

MICHIGAN CAMPAIGN FINANCE COMPLAINT

RECEIVED/FILED
MICHIGAN DEPT OF STATE
2020 SEP 17 PM 1:55
ELECTION/GREAT SEAL

SECTION 1: COMPLAINANT

Dennis G. Lennox II
P.O. Box 232
Topinabee, Mich. 49791
202/709-9615

SECTION 2: ALLEGED VIOLATOR

Bipartisan Solutions
2843 East Grand River
No. 155
East Lansing, Mich. 48823
773/275-1320

SECTION 3: ALLEGATIONS

Upon information and belief, the above-captioned Complainant believes Sec. 24 and Sec. 34 of the Michigan Campaign Finance Act were violated by the above-captioned Alleged Violator.

COMPLAINANT'S STATEMENT OF FACTS

1. "Committee" is defined in Sec. 3 (4) of the Michigan Campaign Finance Act¹ (herein "MCFA") as a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of a candidate, the qualification, passage or defeat of a ballot question or the qualification of a new political party, if contributions received total \$500.00 or more in a calendar year or expenditures total \$500.00 or more in a calendar year. Except as restricted or prohibited by this act or other state or federal law, a committee may also make other lawful disbursements. An individual, other than a candidate, does not constitute a committee. A person, other than a committee registered under this act, making an expenditure to a ballot question

¹ See MCL 169.203.

committee or an independent expenditure committee, shall not, for that reason, be considered a committee or be required to file a report for the purposes of this act unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee or independent expenditure committee.

2. "Person" is defined in Sec. 11(2) of the MCFA as a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly.

3. "Contribution" is defined in Sec. 4(1) of the MCFA, which reads as follows:

"Contribution" means a payment, gift subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for influencing the nomination or election of a candidate, for the qualification, passage or defeat of a ballot question, or for the qualification of a new political party.

4. "Expenditure" is defined in Sec. 6 (1) (a) of the MCFA, which reads as follows:

(1) "Expenditure" means a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to the nomination or election of a candidate, the qualification, passage or defeat of a ballot question, or the qualification of a new political party. Expenditure includes, but is not limited to, any of the following:

(a) A contribution or transfer of anything of ascertainable monetary value for purposes of influencing the nomination or election of a candidate, the qualification, passage or defeat of a ballot question, or the qualification of a new political party.

5. In an April 9, 2014, letter to Karen Zeglis, an attorney representing the Michigan Community Education Fund (herein "MCEF"), the Michigan Department of State discussed the disposition of a complaint filed against MCEF. The Department made the following finding:

MCEF is a Committee subject to the Act's Registration and Reporting Requirements

The registration and reporting requirements of the Act apply to any "committee," which is defined as "a person who receives contributions or expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate...if contributions received total \$500.00 or more in a calendar year or expenditures made total \$500.00 or more in a calendar year." MCL 169.203(4). Under the Act, a committee is required to file a statement of organization within 10 days of its formation. MCL 169.224(1). The failure to timely file a statement of organization may result in the assessment of late filing fees or, in extreme circumstances, the filing of misdemeanor charges. The failure to file a single campaign finance statement may trigger late filing fees. MCL 169.233(7). In certain circumstances, multiple failures to file may constitute a misdemeanor offense. MCL 169.233(8). Although not relevant to this disposition of this complaint, the Act provides a safe harbor for persons who make contributions to ballot question committees: "A person, other than a committee registered under this Act, making an expenditure to a ballot question committee, shall not, for that reason, be considered a committee for the purposes of this Act unless the person solicits or receives contributions for the purpose of making an expenditure to a ballot question committee." MCL 169.203(4). Thus, a corporation that contributes to a ballot question committee is not subject to the Act's registration and reporting requirements unless the corporation solicits or receives contributions from other sources for the purpose of making an expenditure to a ballot question committee. Because Detroit Forward is not a ballot question committee, MCEF cannot avoid registering as a committee on the basis that it did not solicit or receive money for the express purpose of making an expenditure to Detroit Forward.

In your answer on behalf of MCEF, you assert that "[t]here is no requirement under Michigan law that requires a nonprofit corporation to register as a political committee if its only activity is making a contribution to an independent expenditure political committee." This assertion is not a correct statement of Michigan law."

ALLEGED VIOLATION

1. Bipartisan Solutions (herein "BS") is a "person" for purposes of the MCFA.
2. BS was disclosed on the Petition Proposal Report and again on the April 2020 Quarterly Report of Fair and Equal Michigan, a ballot question committee, as having made direct contributions to Fair and Equal Michigan on four separate occasions during these reporting periods: (1) \$175,000.00 on January 23, 2020; (2) \$278,000.00 on January 29, 2020; (3) \$30,000.00 on March 11, 2020; and (4) \$223,000 on March 18, 2020.

3. BS has made direct contributions to Fair and Equal Michigan totaling \$706,000.00. That is over 44 percent of the \$1,597,223.13 reported raised by Fair and Equal Michigan.

4. After making their second contribution to Fair and Equal Michigan, BS lost any claim it might of had that it was somehow excluded from the definition of “Committee” in Section 3(4) by the phrase unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee or independent expenditure committee. Using the April 9, 2014, MCEF conciliation agreement as precedent, BS in the 2020 election cycle has acted not as a corporation that merely made a contribution to a ballot question committee, but rather BS has been acting as an on-going ballot question committee. Viewed in the context of these facts and the totality of these circumstances, Secretary Benson and the Bureau of Elections should find non-compliance with the MCFA and hold that BS, like the MCEF back in 2014, is required to file a Statement of Organization registering itself as a ballot question committee in Michigan and file periodic campaign statements disclosing Its contributors as well as the expenditures it has made.

