

*Special Interests*  
v.  
*Public Values*

**Funding Michigan Supreme Court Campaigns  
1994-2000**

The Michigan Campaign Finance Network is a nonprofit, nonpartisan coalition of organizations and individuals concerned about the influence of money in politics and the need for campaign finance reform in the state of Michigan. MCFN conducts research on campaign contributions and their relationship to election outcomes and issues of public policy, supports access to campaign finance information and develops educational initiatives for the public on the subject of campaign finance reform.

#### BOARD OF DIRECTORS

Steven Chester, attorney

Jan Dolan, former Michigan State Representative

Patricia Donath, League of Women Voters of Michigan

Isaac Elnecave, Michigan Environmental Council

Brian Imus, Public Interest Research Group in Michigan

Lynn Jondahl, Michigan Prospect for Renewed Citizenship

John M. Koval, senior citizen representative

Richard Robinson, *executive director*

© April, 2002 by Michigan Campaign Finance Network.

This report was researched and written by Barbara Moorhouse and Richard Robinson with David Hogg. Document design by Cathy Turley.

The work of the Michigan Campaign Finance Network is supported by the Joyce Foundation, Alliance for Better Campaigns, Public Campaign and the Michigan Prospect for Renewed Citizenship. This project was made possible by the Joyce Foundation.

Michigan Campaign Finance Network  
1310 Turner Street, Suite B, Lansing, MI 48906 (517) 482-7198  
Fax: (517) 482-6132 Email: [mcfn@mcfn.org](mailto:mcfn@mcfn.org) Web site: [www.mcfn.org](http://www.mcfn.org)

# *Special Interests v. Public Values*

## Funding Michigan Supreme Court Campaigns 1994-2000

### C O N T E N T S

---

<b>Executive Summary</b> .....	3
<b>Background &amp; Methodology</b> .....	4
<b>Candidate Committees and the Money Race</b> .....	6
• The Seven Million Dollar Bench .....	9
<b>Independent Expenditures &amp; Issue Ads</b>	
• Independent Expenditures.....	11
• The Undisclosed Campaign .....	11
<b>Contributors — Disclosed &amp; Undisclosed — Before the Bench</b> .....	13
<b>The Public’s Values Concerning Judicial Campaign Fund Raising</b> .....	14
<b>Reform Proposals</b> .....	15
<b>Conclusions &amp; Recommendations</b> .....	16
• Recommendations.....	16
<b>Appendix A. Contribution Limits, PACs &amp; Independent Expenditures</b> .....	18
<b>Appendix B. 1994 Supreme Court Election Summary</b> .....	19
• Richard A. Griffin .....	20
• Elizabeth A. Weaver .....	21
• Conrad L. Mallett, Jr. ....	22
• Donald E. Shelton.....	23
<b>Appendix C. 1996 Supreme Court Election Summary</b> .....	25
• James H. Brickley.....	26
• Hilda R. Gage .....	27
• Marilyn J. Kelly .....	28
• William B. Murphy.....	29
<b>Appendix D. 1998 Supreme Court Election Summary</b> .....	31
• Jeffrey G. Collins .....	32
• Maura D. Corrigan .....	33
• Susan D. Borman .....	34
• Michael F. Cavanagh .....	35
• Clifford W. Taylor.....	36
• Carole F. Youngblood .....	37

<b>Appendix E.</b>	<b>2000 Supreme Court Election Summary</b> .....	39
	• Clifford W. Taylor.....	40
	• Marrietta S. Robinson.....	41
	• Stephen J. Markman .....	42
	• Edward M. Thomas .....	43
	• Robert P. Young, Jr. ....	44
	• E. Thomas Fitzgerald .....	45
<b>Appendix F.</b>	<b>Four Issue Ads Storyboards</b>	
	• “Weak on Crime” .....	46
	• “Where Are My Judges?” .....	47
	• “Too Many Wrong Decisions” .....	48
	• “Defective” .....	49

## F I G U R E S & T A B L E S

---

<b>Figure 1.</b>	Average Campaign Receipts of Successful Supreme Court Candidates, 1994-2000.....	2
<b>Figure 2.</b>	Sources of Campaign Contributions to the Current Michigan Supreme Court .....	9
<b>Figure 3.</b>	Campaign Contributions by Sector to the Current Michigan Supreme Court .....	10
<b>Table 1.</b>	Summary of Contributions to Supreme Court Candidate Committees, 1994-2000 .....	6
<b>Table 2.</b>	Supreme Court Candidate Committee Totals by Party, 1994-2000 .....	6
<b>Table 3.</b>	Campaign Contributors to Supreme Court Candidate Committees by Type, 1994-2000 .....	7
<b>Table 4.</b>	Contributions to Supreme Court Candidate Committees by Economic Sector, 1994-2000 .....	7
<b>Table 5.</b>	Top Contributors to Republican Supreme Court Candidates, 1994-2000 .....	8
<b>Table 6.</b>	Top Contributors to Democratic Supreme Court Candidates, 1994-2000 .....	8
<b>Table 7.</b>	Campaign Fund Raising by the Current Michigan Supreme Court .....	9
<b>Table 8.</b>	Top 20 Contributors to the Current Michigan Supreme Court.....	10
<b>Table 9.</b>	Campaign Committee Totals and Independent Expenditures, 1994-2000 .....	11
<b>Table 10.</b>	Contributions by DaimlerChrysler to Current Justices, 1998-2000 .....	13

# Executive Summary

*“The black-robed solemnity of Michigan’s high court justices was sullied this election year by a political pie fight that would have done Barnum and Bailey proud, only nobody’s laughing. ...*

*“The current climate threatens to poison the judiciary to the point that citizens view judges as mere puppets of political interests.”*

– *Grand Rapids Press* editorial, November 20, 2000<sup>1</sup>

The American system of government depends on a strong and independent judicial branch to guarantee fair and equal treatment under the law. The recent course of Michigan Supreme Court campaigns has challenged the public’s trust in the judicial branch. This report examines the trends of Michigan Supreme Court campaign finances, the attitudes of the Michigan electorate toward judicial campaign finances and reforms that can help protect a fair and impartial judicial branch. These are the major findings:

**There has been explosive growth in fund raising for Michigan Supreme Court campaigns since 1994.** The average amount raised by major-party candidates’ campaign committees increased by 250 percent, from \$322,000 in 1994 to \$1.14 million in 2000. The average amount raised by successful candidates’ committees more than quadrupled during the period from \$286,000 to \$1.3 million. The average amount raised by candidates increased by 83 percent in just one election cycle from 1998 to 2000.

