



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

July 7, 2022

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

Re: Campaign Finance Complaint against The **American Civil Liberties Union
and Sixteen Thirty Fund**

To the Michigan Department of State:

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We achieve this mission by hanging a lantern over public officials who put their own interest over the interests of the public good. We submit this complaint, pursuant to the Michigan Campaign Finance Act section 169.215, to request the Department of State immediately investigate and take appropriate enforcement action against:

American Civil Liberties Union
125 Broad Street
New York, NY 10004
Telephone No. (212) 549-2500

Sixteen Thirty Fund
1828 L Street, NW, Suite 300B
Washington DC 20036
Telephone No. (202) 971-1337

The American Civil Liberties Union (ACLU) and Sixteen Thirty Fund are tax-exempt organizations that are not registered as a ballot question committee, but their activity clearly demonstrates they should have registered as a committee and filed the required reports.¹ **From**

¹ See, e.g., *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021) (attached as Exhibit A).

November 2021 to April 2022, The ACLU contributed \$2,606,199, and the Sixteen Thirty Fund contributed \$1,525,000 to a ballot question committee, Michiganders for Fair Lending (Fair Lending).² These contributions were “substantial” to Fair Lending—comprising 99.9% of Fair Lending’s total funding during that period.³

It is not a violation for an organization to make contributions to a ballot question committee.⁴ However it is “a violation of the Act for an organization to raise money on behalf of the ballot question committee in order to shield the organization’s donors from the reporting requirements of the Act.”⁵ The facts of this case demonstrate that this is precisely what occurred here, and they are analogous to a 2021 Department decision that found organizations “were soliciting or receiving funds for the purpose of collecting contributions with the intent of financially supporting the ballot question committee.” Thus, we request the Department investigate and find there is reason to believe that a violation of the MCFA occurred.⁶

I. Law.

Under Michigan law, a “committee” is defined as an organization:

“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.”⁷

The statute further specifies that an organization does not meet the definition of a committee solely because it makes an expenditure to a ballot question committee or an independent expenditure committee.⁸ However, the organization does meet the definition of a committee if it

² Michiganders For Fair Lending, Michigan Campaign Finance Contribution Search, Department Of State, accessed July 5, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi.

³ *Id.*

⁴ *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021) (citing MCL 169.203(4)).

⁵ *Id.* (citing MCL 169.203(4)).

⁶ MCL 169.15(10).

⁷ MCL 169.203(4).

⁸ *Id.*

“solicits or receives contributions for the purpose of making an expenditure to that ballot question committee or independent expenditure committee.”⁹

Whether or not an organization meets the definition of a committee is consequential because a committee is required to report and publicly disclose information. An organization must file a statement of organization within ten days of formation and thereafter file statements disclosing the organization’s contributions and expenditures.¹⁰ If an organization fails to file the required statements, civil or criminal penalties are imposed.¹¹

To determine whether an organization has “solicited or received contributions for the purpose of making an expenditure to a ballot question committee” and thus has become a committee itself, the Department examines facts showing the two organizations are not independent of one another.¹² For instance, in cases prior to 2021, some specific facts the Department considered when it found a corporation has become a committee are: (1) the corporation and ballot question committee formed within a short period of time; (2) the organizations had the same officers; (3) a high percentage of the ballot question committee’s total funding was from the corporation; and (4) the flow of money between the corporation and ballot question committee demonstrated a relationship between the two groups.¹³

Then, in an October 27, 2021 decision, the Michigan Department of State considered the case of *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Finance Complaint filed May 25, 2021 (decision filed Oct. 27, 2021) (2021 Complaint). This

⁹ *Id.*; *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021); *LaBrant v. Unlock Michigan*, MI Campaign Finance Complaint filed Sept. 17, 2020 (decision filed April 9, 2021).

¹⁰ MCL 169.224.

¹¹ *See, e.g.*, MCL 169.234.

¹² *Id.*; *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021) (explaining evidence the corporation raised significant funds, contributed the funds to a ballot question committee within the calendar year the funds were raised, and the ballot question committee immediately paid vendors supported a finding the corporation was a committee and must register with the Department); *LaBrant v. Unlock Michigan*, MI Campaign Finance Complaint filed Sept. 17, 2020 (decision filed April 9, 2021) (explaining evidence the corporation and ballot question committee are controlled by the same individuals and functioning as the same entity support a finding the corporation is a committee and must register with the Department).

