end of 2007, about \$13 million more than the off year before the 2004 election. Of the \$60.9 million in contributions greater than \$5,000, labor union treasuries gave \$31.7 million and individuals gave \$27.4 million. Businesses contributed only \$1.9 million.

Rules are changing for 527s. The Federal Election Commission made tepid enforcement actions against the Club for Growth and the League of Conservation Voters for acting as political committees in the 2004 election, so we should expect to see 527 committees' advertisements to be somewhat more circumspect than in 2004.

A U.S. Supreme Court decision last

summer in the case of *Federal Election Commission v. Wisconsin Right to Life* ended the prohibition against corporations and unions using money from their treasuries to sponsor broadcast advertisements that

...527s had raised \$76.9 million by the end of 2007, about \$13 million more than the off year before the 2004 election.

use the name or image of federal candidates in the weeks just before an election. That decision undid a fundamental part of the McCain-Feingold campaign finance reforms, but it remains to be seen whether that reopened door will bring in a new flow of soft money.

Through the last three election cycles, 527 committees have been more a Democratic phenomenon than a Republican one, the Swift Boat Veterans notwithstanding. With Sen. Barack Obama speaking out against 527s as old politics, there may be some throttling back on the Dem side.

Sen. John McCain makes regular criticisms of special interest politics and he was savaged by 527s in the 2000 presidential primaries. This may be a campaign season when the candidates lead a push-back against wealthy individuals and deep-pocketed interest groups that try to hijack the message of the campaign. Stay tuned.

Top Federal 527 Committees	
2007-2008 Election Cycle, thru 12/31/2007	Receipts
Service Employees International Union	14,340,802
America Votes	9,987,658
American Solutions Winning the Future	7,298,790
The Fund for America	6,750,000
GOPAC	6,307,979
EMILY's List	5,290,667
Alliance for New America	4,850,621
Citizens United	3,697,234
Friends of Fred Thompson	3,462,355
Working for Working Americans	3,350,022

Top Individual Contributors to Federal 527 Committees	
2007-2008 Election Cycle, thru 12/31/2007	Contributions
George Soros	3,500,000
Sheldon Adelson	2,066,340
Fred Godley	1,100,000
Donald Sussman	1,000,000
Stephen Bing	850,000
Robert Bingham	817,452
Alida R. Messenger	608,000
Lee Fikes	600,000
John R. Hunting	593,000
Jon Stryker	579,054

Source: Center for Responsive Politics analysis of IRS 527 reports

Dem oriented in bold font

Can a Civil Fine "Correct" a Crime?

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Detroit Leadership PAC was fined \$1,000 and that was the end of a violation that involved politically connected actors with ties to Secretary of State Terri Lynn Land and Attorney General Cox. [See *Campaign Finance Talk*, August 2005]

On the other hand and during the same time period, state campaign finance violations that involved prominent Democrats George Cushingberry and Geoffrey Fieger were referred quickly to the Department of the Attorney General for investigation.

An impartial investigator for political violations

The state of Wisconsin has developed a different approach to campaign finance and election law violations. Wisconsin has established a Government Accountability Board of retired judges who direct a professional staff that has responsibility to

investigate and prosecute violations, as appropriate. The staff has subpoena power and, therefore, the ability to conduct a meaningful investigation.

The Michigan Department of State does not have subpoena power.

The Government Accountability Board takes partisan officeholders out of the chain of command for sensitive political cases. And, just as importantly, it does not mandate that apparent violations must be resolved informally.

If the Michigan Campaign Finance Act is to have any deterrent effect on actors who are considering whether to violate the law, it needs serious retooling. The Wisconsin model is one attractive alternative to Michigan's ineffective law. Without change, real transparency and compliance with the law are tenuous possibilities.

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

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