**Special interest groups and the political parties provide an overwhelming majority of funds reported spent in Michigan’s nominally nonpartisan Supreme Court elections.** In 2000, 87 percent of reported campaign spending was attributable to business, lawyers and lobbyists, the political parties and related ideological groups.

**Unreported candidate-specific “issue advertising” has become a major factor in Supreme Court elections.** The most broadly accepted estimates indicate that more was spent in 2000 by the political parties and the Michigan Chamber of Commerce on undisclosed issue advertising than was spent by all the candidates’ committees combined. Because issue ads technically are not election activity, almost no information is available on who provided the money to pay for those ads.

**The potential for, and appearance of, conflict of interest is a constant presence.** In cases heard by the Michigan Supreme Court between 1990 and 1999, 86 percent involved a litigant or lawyer who made a contribution to a justice.

**Judicial campaign fund raising is in conflict with voters’ values.** A February 2002 poll showed that 88 percent of Michigan voters want judges to be independent from the influence of campaign contributors, but 80 percent of voters believe that campaign contributions influence the decisions judges make.

**Voters favor full public funding of judicial campaigns as a reform to limit the influence of private interests’ money in judicial selection.** Those who favor full public funding of judicial campaigns outnumber those who oppose the idea by a margin of five-to-one. Those who favor full public funding of judicial campaigns outnumber those who favor gubernatorial appointment of judges by 70 percent.

---

<sup>1</sup> “Courting reform: State should move toward appointing justices, judges.” *Grand Rapids Press*, November 20, 2000.

# Background & Methodology

## Composition of the Supreme Court and Candidate Qualifications

---

Michigan's Supreme Court has seven justices, serving eight-year terms. Two justices are elected every two years in the general election with one being elected in every eighth year. Candidates must be registered to vote in Michigan, admitted to the practice of law for at least five years, and under 70 years of age.<sup>2</sup> When a vacancy occurs, the governor appoints a successor who serves until the next general election when a successor is elected to serve the remainder of the term.

## Manner of Electing Supreme Court Justices

---

When Michigan became a state in 1837, its constitution called for gubernatorial appointment of Supreme Court justices. However, the 1850 Constitution instituted the popular election of many state officials, including justices. Supreme Court justices were elected on a partisan basis for nearly 90 years until a 1939 amendment to the 1908 Constitution established that Supreme Court justices and other judges were to be elected on a nonpartisan basis. This was reaffirmed in the 1963 Constitution. Throughout the period of nonpartisan election, state law has specified that the political parties may nominate candidates for the Court at their conventions. This is by far the most popular route to the ballot for Supreme Court candidates. Michigan is unique in having candidates nominated by the parties but running on the nonpartisan ballot.

There are two other methods for getting on the ballot. First, an incumbent justice may file an affidavit of candidacy by early July of election year asking to be placed on the ballot. Incumbent judges who were originally nominated by their party's convention or who were appointed to fill a vacancy usually file the affidavit as a safeguard that their name will appear on the ballot.

The second method is for a potential candidate to gather signatures on a nominating petition. Currently, a minimum of approximately 30,000 signatures must be submitted to qualify for the ballot. At least 100 signatures must be gathered from residents of at least eight of the state's congressional districts.<sup>3</sup>

In addition to the easy ballot access, incumbent justices enjoy another major advantage over their challengers. The word "Incumbent" is placed next to their name on the ballot. This designation is permitted only for judicial offices.

## Fund Raising Is Different for Judicial Candidates

---

In addition to following all the rules for fund raising established in the Michigan Campaign Finance Act,<sup>4</sup> judicial candidates also are expected to follow Canon 7 of the Michigan Code of Judicial Conduct, adopted by the Michigan Supreme Court. If candidates do not, they are subject to judicial discipline. The current key provisions of Canon 7 include:

**B(2)(a)** A judge should not personally solicit or accept campaign funds, or solicit publicly stated support by improper use of the judicial office in violation of B(1)(c). A judge may send a thank-you note to a contributor.<sup>5</sup>

**B(2)(b)** A judge may establish committees of responsible persons to secure and manage the expen-

---

<sup>2</sup> A justice who turns 70 during his or her term is allowed to finish that term, but may not then run for reelection.

<sup>3</sup> Bureau of Elections web site <[www.sos.state.mi.us/election/elecadmin/2002web/petsignareq.pdf](http://www.sos.state.mi.us/election/elecadmin/2002web/petsignareq.pdf)>

<sup>4</sup> The Michigan Campaign Finance Act can be found at <[www.michiganlegislature.org/law/GetObject.asp?objName=Act-388-of-1976](http://www.michiganlegislature.org/law/GetObject.asp?objName=Act-388-of-1976)>

<sup>5</sup> 1999 Amendment.

diture of funds for the campaign and to obtain public statements of support for the candidacy.

**B(2)(c)** Such committees are prohibited from soliciting campaign contributions from lawyers in excess of \$100 per lawyer, but may solicit public support from lawyers. (Larger solicitations are allowed if a proper disclaimer, spelled out in the Canon, is printed in the solicitation.<sup>6</sup>)

**B(2)(d)** A candidate's committee may solicit funds for the campaign no earlier than February 15 of the year of the election, and may not solicit or accept funds after the date of the general election.<sup>7</sup>

**B(2)(e)** A candidate should not use or permit the use of campaign contributions for the private benefit of the candidate or the candidate's family.