5. Secretary Benson can close the dark money loophole in the MCFA by imposing this simple remedy: Multiple direct and/or in-kind contributions to a ballot question committee triggers a rebuttable presumption that BS — the dark money group who is disclosed as a multiple contributor — has been raising funds for itself to make additional contributions to the ballot question committee Fair and Equal Michigan.

6. Let us look at this rebuttable presumption standard: The standard does not mean that whenever a corporation, union, or association (entity) makes a second or third contribution to a ballot question committee, then that entity is required to register and report itself as a ballot question committee. Rebuttable presumption can be explained using the following example. Let

us say a corporation, like General Motors, contributes \$50,000 to a ballot question committee. Then, it makes a second contribution of \$75,000 to that same ballot question committee. If someone raises the presumption that General Motors itself must be a ballot question committee, the allegation can easily be rebutted. General Motors has perhaps millions of dollars in its corporate treasury. The presumption that General Motors was out soliciting third parties to make that second \$75,000 contribution can be successfully rebutted. Not so, for BS. The first contribution by BS on January 23, 2020, to Fair and Equal Michigan was for \$175,000; everyone agrees a one-time contribution under Sec. 3(4) does not trigger any registration or reporting requirement. However, six days later, on January 29, 2020, BS made a \$278,000 contribution to Fair and Equal Michigan. Then, 42 days later, on March 11, 2020, it made a third contribution of \$30,000 to Fair and Equal Michigan. Then seven days later, on March 18, 2020, it made a \$223,000 contribution to Fair and Equal Michigan. Why make four separate contributions over a 55-day period? Why not just write a \$706,000 check to Fair and Equal Michigan? The answer that can be inferred is cash flow.

7. BS needed to be out soliciting funds during that period to receive additional contributions to bring its total up to \$706,000 by March 18, 2020. Can BS rebut that presumption? If not, BS must register and disclose those contributors. Using a LIFO accounting procedure, BS would start on January 29, 2020, and work its way backward in time disclosing those contributors to BS by name, address, date, and amount until it reaches \$278,000 in revenue received by BS. The two other contributions made during these reporting periods (March 11, 2020, and March 18, 2020) would also be disclosed using this same methodology.

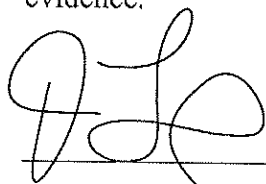
8. Already in 2020, BS, as a ballot question committee, has failed to file a Statement of Organization and its July 2020 quarterly financial statement. Under the MCFA, a committee is

required to file a statement of organization within 10 days of its formation.² The failure to timely file a statement of organization may result in the assessment of late filing fees or, in extreme circumstances, the filing of misdemeanor charges. The failure to file a single campaign finance statement may trigger late filing fees.³ In certain circumstances, multiple failures to file may constitute a misdemeanor offense.

9. Secretary Benson and the Bureau of Elections should assess all penalties and late filing fees necessary to bring BS into compliance with the MCFA.

SECTION 4: CERTIFICATION

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



Dennis G. Lennox II

8 September 2020

² See MCL 169.224(1).

³ See MCL 169.234.



Complaint
Ex. 1

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

April 9, 2014

Karen Zeglis
Utrecht, Kleinfeld, Fiori, Zeglis & Partners
1900 M Street, NW
Suite 500
Washington, DC 20036

Dear Ms. Zeglis:

The Department of State (Department) has completed its investigation of the campaign finance complaint filed against Detroit Forward and the Michigan Community Education Fund (MCEF) by Turnaround Detroit, which alleged that Detroit Forward violated sections 33 and 41 of the Michigan Campaign Finance Act (Act), 1976 PA 388, MCL 169.201 *et seq.*, and MCEF violated sections 24 and 33 of the Act. This letter concerns the disposition of Turnaround Detroit's complaint, which was filed on November 1, 2013. You filed an answer on behalf of the respondents on December 23, 2013. Turnaround Detroit did not file a rebuttal statement with the Department. The Department requested additional information from you on March 5, 2014. You provided this information by letter dated March 13, 2014.

The complainant alleged that: (1) MCEF met the Act's definition of committee and was obligated to meet the registration and reporting requirements of the Act when it made 4 contributions totaling \$149,000.00 to Detroit Forward, and that MCEF violated the Act by failing to comply with these provisions; (2) Christopher Jackson, treasurer of Detroit Forward and the lone incorporator of MCEF, set up MCEF "for the purpose of funneling secret contributions to Detroit Forward[;]" (3) Detroit Forward filed incomplete or inaccurate reports because it was required to itemize the contributions it received from MCEF and report the names of each individual or entity who was the source of the funds of the 4 contributions made by MCEF to Detroit Forward; and (4) MCEF acted as an intermediary and was required to disclose the names and addresses of the actual sources of the contributions it made to Detroit Forward.

In the course of the Department's investigation of the complaint, review of Detroit Forward's campaign finance statements, and the evidence and supplemental material provided, the Department finds there may be a reason to believe violations of the Act occurred as explained below.

Background

Detroit Forward was formed as an independent expenditure PAC on April 17, 2013. Detroit Forward listed Christopher T. Jackson as its treasurer on its Statement of Organization. Detroit Forward's Statement of Organization was signed by Mr. Jackson and Shelly R. Moskwa (the designated record keeper) and filed with the Wayne County clerk on April 18, 2013.

On September 26, 2013 Mr. Jackson filed Articles of Incorporation for MCEF with the Michigan Department of Licensing and Regulatory Affairs.¹ The Articles of Incorporation indicate that MCEF is a "nonprofit organization that shall operate exclusively for social welfare purposes within the meaning of section 501(c)(4) of the Internal Revenue Code of 1986, as amended, which shall include but not be limited to voter registration and education."

