

Campaign Finance Talk

The Voice of the Michigan Campaign Finance Network

December 2005

The Michigan Tattler

50¢

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Scandal!

Beyond Cox and Fieger

by Rich Robinson

Attorney General Mike Cox's confession of an adulterous affair and allegations that Geoffrey Fieger was using knowledge of that affair to attempt to blackmail Cox into dropping a campaign finance investigation that reportedly has uncovered multiple felonies is the stuff of high opera. Regardless of what does or does not come of the case as it makes its way through the courts, a review of the facts reveals many deficiencies in Michigan's campaign finance law.

Just before Election Day 2004, bombastic television advertisements attacking incumbent Michigan Supreme Court Justice Stephen Markman aired around the state. The ads said that no woman in Michigan was safe with Markman on the Supreme Court and urged viewers to "Vote 'No' on Markman." Under Michigan law the ads were unquestionably campaign expenditures that must be disclosed. The disclaimer at the end of the ads

identified Citizens for Judicial Reform as the sponsor of the message.

On October 27, 2004, the Citizens for Judicial Reform filed a statement of organization with the Department of State's Bureau of Elections. If its ads had aired in an attempt to affect the outcome of a *special* election, the law would have required the committee to report its independent expenditures within 48 hours. However, because the ads were trying to affect a *regular* election, and because the pre-election PAC reports had already been filed on October 25th, the law didn't require reporting of independent expenditures until the next scheduled PAC report on January 31, 2005, three months after Election Day. This rather bizarre loophole invites late independent expenditures, usually of the attack variety, by big spenders who do not wish to be identified before an election - and it should be closed. All independent expenditures that are placed after PACs

or political parties close their books for pre-election reports should be disclosed in 48 hours, or, better yet, 24 hours, as is the case with federal elections.

During the same pre-election period of 2004, the Michigan Chamber of Commerce spent \$1.4 million for television advertisements praising Justice Markman for “Protecting victims and fighting for our values.” Under federal campaign finance law, those ads would have been subject to mandatory disclosure because they had the name or image of a candidate in electioneering communications that were broadcast in the weeks just before an election. But in Michigan the standard is different. Under state law, if a communication “does not support or oppose a ballot question or candidate by name or clear inference,” it is not a campaign expenditure and its financial supporters do not have to be identified. The Chamber did not report the contributors or expenditures for its ad campaign in any report.

This is the **issue ad** scam. There are no limits on contributions to the sponsors’ committee, no disclosure and no restrictions against corporations or unions paying for such ads. Since 2000, the Chamber and the two major political parties have sponsored \$20 million worth of such ads in Michigan campaigns.

To restore accountability in state campaign finance law, the definition of “clear inference” of support or opposition needs to be revisited in view of contemporary marketing strategies and the legal precedent established in the *McConnell v. F.E.C.* decision that answered the challenge to the federal McCain-Feingold reforms. When Nike shows you sweaty athletes and a swoosh logo, it doesn’t have to tell you to buy sneakers – you infer its message. Similarly, the Michigan Chamber of Commerce or one of the state parties doesn’t have to tell you how to vote when it runs a million dollar ad campaign the week before an election. You infer the electoral endorsement. Circumspect use of language is not a legitimate reason for evading public oversight, and campaign ads masquerading as issue ads should be fully regulated.

Citizens for Judicial Reform failed to file its required report on January 31, 2005. The Bureau of Elections was frustrated in its attempts to contact CJR - largely due to the fact that the identity of its treasurer, its address and its phone number seems to have been fictitious. On March 16th of this year, six weeks after

Citizens for Judicial Reform should have reported the financing records for the anti-Markman ads, the Department of State’s Legal and Regulatory Services Administration asked the Department of the Attorney General for assistance in bringing the committee into compliance with disclosure requirements of the Michigan Campaign Finance Act and “prosecuting those who have ignored the law to the fullest extent possible.”

This is a radical departure from standard operating procedure. The Michigan Campaign Finance Act mandates a much softer posture: “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** [emphasis added] such as a conference, conciliation or persuasion, and may enter into a conciliation agreement with the person involved.”

In November 2004, I filed an inquiry under the Freedom of Information Act asking for a listing of all cases since January 1, 2001 where the Department of State had made a referral to the Department of the Attorney General requesting an investigation of a campaign finance violation for law enforcement purposes. The Department of State sent me more than 300 pages listing thousands of violations. But on December 29, 2004, Assistant Attorney General George M. Elworth wrote to me and said that his department had not received *any* referrals requesting an investigation. I later learned that a thoroughly documented complaint that I filed in July of 2004 had been referred to the Department of the AG in May of 2005 for “review.” A second thoroughly documented complaint that I filed in August 2004 that involved an illegal corporate contribution to a PAC that had been facilitated by a former Mike Cox protégé, and contributions related to Cox, was settled by a conciliation agreement in May of 2005 after ten months of negotiation. The corporate contribution was never repaid fully.

