

MIICHIGAN CAMPAIGN FINANCE COMPLAINT

Section 1: COMPLAINANT:

Robert S. LaBrant

12411 Pine Ridge Drive Perry, MI 48872

(517) 881-5146

Section 2: ALLEGED VIOLATOR:

Michigan Citizens for Fiscal Responsibility

106 W. Allegan Street, Suite 200

Lansing, MI 48933

(517) 267-9012

Section 3: ALLEGATIONS:

Sections of the MCFA alleged to be violated: Sec. 24 and Sec. 34

COMPLAINT'S STATEMENT OF FACTS

1. "Committee" is defined in Sec. 3 (4) of the Michigan Campaign Finance Act (MCFA), (MCL 169.203) as a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of a candidate, the qualification, passage or defeat of a ballot question or the qualification of a new political party, if contributions received total \$500.00 or more in a calendar year or expenditures total \$500.00 or more in a calendar year. Except as restricted or prohibited or other state or federal law, a committee may also make other lawful disbursements. An individual, other than a candidate, does not constitute a committee. A person, other than a committee registered under this act, making an expenditure to a ballot question committee or an independent expenditure committee, shall not, for that reason, be considered a committee or be required to file a report for the purposes of this act unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee or independent expenditure committee (emphasis added).
2. "Person" is defined in Sec. 11(2) of the Michigan Campaign Finance Act (MCFA) (MCL 169.211) 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.

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3. "Contribution" is defined in Sec. 4(1) of the MCFA (MCL 169.204) which reads as follows:

"Sec. 4(1) "Contribution" means a payment, gift subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for influencing the nomination or election of a candidate, for the qualification, passage or defeat of a ballot question, or for the qualification of a new political party."

4. "Expenditure" is defined in Sec. 6 (1) (a) of the MCFA (169.206) which reads as follows:

(1) "Expenditure" means a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to the nomination or election of a candidate, the qualification, passage or defeat of a ballot question, or the qualification of a new political party. Expenditure includes, but is not limited to, any of the following:

(a) A contribution or transfer of anything of ascertainable monetary value for purposes of influencing the nomination or election of a candidate, the qualification, passage or defeat of a ballot question, or the qualification of a new political party.

5. In an April 9, 2014 letter to Karen Zeglis, an attorney representing the Michigan Community Education Fund MCEF), the Michigan Department of State discussed the disposition of a complaint filed against MCEF. The Department made the following finding:

MCEF is a Committee subject to the Act's Registration and Reporting Requirements

The registration and reporting requirements of the Act apply to any "committee," which is defined as "a person who receives contributions or 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." MCL 169.203(4). Under the Act, a committee is required to file a statement of organization within 10 days of its formation. MCL 169.224(1). The failure to timely file a statement of organization may result in the assessment of late filing fees or, in extreme circumstances, the filing of misdemeanor charges. The failure to file a single campaign finance statement may trigger late filing fees. MCL 169.233(7). In certain circumstances, multiple failures to file may constitute a misdemeanor offense. MCL 169.233(8) Although not relevant to this disposition of this complaint, the Act provides a safe harbor for persons who make contributions to ballot question committees: "A person, other than a committee registered under this Act, making an expenditure to a ballot question committee, shall not, for that reason, be considered a committee for the purposes of this Act unless the person solicits or receives contributions for the purpose of making an

expenditure to a ballot question committee.” MCL 169.203(4). Thus, a corporation that contributes to a ballot question committee is not subject to the Act’s registration and reporting requirements **unless the corporation solicits or receives contributions from other sources for the purpose of making an expenditure to a ballot question committee.** Because Detroit Forward is not a ballot question committee, MCEF cannot avoid registering as a committee on the basis that it did not solicit or receive money for the express purpose of making an expenditure to Detroit Forward.

In your answer on behalf of MCEF, you assert that” [t]here is no requirement under Michigan law that requires a nonprofit corporation to register as a political committee if its only activity is making a contribution to an independent expenditure political committee.” This assertion is not a correct statement of Michigan law.”

ALLEGED VIOLATION

1. Michigan Citizens for Fiscal Responsibility (MCFR) is a “person” for purposes of the Michigan Campaign Finance Act (MCFA).
2. Michigan Citizens for Fiscal Responsibility was disclosed on the July 2020 Quarterly Report of Unlock Michigan, a ballot question committee, as having made direct contributions to Unlock Michigan on five separate occasions during that quarterly reporting period:
 - \$10,000.00 on June 9, 2020
 - \$150,000.00 on June 18, 2020
 - \$400,000.00 on June 24, 2020
 - \$200.00 on June 30, 2020
 - \$100,000.00 on July 20, 2020
3. Michigan Citizens for Fiscal Responsibility has made direct contributions to Unlock Michigan totaling \$660,200.00. That is over 86% of the \$765,024 reported raised by Unlock Michigan.
4. After making their second contribution to Unlock Michigan, Michigan Citizens for Fiscal Responsibility lost any claim it might of had that it was somehow excluded from the definition of “Committee” in Section 3(4) by the phrase **unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee or independent expenditure committee.**

Using the April 9, 2014 Michigan Community Education Fund conciliation agreement as precedent. Michigan Citizens for Fiscal Responsibility in the 2020 election cycle has acted not as a corporation that merely made a contribution to a ballot question committee, but rather Michigan Citizens for Fiscal Responsibility has been acting as an on-going ballot question committee.

Viewed in the context of these facts and the totality of these circumstances, Secretary Benson and the Bureau of Elections should find non-compliance with the MCFA and hold that Michigan Citizens for Fiscal Responsibility, like the Michigan Community Education Fund back in 2014, is required to file a Statement of Organization registering itself as a ballot question committee in Michigan and file periodic campaign statements disclosing its contributors as well as the expenditures it has made.

5. Secretary Benson can clean up the dark money loophole in the MCFA by imposing this simple remedy:

Multiple direct and/or in-kind contributions to a ballot question committee triggers a rebuttable presumption that the dark money group (Michigan Citizens for Fiscal Responsibility) who is disclosed as a multiple contributor has been raising funds for itself to make additional contributions to a ballot question committee (Unlock Michigan).

The first contribution of \$10,000 by Michigan Citizens for Fiscal Responsibility to Unlock Michigan on June 9, 2020 by itself does not carry the presumption that Michigan Citizens for Fiscal Responsibility was acting as a ballot question committee.

However, when Michigan Citizens for Fiscal Responsibility made a \$150,000 contribution to Unlock Michigan on June 18, 2020, that was the second contribution by Michigan Citizens for Fiscal Responsibility to Unlock Michigan giving way to the presumption that it was now acting as a ballot question committee.

Using a LIFO accounting procedure, Michigan Citizens for Fiscal Responsibility would start on June 18, 2020 and work its way backward in time disclosing those contributors to Michigan Citizens for Fiscal Responsibility by name, address, date and amount until it reaches \$150,000, in revenue received by Michigan Citizens for Fiscal Responsibility. Those would be the persons who would be disclosed on Michigan Citizens for Fiscal Responsibility's required campaign statement.

The \$400,000 contribution made by Michigan Citizens for Fiscal Responsibility to Unlock Michigan on June 24, 2020 would be disclosed in that same manner.

The \$200 contribution made by Michigan Citizens for Fiscal Responsibility to Unlock Michigan on June 30, 2020 would also be disclosed in that manner.

The \$100,000 contribution made by Michigan Citizens for Fiscal Responsibility to Unlock Michigan on July 20, 2020 would also be disclosed in that manner.

6. Already in 2020, Michigan Citizens for Fiscal Responsibility, as a ballot question committee, has failed to file a Statement of Organization and its July quarterly financial statement. Under the Act, a committee is required to file a statement of organization within 10 days of its formation. MCL 169.224(1). The failure to timely file a statement of organization may result in the assessment of late filing fees or, in extreme circumstances, the filing of misdemeanor charges. The failure to file a single campaign finance statement may trigger late filing fees. MCL 169.234. In certain circumstances, multiple failures to file may constitute a misdemeanor offense.

Secretary Benson and the Bureau of Elections should assess all penalties and late filing fees necessary to bring Michigan Citizens for Fiscal Responsibility into compliance with the Michigan Campaign Finance Act.

Section 4: CERTIFICATION

I certify to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of this complaint is supported by evidence.

X Robert S. LeBrant

Date: July 30, 2020

Signature of the Complainant

Mystery money fuels campaign to limit Whitmer's emergency powers

Craig Mauger, The Detroit News Published 12:31 p.m. ET July 27, 2020 | Updated 7:51 p.m. ET July 27, 2020

Lansing — The group collecting petitions to limit Gov. Gretchen Whitmer's emergency powers is primarily being funded by a nonprofit that doesn't have to disclose its donors.

Michigan Citizens for Fiscal Responsibility, a Lansing-based organization with ties to Senate Republicans, gave \$660,200 to Unlock Michigan from June 9 through July 20, according to a new campaign finance report. Unlock Michigan is the ballot committee that wants to repeal a 1945 law that allows the governor to declare a state of emergency and keep the declaration in place without input or approval from the Legislature.



Michigan Gov. Gretchen Whitmer gives her morning coronavirus pandemic address via livestream on Monday, April 13, 2020. (Photo: Michigan Executive Office of the Governor)

The emergency declaration is what allows a governor to take unilateral actions, such as requiring masks to be worn in public spaces or issuing a stay-at-home order. The group needs to collect more than 340,000 signatures to initiate the repeal ([/story/news/politics/2020/07/06/petition-limit-governors-emergency-powers-gains-boards-ok/5382976002/](https://www.detroitnews.com/story/news/politics/2020/07/06/petition-limit-governors-emergency-powers-gains-boards-ok/5382976002/)), which Whitmer couldn't veto if the GOP-controlled Legislature approved.

Unlock Michigan's supporters argue that elected lawmakers should have a role in the state's decision-making process during the pandemic. Whitmer, a Democrat, has countered that any attempt to limit her powers during the crisis is "irresponsible, dangerous and foolish." ([/story/news/politics/2020/07/06/petition-limit-governors-emergency-powers-gains-boards-ok/5382976002/](https://www.detroitnews.com/story/news/politics/2020/07/06/petition-limit-governors-emergency-powers-gains-boards-ok/5382976002/)).

Unlock Michigan released its first campaign finance disclosure on Monday. Of the \$765,024 the group raised through July 20, 86% of the money came from Michigan Citizens for Fiscal Responsibility, which spent about \$1.1 million (<https://mcfm.org/node/7191/the-most-expensive-fight-for-the-senate>) backing GOP Michigan Senate candidates in 2018, according to the Michigan Campaign Finance Network.

The organization's board has also featured employees of a consulting firm that works with Senate Republicans. The nonprofit is listed at the same address as the consulting firm in Lansing, according to the disclosures.