According to your March 13 response to the Department's request for additional information, MCEF used funds received on the following dates as the source of its contributions to Detroit Forward:

| <u>Date</u> | <u>Amount</u> |
|-------------|---------------|
| 10/3/2013 | \$50.00 |
| 10/10/2013 | \$15,000.00 |
| 10/10/2013 | \$15,000.00 |
| 10/10/2013 | \$10,000.00 |
| 10/18/2013 | \$39,000.00 |
| 10/21/2013 | \$100,000.00 |

In turn, MCEF made the following contributions to Detroit Forward:

| <u>Date</u> | <u>Amount</u> |
|-------------|---------------|
| 10/17/2013 | \$25,000.00 |
| 10/20/2013 | \$39,000.00 |
| 10/28/2013 | \$70,000.00 |
| 10/28/2013 | \$15,000.00 |

Thus, in a 12-day period, MCEF contributed a total of \$149,000.00 to Detroit Forward and became Detroit Forward's largest contributor. In fact, between October 17 and October 28, 2013 MCEF contributed \$149,000.00 of the \$442,700.00 Detroit Forward raised during the entire 2013 Detroit mayoral election cycle, or over 33%.

After reviewing Detroit Forward's campaign finance statements, the Department notes that on October 21, 2013 -- the same day MCEF received a \$100,000.00 contribution -- Detroit Forward's cash-on-hand was \$32,818.68. Mr. Jackson then proceeded to make \$68,308.75 in expenditures from Detroit Forward over the next 5 days, leaving Detroit Forward with a negative balance in the amount of \$35,490.07 on October 26, 2013. Mr. Jackson then transferred \$85,000.00 from MCEF to Detroit Forward on October 28, 2013. It appears to the Department that due to Mr. Jackson's unique interlocking positions with both MCEF and Detroit Forward, and his knowledge of Detroit Forward's needs, although Mr. Jackson originally deposited the October 21, 2013 \$100,000.00 contribution in MCEF's account, he treated that money as Detroit

¹ By letter dated March 6, 2014, the Department requested the names of all directors of MCEF. According to your response, "MCEF is currently in the process of memorializing its board of directors" and that "[a]round the time of MCEF's formation, Mr. Jackson spoke with Nathan Ford and Keith Williams about joining the board, and both agreed to serve." You further stated that "Mr. Ford and Mr. Williams weighed in on the voter registration and engagement activities of MCEF in 2013 and have continually offered strategic advice regarding the organization." Thus, it appears that Mr. Jackson was the sole director of MCEF at all times relevant to this complaint.

Forward's funds and made expenditures of those funds from Detroit Forward almost immediately and before the transfer.

With your March 13 response to the Department, you provided Mr. Jackson's sworn affidavit, which stated that he "formed MCEF to address the urgent need to increase voter participation in Detroit and other urban areas within the state of Michigan." He also stated that he "personally solicited funds for MCEF in one-on-one meetings and conversations by telephone" and that "[i]n no discussion did [he] specifically raise funds for MCEF for the purpose of making a contribution to Detroit Forward [.]". Yet, Mr. Jackson acknowledged in his affidavit that "[i]n each discussion about a potential donation to MCEF, [he] discussed the primary purpose of the MCEF, voter registration and engagement, as well as potential permissible and limited political activities of MCEF [.]" and that "MCEF could engage in direct advocacy for or against a candidate, or provide financial support to other groups engaging in direct candidate advocacy." (Emphasis added.) Because MCEF used contributions in accordance with Mr. Jackson's statements to contributors that MCEF may use its funds to provide financial support to groups engaging in direct candidate advocacy, MCEF must disclose the original source of the funds solicited.

As the sole incorporator of MCEF and treasurer of Detroit Forward, Mr. Jackson was keenly aware of both organizations' financial positions and could quickly direct substantial contributions from MCEF to Detroit Forward. During this pivotal period, Mr. Jackson transferred over 80% of all funds obtained by MCEF from the time of its inception until Election Day (\$179,050.00).² Thus, it appears that MCEF's original, primary purpose was to shield the names of contributors to Detroit Forward from public disclosure, not fund a coordinated education campaign on voter registration and participation. In essence, by having donors contribute to MCEF and then transferring the contributions to Detroit Forward, Mr. Jackson orchestrated MCEF's effort to thwart the disclosure purposes of the Act.

MCEF is a Committee Subject to the Act's Registration and Reporting Requirements

The registration and reporting requirements of the Act apply to any "committee," which is defined as "a person³ who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate ... if contributions received total \$500.00 or more in a calendar year or expenditures made total \$500.00 or more in a calendar year." MCL 169.203(4). Under the Act, a committee is required to file a statement of organization within 10 days of its formation. MCL 169.224(1). The failure to timely file a statement of organization may result in the assessment of late filing fees or, in extreme circumstances, the filing of misdemeanor charges. *Id.* The failure to file a single campaign statement may trigger late filing fees. MCL 169.233(7). In certain circumstances, multiple failures to file may constitute a misdemeanor offense. MCL 169.233(8).

² When accounting for all funds received by MCEF from September 26, 2013 to present, approximately 70% of MCEF's total was transferred to Detroit Forward.

³ The word "person" is defined as "a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly." MCL 169.211(1).

Although not relevant to this disposition of this complaint, the Act provides a safe-harbor for persons who make contributions to ballot question committees: "A person, other than a committee registered under this Act, making an expenditure to a ballot question committee, shall not, for that reason, be considered a committee for the purposes of this act unless the person solicits or receives contributions for the purpose of making an expenditure to the ballot question committee." MCL 169.203(4). Thus, a corporation that makes a contribution to a ballot question committee is not subject to the Act's registration and reporting requirements unless the corporation solicits or receives contributions from other sources for the purpose of making an expenditure to a ballot question committee. Because Detroit Forward is not a ballot question committee, MCEF cannot avoid registering as a committee on the basis that it did not solicit or receive money for the express purpose of making an expenditure to Detroit Forward.