¹³ *LaBrant v. Unlock Michigan*, MI Campaign Finance Complaint filed Sept. 17, 2020 (decision filed April 9, 2021); *Turnaround Detroit v. Detroit Forward*, MI Campaign Finance Complaint (decision filed April 9, 2014), available at: https://www.michigan.gov/-/media/Project/Websites/sos/14delrio/Turnaround_Detroit_V_Detroit_Forward_and_MCEF_pt_2.pdf?rev=0e1efb6028ff45389da6de8c305aa677 (considering that the corporation contributed over 33% of the ballot question committee’s total funding during the entire Detroit mayoral election cycle).

case involved two 501(c)(4) organizations, Michigan Citizens for Fiscal Responsibility (MCFR) and Michigan! My Michigan! (MMM), which were not registered as committees themselves but had made contributions to a ballot question committee, Unlock Michigan (Unlock).¹⁴

The Department had two pieces of evidence which led to their ruling: (1) the organizations' 2019 form 990 showing their assets at the end of the year and (2) the amount of contributions they gave as disclosed by Unlock in 2020.¹⁵ MCFR had \$715,137 in assets at the end of calendar year 2019 and contributed approximately \$1,780,000 to Unlock from June to October 2020.¹⁶ MMM had \$172,452 in assets at the end of calendar year 2019 and contributed approximately \$550,000 to Unlock from June to October 2022.¹⁷

There was no evidence of the date or amount of contributions received by MCFR and MMM throughout 2020 or the total amount of their assets at any particular point during the year.¹⁸ Both MCFR and MMM filed affidavits stating that they neither "solicited or received contributions for the purpose of making an expenditure to Unlock Michigan or any other ballot question committee."¹⁹

After comparing MCFR and MMM's assets at the beginning of 2020 and the contributions each made to the ballot question committee during the year, the Department found that the assets MCFR and MMM each contributed to the ballot question committee during 2020 "far exceeds the assets controlled by the organizations" at the beginning of the year.²⁰ This demonstrated that MCFR and MMM were fundraising prior to or at the same time as their contributions to Unlock. Additionally, MCFR and MMM made contributions to the ballot question committee "within days of similarly sized payments" from the ballot question committee to its vendor, which demonstrated coordination "to some extent."²¹ The Department found there "may be reason to believe" that MCFR and MMM should have registered as committees themselves and filed the required statements:²²

¹⁴ *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

“As previously stated, it is not a violation of the Act for a group to raise funds in its normal course of conduct and make contributions to a ballot question committee or to coordinate with that ballot question committee. It is, however, a violation of the Act for an organization to raise money on behalf of the ballot question committee in order to shield the organization’s donors from the reporting requirements of the Act. The fundraising necessary to allow MCFR to contribute \$1,780,000 to Unlock and MMM to contribute \$550,000 to Unlock from June to October 2020 is substantial. Although it may be possible that each entity raised those funds in the first half of 2020 independently of each entity’s support for Unlock, to assume that the aggressive fundraising activity necessary for each organization to raise the sums that were then transferred to Unlock was completely independent strains credulity. The disparity between each organization’s assets going into 2020, the amount that each organization contributed to Unlock, and the timing of those contributions demonstrate a level of coordination showing the entities were not independent of each other.

In particular, the number of payments that MCFR and/or MMM made to Unlock days before Unlock made similarly sized payments to NPM suggests that MCFR and MMM were soliciting or receiving funds for the purpose of collecting contributions with the intent of financially supporting Unlock. Such fundraising for the purpose of supporting a ballot question committee, as is evidenced in the instant case, makes MCFR and MMM themselves ballot question committees responsible for registration and for filing appropriate campaign statements under the MCFA, but neither organization, to date, has registered as a committee nor filed those campaign statements as required by sections 24 and 33 of the Act.

Given the coordination between Unlock, the proximity of contributions made to Unlock and the expenditures made by Unlock, and the fact that neither MCFR nor MMM would have been able to make such contributions to Unlock without soliciting/receiving additional funds during 2020, there is reason to believe that MCFR and MMM may have solicited/received funds for the purpose of making contributions to Unlock.”

Therefore, in addition to the factors established by the Department prior the 2021 Complaint, one factual scenario where the Department found an organization “solicits or receives contributions for the purpose of making an expenditure to that ballot question committee” and is thus a ballot question committee itself is when: (1) the organization solicited funds prior to or simultaneously with making contributions to a ballot question committee, and (2) the amount or timing of either contributions by an organization or payments by a ballot question committee to vendors indicate coordination.

II. Analysis

Issue Presented: Whether The ACLU and the Sixteen Thirty Fund Are Committees Thereby Mandating Registration Obligations With the Department.

