

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

Re: Illegal Contributions Received by Jocelyn Benson for Secretary of State; Committee Identification No. 514336, P.O. Box 21369, Detroit, MI. 48221 Telephone No. 517.881.7490

This Complaint outlines an attempt by Jocelyn Benson for Secretary of State (the “Benson Campaign”) to exceed Michigan candidate contribution limits. The Benson Campaign has disclosed accepting contributions from one donor in excess of the contribution limits in MCL 169.252.¹

I. Background

MCL 169.252 sets limits for individual contributions to candidates for public office. The current legal contribution limit for an independent committee is 10 times the amount permitted a person, which is \$71,500 in an election cycle.² In its latest campaign finance disclosure, the Benson Campaign reported it collected \$81,150 from the Michigan Regional Council of Carpenters and Millwrights. This amount is \$10,000 in excess of the legal limits.³

Michigan Regional Council of Carpenters and Millwrights	\$26,500	12/20/2021
Michigan Regional Council of Carpenters and Millwrights	\$10,000	10/17/2021
Michigan Regional Council of Carpenters and Millwrights	\$25,000	12/21/2020
Michigan Regional Council of Carpenters and Millwrights	\$20,000	06/02/2019

II. Legal Analysis

The Text of the MCFA prohibits the Benson Campaign’s Actions

Michigan law is clear regarding contribution limits to statewide candidates – an independent committee may only contribute \$71,500 in an election cycle.⁴ As the Michigan Department of State recognizes:⁵

“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

¹Jocelyn Benson for Secretary of State, July Quarterly 2021, <https://cfrsearch.nictusa.com/documents/513360/details?type=web>.

² MCL 169.252.

³ See note 1.

⁴ MCL 169.252.

⁵ Interpretative Statement (IS) issued to Constance Cumbey dated December 28, 1979.

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.”⁶

The Michigan Constitution vests the legislative power of the State of Michigan—i.e., the power to enact substantive law—in the Legislature.⁷ 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.”⁸

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 exclusive 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.”⁹

As recognized by the Michigan Court of Appeals in *Andrews v. Branigin*,¹⁰ 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*.¹¹ Discussing *Rush*, the

⁶ MICH. CONST. 1963 art. III, § 2.

⁷ MICH. CONST. 1963 art. IV, § 1.

⁸ MICH. CONST. 1963 art. II, § 4.

⁹ Op. Att’y Gen. 5194 (1977) (emphasis added).

¹⁰ *Andrews v. Branigin*, 21 Mich. App 568, 175 N.W.2d 839 (1970).

¹¹ *Common Council of City of Detroit v. Rush*, 82 Mich. 532, 46 N.W. 951 (1890).

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.”¹² 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.¹³

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.”¹⁴

“Public officers have and can exercise only such powers as are conferred on them by law.”¹⁵ 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.”¹⁶ Stated differently, “an agency's interpretation cannot overcome the plain meaning of the statute.”¹⁷

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 Benson Campaign in excess of \$71,500 in an election cycle.

III. Conclusion

The Attorney General, pursuant to MCL 169.215(9), should swiftly investigate the Benson Campaign's illegal circumvention of the contribution limits under MCL 169.252 of the MCFA. As the elected Secretary of State, Ms. Benson should be fully aware of contribution limits.

Secretary Benson, Michigan's chief elections official and an Ivy League educated attorney, has either intentionally broken Michigan's campaign finance laws, or does not understand the fundamentals of campaign finance contribution limits. As the elected official responsible for enforcing the laws, Jocelyn Benson should know better, and it is incumbent upon the Attorney General to take immediate action to remedy this blatant violation.

The penalties for the Respondent's violation of Section 52 of the MCFA violation is: “A person who knowingly violates Section 52 is guilty of a misdemeanor punishable, if the person is an individual, by a fine of not more than \$1,000 or imprisonment for not more than 90 days, or both, or, if the person is not an individual, by a fine of not more than \$10,000.00” MCL 169.252(9).

¹² *Andrews*, 21 Mich. App. at 572, 175 N.W.2d at 841.

¹³ MICH. CONST. 1963 art. II, § 4

¹⁴ *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)).

¹⁵ *Id.*

¹⁶ *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)).

¹⁷ *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)).

