A Case for Political Reform in Michigan

MICHIGAN CAMPAIGN FINANCE NETWORK

The work of the Michigan Campaign Finance Network is sustained by contributions from concerned Michigan citizens and the generous support of the Joyce Foundation of Chicago.

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Introduction and Executive Summary

Michigan is a closely divided state in terms of partisan politics. It is perennially a presidential battleground state. It has alternated between Democratic and Republican governors for the past 30 years. For the past ten years the major parties' aggregate legislative vote totals have ranged within two percentage points of 50 percent, until 2006 when Democratic vote totals hit 54 percent.

While Michigan has not experienced major political scandals of the type that have unfolded in Ohio, Wisconsin and Illinois, money plays a large and growing role in state politics. Spending in state political campaigns surpassed $120 million in 2006, including a record $70 million gubernatorial campaign. Receipts among the top 150 state political action committees (PACs) topped $47 million in the 2006 election cycle – up by 59 percent compared to the 2004 cycle. Annual lobbying expenditures have reached $30 million – 28 percent more than just four years ago. Term limits have left a deficit of experience and institutional memory that is being filled by the fourth branch of government: the lobbyists.

For the first time since term limits began to cut short the careers of State elected officials in 1998, Michigan has a divided legislature with Democrats having a newly seated majority in the House and Republicans holding their majority in the Senate. The need to compromise will test bipartisanship and inter-party relationships as they have not been tested before in the term-limits era.

The divided legislature brings an opportunity. Key legislators from both parties in both chambers of the legislature are talking openly about the extraordinary role of money in state politics and the need for political reform. The divided legislature assures that neither side can bully the other in the name of reform to pursue partisan advantage.

In this context the Michigan Campaign Finance Network offers a broad analysis of the many problems that challenge democracy in Michigan and proposes a number of common-sense reforms that are designed to make government more responsive to all of the citizens of Michigan. This assessment is a work in progress that includes items of different levels of importance. Nonetheless, some things stand out:

- Michigan's campaign finance system must be reformed to establish functional contribution limits and accountability in political campaigns.

Introduction and Executive Summary

- More information is needed from lobbyists so the people and the press can know the nature and extent of lobbyists' activity.
- Ethics laws should be extended to cover the legislative and judicial branches of government.
- Redistricting for partisan advantage makes legislative delegations impervious to changing voter sentiment. Competitiveness should be a valued attribute in future redistricting plans.
- Unnecessary barriers to voting should be removed and participation in elections should be encouraged.
- The State should provide voluntary full public funding for Michigan Supreme Court campaigns so voters have the opportunity to support candidates who demonstrably have no financial connection to interest groups that subsequently become litigants before the Court.
- Term limits should be repealed.

At a time in American history when hundreds of billions of dollars have been spent and thousands of lives have been lost in the name of democracy in the Middle East, it is our sincere hope that all Michiganians will invest their time and attention in a public discussion of the health of our own democracy and how we can nurture it. To the world, America's greatest treasure is its democracy. It is past time for a check-up and maintenance.

Campaign Finance

FAILURES OF LIMITS AND ACCOUNTABILITY

Financing of election campaigns is a central reality of contemporary politics. Those who aspire to office need money to be effective candidates. Citizens and interest groups have a legitimate right to support the candidates of their choice. However, that does not mean that there shouldn't be reasonable campaign finance regulations.

A campaign finance regulatory system should accomplish two things: Establish the limits of what persons and interest groups can contribute to political campaigns and establish requirements for thorough and timely disclosure of the sources of money.

Michigan's campaign finance system has major deficiencies in regulating contribution limits and disclosure. Those deficiencies are widely recognized and easily exploited. This has created an environment where relatively few persons and interest groups are able to dominate political campaigns financially, and they frequently do so anonymously. This is important because it is a statistical truth that 95 percent of Michigan's electoral winners have more money behind them than their opponents.

Perhaps more important is the economic reality that campaign contributions are not given for selfless reasons. Campaign contributions are investments by individuals or interest groups that are seeking a public policy return on investment. It is the way in which money in politics steers public policy that should concern Michigan's citizens. Contribution limits are a check against unrestrained influence. Full and timely disclosure is the key to identifying connections between interest groups' actions and legislative reactions. With deficiencies in regulating limits and disclosure, Michigan's campaign finance system fails to protect the broad public interest from the relentless activism of narrow special interests.

TOO INFREQUENT REPORTING

Michigan's campaign finance system is a patchwork of varying reporting requirements:

- In a year during which a candidate is on the ballot, that candidate must file pre- and post-election campaign finance reports for the primary and general elections.
- In a year when an officeholder is not on the ballot, she or he

must file only one campaign finance report for that year, no matter how many fundraisers the candidate held and no matter how much money she or he has raised. This long gap between reports means that the people and the press have no ability to track correlations between campaign contributions and legislative actions until long after the fact.

- Political action committees file only three reports each year. Each year there are six-month gaps between consecutive PAC reports, again, defying oversight by the people and the press of the correlations between campaign contributions and legislative action.
- Ballot initiative committees are required to file annual campaign finance reports, and they must file reports when their question is qualified for the ballot. Beyond those reports, only pre- and post-election reports are required. This is particularly troublesome because it has become a pattern for out-of-state interest groups and individuals to come into Michigan and use paid petition circulators to qualify socially divisive initiatives for the ballot, then finance an initiative campaign on a narrow, deep-pocketed base of contributors. In 2006, the Michigan Civil Rights Initiative and the Stop Overspending initiative (which failed to qualify for the ballot) were examples of ballot committees that did not file a report until days before Election Day. That both committees received most of their funds from a small group of out-of-state persons and interest groups was a fact that should have been known and reported to the people of Michigan during the course of the campaign.

Recommendations: In order to provide meaningful public oversight of the movement of money in Michigan politics:

- All committees - candidate, PAC, party and ballot committees - should file quarterly campaign finance reports every year. For calendar quarters in which there is a pre- or post-election report, that report can satisfy the quarterly reporting requirement.
- Candidate committees should file supplemental contribution reports each time $500 of accumulated new contributions are received between scheduled reports, analogous to the late-contribution reports that are filed between pre-election reports and Election Day.

CONTRIBUTION LIMITS: SOME COMMITTEES HAVE THEM, SOME DON'T

Michigan's campaign finance law has a partial system of contribution limits. Individual contributions to candidate campaign committees are limited: for a state representative: $500; state senator: $1,000; statewide candidate: $3,400.

Contributions from political action committees (PACs) and political parties to candidates are limited, too. Independent PACs and party committees can give ten-times the individual limit, and state parties can give statewide candidates 20-times the individual limit.

However, there are **no limits** on contributions *to* PACs and political parties. Unlimited contributions to PACs and parties are commonly converted into unlimited independent expenditures, thereby circumventing the limits on contributions directly to candidates.