The American Civil Liberties Union (ACLU) and the Sixteen Thirty Fund are social welfare organizations under section 501(c)(4) of the Internal Revenue Code.²³ The ballot question committee Fair Lending was formed on October 1, 2021.²⁴ From November 2021 to April 2022, the ACLU contributed \$2,606,199 to Fair Lending and Sixteen Thirty Fund contributed \$1,525,000 to Fair Lending, for a total of \$4,131,199.²⁵ These contributions were “substantial” to Fair Lending—**comprising 99.9% of Fair Lending’s total funding during that period.**²⁶ Clearly, Fair Lending simply would not have existed without this funding—the ACLU and Sixteen Thirty Fund **are** the ballot question committee.

The timing of the contributions and vendor payments further show the organizations were not independent. The initial contributions from the ACLU and the Sixteen Thirty Fund occurred immediately after Fair Lending’s formation. The ACLU and Sixteen Thirty Fund continued contributing, which was often timed with payments by Fair Lending to its vendors, as set out in the following chart:

²³ American Civil Liberties Union, Form 990, Internal Revenue Service, accessed July 5, 2022, available at: https://apps.irs.gov/pub/epostcard/cor/133871360_202003_990O_2021060818292134.pdf; Sixteen Thirty Fund, Form 990, Internal Revenue Service, accessed July 5, 2022, available at: https://apps.irs.gov/pub/epostcard/cor/264486735_201812_990O_2020020317100380.pdf.

²⁴ Michiganders for Fair Lending, Committee Statement Of Organization, filed Oct. 1, 2021, available at: <https://cfrsearch.nictusa.com/committees/520155>.

²⁵ Michiganders For Fair Lending, Michigan Campaign Finance Contribution Search, Department Of State, accessed July 5, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi.

²⁶ *Id.*

Selected transactions reported by Michiganders for Fair Lending²⁷

Date	Contributing Organization/Vendor	Amount Contributed to Michiganders for Fair Lending	Amount Paid by Michiganders for Fair Lending	Running balance
November 3, 2021	Sixteen Thirty Fund	\$25,000.00		\$25,055.00
February 3, 2022	American Civil Liberties Union	\$36,199.00		\$61,255.03
February 4, 2022	Sixteen Thirty Fund	\$500,000.00		\$561,255.03
February 11, 2022	Heather Ricketts		\$4,000.00	\$557,255.03
February 11, 2022	Miller Canfield		\$14,274.00	\$542,981.03
February 11, 2022	Miller Canfield		\$21,412.00	\$521,569.03
February 11, 2022	Fieldworks LLC		\$320,000.00	\$201,569.03
February 15, 2022	American Civil Liberties Union	\$325,000.00		\$526,569.03
February 16, 2022	Fieldworks LLC		\$320,000.00	\$206,569.03
February 18, 2022	Sixteen Thirty Fund	\$400,000.00		\$605,781.53
March 1, 2022	Fieldworks LLC		\$864,614.42	\$(260,705.24)
March 1, 2022	American Civil Liberties Union	\$430,000.00		\$169,294.76
March 10, 2022	American Civil Liberties Union	\$917,500.00		\$1,086,789.76
March 23, 2022	Fieldworks LLC		\$534,933.89	\$551,772.87
April 5, 2022	American Civil Liberties Union	\$897,500.00		\$1,449,273.08
April 7, 2022	Sixteen Thirty Fund	\$600,000.00		\$2,049,273.08

Notably, on February 15, 2022, the ACLU contributed \$325,000, and the very next day Fair Lending paid a vendor \$320,000. Similarly, on March 1, 2022, Fair Lending paid a vendor \$864,614.42, an amount that would have placed Fair Lending in a deficit, if not for a \$430,000 contribution made on the same day by the American Civil Liberties Union. Given that contributions by the ACLU and Sixteen Thirty Fund to Fair Lending were closely followed by

²⁷ Michiganders For Fair Lending, Michigan Campaign Finance Contribution Search, Department Of State, accessed July 5, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi; Michiganders For Fair Lending, Michigan Campaign Finance Expenditure Search, Department Of State, accessed July 5, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/exp_anls_res.cgi.

expenditures Fair Lending made to its vendors totaling a similar value, it is clear that the ACLU and Sixteen Thirty Fund continued to coordinate with Fair Lending after its formation.

