



**Michigan Department of State**  
**Campaign Finance Complaint Form**

BUREAU OF ELECTIONS • RICHARD H. AUSTIN BUILDING - 1<sup>st</sup> Floor  
430 W. ALLEGAN STREET • LANSING, MICHIGAN 48918

This complaint form may be used to file a complaint alleging that someone violated the Michigan Campaign Finance Act (MCFA). For instructions on how to complete this form, see the Campaign Finance Complaint Guidebook & Procedures document. All spaces are required unless otherwise indicated.

Section 1. Complainant			
Your Name Vaughn Derderian		Daytime Telephone Number 313-300-4037	
Mailing Address 655 W. Girard Avenue			
City Madison Heights	State MI	Zip 48071	
Email (optional)			

Section 2. Alleged Violator		
Name Turning Point Action, Inc.		
Mailing Address 756 N. Main St., Ste C		
City Crown Point	State IN	Zip 46307-3268
Email (optional)		

**Section 3. Allegations** (Use additional sheets if more space is needed.)

Section(s) of the MCFA alleged to be violated: Sections 51 and 47

Explain how those sections were violated:

Turning Point Action, Inc. using the name "Students for Trump" failed to report billboards, appearing around the State starting on or around May 14, 2020 that support the recall of Governor Gretchen Whitmer, as independent expenditures with the Secretary of State as required by MCL 169.251. Further, Turning Point Action, Inc. failed to include the proper identification and disclaimer statements on the billboards as required by MCL 169.247.

Evidence included with the submission of the complaint that supports the allegations:

See attached Press Release announcing Turning Point Action's acquisition of "Students for Trump."

See attached copy of a photograph of a Students for Trump billboard at I-75 and Exit 101 near Holly, Michigan.

#### Section 4. Certification (Required)

*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.*

X

Signature of Complainant

Date

#### Section 5. Certification without Evidence (Supplemental to Section 4)

If, after a reasonable inquiry under the circumstances, you are unable to certify that certain factual contentions are supported by evidence as indicated above, you may make the following certification:

*I certify that to the best of my knowledge, information, or belief, there are grounds to conclude that the following specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry. Those specific contentions are:*

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X

Signature of Complainant

Date

Section 15(8) of the MCFA provides that a person who files a complaint with a false certification is responsible for a civil violation of the MCFA. The person may be required to pay a civil fine of up to \$1,000.00 and some, or all, of the expenses incurred by the Michigan Department of State and the alleged violator as a direct result of the filing of the complaint.

#### Section 6. Submission

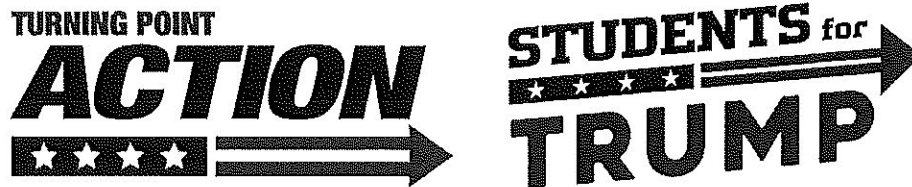
Once completed, mail or hand deliver the complaint form with your evidence to the address below. The complaint is considered filed upon receipt by the Bureau of Elections.

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

**\*\*FOR IMMEDIATE RELEASE\*\***

CONTACT: Turning Point Action

[Press@TPAction.com](mailto:Press@TPAction.com) | (424) 341-1912



## **Turning Point Action Launches 2020 Expansion, Acquires 'Students for Trump'**

**PHOENIX, July 2, 2019**—Charlie Kirk, founder and president of the nation's largest and fastest growing student organization, is officially expanding a sister 501(c)(4) organization, Turning Point Action, with the acquisition of "Students for Trump" along with all associated media assets.

Students for Trump will be the official chapter-based, pro-Trump student group on hundreds of college and high school campuses across America beginning this fall.

"It's no question that *freedom* is on the ballot in 2020," says Charlie Kirk, CEO of Turning Point Action. "I've spent the last six years traveling the country and speaking to young voters. Millennials and Generation Z want to run their own lives and make their own money. What we don't want is insane, socialist and Marxist policies that our parents and grandparents risked, and many cases, lost their lives to defeat in their own generation. We're proud to be at the forefront of the youth movement to re-elect *freedom* in 2020 by adding one million new voters to support four more years of President Trump."

With this acquisition, Charlie Kirk becomes Chairman of Students for Trump, a project of Turning Point Action. Ryan Fournier will remain on as co-Chairman, continuing to build on the incredible success of 2016.

Students for Trump sets out to build the largest candidate-focused chapter program in the nation with a primary goal of reaching Division I universities. With local chapters as the backbone, the organization will hold large-scale rallies and events nationwide starting with the official fall "Launch Party" at the Palms Casino and Resort in Las Vegas, Nevada on Aug 23, 2019.

**About Turning Point Action**

*Turning Point Action is the sister 501(c)(4) to Turning Point USA under the direction of founder and CEO Charlie Kirk. Turning Point media and informational assets reach millions of students every year and are focused on the core mission of identifying, educating and organizing on principles of limited government, free markets and fiscal responsibility. Students can visit Turning Point Action at [www.TPAction.com](http://www.TPAction.com)*

**About Students for Trump**

*Students for Trump became a social media phenomenon in 2016 under the direction of Ryan Fournier and grassroots college students across America. Their success has developed into a platform unlike any other conservative candidate has enjoyed in previous election cycles. Students for Trump is now a project of Turning Point Action. Students can visit Students for Trump at [www.TrumpStudents.org](http://www.TrumpStudents.org)*

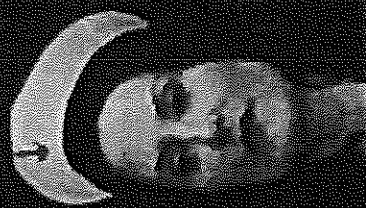


IF GRETCHEN'S HUSBAND CAN  
TRY TO GO BOATING, YOU CAN  
LEAVE YOUR HOME!

STUDENTS FOR  
TRUMP

TRUMPSTUDENTS.ORG

#RECALLWHITMER



alexsf01.com

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**From:** Fracassi, Adam (MDOS)  
**Sent:** Monday, June 22, 2020 10:47 PM  
**To:** Smith, Jessica (MDOS)  
**Subject:** Fwd: Campaign Finance Complaint  
**Attachments:** Complaint Turning Point-Students for Trump.pdf; Attachment I.pdf; Attachment II.jpeg

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**From:** SOS, Disclosure <Disclosure@michigan.gov>  
**Sent:** Tuesday, June 16, 2020 4:41:15 PM  
**To:** Fracassi, Adam (MDOS) <FracassiA@michigan.gov>  
**Subject:** FW: Campaign Finance Complaint

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**From:** Abby Rubley <arubley@michigandems.com>  
**Sent:** Tuesday, June 16, 2020 11:45 AM  
**To:** SOS, Disclosure <Disclosure@michigan.gov>  
**Subject:** Campaign Finance Complaint

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**CAUTION: This is an External email. Please send suspicious emails to [abuse@michigan.gov](mailto:abuse@michigan.gov)**

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Please find attached:

1. Complaint Turning Point - Students for Trump
2. Attachment I
3. Attachment II

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Abby Rubley  
Director of Communications  
Michigan Democratic Party  
517.420.6777  
[arubley@michigandems.com](mailto:arubley@michigandems.com)



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

July 14, 2020

Turning Point Action, Inc.  
756 N. Main Street, Ste. C  
Crown Point, IN 46307

Re: *Derderian v. Turning Point Action, Inc.*  
Campaign Finance Complaint  
No. 2020-16-46-51

Dear Turning Point Action, Inc.:

The Department of State (Department) received a formal complaint filed by Vaughn Derderian against you alleging violations of 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.

