

Complaint Against:

*Gretchen Whitmer for Governor
Committee Identification No. 518014
325 S. Walnut
Lansing, MI 48933
Telephone No. 517.763.2955*

*Gretchen Whitmer
2520 Oxford Road
Lansing, MI 48911*

Complainant:

*Eric Ventimiglia
123 W. Allegan, Suite 770
Lansing, MI 48933
Telephone No. 586.216.4940*

Dated: July 26, 2021

***Filed Pursuant to MCL 169.215
and the Administrative Rules of the
Michigan Department of State
Bureau of Elections
Richard H. Austin Building, 1st Floor
430 W. Allegan
Lansing, Michigan 48918***

COMPLAINT

Complainant, Eric Ventimiglia, whose address is 123 W. Allegan, Suite 770, Lansing, MI 48933, Telephone: 586.216.4940, declares to the Michigan Secretary of State the following:

STATEMENT OF FACTS

1. Respondent Gretchen Whitmer (“Respondent Whitmer”) is a candidate for Governor.
2. Respondent Gretchen Whitmer for Governor (“Respondent Whitmer Committee”) is the candidate committee for Gretchen Whitmer.
3. On or about March 8, 2021, an aide to Respondent Whitmer’s office contacted a representative of an aircraft owner to ask whether the aircraft owner had an aircraft that could fly Respondent Whitmer to Florida for a personal visit. See Attachment 1, Letter from Christopher M. Trebilcock, Counsel to Respondent Gretchen Whitmer for Governor and Michigan Transition 2019, to the Honorable Steve Johnson, Michigan House of Representatives Oversight Committee Chair at 2 (May 27, 2021) (hereinafter referred to as the “Trebilcock Letter”).
4. After the request from Respondent Whitmer’s staff, the aircraft owner then arranged for Respondent Whitmer to fly on its aircraft. On March 10, 2021, the aircraft owner was provided with an itinerary for the flight and arranged for a flight to depart on March 12, 2021 and return on March 15, 2021 (hereinafter referred to as the “Florida Excursion”). Trebilcock Letter at 2.
5. On March 12, Respondent Whitmer flew from Capital Region International Airport in Lansing, Michigan to Palm Beach International Airport in West Palm Beach, Florida. See Charlie LeDuff, *Whitmer mooches billionaires’ plane as father makes miraculous recovery*, DEADLINE DETROIT (May 5, 2021); David Eggert, *Gov. Whitmer won’t discuss trip after reported use of private jet*, THE ASSOCIATED PRESS (May 7, 2021); *Whitmer visited father on plane shared by prominent GOP donors*, THE DETROIT NEWS, (May 6, 2021).
6. Upon information and belief, Respondent Whitmer did not inform Florida Department of Law Enforcement and/or the Palm Beach County Sheriff’s Office of her four-day Florida Excursion, which would have been standard protocol if there were any sort of security concerns with her travel.
7. On March 15, Respondent Whitmer returned to Lansing on the same aircraft. Trebilcock Letter at 2. This private aircraft was a Gulfstream jet. See FAA Registry, N-Number Inquiry Results, N62AE (accessed July 18, 2021).
8. According to Respondent Whitmer’s counsel, the only passengers on the flights were the Governor, her security detail, and her daughters. Trebilcock Letter at 2
9. There can be no dispute that Respondent Whitmer’s Florida Excursion was a personal expense, unrelated to any campaign activity or official business:
 - a. The exclusive purpose of the trip was to visit her father. See Paul Egan, *Spokeswoman: Gov. Gretchen Whitmer traveled to visit her ill father, Richard Whitmer*, DETROIT FREE PRESS (April

19, 2021); Craig Mauger, *Whitmer traveled out of state to visit her father*, THE DETROIT NEWS, (April 19, 2021).

b. According to Respondent Whitmer's counsel, the Florida Excursion was for the purpose of "visit[ing] her father." Trebilcock Letter at 2.

c. According to a May 12, 2021, article entitled "Gov. Whitmer: Flight to visit father was not 'a gift'" published in The Detroit News, Respondent Whitmer freely admitted the personal nature of the trip:

"When a family member of mine needs a little help, though, I'm going to show up."

"For anyone to be surprised that I have a family member who's been having a lot of health issues that I showed up to check in ... they're obviously not paying attention to who I am or what I do."

10. According to Respondent Whitmer's counsel, the value of these flights for the Florida Excursion was \$27,521. Trebilcock Letter at 2

NOW HERE IS WHERE THE FACTS GET INTERESTING FOR THE PURPOSES OF THIS COMPLAINT BECAUSE, SO FAR, THE FACTS ILLUSTRATE THAT RESPONDENT WHITMER TOOK A PURELY PERSONAL TRIP TO FLORIDA AFTER WARNING MICHIGANDERS NOT TO TAKE SIMILAR TRIPS. HYPOCRISY IS NOT A VIOLATION OF THE MICHIGAN CAMPAIGN FINANCE ACT; HOWEVER, FINANCING PERSONAL EXPENSES FROM A CANDIDATE COMMITTEE IS A VIOLATION.

11. According to Respondent Whitmer's counsel, the \$27,521 cost of these flights for the Florida Excursion was initially paid by Michigan Transition 2019, which is an entity organized under Section 501(c)(4) of the Internal Revenue Code. Trebilcock Letter at 2

12. The payment by Michigan Transition 2019 for the Florida Excursion prompted the undersigned Complainant to file a complaint with the Internal Revenue Service. See Craig Mauger, *Conservative group files IRS complaint over Gov. Whitmer's flights*, THE DETROIT NEWS (May 19, 2021).

13. So now comes the about-face that triggers the filing of this Complaint -- according to Respondent Whitmer's counsel: "FAA rules do not allow the operator to accept any flight reimbursements except from a candidate campaign committee." Trebilcock Letter at 2-3. Michigan Transition 2019 is not a candidate committee; therefore, in order to avoid Respondent Whitmer from paying for her own personal expenses (and apparently complying with FAA rules), a candidate committee became the replacement payee here.

14. According to the July 2021 Campaign Statement of Respondent Whitmer Committee, this candidate committee paid \$27,521 on July 20, 2021 to PVS Chemicals for the Florida Excursion and received reimbursement of \$1710 on May 27, 2021 from Respondent Whitmer for what appears to be the Florida Excursion. See Attachment 2.

APPLICABLE STATUTORY AND ADMINISTRATIVE RULE PROVISIONS

1. MCL 169.221a(1):

“(1) A candidate committee of a candidate who is elected or appointed to an elective office may make an expenditure for an incidental expense for the elective office to which that candidate was elected or appointed. Except as otherwise specifically provided in this act, an expenditure for an incidental expense by a candidate committee under this section is an expenditure under this act.”

2. MCL 169.209(1)(f):

“(1) “Incidental expense” means an expenditure that is an ordinary and necessary expense, paid or incurred in carrying out the business of an elective office. Incidental expense includes, but is not limited to, any of the following:

.....

(f) An unreimbursed disbursement for travel, lodging, meals, or other expenses incurred by the public official, a member of the public official’s immediate family, or a member of the public official’s staff in carrying out the business of the elective office.”

3. MCL 169.233(1). Campaign statements listing a committee's contributions and expenditures are required to be filed according to the schedules set forth in the Michigan Campaign Finance Act (“MCFA”).

4. MCL 169.233(10):

“(10) If a candidate, treasurer, or other individual designated as responsible for a committee's record keeping, report preparation, or report filing knowingly files an incomplete or inaccurate statement or report required by this section, that individual is subject to a civil fine of not more than \$1,000.00.”

5. MCL 169.233(9):

“(9) If a candidate is found guilty of a violation of this section, the circuit court for that county, on application by the attorney general or the prosecuting attorney of that county, may prohibit that candidate from assuming the duties of a public office or from receiving compensation from public funds, or both.”

6. MCL 169.215(15):

“(15) Unless otherwise specified in this act, a person who violates a provision of this act is subject to a civil fine of not more than \$1,000.00 for each violation. A civil fine is in addition to, but not limited by, a criminal penalty prescribed by this act.”

7. Administrative Rule 169.63:

“R 169.63 Unauthorized disbursement.

Rule 63. (1) An officeholder's expense fund report shall include information which is sufficient to establish that each disbursement from the fund was for the payment of an expense incidental to the elected public official's office.

(2) If, upon examination of a report, the secretary of state is unable to determine whether a disbursement from an officeholder's expense fund was made in compliance with the act and these rules, the secretary of state shall request additional information or documentation which is sufficient to establish that the disbursement was for an expense incidental to office.

(3) If the secretary of state determines, after receiving the information or documentation required under subrule (2) of this rule, that a disbursement from an officeholder's expense fund was not made in compliance with the act and these rules, the secretary of state shall request the public official to reimburse an amount equivalent to the unauthorized disbursement to the officeholder's expense fund.

(4) If a public official fails to respond within 21 days to a request made under subrule (2) or (3) of this rule, the secretary of state shall refer the matter to the attorney general for commencement of an action to recover the unauthorized disbursement from the officeholder's expense fund. A referral made under this subrule shall not prevent the secretary of state from proceeding under part 5 of these rules.”

NOTE: Although officeholder expense funds, to which this administrative rule relates, were repealed by 1999 PA 224, these administrative rules are utilized in the analysis of incidental expenses. See, for example, Michigan Attorney General Opinion No. 7240 (December 15, 2009).

ISSUE PRESENTED

WHETHER THE PAYMENT BY RESPONDENT WHITMER COMMITTEE FOR THE PERSONAL TRAVEL EXPENSES OF RESPONDENT WHITMER QUALIFIES AS AN “INCIDENTAL EXPENSE” PURSUANT TO MCL 169.209(1)(F) OF THE MCFA?

ANALYSIS

1. RESPONDENT WHITMER’S PERSONAL TRIP CANNOT POSSIBLY QUALIFY AS AN “INCIDENTAL EXPENSE” PURSUANT TO MCL 169.209(1)(F) OF THE MCFA

MCL 169.209(1)(f) provides:

“(1) “Incidental expense” means an expenditure that is an ordinary and necessary expense, paid or incurred in carrying out the business of an elective office. Incidental expense includes, but is not limited to, any of the following:

.....

(f) An unreimbursed disbursement for travel, lodging, meals, or other expenses incurred by the public official, a member of the public official’s immediate family, or a member of the public official’s staff in carrying out the business of the elective office.” (Emphasis supplied)

According to the Michigan Department of State:

“To determine whether a disbursement is a personal expense, the Department applies a “but-for” test in order to determine whether the expenditure may be personal in nature: If the disbursement would have occurred irrespective of the individual’s status as a candidate or an office holder, the expenditure is a prohibited personal expense.”

“The burden is on the committee at the time of filing a campaign statement to demonstrate that the disbursement would not have been made but for the candidate’s status as an officeholder.”

Interpretative Statement issued to Kevin Hertel dated April 15, 2021.

Similarly:

“Expenses ... that originate from personal activity unrelated to performing the functions of the public official's office will not so qualify [as an incidental expense under the MCFA].” Michigan Attorney General Opinion No. 7240 (December 15, 2009).

Consequently, in order for Florida Excursion to qualify as an “incidental expense”, the purpose of this trip must be to carry out the business of the elective office. MCL 169.209(1)(f). However, as the “Statement of Facts” section of this Complaint clearly demonstrates, the Respondents readily admit that the purpose of the Florida Excursion was purely personal and had nothing to do with carrying out the business of the Office of Governor. Because the Florida Excursion had nothing to do with carrying out the business of the Office of Governor, the “disbursement would have occurred irrespective of the individual’s status as a candidate or an office holder” and most certainly did “originate from personal activity unrelated to performing the functions of the public official's office”. Therefore, Respondent Whitmer’s personal trip cannot possibly qualify as an “incidental expense” pursuant to MCL 169.209(1)(f) of the MCFA.

2. ANY ATTEMPT TO JUSTIFY PAYMENT OF A PERSONAL EXPENSE BY A CANDIDATE COMMITTEE BASED ON SELF-ASSERTED SECURITY REASONS NECESSARILY FAILS

If the Respondents are allowed to qualify a purely personal trip as an “incidental expense”, then the prohibition against the payment by a candidate committee of a candidate’s personal expenses becomes meaningless. Under the Respondents’ theory as argued by Respondent Whitmer’s Counsel, the \$27,521 cost of the Florida Excursion is an “incidental expense” because:

“But for her elected office, the Governor would not have incurred the security expenses for travel to see her ailing father on short notice.” Trebilcock Letter at 3.

However, if this argument made any sense, then why stop at trips to West Pam Beach, Florida? What would prevent Respondent Whitmer from chartering flights for personal trips to Disneyworld, the Bahamas, Hawaii, etc.? To be sure, the Respondents have not stumbled upon some clever loophole in the MCFA which somehow allows a candidate committee to finance personal expenses. Rather, the use of Respondent Whitmer Committee to finance the Florida Excursion is simply a knee-jerk reaction when Respondent Whitmer was advised that Michigan Transition 2019, the initial payee of the Florida Excursion, could not finance the Florida Excursion because “FAA rules do not allow the operator to accept any flight reimbursements except from a candidate campaign committee.” Trebilcock Letter at 2-3. Again, the “burden is on the committee at the time of filing a campaign statement to demonstrate that the disbursement would not have been made but for the candidate’s status as an officeholder.” Interpretative Statement issued to Kevin Hertel dated April 15, 2021. Respondent Whitmer’s decision to visit her father has nothing to do with the business of the Office of Governor.

3. RESPONDENT WHITMER’S PAYMENT OF \$1710 TO RESPONDENT WHITMER COMMITTEE REPRESENTS AN ADMISSION THAT THE COST OF THE FLORIDA EXCURSION IS NOT AN “INCIDENTAL EXPENSE”

Respondent Whitmer reimbursed \$1710 to Respondent Whitmer Committee on May 27, 2021. See Attachment 2. Why? If the cost of the Florida Excursion is truly an “incidental expense”, then no reimbursement would be necessary. The cost of the Florida Excursion is either an “incidental expense” or it is not. Stated differently, if any portion of the Florida Excursion is a personal expense, then the entire cost of the Florida Excursion is a personal expense. This reimbursement is a fatal admission here.

CONCLUSION

Based on the foregoing, Respondent Whitmer and Respondent Whitmer Committee, by knowingly and illegally financing the cost of the Florida Excursion through a candidate committee, at a minimum, have violated the following Sections of the MCFA:

- a. Section 21a - by illegally using candidate committee funds to finance a candidate’s personal expenses in the guise of an “incidental expense”.
- b. Section 33 - by knowingly filing an inaccurate statement or report.

The penalties for the Respondents’ MCFA violations are as follows:

1. For violating Section 33:
 - a. If a candidate is found guilty of a violation of Section 33, the circuit court for that county, on application by the attorney general or the prosecuting attorney of that county, may prohibit that candidate from assuming the duties of a public office or from receiving compensation from public funds, or both.

- b. If a candidate, treasurer, or other individual designated as responsible for a committee's record keeping, report preparation, or report filing knowingly files an incomplete or inaccurate statement or report required by Section 33, that individual is subject to a civil fine of not more than \$1,000.
- 2. For violating MCL 169.221a, a civil fine of not more than \$1,000. MCL 169.215(15).
- 3. For violating MCL 169.221a and pursuant to Administrative Rule 63, the public official is required to reimburse an amount equivalent to the unauthorized disbursement to the candidate committee.

REQUEST FOR ACTION BY THE SECRETARY OF STATE

This Complaint demonstrates greed in its purest form, and serves as yet another illustration of Respondent Whitmer's "the rules apply to thee, but not to me" attitude. The MCFA simply does not allow a candidate committee to finance the personal expenses of a candidate. Moreover, because Respondent Whitmer participated in this illegal scheme, then, in addition to other penalties:

- a. Respondent Whitmer may be prohibited from assuming the duties of a public office or from receiving compensation from public funds, or both (MCL 169.233(9)); and
- b. Respondent Whitmer must be forced to reimburse the unauthorized disbursement to Respondent Whitmer Committee as indicated in Administrative Rule 63; otherwise, the Michigan Attorney should commence an action to recover the unauthorized disbursement as indicated in Administrative Rule 63.

Accordingly, the Complainant respectfully requests that the Secretary of State immediately investigate the numerous violations set forth in this Complaint and determine that the Respondents have violated numerous sections of the Michigan Campaign Finance Act and to assess all appropriate penalties.

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: July 26, 2021


Eric Ventimiglia

Attachment 1

**Letter from Christopher M. Trebilcock, Counsel
to Respondent Gretchen Whitmer for Governor
(May 27, 2021)**



Christopher M. Trebilcock
T (313) 965-8575
F +13133096910
Email:ctrebilcock@ClarkHill.com

Clark Hill PLC
500 Woodward Ave., Suite 3500
Detroit, MI 48226
T (313) 965-8300
F (313) 965-8252

May 27, 2021

Hon. Steve Johnson
Michigan House of Representatives
House Oversight Committee Chair
State Capitol
P.O. Box 30014
Lansing, MI 48909

Dear Chair Johnson:

I serve as legal counsel to the Whitmer for Governor candidate committee and Michigan Transition 2019. I am in receipt of your May 22, 2021 letter addressed to Governor Gretchen Whitmer. As the majority of your questions relate to the activities of my clients, I will respond to your inquiries. In addition, I want to set the record straight on issues related to payment for the Governor's March 2021 trip.

Michigan Transition 2019 is organized as a Michigan nonprofit corporation. It is recognized as a tax-exempt social welfare organization under Internal Revenue Code Section 501(c)(4). It also has registered assumed names of "Michigan Inaugural 2019" and "Executive Office Account." Contributions to Michigan Transition 2019 are not deductible as charitable contributions. Thus, any expenditures from Michigan Transition 2019 have not been subsidized by charitable contributions.

Article II of the Articles of Incorporation of Michigan Transition 2019 describe the purposes for which it is established. Those purposes relevant to the current situation include:

- To operate for the promotion of civic action and social welfare by promoting the common good and general welfare of the residents of, and visitors to, the State of Michigan.
- To educate legislators, state officers, and the general public on issues facing Michigan and the United States.
- To advocate citizen participation and obtain support for public policies in Michigan.

The exempt activities of Michigan Transition 2019 are not limited to its original purpose of supporting the transition of Governor Whitmer and her inaugural ceremony. As such, the

expenditures made by Michigan Transition 2019 since its inception were made consistently with its purposes by, in many cases, lessening the use of taxpayers' dollars and the burden of government. This includes expenses for travel, staff, food, postage, and research when those activities are related to the exempt activities of Michigan Transition 2019.

In addition, let me share several facts and the timeline for Governor Whitmer's trip to visit her father. On or around March 8, 2021, an aide to Governor Whitmer's office contacted PVS to ask whether PVS had an aircraft that could fly her on a trip to Florida. The rationale for securing a non-commercial flight was security, as Governor Whitmer has been the subject of extraordinary threats to her life. As you are aware, right now more than a dozen militia members are being prosecuted in state and federal court based on an alleged attempt to kidnap and likely kill the governor. PVS responded to the outreach the next day and indicated that it did have an aircraft. On March 10, 2021, PVS was provided with an itinerary for the flight and arranged for a flight to depart on March 12 and return on March 15, 2021.

As stated by the Governor's office, this was a two-day weekend trip to visit her ailing father, with a travel day on each side of the visit. I have been informed that leading up to and prior to this trip, the Michigan State Police adhered to all protocols at all times during this trip. The Governor's office has also indicated that during the trip, the Governor followed all MDHHS epidemic orders. Michigan has not had any limitations on travel for nearly a year. Although I cannot speak for the Governor's office, my understanding is that the State does not provide details regarding security for the Governor, especially given the very real and ever-present threats to her life.

That said, the Governor and her security detail were on the flight to visit her father. The return flight included her daughters who had been helping manage her father's health issues for several weeks while maintaining their college and high school virtual schedules. No other people were on the flights besides the Governor, her children on the return flight, her security detail, and the flight crew.

On March 19, 2021, an aide to Governor Whitmer's office contacted PVS to determine the cost of the flight. PVS responded to the request but did not issue an invoice or request payment at that time. The value of the flight was \$27,521. PVS later received payment in the amount of \$27,521.00 (the "Payment") from Michigan Transition 2019.

At the time the Payment was issued, both PVS and Michigan Transition 2019 believed that the Payment was being made in compliance with all applicable laws. PVS assumed that the Payment was made pursuant to 14 C.F.R. § 91.321 (Carriage of Candidates in Elections). Under federal tax laws and state nonprofit law, Michigan Transition 2019 may pay expenses related to the carrying out of its exempt purposes. It was determined that the expense of the non-commercial flight was reasonable and necessary given the serious and varied threats to the personal safety of the Governor as advised by security experts. Only because of media reports on these issues did PVS and Michigan Transition 2019 learn that a miscommunication occurred between them with respect to the source of the payment for the flight.

Notwithstanding that the payment of the trip was a proper expense of Michigan Transition 2019 under tax and nonprofit law, legal counsel for PVS advised Michigan Transition 2019 on May 17 that because of PVS' status as a Part 91 operator, FAA rules do not allow the operator to

accept any flight reimbursements except from a candidate campaign committee. Based on this new understanding, the cost of the flight will now be paid from the Whitmer for Governor campaign fund consistent with FAA rules. Although not required by law, the Governor is also voluntarily reimbursing the Whitmer for Governor candidate committee for an amount equivalent to the cost of a first-class commercial airline ticket for herself and her daughters.

Payment for the flight by the Whitmer for Governor candidate committee is also permissible under the Michigan Campaign Finance Act. MCL 169.209 permits candidate committees to make expenditures for incidental expenses “paid or incurred in carrying out the business of an elective office.” Under the law, these expenses include but are not limited to “unreimbursed [expenses] for travel, lodging, meals, or other expenses incurred by the public official, a member of the public official’s immediate family, or a member of the public official’s staff in carrying out the business of the elective office.”

As you know, the threats against the Governor’s life are well-documented. Commercial flights were deemed not reasonable for security reasons at that time. Moreover, as the Governor’s office has stated, while outside the state the Governor maintained her official schedule and conducted scheduled meetings. The payment for the additional security costs by an entity other than the State lessened the burden on taxpayers. But for her elected office, the Governor would not have incurred the security expenses for travel to see her ailing father on short notice. This legal conclusion is consistent with MCL 169.209 and the April 15, 2021 interpretive statement of the Secretary of State’s office to Representative Kevin Hertel, which confirmed that security expenses necessary to protect the health and welfare of an elected official that would not otherwise have been incurred but for the person’s status as an elected official can be considered a necessary and reasonable expense under the Michigan Campaign Finance Act.

We understand that PVS is still working with the FAA to address its questions related to these issues. Once we are informed by PVS that the FAA has resolved its inquiry, the Whitmer for Governor candidate committee will issue a check to PVS. The July 2021 campaign finance report of the Whitmer for Governor candidate committee will reflect this transaction in compliance with the Michigan Campaign Finance Act.

You also raised questions regarding Governor Whitmer’s travel in January 2021 to Washington, D.C. to attend the Inauguration of President Biden, an event for which the Governor served as co-chair. Again, the Governor’s travel was compliant with applicable law. Although it could have been, the cost of the flight was not borne by the taxpayers of Michigan.

Governor Whitmer travelled on a non-commercial plane operated by Solomon Plumbing Co. on January 19 and January 21, 2021. The value of the flight was \$22,670. The plane is operated under Part 91 of the FAA regulations. For the reasons discussed above, and even though the trip was in furtherance of the Governor’s official duties, the Whitmer for Governor campaign committee issued a check for the value of the flight. In compliance with the Michigan Campaign Finance Act, this transaction will be reported on the July 2021 report for the Whitmer for Governor candidate committee.


Finally, the Governor’s March 2021 trip has drawn significant attention the last several weeks. Responses to questions were based on the information and understanding my clients or I had at each point in time. As additional information was shared or learned, we sought to provide

additional clarity. Ensuring the Governor's security, while lessening any burden on taxpayers, has always been our top priority.

Thank you for your attention to these matters.