Under Michigan law, ballot proposal committees, like Unlock Michigan, can receive money from corporate donors and unions, including nonprofits that raise their funds from elsewhere. The chain of giving effectively conceals the original source of the money.

"Unlock Michigan fully complies with all campaign finance disclosure requirements," said Fred Wszolek, the committee's spokesman. "As of this morning, we have more than 1,000 individual contributors and more than 40,000 grassroots activists involved in signature collection."

He added, "Unlock Michigan does not control the reporting requirements."

Sen. Curtis Hertel, D-East Lansing, countered that Senate Republicans "made the laws." The committee is using "unlimited corporate donations that are unknown to anybody" to try get around a democratically elected governor, he said.

Hertel said he wanted to know whether the donors to Michigan Citizens for Fiscal Responsibility knew their money is being used this way.

"I guess we can't ask them because we don't know who they are," Hertel said.

Mark Fisk, spokesman for Keep Michigan Safe, which is opposing the Unlock Michigan proposal, labeled the group's plan a partisan power grab.

"We urge the public to refuse to sign these petitions because doing so will undermine the ability of our elected leaders and medical experts to keep Michigan families safe during the pandemic," Fisk said. "And if we can't keep people safe, the economy, small businesses and workers will continue to struggle."

Keep Michigan Safe didn't report any contributions as of July 20.

Unlock Michigan disclosed 859 individual contributions on its new report, which covered a period from June 1, when the committee formed, through July 20. Many individual donors giving less than \$500 each. The committee also reported spending \$300,000 on printing and circulating petitions on June 25 and about \$89,000 on digital advertising.



The only other donors that gave more than \$1,000 to the effort were Dearborn-based Edward C. Levy Co., an asphalt and concrete company, which gave \$30,000, and Robert Thompson, president of McCoig Holdings, a concrete supplier, who gave \$25,000.

But Michigan Citizens for Fiscal Responsibility was easily the largest financial supporter. The nonprofit organization formed in 2010, according to state business records.

Over the years, its board has featured Republican political consultants. For 2019, Heather Lombardini was listed as the organization's president, according to a business filing with the state. (<https://lambert.com/team/heather-lombardini/>) Lombardini is also president and managing partner of the Lansing political consulting arm (<https://lambert.com/team/heather-lombardini/>) of the national public relations firm Lambert, according to the company's website.

Lombardini and an attorney for Michigan Citizens for Fiscal Responsibility didn't immediately respond to a request for comment.

Lambert is a consulting firm with clients that include Michigan Senate Republicans. The Senate Republican Campaign Committee reported paying Lambert \$28,000 for consulting services from Jan. 1 through April 20, according to campaign finance disclosures.

Michigan Citizens for Fiscal Responsibility reported raising \$2.1 million and spending \$3.7 million in 2018, according to a tax filing the organization previously released to The Detroit News. The group reported having \$21,846 in assets available at the end of 2018.

According to a list of contribution amounts — the list didn't have to include the names of donors — five individuals, corporations or groups gave at least \$100,000 each to Michigan Citizens for Fiscal Responsibility in 2018, according to the filing.

On the filing, the group said its mission was "to inform and educate the public on fiscal policy issues."

In May, Senate Majority Leader Mike Shirkey, R-Clarklake, called a petition drive to limit Whitmer's emergency powers ([/story/news/politics/2020/05/04/shirkey-petition-drive-limit-michigan-governor-emergency-powers-no-1-priority/3077087001/](https://www.detroitnews.com/story/news/politics/2020/05/04/shirkey-petition-drive-limit-michigan-governor-emergency-powers-no-1-priority/3077087001/)) "probably the No. 1 priority."

Shirkey is "involved" with the Unlock Michigan effort, said Amber McCann, Shirkey's spokeswoman.

Bill Ballenger, a former GOP state lawmaker and longtime political observer in Michigan, said the largest funding source of Unlock Michigan isn't likely to be a big deal for the public. Voters and residents have been "saturated" with stories about "dark money" while many ballot campaigns have previously been funded by nonprofit groups, he said.

"I don't think it really resonates with voters and the public broadly," Ballenger added.

cmauger@detroitnews.com

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STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

April 9, 2014

Karen Zeglis
Utrecht, Kleinfeld, Fiori, Zeglis & Partners
1900 M Street, NW
Suite 500
Washington, DC 20036

Dear Ms. Zeglis:

The Department of State (Department) has completed its investigation of the campaign finance complaint filed against Detroit Forward and the Michigan Community Education Fund (MCEF) by Turnaround Detroit, which alleged that Detroit Forward violated sections 33 and 41 of the Michigan Campaign Finance Act (Act), 1976 PA 388, MCL 169.201 *et seq.*, and MCEF violated sections 24 and 33 of the Act. This letter concerns the disposition of Turnaround Detroit's complaint, which was filed on November 1, 2013. You filed an answer on behalf of the respondents on December 23, 2013. Turnaround Detroit did not file a rebuttal statement with the Department. The Department requested additional information from you on March 5, 2014. You provided this information by letter dated March 13, 2014.

The complainant alleged that: (1) MCEF met the Act's definition of committee and was obligated to meet the registration and reporting requirements of the Act when it made 4 contributions totaling \$149,000.00 to Detroit Forward, and that MCEF violated the Act by failing to comply with these provisions; (2) Christopher Jackson, treasurer of Detroit Forward and the lone incorporator of MCEF, set up MCEF "for the purpose of funneling secret contributions to Detroit Forward[;]" (3) Detroit Forward filed incomplete or inaccurate reports because it was required to itemize the contributions it received from MCEF and report the names of each individual or entity who was the source of the funds of the 4 contributions made by MCEF to Detroit Forward; and (4) MCEF acted as an intermediary and was required to disclose the names and addresses of the actual sources of the contributions it made to Detroit Forward.

In the course of the Department's investigation of the complaint, review of Detroit Forward's campaign finance statements, and the evidence and supplemental material provided, the Department finds there may be a reason to believe violations of the Act occurred as explained below.

Background

Detroit Forward was formed as an independent expenditure PAC on April 17, 2013. Detroit Forward listed Christopher T. Jackson as its treasurer on its Statement of Organization. Detroit Forward's Statement of Organization was signed by Mr. Jackson and Shelly R. Moskwa (the designated record keeper) and filed with the Wayne County clerk on April 18, 2013.

On September 26, 2013 Mr. Jackson filed Articles of Incorporation for MCEF with the Michigan Department of Licensing and Regulatory Affairs.¹ The Articles of Incorporation indicate that MCEF is a "nonprofit organization that shall operate exclusively for social welfare purposes within the meaning of section 501(c)(4) of the Internal Revenue Code of 1986, as amended, which shall include but not be limited to voter registration and education."

According to your March 13 response to the Department's request for additional information, MCEF used funds received on the following dates as the source of its contributions to Detroit Forward:

<u>Date</u>	<u>Amount</u>
10/3/2013	\$50.00
10/10/2013	\$15,000.00
10/10/2013	\$15,000.00
10/10/2013	\$10,000.00
10/18/2013	\$39,000.00
10/21/2013	\$100,000.00

In turn, MCEF made the following contributions to Detroit Forward:

<u>Date</u>	<u>Amount</u>
10/17/2013	\$25,000.00
10/20/2013	\$39,000.00
10/28/2013	\$70,000.00
10/28/2013	\$15,000.00

Thus, in a 12-day period, MCEF contributed a total of \$149,000.00 to Detroit Forward and became Detroit Forward's largest contributor. In fact, between October 17 and October 28, 2013 MCEF contributed \$149,000.00 of the \$442,700.00 Detroit Forward raised during the entire 2013 Detroit mayoral election cycle, or over 33%.

After reviewing Detroit Forward's campaign finance statements, the Department notes that on October 21, 2013 -- the same day MCEF received a \$100,000.00 contribution -- Detroit Forward's cash-on-hand was \$32,818.68. Mr. Jackson then proceeded to make \$68,308.75 in expenditures from Detroit Forward over the next 5 days, leaving Detroit Forward with a negative balance in the amount of \$35,490.07 on October 26, 2013. Mr. Jackson then transferred \$85,000.00 from MCEF to Detroit Forward on October 28, 2013. It appears to the Department that due to Mr. Jackson's unique interlocking positions with both MCEF and Detroit Forward, and his knowledge of Detroit Forward's needs, although Mr. Jackson originally deposited the October 21, 2013 \$100,000.00 contribution in MCEF's account, he treated that money as Detroit

¹ By letter dated March 6, 2014, the Department requested the names of all directors of MCEF. According to your response, "MCEF is currently in the process of memorializing its board of directors" and that "[a]round the time of MCEF's formation, Mr. Jackson spoke with Nathan Ford and Keith Williams about joining the board, and both agreed to serve." You further stated that "Mr. Ford and Mr. Williams weighed in on the voter registration and engagement activities of MCEF in 2013 and have continually offered strategic advice regarding the organization." Thus, it appears that Mr. Jackson was the sole director of MCEF at all times relevant to this complaint.

Forward's funds and made expenditures of those funds from Detroit Forward almost immediately and before the transfer.

With your March 13 response to the Department, you provided Mr. Jackson's sworn affidavit, which stated that he "formed MCEF to address the urgent need to increase voter participation in Detroit and other urban areas within the state of Michigan." He also stated that he "personally solicited funds for MCEF in one-on-one meetings and conversations by telephone" and that "[i]n no discussion did [he] specifically raise funds for MCEF for the purpose of making a contribution to Detroit Forward [.]". Yet, Mr. Jackson acknowledged in his affidavit that "[i]n each discussion about a potential donation to MCEF, [he] discussed the primary purpose of the MCEF, voter registration and engagement, **as well as potential permissible and limited political activities of MCEF [.]**" and that "**MCEF could engage in direct advocacy for or against a candidate, or provide financial support to other groups engaging in direct candidate advocacy.**" (Emphasis added.) Because MCEF used contributions in accordance with Mr. Jackson's statements to contributors that MCEF may use its funds to provide financial support to groups engaging in direct candidate advocacy, MCEF must disclose the original source of the funds solicited.

As the sole incorporator of MCEF and treasurer of Detroit Forward, Mr. Jackson was keenly aware of both organizations' financial positions and could quickly direct substantial contributions from MCEF to Detroit Forward. During this pivotal period, Mr. Jackson transferred over 80% of all funds obtained by MCEF from the time of its inception until Election Day (\$179,050.00).² Thus, it appears that MCEF's original, primary purpose was to shield the names of contributors to Detroit Forward from public disclosure, not fund a coordinated education campaign on voter registration and participation. In essence, by having donors contribute to MCEF and then transferring the contributions to Detroit Forward, Mr. Jackson orchestrated MCEF's effort to thwart the disclosure purposes of the Act.

