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CAMPAIGN FINANCE
IN MICHIGAN

Suzanne Novak and Lauren Jones

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ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at NYU School of Law is a public policy institute that works to strengthen democracy and secure justice through law, scholarship, education and advocacy. With Justice Brennan, we believe that a “living constitution” is the genius of American law and politics – and that the test of our institutions is the ability to apply timeless values to a changing world.

ABOUT THE BRENNAN CENTER’S CAMPAIGN FINANCE REFORM PROJECT

The Brennan Center has long been a leader in the fight for campaign finance reform on the national, state and local levels. We helped to draft the federal Bipartisan Campaign Reform Act of 2002, published path-breaking studies of television advertising that were introduced into the congressional record, and played a key role on the legal defense team winning a major victory in the U.S. Supreme Court. After assisting in the drafting of Connecticut’s landmark public funding legislation, enacted in 2005, we were retained as lead counsel for intervenors in two consolidated cases challenging that law. We played the same role in the successful defense of the full public financing systems in Arizona and Maine.

Building on ten years of experience in the field, the Center offers top-flight legal and policy assistance to government officials and activists seeking to develop and defend effective and constitutional campaign finance bills and initiatives. We identify each jurisdiction’s policy goals and then translate those goals into language appropriate for legislation or ballot measures. The Center reviews and analyzes text drafted by others for potential constitutional or other legal problems. Once legislation is introduced, Brennan Center attorneys accept invitations to deliver written and oral expert testimony. When campaign finance reforms are challenged in court, the Brennan Center has skilled and experienced litigators to present a vigorous defense.

Finally, the Center’s publications and public advocacy have amplified the First Amendment values in robust debate and participatory democracy served by campaign finance regulation. For advocates and legislators, we offer an accessible treatise on campaign finance law: *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, now in its fourth edition. Written by Brennan Center attorneys who have litigated campaign finance cases in federal and state courts throughout the nation, this 200-page book offers both practical tips and legal analysis for drafters of campaign finance reform bills or initiatives – both those who want to stay within current constitutional constraints and those who want to test those limits.

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FOREWORD

Full participatory democracy: it's been a national goal since America's founding. Today citizens recognize that money sometimes plays a warping role in electoral politics and hobbles progress towards full democracy. During the past decade, with Washington, D.C. mired in stalemate and in thrall to special interests, many states have stepped forward and introduced innovative laws that enhance the power of ordinary citizens in the political process. States as different in political culture as Arizona and Connecticut have created bold systems to reform campaign finance laws, creating voluntary public financing and ensuring that enforcement is fair and vigorous.

This report is the fourth of a five-part series that examines campaign finance laws and the ways they've worked—or haven't worked—to limit the influence of money on politics in the heartland. This report assesses Michigan's campaign finance system; we have published similar reports for Wisconsin, Illinois, Minnesota, and Ohio. Throughout the last century, governments in these states often led the way for the rest of country, providing “laboratories of democracy” (in the phrase of Supreme Court Justice Louis Brandeis) that test and perfect new policies. Today, the governmental decisions made in these states affect millions of people and set the tone for the rest of the nation.

The campaign finance studies are part of a comprehensive evaluation of democratic institutions that has been undertaken by the Midwest Democracy Network, a collaboration among national research and policy institutions and state-based advocacy organizations that work for honest and accountable government. With generous support from the Joyce Foundation, the Network is examining campaign finance, election administration, redistricting procedures, state courts, and local news coverage of politics in the five Midwestern states.

Michigan has rarely been in the vanguard of political reform. Still, Michigan's campaign finance laws are far from the worst in the Midwest. They limit individual contributions and prohibit contributions by corporations and labor unions.

Decent laws are not enough to guarantee honest government, promote public confidence, and strengthen democracy. Michigan's campaign finance system suffers from large loopholes that reduce effectiveness. For example:

- There are no limits on contributions to PACs and political parties.
- Michigan's disclosure system is inadequate. It does not require reporting of independent expenditures that avoid use of “magic words” such as “vote for” or “vote against.”
- Michigan provides scant public financing, and only does so in gubernatorial races.

Better enforcement of reporting would go a long way towards ensuring that campaign finance laws actually encourage honest government, accessible and accountable to all citizens, regardless of wealth.

Now there is a new Congress in session in Washington and a new hunger throughout the country for honest, accountable government officials who answer the basic economic, health, and education needs of ordinary citizens. This is the time to revive laws consistent with public interest in government that is elected by—and answers to—ordinary citizens, not big-money interests. Nowhere is this more true than in the heartland, in what was once and can be again, the testing ground for progress.

