MICHIGAN FREEDOM

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

Re: Emergency Complaint – Illegal Contributions Received by Gretchen Whitmer for Governor; Committee Identification No. 518014, 325 S. Walnut, Lansing, MI 48933 Telephone No. 517.763.2955

This Complaint outlines an illegal scheme by Gretchen Whitmer for Governor (the "Whitmer Campaign") to evade and eviscerate Michigan candidate contribution limits. The Whitmer Campaign has disclosed accepting contributions from at least 157 individual donors in excess of the contribution limits in MCL 169.252.[1] This Complaint is time sensitive and requires immediate action before the Whitmer Campaign spends funds which were obtained in violation of the Michigan Campaign Finance Act ("MCFA"). The Whitmer Campaign has admitted to these wholesale violations of the MCFA's contribution limitations, but claims that there is an exception to contribution limits for officeholders facing a recall election. However, even if such an exception exists, there is no recall of Governor Whitmer currently being *actively sought*, a condition precedent to any claim to the potential contribution limit exception for recall elections. Whitmer's illegal scheme is inconsistent with the text and purpose of the MCFA, absurd, unfair and could not have been intended by the Legislature.

I. Background

MCL 169.252 sets limits for individual contributions to candidates for public office. The current legal contribution limit for an individual is $7,150 in an election cycle.[2] In its latest campaign finance disclosure, the Whitmer Campaign reported it collected millions from contributions over the legal limits.[3] At least 157 donors gave the Whitmer Campaign contributions in excess of the statutory limits.[4] Attachment 1 of this Complaint is an identification of these contributors and the amounts illegally contributed. Among these contributors are the following individuals who violated MCL 169.252:

[1] Gretchen Whitmer for Governor, July Quarterly 2021, https://cfrsearch.nictusa.com/documents/513607/details?type=web#.
[2] MCL 169.252.
[3] *See* note 1.
[4] See note 1.

Mark Bernstein	**$ 257,150**	**Ahmed Boomrod**	**$ 114,650**
J.B. Pritzker	**$ 250,000**	**James Offield**	**$ 107,150**
Patricia Stryker	**$ 250,000**	**Karla Jurvetson**	**$ 101,000**
Ronda Stryker	**$ 250,000**	**Heidi Stolte**	**$ 100,000**
Stacy Schusterman	**$ 250,000**	**Stephen Silberstein**	**$ 100,000**

The Whitmer Campaign's response to violating the MCFA:[5]

> "Gov. Gretchen Whitmer's re-election campaign, citing a 37-year-old administrative ruling related to candidates facing recall elections, is not observing the donation limits that normally apply to candidates under Michigan law, allowing her to raise millions more through wealthy donors than would normally be allowed."

Accordingly, this Complaint represents the largest money grab ever seen in Michigan to ignore contribution limits under the MCFA.

II. Legal Analysis

The Text of the MCFA prohibits the Whitmer Campaign's Fundraising Scheme

Michigan law is clear regarding contribution limits to statewide candidates – an individual may only contribute $7,150 in an election cycle.[6] As the Michigan Department of State recognizes:[7]

> "Without further legislative or judicial action with respect to these provisions, the Department is bound to enforce the Act's limitations on the amounts that individuals may contribute to candidate committees established by candidates for state elective office."

The foregoing statement is nothing more than the well-settled principle that the Michigan Secretary of State has absolutely no authority to amend the MCFA. To this end, Article III, Section 2 of the Michigan Constitution provides:

> "The powers of government are divided into three branches: legislative, executive, and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution."[8]

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[5] Egan, Paul *Whitmer reelection campaign blows by donor caps, draws big cash from Hollywood, New York,* Detroit Free Press (July 27, 2021).
[6] MCL 169.252.
[7] Interpretative Statement (IS) issued to Constance Cumbey dated December 28, 1979.
[8] MICH. CONST. 1963 art. III, § 2.

The Michigan Constitution vests the legislative power of the State of Michigan—i.e., the power to enact substantive law—in the Legislature.[9] Specifically, Article II, Section 4(2) of the Michigan Constitution provides:

> "Except as otherwise provided in this constitution or in the constitution or laws of the United States the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, except as otherwise provided in this constitution or in the constitution and laws of the United States. The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. No law shall be enacted which permits a candidate in any partisan primary or partisan election to have a ballot designation except when required for identification of candidates for the same office who have the same or similar surnames."[10]

Commenting on this constitutional provision, the Michigan Attorney General noted:

> "Thus, pursuant to the preceding broad mandate, *Schell v Waterford Township*, 381 Mich 123, 128; 159 NW2d 833, 835 (1968), it is within the <u>exclusive</u> province of the legislature to laws providing for the registration of voters, and the time, place, and manner of conducting elections. *Andrews v Wayne County Clerk*, 21 Mich App 568, 572; 175 NW2d 839 (1970); 2 Official Record, Constitutional Convention 1961, p. 3366."[11]

As recognized by the Michigan Court of Appeals in *Andrews v. Branigin*,[12] the Legislature's exclusive role in the election process is a time-honored principle dating back to at least the 1890 Michigan Supreme Court case of *Common Council v Rush*.[13] Discussing *Rush*, the Court of Appeals in *Andrews* stated that, "[u]nder these broad provisions, it has been frequently held to be the exclusive province of the Legislature to enact laws providing for the registration of voters, and the time, place, and manner of conducting elections."[14] Consequently, as the foregoing authorities demonstrate, the Michigan Secretary of State may not amend the MCFA, such authority being vested exclusively in the Legislature by Article II, Section 4 of the Michigan Constitution.[15]

In *Sittler v. Board of Control*, the Michigan Supreme Court set forth the following well-settled rules of law: "The extent of the authority of the people's public agents is measured by the statute from which they derive their authority, not by their own acts and assumption of authority."[16]

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[9] MICH. CONST. 1963 art. IV, § 1.
[10] MICH. CONST. 1963 art. II, § 4.
[11] Op. Att'y Gen. 5194 (1977) (emphasis added).
[12] Andrews v. Branigin, 21 Mich. App 568, 175 N.W.2d 839 (1970).
[13] Common Council of City of Detroit v. Rush, 82 Mich. 532, 46 N.W. 951 (1890).
[14] *Andrews*, 21. Mich. App. at 572, 175 N.W.2d at 841.
[15] MICH. CONST. 1963 art. II, § 4
[16] Sittler v. Bd. of Control of Mich. Coll. of Mining & Tech., 333 Mich. 681, 687, 53 N.W.2d 681, 684 (1952) (quoting Twp. of Lake v. Millar, 257 Mich. 135, 142, 241 N.W. 237, 240 (1932)).

"Public officers have and can exercise only such powers as are conferred on them by law."[17] According to *Michigan Chiropractic Council v. Commissioner*, "Administrative interpretation is not binding on the courts and must be rejected if not in accord with the intent of the Legislature."[18] Stated differently, "an agency's interpretation cannot overcome the plain meaning of the statute."[19]

Therefore, the Michigan Secretary of State may neither amend the MCFA nor interpret the MCFA in a manner to overcome its plain meaning, viz. such as to interpret MCL 169.252 to allow contributions to the Whitmer Campaign in excess of $7,150 in an election cycle.

The Guidance Relied Upon by the Whitmer Campaign is Inapplicable Here

Michigan law is clear regarding contribution limits to statewide candidates – an individual may only contribute $7,150 in an election cycle. As indicated earlier in this Complaint, the Michigan Secretary of State may neither amend the MCFA nor interpret the MCFA in a manner to overcome its plain meaning. Nonetheless, the Whitmer Campaign relies upon two rulings made by the Michigan Department of State to justify the most egregious violation of contribution limits in Michigan history.[20] These rulings seek to establish a narrow exception to contribution limits under MCL 169.252, which are not valid under the MCFA.[21] To take advantage of these invalid rulings, four elements must be met: 1) a political committee must have been organized; 2) to gather petition signatures; 3) to promote a particular officeholder's recall; and importantly, 4) the officeholder's recall must be *actively sought*.[22] The Whitmer Campaign may not avail itself of this so-called recall "exception" because all four elements have not been met, therefore all contributions obtained in excess of the statutory limits are still in violation of MCFA.

Though these Secretary of State rulings are invalid, for the reasons stated before, even if the Whitmer Campaign believed they were valid in order to invoke these (invalid) rulings, the central issue here would hinge on whether or not Governor Whitmer's recall is *actively being sought.* While there is no definition of "actively being sought" in the context of these recall rulings, the process for seeking a recall election sheds light on what it takes to actively seek. The first step

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[17] *Id.*

[18] Mich. Chiropractic Council v. Comm'r of Office of Fin. & Ins. Servs., 262 Mich. App. 228, 233, 685 N.W.2d 428, 431 (2004), *vacated*, 475 Mich. 363, 716 N.W.2d 561 (2006) (citing Lanzo Constr. Co., Inc. v. Dep't of Labor, 86 Mich. App. 408, 414, 272 N.W.2d 662 (1978).

[19] In re Complaint of Consumers Energy Co., 255 Mich. App. 496, 504, 660 N.W.2d 785, 789 (2002) (citing Ludington Serv. Corp. v. Acting Comm'r of Ins., 444 Mich. 481, 505, 511 N.W.2d 661 (1994)).

[20] IS issued to William Faust dated October 7, 1983; Declaratory Ruling (DR) issued to L. Brooks Patterson dated January 3, 1984.

[21] This Complaint does not seek to overturn the IS issued to William Faust dated October 7, 1983, or the DR issued to L. Brooks Paterson dated January 3, 1984. In the IS issued to Andrew Nickelhoff dated August 28, 2020, the Michigan Department of State did not follow otherwise binding Attorney General opinions for various reasons, and certainly did not overturn these otherwise binding Attorney General opinions. An obvious recognition that the Michigan Department of State cannot amend the MCFA would seem a much lighter task than not to follow otherwise binding Attorney General opinions; however, even should the Michigan Department of State adhere to these invalid *Faust* and *Patterson* rulings, then not even these invalid rulings will allow the Whitmer Campaign to violate the contribution limits of MCL 169.252.

[22] IS issued to William Faust dated October 7, 1983; DR issued to L. Brooks Patterson dated January 3, 1984.

in the process of seeking a recall election is approval on the language of the recall petition from the State Board of Canvassers.[23] The State Board of Canvassers must determine the petition is factual and of sufficient clarity before it is circulated for signatures.[24] Once the petition is approved, a recall committee may prepare and circulate the petition for signatures. The number of signatures required to trigger a recall election for Governor is equal to 25% of the votes cast for Governor in the last gubernatorial election.[25] Those signatures must be gathered within 60 days of collecting the first signature.[26] Once the requisite signatures are collected, the petition is filed with the Department of State's Bureau of Elections. Upon filing, the Bureau of Elections has 7 days to examine it and determine if: a) the petition is in the proper form; and b) the petition contains the requisite number of signatures.[27] After the preliminary check, assuming it passes muster, the Bureau begins a registration check to determine if all signers are registered to vote and if their signatures match the voter file.[28]

The bottom line is for a committee to *actively seek* a recall election, they must first get petition approval from the State Board of Canvassers then collect 1,062,647 signatures from registered voters within 60 days.[29]

Governor Whitmer's scandal plagued Spring has led to sinking poll numbers and growing calls for her to be removed as Governor, but an upset constituency is not the legal standard here. In fact, there are no political committees that are or were actively seeking the recall of Governor Whitmer. In 2020, twenty recall efforts were launched against Governor Whitmer.[30] Ten of those petitions were rejected by the State Board of Canvassers, one was withdrawn and nine have since ended.[31] The most recent recall petition approved by the State Board of Canvassers against Governor Whitmer was filed by a John Parkinson, and approved on September 10, 2020, and due to appeal the signature expiration deadline was April 29, 2021.[32] Therefore, after April 29, 2021, no valid recall petition was even in existence!

Moreover, it is absurd for anyone to believe that any of the proponents of these recall petitions against Governor Whitmer were actively seeking a recall election. One of these recall proponents is Chad Baase, an Albion resident who was recently released from prison.[33] The recall committee formed by Baase, Committee to Recall Gretchen Whitmer has no funds.[34] According

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[23] MCL 168.951a.
[24] MCL 168.951a.
[25] MCL 168.955.
[26] MCL 168.961(2)(d).
[27] MCL 168.961.
[28] MCL 168.961.
[29] 4,250,585 total votes were cast in the 2018 Michigan gubernatorial election. Michigan gubernatorial and lieutenant gubernatorial election, 2018, Ballotpedia, https://ballotpedia.org/Michigan_gubernatorial_and_lieutenant_gubernatorial_election,_2018.
[30] *See* Gretchen Whitmer recall, Governor of Michigan (2020-2021), Ballotpedia, https://ballotpedia.org/Gretchen_Whitmer_recall,_Governor_of_Michigan_(2020-2021). .
[31] *See* note 29.
[32] See note 29.
[33] Michigan Department of Corrections, Biographical Information, Chad Everett Baase, https://mdocweb.state.mi.us/OTIS2/otis2profile.aspx?mdocNumber=581491.
[34] Committee to Recall Governor Gretchen Whitmer, April Quarterly 2020 Report, https://cfrsearch.nictusa.com/documents/494426/details/filing/summary?changes=0.

to Baase, the committee's funds were "stolen" by his ex-girlfriend, "Becka" (no last name).[35] It has also been reported that Baase has a gambling addiction.[36] Upon information and belief, Baase appeared at the July 13, 2021 State Board of Canvassers meeting where the Board asked him whether or not the committee has gathered any signatures, Mr. Baase stated it had not. This is consistent with news reports.[37] The so-called Committee to Recall Gretchen Whitmer, which the Whitmer Campaign may claim is actively seeking Governor Whitmer's recall, has no money, gathered no signatures, publicly stated its signature gathering is "on hold,"[38] failed to file multiple campaign finance reports[39] and is run by an individual with a criminal record and reported gambling addiction.

III. Conclusion

The Bureau of Elections should swiftly investigate the Whitmer Campaign's illegal circumvention of the contribution limits under MCL 169.252 of the MCFA. Governor Whitmer is illegally using a so-called recall "exception" to raise unlimited funds, which violates the text of the MCFA. If this Bureau does not require the Whitmer Campaign to return the improperly obtained funds and sanction it accordingly, there will undoubtedly be additional sham recall committees created in the future so candidates may circumvent the law.

Governor Whitmer has consistently made clear that she believes rules for others do not apply to her own behavior. If your office refuses to enforce Michigan law against Governor Whitmer, then you can be sure that candidates will also take advantage of the newly created "Whitmer Loophole!!"

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.

Respectfully submitted,

Dated: August 9, 2021

Victoria Sachs
Executive Director, Michigan Freedom Fund

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[35] *Man Leading Bid to Oust Whitmer Says Ex-Girlfriend Becka, Last Name Unknown, Stole Money From Campaign*, Deadline Detroit (Aug. 4, 2020), https://www.deadlinedetroit.com/articles/25902/man_leading_bid_to_oust_whitmer_says_ex-girlfriend_becka_last_name_unknown_stole_money_from_campaign.
[36] *See* note 35.
[37] *See* note 35.
[38] *See* note 35.
[39] Committee to Recall Governor Gretchen Whitmer, Documents on File, https://cfrsearch.nictusa.com/committees/519594#documents.

Attachment 1

Selected transactions reported in July 2021 Quarterly Campaign Statement filed by Respondent Gretchen Whitmer for Governor (July 26, 2021). This is a list of individual contributors who violated the contribution limits of MCL 169.252.

Donor	Cumulative	Donation1 Date	Donation1 Amount	Donation2 Date	Donation2 Amount	Donation3 Date	Donation3 Amount	Donation4 Date	Donation4 Amount	Donation5 Date	Donation5 Amount	Donation6 Date	Donation6 Amount	Donation7 Date	Donation7 Amount	Donation8 Date	Donation8 Amount	Donation9 Date	Donation9 Amount	Donation10 Date	Donation10 Amount	Donation11 Date	Donation11 Amount	Donation12 Date	Donation12 Amount	Donation13 Date	Donation13 Amount	Donation14 Date	Donation14 Amount	Donation15 Date	Donation15 Amount	Donation16 Date	Donation16 Amount	Donation17 Date
Agnes Gund	$ 25,000	4/30/21	$25,000																															
Ahmed Boomred	$ 114,650	5/19/20	$50,000	6/4/19	$7,150	6/14/21	$2,500	7/8/21	$55,000																									
Aimee Cunningham	$ 10,000	4/28/21	$10,000																															
Albert Kamen	$ 17,150	3/3/20	$7,150	5/25/21	$10,000																													
Alida Messinger	$ 10,000	6/8/21	$10,000																															
Andrew Gutman	$ 9,150	10/31/19	$5,000	6/8/20	$1,000	8/25/20	$2,150	3/3/21	$1,000																									
Angela McInerney	$ 7,650	4/29/19	$500	3/10/21	$7,150																													
Ann Nakawandar	$ 11,070	9/3/20	$150	9/8/20	$2,500	10/13/20	$2,000	11/24/20	$1,000	2/1/21	$1,000	3/31/21	$1,400	5/24/21	$1,500	5/24/21	$20	7/15/21	$1,500															
Anthony Earley	$ 8,150	6/10/19	$2,500	9/1/20	$1,000	2/9/21	$4,650																											
Ann Tellem	$ 35,650	10/3/19	$7,150	3/16/21	$2,500	4/16/21	$1,000	5/10/21	$25,000																									
Barbara Tronstein	$ 7,715	7/20/20	$715	9/27/20	$700	10/27/20	$700	11/27/20	$700	12/27/20	$700	1/27/21	$700	2/27/21	$700	3/27/21	$700	4/27/21	$700	5/27/21	$700	6/27/21	$700											
Bernard Schwartz	$ 25,000	6/14/21	$25,000																															
Brandon Dillon	$ 8,700	9/8/19	$1,000	6/2/20	$500	7/24/20	$100	9/30/20	$1,000	7/19/21	$6,100																							
Carla Walker-Miller	$ 9,650	8/5/20	$2,500	2/8/21	$1,000	3/4/21	$3,650	6/10/21	$1,000	7/15/21	$1,000	7/20/21	$500																					
Carol Leif	$ 15,000	2/21/21	$10,000	7/15/21	$5,000																													
Carolyn Bellinson	$ 12,150	7/20/20	$7,150	7/9/21	$5,000																													
Christine White	$ 8,000	3/30/19	$1,000	6/25/21	$7,000																													
Christopher Brochert	$ 18,322	4/23/19	$715	5/23/19	$715	6/23/19	$715	7/23/19	$715	8/23/19	$715	9/23/19	$715	10/23/19	$715	11/23/19	$715	12/23/19	$715	1/23/20	$715	1/18/21	$500	5/18/21	$4,000	6/2/21	$6,672							
Christopher Gabrieli	$ 10,000	5/24/21	$10,000																															
Conway Family Trust	$ 45,000	3/16/21	$25,000	6/21/21	$20,000																													
Cynthia Ford	$ 8,150	4/2/19	$7,150	4/12/21	$1,000																													
Cynthia Miaskowski	$ 20,000	2/12/21	$20,000																															
Cynthia Sears	$ 10,000	3/22/21	$10,000																															
Dale Taylor	$ 50,000	6/24/21	$50,000																															
Dan Musier	$ 18,131	10/29/19	$6,169	3/4/20	$981	3/4/20	$981	5/5/21	$10,000																									
Daniel Berger	$ 10,000	3/2/21	$10,000																															
Daniel Edson	$ 32,150	6/13/20	$7,150	5/19/21	$25,000																													
Daniel Ozimsky	$ 8,000	10/29/19	$1,000	8/26/20	$3,500	2/5/21	$1,000	5/19/21	$2,500																									
David Bellet	$ 10,000	3/18/21	$10,000																															
David Copi	$ 8,150	9/18/19	$1,000	5/22/20	$7,150																													
David Magerman	$ 37,500	7/14/21	$37,500																															
David Mittleman	$ 17,150	9/20/19	$7,150	5/1/20	$10,000																													
David Tanner	$ 10,500	8/17/20	$500	4/15/21	$10,000																													
Deborah Simon	$ 56,000	12/25/20	$1,000	4/29/21	$5,000	7/16/21	$50,000																											
Dennis Archer Jr	$ 14,200	12/16/19	$7,150	2/8/21	$1,000	6/16/21	$6,100																											
Diane Robertson	$ 7,700	2/4/20	$250	2/5/20	$250	3/4/20	$250	3/10/20	$250	3/17/20	$250	4/4/20	$250	4/23/20	$250	4/29/20	$250	4/29/20	$250	5/4/20	$250	5/7/20	$250	5/14/20	$250	5/31/20	$250	6/4/20	$250	7/4/20	$250	7/8/20	$250	8/4/20
Donna Kaplowitz	$ 12,150	4/19/19	$150	5/2/20	$1,500	2/8/21	$5,550	7/15/21	$5,000																									
Dug Song	$ 10,000	3/23/21	$10,000																															
Edsel B Ford II	$ 8,150	4/2/19	$7,150	4/9/21	$1,000																													
Edward Snowdon	$ 26,000	6/20/00	$6,000	4/28/21	$20,000																													
Edwin Eichler	$ 7,650	12/17/19	$500	5/17/21	$7,150																													
Elizabeth Geraghty	$ 14,300	12/30/19	$7,150	7/15/21	$7,150																													
Elizabeth Hammond	$ 11,650	10/22/19	$5,000	12/19/19	$2,150	2/5/21	$2,000	6/8/21	$2,500																									
Ellie Higginbotham	$ 11,000	11/27/19	$1,000	4/16/21	$10,000																													
Erica Ward-Genson	$ 12,150	8/3/20	$7,150	5/6/21	$2,500	7/2/21	$2,500																											
Fay Bazelon	$ 8,650	5/21/19	$7,150	2/8/21	$500	7/8/21	$1,000																											
Frank Toms, Jr	$ 14,300	12/17/19	$5,000	8/12/20	$2,150	5/21/21	$7,150																											
Gail Alpert	$ 8,150	10/13/19	$5,000	7/9/20	$1,075	8/5/20	$1,075	2/3/21	$500	5/22/21	$500																							
Gary Tongee	$ 8,500	5/4/19	$3,500	7/1/21	$5,000																													
George Barnes	$ 18,150	6/4/19	$7,150	10/23/19	$1,500	5/20/21	$2,000	5/14/21	$2,500	6/25/21	$5,000																							
Gerald Acker	$ 8,300	4/15/19	$1,350	4/17/19	$1,000	5/15/19	$1,000	10/23/19	$500	11/12/19	$3,300	6/14/21	$1,000	7/7/21	$150																			
Gloria Page	$ 47,518	8/18/20	$2,000	8/18/20	$1,000	9/29/20	$500	4/1/21	$5,000	4/2/21	$5,000	4/2/21	$1,000	4/3/21	$5,001	4/4/21	$5,000	4/6/21	$5,010	4/6/21	$5,005	4/23/21	$5,000	5/20/21	$3,000	7/1/21	$3,000	7/17/21	$2,000					
Gov. Thomas Wolf	$ 10,000	7/12/21	$10,000																															
Greg Tatarian	$ 32,150	4/21/20	$7,150	5/28/21	$25,000																													
Gregory Eaton	$ 19,493	5/6/19	$1,050	5/22/19	$1,000	9/9/19	$1,000	10/11/19	$5,000	3/15/21	$2,500	4/28/21	$500	6/29/21	$7,100	7/15/21	$1,393																	
Gretchen Davidson	$ 34,650	11/5/19	$7,150	2/27/21	$1,000	4/14/21	$1,000	5/18/21	$500	7/6/21	$25,000																							
Gretchen Sisson	$ 8,150	12/11/19	$1,000	1/12/21	$6,150	1/12/21	$1,000																											
Hella Fishouri	$ 57,150	4/21/20	$7,150	2/16/21	$50,000																													
Heidi Stolte	$ 100,000	5/5/21	$100,000																															
Holly Maloney	$ 10,500	10/12/20	$500	6/28/21	$10,000																													
Ian Simmons	$ 10,000	6/5/21	$10,000																															
Iwan Jacobs	$ 10,000	6/16/21	$10,000																															
J.B. Pritzker	$ 250,000	7/8/21	$250,000																															
James Bellinson	$ 32,150	7/20/20	$7,150	2/16/21	$25,000																													
James Bronska	$ 25,000	3/24/21	$25,000																															
James Macinnes	$ 17,150	4/18/19	$7,150	5/20/21	$10,000																													
James Miller	$ 15,000	3/25/21	$5,000	6/16/21	$10,000																													
James Offield	$ 107,150	10/28/19	$7,150	4/19/21	$100,000																													
James White	$ 12,150	2/28/19	$1,000	3/30/19	$1,000	10/18/19	$1,000	5/9/20	$2,500	8/24/20	$1,000	10/9/20	$600	1/19/21	$2,500	7/8/21	$2,500																	
Jennifer Flood	$ 7,322	5/6/19	$1,000	12/20/19	$5,312	5/9/20	$10	2/16/21	$1,000																									
Jill Brauffman	$ 10,000	3/30/21	$10,000																															
John Woollam	$ 10,000	6/2/21	$10,000																															
Jonathan Oberheide	$ 50,000	7/14/21	$50,000																															
Jonathan Tisch	$ 10,000	5/5/21	$10,000																															
Joshua Pokempner	$ 17,150	12/1/20	$1,000	2/2/21	$6,150	6/7/21	$10,000																											
Karla Jonelaison	$ 101,000	10/1/20	$1,000	4/29/21	$100,000																													
Kate Wolters	$ 17,150	5/26/19	$1,000	9/16/20	$2,500	4/8/21	$10,000	6/28/21	$3,650																									
Kathleen Glynn	$ 7,209	11/12/19	$25	1/11/20	$34	6/11/21	$7,150																											
Kathryn Wood	$ 13,500	12/3/19	$2,500	4/23/20	$1,000	8/18/20	$1,000	9/27/20	$1,000	11/19/20	$2,000	12/15/20	$1,000	2/5/21	$1,000	3/22/21	$1,000	4/22/21	$1,000	6/2/21	$1,000	7/7/21	$1,000											
Kathy Makino-Leipzig	$ 22,900	10/22/19	$5,000	5/22/20	12/17/19	11/24/20	$5,000	12/30/20	$100	1/30/21	$25	2/28/21	$25	3/30/21	$25	4/30/21	$25	5/30/21	$25	6/30/21	$25	7/12/21	$10,000	UNK	$500									
Kevin Kopp	$ 8,150	7/23/19	$7,150	7/20/21	$1,000																													
Kristine Fahman	$ 14,300	2/25/21	$7,150	7/6/21	$7,150																													
Laura Appel	$ 9,500	5/24/19	$2,500	8/3/19	$1,000	8/24/20	$1,000	2/12/21	$2,500	6/20/21	$2,500																							
Lawrence Nolan	$ 9,650	4/16/19	$1,000	8/12/19	$1,000	3/23/20	$5,150	6/25/21	$2,500																									
Manvir Grewal	$ 17,150	10/7/19	$1,000	2/5/21	$6,150	7/20/21	$10,000																											
Mercy Carney	$ 10,000	5/3/21	$10,000																															
Marie McKeller	$ 20,000	3/30/21	$10,000	03/03/21	$10,000																													
Mark Bernstein	$ 257,150	12/30/19	$7,150	7/20/21	$250,000																													
Mark Gurney	$ 9,650	4/23/21	$7,150	7/13/21	$2,500																													
Martha Samuelson	$ 75,000	5/11/21	$75,000																															
Mary Fisher	$ 10,000	2/4/21	$2,850	2/4/21	$7,150																													
Mary Peace Sullivan	$ 25,000	4/14/21	$25,000																															
Mary Morgan	$ 10,000	7/6/21	$10,000																															
Mayer Morganroth	$ 9,650	10/16/19	$500	12/18/19	$715	3/27/20	$2,500	5/5/20	$2,500	1/13/20	$935	1/18/21	$1,000	2/26/21	$500	6/16/21	$1,000																	
Merle Chambers	$ 12,150	2/24/21	$7,150	5/5/21	$5,000																													
Meryl Mehri	$ 7,500	5/6/21	$2,500	6/29/21	$5,000																													
Michael Eisner	$ 10,000	7/8/21	$10,000																															
Michael McFall	$ 10,000	5/6/19	$2,500	12/19/19	$2,500	3/29/21	$5,000																											
Mike Shahadi	$ 50,000	9/21/20	$7,150	2/8/21	$42,850																													
Milan Gandhi	$ 58,150	4/17/19	$715	5/17/19	$715	6/17/19	$715	7/17/19	$715	8/17/19	$715	9/17/19	$715	10/17/19	$715	11/17/19	$715	12/17/19	$715	1/17/19	$715	11/25/20	$1,000	6/18/21	$50,000									
Nancy Beeuwkes	$ 17,500	4/3/20	$500	9/15/20	$1,000	10/19/20	$1,000	3/16/21	$15,000																									
Nancy Schlichting	$ 10,738	6/4/20	$1,000	12/1/20	$2,000	1/1/21	$1,413	2/8/21	$1,000	4/1/21	$1,413	6/14/21	$2,500	7/1/21	$1,413																			
Natalie Bernstein	$ 25,000	3/29/21	$25,000																															
Nathan Kalasho	$ 9,450	7/14/21	$1,000	7/14/21	$7,500	7/19/21	$950																											
Nicolas Hanauer	$ 10,000	4/18/21	$10,000																															
Nina Abrams	$ 10,500	7/7/19	$1,000	10/24/19	$500	3/24/20	$2,500	6/1/20	$5,000	12/24/20	$500	2/7/21	$1,000																					
Nisu Shah	$ 25,000	5/27/21	$25,000																															
Olan Mills	$ 25,000	3/23/21	$25,000																															
Pamela Reid	$ 7,200	7/29/19	$100	8/15/19	$100	10/20/19	$1,000	5/26/19	$1,000	2/4/21	$2,500	6/30/21	$2,500																					
Patricia Stryker	$ 250,000	4/12/21	$250,000																															
Patrick Olson	$ 11,000	10/10/20	$1,000	3/25/21	$10,000																													
Paul Greeney	$ 82,150	12/12/19	$7,150	5/21/21	$75,000																													
Paul Zotoff	$ 10,000	3/31/20	$5,000	5/30/21	$5,000																													
Philip Hagerman	$ 12,150	2/10/21	$7,150	7/14/21	$5,000																													
Phillip Pierce	$ 10,650	12/16/19	$5,000	1/27/21	$2,150	3/25/21	$1,000	5/19/21	$2,500																									
Ralph Gerson	$ 24,000	8/1/20	$500	8/19/20	$1,000	3/1/21	$2,500	7/2/21	$20,000																									
Ray Weil	$ 7,750	7/27/20	$250	5/5/21	$2,500	7/9/21	$5,000																											
Regina Beauboeuf	$ 7,650	5/29/19	$1,000	7/20/20	$1,000	8/17/20	$1,000	9/16/20	$1,000	10/13/20	$1,000	11/13/20	$1,000	12/17/20	$1,150	4/16/21	$500																	
Reid Garrett Hoffman	$ 32,150	4/19/21	$7,150	5/3/21	$25,000																													
Renee Pippa-Kell	$ 14,300	5/28/19	$1,050	10/30/19	$5,000	2/24/20	$1,150	3/19/21	$7,150																									
Richard Adam	$ 25,000	4/2/21	$25,000																															
Richard Barton	$ 32,150	12/19/19	$7,150	3/31/21	$25,000																													
Richard Blumenstein	$ 11,000	2/15/21	$10,000	7/13/21	$1,000																													
Richard Whitmer	$ 67,150	12/16/19	$7,150	6/29/21	$10,000	7/16/21	$50,000																											
Richard Manoogian	$ 10,000	4/29/21	$10,000																															
Robert Hasslow	$ 15,000	6/28/21	$15,000																															
Roger Ehrenberg	$ 25,000	7/12/21	$25,000																															
Ron Bird	$ 17,150	6/23/20	$1,000	1/28/21	$6,150	7/20/21	$10,000																											
Ronda Stryker	$ 250,000	6/23/21	$250,000																															
Ryan McInerney	$ 17,150	3/10/21	$7,150	6/16/21	$10,000																													
S. Martin Taylor	$ 9,650	7/4/21	$7,150	6/29/21	$2,500																													
Sam Bayobuin	$ 8,150	11/7/19	$7,150	6/11/21	$1,000																													
Sam Nejatbat	$ 10,000	2/8/21	$10,000																															
Sarah Min	$ 10,000	4/17/21	$10,000																															
Sarah Winkler	$ 8,610	9/21/20	$100	2/3/21	$1,000	3/18/21	$7,510																											
Saul Rosenthal	$ 8,800	7/9/20	$2,800	7/10/20	$5,000	10/10/20	$1,000																											
Scott Bowen	$ 57,150	9/11/19	7150	5/25/21	$50,000																													
Scott Chappelle	$ 10,000	7/19/21	$10,000																															
Scott Goodwin	$ 8,000	11/25/19	$1,000	11/19/20	$5,000	1/18/21	$1,000	1/18/21	$1,000																									
Sharif Hussein	$ 57,150	4/7/19	$1,000	5/7/19	$1,000	6/7/19	$1,000	7/16/20	$4,150	3/18/21	$50,000																							
Stacy Schusterman	$ 250,000	4/15/21	$250,000																															
Stephen Silberstein	$ 100,000	5/10/21	$100,000																															
Steven Hamp	$ 12,150	10/7/19	$1,000	5/15/20	$1,000	2/22/21	$5,150	8/30/21	$5,000																									
Susan Lewis	$ 12,150	2/4/20	$7,150	7/7/21	$5,000																													
Suzanne Johnson	$ 10,000	7/19/21	$10,000																															
Thelma Barnes	$ 7,550	3/9/20	$5,550	3/10/21	$2,000																													
Thomas Barron	$ 10,000	2/22/21	$10,000																															
Thomas Keefe Jr	$ 10,000	4/23/21	$10,000																															
Timothy Light	$ 32,150	3/23/21	$25,000	3/23/21	$7,150																													
Todd Wyatt	$ 12,150	8/17/19	$1,000	12/24/19	$6,150	5/1/20	$5,000																											
Tom Werner	$ 10,000	4/15/21	$10,000																															
Venkateshwara Vadlamudi	$ 14,305	8/9/19	$5	1/14/19	$7,150	2/22/21	$7,150																											
William Coats	$ 9,650	3/27/19	$7,150	1/24/21	$2,500																													
William Harris	$ 50,000	4/28/21	$50,000																															
William Lewis	$ 17,300	7/17/19	$2,000	7/19/19	$1,000	2/4/20	$7,150	5/11/20	$7,150																									
Win McCormack	$ 25,000	3/24/21	$25,000																															
Yasmin Abadian	$ 10,000	3/17/21	$5,000	3/17/21	$5,000																													

