

Campaign Finance Talk

The Voice of the Michigan Campaign Finance Network

May/June 2001

Issue Advertising: the Loophole Big Enough to Drive a Campaign through

Issue advertising has caused a revolutionary change in campaign financing. The use of soft money for party-funded issue advocacy that is indistinguishable in intent from express advocacy effectively eliminates limits on campaign contributions in support of candidates and neutralizes campaign finance disclosure requirements.

Under federal election law, issue advocacy is differentiated from express advocacy by the absence of certain terms of direct *support for* or *opposition to* a candidate. If a political advertisement avoids terms (commonly referred to as “magic words”) such as “vote for,” “support,” “elect,” “cast your ballot for,” “defeat,” “reject,” or “vote against,” it is not considered to be express advocacy and it does not have to be reported on any campaign finance statement. Typical issue advertising describes a candidate’s position on an issue and invites the voter to call the candidate and tell him or her what the voter thinks about that issue.

Research conducted on federal election advertisements in 2000 revealed the extent of the failure of the “magic words” test to distinguish the two types of advocacy. More than 90% of advertisements that were paid for by candidates’ committees with regulated hard money contributions — electioneering, by definition — did not use the “magic words” of express advocacy. That finding clearly shows that the “magic words” test is not an effective way of determining whether an ad is express or issue advocacy since the “magic words” are absent

from *both* types. Furthermore, research on viewers’ reactions to candidates’ advertisements and election issue ads verified the lack of distinction between candidates’ express ads and issue ads. Issue ads were perceived as trying to influence a vote for or against a candidate by 86-89% of viewers (depending on which ads). Candidates’ ads were perceived as trying to influence a vote for or against a candidate by 64-74% of viewers (depending on which ad).

Michigan does not have a “magic words” test or any codified differentiation between express and issue advocacy. Michigan law is even more vague than federal law, stating only that a committee does not have to report “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” (MCL 169.206(2)). This provision in Michigan election law opened the door for issue ad campaigns related to the 2000 Supreme Court elections that probably spent more money than the candidates’ own cam-

paings ... and none of that spending was reported (see related article in this newsletter).

Michigan election law needs a new test to distinguish genuine issue advocacy from express electioneering. Based on a recommendation by the nonpartisan Campaign Finance Institute, the Michigan Campaign Finance Network recommends that any communication that (1) contains the name or image of a candidate, (2) is targeted to the electors of the candidate and (3) runs within 60 days prior to an election should be treated as an independent expenditure and its sponsors and contributors should be disclosed. This standard should apply to phone-banking, direct mail and print and broadcast advertising. This standard would not infringe on any organizations’ right to political speech, but it would restore elements of accountability and disclosure. Without such a reform, the issue ad loophole will allow future campaigns to make a mockery of the standards of contribution limits and disclosure.

Online Resources on Issue Advertising

David B. Magleby, *Dictum Without Data: The Myth of Issue Advocacy and Party Building*. <www.byu.edu/outsidemoney/dictum/dictum.pdf>

Jonathan Krasno and Kenneth Goldstein, *The Facts about Television Advertising and the McCain-Feingold Bill*. <www.polisci.wisc.edu/tvadvertising/mccain-feingold.pdf>

Annenberg Public Policy Center, *Issue Advertising in the 1999-2000 Election Cycle*. <www.appcpenn.org/issueads/1999-2000issueadvocacy.pdf>

Stress Fractures in the System of Limits & Accountability

A Look at Michigan's 2000 State Elections

Michigan's state elections in 2000 set new records for money raised in support of campaigns for the House of Representatives and the Supreme Court. In the Supreme Court races, as well as several of the most heavily contested House races, the political parties (and the legislative caucus campaign committees) were greater financial stakeholders than the candidates' own campaigns. This is significant because there are no limits on the amount contributors can give to the parties, and there are no limits on the amounts the legislative campaign committees can give to their candidates. When these contributions without limits are combined with unreported issue advertising, the system of limits and accountability becomes irrelevant.

Top House Races: An Escalating Proxy War

There were 89 incumbents running for re-election to the House in 2000. All 89 won, and 88 of the 89 had more financial backing than their challengers. In the 21 open seats, the better-funded candidate won in 19 districts.