**B(2)(f)** If a candidate is not opposed for such judicial office, the candidate or the candidate's committee shall return to the contributors funds raised in excess of the actual costs incurred or contribute such funds to the client security fund of the State Bar of Michigan, not later than January 1 following the election. Likewise, any candidate or committee having funds remaining after payment of all campaign expenses shall either return such funds to the contributors thereof or donate the funds to the client security fund of the State Bar of Michigan, not later than January 1 following the election.

## Methodology

---

This report covers four elections, dating from 1994 through 2000. Campaign finance reports before 1994 are no longer available. Contribution records were examined only for candidates who were nominated by the major parties. While there were other candidates in every election covered, none of them came within 50 percent of the lowest winning vote total and none of them raised a significant amount of money. The vote totals for all candidates are shown in the summary for each election.

The National Institute for Money in State Politics provided a database of all contribution records for the twenty candidates covered by this report. The contribution information was obtained from the candidates' campaign finance reports, and coded as to economic sector in accordance with standards set by the Center for Responsive Politics. This information shows the public what industries and interest groups are supporting candidates.

Opinion data were collected by Mitchell Research and Communications in a statewide poll of 600 likely voters in February 2002. The margin of error is plus or minus four percent.

It has been customary for judicial candidates to receive many contributions from lawyers of \$100 each because that is the limit specified in the canon. Because state law does not require disclosure of occupation/ employer for contributions of that amount, contribution totals from lawyers in this report are understated.

The Michigan Campaign Finance Network (MCFN) identified the contributions by type: PAC, large individual (\$200 or more), small individual (less than \$200), party, candidate, or other.

While candidates for the Supreme Court are technically nonpartisan, the partisan nominating process and the significant financial involvement of the parties gives reason to consider aspects of campaign finances on a partisan basis. MCFN has done so for this analysis.

This report presents lists of top contributors. The amounts given for contributors in italics represent the aggregation of contributions from that entity's PAC (if there is one), employees, partners, associates, retirees, and spouses.

---

<sup>6</sup> *ibid.*

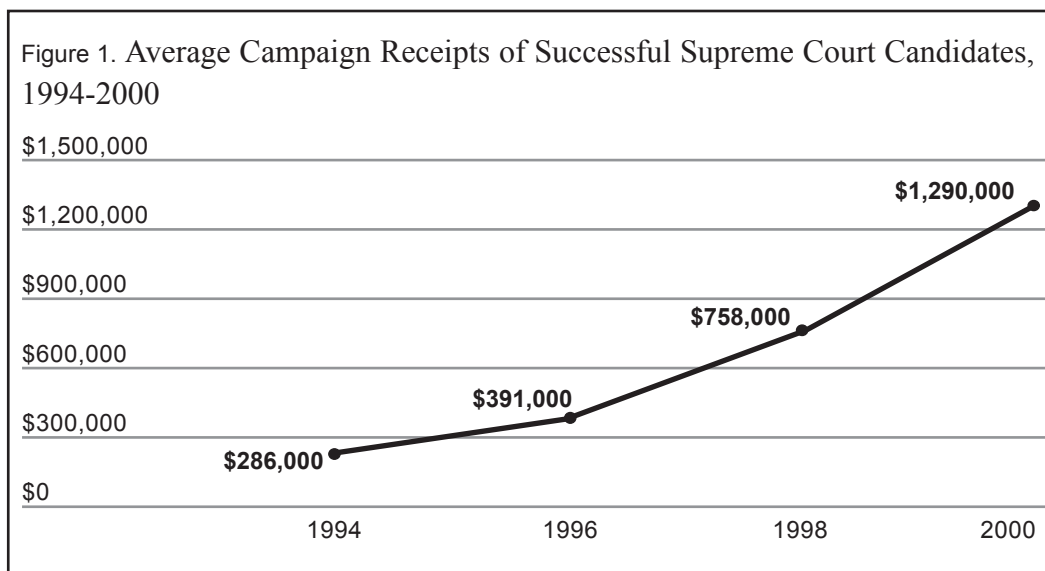
<sup>7</sup> *ibid.*

# Candidate Committees & the Money Race

There has been explosive growth in the funding of Michigan Supreme Court campaigns since 1994. The average amount raised by major-party candidates' committees increased from \$322,000 in 1994 to \$1.14 million in 2000. The average amount raised by successful candidates' committees more than quadrupled during that period from \$286,000 to \$1.3 million. The average amount raised increased by 83 percent in just one election cycle from 1998 to 2000.

Table 1. Summary of Contributions to Supreme Court Candidate Committees, 1994-2000

	1994	1996	1998	2000	Total
# of Major Party Candidates	4	4	6	6	20
# of Contributions	4,372	4,107	10,039	19,810	38,328
# of Contributors	3,796	3,608	8,751	16,744	32,899
Total Money Raised	\$1,289,175	\$2,205,175	\$3,732,621	\$6,825,031	\$14,052,002



In 1994, the Democratic candidates had more than a two-to-one fund raising advantage compared to their Republican opponents. That advantage narrowed to 31 percent in 1996 and was more than offset by independent expenditures. In 1998, the Republican candidate committees enjoyed a fund raising advantage of 47 percent, and in 2000 the advantage was 31 percent. Table 2 shows overall candidate committee fund raising on behalf of major party candidates.

Table 2. Supreme Court Candidate Committee Totals by Party, 1994-2000

	1994	1996	1998	2000	Total
Republican Candidate Committees	\$395,173	\$ 952,547	\$2,222,068	\$3,870,389	\$ 7,440,177
Democratic Candidate Committees	894,002	1,252,628	1,510,553	2,954,642	6,611,825
Total	\$1,289,175	\$2,205,175	\$3,732,621	\$6,825,031	\$14,052,002

For both parties' candidates, individuals giving \$200 or more were the greatest source of campaign funds over the four election cycles. For the Democratic candidates, this was 54 percent of all funds, compared to 40 percent for the Republican candidates. Individuals giving less than \$200 made up 14 percent of all funds for the Republicans and nine percent for the Democrats.