MCEF is a Committee Subject to the Act's Registration and Reporting Requirements

The registration and reporting requirements of the Act apply to any "committee," which is defined as "a person^{3]} 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." MCL 169.203(4). Under the Act, a committee is required to file a statement of organization within 10 days of its formation. MCL 169.224(1). The failure to timely file a statement of organization may result in the assessment of late filing fees or, in extreme circumstances, the filing of misdemeanor charges. *Id.* The failure to file a single campaign statement may trigger late filing fees. MCL 169.233(7). In certain circumstances, multiple failures to file may constitute a misdemeanor offense. MCL 169.233(8).

² When accounting for all funds received by MCEF from September 26, 2013 to present, approximately 70% of MCEF's total was transferred to Detroit Forward.

³ The word "person" is 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." MCL 169.211(1).

Although not relevant to this disposition of this complaint, the Act provides a safe-harbor for persons who make contributions to ballot question committees: "A person, other than a committee registered under this Act, making an expenditure to a ballot question committee, shall not, for that reason, be considered a committee for the purposes of this act unless the person solicits or receives contributions for the purpose of making an expenditure to the ballot question committee." MCL 169.203(4). Thus, a corporation that makes a contribution to a ballot question committee is not subject to the Act's registration and reporting requirements unless the corporation solicits or receives contributions from other sources for the purpose of making an expenditure to a ballot question committee. Because Detroit Forward is not a ballot question committee, MCEF cannot avoid registering as a committee on the basis that it did not solicit or receive money for the express purpose of making an expenditure to Detroit Forward.

In your answer on behalf of MCEF, you assert that "[t]here is no requirement under Michigan law that requires a nonprofit corporation to register as a political committee if its only activity is making a contribution to an independent expenditure political committee." This assertion is not a correct statement of Michigan law. Any person, including a corporation, which receives contributions or makes expenditures of at least \$500.00 in a calendar year satisfies the statutory definition of "committee" and becomes subject to the Act. A nonprofit corporation that makes contributions to an independent expenditure committee which supports or opposes a candidate, such as Detroit Forward, falls squarely within this definition. Once MCEF met the definition of a committee, it was required to file a statement of organization within 10 days. MCL 169.224(1).

MCEF was also required to file periodic campaign finance statements that completely and accurately disclose the sources, dates, and amounts of all contributions and expenditures. MCEF was required to file a 2013 Pre-General Report due on October 25, 2013 (with a closing date of October 20, 2013), and a 2013 Post-General Report due on December 5, 2013 (with a closing date of November 25, 2013). MCL 169.233.

In addition, a treasurer who files an incomplete or inaccurate statement or report is subject to a civil fine of up to \$1,000.00. MCL 169.233(10). A treasurer who knowingly omits or underreports individual contributions or individual expenditures required to be disclosed by the Act may be subject to a civil fine of up to \$1,000.00 or the amount of the undisclosed contributions, whichever is greater. MCL 169.233(11). By failing to file either campaign statement, MCEF effectively omitted every contribution it received and every expenditure it made during the Detroit mayoral election cycle, in violation of MCL 169.233(11). These omissions deprived voters of the opportunity to learn the true source(s) of \$149,000.00 in contributions it received and expenditures it made to Detroit Forward in advance of the November 5, 2013 general election.

Finally, the Act requires a committee to file a late contribution report within 48 hours of receipt of a late contribution. MCL 169.232(1). The failure to file a late contribution report may trigger late filing fees equal to the amount of the undisclosed contribution or \$2,000.00 per report, whichever is less. MCL 169.232(4). MCEF was required to file one such report for the late contribution it received on October 21, 2013, identifying the source and amount of that late contribution.

Because the Department concludes that MCEF met the definition of a committee, should have registered as a committee and filed complete and accurate statements and reports of its contributions and expenditures, the duty to disclose fell upon MCEF, not Detroit Forward.

However, if MCEF denies it violated the statute, the Department is prepared to find that MCEF is an adjunct of Detroit Forward and that Detroit Forward violated the Act by commingling its funds with those of MCEF, failing to disclose contributors, filing incomplete and inaccurate reports, and failing to identify MCEF's account as a secondary depository. Detroit Forward and MCEF shared an interlocking treasurer/director who was aware of the financial needs of Detroit Forward. Because of this unique relationship, Mr. Jackson was in the position to solicit funds through MCEF which he then almost immediately transferred to Detroit Forward. Records indicate that Mr. Jackson expended this money from Detroit Forward on at least one occasion before actually transferring the money from MCEF, leading the Department to believe Mr. Jackson treated this money as Detroit Forward's from the time of its receipt.

Proposed Resolution

Based on the foregoing, the Department finds that there may be reason to believe that MCEF violated the Act. MCL 169.215(10). Having made this determination, the Department is required by law to attempt to resolve this matter informally. *Id.* The Department now offers you this opportunity to informally resolve the complaint by executing the enclosed conciliation agreement, which requires MCEF to: (1) file all outstanding statements and reports with the Wayne County Clerk, including the statement of organization, 2013 Pre-General and Post-General campaign statements, and October 21, 2013 late contribution report; (2) pay to the Wayne County Clerk all associated late filing fees, which total \$4,300.00; (3) provide to the Department copies of all statements and reports and a receipt of filing and proof of payment; and (4) pay a civil fine to the State of Michigan in the amount of \$15,000.00 for the undisclosed contributions.

If MCEF accepts this settlement, it must return all of the materials described above, payment in full, and the executed conciliation agreement to this office on or before May 8, 2014. Payment of the civil fine must be made by check or money order payable to the State of Michigan; please include the notation, "Conciliation Agreement, Attn: Bureau of Elections" on your check or money order; please contact the Wayne County Clerk's Elections Division at (313) 224-5525 for further instructions on remitting late filing fees to that office.

Within 30 days of its determination that there may be a reason to believe a violation of the Act has occurred, the Department is required to post on its website the associated complaint, response, rebuttal statement, and any correspondence regarding that violation between the Department and the respondent. This correspondence includes this determination letter. Please note that as long as a good-faith effort is made and the conciliation process is ongoing, the Department will not post any information to its website regarding this complaint until the 30th day.

Please be advised that if the Department is unable to resolve this complaint informally, it is required by MCL 169.215(10)-(11) to refer the matter to the Attorney General with a request that he prosecute MCEF, Mr. Jackson, or both for the misdemeanor offenses of failing to file a Statement of Organization for more than 30 days and failure to file two or more campaign

finance statements for more than 30 days, or commence an administrative hearing to enforce the civil penalties provided by law. "If after a hearing the secretary of state determines that a violation of this act has occurred, the secretary of state may issue an order requiring the person to pay a civil fine equal to triple the amount of the improper contribution or expenditure plus not more than \$1,000.00 for each violation." MCL 169.215(11).

Sincerely,

A handwritten signature in black ink that reads "Lori A. Bourbonais" followed by a stylized flourish.

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

Fracassi, Adam (MDOS)

From: SOS, Elections
Sent: Monday, August 10, 2020 5:04 PM
To: Malerman, Melissa (MDOS); Fracassi, Adam (MDOS)
Subject: FW: Amendment to Section 3 (Alleged Violation) filed by Robert LaBrant against Michigan Citizens for Fiscal Responsibility (Paragraph 5) signed July 30, 2020

From: Bob LaBrant <bob@boblabrant.com>
Sent: Sunday, August 9, 2020 11:10 AM
To: SOS, Elections <Elections@michigan.gov>
Subject: Amendment to Section 3 (Alleged Violation) filed by Robert LaBrant against Michigan Citizens for Fiscal Responsibility (Paragraph 5) signed July 30, 2020

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5. Secretary Benson can clean up the dark money loophole in the MCFA by imposing this simple remedy: Multiple direct and/or in-kind contributions to a ballot question committee triggers a rebuttable presumption that the dark money group (Michigan Citizens for Fiscal Responsibility) who is disclosed as a multiple contributor has been raising funds for itself to make additional contributions to a ballot question committee (Unlock Michigan).

Let us look at this rebuttable presumption standard:

The standard does not mean that whenever a corporation, union, or association (entity) makes a second or third contribution to a ballot question committee, then that entity is required to register and report itself as a ballot question committee.

Rebuttable presumption can be explained using the following example. Let us say a corporation, like GM, contributes \$50,000 to a ballot question committee. Then it makes a second contribution of \$75,000 to that same ballot question committee. If someone raises the presumption that GM itself must be a ballot question committee, the allegation can easily be rebutted. General Motors has perhaps millions of dollars in its corporate treasury. The presumption that General Motors was out soliciting third parties to make that second \$75,000 contribution can be successfully rebutted.

Not so, for Michigan Citizens for Fiscal Responsibility (MCFR). MCFR'S first contribution on June 9 to Unlock Michigan was for \$10,000; everyone agrees a one-time contribution under Sec. 3(4) does not trigger any registration or reporting requirement. However, ten days later, on June 18, MCFR made a \$150,000 contribution to Unlock Michigan. Then six days later, on June 24, it made a third contribution of \$400,000 to Unlock Michigan. Why make three separate contributions over a 16-day period? Why not just write a \$560,000 check to Unlock Michigan? The answer that can be inferred is cash flow.

MCFR needed to be out soliciting funds during that period to receive additional contributions to bring its total up to \$560,000 by June 24. Can MCFR rebut that presumption?

If not, MCFR must register and disclose those contributors. Using a LIFO accounting procedure, MCFR would start on June 18 and work its way backward in time disclosing those contributors to MCFR by name, address, date, and amount until it reaches \$150,000 in revenue received by MCFR. The three other contributions made during the July quarterly reporting period (June 24, June 30, and July 20) would also be disclosed using this same methodology.



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

August 14, 2020

Michigan Citizens for Fiscal Responsibility
106 WQ. Allegan Street, Suite 200
Lansing, MI 48933

Dear Michigan Citizens for Fiscal Responsibility:

The Department of State (Department) received a formal complaint filed by Robert LaBrant against you, alleging that you violated the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* A copy of the complaint and supporting documentation is enclosed with this letter.

Section 24 requires committees to file a statement of organization with the proper filing official within 10 days after the committee is formed. MCL 169.224(1). Section 24 details specific requirements for all statement of organizations that must be filed. See MCL 169.224(2)-(3). A candidate who fails to form a candidate committee within 10 days is subject to a civil fine up to \$1,000. MCL 169.221(13). Failure to file a statement of organization shall pay a late filing fee of \$10.00 per business day the report isn't filed not to exceed \$300. MCL 169.224(1). A person failing to file a statement of organization after 30 days, is guilty of a misdemeanor punishable by a fine up to \$1,000.

After formation, committees must file reports disclosing their contributions and expenditures as set forth in sections 33 and/or 34 of the Act. The MCFA requires a committee that receives or expends more than \$1,000 during any election to file campaign finance reports in compliance with the Act. MCL 169.233(6). A person who knowingly omits or underreports expenditures required to be disclosed by the Act is subject to a civil fine of not more than \$1,000 or the amount of the expenditures omitted or underreported, whichever is greater. MCL 169.233(11).