In your answer on behalf of MCEF, you assert that "[t]here is no requirement under Michigan law that requires a nonprofit corporation to register as a political committee if its only activity is making a contribution to an independent expenditure political committee." This assertion is not a correct statement of Michigan law. Any person, including a corporation, which receives contributions or makes expenditures of at least \$500.00 in a calendar year satisfies the statutory definition of "committee" and becomes subject to the Act. A nonprofit corporation that makes contributions to an independent expenditure committee which supports or opposes a candidate, such as Detroit Forward, falls squarely within this definition. Once MCEF met the definition of a committee, it was required to file a statement of organization within 10 days. MCL 169.224(1).

MCEF was also required to file periodic campaign finance statements that completely and accurately disclose the sources, dates, and amounts of all contributions and expenditures. MCEF was required to file a 2013 Pre-General Report due on October 25, 2013 (with a closing date of October 20, 2013), and a 2013 Post-General Report due on December 5, 2013 (with a closing date of November 25, 2013). MCL 169.233.

In addition, a treasurer who files an incomplete or inaccurate statement or report is subject to a civil fine of up to \$1,000.00. MCL 169.233(10). A treasurer who knowingly omits or underreports individual contributions or individual expenditures required to be disclosed by the Act may be subject to a civil fine of up to \$1,000.00 or the amount of the undisclosed contributions, whichever is greater. MCL 169.233(11). By failing to file either campaign statement, MCEF effectively omitted every contribution it received and every expenditure it made during the Detroit mayoral election cycle, in violation of MCL 169.233(11). These omissions deprived voters of the opportunity to learn the true source(s) of \$149,000.00 in contributions it received and expenditures it made to Detroit Forward in advance of the November 5, 2013 general election.

Finally, the Act requires a committee to file a late contribution report within 48 hours of receipt of a late contribution. MCL 169.232(1). The failure to file a late contribution report may trigger late filing fees equal to the amount of the undisclosed contribution or \$2,000.00 per report, whichever is less. MCL 169.232(4). MCEF was required to file one such report for the late contribution it received on October 21, 2013, identifying the source and amount of that late contribution.

Because the Department concludes that MCEF met the definition of a committee, should have registered as a committee and filed complete and accurate statements and reports of its contributions and expenditures, the duty to disclose fell upon MCEF, not Detroit Forward.

However, if MCEF denies it violated the statute, the Department is prepared to find that MCEF is an adjunct of Detroit Forward and that Detroit Forward violated the Act by commingling its funds with those of MCEF, failing to disclose contributors, filing incomplete and inaccurate reports, and failing to identify MCEF's account as a secondary depository. Detroit Forward and MCEF shared an interlocking treasurer/director who was aware of the financial needs of Detroit Forward. Because of this unique relationship, Mr. Jackson was in the position to solicit funds through MCEF which he then almost immediately transferred to Detroit Forward. Records indicate that Mr. Jackson expended this money from Detroit Forward on at least one occasion before actually transferring the money from MCEF, leading the Department to believe Mr. Jackson treated this money as Detroit Forward's from the time of its receipt.

Proposed Resolution

Based on the foregoing, the Department finds that there may be reason to believe that MCEF violated the Act. MCL 169.215(10). Having made this determination, the Department is required by law to attempt to resolve this matter informally. *Id.* The Department now offers you this opportunity to informally resolve the complaint by executing the enclosed conciliation agreement, which requires MCEF to: (1) file all outstanding statements and reports with the Wayne County Clerk, including the statement of organization, 2013 Pre-General and Post-General campaign statements, and October 21, 2013 late contribution report; (2) pay to the Wayne County Clerk all associated late filing fees, which total \$4,300.00; (3) provide to the Department copies of all statements and reports and a receipt of filing and proof of payment; and (4) pay a civil fine to the State of Michigan in the amount of \$15,000.00 for the undisclosed contributions.


If MCEF accepts this settlement, it must return all of the materials described above, payment in full, and the executed conciliation agreement to this office on or before May 8, 2014. Payment of the civil fine must be made by check or money order payable to the State of Michigan; please include the notation, "Conciliation Agreement, Attn: Bureau of Elections" on your check or money order; please contact the Wayne County Clerk's Elections Division at (313) 224-5525 for further instructions on remitting late filing fees to that office.

Within 30 days of its determination that there may be a reason to believe a violation of the Act has occurred, the Department is required to post on its website the associated complaint, response, rebuttal statement, and any correspondence regarding that violation between the Department and the respondent. This correspondence includes this determination letter. Please note that as long as a good-faith effort is made and the conciliation process is ongoing, the Department will not post any information to its website regarding this complaint until the 30th day.

Please be advised that if the Department is unable to resolve this complaint informally, it is required by MCL 169.215(10)-(11) to refer the matter to the Attorney General with a request that he prosecute MCEF, Mr. Jackson, or both for the misdemeanor offenses of failing to file a Statement of Organization for more than 30 days and failure to file two or more campaign

finance statements for more than 30 days, or commence an administrative hearing to enforce the civil penalties provided by law. "If after a hearing the secretary of state determines that a violation of this act has occurred, the secretary of state may issue an order requiring the person to pay a civil fine equal to triple the amount of the improper contribution or expenditure plus not more than \$1,000.00 for each violation." MCL 169.215(11).

Sincerely,

A handwritten signature in black ink, appearing to read "Lori A. Bourbonais" with a stylized flourish at the end.

