Testimony of Rich Robinson, Michigan Campaign Finance Network
to the
House Judiciary Committee
October 10, 2007

Thank you for allowing me the opportunity to testify on the matter of standards of recusal for the Michigan Supreme Court. The Michigan Campaign Finance Network (MCFN) identified this as an issue of concern in our April 2007 publication, *A Case for Political Reform in Michigan*.

I will focus my remarks on campaign finances in Michigan Supreme Court election campaigns and the inherent hazards for conflicts of interest, both in appearance and reality. This is an area from which the discussion of recusal, or self-disqualification, is a natural outgrowth. I will also briefly discuss policy measures that would diminish the likelihood of conflicts of interest and, therefore, the need for recusal.

According to a study by the National Institute on Money in State Politics, throughout the decade of the 1990s, 86 percent of the cases that were heard by the Michigan Supreme Court involved at least one campaign contributor to at least one of the justices. Many of those contributions were small and relatively inconsequential; others were large and should be cause for concern.

Michigan Supreme Court campaigns were transformed in 2000, when candidate-focused television issue advertisements first became a major feature of the marketing of the candidates. By MCFN accounting, $23.5 million has been spent in the last four election cycles, beginning with 2000.

Summary of Michigan Supreme Court Campaigns, 2000 through 2006

	2000	2002	2004	2006
Candidate receipts	$ 6,825,031	$ 958,427	$ 1,544,278	$ 1,087,344
Independent expenditures	$ 1,587,831	$ 30,690	$ 647,393	$ 1,021
Issue advertising *	$ 7,500,000	$ 840,000	$ 1,377,000	$ 800,000
Total spending	$ 15,912,862	$ 1,829,117	$ 3,568,671	$ 1,888,365
Number of seats	3	2	2	2
Cost per seat	$ 5,304,287	$ 914,559	$ 1,784,336	$ 944,183

* estimated

The candidates' campaign committees have raised $10.4 million since 2000. This represents great potential for conflicts of interest, even though there are limits on contributions to these committees: $68,000 from the political parties; $34,000 from political action committees; and $3,400 from individuals. But don't take my word that this should be a concern. Take it from someone who has been in the eye of the storm. In July 2000, Justice Robert Young, Jr. told *George* magazine: "My advisers tell me I'll have to raise $1 million or more to run a Supreme Court race. How can this not be a problem? The public has a right to ask: 'If you have to raise $1 million, can you really be impartial?'" In fact, Justice Young raised $1.3 million in 2000 and $622,000 in 2002.

The American Bar Association's newly revised Model Code of Judicial Conduct, Rule 2.11.A.4, recommends that campaign contributions to a judge or justice from a party in a case, the party's lawyer or the law firm of the party's lawyer, of an amount to be recommended by a state advisory committee, should be grounds for disqualification from a case involving the contributor. Presently, 18 states and the District of Columbia have committees reviewing the new Model Code and developing recommendations for implementation in their respective jurisdictions. Our neighbors in Ohio and Indiana are among the 18. Michigan is not.

Independent expenditures represent another sort of peril. Because Michigan has no limits on contributions to political parties or political action committees, and the independent expenditures of such committees cannot be limited, independent expenditures present an unlimited opportunity for an individual or an interest group to support or oppose a candidate, and, thereby, influence the outcome of an election. I will give you two examples.

In 2000, Thomas Monaghan put $655,000 into the Ann Arbor PAC, 86 percent of its funds for the election cycle. The PAC, in turn, gave $34,000 each to Justices Markman, Taylor and Young; and it made over $200,000 worth of independent expenditures supporting those justices. This should invite a question: If Monaghan has a case before the Michigan Supreme Court, should those justices recuse themselves? Should it be a matter of personal conscience, or should there be a standard?

In 2004, Geoffrey Fieger spent more than $450,000 as the sole contributor to a PAC called Citizen's for Judicial Reform for independent expenditures attacking Justice Stephen Markman. Should Fieger's attack cause Justice Markman to have to recuse himself from a case involving Fieger? I would submit that the answer must be 'no.' Otherwise prospective litigants could pursue an active strategy of forced disqualification. But what if Fieger had contributed to a successful challenge to Justice Markman. Would the beneficiary of Fieger's effort be expected to recuse in a case involving Fieger?

