

MICHIGAN CAMPAIGN FINANCE COMPLAINT

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COMPLAINT DEPT OF STATE
2020 SEP 17 PM 1:55
ELECTION/GREAT SEAL

Section 1: COMPLAINANT:

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

Section 2: ALLEGED VIOLATOR

Unlock Michigan
2145 Commons Parkway
Okemos, MI 48864
(313) 288-2346

Section 3: ALLEGATIONS:

Sections of the MCFA alleged to be violated: Sec. 15, Sec. 21, Sec. 24, Sec 34 and Sec. 41.

COMPLAINT'S STATEMENT OF FACTS

1. In a February 7, 2014 letter to Michael Hodge and Andrew Nickelhoff, attorneys representing Citizens for Affordable Quality Home Care (Citizens) and Home Care First, Inc. (HCFI) the Department of State made a finding that there may be reason violations of the Michigan Campaign Finance Act (MCFA) occurred. The Department concluded that:

Citizens is HCFI's ballot question committee. While there were 2 committees that eventually filed, there was in fact only one committee. 99.9984% of the money in Citizens account came from contributions raised by HCFI's efforts.

Citizens did not designate a secondary depository; therefore, contributions solicited by HCFI were improperly deposited into into HCFI's account.

Contributions solicited by HCFI for Citizens were improperly commingled with HCFI funds.

Citizens knowingly filed incomplete and inaccurate campaign statements by failing to disclose the true source of the contributions solicited by HCFI.

This enforcement action provides the Bureau of Elections with a roadmap for navigating the collusion and concealment between Unlock Michigan and Michigan Citizens for Fiscal Responsibility (MCFR).

2. Unlock Michigan registered as a ballot question committee on June 1, 2020, by filing a Statement of Organization. Its committee ID# is 519796. Unlock Michigan is using the Initiative petition process to seek the repeal a 1945 law that grants the governor broad emergency powers without legislative approval.

Unlock Michigan lists its Official Depository as Flagstar Bank, 1801 W. Grand River, Okemos, MI 48864. Name and address of a Secondary Depository was left blank.

Unlock Michigan in 2020 has filed a July Quarterly campaign Statement covering the period June 2, 2020 through July 20, 2020. It has also filed a Qualification Statement that covers the period July 21, 2020 through August 3, 2020.

3. MCFR is a 501 (C) 4 social welfare organization under the IRS code. MCFR is also a non-profit corporation formed under Michigan law. MCFR has no record on the Secretary of State website as having filed any kind of Statement of Organization.
4. MCFR is a "person" for purposes of the MCFA.
5. MCFR has a history of funding, producing, and placing issue ads in the context of state Senate campaigns. Anonymous contributions are only permitted where the Michigan Campaign Finance Law does not regulate the activity. Issue ads are not regulated under the Michigan Campaign Finance Act (MCFA) because the definition of "expenditure" requires express advocacy. Section 6 (2) (j) codified *Buckley v Valeo's* footnote 52 identifying the eight 'magic words' of express advocacy.

When MCFR pays for issue ads (TV, radio, newspaper, billboards, direct mail, etc.), including those ads that use the name or likeness of a clearly identified candidate; as long as the ad does not use words of express advocacy, the fund-raising activity that pays for those issue ads is not regulated under the MCFA. A 501(C) 4 organization is required to file annually Form 990 with the IRS. The organization is required on that IRS Form 990, Schedule B to disclose each contributor of \$5,000 or more. However, the name and address of those donors are redacted on the copy of IRS Form 990, Schedule B that is required to be made available for public inspection.

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

6. MCFR was disclosed on the July 2020 Quarterly Report of Unlock Michigan, as having made direct contributions to Unlock Michigan on five separate occasions during that quarterly reporting period:

\$10,000.00 on June 9, 2020

\$150,000.00 on June 18, 2020

\$400,000.00 on June 24, 2020

\$200.00 on June 30, 2020

\$100,000.00 on July 20, 2020

During the July quarterly reporting period MCFR made direct contributions to Unlock Michigan totaling \$660,200.00. That was over 86% of the \$765,024 reported raised by Unlock Michigan in that reporting period.

In the Qualification reporting period July 21-August 3, 2020, MCFR made a \$35,000 contribution to Unlock Michigan on July 31, 2020 bringing its cumulative total to date to \$695,200. That amount is still over 74% of all the funds raised so far by Unlock Michigan (\$938,916.11). Put another way, \$3 out every \$4 that ends up deposited in Unlock Michigan official depository has passed through MCFR's checking account.

ALLEGATIONS

1. MCFR chose not to register itself as a ballot question committee, as required under MCL 169.224, even though MCFR met the definition of "committee" under MCL 169.203 (4) and was disqualified from being exempt from that definition because MCFR had been soliciting and receiving contributions between June 10-July 31, 2020.

In doing so, MCFR has avoided disclosing to the Bureau of Elections and the general public their contributors as required under MCL 169.234.

2. On July 30, 2020, Robert LaBrant filed with the Elections Bureau a campaign finance complaint alleging that MCFR met the definition of "committee" in MCL 169. 203 (4). As such, MCFR should be required to register as a ballot question committee under MCL 169.224 and disclose the contributors to MCFR since June 10, 20210 by name, address, amount, and date as required under MCL 169.234. MCFR can then report the six expenditures it has made to Unlock Michigan.
3. MCFR should be registered as a ballot question and be reporting as a ballot question committee. Unlock Michigan and MCFR have acted in concert to avoid the disclosure of the actual contributors to Unlock Michigan. MCFR has laundered \$695,200 into

Unlock Michigan without naming one person by name, address, amount, and date. The MCFA prohibits a contribution "made directly or indirectly, by any person in a name other by which that person is identified for legal purposes." MCL 169.241(3).

4. There is another route in the MCFA to force Unlock Michigan into the public disclosure of their contributors. Unlock Michigan did not designate a secondary depository on their Statement of Organization and since 74% of all Unlock Michigan funds have passed through MCFR; MCFR has been acting as a secondary depository of Unlock Michigan. MCFR's bank account should be named as a secondary depository on Unlock Michigan's Statement of Organization. Contributions for Unlock Michigan solicited by MCFR, with the understanding that the contributor's identity would remain unidentified. Those contributions were improperly deposited into MCFR's account. MCL 169.215 (15), provides that a person that fails to disclose the existence of a secondary depository is subject to a civil fine of not more than \$1,000.
5. Contributions solicited by MCFR for Unlock Michigan and deposited initially in MCFR's account were improperly commingled with MCFR funds. MCL 169.221 (12) prohibits Unlock Michigan from commingling contributions that it receives "with other funds of an agent of the committee or any other person." A person who violates MCL 169.221 is subject to a civil fine of not more than \$ 1,000.
6. Unlock Michigan knowingly filed incomplete and inaccurate campaign statements by failing to disclose the true source of the contributions solicited by MCFR. MCL 169.234 (7) provides that if a ballot question committee knowingly files an incomplete or inaccurate statement or report the treasurer is subject to a civil fine of not more than \$1,000 or the amount of the undisclosed contribution, whichever is greater.