Not one candidate from the 1998 House elections would have cracked the top five in financial backing in 2000, and only one two-person race from 1998 (81st District: Julian (R), \$305,000; Fitzgerald (D), \$309,000) would have ranked among the top two-person races from 2000. The top races from 2000 are summarized in the accompanying table.

These House races show the heavy influence of the state parties and caucus campaign committees in the most contested House races. They also show the influence of unlimited contributions. Only one candidate, Gretchen Whitmer in the 70th District, was able to win

with less than \$150,000 in party and caucus support (and she loaned her campaign nearly \$90,000). In comparison, the median House candidate had campaign resources of just \$42,000.

An anomaly in each of the top races was the nature of party independent expenditures. Independent expenditures, by law, must not be coordinated with a candidate's campaign committee. However, the better funded candidate in each of these races benefited from party independent expenditures that purchased media consulting services, coincidentally, from the very same vendor who was providing media services to the candidates. It is very hard under such circumstances to imagine that these expenditures were not coordinated.

The most competitive House races showed a clear pattern of financial domination by party sources. If campaign contributions represent political speech, local voices were overwhelmed. For the sake of limiting the

Most heavily-funded Michigan house races, 2000

Dist	Candidate		Direct & In-kind Contrib.	Independent Expenditures	Total Contrib. & I.E.	Race Total	Caucus & Party Total	Caucus & Party Effort
91	Van Woerkom	R	\$ 576,527	\$ 106,662	\$ 683,189		\$ 507,662	74.3%
91	Habetler	D	110,737	55,765	166,502	\$ 849,691	74,175	44.5%
70	Hollister	R	353,217	55,106	408,323		233,952	57.3%
70	Whitmer	D	264,666	15,128	279,794	688,117	15,128	5.4%
94	Howell	R	342,101	65,845	407,946		243,738	59.7%
94	Hadsall	D	172,561	31,000	203,561	611,507	47,097	23.1%
99	Caul	R	274,963	93,663	368,626		197,008	53.4%
99	Smith	D	124,759	50,706	175,465	544,091	55,759	31.8%
81	Hager	R	259,644	103,524	363,168		251,646	69.3%
81	Oppliger	D	118,016	49,928	167,944	531,111	58,178	34.6%
56	Richardville	R	259,804	101,923	361,727		156,264	43.2%
56	Kehrl	D	115,497	25,593	141,090	502,817	41,066	29.1%

Source: Michigan Secretary of State

Continued:

Stress Fractures in the System of Limits & Accountability

influence of unlimited contributions and for the sake of protecting the political speech of average voters, Michigan needs to have limits on contributions *to* the political parties and *from* the legislative caucus campaign committees.

Supreme Court Elections: Most Expensive Ever ... On and Off the Books

The 2000 Michigan Supreme Court elections were high-stakes contests that far exceeded the record-setting fundraising from 1998. Direct contributions to the candidates increased by 83% to an average of \$1.1 million, but the parties' independent expenditures and unreported issue advertising came to overshadow the candidates' own campaigns.

All three incumbents were more heavily funded than their challengers, and all three were successful in the election. A summary of the Court candidates' campaign finances is included in the accompanying table.

After the election, several press accounts concluded that the total cost of the campaigns was at least \$16 million, which implies that there was roughly \$8 million in unreported spending. Issue advertisements sponsored by both parties and the Michigan Chamber of Commerce were evident throughout the fall, but because there is not a requirement to report issue ads there is no way to verify these estimates from public records.

Regardless of whether the issue ad campaigns exceeded the candidates' campaigns, the 2000 Supreme Court elections have a very serious implication. With the issue ad loophole as it exists today, any corporation, union, interest group, political party or wealthy individual can spend as much as they want on a campaign and report nothing ... as long as they are

coy in the way they present their message. Limits do not apply. Disclosure of contributors does not occur. These elections illustrate the need for two key reforms in Michigan election