There are two allegations in the complaint. The first allegation is that your committee has failed to report billboards which expressly advocate for the recall of Governor Gretchen Whitmer. The second allegation is that this billboard fails to contain a proper paid for by statement.

Corporations are permitted to make independent expenditures under the MCFA, but are required to file an independent expenditure report within ten (10) days of independent expenditures totaling \$100.01 or more. MCL 169.251(1). A person who fails to file a report required may be subjected to a late filing fees up to \$5,000 and a civil fine up to \$1,000 and/or imprisonment for no more than 90 days.

The MCFA and corresponding administrative rules require a person who produces printed material that relates to an election include the phrase "Paid for by [name and address of the person who paid for the item]." MCL 169.247(1), R 169.36(2). A knowing violation constitutes a misdemeanor offense punishable by a fine of up to \$1,000.00, imprisonment for up to 93 days, or both. MCL 169.247(6).

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](http://www.Michigan.gov/elections).

**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. Due to the ongoing public health emergency, the Department asks that all materials be submitted by mail at the address listed below or by email to [Elections@Michigan.gov](mailto:Elections@Michigan.gov) to my attention. 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. Derderian, 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 penalty provided in section 51(2) of the Act.

If you have any questions concerning this matter, you may contact me via email.

Sincerely,



Adam Fracassi  
Bureau of Elections  
Michigan Department of State  
PO Box 20126  
Lansing, MI 48901

c: Vaughn Derderian





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

May 26, 2021

**SECOND NOTICE**

Turning Point Action, Inc.  
756 N. Main Street, Ste. C  
Crown Point, IN 46307

*Via Certified mail*

Re: *Derderian v. Turning Point Action, Inc.*  
Campaign Finance Complaint  
No. 2020-16-46-51

Dear Turning Point Action, Inc.:

By correspondence dated July 14, 2020, the Department of State (Department) advised you of its intention to investigate a complaint filed against you by Vaughn Derderian concerning alleged violations of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 et seq. A copy of the Department's notice is enclosed with this letter.

The notice informed you that, pursuant to section 15(5) of the MCFA, MCL 169.215(5), the Department is reviewing whether you failed to comply with the requirements of the Act. The Committee was provided an opportunity to respond to these allegations within 15-business days of your receipt of the notice, but to date no response has been filed on your behalf.

**By this letter, the Department is providing you a final opportunity to submit a written response to the enclosed notice.** Your response may include any documentary evidence you wish to submit and must be received by the Department on or before **June 18, 2021**. All materials must be sent to the Bureau of Elections, Michigan Department of State, Richard H. Austin Building, 430 West Allegan Street, Lansing, Michigan 48918.

Failure to submit a written response to this second notice will leave the Department no alternative but to make its determination based solely on the documentation furnished by Mr. Derderian.

Sincerely,

Adam Fracassi  
Bureau of Elections  
Michigan Department of State



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

March 1, 2022

Turning Point Action, Inc.  
4940 East Beverly Road  
Phoenix, Arizona 85044

Re: *Derderian v. Turning Point Action, Inc.*  
Campaign Finance Complaint  
No. 2020-16-46-51

Dear Turning Point Action, Inc.:

The Department of State (Department) received a formal complaint filed by Vaughn Derderian against you alleging violations of 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.<sup>1</sup>

There are two allegations in the complaint. The first allegation is that your committee has failed to report billboards which expressly advocate for the recall of Governor Gretchen Whitmer. The second allegation is that this billboard fails to contain a proper paid for by statement.

Corporations are permitted to make independent expenditures under the MCFA, but are required to file an independent expenditure report within ten (10) days of independent expenditures totaling \$100.01 or more. MCL 169.251(1). A person who fails to file a report required may be subjected to a late filing fees up to \$5,000 and a civil fine up to \$1,000 and/or imprisonment for no more than 90 days.

The MCFA and corresponding administrative rules require a person who produces printed material that relates to an election include the phrase "Paid for by [name and address of the person who paid for the item]." MCL 169.247(1), R 169.36(2). A knowing violation constitutes a misdemeanor offense punishable by a fine of up to \$1,000.00, imprisonment for up to 93 days, or both. MCL 169.247(6).

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<sup>1</sup> The Department originally sent notice of this complaint to 765 N. Main St., Ste. C, Crown Point, IN, 46307, which is both the address supplied by Mr. Derderian and the address claimed by Turning Point Action, Inc. on the Form 990 covering the 2019 financial year which Turning Point Action submitted to the federal Internal Revenue Service. The Department believes that the notice sent to the Crown Point address may not have been received by Turning Point Action, and as a courtesy the Department is re-sending the notice to your Arizona address to ensure its delivery.

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. Due to the ongoing public health emergency, the Department asks that all materials be submitted by mail at the address listed below or by email to [Elections@Michigan.gov](mailto:Elections@Michigan.gov) to my attention. 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. Derderian, 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 penalty provided in section 51(2) of the Act.

If you have any questions concerning this matter, you may contact me via email.

Sincerely,



Adam Fracassi  
Bureau of Elections  
Michigan Department of State  
PO Box 20126  
Lansing, MI 48901

c: Vaughn Derderian

# Snell & Wilmer

L.L.P.

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PORTLAND  
RENO  
SALT LAKE CITY  
SAN DIEGO  
SEATTLE  
TUCSON  
WASHINGTON DC

April 1, 2022

## VIA EMAIL ONLY

Mr. Adam Fracassi  
Manager, Bureau of Elections  
Michigan Department of State  
P.O. Box 20126  
Lansing, MI 48901  
[MDOS-BOERegulatory@michigan.gov](mailto:MDOS-BOERegulatory@michigan.gov)

Re: *Derderian v. Turning Point Action, Inc.*  
Campaign Finance Complaint  
No. 2020-16-46-51

Dear Mr. Fracassi:

This firm represents Turning Point Action, Inc. (“Turning Point”) with respect to the above-referenced campaign finance complaint (“Complaint”). Turning Point respectfully requests the Complaint be dismissed with prejudice.

Count I of the Complaint, alleging a violation of MCL 169.251, should be dismissed because: (1) the billboard at issue did not contain any “express advocacy” and therefore did not constitute an independent expenditure; and (2) even if the billboard did represent an independent expenditure, Turning Point spent less than \$100 on this advertising and therefore Turning Point had no reporting obligations pursuant to MCL 169.251(1). The billboard message constituted mere issue advocacy and therefore was beyond the scope of state regulation.