Because the ACLU and the Sixteen Thirty Fund do not publicly disclose their donations and expenditures, the total assets controlled by these entities or the timing of the contributions they received prior to November 2021 are not publicly known. First, the 2021 Complaint instructed this information is not required. The Department did not have this information for MCFR and MMM prior to their donations to Unlock, however, it was found to be unnecessary and it was presumed any funds raised were for the purpose of financing Unlock. The same standard certainly must apply here. Second, it is not relevant to the facts of this case. Both the ACLU and Sixteen Thirty Fund were the sole funders of Fair Lending. After their initial contribution, both the ACLU and Sixteen Thirty Fund presumably continued to fundraise while at the same time knowing they would continue to pay for **all** of Fair Lending's expenses. Thus, they were "collecting contributions with the intent of financially supporting" Fair Lending.

Applying the analysis in the 2021 Complaint to the facts in the present case: "[I]t is not a violation of the Act for a group to raise funds in its normal course of conduct and make contributions to a ballot question committee or to coordinate with that ballot question committee. It is, however, a violation of the Act for an organization to raise money on behalf of the ballot question committee in order to shield the organization's donors from the reporting requirements of the Act."²⁸

Shortly after it was formed the ACLU and Sixteen Thirty Fund became Fair Lending's first and essentially only contributors. From November 2021 to April 2022, the ACLU contributed \$2,606,199 to Fair Lending and Sixteen Thirty Fund contributed \$1,525,000 to Fair Lending. These are substantial contributions, and "the timing of those contributions demonstrate a level of coordination showing the entities were not independent of each other."²⁹

"In particular, the number of payments that [the ACLU] and/or [Sixteen Thirty Fund] made to [Fair Lending] days before [Fair Lending] made similarly sized payments to [its vendors] suggests that [the ACLU] and [Sixteen Thirty Fund] were soliciting or receiving funds for the purpose of collecting contributions with the intent of financially supporting [Fair

²⁸ *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021).

²⁹ Michiganders For Fair Lending, Michigan Campaign Finance Contribution Search, Department Of State, accessed July 5, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi; Michiganders For Fair Lending, Michigan Campaign Finance Expenditure Search, Department Of State, accessed July 5, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/exp_anls_res.cgi. *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021)

Lending].”³⁰ Both the ACLU and Fair Lending presumably continued to fundraise over the time period they were continuing to contribute to Fair Lending, showing they were accepting contributions with the intent of financially supporting Fair Lending. Thus, making “[the ACLU] and [Sixteen Thirty Fund] themselves ballot question committees responsible for registration and for filing appropriate campaign statements under the MCFA, but neither organization, to date, has registered as a committee nor filed those campaign statements as required by sections 24 and 33 of the Act.”³¹

“Given the coordination between [Fair Lending], the proximity of contributions made to [Fair Lending] and the expenditures made by [Fair Lending], and the [presumed] fact that [the ACLU] nor [Sixteen Thirty Fund] stopped fundraising before or during the time it supported Fair Lending], there is reason to believe that [the ACLU] and [Sixteen Thirty Fund] may have solicited/received funds for the purpose of making contributions to [Fair Lending].”³²

III. Conclusion & Request for Action.

The facts support a finding that the ACLU and the Sixteen Thirty Fund solicited contributions for the sole purpose of making expenditures to a ballot question committee. We respectfully request the Department of State immediately investigate the apparent violations set forth in this Complaint and find reason to believe that the ACLU and the Sixteen Thirty Fund have violated the Michigan Campaign Finance Act sections 24 and 34. It is clear, given the facts in this case and the precedent established by the 2021 Complaint, that these organizations must file as a committee, including filing all outstanding statements and reports, paying any late filing fees, and any applicable civil or criminal penalties.

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

Respectfully submitted,
The Foundation for Accountability and Civic Trust



By: Kendra Arnold, Executive Director
Foundation For Accountability and Civic Truест
1717 K Street NW, Suite 900, Washington, D.C., 20006

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

Exhibit A



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

October 27, 2021

Brian D. Shekell
Clark Hill
500 Woodward Ave., Suite 3500
Detroit, MI 48226

Dear Mr. Shekell:

The Department of State (Department) has finished its initial investigation of the campaign finance complaint filed against your clients Michigan Citizens for Fiscal Responsibility (MCFR) and Michigan! My Michigan! (MMM), as well as against Unlock Michigan (Unlock), by Robert LaBrant alleging violations of the Michigan Campaign Finance Act (MCFA or Act). This letter concerns the current disposition of the complaint against your clients.

The complaint alleged that MCFR and MMM solicited or received donations for the purpose of making expenditures to Unlock. Unlock is a ballot question committee regulated by the MCFA. In support of these claims, Mr. LaBrant stated that MCFR and MMM together contributed over \$2.3 million in funding to Unlock from June to October 2020, “nearly 86%” of Unlock’s total funding during that period. The complaint also showed that MCFR and/or MMM frequently provided large amounts of funding to Unlock within days of Unlock making a large payment to the outside signature-gathering firm National Petition Management (NPM).