Donor	Donation17 Amount	Donation18 Date	Donation18 Amount	Donation19 Date	Donation19 Amount	Donation20 Date	Donation20 Amount	Donation21 Date	Donation21 Amount	Donation22 Date	Donation22 Amount	Donation23 Date	Donation23 Amount	Donation24 Date	Donation24 Amount	Donation25 Date	Donation25 Amount	Donation26 Date	Donation26 Amount	Donation27 Date	Donation27 Amount	Donation28 Date	Donation28 Amount	Donation29 Date	Donation29 Amount	Donation30 Date	Donation30 Amount	Donation31 Date	Donation31 Amount	Donation32 Date	Donation32 Amount
Agnes Gund																															
Ahmed Boomod																															
Aimee Cunningham																															
Albert Kamen																															
Alida Messinger																															
Andrew Gutman																															
Angela McInerney																															
Ann Nakasander																															
Anthony Earley																															
Ann Tellem																															
Barbara Tronstein																															
Bernard Schwartz																															
Brandon Dillon																															
Carla Walker-Miller																															
Carol Leif																															
Carolyn Bellinson																															
Christine White																															
Christopher Brochert																															
Christopher Gabrieli																															
Conway Family Trust																															
Cynthia Ford																															
Cynthia Maciokowski																															
Cynthia Sears																															
Dale Taylor																															
Dan Musser																															
Daniel Berger																															
Daniel Edson																															
Daniel Ozimsky																															
David Bellet																															
David Copi																															
David Magerman																															
David Mittleman																															
David Tanner																															
Deborah Simon																															
Dennis Archer Jr																															
Diane Robertson	$250	8/15/20	$250	9/4/20	$250	10/3/20	$250	10/4/20	$250	10/8/20	$100	10/9/20	$100	11/4/20	$250	12/4/20	$250	1/4/21	$250	2/4/21	$250	3/4/21	$250	4/4/21	$250	5/4/21	$250	6/4/21	$250	7/4/21	$250
Donna Kaplowitz																															
Dug Song																															
Edsel B Ford II																															
Edward Snowdon																															
Edwin Eichler																															
Elizabeth Gereghty																															
Elizabeth Hammond																															
Elsie Higginbottom																															
Erica Ward-Genon																															
Fay Bazelon																															
Frank Torre, Jr																															
Gail Alpert																															
Gary Tongee																															
George Barnes																															
Gerald Acker																															
Gloria Page																															
Gov. Thomas Wolf																															
Greg Tatarian																															
Gregory Eaton																															
Gretchen Davidson																															
Gretchen Sisson																															
Hafia Fakhouri																															
Heidi Stoke																															
Holly Maloney																															
Ian Simmons																															
Jean Jacobs																															
J.B. Pritzker																															
James Bellinson																															
James Brooks																															
James MacInnes																															
James Miller																															
James Offield																															
James White																															
Jennifer Flood																															
Jill Brauffman																															
John Woollam																															
Jonathan Oberheide																															
Jonathan Tisch																															
Joshua Pokempner																															
Karla Jurestson																															
Kate Wolters																															
Kathleen Glynn																															
Kathryn Wood																															
Kathy Makino-Leipsitz																															
Kevin Kopp																															
Kristine Fishman																															
Laura Appel																															
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Ralph Gerson																															
Ray West																															
Regina Beauboeuf																															
Reid Garrett Hoffman																															
Renee Pizza-Kell																															
Richard Adam																															
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Robert Haselow																															
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Sarah Min																															
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Susan Lewis																															
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Thelma Barnes																															
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Tom Werner																															
Venkateshwara Vadlamudi																															
William Coats																															
Willam Harris																															
William Lewis																															
Win McCormack																															
Yasmin Abadian																															

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September 9, 2021

Via Email, only

Michigan Department of State
Bureau of Elections
Richard H. Austin Building – 1st Floor
430 W. Allegan St.
Lansing, MI 48918
disclosure@michigan.gov

Re: Response to Complaint in *Michigan Freedom Fund v. Gretchen Whitmer for Governor* No. 2021-08-24-52

Dear Mr. Fracassi:

I serve as legal counsel to Governor Whitmer and the Whitmer for Governor candidate committee (the "Whitmer Campaign"). I am in receipt of the formal complaint filed by the Michigan Freedom Fund against the Whitmer Campaign alleging violations of the Michigan Campaign Finance Act ("MCFA"). The Complaint – while heavy on hyperbole and histrionics – is devoid of any legal basis. The Whitmer Campaign has, at all times, followed the MCFA and the binding declaratory statements issued by the Secretary of State through the Bureau of Elections, as well as the interpretive guidance readily available on the Secretary of State's website. For these reasons, and those more fully explained below, the Complaint should be dismissed with no further action taken or investigation initiated by the Secretary of State.

A. The Unprecedented Efforts to Recall Governor Whitmer in 2020 and 2021.

As the Bureau of Elections is aware, since the beginning of the COVID-19 pandemic, Governor Whitmer has faced an unprecedented number of attempts to recall her from the office of governor. Several Michigan residents filed 28 recall petitions to recall Governor Whitmer. *See* **Exhibit 1**, Reasons for Recall Filed with the Board of State Canvassers, 2019–2022.[1] Five recall petitions were filed against Lt. Governor Gilchrist. *Id.* Both Governor Whitmer and Lt. Governor Gilchrist opposed each recall petition filed against them through lengthy and substantive

[1] As of the date of the filing of this response, this list created by the Bureau of Elections does not include a petition filed by Chad Baase on July 30, 2021. Governor Whitmer opposed that recall petition, and Baase voluntarily withdrew the petition late in the evening on August 16, 2021 – just prior to the August 17, 2021 hearing.

responses, and appeared at clarity hearings before the Board on each petition, which themselves spanned multiple hours at times and have required counsel to travel to Lansing after the lifting of COVID-19 restrictions and the resumption of in-person hearings. The Board approved 10 recall petitions against Governor Whitmer and one recall petition against Lt. Governor Gilchrist. *Id.*

Governor Whitmer and Lt. Governor Gilchrist appealed each of these approved petitions to the Court of Appeals. In an unpublished opinion, the Court of Appeals upheld the Board's approval of Chad Baase's June 8, 2020 petition. *See Whitmer v. Bd. of State Canvassers*, No. 353878, 2020 WL 7086093, at *3 (Mich. Ct. App. Dec. 3, 2020).

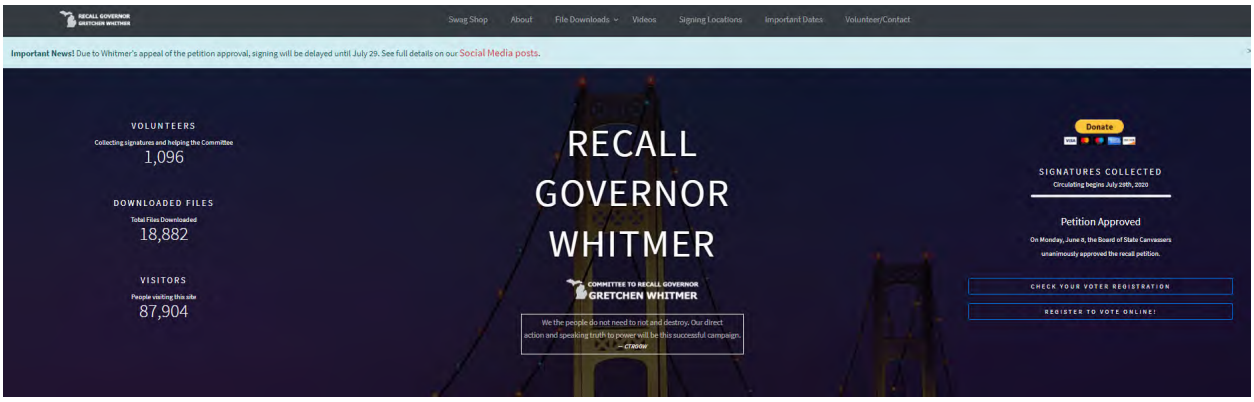
In a later, published opinion, the Court of Appeals upheld the Board's approval of the following petitions against Governor Whitmer: Brenda LaChappelle's July 31, 2020 petition; Jim Makowski's July 31, 2020 and September 2, 2020 petitions; Chad Baase's August 11, 2020 petition; Michael Garabelli's September 2, 2020 petition; and John Parkinson's four September 10, 2020 petitions. *Whitmer v. Bd. of State Canvassers*, No. 354474, 2021 WL 2171162, at *1 (Mich. Ct. App. May 27, 2021). As to the LaChappelle petition, the Court of Appeals actually remanded that petition to the Board "for the ministerial purpose of allowing appellee, Brenda LaChappelle, to correct the scrivener's error in setting forth the date upon which the executive order at issue was signed." *Id.* In that same decision, the Court of Appeals also upheld the Board's approval of Chad Baase's August 11, 2020 petition against Lt. Governor Gilchrist. *Id.* Governor Whitmer and Lt. Governor Gilchrist timely filed applications for leave to appeal both of these decisions to the Michigan Supreme Court. Both applications remain pending at the Michigan Supreme Court.

B. Petition Sponsors and Allies Have Been Actively Engaged in Collecting Signatures and Otherwise Actively Participating in the Recall Process Against Governor Whitmer.

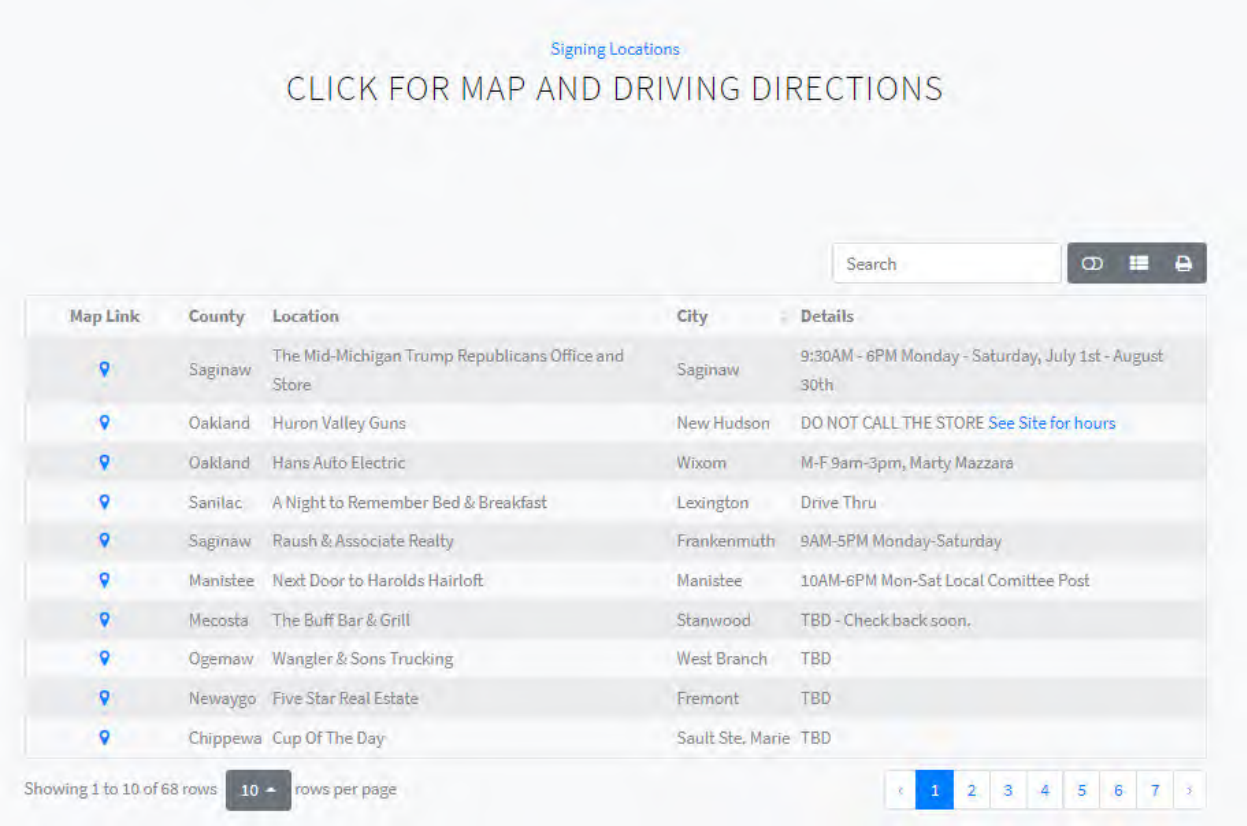
Contrary to the Michigan Freedom Fund's assertions, *see* Compl. at pp. 4–5, the efforts to recall Governor Whitmer have continued in full-force. Indeed, these efforts have been active – including through organized signature collection and fundraising efforts – since April 2020 and continue to remain active through 2021.

For example, Chad Baase, who at the time was a Republican State House Candidate, formed the Committee to Recall Governor Gretchen Whitmer on April 10, 2020 and filed his first recall petition against Governor Whitmer on April 20, 2020. **Exhibit 2**, Michigan Committee Statement of Organization. Baase withdrew that petition, but continued his efforts throughout 2020 and into 2021. After Baase filed his initial petition, others quickly followed suit and began inundating the Board with recall petition after recall petition. *See* **Exhibit 1**; *see also* Huffman, *Albion man files recall petition against Whitmer, questions legality of state-at-home order*, MICHIGAN RADIO (April 20, 2020) (**Exhibit 3**). Governor Whitmer and the Whitmer Campaign had to oppose such recall efforts before the Board each time, including by submitting written oppositions and appearing at numerous hearings, all done through legal counsel.

Baase's recall committee also operated a website called www.recallgovernorwhitmer.com. *See* Egan, *Michigan panel Oks language for petition to recall Gov. Whitmer*, DETROIT FREE PRESS (June 8, 2020) (**Exhibit 4**). According to the website, the committee claimed to have nearly 1,100 volunteers, 68 different signature gathering locations across Michigan, and had nearly 88,000 visitors to the website as of July 2020. Clearly, the recall efforts were *active*.



[Recallgovernorwhitmer.com via archive.org, 7/18/20]



Map Link	County	Location	City	Details
	Saginaw	The Mid-Michigan Trump Republicans Office and Store	Saginaw	9:30AM - 6PM Monday - Saturday, July 1st - August 30th
	Oakland	Huron Valley Guns	New Hudson	DO NOT CALL THE STORE See Site for hours
	Oakland	Hans Auto Electric	Wixom	M-F 9am-3pm, Marty Mazzara
	Sanilac	A Night to Remember Bed & Breakfast	Lexington	Drive Thru
	Saginaw	Raush & Associate Realty	Frankenmuth	9AM-5PM Monday-Saturday
	Manistee	Next Door to Harolds Hairloft	Manistee	10AM-6PM Mon-Sat Local Comittee Post
	Mecosta	The Buff Bar & Grill	Stanwood	TBD - Check back soon.
	Ogemaw	Wangler & Sons Trucking	West Branch	TBD
	Newaygo	Five Star Real Estate	Fremont	TBD
	Chippewa	Cup Of The Day	Sault Ste. Marie	TBD

[Recallgovernorwhitmer.com via archive.org, 7/18/20]

The efforts were not just limited to Baase. As reported by MLive, Makowski was actively pursuing signatures for one of his petitions in late-2020, including by combining forces with other petition sponsors to push forth Makowski's petition that sought to recall Governor Whitmer over her issuance of Executive Order 2020-50. *See* Hicks, *Effort to recall Gov. Whitmer a 'David versus Goliath scenario' as multiple groups begin the process*, MLIVE (Oct. 6, 2020) (**Exhibit 5**).

[Facebook, Recall Movement, 12/12/20]

[Facebook, Recall Movement, 12/11/20]

[Facebook, Recall Movement, 12/20/20]

[Facebook, Recall Movement, 11/28/20]

[Facebook, Recall Movement, 11/28/20]

[Facebook, Recall Movement, 11/3/20]

A "Recall Whitmer" tent was set-up at a September 17, 2020 Second Amendment March in Lansing.

[Twitter, Craig Mauger, 9/17/20]

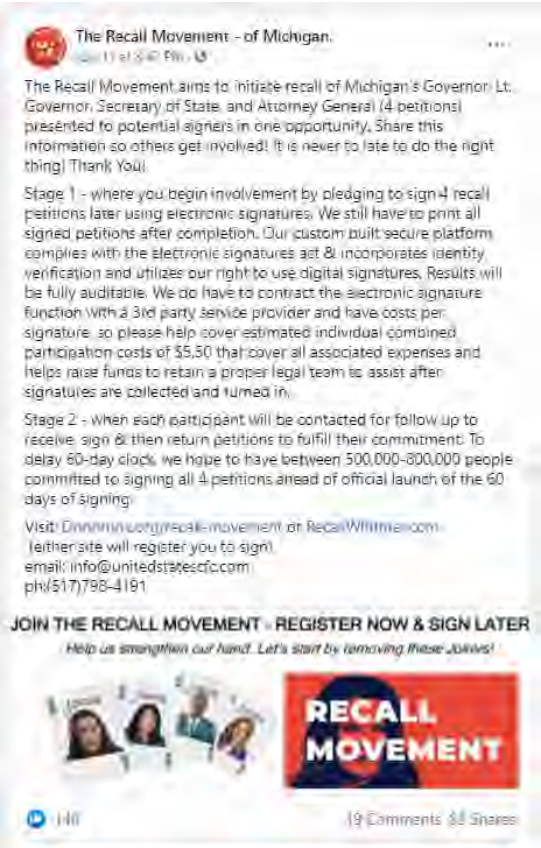
Additionally, in December 2020, the Kalamazoo County Republican Party promoted a recall petition against Governor Whitmer and noted that interested persons could sign the petition at the Kalamazoo County Republican Party's offices.