Count II of the Complaint, alleging a violation of MCL 169.247, likewise should be dismissed because: (1) the billboard did not contain any express advocacy and therefore was not required to include a “paid for” disclaimer; and (2) even if the billboard did contain an election-related reference, Turning Point substantially complied with the disclaimer statute by prominently including a name and website address on the billboard. Since the intent of the statute was fully

satisfied here—public disclosure of the source of political messaging—Turning Point should not face discipline for mere technical omission of a mailing address.<sup>1</sup>

For these all reasons, and as more fully explained below, Turning Point respectfully requests the Complaint be dismissed.

### **Factual Background**

In May 2020 a public scandal erupted in Michigan regarding Governor Whitmer's husband's alleged attempt to circumvent COVID-19 lockdown restrictions and abuse his position of privilege. As reported by Fox News on May 25, 2020:

Michigan Gov. Gretchen Whitmer faced backlash from Republican lawmakers after a reported request from her husband to get the family's boat out on the water before Memorial Day weekend -- far from their home in Lansing.

Whitmer, a Democrat, famously has imposed one of the strictest lockdowns in the country, sparking frequent protests. What's more, she's told people not living in Northern Michigan to stay away from vacation spots there during the holiday weekend.

In Facebook posts no longer visible to the public, NorthShore Dock LLC and its owner, Tad Dowker, focused on what Dowker said was a request last week by Whitmer's husband, Marc Mallory. The posts caught the attention of Republican state lawmakers, who said the governor's family may not have wanted to follow the guidance she's issued for the rest of the state.

"This morning, I was out working when the office called me, there was a gentleman on hold who wanted his boat in the water before the weekend," Dowker posted, The Detroit News reported. "Being Memorial weekend and the fact that we started working three weeks late means there is no chance this is going to happen."

He continued, "Our office personnel had explained this to the man and he replied, 'I am the husband to the governor, will this make a difference?'" . . .

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<sup>1</sup> Turning Point notes the Department delayed until January 26, 2022 to attempt to notify Turning Point of this Complaint, which was dated June 13, 2020. (Turning Point did not actually receive the Complaint until March 24, 2022). MCL 169.215(5) required the Department to provide notice within 5 business days of filing, which was over 1.5 years ago. Turning Point notes, perhaps uncoincidentally, that the Department has a pending declaratory ruling/interpretive statement request that asks: "What authority allows the Department to avoid notifying a respondent of a campaign finance complaint within 5 business days after the filing of a complaint as required by MCL 169.215(5)?" See T. Sachs Request, 1/28/22, available at: [https://www.michigan.gov/sos/0,4670,7-127-1633\\_23669\\_23716-69259--00.html](https://www.michigan.gov/sos/0,4670,7-127-1633_23669_23716-69259--00.html) (last visited April 1, 2022). In the event the Department imposes any disciplinary sanction here, Turning Point reserves the right to contest the Department's late notification and raise the due process issues that prejudiced Turning Point's ability to support its defense.



Last Monday, Whitmer announced restrictions would be lifted in some regions of Northern Michigan, but urged those who didn't live in the region to stay away. "If you don't live in these regions . . . think long and hard before you take a trip into them," she said. "A small spike could put the hospital system in dire straits pretty quickly. That's precisely why we're asking everyone to continue doing their part. Don't descend on [waterfront] Traverse City from all regions of the state."

The vacation property Whitmer and her husband have owned is about 25 minutes from Traverse City, according to The Detroit News, but the family permanently resides in Lansing, over 150 miles away. State Sen. Tom Barrett, R-Charlotte, said Whitmer had urged Michigan residents not to "descend" on the city. "Yet, what did her family try and do?" Barrett said. "In the Army, we have a tradition that the leaders get in line for chow last behind everyone else in the unit," he continued. "Here is the leader of our state. . . . Her family is trying to cut people in line."<sup>2</sup>

In response, Turning Point accepted the offer of a digital billboard owner in Holly, Michigan to publicly call out Governor Whitmer's alleged hypocrisy. Turning Point supplied the text and graphics to be displayed on the digital billboard, but was not charged for use of the billboard. Moreover, Turning Point did not incur any internal financial costs to create the text and graphics in question (and, to the extent some monetary value should be attached to the personnel time necessary to create the text and graphics, that monetary value is less than \$100).

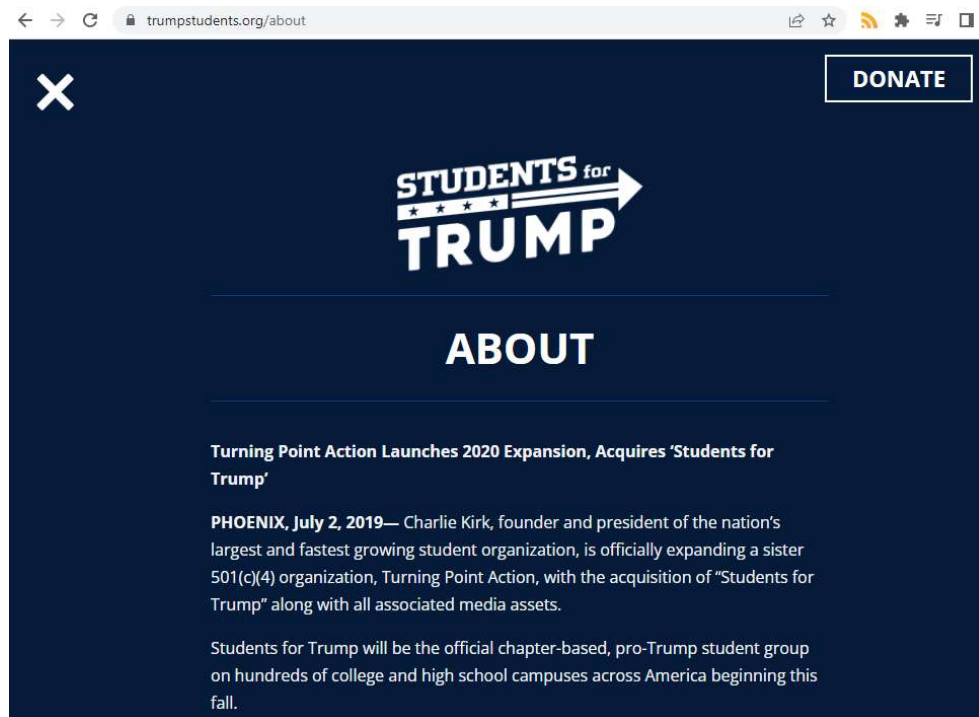
The "hypocrisy" advertisement eventually appeared on a digital billboard on I-75 and Exit 101: "If Gretchen's husband can try to go boating, you can leave your home!":

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<sup>2</sup> See "Michigan Gov. Whitmer caught in Memorial Day lockdown controversy over husband's reported boat request," available at: <https://www.foxnews.com/politics/michigan-whitmer-memorial-day-husband-boat-request-coronavirus> (last visited April 1, 2022).



The billboard contained Turning Point's trade name, "Students for Trump," and a website address ([www.trumpstudents.org](http://www.trumpstudents.org)) that linked to a Turning Point website:<sup>3</sup>



<sup>3</sup> The billboard also contained the billboard owner's website, Alexs101.com.