To borrow from Chief Justice John Roberts' baseball analogy where he characterizes judges as the umpires of society: If one team pays to hire the umpire, can the umpire be expected to call balls and strikes fairly and impartially when that team comes to bat? Do we suppose that this would be agreeable to the opposing team? Would spectators and future players think that this was a fair practice?

Since 2000, candidate-focused television issue advertisements have accounted for more than $10 million of spending in Supreme Court campaigns. The Michigan Chamber of Commerce spent more than $6 million of that total supporting the candidacies of the five Republican incumbents on the Court, or opposing their Democratic opponents. In each of the last four election cycles, the Chamber has spent more than any candidate on the ballot. This is particularly important to our discussion today because these advertisements are not considered to be campaign expenditures under the Michigan Campaign Finance Act. That means that the spending is not disclosed in any campaign finance report, the contributors to the sponsoring entity are not disclosed and there are no

restrictions against corporate or union treasury funds, as there are for candidate committees or political action committees. Therefore, it is next to impossible to determine whether there is a conflict of interest because we can't tell whose money was used for the marketing campaign to promote prospective 'umpires.'

We have had only one good opportunity to look inside the black box of Supreme Court issue ad finances. That occasion came in a front-page story in the Wall Street Journal by Jim VandeHei on September 11, 2001, that I have provided to you. Among the major story lines in VandeHei's reporting is a synopsis of the U.S. Chamber of Commerce's five-state issue ad campaign to elect business-friendly state Supreme Court justices in 2000. The U.S. Chamber's target states were Alabama, Mississippi, Ohio, Indiana and Michigan. The million-dollar contributors to the Chamber for that effort included Wal-Mart, Home Depot, the American Council of Life Insurers and DaimlerChrysler.

On the record in Michigan during the 2000 campaign, DaimlerChrysler's then-CEO, James P. Holden, hosted a fundraising reception for Justices Markman, Taylor and Young at Meadow Brook Hall on October 10th. DaimlerChrysler's PAC, employees, Board members and their spouses made direct contributions of $39,000 to Justices Markman, Taylor and Young, after giving $58,000 to Justices Corrigan and Taylor in 1998.

Before the 2002 election, the Michigan Supreme Court had heard oral arguments on one case involving DaimlerChrysler and moved a second case onto its docket. In the second case, *Gilbert v. DaimlerChrysler*, the Michigan Supreme Court ultimately overturned a *per curiam* opinion of the Court of Appeals and wiped out a $21 million damage judgment against DaimlerChrysler plus $9 million in interest. None of the justices who benefited from the Chamber of Commerce 2000 issue ad campaign or the $98,000 in DaimlerChrysler direct contributions recused themselves from the case.

There are no proofs to establish that DaimlerChrysler's $1 million was routed to the Michigan Chamber's $3 million issue ad campaign in 2000, but certain facts are known.

- The funders of the Citizens for a Strong Ohio issue ad campaign were forced out of the closet through litigation. DaimlerChrysler was not one of them.
- Neither the Alabama nor Mississippi Supreme Court has taken a DaimlerChrysler case since 2000.
- Indiana's Supreme Court has taken only two DaimlerChrysler cases since 2000. DaimlerChrysler sought to compel arbitration in the cases, its motion was denied and the cases were sent to trial court.
- DaimlerChrysler's Assistant General Counsel for Government, Steven B. Hantler, is, or was, a Board member of the Michigan Chamber of Commerce.

I urge you to apply the 'reasonable person' test: Recount these facts to citizens in your home districts and ask them whether recusal should be a matter of personal conscience, or something more objectively defined. MCFN polled 600 likely voters a few

years ago and we learned that 88 percent believed that it is important for judges to be independent from the influence of contributors to their election campaigns. But 80 percent believed that campaign contributions do influence decisions that judges make. These perceptions neatly capture the corrosive impact of big-money judicial campaigns in undermining citizens' trust and confidence in the ideal of a fair and impartial judiciary.

