STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

P.O. Box 30212
Lansing, Michigan 48909

DANA NESSEL
ATTORNEY GENERAL

May 19, 2025

Secretary of State Jocelyn Benson
c/o Khyla D. Craine, Deputy Legal Director
via email only – ***crainek@michigan.gov***

Jocelyn Benson for Governor Campaign
c/o Mark Brewer, Legal counsel
via email only – ***mbrewer@goodmanacker.com***

Re: Campaign Finance Complaints Against Secretary Benson and the Jocelyn Benson for Governor Campaign Committee: *Charette v Benson*; *Henningsen v Benson; Ross-Williams v Benson*.

Dear Ms. Craine and Mr. Brewer:

As you know, the Secretary of State, as required by MCL 169.215(9), referred to this office campaign finance complaints filed against Secretary of State Jocelyn Benson and the Jocelyn Benson for Governor campaign committee to determine whether a violation of the Michigan Campaign Finance Act (MCFA) has occurred. This letter concerns the disposition of the complaints filed by Christian Charette, Tyler Henningsen, and Monica Ross-Williams, which are being resolved together for the sake of efficiency and consistency.

All three complaints allege that Secretary Benson's use of the lobby of the Richard H. Austin Building to hold a January 22, 2025, press conference announcing her gubernatorial candidacy violated the MCFA.

During the January 22nd press conference, Secretary Benson made a statement and then answered several questions.[1] At one point, Secretary Benson was asked why the press conference was being held inside the building, as opposed

[1] The January 22nd press conference was recorded, and the recording reviewed for the purpose of resolving these complaints can be found at: Jan 22 Benson Press Conference [accessed May 19, 2025].

to on the building steps. Secretary Benson answered that she didn't want people to stand outside in the cold weather.[2] One reporter commented that it was unusual for such candidacy announcements to be made inside and that other candidates have not been allowed to do so. When the reporter asked if other candidates could use the lobby of the Austin Building for a similar press conference in this election cycle, Secretary Benson replied, "of course." She went on to state that it had never come to her attention that others had been prevented from using the lobby to make such announcements.

At issue here is section 57(1) of the MCFA, MCL 169.257(1), which states:

> A public body or a person acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under [MCL 169.204].

As an initial matter, to the extent the complaints raise claims against the Jocelyn Benson for Governor campaign committee, those claims are dismissed. Although the committee would fall within the definition of "person,"[3] it is not a "public body" and was not "acting for a public body" in regard to the use of the lobby of the Austin Building. A "public body" is, essentially, a body of local government or a body within the executive or legislative branch of state government. MCL 169.211(7). Because the campaign committee is not a body of local or state government, and there is no allegation that the campaign committee was acting for any such government body, it is determined that the campaign committee has not violated the MCFA. However, the campaign committee's arguments on behalf of Secretary Benson will be considered.[4]

---

[2] According to historical weather data, the temperature in the Lansing area during the morning of January 22, 2025, was at or below zero, with double-digit wind speeds. Jan 22 Weather for Capital City Airport [accessed May 19, 2025].

[3] "Person," as defined by the MCFA, specifically includes a "committee, or any other organization or group of persons acting jointly." MCL 169.211(2).

[4] The Department of State was provided an opportunity to respond to the complaints and indicated that it would not be filing a formal response because the allegations do not involve the Department of State's or Secretary Benson's official activities.

The Department of State has recognized that, for purposes of section 57, "[t]he use of public resources, including space, for campaign activities is a violation of the MCFA." *Schmid v Green Township*, Resolved Complaint, February 2, 2024. Here, Secretary Benson used the lobby space of the Austin Building to announce her campaign for Governor, which falls within this general prohibition. The campaign committee, however, has made four arguments in support of its position that, in this instance, Secretary Benson's use of the lobby space of the Austin Building was not prohibited and was not a violation of the MCFA.

Two of the arguments are similar and will be addressed together. The committee first argues that the prohibition in section 57(1) does not apply because Secretary Benson was not a "person acting for a public body" when she held the press conference; rather, she was there in her "personal capacity as a candidate for Governor." Relatedly, the committee also argues that the exemption in section 57(1)(f) applies here because Secretary Benson was not "acting for a public body" and was on her own "personal time" and expressing her "personal views."[5]

The Department of State has used a "reasonable person" standard in analyzing claims under section 57. For example, in finding unpersuasive, an argument that a public body did not authorize certain social media posts, the Department of State stated, "[a] reasonable person viewing the posts would not have had any indication the posts were made by third parties." *Schonert v RTA*, Resolved Complaint, November 30, 2022. A similar finding is warranted here. Secretary Benson invited members of the press inside the Austin Building and then conducted a press conference, professionally dressed, during the day, in the lobby of the building that houses her office. She gave no indication that would lead a reasonable person viewing the press conference to believe that she was there on her "personal time." Instead, the circumstances would lead a reasonable person to believe that Secretary Benson was acting as Secretary of State with the authority of the Department of State, which is a "public body,"[6] to invite members of the press inside her office building and use the lobby for the press conference. Therefore, the

[5] Section 57(1)(f), exempts, "[a]n elected or appointed public official or an employee of a public body who, when not acting for a public body but is on the public official's or employee's personal time, is expressing the public official's or employee's personal views, is expending the public official's or employee's personal funds, or is providing the public official's or employee's personal volunteer services." MCL 169.257(1)(f).