Accordingly, the Complainant respectfully requests that the Attorney General investigate the violation set forth in this Complaint, and determine that the Respondent has violated Section 52 of the MCFA and to assess all appropriate penalties.

In addition to the penalties put forth by the Michigan Campaign Finance Act, I am calling on Secretary Benson to recuse herself from any consideration of campaign finance complaints concerning Section 52 of the MCFA. Secretary Benson's own violation of Section 52 of the Act make her an inherently biased party, and unable to opine in a fair manner.

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: February 1, 2022

Eric Ventimiglia
Executive Director, Michigan Rising Action

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30217
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

February 9, 2022

Jocelyn Benson
c/o Jocelyn Benson for Secretary of State
P.O. Box 21368
Detroit, MI 48221

Re: *Ventimiglia v Benson*, Campaign Finance Complaint

Dear Ms. Benson:

A formal complaint has been filed by Eric Ventimiglia, the Executive Director of Michigan Rising Action, against "Jocelyn Benson for Secretary of State," alleging violations of the Michigan Campaign Finance Act, MCL 169.201, *et seq.* The complaint was referred to the Department of Attorney General as required by MCL 169.215(9). A copy of the complaint is enclosed with this letter.

The purpose of this letter is to inform you of the complaint and provide you with an opportunity to respond. **If you wish to file a written response to the complaint, please do so within 15 business days of the date of this letter.** Your response may include any statement and supporting documents you would like to be considered. You may submit your response to my attention by email at: BoothJ2@michigan.gov

If you have any questions, please do not hesitate to contact me at the email address noted above.

Sincerely,

Joshua O. Booth

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

Encl.- Complaint

Booth, Joshua O. (AG)

From: Booth, Joshua O. (AG)
Sent: Tuesday, February 22, 2022 11:43 AM
To: 'Richard Wiener'
Subject: RE: Benson v Ventimiglia - Response

Good morning Mr. Wiener,

Sorry I missed your call earlier. Thank you for the response. No need to send a hard copy in addition to the electronic response.

Best,
Josh

From: Richard Wiener <Rick@RickandRaj.com>
Sent: Tuesday, February 22, 2022 11:19 AM
To: Booth, Joshua O. (AG) <BoothJ2@michigan.gov>
Subject: Benson v Ventimiglia - Response

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

Dear Mr. Booth:

Attached please find the response to the complaint filed against the Jocelyn Benson for Secretary of State Committee. Please advise if you desire hard copy to be sent in addition to this electronic response.

Richard Wiener, Treasurer
Jocelyn Benson for Secretary of State
Phone: 517.881.7490
Email: rick@rickandraj.com



February 22, 2022

Joshua O. Booth
Division Chief, Opinions Division
Department of Attorney General
P.O. Box 30217
Lansing Michigan 48909

Re: *Ventimiglia v. Benson*, Campaign Finance Complaint

Dear Mr. Booth:

I am in receipt of your February 9, 2022 letter informing Jocelyn Benson for Secretary of State (the "Committee") that a formal complaint (the "Complaint") had been filed by Eric Ventimiglia, Executive Director of Michigan Rising Action, alleging that the Committee had violated the Michigan Campaign Finance Act (the "Act").^[1] The Complaint was originally submitted to the Bureau of Elections (the "BOE"), which forwarded it to your office for handling, given that the matter involved the Secretary of State. Your February 9 letter enclosed a copy of the Complaint and informed the Committee of the opportunity to respond within fifteen business days. Please consider this letter the response of the Committee.

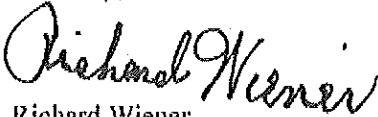
We do not dispute the Complaint's assertion that the Michigan Regional Council of Carpenters and Millwrights PAC (the "MRCC") provided aggregate contributions in the amount of \$81,500 during this election cycle. We also have no objection to the Complaint's summary of certain provisions of the Act and related Michigan campaign finance law. However, the provisions cited are inapplicable to the facts in this matter. In particular, the Complaint cites section 52(9) of the Act, which provides that "a person who *knowingly* violates" the Act's campaign contribution limits is subject to certain penalties.^[2] In filing the complaint, Mr. Ventimiglia may have been unaware that the overage had been quickly identified and corrected by the Committee, which had consulted the BOE to both self-report the overage and seek guidance on additional action—all well before the Complaint was filed. For your reference, below is a summary and timeline of the relevant events:

