



**Michigan Department of State  
Campaign Finance Complaint Form**

BUREAU OF ELECTIONS • RICHARD H. AUSTIN BUILDING - 1<sup>st</sup> Floor  
430 W. ALLEGAN STREET • LANSING, MICHIGAN 48918

This complaint form may be used to file a complaint alleging that someone violated the Michigan Campaign Finance Act (MCFA). For instructions on how to complete this form, see the Campaign Finance Complaint Guidebook & Procedures document. All spaces are required unless otherwise indicated.

Section 1. Complainant			
Your Name <b>Judith Gafa</b>		Daytime Telephone Number <b>313-580-0503</b>	
Mailing Address <b>2158 Beaufait</b>			
City <b>Grosse Pointe Woods</b>	State <b>mi</b>	Zip <b>48236</b>	
Email (optional)			

Section 2. Alleged Violator			
Name <b>Barlow Communications,</b>			
Mailing Address <b>20902 MACK Ave st 203</b>			
City <b>Grosse Pointe Woods</b>	State <b>mi</b>	Zip <b>48236</b>	
Email (optional)			

more  
on  
Back

**Section 3. Allegations** (Use additional sheets if more space is needed.)

Section(s) of the MCFA alleged to be violated: \_\_\_\_\_

Explain how those sections were violated:

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Evidence included with the submission of the complaint that supports the allegations:

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**Section 4. Certification (Required)**

*I certify that 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

*Judy Step*  
Signature of Complainant

8/27/19  
Date

**Section 5. Certification without Evidence (Supplemental to Section 4)**

If, after a reasonable inquiry under the circumstances, you are unable to certify that certain factual contentions are supported by evidence as indicated above, you may make the following certification:

*I certify that to the best of my knowledge, information, or belief, there are grounds to conclude that the following specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry. Those specific contentions are:*

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X

Signature of Complainant

Date

Section 15(8) of the MCFA provides that a person who files a complaint with a false certification is responsible for a civil violation of the MCFA. The person may be required to pay a civil fine of up to \$1,000.00 and some, or all, of the expenses incurred by the Michigan Department of State and the alleged violator as a direct result of the filing of the complaint.

**Section 6. Submission**

Once completed, mail or hand deliver the complaint form with your evidence to the address below. The complaint is considered filed upon receipt by the Bureau of Elections.

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

## Michigan Department of State Campaign Finance Complaint Form

### **Section 1. Complainant**

Judith Gafa

Mailing Address:

Phone:

Email:

### **Section 2. Alleged Violators**

1. Barlow Communications  
20902 Mack Ave., Suite 203  
Grosse Pointe Woods, MI 48236  
(313)743-5325
  
2. Scott Hughes  
Dykema Gossett PLLC  
201 TOWNSEND ST STE 900  
LANSING, MI 48933  
(517) 374-9100
  
3. Genevieve Tusa  
16934 St. Paul  
Grosse Pointe, MI 48230  
(313)885-5656  
gtusa@tusalaw.com

### **Overview**

I have included documentation to show various campaign activities surrounding the recall of Board of Education members in Grosse Pointe which are either attributed to an unregistered PAC, a registered PAC with no filings or not attributed at all and a PAC that was just filed 7/17/2019, over a month after the first Grosse Pointe newspaper ad and the billboard. These items include:

- Images showing that S.E. Michigan First is not registered in Wayne County or elsewhere in any database in the state. (Exhibit A)
- Images showing that The Committee to Save Grosse Pointe Schools is registered but has no filings. (Exhibit B)
- 2 print ads that were run in The Grosse Pointe News, which have a call to action and claims to be paid by S.E. Michigan First run on 6/12/2019 and 6/20/2019 (Exhibit C)

- An unattributed billboard arguing to “Save Our Schools” that also urges people to recall Profeta, Abke and Gafa. We believe it was first placed on June 17th and was removed by July 22nd, unsure of exact date. (Exhibit D)
- The retention of Scott Hughes, an attorney from Dykema Gossett, who has participated in both of the Wayne County Election Commission’s hearings. At both hearings, he refused to disclose who his clients are and who is paying his fees. The hearing dates were 6/26 and 7/18.
- The hiring of Barlow Communications, a PR firm based in Grosse Pointe. This firm purchased the ads in the Grosse Pointe News. As you can see from that ad, the number you can call goes directly to Barlow Communications, which will not disclose their client or their in-kind support for this recall campaign. (Exhibit C)
- The purchase of Facebook ads, and the creation of a digital website (which appear to have launched by June 6th, 2019) (Exhibit E)
- Reports by community members of paid robocall surveys taking place via landline phone calls. Again, no disclosure as to who was behind these calls. The calls were reported June 26th, 2019 (exhibit F)
- Image showing the Save GP Schools Super PAC Formed 7/17, over a month after the website, print newspaper ads and billboard were published. (Exhibit G)
- Image showing Recall Petition from hearing with Wayne County Elections, signed by Genevieve Tusa as the petitioner. Both recall petitions filed against Trustee Kathy Abke and Trustee Judith Gafa and all three filed against Trustee Chris Profeta were signed by Genevieve Tusa. (Exhibit H)

Taken all together, this entire effort is a comprehensive, well-coordinated political campaign in which there is little to none of the required disclosure.

### **Section 3- Allegations**

I believe the print ads, purchased by Barlow Communications, and attributed to a defunct PAC (S.E. Michigan First) violate 169.243 (placed by ad agency on behalf of a defunct PAC) and/or 169.247 (the PAC name used here is defunct) and/or 169.221(8) as S.E. Michigan First does not currently have a treasurer.

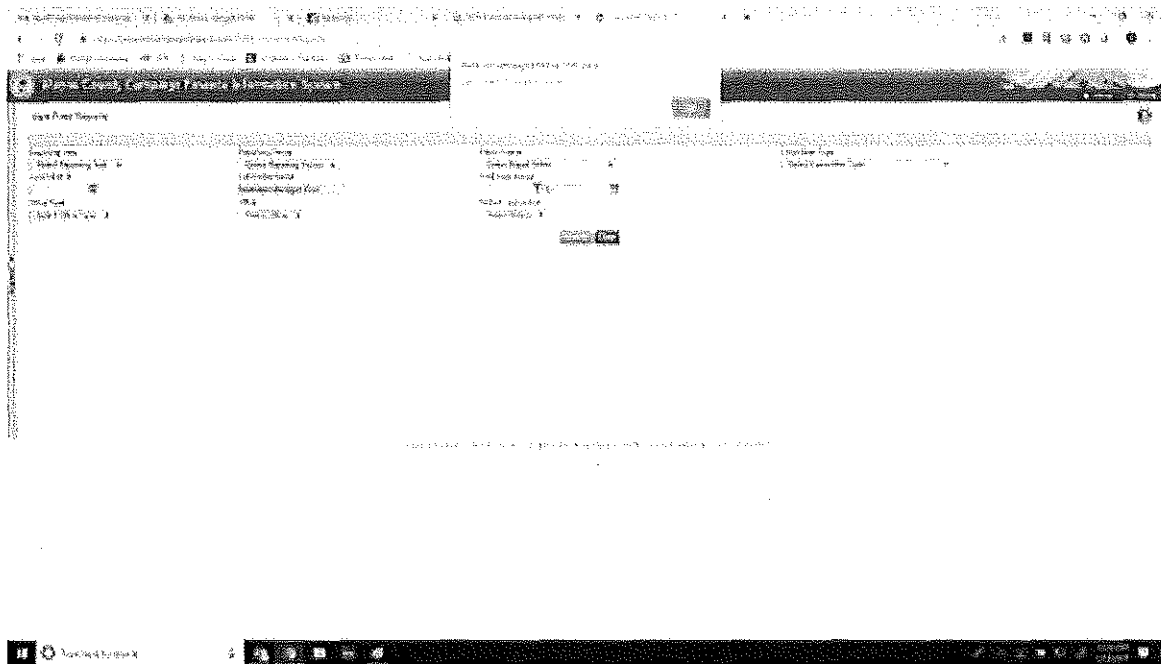
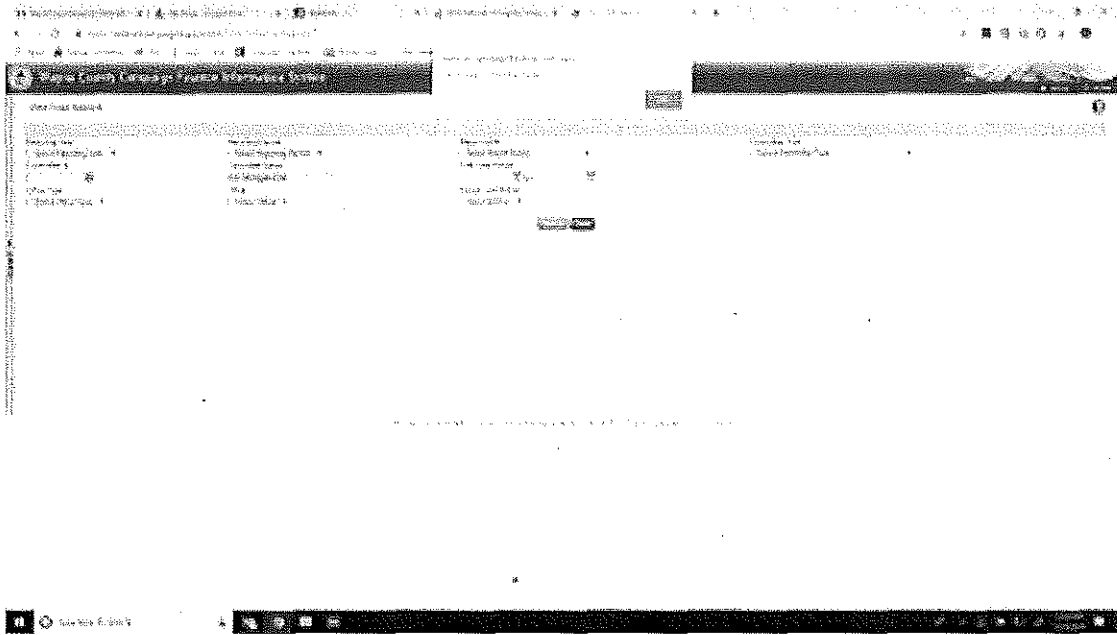
The billboard we could not determine who paid for, because it had no name and address, a violation of 169.247 SEC 47. The billboard pre-dated the filing of Save GP Schools Super PAC by a month. If it was purchased by an individual, it would violate 169.251 Sec. 51 as clearly a month of the billboard ad cost more than \$100.01.