Michael Waldman

Executive Director, Brennan Center for Justice at NYU School of Law

March 2007

CAMPAIGN FINANCE REFORM: WHY DOES IT MATTER?

Campaign finance laws seek to make government more honest and accountable to ordinary people, so that bread-and-butter issues—such as education, taxes, and health care—are not held hostage to moneyed interests. By placing limits on the influence of money on elections, campaign finance laws make it easier for elected officials in Michigan to respond to their constituents’ concerns, rather than those of wealthy political supporters.

While all voters are equal in the voting booth, all voters are not equal in their ability to influence elections and policy. In states with inadequately regulated campaign finance systems, only wealthy individuals and special interests can make the substantial political contributions and advertising expenditures that move public debate and affect electoral outcomes. And although a \$5 contribution from a low-income constituent may represent a much greater commitment than a \$10,000 contribution from a millionaire, the latter usually has more power to influence the outcome of the election and to secure access to the candidate, once elected to office.

Suppose, for example, that the manufacturing industry wants the Michigan legislature to reduce corporate taxes. If contributions from that industry, its executives, and its lobbyists represent a large proportion of a candidate’s campaign funds, that candidate may risk her political future if she later resists industry pressure. She may find it hard to keep a promise to deliver tax relief for the middle class if small donations from moderate-income supporters cannot compensate for the loss of corporate largesse. The temptation to protect industry rather than ordinary taxpayers will be even greater if there is no way for the public to learn exactly who is financing the candidate’s campaign and to connect the dots between corporate contributions and corporate tax breaks.

When wooing wealthy supporters is the key to political success, honest government is difficult to sustain. Although many candidates and officeholders are people of high integrity, political corruption is a chronic problem. Money has been at the heart of political scandals throughout American history, from Teapot Dome to the indictment of Jack Abramoff. Recent scandals in the states have also involved campaign contributions made in exchange for political favors. Combating corruption is crucial to ensure that the government’s policies on everything from the economy to the environment serve the public interest, not special interests.

Campaign finance laws can have other benefits as well. Public funding helps to ensure that whether a citizen can run for public office and conduct an effective campaign is determined more by the force of his ideas in the public arena than by his personal fortune or access to wealthy supporters. Such laws also free candidates and government officials from the rigors of fundraising so they can spend more time listening to their constituents and formulating the best policies for the State. Regulations that reduce this influence of money help voters hold their representatives accountable for policy-making that serves the common good.

HOW DO CAMPAIGN FINANCE LAWS PROMOTE HONEST GOVERNMENT?

One of the most important and least controversial elements of campaign finance law is a requirement that certain political contributions and expenditures be reported to regulatory agencies for disclosure to the public. Reports of the sources and amounts of contributions to candidates from lobbyists, political action committees, and others give the public clues to the candidates' likely political leanings on key issues and flag the interest groups to which the candidates are likely to be responsive. Voters may also glean such information from reports of large independent expenditures made in support of or opposition to candidates. The objective information in the official reports can provide a badly needed supplement to campaign advertising, especially if the reported information is easily accessible to the media and interested citizens in searchable, web-based databases. With more information, voters are better able to choose candidates who share their values and to hold politicians accountable for failures to represent their constituents' interests. Reporting requirements open contributions and expenditures to public scrutiny, making it easier to detect exchanges of political favors for political donations.

Contribution limits also help to protect governmental integrity. A large donation presents a much greater temptation to stray from campaign promises than a small contribution. Limiting the potential benefits of corruption may help to keep candidates and elected officials honest. Public financing also helps in this respect, by ensuring that candidates will be able to run effective campaigns without becoming beholden to private donors.

Of course, none of the campaign finance tools will keep government honest without consistent and vigorous enforcement of the law. If candidates and contributors know that they can break campaign finance rules with impunity, they will have no incentive to follow legal requirements. An agency that is able and willing to enforce the law without regard to the partisanship of any candidate is essential to protecting the integrity of government.

HOW DO CAMPAIGN FINANCE LAWS KEEP OFFICIALS RESPONSIVE AND ACCOUNTABLE?

A variety of campaign finance measures can be crafted to ensure that elected representatives are accountable to their constituents, not wealthy interests. Disclosure requirements identify candidates' financial supporters and allow voters to call elected officials to account if the policies they enact bear a suspiciously close resemblance to the policies favored by special interest contributors.