Over the entire period from 1994 through 2000, political action committees (PACs) provided one third of all funds for Republican candidates and 27 percent for the Democrats. However, the overall percentages obscure one of the crucial dynamics of the period. On the Republican side, funding from PACs increased from four percent in 1994 to 38 percent in 2000. In dollar terms, this was an increase of 85-fold, from \$17,180 to \$1,461,074. On the Democratic side, PAC support ranged from a high of 32 percent (\$284,075) in 1994 to 26 percent (\$762,577) in 2000.

Throughout the period, the Republican Party provided a greater percentage of support for its candidates than the Democratic Party, eleven percent to four percent. Democratic candidates were more dependent on personal contributions to their own campaigns, most notably Justice Marilyn Kelly (\$103,451) in 1996 and Marietta Robinson (\$152,240) in 2000.

Table 3. Campaign Contributors to Supreme Court Candidate Committees by Type, 1994-2000

Type of Contributor	Republican Total	%	Democratic Total	%
PAC	\$2,483,221	33.4	\$1,784,770	27.0
Large Individual (\$200 or more)	2,970,855	39.9	3,564,792	53.9
Small Individual (<\$200)	1,074,454	14.4	589,899	8.9
Candidate	61,921	0.8	335,771	5.1
Political Party	820,956	11.0	279,726	4.2
Other	28,770	0.4	56,867	0.9
Total	\$7,440,177	100.0%	\$6,611,825	100.0%

A fund raising analysis by economic sector shows stark differences between the parties, and probably best represents the competing interest groups on each side. On the Democratic side, lawyers and lobbyists contributed more than half of all funds, followed distantly by labor and the party. On the Republican side, support is spread among the various business sectors and the party. Ideological and single-issue groups, mainly leadership PACs, also provided significant support to Republican candidates, as did lawyers and lobbyists.

Table 4. Contributions to Supreme Court Candidate Committees by Economic Sector, 1994-2000

Sector	Republican Total	%	Democratic Total	%
Agriculture	\$ 157,308	2.1	\$ 10,250	0.2
Communications & Electronics	75,259	1.0	19,810	0.3
Construction	489,885	6.6	22,165	0.3
Educ., Govt., Retired, Non-profit	466,133	6.3	138,878	2.1
Energy & Natural Resources	109,807	1.5	7,850	0.1
Finance, Insurance & Real Estate	943,629	12.7	124,514	1.9
Health	590,007	7.9	50,145	0.8
Ideological & Single Issue	553,904	7.4	98,744	1.5
Labor	10,350	0.1	1,164,265	17.6
Lawyers & Lobbyists	735,119	9.9	3,821,960	57.8
Manufacturing & Misc. Business	1,155,125	15.5	33,666	0.5
Transportation	460,011	6.2	28,321	0.4
Unknown	810,762	10.9	475,760	7.2
Candidate	61,921	0.8	335,771	5.1
Political Party	820,956	11.0	279,726	4.2
Total	\$7,440,177	100.0%	\$6,611,825	100.0%

One contributor on each side gave nearly ten percent of all the money raised by that party's candidates over the period studied: the Michigan Republican State Committee (Republican candidates) and lawyers (and their spouses) from Sommers, Schwartz, Silver & Schwartz, PC (Democratic candidates). Each contributed a total of \$660,000. The Republican candidates received 26 percent of their money from their top ten contributors, while the Democrats received 34 percent of their money from their top ten contributors.

Table 5. Top Contributors to Republican Supreme Court Candidates, 1994-2000

Rank	Contributor	# of Candidates	Amount
1	MI Republican State Committee*	10	\$ 661,145
2	Posthumus Leadership Fund	7	238,000
3	MI Health & Hospital Association/Health PAC	8	176,000
4	MI Association of Realtors/REALTORS PAC	7	147,700
5	MI Association of Home Builders/Builders PAC	8	142,000
6	Detroit Regional Chamber PAC	5	132,800
7	<i>DaimlerChrysler Corp.</i>	8	110,576
8	<i>MI Chamber of Commerce</i>	9	102,826
9	The Ann Arbor PAC**	3	102,000
9	Governor Engler Leadership Fund	3	102,000
Subtotal (26% of total)			\$1,915,047

\* Also made \$1,945,581 in independent expenditures.

\*\* Also made \$208,201 in independent expenditures.

Table 6. Top Contributors to Democratic Supreme Court Candidates, 1994-2000

Rank	Contributor	# of Candidates	Amount
1	<i>Sommers, Schwartz, Silver &amp; Schwartz, PC</i>	10	\$ 659,417
2	MI Trial Lawyers Association/Justice PAC	10	340,000
3	United Auto Workers/UAW MI V PAC	10	309,000
4	MI Education Association/MEA PAC	10	241,075
5	MI Democratic State Central Committee*	5	221,780
6	Robinson, Marietta	7	154,640
7	Kelly, Marilyn J.	4	103,751
8	<i>Sachs Waldman</i>	10	100,640
9	AFSCME PAC	7	82,000
10	MI Citizens Voice	2	68,000
Subtotal (34% of total)			\$2,280,303

\* Also made \$471,854 in independent expenditures.

Summaries for each election and each major party candidate are presented in the Appendices on pages 19-45.

## The Seven Million Dollar Bench

The current justices of the Michigan Supreme Court raised nearly \$7 million in the last four elections. Their fund raising is summarized in Tables 7 and 8 and Figures 2 and 3. In comparison, the justices on the 1996 bench raised \$2.9 million in the previous four elections. Those on the 1998 bench raised \$4.2 million.

Table 7. Campaign Fund Raising by the Current Michigan Supreme Court

Justice	Party	Year	Dollars Raised
Michael F. Cavanagh	D	1998	\$ 255,073
Maura D. Corrigan	R	1998	1,033,339
Marilyn J. Kelly	D	1996	553,274
Stephen J. Markman	R	2000	1,244,502
Clifford W. Taylor*	R	1998	986,566
Clifford W. Taylor	R	2000	1,332,975
Elizabeth A. Weaver	R	1994	196,995
Robert P. Young, Jr.	R	2000	1,292,912
Total			\$6,895,636

\* Justice Taylor ran in 1998 to complete the term to which he had been appointed; in 2000 he ran for a full eight-year term.