The website also has no paid for by attribution, and the Facebook ads also have no paid for attribution/address a violation of 169.247 Sec (4).

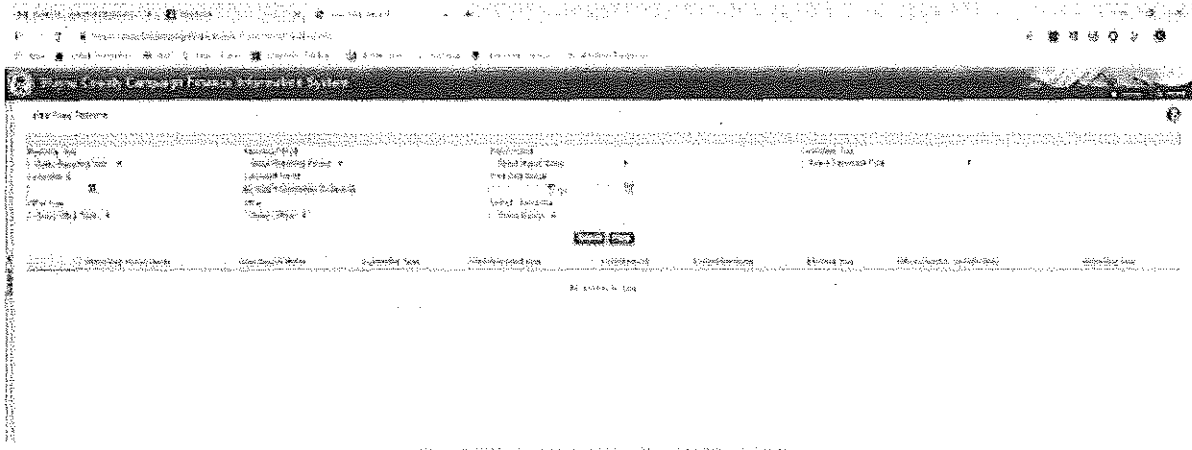
Because there is no attribution for the billboard and website I have included the petitioner on this complaint.