MCFR and MMM also jointly responded to the complaint.¹ In their response, MCFR and MMM claimed that neither organization “solicited or received contributions for the purpose of making an expenditure to Unlock Michigan or any other ballot question committee.” MCFR and MMM included a September 9, 2020 affidavit from Heather Lombardini stating that “MCFR ha[d] not

¹ MCFR and MMM also alleged that the instant complaint should be dismissed as a successive complaint. However, as indicated in the Department’s April 9, 2021 dismissal to Mr. LaBrant, the prior complaint asked the Department only to investigate whether 5 contributions were violative of the Act. Because the instant complaint raises allegations not previously addressed in the first complaint, and adds an additional party, the Department does not treat this as a successive complaint.

solicited or received contributions for the purpose of making an expenditure to Unlock Michigan or any other ballot question committee.”²

Mr. LaBrant provided a rebuttal statement. In his rebuttal, Mr. LaBrant cited the failure of MCFR or MMM to provide financial statements or other information showing that the organizations did not violate the MCFA as evidence that the organizations had in fact violated the Act.

On October 8, 2021, the Department requested that MCFR and MMM provide the Department with IRS Form 990s for calendar year 2019 and 2020. The Department also requested that each organization provide the date and amount of each donation received in excess of \$500 or expenditure made in excess of \$500 between January 1, 2020 and the present, as well as the total value of assets controlled by each organization after each of those donations and expenditures. MCFR and MMM each provided a Form 990 for calendar year 2019 but declined to provide a Form 990 for calendar year 2020 and declined to provide the requested information about expenditures, contributions, and assets.

In Michigan, a committee is an organization which “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). The MCFA requires committees to file certain campaign statements detailing contributions and expenditures. See, e.g., MCL 169.234. Failure to file these required statements can result in civil and criminal penalties. *Id.* An organization making an expenditure to a ballot question committee is not a committee under the MCFA and is not subject to the reporting requirements of the MCFA, however, unless that organization “solicits or receives contributions for the purpose of making an expenditure to that ballot question committee.” MCL 169.203(4). Upon meeting the definition of committee, the organization is obligated to file a statement of organization with the appropriate filing official within 10 days of the committee’s formation, MCL 169.224, and is also required to file various campaign statements detailing the organization’s contributions and expenditures.

As discussed below, the Department finds that there may be reason to believe that MCFR and MMM violated the MCFA. Both MCFR and MMM may have taken actions that qualify each organization as ballot question committees under the MCFA. At the end of calendar year 2019, MCFR had \$715,137 in assets, and MMM had \$172,452 in assets. From June to October 2020, MCFR contributed approximately \$1,780,000 to Unlock, while MMM contributed

² For the reasons more fully set forth below, despite these statements presented in the affidavit, they are not enough to overcome the other evidence submitted.

approximately \$550,000. In each case, the contributions by each organization to Unlock during 2020 far exceeds the assets controlled by each entity at the start of 2020. Moreover, the contributions by MCFR and/or MMM to Unlock were often made within days of similarly sized payments by Unlock to NPM, as set out in the following chart:

Date	Contributing Organization	Amount Contributed to Unlock	Amount Paid by Unlock to NPM
June 9, 2020	MCFR	\$10,000	-
June 18, 2020	MCFR	\$150,000	-
June 24, 2020	MCFR	\$400,000	-
June 25, 2020	-	-	\$300,000
July 20, 2020	MCFR	\$100,000	-
July 21, 2020	-	-	\$100,276.21
July 31, 2020	MCFR	\$35,000	\$100,000
August 3, 2020	-	-	\$44,784.85
August 6, 2020	MCFR	\$150,000	-
August 6, 2020	MMM	\$100,000	\$228,212
August 14, 2020	MCFR	\$25,000	-
August 20, 2020	MMM	\$100,000	-
August 21, 2020	MCFR	\$110,000	-
August 21, 2020	MMM	\$100,000	\$330,000
August 27, 2020	MCFR	\$700,000	-
August 28, 2020	-	-	\$166,248.86
August 31, 2020	-	-	\$160,317.68
September 11, 2020	-	-	\$183,298.30
September 18, 2020	-	-	\$150,000
October 1, 2020	MCFR	\$100,000	-
October 1, 2020	MMM	\$150,000	-
October 5, 2020	-	-	\$218,203.96
October 21, 2020	MMM	\$100,000	-

Given that contributions by MCFR and MMM to Unlock were closely followed by expenditures Unlock made to NPM totaling an almost identical value, it is clear that MCFR and MMM coordinated to some extent with Unlock. Accounting for the assets controlled by each organization at the end of calendar year 2019, between January 1, 2020, and October 1, 2020, MCFR solicited/received at least \$1,064,863 in contributions, while between January 1, 2020, and October 21, 2020, MMM solicited/received at least \$377,548.