Sincerely,

CLARK HILL PLC

A handwritten signature in black ink, appearing to read "Chris M. Trebilcock", written in a cursive style.

Christopher M. Trebilcock

Attachment 2

**Selected transactions reported in July 2021
Quarterly Campaign Statement filed by
Respondent Gretchen Whitmer for Governor
(July 26, 2021)**

GRETCHEN WHITMER FOR GOVERNOR
518014-GUB

DIRECT *GRETCHEN WHITMER*
2520 OXFORD RD LANSING
MI 48911-1035

GOVERNOR-STATE OF MICHIGAN

05/27/21

\$1,710.00

Committee Making Expenditure	Committee ID-Type	Schedule Type	Payee	Expense Date	Exp Code	Purpose	Amount c Value
		SUPP	SIDNEY HOLLINGSWORTH 325 S WALNUT ST LANSING, MI 48933-2013	03/31/2021			\$1,600.67
		SUPP	GABRIELLE MERDITAJ 325 S WALNUT ST LANSING, MI 48933-2013	03/31/2021			\$707.54
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	RUN THE WORLD PO BOX 8708 MADISON, WI 53708-8708	06/07/2021		FUNDRAISING CONTRACTOR	\$31,545.0
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	RUN THE WORLD PO BOX 8708 MADISON, WI 53708-8708	06/02/2021		FUNDRAISING CONTRACTOR	\$30,000.0
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	RUN THE WORLD PO BOX 8708 MADISON, WI 53708-8708	03/19/2021		FUNDRAISING CONTRACTOR	\$27,648.0
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	PVS CHEMICALS 10900 HARPER AVE DETROIT, MI 48213-3364	07/20/2021		FLIGHT	\$27,521.0
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	RUN THE WORLD PO BOX 8708 MADISON, WI 53708-8708	06/30/2021		FUNDRAISING CONTRACTOR	\$27,000.0
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	RUN THE WORLD PO BOX 8708 MADISON, WI 53708-8708	06/07/2021		FUNDRAISING CONTRACTOR	\$26,400.0
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	DKYEMA 400 RENAISSANCE CTR DETROIT, MI 48243-1607	01/11/2021		LEGAL SERVICES	\$25,039.6
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	SOLOMON PLUMBING 29665 WK SMITH DR STE A NEW HUDSON, MI 48165-8581	05/26/2021		FLIGHT	\$22,670.0
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	DNC TRAVEL OFFSET ACCOUNT 430 S CAPITOL ST SE WASHINGTON, DC 20003-4024	06/25/2021		VP HARRIS TRAVEL	\$19,656.0
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	PAYCHEX 29065 CABOT DR STE 100 NOVI, MI 48377-3034	06/30/2021		TAXES	\$17,801.8
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	PAYCHEX 29065 CABOT DR STE 100 NOVI, MI 48377-3034	05/28/2021		TAXES	\$15,527.0
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	PAYCHEX 29065 CABOT DR STE 100 NOVI, MI 48377-3034	04/30/2021		TAXES	\$15,104.9
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	EMILY'S LIST-NF FUND 1800 M ST NW STE 375N WASHINGTON, DC 20036-5862	06/11/2021		POSTAGE COST	\$12,595.8
GRETCHEN WHITMER FOR GOVERNOR	518014-GUB	DIRECT	EMILY'S LIST-NF FUND 1800 M ST NW STE 375N WASHINGTON, DC 20036-5862	05/06/2021		POSTAGE COST	\$12,514.5

Christopher M. Trebilcock
T (313) 965-8575
F (313) 309-6910
Email: ctrebilcock@ClarkHill.com

Clark Hill
500 Woodward Ave., Suite 3500
Detroit, MI 48226
T (313) 965-8300
F (313) 965-8252

August 20, 2021

Via Email, only

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

**Re: Response to Complaint in *Ventimiglia v Whitmer*
No. 2021-07-17-21**

Dear Mr. Fracassi:

I serve as legal counsel to Governor Gretchen Whitmer, the Gretchen Whitmer for Governor candidate committee, and Michigan Transition 2019. I am in receipt of the complaint filed by Eric Ventimiglia against Governor Whitmer (the “Complaint”) alleging violations of the Michigan Campaign Finance Act (“MCFA” or the “Act”). Specifically, the Complaint alleges that the Act does not permit the Gretchen Whitmer for Governor candidate committee to pay for the cost of a private flight for the Governor to travel to Florida in March of 2021. As detailed in the Complaint, the cost of the flight at issue was initially paid for by Michigan Transition 2019. The Complaint is meritless and should be dismissed for the reasons stated below.

A. Michigan Transition 2019

Michigan Transition 2019 is organized as a Michigan nonprofit corporation. **Exhibit 1**, LARA Filings. It is recognized as a tax-exempt social welfare organization under Internal Revenue Code Section 501(c)(4). It also has registered assumed names of “Michigan Inaugural 2019” and “Executive Office Account.” Contributions to Michigan Transition 2019 are not deductible as charitable contributions. Thus, any expenditures from Michigan Transition 2019 have not been subsidized by charitable contributions.

Article II of the Articles of Incorporation of Michigan Transition 2019 describes the purposes for which Michigan Transition 2019 is established. **Exhibit 2**, Article of Incorporation. Those purposes relevant to the current situation include:

- To operate for the promotion of civic action and social welfare by promoting the common good and general welfare of the residents of, and visitors to, the State of Michigan.
- To educate legislators, state officers, and the general public on issues facing Michigan and the United States.
- To advocate citizen participation and obtain support for public policies in Michigan. [*Id.*]

The exempt activities of Michigan Transition 2019 are not limited to its original purpose of supporting the transition of Governor Whitmer and her inaugural ceremony. As such, the expenditures made by Michigan Transition 2019 since its inception were made consistently with its purposes by, in many cases, lessening the use of taxpayers' dollars and the burden on government. This includes expenses for travel, staff, food, postage, and research when those activities are related to the exempt activities of Michigan Transition 2019.

B. The March 2021 Florida Trip

Upon learning of the need for Governor Whitmer to need to travel to Florida in March 2020 to visit her ailing father, her office consulted with Governor Whitmer's security detail regarding the timing, methods, and mode of transportation available for Governor Whitmer to travel to Florida. The conclusion was that travel by private aircraft would significantly reduce the security risks associated with Governor Whitmer's travel to Florida.

On or around March 8, 2021, an aide to Governor Whitmer's office contacted PVS to ask whether PVS had an aircraft that could fly her on a trip to Florida. As stated by the Governor's office, this was a two-day weekend trip to visit her ailing father, with a travel day on each side of the visit.¹

PVS responded to the outreach the next day and indicated that it did have an aircraft. On March 10, 2021, PVS was provided with an itinerary for the flight and arranged for a flight to depart on March 12 and return on March 15, 2021. The flight to Florida included Governor Whitmer and her security detail. The return flight from Florida to Michigan added Governor Whitmer's two daughters, who had been helping manage their grandfather's health issues for several weeks while maintaining their college and high school virtual schedules. No other people were on the flights besides the Governor, her children on the return flight, her security detail, and the flight crew.

¹ I have been informed that leading up to and during this trip, the Michigan State Police adhered to all protocols at all times. The Governor's office has also indicated that during the trip, Governor Whitmer followed all MDHHS epidemic orders. Michigan has not had any limitations on travel for nearly a year. The State does not typically provide details regarding security for the Governor, especially given the very real and ever-present threats to her life.

On March 19, 2021, an aide to Governor Whitmer's office contacted PVS to determine the cost of the flight. PVS responded to the request but did not issue an invoice or request payment at that time. The value of the flight was \$27,521. PVS later received payment in the amount of \$27,521.00 (the "Payment") from Michigan Transition 2019.

At the time the Payment was issued, both PVS and Michigan Transition 2019 believed that the Payment was being made in compliance with all applicable laws. PVS assumed that the Payment was made pursuant to 14 C.F.R. § 91.321 (Carriage of Candidates in Elections). Under federal tax laws and state nonprofit law, Michigan Transition 2019 may pay expenses related to the carrying out of its exempt purposes. It was determined that the expense of the non-commercial flight was reasonable and necessary given the serious and varied threats to the personal safety of the Governor as advised by security experts. Only because of media reports on these issues did PVS and Michigan Transition 2019 learn that a miscommunication occurred between them with respect to the source of the payment for the flight.

Notwithstanding that the payment of the trip was a proper expense of Michigan Transition 2019 under tax and nonprofit law, legal counsel for PVS advised Michigan Transition 2019 on May 17 that because of PVS' status as a Part 91 operator, FAA rules do not allow the operator to accept any flight reimbursements except from a candidate campaign committee. Based on this new understanding, the cost of the flight was then paid from the Gretchen Whitmer for Governor campaign fund consistent with FAA rules and in compliance with the MCFA as an incidental office expense. Although not required by law, Governor Whitmer voluntarily reimbursed the Gretchen Whitmer for Governor candidate committee for an amount equivalent to the cost of a first-class commercial airline ticket for herself and her daughters.

C. The Significant and Continuing Threats to Governor Whitmer's Life

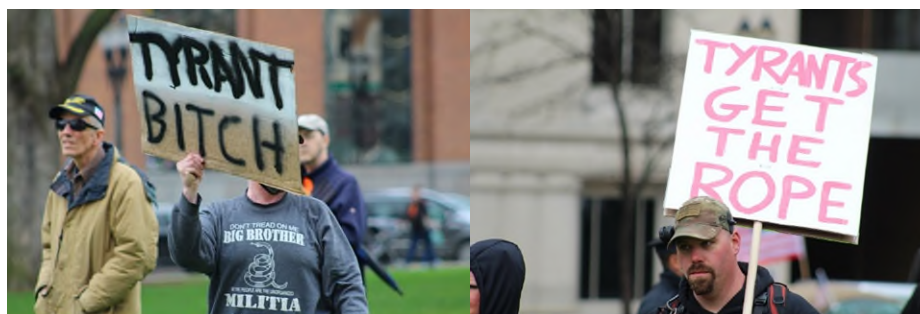
Governor Whitmer has been the subject of extraordinary threats to her life. As this office is aware, in October 2020, the Federal Bureau of Investigation thwarted a plot by more than a dozen militia members who were plotting to kidnap Governor Whitmer and take her to a remote location in Wisconsin, hold a "trial" against her for alleged "treasonous" conduct, and likely execute her. Indeed, these militia members had gone so far as to conduct surveillance at Governor Whitmer's personal vacation home in northern Michigan on at least two occasions. *See* Snell and Naan Burke, *Plans to kidnap Whitmer, overthrow government spoiled, officials say*, THE DETROIT NEWS (Oct. 8, 2020) (**Exhibit 3**).

The threats do not just stop there. The Detroit Metro Times reported on numerous threats made against Governor Whitmer in private Facebook groups, which were "promoting violence and mobilizing armed rallies against Gov. Gretchen Whitmer." *See* Neaviling, *Gov. Whitmer becomes target of dozens of threats on private Facebook groups ahead of armed rally in Lansing*, THE DETROIT METRO TIMES (May 11, 2020) (**Exhibit 4**).² According to the Detroit Metro Times,

² As The Detroit News reported, the militia members who sought to kidnap Governor Whitmer "allegedly met starting in June, including at a Second Amendment rally in Lansing." *See* **Exhibit 3**.

“[a]ssassinating Whitmer [was] a common theme among members of the groups. Dozens of people have called for her to be hanged.” *Id.* (citing to posts stating that a “good old fashioned lynch mob [needed] to storm the Capitol, drag [Governor Whitmer’s] tyrannical a** out onto the street and string her up as our forefathers would have,” that “Plain and simple [Governor Whitmer] needs to eat lead and send a statement to the rest of the democrats that they are next.”). Others suggested that they “[d]rag that tyrant governor out to the front lawn,” and “[f]it her for a noose,” while another man wondered “[h]ow long till she’s hit with a shotgun blast.” *Id.* Finally, one man asked to “[t]ake up a collection for an assassin to put that woman from Michigan down.” *Id.*

Such dangerous individuals did not just hide behind computer screens. Armed protestors – some of whom were militia members – came to the Capitol to protest shelter-in-place orders and carried signs calling Governor Whitmer a “Tyrant B*****” and threatening that “Tyrants get the Rope.” A reporter for the Michigan Advance even headed up being hit in the head with a protestor’s rifle. *See Nichols, ‘Tyrants Get The Rope’: Small anti-Whitmer protest rocks Capitol, reporter hit by gun, MICHIGAN ADVANCE (April 30, 2020) (Exhibit 5).*



Craig Mauger
@CraigDMauger

A sign currently on the lawn:

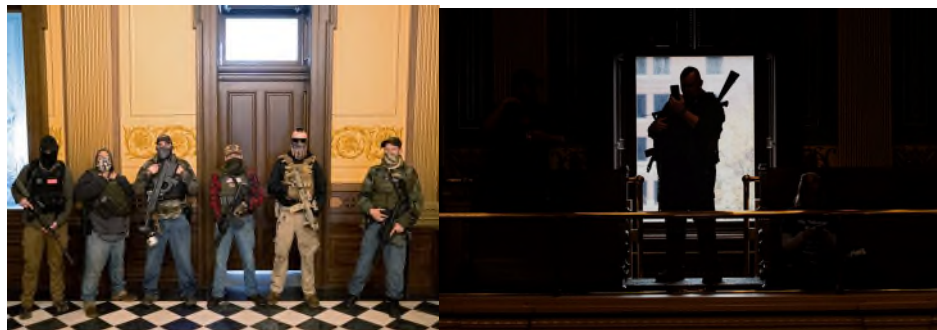


10:18 AM · Apr 30, 2020 · Twitter for iPhone

49 Retweets 43 Quote Tweets 76 Likes

[[Twitter, @CraigDMauger, 4/30/20](#)]

Some protestors demanded entry into the House of Representatives' chamber, and some were dressed in camouflage fatigues carrying semiautomatic rifles, and watched from the gallery for the Senate chamber as elected officials attempted to carry out their work. *See Gray, In Michigan, a Dress Rehearsal for the Chaos at the Capitol on Wednesday*, The New York Times (Jan. 9, 2021) (**Exhibit 6**).



A Republican candidate for 21st state House district – James Chapman – attended a protest where he hung a brunette doll from a noose at the end of his 13-star Betsy Ross flag and fishing rod, and explained that the noose was “one size fits all” for anyone not standing up to Governor Whitmer and her tyranny. *See Dodge, Protester explains doll, noose demonstration at Capitol, wants to gift props to Trump*, MLIVE (May 18, 2020) (**Exhibit 7**). Chapman had a long and violent criminal history, including a 1990 conviction for assault with intent to do great bodily harm less than murder and a firearms charge, for which he was sentenced to three to 10 years in prison and a stalking charge, for which was placed on probation in 2015. More recently, Chapman was sentenced to six months in jail in 2018 after being found guilty of resisting a police officer. *Id.*



According to the Michigan Court of Appeals, during his latest run in with the law, Chapman argued with and attempted to stab an acquaintance and then drove into Belleville Lake in an attempt to evade police. *People v Chapman*, Docket No. 345090, 2019 WL 6340929 (Mich Ct App Nov 26, 2019).

In yet another threat, a Michigan man was charged with threatening to kill both Governor Whitmer and Attorney General Nessel in the spring of 2020. *See Mele, Man Faces Terrorism Charge After Threatening to Kill Michigan's Governor, Officials Say*, THE NEW YORK TIMES (May 15, 2020; updated Oct. 9, 2020) (**Exhibit 8**). As with the numerous and persistent threats against Governor Whitmer and other statewide public officials, Wayne County Prosecutor Kym Worthy stated that the facts of the case “lay out a very disturbing scenario.” *Id.*

The threats continued into 2021. In March of 2021, right around the time of the trip at issue, Attorney General Nessel charged a 21-year-old West Michigan man with threatening terrorism and using a computer to commit a crime for making death threats against President Biden, Speaker Pelosi, and Governor Whitmer. *See Michigan man charged with threatening to kill Biden, Pelosi, and Whitmer*, REUTERS (Mar. 16, 2021) (**Exhibit 9**). Officials stated that the man stated he would use a gun to shoot and kill the elected officials and had information on how to make a bomb, including where to find the necessary materials. *Id.*

Numerous individuals also sent threatening messages directly to Governor Whitmer's social media accounts. *See Exhibit 10*, Social Media Direct Message Threats. Some of the more egregious examples follow:

- While referring to Governor Whitmer by numerous vulgar and misogynistic names over the course of several days, a man threatened that President Trump was “GOING 2 BE COMING AFTER” her. *Id.* at 1–4.
- A woman wished that Governor Whitmer and other Democrats would “die horrible deaths.” *Id.* at 5.
- A Michigan man who allegedly worked at a restaurant stated the following to Governor Whitmer: “I would like to sincerely hope you get some type of mixed super AIDS Ebola that makes you die slowly and painfully while your organs leak from your rectum. I sincerely hope I am working at the next restaurant that you try to eat at so if they don't outright refuse to serve you I can personally walk to your table, **b**** slap your cuck husband, s*** on your dinner plate and shove it down your cold heartless throat.**” *Id.* at 6 (emphasis added).
- Another man told Governor Whitmer she “should watch out” and referred to her in misogynistic language. *Id.* at 12.
- Another man stated his wish that “WE THE PEOPLE REMOVE YOU FROM OFFICE ONE WAY OR ANOTHER VERY SOON.” *Id.* at 14.
- One man sent a message to Governor Whitmer's account stating: “Remove her from office. Do it by force if she won't leave willingly.” *Id.* at 15.

- One man extended to the threat to Governor Whitmer's husband and stated: "F*** your husband. Better hope I never catch you to him on the streets." *Id.* at 16.
- A Florida man expressed his desire to kidnap Governor Whitmer and that he was going to kill her, "cut [her] head off," that she could "get one of [his] cars,"³ that she could "get stabbed," that he was "going to knock [her] head off," and that he was going to "shoot [her] in the head." *Id.* at 17–23.
- On January 6, 2021 – the same day as the Washington D.C. insurrection – one man told Governor Whitmer "[t]he People of Michigan will take care of that for you," and told her "[w]e've got you" and referenced her hiding in one of her two houses, and sent a bomb emoji, followed by an hourglass emoji and a person in a wheelchair emoji. *Id.* at 24.
- On March 7, 2021 – right before the trip at issue – a man sent Governor Whitmer a message blaming her for the suicide of his niece and told her that while he did not live in Michigan, he would be "back to visit" and that he hoped her "protection detail is good and sharp." *Id.* at 25.
- One woman told Governor Whitmer that she hoped "they drag you out and pound your head on the pavement," and that she "would knock [her] teeth down [her] throat." *Id.* at 26.

More recently, the Ronald Weiser, co-chair of the Michigan Republican Party, when speaking about Governor Whitmer, Secretary Benson, and Attorney General Nessel, stated that the Republican Party's "job now is to soften up those three witches and make sure that when we have good candidates to run against them, that they are ready for burning at the stake." Stracqualursi, *Michigan GOP chair calls top Democratic women 'witches' and quips about assassination of Republican congressmen*, CNN (March 29, 2021) (**Exhibit 11**).

These are just the threats that are known and have been made public. Given these threats, a non-commercial flight was necessary in March 2021 to ensure the safety of Governor Whitmer and her family, and the safety of the traveling public. Moreover, the threats to Governor Whitmer are ever present when she travels, whether the travel is for state business, campaign-related, or personal. The job of a governor does not have a time clock and neither do the threats to the Governor.

D. Candidate Committees May Use Funds To Pay For Security Related Expenses Under Interpretive Guidance Issued by the Bureau of Elections.

Payment for the flight by the Gretchen Whitmer for Governor candidate committee was permissible under the MCFA. MCL 169.209 permits candidate committees to make expenditures for incidental expenses "paid or incurred in carrying out the business of an elective office." Under

³ Presumably, this referred to him threatening to run Governor Whitmer over with his car given the context of the rest of the messages.

the law, these expenses include but are not limited to “unreimbursed [expenses] for travel, lodging, meals, or other expenses incurred by the public official, a member of the public official’s immediate family, or a member of the public official’s staff in carrying out the business of the elective office.”

Recently, in response to a request by Representative Kevin Hertel, the Bureau of Elections issued an interpretative statement on April 15, 2021 that is squarely on point and dispositive of the Complaint. *See Exhibit 12*, Hertel Interpretative Statement. Given that heavily armed protestors had attempted to gain access to the floor of the House of Representatives on April 30, 2020, and the death threats that Representative Hertel and his family had received, Representative Hertel wanted to know “[w]hether the purchase of a ballistics vest or home security system in response to threats of violence constitutes a personal expense.” *Id.* at 2. As the Bureau of Elections put it, “[a]t the heart of these questions is whether the requested items [] are considered personal expenses or incidental office expenses.” *Id.*

In unequivocal language, the Bureau of Elections determined that a candidate committee could purchase a home security system as an incidental office expense:

The Department agrees with these conclusions and determines that **a committee may purchase home security system as an incidental office expense so long as the expenditure is not being made for personal use.** If an office holder determines it necessary to purchase a home security system due to increased threats incurred as a result of their elected office, such purchase may be done using committee funds. For example, if the committee elects to purchase a home security system as a direct result of threats motivated by the office holder’s status, such as supporting/opposing legislation, such a disbursement may be a lawful incidental office expense.

However, the disbursement must be done as a result of their status as an office holder, otherwise it will constitute a personal expense. For example, a disbursement for home security system may not increase the value of the residence or constitute a structural improvement (e.g. installation of bullet proof glass or privacy fence), and must be motivated by the office holder’s status as an office holder. [*Id.* at 6 (emphases added).]

The Bureau of Elections arrived at this conclusion after a detailed and thorough analysis of facts applicable to all officeholders in Michigan, the MCFA, and identical and persuasive Federal law and guidance from the Federal Election Commission (“FEC”).

First, as to the facts and the reality of the situation on the ground, the Bureau of Elections recognized that “[i]n 2020, elected and appointed officials in Michigan [and nationwide] have seen an unprecedented number of threats of physical harm against them and their families,” and specifically cited the plot to kidnap Governor Whitmer as an example. *Id.* at 4 and n 7–8. The

Bureau of Elections also referenced the fact that, in the wake of the riot at the United States Capitol on January 6, the Massachusetts Office of Campaign and Political Finance issued an advisory opinion on March 1, 2021 concluding that committee funds may be used to purchase bullet-proof vests/body armor, pepper spray, gas masks, or other similar personal protective equipment so long as it was not being purchased for personal use, in addition to authorizing committee funds to pay for security detail and the purchase of a home security system. *Id.* at n 5 (citations omitted).

Second, in reaching its conclusion, the Bureau of Elections analyzed several advisory opinions issued by the FEC interpreting the Federal Election Campaign Act of 1971 (“FECA”). *Id.* at 5. As the Bureau of Elections recognized, while not binding, it may rely upon administrative opinions of the FEC, and other states, as persuasive in its interpretation of similar provisions of the MCFA. *Id.* at 6 (citing *Interpretative Statement to David Lambert*, issued October 31, 1984 and *Chiles v. Machine Shop, Inc.*, 238 Mich App 462, 472 (1999) (stating that analogous federal precedents of similar legal provisions are persuasive so long as they do not conflict with Michigan law). The Bureau of Elections concluded that “[t]he MCFA’s provisions echo its FECA counterparts,” recognizing the similarities between the two statutes. *Id.*⁴

Having determined the similarities between the statutes, the Bureau of Elections analyzed FEC Advisory Opinion 2021-03.⁵ *Id.* at 5. There, the National Republican Senatorial Committee and the National Republican Congressional Committee asked the FEC whether committee funds could be used to pay for personal security personnel of members of Congress and their families. *Id.* In analyzing and interpreting the relevant provisions of the FECA, the FEC held that committee funds could be used for hiring security personnel for members of Congress and their families due to threats arising from their status as office holders. *Id.*; see also FEC Advisory Opinion 2021-03.