## Section 3- Evidence

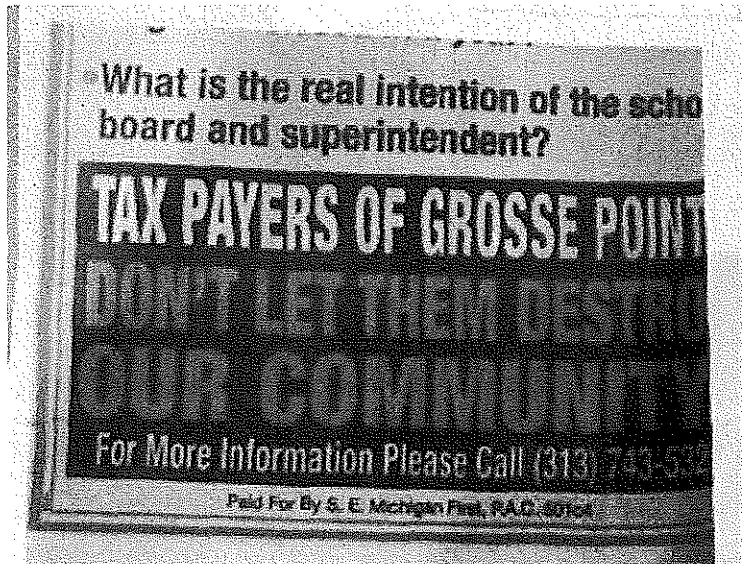
### Exhibit A- S.E. MI First Search



# Exhibit B- Committee to Save Grosse Pointe Schools Search



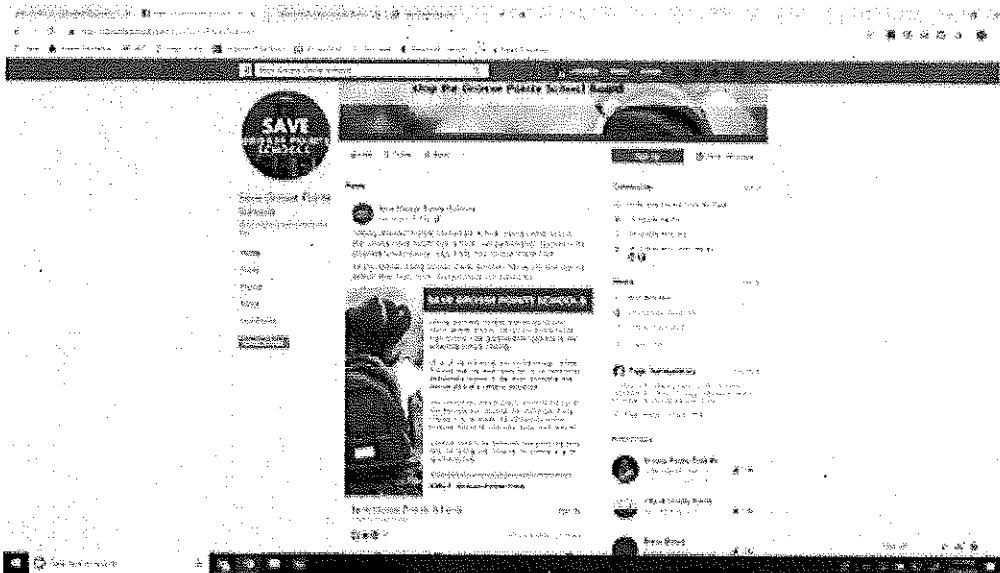
# Exhibit C- Print Ads in GP News



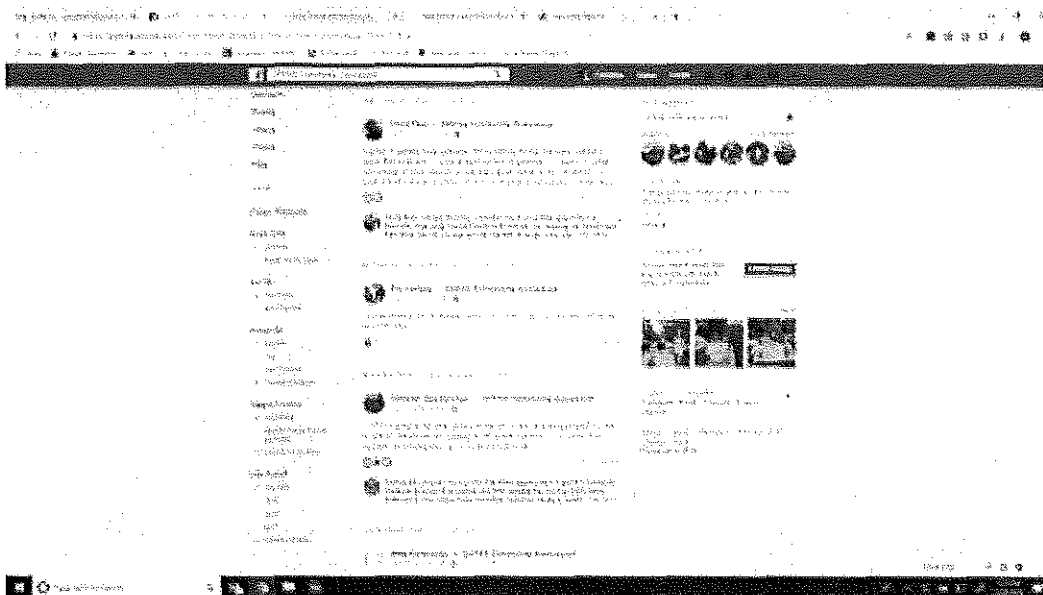
# Exhibit D- Billboard Jefferson and Alter Road



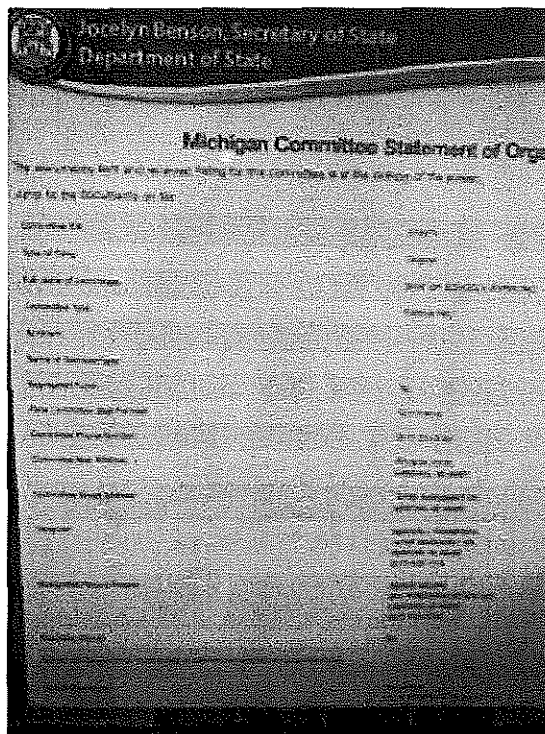
# Exhibit E- Facebook Page with Website Link (ran ads)



# Exhibit F (robo call survey community conversation)



# Exhibit G (Filing 7/17 of Super PAC)





# Exhibit H (Recall Petition- signed by Genevieve Tusa)

**RECALL PETITION**

**CHALLENGER PROFILE**

At the June 24, 2024 Council for the Public Schools (CPS) School Board meeting, the Chicago Profeta voted to support a Recall Petition...

NAME	ADDRESS	CITY	STATE	ZIP

**CERTIFICATE OF QUALIFICATION**

**DECLARATION - DO NOT SIGN OR FILE**

**Signature of Petitioner**

**Signature of Notary Public**

Profeta Recall Petition



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

August 30, 2019

Barlow Communications  
20902 Mack Avenue, Suite 203  
Grosse Pointe Woods, Michigan 48236

Scott Hughes  
Dykema Gossett PLLC  
201 Townsend Street Ste 900  
Lansing, Michigan 48933

Genevieve Tusa  
16934 St. Paul  
Grosse Pointe, Michigan 48230

Re: *Gafa v. Barlow Communications, et al*  
Campaign Finance Complaint  
No. 2019-08-28-21

Dear Barlow Communications, Mr. Hughes & Ms. Tusa:

The Department of State (Department) received a formal complaint filed by Judith Gafa against you alleging that you violated the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* 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.* 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 person who fails 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. Additional sections of the Act require committees to file certain reports and disclose contributions and expenditures. See MCL 169.233, 235, 236.

Ms. Gafa alleges that S.E. Michigan First made expenditures that expressly advocated for the recall of members of the Grosse Pointe Board of Education, has failed to form a committee under the Act, failed to file proper reports under the Act, failed to maintain a treasurer, and failed to place a proper identifier and disclaimer on its materials.

Barlow Communications  
Scott Hughes  
Genevieve Tusa  
August 30, 2019  
Page 2

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 the Department is neither making this complaint nor accepting the allegations as true.

**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, 1<sup>st</sup> Floor, 430 West Allegan Street, Lansing, Michigan 48918. Your response may also be sent via email at the email address listed below.

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 Ms. Gafa, 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 penalty provided in section 33(11) of the Act.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Adam Fracassi  
Bureau of Elections  
Michigan Department of State  
430 West Allegan Street  
Lansing, Michigan 48918  
517-335-3234  
[FracassiA@michigan.gov](mailto:FracassiA@michigan.gov)

c: Judith Gafa

## **Fracassi, Adam (MDOS)**

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**From:** Hughes, Scott <SHughes@dykema.com>  
**Sent:** Tuesday, September 10, 2019 11:19 AM  
**To:** Fracassi, Adam (MDOS)  
**Subject:** Response to Complaint No. 2019-08-28-21  
**Attachments:** Response to MCFA Complaint (SAH) 4831-7575-7987 v.1.pdf; MEETING\_full.pdf

Mr. Fracassi,

Attached is my response to the above-referenced complaint.

Please contact me with any questions. Thank you.

Kind regards,

<b>DyKEMA</b>	<b>Scott A. Hughes</b>	517-374-9172 Direct	201 Townsend Street, Suite 900
	Attorney	517-374-9100 Main	Lansing, Michigan 48933
	SHughes@dykema.com	855-242-8122 Fax	300 Ottawa Ave NW, Suite 700
	www.dykema.com	616-460-8356 Mobile	Grand Rapids, Michigan 49503

\*\*\* Notice from Dykema Gossett PLLC: This Internet message may contain information that is privileged, confidential, and exempt from disclosure. It is intended for use only by the person to whom it is addressed. If you have received this in error, please (1) do not forward or use this information in any way; and (2) contact me immediately. Neither this information block, the typed name of the sender, nor anything else in this message is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.



**Dykema Gossett PLLC**  
Capitol View  
201 Townsend Street, Suite 900  
Lansing, MI 48933  
WWW.DYKEMA.COM  
Tel: (517) 374-9100  
Fax: (517) 374-9191

**Scott A. Hughes**  
Direct Dial: (517) 374-9172  
Direct Fax: (855) 242-8122  
Email: SHughes@dykema.com

September 10, 2019

**Via Email**

Adam Fracassi  
Bureau of Elections  
Michigan Department of State  
430 West Allegan Street  
Lansing, Michigan 48918  
FracassiA@michigan.gov

Re: *Gafa v. Barlow Communications, et al*  
Campaign Finance Complaint  
No. 2019-08-28-21

Dear Mr. Fracassi:

I am writing in response to your letter dated August 30, 2019 regarding the formal complaint filed by Judith Gafa against me and others alleging a violation of the Michigan Campaign Finance Act (the Act), 1976 PA 388, MCL 169.201 et seq. This letter is submitted as my response and not on behalf of any other respondent listed in the complaint.

