

Power Rests in the Middle

To the Editor:

The above phrase usually conveys the fact that the “middle” of the electorate generally has a moderating influence on fringe positions. The subject of this letter is the concern that by “resting,” Michigan lawyers in the middle have ceded power to the fringes to the detriment of the profession. In the past several months, lawyers have been asleep. They have ignored a fundamental issue that is about to have serious, permanent repercussions in terms of their right to express their opinions in an organized fashion on issues that directly affect the legal profession at its core. I refer to a recent Supreme Court report of the Task Force on the Role of the State Bar of Michigan that, in no uncertain terms, recommends a permanent gagging of the State Bar on issues fundamental to our system of justice.

Are you one of the middle that has been resting? Well, here’s a question for you: Do you support the idea of unlimited anonymous campaign contributions for elections involving our highest court? If not, do you feel that our State Bar should be “allowed” to voice an opinion on the subject? If the task force report is adopted, you will lose that voice.

How did this threat to our right to take a position on a matter of fundamental importance come about? A little history...

In 2010, a Michigan bipartisan commission chaired by retired United States Supreme Court Justice Sandra Day O’Connor unanimously supported transparency as it

relates to contributions in judicial elections (see Michigan Judicial Selection Task Force Report and Recommendations at <http://www.michbar.org/negligence/eneews/2012fall/JSTFReport.pdf>). The State Bar, following a unanimous vote of the Representative Assembly, filed a motion with the Michigan Secretary of State for declaratory relief in support of this position. The reaction was swift. A nonlawyer Michigan state

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senator proposed a bill that would make our bar association voluntary. Now, why would a nonlawyer senator give a hoot whether our bar association was voluntary or mandatory? This action was clearly retribution for taking a position on “dark money” in judicial campaigns.

In response to this threat to its existence, the State Bar asked the Supreme Court to intervene. This controversial request resulted in the formation of the Supreme Court Task Force on the Role of the State Bar of Michigan.

The task force convened by the Court had very little input from our lawyers. We were asleep at the switch. The final report concludes that the State Bar should remain mandatory but severely muffled. In fact, the report itself concludes that the recommended restrictions on speech are the strictest in the nation. We were taken to the woodshed. The full report is available on the Michigan Supreme Court website (see http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Comments%20new%202013/2014-07_2014-06-03_SBM%20Task%20Force%20Report.pdf).

So if you want to pay dues to a bar association that has been stripped of its ability to act in a meaningful way on issues fundamental to what it means to be a lawyer, remain at rest. Your slumber will be appreciated by those who believe that it is okay to secretly flood our elections with unlimited cash.

If you are offended by this blatant act of retribution, you need to wake up and express yourself.

We are responsible for the quality of justice in our state. Our courts are the one place where everyone needs to feel they get a fair shake. When the average citizen comes to the conclusion, rightly or wrongly, that the judicial branch is for sale to the highest anonymous bidder, we will all suffer the consequences.

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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN

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