The empirical evidence shows that the odds of a campaign finance violation being referred to the AG by the Department of State for investigation and prosecution are one out of hundreds, or maybe one out of thousands. Partly, that is due to the passive enforcement posture mandated by the law. This is a law

that was conceived by politicians so things would never get too uncomfortable for politicians. It can be argued that this is a necessary protection against political witch-hunts because, after all, partisan elected officials run the Department of State and the Department of the Attorney General. But a better solution would be to follow a model that is currently working its way through the Wisconsin legislature: make elections and ethics violations the domain of a nonpartisan commission that has prosecutorial powers. Then it wouldn't matter whether an enemy or a friend committed a violation. The alleged violator could expect fair and rigorous treatment under the law.

On April 27, 2005 Citizens for Judicial Reform amended its statement of organization and replaced its apparently fictitious treasurer with a real one. At the end of May it filed its overdue January campaign finance statement; reported spending \$450,000 for television ads; reported that its receipts came from an anonymous contributor; and paid a \$1,000 fine – the maximum penalty under the campaign finance law for a filing a late report. But anonymous contributions to Michigan political committees aren't allowed. Two weeks later CJR amended its report and said that it neither raised nor spent any money. Days after that Geoffrey Fieger filed a report with the Oakland County clerk that said he, not CJR, paid for the anti-Markman ads, despite the contradictory disclaimer that ran on the ads.

Coincidentally, this case has brought attention to the fact that the attorney general's leadership PAC, the Cox 5200 Club, was the top contributor to Justice Markman's election campaign committee, having given the maximum \$34,000. This matters because several cases each Supreme Court term involve the State of Michigan as one of the interested parties, and the state's attorney played a significant role in electing one of the justices who decides those cases. And what should be more troubling is the fact that the Michigan Chamber of Commerce spent roughly the same as all the candidates for the Supreme Court combined in 2004, but none of its financiers can be identified in any public record. How

can we know when those same financiers have a case before the Supreme Court? Shouldn't the beneficiary of such secret expenditures recuse himself from any case involving a supporter who spent hundreds of thousands of dollars to help him win a seat on the bench? And what about the impact of attack ads sponsored by Geoffrey Fieger or someone like him? Can a potential litigant force an ideological opponent on the bench to recuse himself by mounting a virulent public attack and then claiming that the target of the attack can't be fair to the sponsor of the attack? This whole mess of conflicting interests makes a strong case for public funding of judicial campaigns.

In a viewpoint essay in the *Detroit Free Press* on November 17, 2005, Richard Steinberg, an attorney representing Fieger, portrayed the stealth anti-Markman ad campaign as nothing more than a celebration of the First Amendment. That is a mischaracterization. Those ads were the campaign equivalent of a drive-by shooting – an anonymous assault. It may have been a reasonable bet to expect that there never would be any serious consequences for flouting the law because the Michigan Campaign Finance Act is a dysfunctional statute as far as assuring contribution limits and accountability in state political campaigns. However, that bet did not account for selective enforcement of the law.

The truth of the matter is that persons and organizations should be free to spend money to comment on political issues and candidates for office. They should be free to be as nasty as they want, or as sweet as saccharine. But voters should be assured of an opportunity to know who is really doing the talking before they cast their votes. And the law should be enforced in a way that doesn't recognize friends or enemies, only violators. It is not beyond our intellectual capacity to see what is wrong and how to fix the law. There are no constitutional barriers preventing a law that would assure limits and accountability. The only thing missing is the political will among our elected representatives to do the right thing. We deserve better than this.



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Citizen's Guide to Michigan Campaign Finance, 2004.



What Economic Slump? PACs are Booming!

As we hit the half way point in the 2006 election cycle, the state's top political action committees are on the way to setting new fund raising records, and that means it's likely that fund-raising records will be set by candidates as well. Last election cycle the top 150 PACs raised a total of \$33.4 million. This cycle the top 150

PACs are 23 percent ahead of the pace of the top 150 at the half way point of the 2004 cycle.

Refer to this list as a guide to who is ingratiating themselves to elected officials. The entire list of the top 150 PACs is posted on www.mcfn.org.