The complaint lists only the following alleged conduct against me:

- The retention of Scott Hughes, an attorney from Dykema Gossett, who has participated in both of the Wayne County Election Commission's hearings. At both hearings, he refused to disclose who his clients are and who is paying his fees. The hearing dates were 6/26 and 7/18. [Emphasis in original.]

The above statement is inaccurate and, notwithstanding, is insufficient to establish any violation of the Act on my part. As an initial matter, the complaint incorrectly alleges that I "refused to disclose who [my] clients are." At both of the hearings, I entered my appearance—on the record—on behalf of Genevieve Tusa, the sponsor of the recall petitions (i.e., the petitioner). See, e.g., Enclosure, Transcript of July 18, 2019 Hearing, page 6, lines 18-19. The question of "who is paying [attorneys'] fees" was not discussed by or with the commission because it was neither relevant to the subject of the hearings, nor an appropriate inquiry by the commission in any event.

# DyKEMA

Adam Fracassi  
September 10, 2019  
Page 2

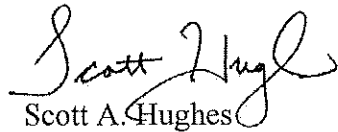
Simply stated, my appearance as counsel for the sponsor of a recall petition at a hearing of the board of county election commissioners pursuant to MCL 168.952 does not trigger any reporting obligation on my part under the Act. Indeed, section 3 of the Act unambiguously states: “*An individual*, other than a candidate, *does not constitute a committee.*” MCL 169.203(4) (emphasis added). Accordingly, the complaint against me is completely without merit and should be dismissed as such.

To the extent the complaint is considered to make allegations regarding Dykema Gossett PLLC (the “Firm”), the allegations again are insufficient to establish any violation of the Act. The Firm simply represents a recall petition sponsor—on a fee basis in the normal course of business—and has not received any contributions or made any 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.” MCL 169.203(4). The Firm does not constitute a “committee” under the Act and has no reporting obligations thereunder with respect to the present matter.

Please contact me with any further questions.

Kindest regards,

**DYKEMA GOSSETT PLLC**

  
Scott A. Hughes

Enclosure

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STATE OF MICHIGAN  
WAYNE COUNTY ELECTION COMMISSION  
  
The Meeting of the Wayne County Election Commission,  
Taken at 2 Woodward Avenue,  
Detroit, Michigan,  
Commencing at 2:05 p.m.,  
Thursday, July 18, 2019,  
Before Laurie R. Mayer, CSR-5385.

1 APPEARANCES:

2

3 HONORABLE FREDDIE G. BURTON, JR.

4 JANET ANDERSON-DAVIS - Corporation Counsel

5 ERIC SABREE - Wayne County Treasurer

6 CATHY GARRETT - Wayne County Clerk

7

8 ALSO PRESENT:

9 JENNIFER REDMOND

10 GREG MAHAR

11 ENJOLI CONLEY

12 LIBBY BUSDICKER

13 DELPHINE ODEN

14 KATHLEEN ABKE

15 CHRIS PROFETA

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1 SCOTT A. HUGHES  
2 Dykema Gossett P.L.L.C.  
3 201 Townsend  
4 Suite 900  
5 Lansing, Michigan 48933  
6 (517) 374-9172  
7 shughes@dykema.com

8 Appearing on behalf of the Petitioner.

9

10 THOMAS P. BRUETSCH  
11 Ottenwess, Taweel & Schenk, P.L.C.  
12 535 Griswold Street  
13 Suite 850  
14 Detroit, Michigan 48226  
15 (313) 965-2121  
16 tbruetsch@ottenwesslaw.com

17 Appearing on behalf of the  
18 Grosse Pointe Public School System.

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1 Detroit, Michigan

2 Thursday, July 18, 2019

3 2:05 p.m.

4

5 JUDGE BURTON: We'll call this meeting to  
6 order. If I could ask the clerk to call the roll,  
7 please?

8 MS. REDMOND: Judge Burton?

9 JUDGE BURTON: Here.

10 MS. REDMOND: Treasurer Sabree?

11 MR. SABREE: Here.

12 MS. REDMOND: Clerk Garrett?

13 MS. GARRETT: Here.

14 MS. REDMOND: We have a quorum.

15 JUDGE BURTON: Thank you very much.

16 Do we have a motion to adopt the agenda?

17 MR. SABREE: So moved.

18 MS. GARRETT: Support.

19 JUDGE BURTON: Properly moved and  
20 supported.

21 All those in favor, signify by saying aye.

22 MS. GARRETT: Aye.

23 MR. SABREE: Aye.

24 JUDGE BURTON: The agenda is adopted.

25 We have the minutes from our last meeting.

1 Do we have a motion to approve the minutes as offered?

2 MR. SABREE: So moved.

3 MS. GARRETT: Support.

4 JUDGE BURTON: All right. Any changes or  
5 modifications of any kind? If not, we'll proceed to a  
6 vote.

7 All those in favor, please signify by  
8 saying aye.

9 MS. GARRETT: Aye.

10 MR. SABREE: Aye.

11 JUDGE BURTON: All right. The minutes are  
12 approved.

13 We now have three matters addressing the  
14 request for determination of clarity. I see some of  
15 the same people back. We welcome them back.

16 Before we get started, I would ask Attorney  
17 Anderson-Davis to summarize the duties and  
18 responsibilities of this commission as it relates to  
19 the requested information.

20 MS. ANDERSON-DAVIS: The role of the  
21 election commission is to determine whether each  
22 reason for the recall, stating that the petition is  
23 factual and of sufficient clarity to enable the  
24 officer whose recall was solved and the electors to  
25 identify the course of conduct that is the basis for

1 the recall, and Judge Levy in White v. Wayne County  
2 Election Commission indicated that --

3 JUDGE BURTON: Can you hear her?

4 THE BOARD: No.

5 MS. ANDERSON-DAVIS: Judge Levy in White v.  
6 Wayne County Election Commission indicated that the  
7 petitioner need not submit evidence just as long as  
8 there's a declaratory statement that's understandable  
9 to the reader to the language as sufficient.

10 JUDGE BURTON: All right. Thank you very  
11 much.

12 What I would like to do is entertain a  
13 motion starting with item number 5A1, and then I'll be  
14 happy to hear from -- I think we have representatives  
15 of the school board present.

16 Counsel, could I have your appearance again  
17 for the record?

18 MR. HUGHES: Yes, Scott Hughes on behalf of  
19 the petitioner.

20 JUDGE BURTON: Counsel?

21 MR. BRUETSCH: Thomas Bruetsch on behalf of  
22 the school board.

23 JUDGE BURTON: Thank you both very much.

24 Do we have a motion relative to item number  
25 5A1?

1 MS. GARRETT: So moved.

2 JUDGE BURTON: Is there support?

3 MR. SABREE: Support.

4 JUDGE BURTON: All right. It's been  
5 properly moved and supported.

6 Do we have any discussion among the  
7 members?

8 If not, Counsel, do you have something you  
9 wish to say?

10 MR. HUGHES: Yes.

11 MS. ANDERSON-DAVIS: If I may?

12 JUDGE BURTON: I'm sorry.

13 MS. ANDERSON-DAVIS: My pardon.

14 The motion is to -- simply to bring this  
15 before the board. What is the motion?

16 JUDGE BURTON: The motion is to approve the  
17 request for determination of clarity; is that correct?

18 MS. GARRETT: I took it that it was to  
19 bring it before the board for discussion.

20 JUDGE BURTON: For the purposes of  
21 discussion, but it's still a motion that it be before  
22 us, and it's a motion to prove or a motion to reject.  
23 Would you rather just have -- set a generic motion and  
24 get it enforced? Let's clarify that.