Contribution limits of various kinds also promote accountability. Limits on the size of contributions to candidates, and of contributions to entities (such as political action committees or political parties) that may serve as conduits to candidates, reduce the potential influence of particular wealthy donors on particular cash-hungry candidates. Aggregate limits on contribu-

tions may prevent such donors from purchasing influence by spreading largesse across entire legislatures. Low contribution limits also encourage candidates to reach out to a broader base of supporters, including low- and moderate-income constituents. A candidate who needs widespread support from ordinary people is more likely to respond to their needs.

In addition, generous public funding systems break the ties between access to wealth and electoral success, allowing candidates to respond to the full spectrum of voters. Arizona Governor Janet Napolitano, twice elected under Arizona's full public financing program, has explained how public financing was connected to her executive order creating a discount prescription drug program for the people of Arizona:

If I had not run [under the public funding program], I would surely have been paid visits by numerous campaign contributors representing pharmaceutical interests and the like, urging me either to shelve that idea or to create it in their image. . . All the while, they would be wielding the implied threat to yank their support and shop for an opponent in four years.

With public financing in place, government officials need not worry that honoring campaign promises popular with ordinary voters will translate to a lack of funds for their next campaign.

Public financing programs, which provide partial or full grants for a candidate's campaign in exchange for limited spending, also permit candidates and officeholders to spend time on tasks more valuable than fundraising, such as studying and attempting to find the solutions to public policy problems and listening and responding to the concerns of ordinary citizens. Moreover, many qualified, dedicated individuals will not run for office if doing so forces them to dial for dollars all day. By lifting that burden, public funding encourages public service by people who care about constituents, not contributors.

Finally, public funding opens doors to public service for individuals of modest means who cannot self-finance their candidacies and do not have wealthy friends to bankroll their campaigns. For example, Deborah Simpson, now in her fourth term in the Maine State Legislature, was a politically active single mother and waitress, who never considered running for office before Maine implemented public financing for its elections beginning in 2000. But she realized that with public funding she could run for office "without having to figure out how to ask for money from donors when [she] really didn't live in that world." Because the public holds the campaign purse-strings, Rep. Simpson's constituents can keep her accountable for her legislative record and turn her out of office if she fails to respond to public needs.

MICHIGAN'S LAWS IN PERSPECTIVE

DISCLOSURE

There are many positive aspects of Michigan's campaign finance disclosure laws. For example, Michigan requires candidates to report any contribution in excess of \$100, including the contributor's occupation and employer.¹ The law also requires the reporting of candidate expenditures in excess of \$50.² Political action committees ("PACs"), independent spenders, and parties also must report all contributions and expenditures.³ In addition, for purposes of contribution limits, and therefore disclosure requirements, Michigan law requires that bundled contributions be regarded as a contribution both from the committee delivering the bundled contributions and from the individuals submitting the contributions through the bundler.⁴

But much can be done to improve Michigan's disclosure laws.

INFREQUENT REPORTING

Reporting deadlines in Michigan are too infrequent. Michigan law requires candidate committees to report only once in non-election years and not until 11 days before the primary in August of election years.⁵ Similarly, PACs must file only three reports per year.⁶ For special elections, the law requires PACs to report within 48 hours for independent expenditures made after the last reporting deadline but before the election.⁷ Independent expenditures made after the last reporting deadline before a regularly scheduled election, however, do not have to be reported until the post-election filing.⁸ As a result, voters cannot obtain important information about who is monetarily supporting candidates until long after the elections are decided. For example, in 2004, the Great Lakes Education Project, a PAC, made independent expenditures in excess of \$270,000 in the weeks before the Michigan House primaries. In some races, that PAC spent more than the candidates themselves did. The PAC, however, did not have to report its expenditures until the next regular PAC filing deadline, which was ten weeks after the primary.⁹

FAILURE TO REQUIRE REPORTING OF ELECTIONEERING COMMUNICATIONS

A major weakness of Michigan's campaign disclosure system is that it fails to require reporting of all types of expenditures affecting and intended to affect elections. Rather, it requires reporting only of independent expenditures that expressly advocate the election or defeat of a candidate. As experience in federal elections and Michigan has shown, such limited regulation allows much election-influencing advertising to go completely unreported because advertisers can easily communicate their messages in favor of or against candidates without using the "magic words" of express advocacy (such as "vote for" or "vote against").