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State



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

October 14, 2020

Bipartisan Solutions
2843 East Grand River
No. 155
East Lansing, MI 48823

Dear Bipartisan Solutions:

The Department of State (Department) received a formal complaint filed by Dennis Lennox II against you, alleging that you violated the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* A copy of the complaint and supporting documentation is enclosed with this letter.

Section 24 requires committees to file a statement of organization with the proper filing official within 10 days after the committee is formed. MCL 169.224(1). Section 24 details specific requirements for all statement of organizations that must be filed. See MCL 169.224(2)-(3). A candidate who fails to form a candidate committee within 10 days is subject to a civil fine up to \$1,000. MCL 169.221(13). Failure to file a statement of organization shall pay a late filing fee of \$10.00 per business day the report isn't filed not to exceed \$300. MCL 169.224(1). A person failing to file a statement of organization after 30 days, is guilty of a misdemeanor punishable by a fine up to \$1,000.

After formation, committees must file reports disclosing their contributions and expenditures as set forth in sections 33 and/or 34 of the Act. The MCFA requires a committee that receives or expends more than \$1,000 during any election to file campaign finance reports in compliance with the Act. MCL 169.233(6). A person who knowingly omits or underreports expenditures required to be disclosed by the Act is subject to a civil fine of not more than \$1,000 or the amount of the expenditures omitted or underreported, whichever is greater. MCL 169.233(11).

Mr. Lennox alleges that Fair and Equal Michigan has disclosed receiving four separate direct contributions from Bipartisan solutions totaling \$706,000 or more than 44% of Fair and Equal Michigan's contributions. Mr. Lennox further alleges that you have failed to form and register a committee and disclose the information of your contributors in violation of the Act.

The purpose of this letter is to inform you of the Department's examination of these matters and your right to respond to the allegations before the Department proceeds further. It is important to understand that the Department is neither making this complaint nor accepting the allegations as true. The investigation and resolution of this complaint is governed by section 15 of the Act and the corresponding administrative rules, R 169.51 *et seq.* An explanation of the investigation process is enclosed with this letter and a copy is available on the Department's website.

If you wish to file a written response to this complaint, you are required to do so within 15 business days of the date of this letter. Your response may include any written statement or additional documentary evidence you wish to submit.

All materials must be sent to the Department of State, Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918. Materials should also be sent via email to Elections@Michigan.gov given the ongoing public health pandemic. If you fail to submit a response, the Department will render a decision based on the evidence furnished by the complainant.

A copy of your answer will be provided to Mr. Lennox, who will have an opportunity to submit a rebuttal statement to the Department. After reviewing all of the statements and materials provided by the parties, the Department will determine whether “there may be reason to believe that a violation of [the MCFA] has occurred [.]” MCL 169.215(10). Note that the Department’s enforcement powers include the possibility of entering a conciliation agreement, conducting an administrative hearing, or referring this matter to the Attorney General for enforcement of the criminal penalties provided in section 24(1) of the Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Fracassi", written in a cursive style.

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Dennis Lennox

SANDLER REIFF

SANDLER REIFF LAMB
ROSENSTEIN & BIRKENSTOCK, P.C.

1090 Vermont Ave NW, Suite 750
Washington, DC 20005
www.sandlerreiff.com
202-479-1111

February 16, 2021

Adam Fracassi
Bureau of Elections
Michigan Department of State
430 W. Allegan, 1st Floor
Lansing, MI 48918

Re: Bipartisan Solutions Response to Lennox Complaint

Dear Mr. Fracassi:

This response is filed on behalf of Bipartisan Solutions in response to a complaint filed by Dennis Lennox II incorrectly alleging that Bipartisan Solutions violated the Michigan Campaign Finance Act (the "Act") by not filing a statement of organization and reports disclosing contributions and expenditures as a committee when it made permissible donations to a ballot-question committee in 2020.

Bipartisan Solutions is a Michigan non-profit corporation formed in 2018 for the purpose of seeking bipartisan solutions on domestic policy issues, particularly in the areas of economics, education, and equal opportunity. It is recognized by the Internal Revenue Service as a tax-exempt social welfare organization pursuant to Section 501(c)(4) of the Internal Revenue Code.

Bipartisan Solutions is not a political committee and it has not engaged in any activity that requires it to file a statement of organization as a committee or file disclosure reports with the Bureau of Elections.

Bipartisan Solutions simply made donations to a ballot question committee in furtherance of its 501(c)(4) social welfare purpose. It did not solicit or receive any contributions for the purpose of making an "expenditure," as defined by the Act.

For this reason, as discussed in detail below, we respectfully request that the Department find no reason to believe that Bipartisan Solutions violated the Act.

I. Statement of Facts

Since its formation in 2018, Bipartisan Solutions has made grants and spent funds directly to promote social welfare consistent with its 501(c)(4) non-profit purpose to seek bipartisan solutions on domestic policy issues in the areas of economics, education, and equal opportunity.

Consistent with its 501(c)(4) purpose, Bipartisan Solutions made five donations in 2020 to Fair and Equal Michigan, a ballot question committee that sought to initiate legislation amending Michigan's civil rights law to clarify the existing prohibitions on discriminatory practices, policies, and customs in the exercise of civil rights prohibits discrimination based on sexual orientation or gender identity.

Bipartisan Solutions solicits funds from various sources. It does not solicit or receive funds for any specific purpose.¹ A copy of solicitation letters sent by Richard Czuba, President of Bipartisan Solutions, in 2018 and 2020 are attached as examples of how it solicits, and receives, general grants from entities and donations from individuals over the years.²

Specifically, Mr. Czuba and Bipartisan Solutions did not solicit or receive any specific or earmarked funds for the purpose of making contributions to Fair and Equal Michigan.³

Lennox provided no evidence to support his allegation that funds were solicited for the purpose of making any contributions to a Michigan ballot-question committee.