As previously stated, it is not a violation of the Act for a group to raise funds in its normal course of conduct and make contributions to a ballot question committee or to coordinate with that ballot question committee. It is, however, a violation of the Act for an organization to raise

money on behalf of the ballot question committee in order to shield the organization's donors from the reporting requirements of the Act. The fundraising necessary to allow MCFR to contribute \$1,780,000 to Unlock and MMM to contribute \$550,000 to Unlock from June to October 2020 is substantial. Although it may be possible that each entity raised those funds in the first half of 2020 independently of each entity's support for Unlock, to assume that the aggressive fundraising activity necessary for each organization to raise the sums that were then transferred to Unlock was completely independent strains credulity. The disparity between each organization's assets going into 2020, the amount that each organization contributed to Unlock, and the timing of those contributions demonstrate a level of coordination showing the entities were not independent of each other.

In particular, the number of payments that MCFR and/or MMM made to Unlock days before Unlock made similarly sized payments to NPM suggests that MCFR and MMM were soliciting or receiving funds for the purpose of collecting contributions with the intent of financially supporting Unlock. Such fundraising for the purpose of supporting a ballot question committee, as is evidenced in the instant case, makes MCFR and MMM themselves ballot question committees responsible for registration and for filing appropriate campaign statements under the MCFA, but neither organization, to date, has registered as a committee nor filed those campaign statements as required by sections 24 and 33 of the Act.

Given the coordination between Unlock, the proximity of contributions made to Unlock and the expenditures made by Unlock, and the fact that neither MCFR nor MMM would have been able to make such contributions to Unlock without soliciting/receiving additional funds during 2020, there is reason to believe that MCFR and MMM may have solicited/received funds for the purpose of making contributions to Unlock.

When presented with a complaint, the Department is tasked to determine "whether or not there may be reason to believe that a violation of [the MCFA] occurred."³ MCL 169.15(10). Once the

³ 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 notes that, under federal law, the Federal Election Commission (FEC) will initiate an investigation into a campaign finance complaint if the Commission finds that "reason to believe that a violation of [federal law] has occurred or is about to occur." 11 CFR § 111.10. The FEC will find that "reason to believe" a violation has occurred or is about to occur when "the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation." Federal Election Commission; Policy Statement; Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 51, 12545 (March 16, 2007). Because the MCFA sets a lower threshold for the Department to initiate an informal resolution process – whether there "*may be* reason to believe that a violation of [the MCFA] occurred" (emphasis added) – than federal law sets for the FEC to initiate an investigation – whether there *is* "reason to believe" – 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.

Department has made this determination, the Department must employ “informal methods such as a conference [or] conciliation” to correct the potential violation or to prevent further violation. *Id.* As part of the informal resolution process, parties may furnish the Department with evidence showing that a potential violation of the MCFA has not actually occurred. It is possible that MCFR and/or MMM can provide information tending to show that its fundraising activities in 2020 were in fact independent of subsequent or concurrent donations to Unlock, and thus demonstrate that MCFR and/or MMM are not ballot question committees regulated by the MCFA. However, such information has not been made available to the Department, and the evidence available to the Department at this time suggests that “there may be reason to believe” that MCFR and MMM “solicit[ed] or receiv[ed] contributions for the purpose of making an expenditure” to Unlock, and thus that MCFR and MMM are ballot question committees under the MCFA with corresponding and unfulfilled filing obligations.

This letter serves to notify you and your clients that the Department has determined there may be reason to believe that your clients have violated the Act, and serves to notify you and your clients that the Department is beginning the informal resolution process. “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 fracassia@michigan.gov by 5:00 p.m. on Friday, November 5 to discuss a resolution to matter, including additional information your clients may be able to provide that may affect the Department’s determination of the scope of any violation that may have occurred.