Figure 2. Sources of Campaign Contributions to the Current Michigan Supreme Court

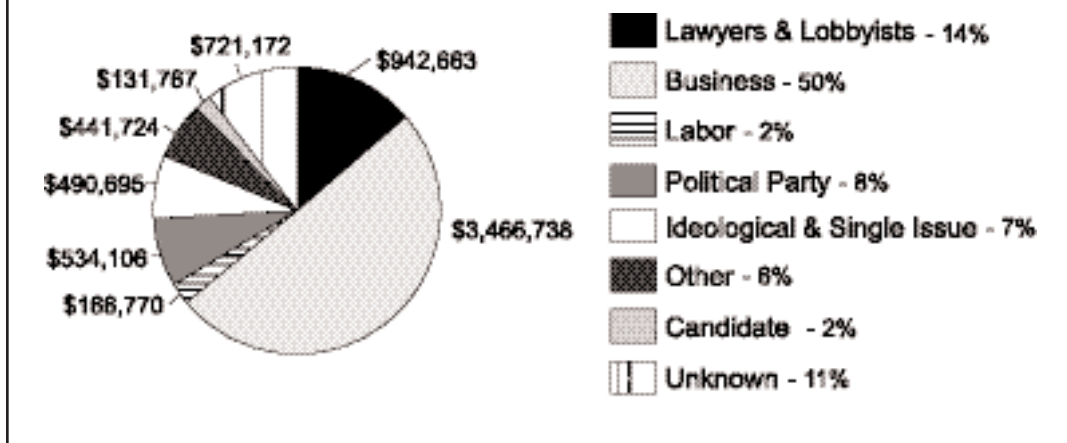


Figure 3. Campaign Contributions by Sector to the Current Michigan Supreme Court

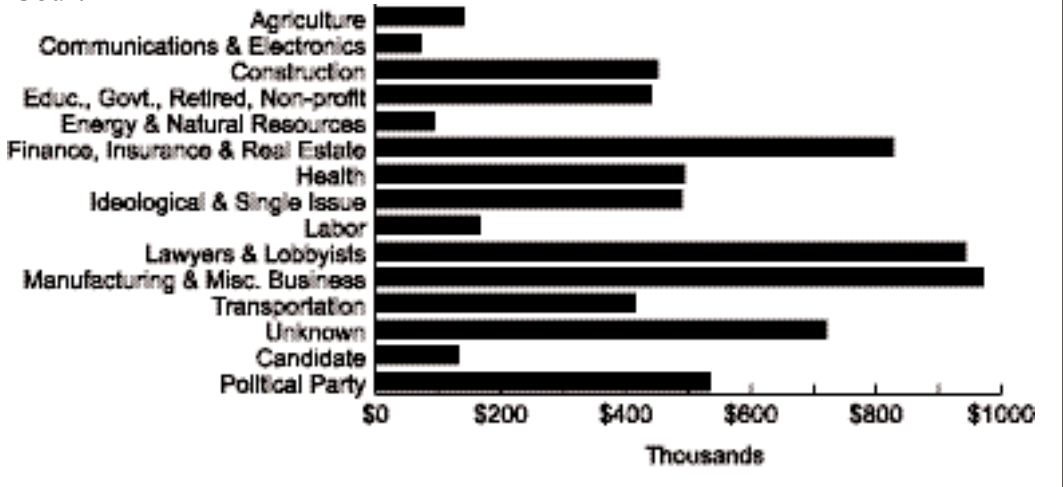


Table 8. Top 20 Contributors to the Current Michigan Supreme Court

Rank	Contributor	# of Candidates	Amount
1	MI Republican State Committee*	6	\$ 392,145
2	Posthumus Leadership Fund	5	170,000
3	MI Health & Hospital Association/Health PAC	5	144,500
4	Detroit Regional Chamber PAC	5	132,800
5	MI Association of Realtors/REALTORS PAC	5	132,700
6	MI Association of Home Builders/Builders PAC	5	132,000
7	Kelly, Marilyn J.	2	103,526
8	The Ann Arbor PAC**	3	102,000
8	Governor Engler Leadership Fund	3	102,000
10	<i>DaimlerChrysler Corp.</i>	5	98,676
Top 10 Subtotal (22% of total)			\$1,510,347
11	Assoc. Builders & Contractors of MI/ABC PAC	5	\$ 96,200
12	MI Chamber of Commerce/Chamber PAC	6	89,226
13	MI Restaurant Association PAC	4	79,501
14	<i>Amway Corp.</i>	6	69,649
15	MI Democratic State Central Committee***	1	68,000
15	MI Trial Lawyers Association./Justice PAC	2	68,000
15	United Auto Workers/UAW MI V PAC	2	68,000
18	MI State Medical Society/MI Doctors PAC	5	64,040
19	MI Farm Bureau PAC	3	60,000
20	<i>Ford Motor Company</i>	5	56,993
Top 11-20 Subtotal			\$ 719,609
Top 20 Subtotal (32% of total)			\$2,229,956

\* Also made \$1,611,434 in independent expenditures.

\*\* Also made \$208,201 in independent expenditures.

\*\*\* Also made \$104,775 in independent expenditures.

# Independent Expenditures & Issue Ads

## Independent Expenditures

Independent expenditures by the political parties and political action committees became a significant factor in the Supreme Court campaigns in 1996. Independent expenditures were more than a third of all spending that year. The parties accounted for \$1,089,444 of this spending (Republican: \$701,659; Democratic: \$387,785), and Justice for Michigan Citizens, a business-sponsored PAC, spent \$103,788 in opposition to the Democratic candidates.

In 1998, independent expenditures were a relatively minor factor, amounting to only two percent of reported spending. However, in 2000, independent expenditures were again a significant factor. The Republican Party spent more than \$1.3 million in support of its candidates while the Democratic Party spent just over \$29,000. A new major player was the Ann Arbor PAC. It made \$208,000 in independent expenditures, in addition to \$34,000 in direct contributions to each of the Republican candidates. Thomas Monaghan, president of the Ave Maria Foundation, gave the Ann Arbor PAC \$650,000, 88 percent of the PAC's money in the 2000 election cycle.

