

Bourbonais, Lori (MDOS)

From: Bourbonais, Lori (MDOS)
Sent: Tuesday, September 10, 2013 9:05 AM
To: 'anickelhoff@sachswaldman.com'
Subject: CFA Complaint
Attachments: D'Assandro v CAQHC and HCFI Notice of Complaint.pdf

Mr. Nickelhoff,

I have attached the notice and the complaint filed by Gideon D'Assandro against Citizens for Affordable Quality Home Care and Home First, Inc. If this isn't what you are looking for, please let me know.

Lori Bourbonais
Bureau of Elections
Michigan Department of State

Bourbonais, Lori (MDOS)

From: Bourbonais, Lori (MDOS)
Sent: Monday, September 23, 2013 4:23 PM
To: 'Andrew Nickelhoff'
Subject: RE: complaint by D'Assandro

Mr. Nickelhoff,

The Department acknowledges your request on behalf of the respondents for an extension of time to file an answer to the campaign finance complaint filed by Gideon D'Assandro against Home Care First, Inc. and Citizens for Affordable Quality Healthcare. The Department understands that the respondents are in the process of retaining separate counsel, and it finds that there is good cause to grant a 15-business day extension pursuant to MCL 169.215(5). Respondents' answers are now due October 21, 2013.

Sincerely,

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

From: Andrew Nickelhoff [<mailto:anickelhoff@sachswaldman.com>]
Sent: Monday, September 23, 2013 3:54 PM
To: Bourbonais, Lori (MDOS)
Subject: complaint by D'Assandro

Ms. Bourbonais: The respondents request an extension of 15 business days for submission of a response to the above complaint. The individual defendants are in the process of retaining separate counsel, which will require some additional time.

Thank you,

Andrew Nickelhoff

**SENT BY: ANDREW NICKELHOFF, SACHS WALDMAN P.C. telephone: (313) 496-9429
PLEASE NOTE NEW ADDRESS: 2211 E. JEFFERSON AVE., STE. 200, DETROIT MI 48207**

This e-mail message and any attached files are confidential and are intended solely for the use of the addressee(s) named above. If you are not the intended recipient, any review, use, dissemination, forwarding, printing, copying, or other distribution of this e-mail message and any attached files is strictly prohibited. In order to comply with IRS Circular 230, we must advise that, unless specifically indicated otherwise, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of either avoiding tax-related penalties under the Internal Revenue Code, or promoting, marketing, or recommending to another party any tax-related matter addressed in this communication.



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

October 22, 2013

Gideon D'Assandro
P.O. Box 14162
Lansing, Michigan 48901

Dear Mr. D'Assandro:

The Department of State received a response to the complaint you filed against Home Care First, Inc. and Citizens for Affordable Quality Healthcare, which concerns alleged violations 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 letter to the Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918.

Sincerely,

A handwritten signature in cursive script that reads "Lori A. Bourbonais".

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: Michael J. Hodge
Andrew Nickelhoff

Founded in 1852
by Sidney Davy Miller

MILLER CANFIELD

MICHAEL J. HODGE
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October 21, 2013

VIA HAND DELIVERY

Mr. Christopher Thomas
Michigan Department of State
Bureau of Elections
Richard H. Austin Building - First Floor
430 W. Allegan
Lansing, MI 48918

Re: Gideon D'Assandro v Citizens for Affordable Quality Home Care, et. al.

Dear Mr. Thomas:

Enclosed for filing in the above referenced matter please find Respondents' Response to Complaint. Thank you for your assistance with regard to this matter. If you have any questions or concerns, please do not hesitate to contact our office.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By: 

Michael J. Hodge

MJH/rrf
Enclosure

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RECEIVED
OCT 21 2013 11:44 AM
BUREAU OF ELECTIONS
MICHIGAN DEPT OF STATE

**MICHIGAN DEPARTMENT OF STATE
BUREAU OF ELECTIONS**

GIDEON D'ASSANDRO,

Complainant,

v.

**CITIZENS FOR AFFORDABLE QUALITY
HOME CARE, HOME CARE FIRST, INC.,
DOHN HOYLE, and NORM DELISLE,**

Respondents.

2009 OCT 21 PM 4:05
BUREAU OF ELECTIONS
MI DEPT OF STATE

RESPONSE TO COMPLAINT

Pursuant to Section 15(5) of the Michigan Campaign Finance Act (MCFA), MCL 169.215(5), Respondents, by their undersigned attorneys, answer the Complaint as follows:

FACTUAL BACKGROUND

1. The ballot question and organizations at issue in this Complaint grew out of a long-term coordinated movement by various individuals, community and labor organizations, and state agencies to improve in-home care services to elderly and disabled low-income residents of Michigan.
2. In 2004, Governor Jennifer Granholm established the Michigan Quality Community Care Council (MQC3) by Executive Order. (Ex. A) The MQC3 was created under an agreement between the Michigan Department of Community Health and the Michigan Quality Community Care Council. Its purpose was to compile a registry of screened home health care providers in

order to allow Medicaid-eligible disabled and elderly home care patients to obtain better in-home personal care services. (Ex. A)

3. Formation of the MQC3 was the result of a grass roots effort by community groups and others that advocate for the elderly and disabled. Among the most active advocates were Arc of Michigan and the Michigan Disability Rights Coalition. Arc of Michigan was established in 1951 for the purpose of advancing the care and rights of people with developmental disabilities. Respondent Dohn Hoyle is the Executive Director of Arc of Michigan. (Ex. B) The Michigan Disability Rights Coalition advocates for the rights of people with disabilities, under the leadership of its Executive Director, Respondent Norm DeLisle. (Ex. C).