The Bureau of Elections should after reviewing this complaint and any answer and rebuttal filed, complete their investigation and make a finding that there may be reason to believe that Unlock Michigan has violated the MCFA an attempt to resolve this matter informally as the MCFA requires. In offering a conciliation, the Bureau should assess all penalties or fees necessary to bring Unlock Michigan into compliance with the MCFA.

Section 4: CERTIFICATION

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

X Robert S. LaBrant Dated September 9, 2020

Robert S. LaBrant



Jocelyn Benson, Secretary of State
Department of State

(<http://www.michigan.gov/sos/0,1607,7-127---,00.html>)

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#: 519796

Type of Filing: Original

Full name of committee: UNLOCK MICHIGAN

Committee Type: Ballot Question

Date Committee Was Formed: 06/01/2020

Committee Phone Number: (313) 288-2346

Committee Mail Address: 2145 COMMONS PARKWAY
OKEMOS, MI 48864

Committee Street Address: 2145 COMMONS PARKWAY
OKEMOS, MI 48864

Treasurer: MARY DOSTER
2870 DOBIE RD
MASON, MI 48854
(517) 525-4994

Designated Record Keeper:

Reporting Waiver: No

Names and addresses of depositories or intended depositories of committee funds

Official Depository: FLAGSTAR BANK
1801 W GRAND RIVER
OKEMOS, MI 48864

Secondary Depository:

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#
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Statement Year	Document Type	Document Covers	Statement Due	Sent/Received	Doc Seq#
2020	QUALIFICATION(e) (https://cfrsearch.nictusa.com/documents/497400)	07/21/2020 – 08/03/2020	Not Available	08/08/2020	497400
2020	JULY QUARTERLY CS(e) (https://cfrsearch.nictusa.com/documents/496247)	06/02/2020 – 07/20/2020	07/27/2020	07/25/2020	496247
	BQ PETITION PROPOSAL LRT (https://cfrsearch.nictusa.com/documents/494880)	N/A	N/A	07/07/2020	494880
	NO REPORTING WAIVER LETTER (https://cfrsearch.nictusa.com/documents/494692)	N/A	N/A	06/10/2020	494692
	S of O - INFORMATION(e)	N/A	N/A	06/02/2020	494663

[FOIA \(http://www.michigan.gov/sos/0,4670,7-127-357908--,00.html\)](http://www.michigan.gov/sos/0,4670,7-127-357908--,00.html)
[Transparency \(http://www.michigan.gov/openmichigan/0,4648,7-266-58520---,00.html\)](http://www.michigan.gov/openmichigan/0,4648,7-266-58520---,00.html)
[Office of Regulatory Reinvention \(http://www.michigan.gov/lara/0,4601,7-154-35738--,00.html\)](http://www.michigan.gov/lara/0,4601,7-154-35738--,00.html)
[Forms \(http://www.michigan.gov/sos/0,1607,7-127-1640_11777--,00.html\)](http://www.michigan.gov/sos/0,1607,7-127-1640_11777--,00.html)
[FAQ \(http://www.michigan.gov/sos/0,1607,7-127-12539---F,00.html\)](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>)

SOS Home (<http://www.michigan.gov/sos>) Contact the Secretary of State (<http://www.michigan.gov/sos/0,3289,7-127-25634--,00.html>)

Jocelyn Benson, Secretary of State Department of State

Michigan.g

(<http://www.michigan.gov/sos/0,1607,7-127--,00.html>)

Michigan Campaign Statement Contributions

- Ⓜ Committee Name: UNLOCK MICHIGAN
- Ⓜ Statement Type: JULY QUARTERLY CS
- Ⓜ Statement Year: 2020
- Ⓜ Schedule: ITEMIZED DIRECT CONTRIBUTIONS

Matches 1 – 100 of 859 [Next 100 matches >>]

Receiving Committee	Committee ID-Type	Schedule Type	Description	Received From	City State Zip	Date	Amount	Cumul
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796-BAL	DIRECT		MI CITIZENS FISCAL RESPONSIBIL 106 W ALLEGAN STE 200	LANSING MI 48933	08/24/2020	\$400,000.00	\$500,000.
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796-BAL	DIRECT		MI CITIZENS FISCAL RESPONSIBIL 106 W ALLEGAN STE 200	LANSING MI 48933	08/18/2020	\$150,000.00	\$180,000.
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796-BAL	DIRECT		MI CITIZENS FISCAL RESPONSIBIL 106 W ALLEGAN STE 200	LANSING MI 48933	07/20/2020	\$100,000.00	\$660,200.
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796-BAL	DIRECT		EDW. C. LEVY CO 9300 DIX AVE	DEARBORN MI 48120	07/06/2020	\$30,000.00	\$30,000.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796-BAL	DIRECT		ROBERT THOMPSON PO BOX 6349 PRES/OWNER MCCOIG	PLYMOUTH MI 48170	07/17/2020	\$25,000.00	\$25,000.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796-BAL	DIRECT		MI CITIZENS FISCAL RESPONSIBIL 106 W ALLEGAN STE 200	LANSING MI 48933	08/09/2020	\$10,000.00	\$10,000.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796-BAL	DIRECT		SUZANNE TENT 5805 KINYON DR SECRETARY DIVERSE HEALTH SERVICES	BRIGHTON MI 48116	07/10/2020	\$1,000.00	\$1,000.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796-BAL	DIRECT		TINA HEIKKINEN 405 US HWY 41 N SELF EMPLOYED ERICSON TRUE VALUE & LUMBER	BARAGA MI 49908	07/09/2020	\$500.00	\$500.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796-BAL	DIRECT		KRISTOPHER POWELL 2317 CHESAPEAKE CT EXEC. BENEPRO INC	TROY MI 48098	07/20/2020	\$500.00	\$700.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796-BAL	DIRECT		CHRIS FENNEMA 4036 SOUTH ROLLING RIDGE MANAGER KENT COMPANIES	WAYLAND MI 49348	07/12/2020	\$500.00	\$500.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796-BAL	DIRECT		AMBER NEWTON 1109 SPRUCEWOOD OFFICE MANAGER CIS	GREENVILLE MI 48838	07/17/2020	\$500.00	\$500.00