The billboard also contained the hashtag “#RecallWhitmer.” Turning Point used the #RecallWhitmer hashtag as acknowledgment of the long-trending social media phenomenon in Michigan politics, which was disconnected from any literal effort to support a pending recall petition. For example, only one month after Governor Whitmer assumed office in January 2019, the #RecallWhitmer hashtag began trending on Twitter in *February 2019*:



These earliest-known #RecallWhitmer tweets were based on the Governor’s decision to review (and potentially have declared unlawful) certain environmental review commissions that the Governor deemed to be impediments for safe drinking water reform.<sup>4</sup> The hashtag #RecallWhitmer gained astounding popularity from there. It has been used potentially thousands of times on social media, in myriad forms of public policy debate, including as recently as March 2022.<sup>5</sup> Thus, the #RecallWhitmer hashtag used in the “hypocrisy” advertisement in May 2020 was borne of the social media culture from which it sprang, and had nothing to do with any formal ballot measure or recall campaign.

Significantly, the “hypocrisy” advertisement only ran from May 27, 2020 to June 9, 2020.<sup>6</sup> As of May 27, 2020, there was no pending recall campaign in Michigan. The Michigan Board of

<sup>4</sup> See <https://twitter.com/GovWhitmer/status/1093249273477693441> (last visited April 1, 2022).

<sup>5</sup> See <https://twitter.com/correctthedia/status/1499747001159852036> (last visited April 1, 2022).

<sup>6</sup> Turning Point disputes the Complainant’s allegation that the “hypocrisy” billboard was displayed as early as May 14, 2020. Upon information and belief, Michigan news outlets did not start reporting the boat controversy until May 25, 2020 and therefore it would have been impossible to create the “hypocrisy” billboard as early as May 14. To the extent Complainant is arguing that other billboards somehow violated Michigan law as early as May 14, 2020, the

Canvassers had recently rejected a proposed recall petition on May 22, 2020, for example.<sup>7</sup> The Board of Canvassers rejected yet another recall petition on June 8 but also approved one that date as well.<sup>8</sup> The eventual successful petition, filed by a serial gadfly of recall applications, would have required over 1 million signatures in order for a recall election to be placed on the ballot.<sup>9</sup> The applicant later tried to withdraw his recall petition, and no signatures were ever filed.<sup>10</sup> This entire quixotic effort could not be taken seriously; nonetheless, Turning Point had no knowledge of any nascent efforts to get any actual recall petition through the Board of Canvassers. The “hypocrisy” advertisement coincidentally came down on June 9, 2020—the next day after the recall petition was approved for circulation—so the advertisement was never displayed during a time period (except perhaps for a few hours) when a recall signature effort was actually pending. But at no time was an actual recall election destined for the ballot.<sup>11</sup>

In short, Turning Point’s entire aim in promoting the “hypocrisy” advertisement was to engage in traditional issue advocacy: to point out the flaws of Governor Whitmer’s COVID-19 lockdown policy, expose the conflict of interest and/or abuse of authority exhibited by her husband, and create public pressure for her to change course. Whitmer was not up for reelection (she was still in the first half of her first term) and Turning Point had no knowledge of any pending recall election effort (indeed, no such recall election was ever called in 2020). Turning Point’s objective motives were clearly limited to achieving public policy goals. Issue advocacy of this nature is not subject campaign finance regulation under Michigan law.

**Turning Point Did Not Conduct Independent Expenditures, Therefore Turning Point Did Not Violate Any Reporting Obligations Under MCL 169.251.**

As the Department has repeatedly emphasized in past campaign finance decisions, “[f]rom the outset, the Department must consider whether [there] is an expenditure covered by the MCFA.”<sup>12</sup> Because there was no expenditure covered by the Michigan Campaign Finance Act here, Turning Point’s advertisement did not run afoul of MCL 169.251.

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Complainant has not provided any evidence or pictures to substantiate that allegation (and cannot now do so in a rebuttal brief).

<sup>7</sup> See “Michigan panel rejects petitions to recall Gov. Gretchen Whitmer, Attorney General Dana Nessel,” available at: <https://www.mlive.com/public-interest/2020/05/michigan-panel-rejects-petitions-to-recall-gov-gretchen-whitmer-attorney-general-dana-nessel.html> (last visited April 1, 2022).

<sup>8</sup> See “Language to Recall Michigan Gov Approved, Needs Signatures,” available at: <https://www.governing.com/now/language-to-recall-michigan-gov-approved-needs-signatures.html> (last visited April 1, 2022).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See “GOP strategists: Efforts to recall Michigan Gov. Whitmer have backfired,” available at: <https://www.bridgemi.com/michigan-government/gop-strategists-efforts-recall-michigan-gov-whitmer-have-backfired> (last visited April 1, 2022).

<sup>12</sup> *Walters v. Harris*, No. 2020-07-96-47 *et al.* (May 4, 2021), available at: [https://www.michigan.gov/documents/sos/Walters\\_v.\\_Harris\\_724323\\_7.pdf](https://www.michigan.gov/documents/sos/Walters_v._Harris_724323_7.pdf).

A. The “Hypocrisy” Advertisement Did Not Constitute Express Advocacy.

An advertisement is only capable of constituting an independent expenditure if the underlying message constitutes express advocacy. The “hypocrisy” advertisement did not meet that standard.

Under Michigan law, “express advocacy” means communications that “in express terms advocate the election or defeat of a clearly identified candidate” and contain “express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for governor,’ ‘vote against,’ ‘defeat,’ or ‘reject.’” MCL 169.206(2)(j). The “hypocrisy” advertisement does not meet this definition for the reasons outlined above: the advertisement merely criticizes Governor Whitmer’s lockdown policy but does not unambiguously urge her electoral defeat. (Besides, such an electoral message would be illogical coming more than 2.5 years before the next election.)<sup>13</sup> Since the advertisement lacks any of the requisite “magic words” of express advocacy, and is clearly susceptible to an interpretation of issue advocacy, the Department cannot conclude that an independent expenditure occurred here.

The tangential presence of the #RecallWhitmer hashtag did not transform Turning Point’s issue advocacy message into an electoral message. A hashtag is simply a mechanism to efficiently group related topics on social media. Searching for #RecallWhitmer on Twitter, for example, will yield hundreds if not thousands of tweets that criticize every possible facet of Governor Whitmer’s job performance without any linkage to an actual recall effort. Use of the hashtag here was simply a trendy method to link Turning Point’s advocacy with the ongoing policy discussion on social media platforms. No Michigan court—and indeed, no court anywhere in the country—has ever held that a mere social media hashtag can qualify as express advocacy.

Finally, even if a hashtag could theoretically qualify as express advocacy, the independent expenditure reporting statute did not apply in May 2020 because there was no recall election in existence at that time. An “election” that triggers regulation in the recall context is specifically defined to only encompass a “recall vote,” *see* MCL 169.205(2), and cannot possibly be applied when a mere recall *application* has been submitted or approved by the Board of Canvassers. A “recall vote” cannot happen until a special election has been officially called pursuant to MCL 168.963. Since the “hypocrisy” billboard was displayed for only a brief 12-day period, Turning

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<sup>13</sup> *See Maine Right to Life Comm., Inc. v. Fed. Election Comm’n*, 914 F. Supp. 8, 12 (D. Me.), *aff’d*, 98 F.3d 1 (1st Cir. 1996) (“[T]he Supreme Court has been most concerned not to permit intrusion upon ‘issue’ advocacy—discussion of the issues on the public’s mind from time to time or of the candidate’s positions on such issues—that the Supreme Court has considered a special concern of the First Amendment. . . . In other words, . . . restriction of election activities was not to be permitted to intrude in any way upon the public discussion of issues. What the Supreme Court did was draw a bright line that may err on the side of permitting things that affect the election process, but at all costs avoids restricting, in any way, discussion of public issues.”).