4. In addition to establishing the registry and providing screening and background check services, the MQC3 offered training and other assistance to home care providers. The MQC3 also voluntarily entered into a collective bargaining agreement covering home care workers with the Service Employees International Union (SEIU). The purpose of the collective bargaining agreement was to establish uniform compensation and terms and conditions of employment for in-home care workers and thereby to attract higher quality applicants for such positions.

5. Respondents Dohn Hoyle and Norm DeLisle, along with other activists working to improve in home care for lower income elderly and disabled, were instrumental in supporting the establishment and activities of MQC3.

6. By all accounts the MQC3 was a success. Use of MQC3's registry increased annually, and by 2010 almost half of all in-home care recipients seeking a non-family care provider were using the registry. (Ex. D, Anderson Economic Group Study, p. 3) Its activities not only improved the quality of in-home care for the elderly and disabled, it also created significant

savings in Michigan=s Medicaid-funded expenditures by allowing more eligible recipients to receive reliable and higher quality in-home care services instead of out-patient treatment.

7. Opposition to MQC3 began to build following the 2010 election. In 2011 the legislature defunded MQC3, essentially putting it out of business.

8. Respondents Hoyle and DeLisle, together with other activists and advocacy groups interested in improving services for the low income elderly and disabled, decided to organize and take action. On March 13, 2012, Dohn Hoyle, Norm DeLisle and Elizabeth Thomas incorporated Home Care First, Inc. (HCF) as a Michigan non-profit corporation. (Ex. E, Articles of Incorporation) HCF has applied for recognition as a tax exempt social welfare organization under Section 501(c)(4) of the Internal Revenue Code. HCF's stated purpose is: Ato promote social welfare . . . by, among other activities, educating the public and promoting public policies which support medical assistance programs in the State of Michigan that provide home personal assistance services to elderly persons and persons with disabilities. . . .@ (Ex. F, Bylaws)

9. A primary task on HCF's agenda was to find a means of resurrecting the MQC3 or at least restoring as many of its services and functions as possible. (Dohn Hoyle Affid. ¶ 3) It was decided at the time of HCF's formation that this purpose could best be achieved by a campaign of public education and by protecting MQC3 from the vicissitudes of politics through a constitutional amendment.

10. Citizens for Affordable Quality Home Care (CAQHC) registered as a ballot committee on or about March 2, 2012 for the purpose of placing the home care proposal on the 2012 ballot. The proposed amendment would have established a Michigan Quality Home Care Council to: regulate the home care provider industry; establish a registry of trained and certified home care workers

who had passed background checks for use by patients seeking competent and reliable home care providers; promulgate minimum standards of compensation and conditions of employment for home care providers; and allow home care providers to engage in collective bargaining with the Council. Respondent Dohn Hoyle was the Treasurer of CAQHC.

11. The founders of HCF envisioned it as an ongoing community organization that would work with and support the proposed Michigan Quality Home Care Council. It was understood that at the beginning, one of HCF's principle activities would be to assist and provide financial support to CAQHC in order to re-establish the Council. However, this was not HCF's only activity. At one of its early meetings, the HCF Board of Directors discussed the efforts of the Senior and Disability Voter Education Project formed by various advocacy organizations to "inform Michiganders about issues facing them and their families in the lead up to the election, including threats to Medicare and Medicaid, the recently-passed senior pension tax, and legislative efforts to undermine home care." (Ex. G, Minutes, p. 6) In May, 2012, the HCF Board approved a \$350,000.00 contribution to the Michigan Senior and Disability Voter Education Project. (Ex. H, Minutes p. 3) In June the Board approved a \$100,000.00 contribution to keep the de-funded MQC3 in existence so that it could "continue serving seniors and persons with disabilities across the state." (Ex. I, Minutes, p. 2) Ultimately, the founders of HCF had a long-term vision of drawing together community support for the restored MQC3 following passage of Proposal 4. (Hoyle Affid. ¶ 4)

12. By the end of the 2012 general election cycle, CAQHC had received a total of \$9,360,150.00 in direct contributions. (Ex. J, 2012 Post General CS) Almost all of that amount, \$9,360,000.00, was contributed by HCF. (*Id.*) CAQHC timely and accurately (with the exception

of routine errors corrected after error or omission notices) reported the sources of contributions received on its 2012 campaign statements.

13. In 2012, HCF received a total of \$4,763,000.00 in direct donations from the SEIU International Union BQC, a registered Michigan ballot question committee formed by the SEIU International Union. (Ex. K) SEIU could legally have donated directly from its treasury to a 501(c)(4) social welfare organization such as HCF without forming a BQC and reporting any of its donations. Believing, erroneously, that it was necessary to do so, SEIU registered a Michigan ballot question committee, SEIU International Union BQC (no. 516248) on August 28, 2012.