- On December 20, 2021, the Committee received a \$26,500 check from the MRCC, which appeared on its face, and as a stand-alone item, to be in compliance with contribution limit requirements set forth under the Act, but which caused the MRCC's aggregate contributions during the effective election cycle to exceed the limit under the Act by \$10,000. The check was deposited into the Committee's account on December 21, 2021.
- In January 2022, in connection with the regular review of its records in preparation for its campaign finance reporting, the Committee detected the overage.
- On January 25, 2022, the Committee contacted the BOE by phone to alert the BOE of the overage and to seek advice regarding corrective measures and proper disclosure.
- On January 25th, the Committee issued a \$10,000 check to the MRCC, refunding the amount of the overage (see check attached to this letter). The Committee was advised by the BOE to disclose the excessive contribution on its annual report, and to report the refund on its next disclosure.

The Committee has proceeded in reliance on the BOE's advice and intends to formally disclose the refund on its July 2022 report, which will cover activity for January 2022. In addition, on February 2, 2022, the Committee delivered to the BOE a letter formally disclosing the overage and establishing a record of its corrective action, even before the filing of the next campaign finance report. That letter is attached.

We submit that the Committee's quick and proactive measures to correct and disclose the overage clearly establish that the Committee did not "knowingly" violate the Act, as suggested by the Complaint. Furthermore, we are hopeful that your office finds that the Committee's actions taken on the direct advice of the BOE resolve the issue. In any case, we look forward to cooperating with your office on any further steps that may be necessary. Please do not hesitate to contact the Committee with any questions or if additional information is needed.

Sincerely,



Richard Wiener
Treasurer

[1] MCL 169.201 et seq.

[2] MCL 169.252(9) (emphasis added).

JOCELYN BENSON FOR SOS

DETROIT, MI 48221-1804

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1/25/2022

Date

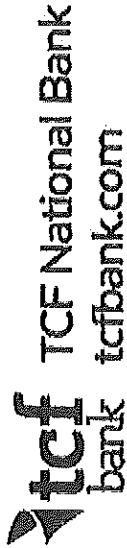
Pay to the Order of Michigan Regional Council of Carpenters ATC \$ 10,000

ten thousand + 00/100

Dollars



Photo Safe Deposits
Details on box



TCF National Bank
bank tcfbank.com

Suey R. M. G.

For Refund of contribution

MP

⑆ 2910700011⑆



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February 2, 2022

Michigan Department of State
Bureau of Elections
Post Office Box 20126
Lansing, MI 48901-0726

Via Email: Disclosure@Michigan.gov
Elections@Michigan.gov

To Whom it May Concern:

This letter is to provide additional details to the Bureau of Elections regarding a contribution reported on the 2021 Annual campaign finance report from Jocelyn Benson for Secretary of State ("the Committee"), ID 514336.

On December 20, 2021, the Committee received a contribution from the Michigan Regional Council of Carpenters PAC (ID 507878), which, when aggregated with prior contributions from the PAC, exceeded the contribution limits set forth by MCFA.

During the course of regular review of records and preparation of the 2021 annual report, the Committee identified the excess contribution and took two actions. First, the Committee promptly issued a refund to the donor. The refund check was issued January 25, 2022, and a copy is attached. Second, the Committee contacted the Michigan Bureau of Elections via phone to seek advice on the best practice for disclosing the contribution. BOE advised the Committee to disclose the excessive contribution on its annual report, and to report the refund on the following disclosure, covering activity for January 2022, to be filed in July 2022.

While the record of this refund will be included in the July 2022 disclosure, we are issuing this letter in advance to formally self-report the overage and ensure the public record reflects the Committee's prompt actions.

Please do not hesitate to contact us if you need additional information about this matter.