[Facebook, Republican Party of Kalamazoo County, 12/11/20]

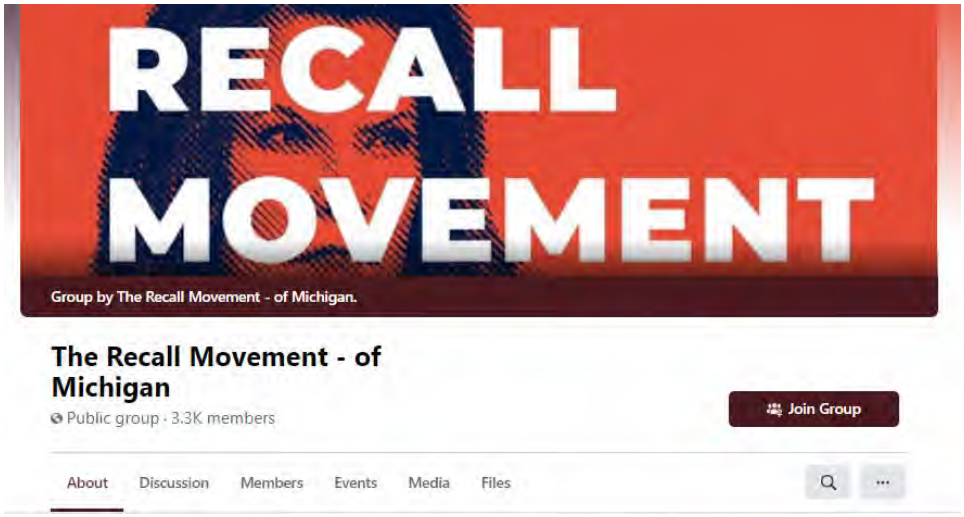
[Facebook, Republican Party of Kalamazoo County, 12/18/20]

Makowski's group – Guarding Against Government Excess – runs a website (https://recallwhitmer.com/) and styles itself "The Recall Movement." The website remains active and individuals are still able to able to make donations.

According to the "donor wall," the group continues to collect donations through the present. As of July 11, 2021, the recall movement laid out a two-stage strategy that included gathering pledges and contact information from at least 500,000 supporters before continuing with signature gathering.



[Facebook.com, Recall Movement, 7/11/21] The Facebook group for the Recall Movement has over 3,000 members.



There is also an active on-line petition on the "Change.org" website calling for Governor Whitmer's recall: https://www.change.org/p/michigan-state-house-impeach-governor-whitmer. This site indicates that 407,528 individuals have signed the petition. A current Republican

candidate for Governor – Tudor Dixon – was serving as the treasurer for another committee to recall Governor Whitmer, Michiganders to Recall Gretchen Whitmer, but dissolved that committee on July 28, 2021 only after media reports about the Whitmer Campaign's reliance on the recall election rules set by the Bureau of Elections. **Exhibit 6**, Michigan Committee Statement of Organization.

Finally, Blair – one of the main petition sponsors and a former cohort of Baase's – is continuing his efforts to recall Governor Whitmer, telling the Detroit News he feels "morally obligated" to continue the recall effort. Mauger, *Gov. Whitmer capitalizes on floundering recall efforts*, DETROIT NEWS (July 29, 2021) (**Exhibit 7**). Blair added that he was still working on collecting signatures:

> [Parkinson] added that because the election is next year, he doesn't believe it's worthwhile to continue to push to recall the governor. Blair disagreed. He still wants to do it and believes he can hit the signature threshold, which others described as a near impossibility. "We are going to move forward," Blair said. "We're not giving up." [*Id.*]

Additionally, as of August 13, 2021, Blair remains active soliciting contributions to support his recall efforts, including by promoting a "Friday the 13th" fundraiser aimed at garnering funds to support the recall efforts against Governor Whitmer, in addition to Lt. Gov. Gilchrist, Secretary Benson, and Attorney General Nessel:

[Facebook.com, Recall Movement, 8/13/20]

C. The Michigan Campaign Finance Act Permits Contributions in Excess of $7,150 During a Recall Election Cycle.

Pursuant to the MCFA, the Secretary of State "shall do all of the following: . . . (e) promulgate rules and issue declaratory rulings to implement this act in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328." *See* MCL 169.215. Under MCL 169.252, the current limit for a contribution during an "election cycle" is $7,150. However, the Secretary of State has promulgated different regulations and declaratory rulings as it relates to contributions during a *recall* election cycle.

Section 5 of the MCFA provides that a special election is an election for purposes of the MCFA, and the Michigan Bureau of Elections has determined that a "Recall Election" is a type of special election. *See* Appendix P, Special Primary, General and Recall Elections, MERTS (accessed August 30, 2021). The Bureau of Elections defines the "election cycle" for a special recall general election or recall election as follows:

> For a special recall general election or recall election, **the period begins 1) the day a committee has been organized to gather petition signatures and to promote the recall or 2) the date petition language stating the reasons for the recall has been filed with the filing official for the purpose of a clarity/factual hearing, whichever is earlier. The election cycle ends 1) the day of the special general recall election or recall election, or 2) the day the appropriate election filing official finds the petitions insufficient and determines that no recall election will be scheduled.** The special primary recall election does not have a separate cycle apart from the special general recall election cycle. [*Id.* (emphasis added).]

As the Bureau of Elections notes, "[e]lection cycles are date ranges used to accumulate contributions and expenditures for reporting and contribution limit purposes." *Id.* To that end, the Bureau of Elections has determined that the following applies to campaigns participating in both a general election and a special/recall election, as the Whitmer Campaign is doing here:

- Contributions received before the beginning of the election cycle of the special election are attributed toward the contribution limit of the contributor for the regular election.
- Contributions received during the election cycle of the special election that are designated in writing for the special election must not exceed the contribution limit of the contributor for the election cycle of the special election.
- Contributions received during the election cycle of the special election that are designated in writing for the regular election must not exceed the contribution limit of the contributor for the election cycle of the regular election. These contributions must be accumulated with the contributions received prior to the election cycle of the special election in order to calculate the amount contributed for the regular election.

- Undesignated contributions received during the overlapping period of the election cycles can be applied by the committee to either the special election or general election, but not both. Again, the contribution must not exceed the contribution limit of the contributor.
- Contributions made after the date of the special election can be designated in writing for the special election only if the contribution does not exceed either the contribution limit of the contributor or the Candidate Committee's net outstanding debts and obligations from the special election.
- Contributions made after the date of the special election are attributed toward the contribution limit of the contributor for the regular election unless they are specifically designated in writing for the special election. These contributions must be accumulated with the contributions received throughout the entire election cycle of the regular election in order to calculate the amount contributed for the regular election

As is evident, the Bureau of Elections differentiates between contributions received for purposes of a *general election* and a *special recall election*. With respect to the latter, the statutory contribution limits are set in accordance with an interpretative statement issued by the Secretary of State in 1983 and a declaratory ruling issued by the Secretary of State in 1984. Thus, as discussed below, the Whitmer Campaign has simply raised contributions for the recall election consistent with law established over 30 years ago.

In 1984, the Secretary of State issued a Declaratory Ruling to L. Brooks Patterson (which followed a 1983 interpretative statement to then Senate Majority Leader William Faust) that firmly held that because recall committees are able to raise unlimited funds, a candidate or campaign facing a recall challenge should not be held to the contribution limits outlined in MCL 169.252:

> This review of the matter indicates that the letter issued by Phillip T. Frangos October 7, 1983, reaches the correct conclusion with respect to the applicability of section 52 of the Act (MCL 169.252). **The basis for concluding that contributors are not bound by the contribution limits of section 52 is set forth in the letter as follows**:
>
> > "Pursuant to section 12(2) of the Act (MCL 169.212), a member of the Legislature is a candidate for 'state elective office.' However, 'elective office' is defined in section 5(2) of the Act (MCL 169.205) as 'a public office filled by an election, except for federal offices.' **Since a recall vote does not fill a public office, it must be concluded that the candidate committee of an officeholder subject to a recall vote is not a 'candidate committee of a candidate for state elective office.' Therefore, section 52 does not apply to contributions received by an officeholder who is being recalled, provided the contributions are designated for a recall election.** In an election to fill an office, the opponents are two or more candidate committees operating under the same restrictions. For example,

> in a state senatorial election, contributions to each candidate are limited by section 52(1) to $450.00, unless made by an independent committee, political party committee, or the state central committee of a political party. Contributions from these committees, however, are subject to other restrictions.
> Proponents of a recall measure are required to file a statement of organization as a political committee. Contributions to political committees are not subject to limitation under the Act. **If section 52 were to apply to contributions received by the candidate committee of a State elective officeholder facing a recall, the opponents in a recall election would be operating under different sets of rules. Such an interpretation would undermine the open and fair election policy otherwise promoted by the Act by allowing the political committee advocating the recall to engage in unlimited fundraising, while severely limiting the officeholder's ability to raise money.** This result, which is inconsistent with the Act's purpose, is both absurd and unfair and could not have been intended by the Legislature. Consequently, section 52 cannot be construed as applying to contributions received by the candidate committee of a state elective officeholder facing a recall election." [2]

See Declaratory Ruling issued to L. Brooks Patterson dated January 2, 1984 (**Exhibit 8**) (the "Patterson Declaratory Ruling") (emphases added). Again, this enforcement position is not new and has been in existence for over 30 years. Other candidates facing recall have, similar to the Whitmer Campaign, raised funds in excess of the contribution limits with the approval of the Bureau of Elections.

For example, former House of Representatives Leader Andy Dillon faced recall in 2007-2008. As part of his efforts to defeat the recall election, he accepted contributions in excess of the individuals limits of $500, receiving as much as $7,600 from individuals. On January 9, 2009, Republican Secretary of State Terri Lynn Land sent the Dillon campaign a notice of error and omissions, citing the excess contributions. *See* January 13, 2009 Notice of Error or Omission. The Dillon campaign responded on January 27, 2009 reminding the Bureau of Elections that pursuant to MCFA and the Department's declaratory guidance, the campaign could accept excess contributions during a recall. *See* January 27, 2009 Response from Dillon Campaign ("The campaign accepted these excess contributions with the understanding that all contribution limits to the committee were lifted during the ongoing recall effort."). On February 6, 2009, the Secretary of State confirmed the Dillon campaign's understanding of the MCFA and considered the notice of Errors and Omissions resolved. *See* February 6, 2009 Closing Letter. The result in this case should be no different.

[2] "State elective office" is now defined under MCL 169.212(3) and its definition remains the same. "Elective office" is now defined under MCL 169.205(4).

Here, a recall election committee was formed and dozens of recall petitions have been filed against Governor Whitmer, which started the recall election cycle. What is more, the filing official for purposes of these recall petitions (*i.e.*, the Bureau of Elections) has not determined that the petitions are insufficient and that no recall will be scheduled. Indeed, the Bureau of Elections cannot even make such a decision until the above-referenced appeals have concluded or the time to circulate the petitions has ended, which has not yet occurred.

Additionally, the application for leave to appeal Baase's June 8, 2020 petition remains pending and the time to re-circulate the petition could be revived depending on how the Michigan Supreme Court rules on Governor Whitmer's application for leave to appeal. With respect to the other nine petitions against Governor Whitmer and one against Lt. Governor Gilchrist, those too remain pending at the Michigan Supreme Court – the application briefing will not even be complete by the time this response is submitted – so, again, the time to recirculate those petitions could be revived. And with respect the LaChappelle petition, as noted, the Court of Appeals ordered that petition remanded to the Board to allow LaChappelle to correct a scrivener's error, but because of the application for leave to appeal, that has not yet been done. If the Michigan Supreme Court denies Governor Whitmer's application for leave to appeal, **the LaChappelle petition will be remanded back to the Board to fix the scrivener's error and the time to recirculate the petition will start over (subject to the time limitations set forth in the Michigan Election Law).**

Moreover, the Patterson Declaratory Ruling is binding upon the Bureau of Elections and candidates relying upon it unless otherwise challenged and struck down by a court. *See Sierra Club Mackinac Chapter v. Dep't of Envt'l Quality*, 747 N.W.2d 321, 277 Mich. App. 531 (2008) (declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court); *see also Frozen Food Exp. v. United States*, 351 U.S. 40, 44 (1956) (treating as binding on third parties a declaratory ruling); *Wilson v. A.H. Belo Corp.*, 87 F.3d 393, 398 (9th Cir. 1996) (same).[3] The Michigan Freedom Fund's suggestion that the Bureau of Elections should now reject over 30 years of precedent based on nothing more than a political agenda should be rejected.

Finally, the notion that Governor Whitmer's recall has not been "actively" sought – and this the Whitmer Campaign may not rely on the Patterson Declaratory Ruling – is belied by the plethora of evidence cited above showing just how active the efforts to recall Governor Whitmer have been. Moreover, there is no basis to conclude that, as the Michigan Freedom Fund contends, that the only way for a committee to "actively" seek a recall is to first obtain approval of recall language and then to actually collect the requisite number of signatures. *See* Compl. at p. 4. Under this strained reading of the Patterson Declaratory ruling and the MCFA, a recall committee would

[3] Michigan considers federal decisions when construing its APA. *See Greenfield Const. Co., Inc. v Mich. Dep't. of State Hwys.*, 58 Mich. App. 49, 58; 227 NW2d 223 (1975) (holding federal APA cases "persuasive because" Michigan's APA and the federal APA "are very similar").

be able to raise unlimited fund during the signature gathering process while an officer subject to recall would not be able to do the same.

Thus, the candidate facing a recall challenge would be hamstrung in opposing recall petition language before the Board and the courts because the candidate would have limited financial resources to pay for the incidental office and legal expenses incurred at the clarity hearings before the Board that would not be necessary but-for the initiation of recall proceedings. *See* MCL 169.209(1)(o) (an "incidental expense" includes fees for "accounting, professional, or administrative services for the candidate committee of the public official."). And the candidate would not able to put up as vigorous of a defense educating voters in the public square why signing a recall petition is unwarranted against a committee gathering signatures that is capable of receiving unlimited donations. The narrow and strained reading described by the Michigan Freedom Fund is contrary to the reasoning set forth in the Patterson Declaratory ruling and should be rejected.

Accordingly, the Complaint is meritless and should be dismissed without any further action taken or investigation initiated by the Bureau of Elections.

Sincerely,

CLARK HILL

Christopher M. Trebilcock

CMT:vcs

EXHIBIT 1

Response to Complaint in Michigan Freedom Fund v. Gretchen Whitmer for Governor
No. 2021-08-24-52

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

July 2021

Reasons for Recall filed with the Board of State Canvassers, 2019-2022

	Date of BSC Meeting	Official whose recall is sought	Sponsor	Reasons for recall	Board Action on Reasons for Recall
1	8/1/19	St. Rep. Inman	Staci Haag, Sondra Hardy	Since Larry Inman was indicted on three felony counts on May 14, 2019: Attempted Extortion Under Color of Official Right (Count 1); Solicitation of a Bribe (Count 2); and False Statement to the FBI (Count 3), Inman has filed notice asserting a diminished capacity defense and missed over 80 votes in the Michigan House of Representatives.	Approved, 4-0
2	5/22/20	Gov. Whitmer	Chad Baase	For signing Executive Orders that prohibit private and public gatherings of any number of people not from the same household which included religious services and required many businesses to close. For signing Executive Orders that prohibit many services including many surgeries and medical proceedures. For making the statement that abortion is a 'life-sustaining' medical proceedure. For signing Executive Orders that suspend provisions of the Open Meetings Act that would otherwise require a physical presence, such as, the Michigan Board of State Canvassers meetings. Not removing Jackson Sheriff Steve Rand from office for allegations of mocking an employee for his disability, making a comment about making a snuff film with a courthouse employee, and using racial slurs described in a 264 page packet submited to Governor Whitmer by Jackson Mayor Derek Dobies. For failure to insure that unemployment applicants are able to reach a representative by phone or in person easily.	Rejected, 4-0
3	5/22/20	Atty. Gen. Nessel	Chad Baase	In June 2019, Attorney General Dana Nessel permitted her prosecution team to dismiss criminal charges against all 8 remaining defendants charged related to the Flint water crisis. Attrorney General Dana Nessel has failed to bring new charges against anyone responsible for the thousands of children who were exposed to lead from drinking water or the 12 people who died of Legionnaires Disease in connection with the Flint water crisis and no defendants have been subjected to prison time for these injuries and deaths. *[Typo in original.]*	Rejected, 4-0

	Date of BSC Meeting	Official whose recall is sought	Sponsor	Reasons for recall	Board Action on Reasons for Recall
4	6/8/20	Gov. Whitmer	Jim Makowski	Gretchen Whitmer, by issuing Executive Order 2020-09, "Temporary restrictions on the use of places of public accommodation," and extending said restrictions through Executive Orders 2020-21, 2020-43, 2020-70, 2020-92 and 2020-96 has forced the closure of Michigan businesses, contributing to a seasonally adjusted jobless rate in April of 22. 7 percent. This monthly jump of 18.4 percentage points has resulted in Michigan's jobless rate growing 8.0 percent above the U.S. national unemployment rate growth of 10.3%.	Rejected, 3-1
5	6/8/20	Gov. Whitmer	Chad Baase	For signing Executive Order 2020-04, Declaration of State of Emergency, on March 10, 2020; For signing Executive Order 2020-17, Temporary restrictions on non-essential medical and dental procedures, on March 20, 2020; For signing Executive Order 2020-21, Temporary requirement to suspend activities that are not necessary to sustain or protect life, on March 23, 2020; For signing Executive Order 2020-32, Temporary restrictions on non-essential veterinary services, on March 30, 2020; For signing Executive Order 2020-33, Expanded emergency and disaster declaration, on April 1, 2020; For signing Executive Order 2020-42, Temporary requirement to suspend activities that are not necessary to sustain or protect life – Rescission of Executive Order 2020-21, on April 9, 2020; For signing Executive Order 2020-67, Declaration of state of emergency under the Emergency Powers of the Governor Act, 1945 PA 302, on April 30, 2020; For Signing Executive Order 2020-68, Declaration of states of emergency and disaster under the Emergency Management Act, 1976 PA 390, on April 30, 2020; For signing Executive Order 2020-92, Temporary requirement to suspend certain activities that are not necessary to sustain or protect life Rescission of Executive Orders 2020-77 and 2020-90, on May 18, 2020.	Approved, 4-0
6	6/8/20	Atty. Gen. Nessel	Chad Baase	For signing and sending a letter with the greeting, "Dear Colleagues," dated May 4, 2020, Re: Executive Orders 2020-69 & 2020-70 with the following paragraph within its text; "The legislature has deemed this to be a "sufficiently broad power of action in the exercise of the police power of the state to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster." MCL 10.32. In addition, the provisions of the EPGA are to "be broadly construed to effectuate this purpose." The full contents of the letter signed by DANA NESSEL may be found at https://www.michigan.gov/ documents/ag/Ltr_re_EO_69_70.final_689490_7.pdf.	Rejected, 4-0
7	6/18/20	Gov. Whitmer	Michael Garabelli	1) In April of 2020, Governor Whitmer signed Executive Order 2020-50 2) On April 13, 2020, Governor Whitmer made the following statements during a News Conference on COVID-19: "There's a lot of false information that is being disseminated. I think you need to always discern if there is political posturing going on as opposed to sharing of facts." "I also would just say, I think it is this group is funded in a large part by the DeVos family and I think it's really inappropriate for a sitting member of the United States president's cabinet to be waging political attacks on any governor, but obviously on me here at home." 3) In March of 2020, Governor Whitmer signed Executive Order 2020-17, which included the following language: "A plan for a covered facility that performs medical procedures should exclude from postponement surgeries related to advanced cardiovascular disease (including coronary artery disease, heart failure, and arrhythmias) that would prolong life; oncological testing, treatment, and related procedures; pregnancy-related visits and	Rejected, 4-0

	Date of BSC Meeting	Official whose recall is sought	Sponsor	Reasons for recall	Board Action on Reasons for Recall
				procedures; labor and delivery; organ transplantation; and procedures related to dialysis."	
8	7/6/20	Gov. Whitmer	Michael Garabelli	For signing in April of 2020, Executive Order 2020-50 2) For saying the following regarding a question about the April 15, 2020 rally, 'Operation Gridlock', during an April 13, 2020 News Conference on COVID-19: "I hope that as people are looking at social media they are dispelling and taking on the dissemination of demonstrably inaccurate information. I also would just say, I think it is this group is funded in a large part by the DeVos family and I think it's really inappropriate for a sitting member of the United States President's cabinet to be waging political attacks on any governor, but obviously on me here at home." MLIVE later reported: "Nick Wasmiller, a spokesperson for the DeVos family, said the family hasn't funded the protest [Operation Gridlock] . . ." 3) For signing in March of 2020, Executive Order 2020-17, Temporary restrictions on non-essential medical and dental procedures, which included the following language: "A plan for a covered facility that performs medical procedures should exclude from postponement surgeries related to advanced cardiovascular disease (including coronary artery disease, heart failure, and arrhythmias) that would prolong life; oncological testing, treatment, and related procedures; pregnancy-related visits and procedures; labor and delivery; organ transplantations; and procedures related to dialysis."	Rejected, 4-0
9	7/31/20	Gov. Whitmer	Brenda LaChappelle	Gretchen Whitmer signed executive order 2020-38 (Covid-19) on April 1, 2020.	Approved, 4-0
10	7/31/20	Gov. Whitmer	Hope Sprangel	Gretchen Whitmer signed a letter to President Donald Trump on 9/11/2019 to support Red Flag Laws, assault weapon bans, and magazine bans. The proposal's in the letter violate Michigan's Second Amendment Rights under Article I Sec VI of the 1963 Michigan Constitution "Every person has the right to keep and bear arms for the defense of himself and the state."	Rejected, 4-0
11	7/31/20	Gov. Whitmer	Jim Makowski	Gretchen Whitmer issued Executive Order 2020-50, which required, in part, nursing homes with a census below 80% to create a unit dedicated to the care of COVID-19- affected residents. This provision of Executive Order 2020-50 was promulgated despite the advice of the Health Care Association of Michigan.	Rejected, 3-1
12	7/31/20	Gov. Whitmer	Jim Makowski	Gretchen Whitmer issued Executive Orders 2020-09, 2020-21, 2020-43, 2020-70, 2020-92 and 2020-96, requiring the closure of many Michigan businesses. Data provided by the U.S. Bureau of Labor Statistics show Michigan had the third highest unemployment rate in the nation at 21.2% for the month of May, 2020.	Rejected, 4-0
13	7/31/20	Gov. Whitmer	Jim Makowski	Gretchen Whitmer issued Executive Order 2020-143 on July 1, 2020 closing indoor service at bars.	Approved, 3-1
14	7/31/20	Gov. Whitmer	Michael Garabelli	1) For signing in April of 2020, Executive Order 2020-50 2) For saying the following regarding a question about the April 15, 2020 rally, 'Operation Gridlock', during an April 13, 2020 News Conference on COVID-19: "I hope that as people are looking at social media they are dispelling and taking on the dissemination of demonstrably inaccurate information. I also would just say, I think it is this group is funded in a large part by the DeVos family and I think it's really inappropriate for a sitting member of the United States President's cabinet to be waging political attacks on any governor, but obviously on me here at home." USATODAY, Fox17, and MLIVE reported that the DeVos family did not fund this rally. 3) For signing in March of 2020, Executive Order 2020-17, Temporary restrictions on non-essential medical and dental procedures, which included the	Rejected, 4-0

	Date of BSC Meeting	Official whose recall is sought	Sponsor	Reasons for recall	Board Action on Reasons for Recall
				following language: “A plan for a covered facility that performs medical procedures should exclude from postponement surgeries related to advanced cardiovascular disease (including coronary artery disease, heart failure, and arrhythmias) that would prolong life; oncological testing, treatment, and related procedures; pregnancy-related visits and procedures; labor and delivery; organ transplantation; and procedures related to dialysis.”	
15	8/11/20	Gov. Whitmer	Chad Baase	For signing Executive Order 2020-04, Declaration of State of Emergency, on March 10, 2020 and for also signing Executive Order 2020-67, Declaration of state of emergency under the Emergency Powers of the Governor Act, 1945 PA 302, on April 30, 2020.	Approved, 3-0
16	8/11/20	Lt. Gov. Gilchrist II	Chad Baase	FOR SIGNING HOUSE BILL 4044 INTO LAW ON NOVEMBER 21, 2019 WHILE GOVERNOR GRETCHEN WHITMER WAS IN ISRAEL.	Approved, 3-0
17	8/11/20	Atty. Gen. Nessel	Chad Baase	For signing a letter with the greeting, “Dear Colleagues,” dated May 4, 2020, Re: Executive Orders 2020-69 & 2020-70 with the following paragraph; The legislature has deemed this to be a “sufficiently broad power of action in the exercise of the police power of the state to provide adequate control over persons and conditions doing such periods of impending or actual public crisis or disaster.” MCL 10.32. In addition, the provisions of the EPGA are to “be broadly construed to effectuate this purpose.” Id.	Rejected, 2-2
18	9/2/20	Gov. Whitmer	Jim Makowski	In April, 2020, Gretchen Whitmer issued Executive Order 2020-50, which required, in part, "A nursing home with a census below 80% must create a unit dedicated to the care of COVID-19-affected residents (“dedicated unit”) and must provide appropriate PPE, as available, to direct-care employees who staff the dedicated unit. A nursing home provider that operates multiple facilities may create a dedicated unit by dedicating a facility for such a purpose."	Approved, 4-0
19	9/2/20	Lt. Gov. Gilchrist II	Jim Makowski	Garlan Gilchrist II (D) is the Lieutenant Governor of Michigan *[Typo in original.]*	Rejected, 4-0
20	9/2/20	Atty. Gen. Nessel	Jim Makowski	Dana Nessel (D) is the Attorney General of Michigan	Rejected, 4-0
21	9/2/20	Sec. of State Benson	Jim Makowski	Jocely Benson (D) is the Michigan Secretary of State *[Typo in original.]*	Rejected, 4-0
22	9/2/20	Gov. Whitmer	Michael Garabelli	1) For signing in April of 2020, Executive Order 2020-50, Enhanced protections for residents and staff of long-term care facilities during the COVID-19 pandemic 2) For saying the following regarding a question about the April 15, 2020 rally, 'Operation Gridlock', during an April 13, 2020 News Conference on COVID-19: 'I hope that as people are looking at social media they are dispelling and taking on the dissemination of demonstrably inaccurate information. I also would just say, I think it is this group is funded in a large part by the DeVos family and I think it's really inappropriate for a sitting member of the United States President's cabinet to be waging political attacks on any governor, but obviously on me here at home." 3) For signing in March of 2020, Executive Order 2020-17, Temporary restrictions on on non-essential medical and dental procedures, which included the following language: "A plan for a covered facility that performs medical procedures should exclude from postponement surgeries	Approved, 4-0