14. In its 2012 pre-general campaign statement filed on October 26, 2012, the SEIU BQC reported a total of \$4,458,000.00 in direct contributions to CAQHC for the purpose of supporting Proposal 4. (Ex. L) This was an error. The SEIU BQC actually made those donations to HCF.¹ On October 31, 2012, after the error was discovered, the SEIU BQC filed an amended pre-general campaign statement that accurately reported the donations as being made to HCF.² (Ex. M)

15. The SEIU BQC timely filed its post-general campaign statement on December 6, 2012, reporting direct contributions of \$812,000.00 to CAQHC. In an amended post-general campaign statement filed on January 31, 2013, which corrected one erroneous entry, the SEIU BQC reported donations totaling \$712,000.00 to CAQHC. (Ex. N) For reasons unknown, it appears that the post-general campaign statement expenditures again were reported inaccurately, inasmuch as these donations were made to HCF and not to CAQHC.

¹ CAQHC's campaign statements reflect contributions from HCF only. CAQHC reported no contributions from the SEIU BQC. (Ex. O)

² The Amended pre-general CS also included an August 28, 2012 contribution that had inadvertently been omitted from the original pre-general report.

DISCUSSION

The Complaint is full of colorful invective, accusing Respondents of a “conspiracy” or a “scheme or plan” to evade disclosure of ballot question contributions by means of a “laundering device.” The Complaint asserts that Respondents “threaten the Michigan Campaign Finance Act’s core function of public disclosure.” None of this states a violation of the MCFA. Given that the MCFA is a complex regulatory law that carries civil and criminal penalties for violation, and given the free speech and due process rights that are implicated, the Complaint must identify specific strictures and requirements of the MCFA that Respondents are alleged to have violated, and explain how those provisions were violated. Rhetoric about laundering schemes should not suffice to state a complaint. The MCFA should be applied strictly according to its precise terms.

All of the Complainant’s hyperbole about laundering and concealment ignores the salient fact that SEIU’s support for Proposal 4 was common knowledge and was widely publicized. The attached contemporaneous news stories and commentary attest to that fact. (Ex. P) It was no secret that SEIU was supporting the ballot proposal.

With the foregoing background in mind, an examination of the actual MCFA provisions cited in the Complainant shows that there was no actionable violation.

Section 41(3) [Complt. ¶¶19-20]

Section 41(3), MCL 169.241(3), cited in ¶ 19 of the Complaint, states: “A contribution shall not be made, directly or indirectly, by any person in a name other than the name by which that person is identified for legal purposes.” The Complaint contains no allegation that any of the Respondents made a contribution in a name other than the legal name of the actual contributor. The only Respondent that reported a contribution to another entity was HCF. While HCF did not

timely report its contributions to CAQHC, for reasons that are discussed below, it did make the contributions in its own legal name and reported them in that manner. Sec. 41(3) speaks by its plain terms to making a contribution under a false name. That did not happen here. The Complaint does not state a violation of Section 41(3).

Section 31(1) [Complt. ¶¶19-20]

Section 31(1), MCL 169.231(1), states:

A contribution that is controlled by, or made at the direction of, another person, including a parent organization, subsidiary, division, committee, department, branch, or local unit of a person, shall be reported by the person making the contribution and shall be regarded for purposes of contribution limits as a contribution attributable to both persons.

The first clause of Sec. 31(1) imposes a reporting obligation on a “person making the contribution” who is controlled by another person. The second dual attribution clause of Section 31(1) has no bearing here, since it applies to contribution limits which do not apply to ballot proposals.

Paragraph 20 of the Complaint alleges that, “various SEIU organizations made contributions through Respondent HCFI to Respondent CAQHC . . . ; however, these contributions were wrongfully reported to the public as being made by Respondent HCFI.” The Complainant has identified no evidence that any of HCF’s contributions to CAQHC were made at the direction of SEIU or any other person. SEIU and its affiliated labor organizations are not a “parent, subsidiary, division, committee, department, branch, or local union of” HCF. HCF is a legally separate corporate entity, and while an SEIU official was one member of its three person Board of Directors, no evidence has been produced suggesting that the HCF Board acted under the control of SEIU or other than independently. Certainly, HCF and SEIU shared the common First

Amendment-protected objective of passage of Proposal 4; and they worked in concert to achieve that common goal. Such associational activity does not violate the letter or the spirit of the MCFA.

Ironically, if Section 31(1) applied here, and it does not, arguably it would have required SEIU to report its contributions to HCF as contributions to CAQHC. While SEIU had no legal obligation to report its contributions to HCF, in fact SEIU's BQC did (mistakenly) report over \$5 million in contributions made directly to CAQHC, when in fact they had been made to HCF. (See ¶¶ 14, 15 above) This reporting was an error and was not compelled or required by Section 31(1).

Sec. 24(1) [Complt. ¶¶ 22-24]

Section 24(1), MCL 169.224(1), provides in relevant part:

A committee shall file a statement of organization with the filing officials designated in section 36 to receive the committee's campaign statements. A statement of organization shall be filed within 10 days after a committee is formed. . . . A person who fails to file a statement of organization required by this subsection shall pay a late filing fee of \$10.00 for each business day the statement remains not filed in violation of this subsection. The late filing fee shall not exceed \$300.00. A person who violates this subsection by failing to file for more than 30 days after a statement of organization is required to be filed is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.