There are numerous examples of this and unlike federal campaign finance law, where an independent spender is prohibited from coordinating with a candidate's campaign committee, Michigan law specifies only that the independent spender cannot be *under the control* of the candidate committee. Coordination is allowed. Here are some examples:

- In the 2000 Supreme Court campaign, Thomas Monaghan gave $650,000 to the Ann Arbor PAC, which, in turn, made more than $200,000 in independent expenditures and gave $34,000 each to incumbent Justices Stephen Markman, Clifford Taylor and Robert Young, Jr.
- In the 2002 Democratic gubernatorial primary campaign, Greektown entrepreneurs Jim Papas and Ted Gatzaros each contributed $450,000 to a PAC called Citizens for Responsible Leadership, which, in turn, made over $1 million in independent expenditures supporting the candidacy of former Gov. Jim Blanchard.
- In the 2002 secretary of state campaign, Paul Land contributed $550,000 to a PAC called West Michigan Leadership Caucus, which, in turn, made $420,000 in independent expenditures supporting Paul Land's daughter, Terri Lynn Land.
- In 2004, Richard DeVos, Sr. and the late Jay Van Andel contributed $1 million each to the Michigan Republican Party,

which, in turn, made more than $3 million in independent expenditures supporting the gubernatorial campaign of former Lt. Gov. Dick Posthumus.

- In 2006, Jon and Pat Stryker gave more than $5 million to a new PAC called Coalition for Progress, which, in turn, made over $3 million dollars in independent expenditures supporting a number of Democratic candidates and opposing Republicans, including $1.65 million spent on the gubernatorial campaign.

Campaign Finance

FAILURES OF LIMITS AND ACCOUNTABILITY

In these cases the major contributors as individuals were confined to giving no more than $3,400 directly to any candidate so they gave a committee most of its money for the election cycle and let the committee spend the money. This is legal money laundering, where the limits on an individual's largesse are eliminated once funds are moved from the personal checking account to the PAC or party account.

For federal campaigns no individual can give more than $2,100 to any candidate for any election, and no individual can give more than $5,000 to any PAC in a calendar year. No individual can give more than $26,700 to any federal party committee in a calendar year, or more than $101,400 to *all* federal candidates, PACs and party committees combined in a two-year election cycle. Those standards have not prevented federal campaigns from raising record amounts of money, but they have limited the influence exerted by individual contributors.

Recommendations: In order to prevent the wealthy few from exercising extraordinary influence in determining the outcome of elections, and gaining extraordinary access to public policy formulation:

- Michigan campaign finance law should limit contributions to PACs to $5,000 per year from any source.
- Michigan campaign finance law should limit individual contributions to state political parties to $50,000 in a two-year election cycle.
- Michigan campaign finance law should limit aggregate contributions from any individual to all state candidates, PACs and political parties to $100,000 for a two-year election cycle.

EXTRAORDINARY SELF-FUNDING

The 2006 gubernatorial campaign raised to prominence the issue of self-funding of political campaigns. Unsuccessful Republican challenger Dick DeVos contributed $35.5 million to his campaign, which gave him an overwhelming campaign finance advantage.

While DeVos's self-funding is the most extreme example in Michigan history, his case is representative of growing trend that has included: Geoffrey Fieger putting more than $5 million into his 1998 gubernatorial campaign; Dan Hibma putting $1.8 million into the 2002 campaign of his wife, Terri Lynn Land, for secretary of state; and, Flint first lady Patsy Lou Williamson putting $330,000 into her 2006 Michigan Senate primary campaign.

Under federal campaign finance law, any self-funding that exceeds $350,000 for an election cycle triggers the "Millionaire Amendment," under which the self-funded candidate's opponent(s) can accept contributions up to three-times the normal limit. This provision levels the financial playing field to some extent, and makes it more difficult for an independently wealthy candidate to buy the outcome of an election.

Recommendation: In order to maintain an element of fairness for a candidate facing an opponent of extraordinary wealth, and to help protect the viability of all candidates who are not independently wealthy:

- Self-funding of a candidate's campaign should trigger a state Millionaire Amendment, wherein the self-funded candidate's opponent is allowed to raise contributions of up to three-times the normal limit. The threshold that activates the Millionaire Amendment should vary, depending on the office and the population of the constituency served by the office.

LIMITS FOR LAME DUCKS

When Michigan law was amended to eliminate officeholder expense accounts, which allegedly were "abused," a provision was made to allow officeholders to use their campaign accounts for expenses incidental to holding office. Certain term-limited legislators have used this provision to raise campaign funds at a pace that exceeded

that of some of their colleagues who still needed their campaign funds to run for office. At some point, lame duck fundraising for a campaign account that can't be used for the purpose for which it was organized transforms the account into a tax-free slush fund. Former Senate Majority Leader Ken Sikkema, who raised more than $250,000 after he could no longer run for the Senate, is the leading example of a lame duck fundraiser.

The need to raise funds to run for some other office is not a legitimate excuse since the prospective candidate is free to establish a new campaign committee for that office. As a contrasting example of institutional restraint, Michigan judicial candidates are allowed to raise money for less than nine months during the year in which they stand for election, and they must empty their accounts at the conclusion of the campaign.

Recommendation: In order to limit officeholder campaign fundraising to that which is relevant to running for office or that which is truly necessary to fulfill the requirements of holding office:

- Term-limited officeholders' campaign committee fundraising should be limited each year and cumulatively.

LATE INDEPENDENT EXPENDITURES ARE REPORTED TOO LATE

If a PAC or political party makes an independent expenditure between its last scheduled pre-election campaign finance report and the election it seeks to affect, it must report the independent expenditure within 48-hours – *if* the election is a special election. If the election is a regularly scheduled election, the independent expenditure does not have to be reported until the committee files its next regularly scheduled campaign finance report – months after the election it was made to affect. This anomaly stands in contrast to federal campaign finance law where all late independent expenditures must be reported within 24 hours, and it keeps voters from being able to evaluate political messages in light of their source.

Individuals' independent expenditures must be reported within 10 days and they are reported to the county clerk where the independent spender lives, regardless of the office for which the candidate affected

by the independent expenditure is running. The 2004 case where Geoffrey Fieger sponsored television advertisements across the state attacking incumbent Supreme Court Justice Stephen Markman illustrates how this lax requirement allowed an independent expenditure of $450,000 to legally remain undisclosed until after the election it sought to influence. The case had other complexities, but nonetheless a major advertising campaign legally avoided disclosure until well after the election, leaving viewers and voters no opportunity to evaluate the message in light of its source.

Recommendations: In order to provide timely disclosure of *all* financial efforts to affect all State elections:

- Any independent expenditure that is made subsequent to a committee's last required report before any election should be reported within 48 hours.
- Any independent expenditure sponsored by an individual should be reported within 48 hours, and those that concern candidates for State office should be reported to the Department of State.

ISSUE ADVOCACY: THE CONVENIENT FICTION

The convenient fiction of Michigan political campaigns is this: A campaign communication that only lays out defining characteristics of a candidate but does not exhort a vote for or against that candidate is not a *campaign expenditure*. It is highly unlikely that any typical Michigan voter would differentiate between a communication that is legally considered a campaign expenditure and one that is an issue ad. Technically, a message – whether broadcast, printed or telephonic – is not necessarily a *campaign expenditure* "if the communication does not support or oppose a ballot question or candidate by name or clear inference" (MCL 169.206(2)).