Point did not “advocate the election or defeat of a candidate” under MCL 169.251(1) because there no “election” to speak of.<sup>14</sup>

For all these reasons, the “hypocrisy” advertisement did not contain the requisite express advocacy to transform that message into an independent expenditure. It was simply issue advocacy. As such, Turning Point had no obligation to file an independent expenditure report under MCL 169.251.

B. The Advertisement Did Not Meet The Requisite Financial Threshold To Trigger Independent Expenditure Reporting Obligations.

Notwithstanding the expressive content of the billboard at issue, the Department should dismiss the Complainant’s independent expenditure claim for a separate reason: Turning Point did not make any financial expenditures in the first place.

MCL 169.251(1) only requires expenditure reporting if “[a] person . . . makes an independent expenditure . . . in an amount of \$100.01 or more in a calendar year.” This base financial threshold ensures that trivial political expenditures do not precipitously trigger government regulation. Such is the case here.

Turning Point did not expend any financial amount on the “hypocrisy” billboard, nor did it have any other expenditures in the State of Michigan in 2020. The billboard merely consisted of 13 words of text, the hashtag, Turning Point’s “Students for Trump” logo and website, and an image of Governor Whitmer. This entailed very low production value. And, unlike a traditional static billboard with paper or vinyl glued to the façade, the nature of a digital billboard meant there was no marginal cost to display this text and imagery.

Even if there was some theoretical monetary value of the labor cost to create the text and imagery, that cost would have been less than \$100. Accordingly, the advertisement in question did not trigger any reporting obligations under Michigan law. The independent expenditure claim should be dismissed.

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<sup>14</sup> See e.g. Declaratory Ruling to P. Ellsworth (1-95-CD) (Apr. 3, 1995), at 7, available at: [https://www.michigan.gov/documents/sos/Ellsworth\\_1995\\_428696\\_7.pdf](https://www.michigan.gov/documents/sos/Ellsworth_1995_428696_7.pdf) (concluding that spending made prior to a ballot measure’s approval before the Board of Canvassers did not constitute “expenditures” because “these expenses were outside the ordinary process of qualifying for the ballot and did not directly influence or attempt to influence the placement of a question on the ballot or an election regarding that question” and “[c]onsequently, these expenses were not expenditures and did not trigger the Act’s . . . requirements.”).

**The Advertisement Was Exempt From Regulation And Therefore Was Not Required To Contain A “Paid For” Disclaimer Under MCL 169.247.**

The absence of express advocacy in the “hypocrisy” billboard also means that Turning Point was not required to utilize a traditional “paid for” disclaimer. Issue advocacy is entirely exempted from the Michigan Campaign Finance Act altogether.

Not all communications require a “paid for” disclaimer under MCL 169.247. Specifically, MCL 169.247(5) contains a disclaimer exception which applies to “[a] communication otherwise entirely exempted from this [campaign finance] act under [MCL 169.206(2)(j)].” As discussed above, subsection (2)(j) exempts from the definition of “expenditure” a communication that “does not in express terms advocate the election or defeat of a clearly identified candidate.” *Id.* That statutory provision intentionally operates “to restrict the application of this [campaign finance] act to [only] communications containing express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for governor,’ ‘vote against,’ ‘defeat,’ or ‘reject.’” *Id.*

MCL 169.247(5) expressly incorporates the exemption in MCL 169.205(2)(j) by imposing the “paid for” disclaimer requirement only on advertising that qualifies as an electioneering communication.<sup>15</sup> Namely, advertising that does not qualify as an “expenditure” need only “contain the identification required by [MCL 169.247] subsection (1) . . . if that communication references a clearly identified candidate or ballot question within 60 days before a general election or 30 days before a primary election in which the candidate or ballot question appears on the ballot . . . [and utilizes] means of radio, television, mass mailing or prerecorded telephone message.” MCL 169.247(5)(a). Otherwise, a communication exempt from regulation under MCL 169.205(2)(j) “[i]s not required to contain the disclaimer required by subsection (1)” of the disclaimer statute. MCL 169.247(5)(b).

The “hypocrisy” billboard, as an expression of issue advocacy, was exempt from regulation under MCL 169.205(2)(j) and therefore was likewise exempt from the “paid for” disclaimer requirement under MCL 169.247(1) and (5). Nor was Turning Point subject to the modified disclaimer requirement for electioneering communications because the advertisement went up years before the election and billboard advertising does not constitute an electioneering communication. Either way, the Michigan Campaign Finance Act does not subject this type of issue advertising to “paid for” disclaimer requirements.

Even if a disclaimer was legally required here, Turning Point substantially complied. The “Students for Trump” logo and “trumpstudents.org” website are well-known Turning Point affiliations. (Even the Complainant here knew who to file a campaign finance complaint against.) The disclaimer statute aims to prevent/curb anonymous spending and provide voters/constituents with information necessary to evaluate the spender’s motive. The multiple references to “Students

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<sup>15</sup> An electioneering communication is a communication that does not qualify as an independent expenditure but is otherwise regulated due to the proximity of an election.

for Trump” amply satisfied that statutory purpose.<sup>16</sup> Furthermore, subjecting Turning Point to discipline for mere omission of an “address” would be elevate form over substance. The Department has dismissed campaign finance complaints under far more egregious circumstances.<sup>17</sup> The Department should follow precedent here and decline to impose any disciplinary sanction.

### **Conclusion**

The Complaint should be dismissed because Turning Point did not violate Michigan law. Issue advocacy on matters involving public policy, like that conducted by Turning Point here, does not trigger campaign finance regulation. Governor Whitmer’s COVID-19 policies were fair game to discuss without transforming those communications into independent expenditures.

The Complainant infers that the “hypocrisy” billboard was an expenditure supporting a recall election. Not so. As explained above, the #RecallWhitmer hashtag was a pre-existing social media phenomenon that touched on all aspects of the Governor’s conduct in office. The hashtag was not tied to any actual recall election, and no recall election had been formally called (or was even serious) at the time Turning Point put up this advertisement. The clear thrust of the billboard was to criticize Governor Whitmer’s lockdown policy, and the mere additional of a tangential social media hashtag did not change the fundamental nature of a message clearly centered on pure issue advocacy.

The “magic words” test codified in MCL 169.205(2)(j) is intended to provide breathing room for this type of speech. Only *unambiguous* expressions of electoral advocacy are subject to reporting and disclaimer requirements. Because Turning Point did not cross that dividing line, the Department should dismiss the Complaint pursuant to MCL 169.215(10) and Mich. Admin. R. 169.55(2).

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<sup>16</sup> See e.g. *McRae v. Rohrs* (Feb. 25, 2014), available at: [https://www.michigan.gov/documents/sos/McRae\\_v\\_Rohrs\\_449220\\_7.pdf](https://www.michigan.gov/documents/sos/McRae_v_Rohrs_449220_7.pdf) (finding no liability under MCL 169.247 and noting “that the ad contained a disclaimer at the top which stated ‘Paid Advertisement’ and ‘Neal Rohr’s Views,’ which provided the public some, though imperfect, disclosure of the source of funds for the ad at the time it ran in the paper.”).