9/8/2020

Michigan Campaign Statement Contributions

Receiving Committee	Committee ID-Type	Schedule Type	Description	Received From	City State Zip	Date	Amount	Cumul
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		SHERI JAHN 1743 S LAKESHORE RD RETIRED RETIRED	CARSONVILLE MI 48419	07/17/2020	\$250.00	\$250.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		JENNY REDER 4675 MACKINAW RD SELF EMPLOYED JENNY REDER	BAY CITY MI 48705	07/10/2020	\$200.00	\$200.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		VICKI DWELLEY 21237 SUMMERSIDE LN RETIRED RETIRED	NORTHVILLE MI 48187	07/13/2020	\$200.00	\$200.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		PERRY MERLO 8801 TERRA BELLA CONTRACTOR MERLO CONSTRUCTION CO INC	NORTHVILLE MI 48188	07/20/2020	\$200.00	\$200.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		CHRISTOPHER LILLA 537 HUMPHREY AVE EVP / CFO BUSCHE PERFORMANCE GROUP	BIRMINGHAM MI 48009	07/18/2020	\$200.00	\$200.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		DOBORAH GELDERBLOM 4640 LEOB RD KAYAK INSTRUCTOR DOBORAH GELDERBLOM	CHARLEVOIX MI 49720	07/03/2020	\$200.00	\$200.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		TWYLA SLACK 135 W GARFIELD RD CO-OWNER UNION PALLET	COLDWATER MI 49036	07/09/2020	\$200.00	\$200.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		DANA OTT 335 BRIDGE ST NW RETIRED RETIRED	GRAND RAPIDS MI 49504	07/09/2020	\$200.00	\$200.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		BRUCE SAWINSKI 2128 GLENN CANYON DR SE DIRECTOR OF PURCHASING FLAT RIVER GROUP	CALEDONIA MI 49316	07/10/2020	\$200.00	\$200.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		JERE JOHNSTON 163 BEAR POINT RD CHAIRMAN ALPENA GROCER WHOLESALE	ALPENA MI 49707	07/16/2020	\$200.00	\$200.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		JANICE DALDOS 6744 S CHARLTON PARK HOMEMAKER HOMEMAKER	HASTINGS MI 49058	07/15/2020	\$200.00	\$200.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		JULIE MCCALL 293 SADDLEBACK DR NE HOMEMAKER HOMEMAKER	GRAND RAPIDS MI 49525	07/07/2020	\$200.00	\$200.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		THOMAS GREENE 200 DINKEL DR SELF EMPLOYED THOMAS GREENE	HOWELL MI 48843	07/13/2020	\$200.00	\$200.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519798)	519798-- BAL	DIRECT		MI CITIZENS FISCAL RESPONSIBIL 106 W ALLEGAN STE 200	LANSING MI 48933	08/30/2020	\$200.00	\$560,200.



Jocelyn Benson, Secretary of State
Department of State

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(<http://www.michigan.gov/sos/0,1607,7-127-,00.html>)

Michigan Campaign Statement Contributions

- ☑ Committee Name: UNLOCK MICHIGAN
- ☑ Statement Type: QUALIFICATION
- ☑ Statement Year: 2020
- ☑ Schedule: ITEMIZED DIRECT CONTRIBUTIONS

Matches 1 – 100 of 683 [Next 100 matches >>]

Receiving Committee	Committee ID-Type	Schedule Type	Description	Received From	City State Zip	Date	Amount	Cumul
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796- BAL	DIRECT		RONALD WEISER 320 N MAIN ST STE 200 FOUNDER/CEO MCKINLEY ASSOCIATES INC	ANN ARBOR MI 48104	07/27/2020	\$100,000.00	\$100,000.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796- BAL	DIRECT		MI CITIZENS FISCAL RESPONSIBIL 106 W ALLEGAN STE 200	LANSING MI 48933	07/31/2020	\$35,000.00	\$695,200.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796- BAL	DIRECT		JEFF KRESNAK 669 CENTURY AVE SW PRESIDENT SUPERIOR ASPHALT	GRAND RAPIDS MI 49603	07/29/2020	\$2,100.00	\$2,100.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796- BAL	DIRECT		THOMAS BRADLEY 6500 NORTHERN PINES DR NE RETIRED RETIRED	ROCKFORD MI 49341	07/30/2020	\$1,000.00	\$1,000.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796- BAL	DIRECT		MATT LANGELER 2300 SANFORD AVE SW TREE SERVICES INTEGRITY TREE	GRANDVILLE MI 49418	08/03/2020	\$1,000.00	\$1,000.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796- BAL	DIRECT		JESSICA YODER 303 NORTH MOUNT TOM RD TOOLING MANAGER M-10 INDUSTRIES INC	MIO MI 48847	07/21/2020	\$1,000.00	\$1,000.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796- BAL	DIRECT		DONALD WILKIE 3347 VINCENT RD RETIRED RETIRED	NORTH STREET MI 48049	07/23/2020	\$1,000.00	\$1,000.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796- BAL	DIRECT		NATHAN HOLSTEGE 7385 OSBORN OWNER PREFERRED MACHINE	ALLENDALE TWP MI 49401	07/30/2020	\$500.00	\$500.00
UNLOCK MICHIGAN (https://cfsearch.nictusa.com/committees/519796)	519796- BAL	DIRECT		ERIK KILUNEN 51818 OSPREY AVE ENTREPRENEUR ERIK KILUNEN	HUBBELL MI 49934	07/27/2020	\$500.00	\$500.00



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

February 7, 2014

Michael J. Hodge
Miller, Canfield, Paddock and Stone, P.L.C.
One Michigan Avenue, Suite 900
Lansing, Michigan 48933

Andrew Nickelhoff
Sachs Waldman
2211 East Jefferson Avenue, Suite 200
Detroit, Michigan 48207

Dear Mr. Hodge and Mr. Nickelhoff:

The Department of State (Department) has completed its initial investigation of the campaign finance complaint filed against Citizens for Affordable Quality Home Care (Citizens) and Home Care First, Inc. (HCFI) by Gideon D'Assandro, which alleged that Citizens violated sections 34, and 41 of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.*, and HCFI violated sections 24, 34, and 41 of the Act. This letter concerns the disposition of D'Assandro's complaint, which was filed on August 30, 2013. You filed an answer on behalf of the respondents on October 21, 2013, and D'Assandro filed a rebuttal statement on November 5, 2013.