HCF's Statement of Organization was filed on October 30, 2012. It states that the committee was formed on March 23, 2012.³

The Complaint alleges that HCF violated Sec. 24(1) by intentionally failing to register as a ballot question committee at the required time. Respondents Hoyle and DeLisle were genuinely

³ This inception date reflects the fact that HCF began operations with its initial meeting of Directors on March 22, 2012.

confused about whether they were required to register HCF as a ballot question committee before they did so. (Hoyle Affid. ¶ 4) Hoyle and DeLisle were aware that during the campaign season most of HCF's contributions were received from SEIU or SEIU-affiliated organizations, and that almost all of HCF's expenditures were made to CAQHC in support of the ballot question. They believed that, like any corporation operating as a Section 501(c)(4) social welfare organization, HCF was able to contribute unlimited amounts to CAQHC to support Proposal 4 without HCF itself becoming a BQC.⁴ (Hoyle Affid. ¶ 4) Based on their experience with advocacy and social welfare organizations, and the fact that those organizations typically do not register and report as a BQC when they make contributions to a BQC, Respondents Hoyle and DeLisle believed that HCF would not have to register as a committee so long as it did not make independent expenditures; they assumed that if HCF contributed to CAQHC, then CAQHC would satisfy any reporting obligations regarding the contributions (which it did). (Hoyle Affid. ¶ 4)

The Complaint attributes a malevolent motive to the fact that HCF was not registered as a BQC until after the election. The fact that HCF registered as a BQC at all was due to the fact that its leaders were informed very late in the campaign that HCF should register out of an abundance of caution since, at least arguably, it had received contributions that were for the purpose of supporting Proposal 4. (Hoyle Affid. ¶ 4) However, the MCFA is far from clear regarding this requirement. As mentioned above, Section 54(3) states a general rule that an organization does

⁴ See Sec. 54(3), MCL 169.254(3) (“A corporation, joint stock company, domestic dependent sovereign, or labor organization may make a contribution to a ballot question committee subject to this act. A corporation, joint stock company, domestic dependent sovereign, or labor organization may make an independent expenditure in any amount for the qualification, passage, or defeat of a ballot question. A corporation, joint stock company, domestic dependent sovereign, or labor organization that makes an independent expenditure under this subsection is considered a ballot question committee for the purposes of this act.”)

not become a BQC by making contributions to a BQC. See n. 4, above.

It is unclear whether and how the final clause of Sec. 4(3), MCL 169.204(3), applies here. That provision is not a model of clarity: “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 that ballot question committee.” It is unknown whether Respondents Hoyle and DeLisle were made aware of this clause; but even if they were, the confusing use of the term “expenditure” instead of “contribution” would have been sufficiently confusing to call into question its applicability. (Hoyle Affid. ¶ 4)

In sum, there was no clear statutory requirement that HCF register and report as a BQC. There is no evidence of a “conspiracy” or “scheme.” At worst, Respondents misunderstood the complicated and opaque wording of the statute.

Sec. 34(6) [Complt. ¶¶25-26]

Sec. 34(6), MCL 169.234(6), states: “If a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing of a ballot question committee fails to file a [campaign] statement . . . for more than 7 days, that treasurer or other designated individual is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 90 days, or both.”

Until shortly before HCF registered as a BQC on October 30, 2012, its leaders did not believe registration was required. (Hoyle Affid. ¶ 4) It took two weeks for HCF to assemble its campaign statements, which were filed on November 14, 2012. Assuming for the sake of argument that HCF was required to register and report as a BQC earlier than it did, there is no

dispute that its campaign statements, as well as several late contribution reports, were filed late. HCF already has paid the statutory penalties. In January, 2013, the Bureau of Elections assessed HCF the following late fees for failure to timely file reports:

2012 pre-primary CS	\$1,000.00
2012 pre-general CS	\$1,000.00
late contribution report	\$1,825.00
late contribution report	\$1,525.00
late contribution report	\$1,325.00

These late fees, totaling \$6,675.00, were paid by HCF. (Ex. Q) Based on the fact that statutory penalties already have been paid for the late filings, any further action would be cumulative and overly punitive. That especially is the case inasmuch as the public knew exactly how much HCF contributed to CAQHC, since all of the contributions were timely and accurately reported on CAQHC's campaign statements.

Sec. 34(7) [Complt. ¶¶27-28]

Sec. 34(7), MCL 169.234(7), states:

If a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing of a ballot question committee knowingly files an incomplete or inaccurate statement or report required by this section, that treasurer or other designated individual is subject to a civil fine of not more than \$1,000.00 or the amount of the undisclosed contribution, whichever is greater.

The Complaint alleges that Dohn Hoyle violated Sec. 34(7) because, as Treasurer of CAQHC, he reported contributions from HCF, while "he must have known that the contributions falsely reported as coming from [HCF] were, in reality, contributions from various SEIU organizations." According to the Complaint, Mr. Hoyle should assessed a civil fine in the amount of \$9.6 million.