II. Legal Analysis

Bipartisan Solutions is not required to register and report because it is not a "committee" under the Act.

The registration and reporting requirements of the Act apply to any "committee," which is defined as "a person⁴ who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against ... the qualification, passage, or defeat of a ballot question ... if contributions received total \$500.00 or more in a calendar year or expenditures made total \$500.00 or more in a calendar year."⁵

¹ Declaration of Richard Czuba, President, Bipartisan Solutions (February 12, 2021).

² See Attachment A.

³ Declaration of Czuba.

⁴ The term "person" is defined as "a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation association, committee, or any other organization or group of persons acting jointly."

⁵ MCL 169.203(4).

The Act provides a safe harbor for persons who make contributions to ballot question committees: “A person, other than a committee registered under this Act, making an expenditure to a ballot question committee, shall not, for that reason, be considered a committee for the purposes of this act unless the person solicits or receives contributions for the purpose of making an expenditure to the ballot question committee.”⁶

Bipartisan Solutions qualifies for the safe harbor because it only made donations to a ballot question committee. It did not solicit or receive contributions for the purpose of making an expenditure to the ballot question committee.

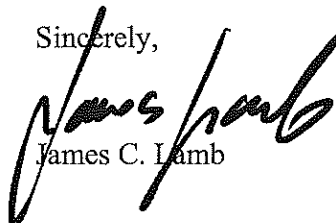
Lennox incorrectly relies on an April 9, 2014 letter to the Michigan Community Education Fund (“MCEF”) to support his allegation against Bipartisan Solutions. In that matter, the sole director of MCEF acknowledged that in his solicitations he told contributors that MCEF may use its funds to provide financial support to groups engaging in direct candidate advocacy.⁷ In this matter, the written solicitations (Exhibit A) and Mr. Czuba’s confirmation in his declaration show that Bipartisan Solutions *did not* solicit funds for the purpose of making an expenditure to the ballot question committee. Unlike MCEF, Bipartisan Solutions did not engage in activities that triggered “committee” status under the Act.

III. Conclusion

Bipartisan Solutions only made donations to a ballot question committee in furtherance of its 501(c)(4) social welfare purpose. It did not solicit or receive any contributions for the purpose of making an expenditure to the ballot question committee. The Act provides a safe harbor for such persons who only make donations to ballot question committees. Accordingly, Bipartisan Solutions is not a committee subject to the registration and reporting requirements under the Act.

There is no evidence to support a reason to believe that a violation has occurred and we respectfully request that the Department dismiss this matter.

Sincerely,



James C. Lamb

⁶ MCL 169.203(4)

⁷ Letter to Karen Zeglis, counsel for MCEF, from Michigan Department of State (Apr. 9, 2014), p. 3.

BIPARTISAN SOLUTIONS

July 19, 2018

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]:

On behalf of Bipartisan Solutions, we would ask you to consider a \$100,000 contribution from [REDACTED]. Bipartisan Solutions is recognized by the Internal Revenue Service as a tax-exempt social welfare organization pursuant to Section 501(c)(4) of the Internal Revenue Code. We recognize that [REDACTED] is a social welfare organization, organized and operated pursuant to Section 501(c)(4) of the Internal Revenue Code. We agree that our expenditure of funds received from [REDACTED] shall be limited solely to the "promotion of social welfare" (as defined in Section 501(c)(4) of the Internal Revenue Code and any existing or proposed regulation), and shall not be used for any direct or indirect candidate-related activity.

Sincerely,

Richard Czuba
President
Bipartisan Solutions

1629 NORTH HASLETT ROAD #162 * HASLETT, MICHIGAN 48840

BIPARTISAN SOLUTIONS

January 2, 2020

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]:

On behalf of Bipartisan Solutions, we would ask you to consider a \$200,000 contribution from [REDACTED]. Bipartisan Solutions is recognized by the Internal Revenue Service as a tax-exempt social welfare organization pursuant to Section 501(c)(4) of the Internal Revenue Code. We recognize that [REDACTED] is a social welfare organization, organized and operated pursuant to Section 501(c)(4) of the Internal Revenue Code. We agree that our expenditure of funds received from [REDACTED] shall be limited solely to the "promotion of social welfare" (as defined in Section 501(c)(4) of the Internal Revenue Code and any existing or proposed regulation), and shall not be used for any direct or indirect candidate-related activity.

Sincerely,

Richard Czuba
President
Bipartisan Solutions

Fracassi, Adam (MDOS)

From: Fracassi, Adam (MDOS)
Sent: Wednesday, April 28, 2021 11:21 AM
To: Fracassi, Adam (MDOS)
Subject: Lennox v. Bipartisan Solutions
Attachments: Answer Letter.pdf; Response to Lennox Complaint 2.16.21 signed.pdf

Good morning,

Please see the attached. If you have any questions, please let me know.

Thank you,

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



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

April 28, 2021

Dennis Lennox
PO Box 232
Topinabee, MI 49791

Re: Lennox v. Bipartisan Solutions
Campaign Finance Complaint
No. 2020-09-157-24

Dear Mr. Lennox:

The Department of State received a response to the complaint you filed against Bipartisan Solutions, which concerns an alleged violation of the Michigan Campaign Finance Act (MCFA), 1976 P.A. 388, MCL 169.201 *et seq.* A copy of the response is provided as an enclosure with this letter.

If you elect to file a rebuttal statement, you are required to send it within 10 business days of the date of this letter to the Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918.