	Date of BSC Meeting	Official whose recall is sought	Sponsor	Reasons for recall	Board Action on Reasons for Recall
				related to advanced cardiovascular disease (including coronary artery disease, heart failure, and arrhythmias) that would prolong life; oncological testing, treatment and related procedures; pregnancy-related visits and procedures; labor and delivery; organ transplantation; and procedures related to dialysis."	
23	9/2/20	Gov. Whitmer	David Blair	For signing Executive Order 2020-04, Declaration of State of Emergency, on March 10, 2020; For signing Executive Order 2020-17, Temporary restrictions on non-essential medical and dental procedures, on March 20, 2020; For signing Executive Order 2020-21, Temporary requirement to suspend activities that are not necessary to sustain or protect life, on March 23, 2020; For signing Executive Order 2020-32, Temporary restrictions on non-essential veterinary services, on March 30, 2020; For signing Executive Order 2020-33, Expanded emergency and disaster declaration, on April 1, 2020; For signing Executive Order 2020-42, Temporary requirement to suspend activities that are not necessary to sustain or protect life - Rescission of Executive Order 2020-21, on April 9, 2020; For signing Executive Order 2020-67, Declaration of state of emergency under the Emergency Powers of the Governor Act, 1945 PA 302, on April 30, 2020; For Signing Executive Order 2020-68, Declaration of states of emergency and disaster under the Emergency Management Act, 1976 PA 390, on April 30, 2020; For signing Executive Order 2020-92, Temporary requirement to suspend certain activities that are not necessary to sustain or protect life Rescission of Executive Orders 2020-77 and 2020-90, on May 18, 2020.	None, due to prior approval of identical language
24	9/10/20	Gov. Whitmer	John Parkinson	Gretchen Whitmer signed executive order 2020-11 on March 16, 2020.	Approved, 3-1
25	9/10/20	Gov. Whitmer	John Parkinson	Gretchen Whitmer signed a letter to President Donald Trump on 09/12/2019 to support Red Flag Laws.	Approved, 4-0
26	9/10/20	Gov. Whitmer	John Parkinson	Gretchen Whitmer signed executive order 2020-160 on July 29, 2020.	Approved, 3-1
27	9/10/20	Gov. Whitmer	John Parkinson	Gretchen Whitmer signed executive order 2020-69 on April 30, 2020.	Approved, 3-1
28	9/24/20	Atty. Gen. Nessel	Chad Baase	For announcing plans on Thursday, August 06, 2020, to ramp enforcement of Covid-19 related restrictions at long-term care facilities .	Rejected, 3-1
29	9/24/20	Sec. of State Benson	Chad Baase	For announcing on Thursday, August 13, 2020 that she, Jocelyn Benson, will be sending Michigan voters postcards encouraging them to apply online to vote from home in the November Presidential Election.	Approved, 3-1
30	10/15/20	Atty. Gen. Nessel	Chad Baase	Dana Nessel, on Thursday, August 06, 2020, Announced plans ramping up efforts to enforce Gov. Gretchen Whitmer's Executive Order 2020-148.	Approved, 3-0
31	5/14/21	Gov. Whitmer	Chad Baase	Gretchen Whitmer continued a State of Emergency after April 30, 2020 without legislative approval which was illegal. Governor Gretchen Whitmer issued multiple Executive Orders using the 1945, Emergency Powers of the Governor Act, which was Unconstitutional. After the October 2, 2020 Michigan Supreme Court Ruling, Governor Gretchen Whitmer issued a press release stating Governor's Orders remain in effect at least 21 more days.	Rejected, 4-0

	Date of BSC Meeting	Official whose recall is sought	Sponsor	Reasons for recall	Board Action on Reasons for Recall
32	5/14/21	Atty. Gen. Nessel	Chad Baase	On May 13, 2020, Attorney General Dana Nessel announced Owosso barber Karl Manke's professional license as well as the license for his barbershop were summarily suspended. On December 10, 2020, Michigan Attorney General Dana Nessel said her office hasn't seen credible information about even isolated voter fraud that was successfully carried out in the Nov. 3 election. On March 19, 2021, Michigan Attorney General Dana Nessel announced the arrest of Marlena Pavlos-Hackney, owner of Marlena's Bistro and Pizzeria in Holland.	Rejected, 4-0
33	5/14/21	Atty. Gen. Nessel	Chad Baase	On May 13, 2020, Attorney General Dana Nessel announced Owosso barber Karl Manke's professional license as well as the license for his barbershop were summarily suspended On March 19, 2021, Michigan Attorney General Dana Nessel announced the arrest today of Marlena Pavlos-Hackney, the owner of Marlena's Bistro and Pizzeria in Holland.	Rejected, 2-2
34	5/14/21	Sec. of State Benson	Chad Baase	The guidance issued by the Secretary of State Jocelyn Benson on October 6, 2020, with respect to signature-matching standards was issued in violation of the Administrative Procedures Act. Secretary of State Jocelyn Benson opposed SB 308, which seeks to establish and require signature verification training for all county, city, and township clerks and for all precinct inspectors, saying it would require "overly specific and restrictive" signature verification" in a press conference on April 21, 2021.	Rejected, 4-0
35	6/1/21	Gov. Whitmer	Hannah Curley	Governor Gretchen Whitmer continued a State of Emergency after April 30, 2020 without legislative approval. After April 30, 2020 Governor Gretchen Whitmer issued multiple Executive Orders using the Emergency Powers of the Governor Act 302 of 1945. After the October 2, 2020 Michigan Supreme Court's Order for Docket #161917, Governor Gretchen Whitmer issued a press release stating "Governor's Orders remain in effect at least 21 more days."	Rejected, 3-0
36	6/1/21	Atty. Gen. Nessel	Hannah Curley	On May 13, 2020, Attorney General Dana Nessel announced in coordination with the Michigan Deptartment of Licensing and Regluatory affairs, Barber Karl Manke's Professional License as well as the License for his Barbershop were summarily suspended. Michigan Attorney General Dana Nessel announced the arrest of Marlena Pavlos-Hackney, owner of Marlena's Bistro and Pizzeria in Holland, made by the Michigan State Police on March 19, 2021. *[Typos in original.]*	Rejected, 3-0
37	7/13/21	Gov. Whitmer	Chad Baase	Governor Gretchen Whitmer has refused to join interstate compacts including the Drivers License Compact, Nurse License Compact, and Psychologist License Compact.	Rejected, 2-2

	Date of BSC Meeting	Official whose recall is sought	Sponsor	Reasons for recall	Board Action on Reasons for Recall
38	7/26/21	Gov. Whitmer	David Blair	For signing Executive Order 2020-04, Declaration of State of Emergency, on March 10, 2020; For signing Executive Order 2020-17, Temporary restrictions on non-essential medical and dental procedures, on March 20, 2020; For signing Executive Order 2020-21, Temporary requirement to suspend activities that are not necessary to sustain or protect life, on March 23, 2020; For signing Executive Order 2020-32, Temporary restrictions on non-essential veterinary services, on March 30, 2020; For signing Executive Order 2020-33, Expanded emergency and disaster declaration, on April 1, 2020; For signing Executive Order 2020-42, Temporary requirement to suspend activities that are not necessary to sustain or protect life – Rescission of Executive Order 2020-21, on April 9, 2020; For signing Executive Order 2020-67, Declaration of state of emergency under the Emergency Powers of the Governor Act, 1945 PA 302, on April 30, 2020; For Signing Executive Order 2020-68, Declaration of states of emergency and disaster under the Emergency Management Act, 1976 PA 390, on April 30, 2020; For signing Executive Order 2020-92, Temporary requirement to suspend certain activities that are not necessary to sustain or protect life Rescission of Executive Orders 2020-77 and 2020-90, on May 18, 2020.	Rejected, 2-2
39	7/26/21	Gov. Whitmer	David Blair	On at least one occasion regarding last year's handling of COVID-19 by the state's executive offices, Gretchen Whitmer did not exhibit public favor or prioritize her oath to support the constitutions. Whitmer's negligence to influence and observe or carryout actions that were entirely aligned with upholding the constitutional rights of all state residents attributed to mass frustration coupled with avoidable harm to the state and its people. This lack of moral obligation and distorted sense of duty and/or gross incompetence brings to question her motives, loyalties, and ability to faithfully discharge the duties of this office.	Rejected, 4-0
40	7/26/21	Gov. Whitmer	David Blair	As a gubernatorial candidate and governor, Whitmer has repeatedly promised she would "Fix the damn roads." During her campaign and inauguration Gretchen Whitmer spoke often of "building bridges" both literally and figuratively. As governor, Whitmer vetoed $375 million in spending that was appropriated for roads and bridges.	Rejected, 4-0
41	7/26/21	Gov. Whitmer	David Blair	Whitmer used at-risk students, public safety, rural healthcare, opioid addiction treatment, and people with autism as political negotiating pawns. After the legislature did not support her plan to raise taxes, Whitmer vetoed funds for at-risk students, public safety, rural healthcare, opioid addition treatment, people with autism, veterans services.	Rejected, 4-0
42	7/26/21	Gov. Whitmer	David Blair	Whitmer vowed to promote Michigan businesses and workers as governor. Whitmer's budget vetoes and actions taken through the Michigan Strategic Fund hurt Michigan business communities and cut funding for worker training and Pure Michigan advertisements. During a budget cycle, Whitmer vetoed $37 million for Michigan's Going Pro worker training program and Pure Michigan advertisements. Additionally, the small communities of Paw Paw, Alpena, and Manistee got caught in a funding cut from Michigan Strategic Fund grants as a result of Whitmer's failed budget negotiations.	Rejected, 4-0
43	7/26/21	Lt. Gov. Gilchrist II	David Blair	For having signed House Bill 4044 into law on NOVEMBER 21, 2019 while Governor Whitmer was in Israel.	Rejected, 2-2

	Date of BSC Meeting	Official whose recall is sought	Sponsor	Reasons for recall	Board Action on Reasons for Recall
44	7/26/21	Lt. Gov. Gilchrist II	David Blair	On at least one occasion regarding last year's handling of COVID-19 by the state's executive offices, Garlin Gilchrist II did not exhibit public favor or prioritize her oath to support the constitutions. Gilchrist's negligence to influence and observe or carryout actions that were entirely aligned with upholding the constitutional rights of all state residents attributed to mass frustration coupled with avoidable harm to the state and its people. This lack of moral obligation and distorted sense of duty and/or gross incompetence brings to question his motives, loyalties, and ability to faithfully discharge the duties of this office.	Rejected, 4-0
45	7/26/21	Lt. Gov. Gilchrist II	David Blair	During a time when our country really needed hope, unity and non-partisan cooperation across the board, Gilchrist II chose to take a less mature approach. In an already negative atmosphere, he used his elected position to take a politically charged and blame filled jab at President Trump. During a virtual event for progressive voters called "Fighting for Justice in Michigan", Lt. Gov. Gilchrist II said; "Donald Trump is a liar who has killed people, straight up." After mentioning he knew nearly two dozen people who had died amid the pandemic, Gilchrist stated, "We cannot afford another four years of this man at the helm." Fueling even more emotion provoking drama to this political maneuver, the lieutenant governor added; "There are literally millions of lives at stake" revealing an alternate agenda.	Rejected, 4-0
46	7/26/21	Sec. of State Benson	David Blair	For violating the Administrative Procedures Act when she gave guidance to local clerks on how to verify signatures in October of 2020.	Rejected, 4-0
47	7/26/21	Sec. of State Benson	David Blair	On at least one occasion regarding last year's handling of COVID-19 by the state's executive offices, Jocelyn Benson did not exhibit public favor or prioritize her oath to support the constitutions. Benson's negligence to influence and observe or carryout actions that were entirely aligned with upholding the constitutional rights of all state residents attributed to mass frustration coupled with avoidable harm to the state and its people. This lack of moral obligation and distorted sense of duty and/or gross incompetence brings to question her motives, loyalties, and ability to faithfully discharge the duties of this office.	Rejected, 4-0
48	7/26/21	Sec. of State Benson	David Blair	Benson refused to testify in front of a State House Oversight Committee hearing on the 2020 general election and said she would be willing to testify before the people's representatives when it made a good talking point for her and got her good press. Benson also refused to testify before Senate Oversight Committee on Michigan's election audits.	Rejected, 4-0
49	7/26/21	Sec. of State Benson	David Blair	Amidst election controversy and sworn testimony of election irregularities by poll watchers, Benson sent an outgoing communication requesting specific instructions be carried out. On December, 1st, 2020 Secretary of State, Jocelyn Benson issued a memo via her Board of Elections that stated: "E-Pollbook laptops and flash drives: The EPB software and associated files must be deleted from all devices by the seventh calendar day following the final canvass and certification of the election (November 30, 2020) unless a petition for recount has been filed and the recount has not been completed, a post-election audit is planned but has not yet been completed, or the deletion of the data has been stayed by an order of the court or the Secretary of State."	Rejected, 4-0

	Date of BSC Meeting	Official whose recall is sought	Sponsor	Reasons for recall	Board Action on Reasons for Recall
50	7/26/21	Atty. Gen. Nessel	David Blair	Dana Nessel, on Thursday, August 06, 2020, announced plans ramping up efforts to enforce Gov. Gretchen Whitmer's Executive Order 2020-148.	Approved, 4-0
51	7/26/21	Atty. Gen. Nessel	David Blair	Attorney General Dana Nessel declined Senator Jim Runestads request to open investigation on COVID-19 related deaths in nursing homes.	Rejected, 4-0
52	7/26/21	Atty. Gen. Nessel	David Blair	Dana Nessel declined a request from Senate Republicans to commence an investigation related to COVID-19 deaths in Michigan nursing homes, and how Governor Gretchen Whitmer's administration handled its COVID-19 response in nursing homes.	Rejected, 4-0
53	7/26/21	Atty. Gen. Nessel	David Blair	On at least one occasion regarding last year's handling of COVID-19 by the state's executive offices, Dana Nessel did not exhibit public favor or prioritize her oath to support the constitutions. Nessel's negligence to influence and observe or carryout actions that were entirely aligned with upholding the constitutional rights of all state residents attributed to mass frustration coupled with avoidable harm to the state and its people. This lack of moral obligation and distorted sense of duty and/or gross incompetence brings to question her motives, loyalties, and ability to faithfully discharge the duties of this office.	Rejected, 4-0

Number submitted for hearing, 1/1/2019-present:	53	
Number approved for circulation, 1/1/2019-present:	15	(28%)
Number of circulated and filed (with signatures), 1/1/19-present:	1	(1.9%)

Number submitted from 1/1/2019-present by officeholder:

Governor Whitmer:	27	(51%)
Lieutenant Governor Gilchrist II:	5	(9.4%)
Attorney General Nessel:	13	(24.5%)
Secretary of State Benson:	7	(13.2%)
State Legislators:	1	(1.9%)

Number submitted from 1/1/2019-present by sponsor:

David Blair:	17	(32%)
Chad Baase:	15	(28.3%)
Jim Makowski:	8	(15.1%)
Michael Garabelli:	4	(7.5%)
John Parkinson:	4	(7.5%)
Hannah Curley:	2	(3.8%)
Hope Sprangel:	1	(1.9%)
Brenda LaChappelle:	1	(1.9%)
Staci Haag and Sondra Hardy:	1	(1.9%)

EXHIBIT 2

Response to Complaint in Michigan Freedom Fund v. Gretchen Whitmer for Governor
No. 2021-08-24-52

Michigan Committee Statement of Organization

The documents sent and received listing for this committee is at the bottom of the screen.

Jump to the documents on file

Committee ID#:	519594
Type of Filing:	Original
Full name of committee:	COMMITTEE TO RECALL GOVERNOR GRETCHEN WHITMER
Committee Type:	Independent PAC
Met Independent Status:	
Acronym:	
Name of Sponsor/Type:	
Segregated Fund:	No
Date Committee Was Formed:	04/10/2020
Committee Phone Number:	(517) 879-8176
Committee Mail Address:	PO BOX 8 ALBION, MI 49224
Committee Street Address:	1021 BURR OAK ST ALBION, MI 49224
Treasurer:	CHAD E BAASE 1021 BURR OAK ST ALBION, MI 49224 (517) 879-8176

Designated Record Keeper:	CHAD E BAASE 1021 BURR OAK ST ALBION, MI 49224 (517) 879-8176
Reporting Waiver	No

Names and addresses of depositories or intended depositories of committee funds

Official Depository:	SYNCHRONY BANK DBA PAYPAL PO BOX 965012 ORLANDO, FL 32896
Secondary Depository:	
Support/Opposed:	
Ballot Proposal:	
Jurisdiction:	

Documents on File

Click on a document to access data and images for this committee.

N/A = Not applicable to this document type.

* Fee has an outstanding balance.

Statement Year	Document Type	Document Covers	Statement Due	Sent/Received	Doc Seq#
	LATE FILING FEE NOTICE (ORIGINAL) - 2021 JULY QUARTERLY CS - OUTSTANDING-$1000.00* (https://cfrsearch.nictusa.com/documents/514318)	N/A	N/A	08/24/2021	514318
	FAILURE TO FILE NOTICE - 2021 JULY QUARTERLY CS (https://cfrsearch.nictusa.com/documents/513916)	N/A	N/A	07/29/2021	513916
	LATE FILING FEE NOTICE (SECOND) - 2020 OCTOBER QUARTERLY CS (https://cfrsearch.nictusa.com/documents/511723)	N/A	N/A	06/23/2021	511723
	LATE FILING FEE NOTICE (SECOND) - 2021 JANUARY QUARTERLY CS (https://cfrsearch.nictusa.com/documents/511642)	N/A	N/A	06/23/2021	511642

Statement Year	Document Type	Document Covers	Statement Due	Sent/Received	Doc Seq#
	LATE FILING FEE NOTICE (ORIGINAL) - 2021 APRIL QUARTERLY CS - OUTSTANDING-$1000.00* (https://cfrsearch.nictusa.com/documents/511309)	N/A	N/A	06/16/2021	511309
	FAILURE TO FILE NOTICE - 2021 APRIL QUARTERLY CS (https://cfrsearch.nictusa.com/documents/510827)	N/A	N/A	04/29/2021	510827
	LATE FILING FEE NOTICE (FINAL) - 2020 JULY QUARTERLY CS (https://cfrsearch.nictusa.com/documents/508730)	N/A	N/A	03/17/2021	508730
	LATE FILING FEE NOTICE (SECOND) - 2020 JULY QUARTERLY CS (https://cfrsearch.nictusa.com/documents/508417)	N/A	N/A	03/11/2021	508417
	LATE FILING FEE NOTICE (ORIGINAL) - 2020 OCTOBER QUARTERLY CS - OUTSTANDING-$1000.00* (https://cfrsearch.nictusa.com/documents/507958)	N/A	N/A	03/04/2021	507958
	LATE FILING FEE NOTICE (ORIGINAL) - 2021 JANUARY QUARTERLY CS - OUTSTANDING-$500.00* (https://cfrsearch.nictusa.com/documents/507667)	N/A	N/A	03/04/2021	507667
	FAILURE TO FILE NOTICE - 2021 JANUARY QUARTERLY CS (https://cfrsearch.nictusa.com/documents/506813)	N/A	N/A	02/05/2021	506813
	FAILURE TO FILE NOTICE - 2020 OCTOBER QUARTERLY CS (https://cfrsearch.nictusa.com/documents/502154)	N/A	N/A	10/30/2020	502154
	LATE FILING FEE NOTICE (ORIGINAL) - 2020 JULY QUARTERLY CS - OUTSTANDING-$1000.00* (https://cfrsearch.nictusa.com/documents/498636)	N/A	N/A	09/10/2020	498636
	FAILURE TO FILE NOTICE - 2020 JULY QUARTERLY CS (https://cfrsearch.nictusa.com/documents/497156)	N/A	N/A	07/30/2020	497156
	EMAIL CORRESPONDENCE (https://cfrsearch.nictusa.com/documents/497394)	N/A	N/A	07/27/2020	497394
2020	APRIL QUARTERLY CS(e) (https://cfrsearch.nictusa.com/documents/494426)	04/10/2020 – 04/20/2020	04/27/2020	05/08/2020	494426
	FAILURE TO FILE NOTICE - 2020 APRIL QUARTERLY CS - SATISFIED-494426 (https://cfrsearch.nictusa.com/documents/494284)	N/A	N/A	04/28/2020	494284
	NO REPORTING WAIVER LETTER (https://cfrsearch.nictusa.com/documents/492616)	N/A	N/A	04/15/2020	492616
	NEW INDEPENDENT PAC LETTER (https://cfrsearch.nictusa.com/documents/492615)	N/A	N/A	04/15/2020	492615
	S of O - INFORMATION(e)	N/A	N/A	04/10/2020	492605

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Office of Regulatory Reinvention (http://www.michigan.gov/lara/0,4601,7-154-35738---,00.html)
Forms (http://www.michigan.gov/sos/0,1607,7-127-1640_11777---,00.html) FAQ (http://www.michigan.gov/sos/0,1607,7-127-12539---F,00.html)
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Michigan.gov Home (http://www.michigan.gov/) Michigan News (http://www.michigan.gov/minewswire)
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EXHIBIT 3

Response to Complaint in Michigan Freedom Fund v. Gretchen Whitmer for Governor
No. 2021-08-24-52

WUOMFM
All Things Considered

Albion man files recall petition against Whitmer, questions legality of stay-at-home order

By BRYCE HUFFMAN (/PEOPLE/BRYCE-HUFFMAN) • APR 20, 2020

Share (http://facebook.com/sharer.php?u=https%3A%2F%2Ftinyurl.com%2Fycbnje2c&t=Albion%20man%20files%20recall%20petition%20against%20Whitmer%2C%20questions%20legality%20of%20stay-at-home%20order)

(https://mediad.publicbroadcasting.net/p/michigan/files/styles/x_large/public/201901/gretchen-whitmer-governor-NEW.jpg)

CREDIT MICHIGAN.GOV

A Michigan man has filed a recall petition against Governor Gretchen Whitmer over her stay-at-home order (https://www.michiganradio.org/post/gov-whitmer-issues-stay-home-order). This comes less than two weeks before Whitmer's stay-at-home order (https://www.michiganradio.org/post/heres-what-you-need-know-about-michigans-stay-home-order) ends.

Albion resident Chad Baase, who filed the petition, says he believes the governor's decision to shut down certain businesses (https://www.michiganradio.org/post/state-sen-zorn-many-businesses-closed-stay-home-order-could-be-safely-reopened) is illegal.

"When she took office she swore to uphold the Constitution, and she's not doing that with her executive order," Baase says.

Baase himself has had previous problems with the law. *The Battle Creek Enquirer reports (https://www.battlecreekenquirer.com/story/news/2017/12/04/man-behind-albion-recall-petitions-had-run-ins-law/913224001/)* that after a custody dispute with his ex-wife, Baase told Calhoun County Commissioner Steve Frisbie that he would kill 10,000 people a day by poisoning the water supply.

It also reports that he threatened to kill family court referees and county judges and their children in a series of August 2013, Facebook messages he sent to Frisbie.

The Board of State Canvassers will meet remotely next week to discuss the petition. The board will decide if the language in the written petition is enough to put a recall on the ballot.

Whitmer's stay at home order will end on April 30 unless it gets extended.

Baase says he believes Whitmer is abusing her powers as governor. He says Whitmer needs to be replaced by someone more in tune with state lawmakers.

"We have to get somebody who can work with our Legislature. We're not going to fix the damn roads without working with our Legislature," he says.

Baase says he has filed four recall petitions before, including a petition against former Albion mayor Garrett Brown – who was voted out of office four months after the recall election would have taken place.

This post has been updated to add details of Baase's past legal issues and to remove an error about former recall petitions.

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TAGS: RECALL (/TERM/RECALL) COVID-19 (/TERM/COVID-19) GRETCHEN WHITMER (/TERM/GRETCHEN-WHITMER) CHAD BAASE (/TERM/CHAD-BAASE) ALBION (/TERM/ALBION)

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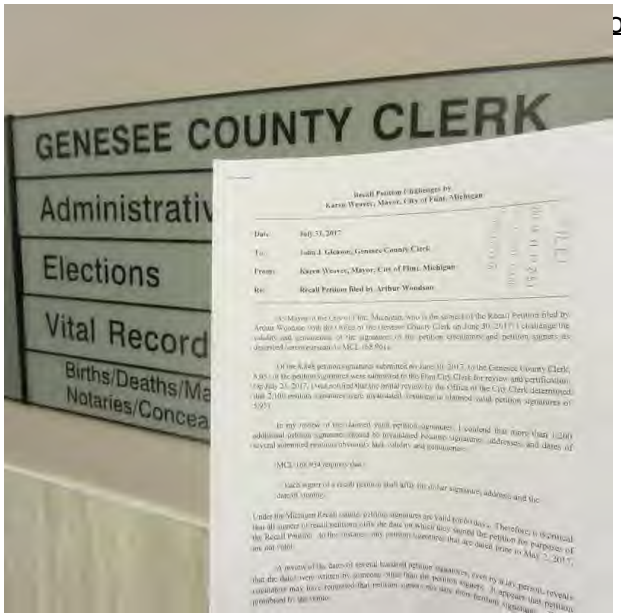

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APR 20, 2020

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EXHIBIT 4

Response to Complaint in Michigan Freedom Fund v. Gretchen Whitmer for Governor
No. 2021-08-24-52

Detroit Free Press

ELECTIONS

Michigan panel OKs language for petition to recall Gov. Whitmer

Paul Egan Detroit Free Press

Published 2:12 p.m. ET Jun. 8, 2020 | **Updated 5:23 p.m. ET Jun. 8, 2020**

LANSING – The Board of State Canvassers approved petition language Monday for a long-shot effort to recall Gov. Gretchen Whitmer.

The recall effort is headed by Chad Baase, an Albion businessman who opposes Whitmer's emergency orders related to the coronavirus pandemic.