The Bureau of Elections analyzed other advisory opinions issued by the FEC regarding the use of campaign funds to protect against threats to officeholders’ physical safety on the grounds that the need for such security expenses would not have been incurred but-for the officeholder’s activities or duties. **Exhibit 12**, at 5. For example, following the shootings targeting

⁴ Under FECA, federal committees may use campaign funds for “ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office.” 52 U.S.C. § 30114(a). A contribution or donation may not be converted for personal use. 52 U.S.C. § 30114(b)(1). The FEC’s regulations define personal use as the “use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.” 11 CFR § 113.1.

Similarly, the MCFA allows incumbent officeholders the ability to make incidental office expenses defined as “an expenditure that is an ordinary and necessary expense, paid or incurred in carrying out the business of an elective office.” MCL 169.209(1). Expenditures are defined as any of ascertainable monetary value made in assistance of or opposition to the election of a candidate. MCL 169.206(1).

⁵ All FEC Advisory Opinions are attached as **Exhibit 13** and appear in the order in which they are referenced in this Response.

Representatives Gabby Giffords and Steve Scalise, the FEC authorized candidate committee funds to be used to purchase home security system installation and upgrades due to the “current heightened threat environment” and anonymous nature of many of the threats. *Id.* at 5 (citing FEC Advisory Opinions 2011-17 and 2017-07). In 2021, the FEC issued another Advisory Opinion in response to a request submitted by Representative Veronica Escobar wherein the FEC expanded its guidance to include upgrades to wiring and lighting as part of a residential security system so long as it did not include a structural improvement. *Id.* at 5 (citing FEC Advisory Opinion 2020-06).

As shown above and as previously recognized by the Bureau of Elections, the threats against Governor Whitmer’s life are well-documented. A private flight was used because this method of travel significantly reduced the security risks to Governor Whitmer’s life based on the security assessment at that time. Moreover, as Governor Whitmer’s office has stated, while outside the state the Governor maintained her official schedule and conducted scheduled meetings. The payment for the additional security costs by an entity other than the State lessened the burden on taxpayers. But for her elected office and the threats that she has received against her life because she holds elected office, Governor Whitmer would not have incurred the security expenses for travel to see her ailing father on short notice.

This legal conclusion is consistent with MCL 169.209 and the April 15, 2021 interpretive statement of the Bureau of Elections to Representative Hertel, which confirmed that security expenses necessary to protect the health and welfare of an elected official that would not otherwise have been incurred but for the person’s status as an elected official can be considered a necessary and reasonable expense under the Michigan Campaign Finance Act.

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

Sincerely,

CLARK HILL PLC



Christopher M. Trebilcock

CMT:vcs

EXHIBIT 1

LARA Corporations Online Filing System

Department of Licensing and Regulatory Affairs

ID Number: 802253099[Request certificate](#)[Return to Results](#)[New search](#)**Summary for:** MICHIGAN TRANSITION 2019**The name of the DOMESTIC NONPROFIT CORPORATION:** MICHIGAN TRANSITION 2019**Entity type:** DOMESTIC NONPROFIT CORPORATION**Identification Number:** 802253099**Date of Incorporation in Michigan:** 11/05/2018**Purpose:** Other**Term:** Perpetual**Most Recent Annual Report:** 2021**Most Recent Annual Report with Officers & Directors:** 2021**The name and address of the Resident Agent:**

Resident Agent Name: CSC-LAWYERS INCORPORATING SERVICE (COMPANY)

Street Address: 2900 WEST ROAD STE 500

Apt/Suite/Other:

City: EAST LANSING

State: MI

Zip Code: 48823

Registered Office Mailing address:

P.O. Box or Street Address: 151 S. OLD WOODWARD AVE

Apt/Suite/Other: SUITE 200

City: BIRMINGHAM

State: MI

Zip Code: 48009

The Officers and Directors of the Corporation:

Title	Name	Address
PRESIDENT	S. MARTIN TAYLOR	222 N WASHINGTON SQUARE, SUITE 400 LANSING, MI 48933 USA
TREASURER	KRISTEN CASWELL	222 N WASHINGTON SQUARE, SUITE 400 LANSING, MI 48933 USA
SECRETARY	MICHAEL PRUSI	222 N WASHINGTON SQUARE, SUITE 400 LANSING, MI 48933 USA
DIRECTOR	KRISTEN CASWELL	222 N WASHINGTON SQUARE, SUITE 400 LANSING, MI 48933 USA
DIRECTOR	MICHAEL PRUSI	222 N WASHINGTON SQUARE, SUITE 400 LANSING, MI 48933 USA
DIRECTOR	S. MARTIN TAYLOR	222 N WASHINGTON SQUARE, SUITE 400 LANSING, MI 48933 USA

Act Formed Under: 162-1982 Nonprofit Corporation Act**Acts Subject To:** 162-1982 Nonprofit Corporation Act

The corporation is formed on a Directorship basis.

☐ **Written Consent**[View Assumed Names for this Business Entity](#)**View filings for this business entity:**

ALL FILINGS
ANNUAL REPORT/ANNUAL STATEMENTS
ARTICLES OF INCORPORATION
ARTICLES OF INCORPORATION
RESTATED ARTICLES OF INCORPORATION
RESTATED ARTICLES OF INCORPORATION



[View filings](#)

Comments or notes associated with this business entity:

[LARA FOIA Process](#)

[Transparency](#)

[Office of Regulatory Reinvention](#)

[State Web Sites](#)

[Michigan.gov Home](#)

[ADA](#)

[Michigan News](#)

[Policies](#)

Copyright 2021 State of Michigan

EXHIBIT 2

502

03
E2
2:26

NOV 05 2018

**ARTICLES OF INCORPORATION
OF
MICHIGAN TRANSITION 2019**

FILED

NOV 05 2018

ADMINISTRATOR
CORPORATIONS DIVISION

Pursuant to the provisions of Act 162, Public Acts of 1982, as amended (the "Act"), the undersigned Corporation executes the following Articles:

**ARTICLE I
NAME**

The name of the Corporation is: Michigan Transition 2019.

**ARTICLE II
PURPOSES**

The purpose or purposes for which Michigan Transition 2019 (the "Corporation") is organized are exclusively set forth Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States internal revenue law (the "Code"), and include all of the following:

- A. To operate for the promotion of civic action and social welfare by promoting the common good and general welfare of the residents of, and visitors to, the State of Michigan.
- B. To engage in activities necessary for the Governor-elect of the State of Michigan to prepare for and assume the office of Governor.
- C. To engage in activities necessary for the Lieutenant Governor-elect of the State of Michigan to prepare for and assume the office of Lieutenant Governor.
- D. To organize events and produce materials celebrating the inauguration of the Governor-elect, the Lieutenant Governor-elect and other elected officers of the State of Michigan.
- E. To educate legislators, state officers, and the general public on issues facing Michigan and the United States.
- F. To advocate citizen participation and obtain support for public policies in Michigan.
- G. To engage in public opinion research activities to further the Corporation's social welfare purpose.
- H. To do such things and to perform such acts to accomplish its purposes as the board of directors may determine to be appropriate and as are not forbidden by Section 501(c)(4) of the Code, with all the power conferred on nonprofit corporations under the laws of the State of Michigan.

AW

520 CK186

29173621.1

1864509

ARTICLE III
ORGANIZATION

The Corporation is organized on a non-stock, directorship basis. The Corporation possesses no real property and no personal property. The Corporation is to be financed according to the following general plan: through individual, corporate, and any other contributions as permitted by law.

ARTICLE IV
RESIDENT AGENT AND REGISTERED OFFICE

The name of the resident agent at the registered office is: CSC-Lawyers Incorporating Service.

The address of the Corporation's registered office in Michigan is: 601 Abbot Road, East Lansing, MI 48823.

ARTICLE V
INCORPORATOR

The name of the incorporator is: Peter B. Ruddell.

The address of the incorporator is: 222 N. Washington Square, Suite 400, Lansing, MI 48933.

ARTICLE VI
EXCLUSION AND ASSUMPTION OF LIABILITY

A. No director or volunteer officer will be liable to the Corporation for money damages for any action taken or any failure to take any action as a director or volunteer officer, except liability for any of the following:

1. The amount of a financial benefit received by a director or volunteer officer to which he or she is not entitled.
2. Intentional infliction of harm on the Corporation.
3. A violation of section 551 of the Act.
4. An intentional criminal act.
5. A liability imposed under section 497(a) of the Act.

B. The Corporation assumes all liability for all acts or omissions of a volunteer director, volunteer officer, or other volunteer if all of the following are met:

1. The volunteer was acting or reasonably believed he or she was acting within the scope of his or her authority.
2. The volunteer was acting in good faith.
3. The volunteer's conduct did not amount to gross negligence or willful and wanton misconduct.
4. The volunteer's conduct was not an intentional tort.
5. The volunteer's conduct was not a tort arising out of the ownership, maintenance, or use of a motor vehicle for which tort liability may be imposed under section 3135 of the insurance code of 1956, 1956 PA 218, MCL 500.3135.

C. Notwithstanding anything in Section B of this ARTICLE VI to the contrary, the Corporation shall not assume any liability to the extent the assumption is inconsistent with the status of the Corporation as an organization described in Section 501(c)(4) of the Code.

D. Any repeal or modification of this ARTICLE VI by the Corporation shall not adversely affect any right or protection of any person existing under this ARTICLE VI at the time of, or with respect to, any acts or omissions occurring before the effective date of such repeal or modification. If the liability of a director or volunteer officer might be limited or eliminated under more than one of Sections A and B of this ARTICLE VI, then the provision or provisions offering the maximum protection to the director or volunteer officer will apply.

ARTICLE VII

INDEMNIFICATION

A. The Corporation shall, to the fullest extent permitted by applicable law, indemnify any person that was or is a party or is threatened to be made a party to a threatened, pending or completed action or suit by reason of the fact that the person is or was a director, officer, employee, nondirector volunteer, or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not. However, the Corporation will not pay or reimburse the expenses of a party entitled to indemnification under the preceding sentence in advance of final disposition of the proceeding unless (i) the Corporation authorizes the advance consistent with the requirements of the Act, and (ii) the person furnishes the Corporation a written agreement, consistent with the requirements of the Act, to repay the advance if it is ultimately determined that the person did not meet the standard of conduct, if any, required by the Act for the indemnification.

B. The Corporation may, to the fullest extent permitted by applicable law purchase and maintain insurance on behalf of any person described in Section A of this ARTICLE VII against any liability asserted against the person and incurred by the person in that capacity or

arising out of the person's status as such, whether or not the Corporation has the power to indemnify the person against liability.

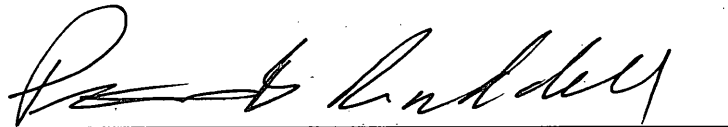
ARTICLE VIII **DISSOLUTION**

Upon dissolution of the Corporation, the property remaining after providing for debts and obligations of the Corporation shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(4) of the Code, as may be determined by the Board of Directors.

ARTICLE IX **AMENDMENT**

These Articles of Incorporation may be amended by a majority vote of the directors or by a unanimous consent resolution of the directors.

I, the incorporator, execute these Articles of Incorporation on this 5th day of November, 2018.

A handwritten signature in black ink, appearing to read "Peter B. Ruddell", is written over a horizontal line.

Peter B. Ruddell

EXHIBIT 3

The Detroit News

MICHIGAN

Plans to kidnap Whitmer, overthrow government spoiled, officials say

Robert Snell and Melissa Nann Burke The Detroit News

Published 11:27 a.m. ET Oct. 8, 2020 | Updated 5:18 p.m. ET Oct. 9, 2020

Federal agents said Thursday they thwarted a plot to violently overthrow the government as well as kidnap and harm Michigan Gov. Gretchen Whitmer — a conspiracy that included visits to her home in northern Michigan and training with firearms and explosive devices.

The alleged plot mainly involved six conspirators unhappy in part about Whitmer's coronavirus restrictions, calling her a "tyrant." They wanted to create a "self-sufficient" society free from what they called unconstitutional state governments and discussed plans to storm the Capitol and take hostages, according to FBI documents filed in court.

Organizers allegedly met starting in June, including at a Second Amendment rally in Lansing and in a Grand Rapids shop basement accessed through a secret door hidden under a rug.

The plot also included at least seven members of a Michigan militia known as the Wolverine Watchmen accused by state officials on Thursday of targeting police, making threats to "instigate civil war" and helping to plan Whitmer's kidnapping, according to state and federal officials.

► **Read the filing:** FBI affidavit: Conspirators wanted to kidnap gov to remote Wisconsin location

The federal court filing alleges the conspirators twice conducted surveillance at Whitmer's personal vacation home in northern Michigan and discussed kidnapping her to a "secure location" in Wisconsin to stand "trial" for treason prior to the

Nov. 3 election.

"Several members talked about murdering 'tyrants' or 'taking' a sitting governor," an FBI agent wrote in the affidavit. "The group decided they needed to increase their numbers and encouraged each other to talk to their neighbors and spread their message."

After the charges were revealed, Whitmer slammed President Donald Trump for failing to condemn in strong enough terms hate groups, such as the far-right Proud Boys, whom he told to "stand back and stand by" during the debate last week.

"Hate groups heard the president's words not as a rebuke, but as a rallying cry, a call to action," the Democratic governor said.

She also warned those who threatened violence: "We will find you, we will hold you accountable and we will bring you to justice."

The federal affidavit first reported by The Detroit News was filed hours after a team of FBI agents raided a Hartland Township home Wednesday and comes amid an investigation into the death of a Metro Detroit man killed during a shootout with FBI agents.

Michigan Attorney General Dana Nessel, federal and state officers on Thursday detailed charges against the 13 people and what they described as "elaborate plans" to kidnap Whitmer.

The nature of the case is "rather unprecedented," Michigan State Police Col. Joe Gasper said at the news conference.

"But it does send a very vivid reminder that while we may be in a period of discourse, possibly even divisiveness and fighting across the nation, law enforcement stands united," Gasper said.

The investigation is the result of months of work that culminated Wednesday night in the execution of a series of search warrants and arrest warrants — both in-state and out-of-state — related to acts of terrorism under Michigan state law.

The conspiracy described by the FBI specifically involved six people, including Ty Garbin, 24, whose home was raided by agents in Hartland Township late Wednesday.

The affidavit filed in federal court details probable cause to charge the six men with conspiring to kidnap Whitmer. Those identified by name include:

Adam Fox, 37, of Potterville

Barry Croft, 44, of Bear, Delaware

Ty Garbin, 24, of Hartland

Kaleb Franks, 26, of Waterford

Daniel Harris, 23, of Lake Orion

Brandon Caserta, 32, of Canton Township

Fox, Garbin, Franks, Harris and Caserta made initial appearances in federal court Thursday and are being held without bond pending detention hearings. The conspiracy charge each is facing is punishable by up to life in federal prison.

"All of us standing here today want the public to know that federal and state law enforcement are committed to working together to make sure violent extremists never succeed with their plans, particularly when they target our duly elected leaders," said U.S. Attorney Andrew Birge of the Western District of Michigan.

'Wake ... up'

Through confidential sources, undercover agents and "clandestine" recordings, federal agents tracked the six men during their planning to kidnap Whitmer as they communicated over encrypted messaging platforms using code words and phrases in an attempt to avoid detection by law enforcement, Birge said.

The group also allegedly participated in field exercises that included detonating an improvised explosive wrapped in shrapnel to test its capabilities, he said.

Caserta, 32, of Canton Township, posted several videos on TikTok, including one in which he is wearing a Hawaiian shirt, the trademark clothing of members of the antigovernment boogaloo movement.

“The price of freedom is eternal vigilance,” Caserta said in one video. “And indifference to this notion is the means by which the people can and will secure their own oppression. Wake the f--- up.”

Former U.S. Rep. Mike Rogers, a former FBI agent who chaired the House Intelligence Committee, said the conspirators had taken “really extensive steps” to put their plan into action, which was “obviously very, very troubling.”

“I feel for the governor and her family. Politics is bad enough these days. To have to put up with somebody threatening to kidnap and probably kill you for some deranged political cause is over the top for sure. My heart goes out to her and her family,” said Rogers, a Howell Republican.

He said it seems the authorities appear to have a solid case against the accused.

“They got a level of evidence inside the organization that is going to be hard to deny,” said Rogers, noting information from an undercover agent, informants, as well as bugged phone and intercepted data conversations.

“It looks like the evidence was overwhelming, and they got to a point where they said, OK, we don’t want to take the chance that they actually flip the switch here, and went in and did it.

"We should all be concerned," he added. "We really need to talk about how this stuff needs to be tamped down."

The criminal charges were filed six days after another so-called boogaloo boy, Madison Heights resident Eric Allport, 43, was killed during a shootout with FBI agents at a Madison Heights restaurant.

Allport is not believed to have been involved with any of the people accused of conspiring to kidnap Whitmer or violently overthrow the government, a law enforcement source told The News.

Allport died of multiple gunshot wounds during a shootout with FBI agents in the parking lot of a Texas Roadhouse at about 4:30 p.m. Friday near John R and 12 Mile.

He had a violent, turbulent life. Allport served an 11-year prison sentence for shooting at two police officers, was a boogaloo adherent and played a minor role in the infamous Ruby Ridge standoff in 1992, one of the darkest chapters in federal law enforcement history.

The 'Watchmen'

Separately, Nessel on Thursday announced state charges against the seven other individuals pursuant to the state's anti-terrorism act, "all of whom are in custody and linked to the militia group Wolverine Watchmen."

In total, 19 state felony charges for firearms and terror-related acts were filed by Nessel against seven individuals known to be members or associates of the Wolverine Watchmen.

The individuals include Paul Bellar, 21, of Milford; Shawn Fix, 38, of Belleville; Eric Molitor, 36, of Cadillac; Michael Null, 38, of Plainwell; William Null, 38, of Shelbyville; Pete Musico, 42; and Joseph Morrison, 26, who live together in Munith.

The suspects are alleged to have called on the groups' members to identify the home addresses of law enforcement officers in order to target them; made threats of violence to instigate a civil war leading to societal collapse; and engaged in the planning and training for an operation to attack the state Capitol building and kidnap government officials, including Whitmer, according to a statement from Nessel's office.

"There has been a disturbing increase in anti-government rhetoric and the re-emergence of groups that embrace extremist ideologies," Nessel said.

"These groups often seek to recruit new members by seizing on a moment of civil unrest and using it to advance their agenda of self-reliance and armed resistance. This is more than just political disagreement or passionate advocacy, some of these groups' mission is simply to create chaos and inflict harm upon others."

Musico and Morrison live in Munith in a rural area of Jackson County. Signs saying "private property" and "no trespassing" were in their home's front yard Thursday evening. What appeared to be a Confederate flag could also be seen near the home, which was located along a wooded roadway and a river.

Pam Karshnock of Munith lives next door to the property. She said she regularly hears the sound of gunfire that disrupt her quiet evenings in the country.

"For months, there's been gunfire almost daily," Karshnock said.

“I’m still shaking, knowing that it was that close to me,” she added, “just thinking back to the times I almost approached them to ask them to stop.”

A group of individuals was visible Thursday outside of the home. They appeared to be moving things from the residence into a trailer that was parked outside. A stack of tires, cars and an RV were all located near the home.

The federal investigation dates to early this year when the FBI learned through social media that individuals were discussing the violent overthrow of several state governments and law enforcement.

In June, Croft, Fox and 13 others from multiple states held a meeting in Dublin, Ohio, near Columbus, according to the government.

Those present included an FBI confidential source who recorded the meetings. The source has been paid \$8,600.

“The group talked about creating a society that followed the U.S. Bill of Rights and where they could be self-sufficient,” the FBI agent wrote.

“They discussed different ways of achieving this goal from peaceful endeavors to violent actions. At one point, several members talked about state governments they believed were violating the U.S. Constitution, including the government of Michigan and Whitmer.

“As part of that recruitment effort, Fox reached out to a Michigan-based militia group,” the agent added.

'We gotta do something'

The militia group is not identified in the court filing, but members periodically meet in remote areas of the state for firearms training and tactical drills.

The FBI was already tracking the militia in March after a local police department learned members were trying to obtain addresses of local law-enforcement officers, the FBI agent wrote.

“At the time, the FBI interviewed a member of the militia group who was concerned about the group’s plans to target and kill police officers, and that person agreed to become a (confidential source),” the agent wrote

In late June, Fox posted on Facebook a video in which he complained about the state’s judicial system and COVID-19 restrictions on gyms operating in Michigan.

“Fox referred to Governor Whitmer as ‘this tyrant b----,’ and stated, ‘I don’t know, boys, we gotta do something,” according to the court affidavit. “You guys link with me on our other location system, give me some ideas of what we can do.”

The affidavit describing the thwarted plot reports two occasions when the alleged conspirators conducted surveillance on Whitmer's vacation home — during the day on Aug. 29 and at night over the weekend of Sept. 12-13.

Fox and two other individuals located Whitmer's home and shot video and took photos of it as they drove by on Aug. 29. One of the individuals then calculated how long it would take local and state police to respond to an incident at the property.

"We ain't going to let 'em burn our f---in' state down. I don't give a f--- if there's only 20 or 30 of us, dude, we'll go out there and use deadly force," said Fox during the surveillance operation, according to an audio recording quoted in the affidavit.

In an encrypted group chat, Garbin later suggested that demolishing a nearby bridge would hamper a response by police to the governor's home, according to the court filing.

The September surveillance followed a field exercise at Garbin's property in Luther, Michigan, where the conspirators allegedly detonated an improvised explosive device made from a commercial firework wrapped in shrapnel "to test its anti-personnel effectiveness."

After a briefing on the plan to kidnap Whitmer, a larger group of the men drive from Luther to the vacation home in three separate vehicles while armed.

They stopped to check the underside of a highway bridge to check for places to attach an explosive charge, and discussed detonating explosive devices to divert law enforcement officers from the area of the governor's home.

“She f---ing goddamn loves the power she has right now,” Fox said during the surveillance operation, according to the affidavit. “I can see several states takin’ their f---in’ tyrants. Everybody takes their tyrants.”

The group later returned to Garbin's property, where they discussed destroying Whitmer's vacation home. "Kidnapping, arson, death, I don't care," Franks said, according to the affidavit.

The group made plans to conduct a final training exercise in late October but then decided that was too close to the November election, so they moved forward with raising money to procure explosives and other supplies including an 800,000-volt taser. It's unclear when the kidnapping was planned for.

The 'lightning rod'

FBI and state police executed the arrests of several of the conspirators when they were meeting on the east side of the state to pool funds for explosives and exchange tactical gear, Birge said Thursday.

Garbin and Franks appeared in federal court shortly after Thursday's news conference announcing the charges in the alleged kidnapping plot.

In a brief court hearing in Grand Rapids that took about five minutes, Garbin, 24, and Franks told a judge that they would need court-appointed attorneys based on their financial status. The two also were given their next court date of Oct. 13 for a bond hearing. The pair will remain in the custody of the U.S. Marshals.

The criminal case comes after months of state restrictions on travel and business during the COVID-19 pandemic.

“The lockdown has been a lightning rod for anti-government extremists in this country, and Gov. Whitmer has been on the forefront of their targeting,” said Seamus Hughes, deputy director of George Washington University’s Program on Extremism.

Senate Majority Leader Mike Shirkey, R-Clarklake, tweeted Thursday afternoon: "A threat against our Governor is a threat against us all."

"We condemn those who plotted against her and our government," he said. "They are not patriots. There is no honor in their actions. They are criminals and traitors, and they should be prosecuted to the fullest extent of the law."

House Speaker Lee Chatfield tweeted that violence "has no place in politics."

"Ever. It's never a solution to disagreements. The people who targeted @GovWhitmer and police officers are un-American. Justice should be swift and severe. It's time to send a message that violence will not be tolerated," he wrote.

U.S. Rep. Paul Mitchell, a Republican and Whitmer critic, also condemned the threats against her and praised law enforcement. "I wish Governor Whitmer and her family well."

In recent weeks, the state-owned Michigan governor's residence received security upgrades, including the construction of a new perimeter fence.