The operational interpretation of this law derives from the "magic words" of the U.S. Supreme Court's 1976 *Buckley v. Valeo* decision. That is, there must be explicit reference to voting, using words such as "vote for," "oppose," "support," "defeat," or the like.

This distinction is lost on the overwhelming majority of voters because contemporary candidates' own advertisements seldom bother to make reference to voting. Modern selling of the candidate is

about defining the candidate or the opponent in positive or negative terms. Clearly, candidates are praised and impugned very effectively without making reference to voting.

Acknowledgment of this marketing reality led Congress to pass the McCain-Feingold federal campaign finance reforms (officially, the Bipartisan Campaign Reform Act of 2002, or BCRA). Under BCRA, any targeted broadcast message within 30 days of a primary election or 60 days of a general election is an *electioneering communication.* The sponsors and financing of electioneering communications must be disclosed, and corporations and unions are prohibited from contributing from their treasuries to the committees paying for electioneering communications.

Michigan's failure to recognize that such third-party advertisements are electioneering communications creates an enormous campaign finance loophole. While Michigan law prohibits corporations and unions from contributing money from their treasuries to political candidates and political action committees, they are free to provide funds to political parties and interest groups for campaign ads masquerading as issue ads. Furthermore, such soft-money contributions and the advertisements they support never have to be reported.

Since 2000, undisclosed issue ads have become a major feature of the Michigan's most contested statewide campaigns and some legislative contests. Here are some examples of spending for television "issue ads," as compiled from records in state television broadcasters' public files:

- In 2000, the political parties and the Michigan Chamber of Commerce sponsored over $7 million worth of issue ads characterizing the major-party nominees for the Supreme Court in favorable and unfavorable terms.
- In the 2002 Democratic gubernatorial primary campaign, the St. Clair County Democratic Party sponsored $2 million worth of positive ads about former U.S. Rep. David Bonior and critical spots about now-Gov. Jennifer Granholm and former Gov. Jim Blanchard.
- In the 2002 gubernatorial general election campaign, the Michigan Democratic Party sponsored more than $7 million

worth of issue ads and the Michigan Republican Party sponsored more than $1 million worth characterizing the respective nominees.

- Over the 2002, 2004 and 2006 Supreme Court campaigns, the Michigan Chamber of Commerce sponsored over $2.5 million worth of issue ads that characterized positively incumbent Republican nominees for the Court.
- In the 2006 gubernatorial campaign, the Michigan Democratic Party sponsored more than $12.8 million in positive ads about Gov. Jennifer Granholm and negative ads on Dick DeVos. The Republican Governors' Association, the Michigan Republican Party, the Michigan Chamber of Commerce and the Coalition for Traditional Values sponsored another $5 million worth of issue ads with the reverse spin.

In these cases, "sponsor" is a loose term. The television advertisements identified the sponsors, but the contributors to the sponsors were not disclosed in any campaign finance report. These examples alone represent more than $37 million worth of anonymous influence injected into Michigan's most critical election campaigns in just over six years.

Over the last four years, this same disclosure gap also has concealed the true source of the money behind a new and reviled campaign irritant: the robo-call. Robo-calls are not required to carry a disclaimer, so the hectored citizen can't begin to identify who is responsible for the communication. And because robo-calls normally don't bother to mention voting while defining the candidates, they are not considered campaign expenditures and, therefore, they are unlikely to be disclosed.

Addressing the question of "issue advocacy" is proving to be one of the most difficult challenges of political reform for the states. Wisconsin and Michigan require no reporting whatever. In other states, such as Illinois, electioneering-communication committees must report what they spend and name their contributors, but there is no prohibition against using corporate or union funds. Federal regulation is the current gold standard, wherein the only deviation from "hard money" regulation is that individuals can make unlimited

contributions to electioneering-communication committees; and even this exception may be short lived, as evidenced by the December 2006 Federal Election Commission fines against 527 committees that acted as *de facto* political action committees in 2004.

Recommendations: In order to close this glaring loophole that has repeatedly overshadowed candidates' own campaigns:

- All electioneering communications – broadcast, printed and telephonic – that feature the name or image of a candidate for public office within 30 days of a primary election or 60 days of a general election should be considered campaign expenditures, and they should be regulated accordingly. Contributions to committees making such expenditures should be limited; corporate and union treasury funds should be prohibited; all receipts and expenditures should be reported in accordance with the same schedule as political action committees.
- Robo-calls that name a candidate for public office within the window for electioneering communications should be required to include a disclaimer naming the sponsor of the call.

PUBLIC FINANCING OF GUBERNATORIAL CAMPAIGNS

Michigan's gubernatorial public financing is patterned after presidential public financing. By providing a two-to-one public match for qualifying private contributions up to $100 during the primary election period, the system is designed to make small contributors more attractive to candidates, and to make candidates less dependent on big-money contributors and interest groups. The $1.125 million candidate grant for the general election period, again, is designed to diminish candidates' dependency on interest groups and big contributors. The condition for receiving public financing is that the candidate spend no more than $2 million for the primary campaign and the same in the general election campaign.

Like the presidential public financing system, Michigan's gubernatorial system is broken:

- At least one major-party candidate has opted out of at least one phase of the system in each of the last three gubernatorial campaigns.
- Issue ad campaigns and independent expenditures have

overshadowed several candidate campaigns.

- A major-party candidate has self-funded in two of the last three campaign cycles.
- The spending limit of $2 million is impractically low.
- The public fund is not sufficiently funded from present tax-return check-offs to fund significantly larger campaigns.

The non-partisan Campaign Finance Institute has recommended reforms to the presidential public financing system that would translate well to Michigan's gubernatorial system:

- The check-off designation of personal income taxes should be increased.
- The public match for qualifying contributions should be increased to four-to-one.
- Spending limits must be increased.

However, in the wake of the $70 million 2006 gubernatorial campaign, it is not certain those reforms would fix what's wrong with the gubernatorial public financing system. Costs appear to have escalated beyond the system's ability to keep up.

PUBLIC FINANCING OF SUPREME COURT CAMPAIGNS

Since the Supreme Court campaigns of 2000, when the six major-party nominees to fill three seats raised $6.8 million and the parties and interest groups spent over $7 million more, millions of dollars worth of independent expenditures and issue ads have become regular features of Michigan Supreme Court campaigns. Since 2000, each of the seven incumbent justices has been elected or re-elected at least once (nine winners, overall) with aggregate support of $16 million - $6 million of which was spent by anonymous contributors for "issue ad" campaigns.

Many contributors then become involved in cases that are heard by the justices whose campaigns they have supported or opposed, and that can be problematic. A study by the Institute of Money in State Politics found that 86 percent of the cases heard by the Michigan Supreme Court in the 1990s involved at least one contributor to at least one justice. Although these contributions are often small and

seemingly inconsequential, occasionally they are very large. And with more than one-third of the spending coming from anonymous sources, there is no way to evaluate the nature or the scale of the financial connection between the justices and the judged.