Top 100 PACs, 2006 Election Cycle

Rank	Name	01/05-10/05	01/03-10/03	Change (%)	2004 Cycle
1	House Republican Campaign Committee	\$ 1,227,084	\$ 801,504	53.1	\$ 3,019,668
2	Senate Republican Campaign Committee	938,240	627,276	49.6	1,448,961
3	MI House Democratic Fund	810,852	420,225	93.0	1,927,803
4	MI Assn. of Realtors / REALTORS PAC	500,914	333,056	50.4	945,332
5	Senate Democratic Fund	493,739	223,942	120.5	568,086
6	MI Education Assn. / MEA PAC	413,907	492,250	(15.9)	1,579,535
7	United Auto Workers / UAW MI Voluntary PAC	400,000	250,000	60.0	1,125,000
8	Blue Cross/Blue Shield of MI / BCBSM PAC	346,236	383,557	(9.7)	920,421
9	MI Beer & Wine Wholesalers Assn. PAC	306,986	211,969	44.8	683,316
10	MI Trial Lawyers Assn. / Justice PAC	265,306	207,486	27.9	861,039
11	MI Manufactured Housing RV & Campground Assn. PAC	254,976	74,351	242.9	525,037
12	Auto Dealers of Michigan PAC	226,125	203,548	11.1	404,125
13	DTE Energy Co. PAC	210,032	193,221	8.7	485,881
14	MI Regional Council of Carpenters PAC	207,193	185,456	11.7	426,185
15	Anthony Marrocco Victory PAC	200,025	168,074	19.0	168,074
16	MI Infrastructure & Transportaion PAC / MITA PAC	198,322	143,650	38.1	304,800
17	MI Bankers Assn. PAC / MI BANK PAC	196,706	158,535	24.1	324,573
18	Great Lakes Education Project (DeVos)	192,100	211,025	(9.0)	881,385
19	MI Health & Hospital Assn. / Health PAC	181,277	153,134	18.4	351,510
20	Granholm Leadership Fund	172,400	160,381	7.5	464,191
21	Detroit Auto Dealers / DAD PAC	170,750	153,900	10.9	380,250
22	Comerica Bank PAC	166,522	129,823	28.3	453,039
23	Intl. Brotherhood of Electrical Workers / IBEW COPE	135,435	36,635	269.7	301,615
24	JDC Genesee Fund	130,925	129,035	1.5	267,930
25	Republican Victory Committee (Jason Allen)	118,550	-	n/a	31,087
26	Miller Canfield PAC	115,000	125,000	(8.0)	260,000
27	MI Restaurant Assn. PAC	109,678	91,450	19.9	232,581
28	Knights of the Round Table Leadership PAC (Mike Bishop)	106,295	25,551	316.0	106,126
29	COMM-PAC	101,000	89,336	13.1	199,876
30	MI Auto Dealers Assn. / MAD PAC	98,790	117,953	(16.2)	249,588
31	Kuipers Impact Fund	96,475	12,550	668.7	43,613
32	The Commonwealth PAC (Mitt Romney)	93,250	n/a	n/a	87,080
33	MI Chamber of Commerce PAC	93,133	78,755	18.3	222,433
34	MI Credit Union League Action Fund	89,340	55,032	62.3	131,209
35	No. VI Leadership Fund (Craig DeRoche)	87,225	13,400	550.9	229,125
36	Citizens for Michigan (Anthony Soave)	85,000	91,400	(7.0)	171,400
37	Automobile Club of MI PAC / ACPAC	81,580	66,254	23.1	168,082
38	MI Assn. of Insurance Agents / Agent PAC	81,455	62,450	30.4	164,496
39	MI Petroleum Jobbers PAC	79,330	74,895	5.9	166,335
40	MI Farm Bureau PAC	75,622	77,110	(1.9)	181,392
41	MI Assn. of CPAs / MACPA PAC	71,060	57,665	23.2	138,919
42	County Road Assn. of MI / CRAM-RUSH PAC	69,728	71,407	(2.4)	140,396
43	Cox 5200 Club	66,167	195,518	(66.2)	682,958
44	SBC Communications MI PAC	63,604	75,574	(15.8)	211,051
45	MHSA PAC	63,400	72,315	(12.3)	163,565
46	AFSCME PAC	60,212	130,061	(53.7)	243,242
47	Burton Leland Leadership Fund	60,150	-	n/a	28,270
48	CMS Energy Employees for Better Government	59,871	71,221	(15.9)	165,635
49	Fannie Lou Hamer PAC	59,493	36,127	64.7	129,488
50	Fifth Third Bancorp PAC	58,026	62,633	(7.4)	127,414
51	MI Soc of Anesthesiologists PAC	57,605	44,237	30.2	104,447
52	Singh PAC	56,896	-	n/a	147,600
53	MI State Medical Society / MI Doctors PAC	56,570	67,100	(15.7)	189,685
54	Detroit Regional Chamber PAC	56,146	68,900	(18.5)	127,103
55	Michigan List	52,781	-	n/a	74,416
56	Dykema Gossett PAC	52,523	44,376	18.4	114,201
57	Great Lakes Sugarbeet Growers PAC	52,473	10,109	419.1	60,463
58	Local 58 IBEW	52,191	54,255	(3.8)	151,343