The "perimeter security and other safety upgrades" were planned out last year, Whitmer spokeswoman Tiffany Brown said in early September. They were scheduled to start in the early spring but were delayed until recently because of the pandemic, she said.

The cost for the "maintenance" projects at the Lansing residence, which was recommended by the Michigan State Police and the state Department of Technology, Management and Budget, was about \$1.1 million, Brown said.

"As a matter of practice, we're constantly reviewing security protocols and adjusting as needed," said Shanon Banner, spokeswoman for the Michigan State Police, in early September.

"We don't comment on specific threats against the governor nor do we provide information about security measures."

Staff Writers Craig Mauger, Beth LeBlanc, Francis X. Donnelly and Christine Ferretti contributed.

EXHIBIT 4

NEWS HITS

Gov. Whitmer becomes target of dozens of threats on private Facebook groups ahead of armed rally in Lansing

Posted By Steve Neavling on Mon, May 11, 2020 at 9:38 am



Shutterstock

Dozens of angry Michiganders, fueled by conspiracy theories and disinformation about the coronavirus, are promoting violence and mobilizing armed rallies against Gov. Gretchen Whitmer on Facebook, in violation of the social media company's policies.

Metro Times gained access to four private Facebook groups that can only be seen by approved members. The pages, which have a combined 400,000 members, are filled with paranoid, sexist, and grammar-challenged rants, with members encouraging violence and flouting the governor's social-distancing orders.

On Sunday, after being contacted by *Metro Times*, Facebook removed one of the groups, **Michigan United for Liberty**, and deleted posts on others for violating the company's policy against inciting violence. Facebook announced last month that it will remove groups and events that encourage people to defy social-distancing measures. Facebook also is investigating the other groups.

"We removed one group for violating our policies and will remove any other violations as we continue our review," a Facebook spokesperson tells *Metro Times*.

Assassinating Whitmer is a common theme among members of the groups. Dozens of people have called for her to be hanged.

"We need a good old fashioned lynch mob to storm the Capitol, drag her tyrannical ass out onto the street and string her up as our forefathers would have," John Campbell Sr. wrote in a group called "**People of Michigan vs. Gov. Gretchen Whitmer**," which had nearly 9,000 members as of Monday morning.

Steve Doxsie had the same idea: "Drag that tyrant governor out to the front lawn. Fit her for a noose."

"Either President Trump sends in the troops or there is going to be a midnight lynching in Lansing soon," Michael Smith chimed in.

Others suggested she be shot, beaten, or beheaded.

"Plain and simple she needs to eat lead and send a statement to the rest of the democrats that they are next," James Greena, of Fennville, wrote.

Russel Christopher Rozman said, “She needs her ass beat. Most of these politicians need a good ass whooping. Just. Punch there lights out.”

When someone suggested the guillotine, Thomas Michael Lamphere responded, “Good ol’ fashioned bullets work better, but I like the enthusiasm.”

“Wonder how long till she’s hit with a shotgun blast,” Chris Parrish wrote.

Matthew Woodruff had another idea: “Can we please just take up a collection for an assassin to put that woman from Michigan down,” he asked.



The comments are especially disturbing because some of those calling for violence are planning to attend an armed rally at the Capitol building in Lansing on Thursday. On April 30, hundreds of protesters, some of them heavily armed, **descended on the state Capitol** during the “American Patriot Rally,” and there were armed protesters as part of “Operation Lansing” on April 15. A two-day rally is also planned for the weekend.

“We could’ve taken over the capital last time if we wanted,” Chris Coffey said. “This was just a display. Next time won’t be!”

“If she thinks the last protest was bad she hasn't seen anything yet,”

DonnaCookie Grady warned.

“We haven’t had any bloodshed yet, but the populous is counting to three, and the other day was two,” Dave Meisenheimer wrote in **Michiganders Against Excessive Quarantine**, which has more than 385,000 members. “Next comes watering the tree of liberty with the blood of tyrants.”

Gordon Chapman says he’s going to the Thursday rally and hopes demonstrators are “armed to the teeth.”

“Voting is too late we need to act now,” Chapman said.

The potential for violence prompted some public officials, including Whitmer and Attorney General Dana Nessel, to promote banning firearms from the Capitol building.

“There are legislators who are wearing bulletproof vests to go to work,” Whitmer told ABC News last week. “No one should be intimidated by someone who's bringing in an assault rifle into their workplace.”

At 11 a.m. Monday, **the bipartisan Michigan State Capitol Commission** plans to discuss a firearms ban. In a letter to the six-member commission, Nessel told the panel that it has the legal authority to ban guns from the Capitol.

Nessel’s support of the ban drew anger on another private Facebook page, **Whitmer Recall Movement**, which has more than 3,500 members.

“We are sharpening a stick for you Dana,” Pete Scudamore wrote.

“DO you want me to bring the rope, shouldn’t be too hard to find a good tree,” Russell Kynn asked.

Nessel's spokeswoman Kelly Rossman-McKinney says the attorney general's office will not tolerate threats.

"We take every threat seriously — and, of course, we are doing everything we can to minimize threats," Rossman-McKinney tells *Metro Times*.

In January, *Metro Times* **chronicled another Facebook page** that was rife with sexism, Islamophobia, and threats against Whitmer and other politicians.

Whitmer responded with a letter to Facebook.

"As a lawyer who respects the First Amendment right to freedom of speech and expression, I realize there is only so much purview media platforms have for the content posted by their users," Whitmer wrote. "However, better enforcement of Facebook's own community standards — where 'attacks' are defined as, 'violent or dehumanizing speech, statements of inferiority, or calls for exclusion or segregation' — this election cycle is needed now more than ever. Mine is not a singular ask."

The private Facebook groups are a hub for far-fetched conspiracy theories and disinformation, reinforcing people's fears and anger. For some, the state's stay-at-home order is an unconstitutional plot by liberals to strip residents of their freedoms and steal the election from President Trump. Some insist the coronavirus is a hoax, and others believe it's a manmade disease designed to enrich billionaires and force vaccines on the masses.

One of the most popular and influential conspiracies is featured in "Plandemic," a 26-minute documentary-style video with ominous music that racked up millions of views in the past week. The video features **a widely refuted researcher named Judy Mikovits**, who spins a baseless tale about wealthy people intentionally spreading the coronavirus to boost vaccination

rates. She also warns against wearing masks, saying they can exacerbate viral symptoms. Facebook, YouTube, and Instagram have been removing the video, saying the false claims pose a threat to public health.

Not surprisingly, many members of the groups say they will never wear a mask because they believe they are unsafe or represent tyranny.

Birbot Arvo suggested he would resort to violence if police approached him about wearing a mask.

“Cop or not. You come at me strong about a mask and I will break your face,” Arvo said.

Nathan Silver declared he “will not submit to their cultural Marxism.”

“I refuse to wear one,” wrote Rich T. Tyra II. “They cause more problems than they prevent and its a sign of being silenced and submission and its training for the forced vaccinations.”

To Melody DeCaire, wearing a mask is useless because the coronavirus isn’t real.

“theres no such thing as Covid,” she insisted. “Its radation [*sic*] poisoning coming from the 5g,” referring to the **conspiracy theory** that 5G towers cause the illness.

As it struggles to stem the spread of disinformation, Facebook has become the go-to platform for anti-government talking points.

In an April 20 **interview with ABC News’ *Good Morning America***, Facebook CEO Mark Zuckerberg said that the “stuff that people are saying that is false around a health emergency like this can be classified as

harmful misinformation that has a risk of leading to imminent danger, and we'll take that content down.”

When reached for comment, Facebook users who posted comments about violence said they were merely exercising their right to free speech.

Thomas Allan Morse, who wrote, “Army 11 bravo vet here ready to rumble. Two to the chest one to the head,” responded that he “earned” the right to exercise free speech because he served in the military.

“Did you serve this country in the armed forces? Let alone ground combat?” Morse asked *Metro Times* via Facebook Messenger. “I earned my 1st ammendment (sic).” ‘

He declined to say whether he planned to attend Thursday’s rally.

Sexism also is rampant among members of the private groups.

“I'm dying here a woman talking strategy is like a man explaining what its like to go through menopause. PLEASE,” Eric John Mayer said.

James Davis added, “Men advanced civilization from the days of banging two rocks together. I don’t doubt there are smart women out there. However, the smart women are busy doing things like having families, not corrupting themselves with power and ruining people’s lives.”

Facebook users called Whitmer a “Nazi,” “spawn of the devil,” “wicked witch,” “arrogant facist [sic] pig,” “Gestapo Gretchen,” “tyrant,” “Soros puppet,” and “baby killer tyrant.”

For Patricia Folk, threats are the logical next step to regaining her freedoms.

“I honestly believe that the only way that Congress and the Senate are going to start listening to ‘We the People’ are threats,” Folk wrote on one of the private pages. “They no longer respect the voter, or the people they represent. Maybe a tarred and feathered election official, may wake them up.”



Brian Masnova ▶ **Whitmer Recall Movement**



Sunday at 10:55 PM · 📺



Curt Wind

Remove witchmer the baby killer tyrant

5d Like Reply



Mike Phipps

Gotta go in a grab her by the hair and drag her down the street for everyone to see. Get the gallos ready

4d Like Reply



Christopher Loeffler

Mike - I keep saying the very same thing....

4d Like Reply



DonnaCookie Grady Evil discusssing cunt look at her she looks higher than a kite if she thinks the last protest was bad she hasn't seen anything yet she better stop the bullshit now, whitless doesn't work for us because if she did she would let people get back to work but she doesn't want that she wants Michigan to fail so they can blame everything on Trump

Like · Reply · 13m



Dink Winkerman It's time for the people of Michigan to join together in uprising storm her house storm the capitol if we don't do that these politicians will continue destroying everything they touch

Like · Reply · 9m



1



Dink Winkerman Time for the people in Michigan to join together and uprising. Let's storm her house let's storm the capitol. The only way to stop these people is to physically stop these destructive evil people

Like · Reply · 8m



1



Sherry Smith-perry ► The PeopleOf
Michigan vs Gov. Gretchen Whitmer



Sunday at 11:32 PM · 📺



Mike Dershem Jr.

They might both end up being cut from a rope if they don't watch it



3d Like Reply



Melissa Rhey 🖐️


Mike Dershem Jr. we should be so lucky!! 🙌

1d Like Reply





Kevin Rex Heine shared a link.

Thursday at 7:35 PM · 



Steve Riker

I wish someone would take her out permanently

1d Like Reply



Renee Collar Sias 🖐️

Steve might want to pull that. A friend had a police visit from that remark. Please know I am only saying it so you know they are hauling people on for that.

1d Like Reply



Mike Pruitt 🖐️

It's time to stop talking and do something. What do you think would happen if a thousand armed Patriots showed up in Lansing demanding her resignation. They might get a few but they cant get all of us and it might not get her out that day but it would open up some eyes here in Michigan and more importantly in Washington. WWG1WGA

Just now Like Reply



Matthew Woodruff

Can we please just take up a collection for an assassin to put that woman from Michigan down

8h Like Reply

*Stay on top of Detroit news and views. **Sign up** for our weekly issue newsletter delivered each Wednesday.*

Tags: Facebook, Whitmer, coronavirus, COVID-19, lockdown, Lansing, Republicans, Image

We welcome readers to submit letters regarding articles and content in *Detroit Metro Times*. Letters should be a minimum of 150 words, refer to content that has appeared on *Detroit Metro Times*, and must include the writer's full name, address, and phone number for verification purposes. No attachments will be considered. Writers of letters selected for publication will be notified via email. Letters may be edited and shortened for space.

Email us at letters@metrotimes.com.

**Support Local Journalism.
Join the *Detroit Metro Times* Press Club**

Local journalism is information. Information is power. And we believe **everyone** deserves access to accurate independent coverage of their community and state. Our readers helped us continue this coverage in 2020, and we are so grateful for the support.

Help us keep this coverage going in 2021. Whether it's a one-time acknowledgement of this article or an ongoing membership pledge, your support goes to local-based reporting from our small but mighty team.

Join the Metro Times Press Club for as little as \$5 a month.

TRENDING

[Fox News suddenly gives a shit about CDC guidelines when it's Rashida Tlaib](#)

[Investigation into drugging allegations at Birmingham's Rose Room is 'inactive' after 7 complaints filed](#)

[Betsy DeVos won't run for Michigan governor as GOP searches for viable candidates](#)





WHY DOES IT FEEL LIKE SO MANY TOURS SKIP DETROIT? IT'S COMPLICATED.

SPEAKING OF...



Report finds 9 out of
10 Michigan
restaurants are



ICYMI: Climate report
says we're fucked, R.
Kelly trial starts,



Detroit area bars now
require proof of
vaccination

'inadequately staffed,'
and we're not
suprised
Aug 11, 2021

Canadian border
reopens, and more
Aug 11, 2021

Aug 10, 2021

MORE »

EXHIBIT 5



CIVIL RIGHTS COVID-19 HEALTH CARE HEALTH POLICY RACE EQUITY
STATE GOVERNMENT WOMEN'S RIGHTS

'Tyrants Get The Rope': Small anti-Whitmer protest rocks Capitol, reporter hit by gun

BY: ANNA LIZ NICHOLS - APRIL 30, 2020 4:26 PM



📷 Conservative protest at the Capitol against Gov. Gretchen Whitmer, April 30, 2020 | Anna Liz Nichols

Updated, 6:38 p.m. with comments from Chatfield's spokesman

A couple hundred right-wing protestors chanting “Lock her up” and “Heil Whitmer” spilled into the Michigan state Capitol Thursday after holding a rally on the Capitol steps, even though the building is currently [closed](#) for tours and events to stop the spread of COVID-19.

While jammed outside the House chamber, one protestor carrying a long gun turned and hit this reporter in the head with a rifle. The incident did not appear intentional, but was reported to the Michigan State Police (MSP). Lt. Brian Oleksyk said MSP arrested one protestor for assaulting another protestor at the rally.



Anna Liz Nichols
@annaliznichols

Just got slammed in the head by a protestor's rifle.

There is no care for safety or social distancing in the crowd

12:43 PM · Apr 30, 2020 from Lansing, MI



18.2K



See the latest COVID-19 information on Twitter

Tweet your reply

Gideon D'Assandro, spokesman for House Speaker Lee Chatfield (R-Levering), noted the Capitol “is currently closed to functions,

including group events, meetings and tours, etc. But the public is still allowed to view meetings of the Legislature, so they are allowed in when the House or Senate is in session.” He declined to comment on the incident with the reporter until the speaker talks with personnel onsite. A spokesperson for Senate Majority Leader Mike Shirkey (R-Clarklake) did not return a request for comment from the *Advance*.*

Many of the shouts from speakers and protestors were directed at Democratic Gov. Gretchen Whitmer to end what they said was “tyrannical rule” and stop the stay-home order during the pandemic that’s [sickened](#) more than 40,000 and killed more than 3,700 in Michigan. The order is in effect through May 15.

Signs ranging from profane and misogynistic (“Tyranny Bitch”) to violent (“Tyrants Get The Rope”) were raised at the event. A speaker at the protest acknowledged the more than a dozen militia members at the Capitol, saying that they were there for security to protect protestors. Several speakers discussed conspiracy theories about the disease.



Conservative protest
at the Capitol against
Gov. Gretchen
Whitmer, April 30,
2020 | Anna Liz
Nichols

Conservative protest
at the Capitol against
Gov. Gretchen
Whitmer, April 30,
2020 | Anna Liz
Nichols

Conservative protest
at the Capitol against
Gov. Gretchen
Whitmer, April 30,
2020 | Anna Liz
Nichols



Conservative protest
at the Capitol against
Gov. Gretchen
Whitmer, April 30,
2020 | Anna Liz
Nichols

Conservative protest
at the Capitol against
Gov. Gretchen
Whitmer, April 30,
2020 | Anna Liz
Nichols

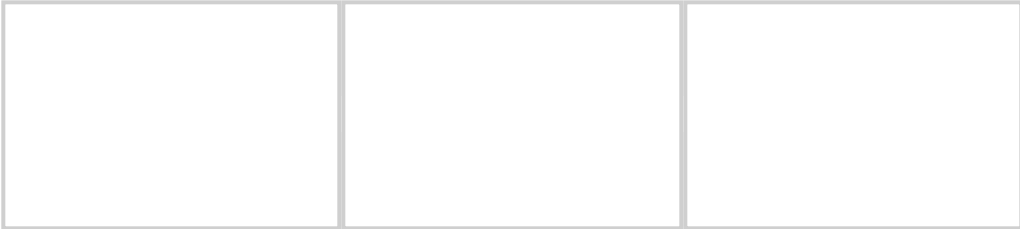
Conservative protest
at the Capitol against
Gov. Gretchen
Whitmer, April 30,
2020 | Anna Liz
Nichols



Conservative protest at the Capitol against Gov. Gretchen Whitmer, April 30, 2020 Anna Liz Nichols	Conservative protest in the Capitol against Gov. Gretchen Whitmer, April 30, 2020 Anna Liz Nichols	Many anti-lockdown and pro-Trump rallies featured QAnon signs and slogans like this popular one about accused child trafficker Jeffrey Epstein, pictured next to gallows, at a conservative protest at the Capitol against Gov. Gretchen Whitmer, April 30, 2020 Anna Liz Nichols
---	---	---



Conservative protest at the Capitol against Gov. Gretchen Whitmer, April 30, 2020 Anna Liz Nichols	Conservative protest at the Capitol against Gov. Gretchen Whitmer, April 30, 2020 Anna Liz Nichols	Conservative protest at the Capitol against Gov. Gretchen Whitmer, April 30, 2020 Anna Liz Nichols
---	---	---



Conservative protest at the Capitol against Gov. Gretchen Whitmer, April 30, 2020 Anna Liz Nichols	Conservative protest at the Capitol against Gov. Gretchen Whitmer, April 30, 2020 Anna Liz Nichols	Police and sergeants-at-arms try to keep order at the conservative protest at the Capitol against Gov. Gretchen Whitmer, April 30, 2020 Anna Liz Nichols
--	--	--



Conservative protest at the Capitol against Gov. Gretchen Whitmer, April 30, 2020 Anna Liz Nichols	Conservative protest at the Capitol against Gov. Gretchen Whitmer, April 30, 2020 Anna Liz Nichols
--	--

Speakers called out the Legislature for letting Whitmer’s stay-home order stand, even though many legal experts don’t believe lawmakers have the authority to do overturn it.

The protest took place as the GOP-led Legislature prepared to go forward with legal action against Whitmer and appease conservative protestors and interest groups by trying to limit her orders.

Gov. Gretchen Whitmer's approval rating for handling COVID-19 has remained high throughout the crisis, with most recent [Navigator](#) polling taken April 22 through Tuesday showing her at 65% approval. President Donald Trump is at 43% approval in Michigan for his COVID-19 response.

As for measures to stop COVID-19, polls have consistently found support across party lines. A Politico/Morning Consult [poll](#) found 81% of voters believe we "should continue to social distance for as long as is needed to curb the spread of coronavirus, even if it means continued damage to the economy." A super-majority of both parties agreed, with 89% of Democrats and 72% of Republicans on board.

COVID-19 cases surpass 20K, Detroit sees slowdown in cases

The state is reporting that the number of COVID-19 cases has reached 20,346, an increase of 1,376 since Tuesday. A statewide coronavirus hotline is open 7 days a week from 8 a.m. to 5 p.m. at 1-888-535-6136. Information can be found on the DHHS website or the U.S. Centers for Disease Control (CDC) and Prevention ... Continue reading



Michigan Advance

More than 40 states adopted stay-home orders to combat COVID-19, which has [spread to](#) more than 1 million people nationwide and killed almost 62,000.

Similar small protests have taken place in other states, many of which were [organized](#) by well-connected conservative groups like

Freedom Works, which also funded tea party events against former President Obama.

Freedom was a major theme as protestors staged a smaller version of [Operation Gridlock](#), an event from earlier this month where more than 3,000 people gathered to protest the stay-home order, but greatly resembled a Trump rally.

Both rallies featured Confederate flags and swastikas, with protestors chanting “Heil Whitmer” and calling her executive orders a violation of their civil liberties.

Like in Operation Gridlock, social distancing and mask usage was minimal. This time, most protestors did not stay in their cars. Oleksyk said 600 to 800 people gathered outside for the rally and police let 275 individuals into the Capitol. Short of the one arrest, Oleksyk said the event was a peaceful protest.

Michigan reaches more than 41K COVID-19 cases, 3,700 deaths

There are now 41,379 positive cases of COVID-19 in Michigan as of 3 p.m. Thursday, although state officials believe the actual number of cases is much higher. This is an additional 980 cases since Wednesday. A statewide coronavirus hotline is open 7 days a week from 8 a.m. to 5 p.m. at 1-888-535-6136. Information can ... Continue reading



Michigan Advance

“Everything else has been peaceful. People are behaving and we’re creating a safe environment for them to practice their freedom of speech. Other than that one arrest so far everything’s been good,” Oleksyk said.

Outside the doors of the House, the majority of protestors that entered the Capitol gathered seeking entry to the session. The crowd hurled insults at Capitol officials and police calling them “bastards” and “cowards.”

Republicans state House candidate Michelle Gregoire, who is running against state Rep. Jim Haadsma (D-Battle Creek), returned to the Capitol after a [confrontation](#) with House Chief Sergeant David Dickson on Wednesday. Reporter Ali Kasben from Gongwer noted Gregoire’s videos Thursday.



Ali Kasben
@kasbenal

Even though the protester who was thrown out of the House gallery yesterday asked for Chief Sergeant Davic Dickson's name so she could press charges, she keeps calling him "the black guy" in her videos from today an yesterday.

12:50 PM · Apr 30, 2020

♥ 29 💬 5 ↗ Share this Tweet

[Tweet your reply](#)

A group focused on the sergeants, who wear red blazers, called them “red coats” and declared America has fought red coats before.

Dozens of armed individuals stood in front of the House doors yelling, “Let us in” even though the public is not allowed on the floor. Over in the Senate, 22 people were allowed in the gallery. This included a few people with large guns.

Advance *Editor Susan J. Demas contributed to this story.*



REPUBLISH

Our stories may be republished online or in print under Creative Commons license CC BY-NC-ND 4.0. We ask that you edit only for style or to shorten, provide proper attribution and link to our web site. Please see our republishing guidelines for use of photos and graphics.



ANNA LIZ NICHOLS 

Anna Liz Nichols is a former Michigan Advance intern. She is a Michigan State University graduate who has reported for several publications, including MLive and Michigan State University's award-winning student paper, the State News, where she covered the many tendrils of the Larry Nassar sexual abuse scandal.

MORE FROM AUTHOR

RELATED NEWS



Black lawmakers warned of extremism and white...

BY ALLISON R. DONAHUE

October 20, 2020



Advance investigation: Michigan joins just 2 other...

BY LAINA G. STEBBINS

January 11, 2021

STORIES THAT MOVE YOU

DEMOCRACY TOOLKIT



Corporate media aren't cutting it. The Michigan Advance is a nonprofit outlet featuring hard-hitting reporting on politics and policy and the best progressive commentary in the state.

[Ethics Policy](#) | [Privacy Policy](#)



Our stories may be republished online or in print under Creative Commons lisence CC BY-NC-ND 4.0. We ask that you edit only for style or to shorten, provide proper attribution and link to our web site.



© Michigan Advance, 2021

EXHIBIT 6

In Michigan, a Dress Rehearsal for the Chaos at the Capitol on Wednesday

In April, armed protesters crowded into the State Capitol in Michigan. Frightened lawmakers saw echoes of that day in Wednesday's deadly riot at the Capitol in Washington.

By Kathleen Gray

Jan. 9, 2021

LANSING, Mich. — First came the “Unlock Michigan” protest. More than 1,000 cars, many draped with flags supporting President Trump, drove around the Michigan State Capitol, blaring their horns and decrying Gov. Gretchen Whitmer’s coronavirus lockdown orders. Hundreds of others, many armed with military-style weapons, milled about on the lawn.