<sup>17</sup> See e.g., *Walters v. Harris*, No. 2020-07-96-47 *et al.* (May 4, 2021), available at: [https://www.michigan.gov/documents/sos/Walters\\_v.\\_Harris\\_724323\\_7.pdf](https://www.michigan.gov/documents/sos/Walters_v._Harris_724323_7.pdf) (issuing a formal warning despite finding that campaign materials contained express advocacy, “the materials completely omitted the required paid for statement,” and “the evidence supports the conclusion that a potential violation has occurred.”); *Kerry v. Frutig*, No. 2020-10-188-47 (Jan. 19, 2021), available at: [https://www.michigan.gov/documents/sos/Kerry\\_v.\\_Frutig\\_723577\\_7.pdf](https://www.michigan.gov/documents/sos/Kerry_v._Frutig_723577_7.pdf) (same); *Mallon v. Peiffer*, No. 2020-10-182-47 (Oct. 29, 2020), available at: [https://www.michigan.gov/documents/sos/Mallon\\_v.\\_Peiffer\\_722723\\_7.pdf](https://www.michigan.gov/documents/sos/Mallon_v._Peiffer_722723_7.pdf) (same); *Clarke v. Markee*, No. 2020-10-166-47 (Oct. 16, 2020), available at: [https://www.michigan.gov/documents/sos/Clarke\\_v.\\_Markee\\_722513\\_7.pdf](https://www.michigan.gov/documents/sos/Clarke_v._Markee_722513_7.pdf) (same); *Reminga v. Hayes*, No. 2020-09-156-47 (Oct. 14, 2020), available at: [https://www.michigan.gov/documents/sos/Reminga\\_v.\\_Hayes\\_722705\\_7.pdf](https://www.michigan.gov/documents/sos/Reminga_v._Hayes_722705_7.pdf) (same); *White v. Weaver*, No. 2020-09-154-47 (Oct. 8, 2020), available at: [https://www.michigan.gov/documents/sos/White\\_v.\\_Weaver\\_722722\\_7.pdf](https://www.michigan.gov/documents/sos/White_v._Weaver_722722_7.pdf) (same); *Robinson v. Atayah*, No. 2019-09-144-47 (Oct. 6, 2020), available at: [https://www.michigan.gov/documents/sos/Robinson\\_v.\\_Atayah\\_722707\\_7.pdf](https://www.michigan.gov/documents/sos/Robinson_v._Atayah_722707_7.pdf) (same).

April 1, 2022

Page 11

Sincerely,

Snell & Wilmer L.L.P.

A handwritten signature in blue ink, appearing to be 'E. Spencer', with a stylized, flowing script.

Eric H. Spencer

cc: [elections@michigan.gov](mailto:elections@michigan.gov)



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

April 11, 2022

Vaughn Derderian  
655 W. Girard Avenue  
Madison Heights, MI 48071

Re: Derderian v. Turning Point Action, Inc.  
Campaign Finance Complaint No. 2020-16-46-51

Dear Mr. Derderian:

The Department of State received a response from Turning Point Action, Inc. to the complaint you filed against them alleging a violation of the Michigan Campaign Finance Act, 1976 P.A. 388, MCL 169.201 *et seq.* A copy of the response is provided as an enclosure with this letter.

You may file a rebuttal statement after reviewing the enclosed response. If you elect to file a rebuttal statement, you are required to do so within 10 business days of the date of this letter. The rebuttal statement may be emailed to [BOERegulatory@michigan.gov](mailto:BOERegulatory@michigan.gov) or mailed to the Department of State, Bureau of Elections, Richard H. Austin Building, 1<sup>st</sup> Floor, 430 West Allegan Street, Lansing, Michigan 48918.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jenny McInerney".

Jenny McInerney, Election Law Specialist  
Bureau of Elections  
Michigan Department of State





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

July 22, 2022

Turning Point Action, Inc.  
4940 East Beverly Road  
Phoenix, Arizona 85044

Re: *Derderian v. Turning Point Action, Inc.*  
Campaign Finance Complaint  
No. 2020-16-46-51

Dear Turning Point Action, Inc.:

The Department of State (Department) has finished investigating the campaign finance complaint filed against you by Vaughn Derderian alleging that you violated the Michigan Campaign Finance Act (MCFA or Act). This letter concerns the disposition of that complaint.

The complaint concerned a digital billboard located at I-75 and Exit 101 near Holly, Michigan. From May 27, 2020 to June 9, 2020, you ran an advertisement on that billboard that stated "If Gretchen's husband can try to go boating, you can leave your home." The advertisement also included the Students for Trump logo, a link to a Turning Point website ([trumpstudents.org](http://trumpstudents.org)), and the hashtag "#RecallWhitmer."

The complaint first alleged that the billboard expressly advocated for the recall of Governor Gretchen Whitmer and that you failed to report the funds you spent on the billboard as required by the MCFA. The second allegation is that the billboard failed to contain a proper "paid for by" statement.

In your April 1, 2022 response, you disputed those allegations. In response to the first allegation, you claimed the billboard did not constitute express advocacy. Citing MCL 169.206(2)(j), you argued that the advertisement did not contain any of the listed phrases that would bring the advertisement within the purview of the MCFA, such as "vote for," "vote against," or "defeat." Additionally, you argued that the inclusion of the hashtag "#RecallWhitmer" was only a reference to a social media trend, rather than a directive to vote to recall Governor Whitmer. You contended that the billboard merely critiqued Governor Whitmer's policies related to COVID-19, rather than expressly advocated for Governor Whitmer's recall. You also argued that recall-related advocacy could not be express advocacy because a recall election had not been called against Governor Whitmer at the time the billboard advertisement appeared. Finally, you claimed

that, regardless of whether the advertisement constituted express advocacy, the complaint should be dismissed because you did not spend the requisite amount to trigger reporting requirements.

Mr. Derderian did not provide a rebuttal to your response.

The MCFA requires that a person, other than a committee, that makes an independent expenditure of more than \$100.00 “advocat[ing for] the election or defeat of a candidate for state elective office . . . shall file the report with the secretary of state” within 10 days of making the expenditure. MCL 169.251(1). The definition of “person” includes corporations. MCL 169.211(2). Further, the definition of “expenditure” includes not only a payment or donation, but also “[a] contribution or a transfer of anything of ascertainable monetary value for purposes of influencing the nomination or election of a candidate.” MCL 169.206(1)(a). If a person fails to file a report, they must pay a late filing fee. MCL 169.251(2). If a person fails to file a report after more than 30 days, the violation constitutes a misdemeanor and is punishable by a fine of up to \$1,000.00, imprisonment for up to 90 days, or both. *Id.*

The Department has reviewed the evidence submitted in this matter and finds that sufficient evidence has been presented to support a finding that a potential violation of the MCFA may have occurred. From the outset, the Department must consider whether the billboard in question is an expenditure covered by the MCFA. Under the Act, express advocacy is advocacy that “in express terms advocate[s] the election or defeat of a clearly identified candidate.” MCL 169.206(2)(j). The definition is intended “to restrict the application of this act to communications containing express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for governor,’ ‘vote against,’ ‘defeat,’ or ‘reject.’” *Id.*

Governor Whitmer is a candidate under the Act because she was the subject of a recall effort at the time the billboard advertisement appeared. MCL 169.203(1)(d) (defining candidates as “an officeholder who is the subject of a recall vote”). Although the term “recall” is not included in the text of MCL 169.206(2)(j), the list is not all-inclusive,<sup>1</sup> and “recall” is an express term of advocacy consistent with terms such as “vote for” or “vote against.” If the hashtag were to read, for example, “#VoteAgainstWhitmer,” it would qualify as express advocacy. The inclusion of the term “recall” in a hashtag is no different.<sup>2</sup> Recall votes are also included under the definition of an election that triggers MCFA regulation. MCL 169.205(2).