Top 100 PACs, 2006 Election Cycle (continued)

56	Dykema Gossett PAC	52,523	44,376	18.4	114,201
57	Great Lakes Sugarbeet Growers PAC	52,473	10,109	419.1	60,463
58	Local 58 IBEW	52,191	54,255	(3.8)	151,343
59	MI Assn. of Health Plans PAC	52,110	840	6,103.5	28,290
60	MI Assn. of Home Builders / Builders PAC	51,588	68,330	(24.5)	133,931
61	Command Officers Assn of MI PAC	51,058	-	n/a	14,841
62	Political Action for Voter Education / PAVE	49,775	120,102	(58.6)	205,198
63	MI Optometric Assn. PAC	49,400	52,886	(6.6)	113,502
64	DaimlerChrysler PAC	49,380	52,398	(5.8)	130,381
65	Wisdom PAC	49,000	1,135	4,217.2	1,335
66	MI Osteopathic PAC	47,108	47,497	(0.8)	127,184
67	Progressive Women's Alliance of West MI	45,185	-	n/a	34,340
68	MI Licensed Beverage Assn. PAC	44,902	22,216	102.1	82,994
69	General Motors Corp. PAC - MI	44,500	59,132	(24.7)	137,881
70	Ken Sikkema Leadership Fund	44,500	73,545	(39.5)	242,315
71	JP Morgan Chase & Co MI PAC	44,057	26,044	69.2	83,480
72	Troopers PAC	42,000	33,633	24.9	86,852
73	Plumbers & Pipefitters Local 333 PAC	41,922	37,604	11.5	88,729
74	Health Alliance Plan PAC	41,687	n/a	n/a	n/a
75	Delta Dental PAC	40,522	52,047	(22.1)	112,395
76	Karoub Associates PAC	39,830	26,718	49.1	71,447
77	Meijer PAC	39,576	64,253	(38.4)	145,913
78	Friends of Ferris	38,512	35,313	9.1	96,595
79	Waste Management PAC	37,637	31,299	20.3	74,013
80	Ford Motor Civic Action Fund	37,386	32,102	16.5	86,802
81	MI Petroleum PAC	37,050	27,630	34.1	64,580
82	MI Funeral Directors Assn. PAC / MFDA PAC	36,990	46,406	(20.3)	98,915
83	Brooke PAC (Jackson Natl. Life)	36,881	5,736	543.0	31,068
84	Republican State Leadership Comm MI PAC	35,500	-	n/a	19,900
85	Concerned Citizens for Macomb	34,250	-	n/a	n/a
86	21st Century Club	34,100	29,895	14.1	67,870
87	Detroit Police Officers Assn. PAC	33,773	35,399	(4.6)	89,809
88	Pharmacy PAC	33,697	20,943	60.9	63,662
89	Chris Ward Majority Fund	33,450	7,562	342.4	83,352
90	Ed Gaffney Leadership Fund	32,650	2,500	1,206.0	33,392
91	Meisner Majority Fund	32,476	n/a	n/a	n/a
92	MI Assn. of Nurse Anesthetists PAC	32,227	28,455	13.3	39,637
93	School Administrators PAC	30,022	38,131	(21.3)	116,231
94	MI Dental Assn. / Dent PAC	30,003	31,492	(4.7)	143,168
95	Honigman Miller Schwartz & Cohn PAC	29,720	19,700	50.9	31,775
96	Health Care Assn. of MI / HCAM-PAC	29,560	41,525	(28.8)	85,451
97	MI Distributors & Vendors Assn. PAC / MDVA PAC	28,932	21,619	33.8	51,574
98	Huntington Natl Bank MI PAC	28,867	20,580	40.3	63,534
99	Jacobs Millennium PAC	28,136	-	n/a	-
100	Run To Win Sak Leadership Fund	27,910	n/a	n/a	n/a

Thank You!

Thanks to the many readers of *Campaign Finance Talk* who answered former Governor William Milliken's fundraising letter for MCFN by making a generous contribution. Your support allows us to continue to conduct original research on money in Michigan politics, inform the public about the role of money in shaping public policy and file complaints against those who just don't seem to be able to stay on the right side of the campaign finance law.

Special thanks to Governor Milliken are in order. He continues to be a stalwart voice for high standards and transparency in Michigan politics and a generous source of encouragement to MCFN.

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Happy holidays to all!
Rich Robinson, Executive Director

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

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