The Complaint seeks to impose such an extreme civil penalty on Mr. Hoyle based on the

fact that he *accurately* reported the contributor of financial support received by CAQHC. Mr. Hoyle did not file an inaccurate or incomplete report. The contributions received by CAQHC were made by HCF, and as Treasurer Hoyle filed reports that accurately reported the contributor as HCF. Mr. Hoyle could not have reported the contributors as the SEIU organizations because those entities did not make contributions to CAQHC.⁵ Reporting the contributors as SEIU organizations would have resulted in an inaccurate report.

It should be added that imposition on Mr. Hoyle of a \$9.6 million fine, as the Complaint urges, would support a facial and as applied challenge to the constitutionality of Section 34(7) under the free speech and due process clauses of the Michigan and U.S. Constitutions. Not only is the possibility of a \$9.6 million fine against an individual under these circumstances unconstitutionally excessive, but *any* civil penalty against Mr. Hoyle would violate due process because there were no “undisclosed contributions.” CAQHC accurately reported all of the contributions that it received.

CONCLUSION

As is the case with many other advocacy and community organizations, the organizers of HCF believed that they could legally contribute unlimited amounts to a ballot question committee without themselves registering as one, understanding that the ballot question committee would be reporting their organization’s contributions. The Complaint over dramatizes these events as a “conspiracy” or “scheme” to “launder” or conceal contributions. That hyperbole does not square with reality. If the Michigan Freedom Fund is correct that Respondents schemed to avoid

⁵ This despite the fact that, as indicated above, the SEIU International Union BQC mistakenly reported having made direct contributions to CAQHC.

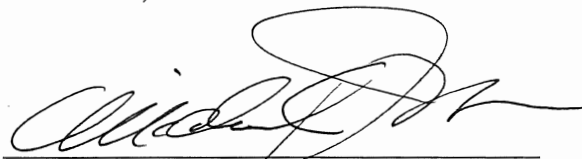
disclosure of SEIU's support for Proposal 4 by using HCF as cover, how do they explain the fact that SEIU formed a BQC when it wasn't required to, and then filed reports showing contributions directly to CAQHC? Those were not the actions of an organization intent on concealing its support for Proposal 4. As discussed earlier, the reality is that SEIU's support for Proposal 4 was not a closely-held secret; it was common knowledge and was widely publicized during the campaign. When the facts are viewed in relation to the specific provisions of the MCFA, as they should be, it is clear that the Complaint is without substance.

SACHS WALDMAN, P.C



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MILLER CANFIELD PADDOCK
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Attorneys for Dohn Hoyle
and Norm DeLisle
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Dated: October 21, 2013

MICHIGAN DEPARTMENT OF STATE
BUREAU OF ELECTIONS

GIDEON D'ASSANDRO,

Complainant,

v

CITIZENS FOR AFFORDABLE QUALITY
HOME CARE, HOME CARE FIRST, INC.,
DOHN HOYLE, and NORM DELISLE,

Respondents.

AFFIDAVIT OF DOHN HOYLE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Dohn Hoyle, being duly sworn, states that if called to testify in the above referenced matter, he can say from personal knowledge the following:

1. He is the Executive Director of ARC of Michigan, a non-profit corporation which was established in 1951 for the purpose of advancing the care and rights of people with developmental disabilities.

2. Both he and ARC were involved in supporting the establishment of the Michigan Quality Community Care Council (MQC3), which was created by Executive Order issued by Governor Jennifer Granholm in 2004 with the purpose of compiling a registry of screened home health care providers to enable Medicaid-eligible disabled and elderly home care patients to obtain better in-home personal care services.

3. In 2011, the Legislature defunded MQC3 and, in response, he and other activists interested in improving services for low-income elderly and disabled individuals, decided to organize and take action. On March 13, 2012, he was one of the incorporators of Home Care First, Inc. (HCF), a non-profit corporation created with the primary task of finding a means of resurrecting the MQC3 or at least restoring as many of its services as possible.

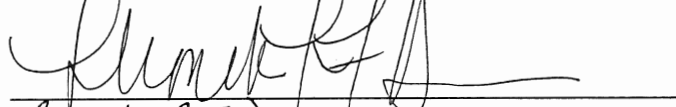
4. He also served as the Treasurer of Citizens for Affordable Quality Home Care (CAQHC) which registered as a ballot question committee on or about March 2, 2012 for the purpose of placing a home care proposal on the 2012 ballot which would have established a Michigan Quality Home Care Council to regulate the home care provider industry; establish a registry of trained and certified home care workers who had passed background checks for use by patients seeking competent and reliable home care providers; promulgate minimum standards of compensation and conditions of employment for home care providers and allow home care providers to engage in collective bargaining with the council. On October 30, 2012, a Statement of Organization was filed designating HCF as a ballot question committee. This was done because he and other supporters were confused about whether HCF, Inc. was required to register as a ballot question committee. Prior to filing the Statement of Organization, and even to this day, he and his colleagues were operating with the understanding that a 501(c)(4) corporation was authorized to contribute unlimited amounts to ballot question committees without becoming one itself. He, and other leaders involved in the ballot proposal were, however, informed very late in the campaign that HCF should register out of an abundance of caution since, at least arguably, it had received contributions that were for the purpose of supporting proposal 4. Even as of the date of signing this Affidavit, it remains unclear to him whether any such legal obligation exists.

FURTHER AFFIANT SAYTH NOT.