[6] MCL 169.211(7).

arguments that the prohibition in section 57(1) does not apply and that the exemption in section 57(1)(f) does are unpersuasive.

The committee's third argument is that there was no violation because section 57(1) does not apply to "[t]he use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility." MCL 169.257(1)(d). Secretary Benson's statements at the press conference show that she believed that other candidates could use the Austin Building lobby for similar announcements. But Secretary Benson's belief was misplaced because the Austin Building is operated by the Department of Technology, Management, and Budget (DTMB), and DTMB specifically prohibits "[p]artisan political events inside a facility" – although such events "can be held outdoors." *Administrative Guide to State Government, Procedure 0210.08 Obtaining Written Authorization for Using State Buildings and Grounds*. Therefore, the lobby of the Austin Building is not a facility that "any candidate or committee has an equal opportunity to use." As a result, the exemption in section 57(1)(d) does not apply.

Last, the committee argues that any violation of section 57 infringes on Secretary Benson's rights under the First Amendment because the prohibition on using the lobby for press conferences serves no legitimate purpose and such use would not actually interfere with the activities in the Austin Building. First, it is doubtful that section 57 can be declared unconstitutional in the context of resolving a campaign finance complaint. *Grievance Administrator v Fieger*, 476 Mich 231, 253 (2006) (recognizing that declaring a statute unconstitutional is a judicial power). In any event, the Department of State has, on multiple occasions, recognized that section 57 "is intended to prevent those who control public resources from using those resources to influence the outcome of an election." *Interpretive Statement to Sen. Dianne Byrum and Rep. Laura Baird*, September 3, 1996. This is a legitimate purpose, and prohibiting candidates from conducting press conferences and other partisan political activities in a government office building is reasonably related to that purpose. And one can easily envision a scenario where allowing such activities in a lobby would interfere with entering, exiting, moving throughout, and conducting business in, the building. The First Amendment argument is unpersuasive.

It is determined that Secretary Benson's use of the Austin Building lobby space to hold a press conference to announce her gubernatorial candidacy is a violation of section 57 of the MCFA.

As for other claims raised in the complaints, the complaint filed by Christian Charette also asserts a claim that Secretary Benson violated the MCFA by conducting "community conversations" prior to her candidacy. At the press conference, Secretary Benson stated that she went across the state to have "community conversations" about what issues are important to Michiganders. But there is no context in which to place those conversations, and, depending on the specific circumstances, there could be an applicable exemption or the prohibition in section 57(1) may not even be implicated at all. In the absence of a more detailed allegation or further supporting evidence, this claim is dismissed.

The complaint filed by Monica Ross-Williams refers to the Standards of Conduct for Public Officers and Employees Act, MCL 15.341 *et seq*. But neither the Department of State nor the Department of Attorney General has authority to determine whether that Act was violated. Instead, that Act sets out its own complaint and enforcement processes. See e.g., MCL 15.342(c) (filing a civil action); MCL 15.345 (making a complaint with the Board of Ethics). This claim is dismissed.

Turning now to the penalty for the violation arising out of the use of the Austin Building lobby. Generally, complaints alleging violations of the MCFA are filed with and investigated by the Secretary of State. MCL 169.215(5); MCL 169.215(9). But if the alleged violation involves the Secretary of State, her immediate family, her campaign, or a committee she is connected with, the Secretary of State refers the complaint to the Attorney General. MCL 169.215(9).

When it comes to civil penalties, the MCFA states that "a person who violates a provision of this act is subject to a civil fine of not more than $1,000.00 for each violation." The MCFA sets out a detailed process for the Secretary of State to resolve complaints, and that process clearly provides the Secretary of State with the means by which to impose civil fines. MCL 169.215(5); MCL 169.215(10); MCL 169.215(15). In fact, the MCFA provides at least two ways for the Secretary of State to impose a civil fine.

First, after the Secretary of State's investigation of a complaint is completed:

> If the secretary of state determines that there may be reason to believe that a violation of this act occurred, the secretary of state shall endeavor to correct the violation or prevent a further violation by using informal methods such as a conference, conciliation, or persuasion, and may enter into a conciliation agreement with the person involved. [MCL 169.215(10).]

Although not specifically spelled out, one way to "prevent a further violation" of the MCFA is to impose civil fines as a deterrent. As a result, conciliation agreements entered into by the Secretary of State frequently require the alleged violator to pay a civil fine. See e.g., *Schroder v Fouts*, Resolved Complaint, June 28, 2013 (imposing a civil fine of $750).