Sincerely,

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

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Jim Lamb

May 10, 2021

Mr. Adam Fracassi
Bureau of Elections
Department of State
Richard H. Austin Building
430 West Allegan Street
Lansing, Michigan 48918
Also delivered by electronic mail to FracassiA@michigan.gov

Dear Mr. Fracassi:

I am in receipt of your letter dated April 28, 2021, in the matter of *Lennox v. Bipartisan Solutions* (campaign finance complaint No. 2020-09-157-24). This correspondence is a rebuttal statement.

Bipartisan Solutions (herein “Bipartisan Solutions” or “BS”) has met the definition of “committee” under the Michigan Campaign Finance Act triggering registration requirements by soliciting contributions for the purpose of making expenditures to Fair and Equal Michigan. To this end, the activities of Richard Czuba, BS, and Fair and Equal Michigan demonstrate coordination.

Mr. Czuba, president of BS, has played an integral supportive role for Fair and Equal Michigan. According to Fair and Equal Michigan’s January 7, 2020 launch announcement, Czuba has been on the ground floor of this petition drive.¹

But it does not stop there. According to Fair and Equal Michigan’s campaign finance reports, Mr. Czuba has *personally* donated \$225,000 to Fair and Equal Michigan.² Combined with the \$782,000 contributed by Bipartisan Solutions,³ these Czuba-controlled contributions in excess of \$1 million represent over a third of the funds received by Fair and Equal Michigan — by far the largest contributor to the petition drive.

Beyond the common control and funding, these entities have been coordinating their activities as would be expected of groups under common control with common funding pursuing a common goal. The contributions of Mr. Czuba and BS to Fair and Equal Michigan are not random. There is a clear pattern of Mr. Czuba and BS moving funds to Fair and Equal Michigan to make the large payments owed to the paid signature firms engaged by Fair and Equal

¹ Fair and Equal Michigan press release, dated January 7, 2020 and entitled “Citizen initiative would prohibit discrimination against LGBTQ people.” Accessible at <https://www.fairandequalmichigan.com/launch-release>.

² Fair and Equal Michigan 2021 campaign finance contributions report. Accessible at <https://cfrsearch.nictusa.com/documents/506421/details/filing/contributions?schedule=%2A&changes=0>.

³ Ibid.

Mr. Adam Fracassi
May 10, 2021
Page 2

Michigan. For example, on October 9, 2020, Fair and Equal Michigan paid \$186,448.⁴ Also on October 9, 2020, Mr. Czuba gave \$200,000 to Fair and Equal Michigan.⁵ Coincidence?

For all of these reasons, I request that you find that there may be reason to believe that Bipartisan Solutions and Fair and Equal Michigan violated the Michigan Campaign Finance Act, including but not limited to MCL 169.215(15), 169.221(12), 169.224(2)(c), 169.224(2)(f), 169.234, and 169.241(3); conduct an investigation of Bipartisan Solutions by obtaining its bank records, records of contribution solicitations, and a list of donors by name, amount, and date since July 1, 2020; and take any and all further steps to punish Bipartisan Solutions and Fair and Equal Michigan for their violations of the Michigan Campaign Finance Act.

Thank you for your prompt and continued attention to this matter.

Yours sincerely,



Dennis Lennox
P.O. Box 232
Topinabee, Michigan 49791
dennisglennox@gmail.com
202/709-9615

⁴ Fair and Equal Michigan 2021 campaign finance expenditures report. Accessible at <https://cfrsearch.nictusa.com/documents/506421/details/filing/expenditures?schedule=%2A&changes=0>.

⁵ Fair and Equal Michigan 2021 campaign finance contributions report. Accessible at <https://cfrsearch.nictusa.com/documents/506421/details/filing/contributions?schedule=%2A&changes=0>.

Fracassi, Adam (MDOS)

From: Fracassi, Adam (MDOS)
Sent: Friday, July 30, 2021 1:28 PM
To: Fracassi, Adam (MDOS)
Subject: Lennox v. Bipartisan Solutions
Attachments: Determination.pdf

Attached is the determination reached in the abovementioned campaign finance complaint. If you have any questions, please let me know.

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



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

July 30, 2021

Dennis G. Lennox II
P.O. Box 232
Topinabee, MI 49791

Via Email

Dear Mr. Lennox:

The Department of State ("Department") has finished its investigation into the formal complaint you filed against Bipartisan Solutions ("BS") alleging violations of the Michigan Campaign Finance Act ("MCFA" or "Act"), 1976 PA 388, MCL 169.201 *et seq.* This letter concerns the resolution of this complaint.

In the complaint, which was filed with the Department on September 17, 2020, you alleged BS failed to properly file and register as a committee and ballot question committee under the MCFA after making expenditures to Fair and Equal Michigan ("FEM"), a ballot question committee. Consequently, you argued BS is subject to late filing fees as well as other civil penalties prescribed in Michigan law. To support your allegations, you noted that BS made multiple donations to FEM, totaling \$706,000.00, over the course of just a few months, which is over 44% of the reported \$1,597,223.13 funds raised by FEM. Furthermore, you drew on the Department's precedent of *Turnaround Detroit v. Detroit Forward* to compare the actions of BS in this case with the violations perpetrated by a similar entity in *Turnaround Detroit*. You noted that, similar to *Turnaround Detroit*, BS failed to register as a committee and disclose its donors after making expenditures to a ballot question committee.