Invariably judges and justices say that campaign contributions do not affect their decisions. But, one can imagine having a day in court and knowing that your opponent has invested hundreds of thousands of dollars to select the judges, even if done anonymously through an issue ad campaign. Such investments undermine trust and confidence in judicial impartiality.

While Michigan's public campaign fund appears to be inadequate to sustain future gubernatorial campaigns, it still does have a sufficient balance and a sufficient cash flow to sustain Michigan's contemporary Supreme Court campaigns. Providing full public funding for Supreme Court campaigns would allow Michigan voters to select candidates who demonstrably have no financial connection to litigants whose cases they may have to hear. That would be a major step to improve the appearance and the reality of judicial impartiality.

Recommendation: In order to provide Michigan voters an opportunity to vote for candidates for Michigan Supreme Court who demonstrably have no financial ties to the litigants who argue cases before them:

- Michigan should establish a voluntary system of full public financing for Michigan Supreme Court campaigns.

PUBLIC FINANCING FOR ALL STATE CAMPAIGNS

The most compelling arguments for a complete system of full public financing are those from elected officials in Maine and Arizona – the states that have established such systems. Liberal, centrist and conservative lawmakers argue that public funding is a liberating factor that allows them to act boldly and vote more faithfully for the interests of their constituents, because they are not dependent on lobbyists and special interests for campaign contributions.

While there are direct taxpayer costs for having a system of full public financing for political campaigns, there are also incalculable costs to taxpayers and consumers from laws, policies and budget

priorities that are sops to special interests. Public financing may provide a net financial benefit to citizen taxpayers.

Recommendation: To evaluate the costs and benefits to citizen-taxpayers and elected officials:

- Michigan should establish a commission to evaluate the merits of a system of voluntary full public funding for all State election campaigns.

Lobbying

INSUFFICIENT DISCLOSURE

INSUFFICIENT DISCLOSURE

It is the responsibility of lobbyists to represent specific interests in decision-making on public policy issues. Because of the important role and impact of lobbying, it is critical that there be comprehensive disclosure of lobbyists' activities.

In 2006, 1,100 Michigan lobbyists reported lobbying expenditures of $29.9 million – a level of spending that is up by more than 28 percent from just four years ago. That amount includes $450,000 of food and beverage expenditures, an amount sufficient to provide every member of the Legislature a $30 lunch for each session day in Lansing.

Michigan's system for disclosure of lobbying activity has a few strengths and a number of important deficiencies.

Lobbyists (interest groups and multi-client firms) and lobbyist agents (persons who work for lobbyists) file semi-annual reports in January and August of each year. The Department of State stores those reports in a searchable database so public officials, journalists and concerned citizens can find information about a particular lobbyist, or generate lists of all lobbyist's expenditures for a given reporting period. Individual lobbyists' reports identify the lobbyist's employees and clients.

Lobbyists report gross expenditures for lobbying activity, but there are varying reporting thresholds for specific expenditures that are made to benefit lobbyable officials (elected officeholders or high administration officials) directly:

- Lobbyists must identify individual beneficiaries of food and beverage expenditures only if they reach $53 in a month, or if those food and beverage expenditures reach $325 for a calendar year.
- Lobbyists must disclose expenditures or reimbursement for travel and lodging expenses for a lobbyable official on "public business" (such as going to a resort to brief an association meeting on legislative prospects) but only when they reach $700.
- Financial transactions (purchases, sales, loans, exchanges) between lobbyists and lobbyable officials must be reported only when they reach a threshold of $1,075.
- Lobbyists can give lobbyable officials items such as tickets for entertainment whose value is less than $53 in a month and

those items do not have to be disclosed. Lobbyists cannot give lobbyable officials items whose value exceeds $53 in a month.

The fact that the beneficiaries of lobbying expenditures below the reporting thresholds are not identified is a shortcoming, but it is not the only shortcoming. Lobbyists do not have to report what issues, bills, regulations or public contracts they are trying to influence as they do their work. Although lobbyists have to disclose their paying clients, relating lobbying expenditures to the issues on which the lobbyist worked is not required. That contrasts with federal regulations which require that each report must list the issues or bills on which the lobbyist is working; or lobbying disclosure in Wisconsin, where the lobbyist must file a public statement of interest in an issue or bill *before* beginning to work on the issue. In Wisconsin, lobbyists also file semi-annual reports that disclose billable hours and expenditures for each issue on which they work.

Recommendations: In order to make a complete public record of the extent and nature of lobbying activity to influence public policy:

- *All* expenditures for individual lobbyable officials that exceed a low, uniform dollar threshold should be reported by the lobbyists who make them.
- The issues, bills, regulations and public contracts that a lobbyist is seeking to influence during any reporting period should be identified in that report.

SLOWING THE REVOLVING DOOR

The "revolving door" refers to movement from government to lobbying without interruption. Stated plainly, the concern about the revolving door is that the elected officeholder or administration official will work on behalf of a special interest in order to enhance his or her post-government employment prospects rather than working for the broader public interest. A mandatory interval, or "cooling-off" period, is meant to be a prophylactic against that temptation.

Michigan law prohibits an officeholder who resigns from office from lobbying within the period for which the officeholder was elected. Federal law prohibits officeholders from lobbying former

peers for a period of one year. Twenty-five states have cooling-off periods of at least one year, including six states that block the revolving door for two years. Michigan law does not require a cooling off period for officeholders who complete their term in office.

This issue is particularly important in Michigan's term-limited environment. The majority of new state representatives will have a legislative career of six years or less. For those who find fulfillment in the world of public policy but face limited electoral possibilities, lobbying presents the chance for a highly rewarding career.

Lobbying

INSUFFICIENT DISCLOSURE

Consider the case of former Speaker of the House Rick Johnson. During the four years that Johnson was speaker, he raised $280,000 in his candidate campaign account, $592,000 in his two leadership PACs and $816,000 for two 501(c)(4) organizations – and he controlled the legislative calendar for the Michigan House. Johnson went immediately from being speaker of the house to a lobbying career. In this case there is no concrete evidence to suggest that Johnson pursued a legislative agenda that paved the way to his lobbying position, but is not hard to see how the opportunity could lure a lesser person to do so. The mere appearance of self-serving opportunism undermines trust and confidence in elected officials.

Recommendations: In order to limit the temptation for an officeholder or a high administration official to serve a special interest at the expense of the public interest to enhance his or her future career prospects:

- An elected officeholder should be subject to a mandatory one-year cooling-off period before he/she can become a paid lobbyist or engage in lobbying related activity, such as recruiting clients or planning and directing a lobbying campaign.
- Top appointed administration officials should be subject to a mandatory one-year cooling off period before they can become paid lobbyists or engage in lobbying-related activity.

Ethics

HIGH STANDARDS FOR ALL

Michigan's law regarding ethics for public officials is inconsistent at best. The Standards of Conduct for Public Officers and Employees (P.A. 196 of 1973) applies to the executive branch but not the legislative branch or the judicial branch. On the other hand, legislators are specifically prohibited from accepting honoraria while other officeholders are not. A uniform State framework should cover all officeholders and employees to preclude unethical conduct that enriches the public official or injures the State or its citizens.