Baase, 39, cited Whitmer's March 10 emergency declaration and about a dozen of her subsequent emergency orders as reasons for seeking the recall.

Baase told the Free Press the main reason he wants to recall Whitmer is that she put large numbers of Michiganders out of work without making sure the Unemployment Insurance Agency, which has experienced major online and telephone problems, was equipped to handle the load.

The Board of State Canvassers approved the recall language Monday in a 4-0 vote, after rejecting the language in two earlier petitions submitted by Baase.

Christopher Mills, a senor adviser to the Whitmer for Governor campaign, dismissed the recall effort as a "baseless partisan attack that will not distract the governor from doing her job. Under state law, Baase must collect about 1.1 million recall signatures in 60 days to force a recall election. His group has a website, www.recallgovernorwhitmer.com.

Several efforts to recall Whitmer's predecessor, Republican Gov. Rick Snyder, fell short. Whitmer is a Democrat who took office Jan. 1, 2019.

More: Poll: Michiganders fear second wave of coronavirus, support Gov. Whitmer's orders

More: Michigan barbershops, hair salons can reopen statewide June 15

Baase is a Republican candidate for the state House in the 62nd District, in Calhoun County, state records show.

Baase has also had trouble with the law, the Battle Creek Enquirer reported in 2017.

In July 2014, a county judge sentenced him to 30 months to 20 years in prison and 15 months of parole for making a false report or threat of terrorism, the newspaper reported. Baase served 30 months.

The threats were made during a child custody dispute.

Baase said he would kill 10,000 people a day by poisoning the water supply because a court official had ruled against him, according to court records.

Baase said Monday he was drunk when he sent threatening messages and was trying to get attention because he felt his children were in danger. He told the Enquirer he has run multiple cellphone stores and a novelty business and in 2017 was painting water towers.

He said he may go to court to seek approval for using online signatures. Under current law, recall signatures must be signed in person.

Mills said Whitmer "plans to fight this recall aggressively while staying focused on protecting Michigan families from the spread of COVID-19."

Contact Paul Egan: 517-372-8660 or pegan@freepress.com. Follow him on Twitter @paulegan4. Read more on Michigan politics and sign up for our elections newsletter.

EXHIBIT 5

Response to Complaint in Michigan Freedom Fund v. Gretchen Whitmer for Governor
No. 2021-08-24-52

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Public Interest

Effort to recall Gov. Whitmer a ‘David versus Goliath scenario’ as multiple groups begin the process

Updated: Oct. 06, 2020, 10:59 a.m. | Published: Oct. 06, 2020, 10:59 a.m.

Rally goers gather at the Capitol and listen as Steven Crowder speaks during his anti-Whitmer protest at Michigan State capitol on Oct. 2, 2020. (Nicole Hester | MLive.com) Nicole Hester/Mlive.com

By Justin P. Hicks | jhicks3@mlive.com

Efforts are underway to recall a handful of Michigan's top executives, including multiple petitions aimed at Gov. Gretchen Whitmer, but it'll be an uphill battle.

Of the nearly 30 recall petitions submitted to the state for approval, 11 have had their language approved for circulation. Each petition would need to collect more than 1.06 million signatures, within a 60-day period, to earn a spot on a future ballot.

Advertisement

"It's truly a David versus Goliath scenario," said Jim Makowski, a 54-year defense attorney behind one effort to recall Whitmer.

Nine petitions aimed at recalling the governor have been approved by the Michigan Board of State Canvassers in opposition of the governor. Two more petitions were approved for Lt. Gov. Garlin Gilchrist and Secretary of State Jocelyn Benson.

Makowski was one of five Michigan residents to have their recall petition approved by the board. He has since joined forces with three of the other four recall sponsors to push one petition forward to the signature collection process.

That petition specifically seeks to recall Whitmer for her signing of Executive Order 2020-50 related to "enhanced protections for residents and staff of long-term care facilities during the COVID-19 pandemic."

Makowski said the governor endangered nursing home residents and staff by not creating separate facilities for patients who tested positive for coronavirus. His petition also goes beyond that order.

"It's for a host of reasons," Makowski said. "In our opinion, she's made an unconstitutional overreach of power. Her measures are absolutely draconian. There was no need to endanger anyone in nursing homes, and many of her executive orders made no sense.

"She has usurped her power and the power of the legislature. Representatives in the House and Senate are elected by the people and she's ignored and defied their directives. It's time for the people to take back that power."

Bobby Leddy, a spokesperson for Whitmer's campaign, told MLive that each approval by the Board of State Canvassers has been appealed to the Michigan Court of Appeals because the board "failed to apply the correct standard or review to any single petition and has been inconsistent in its application of the standards they have applied."

"No elected official in Michigan, including the governor, could articulate the standard of review being applied by the Board of Canvassers right now," Leddy said. "We are confident that the Court of Appeals will clarify the applicable standard of review and when applied to the pending recall petitions find that the recall petitions are neither factual, lack sufficient clarity, or misrepresent the content of the executive orders identified in the petition."

The Recall Whitmer Movement is a grassroots campaign organized by a group called Guarding Against Government Excess (GAE), of which Makowski is a founding member. They've had multiple petitions approved by the state, but are only moving forward with the one associated with the governor's order pertaining to nursing homes.

Collection of signatures is expected to begin Oct. 23 and run into late December. Residents interested in recalling the governor must sign a petition based in their city, township or village.

Without any major business sponsors, Makowski said the movement is going to require significant fundraising and volunteer efforts. He estimated a price tag of upwards of $7-$8 million, even with the GAGE's founders pledge not to take salaries.

"Fundraising is hugely important to us and we're woefully short of our goal," he said. "We've got thousands of dedicated volunteers. Volunteers are great but it wont be enough if we want to achieve our goal.

"We don't even have enough money right now to get (an estimated 200,000) petitions printed."

The group plans to hire professional petitioners to get the signatures they need, though Makowski said they will not hire an organization that uses unethical practices to collect signatures. He referenced the group Unlock Michigan, whose petition seeking the end of Gov. Whitmer's emergency powers is under criminal investigation for allegations it gathered some signatures improperly.

Michigan Attorney General Dana Nessel said her office received multiple complaints that some of Unlock Michigan's signatures were obtained via false pretenses, including volunteers telling signers they were supporting petitions for LGBTQ rights, medical marijuana allowances or small business initiatives.

"We're looking for 100% legitimacy and transparency," Makowski said.

Guarding Against Government Excess's recall effort uses the website recallwhitmer.com. It is separate from the recall effort sponsored by Albion resident Chad Baase. Baase met with the group, but the two sides decided not to work together.

"We have nothing to do with his effort and we want nothing to do with his effort," Makowski said. "I wish him the best but that's not us."

Baase has had two petitions approved to recall Whitmer, as well as one each against Gilchrist and Benson. He has submitted another petition to recall Attorney General Dana Nessel after his previous attempts were voted down by the Board of State Canvassers because the language wasn't clear and factual.

Baase's petition to recall Whitmer is based on her declaring a state of emergency on March 10, and again April 30, under the Emergency Powers of the Governor Act from 1945. He called those orders the origin of Whitmer's violations of the separation of powers clause of the Michigan constitution.

The Michigan Supreme Court ruled last week that Whitmer didn't have the authority to expand the declared state of emergency beyond April 30.

Baase's petition began collecting signatures Thursday, Oct. 1, though he has hit some roadblocks after he said his former campaign manager deleted the effort's Facebook page and list of volunteers.

Both Baase and Makowski anticipate having petition circulators positioned at every polling location across the state on Tuesday, Nov. 3.

Recalling an elected official in Michigan requires a petition to collect signatures equal to 25% of the number of total votes cast in the prior gubernatorial election. In 2018, there were about 4.25 million votes cast, of which 53.3% were for Whitmer.

The recall process was made more challenging in 2012, thanks to a bill signed by then-Gov. Rick Snyder. The change:

- disallowed recalls during the first and last year of an elected official's term in office for officials with four-year terms;
- required each petition to "state factually and clearly each reason for the recall," a change from previous law that required only clarity;
- put recalls for state lawmakers before the Board of State Canvassers instead of county boards;
- made it so that signatures had to be collected in a 60-day period instead of a 90-day period.

"It's a huge undertaking but we feel it's worth it," Makowski said. "We feel we have to do this to protect the citizens of Michigan."

COVID-19 PREVENTION TIPS:

In addition to washing hands regularly and not touching your face, officials recommend practicing social distancing, assuming anyone may be carrying the virus.

Health officials say you should be staying at least 6 feet away from others and working from home, if possible.

Use disinfecting wipes or disinfecting spray cleaners on frequently-touched surfaces in your home (door handles, faucets, countertops) and carry hand sanitizer with you when you go into places like stores.

Michigan Gov. Gretchen Whitmer has also issued executive orders requiring people to wear face coverings over their mouth and nose while in public indoor and crowded outdoor spaces. See an explanation of what that means here.

Additional information is available at Michigan.gov/Coronavirus and CDC.gov/Coronavirus.

Read more on MLive:

Michigan AG will no longer enforce governor's executive orders after court ruling

Whitmer: Michigan Supreme Court 'undermined' public health efforts amid COVID-19 pandemic

Michigan's coronavirus numbers are creeping up. Is it the start of a fall surge?

Nearly 100,000 now recovered in Michigan from coronavirus

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EXHIBIT 6

Response to Complaint in Michigan Freedom Fund v. Gretchen Whitmer for Governor
No. 2021-08-24-52

Michigan Committee Statement of Organization

The documents sent and received listing for this committee is at the bottom of the screen.

Jump to the documents on file

Committee ID#:	519616
Type of Filing:	Original
Full name of committee:	MICHIGANDERS TO RECALL GRETCHEN WHITMER
Committee Type:	Independent PAC
Met Independent Status:	
Acronym:	
Name of Sponsor/Type:	
Segregated Fund:	No
Date Committee Was Formed:	04/14/2020
Committee Phone Number:	(231) 343-6470
Committee Mail Address:	950 W. NORTON STE 302 MUSKEGON, MI 49441
Committee Street Address:	950 W. NORTON STE 302 MUSKEGON, MI 49441
Treasurer:	TUDOR DIXON 950 W. NORTON STE 302 MUSKEGON, MI 49441 (231) 343-6470
Designated Record Keeper:	

Reporting Waiver	Gained waiver on 04/15/2020

Names and addresses of depositories or intended depositories of committee funds

Official Depository:	INDEPENDENT BANK 3251 HENRY STREET MUSKEGAN, MI 49441
Secondary Depository:	
Support/Opposed:	
Ballot Proposal:	
Jurisdiction:	

Documents on File

Click on a document to access data and images for this committee.

N/A = Not applicable to this document type.

* Fee has an outstanding balance.

Statement Year	Document Type	Document Covers	Statement Due	Sent/Received	Doc Seq#
2021	DISSOLUTION CS (https://cfrsearch.nictusa.com/documents/513674)	Not Available	Not Available	07/28/2021	513674
	NEW INDEPENDENT PAC LETTER (https://cfrsearch.nictusa.com/documents/492713)	N/A	N/A	04/17/2020	492713
	S of O - INFORMATION(e)	N/A	N/A	04/14/2020	492702

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Office of Regulatory Reinvention (http://www.michigan.gov/lara/0,4601,7-154-35738---,00.html)
Forms (http://www.michigan.gov/sos/0,1607,7-127-1640_11777---,00.html) FAQ (http://www.michigan.gov/sos/0,1607,7-127-12539---F,00.html)
Online Services (https://onlineservices.michigan.gov/ExpressSOS) SOS Home (http://www.michigan.gov/sos)

Contact the Secretary of State (http://www.michigan.gov//sos/0,4670,7-127--25634--,00.html)
State Web Sites (http://www.michigan.gov//sos/0,1607,7-127----A,00.html)

Michigan.gov Home (http://www.michigan.gov/) Michigan News (http://www.michigan.gov/minewswire)
Policies (http://www.michigan.gov/sos/0,4670,7-127--281460--,00.html)

EXHIBIT 7

Response to Complaint in Michigan Freedom Fund v. Gretchen Whitmer for Governor
No. 2021-08-24-52

The Detroit News

FOR SUBSCRIBERS POLITICS

Gov. Whitmer capitalizes on floundering recall efforts

Craig Mauger The Detroit News

Published 10:40 p.m. ET Jul. 28, 2021

View Comments

Lansing — The recall campaigns that have enabled Michigan Gov. Gretchen Whitmer to raise millions of dollars for her reelection bid have struggled to get off the ground, and their own organizers acknowledged they've come nowhere near the required level of support.

Three Michigan residents who've submitted petition language aimed at unseating Whitmer agreed Wednesday that the most successful recall campaign collected fewer than 100,000 signatures before halting its effort in December. To put a recall of the Democratic governor before voters, it would take more than 1 million valid signatures.

The backers of some recall petitions haven't garnered a single signature, dropping their language to assist others. And one of the most visible organizers, Chad Baase of Albion, told the Bureau of Elections last year that his fundraising committee faced a "hostile takeover."

Kathy Swartz demonstrates against Gov. Gretchen Whitmer with a "recall Whitmer" sign. The most successful recall petition against Whitmer fell hundreds of thousands of signatures short of the legally required number. Dale G. Young, Special To Detroit News

The details of what's happened with petition efforts to recall Whitmer over the last year could be the focus of intense debate in the coming weeks as her opponents question the legality of her campaign accepting larger-than-normally-allowed contributions from donors in response to the recall efforts.

It's a fight that could affect about $3.4 million in giving to the governor's campaign and hinge, at least in part, on whether a recall is "actively being sought" against her.

"I don't think she's justly raising money," said David Blair, who had five sets of recall petition language against Whitmer rejected by the Board of State Canvassers on Monday.

While Blair of Manistee said he feels "morally obligated" to pursue Whitmer's recall, none of the efforts in Michigan, except one, have apparently gotten to the point of collecting signatures. The campaign that did stopped in mid-December, Blair said.

"This isn't an active recall," Blair said of his own efforts. "We're not even collecting signatures right now."

But Whitmer's supporters argued that regardless of the status of the petitions, the governor's campaign shouldn't have to spend money meant for her reelection on fighting the recalls.

There are ongoing court cases involving seven recall petitions against the governor, and new ones are popping up almost every month. That means there are active recalls happening, said Steve Liedel, an attorney who served as general counsel to Whitmer's transition team.

"She's entitled to defend herself against a recall," Liedel said.

"You have an obligation to your supporters to use them to your advantage," he said of the state's laws on fundraising.

Importance of active recall

Under two decisions from then-Secretary of State Richard Austin in the 1980s, Michigan officeholders can accept unlimited contributions if a recall is "actively being sought" against them.

Austin's argument was that if a recall committee can raise unlimited amounts of money, it would be "absurd" and "unfair" to limit the contributions to an officeholder fighting the recall.

That's the rationale Whitmer's campaign has used this year to raise about $3.4 million in excess contributions from individual donors who gave more than the normal limit of $7,150. The total represented about 39% of the money her campaign raised this year as of July 20, the end of the most recent fundraising period.

Michigan Gov. Gretchen Whitmer, right, gets a hug from Shante Rice before a June 22 press conference on Belle Isle in Detroit. Whitmer's campaign says ongoing litigation involving recalls means there are active recall efforts that allow her to raise money beyond normal state limits. *David Guralnick, The Detroit News*

On Monday, Mark Fisk, the spokesman for Whitmer's campaign, said about 30 recall efforts have been started against Whitmer.

"You better believe we're going to be beating these back," Fisk said.

However, Austin's opinion was somewhat unclear about what "actively being sought" means when it comes to a recall. At one point in a 1983 response, Austin said a political committee must be "actively promoting" the officeholder's recall.

There is currently at least one website promoting Whitmer's recall. It appears to be accepting donations and allowing volunteers to sign up to support the campaign.

In a Wednesday complaint with the Bureau of Elections filed against the governor's fundraising strategy, Tori Sachs, executive director of the conservative Michigan Freedom Fund, said state lawmakers had limited contributions to statewide campaigns at $7,150 and Austin's decisions were invalid.

But she also contended that recalls are not being actively sought against Whitmer. The most recent recall petition approved by the Board of State Canvassers against Whitmer was Sept. 10. That petition expired on April 29, after a deadline based around a legal appeal, Sachs said.

"Therefore, after April 29, 2021, no valid recall petition was even in existence," Sachs said. "Moreover, it is absurd for anyone to believe that any of the proponents of these recall petitions against Gov. Whitmer were actively seeking a recall election."

Three of Whitmer's largest contributions of $250,000 or more arrived after that date of April 29, according to disclosures.

'We were not getting them'

Since the beginning of 2020, 28 sets of petition language aimed at recalling Whitmer have gone before the Board of State Canvassers, according to state records. Of those, one was withdrawn before a vote, 17 were rejected as not being factual or clear in their language, and 10 were approved.

Most of the recall efforts focused on elements of Whitmer's handling of the COVID-19 pandemic, including her decision to shutter indoor service at bars and restaurants and her move to continue an emergency declaration after the GOP-controlled Legislature rejected the idea.

The petition that gained the most steam was about her policies for nursing homes, about which Republican lawmakers criticized her for not setting up wholly separate facilities to care for those with the virus.

The language came from Jim Makowski, an attorney who practices in Dearborn. The Board of State Canvassers approved it on Sept. 2, setting up a 180-day window for petitions to be valid. Yet under state policies, supporters had to gather more

than 1 million required petition signatures to advance a recall to voters in a period of 60 days within the larger window.

Makowski said he was advised it would take about $7 million to collect the number of needed signatures. His committee, Guardians Against Government Excess, has reported raising about $21,000.

The group gathered signatures from October into December, before discontinuing their effort.

"It just can't be done without vast financial resources," Makowski said. "And we were not getting them."

'Hostile takeover'

While Makowski's effort fell well short, organizers in the movement to recall Whitmer view it as the most successful.

Chad Baase of Albion had two sets of petition language against Whitmer approved by the Board of State Canvassers last year. Baase tried again with new language on July 13. The board rejected his proposed language.

His fundraising committee, the Committee to Recall Governor Gretchen Whitmer, hasn't reported raising any money. But it also hasn't filed a required disclosure since April 2020.

In an email to the Bureau of Elections on July 27, Baase wrote that because of a "hostile takeover" of the committee, he was unable to enter information into the state's campaign finance database.

Baase didn't respond to requests for comment Wednesday. In her complaint, Sachs said Baase had stated his committee had not collected any petition signatures.

Two of Makowski's petitions against Whitmer and two of Baase's against her are among seven that Whitmer's campaign challenged in the state Court of Appeals. The court upheld the Board of State Canvassers' decision to approve the language, but Whitmer's campaign is appealing to the Michigan Supreme Court.

The ongoing litigation is one of the reasons the recalls are still active, said Mark Brewer, an attorney and former chairman of the Michigan Democratic Party.

John Parkinson of Macomb Township also backed petition language that was approved in September but is still being litigated in the courts. Parkinson said he wasn't certain why the governor's campaign was fighting his petition language in court when he's not actively pursuing the recall.

"It's a waste of money and time," Parkinson said.

He added that because the election is next year, he doesn't believe it's worthwhile to continue to push to recall the governor.

Blair disagreed. He still wants to do it and believes he can hit the signature threshold, which others described as a near impossibility.

"We are going to move forward," Blair said. "We're not giving up."

Whitmer will be up for reelection for a second four-year term in November 2022.

cmauger@detroitnews.com

EXHIBIT 8

Response to Complaint in Michigan Freedom Fund v. Gretchen Whitmer for Governor
No. 2021-08-24-52

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

January 3, 1984

L. Brooks Patterson
Prosecuting Attorney
Courthouse Tower
Pontiac, Michigan 48053

Dear Mr. Patterson:

In your letter of November 17, 1983, you request that the Secretary of State issue a declaratory ruling on the question of whether the contribution limits of section 52 of the Campaign Finance Act, 1976 PA 388, as amended (the "Act"), are applicable to contributions made to an officeholder who is the subject of a recall election.

Your request was made subsequent to the dismissal of your action against Senator Mastin's candidate committee in Oakland County Circuit Court. The dismissal was based on your failure to seek a declaratory ruling from the Secretary of State prior to seeking declaratory relief from the Court.

Specifically you state the following:

> "I am requesting that you specifically rule whether Section 52 of the Campaign Finance Act applies to a candidate committee of an office holder subject to a recall vote. I am sure that you are aware of the October 7, 1983 letter from Mr. Philip T. Frangos, Director of Hearings and Legislation for your office, which advises that the provisions of Section 52 do not apply to a candidate for recall. I disagree with that ruling and request that you reconsider it and issue a formal declaratory ruling on that issue."

This review of the matter indicates that the letter issued by Phillip T. Frangos October 7, 1983, reaches the correct conclusion with respect to the applicability of section 52 of the Act (MCL 169.252). The basis for concluding that contributors are not bound by the contribution limits of section 52 is set forth in the letter as follows:

"Pursuant to section 12(2) of the Act (MCL 169.212), a member of the Legislature is a candidate for 'state elective office.' However, 'elective office' is defined in section 5(2) of the Act (MCL 169.205) as 'a public office filled by an election, except for federal offices.' Since a recall vote does not fill a public office, it must be concluded that the candidate committee of an officeholder subject to a recall vote is not a 'candidate commitee of a candidate for state elective office.' Therefore, section 52 does not apply to contributions received by an officeholder who is being recalled, provided the contributions are designated for a recall election.

In an election to fill an office, the opponents are two or more candidate committees operating under the same restrictions. For example, in a state senatorial election, contributions to each candidate are limited by section 52(1) to $450.00, unless made by an independent commitee, political party committee, or the state central committee of a political party. Contributions from these committees, however, are subject to other restrictions.

Proponents of a recall measure are required to file a statement of organization as a political committee. Contributions to political committees are not subject to limitation under the Act. If section 52 were to apply to contributions received by the candidate committee of a state elective officeholder facing a recall, the opponents in a recall election would be operating under different sets of rules. Such an interpretation would undermine the open and fair election policy otherwise promoted by the Act by allowing the political committee advocating the recall to engage in unlimited fundraising, while severely limiting the officeholder's ability to raise money. This result, which is inconsistent with the Act's purpose, is both absurd and unfair and could not have been intended by the Legislature. Consequently, section 52 cannot be construed as applying to contributions received by the candidate committee of a state elective officeholder facing a recall election."

One of the points made in the material submitted along with the request for a declaratory ruling is that the previous letter ignores section 5(1) of the Act (MCL 169.205). That section defines the term election. Recall elections are specifically included in the definition. This provision was not ignored in drafting the previous letter. It is clear that a recall vote is an election pursuant to the Act. As a result committees which participate in recall elections are required to meet all the registrations and disclosure requirements of the Act. It is not inconsistent to conclude that even though a recall vote is an election that the provisions of section 52 are not applicable since the officeholder who is the subject of the recall vote is not a "candidate for state elective office" which is a prerequisite to the application of the contribution limits set forth in section 52.

In upholding the contribution limits established in the Federal Election Campaign Act, the U.S. Supreme Court in Buckley v Valeo, 424 US 1 (1976) pointed

to the fact that the contribution limits applied equally to incumbents and challengers as follows:

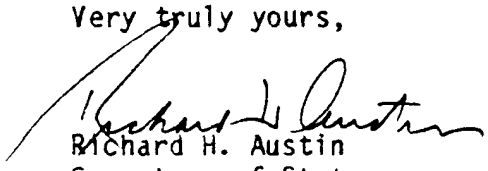
> "Apart from these First Amendment concerns, appellants argue that the contribution limitations work such an invidious discrimination between incumbents and challengers that the statutory provisions must be declared unconstitutional on their face. In considering this contention, it is important at the outset to note that the Act applies the same limitations on contributions to all candidates regardless of their present occupations, ideological views, or party affiliations. Absent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes evenhanded restrictions." (424 US 1 at 31)

The Secretary of State has an obligation to administer this law in a constitutional fashion and to implement the statute so as to avoid absurd results.

To implement the statute as you have suggested would treat contributors to the proponents of a recall differently than contributors to the committee of the state official who is the subject of the recall. Such a construction would subject the Act to a challenge on constitutional grounds. In addition it would create a result that clearly could not have been intended by the Legislature.

This response is a declaratory ruling as provided for in the Act, the Rules and the Michigan Administrative Procedures Act.

Very truly yours,



Richard H. Austin
Secretary of State

RHA/cw

MICHIGAN FREEDOM FUND

PO Box 14162 | Lansing, Michigan 48901 | 517.618.1589 | www.MichiganFreedomFund.com

October 8, 2021

Adam Fracassi
Bureau of Elections
Richard H. Austin Building, 1st Floor
430 W. Allegan
Lansing, MI 48918

By email transmission
FracassiA@michigan.gov

Re: Michigan Freedom Fund v. Whitmer
Campaign Finance Complaint
No. 2021-08-24-52
Rebuttal Statement

Dear Mr. Fracassi:

INTRODUCTION

Thank you for your letter dated September 27, 2021 which contained the response (the "Response") submitted by the Respondent in the above-referenced matter. Please consider this letter to be the Rebuttal Statement submitted on behalf of the Complainant.[1] The Response does not, and cannot, avoid the unmistakable fact that the text of the Michigan Campaign Finance Act prohibits the Whitmer Campaign's fundraising scheme to raise millions of dollars in excess of the contribution limits. While every other candidate in the State of Michigan must comply with the Act's contribution limits, in Governor Whitmer's self-important world: "THE RULES APPLY TO THEE BUT NOT TO ME".

Significantly, one of these Michigan candidates who has complied with contribution limits is Secretary Benson. It has not gone unnoticed that while Secretary Benson could potentially make the same unjustified clams as Governor Whitmer, Secretary Benson has not raised excess contributions under the guise of the so-called and invalid "recall exception" to contribution limits and has continued to only accept contributions within the statutory limits. On this point, on July 20, 2021, Secretary Benson correctly refunded an excess contribution given to her campaign by mega-donor Mark Bernstein (who contributed an eye-popping $257,150 in the current election

[1] All capitalized terms not otherwise defined herein shall have those meanings as set forth in the Complaint filed in the above-referenced matter. The Complaint is hereby incorporated herein by reference.

cycle to the Whitmer Campaign).[2] Consequently, we are confident that your office will put an end to the largest money grab in Michigan's history and confirm that EVERY candidate in the State of Michigan must comply with the Michigan Campaign Finance Act's contribution limits.