In its response to your complaint, submitted to the Department on February 16, 2021, BS noted it is not required to file and register as a committee or ballot question committee because it is a Michigan registered non-profit corporation and recognized as a 501(c)(4) (tax-exempt social welfare organization) by the Internal Revenue Service. Bipartisan Solutions stated that the donations made to FEM were in furtherance of its social welfare purpose and that these funds were not solicited or received for the explicit purpose of making an expenditure, as defined under the MCFA, to FEM. Furthermore, BS argued that it fell within the "safe harbor" exception for persons making contributions to ballot question committees since the funds it raised were not solicited or received for the purpose of making an expenditure to FEM. To support its defense, Richard Czuba, President of BS, stated in a Declaration that BS "does not solicit or receive funds for any specific purpose" and that BS "did not solicit or receive any specific or earmarked funds for the purpose of making contributions to Fair and Equal Michigan." Bipartisan Solutions also provided examples of solicitation letters it commonly sends entities to raise funds, which span two years of its efforts and demonstrate how it does not solicit funds for a particular purpose.

Finally, BS highlighted the differences between the violations of MCEF in the *Turnaround Detroit* case with the relationship it has with FEM to argue that it committed no violation.

In a rebuttal statement submitted to the Department on May 10, 2021, you reiterated your allegation that BS is in fact a committee requiring its registration under the MCFA. You provided additional evidence of payments made to FEM by BS' President Richard Czuba of \$225,000.00 and noted that most of that payment was made on the same day that FEM paid approximately the same amount. You provided public press releases of Mr. Czuba's professional connection to FEM. Finally, you drew parallels between these donative and relational practices with those conducted by the individuals involved in the *Turnaround Detroit* case, which constituted a violation.

The threshold issue in this complaint is whether BS meets the definition of "committee," triggering registration obligations with the Department. Based on the arguments and evidence provided, the Department concludes that the evidence is insufficient to conclude that there may be reason to believe a violation of the Act has occurred.

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

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

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

Bipartisan Solutions provided sufficient evidence to show the funds it donated to FEM were not solicited for a particular purpose, including the purpose to make an expenditure to FEM. BS President Richard Czuba's Declaration testimony demonstrates that BS does not solicit or receive funds for any particular purpose other than to promote social welfare, which is in line with its 501(c)(4) status. Most importantly, he stated these funds were not solicited for the specific purpose of making contributions to FEM, as required by committees under the Act. MCL 169.203(4). The solicitation letters provided by BS further support this position by demonstrating a multiyear practice of soliciting funds for no particular or designated purpose other than to promote social welfare. There was no evidence, other than speculation, provided to the Department that these funds were solicited for the explicit purpose of making contributions to

FEM. Therefore, the “safe harbor” provision applies and BS’ actions do not trigger MCFA committee reporting requirements under 169.224(1) – (3) or 169.233(6).

Furthermore, the decision in *Turnaround Detroit* is inapplicable in this case as the actions of BS and its President and those of Michigan Community Education Fund (MCEF) and its leadership are sufficiently different.

In *Turnaround Detroit*, Mr. Christopher Jackson was the treasurer of Detroit Forward and the sole director of MCEF. The Department concluded:

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

Turnaround Detroit v. Detroit Forward and MCEF,

https://www.michigan.gov/documents/sos/Turnaround_Detroit_V_Detroit_Forward_and_MCEF_pt_2_455985_7.pdf. The Department further concluded that it appeared “MCEF’s original, primary purpose was to shield the names of contributors to Detroit Forward from public disclosure” by having donors contribute to MCEF and then transferring the contributions to Detroit Forward. *Id.* Thus, the Department concluded that a violation had occurred.

In the present complaint, you allege Mr. Richard Czuba acted in the same fashion through his role as President of BS and, in your words, his “integral supporting role” for FEM as Mr. Christopher Jackson acted in *Turnaround Detroit*. You supplement this claim by indicating that Mr. Richard Czuba donated his *personal* funds to FEM as well, even a substantial amount on the same day that FEM paid a similar substantial amount.

As stated, BS’ contributions to FEM are not violations in themselves as BS does not meet the definition of a “committee.” MCL 169.203(4). Simply because Mr. Czuba was the President of BS when these payments were made does not change this fact. No evidence was presented to suggest that the payments from BS to FEM were made on the same day as equivalent payments made by FEM as was a relevant factor to the determination a violation occurred in the *Turnaround Detroit* case. Instead, the evidence only indicates that BS donated multiple times to FEM, a permissible practice for a non-committee. You argue that there is a rebuttal presumption that, since BS made multiple payments over the course of three months rather than one lumpsum payment to FEM, BS had to be soliciting during that time for the specific purpose of making expenditures to FEM; however, again, no evidence was given to support this position and BS provided sufficient evidence to show the funds it solicited were *not* for the specific purpose of making contributions or expenditures to FEM.

It is also clear that Mr. Czuba does not have a significant leadership role with FEM whereby he could know FEM's financial needs to such a degree as that seen in the *Turnaround Michigan* case where Mr. Jackson held both a treasurer and director role of the two organizations. The only mention of Mr. Czuba on FEM's website, and as provided by you to the Department, is as the "[n]on-partisan Michigan pollster Richard Czuba," who "conducted a statewide survey of 600 registered voters that shows 77.5% of likely 2020 Michigan General Election voters support legislation to amend the state's civil rights law to protect LGBT people (66% strongly support) and 16.5% do not support." <https://fairandequalmichigan.com/launch-release>. While, to some, Mr. Czuba's work may be seen as "an integral supportive role for [FEM]," it does not mean he has sufficient understanding of the organization's finances such as a treasurer or director may possess. You note that on October 9, 2020, FEM paid \$186,448.00 and Mr. Czuba donated \$200,000.00 to FEM of his personal money. This is different from the *Turnaround Detroit* case, where Mr. Jackson was found to have used his interlocking positions to funnel money from one of his organizations to another while masking who contributed those funds. There is no indication or evidence presented that Mr. Czuba was attempting or did in fact donate his personal funds with a similar intent or scheme.

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

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

Sincerely,



Adam Fracassi
Bureau of Elections
Michigan Department of State

c: James Lamb, Attorney for Bipartisan Solutions