STANDARDS OF CONDUCT FOR ALL

The Standards of Conduct for Public Officers and Employees prescribe elected and appointed executive branch officials:

- Shall not divulge confidential information acquired in the course of employment in advance of the time prescribed for its authorized release to the public;
- Shall not represent his or her personal opinion as that of an agency;
- Shall use personnel resources, property, and funds judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures and not for personal gain or benefit;
- Shall not solicit or accept a gift or loan of money, goods, services, or other thing of value for the benefit of a person or organization, other than the State, which tends to influence the manner in which the public officer or employee or another public officer or employee performs official duties;
- Shall not engage in a business transaction in which the public officer or employee may profit from his or her official position or authority or benefit financially from confidential information which the public officer or employee has obtained or may obtain by reason of that position or authority;
- Shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the officer or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties;

- Shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision relating to a business entity in which the public officer or employee has a personal or financial interest.

Recommendations: In order to provide a meaningful framework of ethical conduct for all governmental actors:

- The State Standards of Conduct for Public Officers and Employees should be made to apply to the legislative and judicial branches of government.
- All State officeholders and top appointees should be prohibited from accepting honoraria.

Ethics

HIGH STANDARDS FOR ALL

DISCLOSURE OF PERSONAL FINANCIAL INTERESTS

Michigan is one of only three states that do not require public officials to file a statement of personal financial circumstances. As with public officials in 47 states, federal officeholders and judges must file statements of personal financial interests.

While there is some degree of intrusion on the public official's private life inherent in personal financial disclosure, transparency helps assure citizens that public officials are not using their office as a means for personal enrichment.

Recommendation: In order to allow public oversight of whether a public official's actions avoid ethical transgressions for personal enrichment:

- Michigan should require elected officials, including judges, and top administrative appointees to file periodic reports of their real property holdings, financial assets, outside income and creditors, and material transactions that change their financial circumstances.

Term Limits

THE HIGH COST OF INEXPERIENCE

Michigan law has limited State officeholders' terms in office since 1992. Michigan allows three two-year terms for state representatives, and two four-year terms for state senators and elected executives. Michigan is one of 21 states that enacted term limits in the early 1990s.

In acknowledging the term-limit movement in his 1991 State of the Union address, President George H.W. Bush noted that, "the American people are increasingly concerned about big-money influence in politics." If limiting the influence of money in politics was genuinely a driving motivation for term limits, it has not produced the desired effect. In a valedictory appearance on Michigan Public Television's "Off the Record," outgoing Senate Majority Leader Ken Sikkema stated that the impact has been the opposite: Campaigns have grown ever more expensive, and the pressure on legislative leaders to raise money is relentless. Statistics support Sikkema's assertion. There has been a steady increase in the median cost of legislative campaigns, and 2006 saw numerous legislative campaigns that cost over $1 million. Annual lobbying expenditures in Michigan now exceed $30 million.

Term limits give interest groups an advantage in information and institutional memory that lobbyists hold over inexperienced legislators. A telling example was the occasion in November 2005 when the House passed a rewrite of the Michigan Telecommunications Act. House Energy and Technology Chairman Mike Nofs noted the daunting technical task his committee had faced, and he observed that their knowledge deficit could only be overcome with the able assistance of lobbyists for the telecommunications industry.

In fact, the danger of the knowledge and experience deficit is present throughout the lawmaking process. Three speakers of the House had only one term in the body before they assumed control of the calendar. A chairman of the Appropriations Committee was appointed who had never been on the committee – and he was responsible for writing one side of a $40 billion budget. Chairs of all committees are expected to learn on the job, but there are almost no seasoned mentors from whom they can learn.

Other reasons that were offered as rationale for term limits included greater voter interest and more competitive elections. In the 2004 book, *The Political and Institutional Effects of Term Limits,* Marjorie

Term Limits

THE HIGH COST OF INEXPERIENCE

Sarbaugh-Thompson, *et al*, consider those points in detail and show them to be false promises. Voter turnout has not increased as a function of term limits. Open seats occur more frequently, and they generally are more competitive than seats that are being defended by an incumbent, but there is less competition among incumbent-defended seats, evidence of an apparent strategy to wait out the incumbent until he or she must leave office. Overall, it is questionable whether the competitiveness of an election is more a function of term limits or other factors such as redistricting or a party or caucus's capacity to raise money.

The argument that term limits ends political careerism is not born out by experience. Sarbaugh-Thompson, *et al*, show that more legislators now come to Lansing with experience as elected officials than prior to the era of term limits. Also, many run for mayor, county commission or the other legislative chamber upon being termed-out of office. Sometimes an immediate family member succeeds the term-limited officeholder. Rather than ending political careerism, term limits has stimulated an era of political musical chairs.

Since the first representatives left the House because of term limits at the end of 1998, both chambers of the legislature had a Republican majority for the next eight years. Throughout this period of single-party domination, bipartisanship has not been necessary and, by most accounts, it was not cultivated. Sen. Sikkema, again commenting on "Off the Record," noted that legislators simply do not have enough time to develop trusting relationships that allow them to solve tough problems and to work effectively 'across the aisle.' With a divided legislature beginning in January 2007, and the first real requirement for inter-party compromise since term limits have taken effect, the compressed interpersonal relationships will be tested as they have not been up to this point.

Overall, term limits have been a failed experiment. They have created a legislative culture that lacks accountability, because elected officials move on and let their successors inherit whatever problems their service may have caused. The State's structural budget deficit is an obvious example: A bold, ideological tax-cutting initiative was not coupled with a bold budget-balancing initiative. The consequences

were left for succeeding lawmakers to clean up – and so far that still hasn't happened.

Restricting the power of citizens to elect whomever they choose does not enhance our democracy.

Recommendation: In order to give voters the best possible choices of whom to elect; to accommodate more knowledgeable officeholders; and to elevate accountability in governing:

- Michigan's term limits should be eliminated

Term Limits

THE HIGH COST OF INEXPERIENCE

Redistricting

COMPETITION SERVES DEMOCRACY

Since the adoption of the 1963 Michigan Constitution, the courts have directly supervised all but one decennial redistricting process: the 2001 redistricting, when Republicans held majorities in both chambers of the legislature, the governorship and a majority on the nominally non-partisan Michigan Supreme Court.

The Michigan redistricting standards, popularly known as the Apol Standards, set acceptable population variances among districts, give a preference for compact and contiguous districts, and mandate that breaking of city, township and county jurisdictional boundaries be minimized. A redistricting plan also must comply with the Voting Rights Act. However, conspicuously absent from the Apol Standards is any preference for competitiveness of districts.

The table titled "Votes and Legislative Delegations, 1998 – 2006" shows the parties' aggregate vote percentages for each legislative body, and the percentage of the delegation won by those vote percentages. The table shows the degree to which the respective legislative bodies reflect aggregate vote counts across the state.