D'Assandro alleged that although the HCFI committee was formed on March 23, 2012, its Statement of Organization was not filed until October 30, 2012. D'Assandro further alleged that HCFI deliberately filed its Statement of Organization and campaign finance statements late to delay reporting contributions it received from various Service Employee International Union (SEIU) organizations, which it then contributed to Citizens, in order to prevent public disclosure of the true source of the contributions until after Election Day. D'Assandro also alleges that although Citizens reported contributions from HCFI, those reports are incomplete or inaccurate because the money was "wrongfully reported to the public as being made by Respondent HCFI . . . when, in fact, these contributions were actually made by various SEIU organizations."

The MCFA requires a committee to file a statement of organization within 10 days after a committee is formed. MCL 169.224(1). Late fees may be incurred if the statement of organization is filed late. *Id.* Failure to file a statement of organization for more than 30 days is a misdemeanor. *Id.* By statutory definition, a committee is formed when "a person 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 a ballot question . . . 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). For purposes of determining whether a committee exists, the word "person" includes a "group of persons acting jointly." MCL

169.211(2). A statement of organization must be filed within 10 days of reaching one of these \$500.00 thresholds.

The Act further requires committees to file periodic campaign finance statements and reports. MCL 169.234. The failure to file a single campaign statement may trigger late filing fees. MCL 169.234(3), (4). In certain circumstances, a failure to file may constitute a misdemeanor offense. MCL 169.234(6). Additionally, the MCFA requires filed campaign finance statements and reports to be complete and accurate. MCL 169.234. A treasurer who knowingly files an incomplete or inaccurate statement or report may be subject to a civil fine of up to \$1,000.00 or the amount of an undisclosed contribution, whichever is greater. MCL 169.234(7).

Finally, the Act prohibits a contribution "made, directly or indirectly, by any person in a name other than by which that person is identified for legal purposes." MCL 169.241(3). A knowing violation of section 41 is a misdemeanor offense. MCL 169.241(4).

In the course of the Department's investigation of D'Assandro's complaint and its thorough review of Citizens' and HCFI's filed campaign statements, the Department finds there may be a reason to believe violations of the Act occurred, not precisely as D'Assandro alleged, but as explained below.

Summary

For the reasons that follow, the Department concludes:

- **Citizens is HCFI's ballot question committee.** While there were 2 committees filed, there was in fact only one committee. HCFI and Citizens had a director/ treasurer in common (Hoyle), and 99.9984% of the money in Citizens' account came from contributions raised by HCFI's efforts.
- **Citizens did not designate a secondary depository;** therefore, contributions solicited by HCFI were improperly deposited into HCFI's account.
- **Contributions solicited by HCFI for Citizens were improperly commingled with HCFI funds.**
- **Citizens knowingly filed incomplete and inaccurate campaign statements** by failing to disclose the true source of the contributions solicited by HCFI.

Background

On March 1, 2012, Dohn Hoyle, Norm DeLisle, and Elizabeth Thomas (a member of the 2012 SEIU Healthcare MI Executive Board)¹ signed the Articles of Incorporation for Home Care First, Inc.² According to your answer:

A primary task on [HCFI]'s agenda was to find a means of resurrecting the MQC3 or at least restoring as many of its services and functions as possible. It

¹ SEIU Healthcare Michigan 2012 LM-2.

² Answer to Complaint, Ex E.

was decided at the time of HCFI's formation that this purpose could best be achieved by a campaign of public education and by protecting MQC3 from the vicissitudes of politics through a constitutional amendment. (Emphasis added.)³

You further admit in your answer that "[i]t was understood that at the beginning, one of [HCFI's] principle activities would be to assist and provide financial support to [Citizens] in order to re-establish the [MQC3]."⁴ On March 13, 2012, HCFI's Articles of Incorporation were filed with the Michigan Department of Licensing and Regulatory Affairs, identifying the incorporators as Hoyle, DeLisle, and Thomas, and appointing them as the only three members of HCFI's Board of Directors.⁵ Thomas appointed Robert Allison, Director of Governmental Affairs for SEIU Healthcare MI⁶, as her alternate director.⁷

On March 2, 2012, the very next day following the incorporation of HCFI, the Citizens ballot question committee was formed.⁸ The treasurer of Citizens was Hoyle, one of the three individuals who incorporated HCFI. Both HCFI's Articles of Incorporation and Citizens' Statement of Organization list the same address as the registered office of HCFI and the mailing address of Citizens.⁹

HCFI held its organizational meeting on March 22, 2012. At that meeting, the HCFI Board of Directors passed a motion requiring that all checks or wire transfers above \$5,000 must be expressly and specifically approved by the Board.¹⁰ Also during this meeting, "[t]he Directors discussed three projects and/or requests for financial support [.]"¹¹ One of these projects was "[a] Constitutional ballot measure to establish permanently, a registry like that being run by the MQC3 [.]"¹² The three Directors unanimously approved a wire transfer of \$450,000 from HCFI to Citizens.¹³

Hoyle was one of only three directors of HCFI and simultaneously served as the treasurer of Citizens. The HCFI directors were required to approve every check or wire transfer made to Citizens (since all exceeded the \$5,000 threshold requiring a vote of the Board). This enabled Hoyle, in his dual role as Citizens' treasurer and HCFI director, to know when Citizens required an infusion of funds and authorize transfers from HCFI accordingly. The transfers often coincided with substantial expenditures by Citizens.¹⁴

³ Answer to Complaint, pg. 3.

⁴ Answer to Complaint, pg. 4.

⁵ Answer to Complaint, Ex. F.

⁶ SEIU Healthcare Michigan 2012 LM-2.

⁷ Answer to Complaint, Ex. G.

⁸ Citizens' Statement of Organization.

⁹ Answer to Complaint, Ex. G, and Citizens' Statement of Organization.

¹⁰ The Board also authorized Thomas, who had been named Secretary-Treasurer, to make wire transfers when directed by the Board. Answer to Complaint, Ex. G.

¹¹ Answer to Complaint, Ex. G.

¹² *Id.*

¹³ *Id.* This transfer represented 90% of HCFI's funds.