Although there was no recall vote scheduled at the time the billboard was posted, organized and formal recall efforts were underway. From May 12, 2020 to June 2, 2021, “valid recall petition language [was] in circulation against the governor with the exception of a four day window in

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<sup>1</sup> MCL 169.206(2)(j) “restrict[s] the application of this act to communications express words of advocacy *such as* ‘vote for,’ ‘elect,’ . . .” (emphasis added).

<sup>2</sup> The fact that the term was included only in a hashtag does not change its status as express advocacy or remove it from the Act’s coverage.

2020 (May 23-26).”<sup>3</sup> The billboard advertisement ran from May 27, 2020 to June 9, 2020. Even if the recall effort had not yet garnered enough signatures to be placed on the ballot, recall language approved by the Board of State Canvassers was in circulation for the full period during which the advertisement was posted. Under the MCFA, as applied by the Department through previous campaign finance determinations and interpretive statements, the existence of an active recall petition approved by the Board of State Canvassers is sufficient for an officeholder to be considered a candidate for the purposes of the Act.<sup>4</sup> Consequently, if approved recall language is in circulation, that is also sufficient to trigger MCFA obligations for a person expressly advocating for the recall of the officeholder in question during the period in which the recall language is valid.

Regarding the reporting threshold, section 51 of the Act states that,

The report required under this section must be made on an independent expenditure report form provided by the secretary of state, include the date of the expenditure, a brief description of the nature of the expenditure, the amount, the name and address of the person to whom it was paid, the name and address of the person filing the report, together with the name, address, occupation, employer, and principal place of business of each person that contributed \$100.01 or more to the expenditure, and identify the candidate or ballot question for or against which the independent expenditure was made.

MCL 169.251(1).

Although you may not have spent greater than \$100 creating the advertisement, the value of the independent expenditure that must be reported is the total value of goods and services used in the advocacy in question. *See* MCL 169.206(1)(a). In this case, the billboard was an in-kind expenditure, and the fair market value of the billboard rental for the two weeks during which the advertisement was run must be included in calculating the total cost of the express advocacy at issue. The Department has reason to believe the fair market value of the billboard space exceeded \$100.<sup>5</sup>

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<sup>3</sup> *See* Determination in *Michigan Freedom Fund v. Whitmer*, Campaign Finance Complaint No. 2021-08-24-52 (received Aug. 9, 2021), [MFF v. Whitmer File 744164 7.pdf \(michigan.gov\)](#);

<sup>4</sup> *Id.*; *Interpretive Statement to Faust*, [Faust 1983.pdf \(michigan.gov\)](#).

<sup>5</sup> The MCFA directs the Department to initiate the resolution process if “there may be reason to believe that a violation of [the MCFA] occurred.” MCL 169.15(10). The Department’s longstanding practice is to initiate the informal resolution process when the evidence available to the Department at the time that a determination is issued can reasonably support an inference that the MCFA has been violated. Outdoor Advertising Guide estimates that a large digital billboard could cost as much as over \$5,000 for four weeks ([Outdoor Advertising Rentals in Michigan | Billboards MI \(outdooradvertisingguide.com\)](#)). As discussed later in this determination, the Department is requesting a list of costs for this billboard, including any production/labor costs you expended and the fair market value of the

In response to the second allegation, you similarly claimed the billboard was not covered by the Act because it did not constitute express advocacy. Further, you argued that even if disclosure was required, you substantially complied with the Act's requirements by including the "Students for Trump" logo and "trumpstudents.org," which are well-known Turning Point affiliations. You argued this satisfied the statute's purpose of providing voters with the necessary information to evaluate the spender's motive.

The MCFA and corresponding administrative rules require a person who produces printed material that relates to an election to include the phrase "Paid for by [name and address of the person who paid for the item]." MCL 169.247(1), R 169.36(2). A knowing violation constitutes a misdemeanor offense punishable by a fine of up to \$1,000.00, imprisonment for up to 93 days, or both. MCL 169.247(6).

The Department has reviewed the evidence submitted in this matter and finds that sufficient evidence has been presented to support a finding that the absence of a "paid for by" statement on the billboard is a potential violation of the MCFA. Once again, the Department must first consider whether it is an expenditure covered by the MCFA. As explained previously, the billboard's inclusion of the hashtag "#RecallWhitmer" constitutes express advocacy. Thus, the billboard is covered by the gambit of the Act and must include the paid for by statement outlined under Section 47. MCL 169.206(2)(j). However, the billboard failed to comply with the requirements of section 47 by failing to include a paid for by statement. The Department also rejects your argument that the billboard substantially complied with Section 47. The plain language of Section 47 requires strict compliance.<sup>6</sup> Because the required "paid for by" statement was absent, the evidence supports the conclusion that a potential violation has occurred.

After reaching these conclusions, the Act requires the Department to "endeavor to correct the violation or prevent further violation by using informal methods" if it finds that "there may be reason to believe that a violation . . . has occurred." MCL 169.215(1). The objective of an informal resolution is "to correct the violation or prevent a further violation." *Id.*

Given this, the Department will consider the first matter resolved upon receipt of a proper independent expenditure filing by Turning Point, Inc. regarding the billboard. As for the second allegation, the Department concludes that a formal warning is a sufficient resolution and is hereby advising you that MCL 169.247(1) and R 169.36(2) require you to print a complete and

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billboard space for the time you ran the advertisement. Until then, a warning that a potential violation has occurred is sufficient for the purpose of this determination.

<sup>6</sup> "Except as otherwise provided . . . a billboard . . . shall bear upon it an identification that contains the name and address of the person paying for the matter." MCL 169.247(1) (emphasis added); see *Stand Up v. Sec'y of State*, 822 N.W.2d 159, 163 (Mich. 2012) ("The words of the statute are the most reliable evidence of the Legislature's intent and we must give each word its plain and ordinary meaning. In interpreting the statute at issue, we consider both the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.'" (footnotes and internal quotations omitted)).

accurate identification statement on all campaign materials, consisting of the phrase “paid for by” followed by the full name and address of the person who paid for the item.

Note that all printed materials constituting express advocacy produced in the future must include this identification statement. Please be advised that this notice has served to remind you of your obligation under the Act to identify your printed matter and may be used in future proceedings as evidence that tends to establish a knowing violation of the Act. A knowing violation is a misdemeanor offense and may merit referral to the Attorney General for enforcement action. MCL 169.247(6), 215(10).