THERE IS ONLY ONE CITATION TO THE APPLICABLE CONTRIBUTION LIMIT UNDER THE MICHIGAN CAMPAIGN FINANCE ACT IN THE ENTIRE RESPONSE

Buried on Page 11 of the 64-page Response is the only citation to the applicable contribution limits applicable to candidates under the Michigan Campaign Finance Act:

> "Under MCL 169.252, the current limit for a contribution during an "election cycle" is $7,150."

The remainder of the Response represents a desperate and misleading attempt to avoid contribution limits under the Michigan Campaign Finance Act.

THE COMPREHENSIVE AMENDMENTS TO MICHIGAN'S RECALL PROCESS IN 2012 SUPERSEDE AND INVALIDATE THE 1983 AND 1984 RULINGS RELIED UPON BY THE WHITMER CAMPAIGN TO AVOID MICHIGAN'S CONTRIBUTIONLIMITS

The Whitmer Campaign relies upon two rulings made by the Michigan Department of State to justify the most egregious violation of contribution limits in Michigan history.[3] In these rulings, the "basis for concluding that contributors are not bound by the contribution limits of section 52 [in a recall situation] is set forth in the letter as follows:

> "Pursuant to section 12(2) of the Act (MCL 169.212), a member of the Legislature is a candidate for 'state elective office.' However, 'elective office' is defined in section 5(2) of the Act (MCL 169.205) as 'a public office filled by an election, except for federal offices.' Since a recall vote does not fill a public office, it must be concluded that the candidate committee of an officeholder subject to a recall vote is not a 'candidate committee of a candidate for state elective office.' Therefore, section 52 does not apply to contributions received by an officeholder who is being recalled, provided the contributions are designated for a recall election."[4] Emphasis supplied.

In 1983 and in 1984, a recall vote did not fill a public office. According to former MCL 168.968 which was in effect at that time:

---

[2] See 2021 July Quarterly Campaign Statement of Jocelyn Benson for Secretary of State available at Michigan Campaign Statement Expenditures (nictusa.com)

[3] Interpretative Statement (IS) issued to William Faust dated October 7, 1983; Declaratory Ruling (DR) issued to L. Brooks Patterson dated January 3, 1984.

[4] Id.

> "If a board of canvassers determined that a majority of the votes are in favor of a recall, the board of canvassers immediately upon the determination shall certify the result to the officer with whom the recall petition was filed. Upon certification, the office is vacant." Emphasis supplied.

Significantly, as a result of Public Act 417 of 2012, a recall vote for Governor currently does fill a public office! According to MCL 168.975g which is now in effect:

> "If the board of state canvassers determines that a majority of the votes are in favor of recall, the board of state canvassers immediately upon the determination shall certify the result to the officer with whom the recall petition was filed. Upon certification, the governor shall be replaced as provided under section 26 of article V of the state constitution of 1963." Emphasis supplied.

Accordingly, because a recall vote for Governor does fill an election after 2012, the basis for these 1983 and 1984 rulings no longer exists; therefore, the enactment of Public Act 417 of 2012 supersedes and nullifies the 1983 and 1984 rulings for this reason alone.[5]

IN MICHIGAN, AN AGENCY MAY NOT ADOPT A DECLARATORY RULING CONTRARY TO STATUTE

Again, the Whitmer Campaign relies upon two rulings made by the Michigan Department of State to justify the most egregious violation of contribution limits in Michigan history.[6] These rulings seek to override the contribution limits under MCL 169.252; however, it is beyond dispute that, in Michigan, an agency may not adopt a declaratory ruling contrary to statute. *Michigan Association of Intermediate Special Educ. Administrators v. Department of Social Services*, 207 Mich. App. 491, 494-495 (1994). Consequently, even absent nullification by the Public Act 417 of 2012 recall process amendments, these 1983 and 1984 rulings are invalid to the extent that they are contrary to the contribution limits under MCL 169.252.

THE RESPONSE'S CIRCULAR ARGUMENT - WHICH SUGGESTS THAT THE MICHIGAN DEPARTMENT OF STATE IS SOMEHOW BOUND TO THE OTHERWISE INVALID 1983 AND 1984 RULINGS – DEFIES LOGIC

It should not go unnoticed that the Response completely avoids the insurmountable hurdle as to whether the Michigan Department of State has the authority to amend statutory contribution limits with the 1983 and 1984 rulings by creating a so-called "recall exception". Instead, the Response, without citing a single Michigan case on point, claims that declaratory rulings are "binding" on

[5] See IS issued to Andrew Nickelhoff dated August 28, 2020 where the Michigan Department of State ruled that 1978 Attorney General opinions were no longer valid because, in part, that the "MCFA has been amended since that time and Michigan Supreme Court jurisprudence on statutory construction has also shifted in the forty-two years since they were issued."

[6] IS issued to William Faust dated October 7, 1983; DR issued to L. Brooks Patterson dated January 3, 1984.

the Michigan Department of State. See Response, page 14. Such a circular "IT IS BECAUSE IT IS" argument defies logic.

To this end, the Respondent demands that the Michigan Department of State, having illegally amended statutory contribution limits in a declaratory ruling, must forever be bound to follow the invalid declaratory ruling because it illegally amended statutory contribution limits in an invalid declaratory ruling! Accordingly, the Complainant respectfully requests that the Michigan Department of State reject the Respondent's invitation to ride this dizzying merry-go-round of circular illogical reasoning and just simply follow the Michigan Campaign Finance Act.

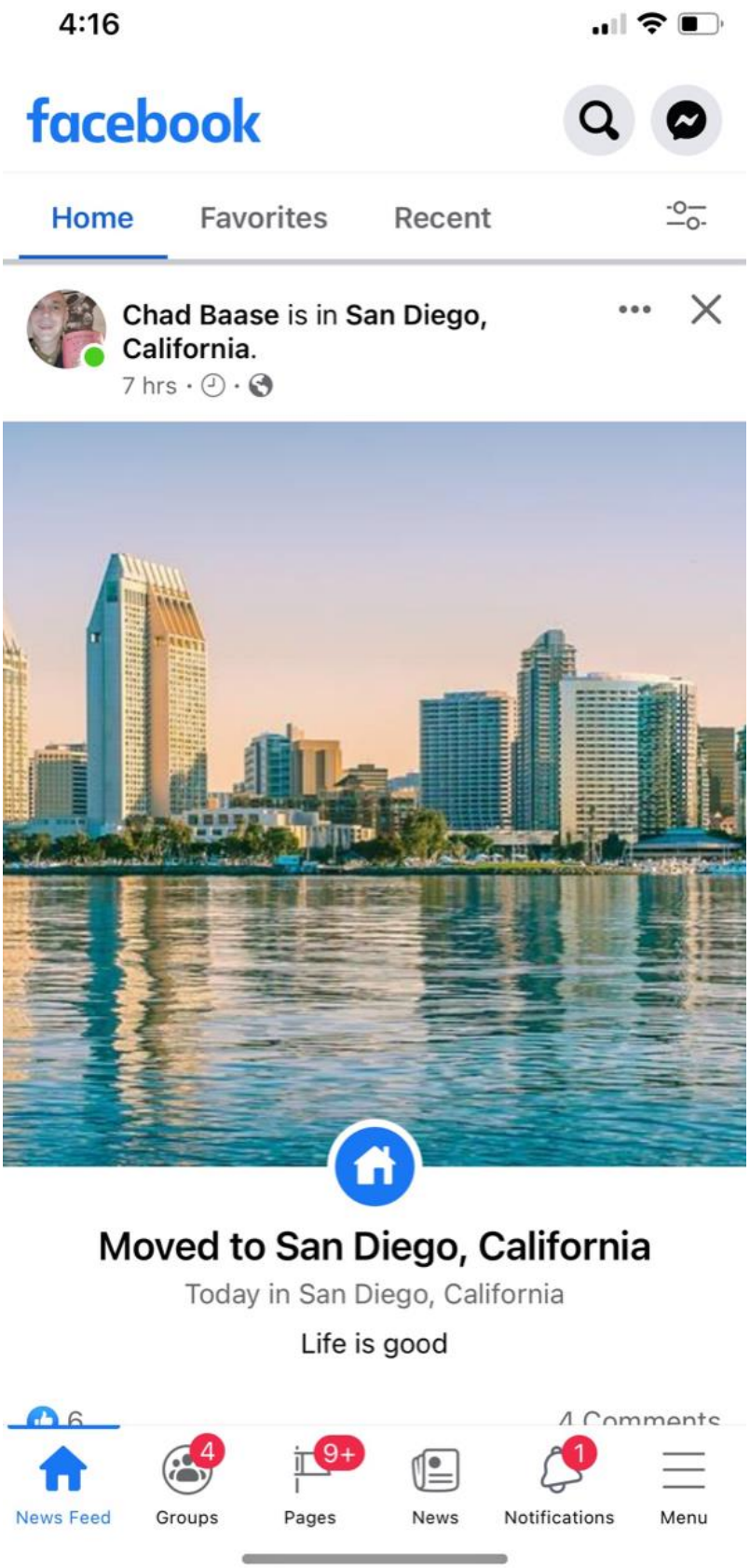
EVEN IF THE 1983 AND 1984 RULINGS, RELIED UPON BY THE WHITMER CAMPAIGN, HAVE ANY VALIDITY WHATSOEVER (WHICH THEY CERTAINLY DO NOT), GOVERNOR WHITMER MAY NOT RELY UPON THESE RULINGS TO BE THE ONLY CANDIDATE IN THE STATE OF MICHIGAN WHO DOES NOT HAVE TO COMPLY WITH CONTRIBUTION LIMITS

There are at least four reasons why the Whitmer Campaign cannot rely upon the (otherwise invalid) 1983 and 1984 rulings to self-proclaim that Governor Whitmer is the ONLY candidate in the State of Michigan who does not need to comply with the Michigan Campaign Finance Act's contribution limits.

1. The Respondent fails to identify which political committee has been organized to gather petition signatures and to promote a particular officeholder's recall. The (otherwise invalid) 1983 and 1984 rulings require an active political committee as a prerequisite to the so-called "recall exception": "This analysis assumes, of course, that a political committee has been organized to gather petition signatures and to promote a particular officeholder's recall."[7] However, the only non-dissolved committee referenced in the Response is the so-called "Committee to Recall Governor Gretchen Whitmer". See Response, Page 3 and Exhibit 2. As of April 20, 2021, the latest report available, the Committee to Recall Governor Gretchen Whitmer had no funds and has not even filed a 2021 July Quarterly Campaign Statement.[8] Moreover, Chad Baase -- the Treasurer of the Committee to Recall Governor Gretchen Whitmer and the person identified in the Response as leading these "active" recall efforts, has now moved to San Diego, California:

[7] IS issued to William Faust dated October 7, 1983

[8] See 2021 April Quarterly Campaign Statement of Committee to Recall Governor Whitmer available at Michigan Campaign Statement Summary Page (nictusa.com)


4:16
facebook
Home
Favorites
Recent
Chad Baase is in San Diego, California.
7 hrs
Moved to San Diego, California
Today in San Diego, California
Life is good
4 Comments
News Feed
Groups
Pages
News
Notifications
Menu

Chad Baase | Facebook 10/2/21.

With a bankrupt committee whose organizer now lives in California, it defies reality to suggest that the Committee to Recall Governor Gretchen Whitmer is actively seeking the recall of Governor Whitmer.

2. The recall of Governor Whitmer is not actively being sought, at least not by recall proponents. On pages 2-10 of the Response, there are numerous pictures, archived Facebooks posts, archived website pages, and Twitter posts—none of which are current and none in 2021.[9] This 2020 timeframe is consistent with the December 3, 2020 article quoting the person behind the Whitmer recall efforts (who now lives in California) indicating that whatever recall activities actually occurred, have ended. See Man behind Whitmer recall abandons effort, despite court ruling in his favor - mlive.com In fact, the only current activity, according to the Respondent, are the court cases that the Respondent has kept alive. See Response, Pages 2, 14. However, pursuant to the (otherwise invalid) 1983 and 1984 rulings, the recall must be actively sought by the recall proponents, not the officer allegedly subject to the recall. As indicated in Attachment 1 of the Complaint, the Whitmer Campaign received millions of excessive and illegal contributions in 2021 – well after the Response's own evidence suggests that any recall activities were concluded.

3. The (otherwise invalid) 1983 and 1984 rulings relied upon the "officeholder [being] subject to a recall vote".[10] Similarly, the election cycle references in Appendix P of the Manual published by the Bureau of Elections[11] and cited by the Response on Pages 11 and 12, require that a recall election actually be called. Further, in 2008, Representative Andy Dillon (whose situation was cited by the Response on Page 13) was subject to an actual (not hypothetical) recall election. See Andy Dillon recall, Michigan (2008) - Ballotpedia. However, in the present case, no recall election has been called; therefore, any argument as to the relevance of these "authorities" or situations is without merit.

4. The (otherwise invalid) 1983 and 1984 rulings were intended to prevent "allowing the political committee advocating the recall to engage in unlimited fundraising, while severely limiting the officeholder's ability to raise money."[12] On this point, the Response claims that the so-called "recall exception" is necessary; otherwise, a "candidate would have limited financial resources….." Response, Page 15. However, in the present situation, whereas the Gretchen Whitmer for Governor committee has reported having $10,748,485.43 as of July 20, 2021,[13] the Committee to Recall Governor Gretchen Whitmer has reported having no funds as of April 20,

[9] The Response's reference on Page 9 to "change.org" and a "Recall Movement" without any evidence that either group is actively seeking the recall of Governor Whitmer, is irrelevant and demonstrates how desperate the Whitmer Campaign must be the only Michigan candidate not subject to statutory contribution limits.
[10] IS issued to William Faust dated October 7, 1983; DR issued to L. Brooks Patterson dated January 3, 1984.
[11] Appendix P is available at Michigan Elections - Disclosure Division - - Appendices (mertsplus.com)
[12] IS issued to William Faust dated October 7, 1983; DR issued to L. Brooks Patterson dated January 3, 1984.
[13] See 2021 July Quarterly Campaign Statement of Gretchen Whitmer for Governor available at Michigan Campaign Statement Summary Page (nictusa.com)

2021, the most recent report available.[14] Therefore, the Whitmer Campaign's claim of poverty absent being allowed to illegally rase millions of dollars, rings hollow.

* * *

Accordingly, the Complaint sets forth the serious nature of the Michigan Campaign Finance Act violations at stake here. The largest money grab in the history of Michigan election must be stopped. Unless the Bureau of Elections and Secretary of State prevent Governor Whitmer's quest to become the only candidate in the State of Michigan to ignore statutory contribution limits without consequences, our democracy is at risk.

If you have any questions or need additional information, please contact me.

Sincerely,

Tori Sachs
Executive Director
Michigan Freedom Fund

[14] See 2021 April Quarterly Campaign Statement of Committee to Recall Governor Whitmer available at Michigan Campaign Statement Summary Page (nictusa.com)

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November 16, 2021

Via Email (only): disclosure@michigan.gov

Jonathan Brater
Director of Elections
Michigan Department of State
Richard H. Austin Building – 1st Floor
430 W. Allegan St.
Lansing, MI 48918

Re: Supplemental Information Relating to Complaint No. 2021-08-24-52

Dear Mr. Brater:

As you know, I serve as legal counsel to Governor Whitmer and the Whitmer for Governor candidate committee (the "Whitmer Campaign"). In connection with the above-referenced complaint filed against the Whitmer Campaign (the "Complaint"), which erroneously alleges violations of the Michigan Campaign Finance Act ("MCFA"), please consider the following additional factual developments, mostly occurring after the initial response to the Complaint:

(1) Last Friday, the Michigan Supreme Court issued an order declining to grant an application for leave to appeal the approval of several petitions seeking to recall Governor Whitmer and the Lieutenant Governor.
(2) An additional application for leave to appeal not addressed by the Court in the order issued last Friday has been withdrawn.
(3) There has been no attempt by recall petitioner Barbara LaChappelle to comply with a May order of the Court of Appeals remanding her petition for correction, even after subsequent solicitation to do so by the Bureau of Elections (the "Bureau").
(4) Even now, a registered political committee continues to solicit contributions to promote the recall of Governor Whitmer and the collection of signatures.
(5) The Whitmer Campaign has announced that it has ceased accepting contributions to assist in defending against recall activities and will close out expenditures relating to recall activity, thereby allowing disposition of remaining money raised for recall purposes consistent with the MCFA within the current reporting period.

These new facts are discussed more fully below in the context of the applicable MCFA standards.

A. The Complaint Is Limited To Issues Arising Under The MCFA And The Bureau's Review Is Limited To The Text Of The MCFA, And Existing Rules And Guidelines Issued Under That Act.

The issues before the Bureau are (a) whether, pursuant to the MCFA, the Whitmer Campaign was permitted to receive recall contributions relating to recall activities in excess of the otherwise applicable statutory limits and, if so, (b) during what period of time. Whether, and to what extent, recall activities are also governed by the Michigan Election Law is a separate, distinct, and stand-alone question.

Review of a complaint of violation of the MCFA is limited to only those issues specifically arising under the MCFA. MCL 169.215(2) and (6). MCL 169.215(9) specifically provides that "[t]he remedies provided in this act are the exclusive means by which this act may be enforced and by which any harm resulting from a violation of this act may be redressed."

B. The Bureau Has Not Made A Determination Regarding Any Recall Petitions.

The Bureau's determination of whether a recall election cycle is open, permitting the Whitmer Campaign to solicit and accept recall-related contributions, including contributions in excess of the limits otherwise applicable to gubernatorial campaign committees, is controlled by the plain text of the MCFA and current Bureau guidance. No administrative rules of the Department of State promulgated under the MCFA address contributions and expenditures relating to recalls.

The public, including the Whitmer Campaign, relies upon the guidance published by the Bureau of Elections in Appendix P of the MERTS User Guide, which clearly indicates that a recall election cycle begins on the earlier of the following:

1) the day a committee has been organized to gather petition signatures and to promote the recall; or
2) the date petition language stating the reasons for the recall has been filed with the filing official for the purpose of a clarity/factual hearing.

Appendix P of the MERTS User Guide also clearly indicates that a recall election cycle ends on one of the following dates:

1) the day of the special general recall election or recall election; or
2) the day the appropriate election filing official finds the petitions insufficient and determines that no recall election will be scheduled.

In this case, the Committee to Recall Governor Gretchen Whitmer (ID No. 519594) was formed and registered with the Secretary of State on April 10, 2020.[1] In accordance with the Appendix P of the MERTS User Guide, **the recall election cycle for the Whitmer Campaign started on April 10, 2020.**

Since that date, the organizer of that committee, Chad Baase, has filed 16 recall petitions, including at least seven against Governor Whitmer. The latest recall petition filing by Mr. Baase occurred on July 30, 2021. That recall petition was withdrawn on August 17, 2021, the same date as a scheduled factual and clarity hearing on the recall petition before the Board of State Canvassers ("BOC"). The recall committee remains active and has not been dissolved. For purposes of the Michigan Campaign Finance Act, and based upon public information included on the Bureau's website, this recall campaign committee organized for the purpose of recalling Governor Whitmer from office remains active.

The recall election cycle currently affecting the Whitmer Campaign is active for purposes of the Michigan Campaign Finance Act, and under the MCFA and the Bureau's own published guidance, the recall election cycle has not ended. Pursuant to Appendix P of the MERTS User Guide, which the public, including the Whitmer Campaign, relies upon, the recall election cycle would end and no longer be active on (1) the date of a recall election; or (2) the day the appropriate election filing official finds the recall petitions insufficient and determines that no recall election will be scheduled.

In this case, no recall election been scheduled. No recall election has ended the recall election cycle. Accordingly, the only date on which the current recall election cycle affecting the Whitmer Campaign could end under the Bureau's published guidance is the date on which "the appropriate election filing official finds the petitions insufficient and determines that no recall election will be scheduled." No petition previously approved by BOC seeking to recall Governor Whitmer from office has been deemed insufficient by the BOC. No other election filing official possesses any statutory authority to determine a recall petition insufficient. No election filing official has determined that no recall election will be scheduled. Therefore, under the MCFA and the guidance published by the Bureau pursuant to its authority under the MCFA in of Appendix P of the MERTS User Guide, the recall election cycle for the Whitmer Campaign is active and has not ended.

Regardless of whether an election filing official determines that a recall election will not be held, recall petitions may not be filed against Governor Whitmer during the last year of her current term of office. MCL 168.951. By operation of law (not by action of an election filing official as provided in Appendix P of the MERTS User Guide) no recall petition, with sufficient or insufficient signatures may be filed against Governor Whitmer by noon on January 1, 2022. This means that no recall election can be held against Governor Whitmer after noon on January 1,

[1]A second recall committee was formed a few days later. Michiganders to Recall Gretchen Whitmer, committee ID No. 519616, was formed on April 14, 2020 and remained active through the date of its dissolution on July 21, 2021.

2022, unless a recall petition previously-approved by the BOC containing sufficient signatures is filed.

This is consistent with Secretary of State Benson's recent assertion in *Weiser v. Benson*, Case No. 1:21-cv-00816-JTN-SJB (WD Mich). In her request for a prehearing conference in this federal case, Secretary Benson argued that the lawsuit will likely be moot by January 1, 2022 because:

> As of this date, none of the recall petitions that have been approved have returned valid signatures within the required 180 days, and no new recall petitions have been approved since September of 2020. ***If there are no additional recall petitions filed by January 1, 2022, any possible recall effort will necessarily be considered "concluded" because no new petitions could be filed. The Governor would be required to disgorge any contributions received in excess of the MCFA limits at that time***—months before even the April 19, 2022 deadline for Republican gubernatorial candidates to file their nominating petitions. (Exhibit 1)(emphasis added).

Similarly, in response to the plaintiff's request for a prehearing conference, Secretary of State Benson emphasized "…that ***if no new recall petition is submitted for the approval of the Board of State Canvassers by 11:59 a.m. on January 1, 2022, then any recall effort against the Governor will conclude at that time***—long before even the primary election. See MCL 168.63." (Exhibit 2)(Emphasis added). Thus it appears that the Secretary of State's official position, as indicated in federal court, is that the recall election cycle currently affecting the Whitmer Campaign remains active and will not conclude until January 1, 2022.

It is therefore clear that under the MCFA the recall election cycle is defined by the dates on which a recall committee is formed or a recall petition is filed with the BOC for approval and that the date on which the recall election occurs or an appropriate election filing official determines that no recall election will be scheduled due to insufficient signatures on recall petitions approved by the BOC. No recall election has occurred. No determination by an appropriate election filing official that recall petitions are insufficient or that a recall election will not be held has occurred. Absent a determination by the appropriate election official that recall petitions approved by the BOC seeking to recall Governor Whitmer are insufficient and that no recall election will be held, the recall election cycle affecting the Whitmer Campaign is active and will not end until the statutory deadline prohibiting any additional recall petition filings at noon on January 1, 2022. The applicability and effect of this latter date is confirmed by the Secretary of State's recent filings in federal court.

C. The Active Recall Committees Promoting And Collecting Recall Petition Signatures.

In addition to the two recall committees formed in April 2020 discussed above, on August 11, 2020, a group calling itself the "United States Constitutional Freedom Coalition SuperPAC

("USCFC")", Committee ID No. 519896, was formed and registered with the Secretary of State. This Committee runs a website located at https://recallwhitmer.com/. According to the website, "The Recall Movement seeks to recall Michigan's Governor, Lt. Governor, Secretary of State, and Attorney General (4 petitions) presented to potential signers in one single opportunity."

The Treasurer of USCFC is David Blair. Mr. Blair has filed more recall petitions in Michigan since April 2020 than any other person—17 in total. Of those 17 petitions, Mr. Blair filed at least two recall petitions against Governor Whitmer. The latest petition was filed on July 7, 2021 and then rejected on July 26, 2021 at a factual and clarity hearing held by the BOC pursuant to MCL 168.951a. While this rejection by the BOC was a factual and clarity determination under MCL 168.951a, the BOC did not make a determination that recall petitions were insufficient, and did not make any determination that a recall election would not be called. For purposes of the Michigan Election Law, the reasons for recall included in the recall petition filed by Mr. Blair were determined by the BOC not to be factual and of sufficient clarity to enable Governor Whitmer and the electors to identify the course of conduct that was the basis for the recall. MCL 168.951a(3). Mr. Blair had the opportunity to appeal the BOC's determination under MCL 168.951a(6). He did not.

While Mr. Blair's latest recall petition seeking to recall Governor Whitmer was rejected and could not be circulated, Mr. Blair's recall efforts remain active. Undeterred by the BOC's rejection of the recall petition and Mr. Blair's failure to appeal that determination, USCFC has not ceased its efforts to promote the recall of Governor Whitmer and the collection of signatures for a recall petition against Governor Whitmer. A cursory review of the group's Facebook page demonstrates continued and active recall efforts to promote and collect recall petition signatures, including during the past several weeks:

https://www.facebook.com/TheRecallMovement/posts/426131319076060
https://www.facebook.com/TheRecallMovement/posts/413440107011848

As recently as November 6, 2021, the group announced on its Facebook Page, https://www.facebook.com/TheRecallMovement/, that it was starting its "OFFICIAL SIGNING LAUNCH …. We have from 11/1/2021 thru 12-29-2021 but we can do it faster than that when every individual just completes the minimum recommended participation requirements combined with those of you who continually go above and beyond the call of duty!" Mr. Blair further advised his followers that "[w]e will get a video out ASAP that will be 30-60 seconds long summarizing everything to help accommodate the proper understanding of this 3rd and final shot at this…" To conclude that active recall efforts do not exist promoting and seeking to collect signatures ignores reality and uncontroverted facts, and the active status of at least two recall committees.

The Bureau's published guidance states that the recall election cycle starts when a committee is formed to promote or support a recall petition. The USCFC Committee remains in good standing according to the Bureau and has recently been engaged in active efforts to promote a recall petition against Governor Whitmer and the collection of recall petition signatures. Under the Michigan Election Law, the group is legally permitted to submit a recall petition to the BOC at any time until noon on January 1, 2022. Consistent with the MCFA, and the Bureau's published

guidance, interpretive statements, and declaratory rulings under the MCFA, an active recall effort against Governor Whitmer continues, the recall election cycle remains open under the MCFA through January 1, 2022, and contributions in excess of the general election limits may continue for recall purposes until the recall election cycle is closed.