VOTES AND LEGISLATIVE DELEGATIONS, 1998 – 2006

		1998				2000			
		vote count	vote %	seats	% deleg	vote count	vote %	seats	% deleg
US House	Republican	1,438,283	48.18%	6	37.50%	1,786,991	43.91%	7	43.75%
	Democratic	1,469,111	49.21%	10	62.50%	2,117,678	52.03%	9	56.25%
	Other	77,839	2.61%			165,067	4.06%		
	Total	2,985,233		16		4,069,736		16	
MI Senate	Republican	1,556,762	52.33%	24	63.16%	-			
	Democratic	1,388,711	46.68%	14	36.84%	-			
	Other	29,430	0.99%			-			
	Total	2,974,903		38		-			
MI House	Republican	1,473,800	49.79%	58	52.73%	1,919,869	48.19%	58	52.73%
	Democratic	1,455,442	49.17%	52	47.27%	2,016,994	50.63%	52	47.27%
	Other	30,864	1.04%			46,981	1.18%		
	Total	2,960,106				3,983,844			

Differential Delegation % vs. Vote %		1998 Repub.	1998 Dem.	2000 Repub.	2000 Dem.
	US House	-10.68	13.29	-0.16	4.22
	MI Senate	10.83	-9.84	-	-
	MI House	2.97	-1.90	4.54	-3.36

There are certain limitations on the utility of this analysis. Voters are voting for individual candidates, not necessarily parties. The parties' voters are not distributed evenly across the state. There are large majorities of Democratic voters in urban areas, particularly Detroit; and there are strong Republican majorities across large swaths of western and northern Michigan.

Despite these limitations, two important trends are discernible in these data. First, one can readily see that the smallest districts, those of the Michigan House, are most responsive to aggregate movements of voter sentiment. Throughout the five elections, the percentage differential between seats and votes remained in a range from 2.53% to 7.25% for the Michigan House. The more populous districts are less likely to respond to swings in the aggregate vote percentage, with U.S. House districts less likely than Michigan Senate districts. The Apol Standards provide a significant measure of insulation against a partisan gerrymander at the level of smaller districts, but the 2006 election shows evidence that the larger districts, as they are drawn,

Redistricting

COMPETITION SERVES DEMOCRACY

2002				2004				2006			
vote count	vote %	seats	% deleg	vote count	vote %	seats	% deleg	vote count	vote %	seats	% deleg
1,465,178	47.95%	9	60%	2,284,181	49.32%	9	60%	1,624,865	44.54%	9	60%
1,507,174	49.32%	6	40%	2,221,524	47.97%	6	40%	1,923,485	52.72%	6	40%
83,545	2.73%			125,353	2.71%			100,152	2.75%		
3,055,897		15		4,631,058		15		3,648,502		15	
1,532,170	50.07%	22	57.89%	-				1,647,059	45.01%	21	55.26%
1,506,920	49.24%	16	42.11%	-				1,968,080	53.79%	17	44.74%
21,010	0.69%			-				43,849	1.20%		
3,060,100		38						3,658,988		38	
1,520,395	50.02%	63	57.27%	2,201,727	48.16%	58	52.73%	1,624,975	44.74%	52	47.27%
1,498,865	49.31%	47	42.73%	2,332,501	51.03%	52	47.27%	1,979,748	54.51%	58	52.73%
20,302	0.67%			37,057	0.81%			27,021	0.74%		
3,039,562		110		4,571,285				3,631,744		110	

Repub.	Dem.	Repub.	Dem.	Repub.	Dem.
12.05	-9.32	10.68	-12.03	15.46	-12.72
7.82	-7.13	-	-	10.25	-9.05
7.25	-6.58	4.57	-3.76	2.53	-1.78

are highly impervious to flipping from one party to the other, even when there are significant swings in partisan sentiment as manifested in the percentage of votes cast. The greatest imbalance between percentage of votes and percentage of delegation was after the 2006 election, when Republicans captured 60 percent of the congressional delegation with only 45 percent of the congressional vote.

Redistricting

COMPETITION SERVES DEMOCRACY

The second important point in these data is that the differential between percentage of seats and percentage of votes moved uniformly in favor of Republicans after the Republican-controlled redistricting of 2001. That is a predictable result because that is the intent of a partisan-controlled redistricting process: to give the greatest possible return on the votes that are cast by one's own party. This result is achieved by conceding a minimum number of districts to the opposition, and drawing boundaries that maximize the number of the opposition party's voters in those districts.

A redistricting process that would better serve democracy and better represent voters' sentiments should combine the sound underlying logic of the Apol Standards, respect for the Voting Rights Act and a preference for competitiveness.

Recommendation: In order to have legislative representation that accurately reflects voter sentiment, is responsive to changes in voter sentiment, values competition and respects minority representation:

- Michigan should institute a system wherein a nonpartisan entity such as the Legislative Service Bureau is responsible for drawing decennial redistricting plans that incorporate the Apol Standards, value competition and respect minority voter representation. Those nonpartisan plans would have to be approved by the legislature and governor; and if the nonpartisan body is unable to create a plan that gains approval, the process would be turned over to the courts.

Election Administration

TIME FOR NEW REFORMS

Michigan's history in election administration is marked by notable achievements in early adoption of some election reforms. Michigan first gave its citizens the opportunity to register to vote at Department of State branch offices in 1975, 18 years before "motor voter" became a federal standard. Michigan also was a leader in adopting a statewide voter registry (the Qualified Voter File) in the 1990s. Michigan does not allow felons to vote while they are incarcerated, but voting rights are restored after release from prison.

Michigan is now in a position where new reforms are necessary to encourage voter participation. Some issues are straightforward and simple, while other opportunities require more ambitious thinking.

NO-EXCUSE ABSENTEE BALLOTS

Michigan voters are eligible for absentee voter ballots if they meet one of six criteria: over age 60; disabled; a religious requirement; absent from the area on Election Day; incarcerated awaiting trial; or, working in another precinct on Election Day. Personal convenience is not considered an acceptable reason for being able to vote absentee. In addition, one is not eligible to vote by mail for the first time if he or she did not register at a secretary of state branch office or with his or her own clerk, a condition that can be particularly troublesome for college students.

Legislation to remove such limiting requirements has been introduced in several legislative sessions by Republicans and Democrats, but never by both at once.

Recommendations: In order to remove unnecessary barriers to voting for citizens:

- Voters should be granted absentee ballots upon request without having to specify a reason.
- Mail-in voter registration should accommodate a witnessing signature by *any* sworn election official or a certified notary public, and first-time voters who have thus registered should be allowed to vote an absentee ballot.

REGISTRATION BEFORE VOTING

Michigan law requires voters to be registered 30 days prior to Election Day. This barrier to voting is unnecessary in the era of the Qualified Voter File and it translates to lower voter turnout than in states that allow same day registration.

Recommendation: In order to diminish a needless barrier to voting:

- Reduce the period required between registration to vote and voting from 30 days.

CANDIDATE ORDER ON THE BALLOT

Michigan ballots list the candidates for each office beginning with the candidate who is of the party of the incumbent secretary of state. Through the long tenure of Secretary of State Richard Austin, Democrats were listed first. The year 2007 marks the thirteenth consecutive year of listing Republicans first.