25 MS. GARRETT: How did I take it?

1 JUDGE BURTON: What did that motion --

2 MS. GARRETT: I move that we bring petition  
3 5A1 forth for the point of discussion.

4 JUDGE BURTON: All right. Is that  
5 supported?

6 MR. SABREE: Support.

7 MR. HUGHES: Commissioners, good to see you  
8 again.

9 JUDGE BURTON: You too.

10 MR. HUGHES: I think at the last meeting I  
11 spent a lot of time about the standard of review, and  
12 I'm not going to repeat that, other than to  
13 acknowledge that the Michigan Court of Appeals  
14 recently considered it and reiterated that it's a very  
15 lenient, lenient standard of review.

16 The language in the petitions in this case  
17 easily satisfies that both threshold. If you look at  
18 petition 5A1, the reason stated is before you, I'm  
19 sure. I'll just read it briefly.

20 On June 24th, 2019, Kathleen Abke voted in  
21 favor of closing two elementary schools in the Grosse  
22 Pointe Public School system's school district. That  
23 is stated as an assertion of fact. It is clear to put  
24 the public official on notice of the reason for the  
25 recall and also gives notice to the public of the

1 reason for the recall.

2 As this commission is well aware, it's  
3 not the inquiry today whether or not these individuals  
4 should be recalled, just whether or not the language  
5 is sufficient. And I would submit to you that this  
6 language is very concise, clear and stated as a fact.

7 The Court of Appeals also made clear that  
8 truthfulness or accuracy is not proper or appropriate  
9 inquiry today. So there's no need to look to external  
10 materials, whether that be board minutes or  
11 resolutions that this may pertain to.

12 With that, I would be happy to entertain  
13 any questions.

14 JUDGE BURTON: Any questions for counsel?  
15 None?

16 Counsel, response?

17 MR. BRUETSCH: Thank you, Mr. Chairman.

18 Yes. With respect to the petitions for Ms.  
19 Abke, another one we'll discuss in a moment is Gafa, I  
20 would have the same language, and I'll discuss them  
21 together, if you don't mind.

22 As you know, under the constitution, and  
23 you've been doing this a long time, this body  
24 preserves the purity of the elections and guards  
25 against abuse of the franchise, preventing voter

1 confusion.

2 Now, the two petitions regarding Ms. Abke  
3 and Ms. Gafa that they voted in favor of closing two  
4 elementary schools in the Grosse Pointe Public School  
5 District fare no better than the last time we were  
6 here.

7 Grosse Pointe Public Schools have nine  
8 elementary schools, yet the petition doesn't state  
9 which elementary schools they voted to close, and I  
10 believe this is intentional. It's intentionally  
11 deceptive because they're going to take these  
12 petitions out into the community and the neighborhoods  
13 where no schools are closing, and people in the  
14 community and these neighborhoods are going to look at  
15 them, and if they're not familiar with the issue, are  
16 going to potentially think that it's their school that  
17 somebody voted to close rather than a school that  
18 could be miles and miles away from their homes.

19 When you have a law that requires 25  
20 percent signatures being collected, that's important  
21 because, you know, the people who are probably going  
22 to be most interested in this issue are people whose  
23 local schools are closing. So I believe that was  
24 intentional. I believe that makes the language vague  
25 and confusing when you have nine elementary schools in



1 the community and they didn't name the two schools  
2 that they voted to close.

3 In addition, the resolution did  
4 considerably more than just direct that the two  
5 elementary schools be closed. Schools don't close  
6 immediately. They're closing at the end of the  
7 following school year. Voters should have been told  
8 that.

9 The resolutions indicated that the  
10 administrator hadn't filed (phonetic) listing poor  
11 policies, and discuss declining enrollment, efforts to  
12 reduce costs and other matters, as well.

13 I'll wait for Mr. Profeta's petition, which  
14 has different language, until we get there. But I  
15 would note that the matter in front of you I believe  
16 is very similar to the one that was before this body  
17 several years ago regarding state Representative and  
18 former state Representative Tim Bledsoe, allegation  
19 that the petition was that Representative Bledsoe had  
20 not voted in favor of a certain bill that allegedly  
21 would have repealed some taxes, tax statutes. That  
22 bill had much more going on in it, just as this  
23 resolution does. It was an amendment to the tax  
24 ordinance, not a repeal. So this body rejected it  
25 after arguments that that petition was incomplete and

1 unclear. And I think this matter is very similar to  
2 that, the Bledsoe matter.

3 I would also note a recent decision of the  
4 Oakland County Election Commission where I was  
5 president, considering the supervisor of Royal Oak  
6 Township. One of the rejected conditions in that case  
7 was that the supervisor had, quote, opposed a township  
8 match for a grant to approve the township recreation  
9 center. The election commission there found the  
10 petition unclear because voters wouldn't know what a  
11 township match was, and the circuit court  
12 upheld the commission's decision in that case.

13 So because these petitions continue to be  
14 unclear and confusing voters, I would ask that you  
15 reject them.

16 JUDGE BURTON: All right. Thank you very  
17 much.

18 Do we have any further discussion? Do we  
19 have a motion to approve this language or reject the  
20 language?

21 I would move that we approve the language  
22 as submitted. Is there support?

23 MS. GARRETT: Support with the statement.  
24 I just want to address the fact that I think this  
25 attorney over here mentioned about purity of

1 elections.

2 I want it put on the record, absolutely as  
3 to county clerk, purity of the election process is of  
4 the utmost importance to me. However, based on what  
5 our duties are here said by our attorney, I will  
6 support your motion in approving the petition based on  
7 it is clear.

8 JUDGE BURTON: Do we have any additional  
9 comments from the news or the commission?

10 If not, let us proceed to a vote.

11 All those in favor of the motion as  
12 offered, please signify by saying aye.

13 MS. GARRETT: Aye.

14 MR. SABREE: Aye.

15 JUDGE BURTON: Aye.

16 It is unanimous. The language that is  
17 included in this recall petition is approved for  
18 circulation.

19 We will now move to item number 5A2, Judy  
20 Gafa.

21 Do we have a motion? I will move approval  
22 of the language in this recall petition. Is there  
23 support?

24 MR. SABREE: Support.

25 MS. GARRETT: Support.

1 JUDGE BURTON: All right.

2 Is there any discussion? Hearing none,  
3 I'll proceed to a vote.

4 All those in favor, please signify by  
5 saying aye.

6 MR. SABREE: Aye.

7 MS. GARRETT: Aye.

8 JUDGE BURTON: Aye.

9 The language in this recall petition then  
10 is approved.

11 As to item number 5A3, Christopher Profeta,  
12 do we have a motion? I would move approval of this  
13 recall petition as it is worded.

14 Is there support? Having (inaudible) for  
15 lack of support, is there a counter motion or a  
16 different motion?

17 MR. SABREE: I would make a motion that  
18 this petition be rejected for lack of clarity.

19 JUDGE BURTON: Is there support?

20 For lack of support, we don't have a motion  
21 for the board.

22 MS. GARRETT: I didn't get a chance to.

23 JUDGE BURTON: What?

24 MS. GARRETT: You moved right ahead. I was  
25 going to say.

1 JUDGE BURTON: Please make a motion.

2 MS. GARRETT: Well, could you make your  
3 motion again?

4 MR. HUGHES: Mr. Chair, may I comment  
5 before the commission entertains a motion?

6 JUDGE BURTON: Do you have a procedural  
7 question? I will have to let both sides comment. Is  
8 that what you want? What would you like to say?

9 MR. HUGHES: I would just like to add, as  
10 this commission is aware, that the language is  
11 different. But as the Court of Appeals just recently  
12 pointed out in the Hooker case that I mentioned  
13 before, a meticulous and detailed statement of the  
14 charges against an officeholder is not required.

15 And so opposing counsel made some  
16 criticisms regarding the previous language, that I  
17 suspect he may reiterate with respect to this  
18 petition.

19 I would say the Court of Appeals has  
20 rejected that out of hand as there's no requirement to  
21 provide a detailed and meticulous statement. This is  
22 sufficient to put the officeholders and the public on  
23 notice of the reasons for the recall, and this will be  
24 tested at the ballot box and in the petition  
25 circulation process whether or not there's adequate

1 public support for the recall. Thank you.

2 JUDGE BURTON: Counsel?

3 MR. BRUETSCH: Yes. Thank you, Mr.

4 Chairman.

5 This language is far worse than the  
6 language in the other petition. It says that Mr.  
7 Profeta, quote, voted in favor of reconfiguring middle  
8 and elementary schools.