D. All Approved Recall Petitions Previously Approved By The BOC Will Be Invalid As Of November 17, 2021 For Purposes Of Michigan Election Law.

On Friday, November 12, 2021, the Michigan Supreme Court issued an order (attached as Exhibit 1) (the "**Nov. 12 Order**") that denied the Whitmer Campaign's application for leave to appeal determinations by the BOC in the following matters: Supreme Court Docket Nos. 163246 (recall petition filed against Governor Whitmer by James Makowski), 163248 (recall petition filed against Governor Whitmer by Chad Baase), 163249 (recall petition filed against Governor Whitmer by Chad Baase), 163250 (recall petition filed against Governor Whitmer by James Makowski), 163251 (recall petition filed against Governor Whitmer by Michael Garabelli), and 163252 (recall petition filed against Governor Whitmer by John Parkinson).

As a result, none of these recalls remain subject to a pending appeal. For purposes of the Michigan Election Law, these recall petitions previously approved by the BOC are no longer valid given that the deadline under MCL 168.951a(8) has expired and there is no further opportunity for judicial relief extending that deadline or altering the content of BOC-approved petition language. The Whitmer Campaign is proceeding accordingly and now considers these recall petitions invalid for purposes of the Michigan Election Law as of the date of the Nov. 12 Order.[2]

LaChappelle Petition

With the recall petitions affected by the November 12 Order now invalid and the withdrawal of the application for leave to appeal in Docket No. 162473, the only other outstanding item relating a BOC-approved recall petition seeking to recall Governor Whitmer is the recall petition submitted by Brenda LaChappelle. That petition was approved for factual and clarity purposes under MCL 168.951a by the BOC on July 31, 2020 (the "LaChappelle Petition"). The approval was appealed by the Whitmer Campaign on September 21, 2020. Pursuant to MCL 169.951a, the LaChappelle petition was valid for circulation through March 18, 2021.

However, after that date, in a published opinion issued on May 27, 2021, the Court of Appeals, while generally upholding the BOC's approval of the LaChappelle Petition, remanded the petition to the BOC "for the ministerial purpose of allowing appellee, Brenda LaChappelle, to correct the scrivener's error in setting forth the date upon which the executive order at issue was signed." *Whitmer v. Bd. of State Canvassers*, No. 354474, 2021 WL 2171162, at *1 (Mich. Ct. App. May 27, 2021).

[2] Given the November 12 Order, and the failure of the Court to address Docket No. 162473, the application for appeal in Docket No. 162473 is being withdrawn.

During the November 15, 2021 meeting of the BOC, Director of Elections Jonathan Brater was asked whether Ms. LaChappelle contacted the BOC or the Bureau for the purpose of correcting the scrivener's error consistent with the remand to the BOC by the Court of Appeals. Mr. Brater indicated that Ms. LaChappelle had not contacted the BOC. Mr. Brater and Mr. Adam Fracassi then proceeded to inform the BOC that in the weeks after the May 27 Court of Appeals order, the Bureau of Elections did proactively reach out to Ms. LaChappelle to inform her of the opportunity to request that the BOC correct the scrivener's error. This outreach to assist the proponent of a recall occurring after both March 15, 2021 and May 27, 2021 is a clear indication of the Bureau's recognition that the LaChappelle Petition remained active and subsequently could be circulated with the correction of the scrivener's error, even after the expiration of initial circulation period under the Michigan Election Law.

Because no effort has been made to correct the scrivener's error on the LaChappelle Petition consistent with the relief permitted by the Court of Appeals in its order of remand to the BOC, the deadline under MCL 168.951a(8) for the validity of the LaChappelle Petition will expire on Wednesday, November 17, 2021. There is no further opportunity for judicial relief extending that deadline or altering the content of the LaChappelle Petition given the November 12 Order of the Michigan Supreme Court. This conclusion was confirmed by the discussion that occurred involving the BOC, the Bureau, and the Department of Attorney General at the meeting of the BOC on November 15.

E. Recall Fundraising Efforts By Elected Officials Is Not Limited BY MCFA To A 180-Day Window Or Time Period Based Upon Petition Validity.

The Complaint wrongly suggests that recall contributions may only be sought when a recall petition is "active" or "actively being sought." No such language appears in the MCFA or Bureau guidelines. The subjective terms "active" or "actively sought" do not appear in the MCFA. Nothing in Michigan law permits the Complainant to engage in activism and construct a legal standard of its own out of thin air. In resolving the Complaint, only the MCFA and guidelines published by the Bureau pursuant to the MCFA are applicable. Under the Bureau's guidelines published pursuant to the MCFA, the Bureau specifically advises the public and candidates facing a recall effort that "[e]lection cycles are date ranges used to accumulate contributions and expenditures for reporting and contribution limit purposes." *See* Appendix P, Special Primary, General and Recall Elections, MERTS User Guide.

In other words, the period (180 days or otherwise if an appeal occurs) during which a recall petition approved by the BOC is valid under the Michigan Election Law (MCL 168.951a) (the "Petition Validity Period") bears no relationship whatsoever to whether an elected official may solicit and accept contributions relating to a recall effort. Instead as detailed above, the recall election cycle is determined by events independent of the Petition Validity Period applicable to an approved recall petition under the Michigan Election Law. Any conclusion that an elected official is limited to fundraising only during the Petition Validity Period is not supported by any text in the MCFA and is directly contrary to the Bureau's published guidance. Additionally, such a conclusion would eviscerate the guidance issued under the MCFA that a recall election cycle starts on the earlier of the registration of a committee to promote a recall petition or the filing of a recall

petition for a factual/clarity hearing. Neither or those events bear any relationship to the Petition Validity Period applicable to an approved recall petition under the Michigan Election Law. Activities relating to a recall occur long before a petition is approved by the BOC under MCL 168.951a and can continue after the Petition Validity Period ends under the Michigan Election Law.

Interpreting the MCFA in a manner that concludes that a recall election cycle ends at the end of a Petition Validity Period applicable to an approved recall petition under the Michigan Election Law would produce absurd results when applying the MCFA as a whole. Consider the various dates of the recall petitions filed against Governor Whitmer, especially the seven recall petitions filed against Governor Whitmer that were approved by the BOC. As a result of the appeals, the end of the Petition Validity Period for the seven approved petitions fell on the following dates: January 24, 2021, March 18, 2021, March 29, 2021, April 19, 2021, May 14, 2021. If the Petition Validity Period defined the election cycle, the Whitmer Campaign would be required to close books on the recall on May 14, 2021 and end all fundraising efforts on that date, even though active efforts seeking to recall Governor Whitmer, including efforts to initiate new recall petitions and ongoing litigation continued.

Assuming that the Bureau would still allow a recall election cycle to be opened upon the filing of a new recall petition after May 14[3], the Whitmer Campaign would then have had to re-open a recall election account three days later when it was notified of a recall petition filed on May 14, 2021, then close the recall election account on June 1, 2021 when the recall petition filed May 14 was rejected. Then, after closing it books and dispersing leftover funds as of May 14, the Whitmer Campaign would have needed to re-open the recall election account on June 26, 2021 when another recall petition was filed, then close the recall election account on July 26, 2021 when a recall petition filed on July 7 was rejected, only to then re-open the recall election account on July 30 when a new recall petition was filed, and then close the recall election account on August 17, 2021 when the Whitmer Campaign was informed that the last recall petition was withdrawn. For each of these opening and closing of the account, the MCFA would require the Whitmer Campaign to file a post-election campaign statement and disperse any leftover funds in accordance with the MCFA. MCL 169.233. It is an absurd result only possible under the manufactured standard not based in the text of the MCFA suggested in the Complain. Such an interpretation is not supported the text of the MCFA, by any prior interpretation of the MCFA, or by the Bureau's existing published guidance under the MCFA. Clearly the Petition Validity Period under the Michigan Election Law cannot be used as the measuring stick of when an elected official may or may not lawfully solicit and accept recall campaign contributions during a recall election cycle under the MCFA. Others may suggest that the MCFA be enforced in the manner they want it to be

[3] Such an interpretation would be inconsistent with the Bureau's own published guidance, which indicates that a recall election cycle begins on either the establishment or a recall committee or the filing of a recall petition with the BOC for a factual/clarity determination, not simply the filing of a petition. Nothing in the published guidance provides for such opening/closing of recall election cycles under the MCFA based upon the validity of petitions or the Petition Validity Period under the Michigan Election Law.

or believe it should be. The Bureau, however, has an obligation to enforce the MCFA in a manner consistent with the text of the MCFA and its guidance published under the MCFA.

F. The Bureau Has Not Notified The Whitmer Campaign Of Any Errors Or Omissions Or Unfiled Campaign Reports.

MCL 169.216(6) provides that "Within 4 business days after the deadline for filing a statement or report under this act, the filing official shall … give notice to a person the filing official has reason to believe is a person required to and who failed to file a statement or report." The Whitmer Campaign timely reported raising recall contributions on its January 25, July 25, and October 25 campaign statements. To date, the Bureau has not provided any notice to the Whitmer campaign as required by MCL 169.216(6) that any of its reports contained an error or omission based on recall contributions being accepted or failing to file a post-election recall campaign report when any "active recall effort" allegedly ended. The absence of any such notice indicates that the Whitmer Campaign has fully complied with the MCFA, particularly when such notices were sent in the past to elected officials defending recall efforts (for example, former State Representative Andy Dillon).

G. Legal Expenses Related To Recall Petitions Are Expenses Of The Recall Campaign.

While an appeal of a decision of the BOC approving a recall petition does not indefinitely extend the time a recall petition may be circulated, the expenses related to that appeal are expenses of the recall election account of a candidate and should not be borne by the funds of the general election account of a candidate. MCL 169.221a specifically permits a candidate committee to make expenditures for legal expenses related to a recall election. Likewise, MCL 169.209(1)(o), considers legal expenses an incidental expense that may be paid for with campaign contributions.

In this case, the Whitmer for Governor candidate committee continued to incur legal expenses related to the recall election petitions, specifically the applications for leave to appeal filed with the Michigan Supreme Court on January 14, 2021 and July 8, 2021, respectively, through this week. Those expenses also include expenses incurred in responding to the Complaint, appearing before the Board on November 15, and those incurred related to *Weiser v. Benson*, *supra*, which seeks to enjoin the Whitmer Campaign's actions, while conceding that the actions were permitted by the MCFA and the Bureau's published guidance, from raising and dispersing recall contributions. If the Complainant's manufactured standard is applied and the recall election cycle applicable to the Whitmer Campaign is considered closed before the resolution of appeals, complaints under the MCFA, and litigation in federal court, legal costs related solely to a recall election cycle will instead be borne by the general election campaign funds of the Whitmer for Governor candidate committee. This is contrary to the entire purpose of raising separate funds for a recall election and the purpose of allowing excess contributions pursuant to the Bureau's 1984 Paterson Declaratory Ruling and would create a financial advantage to others seeking the office of governor not subject to similar pressures on their candidate committee finances.

If it is concluded that pending judicial appeals relating to a recall petition do not affect a recall election cycle, additional issues arise. First, if legal costs related to the recall election efforts

continue, but the recall election cycle is considered closed, an affected committee would be unable to report those expenses attributable to the recall election account in compliance with the MCFA. Second, a candidate committee would be unable to determine the amount of leftover funds that exist in the recall election account until all expenses related to the recall election are paid and final.

Finally, such a conclusion presents elected officials with a Hobson's choice: either exercise the legal right to challenge a decision of the BOC through the statutorily-authorized appeal process and expend limited campaign funds that were raised to support the re-election of the official (not defend a recall), or drop the appeal after 220 days and hope that the proponents of the recall petition do not collect a sufficient number of signatures and turn them in after the recall election cycle is closed and the leftover funds raised for a recall are dispersed in accordance with the MCFA. Such an interpretation is not supported by the text of MCFA, its current published guidelines, or by the principals of common sense, fairness, and justice.

The appeal of a factual and clarity determination by the BOC can serve many purposes. The most obvious and important one is that a successful appeal will defeat an improperly approved recall petition, even if the proponents are able to gather sufficient signatures. Indeed, MCL 168.951a(7) emphasizes the power of the appeal process and does not limit it to the 180-day window a petition may be circulated: "A petition is not valid for circulation ***if at any time*** the Michigan court of appeals determines that each reason on the recall petition is not factual and of sufficient clarity." MCL 168.951a(7)(emphasis added).

Moreover, through the appeal process, proponents, candidates, and the BOC are provided much needed guidance for the drafting and review of future recall petitions. It has been implied that the Whitmer Campaign's appeals were frivolous and for some reason do not affect the length of the recall election cycle. Not only is the assertion false, but the right to appeal a determination by the BOC is a statutory right under MCL 168.951a. The implication of frivolity ignores the fundamental right of elected officials to resort to judicial remedies to protect rights and to clarify actions of administrative bodies. The allegations of frivolous appeals also ignore that the Court of Appeals did actually find that one BOC determination, the determination on the LaChappelle Petition, was improper and Court of Appeals Judge Krause and Supreme Court Justice Welch each cited specific problems with the current clarity review standards applicable to recall petitions.

Thank you for your continued hard work on these important matters. We would welcome the opportunity to visit with Bureau staff regarding these matters before the Bureau makes any determination regarding the Complaint, consistent with past practices of the Bureau. We would be happy to answer any questions regarding the materials submitted in response to the Complaint.

We are confident given the language of the MCFA and clear guidelines published by the Bureau that the Secretary of State will reject this legally-deficient, politically-motivated Complaint and protect the decades of Bureau guidance and interpretation upon which the public, including the Whitmer Campaign, has relied upon in good faith.

Sincerely,

CLARK HILL

Christopher M. Trebilcock

CMT:vcs

cc: Adam Fracassi, via email

Order

Michigan Supreme Court
Lansing, Michigan

November 12, 2021

163246-52

Bridget M. McCormack,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

GOVERNOR GRETCHEN WHITMER,
Appellant,

v

SC: 163246
COA: 354474
Bd of State Canvassers:
00-000000

BOARD OF STATE CANVASSERS and
JAMES MAKOWSKI,
Appellees.

_____/

GOVERNOR GRETCHEN WHITMER,
Appellant,

v

SC: 163247
COA: 354475
Bd of State Canvassers:
00-000000

BOARD OF STATE CANVASSERS and
BRENDA LACHAPPELLE,
Appellees.

_____/

LIEUTENANT GOVERNOR GARLIN
GILCHRIST, II,
Appellant,

v

SC: 163248
COA: 354582
Bd of State Canvassers:
00-000000

BOARD OF STATE CANVASSERS and
CHAD BAASE,
Appellees.

_____/

GOVERNOR GRETCHEN WHITMER,
Appellant,

v

SC: 163249
COA: 354583
Bd of State Canvassers:
00-000000

BOARD OF STATE CANVASSERS and
CHAD BAASE,
Appellees.

_____/

GOVERNOR GRETCHEN WHITMER,
Appellant,

v

SC: 163250
COA: 354794
Bd of State Canvassers:
00-000000

BOARD OF STATE CANVASSERS and
JAMES MAKOWSKI,
Appellees.

_____/

GOVERNOR GRETCHEN WHITMER,
Appellant,

v

SC: 163251
COA: 354795
Bd of State Canvassers:
00-000000

BOARD OF STATE CANVASSERS and
MICHAEL GARABELLI,
Appellees.

_____/

GOVERNOR GRETCHEN WHITMER,
Appellant,

v

SC: 163252
COA: 354878
Bd of State Canvassers:
00-000000

BOARD OF STATE CANVASSERS and
JOHN PARKINSON,
Appellees.

_____/

On order of the Court, the application for leave to appeal the May 27, 2021 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

WELCH, J. (*concurring*).

I believe in the future this Court should take a closer look at *Hooker v Moore*, 326 Mich App 552, 560 (2018), which held that "the terms 'factually' and 'factual' as used in MCL 168.951a"—the provision that sets forth the requirements for recalling certain elected officials by petition—"require the reason stated in the recall petition to be in the form of a factual assertion but do not confer upon the Board [of State Canvassers] or upon this Court the task of determining the truthfulness of the statement." But these cases do not merit such an examination because, as both the majority and concurring opinions below concluded, the statements in the recall petitions at issue were neither materially misleading nor untruthful under MCL 168.951a. I further believe that the concerns raised about the potential for misrepresentation of an executive order in a recall petition calls for a legislative solution. MCL 168.951a(1)(c) states that "[i]f any reason for the recall is based on the officer's conduct in connection with specific legislation, the reason for the recall must not misrepresent the content of the specific legislation." Most of the recall petitions at issue in this matter concern the Governor's signing of various executive orders, and the Governor argues that one petition misrepresents the scope of Executive Order 2020-143. Executive orders, like legislation, have the force of law and can have significant impacts on the lives of Michiganders. Many of the same justifications for forbidding misrepresentation of the content of specific legislation in a recall petition likely apply with equal force to misrepresentation of the content or scope of an executive order. While I agree with the Court of Appeals' interpretation and application of MCL 168.951a(1)(c) as it relates to executive orders, it would likely benefit the residents of our state if the protections provided by that statute were extended to executive orders. The power to make such a change in the law rests with the Legislature and not this Court. Accordingly, I concur in the Court's decision to deny leave to appeal in these cases.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 12, 2021

Clerk

m1109

PO Box 14162 | Lansing, Michigan 48901 | 517.618.1589 | www.MichiganFreedomFund.com

November 24, 2021

Adam Fracassi
Bureau of Elections
Richard H. Austin Building, 1st Floor
430 W. Allegan
Lansing, MI 48918

By email transmission
FracassiA@michigan.gov

Re: Michigan Freedom Fund v. Whitmer
Campaign Finance Complaint
No. 2021-08-24-52
Supplemental Rebuttal Statement

Dear Mr. Fracassi:

INTRODUCTION

The Michigan Freedom Fund has received your email transmission dated November 17, 2021 which contained an additional and unauthorized response (the "Unauthorized Response") submitted by the Respondent in the above-referenced matter. Please consider this letter to be the Supplemental Rebuttal Statement submitted on behalf of the Complainant.[1]

The Unauthorized Response raises more questions than it answers (or avoids) including the following:

1. Where in the Michigan Campaign Finance Act is Governor Whitmer allowed to submit another answer to the Complaint? While every other respondent of a campaign finance complaint is limited to filing one answer in a timely fashion, in Governor Whitmer's self-important world: "THE RULES APPLY TO THEE BUT NOT TO ME".

2. Why was the Unauthorized Response submitted at all? The Unauthorized Response argues for a "recall election cycle" that begins on April 10, 2020 and ends on January 1, 2022. However, the issue raised by the Complaint is whether the Bureau and the Secretary of State will enforce the Michigan Campaign Finance Act's contribution limits to prevent the largest money grab in Michigan's history. What relevance does a "recall election cycle" have on Governor Whitmer's ability to accept excessive contributions in violation of the Michigan Campaign Finance Act? While every other candidate in the State of Michigan must comply with the Act's contribution

[1] All capitalized terms not otherwise defined herein shall have those meanings as set forth in the Complaint filed in the above-referenced matter. The Complaint is hereby incorporated herein by reference.

limits, in Governor Whitmer's self-important world: "THE RULES APPLY TO THEE BUT NOT TO ME".

Significantly, one of these Michigan candidates who has complied with contribution limits is Secretary Benson. It has not gone unnoticed that while Secretary Benson could potentially make the same unjustified clams as Governor Whitmer, Secretary Benson has not raised excess contributions under the guise of the so-called and invalid "recall exception" to contribution limits and has continued to only accept contributions within the statutory limits. On this point, on July 20, 2021, Secretary Benson correctly refunded an excess contribution given to her campaign by mega-donor Mark Bernstein (who contributed an eye-popping $257,150 in the current election cycle to the Whitmer Campaign).[2] Consequently, we are confident that your office will put an end to the largest money grab in Michigan's history and confirm that EVERY candidate in the State of Michigan must comply with the Michigan Campaign Finance Act's contribution limits

GOVERNOR WHITMER CONTINUES TO IGNORE THE REQUIREMENTS OF THE MICHIGAN CAMPAIGN FINANCE ACT BY FILING A SECOND ANSWER TO THE COMPLAINT

Section 15(5) of the Michigan Campaign Finance Act lays out a clearly-defined process for the processing of campaign finance complaints:

> "(5) A person may file with the secretary of state a complaint that alleges a violation of this act. Within 5 business days after a complaint that meets the requirements of subsection (6) is filed, the secretary of state shall give notice to the person against whom the complaint is filed. The notice shall include a copy of the complaint. Within 15 business days after this notice is mailed, the person against whom the complaint was filed may submit **a** response to the secretary of state. The secretary of state may extend the period for submitting a response an additional 15 business days for good cause. The secretary of state shall provide a copy of **a** response received to the complainant. Within 10 business days after **the** response is mailed, the complainant may submit a rebuttal statement to the secretary of state. The secretary of state may extend the period for submitting a rebuttal statement an additional 10 business days for good cause. The secretary of state shall provide a copy of the rebuttal statement to the person against whom the complaint was filed." (Emphasis supplied)

Based on the foregoing, a respondent may file "a" or "the" response within a limited time period.

Similarly, the Bureau of Elections describes the process for filing a single answer within a limited time period on Page 9 of its Guidebook for Complainants and Respondents on the Campaign Finance Complaint Process (June 2019):

[2] See 2021 July Quarterly Campaign Statement of Jocelyn Benson for Secretary of State available at Michigan Campaign Statement Expenditures (nictusa.com)

> "Answering the complaint
>
> **The** answer is the respondent's opportunity to clarify, correct, or supplement the information contained within the complaint or to otherwise demonstrate to the Department why the Department should not pursue compliance action. There is no prescribed format for answers. While not required, providing documentation or additional evidence or sworn affidavits from persons with first-hand knowledge of the facts, is helpful. It is also helpful for the respondent to directly answer every allegation in the complaint that has not been dismissed by the Department.
>
> The respondent must respond to the notice of the complaint within **15 business days of the date of the notice of the complaint.** MCL 169.215(5). **The** answer should be submitted to the Department through the Bureau of Elections via mail, or hand delivery at the address provided above. **The** answer may also be emailed directly to the person investigating the complaint as identified in the Notice of the Complaint.
>
> The respondent may request one 15-business day extension upon a showing of good cause. Requests for an extension should be sent to the Bureau and may be submitted via mail or email. Regardless of the way the extension is requested, the Department will respond via writing.
>
> Failure to respond to the complaint will force the Department to render a determination based solely upon the allegations contained within the complaint." (Emphasis supplied)

Again, a respondent may file "a" or "the" response within a limited time period. If a respondent has the ability to file a second or supplemental answer, there would be no reason to have the statutorily-required 15 business day limit to respond. Consequently, both the Michigan Campaign Finance Act and the Guidebook for Complainants and Respondents on the Campaign Finance Complaint Process limit Governor Whitmer to filing one answer—yet another rule that Governor Whitmer does not believe applies to her. Therefore, because there is no authority for Governor Whitmer to unilaterally file the Unauthorized Response, the Bureau of Elections and the Secretary of State should reject this filing.

EVEN IF THE UNAUTHORIZED RESPONSE IS NOT REJECTED FOR BEING PROCEDURALLY IMPROPER, THE UNAUTHORIZED RESPONSE REPRESENTS YET ANOTHER DESPERATE AND MISLEADING ATTEMPT TO AVOID CONTRIBUTION LIMITS UNDER THE MICHIGAN CAMPAIGN FINANCE ACT

In the Unauthorized Response, the Whitmer Campaign spends 8 of its 11 pages arguing for a "recall election cycle" that begins on April 10, 2020 and ends on January 1, 2022. So what? According to Appendix P of the MERTS User Guide entitled "Special Primary, General, and

Recall Elections", the Bureau of Elections describes the role of an "election cycle" under the Michigan Campaign Finance Act:

> "Election cycles are date ranges used to accumulate contributions and expenditures for reporting and contribution limit purposes. Election cycles must be understood to avoid violating the MCFA by accepting or making an excess contribution."

Significantly, these "date ranges" have no bearing on the $7,150 per individual limit on contributions pursuant to MCL 169.252. True, this $7,150 statutory limit on contributions applies per election cycle; however, for the Whitmer Campaign's "recall election cycle" theory to be relevant, it would require over 35 election cycles to allow the Whitmer Campaign to accept the $257,150 contribution from Mark Bernstein![3] Accordingly, whether or not the Whitmer Campaign is correct in its assertion for a "recall election cycle" that begins on April 10, 2020 and ends on January 1, 2022, such an assertion has no bearing on this matter. The question which remains, and which the Whitmer Campaign cannot answer, is how the Michigan Campaign Finance Act allows a candidate to accept millions of dollars in contributions in excess of the contribution limits of MCL 169.252. The Unauthorized Response is the latest example of the Whitmer Campaign's refusal to accept the plain meaning of the Michigan Campaign Finance Act.

THE MANY POSITIONS TAKEN BY GOVERNOR WHITMER TO JUSTIFY THE ACCEPTANCE OF MILLIONS IN EXCESSSIVE CONTRIBUTIONS CANNOT OVERCOME THE TEXT OF THE MICHIGAN CAMPAIGN FINANCE ACT

The Complaint outlines an illegal scheme by the Whitmer Campaign to evade and eviscerate Michigan candidate contribution limits. The Whitmer Campaign has disclosed accepting MILLIONS in contributions from donors in excess of the $7,150 individual contribution limit in MCL 169.252.

Because the Whitmer Campaign cannot achieve its desired result to accept millions of dollars in excessive contributions under the Michigan Campaign Finance Act, the Whitmer Campaign must necessarily avoid any reference to the statutory contribution limits set forth in MCL 169.252. As noted by Carl Sandburg:[4]

> "If the facts are against you, argue the law. If the law is against you, argue the facts. If the law and the facts are against you, pound the table and yell like hell"

Therefore, taking Sandburg's advice to pound and yell, the Whitmer Campaign has offered the following justifications for the largest money grab in Michigan's history:

1. The "unprecedented" efforts to recall Governor Whitmer are active.[5]

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[3] $257,150 divided by $7,150 is 35.97.

[4] See Quote by Carl Sandburg: "If the facts are against you, argue the law. If..." (goodreads.com)

[5] Response, Pages 1-10. Both the Complaint and Rebuttal Statement have thoroughly debunked this myth; therefore, this review will not be repeated here.