Stanford Professor Jon A. Krosnick has conducted research on the significance of the order in which names are presented to voters and found that being placed first is generally worth two percentage points – enough to turn a 49-51 loss to a 51-49 win. In about half the elections Krosnick studied, the advantage of being listed first was even greater.

Krosnick identifies Ohio's system as the model of fairness in regard to order of presentation of candidates. In Ohio candidates are rotated precinct by precinct, so each candidate will be listed first an equal number of times.

Recommendation: In order to neutralize the unwarranted advantage of being the first name the voter sees:

- The order in which candidates' names are presented to voters should be rotated precinct by precinct, so candidates will be listed first an equal number of times in the aggregate.

MAJORITY WINNERS – INSTANT RUN-OFF VOTING

Electoral winners who win a plurality of votes rather than a majority frequently raise a level of dissatisfaction among voters. Supporters

of President George H. W. Bush felt that Ross Perot was a spoiler who made Bill Clinton a plurality winner. Similarly, supporters of Al Gore felt that Ralph Nader was a spoiler who made George W. Bush a plurality winner in Florida and nationally.

In Michigan minor party candidates sometimes draw enough votes to make the difference between a majority winner and a plurality winner. Minor party candidates are loath to view themselves as "spoilers," but that is precisely how they are seen by large numbers of the public. And this is a problem that cuts both ways: both major parties have endured losses due to a minor party spoiler effect. Current Representatives Kathleen Law (D-Gibraltar) and David Robertson (R-Grand Blanc) may well owe their initial winning margin to voters pulled away from their major party opponent by a Libertarian and a Green, respectively. In 2006, it has been noted that Green candidates may be the reason that Republicans John Pappageorge and Roger Kahn were able to pull out plurality wins, which was a difference sufficient to keep Democrats from winning a majority in the Senate.

Instant Run-off Voting (IRV) offers a solution to the problem of plurality winners. IRV voters are allowed to make a second choice selection so that if no candidate wins a majority of votes, the supporters of the candidate(s) who polled least will have their second choice count, until one candidate does have the support of a majority of those who have voted. This has the effect of selecting the candidate who genuinely best suits the majority of voters, and it removes the stigma from voting for a minor party candidate. This could allow minor parties an opportunity to grow.

Recommendation: In order to elect officials who best suit the majority of voters:

- Michigan should implement a system of Instant Run-off Voting.

REFORMING THE INITIATIVE/REFERENDUM PROCESS

Ballot questions in 2006, particularly the Michigan Civil Rights Initiative (MCRI), have drawn attention to serious weaknesses in the voter initiative process. In particular, hundreds of persons appeared before the State Board of Canvassers and the Michigan Civil Rights

Commission to state that they had been duped into signing a petition to put the MCRI on the State ballot. Many, including a state judge, testified that petition circulators had misrepresented by 180 degrees the intent of the MCRI. A federal judge agreed that fraud had probably occurred, but he found that the federal Voting Rights Act had not been violated because both blacks and whites had been deceived in order to get the measure on the ballot, and there is no state law prohibiting such fraud.

As noted before, several recent initiative campaigns have been advanced by a few deep-pocketed out-of-state persons or interest groups. The MCRI is an example where paid petition circulators, largely funded by Ward Connerly and his California-based American Civil Rights Coalition, were able to get an issue to the ballot and ultimately win the vote. The proposed constitutional amendment to restrict State spending known as Stop Overspending (which failed to reach the ballot) was another phony grassroots, or astroturf, campaign that was 99 percent financed by out-of-state organizations. In both these cases, the public's right to know who is supporting these initiatives would have been better served if all state political committees were required to report their campaign finances quarterly.

In order to address the complaint of fraudulent misrepresentation of the intent of a ballot initiative in petition gathering, the overall process can be reordered so that the request for ballot language and hearings on the ballot language precede petitions going into the field. This would mean that petitions would carry the precise 100-word description of the question that would ultimately appear on the ballot.

Recommendations: In order to build integrity in the ballot initiative process:

- Fraud in the ballot initiative process should be prohibited by state law.
- Ballot committees should be required to file quarterly campaign finance reports as soon as they are formed.
- Ballot language should be determined before petitions are circulated.

ELECTION CAMPAIGNS

As noted previously, a hazard of highly expensive judicial election campaigns is that they create financial connections between campaign contributors and justices who hear cases involving those same contributors. A study by the Institute on Money in State Politics showed that 86 percent of cases that were heard by the Michigan Supreme Court in the decade of the 1990s involved at least one contributor to at least one justice.

Recommendation: In order to provide Michigan voters the opportunity to vote for candidates for Michigan Supreme Court who demonstrably have no financial ties to the litigants who argue cases before them:

- Michigan should establish a voluntary system of full public financing for Michigan Supreme Court campaigns.

RECUSAL

Recusal refers to a judge or justice removing him- or herself from hearing a case because of an appearance of a conflict of interest which might compromise the judge or justice's impartiality.

The money spent by interest groups – reported and unreported – that helped to elect sitting justices should be part of the recusal discussion. Does this money compromise the impartiality of the justices who are sitting in judgment of a former campaign contributor? If it's legal, can it be wrong? Does it matter, as long as the justices "get it right" in their decisions?

The circumstances surrounding the financial involvement of the DaimlerChrysler Corporation illustrate the complex issues of political spending in Supreme Court campaigns. DaimlerChrsyler's PAC and employees contributed amounts ranging from $13,000 to $44,000 to Justices Corrigan, Markman, Taylor and Young during campaigns in 1998 and 2000, for a total of more than $98,000. In addition, DaimlerChrysler gave $1 million to the U.S. Chamber of Commerce in 2000 for its $10 million "issue advocacy" that focused on state Supreme Court campaigns in Michigan, Ohio, Indiana, Mississippi and Alabama. In turn, the U.S. Chamber supported the Michigan Chamber of Commerce in its $3 million television "issue"

campaign supporting Justices Markman, Taylor and Young in their 2000 election.

Subsequent to the 2000 campaign, Justices Corrigan, Markman, Taylor and Young voted in two separate cases to overturn eight-figure damage judgments against DaimlerChrysler.

Because of the lack of disclosure in so-called issue campaigns, it is not possible to ascertain whether DaimlerChrysler's million-dollar contribution to the U.S. Chamber was earmarked to come back to Michigan and support Markman, Taylor and Young. Nor can the possibility be dismissed. Is an anonymous $1 million expenditure more benign than $45,000 given directly to a candidate?

Judicial Independence

INSULATION FROM INTEREST GROUPS

Recusal for the Michigan Supreme Court (an elected body) is a different matter than recusal for the U.S. Supreme Court (whose members are appointed for life) precisely because millions of dollars are spent by persons and interest groups, some of whom will have interests before the Court, to select the justices. As long as huge sums of private interests' money are involved in the judicial selection process, the Court should be attentive to the fact that political money compromises the appearance, if not the reality, of its judicial impartiality.

Recommendation: In order to protect the appearance and reality of judicial impartiality:

- The Michigan Supreme Court should develop standards for recusal for cases involving individuals and interest groups who have substantial financial ties, whether personal or political, to any justices.