Earlier this year on the occasion of the release of the report *The New Politics of Judicial Elections, 2006*, former United States Supreme Court Justice Sandra Day O'Connor said, "Justice at Stake's report shows how in too many states, 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. I hope that every state that elects judges in partisan elections will consider reforms."

I certainly concur with Justice O'Connor's comment and I would suggest that it should apply to our nominally nonpartisan Supreme Court elections as well. Michigan has an immediate need for standards of recusal for our Supreme Court, but this Legislature should look beyond standards for recusal. It should be mandatory for sponsors of candidate-focused issue advertising to identify their contributors in the public record, so questions of recusal can be properly identified and considered. A policy of 'Don't ask, don't tell' has no ethical underpinnings as a substitute for transparency. And we should have a full public funding program for candidates for the Supreme Court, so candidates can have a viable campaign that is demonstrably free of special interest money. In so doing, much of the cause for concern about recusal could be eliminated. The American Bar Association recommends public funding for states that elect their Supreme Court in contested elections, and the Representative Assembly of the State Bar of Michigan passed a resolution five years ago that similarly endorsed public funding. This is a policy whose time has come.

In order to facilitate a public funding system for Supreme Court campaigns, this Legislature should respect the directive of more than two million tax filers and fully restore the State Campaign Fund. That fund may have been rendered obsolete for gubernatorial campaigns, but a fully restored fund could nicely accommodate a system of full public funding for our state's highest court.

Finally, I feel compelled to note that the conversation about money and judicial disqualification should go beyond campaign finances. Judges and justices should recuse themselves from cases in which they have substantial personal financial interests at stake. But since Michigan is one of only three states that do not require elected officials to disclose personal financial interests, this, too, is currently a matter of personal conscience, instead of public oversight and standards.

I am grateful that the Committee is taking up these important issues. We have a recusal problem, but that problem is only a symptom of a campaign finance system that is an incubator for conflicts of interest. All it will take to perpetuate this toxic system is for a few good men and women to do nothing. Please, give this situation the attention it deserves. Thank you.

commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

RULE 2.11
Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

(2) The judge knows* that the judge, the judge's spouse or domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous [insert number] year[s] made aggregate* contributions* to the judge's campaign in an amount that [is greater than $[insert amount] for an individual or $[insert amount] for an entity] [is reasonable and appropriate for an individual or an entity].

(5) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

RULE 2.12
Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

COMMENT

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

RULE 2.13
Administrative Appointments

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially* and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not appoint a lawyer to a position if the judge either knows* that the lawyer, or the lawyer's spouse or domestic partner,* has contributed more than $[insert amount] within the prior [insert number]

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Political Cover

Major Business Lobby Wins Back Its Clout By Dispensing Favors

Some Members Can Hide Behind Chamber's Name To Pursue Private Ends

Targeting 'Unfriendly' Judges

By JIM VANDEHEI
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—Last summer, Philip Anschutz, chairman of Qwest Communications International Inc., wanted to defeat legislation that could have prevented his company from expanding overseas. But the billionaire investor, who shuns publicity, preferred to keep a low profile.

Enter Thomas Donohue, president of the U.S. Chamber of Commerce. Mr. Donohue, who considered Mr. Anschutz a potential $1 million donor to the chamber, eagerly proposed a solution: His organization would step up its efforts to derail the legislation, and it would keep Mr. Anschutz and his associates fully informed.

Thomas Donohue

It wasn't the first time Mr. Donohue had helped a corporate chieftain out of a jam. By selectively offering such personalized assistance, the 62-year-old executive has transformed the way the nation's flagship business organization does business. Since taking over the U.S. Chamber of Commerce four years ago, he has more than doubled the group's fund-raising tally to $100 million annually. His most striking innovation has been to offer individual companies and industries the chance to use the chamber as a means of anonymously pursuing their own political ends.