2. The Declaratory Ruling issued to L. Brooks Patterson dated January 3, 1984 (which adopted the Interpretative Statement issued to William Faust dated October 7, 1983) allows the Whitmer Campaign to ignore statutory contribution limits.[6]

3. The "recall election cycle" for the Whitmer Campaign begins on April 10, 2020 and ends on January 1, 2022.[7]

4. The Bureau of Elections has not notified the Whitmer Campaign of any errors or omissions.[8]

5. Legal expenses related to recall petitions are expenses of the recall campaign.[9]

Instead of the pounding and yelling offered by the Whitmer Campaign, we respectfully request that the Bureau of Elections and the Secretary of State remain faithful to the Michigan Campaign Finance Act. As the Michigan Department of State recognizes:[10]

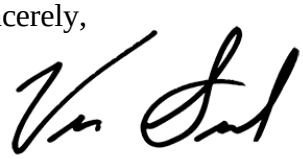
> "Without further legislative or judicial action with respect to these provisions, the Department is bound to enforce the Act's limitations on the amounts that individuals may contribute to candidate committees established by candidates for state elective office."

* * *

Accordingly, unless the Bureau of Elections and Secretary of State prevent Governor Whitmer's quest to become the only candidate in the State of Michigan to ignore statutory contribution limits without consequences, we will all be witness to the largest money grab in the history of Michigan elections.

If you have any questions or need additional information, please contact me.

Sincerely,



[6] Response, Pages 10-15. Both the Complaint and Rebuttal Statement have thoroughly discredited the validity of these rulings; therefore, this analysis will not be repeated here.
[7] Unauthorized Response, Pages 1-9. The relevancy of this justification has already been reviewed in this Supplemental Rebuttal Statement.
[8] Unauthorized Response, Page 9. It defies logic and reality that the "absence of any such notice indicates that the Whitmer Campaign has fully complied with the MCFA". Where in the Michigan Campaign Finance Acts does it state that the absence of a Notice of Error or Omission operates as a bar to prevent the enforcement of the Act?
[9] Unauthorized Response, Pages 9-10. Although how the Whitmer Campaign spends its funds may be the subject of a future campaign finance complaint, the present Complaint relates to the improper receipt of excessive contributions.
[10] Interpretative Statement issued to Constance Cumbey dated December 28, 1979.

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

December 21, 2021

Michigan Freedom Fund
C/O Tori Sachs
PO Box 14162
Lansing, MI 48901

Re: *Michigan Freedom Fund v. Whitmer*
Campaign Finance Complaint
No. 2021-08-24-52

Dear Ms. Sachs:

The Department of State (Department) has finished investigating the campaign finance complaint filed against the Gretchen Whitmer for Governor Campaign Committee (Committee) by the Michigan Freedom Fund (MFF) alleging violations of the Michigan Campaign Finance Act (MCFA or Act). This letter concerns the disposition of that complaint.

In its complaint, MFF makes several arguments regarding the lawfulness of the Committee's acceptance of campaign contributions in excess of the $7,150 contribution limit during periods when Governor Whitmer was subject to recall petitions seeking her removal from office (the "recall doctrine"). First, MFF argues that the MCFA forbids the recall doctrine because the plain text of the MCFA limits an individual's contributions to a candidate to $7,150 per an election cycle. In the alternative, MFF argues that even if the recall doctrine is valid, the Committee violated the doctrine by accepting contributions above the $7,150 limit during periods when the recall of Governor Whitmer was not actively being sought. The complaint further argues that certain active recall petitions should be disregarded for the purposes of the recall doctrine because the recall petitions were frivolous.

The Committee responded to the complaint. In that response, the Committee detailed efforts by recall proponents to gather signatures and otherwise further the recall process. The response contained photos and news articles showing recall efforts by multiple individuals and groups, including a website promoting a recall effort that, as of the date of the response, remained active and was still accepting donations. The Committee noted that at least one committee organized to further a recall effort remained active after the recall language promoted by the committee had expired. Next, the Committee argued that the recall doctrine was valid and that a recall had been

active against Governor Whitmer from at least June 8, 2020, because appeals relevant to recall petitions have been continuously pending from June 8, 2020, to the date of the response.[1] Additionally, the Committee argued that under the Department's existing guidance, the recall cycle remained active because the filing official (in this case, the Department of State) had not found the recall petitions insufficient and had not determined that no recall election would be scheduled.

MFF submitted a reply to the Committee's response. In that reply, MFF reiterated its arguments that the recall doctrine was unlawful and that the Committee had accepted excess contributions when no recall petition was active. Additionally, MFF argued that the Committee had failed to identify campaign committees active during the entire period when the Committee accepted excess donations, and separately argued that the recall efforts against Governor Whitmer should not be considered active even during the 180-day period following approval of a petition[2] by the State Board of Canvassers if the signature gathering effort did not appear sufficiently serious.

On November 16, 2021, the Committee submitted a document titled "Supplemental Information Relating to [the Complaint]" (Supplemental Statement). The Supplemental Statement laid out the procedural status of several court cases involving recall petitions against Governor Whitmer and argued that these cases, along with inaction on the part of various proponents of the recall, meant that the Bureau of Elections could not have made a determination regarding the sufficiency of any recall petitions against the Governor, and thus that the recall petitions remained active.

On November 24, MFF responded to the Supplemental Statement. That response argued that a supplemental statement was not authorized under law and reiterated arguments made in MFF's original complaint and reply. [3]

In the instant complaint, the Department must determine whether the Committee improperly accepted contributions in excess of the contribution limit outside of a time period when there was an "active recall being sought." *Interpretive Statement to William Faust*, issued October 7, 1983. As is customary, the Department begins with the current precedent.

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[1] Specifically, the Committee appealed the Board's approval of Chad Baase's June 8 petition to the Court of Appeals, while various proponents of recall petitions rejected by the Board appealed those rejections to the Court of Appeals. At the time the response was submitted, several of these appeals were pending before the Michigan Supreme Court, while at least one petition had been remanded to the Board with directions that the Board allow the sponsor to correct a scrivener's error and then approve the petition.

[2] An individual recall petition is valid if it has been submitted to the Board of State Canvassers and was (1) within the signature gathering time limit provided for by the MEL and (2) that had not been rejected or found otherwise insufficient by the Board of State Canvassers. The dates of submission and of action by the Board of State Canvassers are available at https://www.michigan.gov/sos/0,4670,7-127-1633_41221_41222---,00.html.

[3] Because the Bureau does not rely on the arguments made in the Supplemental Statement in this determination, the Bureau does not address arguments that supplemental filing was improper under the MCFA's framework for the adjudication of campaign finance complaints.

"The right to recall an elected official is reserved to the voters of this state by our state Constitution." *Hooker v. Moore*, 326 Mich. App. 552, 555 (2018) (citing Const 1963, art 2, § 8). Under current precedent, officeholders facing recall efforts against them are not subject to the contribution limits established under section 52 of the MCFA. This principle originated in the Department's 1983 interpretive statement to William Faust. *Interpretive Statement to Faust.* That interpretive statement found that an officeholder facing a recall effort against them is a candidate for purposes of the MCFA and that contributions meant to influence voters during that recall election are contributions regulated by the MCFA. The statement also found, however, that a candidate committee operating to defeat a recall effort on behalf of an incumbent officeholder was not a candidate committee for a state elective office subject to the MCFA's contribution limits.

The ruling reasoned that, because an elective office was defined as a "public office filled by an election," and because a recall vote only decided whether to remove an officeholder rather than deciding who should fill the newly vacant post created by the recall, the MCFA's contribution limits did not apply to candidate committees operating on behalf of officeholders subject to a recall effort. The interpretive statement buttressed this conclusion with a fairness rationale – because a committee seeking to eject an officeholder through a recall effort was not subject to the MCFA's contribution limits, a candidate committee seeking to defend the incumbent officeholder against that recall effort should be similarly unconstrained.

The ruling limited the period during which an officeholder's committee could accept contributions in excess of the MCFA's contribution limits to periods when "a political committee is actively promoting the officeholder's recall" and concludes that '[a]n officeholder's candidate committee may accept contributions in excess of the section 52 contribution limitations only if the officeholder's recall is actively being sought."

The recall doctrine was reaffirmed in the Department's 1984 declaratory ruling to L. Brooks Patterson. *Declaratory Ruling to L. Brooks Patterson*, issued January 3, 1984. Mr. Patterson requested that the Department reconsider the Faust interpretive statement and raised arguments disputing the Department's interpretation of the term "election." The Department declined, explaining that a recall could qualify as an election for some provisions of the MCFA and not qualify as an election for other provisions, and that a recall could both be an election under the MCFA for reporting purposes and not an election under the MCFA for contribution limit purposes. The Department also reiterated the fairness rationale underpinning the recall doctrine as espoused by the landmark United State Supreme Court precedent, *Buckley v. Valeo*, 424 US 1 (1976).

The Department's November 2011 interpretive statement to Eric Doster further clarified the recall doctrine. *Interpretive Statement to Eric Doster*, issued November 1, 2011. There, the Department found that, because expenses incurred in the preparation or advancement of a recall

petition prior to the petition's approval by the Board of County Canvassers[4] were expenses made "for the purpose of influencing an election" or "in assistance of, or in opposition to" the recall of an elected official, contributions and expenditures made during the preparation of a recall petition were regulated by the MCFA. Similarly, the Department also found that legal expenses incurred during a suit involving the sufficiency of a recall petition, or of signatures on a recall petition, were also expenditures subject the reporting requirements of the MCFA. Finally, the Department found that the MCFA regulated communications expressly advocating in support of or in opposition to an officeholder's recall.

In 2012, Michigan's recall statutes were substantially amended by 2012 PA 417 to provide for different processes and procedures. PA 417 created a new framework for how and when Michigan's voters could petition to seek recall of an elective office, and the way recall elections were held.[5]

PA 417 added section 951a which requires that each petition be circulated on a city/township petition sheet and "state factually and clearly each reason for the recall." MCL 168.951a(1)(c). The amendments, for the first time, inserted the Michigan Board of State Canvassers (Board) and the Secretary of State into the process. Before a recall petition can be circulated against a state officer, it must be submitted to the Board which must meet between 10 and 20 days after the petition is submitted and determine whether each reason for recall is "factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall." MCL 168.951a(3).

The Michigan Court of Appeals summarized these changes in the following manner:

> On December 27, 2012, Public Act 417 took immediate effect, substantially changing the way in which elected officials are recalled in Michigan. The amendments clarify and make more uniform the process for recalling elected officials. Uniformity is accomplished by creating consistency in interpretation, placing recalls for all statewide (and some county) officeholders before the same body, requiring that the reasons stated for the recall be factual, and specifying the periods during which a recall petition may be circulated, precluding multiple, simultaneous recall petitions, etc.
>
> To address concerns regarding inconsistent application of the Michigan Election Law, the 2012 amendments now require petitions seeking the recall of public officials to be submitted to the Board of State Canvassers before being circulated. The board is a constitutionally created commission responsible for canvassing petitions and election results, conducting recounts, and administering elections in Michigan. . . .

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[4] Prior to the 2012 amendment, all recall petitions were filed with the appropriate County.
[5] The status of the Michigan Election Law prior to the changes in 2012 can be found on the Legislature's website.

> The 2012 amendments also added a factuality requirement so that a petition must now state the reasons for recall both "factually and clearly." Although the grounds for recall remain a political question, for the sake of avoiding voter confusion in the present climate of relentless (and often intentionally misleading) political advertisements, the legislature commanded that the ballot language itself must be both factual and clear. [Hanselman, *Total Recall: Balancing the Right to Recall Elected Officials with the Orderly Operation of Government*, Mich Bar J (January, 2014), p 36 (citations and footnote omitted).]

Whitmer v. Bd. of State Canvassers, 2021 Mich. App. LEXIS 3365 (May 27, 2021). Sponsors and targets of the recall petition may appear at the Board meeting and present arguments on whether the reasons are stated factually and clearly. MCL 168.951a(5). At the factual and clarity hearing, the Board will either approve or reject the recall petition. MCL 168.951a(3). If the Board rejects the recall petition, no election will be held, and the petition is not valid for circulation. See MCL 168.951a(3).

PA 417 also introduced a limitation to the circulation period for recall petitions following the state Board's factual and clarity hearing. If the petition language is approved by the Board, the petition may be circulated, but is only valid for 180 days from the Board's approval. PA 417 included a mandatory stay of up to 40 days on the circulation period where a party appeals the determination of the Board. MCL 168.951a(6). If the petition language is approved by the Board, the language of the petition is valid for 180 days after either of the following, whichever occurs later:

1. The date of the determination of whether each reason is factual and of sufficient clarity by the Board of State Canvassers.
2. The sooner of the following:
    a. The date of determination of whether each reason is factual and of sufficient clarity by the Michigan Court of Appeals; or
    b. 40 days after the date the appeal by the target of the recall.

MCL 168.951a(8). Stated differently, the language approved by the Board is only valid for circulation for 180 days after the Board's approval if the Board's approval is not appealed. Where the Board's decision is appealed, the language is valid for 180 days after the Court's determination or 220 days after the date of the appeal. After circulation, sponsors of a gubernatorial recall petition must submit the sufficient number of signatures for canvassing by the Secretary of State. MCL 168.961. The Secretary must then determine whether there is a sufficient number of valid signatures, and if appropriate, issue the call of election within 35 days after the filing of the petition. MCL 168.963. Gubernatorial recall elections may only be held on the next May or August election date, whichever occurs first. *Id*.

From January 1, 2019 to the date of this determination, there have been 53 recall petitions submitted to the Board, 27 of which have been submitted against Governor Whitmer.[6] No sponsor has submitted signatures against the Governor to the Secretary of State (the filing official). The following represents the petitions submitted, the date the petition was submitted and the date the language was no longer valid for circulation by operation of law:

Recall Sponsor	Date Petition Filed with the Department of State	Date Board Rejected, or Expiration of Recall Language
Baase	5/12/2020	5/22/2020
Baase	5/29/2020	1/25/2021
Makowski	5/27/2020	6/8/2020
Garabelli	6/4/2020	6/18/2020
Garabelli	6/19/2020	7/6/2020
Sprangel	7/14/2020	7/31/2020
LaChappelle	7/14/2020	3/18/2021
Makowski	7/14/2020	3/18/2021
Makowski	7/14/2020	7/31/2020
Makowski	7/14/2020	7/31/2020
Garabelli	7/16/2020	7/31/2020
Baase	7/28/2020	3/29/2021
Makowski	8/20/2020	4/19/2021
Garabelli	8/20/2020	4/19/2021
Parkinson	8/24/2020	4/29/2021
Parkinson	8/24/2020	4/29/2021
Parkinson	8/24/2020	4/29/2021
Parkinson	8/24/2020	4/29/2021
Baase	4/26/2021	5/14/2021
Curley	5/14/2021	6/1/2021
Baase	6/25/2021	7/13/2021
Blair	7/7/2021	7/26/2021
Blair	7/7/2021	7/26/2021
Blair	7/7/2021	7/26/2021
Blair	7/7/2021	7/26/2021
Blair	7/7/2021	7/26/2021

Since May 12, 2020, there has been valid recall petition language in circulation against the Governor with the exception of a four-day window in 2020 (May 23-May 26) and a 23-day window in 2021 (June 2-June 24).

[6] https://www.michigan.gov/documents/sos/State-Level_Recall_Attempts_2021-2022_731366_7.pdf.

There is no dispute that the Committee accepted contributions in excess of $7,150. The question is whether the Committee was authorized to do under the recall exception, and at what point the recall election cycle begins and ends (ending the window in which the recall exception applies).

With this in mind, the Department turns to the instant complaint. The complaint asks the Department to overturn the above precedent established by *Faust, Patterson, and Doster*. As the Department has previously indicated, it must apply the facts in the instant complaint to the precedent as it exists today. The Department cannot overturn an interpretive statement or declaratory ruling via the campaign finance complaint process, but rather may only interpret its rulings and provide further clarity. MCL 24.263 ("A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling. . . .")

The Department must interpret the existing precedent consistent with the significant changes made to the Michigan Election Law's recall statutes in 2012 so to avoid conflicts in the law. *People v. Webb*, 458 Mich. 265, 274 (1998) (citing *House Speaker v. State Administrative Bd.*, 441 Mich. 547, 568-569 (1993) ("If statutes lend themselves to a construction that avoids conflict, then that construction should control."). Using these parameters, the Department must determine whether the Committee accepted excess contributions at any time when a recall was not actively being sought; that is, at any time in which the window for the recall exception had not yet opened, or at any time after the window had closed.

The starting point is the opening of an election cycle. "Election cycles are date ranges used to accumulate contributions and expenditures for reporting and contribution limit purposes." Appendix P. The election cycle begins when there is a recall petition being actively sought against an elected official. *Faust, supra*. The Committee quotes the Department's website, which states the following:

> For a special recall general election or recall election, the period begins 1) the day a committee has been organized to gather petition signatures and to promote the recall or 2) the date petition language stating the reasons for the recall has been filed with the filing official for the purpose of a clarity/factual hearing, whichever is earlier.

Appendix P.

As further explained below, the Department's website does not define the beginning of the recall election cycle with the precision necessary to reflect the revisions made in 2012 to the Election Law. However, that ambiguity is irrelevant to the present determination because no matter how the beginning of the recall cycle is defined, the Committee did not accept otherwise excess contributions until after the first recall petition was received. The first otherwise excess contribution was received after May 12, 2020, at which point a recall had been filed with the

filing official; clearly, therefore, the recall exception window had opened before the first otherwise excess contribution was received.

Once the recall cycle begins, under the Department's precedents a candidate committee may continue to accept excess contributions until the cycle ends. The Department's guidance has provided for two specific instances in which the cycle ends:

> The election cycle ends 1) the day of the special general recall election or recall election, or 2) the day the appropriate election filing official finds the petitions insufficient and determines that no recall election will be scheduled. The special primary recall election does not have a separate cycle apart from the special general recall election cycle.

Appendix P.

Even after the 2012 changes to the Michigan Election Law, the cycle may end the day of the recall election. Because no election occurred, this scenario is irrelevant to the current complaint. The cycle may also end, in this case, when the Department of State finds recall petitions insufficient (because they lack the requisite number of signatures, or for some other purpose) and determines a recall election will not occur.

A third scenario, not clearly articulated in the guidance above, occurs when a recall petition has become invalid and can no longer be submitted to the appropriate filing official because the statutorily limited number of days have elapsed (180 days after Board approval, or up to 220 days if an appeal is filed). In this instance, the filing official may not accept petition signatures if filed, because they are no longer valid. MCL 168.951a(9).

In the instant complaint, the Committee accepted some otherwise excess contributions more than 180 (or 220) days after petition language was approved for each petition. The Secretary of State did not make an express determination that the petitions were insufficient, because the petitions with expired language were never filed with the Department. If the petitions had been filed, however, the Department would have been prohibited from accepting them. *Id.*

The Department is not persuaded that pending litigation brought by the Committee (opposed to the petition) has any bearing on the statutory period when it comes to otherwise excess contributions. The Committee first argues that the recall cycle should remain open and was actively being sought against the Governor since there was pending litigation regarding the petition active in the court system. As part of the 2012 amendments, the legislature implemented an appellate process directly to the Michigan Court of Appeals. "The determination by the board of state canvassers may be appealed by the officer whose recall is sought or by the sponsors of the recall petition drive to the court of appeals." MCL 168.951a(6). Any appeal must be taken within 10 days after the determination of the Board. *Id.*

Here, after the Board approved several recall petitions for circulation, the Committee appealed them directly to the Court of Appeals, and again to the Supreme Court. The Committee argues that because it appealed to the Court of Appeals and Supreme Court that the recall cycle remained active. See response to complaint, pg. 14. The Committee states that since the Court could remand to the Board or take a further action, that the recall petition remained active allowing the Committee to continue to accept contributions in excess of section 52's limitations. *Id*.

However, based on the text of the Election Law, there is a distinction between the party bringing the appeal as to whether the contribution limit remains lifted during the course of the appeal. For example, where the sponsor of a recall petition appeals the Board's rejection, it naturally follows that the recall is "actively being sought" and the target of the recall would be entitled to accept contribution in excess of the limit. *See Faust, supra.* Conversely, where the target of the recall appeals, that action alone does not keep the recall cycle open pending a determination of the appropriate court as there is no set time frame on when a court may make a decision on the merits of a case. Keeping the recall cycle open for an indefinite amount of time would create a loophole not intended by *Faust*, *Patterson*, or *Doster*.

It remains true that upon the closing of the recall cycle, the elected official must disgorge all recall-designed contributions. *See Faust*. Such contributions must be disgorged in accordance with section 45 within 30 days of the recall cycle closing. MCL 169.245. While active litigation regarding the petition would not allow the contribution limitation to remain lifted, a committee pursuing litigation would not be required to disgorge the funds while the litigation remains open. It remains a legitimate use of committee recall funds to pay for legal costs that relate to a recall election. MCL 169.221a(2)(a). So, while the Committee may not continue to raise unlimited contributions, it may retain funds to defend itself against pending litigation surrounding a recall petition, but such funds should be disgorged within 30 days of the closing of litigation in accordance with section 45 of the Act. See MCL 169.245.

Nonetheless, the Department acknowledges that its existing interpretations of the recall exception first recognized by the Department in 1983 did not clearly articulate that the recall exception window ends upon statutory expiration of approved language, even if the filing official does not expressly determine that the petition is insufficient. Further, the Department has made various rulings through the declaratory ruling process, posted information on its website that is incomplete when viewed in the context of current law, and did not clearly articulate parameters after the recall law was amended by the Legislature in 2012.

Moreover, the Department had never had occasion to detail in a written opinion or enforcement action the above parameters, and no other candidate had previously raised this issue of first impression. Because of this, the Department is cognizant that a regulated entity would review these materials and believe it was acting in compliance with the Department's precedent and the

Act's requirements. Therefore, the Department dismisses the instant complaint and will take no further action against the Committee, provided applicable contributions are disgorged.

However, the Department takes this opportunity to delineate the parameters of the recall exception as they exist based on the current precedent. In so doing, the Department will clarify the standards outlined under *Faust*, *Patterson*, and *Doster*, but cannot overturn those precedents within a complaint. Should an interested party request the Department reconsider these precedents via the declaratory ruling process, the Department would welcome the opportunity to more fully review these precedents.

For purposes of accepting contributions in excess of the limits outlined under §52 of the Act, the recall cycle opens, and remains open, when there is an active recall being sought. *Faust.*

A petition is not considered to be active (that is, the recall exception window is not considered to have opened) *solely* because a committee has been formed or registered, and the recall exception will not remain open indefinitely on this basis. Rather, there must be some other action coupled with registration demonstrating the petition's activity.

Under the Act, a committee is "a person that receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against . . . the qualification, passage, or defeat of ballot questions . . . if contributions received total $500.00 or more in a calendar year or expenditures made total $500.00 or more in a calendar year." MCL 169.203(4). Committees that do not expect to receive or spend more than $1,000 are eligible to be placed on a reporting waiver and are not required to submit reports under the Act. MCL 169.224. Further, individuals can form and register a committee for any reason. *See Interpretive Statement issued to Evelyn Quiroga*, September 3, 2020. Similarly, there is no requirement as to when a committee is required to dissolve.

Because of this, the mere act of forming and registering a recall committee cannot be enough to trigger raising the contribution limits as it would also create an unintended loophole around the contribution limits. An individual could create a committee, place it on a reporting wavier, and keep the committee open indefinitely, while the elected official could accept unlimited contributions – even if a recall petition could not be filed. On the other hand, the purpose of the recall doctrine was to treat contributors to the proponents of a recall petition the same as contributors to opposition of the recall petition. *See Patterson*, *supra*. It would be inconsistent with *Patterson* to not consider the fact that a committee could raise funds prior to submission of language to a filing official, while the target of the recall would be unable to raise funds in their defense for use at the factual and clarity hearing. *See Doster, supra*.

Therefore, the Department concludes that a recall committee is actively seeking a recall when it takes some other action to support the recall. As the Committee indicates in its response, that effort can include soliciting funds, making expenditures, or actively gathering signatures on a

pending recall petition. It also can include submitting language to a filing official and requesting the Board's approval or the sponsor appealing the Board's denial. This is not an exhaustive list, and the Department declines to expand on every situation that fits this category. Rather, the premise is that a recall committee must take some further action beyond mere formation and registration "to promote a particular officeholder's recall." *Faust, supra.*

The recall cycle closes when any of the following occurs: [7]

> (1) there is no longer an active recall being sought;
> (2) the date the Board determines the recall petition does not factually or clearly state the reasons for recall;
> (3) the expiration of time for which signatures could be submitted to the filing official;
> (4) the date in which the filing official determines a submitted recall petition contains an insufficient number of valid signatures; or
> (5) the date of the special recall election.

The Department need not issue a formal notice or determination closing the recall cycle as Election Law automatically closes it by determining the language is no longer valid. MCL 168.951a(9) ("A recall petition that is filed after the 180-day period described in subsection (8) is not valid and must not be accepted by the filing official under section 961."). Moreover, pending litigation brought by the opponent of a petition will not be deemed to extend the time period after the statutory time period has otherwise expired with regard to otherwise excess contributions, but in this instance, committees may continue to use existing funds to pay for the costs of litigation (that is, these funds do not need to be immediately disgorged).

Upon the closing of the recall cycle, the target of the recall may no longer accept contributions in excess of the limits outlined under section 52 of the Act. Any outstanding recall funds must be disgorged as outlined under section 45 of the Act within 30 days, except for the purpose of making expenditures for expenses incurred that relate to the recall.[8]

Going forward, committees are on notice that the above parameters control, and this notice may be used in future proceedings as evidence that tends to establish a knowing violation of the Act. Although, when applying existing precedent, there was not a basis to find a violation with regard to the existing complaint, the recall exception as currently defined does create the potential for abuse by allowing otherwise-excess contributions to be used for what would otherwise amount to campaign advertising. Although the record in this complaint does not show that the Committee actually expended funds for that purpose, a future committee could. As noted above, the

[7] The Department's website will be updated to reflect these parameters.
[8] It remains the same that a committee may not use recall-designated funds on expenditures for any other election.

Department would welcome the opportunity to consider the issue further in the context of a Declaratory Ruling request.

Sincerely,

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Chris Trebilcock, Attorney for Gretchen Whitmer for Governor