Two weeks later, on April 30, the dissent escalated. Gun-toting protesters rushed the State Capitol, not long after Mr. Trump tweeted “Liberate Michigan.” They demanded entry into the House of Representatives’ chamber, chanting “Let Us In.”

Subscribe to The Times to read as many articles as you like.
[nytimes.com/subscription](https://www.nytimes.com/subscription)

In Michigan, a Dress Rehearsal for the Chaos at the Capitol on Wednesday

In April, armed protesters crowded into the State Capitol in Michigan. Frightened lawmakers saw echoes of that day in Wednesday's deadly riot at the Capitol in Washington.

By Kathleen Gray

Jan. 9, 2021

LANSING, Mich. — First came the “Unlock Michigan” protest. More than 1,000 cars, many draped with flags supporting President Trump, drove around the Michigan State Capitol, blaring their horns and decrying Gov. Gretchen Whitmer’s coronavirus lockdown orders. Hundreds of others, many armed with military-style weapons, milled about on the lawn.

Two weeks later, on April 30, the dissent escalated. Gun-toting protesters rushed the State Capitol, not long after Mr. Trump tweeted “Liberate Michigan.” They demanded entry into the House of Representatives’ chamber, chanting “Let Us In.”

Subscribe to The Times to read as many articles as you like.
[nytimes.com/subscription](https://www.nytimes.com/subscription)

EXHIBIT 7



Subscribe

The context you need to understand. The facts you need to decide. Start today for \$1.

Advertisement

News

Protester explains doll, noose demonstration at Capitol, wants to gift props to Trump

Updated: May. 18, 2020, 8:17 p.m. | Published: May. 18, 2020, 5:48 p.m.

28

Skirmish at Michigan Capitol over doll with a noose around neck

2,834
shares

By **Samuel Dodge | sdodge@mlive.com**

The controversial protester who brought a symbolic doll with a noose wrapped around its neck to a demonstration at the state Capitol last week isn't necessarily a coronavirus denier, he said.

James Chapman said Monday that his real beef at Thursday's protest in Lansing was two-fold: restrictions on public gatherings - which he argues violate the First Amendment, and Gov. Gretchen Whitmer's unilateral assertion of emergency powers.

Advertisement

The Van Buren Township native sought to make his point by hanging a brunette doll from a noose at the end of his 13-star Betsy Ross flag and a fishing rod.

He has a criminal history and wants to be a Michigan lawmaker. Thursday, he carried a doll in a noose to the state Capitol.

The noose is "one size fits all" for anyone not standing up to Whitmer and her "tyranny," the Republican candidate for the 21st state House district seat said Monday. That includes RINOs, or Republicans in Name Only, he said.



News you need. Stories you care about.

The source you trust

The source you trust.

[Read now](#)

“The Republicans need to be cleaned out,” Chapman said. “I would like to give some political symbolism here. That noose is one size fits all, and we will kick your RINO butt out of there... This is the reason Gretchen Whitmer has not been called out on the carpet (the Capitol floor) by the legislature.”

Advertisement

Chapman feels a deep connection to the Revolutionary War that's inspired him to research the history of a millstone on the Huron River that may have stood on the Delaware River near Valley Forge back in the 1700s. It's also led him to take on an aggressive style of protest that includes depicting violence against political leaders.

“The First Amendment protected (these) forms of protest. It's something the original patriots did,” he said. “They not only hung them in effigy, but they burned them in effigy.”

He accused Whitmer of violating First Amendment protections of public and religious assembly. She banned public meetings between anyone not in the same household in Executive Order 2020-42. Places of worship are

public meetings between anyone not in the same household in Executive Order 2020-11. Places of worship are exempt from punishment under Executive Order 2020-11.

Churches sue Whitmer, claim coronavirus orders hinder religious gatherings despite exceptions

Advertisement

On May 14, Chapman attended a protest organized by the group Michigan United for Liberty against the state's stay-home order, carrying the doll by a noose just as he did at an April 15 rally. He told MLive on Monday that the doll was meant to represent Whitmer.

A brief fight broke out when a female protester attempted to take the doll. Lt. Brian Oleksyk public information officer for the Michigan State Police said troopers spoke the man after the incident and that no one involved was injured or arrested.

Erica Pettinaro, a co-founder of Michigan United for Liberty, denounced Chapman's demonstration, as did Michigan Republican Party Chair Laura Cox.

"Our organization does not agree with or encourage violent threats or actions of any kind," Pettinaro said, adding that the organization is non-partisan. "We have made several statements in regards to keeping our events peaceful."

The scuffle with the female protester led to three violations of his personal rights, Chapman said.

“She tried to violently destroy my First Amendment prop,” he said. “Number one, (That’s) a violation of my First Amendment rights. Number two, malicious destruction of property. Number three was larceny from a person, because they stole my axe.”

The axe, which he named Paul Bunyan, is a tool of his tree-cutting service in the Belleville area, he said.

Chapman has had several run-ins with the criminal justice system over the last few decades, according to law enforcement records and local news reports reviewed by MLive.

In 1990, Chapman was found guilty of assault with intent to do great bodily harm less than murder and a firearms charge and was sentenced to three to 10 years in prison, according to [Michigan Department of Corrections records](#). He was also put on probation for a stalking charge in 2015.

Chapman was sentenced to six months in jail in 2018 after being found guilty of resisting a police officer, according to The [Belleville-Area Independent](#). A Michigan Court of Appeals opinion [summarized the incident](#), noting Chapman argued with and attempted to stab an acquaintance at a house in Van Buren Township, and eventually dove into Belleville Lake in an attempt to evade police.

The criminal record, Chapman said, makes him the most-qualified candidate for the state House Judiciary Committee, should he win the 21st district.

He has a plan to wipe that record clean, however. He intends to visit President Donald Trump [during his scheduled visit to the Ford Rawsonville manufacturing plant](#) in Ypsilanti Township on Thursday.

[Trump planning Thursday tour of Michigan Ford plant where ventilators, PPE are made](#)

In exchange for a clean record, he plans to give Trump the fishing rod and noose as a gift.

READ MORE

[Complete coverage at mlive.com/coronavirus](https://mlive.com/coronavirus)

[Monday, May 18: Latest developments on coronavirus in Michigan](#)

PREVENTION TIPS

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

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

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

Michigan Gov. Gretchen Whitmer has also issued an executive order requiring people to wear [face coverings over their mouth and nose](#) while inside enclosed, public spaces.

Read all of MLive's coverage on [the coronavirus at mlive.com/coronavirus](https://mlive.com/coronavirus).

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

Note to readers: if you purchase something through one of our affiliate links we may earn a commission.

Around the Web

The Walking Dead: The Beginning of the End

The fight for survival only gets harder. Stream the new season of The Walking Dead now on AMC+

AMC+ | Sponsored

2 ex-Tigers traded to Reds in surprising late-night deal

Justin Wilson and Luis Cessa are linked again.

MLive.com

Discover Hunter Douglas Blinds With One Of Our Experts

Hunter Douglas | Sponsored

Illinois: Power-proof your home with solar + Generac Battery for No Cost at install

Get protection for blackouts & save thousands on electric bills with Solar + Generac. This new program offers a system for No Cost at install. Take this 30 sec quiz to see if you qualify.

Powerhome Solar | Sponsored

All-Time Greatest High School Basketball Teams

Stadium Talk | Sponsored

Lily From The AT&T Ads Is Causing A Stir For One Reason

Elite Herald | Sponsored

25 Little Known Facts about Shawshank Redemption

Past Factory | Sponsored

The Ingenious Reason There Are No Mosquitoes At Disney World

Total Past | Sponsored

Chicago: Startup Is Changing the Way People Retire

This Princeton grad's startup raised \$110 million to help you plan a comfortable retirement. See how its free tool can get you on track.

SmartAsset | Sponsored

Tigers' Miguel Cabrera hits 3-run double, leaves game with groin tightness

MLive.com

Butterfield Island, Michigan

MLive.com

ADVANCE LOCAL

Registration on or use of this site constitutes acceptance of our [User Agreement](#), [Privacy Policy and Cookie Statement](#), and [Your California Privacy Rights](#) (User Agreement updated 1/1/21. Privacy Policy and Cookie Statement updated 5/1/2021).

[Cookies Settings](#)

© 2021 Advance Local Media LLC. All rights reserved ([About Us](#)).

The material on this site may not be reproduced, distributed, transmitted, cached or otherwise used, except with

the prior written permission of Advance Local.

[Community Rules](#) apply to all content you upload or otherwise submit to this site.

[Ad Choices](#)

EXHIBIT 8

Man Faces Terrorism Charge After Threatening to Kill Michigan's Governor, Officials Say

Robert S. Tesh made “credible threats” via social media messages to kill Gov. Gretchen Whitmer and Michigan’s attorney general, Dana Nessel, the authorities said.



By Christopher Mele

Published May 15, 2020 Updated Oct. 9, 2020

A Detroit man has been charged with threatening to kill Gov. Gretchen Whitmer of Michigan and the state attorney general, Dana Nessel, prosecutors said on Friday.

The man, Robert S. Tesh, 32, was charged with false report of threat of terrorism, a felony. Mr. Tesh relayed what prosecutors called “credible threats” to an acquaintance, using more than one social media messenger on April 14, First Lt. Mike Shaw, a spokesman for the Michigan State Police, said on Friday.

He said that the authorities had received a tip about the messages and that Mr. Tesh was arrested later that day at his home. Lieutenant Shaw declined to say which social media platforms were used. If convicted, Mr. Tesh could face up to 20 years in prison.

The threats were not specifically related to the governor’s stay-at-home orders issued in March to stem the spread of the coronavirus, Maria Miller, a spokeswoman for the Wayne County Prosecutor’s Office, said on Friday. She declined to provide more details, saying they would be revealed in court.

The governor has been the target of demonstrators, some of them armed, who have crowded the State Capitol in Lansing to oppose the restrictions. Ms. Whitmer, a first-term governor, has been called out by President Trump as one of the governors standing in the way of reopening the country and slowing a return to economic activity in the face of the pandemic.

Robert S. Tesh
Detroit Police Public Safety Office, via
Associated Press

“The alleged facts in this case lay out a very disturbing scenario,” Kym L. Worthy, the prosecutor for Wayne County, which includes Detroit, said in a statement. “We understand that these times can be stressful and upsetting for many people.”

She said the authorities “will not and cannot tolerate threats like these” against public officials who are carrying out their duties “as efficiently as they can.”

As for what made the threats “credible,” Lieutenant Shaw said, “You can’t make threats against anybody — members of the public, a member of a school board or about shooting up a Walmart or one of our elected officials.”

Mr. Tesh was arraigned on April 22, posted \$50,000 bond and remains on a “GPS tether,” officials said.

“It is never acceptable to make threats of violence to anyone, but our officeholders as well,” the governor said on Friday, adding that officials take threats “very seriously,” The Associated Press reported.

A representative for the attorney general could not be immediately reached on Friday. Neither Mr. Tesh nor his lawyer, Jonathan Simon, could be reached.

Susan Beachy contributed research.

EXHIBIT 9

[World](#)[Business](#)[Markets](#)[Breakingviews](#)[Video](#)[More](#)

U.S. LEGAL NEWS MARCH 16, 2021 / 6:10 PM / UPDATED 5 MONTHS AGO

Michigan man charged with threatening to kill Biden, Pelosi and Whitmer

By Reuters Staff

3 MIN READ



(Reuters) - Michigan state prosecutors have charged a 21-year-old man with threatening to kill President Joe Biden, House Speaker Nancy Pelosi and Michigan Governor Gretchen Whitmer, all Democrats, saying he claimed to “be the catalyst” for an American revolution, officials said on Tuesday.

Slideshow (3 images)

Whitmer previously had been the target of right-wing militia extremists who plotted to kidnap her ahead of last November's election, according to U.S. prosecutors.

The new and separate charges come as U.S. law enforcement officials including FBI Director Christopher Wray have warned of the growing threat of homegrown violent extremism in the United States.

The office of Michigan Attorney General Dana Nessel on Monday charged Joshua Docter, 21, of Holland, Michigan, with threatening terrorism and using a computer to commit a crime. Each count carries a sentence of up to 20 years in prison.

The suspect turned himself in on Monday and faced a judge on Tuesday, Nessel's office said in a statement.

A lawyer for Docter could not immediately be identified.

The FBI, which initiated the investigation, received a tip that Docter posted threats on the social media site iFunny, and the case was later taken over by Michigan State Police, the statement said.

"Michigan Attorney General Dana Nessel has charged a Holland man with crimes for making death threats against President Joe Biden, U.S. Speaker of the House Nancy Pelosi and Michigan Gov. Gretchen Whitmer," the statement said.

"In those posts, Docter stated he would use a gun to shoot and kill the elected officials and would 'be the catalyst' for a new American revolution. Docter also had information on how to make a bomb and where to find the necessary materials on his smart phone," it said.

In the previous plot against Whitmer, federal officials arrested and charged six men [here](#) with conspiring to abduct her from her vacation home last summer. One of them has pleaded guilty.

Eight other men accused of taking part in the plot have been charged in Michigan state court with domestic terrorism.

Investigators linked the suspects to an anti-government militia group based in Michigan called the Wolverine Watchmen.

Reporting by Daniel Trotta; editing by Grant McCool

Our Standards: [The Thomson Reuters Trust Principles.](#)

[Apps](#) [Newsletters](#) [Advertise with Us](#) [Advertising Guidelines](#) [Cookies](#) [Terms of Use](#) [Privacy](#)
[Do Not Sell My Personal Information](#)



All quotes delayed a minimum of 15 minutes. See [here](#) for a complete list of exchanges and delays.

© 2021 Reuters. All Rights Reserved.

EXHIBIT 10

**Scott Houser**

ASS IN JAIL CUNT

JAN 02, 7:35 PM

Hey CUNT YOUR WORST NIGHTMARE IS COMMING TRUE OUR GREAT PRESIDENT TRUMP IS GOING 2 RETAIN HIS PRESIDENTIAL POSTION HAHA CUNT HE'S GOING 2 BE COMING AFTER YOU AND YOUR GOING 2 BE LOCKED UP PERSONALLY MYSELF AND THE MAJORITY OF MICHIGAN FEEL THE SAME WAY YOU ARE 100% A TOTAL FAILURE OF NOT ONLY A GOVERNOR BUT A HUMAN BEING HOW THE FUCK DO YOU SLEEP AT NIGHT JAIL IS GOING 2 BE YOUR HOME 4 ALONG TIME SO KISS YOUR LOVED 1S GOOD BY IT IS COMING SOONER THEN YOU THI K YOU SKANKY ASS CUNT FUCK YOU whitmere I FUCKING HATE YOUR OILY FUCKI G NASTY ASS JAIL BIRD



JAN 02, 7:17 AM



Quickly review your photos



Aa



< 17

**Scott Houser**

JAIL TIME IS COMING 4 YOU
YOU GREASEY ASS CUNT
whitmere

Just a few more days and
TRUMP WILL LOCK YOUR
SLIMEY ASS UP FUCKING ASS
HAT

Jail time are you going 2 be
selling your CAT for extra soda
or ho hos not like comey harris
better make a plan Cunt

How do you tell if whitmere is
lieing? Her Fucking mouth is
moving

Printing ballots for Pennsylvania
Thousands of fraudulent ballots
Benson nessel and whitmere all
going 2 jail haha proof of this
haha what a DUMB FUCK
GREASY CUNT

biden will never be 81000000
peoples President what a
FUCKING FOOL biden is a
SHITBAG



Aa



< 17

**Scott Houser**

Our state is # 1 for business you destroyed and shut down permanently you are a Slimey fucking grease nasty evil FUCKING CUNT A STORM IS COMING YOU EVIL BITCH KARMA WILL GET YOUR NASTY FUCKING ASS

JAN 04, 10:48 PM



Fuk u

JAN 05, 10:32 AM



Your going 2 jail

Thank you for contacting Governor Gretchen Whitmer. To get in touch with the team, please visit www.michigan.gov/whitmer



JAN 05, 8:14 PM



Your a Cunt going 2 jail soon



Useless greasy Bitch



JAN 06, 12:20 AM



Aa



**Scott Houser**

WOW LOTS OF PEOPLE
HEADING 2 DC BUT NOT FOR
HIDEN biden but for our GREAT
PRESIDENT TRUMP 2020 YOU
CHEATING FUCKING CUNT



I don't know if you can tell but I
as many of us Michigan people
have absolutely no respect 4
you haha you greedy ass CUNT



Are you the dumb CUNT
whitmere that told the Election
polls 2 stop counting votes at
10pm YOUR A DUMB FUCKING
CUNT GREESE BALL

JAN 04, 8:53 PM



Hey DUMB CUNT IF your okay
rigging an election I'm ok with
Martial law 2 end it Greasey
CUNT

JAN 04, 9:14 PM

Our state is # 1 for business you
destroyed and ↓ down
permanently you are a Slimey



Aa




**Ashley Grice**

Ashley Grice

JAN 07, 11:23 AM

all i have to say to you is i hope you an your dems are ready for a fight an you guys will lose we the people pay you to do your job an you guys fucking suck i hope you all die horrible deaths an now its not a threat it's a prayer an future knowledge to you guys that if you don't take away this stupid mask shit you will all regret it very much just like a new born who needs to be exposed to stuff to get immunities the vivid is a virus whisch means you still can get it if you wear a mask or not an it's air born dumbasses just like the flu but your mandate is bullshit cause it's not a fucking law an if you try oh b oy if you try you will regret it badly bitch we are all comeing for you an your leaders we the people are tiered of this shit we want normal

Double tap to 

Aa



**Charles Ellery Sullivan**

So, I notice you always have expensive outfits on while doing your numerous press conferences where you say absolutely nothing important. You are an attention whore as well as being incompetent. We here in the restaurant industry would like to thank you for destroying our lives while murdering our grandparents. I would like to sincerely hope you get some type of mixed super AIDS Ebola that makes you die slowly and painfully while your organs leak from your rectum. I sincerely hope I am working at the next restaurant that you try to eat at so if they don't outright refuse to serve you I can personally walk to your table, bitch slap your cuck husband, shit on your dinner plate and shove it down your cold heartless throat. Fuck you. I pray you get ovarian cancer, breast cancer and waste away to nothingness in awful pain. If I was your child I would ask to be emancipated.



Aa





Ryan Maccune

Assign Conversation ▼



See contact

Jan 5, 2021, 1:26 PM

you are a piece of work and should not be in office. You are a nobody and the people will stand against you we made this country and you politicians destroy it to get rich fucking cowards.



Reply in Messenger





Kathryn Buchanan

Assign Conversation ▼



See contact

Jan 5, 2021, 7:43 PM

Gretchen Esther Whitmer.

18 U.S. Code § 2381 - Treason
18 U.S. Code § 2382 - Misprision Of Treason
18 U.S. Code § 2383 - Rebellion Or Insurrection
18 U.S. Code § 2384 - Seditious Conspiracy
18 U.S. Code § 2385 - Advocating Overthrow Of Government



8

Thank you for contacting Governor



Des Alton

Assign Conversation ▼

...



See contact

Jan 6, 2021, 1:57 AM

Bitch I can't wait till somebody find
yo ass again playing with everybody
money !!!

Thank you for contacting Governor
Gretchen Whitmer.To get in touch with
the team, please visit
www.michigan.gov/whitmer



Reply in Messenger



9





Scott Houser

Assign Conversation ▼



See contact

You are about done Trump is going
2 THROW YOUR STINKY ASS IN
JAIL CUNT

Jan 2, 2021, 7:35 PM

Hey CUNT YOUR WORST
NIGHTMARE IS COMMING TRUE
OUR GREAT PRESIDENT TRUMP
IS GOING 2 RETAIN HIS
PRESIDENTIAL POSTION HAHA
CUNT HE'S GOING 2 BE COMING
AFTER YOU AND YOUR GOING 2
BE LOCKED UP PERSONALLY
MYSELF AND THE MAJORITY



Reply in Messenger





Scott Houser

Assign Conversation ▼



See contact

MYSELF AND THE MAJORITY
OF MICHIGAN FEEL THE SAME
WAY YOU ARE 100% A TOTAL
FAILURE OF NOT ONLY A
GOVERNOR BUT A HUMAN
BEING HOW THE FUCK DO YOU
SLEEP AT NIGHT JAIL IS GOING
2 BE YOUR HOME 4 ALONG TIME
SO KISS YOUR LOVED 1S GOOD
BY IT IS COMING SOONER THEN
YOU THI K YOU SKANKY ASS
CUNT FUCK YOU whitmere I
FUCKING HATE YOUR OILY FUCKI
G NASTY ASS JAIL BIRD



Reply in Messenger





Andrew Sylvio

Assign Conversation ▼



See contact

11/2/20, 9:37 PM



Hey cunt

Thank you for contacting Governor
Gretchen Whitmer. To get in touch with
the team, please visit
www.michigan.gov/whitmer



Jan 9, 2021, 6:56 PM



You should watch out bitch. Your a
evil cunt.



Reply in Messenger

12





Greg Lawson

Assign Conversation ▼



See contact

the team, please visit
www.michigan.gov/whitmer



U stupid ass bitch

Jan 14, 2021, 10:50 AM



Dumb bitch

Jan 22, 2021, 3:09 PM



I hate you bitch I hope u die,die slow
bitch wit a dick in yo mouth



Reply in Messenger

13





Jim Morrow

Assign Conversation ▼



See contact

Feb 18, 2021, 9:01 PM

Hey you wretched horrible witch...Why would you hide your bullshit decision to keep your ignorant rule of 25% capacity of restraints thru 3/29/21...You are an ignorant bitch with no regard for anybody except your elite following...I hope WE THE PEOPLE REMOVE YOU FROM OFFICE ONE WAY OR ANOTHER VERY SOON...FUCK OFF



Reply in Messenger

14





Brandon West

Assign Conversation ▼



See contact

Mar 3, 2021, 6:23 AM

Remove her from office. Do it by force if she won't leave willingly. Traitor to Michigan and its people. Everyone in Midland suffered/ is still suffering because of her. Step down. Seriously.