Dohn Hoyle

Subscribed and sworn to before me this 21st day of October, 2013.



Rhonda R.F. Dancer, Notary Public
State of Michigan, County of Ingham
My Commission Expires: 3/17/2018
Acting in Ingham County

**MICHIGAN DEPARTMENT OF STATE
BUREAU OF ELECTIONS**

GIDEON D'ASSANDRO,

Complainant,

v.

**CITIZENS FOR AFFORDABLE QUALITY
HOME CARE, HOME CARE FIRST, INC.,
DOHN HOYLE, and NORM DELISLE,**

Respondents.

RESPONSE TO COMPLAINT

Pursuant to Section 15(5) of the Michigan Campaign Finance Act (MCFA), MCL 169.215(5), Respondents, by their undersigned attorneys, answer the Complaint as follows:

FACTUAL BACKGROUND

1. The ballot question and organizations at issue in this Complaint grew out of a long-term coordinated movement by various individuals, community and labor organizations, and state agencies to improve in-home care services to elderly and disabled low-income residents of Michigan.
2. In 2004, Governor Jennifer Granholm established the Michigan Quality Community Care Council (MQC3) by Executive Order. (Ex. A) The MQC3 was created under an agreement between the Michigan Department of Community Health and the Michigan Quality Community Care Council. Its purpose was to compile a registry of screened home health care providers in

order to allow Medicaid-eligible disabled and elderly home care patients to obtain better in-home personal care services. (Ex. A)

3. Formation of the MQC3 was the result of a grass roots effort by community groups and others that advocate for the elderly and disabled. Among the most active advocates were Arc of Michigan and the Michigan Disability Rights Coalition. Arc of Michigan was established in 1951 for the purpose of advancing the care and rights of people with developmental disabilities. Respondent Dohn Hoyle is the Executive Director of Arc of Michigan. (Ex. B) The Michigan Disability Rights Coalition advocates for the rights of people with disabilities, under the leadership of its Executive Director, Respondent Norm DeLisle. (Ex. C).

4. In addition to establishing the registry and providing screening and background check services, the MQC3 offered training and other assistance to home care providers. The MQC3 also voluntarily entered into a collective bargaining agreement covering home care workers with the Service Employees International Union (SEIU). The purpose of the collective bargaining agreement was to establish uniform compensation and terms and conditions of employment for in-home care workers and thereby to attract higher quality applicants for such positions.

5. Respondents Dohn Hoyle and Norm DeLisle, along with other activists working to improve in home care for lower income elderly and disabled, were instrumental in supporting the establishment and activities of MQC3.

6. By all accounts the MQC3 was a success. Use of MQC3's registry increased annually, and by 2010 almost half of all in-home care recipients seeking a non-family care provider were using the registry. (Ex. D, Anderson Economic Group Study, p. 3) Its activities not only improved the quality of in-home care for the elderly and disabled, it also created significant

savings in Michigan=s Medicaid-funded expenditures by allowing more eligible recipients to receive reliable and higher quality in-home care services instead of out-patient treatment.

7. Opposition to MQC3 began to build following the 2010 election. In 2011 the legislature defunded MQC3, essentially putting it out of business.

8. Respondents Hoyle and DeLisle, together with other activists and advocacy groups interested in improving services for the low income elderly and disabled, decided to organize and take action. On March 13, 2012, Dohn Hoyle, Norm DeLisle and Elizabeth Thomas incorporated Home Care First, Inc. (HCF) as a Michigan non-profit corporation. (Ex. E, Articles of Incorporation) HCF has applied for recognition as a tax exempt social welfare organization under Section 501(c)(4) of the Internal Revenue Code. HCF's stated purpose is: Ato promote social welfare . . . by, among other activities, educating the public and promoting public policies which support medical assistance programs in the State of Michigan that provide home personal assistance services to elderly persons and persons with disabilities. . . .@ (Ex. F, Bylaws)

9. A primary task on HCF's agenda was to find a means of resurrecting the MQC3 or at least restoring as many of its services and functions as possible. (Dohn Hoyle Affid. ¶ 3) It was decided at the time of HCF's formation that this purpose could best be achieved by a campaign of public education and by protecting MQC3 from the vicissitudes of politics through a constitutional amendment.

10. Citizens for Affordable Quality Home Care (CAQHC) registered as a ballot committee on or about March 2, 2012 for the purpose of placing the home care proposal on the 2012 ballot. The proposed amendment would have established a Michigan Quality Home Care Council to: regulate the home care provider industry; establish a registry of trained and certified home care workers

who had passed background checks for use by patients seeking competent and reliable home care providers; promulgate minimum standards of compensation and conditions of employment for home care providers; and allow home care providers to engage in collective bargaining with the Council. Respondent Dohn Hoyle was the Treasurer of CAQHC.