Internal chamber documents reviewed by The Wall Street Journal show that the organization has created several special accounts to take in money for projects on behalf of individual companies or groups of companies with a common policy goal. In some cases, the money is spent just days after it comes in the door. The chamber, like many nonprofit organizations, isn't required to report the sources of its funding, which makes it an attractive vehicle for those such as Mr. Anschutz who sometimes like to operate under the radar. Mr. Anschutz couldn't be reached for comment.

Mr. Donohue, who is 62 years old, defends the chamber's special projects, saying all of them are consistent with the organization's pro-business mission and its role as an advocate for the American business community at large. And, he adds, none of them conflict with the interests of any of the chamber's 150,000 dues-paying member companies. "The chamber is not for sale," Mr. Donohue says, though he adds that he is constantly marketing its lobbying and legal services to companies who could use them.

Many companies are buying. Last fall, for example, Wal-Mart Stores Inc., DaimlerChrysler AG, Home Depot Inc. and the American Council of Life Insurers all kicked in $1 million each for one of the chamber's special projects: a TV and direct-mail advertising campaign aimed at helping elect business-friendly judges. The participants had all been targets of costly lawsuits, and the chamber's campaign gave them a way to fight back—without disclosing their identities. That allowed them, among other things, to avoid attracting the attention of the nation's trial lawyers, who were spending millions of their own to help elect plaintiff-friendly judges.

'Fixing' the System

Wal-Mart spokesman Tom Williams says his company joined the campaign because "we're always looking for ways to drive down costs for our business and save money for our customers." He says that the fact that Wal-Mart's sponsorship of the ads wouldn't be made public didn't figure into its decision. Nor did the prospect of anonymity sway the ACLI, says Phil Anderson, a spokesman for the Washington-based trade group. Rather, he says, the group wanted to "get people to make different political decisions" and "fix" the legal system.

"Finally," says Mr. Donohue, the "business community is finding out" that class-action lawsuits are "sucking the vitality out of their ability to develop products and do business" without ending up in court. "And somebody—thank you very much—was smart enough to organize" the campaign.

Although Mr. Donohue promised contributors anonymity in the effort, some balked. General Motors Corp., which contributed $250,000 to defeat product-liability legislation, "told them that our [money] cannot be used in judicial races," says GM spokesman William H. Noack. "We did not think it was appropriate," because GM doesn't typically contribute such "soft money" to political campaigns.

Still, Mr. Donohue raised more than $5 million for judicial campaign ads in Michigan, Mississippi, Ohio, Indiana and Alabama. Many of the targeted judges had rendered verdicts against one or more of the companies contributing to the effort. In Mississippi, where the chamber spent about $1 million on the state's Supreme Court elections, it still is engaged in a court battle to protect the identities of its donors.

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Political Cover:
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By Jim VandeHei. Wall Street Journal. (Eastern Edition). New York, N.Y.: Sep 11, 2001. p. A.1

Full Text (2234 words)

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In mid-September, a few weeks after the money earmarked for the judicial races starting rolling in, Bruce Josten, one of Mr. Donohue's closest colleagues, approached more than a dozen pharmaceutical companies. He asked them each to pony up a sizable sum of money to run a separate set of ads under the chamber's banner. The idea was to help defend the views of GOP candidates that sided with the industry in the debate over a Medicare prescription-drug benefit.

At the time, Democrats were pounding Republican candidates and the drug industry for not supporting the initiative, which could have lowered drug prices as well as drug-company profits. The industry, arguing that the legislation would kill its incentives to invest in new drugs, struck back, launching a series of ads through its trade group. But many GOP leaders considered the ads ineffective. Mr. Josten says he offered drug-

company executives a "better messenger" -- the chamber. The idea that the chamber would seem to be a less self-interested spokesman than the drug trade association wasn't a "tough sell," he adds.

Eleven drug makers, including Merck & Co. and Bristol-Myers Squibb Co., contributed $1.22 million each to the campaign, internal chamber documents show. Schering-Plough Corp., which isn't a member of the chamber, chipped in a similar amount. The companies were asked to wire the money to the chamber, which, in turn, paid media-buying companies to place the TV ads under "the U.S. Chamber of Commerce" logo. The chamber collected a total of $15 million between Sept. 29 and Oct. 27, as the ads began airing.

