

## Ecology of Michigan Supreme Court Election Campaigns

Michigan Supreme Court election campaigns have become expensive and highly contentious over the past decade. Since 2000, spending has exceeded \$23 million for the elections of the seven justices, two of whom faced the electorate twice. Retired U.S. Supreme Court Justice Sandra Day O'Connor has written, "Motivated interest groups are pouring money into judicial elections in record amounts. Whether or not they succeed in their attempts to sway the voters, these efforts threaten the integrity of judicial selection and compromise public perception of judicial decisions."

Contributors to Michigan Supreme Court justices' election campaigns frequently appear as litigants or counsel in cases decided by the Court. For the decade of the 1990s, 86 percent of the Court's cases had at least one contributor to at least one justice. Many contributions are small and inconsequential. Many are large and should be disconcerting.

The American Bar Association's Model Code of Judicial Conduct recommends that states should establish some threshold contribution amount, above which a justice should recuse himself from a case involving his campaign's financial supporters. Eighteen states have formed committees to develop recommendations for implementing the Model Code. Michigan is not one of them.

The American Judicature Society identifies justices of the Michigan Supreme Court as "the only judges in the country who do not have rules that establish grounds for disqualification."

The American Bar Association recommends that states that elect their Supreme Court justices in competitive elections should provide full public funding for those campaigns. This allows candidates to have financially viable campaigns without having to solicit financial support from interest groups or counsel that may later appear before the Court. The Representative Assembly of the State Bar of Michigan passed a resolution in support of public financing in 2002. Two states, North Carolina and New Mexico, already have established full public financing for their Supreme Court campaigns.

Candidate-focused television "issue" advertisements, for which there is **no campaign finance accounting**, have been the cause of \$10 million in spending since 2000. Sometimes these advertisements burnish the images of candidates and sometimes they disparage. Contributors to these ad campaigns are anonymous, their contributions are not subject to limits and there are no restrictions against corporations and unions contributing to these campaigns, as there are for contributions to candidates, PACs and political parties. The investors in these campaigns leave no footprints in the public record despite providing more than 40 percent of the money spent on the campaigns.

Michigan has a State Campaign Fund that was established to provide public funding for gubernatorial campaigns. Because of the high costs of recent gubernatorial campaigns, it is inadequate for that purpose. The State Campaign Fund could accommodate contemporary Supreme Court campaigns comfortably.