¹⁴ For example, on June 21, 2012, Citizens' cash on hand was \$66,435.40, until a \$250,000 transfer was received from HCFI one day later. That very day, June 22, 2012, Citizens made an expenditure of \$219,305.45 to PCI

Indeed, from March 2012 until the November 6, 2012 general election, HCFI solicited and received contributions from various SEIU organizations, and then made contributions in corresponding amounts to Citizens – in some cases transferring as much as \$1.25 million to Citizens on the very same day it received funds from an SEIU organization.¹⁵ According to the campaign statements filed by Citizens and belatedly filed by the Home Care First ballot question committee, HCFI received and transferred \$9.36 million to Citizens during the 2012 election cycle. HCFI was the sole contributor to Citizens, save for a \$150 contribution from the Dearborn Democratic Club. In other words, 99.9984% of Citizens' contributions came from a handful of SEIU organizations via transfers from HCFI.

While HCFI was collecting contributions and funneling them to Citizens, and Citizens was identifying HCFI as its single contributor on campaign statements filed pursuant to the MCFA, SEIU International formed its own ballot question committee¹⁶ and began reporting the contributions it was making in support of Proposal 4. Although Citizens was reporting that it was receiving contributions exclusively from HCFI, SEIU International disclosed that it made \$4,808,000 million in contributions to Citizens *directly*.¹⁷ However, SEIU International subsequently filed an amended Pre-General campaign statement on October 31, 2012, which reflected no direct contributions to Citizens and \$4,458,000 in contributions to HCFI.

At the end of October 2012, after SEIU International publicly disclosed its contributions to support the ballot question, HCFI determined that it, too, should form a ballot question committee "out of an abundance of caution" since it had solicited and received contributions for the purpose of supporting Proposal 4.¹⁸ On October 30, 2012 (the day before the SEIU International amended its Pre-General campaign statement to reflect contributions made to HCFI instead of Citizens), HCFI filed a Statement of Organization for a ballot question committee.

Under the MCFA, a group of persons acting jointly constitutes a committee once the monetary threshold is met. MCL 169.203(4). Here, Hoyle, DeLisle, and Thomas acted in concert to solicit funds from SEIU organizations that were ultimately spent by Citizens in support of Proposal 4. They were required to form a *single* committee that would disclose the source and amount of the contributions it received and the expenditures it made. That committee ought to have been Citizens. Instead, Hoyle, DeLisle, and Thomas devised a scheme by which contributions from SEIU organizations would purportedly pass through HCFI on their way to Citizens, but HCFI would refrain from disclosing the sources of those contributions. In essence, the contributions made by the SEIU affiliates and expenditures made by Citizens were artificially divided between

Consulting. This same-day transfer and expenditure enabled Citizens to pay a bill which it otherwise would have been unable to afford.

¹⁵ See, e.g., the pre-general campaign statement belatedly filed by the Home Care First ballot question committee, which received \$250,000 from SEIU Healthcare MI on 9/27/12 and \$1,000,000 from SEIU International Ballot Question Committee on 9/28/12, then subsequently made two contributions totaling \$1.25 million to Citizens on 9/28/12.

¹⁶ SEIU International formed its committee on August 28, 2012 and filed its Statement of Organization with the Department on September 7, 2012.

¹⁷ SEIU International Ballot Question Committee Pre-General campaign statement filed October 26, 2012 (original).

¹⁸ Answer to Complaint, pg. 9 and Ex. G.

two entities, HCFI and Citizens, thwarting the disclosure purposes of the MCFA. Funds solicited and received by HCFI for the purpose of supporting a ballot question were not HCFI's funds; they were Citizens' funds and should have been reported as contributions from the various SEIU organizations.

This bifurcation enabled Hoyle, DeLisle, and Thomas to conceal the true funding source behind Proposal 4, and deprived voters of this vital information until after Election Day.

Secondary Depository and Commingling of Funds

Under the MCFA, a committee "shall have 1 account in a financial institution in this state as an official depository for the purpose of depositing all contributions received by the committee . . . and for the purpose of making all expenditures." MCL 169.221(6). Secondary depositories "shall be used for the sole purpose of depositing contributions and promptly transferring the deposits to the committee's official depository." *Id.* In addition, section 21(12) prohibits a committee from commingling contributions that it receives "with other funds of an agent of the committee or of any other person."¹⁹ A person who violates section 21 of the Act is subject to a civil fine of not more than \$1,000.00. Section 24 of the Act requires a committee to "list the name and address of each financial institution in which a secondary depository is or is intended to be located." MCL 169.224(2)(c). A person that fails to disclose the existence of a secondary depository is subject to a civil fine of not more than \$1,000.00. MCL 169.215(15).

Citizens omitted a secondary depository from its Statement of Organization, yet it received contributions that were initially deposited into HCFI's account and subsequently transferred to Citizens' official depository account. Under this arrangement, HCFI's account functioned as a secondary depository for Citizens. There were 49 transactions conducted through this undisclosed secondary depository – 31 contributions and 18 expenditures. Because Citizens did not list a secondary depository on its Statement of Organization, the Department concludes that there may be a reason to believe that Citizens violated section 24 of the Act.

Section 21 requires contributions deposited into a secondary depository to be "promptly" transferred to the committee's official depository. A review of the campaign statements filed shows that on March 23, 2012, SEIU Healthcare MI made a \$500,000 contribution which was deposited into HCFI's bank account, but only \$450,000 of this amount was transferred to Citizens' account on that day. The remaining \$50,000 was not transferred to Citizens' account until June 5, 2012, 74 days later.

Additionally, contributions to Citizens were commingled with funds belonging to HCFI when they were deposited into HCFI's account. The Department finds that 49 transactions occurred through this commingled account.

An analysis of the campaign statements filed by both Citizens and the HCFI belatedly-formed ballot question committee also reveals several instances where HCFI purportedly transferred more money to Citizens than it had available. For example, based on HCFI's reported

¹⁹ Under the Act, a person includes a corporation. MCL 169.211(2).

contributions and expenditures, it appears that HCFI transferred \$1.6 million to Citizens on September 6, 2012 when it only had \$1.56 million available. HCFI does not report receiving another contribution until September 11, 2012 to cover this deficit. On September 24, 2012, HCFI appears to have transferred \$350,000 to Citizens when it only had \$310,000 available. It was 3 days before HCFI received a contribution to cover this deficit. HCFI also appeared to transfer more money than it had available on September 28, 2012 (\$40,000 deficit), October 4, 2012 (\$20,000 deficit), and October 12, 2012 (\$20,000 deficit). One of three things occurred – 1) HCFI’s bank allowed it to make a transfer to another account in an amount that would overdraw HCFI’s bank account by tens of thousands of dollars, which the Department finds improbable; 2) HCFI and Citizens shared the same bank account and there was no physical transfer of money; or 3) Citizens reports and the reports that were belatedly filed after the election are incomplete or inaccurate.