Sincerely,



Adam Fracassi

Bureau of Elections



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

August 29, 2022

American Civil Liberties Union
125 Broad Street
New York, NY 10004

Sixteen Thirty Fund
1828 L Street, NW, Suite 300B
Washington DC 20036

Re: *The Foundation for Accountability and Civic Trust v. American Civil Liberties Union, Sixteen Thirty Fund*
Campaign Finance Complaint No. 2022-07-42-215

Dear American Civil Liberties Union and Sixteen Thirty Fund:

The Department of State (Department) has received a formal complaint filed against you by The Foundation for Accountability and Civic Trust alleging that you violated the Michigan Campaign Finance Act (MCFA or Act). Specifically, the complaint alleges that you solicited or received funds to your organizations for the purpose of collecting contributions with the intent of financially supporting the ballot question committee Michiganders for Fair Lending. A copy of the complaint is included with this notice.

As the Department stated in a 2020 campaign finance complaint determination,¹ "it is not a violation of the Act for a group to raise funds in its normal course of conduct and make contributions to a ballot question committee or to coordinate with that ballot question committee. It is, however, a violation of the Act for an organization to raise money on behalf of the ballot question committee in order to shield the organization's donors from the reporting requirements of the Act." The complaint alleges that your groups' activities amount to such a violation.

If, as the complainant alleges, you solicited or received contributions for the purpose of making an expenditure to a ballot question committee, and if you met applicable contribution and expenditure thresholds, you would be required to file as a ballot question committee yourselves, and to report and publicly disclose certain information. MCL 169.203(4), MCL 169.234.

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

¹ *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! MyMichigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021)

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 process is included in the enclosed guidebook.

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. Materials may be emailed to BOERegulatory@michigan.gov or mailed to the Department of State, Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918. 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 The Foundation for Accountability and Civic Trust, who will have an opportunity to submit a rebuttal statement to the Department. After reviewing 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 penalty provided in section 33(11) of the Act.

If you have any questions concerning this matter, you may contact the Regulatory Section of the Bureau of Elections at BOERegulatory@michigan.gov.

Sincerely,

Regulatory Section
Bureau of Elections
Michigan Department of State

Guidebook for Complainants and Respondents on the
Campaign Finance Complaint Process



Bureau of Elections

June 2019

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Introduction

The purpose of this guidebook is to assist complainants and respondents and educate the public concerning enforcement matters filed under Section 15 of the Michigan Campaign Finance Act (MCFA or Act) with the Michigan Department of State (Department). This guidebook summarizes the Department's general enforcement policies and procedures and provides a step-by-step guide through filing a complaint with the Bureau and the complaint process as a whole.

This guidebook does not replace the law, change its meaning, or create any rights for or against any person. Nor does it bind the Department in a specific manner. It is intended to provide guidance and be a general reference guide through the process. It is not intended to be an exhaustive list of procedures and does not attempt to address every situation that may arise during the complaint process.

In addition to the MCFA, everyone should consult the Department's administrative rules that have been promulgated, the Declaratory Rulings and Interpretive Statements issued by the Department, previously resolved complaints, and relevant case law.

From the outset, please note:

- Except as noted under section 57 of the Act, there is no private right of action under the Act and the remedies for potential violations are specifically outlined in the Act. The Department has the exclusive authority over compliance matters under the Act unless specifically noted in section 17.
- The designation of "complainant" and "respondent" are based upon who files the complaint (complainant) and the person the complaint is filed against (respondent).
- The Department's investigative process is carried out through the Bureau of Elections and is governed by Section 15 of the Michigan Campaign Finance Act (MCFA or Act) along with part 5 of the Department's administrative rules.
- All documents – including emails – sent or received by the Department may become part of the Department's permanent public record and posted on the Department's website.

I. Complaint Requirements

Section 15 governs the filing and processing of complaints. The complaint must include all of the following:

- The complainant's name, address and telephone number
- Respondent's name and address
- A description of how the MCFA was violated
- Evidence supporting the allegation
- The certification statement as outlined in Section 15(6)
- The complainant's signature

The failure to submit a complaint that furnishes all of the above must result in a dismissal. In the dismissal, the complainant will be notified of which required elements are missing, be provided a copy of the Department's created form, and provided the opportunity to correct the missing information.

Use of the Department's form is not mandatory, but it helps ensure compliance with the Act's requirements.

II. Submitting the Complaint

Pursuant its authority under the Act, the Department has developed a form for the filing of campaign finance complaints. This section walks through the forms requirements and how to fill out the form. Copies of the form are available on the Department's [website](#).

Section 1: Complainant Information

First, the person filing the complaint must fill out section 1.

This section requests the complainant provide his or her name, mailing address, and contact information. An email address is requested but is not mandatory. Should an email address be provided, the Department will communicate via email.