The pharmaceutical companies would neither confirm nor deny that they contributed to the campaign. Ronald Asinari, a spokesman for Schering-Plough says his company "supports programs that facilitate public debate of new ideas that best represent the company's point of view."

GOP strategists say the chamber's ads helped Republican candidates -- Reps. Ernie Fletcher of Kentucky and Mike Rogers of Michigan, for example -- win in several House and Senate races where health care was a major issue. The ads also helped the candidates focus their own spending on other issues.

Mr. Donohue says the chamber's political campaigns benefit all chamber members because the money is spent on pro-business initiatives. "We gave them a means to do this. We gave them a mechanism to do this. We showed them that we have the courage to do this," he says. As for the fund raising, says the sharp-tongued Brooklyn native, "I'm good for getting it."

Indeed, fund raising has been an important part of Mr. Donohue's crusade to re-establish the chamber as an influential player here in Washington. The group's prestige reached its peak during the Reagan years, because of its zealous support for the president's supply-side economic program. But by the mid-1990s, the group's clout had waned. Many of its allies trace the low point to 1994, when Richard Lesher, Mr. Donohue's predecessor, endorsed Hillary Clinton's ill-fated national health-care program, sparking a revolt among his members.

When Mr. Donohue, a former leader of the American Trucking Associations, took over the chamber in 1997 after Mr. Lesher's retirement, he pledged to dispel what he said was the chamber's image as "a sleeping giant, missing in action from many important battles."

Over the next few years, he hired a stable of lobbyists, mainly Republican aides to the GOP-controlled Congress, and a new team of policy experts. During the same period, the chamber started to draw a growing percentage of its members and contributors from among the nation's biggest companies. Those companies helped the chamber raise $35

million in 2000 for general operations, up sharply from $3 million four years ago, and kicked in another $20 million for special projects.

Mr. Donohue has benefited along the way. He says his salary this year will top $1 million, about twice that of his predecessor. The chamber also will spend another $1 million this year to lease and run the eight-seat private jet that it keeps at Mr. Donohue's disposal under terms of his contract. The executive, who rides around Washington in a chauffeured Lincoln, is known for throwing some of the city's most lavish parties on the chamber's behalf. At one recent fete at the National Building Museum, pop star Bruce Hornsby provided the entertainment.

Late last year, Mr. Donohue landed a seat on the Qwest board and stock options in the company worth $750,000. He also sits on the boards of Sunrise Assisted Living Inc., XM Satellite Radio Holdings Inc. and Union Pacific Corp. "I operate at the same level as CEOs. They expect me to be on boards," Mr. Donohue says.

Mr. Donohue feels he has become so visible that he pays security companies to sweep his house, office and business cars for wire-tapping devices as often as twice a year. He fears that trial lawyers or agents from China or Cuba might be trying to listen in on his conversations.

Mr. Donohue says his plane and parties are little more than tools to help him raise more money and make the chamber the most powerful business lobby in town. "Are we more powerful? Damn right we are," he says. The chamber, he adds, continues to spend the vast majority of its money on bread-and-butter issues that appeal to most of its members: freer trade, lower taxes and regulatory and legal reform. But he makes no apologies for the group's aggressive efforts on behalf of some of its deepest-pocketed constituents.

Take, for example, its service to Ford Motor Co. and other major auto makers in the wake of last year's recall of 6.5 million Firestone tires. Firestone tire failures on Ford Explorer vehicles had been implicated in the deaths of more than 100 Americans. The fatalities inspired a fervent crusade by GOP Sen. John McCain of Arizona, among others, for legislation to subject certain manufacturers of defective products to criminal penalties.

The legislation could have exposed the auto makers to billions of dollars in new lawsuits and might have influenced product-liability cases in other industries. Mr. Josten, the chamber's executive vice president, reached out to the Alliance of Automobile Manufacturers, the Rubber Manufacturers Association, which represents tire makers, and lawyer Victor Schwartz, who represented tire maker Bridgestone-Firestone Inc., to develop a response.