Mr. LaBrant alleges that Unlock Michigan has disclosed received five separate direct contributions from Michigan Citizens for Fiscal Responsibility totaling \$660,200 or more than 86% of Unlock Michigan's contributions. Mr. LaBrant further alleges that you have failed to form and register a committee and disclose the information of your contributors in violation of the Act.

The purpose of this letter is to inform you of the Department's examination of these matters and your right to respond to the allegations before the Department proceeds further. It is important to understand that the Department is neither making this complaint nor accepting the allegations as true. The investigation and resolution of this complaint is governed by section 15 of the Act and the corresponding administrative rules, R 169.51 *et seq.* An explanation of the investigation process is enclosed with this letter and a copy is available on the Department's website.

If you wish to file a written response to this complaint, you are required to do so within 15 business days of the date of this letter. Your response may include any written statement or additional documentary evidence you wish to submit.

All materials must be sent to the Department of State, Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918. Materials should also be sent via email to Elections@Michigan.gov given the ongoing public health pandemic. If you fail to submit a response, the Department will render a decision based on the evidence furnished by the complainant.

A copy of your answer will be provided to Mr. LaBrant, who will have an opportunity to submit a rebuttal statement to the Department. After reviewing all of the statements and materials provided by the parties, the Department will determine whether “there may be reason to believe that a violation of [the MCFA] has occurred [.]” MCL 169.215(10). Note that the Department’s enforcement powers include the possibility of entering a conciliation agreement, conducting an administrative hearing, or referring this matter to the Attorney General for enforcement of the criminal penalties provided in section 24(1) of the Act.

Sincerely,



Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Robert LaBrant

CLARK HILL

Brian D. Shekell
T (313) 965-8803
F (313) 309-6833
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Clark Hill PLC
500 Woodward Ave., Suite 3500
Detroit, MI 48226
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clarkhill.com

September 9, 2020

Adam Fracassi
Bureau of Elections
Michigan Department of State
430 W. Allegan, First Floor
Lansing, MI 48918

Re: Response of Michigan Citizens for Fiscal Responsibility to Complaint filed by Robert S. LaBrant

Dear Mr. Fracassi:

This office represents Michigan Citizens for Fiscal Responsibility (the “Respondent”) in the above-referenced matter. On August 20, 2020, we received a copy of your letter dated August 14, 2020 and the August 3, 2020 Complaint, as amended on August 9, 2020 (the “Complaint”), that was submitted by Robert S. LaBrant. Please allow this letter to serve as Respondent’s response to the Complaint and a request that it be dismissed.

The Complaint alleges that Respondent became a “ballot question committee” under the Michigan Campaign Finance Act (the “MCFA”), because it made more than one contribution to Unlock Michigan, a registered ballot question committee in the State of Michigan. There is no legal, precedential, or common-sense support for the Complaint’s fanciful assertions.

The relief requested in the Complaint requires Secretary of State Jocelyn Benson (“Secretary Benson”) to act contrary to established Michigan law. That is, the Complaint urges Secretary Benson to disregard the plain language of MCL 169.203(4), which mandates that a person making an expenditure “shall not” be “considered a committee” under the MCFA “unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee.”

Applying the correct legal standard that is set forth in MCL 169.203, the Complaint is not, and cannot be, supported by any evidence that Respondent has solicited or received contributions for the purpose of making an expenditure to Unlock Michigan. The absence of any such evidence is dispositive and must result in dismissal of the Complaint.

The Complaint attempts to overcome this fatal defect by asserting that Secretary Benson should unilaterally promulgate and apply a “rebuttable presumption standard.” This argument too is devoid of any supporting legal authority and impermissibly shifts the burden to Respondent to prove a negative. In fact, it is at direct odds with the clear and unambiguous text of the MCFA.

Simply put, the Complaint is without a scintilla of factual or legal support. It urges Secretary Benson to ignore the law she is duty bound to adhere to and apply a rule that Mr. LaBrant, a private citizen, contrived on his own. For these reasons, and as described in more detail below, the Complaint should be dismissed.

I. THE PLAIN AND UNAMBIGUOUS TEXT OF THE MCFA REQUIRES DISMISSAL OF THE COMPLAINT

The Complaint asserts that Respondent is a “committee” under the MCFA simply because it made more than one contribution to a ballot question committee. However, this unfounded and conclusory claim is contrary to what the MCFA requires in order for a “person” to be deemed a “committee.” MCL 169.203(4) states:

A person, other than a committee registered under this act, making an expenditure to a ballot question committee or an independent expenditure committee, shall not, for that reason, be considered a committee or be required to file a report for the purposes of this act unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee or independent expenditure committee. (Emphasis added)

The language of MCL 169.203(4) is plain and unambiguous. Respondent cannot, as a matter of law, be considered a “committee” under the MCFA unless it “solicits or receives contributions for the purpose of making an expenditure to that ballot question committee.” There is no language in MCL 169.203 or the MCFA that prohibits a person from making multiple contributions to the same ballot question committee or that turns a person into a “committee” if it makes more than one contribution. Stated differently, it is irrelevant whether Respondent made 1, 2, 10 or 100 contributions to Unlock Michigan.

The *only* relevant question permitted by the MCFA is whether Respondent solicited or received contributions for the purpose of making an expenditure to Unlock Michigan or any other ballot question committee. The answer to this question is simple, straightforward, and fatal to the Complaint’s allegations – Michigan Citizens for Fiscal Responsibility did not solicit or receive contributions *for the purpose* of making an expenditure to Unlock Michigan or any other ballot question committee. (Exhibit 1, Affidavit of Heather Lombardini). The Complaint does not, and cannot, assert otherwise.

The uncontroverted affidavit of Heather Lombardini, President of Respondent, is dispositive. There is no evidence that Respondent solicited or received contributions *for the purpose* of making an expenditure to Unlock Michigan. The allegations in the Complaint are

without factual support and should result in its dismissal. *See* Interpretative Statement issued to Constance Cumbey dated December 28, 1979 (noting that the Michigan Department of State is bound to enforce the MCFA's limitations as written).

II. THE COMPLAINT'S "REBUTTABLE PRESUMPTION" THEORY SHOULD BE DISREGARDED

The Complaint attempts to circumvent the unambiguous text of the MCFA by advocating for the application of a "rebuttable presumption." It argues that Secretary Benson should apply a rebuttable presumption that a person is deemed a committee under the MCFA if it makes multiple contributions to a ballot question committee. This rebuttable presumption theory is without any legal support, is at direct odds with the plain text of MCL 169.203 and urges Secretary Benson to improperly circumvent the legislative process by applying a new and different legal standard.

A. There is no legal support for a rebuttable presumption

It is evident when reading the Complaint that Mr. LaBrant's advocacy for a rebuttable presumption is without legal support. Indeed, Mr. LaBrant espouses the need for Secretary Benson to apply a rebuttable presumption without a single citation or reference to any legal authority. This is because there is no such authority.

Nowhere is this "rebuttable presumption" theory discussed in the MCFA, the MCFA's administrative rules, cases, Attorney General opinions, declaratory rulings, interpretative statements, or any other authority.

Secretary Benson should reject the Complaint's request to apply a rebuttal presumption in this case given the absence of any legal support to support its adoption and application.

B. A rebuttable presumption ignores the plain text of the MCFA

The "rebuttable presumption" theory should also be disregarded because it ignores the requirement in the MCFA that a person must solicit or receive contributions for "the" purpose of making an expenditure to that ballot question committee. *See* MCL 169.203(4). Not "a" purpose, but "the" purpose. As recognized by the Michigan Supreme Court:

"The" and "a" have different meanings. "The" is defined as "definite article. 1. (used, [especially] before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an)" *Random House Webster's College Dictionary*, p. 1382.

* * *

"We must follow these distinctions between "a" and "the" because the Legislature has directed that "[a]ll words and phrases shall be construed and understood according to the common and approved

usage of the language....” MCL 8.3a. See, e.g., *Detroit v. Tygard*, 381 Mich. 271, 275, 161 N.W.2d 1 (1968) (“We regard the use of the definite article ‘the’ as significant.”)

Robinson v. City of Detroit, 486 Mich 1, 14 (2010).

Even if one of the bases upon which Respondent solicited contributions was so that it could make an expenditure to Unlock Michigan, which it was not, the MCFA requires a showing that Respondent’s solicitation of such contributions was *the* reason. There is simply no evidence that Respondent has engaged in such activity. See Affidavit of Heather Lombardini.

The fallacy in the rebuttable presumption theory is further underscored by the fact that it seeks to introduce concepts such as cash flow and multiple contributions, which necessarily fall outside “the” purpose that is required by the MCFA. See *Robinson, supra*. The rebuttable presumption theory is contrary to the text of the MCFA.¹

C. The Legislature could have required a rebuttal presumption when it passed the MCFA, but did not do so

Had the Legislature wanted to permit Secretary Benson to apply a rebuttable presumption in this type of case, it would have expressly provided for such in the MCFA. See *Potter v. McLeary*, 484 Mich. 397, 422 n. 30, (2009) (observing that “[i]f the Legislature wanted such a requirement, it could have easily included it”).

The concept of a rebuttable presumption is not new, nor has it been lost on the Legislature. There have been multiple laws passed by the Legislature that expressly called for rebuttable presumptions to be applied in certain circumstances. See e.g., MCL 780.951 (providing for a “Presumption Regarding Self-Defense); MCL 600.2946 (“In a product liability action brought against a manufacturer or seller for harm allegedly caused by a product, there is a *rebuttable presumption* that the manufacturer or seller is not liable if, at the time the specific unit of the product was sold or delivered to the initial purchaser or user...”)(emphasis added); MCL 710.33(2) (“Such a notice shall create a *rebuttable presumption* as to paternity of the child for purposes of dependency or neglect proceedings under chapter 12a.”)(emphasis added); MCL 206.667 (The apportionment provisions of this part shall be *rebuttably presumed* to fairly represent the business activity attributed to the taxpayer in this state...”)(emphasis added).

The fact that the Legislature could have, but did not, adopt the rebuttable presumption Mr. LaBrant advocates for in this matter is further evidence that his theory is without merit. Simply put, the MCFA does not authorize Secretary Benson to apply Mr. LaBrant’s rebuttable presumption theory in this case or in any other case. While Mr. LaBrant may not personally agree

¹ Aside from being contrary to the text of the MCFA, the Complaint’s “rebuttable presumption” theory ignores the dangers of creating presumptions in general. It is a time-honored principle that presumptions are like “bats of the law, flitting in the twilight, but disappearing in the sunshine of actual facts.” See *Mackowik v. Kansas City, St. J. & C.B. R.R.*, 94 S.W. 256, 262 (Mo. 1906).

with what MCL 169.203 requires, it is not the role of Secretary Benson to shirk her constitutional and legal obligations to enforce the MCFA as written.