Unregulated sham issue ads that avoid use of these "magic words" represent a substantial portion of the election advertising in Michigan. The Michigan Campaign Finance Network estimates that political parties and the Michigan Chamber of Commerce spent at least \$13.5 million on independent expenditures and sham issue ads in the 2002 gubernatorial race. Ap-

proximately \$10 million of those contributions funded sham issue ads that were not disclosed on any campaign finance reports.¹⁰

In addition, the sham issue ads run by parties and the Michigan Chamber of Commerce accounted for more than half of all spending in the 2000, 2004, and 2006 Michigan Supreme Court races. Research by the Michigan Campaign Finance Network shows that in the last three weeks before the 2004 election, the Michigan Chamber of Commerce spent \$1.4 million on ads touting incumbent Supreme Court Justice Stephen Markman's virtues.¹¹ According to data collected by TNS Media Intelligence-CMAG and analyzed by the Brennan Center, in 2006 the Chamber again supported a Supreme Court candidate, spending more than \$700,000 to run a television advertisement that lauded incumbent Justice Maura Corrigan.¹² The ad praised the justice and urged voters to "call Justice Corrigan today and thank her for protecting Michigan children." In both cases, the ads did not explicitly ask viewers to vote for the justice, so the Chamber did not have to report its spending.

In addition, according to local advocates, the Michigan Democratic State Central Committee spent \$12.6 million, the Republican Governors Association spent \$2.6 million, and the Michigan Republican Party spent \$1.6 million to run sham issue ads leading up to the 2006 gubernatorial race. Again, without regulation of the sham issue ads, their funding sources remained obscured from public view.

To distinguish them from campaign ads using the "magic words" of express advocacy, certain sham issue ads are often separately defined as "electioneering communications." Typically, electioneering communications are defined as advertisements in designated media, made within a specified period before an election, that refer unambiguously to a candidate and are targeted to the candidate's constituents. Electioneering communications may be regulated exactly as are ads using magic words: spending of corporate and labor union treasury funds on such communications may be limited or banned entirely, corporations and unions may be required to establish affiliated PACs through which to finance the communications, PACs sponsoring electioneering communications may be required to disclose their financial backers, and all sponsors (including individuals) may be required to report their spending on electioneering communications.

As of December 2006, 17 states had incorporated such provisions into their laws.¹³ In 1998, before the decision in *McConnell v. FEC* (upholding electioneering communications regulations in federal law), the Michigan Secretary of State promulgated an electioneering rule banning the use of a candidate's name or likeness in corporate communications 45 days before an election, but two district courts struck down the rule as overbroad.¹⁴ Although *McConnell v. FEC* opens the door for a new effort to regulate such ads, Michigan has not regulated electioneering communications, leaving huge sums spent on campaign advertising exempt from disclosure requirements. To this day, the public remains in the dark about the financing of major independent advertising campaigns that influence elections.

CONTRIBUTION LIMITS

The Michigan Campaign Finance Act sets reasonable limits on contributions to candidates, but weaknesses in other types of contribution limits and loopholes in the law undermine its effectiveness.

CONTRIBUTION LIMITS TO CANDIDATES UNDER MICHIGAN LAW

A person, defined as “a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly,”¹⁵ may contribute \$3,400 per election cycle to candidates for statewide elective office or local candidates running in districts whose populations exceed 250,000.¹⁶ The corresponding limits on contributions to candidates for state senate or local candidates running in districts whose populations are between 85,000 and 250,000 is \$1,000. The law also caps contributions to candidates for state house or local candidates running in districts whose populations are less than 85,000 at \$500.¹⁷ (See Figure 1.)

FIGURE 1:
LIMITS ON CONTRIBUTIONS TO CANDIDATES FROM PERSONS
(PER ELECTION CYCLE)

Office	Contribution Limit
Candidate for Statewide Elective Office	\$3,400
Candidate for Local Office in a District Larger Than 250,000	\$3,400
Candidate for State Senator	\$1,000
Candidate for Local Office in a District between 85,000 and 250,000	\$1,000
Candidate for State Representative	\$500
Candidate for Local Office in a District Smaller Than 85,000	\$500

Michigan’s individual contribution limits compare well with laws in other Midwestern states. For example, while Minnesota limits personal contributions to gubernatorial candidates to \$2,000 per election year, Wisconsin allows individuals to contribute up to \$10,000 per election cycle, and Ohio sets the limit at \$20,000 per election cycle. Illinois provides no contribution limits at all.