11. The founders of HCF envisioned it as an ongoing community organization that would work with and support the proposed Michigan Quality Home Care Council. It was understood that at the beginning, one of HCF's principle activities would be to assist and provide financial support to CAQHC in order to re-establish the Council. However, this was not HCF's only activity. At one of its early meetings, the HCF Board of Directors discussed the efforts of the Senior and Disability Voter Education Project formed by various advocacy organizations to "inform Michiganders about issues facing them and their families in the lead up to the election, including threats to Medicare and Medicaid, the recently-passed senior pension tax, and legislative efforts to undermine home care." (Ex. G, Minutes, p. 6) In May, 2012, the HCF Board approved a \$350,000.00 contribution to the Michigan Senior and Disability Voter Education Project. (Ex. H, Minutes p. 3) In June the Board approved a \$100,000.00 contribution to keep the de-funded MQC3 in existence so that it could "continue serving seniors and persons with disabilities across the state." (Ex. I, Minutes, p. 2) Ultimately, the founders of HCF had a long-term vision of drawing together community support for the restored MQC3 following passage of Proposal 4. (Hoyle Affid. ¶ 4)

12. By the end of the 2012 general election cycle, CAQHC had received a total of \$9,360,150.00 in direct contributions. (Ex. J, 2012 Post General CS) Almost all of that amount, \$9,360,000.00, was contributed by HCF. (*Id.*) CAQHC timely and accurately (with the exception

of routine errors corrected after error or omission notices) reported the sources of contributions received on its 2012 campaign statements.

13. In 2012, HCF received a total of \$4,763,000.00 in direct donations from the SEIU International Union BQC, a registered Michigan ballot question committee formed by the SEIU International Union. (Ex. K) SEIU could legally have donated directly from its treasury to a 501(c)(4) social welfare organization such as HCF without forming a BQC and reporting any of its donations. Believing, erroneously, that it was necessary to do so, SEIU registered a Michigan ballot question committee, SEIU International Union BQC (no. 516248) on August 28, 2012.

14. In its 2012 pre-general campaign statement filed on October 26, 2012, the SEIU BQC reported a total of \$4,458,000.00 in direct contributions to CAQHC for the purpose of supporting Proposal 4. (Ex. L) This was an error. The SEIU BQC actually made those donations to HCF.¹ On October 31, 2012, after the error was discovered, the SEIU BQC filed an amended pre-general campaign statement that accurately reported the donations as being made to HCF.² (Ex. M)

15. The SEIU BQC timely filed its post-general campaign statement on December 6, 2012, reporting direct contributions of \$812,000.00 to CAQHC. In an amended post-general campaign statement filed on January 31, 2013, which corrected one erroneous entry, the SEIU BQC reported donations totaling \$712,000.00 to CAQHC. (Ex. N) For reasons unknown, it appears that the post-general campaign statement expenditures again were reported inaccurately, inasmuch as these donations were made to HCF and not to CAQHC.

¹ CAQHC's campaign statements reflect contributions from HCF only. CAQHC reported no contributions from the SEIU BQC. (Ex. O)

² The Amended pre-general CS also included an August 28, 2012 contribution that had inadvertently been omitted from the original pre-general report.

DISCUSSION

The Complaint is full of colorful invective, accusing Respondents of a “conspiracy” or a “scheme or plan” to evade disclosure of ballot question contributions by means of a “laundering device.” The Complaint asserts that Respondents “threaten the Michigan Campaign Finance Act’s core function of public disclosure.” None of this states a violation of the MCFA. Given that the MCFA is a complex regulatory law that carries civil and criminal penalties for violation, and given the free speech and due process rights that are implicated, the Complaint must identify specific strictures and requirements of the MCFA that Respondents are alleged to have violated, and explain how those provisions were violated. Rhetoric about laundering schemes should not suffice to state a complaint. The MCFA should be applied strictly according to its precise terms.

All of the Complainant’s hyperbole about laundering and concealment ignores the salient fact that SEIU’s support for Proposal 4 was common knowledge and was widely publicized. The attached contemporaneous news stories and commentary attest to that fact. (Ex. P) It was no secret that SEIU was supporting the ballot proposal.

With the foregoing background in mind, an examination of the actual MCFA provisions cited in the Complainant shows that there was no actionable violation.

Section 41(3) [Complt. ¶¶19-20]

Section 41(3), MCL 169.241(3), cited in ¶ 19 of the Complaint, states: “A contribution shall not be made, directly or indirectly, by any person in a name other than the name by which that person is identified for legal purposes.” The Complaint contains no allegation that any of the Respondents made a contribution in a name other than the legal name of the actual contributor. The only Respondent that reported a contribution to another entity was HCF. While HCF did not

timely report its contributions to CAQHC, for reasons that are discussed below, it did make the contributions in its own legal name and reported them in that manner. Sec. 41(3) speaks by its plain terms to making a contribution under a false name. That did not happen here. The Complaint does not state a violation of Section 41(3).

Section 31(1) [Complt. ¶¶19-20]

Section 31(1), MCL 169.231(1), states:

A contribution that is controlled by, or made at the direction of, another person, including a parent organization, subsidiary, division, committee, department, branch, or local unit of a person, shall be reported by the person making the contribution and shall be regarded for purposes of contribution limits as a contribution attributable to both persons.

The first clause of Sec. 31(1) imposes a reporting obligation on a “person making the contribution” who is controlled by another person. The second dual attribution clause of Section 31(1) has no bearing here, since it applies to contribution limits which do not apply to ballot proposals.