D. Applying a rebuttable presumption would eviscerate MCL 169.203

Mr. LaBrant's rebuttable presumption theory is also contrary to the express presumption in MCL 169.203 that a person is not a committee.

The statutory presumption in favor of a person *not* being deemed a committee can only be rebutted by a showing that a person solicited or received contributions for the purpose of making an expenditure to a ballot question committee. Mr. LaBrant's theory, however, turns MCL 169.203(4) on its head by reversing the statutory presumption that a person is not a committee. Stated differently, Mr. LaBrant advocates that Secretary Benson disregard the entire legislative process and unilaterally amend the MCFA by substituting his presumption for what the duly enacted law currently requires. *See Martin v. Secretary of State*, 482 Mich. 956 (2008) ("it is not 'manifestly unjust' for this Court to conclude that the plain words of a law enacted by the Legislature cannot be modified by a clerk in the Secretary of State's office (or indeed by the Secretary of State herself).") (Markman, concurring). *See also South Dearborn Environmental Improvement Ass'n, Inc. v. Dep't of Environmental Quality*, 502 Mich. 349, 360 (2018) (when interpreting a statute, the principal goal "is to give effect to the Legislature's intent, and the most reliable evidence of that intent is the plain language of the statute")(opinion by Bernstein); *In re Rovas Complaint*, 482 Mich. 90, 108 (2008) (an administrative agency's interpretation of a statute that it is obligated to execute "cannot conflict with the plain meaning of the statute"). The Complaint's rebuttable presumption theory is without legal support and, in fact, is at direct odds with the plain text of the MCFA and longstanding principles of statutory construction. Secretary Benson should reject Mr. LaBrant's attempt to circumvent the legislative process and unilaterally promulgate his own law.

E. Mr. LaBrant's public statements regarding this matter, when compared to the undisputed facts, further supports dismissal of the Complaint.

Even if Mr. LaBrant's rebuttable presumption theory had a shred of legal support, which it does not, Mr. LaBrant's public statements confirm that Respondent has sufficiently rebutted that presumption.

In an August 24, 2020 article published by The Ballenger Report titled *Why LaBrant Filed Complaint Against 'Unlock Michigan' Funding*, Mr. LaBrant provides an "exclusive statement" regarding the allegations upon which his Complaint is based and the reasoning for his contrived theories.²

Among Mr. LaBrant's statements in The Ballenger Report article is his recognition that if Respondent had a sufficient level of funds in its bank account prior to making contributions to Unlock Michigan, then it has sufficiently rebutted the "presumption" that Respondent's

² <https://www.theballengerreport.com/why-labrant-filed-complaint-against-unlock-michigan-funding/>

expenditures result in its being a committee under the MCFA. Indeed, this makes sense because Respondent would not need to solicit funds for Unlock Michigan if it already had the funds in the first place. Specifically, Mr. LaBrant states:

In my complaint, I stated that the second contribution by MCFR to Unlock Michigan raises the presumption that during the nine days between their first contribution (\$10,000) on June 9, and the second contribution (\$150,000) to Unlock Michigan on June 18, MCFR was doing precisely what that phrase — “unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee” — says disqualifies MCFR from being exempt from definition of “committee.” That presumption, of course, can be rebutted. It is conceivable that MCFR had \$160,000 in its bank account on June 9, 2020 and that MCFR was not out soliciting and receiving contributions to make that second contribution of \$150,000 to Unlock Michigan on June 18. (Emphasis added).

As detailed in the affidavit of Ms. Lombardi, the Form 990 that Respondent intends to submit will show that Respondent had a bank account balance of over \$700,000 as of December 31, 2019. (Ex. 1) This is far above the amount of the expenditures made to Unlock Michigan in 2020 dispelling the need to solicit funds for the purpose of making an expenditure to Unlock Michigan. This undisputed fact, in Mr. LaBrant’s view, adequately rebuts the presumption that Respondent was soliciting funds for the “purpose of making an expenditure to that ballot question committee” because it always had a bank account balance in excess of any expenditure made to Unlock Michigan.

Even if Secretary Benson were to apply Mr. LaBrant’s rebuttable presumption theory, which she should not, Respondent has rebutted the presumption that it acted as a committee by providing evidence of its financial resources above the amount of the expenditures made to Unlock Michigan. This too should result in dismissal of the Complaint.

III. SECRETARY BENSON SHOULD DISREGARD THE COMPLAINT’S EXAMPLES AND RELIANCE ON AN INAPPLICABLE CASE FROM 2014

In tacit acknowledgment that there is no support for the indefensible positions asserted in the Complaint, Mr. LaBrant sets forth strained applications of a distinguishable past case and illusory hypotheticals. His reliance on this case and hypotheticals should be ignored.

A. The 2014 MCEF matter is inapposite

The Complaint seeks to utilize the 2014 Michigan Community Education Fund (“MCEF”) matter as “precedent” to support its otherwise meritless positions. The MCEF case has no application to this case.

The Department of State's inquiry into MCEF's expenditures was based on Detroit Forward *not* being registered as a ballot question committee under the MCFA. In its April 9, 2014 letter, the Department of State stated:

"Although not relevant to this disposition of this complaint, the Act provides a safe harbor for persons who make contributions to ballot question committees: "A person, other than a committee registered under this Act, making an expenditure to a ballot question committee, shall not, for that reason, be considered a committee for the purposes of this Act unless the person solicits or receives contributions for the purpose of making an expenditure to a ballot question committee." MCL 169.203(4). Thus, a corporation that contributes to a ballot question committee is not subject to the Act's registration and reporting requirements unless the corporation solicits or receives contributions from other sources for the purpose of making an expenditure to a ballot question committee. Because Detroit Forward is not a ballot question committee, MCEF cannot avoid registering as a committee on the basis that it did not solicit or receive money for the express purpose of making an expenditure to Detroit Forward." (Emphasis added).

The fact that Detroit Forward was not considered a "ballot question committee" is critically material for purposes of this analysis. Under MCL 169.203(4), it is presumed that a person is not a committee if they make contributions to a "ballot question committee." Detroit Forward was not a ballot question committee, which meant that the presumption and showing of proof that is required here did not apply.

Here, there is no dispute that Unlock Michigan is duly registered as a ballot question committee in Michigan. This requires the presumption that Respondent is not a committee under the MCFA. Given the absence of any evidence to the contrary, the Complaint should be dismissed.

Even if the legal principles at issue in MCEF were applicable here, which they are not, the facts of the MCEF case are wholly distinguishable from the facts Mr. LaBrant complains of here.

In MCEF, Detroit Forward was formed as an independent expenditure PAC on April 17, 2013, and listed Christopher T. Jackson as its Treasurer. Just five months later, on September 26, 2013, Jackson filed Articles of Incorporation with the State on behalf of MCEF. MCEF's Articles of Incorporation listed Jackson as the sole member of the MCEF's Board of Directors. Within a month of being created, MCEF received \$179,050 in contributions and made \$149,000 in expenditures to Detroit Forward.

In response to a campaign finance complaint submitted to the Department of State, Mr. Jackson stated that he discussed with potential donors to MCEF the "potential permissible and limited political activities of MCEF[,]" and that "MCEF could engage in direct advocacy for or against a candidate or provide financial support to other groups engaging in direct candidate advocacy."

In its April 9, 2014 letter detailing the results from its investigation, the Department of State noted that Jackson held “unique interlocking positions” with MCEF and Detroit Forward, and had “knowledge of Detroit Forward’s needs.” Additionally, “[b]ecause MCEF used contributions in accordance with Mr. Jackson’s statements to contributors that MCEF may use its funds to provide financial support to groups engaging in direct candidate advocacy, MCEF must disclose the original source of funds solicited. The Department of State went on to state:

As the sole incorporator of MCEF and treasurer of Detroit Forward, Mr. Jackson was keenly aware of both organizations’ financial positions and could quickly direct substantial contributions from MCEF to Detroit Forward. During his pivotal period, Mr. Jackson transferred over 80% of all funds obtained by MCEF from the time of its inception until Election Day (\$179,050.00). Thus, it appears that MCEF’s original, primary purpose, was to shield the names of contributors to Detroit Forward from public disclosure, not fund a coordinated education campaign on voter registration and participation. In essence, by having donors contribute to MCEF and then transferring the contributions to Detroit Forward, Mr. Jackson orchestrated MCEF’s effort to thwart the disclosure purpose of the Act.

As discussed above, the facts of this case are irrelevant because, unlike Unlock Michigan, Detroit Forward was not a ballot question committee. This resulted in a different consideration of the facts than is required here.

Nevertheless, the obvious self-dealing by Jackson in his dual-roles with Detroit Forward and MCEF is completely inapposite to the facts here. Respondent has been in existence since 2010 and has been and continues to be involved with numerous different causes since that time. Moreover, there are no officers of the Respondent who are officers of Unlock Michigan; nor were there any statements made to contributors by the Respondent akin to those made by MCEF’s representatives. As discussed above, Respondent has consistently maintained bank account levels significantly higher than the amounts of expenditures it made to Unlock Michigan. This is far different than MCEF, where Jackson created the organization just months after Detroit Forward was created, funneled nearly all of its contributions to Detroit Forward, and had a dual role in the two organizations leadership.

The MCEF matter that the Complaint relies on is legally and factually inapposite to the facts here. Mr. LaBrant’s reliance on that case should be rejected.

B. The Complaint's hypotheticals highlight the need to disregard the rebuttable presumption theory

Mr. LaBrant's attempt to illustrate his rebuttable presumption theory is not only a fictional exercise of an active imagination, it represents the danger of straying from the text of the MCFA. Indeed, the fallacy in Mr. LaBrant's example is evident given his explanation that the first contribution does not trigger "committee" status under the MCFA. In his August 9, 2020 amendment to Section 3 of the Complaint, Mr. LaBrant states as follows:

"MCFR'S first contribution on June 9 to Unlock Michigan was for \$10,000; everyone agrees a one-time contribution under Sec. 3(4) does not trigger any registration or reporting requirement."

This makes no sense and is unsupported by the plain text of MCL 169.203. If a person "solicits or receives contributions *for the purpose* of making an expenditure to that ballot question committee," it makes no legal difference if it is the person's first, second, third or tenth contribution to a ballot question committee. This is the danger of straying from the text of the MCFA.

The Complaint's use of General Motors as an example of how to rebut Mr. LaBrant's rebuttable presumption theory is illustrative of yet another fatal flaw in its application. By claiming that "cash flow is the only factor," how would this theory have applied during the General Motors bankruptcy in 2009 where GM perhaps lacked "millions of dollars in its corporate treasury?" Under the rebuttable presumption theory, GM would be a ballot question committee not because it "solicits or receives contributions for the purpose of making an expenditure to that ballot question committee" (as required by the MCFA), but because of how much was in its bank account. This is nonsensical and underscores the practical dangers of straying from the plain text of the MCFA.