Because the funds appear to have been commingled and were not promptly transferred to the Citizens account, the Department concludes there may be reason to believe Citizens violated section 21 of the Act.

Inaccurate or Incomplete Reports

Section 34 of the MCFA requires ballot question committee to timely file complete and accurate campaign statements. A treasurer who files an incomplete or inaccurate statement or report is subject to a civil fine of up to \$1,000.00 or the amount of the undisclosed contribution, whichever is greater. MCL 169.234(7).

The Legislature has made it clear that an important purpose of the Act is to make public the source of the funds behind a registered ballot question committee. In fact, as recently as July 3, 2012, the Legislature amended the Act to enhance the penalty for the non-disclosure of contributions to a ballot question committee and to require a ballot question committee to file additional campaign statements to provide more timely information regarding the source the committee’s funds to the public.²⁰ 2012 PA 277 increased the highest penalty for a violation of section 34 of the Act from \$1,000.00 to the amount of the undisclosed contribution.

When Hoyle, DeLisle, and Thomas incorporated HCFI and Hoyle formed Citizens, they attempted to evade the disclosure provisions of the MCFA by artificially dividing contributions and expenditures between two committees. The enclosed table illustrates the total contributions obtained by Citizens, by funneling the money through HCFI, that were hidden from public view prior to the 2012 November election. It includes 31 distinct contributions from SEIU entities, totaling \$9.36 million, between March and November, 2012.

The Department notes that in response to the complaint, you contend that “SEIU’s support for Proposal 4 was not a closely-held secret[,]” and provided several newspaper articles in support of your position. Certainly, statements made to the news media do not suffice where the Act requires public disclosure of a committee’s financial activity through the filing of campaign

²⁰ Prior to Public Act 277 of 2012, a treasurer or other person responsible for report preparation who failed to disclose a contribution on a report was subject to a fine of up to \$1,000.00.

statements. The Department further recognizes that the reports you have provided tend to show that the opponents of the proposal publically raised the issue of SEIU's interest in placing a provision for home care workers in the Michigan Constitution, but they also bolster the fact that other than the contributions reported by SEIU International, no one knew where the money for the ballot question was coming from. Further, despite possessing intimate knowledge of Citizens' and HCFI's finances and thus the original source of Citizens' funds, when Hoyle was asked by The Detroit News right before the 2012 November election to disclose the donors to Home Care First, he surprisingly responded, "I think it's safe to say that workers and advocacy groups on behalf of seniors and disability groups are funding it."²¹

Additionally, on its original 2012 Post-General campaign statement, SEIU International reported 2 separate contributions to Citizens on October 25, 2012 – one for \$397,000 and one for \$200,000. HCFI and Citizens reported this as a single \$597,000 contribution. SEIU International subsequently filed an Amended 2012 Post-General campaign statement, which omits the \$200,000 contribution to Citizens. You acknowledge in your answer to the complaint that this amendment "corrected one erroneous entry,"²² but Citizens still reports receiving and expending this \$200,000, and has not disclosed any alternate source for these funds.

In short, the belated revelations of the source of HCFI's funds thwarted the disclosure purposes of the MCFA and deprived the electorate of any meaningful opportunity to discover the ultimate source of Citizens' funds prior to Election Day. There was no public disclosure of the contributions from various SEIU groups until 8 days after the election. Because the Department concludes that the functions of gathering contributions and making expenditures was artificially bifurcated between two entities and that Citizens failed to report the true source of its contributions, the Department finds there may be a reason to believe Citizens violated section 34 of the Act.

Late Contribution Reports

The MCFA requires committees to report late contributions by filing a late contribution report within 48 hours of receipt of the contribution. MCL 169.232(1). Citizens was required to file three late contribution reports for 6 contributions purportedly received from various SEIU organizations (not HCFI) on October 25, 30, and November 2, 2012. Although Citizens filed late contribution reports, they erroneously identify HCFI as the source of these late contributions. Based on these facts, the Department concludes there may be a reason to believe Citizens violated section 32 of the Act.

²¹ The Detroit News, Chad Livengood, November 5, 2012, available at <http://www.detroitnews.com/article/20121105/POLITICS01/211050346>. While those groups may have wanted to the proposal to pass, they certainly were not the source of funding behind HCFI or Citizens. When Hoyle made that statement, he was well aware that all of the funding for Citizens had actually come from a few SEIU organizations.

²² Answer to Complaint, pg. 5

Michael J. Hodge
Andrew Nickelhoff
February 7, 2014
Page 8

Proposed Resolution

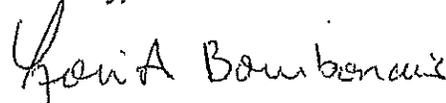
Therefore, based on the foregoing, the Department finds that there may be reason to believe that Citizens violated the MCFA. MCL 169.215(10). Having made this determination, the Department is required by law to attempt to resolve this matter informally. *Id.* The Department now offers you this opportunity to informally resolve the complaint by executing the enclosed conciliation agreement, which requires Citizens to pay a civil fine to the State of Michigan in the amount of \$256,000.00. This amount represents the following:

Secondary Depository MCL 169.221(6), (13), 224(2)(c)	49 transactions \$1,000.00 per violation	\$49,000.00
Commingleing of Funds MCL 169.221(12), (13)	49 transactions \$1,000.00 per violation	49,000.00
Incomplete or Inaccurate Campaign Statements MCL 169.234(7)	31 contributions \$5,000.00 per violation	155,000.00
Incomplete or Inaccurate Late Contribution Reports MCL 169.232, 215(15)	3 inaccurate reports \$1,000.00 per violation	3,000.00
TOTAL		\$256,000.00

If Citizens accepts this settlement, the executed conciliation agreement and payment in full must be submitted to this office on or before February 21, 2014. Payment must be made by check or money order payable to the State of Michigan; please include the notation, "Conciliation Agreement, Attn: Bureau of Elections" on your check or money order.

Please be advised that if the Department is unable to resolve this complaint informally, it is required by MCL 169.215(10)-(11) to commence an administrative hearing to enforce the civil penalties provided by law. "If after a hearing the secretary of state determines that a violation of this act has occurred, the secretary of state may issue an order requiring the person to pay a civil fine equal to triple the amount of the improper contribution or expenditure plus not more than \$1,000.00 for each violation." MCL 169.215(11).