Paragraph 20 of the Complaint alleges that, “various SEIU organizations made contributions through Respondent HCFI to Respondent CAQHC . . . ; however, these contributions were wrongfully reported to the public as being made by Respondent HCFI.” The Complainant has identified no evidence that any of HCF’s contributions to CAQHC were made at the direction of SEIU or any other person. SEIU and its affiliated labor organizations are not a “parent, subsidiary, division, committee, department, branch, or local union of” HCF. HCF is a legally separate corporate entity, and while an SEIU official was one member of its three person Board of Directors, no evidence has been produced suggesting that the HCF Board acted under the control of SEIU or other than independently. Certainly, HCF and SEIU shared the common First

Amendment-protected objective of passage of Proposal 4; and they worked in concert to achieve that common goal. Such associational activity does not violate the letter or the spirit of the MCFA.

Ironically, if Section 31(1) applied here, and it does not, arguably it would have required SEIU to report its contributions to HCF as contributions to CAQHC. While SEIU had no legal obligation to report its contributions to HCF, in fact SEIU's BQC did (mistakenly) report over \$5 million in contributions made directly to CAQHC, when in fact they had been made to HCF. (See ¶¶ 14, 15 above) This reporting was an error and was not compelled or required by Section 31(1).

Sec. 24(1) [Complt. ¶¶ 22-24]

Section 24(1), MCL 169.224(1), provides in relevant part:

A committee shall file a statement of organization with the filing officials designated in section 36 to receive the committee's campaign statements. A statement of organization shall be filed within 10 days after a committee is formed. . . . A person who fails to file a statement of organization required by this subsection shall pay a late filing fee of \$10.00 for each business day the statement remains not filed in violation of this subsection. The late filing fee shall not exceed \$300.00. A person who violates this subsection by failing to file for more than 30 days after a statement of organization is required to be filed is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.

HCF's Statement of Organization was filed on October 30, 2012. It states that the committee was formed on March 23, 2012.³

The Complaint alleges that HCF violated Sec. 24(1) by intentionally failing to register as a ballot question committee at the required time. Respondents Hoyle and DeLisle were genuinely

³ This inception date reflects the fact that HCF began operations with its initial meeting of Directors on March 22, 2012.

confused about whether they were required to register HCF as a ballot question committee before they did so. (Hoyle Affid. ¶ 4) Hoyle and DeLisle were aware that during the campaign season most of HCF's contributions were received from SEIU or SEIU-affiliated organizations, and that almost all of HCF's expenditures were made to CAQHC in support of the ballot question. They believed that, like any corporation operating as a Section 501(c)(4) social welfare organization, HCF was able to contribute unlimited amounts to CAQHC to support Proposal 4 without HCF itself becoming a BQC.⁴ (Hoyle Affid. ¶ 4) Based on their experience with advocacy and social welfare organizations, and the fact that those organizations typically do not register and report as a BQC when they make contributions to a BQC, Respondents Hoyle and DeLisle believed that HCF would not have to register as a committee so long as it did not make independent expenditures; they assumed that if HCF contributed to CAQHC, then CAQHC would satisfy any reporting obligations regarding the contributions (which it did). (Hoyle Affid. ¶ 4)

The Complaint attributes a malevolent motive to the fact that HCF was not registered as a BQC until after the election. The fact that HCF registered as a BQC at all was due to the fact that its leaders were informed very late in the campaign that HCF should register out of an abundance of caution since, at least arguably, it had received contributions that were for the purpose of supporting Proposal 4. (Hoyle Affid. ¶ 4) However, the MCFA is far from clear regarding this requirement. As mentioned above, Section 54(3) states a general rule that an organization does

⁴ See Sec. 54(3), MCL 169.254(3) (“A corporation, joint stock company, domestic dependent sovereign, or labor organization may make a contribution to a ballot question committee subject to this act. A corporation, joint stock company, domestic dependent sovereign, or labor organization may make an independent expenditure in any amount for the qualification, passage, or defeat of a ballot question. A corporation, joint stock company, domestic dependent sovereign, or labor organization that makes an independent expenditure under this subsection is considered a ballot question committee for the purposes of this act.”)

not become a BQC by making contributions to a BQC. See n. 4, above.

It is unclear whether and how the final clause of Sec. 4(3), MCL 169.204(3), applies here. That provision is not a model of clarity: “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 that ballot question committee.” It is unknown whether Respondents Hoyle and DeLisle were made aware of this clause; but even if they were, the confusing use of the term “expenditure” instead of “contribution” would have been sufficiently confusing to call into question its applicability. (Hoyle Affid. ¶ 4)

In sum, there was no clear statutory requirement that HCF register and report as a BQC. There is no evidence of a “conspiracy” or “scheme.” At worst, Respondents misunderstood the complicated and opaque wording of the statute.

Sec. 34(6) [Complt. ¶¶25-26]

Sec. 34(6), MCL 169.234(6), states: “If a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing of a ballot question committee fails to file a [campaign] statement . . . for more than 7 days, that treasurer or other designated individual is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 90 days, or both.”

Until shortly before HCF registered as a BQC on October 30, 2012, its leaders did not believe registration was required. (Hoyle Affid. ¶ 4) It took two weeks for HCF to assemble its campaign statements, which were filed on November 14, 2012. Assuming for the sake of argument that HCF was required to register and report as a BQC earlier than it did, there is no