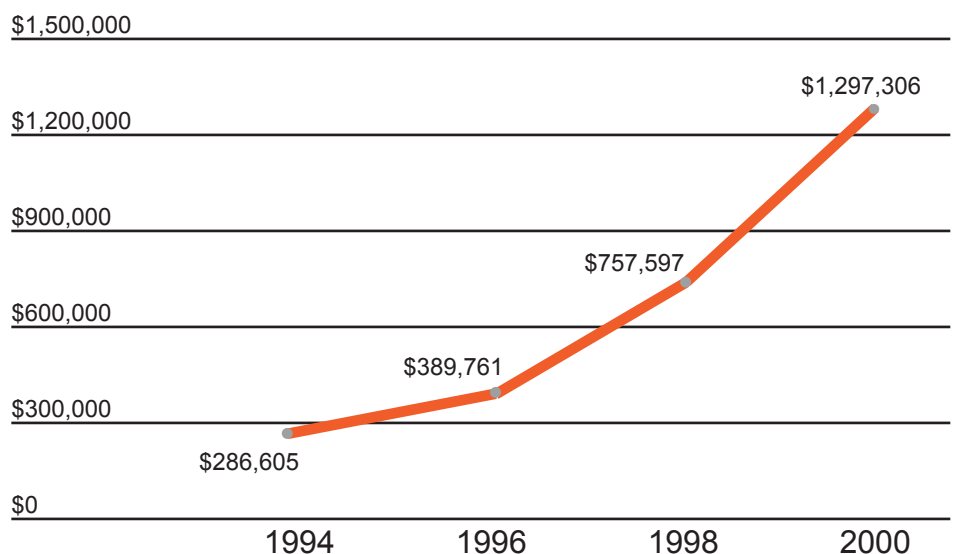
law: there should be limits on contributions to the political parties; and the loophole that allows sham issue ads to go unreported and contributors undisclosed should be closed.

Campaign finance summary — Supreme Court, 2000

Name	Nominating Party	Direct & In-Kind Contributions	Party Independent Expenditures
8-year term			
Taylor	R	\$ 1,340,107	\$ 453,402
Robinson	D	\$ 1,198,586	\$ 122
4-year term			
Markman	R	\$ 1,250,963	\$ 427,396
Thomas	D	\$ 1,001,798	\$ 122
2-year term			
Young	R	\$ 1,300,848	\$ 466,683
Fitzgerald	D	\$ 757,646	\$ 122
Total All Candidates		\$ 6,849,948	\$ 1,347,849

Source: Michigan Secretary of State.

Average campaign receipts — successful Supreme Court candidates, 1994-2000



Source: Michigan Secretary of State.

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The voice of the

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Things You Can Do to Promote Campaign Finance Reform

As we prepare to release our summary analysis of Michigan's 2000 State elections, there are many things you can do to promote campaign finance reform in your community. MCFN would be pleased to support you or work with you in an active partnership.

▶ Arrange a presentation for your service club, faith-based group, voluntary association, professional association or local or county government. MCFN staff can participate in the presentation, or we can provide you with materials so you can make a presentation.

▶ Contact educators in your local secondary schools, community college or

university and ask them to include the subject of campaign finance in their curriculum. We are having educational modules prepared for various levels of education.

▶ Arrange a town hall meeting in your community on money in politics and campaign finance reform. MCFN will help present material, or provide you with materials you can use to start the discussion. Invite your legislators to participate.

▶ Contact your newspaper's editorial board and ask them to support campaign finance reform in Michigan. Many state dailies have editorialized in support of McCain-Feingold and Shays-Meehan. We need similar reforms in Michigan, as a first step to better elections.

▶ Set up an information table at festivals or events in your community. We can provide you with informational materials and other support.

▶ Ask your local government and cable system to support candidate debates at a regularly scheduled time during election season.

▶ Call your local news-talk radio host and ask him or her to have a show on campaign finance reform.

▶ Contact MCFN and we can work with you to generate a campaign finance summary about your legislators.

▶ Write a letter to the editor of your local paper.

▶ Write to your legislators.

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Summary of 2000 Elections to Be Released in July

The Michigan Campaign Finance Network is pleased to announce the release of a report analyzing Michigan's 2000 state elections. The release is planned for July 18th at a Lansing news conference. Outreach to statewide media and the public will follow in the weeks and months ahead. The report also will be posted on the MCFN web site, www.mcfn.org.