Thank you for contacting Governor Gretchen Whitmer. To get in touch with the team, please visit www.michigan.gov/whitmer



Reply in Messenger





Alex Nowicke

Assign Conversation ▼



See contact

Fuck off bitch

You are a waste. I will never listen to you. Why don't your family go to hell

Fuck your husband

Better hope I never catch you to him on the streets

Thank you for contacting Governor Gretchen Whitmer. To get in touch with the team, please visit

Your Page is no longer able to send messages to this person. Learn more

16





Jacob Kuntz

Assign Conversation ▼



See contact

I mean I live in Florida

You better became text

I don't care if she do sign language
cheesy b**** too and I live in Florida

I want to kidnap you coming with me
I live in Florida

I'm on kidnap you I'm in Florida live
in Florida



Reply in Messenger

17





Jacob Kuntz

Assign Conversation ▼



See contact

F*** you m*****I live in Florida

F*** you I said kidnap you in Florida

I'm going to kill you I am Florida f*****
god n****

Are you going to be on TV today I
live in Florida so I can see you

I'm going to kill you for living Florida

Cuz you f***** hell this is a f***** hell



Reply in Messenger

18





Jacob Kuntz

Assign Conversation ▼



See contact

Cuz you f***** nell this is a f***** nell

My name is Jason f***** kill you I live in Florida

Jason who can help you can I live in Florida

And I wish you were in the woods

Breaking news on TV

Jason is going to kidnap you I live in Florida



Reply in Messenger



19





Jacob Kuntz

Assign Conversation ▼



See contact

Cut you head off

I'll f*** you up I live in Florida

Yes my name is Jason f***** b****

Talk to you later b****



0:05



0:04



0:09



Reply in Messenger



20





Jacob Kuntz

Assign Conversation ▼



See contact

Do you know me I'm Jason from Florida I don't know what you talking about

I am black I'm in Florida I don't give a f*** where the f***** cut your head off

I don't care if I've seen on TV I am black a if you



0:04

You are such an idiot

We can do this and f***** s***



Reply in Messenger





Jacob Kuntz

Assign Conversation ▼



See contact

I'm just going to shoot you

I'm going to choke you to die

I'm going to watch you on TV today

I'm going to watch you on TV say f*** you

Florida just do that

F*** you f*** you f*** you f*** you f*** you
f*** you f*** you and f*** you f*** you I'm I
am black I live in Florida and f*** you



Reply in Messenger



22





Jacob Kuntz

Assign Conversation ▼



See contact

You are a joke you can die

You can get one of my car

You can get stabbed

I'm going to knock your head off

I don't believe you said about homework

I so shoot you in the head

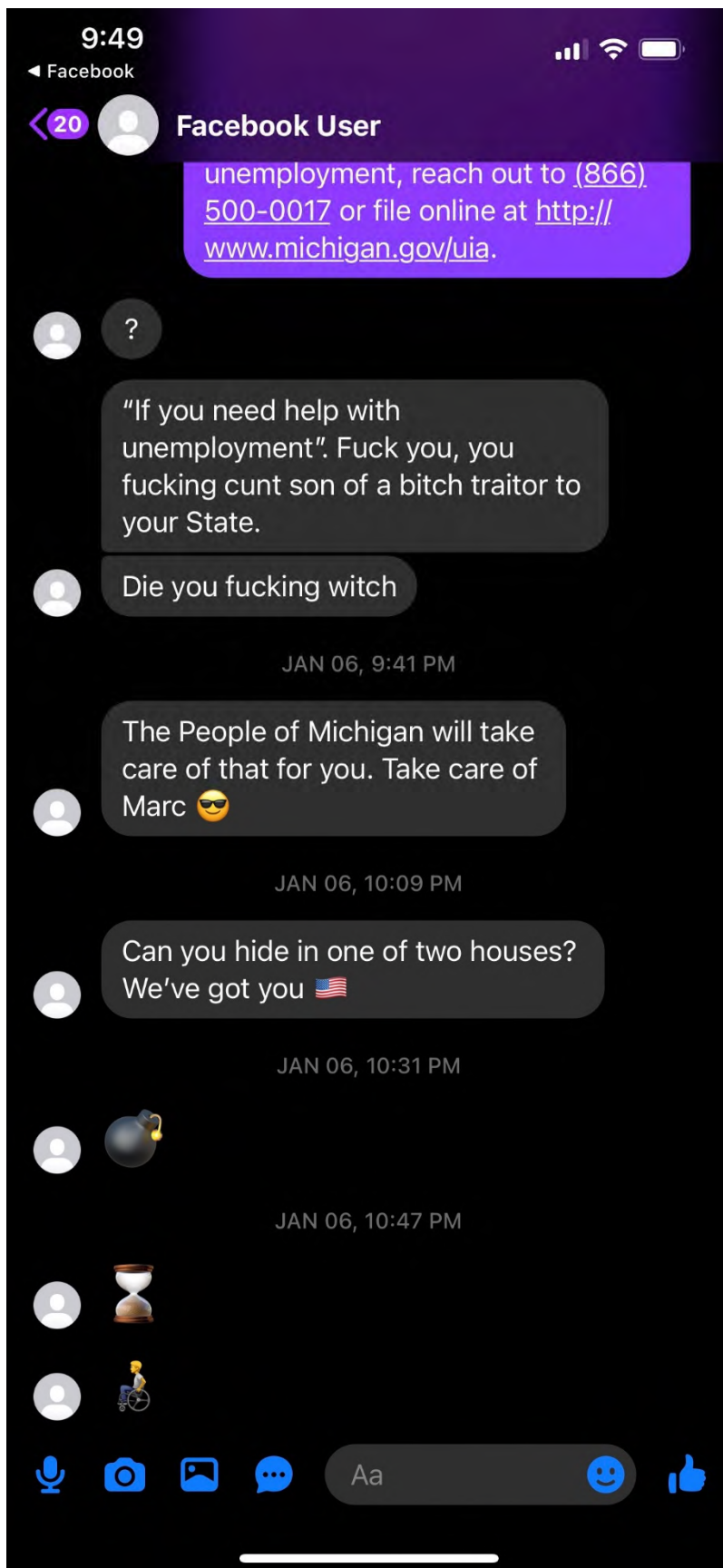
I said that you did body in chest

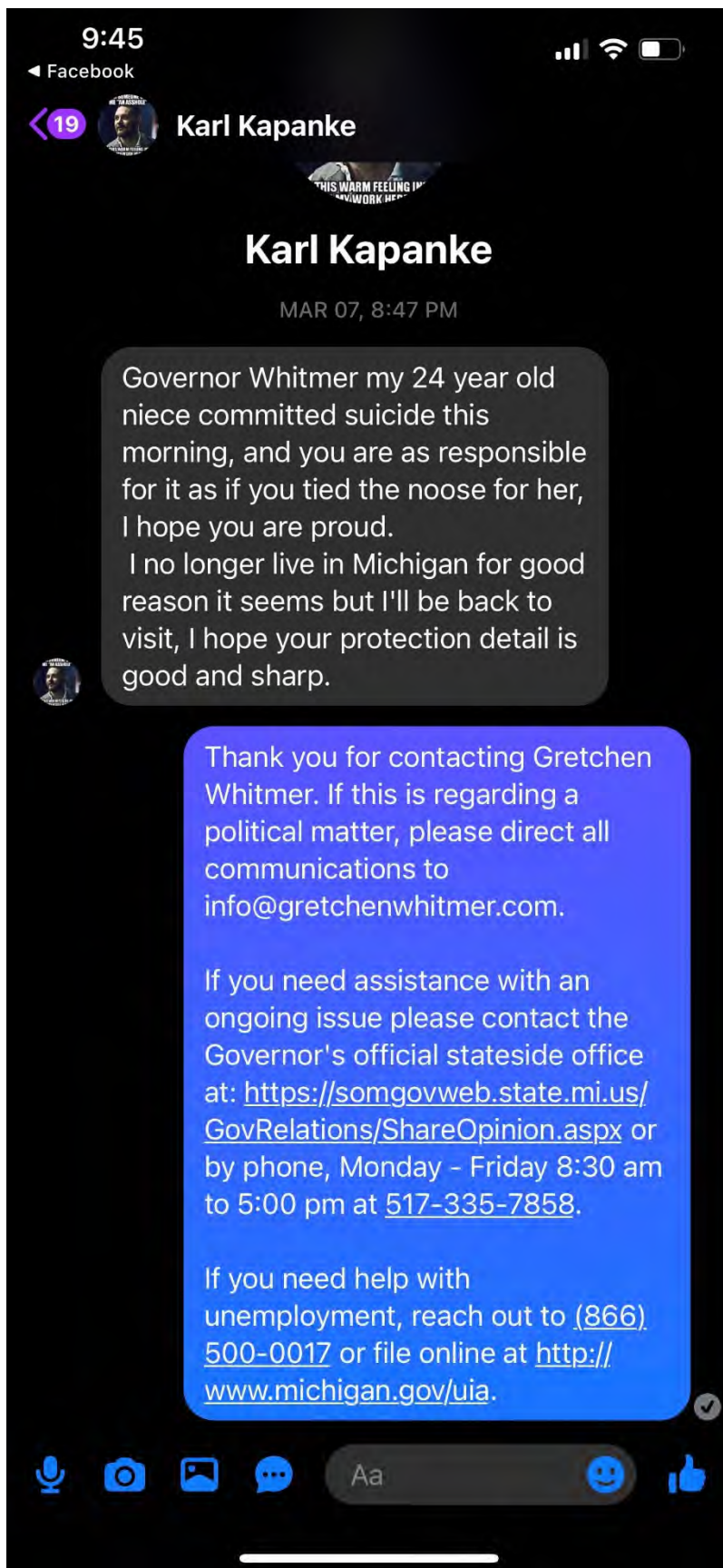


Reply in Messenger

23







9:55



< 20



Aimee Stearman Green



Aimee Stearman Green

APR 14, 2020, 7:58 PM

Are you really acting like Hitler. I hope the people of your state hunt you down. You did not consult any experts. Good luck now getting the nomination to be VP running mate. The whole county is watching you be a ratchet bitch.



Thank you for contacting Gretchen Whitmer. Please direct all communications to GretchenWhitmer.com/Contact

APR 26, 2020, 7:50 PM



Whore Nazi cunt.

MAY 04, 2020, 2:26 AM

You are the fucking communist tyrant bitch. I hope they drag you out and pound your head on the pavement. I would knock your teeth down your throat. Fucking CUNT.



OCT 09, 2:33 AM



Aa



EXHIBIT 11

HAPPENING NOW

The Defense Department holds a briefing on the situation in Afghanistan

Michigan GOP chair calls top Democratic women 'witches' and quips about assassination of Republican congressmen

By [Veronica Stracqualursi](#), CNN

Updated 11:55 PM ET, Mon March 29, 2021





Source: [CNN](#)



to go out there and support their opponents. You have to do what you need to get out the vote in those areas. That's how you beat people."

Weiser in his Friday tweet said that his remarks were being taken out of context. "While I should have chosen my words more carefully, anyone who knows me understands I would never advocate for violence," he said, adding that he's spoken with Upton and Meijer.

Meijer's office on Monday declined to comment. CNN has reached out to Upton as well as to Weiser for additional comment.

Ted Goodman, a spokesman for the Michigan Republican Party, told CNN in a statement that Weiser was being "very clear that it is up to the voters to determine the nominees of the Republican Party, and to suggest anything else is dishonest and irresponsible." Goodman also pointed out that Weiser had personally donated to all Republican congressmen in Michigan.

But Michigan Democratic Party Chair Lavora Barnes [called](#) Weiser's comments "not only sexist, but markedly dangerous," and Whitmer press secretary Bobby Leddy condemned them, saying that "given the dramatic increase in death threats against Michigan elected officials during the Trump Administration, this type of rhetoric is destructive and downright dangerous."

"We saw this firsthand when Republican legislators met with the very militias that tried to kidnap and kill the governor, and when Republican party leaders helped organize the January 6th protest at the U.S. Capitol building," Leddy said in a statement to CNN.

Leddy added, "As the governor has said repeatedly, it's time for people of good will on both sides of the aisle to bring down the heat and reject this kind of divisive rhetoric."

Whitmer on Twitter Friday also [posted a photo of her](#) with the book "The Witches Are Coming," with the quote from author Lindy West: "For a long time, a certain set of men have called women like me 'witches' to silence and discredit us."

Nessel responded with a tweet that included an edited photo of herself, Benson and Whitmer with witch hats, saying, "Witches who magically decrease Covid spread, increase voter turnout and hold sexual predators accountable without any help from the legislature? Sign me up for that coven. Do better, Michigan GOP."

She [later added](#) that as "a gay, Jewish woman, I have long since learned to respond to hateful rhetoric with humor. But as a prosecutor, I know these remarks are certain to inspire further death threats which will eventually be acted upon."

And Benson wrote on Twitter, "Thinking of all the young women leaders out there who aspire to serve and hold public office, hearing this hateful rhetoric in the headlines (and) feeling discouraged, deterred, or dismissed."

"My message: Keep leading. The world needs your voice, your service, (and) your courage," she added.

Weiser's comments also prompted calls for his resignation from the University of Michigan's board of regents.

Jordan Acker, a Democrat who serves with Weiser on the board, said that he should resign and that his "reckless and dangerous language does not reflect the values of our Board and our Institution."

"Comments about removal by 'assassination' are a literal attack on our Democracy, and are incredibly dangerous in light of the January 6th insurrection at the Capitol. And the FBI-thwarted attacks on our Governor," Acker [wrote on Twitter](#) Friday. Whitmer was the [target of a kidnapping plot](#) last year.

Weiser has said he does not intend to resign from the board of regents.

This story has been updated with additional information.



World

Politics

Business

Opinion

Health

Entertainment

Tech

Style

Travel

Sports

Videos

Audio

Coupons

Weather

More



FOLLOW CNN POLITICS



[Terms of Use](#) [Privacy Policy](#) [Do Not Sell My Personal Information](#) [AdChoices](#) [About Us](#) [CNN Store](#) [Newsletters](#) [Transcripts](#) [License Footage](#)

[CNN Newsource](#) [Sitemap](#)

© 2021 Cable News Network. A Warner Media Company. All Rights Reserved.

CNN Sans ™ & © 2016 Cable News Network.

EXHIBIT 12



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

April 15, 2021

Hon. Kevin Hertel
PO Box 30014
Lansing, MI 48909

Dear Representative Hertel:

The Michigan Department of State (Department) acknowledges receipt of your letter dated January 25, 2021, which requests the issuance of a declaratory ruling or interpretative statement regarding the Department's interpretation of the Michigan Campaign Finance Act, MCL 169.201, *et seq.* The same day, the Department published a copy of your request on its website and invited public comments regarding your request, but none were received.

The MCFA and Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, require the Department to issue a declaratory ruling if an interested person submits a written request that presents a question of law and a reasonably complete statement of facts. MCL 24.263, 169.215(2). If the Department declines to issue a declaratory ruling, it must instead offer an interpretive statement "providing an informational response to the question presented[.]" MCL 169.215(2). In compliance with the MCFA and the APA's publication and public comment period requirements, the Department posted to its website and informed e-mail subscribers of its preliminary response and the deadline to file public comments. *Id.* The preliminary response to your request was posted on March 30, 2021, and to date, no public comments have been received.

Because your statement of facts is not sufficient, the Department declines to issue a declaratory ruling and issues this interpretive statement in response to your request.

Your request states that you are a State Representative elected to your third term in November 2020, and you maintain your candidate committee, the Committee to Elect Kevin Hertel. You state that as a State Representative, your job duties include, in part, attending legislative sessions, committee meetings, and votes and you are obligated to attend such sessions under the House rules. As a result of the House rules, you contend that you are obligated to attend such session in person.

You argue that attending in person has presented a risk as a result of the COVID-19 global pandemic since it exposes you and your colleagues to potential exposure to COVID-19. In an effort to limit any exposure, the House of Representatives' COVID-19 Preparedness and Response Plan strongly encourages representatives (and mandates employees) to wear a mask while in public areas of the Capitol and House Office buildings.

You further state that you encounter threats of violence daily during the course of conducting your duties as State Representative. Specifically, you cite “heavily armed ‘protestors’” in the State Capitol on April 30, 2020 who attempted to gain access to the floor of the House of Representatives. You also cite instances in which you and your family have received threats of violence or death.

Given all of this, you ask questions which the Department restates as follows:

- (1) Whether the purchase of personal protective equipment (PPE) in response to the COVID-19 public health epidemic constitutes a personal expense;
- (2) Whether the purchase of a ballistics vest or home security system in response to threats of violence constitutes a personal expense.

At the heart of these questions is whether the requested items above are considered personal expenses or incidental office expenses. In creating and defining expenditures under section 6, the Legislature has provided a guiding framework for limiting how and to whom committees may disburse their money. Registered committees are subject to a number of limitations when making expenditures. “Expenditures by a candidate committee must be made for the purpose of influencing an election, not for the personal benefit of an individual.” *Interpretive Statement to Christopher Rose*, Issued November 2, 1978. Candidate committees are allowed disbursements only if they qualify as expenditures¹, which in turn are subject to limitations.

However, the Legislature has also allowed incumbent officeholders to use candidate committee funds to pay for ordinary and necessary expenses created for the purpose of carrying out the business of an elective office – called incidental office expenses. While still an expenditure, an incidental office expense is “an expenditure that is an ordinary and necessary expense, paid or incurred in carrying out the business of an elective office.” MCL 169.209(1). The MCFA does not allow a candidate committee to make disbursements for incidental office expenses unless the candidate actually holds elective office. MCL 169.221a(1). All incidental office expenses are expenditures, but not all expenditures are incidental office expenses. To qualify as an incidental office expense, the disbursement must qualify under one of the subsections outlined under the Act. MCL 169.209(1).

The purchase of tangible assets, such as PPE and a home security system, must be evaluated as to the question of whether they constitute personal expenses. To determine whether a disbursement is a personal expense, the Department applies a “but-for” test in order to determine whether the expenditure may be personal in nature: If the disbursement would have occurred irrespective of the individual’s status as a candidate or an office holder, the expenditure is a prohibited personal expense.

Ultimately, to answer your questions, the Department must determine the threshold question of whether the items sought would have been purchased regardless of your status as an office holder – in other words, whether they constitute personal expense.

¹ “Expenditure” is defined in relevant part as a payment of anything of ascertainable monetary value in assistance of or opposition to the nomination or election of a candidate. MCL 169.206(1).

I. Whether the purchase of PPE in response to the COVID-19 public health epidemic constitutes a personal expense.

As of the date of the issuance of this preliminary response, the COVID-19 pandemic is proving to be the greatest health crisis the State of Michigan has faced in nearly a century. Thus far, the State of Michigan has seen nearly 765,000 confirmed cases and over 16,600 deaths as a result of COVID-19.² The State's health experts have confirmed the health risks associated with exposure to COVID-19, including the potential death of Michigan's citizens.

In order to combat the spread of COVID-19, the State and many localities have responded with various public health orders designed to slow the spread of COVID-19 in the general public. Many of these public health orders have been guided by the Centers for Disease Control and Prevention's (CDC) recommendations on how to best slow the spread. One such order issued by the Director of the Michigan Department of Health and Human Services (MDHHS) generally requires facemasks be worn "where two or more persons from more than one household are present in a shared space."³ The CDC guidance also recommends businesses and employers implement routine cleaning and disinfection protocols for surfaces and employees wear PPE such as masks.⁴ Additionally, private businesses have placed similar requirements on their consumers by requiring facemasks and sequestering the public to six-foot increments as suggested by the CDC. Ultimately, PPE and other cleaning supplies such as hand sanitizer and disinfectants have become ordinary – if not mandatory – in the workplace.

In response, you ask whether your committee may purchase (for you and your staff) PPE as an incidental office expense. What is not immediately clear from your request is whether the PPE purchase is based entirely upon the requirements placed upon you or your staff in the capacity of a State Representative or in the more general capacity. Therefore, the Department concludes that a committee may purchase PPE as an incidental office expense using committee funds so long as the committee demonstrates the purchase is not a personal expense.

As previously indicated, in determining whether an expenditure is personal in nature, the Department applies the "but-for" test: if the disbursement would not otherwise have occurred but for the status as an officeholder, committee funds may be used. As applied here, a committee may not use committee funds to purchase PPE as an incidental office expense where the committee would have purchased PPE regardless of the status as an office holder. But where the PPE must be purchased in order to carry out the duties of elected office, committee funds may be utilized. For example, if a committee purchases a facemask for the candidate using committee funds because a store requires a facemask to enter, such a disbursement would constitute an improper personal expense. Conversely, if a committee purchases a facemask in order for the

² Available at <https://www.michigan.gov/coronavirus/>, last accessed April 14, 2021.

³ DHHS Gatherings and Facemask Epidemic Order, available at: https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-554922--,00.html, last accessed April 14, 2021.

⁴ https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcommunity%2Forganizations%2Fcleaning-disinfection.html.

office holder to attend constituent meetings at a public facility mandating facemasks for entry, such disbursement would qualify as an incidental office expense.

Ultimately, a committee may not use committee funds to purchase PPE as an incidental office expense where it would have been purchased regardless of the status as an office holder, but where the PPE must be purchased in order to carry out the duties of elected office, committee funds may be utilized. The burden is on the committee at the time of filing a campaign statement to demonstrate that the disbursement would not have been made but for the candidate's status as an officeholder. This can be accomplished by entering a specific purpose into the description field (e.g. "Facemask for Constituent Meetings").

II. Whether the purchase of a ballistics vest or home security system in response to threats of violence constitutes a personal expense.

Your next question presented asks whether a State Representative may make a disbursement as an incidental office expense for certain security equipment such as a home security system and/or ballistics vest in response to threats received and the general increase of violence. In 2020, elected and appointed officials in the State of Michigan⁵ have seen an unprecedented number of threats of physical harm against them and their families. Most notably, the Michigan Attorney General and the United States Attorney have brought charges against individuals making death threats against a member of the Wayne County Board of Canvassers,⁶ against militia members plotting to storm Michigan's Capitol, take hostages, publicly execute legislators, and set the building on fire,⁷ and against militia members plotting to kidnap and physically harm the Governor.⁸ Outside of charges, multiple members of the Michigan Board of State Canvassers reported receiving threats in advance of their November 23, 2020 board meeting, and as you reported, several members of the State Legislature have indicated they have received threats regularly.

Most recently, on January 6, 2021, the day Congress convened to count the electoral votes, armed insurrectionists stormed the U.S. Capitol forcing the evacuation of the Vice President,

⁵ Unfortunately, this increased threat of violence is not unique to Michigan. In the wake of the riot at the United States Capitol on January 6, 2021, the Massachusetts Office of Campaign and Political Finance issued an advisory opinion on March 1, 2021 concluding that committee funds may be used to purchase bullet-proof vests/body armor, pepper spray, gas masks, or other similar personal protective equipment so long as such equipment is not purchased for personal use. Massachusetts Advisory Opinion 21-02, available at <http://files.ocpf.us/pdf/legaldocs/AO-21-02.pdf>. The State of Massachusetts also previously authorized committee funds to pay for security detail and purchase a home security system. *See id*, citing 970 CMR 2.06(3)(1); Massachusetts Advisory Opinion 11-04, available at <http://files.ocpf.us/pdf/legaldocs/AO-11-04.pdf>.

⁶ <https://www.freep.com/story/news/local/michigan/wayne/2020/12/23/monica-palmer-threats-wayne-county-election-katelyn-jones/4026231001/>

⁷ <https://www.usatoday.com/story/news/nation/2020/11/13/michigan-attorney-general-office-gretchen-whitmer-plot-details/6269455002/>

⁸ <https://www.detroitnews.com/story/news/local/michigan/2020/10/08/feds-thwart-militia-plot-kidnap-michigan-gov-gretchen-whitmer/5922301002/>

Senators and Representatives. More than 140 people were injured, and five were killed.⁹ The FBI has charged more than 300 individuals with federal crimes.

Through several advisory opinions interpreting the Federal Election Campaign Act of 1971 (FECA) and its regulations, the FEC has been asked similar questions. Under FECA, federal committees may use campaign funds for “ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office.” 52 U.S.C. § 30114(a). A contribution or donation may not be converted for personal use. 52 U.S.C. § 30114(b)(1). The FEC’s regulations define personal use as the “use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.” 11 CFR § 113.1.

In analyzing these provisions in response to a request by the National Republican Senatorial Committee and the National Republican Congressional Committee, the FEC was asked whether committee funds may be used to pay for personal security personnel of members of Congress and their families. FEC Advisory Opinion 2021-03. In analyzing whether this type of disbursement constitutes an “ordinary and necessary expense incurred in connection with the duties of the individual as a holder of Federal office,” the FEC concluded that committee funds could be used for security personnel due to threats arising from their status as officeholders. *Id.*

This was not the first advisory opinion the FEC has authorized the use of campaign funds to protect against threats to officeholders’ physical safety on the grounds that the need for such security expenses would not have been incurred but for the officeholders’ activities or duties. For example, after shootings targeting U.S. Representatives Gabby Giffords and Steve Scalise, the Commission authorized candidate committee funds to be used to purchase home security system installation and upgrades due to the “current heightened threat environment” and anonymous nature of many of the threats. FEC Advisory Opinion 2011-17¹⁰; 2017-07.¹¹ In 2020, the Commission expanded its guidance to include upgrades to wiring and lighting so long as it did not constitute a structural improvement. FEC Advisory Opinion 2020-06.¹²

The MCFA’s provisions echo its FECA counterparts. Michigan allows incumbent officeholders the ability to make incidental office expenses defined as “an expenditure that is an ordinary and necessary expense, paid or incurred in carrying out the business of an elective office.” MCL 169.209(1). Expenditures are defined as any of ascertainable monetary value made in assistance of or opposition to the election of a candidate. MCL 169.206(1). The Department has previously concluded that expenditures may only be made for election-related purposes and may not be converted for personal use. *Interpretive Statement to Christopher Rose*, Issued November 2, 1978.