Sincerely,

Richard Wiener

Richard Wiener
Treasurer

Paid for by Jocelyn Benson for Secretary of State
PO Box 21368, Detroit MI 48221

Booth, Joshua O. (AG)

From: Booth, Joshua O. (AG)
Sent: Friday, February 25, 2022 9:03 AM
To: eventimiglia@michiganrisingaction.org
Cc: dwernholm@michiganrisingaction.org
Subject: "Jocelyn Benson for Secretary of State" Campaign Finance Complaint - Response/Reply
Attachments: Ventimiglia v Benson Response.pdf

Dear Mr. Ventimiglia,

I have been assigned to handle the complaint you and Michigan Rising Action filed against the "Jocelyn Benson for Secretary of State" campaign regarding contributions from the Michigan Regional Council of Carpenters and Millwrights. I sent the campaign a copy of the complaint and the campaign recently sent me a response. A copy of the response is attached. **If you would like to provide a reply to the response, please do so within 10 business days.** You may submit any reply, or any questions you have about this matter, to me via this email address.

Thank you for your time.

Best,
Josh

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

Booth, Joshua O. (AG)

From: Eric Ventimiglia <eventimiglia@michiganrisingaction.org>
Sent: Friday, March 11, 2022 3:50 PM
To: Booth, Joshua O. (AG)
Subject: Re: "Jocelyn Benson for Secretary of State" Campaign Finance Complaint - Response/Reply

Follow Up Flag: Follow up
Flag Status: Flagged

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Mr. Booth,

My response is as follows:

It is noted that the Bureau of Elections advised the Benson campaign that to remedy an excessive contribution, the remedy is to refund the excess contribution to the donor. Why did not Secretary of State Benson require the Whitmer Campaign to refund the \$3.5 million dollars in excess contributions to donors instead of allowing Whitmer to transfer to the Michigan Democratic Party?

Sincerely,
Eric Ventimiglia

On Fri, Feb 25, 2022 at 9:02 AM Booth, Joshua O. (AG) <BoothJ2@michigan.gov> wrote:

Dear Mr. Ventimiglia,

I have been assigned to handle the complaint you and Michigan Rising Action filed against the "Jocelyn Benson for Secretary of State" campaign regarding contributions from the Michigan Regional Council of Carpenters and Millwrights. I sent the campaign a copy of the complaint and the campaign recently sent me a response. A copy of the response is attached. **If you would like to provide a reply to the response, please do so within 10 business days.** You may submit any reply, or any questions you have about this matter, to me via this email address.

Thank you for your time.

Best,

Josh

Joshua O. Booth

Division Chief, Opinions Division

Michigan Department of Attorney General

Booth, Joshua O. (AG)

From: Booth, Joshua O. (AG)
Sent: Friday, March 25, 2022 3:38 PM
To: Richard Wiener
Subject: FW: "Jocelyn Benson for Secretary of State" Campaign Finance Complaint - Response/Reply

Mr. Wiener,

Below is Mr. Ventimiglia's statement in rebuttal to the response the campaign provided regarding the complaint submitted by Mr. Ventimiglia and Michigan Rising Action. Please note that the rebuttal statement consisted only of the email below; there were no attachments to the email.

Sincerely,
Josh

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

From: Eric Ventimiglia <eventimiglia@michiganrisingaction.org>
Sent: Friday, March 11, 2022 3:50 PM
To: Booth, Joshua O. (AG) <BoothJ2@michigan.gov>
Subject: Re: "Jocelyn Benson for Secretary of State" Campaign Finance Complaint - Response/Reply

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Thank you for your time.

Best,

Josh

Joshua O. Booth

Division Chief, Opinions Division

Michigan Department of Attorney General

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30217
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

April 18, 2022

Eric Ventimiglia, Executive Director
Michigan Rising Action
Via email: eventimiglia@michiganrisingaction.org

Re: *Ventimiglia v Jocelyn Benson for Secretary of State,*
Campaign Finance Complaint, dated February 1, 2022

Dear Mr. Ventimiglia:

The Department of State, as required by MCL 169.215(9), referred to this office the February 1, 2022, campaign finance complaint you filed against the Jocelyn Benson for Secretary of State campaign committee (the Campaign) alleging violations of the Michigan Campaign Finance Act (MCFA). This letter concerns the disposition of that complaint.

The complaint states that in this election cycle, the Campaign reported it collected \$81,500 in contributions from the Michigan Regional Council of Carpenters Political Action Committee (MRCC). The complaint goes on to allege that the Campaign thereby violated MCL 169.252, which limits contributions from such committees to \$71,500 in an election cycle.