Mr. Josten and his collegues mounted a fierce lobbying effort against the McCain bill and helped convince their GOP allies in the House to introduce an alternative that provided business with far more protection from lawsuits. The alternative measure was signed into law by President Clinton six days before the 2000 election.

The successful campaign was run out of the chamber's Institute for Legal Reform, which, according to internal documents, has received $250,000 from GM, $200,000 from Toyota Motor North America U.S.A. Inc., $150,000 from Ford and $50,000 from DaimlerChrysler. Ford felt it would be "more effective to work with a broad-based coalition of companies" with common interests rather than on its own, says company spokeswoman Ellen Dickson.

Several manufacturers and insurance companies also contributed to the Institute for Legal Reform. Wal-Mart and insurer Aegon USA Inc., for instance, each kicked in $1 million, while State Farm Mutual Automobile Insurance Cos. contributed $500,000. Sen. McCain credited the institute with persuading GOP senators to keep his bill from ever reaching the floor.

Around the same time, the chamber's campaign on behalf of Mr. Anschutz was in full swing. It was urging lawmakers to reject a bill introduced by Sen. Fritz Hollings, a South Carolina Democrat, that would have barred partially state-owned foreign companies, such as Deutsche Telekom AG, from merging with a U.S. telecom firm. Mr. Anschutz's Qwest was among several companies that had expressed interest in merging with Deutsche Telekom.

At first, Mr. Donohue's decision to oppose the legislation "raised a lot of eyebrows" at the chamber, says one of the organization's senior officials. The chamber typically avoids taking a position that could hurt any of its members, and cross-border telecom mergers were likely to produce both winners and losers. But Mr. Donohue says he felt that global expansion was good for the entire telecom industry, not just the handful of companies involved in the Deutsche Telekom talks.

For help, Mr. Donohue approached the companies involved in the talks. Deutsche Telekom rebuffed his appeal for a donation. But VoiceStream Wireless, which was in advanced negotiations with the German company, agreed to join the chamber and gave it $100,000. Qwest joined, too, and kicked in $100,000. Spokesmen for both companies said their contributions weren't related to the lobbying campaign.

In early October, Mr. Donohue got AFL-CIO chief John Sweeney to join him at a news conference to denounce the legislation as bad for the U.S. economy. That left the measure as good as dead. Deutsche Telekom completed its merger with VoiceStream earlier this year.

Mr. Donohue is still hoping to talk $1 million out of Mr. Anschutz and dozens of other business leaders. "We're only about a third of the way of where we are going to get before I get out of here," says Mr. Donohue. "We're going to get bigger [and] stronger."

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JAMES P. HOLDEN

September 21, 2000

[redacted]

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Our legal system is not working the way it is supposed to work. It has become so bad that joking about it is now part of our American culture. I, however, do not believe that laughter is the best medicine for our ailing legal system. Instead, we need common-sense legal reforms that make the system fairer and more predictable without taking away the right to sue for legitimate claims.

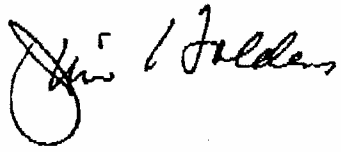
In addition to supporting such reforms, we need to advocate the election of judges who follow the law and resist the temptation to legislate from the bench. Here in Michigan, we have the opportunity to make a difference November 7 by supporting the election of incumbent Supreme Court Justices Stephen Markman, Clifford Taylor, and Robert Young, Jr., for three seats on the Michigan Supreme Court.

This election will be critical since the new court is likely to set the direction of the court for many years to come. Many of us have worked hard to convince the Michigan Legislature to enact sensible legal reforms and other key changes in state law that fairly balance the interests of consumers, employees, and business. All of these reforms could be at risk unless we elect the kind of judges who respect the legislative process and understand the role of the judiciary.

I am hosting a reception in honor of Justices Markman, Taylor, and Young on Tuesday, October 10, from 6:00 p.m. to 8:00 p.m. at Meadow Brook Hall in Rochester Hills. I hope that you will be there to offer your support as well. A contribution of $750 to "Supreme Court 2000" would be most appreciated. A response card is enclosed for your convenience.

I look forward to seeing you on October 10.

Sincerely,



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