⁹ <https://www.cbsnews.com/news/capitol-riot-arrests-2021-03-25/>

¹⁰ Available at <https://www.fec.gov/files/legal/aos/2011-17/AO-2011-17.pdf>.

¹¹ Available at <https://www.fec.gov/files/legal/aos/2017-07/2017-07.pdf>.

¹² Available at <https://www.fec.gov/files/legal/aos/2020-06/2020-06.pdf>.

While not binding, the Department may rely upon administrative opinions of the Federal Election Commission, and other states, as persuasive in its interpretation of similar provisions of the MCFA. See *Interpretive Statement to David Lambert*, issued October 31, 1984¹³; *Chiles v. Machine Shop, Inc.*, 238 Mich App 462, 472 (1999) (stating that analogous federal precedents of similar legal provisions are persuasive so long as they do not conflict with Michigan law). Through its advisory opinions, the FEC has ultimately concluded that committee funds may be used for a security system so long as the security system does not constitute a personal expense or a structural improvement to real property.

The Department agrees with these conclusions and determines that a committee may purchase home security system as an incidental office expense so long as the expenditure is not being made for personal use. If an office holder determines it necessary to purchase a home security system due to increased threats incurred as a result of their elected office, such purchase may be done using committee funds. For example, if the committee elects to purchase a home security system as a direct result of threats motivated by the office holder's status, such as supporting/opposing legislation, such a disbursement may be a lawful incidental office expense.

However, the disbursement must be done as a result of their status as an office holder, otherwise it will constitute a personal expense. For example, a disbursement for home security system may not increase the value of the residence or constitute a structural improvement (e.g. installation of bullet proof glass or privacy fence), and must be motivated by the office holder's status as an office holder.

The burden is on the committee at the time of filing a campaign statement to demonstrate that the disbursement would not have been made but for their status as an officeholder. This can be accomplished by entering a specific purpose into the description field.

III. Asset disposition upon committee's dissolution

Any purchase of consumable supplies or permanent assets by the committee remains subject to the Department's rules on asset disposition upon the committee's dissolution. See *Interpretive Statement issued to Christopher L. Rose*, Issued November 2, 1978 ("The Act does not expressly permit usage or retention of these assets and moneys by the candidate for his personal benefit.") Consumable supplies are assets or goods that are intended to be "used up" or discarded. See *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/consumed>; *FTC v. Staples*, 970 F. Supp. 1066, 1073 (D.D.C. 1997). Comparatively, permanent assets are those that are not intended to be discarded. *Id.*

Assets purchased which are no longer being used as incidental office expenses must be disposed of properly upon dissolution, and committees maintaining assets remain ineligible to dissolve. R. 169.28. The Department considers a home security system and ballistics vest a permanent asset, while PPE is considered a consumable.

For the purchase of permanent assets, such as the ballistics vest or home security system, the committee must maintain records of the purchase. Upon dissolution, the items may be sold at

¹³ Available at https://www.michigan.gov/documents/sos/Lambert_1984_429284_7.pdf.

fair market value and the funds deposited into the committee's account or donated to a qualifying charity. R. 169.65¹⁴ Items may also be transferred from a dissolving committee to an eligible committee under § 45 of the Act.

Consumable supplies do not need to be recorded in this manner. The committee purchasing must only report the expense as an incidental office expense under the appropriate report.

IV. Conclusion

An office holder may purchase PPE (for themselves and staff), a ballistics vest, or a home security system (for themselves) as an incidental office expense so long as the disbursement would not have been made but for their status as an office holder. Stated differently, if the office holder would have purchased PPE, a ballistics vest, or a home security system if they were not an office holder, then such a disbursement would be a barred personal expenditure. But where the disbursement is being made only as a result of their status as an office holder, such a disbursement may be a proper incidental office expense during their tenure as an office holder.

The foregoing represents an interpretive statement concerning the applicability of the Campaign Finance Act.

Sincerely,

E-SIGNED by Melissa Smiley
on 2021-04-15 10:55:08 EDT

Melissa J. Smiley, Ph.D.
Chief of Staff

¹⁴ Rule 65 specifically governs the dissolution of assets purchased using Officeholder Expense Funds (OEF). In 1994, the MCFA was amended to eliminate OEFs and replace them with incidental office expenses under one candidate committee. 1994 PA 411.

EXHIBIT 13



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 25, 2021

ADVISORY OPINION 2021-03

Jessica Furst Johnson, Esq.
Chris Winkelman, Esq.
Holtzman Vogel Josefiak Torchinsky PLLC
2300 N Street, Northwest, Suite 643A
Washington, DC 20037

Dear Ms. Johnson and Mr. Winkelman:

We are responding to your advisory opinion request on behalf of the National Republican Senatorial Committee (the “NRSC”) and the National Republican Congressional Committee (the “NRCC”) regarding the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to the proposed use of the campaign funds of the members of Congress who comprise the NRSC and NRCC to pay for personal security to protect themselves and their families. The Commission concludes that the proposed use of campaign funds for bona fide, legitimate, professional personal security personnel against threats arising from the members’ status as officeholders is a permissible use of campaign funds under the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter received on January 27, 2021, on public disclosure reports filed with the Commission, and on statements made by you and/or your client at the Commission’s March 25, 2021 public meeting.

The NRSC and NRCC are national party committees. Advisory Opinion Request at AOR002.¹ The NRSC is comprised of all sitting Republican members of the United States Senate, and the NRCC is comprised of all sitting Republican members of the United States House of Representatives. *Id.* The NRSC’s and NRCC’s primary functions are to aid in the election of Republican candidates for office, and in that role the NRSC and NRCC provide

¹ See also NRSC, FEC Form 1 (Statement of Organization) (filed Oct. 3, 2020), <https://docquery.fec.gov/pdf/753/202010039285004753/202010039285004753.pdf>; NRCC, FEC Form 1 (Statement of Organization) (filed Feb. 5, 2021), <https://docquery.fec.gov/pdf/441/202102059427031441/202102059427031441.pdf>.

guidance to Republican candidates for federal office and officeholders. *Id.* The NRSC and NRCC seek this advisory opinion “on behalf of their Members currently serving in federal office.”

The request lists numerous instances of “concrete threats of physical violence against Members and their families” and responses by law enforcement agencies, going back several years and continuing to the present, and the “worsened” threat environment as assessed by the Capitol Police. *Id.* AOR003-007. In response to the recent and ongoing threats of physical violence against senators and representatives and their families due to their status as officeholders, some officeholders have considered increasing security measures, including hiring personal security personnel. AOR002. Senators’ and representatives’ “vulnerability to potential threats is significantly heightened when they are away from home,” while the responsibilities of their offices require them and their families to appear frequently in public settings. AOR005. Thus “the most practical and effective solution for protecting the safety of Members and their families is the employment of personal security personnel.” *Id.* “The request would only apply in those instances where federal agents are not protecting the Member or Member’s family, and in no way would any private personnel retained pursuant to this request interfere with the operations of federal law enforcement agencies.” AOR002.

Question Presented

May the Members of the United States Senate and United States House of Representatives that comprise the NRSC and NRCC permissibly use campaign funds to pay for bona fide, legitimate, professional personal security personnel to protect both the Member and the Member’s immediate family due to threats arising from his or her officeholder status?

Legal Analysis and Conclusion

Yes, Members of the United State Senate and United States House of Representatives that comprise the NRSC and the NRCC may use campaign funds to pay for bona fide, legitimate, professional personal security personnel to protect themselves and their immediate families due to threats arising from their status as officeholders when they are not otherwise being protected by federal law enforcement agents or the United States Capitol Police.²

The Act identifies six categories of permissible uses of contributions accepted by a federal candidate, two of which are “ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of Federal office,” and “any other lawful purpose” not prohibited by 52 U.S.C. § 30114(b). 52 U.S.C. § 30114(a); *see also* 11 C.F.R. § 113.2(a)-(e).

The Commission has issued a number of advisory opinions authorizing the use of campaign funds to protect against threats to officeholders’ physical safety, on the grounds that the need for such security expenses would not exist if not for the officeholders’ activities or

² As indicated in the request, “immediate family” means members of the officeholder’s household, including a spouse, minor children, or other relatives who normally reside with the officeholder. AOR001 n.3.

duties. In Advisory Opinion 2020-06 (Escobar), Advisory Opinion 2011-17 (Giffords), Advisory Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly), members of Congress faced specific and ongoing threats to the safety of themselves and their families. The facts presented in those advisory opinions suggested that the threats were motivated by the requestors' public roles as federal officeholders, candidates, or both.

The Commission concluded in each instance that the expenses for the proposed security upgrades would not have existed irrespective of the requestors' duties as federal officeholders or candidates. Therefore, the Commission concluded that the use of campaign funds to pay for the security upgrades was permissible under the Act or Commission regulations. *See* Advisory Opinion 2020-06 (Escobar) at 3; Advisory Opinion 2011-17 (Giffords) at 3; Advisory Opinion 2011-05 (Terry) at 4; Advisory Opinion 2009-08 (Gallegly) at 4.

The Commission has also previously considered the implications of the heightened threat environment faced by Members of Congress collectively, necessitating increased residential security measures even if an individual Member has not received direct threats. In Advisory Opinion 2017-07 (Sergeant at Arms), the Commission considered information from the House Sergeant at Arms about the threats faced by Members of Congress due to their status as federal officeholders, and the recommendation of the Capitol Police that Members of Congress install or upgrade residential security systems to protect themselves and their families. In light of that information, the Commission concluded that certain costs of installing or upgrading home security systems would constitute ordinary and necessary expenses incurred in connection with Members' duties as federal officeholders, and that therefore Members of Congress may use campaign funds to pay for reasonable costs associated with home security systems. *See* Advisory Opinion 2017-07 (Sergeant at Arms) at 3.

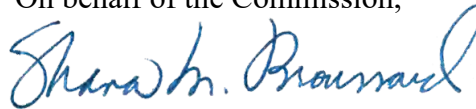
Here, the Commission considers the need for officeholders to take proactive measures to protect themselves and their immediate families due to threats arising from their status as officeholders. Similar to the need for increased residential security, the need for personal security for officeholders and their immediate family members in the context requested arises due to officeholders' roles as elected officials. Under these circumstances, the reasonable costs of bona fide, legitimate, professional personal security personnel for officeholders and their immediate family members constitute ordinary and necessary expenses incurred in connection with officeholders' duties and are a permissible use of campaign funds under the Act and Commission regulations.

Accordingly, the Members that comprise the NRSC and NRCC may use campaign funds to pay for bona fide, legitimate, professional personal security personnel to protect themselves and their immediate families due to threats arising from their status as officeholders, when federal agents are not protecting the Members or the Members' families. The Commission emphasizes this conclusion is based on the information provided about security threats that exist due to the Members' duties as federal officeholders. *See* Advisory Opinion 2017-07 (Sergeant at Arms); Advisory Opinion 2011-17 (Giffords) at 3.

This response constitutes an advisory opinion concerning the application of the Act and

Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See id.* § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,



Shana M. Broussard
Chair



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 1, 2011

CERTIFIED MAIL RETURN
RECEIPT REQUESTED

ADVISORY OPINION 2011-17

Michael McNulty
Chairman
Giffords for Congress
P.O. Box 12886
Tucson, AZ 85732-2886

Dear Mr. McNulty:

We are responding to your advisory opinion request on behalf of Giffords for Congress (the "Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the use of campaign funds to pay for enhanced security at Representative Gabrielle Giffords's home.

The Commission concludes that because the need for enhanced security at Representative Giffords's home is due to violence and security threats stemming from her activities as a Member of Congress, the use of campaign funds to pay for such security measures does not constitute personal use of campaign funds, and is permissible under the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter received on August 17, 2011, and public disclosure reports filed by the Committee with the Commission.

Representative Gabrielle Giffords is a Member of the U.S. House of Representatives from Arizona's 8th Congressional District. The Committee is her principal campaign committee. Representative Giffords was both a Federal officeholder and a candidate for re-election to the House of Representatives when the events giving rise to this request occurred.

On January 8, 2011, Representative Giffords was shot and severely wounded at an event sponsored by her congressional office. Since that time, Representative Giffords has been undergoing treatment at TIRR Memorial Hermann Hospital in Houston, Texas. She was recently transferred to outpatient rehabilitation, allowing her to reside in the family home in the Houston area when she is not receiving treatment.

After Representative Giffords was shot, at the request of the U.S. House of Representatives Sergeant at Arms, the U.S. Capitol Police conducted a security assessment of the Houston area family home and the general threat to Representative Giffords. The U.S. Capitol Police, following its standards and best industry practices, made several recommendations to increase the home's security that are specific to the identified security needs of Representative Giffords. The recommendations include installing improved exterior lighting, improved locks, and a duress alarm button. The estimated cost of the improvements is \$2,200. The Committee states that these security improvements are not intended to increase the value of the property.

Question Presented

May the Committee use campaign funds to pay the costs of installing the recommended additional security measures to Representative Giffords's home?

Legal Analysis and Conclusions

Yes, the Committee may use campaign funds to pay the costs of installing the recommended additional security measures to Representative Giffords's home because these costs would not constitute personal use of campaign funds under 2 U.S.C. 439a(b).

The Act identifies six categories of permissible uses of contributions accepted by a Federal candidate. They are: (1) otherwise authorized expenditures in connection with the candidate's campaign for Federal office; (2) ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of Federal office; (3) contributions to organizations described in 26 U.S.C. 170(c); (4) transfers, without limitation, to national, State, or local political party committees; (5) donations to State and local candidates subject to the provisions of State law; and (6) any other lawful purpose not prohibited by 2 U.S.C. 439a(b). 2 U.S.C. 439a(a); *see also* 11 CFR 113.2(a)-(e).

Under the Act and Commission regulations, contributions accepted by a candidate may not be converted to "personal use" by any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.2(e). Conversion to personal use occurs when a contribution or amount is used "to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office." 2 U.S.C. 439a(b)(2); *see also* 11 CFR 113.1(g).

The Act and Commission regulations provide a non-exhaustive list of items that would constitute personal use, none of which applies here. *See* 2 U.S.C. 439a(b)(2)(A)-

(I); 11 CFR 113.1(g)(1)(i)(A)-(J). For items not on this list, such as payments for home security systems, the Commission determines on a case-by-case basis whether an expense would fall within the definition of “personal use.” 11 CFR 113.1(g)(1)(ii). The Commission has long recognized that if a candidate “can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.” Explanation and Justification for Final Rules on Personal Use of Campaign Funds, 60 FR 7862, 7867 (Feb. 9, 1995).

The Commission has previously concluded that payments for, or improvements to, a home security system, under circumstances very similar to those presented here, do not constitute personal use under the Act and Commission regulations. In Advisory Opinions 2011-05 (Terry) and 2009-08 (Gallegly), Members of Congress who were also candidates for re-election faced specific ongoing threats to the safety of themselves and members of their families. The facts suggested that the individuals threatening both Representatives Gallegly and Terry were motivated by the Representatives’ public roles as candidates and activities as Members of Congress. In both of those advisory opinions, the proposed security upgrades to the Representatives’ homes were recommended by the U.S. Capitol Police specifically because of the continuing threats. The Commission concluded in both advisory opinions that the threats would not have occurred had the Representatives not been Members of Congress or candidates for re-election, and that the expenses for the proposed upgrades to the Representatives’ security systems would not exist irrespective of the Representatives’ campaigns or duties as Federal officeholders.

Similarly, here, the Commission concludes that the ongoing security needs of Representative Giffords identified by the U.S. Capitol Police would not exist were Representative Giffords not a Federal officeholder or a candidate for re-election. Representative Giffords was shot and severely wounded while engaged in her duties as a Federal officeholder, and the expenses for the proposed upgrades to the security system at Representative Giffords’s family home would not exist irrespective of her duties as a Federal officeholder or as a candidate for re-election. Therefore, the use of campaign funds to pay for these security system upgrades would not constitute personal use of campaign contributions, and would not be prohibited by the Act or Commission regulations. 2 U.S.C. 439a(b).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law, including, but not limited to, statutes, regulations, advisory opinions, and case law.

The cited advisory opinions are available on the Commission's website, www.fec.gov, or directly from the Commission's Advisory Opinion searchable database at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)

Cynthia L. Bauerly
Chair



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 13, 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2017-07

Hon. Paul D. Irving
Sergeant at Arms
U.S. House of Representatives
H-124 Capitol
Washington, DC 20515-6634

Dear Mr. Irving:

We are responding to your advisory opinion request concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to the proposed use of campaign contributions by Members of the United States House of Representatives (“Members of Congress” or “Members”) for residential security systems. The Commission concludes that Members of Congress may use campaign funds to pay for costs associated with installing (or upgrading) and monitoring a security system at the Members’ residences without such payments constituting an impermissible conversion of campaign funds to personal use, under the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your advisory opinion request received on June 21, 2017, the supplemental letter received on June 29, 2017, and a comment from Rep. Gregg Harper received on July 12, 2017.

As the Sergeant at Arms, you are the chief law enforcement official for the United States House of Representatives. Advisory Opinion Request at AOR001. You state that “Members receive threatening communications on a daily basis” and that the incidence of such threats is increasing. *Id.* In calendar year 2016, the United States Capitol Police investigated 902 threatening communications received by Members, while in approximately the first six months of 2017 they have investigated 950 such communications. *Id.* You characterize this as “the new daily threat environment faced by Members of Congress.” *Id.* You indicate that the anonymous nature of many of the threats makes the Capitol Police’s investigation of those threats

particularly challenging, and you contend that “Members of the U.S. House of Representatives require a residential security system due to the threat environment.” AOR002.

The comment from Rep. Harper further clarifies the nature of the threat he and other Members of Congress are facing. “These types of threats necessitate a proactive rather than reactive response. Members are unfortunately no longer able to wait until confirmation of a threatening communication before taking prudent steps to protect themselves and their family.”¹

Question Presented

May Members of Congress use campaign contributions to install or upgrade residential security systems that do not constitute structural improvements to the Members’ homes?

Legal Analysis and Conclusions

Yes, Members of Congress may use campaign contributions to install or upgrade residential security systems that do not constitute structural improvements to Members’ homes. Such systems fall within the uses defined as permissible under the Act: ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of federal office. 52 U.S.C. § 30114(a)(2).

As a permitted use, the spending on the residential security systems does not fall into the Act’s prohibition on federal officeholders’ converting contributions they have accepted to their own “personal use.” 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e). Conversion to personal use occurs when a contribution or amount is used “to fulfill any commitment, obligation, or expense” of a federal officeholder “that would exist irrespective” of the federal officeholder’s duties. 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g).²

The Act and Commission regulations provide a non-exhaustive list of items that would constitute a prohibited personal use *per se*, none of which applies here. See 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J). For items not on this list, such as payments for residential security systems, the Commission determines on a case-by-case basis whether such expenses would fall within the definition of “personal use.” 11 C.F.R. § 113.1(g)(1)(ii). The Commission has long recognized that if a candidate “can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.” Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995).

¹ Comment of Rep. Gregg Harper dated July 12, 2017.

² While these provisions also proscribe personal use of campaign funds by federal candidates who are not current federal officeholders, the advisory opinion request was, and this advisory opinion is, limited to payments by current federal officeholders. You have not asked about, and this opinion does not address, the use of campaign funds for residential security by candidates for federal office, or for former federal officeholders.

The Commission has previously concluded that payments for, or improvements to, a residential security system, under certain circumstances, do not constitute personal use under the Act and Commission regulations. In Advisory Opinion 2011-17 (Giffords), Advisory Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly), Members of Congress faced specific and ongoing threats to the safety of themselves and their families. The facts presented in those advisory opinions suggested that the threats were motivated by the Members' public roles as federal officeholders and/or candidates. In all three instances, the Capitol Police recommended specific security upgrades to the Members' residences due to the continuing threats. The Commission concluded that the threats would not have occurred had the Members not been federal officeholders and/or candidates, and that the expenses for the proposed residential security upgrades would not exist irrespective of their duties as federal officeholders and/or candidates. Therefore, the Commission concluded that the use of campaign funds to pay for the non-structural security upgrades recommended by the Capitol Police would not constitute a prohibited personal use of campaign contributions under the Act or Commission regulations.

The Commission has carefully considered the information provided by your office and Representative Harper regarding both (1) the current threat environment facing Members of Congress due to their status as federal officeholders; and (2) the Capitol Police's threat assessment, resulting in its recommendation that Members upgrade their residential security.³ In light of this information, the Commission concludes that Members of Congress may, while in office, use campaign funds to pay for the reasonable costs associated with installing (or upgrading) and monitoring a security system at Members' residences, as described in this opinion, regardless of whether those Members have received specific or ongoing threats, without such payments constituting a prohibited personal use of campaign contributions under the Act and Commission regulations.⁴ Specifically, the Commission authorizes the use of campaign funds to pay for the installation (or upgrade) and monitoring costs of cameras, sensors, distress devices, and similar non-structural security devices, as well as locks, in and around a Member's residence.⁵ These expenses must be reported as "residential security expenses" on campaign-finance reports; simultaneously with the approval of this Advisory Opinion, the Commission will add "residential security expenses" to its list of reporting purposes deemed "adequate" for campaign disbursements.

The Commission emphasizes that this conclusion is based on the information you provided about the current heightened threat environment experienced by Members of

³ The advisory opinion request in this instance asks only about use of campaign funds by federal officeholders. Candidates who are not federal officeholders may rely on Advisory Opinion 2011-17 (Giffords), Advisory Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly) if the relevant facts are materially indistinguishable from the facts of those advisory opinions, or they may submit an advisory opinion request.

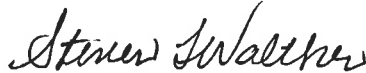
⁴ The Commission assumes that officeholders' campaign committees will pay the fair market value of any such residential security installation or upgrades to prevent the acceptance of potentially impermissible in-kind contributions from vendors.

⁵ Such residential security expenses are not considered to be "utility payments" under 11 C.F.R. § 113.1 (g)(1)(i)(E).

Congress, as assessed by the Capitol Police, and that if the threat environment should diminish significantly at some point in the future, this conclusion may no longer apply.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,


Steven T. Walther,
Chairman



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 22, 2021

ADVISORY OPINION 2020-06

Honorable Veronica Escobar
Member of Congress
Veronica Escobar for Congress
P.O. Box 3961
El Paso, TX 79923

Dear Representative Escobar:

We are responding to the advisory opinion request you submitted on behalf of yourself and Veronica Escobar for Congress, your principal campaign committee, regarding the application of the Federal Election Campaign Act, 52 U.S.C. § 30101-45 (the “Act”), and Commission regulations to the proposed use of your committee’s campaign funds for expenses related to installing a residential security system at your home. The Commission concludes that the proposed use of campaign funds for wiring and lighting costs that are necessary for the operation of the residential security system as recommended by the House Sergeant of Arms is permissible under the Act and Commission regulations and would not constitute a prohibited conversion of campaign funds to personal use.

Background

The facts presented in this advisory opinion are based on your letter received on December 22, 2020.

You are a member of the U.S. House of Representatives from Texas’s 16th Congressional District. Since taking office, you have received numerous direct threats to your safety, which the Capitol Police have investigated. Advisory Opinion Request at AOR001. You have consulted with the Office of the House Sergeant at Arms about these threats, and they have recommended installation of a home security system, including cameras for a detached garage and surrounding your home. *Id.* The additional wiring and lighting would provide electricity to the cameras and enough light for them to pick up images, and therefore would be necessary for these recommended security measures to function properly. *Id.* You state that the additional

wiring and lighting are intended solely to support the effectiveness of the security system, and are not intended for the purpose of improving your home. *Id*

Question Presented

*May Veronica Escobar for Congress use excess campaign funds to pay the costs of lighting and wiring required as part of a residential security system at your home?*¹

Legal Analysis and Conclusion

Yes, Veronica Escobar for Congress may use campaign funds to pay for costs of wiring and lighting that are necessary for the operation of a residential security system at your home as recommended by the House Sergeant at Arms, without such payments constituting prohibited conversion to personal use of campaign funds.