Sincerely,



Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

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November 2, 2020

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

BY EMAIL TRANSMISSION
Adam Fracassi fracassia@michigan.gov

***Re: LaBrant v. Unlock Michigan; Campaign Finance Complaint No. 2020-09-158-21;
Response to Campaign Finance Complaint (the "Complaint") Filed by Robert LaBrant (the
"Complainant") dated September 9, 2020***

Dear Mr. Fracassi:

This office represents Unlock Michigan (the "Respondent") in the above-referenced matter. We have received your letter dated October 14, 2020, which contained the Complaint. As your October 14, 2020 letter indicates, the Complaint makes the following allegations:

"Mr. LaBrant alleges that Unlock Michigan knowingly filed incomplete and inaccurate campaign statements by failing to disclose the source of contributions solicited by Michigan Citizens for Fiscal Responsibility."

Although the Complaint certainly makes this allegation, please consider the following relevant questions which are conspicuously left unanswered and completely ignored by the Complaint:

Where in the Complaint does it even allege that Unlock Michigan knows the source of any contributions solicited by Michigan Citizens for Fiscal Responsibility?

[ANSWER: Nowhere. In fact, on Page 2 of the Complaint, the Complaint readily admits that donors to Michigan Citizens for Fiscal Responsibility are not disclosed.]

Where in the Complaint does it even allege any obligation imposed upon Unlock Michigan by the Michigan Campaign Finance Act to know or even inquire as to the source of any contributions solicited by Michigan Citizens for Fiscal Responsibility?

[ANSWER: Nowhere]

November 2, 2020
Adam Fracassi
Page 2 of 4

Where in the Complaint is there any evidence of even one contribution which was “solicited by [Michigan Citizens for Fiscal Responsibility] for Unlock Michigan” or was “for Unlock Michigan solicited by [Michigan Citizens for Fiscal Responsibility]” as claimed on Page 4 of the Complaint? [ANSWER: Nowhere]

Where in the Complaint does it even allege any obligation imposed upon Unlock Michigan by Section 24 of the Michigan Campaign Finance Act to name a contributor (which is a completely separate entity) as a secondary depository on Unlock Michigan’s Statement of Organization? [ANSWER: Nowhere]

Where in the Complaint is there any evidence that Michigan Citizens for Fiscal Responsibility is somehow an agent of Unlock Michigan such that donations received by Michigan Citizens for Fiscal Responsibility are contributions to Unlock Michigan triggering some sort of commingling situation in violation of Section 21 of the Michigan Campaign Finance Act as referenced on Page 4 of the Complaint? [ANSWER: Nowhere. In fact, to be clear, Michigan Citizens for Fiscal Responsibility is not an agent and/or independent contractor of Unlock Michigan. An agency is defined as "a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions." *Breighner v Mich. High Sch Athletic Assoc*, 255 Mich.App. 567, 582-583 (2003), quoting *Black's Law Dictionary* (7th ed). In Michigan, whether a principal-agent relationship exists is determined by whether the principal has the right to control the agent. *Little v Howard Johnson Co*, 183 Mich.App. 675, 680 (1990). Significantly, the Complaint does not (and cannot) allege that there is any express or implied contract between Unlock Michigan and Michigan Citizens for Fiscal Responsibility because no such contract exists. Moreover, Unlock Michigan certainly has no right to control Michigan Citizens for Fiscal Responsibility or any aspect of its activities. Therefore, the Complaint does not (and cannot) allege any fact to support its unsubstantiated allegation that Michigan Citizens for Fiscal Responsibility is an agent and/or independent contractor of Unlock Michigan.]

Where in the Complaint is there any evidence for the following defamatory statement set forth on Page 3 of the Complaint: “Unlock Michigan and [Michigan Citizens for Fiscal Responsibility] have acted in concert to avoid disclosure of the actual contributors to Unlock Michigan.”? [ANSWER: Nowhere]

Where in the Complaint is there any evidence for the following defamatory statement set forth on Pages 3 and 4 of the Complaint: “[Michigan Citizens for Fiscal Responsibility] has laundered \$695,200 into Unlock Michigan without naming one person by name, address, amount and date.”? [ANSWER: Nowhere]

The Complainant attached to his Complaint a copy of a Michigan Department of State’s February 7, 2014 letter (the “2014 determination”) regarding a prior Michigan Department of State’s

determination that Complainant apparently believes supports his position here. Yet, the facts involved in that determination are inapposite and so have no probative value here. For instance:

1. The 2014 determination involved 2 committees which had a director/officer in common—Unlock Michigan and Michigan Citizens for Fiscal Responsibility have no director or officer in common.
2. In the 2014 determination, 99.984% of the money in one committee's account came from contributions raised by the other committee's efforts—not true with respect to Unlock Michigan and Michigan Citizens for Fiscal Responsibility.
3. In the 2014 determination, one of the principal activities of one of the committees was to “assist and provide financial support” to the other committee—not true with respect to Unlock Michigan and Michigan Citizens for Fiscal Responsibility, particularly since Unlock Michigan was formed 10 years after Michigan Citizens for Fiscal Responsibility!
4. In the 2014 determination the 2 committees were formed within days of each other—not true with respect to Unlock Michigan (formed in 2020) and Michigan Citizens for Fiscal Responsibility (formed in 2010).
5. In the 2014 determination both committees listed the same address as their official address—not true with respect to Unlock Michigan and Michigan Citizens for Fiscal Responsibility.
6. In 2014, the Michigan Department of State found that the two committees “shared the same bank account and there was no physical transfer of money” between the two committees—not true with respect to Unlock Michigan and Michigan Citizens for Fiscal Responsibility.
7. In the same way, the 2014 determination involved transfers of funds by one committee that “often coincided with substantial expenditures” by the other committee—not true with respect to Unlock Michigan and Michigan Citizens for Fiscal Responsibility.
8. In the 2014 determination, with the exception of a single contribution, one committee was the sole contributor to the other committee—not true with respect to Unlock Michigan and Michigan Citizens for Fiscal Responsibility because Unlock Michigan has received contributions from over 2200 different contributors!

9. Also, in the 2014 determination, as evidence that the first committee was soliciting contributions for the “purpose of making an expenditure” to the second committee (see MCL 169.203(4)), a contributor to the first committee actually reported that the second committee was the recipient of these contributions—not true with respect to Unlock Michigan and Michigan Citizens for Fiscal Responsibility.

Facts matter. And so, the 2014 determination attached by the Complainant provides absolutely no support for the Complaint or for granting the Complainant’s requested relief here. On the contrary, the 2014 determination, and the facts it was premised on, support the Department finding that no violations of the Michigan Campaign Finance Act (“MCFA”) have occurred.