9 I don't know about you, but without  
10 context, that word, reconfigured, is incredibly vague.  
11 Reconfigured what? Reconfigured the lunch hour?  
12 Reconfigured academic requirements? Reconfigured  
13 what?

14 That word has to have some kind of context,  
15 some kind of subject to it for the voters to  
16 understand what it is that they're signing, and  
17 importantly, for Mr. Profeta to defend himself.  
18 Without that context, that particular word,  
19 reconfigured, is very vague and confusing. So I would  
20 ask you to reject it.

21 JUDGE BURTON: All right. Thank you.

22 Do we have a motion?

23 MR. SABREE: I have a motion to reject this  
24 for lack of clarity.

25 MS. GARRETT: I'll support.

1 JUDGE BURTON: All right. It is properly  
2 moved and supported that the language in this recall  
3 petition be rejected.

4 All those in favor of the motion, please  
5 signify by saying aye.

6 MS. GARRETT: Aye.

7 MR. SABREE: Aye.

8 JUDGE BURTON: And those opposed, aye.

9 I oppose this. So by a two to one vote,  
10 this language is rejected. Thank you.

11 We'll now move to item number 6, which is  
12 new business. Do we have any new business?

13 MS. REDMOND: None.

14 JUDGE BURTON: No?

15 MS. REDMOND: No.

16 JUDGE BURTON: Okay. All right.

17 This is the opportunity for public  
18 comments. If anyone wishes to offer any public  
19 comments, would you just rise and identify yourself,  
20 please, for the record? Anyone?

21 MS. LISTWAN: Back here. Back here.

22 JUDGE BURTON: Good. Thank you.

23 MS. LISTWAN: My name is Karen Listwan.

24 I'm a teacher in Grosse Pointe, and this will be my  
25 33rd year.

1 JUDGE BURTON: Do you mind standing so we  
2 can make sure everyone hears you?

3 MS. LISTWAN: Sure.

4 I've been a special education teacher in  
5 Grosse Pointe for 32 years. I've known Judy Gafa for  
6 at least 15 of those years. I first met Judy when she  
7 was actively involved here at Mason Elementary where I  
8 was teaching. Judy was a presence in the school  
9 almost daily, actively involved in her children's  
10 classrooms and the school as a whole.

11 I recall attending PTO meetings and hearing  
12 her say, kids first, many, many times. Judy clearly  
13 demonstrated understanding and supported diversity  
14 regarding our special needs students. When our  
15 program -- I'm a special ed teacher -- when our  
16 program was moved from Mason to Ferry, Judy met me  
17 with tears in her eyes and told me how much our  
18 presence at Mason and the integration of our students  
19 into the classrooms enriched the lives of her own  
20 children.

21 In the ensuing years, I watched Judy's  
22 involvement grow by running for the board. Every time  
23 I see Judy, she always has that kids first demeanor.  
24 I do not know anyone who works so tirelessly for our  
25 district as Judy Gafa. Her strong ethics and strong



1 moral standards make her an invaluable asset to our  
2 schools. She is thoughtful, measured, fair and  
3 open-minded, and our district remains great in large  
4 part because of Judy Gafa. Thank you.

5 JUDGE BURTON: Thank you.

6 Anyone else have any comments?

7 MS. GARRETT: I do. I would just like to  
8 say that based on -- and I applaud you for what you do  
9 as being a teacher. But based on what she said, it  
10 saddens me that we can't weigh in on what the moral  
11 fiber is of the individual or what he or she might or  
12 might not do, but we're charged -- or I'm charged --  
13 I'll speak for myself. I'm charged as what our  
14 attorney said, that if it's clear, that's what we have  
15 to go with.

16 But the ultimate recall is when elections  
17 come up versus this is taxpayer dollars, et cetera,  
18 et cetera. But just know that I'm charged to do it.  
19 Unlike the last petition, this one was clear.

20 JUDGE BURTON: Anything else?

21 MR. SABREE: No.

22 JUDGE BURTON: I'll sort of weigh into  
23 this. At the last meeting concerning these petitions,  
24 I think school board members have the most thankless  
25 job of any elected official in the country. And it's

1 absolutely clear, I hope to everyone in this room,  
2 that we're not in a position to weigh in on the  
3 substantive basis of language. We're not in a  
4 position to weigh into truthfulness of or the falsity  
5 of language.

6 We're here to make a decision simply by its  
7 clarity for the purpose of being circulated into the  
8 community. And I've got a feeling that the  
9 citizens -- judging from all of you here, that the  
10 citizens are going to be involved heavily in debate as  
11 these petitions are circulated. And I'm certain that  
12 the Grosse Pointe News and other newspapers will  
13 certainly publish respected positions and that people  
14 will be well informed and have an opportunity to sign  
15 these petitions or not and have an opportunity, if it  
16 goes to a vote, to vote. And I suspect that we will  
17 see people make the final decision, as it should be.  
18 So I thank you all for your participation. I'm glad  
19 to see all of you here. We don't often get this many  
20 people coming out to actually use their Constitutional  
21 right to speak up, so we appreciate that.

22 Is there anything else that anyone wishes  
23 to add at this time? If not --

24 MR. MARTIN: Sorry. Can I say one thing?

25 JUDGE BURTON: Certainly. Please stand up

1 and tell us who you are.

2 MR. MARTIN: John Martin. I'm a resident,  
3 lifelong resident of Grosse Pointe. And I know,  
4 again, this has no weighing on your decision today,  
5 and I understand your job.

6 I just wanted to say just on the record  
7 that Kathy, Judy and Chris are beloved in Grosse  
8 Pointe. I don't think this is going to go anywhere.  
9 I apologize to you because I think this is a gigantic  
10 waste of your time and resources. And I think the  
11 people behind us need to step up and put their names  
12 on it because it's a shame that all of us are here in  
13 support and there's not a single person that's going  
14 to put their name on this other than the attorney  
15 from -- none of us know from Lansing, behind a group  
16 that I think are a bunch of cowards.

17 JUDGE BURTON: Well, I would like to not  
18 get into name calling. There's a certain level of --

19 MR. MARTIN: I'm trying, I'm trying.

20 JUDGE BURTON: Well, if you don't, then  
21 it's my job to kind of cut you off. And so I would  
22 like to give you a chance to speak if you wish to  
23 speak. Otherwise, speak to us all, each of us in a  
24 civil manner. We're not in Washington, D.C.

25 So is there anything else from anyone?

1 Do we have a motion then to recess?

2 MS. ODEN: Adjourn.

3 JUDGE BURTON: Recess, adjourn, it means  
4 the same thing to me. We are adjourned. Thank you  
5 very much.

6 MS. REDMOND: Transcript for the record.

7 (Meeting concluded at 2:24 p.m.)

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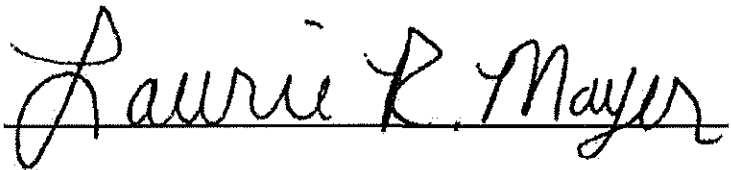
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and correct transcription of said proceedings.



Laurie R. Mayer, CSR-5385

Notary Public

Wayne County, Michigan

My Commission expires: August 9, 2019

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**versus** 19:17

**vote** 17:9 20:16

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**waste** 21:10

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**Y**

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**year** 17:25

**years** 18:5,6,21



**Fracassi, Adam (MDOS)**

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**From:** Michael Schwartz <phrog@schwartzlawyer.com>  
**Sent:** Tuesday, September 10, 2019 1:11 PM  
**To:** Fracassi, Adam (MDOS)  
**Subject:** Gafa v Barlow Communications, Case No. 2019-08-28-21  
**Attachments:** fracassi ltr.pdf

Attached please see the response that is herewith sent to you in connection with the above-referenced matter.