Exceptionally large independent expenditures are facilitated by the absence of limits on contributions to PACs and the parties in Michigan campaign finance law. Corporations and unions cannot make contributions from their treasuries, but individuals are allowed to give without limit. This absence of contribution limits to PACs and parties provides a vehicle for individuals to circumvent the limit on their contributions to candidates.

Table 9. Campaign Committee Totals and Independent Expenditures, 1994-2000

	1994	1996	1998	2000	Total
Republican Candidate Committees	\$395,173	\$ 952,547	\$2,222,068	\$3,870,389	\$7,440,177
Independent Expenditures	0	805,447	43,923	1,558,586	2,407,956
Total	\$395,173	\$1,757,994	\$2,265,991	\$5,428,975	\$9,848,133
Democratic Candidate Committees	\$894,002	\$1,252,628	\$1,510,553	\$2,954,642	\$6,611,825
Independent Expenditures	50,667	387,785	33,035	29,245	500,732
Total	\$944,669	\$1,640,413	\$1,543,588	\$2,983,887	\$7,112,557
Total Reported	\$1,339,842	\$3,398,407	\$3,809,579	\$8,412,862	\$16,690,690

## The Undisclosed Campaign

***“There has been an alarming increase in attempts by special interests to influence judicial elections through financial contributions and attack campaigning.”***

– American Bar Association President Martha Barnett, July 2001<sup>8</sup>

In Michigan's 2000 Supreme Court campaigns, the Michigan Democratic and Republican Parties and the Michigan Chamber of Commerce spent an estimated \$7-8 million for undisclosed candidate-specific “issue advertising.”<sup>9</sup> Those ads, whose principal issue was the unsuitability for office of candidates they opposed, were the attack campaigns. By carefully stopping short of using the “magic words” of express advocacy, such

<sup>8</sup> American Bar Association, ABA Group Urges Public Financing of Judicial Campaigns, Cites Growing Public Cynicism About Court, press release, July 23, 2001. <<http://www.abanet.org/media/jul01/judicial.html>>

<sup>9</sup> See David Shepardson, “Special Interests Pour \$15 Million into Battle for Control of State Justices,” *The Detroit News*, October 31, 2000. <<http://www.detnews.com/2000/politics/0010/31/a01-141910.htm>>; and Gordon Trowbridge, “Campaign Spending Accelerates: Costliest Elections in State's History Spark Call for Reform as Ads Turn Off Electorate,” *The Detroit News*, December 8, 2000. <<http://www.detnews.com/2000/politics/0012/08/c01-159128.htm>>

as “vote for” or “defeat,” that subject electioneering ads to disclosure, the Chamber and the parties were able to provide political cover for the interest groups and individuals who paid for the attack advertising. Corporations and unions, which otherwise must conduct their political activity using segregated funds through fully disclosed PACs, were able to spend freely from their treasuries for these “non-election” communications. Neither the parties nor the Chamber of Commerce reported any Supreme Court opposition advertising in their respective campaign finance reports. Storyboards of four Supreme Court issue ads are shown in Appendix F.

Opposition issue advertising was widely cited for giving the court races a tone of incivility<sup>10</sup> and making the judicial elections look and feel similar to mainstream politics. Among the most infamous ads were one sponsored by the Democratic State Central Committee that featured likenesses of Justices Markman, Taylor and Young “in the pocket” of an insurance executive; and one sponsored by the Republican State Committee that accused Judge Thomas Fitzgerald of being soft on pedophiles. Current Chief Justice Maura Corrigan said, “The current system does make it look like the justices are up for sale. I hope people will buy into the need for change.”<sup>11</sup>

Secretary of State Candice Miller attempted in 1998 to ban unions and corporations from using treasury funds to sponsor electioneering communications that feature the name or likeness of a candidate for public office during the period prior to an election, but two Michigan federal district courts overturned that election rule.<sup>12</sup> However, treatment of such “issue advertising” remains a dynamic national point of contention. In the 2000 Mississippi state Supreme Court elections, Chamber of Commerce issue ads were challenged on the basis that they were *de facto* election advertisements that should have been subject to the state’s campaign finance disclosure law. The federal district court for southern Mississippi ruled that the ads should be subject to disclosure, but that decision was reversed on April 5, 2002 by the U.S. 5th Circuit Court of Appeals. In its opinion, the 5th Circuit said, “The district court, in a thoughtful and reasoned opinion, held that the advertisements were subject to state regulation because reasonable minds could not differ that the advertisements advocate the election of the specified candidates.” And the 5th Circuit added, “We recognize that the result we reach in this case may be counterintuitive to a commonsense understanding of the message conveyed by the television political advertisements at issue.”<sup>13</sup> Yet, the 5th Circuit cited a strict reading of the U.S. Supreme Court’s *Buckley v. Valeo* decision in its reversal.

In all likelihood, the Bipartisan Campaign Finance Reform Act of 2002 will move the U.S. Supreme Court to revisit regulation of so-called issue ads. The new law was crafted because the “magic words” test has been overtaken by contemporary campaign patterns. Advertisements sponsored by interest groups employ creative tactics to avoid explicitly worded exhortations to support or oppose a candidate, but so do most ads sponsored by the candidates themselves.<sup>14</sup> It has become impossible to differentiate express advocacy from issue advocacy based on the magic words test. The issue ad loophole is so routinely exploited that the majority of electioneering spending can circumvent disclosure, as was the case in Michigan’s Supreme Court campaigns.

---

<sup>10</sup> See Hugh McDiarmid, “Party chairs turning court races uncivil,” *Detroit Free Press*, September 26, 2000, 1B. and Robert Tanner, “Judges campaigns turn into bitter expensive affairs,” *The Detroit News*, October 28, 2000. <[www.detnews.com/2000/politics/0010/28/politics-140414.htm](http://www.detnews.com/2000/politics/0010/28/politics-140414.htm)>

<sup>11</sup> David Shepardson, “Special Interests Pour \$15 Million into Battle for Control of State Justices.”