Per election cycle, independent committees¹⁸ and political party committees other than the state central political party committees may contribute 10 times the individual contribution limit to candidates. (See Figure 2. ON PAGE 12)

Limits on Contributions from Individuals to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	\$3,400/election cycle*	\$3,400/election cycle	\$1,000/election cycle
Minnesota	\$2,000/election year**	\$500-\$1,000/ election year	\$500/election year
Ohio	\$10,000/election***	\$10,000/election	\$10,000/election
Wisconsin	\$10,000/election cycle	\$10,000/election cycle	\$1,000/election cycle

Limits on Contributions from PACs to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	\$34,000/election	\$34,000/election	\$10,000/election
Minnesota	\$2,000/election year	\$500-\$1,000/election year	\$500/election year
Ohio	\$10,000/election from political action committees or political contributing entities	\$10,000/election from political action committees or political contributing entities	\$10,000/election from political action committees or political contributing entities
Wisconsin	\$43,128/election cycle	\$8,625 - \$21,560/election cycle	\$1,000/election cycle

Limits on Contributions from Political Parties to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	\$68,000/election cycle	\$68,000/election cycle	\$10,000/election cycle
Minnesota	\$20,000/election year	\$5,000-\$10,000/election year	\$5,000/election year
Ohio	\$1,628,000/election cycle from state and county party units, including legislative campaign funds	\$1,628,000/election cycle from state and county party units, including legislative campaign funds	\$618,500/election cycle from state and county party units, including legislative campaign funds
Wisconsin	\$700,830/election cycle from all committees including political parties	\$140,156 - \$350,350/election cycle from all committees including political parties	\$22,425/election cycle from all committees including political parties

Limits on Contributions from Corporations to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	Prohibited	Prohibited	Prohibited
Minnesota	Prohibited	Prohibited	Prohibited
Ohio	Prohibited	Prohibited	Prohibited
Wisconsin	Prohibited	Prohibited	Prohibited

Limits on Contributions from Labor Unions to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	Prohibited	Prohibited	Prohibited
Minnesota	\$100/year	\$100/year	\$100/year
Ohio	\$10,000/election	\$10,000/election	\$10,000/election
Wisconsin	Unlimited	Unlimited	Unlimited

	Entities		
	PACs	Political Parties	Other
State Rep			
Unlimited	Unlimited	Unlimited	
\$500/election cycle	Unlimited	Unlimited	
\$500/election year	Unlimited	Unlimited	
\$10,000/election	\$10,000/year	\$30,000/year to state political party	\$10,000/year to any political contributing entity; \$10,000/year to any county political party; \$15,000/year to any legislative campaign fund
\$500/election cycle	\$10,000/year	\$10,000/year	

* Election cycles may differ by state and by office (i.e. 4-year cycle for governor, 2-year cycle for state senators).

** States with limits per election year also have lower limits on non-election year contributions.

*** Primary, general, and special elections are considered separate elections.

	Entities		
	PACs	Political Parties	Other
State Rep			
Unlimited	Unlimited	Unlimited	
\$5,000/election	Unlimited	Unlimited	
\$500/election year	Unlimited	Unlimited	
\$10,000/election from political action committees or political contributing entities	\$10,000/year from one political action committee or political contributing entity to another	\$15,000/year to any one legislative campaign fund; Prohibited to county political parties	
\$500/election cycle	Prohibited	\$6,000/year	

	Entities		
	PACs	Political Parties	Other
State Rep			
Unlimited	Unlimited	Unlimited	
\$5,000/election cycle	Unlimited	Unlimited	
\$5,000/election year	Unlimited	Unlimited	Party expenditures that do not name any candidate or that fund mailings, phone calls, fundraising or party committee staff that benefit three or more party candidates are not counted toward the contribution limits for individual candidates.
\$309,000/election cycle from state and county party units, including legislative campaign funds	\$10,000/year to any one political action committee or any one political contributing entity	Prohibited from county political party to another county political party; Unlimited from legislative campaign fund to state candidate fund of political party	Individual Limits differ for contributions from county parties; Individual limits differ for contributions from legislative campaign funds
\$11,213/election cycle from all committees including political parties	Unlimited	Unlimited	

	Entities		
	PACs	Political Parties	Other
State Rep			
Unlimited	Unlimited	Unlimited	
Prohibited	Prohibited	Prohibited	
Prohibited	Prohibited	Prohibited	
Prohibited	Prohibited	Prohibited	
Prohibited	Prohibited	Prohibited	