Second, if a conciliation agreement cannot be reached and the other "informal methods" are unsuccessful, then the Secretary of State must either: (1) refer the matter to the Attorney General "for the enforcement of any criminal penalty provided by [the MCFA]"; or (2) commence a hearing under the Administrative Procedures Act (APA), "for enforcement of any civil violation." MCL 169.215(11). After a hearing under the APA is conducted, if the Secretary of State determines that a violation of the MCFA has occurred, then "the secretary of state may issue an order requiring the person to pay a civil fine." MCL 169.215(11). Such an order is subject to judicial review as provided in the APA. *Id*. Also, the MCFA states that "the secretary of state shall deposit a civil fine imposed under this section in the general fund." *Id*.

In contrast to the detailed process and multiple options for the Secretary of State to resolve campaign finance complaints and impose civil penalties, the only guidance and authority given to the Attorney General by the MCFA for complaints against the Secretary of State is to "determine whether a violation of the act occurred." MCL 169.215(9). The MCFA is completely silent as to how the Attorney General is to resolve a complaint after determining that the Secretary of State has violated the act. There is no provision establishing a conciliation process or other informal methods of resolution for the Attorney General, no provision allowing the Attorney General to initiate an administrative hearing or civil judicial proceeding, no provision specifically allowing the Attorney General to issue an order requiring a civil fine following a hearing, no provision that would allow the Secretary of State to appeal a civil fine imposed by the Attorney General, and no guidance as to where any civil fine would be deposited by the Attorney General.

"When the Legislature has expressly included language in one part of a statute and omitted this same language elsewhere in the provision, this inclusion and omission should be construed as intentional." *Four Zero One Associates LLC v Department of Treasury*, 320 Mich App 587, 596 (2017). Therefore, because the Legislature did not grant the Attorney General the authority to engage in the same resolution process as the Secretary of State, which includes means by which to impose civil penalties, such omission must be deemed intentional, and so, that resolution process is not available to the Attorney General. As to the availability of some other process, "the remedies provided in [the MCFA] are the exclusive means

by which [the] act may be enforced and by which any harm resulting from a violation of [the] act may be redressed." MCL 169.215(17). As a result, there is no process available other than the one set out in the MCFA, and the MCFA does not establish any means by which the Attorney General can impose a civil penalty to redress a violation of the MCFA by the Secretary of State.

Further, in regard to criminal penalties, here, it has been determined that the Secretary of State violated MCL 169.257, and a person that "knowingly violates" that section is guilty of a misdemeanor. MCL 169.257(3). But "the criminal penalties provided by [the MCFA] may only be enforced by the attorney general and only upon referral by the secretary of state as provided under subsection (10) or (13)." MCL 169.215(17)(emphasis added). This referral to the Attorney General was made by the Secretary of State as provided under subsection (9). Therefore, under this plain language, the MCFA itself seemingly gives no authority to the Attorney General to seek criminal penalties for a violation by the Secretary of State either.

It could be viewed as odd and unfair that the Secretary of State, her immediate family, her campaign, and any committee that she is connected with are the only people and entities subject to the requirements of the MCFA, but not any of the penalties for violating them. This may simply be a matter of legislative oversight in drafting the MCFA, but, for whatever reason, the Legislature has not provided the Attorney General with any authority as to penalties that can be imposed if, following a referral under MCL 169.215(9), it is determined that the Secretary of State has violated the MCFA. Consequently, the Attorney General is left with no choice but to simply identify the violation, remind the Secretary of State of her obligations under the MCFA, and warn her against violating them in the future.

That said, it is by no means unusual for the Secretary of State to resolve campaign finance complaints with a similar reminder and warning. See e.g., *Schmid v Green Township*, Resolved Complaint, February 2, 2024. Here, as mentioned, Secretary Benson held the press conference indoors to shield the attendees from the weather and was under the mistaken belief that she, or any other candidate, could use the lobby for this purpose. Under the circumstances, resolving these complaints with a reminder and warning is the appropriate sanction, but it is also important to take this opportunity to point out the lack of enforcement options available to the Attorney General under the current language of the MCFA. There will almost certainly be situations in the future where the Secretary of State is a candidate for re-election or for some other public office while holding that office and is accused of violating the MCFA; yet the MCFA does not treat the Secretary of State the same as any other candidate in terms of being

sanctioned for violating the MCFA. Such unequal treatment is something the Legislature may want to consider addressing.

Secretary Benson is hereby reminded that MCL 169.257 precludes the use of public resources, such as the Austin Building lobby, for campaign-related purposes, and warned that this letter may be used in a future proceeding as evidence of a knowing violation of the MCFA.

These complaints are resolved.

Sincerely,

Joshua O. Booth
Division Chief, Opinions Division
Michigan Department of
Attorney General

cc: ***sent by email only:***
Christian Charette - *char.christian.business@gmail.com*
Tyler Henningsen - *tyler@mi-gop.org*
Monica Ross-Williams - *monicarw@mrwsolutionsgroup.com*