<sup>12</sup> See *Planned Parenthood Affiliates of Michigan, Inc. v. Miller*, 21 F. Supp. 2d 740, 742-46 (E.D. Mich. 1998), *Right to Life of Michigan, Inc. v. Miller*, 23 F. Supp. 766, 768-71 (W.D. Mich. 1998).

<sup>13</sup> *Chamber of Commerce v. Moore*, 2002 WL 518638 5th Circuit, April 5, 2002.

<sup>14</sup> Deborah Goldberg, Craig Holman, Samantha Sanchez, *The New Politics of Judicial Elections* (Justice at Stake 2002), p. 19. <[www.justiceatstake.org/files/JASMoneyReport.pdf](http://www.justiceatstake.org/files/JASMoneyReport.pdf)>

# Contributors – Disclosed & Undisclosed – Before the Bench

A recent study by the National Institute on Money in State Politics looks at the incidence of campaign contributors involved in cases before the Michigan Supreme Court. The study found that 86 percent of cases that were heard by the Court between 1990 and 1999 involved a litigant or lawyer who made a contribution to a justice.<sup>15</sup> Half of these cases involved state-employed lawyers who were also contributors and half of the cases involved private interests. The study found no statistical correlation between contributions and Court decisions, but the contributions represent a constantly looming potential for, or appearance of, conflict of interest. This undermines public confidence in the fairness and impartiality of the Court.

The case of *Robertson v. DaimlerChrysler*, heard by the Supreme Court in November 2001, illustrates well the appearance of conflict of interest when a campaign contributor has a case before the Court. DaimlerChrysler's corporate PAC and employees made the following contributions to sitting justices in the last two elections:

Table 10. Contributions by DaimlerChrysler to Current Justices, 1998-2000<sup>16</sup>

	<b>Amount</b>
Justice Maura Corrigan	\$27,580
Justice Clifford Taylor (1998)	30,950
Justice Clifford Taylor (2000)	13,068
Justice Stephen Markman	12,946
Justice Robert Young, Jr.	13,862
Total	\$98,676

Since it is the candidates' responsibility to assure the accuracy of their campaign finance reports, it is reasonable to expect that the justices had knowledge of the contributions. This puts the justices in a position in which the voting public does not want them. The voting public wants the justices to be independent from the influence of campaign contributors, but believes that campaign contributions influence decisions that are made (see "The Public's Values Concerning Judicial Campaign Fund Raising," on page 14 of this report).

There is another level of complexity in this example. DaimlerChrysler was also a major participant in a 2000 five-state judicial "issue ad" effort that affected Michigan's Supreme Court campaigns. DaimlerChrysler was one of a group of corporations that included Wal-Mart, Home Depot and the American Life Insurers Council that contributed \$1 million each to the U. S. Chamber of Commerce for judicial issue ads in Michigan, Ohio, Alabama, Mississippi and Indiana. The U.S. Chamber, in turn, provided financial support to the Michigan Chamber for its Supreme Court opposition issue ad campaign.<sup>17</sup>

Although it is impossible to know what, if any, of DaimlerChrysler's million-dollar investment was used specifically for opposition ads directed against Michigan Democratic candidates, as opposed to issue ads in the other states, the possibility raises a poignant question. When interest groups exploit the issue-ad loophole in judicial campaigns, how could a conflict of interest be detected if one did exist? There is no public record of any issue ad spending. There is no accountability.

This example illustrates the insidious nature of unreported issue advertising. It represents a perfect blueprint for how an interest group can spend a million dollars to defeat "unfriendly" judicial candidates and disclose nothing. This is a practice on both sides of the partisan divide.

---

<sup>15</sup> Samantha Sanchez, "Campaign Contributions and the Michigan Supreme Court," National Institute for Money in State Politics, Helena, MT, January 2002. <<http://www.followthemoney.org/reports/mi/20020129/MI.phtml>>

<sup>16</sup> Includes contributions from the corporation's PAC, employees, retirees and spouses.

<sup>17</sup> Jim VanderHei, "Major Business Lobby Wins Back Its Clout By Dispensing Favors," *The Wall Street Journal*, September 11, 2001, A1.

# The Public's Values Concerning Judicial Campaign Fund Raising

An opinion poll of 600 likely voters conducted by Mitchell Research & Communications in February 2002 explored the attitudes of the Michigan electorate in regard to judicial campaign finances. Among the key findings are the following:

- Eighty-eight percent indicated that it is important that judges be independent from the influence of contributors to their campaigns. Seventy-one percent said it is “very important.”
- Eighty percent think campaign contributions influence decisions that judges make. Thirty-nine percent think that campaign contributions have “a lot of influence.”
- Eighteen percent have “a lot” of trust and confidence in Michigan’s state courts and judges. Twenty-four percent have “little” or “no” trust and confidence in Michigan’s state courts and judges. Fifty-four percent have “some” trust and confidence.
- Even among those who have a lot of trust and confidence in Michigan’s courts and judges, 28 percent think that campaign contributions have “a lot of influence” on the decisions judges make.

These data show an electorate that wants judges to be independent of campaign contributors because it believes that campaign contributions do influence decisions judges make. This is a clear indication that judicial campaign fund raising is at odds with the values of the voting public.

The Michigan polling closely parallels national polling conducted for the nonpartisan Justice at Stake Campaign by Greenberg, Quinlan, Rosner Research and AmericanViewpoint. National results were similar to the values expressed by Michigan voters in regard to judicial campaign fund raising. However, Justice at Stake polled a special population in addition to voters — more than 2,400 state judges from across the nation.

Nearly half of the responding state court judges said they felt pressure to raise money for their election campaigns. By a margin of seven-to-one, they felt the tone of judicial campaigns has gotten worse rather than gotten better over the past five years. Seventy-four percent are concerned about the high incidence of cases involving campaign contributors. And 26 percent feel that campaign contributions have “some” or “a great deal” of influence on judges’ decisions versus 56 percent who feel campaign contributions have “little” or “no” influence (among 188 Supreme Court justices who responded, 35 percent said “some” or “great” influence versus 38 percent who said “little” or “no” influence). Eight in ten judges are concerned about special interests trying to use the courts to shape policy on a range of economic and social issues.

