

COURTING TROUBLE: A Forum about Threats to a Fair, Open and Independent Michigan Supreme Court. Thursday Oct. 25 at the Oleson Center, Northern Michigan College, in Traverse City.

"AN INDEPENDENT AND HONORABLE JUDICIARY IS INDISPENSABLE TO JUSTICE IN OUR SOCIETY." Michigan Code of Judicial Conduct

"JUDICIAL ELECTIONS ARE BECOMING POLITICAL PRIZEFIGHTS WHERE PARTISANS AND SPECIAL INTERESTS SEEK TO INSTALL JUDGES WHO WILL ANSWER TO THEM INSTEAD OF THE LAW AND THE CONSTITUTION." Sandra Day O'Connor, July 2007

We learned at the forum that the partisans and special interests have already taken control here in Michigan. We learned that, as former Governor Milliken wrote to the group, we needed to "...focus on questions of whether there are systemic problems in the way that we choose our justices that undermine trust and confidence in the fairness and impartiality of our Supreme Court." The forum was jam-packed with disturbing, detailed information, with concerned people (at least 150 attended, many from Benzie County), and with ideas and energy. Here is my report on SOME of it.

The first speaker was Brian Dickerson, a columnist for the Detroit Free Press. ALL citizens of Michigan are 'parties' to recent decisions by the court which have, in effect, often rewritten the law and constitution, and taken away our established rights. He showed us very clearly three cases (among many) where this has happened. For instance, a recent court decision has basically stripped us of our standing as citizens to sue on environmental impacts, regardless of where they occur in the state. Two other court decisions have removed some of our rights to sue for uninsured motorist coverage under our insurance contracts, and some of our rights for protection under the Michigan Consumer Protection Act. These and many other cases are cases where the current court has reinterpreted laws and precedents to favor special interests.

Why and how did these types of decisions and reinterpretations happen? How did we let OUR Supreme Court run away with our rights? Rich Robinson, the Executive Director of the Michigan Campaign Finance Network, spoke on a major reason –the election financing methods for the Supreme Court. He advocates public financing for State Supreme Court elections.

Next year it is expected that the campaign for the court may cost \$20 MILLION dollars, twice as expensive as any other state. Eighty-six percent of the cases that came before the Michigan Supreme Court in the 1990s involved at least one campaign contributor to at least one of the judges.

ISSUE ADVOCACY ADS now account for half or more of all judicial campaign expenditures. Issue advocacy ads are not covered by the Michigan Campaign Finance Act, and are more candidate specific than those permitted at the Federal level. There are no limits to spending, and donations and donors are not disclosed on any campaign

finance report. They are anonymous – transparency is totally lacking. You will have seen many TV ads in the last election cycle telling you why certain candidates were soft on crime or otherwise unfit for office, or ads supporting certain candidates. Who paid for those ads? What if they have (or have already had) a case before the court?

Judicial campaigns are financed in three ways. In addition to issue advocacy ads, campaigns may be financed by candidate campaign committees and political party independent expenditures. There are ethical problems with these other financing methods, also. Candidate campaign committee donors are publicly disclosed, and the donations of PACs, political parties, and individual donors are limited. Many lawyers in the state may contribute to these committees. All these donors may have cases before the court in subsequent years. Also, there are no formal requirements separating political party 'independent expenditure' activity and the candidate's campaign committee activities.

Those are some of the reasons why Rich Robinson spoke so forcefully in favor of public financing for State Supreme Court elections.

The forum brought out many other issues of importance related to the court, but did not have time to discuss them depth. I want to mention a few of them. (1) Political parties select individuals to run for the court on a nonpartisan ballot. (2) The governor has unchecked power to appoint judges when there are vacancies. (3) There are no standards for recusal for the judges, that is, self-disqualification when there are conflicts of interest. In fact, because of the methods of financing campaigns, it is often not possible to know whether there is a conflict of interest. We often do not know whether a party before the Court is also a contributor to a particular Judge's campaign. Michigan is the ONLY STATE without a standard process for self-disqualification. (4) We elect our judges, usually with very little information about them. Is this the best way to get an independent, fair, and competent Supreme Court?

As Michigan Supreme Court Justice Elizabeth Weaver said after the two speakers, "This is just the tip of the iceberg." She suggested that we need independent judges who are restrained persons with common sense. Without those qualities, judges can, and obviously do, abuse the power of interpretation, as Brian Dickerson so ably illustrated with just 3 cases. She further suggested that, because at present the Supreme Court power is unchecked by any check or balance, judges can (and do) promote their own personal agendas, the agendas of special interests, and even their own biases and prejudices. She suggested a number of ways to add some checks and balances to the court, including an 8-year term limit for all justices, and changes in the method used for vacancy appointments.

The Forum was sponsored by the League of Women Voters, the Michigan Campaign Finance Network, the Northern Michigan Environmental Action Council, and the Traverse City Record Eagle. After the presentations, the crowd broke into work groups and developed suggestions for follow-through on issues to emphasize and actions to take.

Some action ideas that came out of the work groups which followed the forum include: (1) Work toward public financing of the Supreme Court election campaigns; circulate a petition to our state senators to hold hearings on full public financing for Michigan Supreme Court election campaigns. (2) Work for term limits for Supreme Court Justices (staggered 8 year term). (3) Develop a better way to select judges (many methods of interest are possible here). (4) Write letters to the editor. (5) Publish voter guides on the candidates. (6) Publish a list of how each justice votes on each issue. (7) Delete the 'incumbent' designation on the ballot. (8) Learn more about how other states select their supreme courts. How has state campaign financing worked elsewhere? How are judges selected elsewhere? (9) Encourage other groups across the state to hold forums or act in other ways to spread information about these court issues, and encourage others to become energized to act. We need to energize a 'critical mass' to keep the reform ball rolling.

Submitted by Jane Lean