

JAMES L. RYAN

SENIOR UNITED STATES CIRCUIT JUDGE, INACTIVE

Honorable Chief Justice and Associate Justices
Supreme Court of Michigan
Hall of Justice, 6th floor
925 W. Ottawa Street
Lansing, MI 48915

Dear Ladies and Gentlemen,

You have invited comment on the report and recommendations of the Task Force on the Role of the State Bar of Michigan.

My comments, most respectfully submitted, derive primarily from my 10 years of service as an Associate Justice of the Michigan Supreme Court, which included two statewide elections (1976 and 1978) to retain the seat on the court to which I had been appointed by Governor William G. Milliken in 1975.

Of the Task Force's many recommendations there is one I believe to be seriously misguided and I would like to explain to you why I think so. The Task Force recommends that the court issue an order declaring "impermissible" any State Bar Advocacy on issues of "election law" and "judicial selection." Such an order, in my view, would be a serious interference with the proper mission of the State Bar and contrary to the public interest.

Nothing has damaged the historic excellent reputation of the Michigan Supreme Court for professional integrity, freedom from bias, and judicial impartiality than the expenditure of increasing millions of dollars of "dark money" that has been contributed by unidentified individuals and organizations to fund the last three Supreme Court campaigns. Tens of millions of dollars have been contributed to these campaigns, including the campaigns of sitting justices, under the thinly veiled guise of "issue advertising." The contributors have not been identified and under current Michigan law need not be. The resulting widespread public perception, mistaken or not, is that the candidates know who these "dark money" contributors are; only the public does not.

I need not spell out for you, ladies and gentlemen, what the ordinary Michigan voter thinks the effect of these massive anonymous contributions "must be" on the benefiting justices. I accept that the scandal of these massive funds being spent for a Supreme Court seat is simply "the way it is" in modern elections, but the greater scandal is perpetuating the system that assures the continuing anonymity of the donors.

The Task Force on Judicial Selection of Michigan Supreme Court Justices, of which I was honored to serve as a member last year and whose report was submitted to you, the Governor and to the Legislature, demonstrated persuasively, I think, why the legislature should amend the Michigan Campaign Finance Act to guarantee transparency in Supreme Court election funding by requiring identification of all contributors to Supreme Court campaigns, including those funds heretofore

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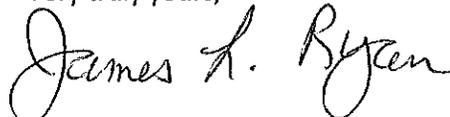
unimaginatively masked as television "issue" advertising. If my wife and I must be identified, and we ought to be, for our paltry \$100 contribution to a Supreme Court candidate's campaign, so should those who contribute millions.

The State Bar of Michigan is uniquely suited to impartially educate the public about the scandal of the "investment" of millions of dollars in Supreme Court campaigns by anonymous, usually out-state donors, and to advocate for legislation to require public disclosure of the identity of all Supreme Court election funding contributors. Such advocacy is, plainly within the rule announced in Kellar v State Bar of California, 496 US2 (1990).

Given Michigan's mandatory State Bar membership rule, no individual, no group, and certainly no bar association is better suited, and better qualified to express an informed position on the need for transparency in Supreme Court election campaign funding, than the State Bar of Michigan; and no other advocate is more likely to enjoy the confidence of the public.

I respectfully urge that you do not enter an order that would preclude the State Bar of Michigan from engaging in advocacy regarding "election law" and "judicial selection" issues.

Very truly yours,

A handwritten signature in black ink that reads "James L. Ryan". The signature is written in a cursive, flowing style with a large initial "J".

James L. Ryan