	Entities		
	PACs	Political Parties	Other
State Rep			
Unlimited	Unlimited	Unlimited	
Prohibited	Prohibited	Prohibited	
\$100/year	\$100/year	\$100/year	
\$10,000/election	\$10,000/year to another PAC or political contributing entity	\$30,000/year to any state political party candidate fund	Other limits apply for legislative campaign funds and contributions to Levin accounts
Unlimited	Unlimited	Unlimited	

FIGURE 2:
LIMITS ON CONTRIBUTIONS TO CANDIDATES
FROM INDEPENDENT COMMITTEES AND POLITICAL PARTY COMMITTEES
OTHER THAN THE STATE CENTRAL PARTY COMMITTEES
(PER ELECTION CYCLE)

Office	Contribution Limit
Candidate for Statewide Elective Office	\$34,000
Candidate for Local Office in a District Larger Than 250,000	\$34,000
Candidate for State Senator	\$10,000
Candidate for Local Office in a District between 85,000 and 250,000	\$10,000
Candidate for State Representative	\$5,000
Candidate for Local Office in a District Smaller Than 85,000	\$5,000

State central committees of a political party may contribute 20 times the individual contribution limit to candidates for state elective office and 10 times the individual contribution amount to candidates for the legislature or local office.¹⁹ (See Figure 3.)

FIGURE 3:
LIMITS ON CONTRIBUTIONS TO CANDIDATES
FROM STATE CENTRAL PARTY COMMITTEES
(PER ELECTION CYCLE)

Office	Contribution Limit
Candidate for Statewide Elective Office	\$68,000
Candidate for Local Office in a District Larger Than 250,000	\$34,000
Candidate for State Senator	\$10,000
Candidate for Local Office in a District between 85,000 and 250,000	\$10,000
Candidate for State Representative	\$5,000
Candidate for Local Office in a District Smaller Than 85,000	\$5,000

Michigan's limits on contributions from PACs and political parties to candidates fare moderately well compared with other states in the Midwest. On the one hand, Michigan PACs may contribute \$34,000 per election cycle to a gubernatorial candidate, while Minnesota limits PACs' contributions to gubernatorial candidates to \$3,500 per election cycle, and Ohio limits them to \$20,000 per election cycle. Wisconsin, however, limits PAC contributions to \$43,128 per election cycle, and Illinois does not have contribution limits.

A state political party in Michigan can contribute \$68,000 per election cycle to gubernatorial candidates, while Minnesota limits political party contributions to \$35,000 per election cycle. However, Ohio and Wisconsin place limits only on the aggregate amount gubernatorial candidates can accept from all political party entities; this level is \$1,628,000 per election cycle in

Ohio and \$700,830 per election cycle in Wisconsin. Illinois places no limits on political parties' contributions to candidates.

Finally, Michigan prohibits contributions (and expenditures) by corporations and labor unions.²⁰ Among other Midwestern states, Minnesota, Wisconsin, and Ohio all prohibit corporate contributions.²¹ In Illinois, corporate contributions are unlimited. Notably, among those states Michigan is the only one that completely prohibits contributions from labor unions. Contributions from labor unions are unlimited in both Illinois and Wisconsin, while Ohio limits labor union contributions to \$10,000 per primary and general election each and Minnesota limits them to \$100 annually.

WEAKNESSES AND LOOPHOLES IN MICHIGAN'S LAW ON CONTRIBUTION LIMITS

Large loopholes in the existing laws make the limits on contributions to candidates easy to circumvent. First, with the exception of a \$20,000 limit per year on contributions from persons to the four legislative caucus PACs,²² contributions from persons (excluding labor unions and corporations) to PACs and political parties are unlimited. In the 2002 Democratic primary, for example, two households donated a combined \$900,000 to a PAC, which in turn made more than \$1 million in independent expenditures to aid former-Governor Jim Blanchard's campaign, undermining the goal of contribution limits in shielding a candidate from the dominating influence of one or a few donors.²³

And although Michigan prohibits contributions by corporations and labor unions, these restrictions are easily circumvented. There are no limits on corporate and union treasury fund donations to state parties, as long as that money is not used for campaign "expenditures." Because expenditures are narrowly defined so as not to include sham issue ads (discussed above), the law creates a soft money loophole permitting corporations and unions to funnel money to support ads that are designed to influence, and do influence, elections.

PUBLIC FINANCING

In 1976 Michigan established a program of partial public financing for gubernatorial candidates only. While the program was effective for over 20 years, failure to amend it in recent years has rendered it obsolete.