IV. THE COMPLAINT IS NOT SUPPORTED BY FACTUAL EVIDENCE

Section 15(5)(c) of the MCFA requires that the complaint be "supported by evidence" or that "the identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry." The only facts identified by the LaBrant Complaint are the number and amount of contributions made by the Respondent to Unlock Michigan. But these facts do not support the argument that the Respondent is a ballot question committee. As discussed above, the statute requires registration as a ballot question committee only if the organization "solicits or receives contributions for the purpose of making an expenditure to that ballot question committee." The number and amount of the contributions has no relevance to whether the organization has solicited or received contributions for the purposes of making an expenditure to a ballot question committee.

Mr. LaBrant himself has stated that the total amount of the contributions is irrelevant:

Had MCFR written only one check for \$695,200 on June 9, 2020, that would be a legal contribution to a ballot question committee.

Section 3(4) would be crystal clear — MCFR would not have to register and report itself as a ballot question committee, because it did not go on to solicit and receive contributions. I would not have filed a campaign finance complaint. *Why LaBrant Filed Complaint Against 'Unlock Michigan' Funding*, The Ballenger Report, August 24, 2020.

So, Mr. LaBrant only offers the fact that there were multiple contributions and not a single contribution to support his theories.

This is not evidentiary support for a violation of the MCFA's ballot committee registration requirements that the Secretary of State and the Bureau of Elections have ever recognized. This is despite the fact that there are years of precedent where countless ballot proposal committees have accepted multiple contributions from donor organizations that have not registered as ballot question committees themselves. As a recent example, a group, Bipartisan Solutions, claiming tax-exempt status under Section 501(c)(4) of the Internal Revenue Code, has made four direct contributions since January 2020 to the ballot question committee Fair and Equal Michigan in the total amount of \$706,000. If the Respondent's contributions are problematic, surely Bipartisan Solutions' contributions would be as well. Undoubtedly, an adverse ruling in this case would lead to a flurry of campaign finance complaints against similar organizations.

As discussed above, there are numerous factual and legal flaws in the Complaint's allegations that should result in its dismissal. Aside from these dispositive factors, the practical implications of Mr. LaBrant's claims cannot be ignored. By disregarding the plain text of the MCFA, those individuals and organizations who have made contributions based on what the law requires will be irreparably harmed. If the Secretary of State and the Bureau of Elections wish to change the law on such issues, the LaBrant Complaint is not the appropriate means to do so.

Thank you for your consideration of our comments in this matter. Please contact us if you have any questions or require additional information.

Sincerely,

CLARK HILL PLC

Brian D. Shekell

Brian D. Shekell

Andrew C. Richner

Andrew C. Richner

MCFR Response
September 9, 2020
Page 11

cc: Heather Lombardini, President
(Michigan Citizens for Fiscal Responsibility)

EXHIBIT 1

AFFIDAVIT OF HEATHER LOMBARDINI

STATE OF MICHIGAN)
)ss
COUNTY OF INGHAM)

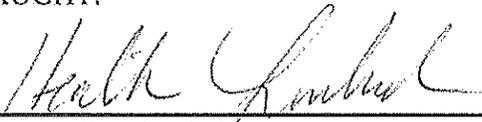
Heather Lombardini, being first duly sworn, deposes and states as follows:

1. I am the President for Michigan Citizens for Fiscal Responsibility (“MCFR”). I have held this role since 2019.
2. MCFR was formed in 2010. Since this time, MCFR has engaged in promoting the common good and general welfare of the public by advocating for fiscal responsibly at the state and federal levels of governments, as provided in its Articles of Incorporation and Section 501(c)(4) of the Internal Revenue Code.
3. As the President of MCFR, my duties and responsibilities include general and active management of the activities of the Corporation, as well as fundraising. Additionally, I am aware of the requirements under the Michigan Campaign Finance Act (“MCFA”), and specifically MCL 169.203(4), that a “person” shall not be considered a “committee” under the MCFA, “unless that person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee or independent expenditure committee.”
4. In my role as President, I have personal knowledge as to: (1) how MCFR solicits and receives contributions; (2) the contributions made to MCFR in 2019 and 2020; and (3) expenditures made by MCFR to third-parties in 2020.
5. While MCFR has not yet submitted its Form 990 for the 2019 calendar year, when it does so, it will show that as of December 31, 2019, MCFR had a bank account balance of over \$700,000. Because of this, MCFR has never had the need to solicit funds for the purpose of making an expenditure to Unlock Michigan.

6. To the best of my knowledge, MCFR has not solicited or received contributions for the purpose of making an expenditure to Unlock Michigan or any other ballot question committee.

7. It is my belief that MCFR has complied with the requirements of the MCFA. This includes making expenditures to Unlock Michigan as a "person," and not having engaged in actions that would result in MCFR being classified as a "committee" under the MCFA.

FURTHER DEPONENT SAYETH NAUGHT.



Heather Lombardini

Subscribed and sworn to before me
this 7th day of September, 2020.

Fracassi, Adam (MDOS)

From: Fracassi, Adam (MDOS)
Sent: Friday, September 25, 2020 5:38 PM
To: Bob LaBrant
Subject: RE: Response from Michigan Citizens for Fiscal Responsibility to LaBrant Complaint
Attachments: MCFR Response to LaBrant Complaint 9.9.2020.pdf

Mr. LaBrant:

The Department of State received a response to the complaint you filed against Michigan Citizens for Fiscal Responsibility, which concerns an alleged violation of the Michigan Campaign Finance Act (MCFA), 1976 P.A. 388, MCL 169.201 *et seq.* A copy of the response is provided as an enclosure with this letter.

If you elect to file a rebuttal statement, you are required to send it within 10 business days of the date of this email to the Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918.

Thank you,

Adam Fracassi, Election Law Specialist
Michigan Bureau of Elections
P.O. Box 20126
Lansing, Michigan 48901

From: Bob LaBrant <bob@boblabrant.com>
Sent: Friday, September 25, 2020 4:45 PM
To: Fracassi, Adam (MDOS) <FracassiA@michigan.gov>
Subject: Re: Response from Michigan Citizens for Fiscal Responsibility to LaBrant Complaint

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Adam,

If you receive electronically a response from Michigan Citizens for Fiscal Responsibility to my complaint by close of business today will you be forwarding that response to me electronically?

Am I correct that I have 10 business days to then file electronically a rebuttal to MCFR's response?

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From: Bob LaBrant <bob@boblabrant.com>
Sent: Tuesday, September 22, 2020 3:47:06 PM
To: Fracassi, Adam (MDOS) <FracassiA@michigan.gov>
Subject: Re: Response from Michigan Citizens for Fiscal Responsibility to LaBrant Complaint

Thanks for the update.

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From: Fracassi, Adam (MDOS) <FracassiA@michigan.gov>
Sent: Tuesday, September 22, 2020 1:26:25 PM
To: Bob LaBrant <bob@boblabrant.com>
Subject: RE: Response from Michigan Citizens for Fiscal Responsibility to LaBrant Complaint

Hi Bob,

I've received a high volume and, coupled with COVID, I am behind on processing. However, it does look like it was received on September 17th.

Thanks,
Adam

From: Bob LaBrant <bob@boblabrant.com>
Sent: Tuesday, September 22, 2020 1:10 PM
To: Fracassi, Adam (MDOS) <FracassiA@michigan.gov>
Subject: Re: Response from Michigan Citizens for Fiscal Responsibility to LaBrant Complaint

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Are you in the office today to respond to my inquiry about my complaint against Unlock Michigan being received? If it has been lost is there a procedure for me to hand deliver the complaint to security at the Austin Building? I've lost my trust in the postal service after my latest odyssey.

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From: Bob LaBrant
Sent: Tuesday, September 22, 2020 10:08:33 AM
To: Fracassi, Adam (MDOS) <FracassiA@michigan.gov>
Subject: RE: Response from Michigan Citizens for Fiscal Responsibility to LaBrant Complaint

Adam,

I'm following up with my inquiry whether my complaint against Unlock Michigan has been received at the Bureau of Elections?

Bob LaBrant

From: Fracassi, Adam (MDOS) <FracassiA@michigan.gov>
Sent: Monday, September 21, 2020 10:15 PM
To: Bob LaBrant <bob@boblabrant.com>
Subject: Re: Response from Michigan Citizens for Fiscal Responsibility to LaBrant Complaint

Was this a new one against Unlock Michigan? Just want to make sure

From: Bob LaBrant <bob@boblabrant.com>
Sent: Monday, September 21, 2020 9:30:01 PM

To: Fracassi, Adam (MDOS) <FracassiA@michigan.gov>

Subject: Re: Response from Michigan Citizens for Fiscal Responsibility to LaBrant Complaint

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Adam,

I mailed a complaint to the Bureau of Elections against Unlock Michigan by certified mail. Checking its progress by a tracking number I saw after it was mailed from Perry, Michigan it inextricably was sent to the San Francisco, CA Regional Postal Center. After a few days there it made its way to the Pontiac, MI Regional Postal Center then after a couple of days on to Lansing. My tracking number said it was delivered on September 17, after an 8 day odyssey. I just want to confirm that my complaint has in fact been received at the Bureau.

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From: Bob LaBrant <bob@boblabrant.com>

Sent: Friday, September 4, 2020 2:08:20 PM

To: Fracassi, Adam (MDOS) <FracassiA@michigan.gov>

Subject: Re: Response from Michigan Citizens for Fiscal Responsibility to LaBrant Complaint

Thank you

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From: Fracassi, Adam (MDOS) <FracassiA@michigan.gov>

Sent: Friday, September 4, 2020 2:07:43 PM

To: Bob LaBrant <bob@boblabrant.com>

Subject: RE: Response from Michigan Citizens for Fiscal Responsibility to LaBrant Complaint

Yes, they did, and we granted the request. The new due date is September 25th

From: Bob LaBrant <bob@boblabrant.com>

Sent: Friday, September 4, 2020 1:57 PM

To: Fracassi, Adam (MDOS) <FracassiA@michigan.gov>

Subject: Response from Michigan Citizens for Fiscal Responsibility to LaBrant Complaint

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Has MCFR requested a 15 business day extension to file a response? Has the Bureau of Elections agreed that an extension request meets the "good cause" standard found in MCL 169.215?

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Fracassi, Adam (MDOS)

From: Bob LaBrant <bob@boblabrant.com>
Sent: Thursday, October 1, 2020 8:18 AM
To: Fracassi, Adam (MDOS)
Subject: Rebuttal to Response filed by Michigan Citizens for Fiscal Responsibility on September 25, 2020
Attachments: October 1 rebuttal.docx

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

October 1, 2020

By email transmission: Elections@Michigan.gov

Adam Fracassi
Bureau of Elections
Michigan Department of State
Richard H. Austin Building, 1st Floor
430 West Allegan Street
Lansing, Michigan 48918

Re: Rebuttal to the Response filed by Michigan Citizens for Fiscal Responsibility on September 25, 2020

Dear Mr. Fracassi:

In my complaint I spotlighted the enforcement action brought by the Bureau of Elections against the Michigan Community Education Fund (MCEF) that resulted in a finding on April 9, 2014 that there may be reason to believe a violation of the Michigan Campaign Finance Act (MCFA) had occurred. A conciliation agreement was later entered into by the parties. That enforcement action I suggest serves as a roadmap for the Bureau of Elections to follow in resolving my complaint against Michigan Citizens for Fiscal Responsibility (MCFR).