In the national polling of 1,000 likely voters, more than two-thirds — including strong majorities among Democrats (69 percent) and Republicans (64 percent) — felt that “individuals or groups that give money to judicial candidates often get favorable treatment.” Sixty-two percent, including 90 percent of African-American voters, believe that there are two systems of justice in the United States — one for the rich and powerful and one for everyone else.

# Reform Proposals

Just one month after the 2000 elections, the National Center for State Courts convened a National Summit on Improving Judicial Selection to consider issues that had arisen in Michigan and several other states. Participants in the Summit included the chief justices and legislative leaders from the seventeen most populous states that elect judges. Then-Chief Justice Elizabeth Weaver and Senator Ken Sikkema represented Michigan. The Summit produced numerous recommendations, including one that calls for states where candidates are elected for judicial positions to consider providing public funding for campaigns.<sup>18</sup>

In his 2001 State of the State address, Governor John Engler recommended that Michigan should amend its constitution to provide for gubernatorial appointment of Supreme Court justices. In February 2001, Senator Sikkema introduced a resolution (SJR F) to put such an amendment on the ballot in 2002.<sup>19</sup> As of March 2002, the resolution has not had a senate committee hearing.

In July 2001, the American Bar Association's (ABA) Standing Committee on Judicial Independence, led by current ABA president-elect Alfred P. Carlton, released a task force report recommending that states holding competitive judicial elections should provide public funding for the campaigns.<sup>20</sup> On February 5, 2002, the ABA's House of Delegates granted the Association's final approval of the recommendation.

In February 2002, Mitchell Research & Communications polled 600 likely Michigan voters and asked them to consider independently (not rank or compare) three reform options to reduce the influence of special interest money in the selection of Supreme Court justices. The proposals and results follow:

- Under one proposal, Supreme Court candidates would no longer raise money from private sources. Instead, each candidate would receive a set amount of money from a publicly financed election fund. Spending by candidates would be limited to the amount they receive from the fund. Generally speaking, do you favor or oppose this proposal?

Strongly favor	48%	
Somewhat favor	30	<b>78% Favor</b>
Somewhat oppose	9	<b>15% Oppose</b>
Strongly oppose	6	
Don't know/refused	7	

- Under one proposal, Supreme Court candidates would receive public funding to match private contributions and they would agree to limit spending in their campaigns, similar to the partial public funding system for Michigan gubernatorial candidates. Generally speaking, do you favor or oppose this proposal?

Strongly favor	17%	
Somewhat favor	30	<b>47% Favor</b>
Somewhat oppose	23	<b>45% Oppose</b>
Strongly oppose	22	
Don't know/refused	9	

- Under one proposal, the governor would appoint Supreme Court justices from a list of candidates deemed qualified by legal professionals and a citizen advisory board. Those selected would be subject to approval by the legislature. Generally speaking, do you favor or oppose this proposal?

Strongly favor	20%	
Somewhat favor	26	<b>46% Favor</b>
Somewhat oppose	16	<b>45% Oppose</b>
Strongly oppose	29	
Don't know/refused	9	

---

<sup>18</sup> National Summit to Improve Judicial Selection: Call to Action <<http://www.ncsc.dni.us/SummitCalltoAction.htm>>

<sup>19</sup> SJR F can be viewed at <<http://198.109.172.10/pdf/senate.joint.res/2001-2002/SJRF0000.pdf>>

<sup>20</sup> See <<http://www.abanet.org/leadership/2002/103.pdf>>

# Conclusions & Recommendations

The money invested in Michigan Supreme Court campaigns has increased dramatically in the past four election cycles. The average amount raised by major-party candidates' campaign committees increased by more than 250 percent from 1994 to 2000. And in 2000, more was spent by outside parties on unreported candidate-focused "issue ads" than the candidates themselves spent. More than 87 percent of the money contributed to the candidates in 2000 came from business interests, lawyers and lobbyists, the political parties and related PACs. There is very little information available about the sources of funds provided to the parties and the Michigan Chamber of Commerce for the "issue ads" they sponsored.

A study by the National Institute on Money in State Politics shows that 86 percent of all cases heard by the Michigan Supreme Court between 1990 and 1999 involved at least one party as a litigant or counsel who had made a campaign contribution to a seated justice. This study did not include campaign contribution records from the 2000 election, and more than half the contributions made in the last four election cycles came in the 2000 election. While the study showed no statistical correlation between contributions and favorable case disposition, the potential for conflict of interest is an ever-present consideration.

Judicial campaign fund raising is in conflict with the public's values. Overwhelmingly, the electorate wants judges to be independent of the influence of campaign contributors, but they don't believe that they are. This undermines public confidence in the fairness and impartiality of the court.

Only 74 percent of those who voted for president in 2000 voted for Supreme Court candidates. In spite of unprecedented campaign spending, 23 percent of respondents in statewide polling said "not knowing enough about candidates" kept them from voting.

One proposal for taking special interest money out of Michigan's judicial selection process is to adopt a system of gubernatorial appointment. To do so would require an amendment to the Michigan Constitution. With polling showing that the electorate is evenly divided on this idea, a constitutional amendment is highly improbable.

## Recommendations

---

In order to restore and protect public trust and confidence in the fairness and impartiality of the Michigan Supreme Court, Michigan Campaign Finance Network makes four recommendations:

- Michigan should establish a system of voluntary full public funding for Supreme Court campaigns so candidates would no longer have to raise hundreds of thousands of dollars from special interests to have a viable candidacy.
- Limits should be established for contributions to political action committees and the political parties to prevent individuals from using these committees as vehicles to circumvent limits on direct contributions to candidate campaign committees.
- All communications that include the name or image of a candidate for public office immediately prior to an election should be treated as election expenditures, subject to all the rules thereof. They should be paid for with fully disclosed segregated funds.
- The state should produce, distribute and publicize a voters' guide to Supreme Court candidates so the electorate will have factual information about, and statements from, the candidates seeking a seat on the Supreme Court.