This letter serves to notify you and your clients that the Department has determined there may be reason to believe that you have violated the Act and to notify you and your clients that the Department is beginning the informal resolution process. This process will resolve upon receipt of a proper independent expenditure filing within 90 business days of this determination. “If, after 90 business days, the secretary of state is unable to correct or prevent further violation by these informal methods, the secretary of state shall do either of the following:

- (a) Refer the matter to the attorney general for the enforcement of any criminal penalty provided by this act.
- (b) Commence a hearing as provided in subsection (11) for enforcement of any civil violation.”

MCL 169.215(11).

Please contact the undersigned at [BOERegulatory@michigan.gov](mailto:BOERegulatory@michigan.gov) to confirm submission of the independent expenditure report.

Sincerely,

Regulatory Section  
Bureau of Elections  
Michigan Department of State

c. Vaughn Derderian



## SOS

### Campaign Finance Disclosure - Confirmation of Submission

This page is confirmation that your Independent Expenditures Report for State Filers was submitted to the Michigan Office of Campaign Finance/Disclosure. If you have questions, please contact us at 517-335-0170 or [disclosure@michigan.gov](mailto:disclosure@michigan.gov)

**To report additional contributors or expenditures,** please click this link to go to the [Independent Expenditures - State Filers online form](#).

Or, close your internet browser window with the **X** in the top right corner of this window or use a link on the left to return to the State of Michigan Campaign Finance Disclosure website.



### Campaign Finance Disclosure - Confirmation of Submission

Copyright State of Michigan

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**From:** Spencer, Eric H. <espencer@swlaw.com>  
**Sent:** Tuesday, November 15, 2022 4:23 PM  
**To:** MDOS-BOERegulatory  
**Subject:** No. 2020-16-46-51 - independent expenditure report  
**Attachments:** 2022 0722 - TPA - Michigan SOS Decision.pdf; Campaign Finance Disclosure - Confirmation of Submission.pdf

**CAUTION: This is an External email. Please send suspicious emails to [abuse@michigan.gov](mailto:abuse@michigan.gov)**

To whom it may concern,

This firm represents Turning Point Action (TPA) in Complaint No. 2020-16-46-51. TPA timely filed an independent expenditure report today, which resolves the attached campaign finance decision.

I trust this resolves the matter.

Very truly yours,  
Eric

**Eric H. Spencer**

office: 602.382.6403 | mobile: 602.301.5158  
email: [espencer@swlaw.com](mailto:espencer@swlaw.com)

Snell & Wilmer  
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**From:** electionselearning@michigan.gov  
**Sent:** Tuesday, November 15, 2022 3:50 PM  
**To:** DelRio, Irene (MDOS)  
**Cc:** SOS, Disclosure  
**Subject:** Independent Expenditures Report for State Filers

**CAUTION: This is an External email. Please send suspicious emails to [abuse@michigan.gov](mailto:abuse@michigan.gov)**

Hello ,

We have received your 'Independent Expenditures - State Filers' form.

If you have any questions, please contact the State of Michigan at 517-335-0170 or [disclosure@michigan.gov](mailto:disclosure@michigan.gov)

**User submitted data**

**Section**

**The Independent Expenditure was to:** Oppose a Candidate

**Candidate's Name** Gretchen Whitmer

**Office Sought** Governor

**County**

**District/Jurisdiction**

**Ballot Question Description** Recall

**Ballot Designation (If issued by Michigan Board of State Canvassers)**

**Name** Turning Point Action

**Address** 4930 E. Beverly Road  
Phoenix, AZ 85044

**Same as above** Yes

**Contact Name**

**Contact Address**

**Email Address** tyler@tpaction.com

**1. Name** None (no contributions were made to Turning Point Action for the purpose of furthering any independent expenditure in Michigan supporting Governor Whitmer's recall. See e.g. <https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-de>

1. Address n/a

1. Employer Name and Address n/a

1. Occupation n/a

2. Add additional contributions No

2. Name

2. Address

2. Occupation

2. Employer Name and Address

3. Add additional contributions

3. Name

3. Address

3. Occupation

3. Employer Name and Address

4. Add additional contributions

4. Name

4. Address

4. Occupation

4. Employer Name and Address

5. Add additional contributions

5. Name

5. Address

5. Occupation

5. Employer Name and Address

Add additional contributions

1. Name Nick Nannoshi

1. Address 600 Middlebelt Road  
West Bloomfield, MI 48322

1. Date of Expenditure /  
Purchase Date (mm-dd-yyyy) 05-27-2020

1. Dollar Amount of  
Expenditure (xxxx.xx) 2000.00

1. Purpose of Expenditure In-kind use of billboard

2. Add additional expenditures No

**2. Name**

**2. Address**

**2. Date of Expenditure /  
Purchase Date**

**2. Dollar Amount of  
Expenditure**

**2. Purpose of Expenditure**

**3. Add additional expenditures**

**3. Name**

**3. Address**

**3. Date of Expenditure /  
Purchase Date**

**3. Dollar Amount of  
Expenditure**

**3. Purpose of Expenditure**

**4. Add additional expenditures**

**4. Name**

**4. Address**

**4. Date of Expenditure /  
Purchase Date**

**4. Dollar Amount of  
Expenditure**

**4. Purpose of Expenditure**

**5. Add additional expenditures**

**5. Name**

**5. Address**

**5. Date of Expenditure /  
Purchase Date**

**5. Dollar Amount of  
Expenditure**

**5. Purpose of Expenditure**

**Add additional expenditures**

**Please check this box to certify  
your report:** ☐ Certified



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

November 18, 2022

Turning Point Action, Inc.  
4940 East Beverly Road  
Phoenix, Arizona 85044

Re: *Derderian v. Turning Point Action, Inc.*  
Campaign Finance Complaint No. 2020-16-46-51

Dear Turning Point Action, Inc.:

This letter concerns the campaign finance complaint filed against you by Vaughn Derderian, which alleged certain violations of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.*

The complaint first alleged that the billboard expressly advocated for the recall of Governor Gretchen Whitmer and that you failed to report the funds you spent on the billboard as required by the MCFA. The second allegation is that the billboard failed to contain a proper "paid for by" statement.

By letter dated July, 22, 2022, the Department found that the evidence provided supported a reason to believe that a violation had occurred. As previously indicated, upon reaching this conclusion, the Department is required to "endeavor to correct the violation or prevent a further violation by using informal methods [.]" if it finds that "there may be reason to believe that a violation ... has occurred [.]" MCL 169.215(10). The objective of an informal resolution is "to correct the violation or prevent a further violation [.]" *Id.*

As part of the informal resolution, the Department asked you to file an independent expenditure report. Notification of the report filing was sent to the Regulatory Section of the Department's Bureau of Elections via email on November 15, 2022.

The Department has reviewed the statement and is satisfied that you complied with the Department's request. Therefore, the Department determines that this formal warning is a sufficient resolution to the complaint. The Department now considers this matter closed and will take no further action against you at this time.



Please be advised that this notice has served to remind you of your obligation under the Act to disclose contributions and expenditures, and may be used in future proceedings as evidence that tends to establish a knowing violation of the Act.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jenny McInerney", is positioned above the typed name.

Jenny McInerney, Regulatory Attorney  
Bureau of Elections  
Michigan Department of State

c: Vaughn Derderian