Enforcement

NEED FOR STRENGTH AND CONSISTENCY

The Department of State is responsible for enforcement of the State's campaign finance law. Enforcement of the law is weak and inconsistent – often appearing arbitrary. To some degree that is the product of the posture of the law: Apparent violations are flagged by the Department with Error and Omissions notices, to which the violator is asked to respond with corrective action. If violations are identified in a complaint and they appear to be substantiated "…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." (MCL 169.216(10)).

It is not surprising that those who might run afoul of this law would write it so that consequences for violations are minimal. Penalties for violations are anachronistically small, often amounting to little more than a minor cost of doing business.

Under Michigan's current law and the administration of that law, committees have found it easy to withhold campaign finance information until after an election and belatedly paid a minimal fine. The Burton Leland Leadership Fund in 2001 and Generations PAC in 2005 are examples. Voters are deprived of knowledge of the financial source of campaign messages, and are thus unable to evaluate those messages in light of their source.

Disparate enforcement is evident in the handling of campaign finance complaints filed with the Department of State. In one complaint, the Department of State's Legal and Regulatory Affairs Division agreed that a $25,000 corporate contribution was illegal but six months later the complaint against the contributor was dismissed because "mistakes were made." The recipient committee repaid only half the illegal contribution and paid only a $1,000 fine.

In another case, a PAC made contributions to a candidate committee that were $21,100 in excess of the legal limit, and it had accepted $8,000 in illegal corporate contributions to do so. In this case the candidate committee returned the full amount of the excess contribution, the PAC returned the entire $8,000 of corporate money to its sources and the PAC was fined $18,238.

Enforcement

NEED FOR STRENGTH AND CONSISTENCY

The notable difference between the cases is that one involved Republicans and the other involved Democrats. Such disparities can and should be avoided by placing enforcement authority for campaign finance, lobbying and ethics violations with a nonpartisan commission.

Recommendations: In order to provide a greater incentive for compliance with campaign finance law:

- Fines for violations should be increased substantially; consideration should be given to basing fines on a percentage of the amount of money that is the subject of the violation.

In order to assure fair and impartial handling of campaign finance, lobbying and ethics violations:

- An independent, nonpartisan commission should be established to investigate apparent campaign finance, lobbying and ethics violations; and this commission should have authority for imposing penalties for verified violations.

CAMPAIGN FINANCE

- All committees - candidate, PAC, party and ballot committees - should file quarterly campaign finance reports every year. For calendar quarters in which there is a pre- or post-election report due, that report can satisfy the quarterly reporting requirement.
- Candidate committees should file supplemental contribution reports each time $500 of accumulated new contributions are received between scheduled reports, analogous to the late-contribution reports that are filed between pre-election reports and Election Day.
- Michigan campaign finance law should limit contributions to PACs to $5,000 per year from any source.
- Michigan campaign finance law should limit individual contributions to state political parties to $50,000 in a two-year election cycle.
- Michigan campaign finance law should limit aggregate contributions from any individual to all state candidates, PACs and political parties to $100,000 for a two-year election cycle.
- Self-funding of a candidate's campaign should trigger a state Millionaire Amendment, wherein the self-funded candidate's opponent is allowed to raise contributions of up to three-times the normal limit. The threshold that activates the Millionaire Amendment should vary, depending on the office and the population of the constituency served by the office.
- Term-limited officeholders' campaign committee fundraising should be limited each year and cumulatively.
- Any independent expenditure that is made subsequent to a committee's last required report before any election should be reported within 48 hours.
- Any independent expenditure sponsored by an individual should be reported within 48 hours, and those that concern candidates for State office should be reported to the Department of State.
- All electioneering communications – broadcast, printed and telephonic – that feature the name or image of a candidate for public office within 30 days of a primary election or 60 days of a general election should be considered campaign expenditures,

Summary of Recommendations

and they should be regulated accordingly. Contributions to committees making such expenditures should be limited; corporate and union treasury funds should be prohibited; all receipts and expenditures should be reported in accordance with the same schedule as political action committees.

- Robo-calls that name a candidate for public office within the window for electioneering communications should be required to include a disclaimer naming the sponsor of the call.
- Michigan should establish a voluntary system of full public financing for Michigan Supreme Court campaigns.
- Michigan should establish a commission to evaluate the merits of a system of voluntary full public funding for all State election campaigns

LOBBYING

- All expenditures to benefit individual lobbyable officials that exceed a low, uniform dollar threshold should be reported by the lobbyists who make them.
- The issues, bills, regulations and public contracts that a lobbyist is seeking to influence during any reporting period should be identified in that report.
- An elected officeholder should be subject to a mandatory one-year cooling-off period before he/she can become a paid lobbyist or engage in lobbying related activity, such as recruiting clients or planning and directing a lobbying campaign.
- Top appointed administration officials should be subject to a mandatory one-year cooling off period before they can become paid lobbyists or engage in lobbying-related activity.

ETHICS

- The State Standards of Conduct for Public Officers and Employees should be made to apply to the legislative and judicial branches of government.
- All State officeholders and top appointees should be prohibited from accepting honoraria.
- Michigan should require elected officials, including judges, and top administrative appointees to file periodic reports of their real property holdings, financial assets, outside income and creditors, and material transactions that change their financial circumstances.

Summary of Recommendations

TERM LIMITS

- Michigan's term limits should be eliminated.

REDISTRICTING

- Michigan should institute a system wherein a nonpartisan entity such as the Legislative Service Bureau is responsible for drawing decennial redistricting plans that incorporate the Apol Standards, value competition and respect minority voter representation. Those nonpartisan plans would have to be approved by the legislature and governor; and if the nonpartisan body is unable to create a plan that gains approval, the process would be turned over to the courts.

ELECTION ADMINISTRATION

- Voters should be granted absentee ballots upon request without having to specify a reason.
- Mail-in voter registration should accommodate a witnessing signature by any sworn election official or a certified notary public, and first-time voters who have thus registered should be allowed to vote an absentee ballot.
- Reduce the period required between registration to vote and voting from 30 days.
- The order in which candidates' names are presented to voters should be rotated precinct by precinct, so candidates will be listed first an equal number of times in the aggregate.
- Michigan should implement a system of Instant Run-off Voting.
- State law should prohibit fraud in the ballot initiative process.
- Ballot committees should be required to file quarterly campaign finance reports as soon as they are formed.
- Ballot language should be determined before petitions are circulated.

JUDICIAL INDEPENDENCE

- The Michigan Supreme Court should develop standards for recusal for cases involving individuals and interest groups who have substantial financial ties, whether personal or political, to any justices.

Summary of Recommendations

ENFORCEMENT

- Fines for violations should be increased substantially; consideration should be given to basing fines on a percentage of the amount of money that is the subject of the violation.
- An independent, nonpartisan commission should be established to investigate apparent campaign finance, lobbying and ethics violations; and this commission should have authority for imposing penalties for verified violations.

"There are those who look at things the way they are, and ask why… I dream of things that never were, and ask why not."

– Robert F. Kennedy