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September 10, 2019

Mr. Adam Fracassi  
Bureau of Elections  
430 West Allegan Street  
Lansing, Michigan 48918

Re: *Gafa v Barlow Communications*  
Campaign Finance Complaint  
Case No. 2019-08-28-21

Dear Mr. Fracassi:

Please be advised that I represent Barlow Communications, Inc, in connection with the above-referenced matter and this letter constitutes my client's response to the complaint filed by Judith Gafa.

Initially, it should be noted that my client is a corporation that engages in placing advertising for its customers. It does not engage in performing compliance services nor in providing legal advice.

It also should be noted that, as of the date of this letter, there is no recall ballot that contains the names of anyone who would be subject to recall. It is understood that petitions for recall are being circulated amongst the electorate in order to obtain enough valid signatures to have a recall election vis-a-vis certain members of the Grosse Pointe School Board. To the best of my client's knowledge and belief, no recall petitions containing requisite signatures have been filed with the election filing official. Therefore, the complaint by Complainant appears to be premature and not frivolous. However, my client shall provide the following response to the complaint as follows:

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A. My client is unaware of whether S.E. Michigan First is, or is not, registered anywhere in the State of Michigan or in the rest of the world. Exhibit "A," as provided, is not legible and thus is not susceptible to verification of the claim set forth by the Complainant.

B. My client is unaware of any entity called "The Committee to Save Grosse Pointe Schools." Exhibit "B," as provided, is not legible and thus is not susceptible to verification of the claim set forth by the Complainant.

C. The two print advertisements referred to having run in the Grosse Pointe News on June 12, 2019 and June 20, 2019, appear to ask questions. There does not appear to be anything in the articles that implore members of the public to take any particular course of conduct.

D. As to a billboard, my client had no connection with the same.

E. Regarding a lawyer named Genevieve Tusa, my client does not know said individual and does not know what that lawyer is alleged to have done that is of interest to the Bureau of Elections.

F. My client facilitated notices to be placed in the Grosse Pointe News. However, the notices did not make reference to a specific election, did not refer to any particular candidate, and did not urge anyone to vote one way or the other or to vote at all.

G. My client had no connection with the purchase of Facebook advertisements or with the creation of a digital website.

H. My client has no knowledge of any robocalls, paid or otherwise.

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- I. My client has no connection with “Save GP Schools Super PAC.”
- J. My client has no connection with any recall petition against Kathy Abke, Judith Gafa and/or Christopher Profeta.
- K. The Complainant’s beliefs are not factual but rather are her personal viewpoint which may well be the product of her own self-interest.

Barlow Communications, Inc, has not engaged in any violation of the Michigan Campaign Finance Act [hereinafter referred to as “the Act”]. The only conduct for which the Complainant complains is my client’s facilitating the placement of two advertisements in the Grosse Pointe News. The advertisements do not identify any candidates, and there is nothing in the notices that urge readers to vote for or against anything or anyone.

Finally, reference is made to MCL 169.206(2)(b)(j), which provide as follows:

(2) Expenditure **does not** include any of the following:

(b) An expenditure for communication on a subject or issue **if the communication does not support or oppose a ballot question or candidate by name or clear inference.**

\* \* \* \*

(j) Except only for the purposes of section 47, an expenditure for a communication if the communication does not in **express terms advocate the election or defeat of a clearly identified candidate** so as to restrict the application of this act to communications containing express words of advocacy of election or defeat, such as “vote for”, “elect”,

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“support”, “cast your ballot for”, “Smith for governor”,  
“vote against”, “defeat”, or “reject”. [Emphasis supplied.]

Inasmuch as MCL 169.206(2)(b)(j) apply to the two notices printed in the Grosse Pointe News, there was no expenditure for purposes of the Act.

Under MCL 169.247(5), the following is stated:

A communication otherwise entirely exempted from this act under section 6(2)(j) is subject to both of the following:

(a) Must contain the identification required by subsection (1), (2), or (7) if that **communication references a clearly identified candidate or ballot question within 60 days before a general election or 30 days before a primary election in which the candidate or ballot question appears on a ballot and is targeted to the relevant electorate where the candidate or ballot question appears on the ballot by means of radio, television, mass mailing, or prerecorded telephone message.**

(b) **Is not required to contain the disclaimer required by subsection (1) or (2).** [Emphasis supplied.]

Given the language of MCL 169.247(5), none of the notices are subject to any action by the Bureau of Elections inasmuch as there are no ballots that have been created. No candidates appear on any recall ballot because there are no recall ballots at this time. Only recall petitions which have not been filed with the filing official are extant, and they do not constitute ballots. Moreover, assuming that there will be valid,

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executed recall petitions that will be filed with the election official, the earliest that a recall election could occur is in May, 2020, which is substantially more than 60 days from the publication of the newspaper advertisements at issue. Thus, inasmuch as the notices are entirely exempted from the Act, did not clearly identify a candidate or ballot question, did not target a relevant electorate by means of radio, television, mass mailing or prerecorded telephone message, and were not referencing a ballot (because no ballot exists) the disclaimer that otherwise would have been required under MCL 169.247(1)(2) is not required. In other words, it was not necessary for the newspaper notices to indicate and name and address of the person paying for the advertisement.

Accordingly, the complaint filed by the Complainant is completely without merit as it pertains to Barlow Communications, Inc, and should be dismissed as to my client.



Michael Alan Schwartz

RECEIVED/FILED  
MICHIGAN DEPT OF STATE  
2019 SEP 11 PM 2:18  
CLERK OF COURTS/GREAT SEAL

**Genevieve Dwaihy Tusa**  
**16934 St Paul**  
**Grosse Pointe, MI 48230**  
**gtusa@tusalaw.com**

September 11, 2019  
*Sent Via Hand Delivery and email*

Michigan Department of State  
Bureau of Elections  
Attention: Adam Fracassi  
430 West Allegan Street  
Lansing, Michigan 48918

Re: *Gafa v. Barlow Communications, et al*  
Campaign Finance Complaint No. 2019-08-28-21

Dear Mr. Fracassi,

I am writing in response to your letter dated August 30, 2019 regarding Judith Gafa's formal complaint against me and others alleging a violation of the Michigan Campaign Finance Act (the Act). This responds only to the allegations against me.

According to Ms. Gafa, the only reason I am included on the complaint is that a billboard and a website that reference the Grosse Pointe School Board (although the copies I was sent are somewhat blurry, many of the attachments do not even appear to mention a recall) did not disclose the person or persons financing them. To wit, the complaint states that "[b]ecause there is no attribution for the billboard and website I have included the petitioner on this complaint." This is insufficient to establish a violation of the Act.

Other than the recall petitions that I filed with the Wayne County Election Commission as a resident and voter of the Grosse Pointe School District, Ms. Gafa offers no

evidence to support a claim against me. Nonetheless, according to the complaint, because I submitted these recall petitions, I apparently must be responsible for every person or group that also supports the recall effort. This simply is not true. Filing the recall petitions does not make me a committee under the Act or mean that I am subject to any of the disclosure requirements under the Act. *See* MCL 169.203 ("An individual, other than a candidate, does not constitute a committee."). To be clear, I did not coordinate, prepare, or pay for the website, billboard, or print advertisement cited by Ms. Gafa. Indeed, some of the material provided by Ms. Gafa does not address the recall effort at all. For example, the print ads by S.E. Michigan First do not discuss recalling School Board members. Rather than reflecting a "comprehensive, well-coordinated political campaign," as Ms. Gafa alleges, it seems the Grosse Pointe community is expressing how displeased it is with the Grosse Pointe School Board.

Pointing to the recall petitions that I filed as "evidence" that I am somehow connected with the actions of others is completely insufficient to support Ms. Gafa's allegations against me. This complaint instead appears to be nothing more than a fishing expedition meant to harass me for exercising my constitutional rights as a Michigan voter and voicing my disagreement with Ms. Gafa's actions on the School Board. In fact, given the insufficient evidence presented in the complaint, Ms. Gafa's certification under Section 4 is specious at best and fails to meet the requirements of MCL 169.215(6)(c), potentially in violation of MCL 169.215(8). At the very least, the complaint should be dismissed.