Thank you for your consideration of our comments in this matter. If you have any questions, please contact me at mc@mikecoxlaw.com, so either Unlock Michigan or I can address any question or provide more information. Because the Complaint does not adequately plead any MCFA violations by Unlock Michigan, if the Complainant styles or states new allegations to address that deficiency in his rebuttal or reply, then Unlock Michigan respectfully requests the opportunity to respond to what would become a new Complaint.

Again, thank you for your consideration of our arguments and this response.

Very truly yours,

THE MIKE COX LAW FIRM, PLLC



Michael A. Cox

By email transmission: Elections@Michigan.gov

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

Re: Rebuttal to the Response filed by Unlock Michigan received by me on January 19, 2021

Dear Mr. Fracassi:

On September 28, 2020, Attorney General Dana Nessel announced a criminal investigation of Unlock Michigan.

I filed two complaints, the first, against Michigan Citizens for Fiscal Responsibility (MCFR); the second, against Unlock Michigan. The two complaints are interconnected and should be resolved together because MCFR and Unlock Michigan were part of a coordinated effort to conceal the true identity of the source of the \$695,200 MCFR contributed in six checks to Unlock Michigan between June 9, 2020 and July 31, 2020, in violation of the Michigan Campaign Finance Act (MCFA).

In my October 1, 2020, rebuttal to the MCFR Response I requested that the Bureau of Elections seek bank information from MCFR in the same manner as the Bureau of Elections did in a March 6, 2014 letter to the Michigan Community Education Fund (MCEF) which requested the following:

1. Did MCEF solicit any funds for the purpose of making a contribution to Detroit Forward?
2. Did MCEF receive funds for any purpose other than making a contribution to Detroit Forward?
If so, what is the total amount received for other purposes?
3. Did MCEF make any expenditures within the meaning of MCL 169.203 other than the following contributions to Detroit Forward?
 - a. 10/17/2013 \$25,000
 - b. 10/20/2013 \$39,000
 - c. 10/28/2013 \$70,000
 - d. 10/28/2013 \$15,000
4. What type of accounting method does MCEF use (First-In/First-Out, Last-In/First-out, etc.)?

Please also provide in writing:

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

The attorney for MCEF responded to the Bureau of Elections with a letter and affidavit dated March 13, 2014 providing responses to those questions. Those answers to the Bureau of Elections served as the

basis for further investigation by the Bureau of Elections which ultimately resulted in MCEF signing a conciliation agreement resulting in MCEF registering itself as a committee under MCL 169.203(4) and disclosing the true identity of its contributors by name, address, date, and amount.

If the Bureau of Elections believes it is not empowered to treat the MCFR complaint the same way the Bureau responded to the 2013 MCEF complaint, which serves as the predicate for the complaint against Unlock Michigan, then the Bureau of Elections should refer my two complaints, the two responses and my two rebuttals to Attorney General Nessel and her investigation of Unlock Michigan.

As part of Attorney General Nessel's investigation into Unlock Michigan, she and her investigators certainly have the power to place Heather Lombardini, President of MCFR under oath and ask her about meeting(s) she may have arranged and/or attended with Sen. Mike Shirkey and/or other Republican legislators with members of the lobbying community where funds for Unlock Michigan were solicited. Ms. Lombardini should also be asked if MCFR was suggested to be the recipient of funds for those persons preferring not to give to Unlock Michigan directly. Ms. Lombardini should be asked if MCFR, did in fact, receive any checks that were deposited into MCFR's bank account between June 1, 2020 and July 31, 2020.

Ms. Lombardini should be asked to provide the Attorney General and her investigators with records of MCFR's bank balances, deposits, and expenditures between June 1, 2020 and July 31, 2020. If those financial records are not provided voluntarily, the Attorney General's investigation can seek them with a subpoena.

If evidence is produced that MCFR made deposits into its bank account during that time period, then MCFR meets the definition of "committee" under MCL 169.203(4) and was required to register as a ballot question committee and file all required campaign finance statements disclosing the true identity of its contributors. Such a finding would be dispositive in confirming these three allegations made in my complaint:

1. Unlock Michigan did not designate a secondary depository on their Statement of Organization and since 74% of all Unlock Michigan funds have passed through MCFR; MCFR has been acting as a secondary depository of Unlock Michigan. MCFR's bank account should be named as a secondary depository on Unlock Michigan's Statement of Organization. Contributions for Unlock Michigan solicited by MCFR, with the understanding that the contributor's identity would remain unidentified. Those contributions were improperly deposited into MCFR's account. MCL 169.215 (15), provides that a person that fails to disclose the existence of a secondary depository is subject to a civil fine of not more than \$1,000.
2. Contributions solicited by MCFR for Unlock Michigan and deposited initially in MCFR's account were improperly commingled with MCFR funds. MCL 169.221 (12) prohibits Unlock Michigan from commingling contributions that it receives "with other funds of an agent of the committee or any other person." A person who violates MCL 169.221 is subject to a civil fine of not more than \$1,000.

3. Unlock Michigan knowingly filed incomplete and inaccurate campaign statements by failing to disclose the true source of the contributions solicited by MCFR. MCL 169.234 (7) provides that if a ballot question committee knowingly files an incomplete or inaccurate statement or report the treasurer is subject to a civil fine of not more than \$1,000 or the amount of the undisclosed contribution, whichever is greater.

The Bureau of Elections should complete their investigation, perhaps working with the Attorney General and her investigators to make a finding that money was laundered through MCFR that substantially funded Unlock Michigan. The Bureau of Elections should then declare that there may be reason to believe that Unlock Michigan has violated the MCFA and begin to resolve this matter informally as the MCFA requires. In offering conciliation, the Bureau should assess all penalties or fees necessary to bring Unlock Michigan into compliance with the MCFA.

Sincerely,

s/Robert S. LaBrant

Robert S. LaBrant
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Perry, MI 48872
(517) 881-5146
bob@boblabrant.com



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

April 9, 2021

Bob LaBrant
12422 Pine Ridge Drive
Perry, MI 48872

Via Email

Dear Mr. LaBrant:

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

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

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

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

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

² Committee ID No. 519796.

\$100,000 July 20, 2020

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

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

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

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

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

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

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

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

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

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

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

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

Turnaround Detroit v. Detroit Forward,

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

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

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

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

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

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

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

³ Articles of Incorporation, available at:

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

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

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

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

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

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

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

Sincerely,



Adam Fracassi
Bureau of Elections
Michigan Department of State

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