In 2014 the issue in that case was whether MCEF was an independent expenditure only--political committee itself, because of it solicited and raised funds to make multiple contributions to Detroit Forward, a registered independent expenditure--only political committee.

The attorneys for MCFR in their answer to my complaint question the relevance of that case since my complaint focuses on a ballot question committee.

Where MCFR legally errs is that for the purpose of meeting the definition of "Committee" found in MCL 169.203(4) an independent expenditure committee (new name for what was in 2013 an independent expenditure--only political committee) is treated exactly the same as a ballot question committee.

A Response was filed by the attorney representing the Michigan Community Education Fund (MCEF) on December 19, 2013 denying all the complaint's allegations. The complaint was denounced by MCEF's attorney as scurrilous, not based in fact or law, without evidence of wrongdoing, "and claiming that simply attaching publicly available registration records and a list of publicly reported contributions is an insufficient basis for the Department to proceed with an investigation of this complaint." The attorneys for MCFR today repeat the same criticism at my complaint.

Yet in MCEF, the Bureau of Elections proceeded with further investigation.

In a March 6, 2014 letter to MCEF's attorney the Bureau said it " had completed a preliminary review of the evidence and requested written answers to the following questions:

1. Did MCEF solicit any funds for the purpose of making a contribution to Detroit Forward?
2. Did MCEF receive funds for any purpose other than making a contribution to Detroit Forward? If so, what is the total amount received for other purposes?

3. Did MCEF make any expenditures within the meaning of MVCL 169.206 other than the following contributions to Detroit Forward?
 - a. 10/17/2013 \$25,000
 - b. 10/20/2013 \$39,000
 - c. 10/28/2013 \$70,000
 - d. 10/28/2013 \$15,000
4. What type of accounting method does MCEF use (First-In/First-Out, Last-In/First-out, etc.)?

Please also provide in writing:

1. The amount and date of each contribution received by MCEF used for each of its expenditures to Detroit Forward listed above in 3(a)-(d). Please note at this time the Department is not asking for the disclosure of the names of those contributors, simply the date(s) and amount(s).
2. The names of all the Directors of MCEF.
3. The name and address of MCEF's depository."

The attorney for MCEF responded to the Bureau of Elections with a letter and affidavit dated March 13, 2014 providing responses to those questions. Those answers served as basis for further investigation by the Bureau of Elections resulted in MCEF signing a conciliation agreement.

The Bureau of Elections should find that MCFR violated the MCFA or it should commence an investigation into my complaint by sending a similar letter to MCEF asking for additional information.

If an investigation is commenced into my complain, the bureau should ask this fundamental question: Did MCFR make any bank deposits between June 9, 2020 through July 31, 2020? Were any of those deposits used to fund the six contributions MCFR made to Unlock Michigan? If so, then MCFR must register and report itself as a ballot question committee.

The President of MCFR submitted an affidavit for the Response to my Complaint filed against MCFR. She claims MCFR had at least a \$700,000 balance in their bank account on December 31, 2019, so MCFR "never had the need to solicit funds for the purpose of making an expenditure to Unlock Michigan." That is a cleverly worded affidavit. The Bureau of Elections does not need to know MCFR's bank balance on December 31, 2019, rather what was the bank balance on June 9, 2020?

Likewise, The Bureau of Elections should not take as dispositive the assertion by MCFR President that MCFR because of its December 31, 2019 bank balance, "never had the need to solicit funds." MCFR has had the Senate Republicans as a client for issue advocacy fund-raising since at least 2013- 2014. The Senate Republicans were active in the formation of Unlock Michigan. Unaddressed by the affidavit is not whether MCFR " had the need to solicit," but did others. Including lawmakers who normally assisted MCFR in Senate issue advocacy fund-raising. In soliciting funds for Unlock Michigan was MCFR used as an alternate or secondary depository ? Would the Senate Majority Leader or others in the Senate Republican leadership submit an affidavit denying holding meetings with lobbyists to solicit funding for Unlock Michigan and suggesting the use of MCFR for clients wishing to avoid public disclosure of their contributions. For these reasons, the affidavit is meaningless.

In a February 7, 2014 letter to Michael Hodge and Andrew Nickelhoff the Department found reason to believe a violation of the MCFA may have occurred resulting from a complaint filed by Gideon D'Assandro against Citizens for Affordable Quality Health Care. The Bureau of Elections after its investigation, concluded that although their findings were not precisely as alleged by the complainant, they nevertheless found that violations of the MCFA may have occurred.

My complaint may lead the Bureau of Elections to find other violations of the MCFA which were not initially plead by me.

MCFR asserts it had at least \$700,000 cash on hand and had no need to solicit and receive contributions to make three of six contributions to Unlock Michigan between June 9-June 24, 2020. Unlock Michigan filed its Statement of Organization on June 1, 2020. During this early phase while Unlock Michigan was launching its petition drive, they had their greatest need to put together the funding in the shortest period of time to pay for petition signatures and pay other campaign vendors. So, It defies logic why MCFR would make three contributions over a 15-day period? June 9-June 24, 2020. Why not just write out a \$560,000 check to Unlock Michigan?

The only answer is cash flow.

Unlock Michigan disclosed five contributions from MCFR in the July Quarterly reporting period. MCFR accounted for 86% of all the funds raised by Unlock Michigan during the July quarterly reporting period.

MCFR needed to be out soliciting funds to receive additional contributions to bring its total up to \$560,000 by June 24 and \$695,200 by July 31, 2020. Asking MCFR to furnish their bank deposits and bank balances during this 42-day time period, like the Bureau of Elections did during their investigation into the complaint against MCEF in March 2014 is warranted.

The attorneys for MCFR raise the specter that other 501 (c) 4 organizations might be required to register and report as a ballot question committee if the Bureau of Elections finds MCFR violated Sections 24 and 33. So what if it does. Allowing 501 (c)(4) organizations be used to launder significant funding without the disclosure of the true identity of the contributors to a ballot question committee is poisoning the campaign finance reforms incorporated into the MCFA in 1976 which placed a premium on public disclosure.

Except for the narrow exception found in MCL 169.247 enacted after *McIntyre v Ohio Elections*, 514 U.S. 334 (1995), anonymous contributions are only permitted where the Michigan Campaign Finance Act (MCFA) does not regulate the activity. Issue ads are not regulated under the MCFA because the definition of "expenditure" requires express advocacy. Section 6 (2) (j) codified *Buckley v Valeo's* footnote 52 identifying the eight 'magic words' of express advocacy.

Michigan Citizens for Fiscal Responsibility (MCFR) is a 501 (C) 4 social welfare organization under the IRS code. MCFR is also a non-profit corporation formed under Michigan law. MCFR has a history of funding, producing, and placing issue ads in the context of state Senate campaigns.

When MCFR pays for issue ads (TV, radio, newspaper, billboards, direct mail, etc.), including those ads that use the name or likeness of a clearly identified candidate, if the ad does not use words of express advocacy, the fund-raising activity that pays for those issue ads is not regulated under the MCFA.

A 501(C) 4 organization is required to file annually Form 990 with the IRS. The organization is required on that IRS Form 990, Schedule B to disclose each contributor of \$5,000 or more. However, the name and address of those donors are redacted on the copy of IRS Form 990, Schedule B that is required to be made available for public inspection.

A 501 (c) 4 organization that does only issue ads can inform their donors that although the IRS will be informed of their contribution, if over \$5,000, the general public will not. As a result, some commentators call these donations "dark money."

With no state Senate seats up for election in 2020, MCFR in June 2020 decided to venture outside of issue advocacy and into a new arena making multiple contributions to Unlock Michigan, a ballot question committee established to sponsor an initiative petition drive to repeal the 1945 Emergency Powers of Governor Act. As of this writing, MCFR has been disclosed by Unlock Michigan, as having made six contributions totaling \$695,200, more than 74% of all the funds received by Unlock Michigan as of August 3, 2020.

Perhaps, MCFR did not understand the implications of the key phrase in the definition of "committee" found in Sec. 3(4) of the MCFA. That phrase reads: "unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee." That phrase disqualifies MCFR from being exempt from the definition of "Committee," if it solicits and raises funds.

While issue advocacy fund raising and advertising falls outside the regulation of the MCFA. ballot question committee activity, in sharp contrast, is regulated by the MCFA. Pledges of anonymity promised to contributors for issue advocacy, does not apply to contributors solicited to support a ballot question committee hidden from public disclosure because it was laundered through a 501 (c) 4.

In a *Detroit News* article by Craig Mauger published on July 27, 2020 titled, "*Mystery money fuels campaign to limit Whitmer's emergency powers,*" Michigan Citizens for Fiscal Responsibility is reported from IRS tax filings having raised \$ 2.1 million and spending \$ 3.7 million in 2018. MCFR reported on its 2018 Form 990 having assets of just \$ 21,846 at the end of 2018.

Now the MCFR affidavit says, " While MCFR has not yet submitted its Form 990 for the 2019 calendar year, when it does, it will show that as of December 31, 2019, MCFR had a bank account balance of over \$ 700,000. Because of this, MCFR never had the need to solicit funds for the purpose of making an expenditure to Unlock Michigan."

At the very least the Bureau of Elections, now that the Attorney General has launched a criminal investigation into Unlock Michigan petition gathering activities, should take the admonition from the Watergate scandal, "follow the money."

The Bureau of Elections, like they did with Michigan Community Education Fund in March 2014, should request from MCFR the following:

- 1) The cash on hand balance in their account from their May 2020 bank statement .
- 2) The amount of each bank deposit made after June 8, 2020 through July 31, 2020.
- 3) The amount of each expenditure made from MCFR's bank account from June 9-July 31, 2020.
- 4) The cash on hand balance in their bank account reported on their August 2020 bank statement.

The answers to those four questions are dispositive whether money was laundered through MCFR to fund Unlock Michigan.

Sincerely,

s/Robert S. LaBrant

Robert S. LaBrant
12411 Pine Ridge Drive
Perry, MI 48872
(517) 881-5146
bob@boblabrانت.com



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

April 9, 2021

Bob LaBrant
12422 Pine Ridge Drive
Perry, MI 48872

Via Email

Dear Mr. LaBrant:

The Department of State (Department) has finished its investigation into the formal complaint you filed against Michigan Citizens for Fiscal Responsibility (MCFR) and the second complaint filed against Unlock Michigan (Unlock), alleging that violations of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* In separate correspondence, the Department notified you that the complaints were being merged together for the purpose of administrative efficiency.¹ This letter concerns the resolution of both complaints.