Sincerely,



Genevieve Tusa



**Fracassi, Adam (MDOS)**

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**From:** Fracassi, Adam (MDOS)  
**Sent:** Monday, September 23, 2019 10:51 AM  
**To:** Fracassi, Adam (MDOS)  
**Subject:** Gafa v. Barlow Communications, et al - Answers Received  
**Attachments:** Answer Letter.pdf; Answers to Complaint.pdf

Ms. Gafa,

Please find attached correspondence and the answers to the complaint you filed against Barlow Communications, Scott Hughes, and Genevieve Tusa. If you have any questions, please do not hesitate to contact me.

**Adam Fracassi**  
Election Law Specialist  
Bureau of Elections  
Michigan Department of State  
430 West Allegan Street  
Lansing, Michigan 48918  
(517) 335-3234



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

September 23, 2019

Judith Gafa  
2158 Beaufait  
Grosee Pointe Woods, Michigan 48236

*Via Email*

Dear Ms. Gafa:

The Department of State received a response to the complaint you filed against Barlow Communications, Scott Hughes and Genevieve Tusa, 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 letter to the Bureau of Elections, Richard H. Austin Building, 1<sup>st</sup> Floor, 430 West Allegan Street, Lansing, Michigan 48918.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Fracassi".

Adam Fracassi  
Bureau of Elections  
Michigan Department of State

c: Michael Schwartz, via email  
Scott Hughes, via email  
Genevieve Tusa, via email



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

December 23, 2019

Judith Gafa  
2158 Beaufait Dr  
Grosse Pointe Woods, MI 48236

Dear Ms. Gafa:

The Michigan Department of State (Department) has finished its investigation into the campaign finance complaint you filed against Barlow Communications, Scott Hughes, and Genevieve Tusa which alleged violations of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, 169.201 *et al.* This letter concerns the disposition of the complaint.

The Complaint was filed with the Department on August 27, 2019 and alleges that campaign advertisements were placed by a PAC without a proper paid for by statement and without reports being filed. Specifically, at issue are a website, Facebook advertisements, and a billboard which are alleged to be violative of the Act. The complaint was filed against these respondents because, according to the complaint, the ads were purchased by Barlow Communications, Ms. Tusa sponsored the Recall Petition filed with Wayne County Elections, and Mr. Hughes was retained as an attorney by clients supporting the recall effort. Submitted with the complaint were pictures of newspaper print advertisements, a billboard, Facebook page, certain filings with the Department, and the recall petition.<sup>1</sup>

The Department received an answer from Mr. Hughes on September 10, 2019. Mr. Hughes was retained at the petition filing stage by Ms. Tusa and argued that his retention does not trigger any reporting obligation under the MCFA. He further argued that neither he nor his firm, Dykema Gossett, qualifies as a committee under the Act. With his answer, Mr. Hughes provided a transcript from the July 18, 2019 meeting of the Wayne County Election Commission.

The Department next received an answer from Michael Schwartz on September 10, 2019, attorney for Barlow Communications. Mr. Schwartz stated that Barlow Communications is a corporation that places advertisements for its clients and is not responsible for ensuring compliance with the MCFA. He stated that Barlow Communications only placed the print advertisements and had no connection to the billboards, Facebook advertisements, website or robocalls.

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<sup>1</sup> The Department notes that several of the pictures are small and difficult to read. Specifically, the Department is unable to read most of the text of the billboard or any text on the Facebook pages, and therefore cannot see the website link.

Finally, the Department received an answer from Ms. Tusa on September 11, 2019. Ms. Tusa alleged the complaint was insufficient because she did not coordinate, prepare or purchase the billboards, Facebook advertisements or print advertisements. She indicated her only involvement was the filing and sponsoring of the recall petition effort.

From the outset the Department must consider whether these advertisements are expenditures as defined by the Act. MCL 169.206(2)(j). The MCFA excludes any communication from the Act's reach unless it specifically urges voters to "vote yes," "vote no," "elect," "defeat," "support," or "oppose" a candidate or ballot question, using these or equivalent words and phrases. MCL 169.206(2)(j). Under that standard, the Department reviews election-related materials to determine whether they constitute expenditures and thus become subject to regulation under the Act. In other words, the express advocacy test excludes a communication from the Act's reach unless it specifically urges voters to "vote yes," "vote no," "elect," "defeat," "support," or "oppose" a ballot question or candidate, using these or equivalent words and phrases. The Department may only consider the text of the communication itself and not the broader context in which it was made in determining whether it is subject to MCFA regulation. Interpretive Statement to Robert LaBrant, April 20, 2004.

Upon review, the Department must dismiss this complaint as the evidence is insufficient to support the conclusion that a potential violation has occurred. First, certain advertisements failed to contain words of express advocacy as that term is defined by the MCFA and therefore are exempted from the Act's requirements. The newspaper print advertisements are dismissed because the text of the ads do not specifically urge voters to "vote yes," "vote no," "elect," "defeat," "support," or "oppose" a ballot question or candidate, using these or equivalent words and phrases. Accordingly, these advertisements lack words of express advocacy and are exempted from the Act's reach.

Second, the Department must also dismiss the Facebook posts as they are illegible. However, the Department notes that general posts on Facebook do not constitute expenditures under the Act, and the boosting of Facebook advertisements constitutes an expenditure if it meets the definition of express advocacy. But, because the Department cannot read the text of the alleged Facebook advertisements, it is unable to make a conclusion on those ads.

This leaves as the only potential issue the billboard advertisements. The Department concludes that this advertisement constitutes express advocacy because it contains the words "Recall" followed by three different candidates. These words constitute express advocacy as that term is defined by the Act.

However, the allegations brought are dismissed because there is no evidence that the respondents are responsible for the purchase or placement of the billboard advertisements. In their answers, Mr. Hughes, Mr. Schwartz, and Ms. Tusa each indicated that neither they nor their clients (if applicable) were not responsible for the coordination, design, purchase, or placement of the billboard advertisements.<sup>2</sup> Therefore, the Department cannot conclude that these individuals have violated the MCFA.

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<sup>2</sup> The respondents also indicated they were not responsible for the Facebook advertisements.

Judith Gafa  
December 23, 2019  
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Accordingly, the Department dismisses the complaint as there is insufficient evidence to support the conclusion that a potential violation has occurred. The Department's file on this matter is closed and no further enforcement action will be taken.

In accordance with Section 15 of the Act, the entire file on this matter will be posted to the Department's website at [www.Michigan.gov/campaignfinance](http://www.Michigan.gov/campaignfinance).

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Fracassi". The signature is written in a cursive style with a large, stylized initial "A".

Adam Fracassi  
Bureau of Elections  
Michigan Department of State

c: Michael Schwartz, via email  
Scott Hughes, via email  
Genevieve Tusa, via email

**Fracassi, Adam (MDOS)**

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**From:** Fracassi, Adam (MDOS)  
**Sent:** Monday, December 23, 2019 12:01 PM  
**To:** Hughes, Scott  
**Subject:** Gafa v. Barlow Communications, et al  
**Attachments:** Determination.pdf

Mr. Hughes,

Please see the attached determination made in the complaint filed against you. If you have any questions, please let me know.

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

**Fracassi, Adam (MDOS)**

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**From:** Fracassi, Adam (MDOS)  
**Sent:** Monday, December 23, 2019 12:02 PM  
**To:** Genevieve D Tusa  
**Subject:** Gafa v. Barlow Communications, et al  
**Attachments:** Determination.pdf

Ms. Tusa,

Please see the attached determination made in the campaign finance complaint filed against you. If you have any questions, please let me know.

Thank you,

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

## **Fracassi, Adam (MDOS)**

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**From:** Fracassi, Adam (MDOS)  
**Sent:** Monday, December 23, 2019 12:03 PM  
**To:** 'phrog@schwartzlawyer.com'  
**Subject:** Gafa v Barlow Communications, et al, Case No. 2019-08-28-21  
**Attachments:** Determination.pdf

Mr. Schwartz,

Please see the attached determination made in the campaign finance complaint filed against your client. If you have any questions, please let me know.

Thank you,

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