HOW IT WORKS

To qualify for public financing, a candidate must raise \$75,000 in contributions of \$100 or less from Michigan residents²⁴ and agree to a \$2 million expenditure limit per election.²⁵ The state distributes funds on a two-to-one matching basis for the primaries. Major party candidates may receive up to \$990,000 for the primary election.²⁶ The two major party primary election winners then receive a flat grant of \$1,125,000 for the general election, and the candidate may raise \$875,000 (up to the spending limit of \$2 million) from private contributions, as limited by Michigan law.²⁷

Minor party candidates whose party received at least five percent of the vote in the previous election can receive up to the following: \$1,125,000 multiplied by the number of votes the party received in the previous general gubernatorial election, divided by the average number of votes the major party candidates received in that election.²⁸ They can also receive additional money post-election if they receive more votes in that election than their predecessors did in the previous one. If a minor party candidate's party did not receive five percent of the votes in the previous election, but she wins at least five percent of the votes in that general election, she is entitled to a post-election reimbursement using the same formula.²⁹ Other minor party candidates and independent candidates may apply for one-to-one matching up to \$750,000 in the general election, so long as they have raised the requisite \$75,000 in qualifying contributions.³⁰

PROBLEMS WITH THE MICHIGAN PUBLIC FINANCING PROGRAM

The public financing system in Michigan is relatively ineffective. Spending limits are woefully low, leading many candidates to opt out of public financing. In 2006, for the first time, both major party candidates declined to participate during the primary. Incumbent Governor Jennifer Granholm opted to participate during the general election, receiving the \$1.125 million. Because her Republican opponent, Dick DeVos, spent his own money, she was released from the \$2 million cap. According to their campaign finance reports, Governor Granholm raised more than \$14 million for the 2006 gubernatorial general election, while DeVos raised more than \$41 million. These fundraising amounts highlight that a grant of \$1,125,000 and spending limit of \$2 million for the general election make it unlikely that major party gubernatorial candidates will participate in the public financing program in the future.

ENFORCEMENT

Enforcement of campaign finance laws in Michigan is weak. The Michigan Secretary of State is responsible for enforcing the campaign finance laws but has little power to do so. The Secretary of State cannot issue subpoenas or issue orders to cease and desist. The office has no auditing powers, and it is not required to investigate campaign finance violations. If the Secretary of State is unable to enforce the law or prevent further violations, however, he or she may refer a violation to the Attorney General's office for criminal prosecution.³¹

Moreover, in most cases, penalties for violating campaign finance law do not exceed \$1,000, which many contributors see as an affordable cost. For example, in 2005 Detroit Mayor Kwame Kilpatrick's PAC, Generations PAC, spent more than \$250,000 in favor of Mayor Kilpatrick's campaign. When the group failed to file a pre-election report in October, the Secretary of State sent the PAC a letter informing them that they had missed the filing deadline, and therefore were required to pay a \$1,000 late filing fee. Generations PAC did not file its pre-election report until January 11, 2006. Accordingly, voters were not able to trace contribution sources until months after they had cast their votes.³³

RECOMMENDATIONS FOR REFORMING MICHIGAN'S CAMPAIGN FINANCE LAWS

DISCLOSURE

- As many other states and the federal government have done, Michigan should enact laws regulating electioneering communications, thereby preventing millions of dollars in unreported spending.
- Any independent expenditures that are made between a committee's final pre-election report and Election Day should be reported within 48 hours.
- Reporting deadlines should occur at least quarterly.
- Michigan should implement laws requiring the reporting of donations to political parties for "party-building expenses," thereby closing a soft money loophole.

CONTRIBUTION LIMITS

- Michigan should implement limits on contributions to PACs and political parties, including aggregate caps to all PACs and political party committees.
- The State should extend the prohibition on the use of corporate and labor union contributions to political parties for expenditures to electioneering communications as well.

PUBLIC FINANCING

- Michigan's gubernatorial public financing system is almost obsolete. In order to encourage candidates to participate and enable them to run viable campaigns, the state should increase both the amount of funding it provides to candidates and the spending limits.
- Ideally, Michigan should implement a functional public financing system for all statewide, legislative, and judicial campaigns.

ENFORCEMENT

- Michigan should arm the Secretary of State's office with the power to investigate campaign finance violations, issue subpoenas, and issue cease and desist orders.
- To encourage compliance, Michigan should implement penalties that are more proportionate to violations.