The Act identifies six categories of permissible uses of contributions accepted by a federal candidate, two of which are “ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of Federal office,” and “any other lawful purpose not prohibited by 52 U.S.C. § 30114(b).” 52 U.S.C. § 30114(a); *see also* 11 C.F.R. § 113.2(a)-(e).

Under the Act and Commission regulations, contributions accepted by a candidate may not be converted to “personal use” by any person. 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e). Conversion to personal use occurs when a contribution is used “to fulfill any commitment, obligation, or expense” of a federal officeholder “that would exist irrespective” of the officeholder’s duties. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

The Act and Commission regulations provide a non-exhaustive list of items that would constitute conversion to personal use *per se*, none of which applies here. *See* 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J). For items not on this list, such as payments for residential security systems, the Commission determines on a case-by-case basis whether such expenses would fall within the definition of “personal use.” 11 C.F.R. § 113.1(g)(1)(ii). The Commission has long recognized that if a candidate “can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.” Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995).

The Commission has previously concluded that payments for, or improvements to, a residential security system, under certain circumstances, do not constitute personal use under the Act and Commission regulations. In Advisory Opinion 2011-17 (Giffords), Advisory Opinion

¹ The advisory opinion request asks whether members of Congress may use campaign funds for the proposed residential security costs. Commission regulations provide that requests regarding the activities of third parties do not qualify as advisory opinion requests. 11 C.F.R. § 112.1(b). As such, the Commission is responding to Representative Escobar’s request only as it applies to her. Other federal officeholders may rely on it to the extent their factual circumstances are materially indistinguishable from those described here. *See* 11 C.F.R. § 112.5(a)(2).

2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly), members of Congress faced specific and ongoing threats to the safety of themselves and their families. The facts presented in those advisory opinions suggested that the threats were motivated by the requestors' public roles as federal officeholders, candidates, or both. In all three instances, the Capitol Police recommended specific security upgrades to the members' homes due to the continuing threats.

The Commission concluded in each instance that the threats would not have occurred had the members not been federal officeholders or candidates, and that the expenses for the proposed security upgrades would not have existed irrespective of their duties as federal officeholders or candidates. Therefore, the Commission concluded that the use of campaign funds to pay for the security upgrades recommended by the Capitol Police would not constitute a prohibited personal use of campaign contributions under the Act or Commission regulations. *See* Advisory Opinion 2011-17 (Giffords) at 3; Advisory Opinion 2011-05 (Terry) at 4; Advisory Opinion 2009-08 (Gallegly) at 4.

The Commission has also previously considered the implications of the heightened threat environment faced by members of Congress collectively, necessitating increased residential security measures even if an individual member has not received direct threats. In Advisory Opinion 2017-07 (Sergeant at Arms), the Commission considered information from the House Sergeant at Arms about the threats faced by members of Congress due to their status as federal officeholders, and the recommendation of the Capitol Police that members of Congress install or upgrade residential security systems to protect themselves and their families. In light of that information, the Commission concluded that certain costs of installing or upgrading home security systems would constitute ordinary and necessary expenses incurred in connection with members' duties as federal officeholders, and that therefore members of Congress may use campaign funds to pay for reasonable costs associated with home security systems. *See* Advisory Opinion 2017-07 (Sergeant at Arms) at 3. The Commission's conclusion in that advisory opinion was limited to the use of campaign funds for "non-structural security devices" and the Commission specifically authorized the use of campaign funds for the installation or upgrade of "cameras, sensors, distress devices, and similar non-structural security devices, as well as locks, in and around a Member's residence." *Id.*

As in the previous advisory opinions concerning federal officeholders who faced direct threats, you have also received direct threats since taking office as a Member of Congress, and the House Sergeant at Arms has recommended that you install specific security measures at your home in response. AOR001. Similar to the circumstances of the previous advisory opinions, your need for a residential security system arose due to your role as a federal officeholder, and the proposed wiring and lighting are "meant solely for supporting the effectiveness of the security system and not as an 'improvement'" to your home. *Id.*; *see* Advisory Opinion 2011-17 (Giffords) at 2; Advisory Opinion 2011-05 (Terry) at 2; Advisory Opinion 2009-08 (Gallegly) at 2. Therefore, the costs of installing the recommended security measures will not constitute a prohibited personal use of campaign funds.

Moreover, even in the absence of specific threats directed at you, you are currently subject to the heightened threat environment faced by members of Congress that was considered

by the Commission in Advisory Opinion 2017-07 (Sergeant at Arms). As such, the costs of installing a residential security system as recommended by the House Sergeant at Arms constitute ordinary and necessary expenses incurred in connection with your duties as a federal officeholder, and are a permissible use of campaign funds.

The specific recommendations of the Sergeant at Arms in your case require installing additional wiring and lighting around your home and detached garage. AOR001. While these particular costs may not, on their face, fall within the category of “non-structural security devices” authorized in Advisory Opinion 2017-07 (Sergeant at Arms), the recommended security cameras would not function properly without the additional wiring and lighting. As such, these costs constitute an integral part of an ordinary and necessary expense that may be paid with campaign funds under the Act. *Id.* Accordingly, Veronica Escobar for Congress may use campaign funds to pay those costs without such payment resulting in a prohibited conversion of campaign funds to personal use.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission’s website.

On behalf of the Commission,



Shana M. Broussard
Chair

Christopher M. Trebilcock
T (313) 965-8575
F (313) 309-6910
Email: ctrebilcock@ClarkHill.com

Clark Hill
500 Woodward Ave., Suite 3500
Detroit, MI 48226
T (313) 965-8300
F (313) 965-8252

August 23, 2021

Via Email, only

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

**Re: Supplemental Exhibit to Response to Complaint in *Ventimiglia v Whitmer*
No. 2021-07-17-21**

Dear Mr. Fracassi:

Please accept this letter and its attachment as a supplement to the response my office submitted on August 20, 2021 on behalf of Governor Gretchen Whitmer, the Gretchen Whitmer for Governor candidate committee, and Michigan Transition 2019 in the above-referenced complaint.

This letter's attachment – which we have designated as **Exhibit 14** – is an article from today, August 23, 2021, and is relevant to – and supplements – pages three through seven of our response, which detailed numerous threats against Governor Whitmer's safety and life in the last 18 months. The article reveals that on August 23, 2021, Attorney General Dana Nessel charged a man from Clarkston, Michigan with making malicious threats to Governor Whitmer through a web submission portal in January and March 2021. *Id.* Attorney General Nessel's office released one of the messages sent to Governor Whitmer by the man, which stated as follows: "Take care . . . and maybe shelter. We have been watching and know your every step. You f--- with everyday hard-working Americans, we F--- WITH YOU."

Sincerely,

CLARK HILL PLC



Christopher M. Trebilcock

CMT:vcs

EXHIBIT 14

The Detroit News

MICHIGAN

Clarkston man charged after leaving 'malicious' messages for governor

Beth LeBlanc The Detroit News

Published 1:03 p.m. ET Aug. 23, 2021

A 31-year-old Clarkston man has been charged with sending 'malicious' messages to Gov. Gretchen Whitmer, according to a statement from Attorney General Dana Nessel's office.

Kevin Dawe turned himself in to Michigan State Police on Aug. 19 and posted a \$500 bond after he was charged with sending messages to Whitmer through a web submission portal in January and in March, Nessel's statement said.

He was charged with two counts of malicious use of telecommunications services. Both counts are misdemeanors punishable by up to six months in jail or a \$1,000 fine.

An example of one of the messages, provided by Nessel's office, said: "Take care . . . and maybe shelter. We have been watching and know your every step. You f--- with everyday hard-working Americans, we F--- WITH YOU."

"There is a fine line between airing grievances with an elected official and threatening their life or their loved ones," Nessel said in a statement. "My office stands ready to pursue criminal charges against anyone who crosses that line."

The charges come more than 10 months after 14 people were charged in connection with an alleged plot to kidnap Whitmer over pandemic restrictions. One of the individuals has pleaded guilty. Several others await trial.

eleblanc@detroitnews.com

Christopher M. Trebilcock
T (313) 965-8575
F (313) 309-6910
Email: ctrebilcock@ClarkHill.com

Clark Hill
500 Woodward Ave., Suite 3500
Detroit, MI 48226
T (313) 965-8300
F (313) 965-8252

August 23, 2021

Via Email, only

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

**Re: Supplemental Exhibit to Response to Complaint in *Ventimiglia v Whitmer*
No. 2021-07-17-21**

Dear Mr. Fracassi:

Please accept this letter and its attachment as a supplement to the response my office submitted on August 20, 2021 on behalf of Governor Gretchen Whitmer, the Gretchen Whitmer for Governor candidate committee, and Michigan Transition 2019 in the above-referenced complaint.

This letter's attachment – which we have designated as **Exhibit 14** – is an article from today, August 23, 2021, and is relevant to – and supplements – pages three through seven of our response, which detailed numerous threats against Governor Whitmer's safety and life in the last 18 months. The article reveals that on August 23, 2021, Attorney General Dana Nessel charged a man from Clarkston, Michigan with making malicious threats to Governor Whitmer through a web submission portal in January and March 2021. *Id.* Attorney General Nessel's office released one of the messages sent to Governor Whitmer by the man, which stated as follows: "Take care . . . and maybe shelter. We have been watching and know your every step. You f--- with everyday hard-working Americans, we F--- WITH YOU."

Sincerely,

CLARK HILL PLC



Christopher M. Trebilcock

CMT:vcs

EXHIBIT 14

The Detroit News

MICHIGAN

Clarkston man charged after leaving 'malicious' messages for governor

Beth LeBlanc The Detroit News

Published 1:03 p.m. ET Aug. 23, 2021

A 31-year-old Clarkston man has been charged with sending 'malicious' messages to Gov. Gretchen Whitmer, according to a statement from Attorney General Dana Nessel's office.

Kevin Dawe turned himself in to Michigan State Police on Aug. 19 and posted a \$500 bond after he was charged with sending messages to Whitmer through a web submission portal in January and in March, Nessel's statement said.

He was charged with two counts of malicious use of telecommunications services. Both counts are misdemeanors punishable by up to six months in jail or a \$1,000 fine.

An example of one of the messages, provided by Nessel's office, said: "Take care . . . and maybe shelter. We have been watching and know your every step. You f--- with everyday hard-working Americans, we F--- WITH YOU."

"There is a fine line between airing grievances with an elected official and threatening their life or their loved ones," Nessel said in a statement. "My office stands ready to pursue criminal charges against anyone who crosses that line."

The charges come more than 10 months after 14 people were charged in connection with an alleged plot to kidnap Whitmer over pandemic restrictions. One of the individuals has pleaded guilty. Several others await trial.

eleblanc@detroitnews.com

September 16, 2021

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

By email transmission
FracassiA@michigan.gov

Re: Ventimiglia v. Gretchen Whitmer and Gretchen Whitmer for Governor
Campaign Finance Complaint
No. 2021-07-17-21
Rebuttal Statement

Dear Mr. Fracassi:

INTRODUCTION

Thank you for your letter dated September 3, 2021 which contained the response (the “Response”) submitted by the Respondents in the above-referenced matter. Please consider this letter to be the Rebuttal Statement submitted on behalf of the Complainant.¹ The Response’s “smoke and mirrors” approach never answers why Governor Whitmer’s personal trip to West Palm Beach, Florida (the “Florida Excursion”) has any relationship whatsoever to “carrying out the business of an elective office” to allow a candidate committee to finance these expenses as an incidental expense pursuant to MCL 169.221a and MCL 169.209(1). With all due apologies to the late poet James Riley,² if an expense looks like a personal expense, swims like a personal expense, and quacks like a personal expense, then we call that a personal expense.

THERE IS ONLY ONE FACT THAT MATTERS: THE PURPOSE OF THE FLORIDA EXCURSION WAS EXCLUSIVELY PERSONAL

The Response confirms the dispositive fact (the “Dispositive Fact”) alleged in the Complaint:

“As stated by the Governor’s office, this was a two-day weekend trip to visit her ailing father, with a travel day on each side of the visit.” Response, page 2.

¹ All capitalized terms not otherwise defined herein shall have those meanings as set forth in the Complaint filed in the above-referenced matter. The Complaint is hereby incorporated herein by reference, including, but not limited to, the sections entitled “Conclusion” and “Request for Action by the Secretary of State”.

² [Duck test - Wikipedia](#)

Once the Dispositive Fact was admitted by the Respondents, nothing else matters. MCL 169.221a allows Respondent Gretchen Whitmer for Governor to make an expenditure for an “incidental expense” which means an “expenditure that is an ordinary and necessary expense, paid or incurred in carrying out the business of an elective office.” MCL 169.209(1). Although the Response can waste pages referring to Michigan Transition 2019 (which is not a Respondent here) or the threats made to Respondent Whitmer, there is one inescapable fact that the Respondents cannot explain away:

Respondent Whitmer’s personal trip to visit her father in Florida was wholly unrelated to “carrying out the business of an elective office.”

**ANY ASSERTION THAT A PERSONAL WEEKEND VACATION IS JUSTIFIED BY
SECURITY CONCERNS IGNORES THAT THIS EXPENDITURE WOULD HAVE
OCCURRED IRRESPECTIVE OF RESPONDENT WHITMER’S STATUS AS
GOVERNOR**

The Response cites both an Interpretative Statement issued to Kevin Hertel dated April 15, 2021 and Federal law to justify the expenditure of candidate committee funds for personal use. See Response, pages 8-10. However, the Florida Excursion is a personal weekend vacation, not a home security system.

According to the Michigan Department of State:

“To determine whether a disbursement is a personal expense, the Department applies a “but-for” test in order to determine whether the expenditure may be personal in nature: If the disbursement would have occurred irrespective of the individual’s status as a candidate or an office holder, the expenditure is a prohibited personal expense.”

“The burden is on the committee at the time of filing a campaign statement to demonstrate that the disbursement would not have been made but for the candidate’s status as an officeholder.”

Interpretative Statement issued to Kevin Hertel dated April 15, 2021.

Certainly, the Respondents are not seriously arguing that visiting a family member on a weekend vacation would not have occurred “but for” Respondent Whitmer’s status as Governor. Therefore, based on the Hertel ruling, the expenditure for the Florida Excursion cannot be an incidental expense.

Moreover, even a cursory review of Federal law illustrates that the expenditure for the Florida Excursion cannot be an incidental expense. Significantly, the Federal law “personal use” regulations expressly recognize that a “vacation” is “personal use” which cannot be financed from a candidate committee account. 11 CFR 113.1(g)(1)(i)(J). Similar to the Hertel ruling, the Federal authorities employ a “but for” analysis:

“...the use of campaign funds to take the candidate’s family out to dinner in a restaurant would be personal use, because the family’s meal expenses would exist even if no member of the family were a candidate or an officeholder.”

Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7868 (Feb. 9, 1995).

Whether the expense is family dinner or a personal trip to West Palm Beach, Florida, this trip “to visit her ailing father” would have been made whether or not Respondent Whitmer was Governor. Unless the Bureau of Elections continues to adhere to the Hertel “but for” analysis, then the personal use prohibition becomes meaningless.

Accordingly, the Respondents’ security “justification” to finance the Florida Excursion ignores that the Florida Excursion is a personal expense. If the Respondents want to utilize candidate committee funds to purchase a home security system or to finance security expenses with respect to a trip which relates to “carrying out the business of an elective office”, then so be it. However, such is not the case here with respect to the Florida Excursion.

**OTHER ADMISSIONS IN THE RESPONSE WILL ASSIST THE BUREAU OF
ELECTIONS TO ESTABLISH THE APPROPRIATE PENALTIES UNDER THE
MICHIGAN CAMPAIGN FINANCE ACT**

Other important facts, alleged in the Complaint and now conceded by the Respondents, include:

1. “The value of the flight was \$27,521.” Response, page 3. Compare Complaint, paragraph 10.
2. “...the cost of the flight was then paid from the Gretchen Whitmer for Governor campaign fund...” Response, page 3. Compare Complaint, paragraph 14.
3. “...Governor Whitmer voluntarily reimbursed the Gretchen Whitmer for Governor candidate committee for an amount equivalent to the cost of a first-class commercial airline ticket for herself and her daughters. Response, page 3. Compare Complaint, paragraph 14.

As set forth in the Complaint, the foregoing facts establish: (1) the amount of the violation, (2) that Respondent Gretchen Whitmer for Governor is attempting to pay a personal expense of Respondent Whitmer, and (3) that Respondent Whitmer’s reimbursement of a portion of the expenses of the Florida Excursion serves as an admission that these expenditures are not incidental expenses.

* * *

Accordingly, the Complaint sets forth the serious nature of the Michigan Campaign Finance Act violations at stake here. The Response’s factual concessions only serve to bolster the Complaint. Unless the Bureau of Elections and Secretary of State protect the prohibition against personal use

spending by candidate committees, then any candidate committee will be allowed to finance personal vacations with impunity to anywhere in the world. Therefore, if the text of the Michigan Campaign Finance Act and the prior rulings of the Michigan Department of State have any meaning whatsoever, the inescapable conclusion is that the Respondents have made a prohibited personal expense to benefit Respondent Whitmer.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Ventimiglia", with a long horizontal flourish extending to the right.

Eric Ventimiglia

Dated: September 16, 2021

Executive Director, Michigan Rising Action



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

December 21, 2021

Eric Ventimiglia
123 W. Allegan, Suite 770
Lansing, MI 48933

Re: *Ventimiglia v. Whitmer*
Campaign Finance Complaint
No. 2021-07-17-21

Dear Mr. Ventimiglia:

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

The complaint alleges that Governor Whitmer improperly used campaign funds from the Gretchen Whitmer for Governor Campaign Committee (Committee) to pay for a chartered flight as part of a personal trip to and from Florida. The complaint alleges that, because the trip to Florida was made entirely for personal reasons, all expenses incurred as a result of that trip must be personal expenses that cannot be reimbursed from Committee funds.

In response to the complaint, Governor Whitmer confirmed that the Committee's funds were used to pay for a chartered flight to and from Florida and confirmed that the Florida trip was not taken for any official reason.¹ Governor Whitmer stated that the chartered flight was necessary to ensure her personal security and provided multiple news articles and social media communications documenting the threats against her. Further, Governor Whitmer reimbursed the Committee on May 27, 2021 for the cost of four first-class one-way tickets between Lansing and Florida – one for Governor Whitmer's flight to Florida, one for Governor Whitmer's return flight

¹ While Governor Whitmer's response states that the Governor continued to take meetings and carry out her official duties during her time in Florida, nothing in the response suggests that any official business required Governor Whitmer to be present in Florida; the only apparent reason that Governor Whitmer traveled to Florida was to visit her father. If no official reasons justify the trip to Florida, the trip cannot be categorized as an official trip.

to Lansing, and two for each of the Governor's daughters who were also on the return flight to Lansing.²

You submitted a rebuttal statement, which reiterated that the personal nature of Governor Whitmer's trip to Florida necessarily meant that all expenses associated with the trip are non-reimbursable personal expenditures.

In Michigan, candidate committees may make an expenditure only "to further the nomination or election of the candidate for which [the committee] is formed." MCL 169.244(2). Office holders may also make expenditures for incidental office expenses – expenses that are "ordinary and necessary, paid or incurred in carrying out the business of an elective office." MCL 169.209(1). However, candidates may not use committee funds for the personal benefit of an individual. *Interpretive Statement to Christopher LaRose*, Issued November 2, 1978.

To determine whether an expense incurred by a candidate committee is an impermissible personal expenditure, the Department applies a "but-for" test: "[i]f the disbursement would have occurred irrespective of the individual's status as a candidate or an office holder, the expenditure is a prohibited personal expense." *Interpretive Statement to Kevin Hertel*, issued April 15, 2021. Conversely, disbursements that are entirely attributable to an individual's status as a candidate or an office holder are incidental expenses that may be paid by a committee regulated by the MCFA. The committee bears the burden of showing that the disbursement would not have been made but for the individual's status as a candidate or officeholder. *Id.*

The Department has reviewed the evidence submitted in this matter and concludes that insufficient evidence has been submitted to support a finding that a potential violation of the MCFA has occurred. While Governor Whitmer's trip to Florida was taken solely for personal reasons, the fact that a specific expense was incurred as part of a broader set of activities with a purely personal purpose is not dispositive as to whether that specific expense is a personal expenditure or an incidental expenditure. Instead, the but-for test must be applied to the individual expense – each expense incurred by the individual in question must be examined to determine if, but for the individual's status as an elected official, that expense would not have been incurred.

Here, the but-for test categorizes some expenses associated with the Florida trip as personal and others as official. Governor Whitmer concedes that her trip to Florida was a personal trip

² Governor Whitmer's two daughters only traveled on the return charter flight from Florida to Michigan; they did not travel on the initial charter flight from Michigan to Florida. Governor Whitmer's response to this complaint states that the Governor reimbursed the Committee "for an amount equivalent to the cost of a first-class ticket for herself and her daughters." The Department interprets this to mean that Governor Whitmer reimbursed the Committee for four tickets, as explained above. The Department also does not examine whether the reimbursement was indeed equivalent to the cost of four first class tickets, as the issue was not raised by the complainant in either the original complaint or in his reply.

unrelated to her official duties. If Governor Whitmer was not an elected official, she still would have traveled to Florida – but presumably not on a chartered flight. Because Governor Whitmer would have incurred the cost of domestic airline ticket even if she did not hold office, the cost of that ticket must be paid by Governor Whitmer personally – and Governor Whitmer bore that cost. Importantly, Governor Whitmer reimbursed the Committee for the fair market value of first-class prior tickets within 10 days of the Committee making the expenditure – the Committee learned of the expense on May 17, 2021, and Governor Whitmer reimbursed the Committee on May 27, 2021.³

Had Governor Whitmer not reimbursed the Committee for the fair market value of commercial plane tickets, or had done so in response to news coverage or a complaint, there may have been reason to believe that a potential violation of the MCFA had occurred. Further, had Governor Whitmer not promptly reimbursed the Committee for the cost of the tickets upon learning of the expenditure, there may have been reason to believe that a potential violation of the MCFA had occurred.

The next question is whether the *additional* costs – those attributable to using a chartered flight rather a commercial airline – would not have been incurred but for the Governor’s status as an elected official. To be justifiable, the expense must be rationally related to a condition created by an individual’s status as a candidate or officeholder, and the candidate committee bears the burden of proof. *Hertel, supra*.

Here, Governor Whitmer asserts that travel via chartered flight was necessary because numerous and documented threats against her life made travel on a commercial airline unsafe. Further, Governor Whitmer claims that these threats stem from her status as Governor, and but for that status, she would not be the recipient of death threats, her safety would not be in question, and she would be able to take commercial flights rather than being required to travel on private, chartered flights.

In this case, the Department finds that Governor Whitmer’s stated concern for her safety and security is a direct result of her status as Governor, and that, particularly given the tenor and intensity of the threats included with Governor Whitmer’s response statement, travel via private chartered flight rather than by commercial airline is a response rationally related to those security concerns.⁴

³ While the charter flight was taken in March, Governor Whitmer claims that a good-faith error regarding which entity would pay for the flight prevented the Committee from becoming aware of its obligation to pay the expense until May 17, 2021. Because the nature of the error is not contested by the complainant, the circumstances surrounding the error are irrelevant to this determination.

⁴ The Department is not in a position, nor will it attempt, to evaluate whether these specific measures taken to protect the safety of a public official, relative to some other hypothetical action that might have been taken, are the only or most optimal method of protecting safety. However, an official or candidate claiming an otherwise personal expense is necessary because of a safety concern must demonstrate that the expenditure would not have been

The complaint errs in asserting that the personal nature of the Florida trip means that no individual cost associated with the trip could be an incidental expense payable by a committee under the MCFA. As explained above, expenses may be incidental expenditures payable by a committee if the expense is attributable to an individual's status as a candidate or an elected official.

Because the violation of the MCFA alleged in the complaint has not been substantiated by sufficient evidence, the Department dismisses the complaint and will take no further enforcement action.

Sincerely,



Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Chris Trebilcock, Attorney for Gretchen Whitmer for Governor

necessary but for the official or candidate's status, and the expenditure is a response rationally related to that concern.