A copy of the complaint was forwarded by this office to the Campaign. In response to the complaint, the Campaign acknowledged that the MRCC did give aggregate contributions in the amount of \$81,500 during this election cycle. The Campaign denied, however, that there was a "knowing" violation of the MCFA and therefore asserted that no penalty is appropriate. In support of that denial, the Campaign stated that the "excessive contribution" from the MRCC was received on December 20, 2021, and that it was discovered in January 2022. The Campaign further stated that on January 25, 2022, it contacted the Bureau of Elections (BOE) to report the overage and seek guidance. According to the Campaign, on that same date, the Campaign issued a refund of \$10,000 to the MRCC. In a February 2, 2022, letter to the BOE, the Campaign memorialized its actions and stated that, consistent with the advice given to the Campaign by BOE, the Campaign would

disclose the excessive contribution on its annual report and disclose the refund on the July 2022 disclosure report that covered activity for January 2022.

You submitted a statement in rebuttal to the Campaign's response in which you acknowledged "that the Bureau of Elections advised the Benson campaign that to remedy an excessive contribution, the remedy is to refund the excess contribution to the donor."¹

At issue in your complaint is MCL 169.252(2), which states that an independent committee such as the MRCC shall not make contributions to a candidate committee that, in the aggregate for that election cycle, are more than 10 times the amount permitted by a person other than an independent committee. Relatedly, the Campaign cannot accept a contribution that exceeds that limitation. MCL 169.252(7). The current contribution limit for a person other than an independent committee is \$7,150.² Therefore, the MRCC was not allowed to contribute, and the Campaign was not allowed to accept, more than \$71,500 in this election cycle.

It is not in dispute that the Campaign received \$81,500 in contributions from MRCC this election cycle. While this amount exceeds the \$71,500 limitation established by MCL 169.252, as noted by the Campaign, penalties are only imposed on "[a] person who knowingly violates" that statute. MCL 169.252(9). And Michigan courts have recognized that when it comes to allegedly illegal campaign contributions under the MCFA, "knowingly violates" means "something other than the fact of the transfer itself," and that the MCFA anticipates "[t]he occurrence of frequent unintended violations." *People v Weiss*, 191 Mich App 553, 560, 562 (1991). Therefore, the mere fact that the excessive contribution occurred does not mean that the Campaign "knowingly violated" MCL 169.252.

Instead, a "knowing" violation is akin to an actor "voluntarily and intentionally" violating the law. See e.g., *Weiss, supra* at 562 (quoting *Cheek v United States*, 498 US 192 (1991)). Stated differently, "knowingly" requires a "subjective desire or knowledge that the prohibited result will occur." See generally, *People v Gould*, 225 Mich App 79, 84-87 (1997) (cleaned up).

Here, based on the information that has been provided, there is no reason to believe that the Campaign voluntarily and intentionally accepted the MRCC's

¹ You also asked, "[w]hy did not Secretary of State Benson require the Whitmer Campaign to refund the \$3.5 million dollars in excess contributions to donors instead of allowing Whitmer to transfer to the Michigan Democratic Party?" That question is outside the scope of the complaint and will not be addressed.

² [2018 CPI MEMO With CONTRIBUTION LIMITS 640824 7.pdf \(michigan.gov\)](#)

Eric Ventimiglia
Page 3
April 18, 2022

December 20, 2021, contribution with a subjective desire to violate the MCFA. The information provided also shows that upon discovery of the excessive contribution, the Campaign sent a refund check to the MRCC for an amount that reduced the MRCC's aggregate contributions to the statutory limit, and also sought guidance from the BOE. Further, it is at least noteworthy that the Campaign took these actions even before the instant complaint was filed. Under these circumstances, there was an unintended violation of the MCFA that the Campaign took steps to remedy upon discovery. Because the Campaign did not "knowingly violate" MCL 169.252, no penalties are warranted, and the complaint is dismissed.

Sincerely,

Joshua O. Booth

Joshua O. Booth
Division Chief
Opinions Division

cc: Richard Wiener, Treasurer, Jocelyn Benson for Secretary of State (via email)