Unlock is a registered ballot question committee with the Department² and has filed an initiative petition seeking the repeal of the Emergency Powers of Governor Act, 1945 PA 301, MCL 10.31 *et seq.* Unlock has filed its July Quarterly campaign finance statements and disclosed a total of \$765,024 in contributions received, including \$660,200 from MCFR alone. MCFR is registered as a 501(c)(4) with the Internal Revenue Service (IRS), but not as a ballot question committee under the MCFA. These facts are not in dispute.

You argue that since MCFR has met the definition of committee because it has solicited contributions for the purpose of making expenditures to Unlock and should be required to form and register as a committee. Specifically, you state that the following five contributions mandate MCFR's registration:

Date	Amount
\$10,000	June 9, 2020
\$150,000	June 18, 2020
\$400,000	June 24, 2020
\$200	June 30, 2020

¹ See, e.g., *Michigan Waste Systems, Inc v Dep't of Natural Resources*, 157 Mich App 746, 756 (1987) ("The purpose of consolidation is to promote the convenient administration of justice and to avoid needless duplication of time, effort, and expense.") (Internal quotations omitted.)

² Committee ID No. 519796.

\$100,000 July 20, 2020

You allege these contributions were made to MCFR and earmarked for Unlock and that MCFR made multiple contributions to Unlock. Because of this, you argue MCFR is obligated to register as a committee with the Department. You next allege that since the contributions were earmarked, Unlock would also be obligated to disclose the source of the contributions given to MCFR. By failing to do so, you allege Unlock has violated the Act's disclosure provisions.

Unlock and MCFR responded by letters dated November 2, 2020 and September 9, 2020 respectively. They argued there was no evidence that contributions were solicited by MCFR on behalf of Unlock and that MCFR was not an agent of Unlock. Further, they argued that MCFR was formed in 2010 and MCFR does not share common officers, such as a treasurer or director, with Unlock. Unlock further argued that it did not violate the Act since it properly reported all contributions received from MCFR.

The threshold issue in this complaint is whether MCFR meets the definition of "committee" thereby mandating registration obligations with the Department. If MCFR does not meet the Act's definition of "committee," then no registration requirements for MCFR have arisen, and contributions to Unlock have been properly reported. The Department turns to this first issue.

Committee is defined as a "person that 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, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party, if contributions received total \$500.00 or more in a calendar year or expenditures made total \$500.00 or more in a calendar year." MCL 169.203(4). However, the Act specifically exempts committee registration "*unless* the person solicits or receives contributions of the purpose of making an expenditure to that ballot question committee." *Id.*, (Emphasis added).

In interpreting a statute, the goal is to "ascertain and give effect to the intent of the Legislature." *People v Gardner*, 482 Mich 41, 50 (2008), quoting *People v Pasha*, 466 Mich 378, 382. "To do so, we begin with the language of the statute, ascertaining the intent that may reasonably be inferred from its language. When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted." *Odom v Wayne County*, 482 Mich 459, 467 (2008), quoting *Lash v Traverse City*, 479 Mich 180, 187 (2007).

The Act's definition is clear and unambiguous in its requirement that contributions be solicited for the purpose of making an expenditure to that ballot question committee. Stated differently, MCFR is not obligated to register as a committee and file reports unless the evidence shows that MCFR solicited or received contributions *for the purpose of making an expenditure* to Unlock.

In support of your complaint, you cite the Department's prior enforcement action in *D'Assandro v. Home Care First, Inc* (HCFI). There, the allegation was that HCFI (an unregistered committee) solicited contributions for the sole purpose of making expenditures to Citizens for Affordable Quality Home Care (Citizens), a registered ballot question committee. In finding a violation, the Department concluded the following:

- A principal activity for HCFI was to provide financial support to Citizens.
- HCFI's articles of incorporation appointed three members to its Board of Directors. The next day following incorporation, Citizens formed its ballot question committee listing the same address as the registered office of HCFI and Citizens mailing address.
- One of HCFI's directors simultaneously served as the treasurer of Citizens. This is evidence of coordination in that it enabled him to know when Citizens would require money for its ballot proposal and when HCFI would be providing money.
- Between March 2012 and November 2012, with the exception of one contribution, HCFI was the *sole* contributor to Citizens.
- A third ballot question committee was formed by SEIU International who reported making contributions directly to *Citizens* while the contributions were being solicited and reported by HCFI.
- Contributions made by SEIU were deposited into HCFI's bank account and the *exact* amount was later transferred to Citizens' account within days.
- HCFI transferred *more money* to citizens than it had available in its account.

See *D'Assandro v. HCFI*, available at:

https://www.michigan.gov/documents/sos/DAssandro_v_Home_Care_and_Citizens_CA_cover_letter_and_Conciliation_Agreement_449955_7.pdf. Ultimately, the Department concluded that the evidence demonstrated an arrangement was made between HCFI and Citizens because the groups were formed within one day of the other, they had the same officers, the contributions were commingled between the two groups, and the exchange of money between the two groups clearly demonstrated that contributions were being solicited by HCFI on behalf of Citizens.

You similarly rely upon an enforcement action conducted in *Turnaround Detroit v. Detroit Forward*. In *Detroit Forward*, the Department concluded that it had reason to believe violations of the Act had occurred when Michigan Community Education Fund (MCEF), a registered 501(c)(4), made certain contributions to Detroit Forward, an independent expenditure committee. Mr. Christopher Jackson was the treasurer of Detroit Forward and the sole director of MCEF. The Department concluded the following:

After reviewing Detroit Forward's campaign finance statements, the Department notes that on October 21, 2013 – the same day MCEF received a \$100,000 contribution – Detroit Forward's cash-on-hand was \$32,818.68. Mr. Jackson then proceeded to make \$68,308.75 in expenditures from Detroit Forward over the next 5 days, leaving Detroit Forward with a negative balance in the amount of \$35,490.07 on October 26, 2013. Mr. Jackson then transferred \$85,000 from MCEF to Detroit Forward on October 28, 2013. It appears to the Department that due to Mr. Jackson's unique interlocking positions with both MCEF and Detroit Forward, and his knowledge of Detroit Forward's needs, although Mr. Jackson originally deposited the October 21, 2013 \$100,000 contribution in MCEF's account, he treated that money as Detroit Forward's funds and made expenditures of those funds from Detroit Forward almost immediately and before the transfer.

Turnaround Detroit v. Detroit Forward,

https://www.michigan.gov/documents/sos/Turnaround_Detroit_V_Detroit_Forward_and_MCEF_pt_2_455985_7.pdf. The Department further concluded that it appeared "MCEF's original,

primary purpose was to shield the names of contributors to Detroit Forward from public disclosure” by having donors contribute to MCEF and then transferring the contributions to Detroit Forward. *Id.* Thus, the Department concluded that a violation had occurred.

In the present complaints, you have you have argued the Department to follow the same course of action it took in *HCFI* and *Detroit Forward*, but the facts simply do not support such a proposed course. In *HCFI* and *Detroit Forward*, the Department concluded that the evidence showed the contributions were solicited solely for the purpose of being given to the specific ballot question committee. There, the Department relied heavily upon the fact that the same individual was controlling the money in the 501(c)(4) and the ballot question committee in order to find a violation. The Department concluded that the evidence showed contributions were received by the registered corporation and then corresponding or exact amounts were transferred to the registered ballot question committee, and in many instances, *after* the ballot question committee had already spent the money. What *HCFI* and *Detroit Forward* stand for is the proposition that a ballot question committee cannot shield its contributors by funneling the money through a corporation when the evidence clearly demonstrates that the ballot question committee and the corporation are the same entity or are controlled by the same individuals.

Yet, none of the same elements present in *HCFI* or *Detroit Forward* are present here. According to evidence submitted by MCFR’s president, Heather Lombardi, HCFI was formed in 2010.³ MCFR has listed Stephen Linder and Denise DeCook as President and Treasurer respectively and its principal address is located in Lansing.⁴ Comparatively, Unlock filed its statement of organization in 2020 listing Mary Doster as its treasurer and a mailing address in Okemos.⁵

Not only do the formation documents fail to support the allegations in the complaint, neither do the contributions or expenditures themselves. The 990 reports filed with the IRS demonstrate that since at least 2015, MCFR has solicited contributions and made expenditures for myriad political campaign activities unrelated to Unlock:

<u>Year</u>	<u>Total Revenue</u>	<u>Total Expenditures</u>
2015	\$ 494,358	\$ 135,503
2016	\$ 720,170	\$ 250,241
2017	\$ 1,010,594	\$ 205,855
2018	\$ 2,102,182	\$ 3,736,327

And according to the affidavit submitted by Heather Lombardi, President of MCFR, in 2019, MCFR had a bank account balance of over \$700,000 and did not have the need to solicit funds in order to contribute to Unlock. See MCFR’s Answer, Exhibit 1. Her affidavit further stated that she was not aware of MCFR soliciting contributions for the purpose of making an expenditure to Unlock. *Id.* Despite this, in your rebuttal, you argue the only way these fives contributions

³ Articles of Incorporation, available at:

https://cofs.lara.state.mi.us/CorpWeb/CorpSearch/CorpSearchFormList.aspx?SEARCH_TYPE=3

⁴ IRS 990, available at: https://apps.irs.gov/pub/epostcard/cor/271993953_201812_990O_2020060917183084.pdf.

⁵ Statement of Organization, <https://cfrsearch.nictusa.com/committees/519796>.

could be made to Unlock was if MCFR solicited the funds contrary to the statements made in Ms. Lombardi's affidavit.

The evidence presented in these complaints does not support your allegations that MCFR has met the definition of committee triggering registration requirements by soliciting contributions for the purpose of making expenditures to Unlock. MCFR was formed ten years prior to Unlock, neither shares common officers such as President or Treasurer, and MCFR maintained enough money in its account to make contributions to Unlock without having to solicit additional funds. Further, no evidence has been offered to rebut the statements made in Ms. Lombardi's affidavit that MCFR has not solicited funds, especially given the fact that the IRS statements provided show that MCFR has collected funds through fundraisers as part of its ordinary course of business for at least the last seven years.

It is not a violation of the Act for a registered 501(c)(4) to make a contribution to a ballot question committee. MCL 169.203(4). In order to be a violation of the Act, the evidence must show that MCFR has solicited contributions for the sole purpose of making expenditures to Unlock. *Id.* That evidence was present in both *HCFI* and *Detroit Forward* but is not present here.

Therefore, the Department finds that the evidence is insufficient to conclude that a potential violation of the Act has occurred and dismisses your complaint.

Sincerely,



Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Brian Shekell, Attorney for MCFR
Mike Cox, Attorney for Unlock