¹ Mich. Comp. Laws Ann. § 169.226(1)(e).

² Id. § 169.226(1)(j).

³ Id. § 169.229.

⁴ Id. §169.231(1).

⁵ Id. § 169.233(1)(a).

⁶ Id. § 169.233(1)(c).

⁷ Id. § 169.233(5).

⁸ Id. Oddly, however, persons other than committees that make independent expenditures of over \$100 must report the expenditure within 10 days. Id. § 169.251. “Committee” is defined as “a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate . . .if contributions received total \$500.00 or more in a calendar year or expenditures made total \$500.00 or more in a calendar year.” Moreover, “[a]n individual, other than a candidate, does not constitute a committee” Id. § 169.203(4).

⁹ Michigan Campaign Finance Network, *A Citizen’s Guide to Michigan Campaign Finance - 2004*, at 26, available at <http://www.mcfn.org/pdfs/reports/CG05.pdf>.

¹⁰ Michigan Campaign Finance Network, *A Citizen’s Guide to Michigan Campaign Finance 2002*, at 8, available at <http://www.mcfn.org/pdfs/reports/CG2002.pdf>.

¹¹ Michigan Campaign Finance Network, *A Citizen’s Guide to Michigan Campaign Finance - 2004*, at 25, available at <http://www.mcfn.org/pdfs/reports/CG05.pdf>.

¹² Brennan Center for Justice, “Buying Time 2006: Sponsors, Airings, and Costs,” (Nov. 7, 2006), available at http://www.brennancenter.org/dynamic/subpages/download_file_48004.pdf.

¹³ States that regulate electioneering communications are: Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Vermont, Washington, and West Virginia.

¹⁴ *Planned Parenthood Affiliates v. Miller*, 21 F. Supp. 2d 740 (E.D. Mich. 1998); *Right to Life., Inc. v. Miller*, 23 F. Supp. 2d. 766 (W.D. Mich. 1998).

¹⁵ Mich. Comp Laws Ann. § 169.211(1).

¹⁶ In the case of a general election, “election cycle” is defined as “the period beginning the day following the last general election in which the office appeared on the ballot and ending on the day of the general election in which the office next appears on the ballot.” For a special election, the election cycle is defined as “the period beginning the day a special election is called or the date the office becomes vacant, whichever is earlier, and ending on the day of the special general election.” Mich. Comp. Laws Ann. § 169.205(3).

¹⁷ Mich. Comp. Laws Ann § 169.252(1).

¹⁸ “Independent committee” is defined as “a committee, other than a political party committee, that before contributing to a candidate committee of a candidate for elective office . . . files a statement of organization as an independent committee at least 6 months before an election for which it expects to accept contributions or make expenditures in support of or in opposition to a candidate for nomination to or election to an elective office; and receives contributions from at least 25 persons and makes expenditures . . . in support of or in opposition to 3 or more candidates for nomination to or election to an elective office in the same calendar year.” Mich. Comp Laws Ann. § 169.208(3).

¹⁹ Mich. Comp. Laws Ann. § 169.252(4).

²⁰ Id. § 169.254(1).

²¹ Under Ohio law, corporations are allowed to contribute up to \$10,000 per year to political parties’ “restricted funds,” which are accounts used for party-building activities such as rent and staff salaries. Similarly, corporations may contribute up to \$10,000 during federal election years to “Levin funds” that pay for activities related to voter registration and get-out-the-vote drives.

²² Mich. Comp. Laws Ann. § 169.252a.

²³ Michigan Campaign Finance Network, *A Citizen’s Guide to Michigan Campaign Finance - 2004*, at 27, available at <http://mcfn.org/pdfs/reports/CG05.pdf>.

²⁴ Mich. Comp. Laws Ann. § 169.264(1)(a).

²⁵ Id. § 169.267(1).

²⁶ Id. § 169.264(3).

²⁷ Id. § 169.265(1).

²⁸ Id. § 169.265(2).

²⁹ Id. § 169.265(3).

³⁰ Id. § 169.265(5).

³¹ Id. § 169.215(10).

³² Michigan Campaign Finance Network, *A Citizen’s Guide to Michigan Campaign Finance - 2004*, at 26, available at <http://www.mcfn.org/pdfs/reports/CG05.pdf>.

³³ Michigan Department of State, “Committee Statement of Organization: Generations Political Action Committee,” available at http://miboecfr.nicusa.com/cgi-bin/cfr/com_det.cgi?com_id=508723#DOC.

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