Section 1. Complainant		
Your Name	Daytime Telephone Number	
Mailing Address		
City	State	Zip
Email (optional)		

Should an email address be provided, the Department will communicate via email.

Except for an email address, these sections are mandatory. MCL 169.215(6)(a)-(c). Failure to fill out the required information may result in a dismissal. Please note the Department cannot investigate anonymous complaints.

Section 2: Respondent Information

Section 2 requires the complainant fill out the alleged violator's information. At a minimum, this section should contain the respondent's name and mailing address. These sections are required, and the failure to include any of this required information will result in a dismissal of the complaint.

If a phone number and email are known, they should also be provided.

Section 2. Alleged Violator		
Name		
Mailing Address		
City	State	Zip
Email (optional)		

Section 3: Allegations

Section 3 requires the complainant provide evidence supporting the allegations in the complaint. If more space is needed, you may use additional sheets.

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

Section(s) of the MCFA alleged to be violated: _____

The first question asks the filer to indicate which section of the MCFA is alleged to be violated. While not required, this assists the Department in identifying potential violations. The answer to this question should cite a provision of the Michigan Campaign Finance Act. The Department cannot investigate claims brought under any other act (e.g. Michigan Election Law).

Explain how those sections were violated:

The second section provides space for the complainant to explain how the section(s) of the MCFA identified in the first question has been violated. In this section, the complainant should describe in reasonable

detail the alleged violation and identify any and all legal arguments that support his or her position. The Department must provide the allegations to the respondent, and allegations that were available at the time of the complaint but not submitted at the time of filing may not be considered in later stages of the complaint process. Complaints should be as factually specific as possible.

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

The final question asks the complainant to identify the evidence that is being submitted that supports the allegations in

the complaint. All available evidence is required to be identified and submitted per the Department's administrative rules. R. 169.52(2).

If the allegations in the complaint are based in whole or in part upon information contained in an advertisement, news article, or website, the complaint should provide a copy of the relevant advertisement, news article, or link to the website, if possible. If the complaint is about specific campaign material, photocopies or pictures of the material should be provided. Complaints should be filed as soon as possible after the alleged violation becomes known to the complainant in order to preserve evidence as committees are only required to retain records for five years.

In order to be investigated, the burden is placed on the filer to submit any and all available evidence. The Department cannot investigate complaints that do not contain sufficient evidence or complaints that are based upon speculation. If the filer is unable to obtain evidence but is able to make the certification statement contained within section 5 of the complaint, the Department may investigate the complaint.

Sections 4 & 5: Certification

Once the complainant has completed sections 1-3, the complainant must sign the verification statement contained within either section 4 or 5. If evidence is being submitted with the complaint, the complainant should sign the verification statement in section 4.

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:

If, after a reasonable inquiry under the circumstances, the complainant is unable to obtain evidence, the complainant should sign the verification statement in section 5 providing enough factual allegations to warrant investigation.

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:

A person that files a complaint with a false certification is responsible for a civil violation of the MCFA. MCL 169.215(8). 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.

X _____
Signature of Complainant Date

Section 6: Submission

Upon the completion of the form, the complainant should mail, or hand deliver the complaint form and all evidence to the Bureau of Elections at the following address:

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

Complaints are considered filed on the date the Bureau receives the submitted form and the evidence. Complaints **must** be submitted to the Bureau and may not be accepted by county or local clerks.

III. The Investigation

Upon the submission to the Department of the complaint, the Department will conduct a preliminary review to determine whether there is sufficient information to warrant an investigation or whether the complaint should be summarily dismissed.

Summary dismissal

If the Department determines that complaint does not warrant an investigation, the complaint will be dismissed. R. 169.53. Some reasons where a complaint would not warrant an investigation include (but are not limited to):

- The complaint is frivolous, illegible, unsigned, or does not contain a verification statement. R 169.53.
- There is no evidence submitted with the complaint. R. 169.52(2).
- The complaint does not contain the form requirements under MCL 169.215(6).
- The violations are brought under other provisions of Michigan law and not the Michigan Campaign Finance Act. R. 169.53.
- The activity alleged in the complaint does not constitute a violation of the MCFA. R. 169.53.

If a complaint is summarily dismissed, the complainant will be notified in writing with the reasons for the dismissal. If the complainant addresses the reasons for dismissal (i.e., by providing new evidence to corroborate the allegation), the complaint may be resubmitted. The Department may dismiss the complaint in its entirety or portions. Alternatively, the Department may issue a warning letter in lieu of investigating.

Successive complaints

If the Department receives multiple complaints which allege the same violation(s) against the same persons regarding the same evidence or activity, the Department may investigate only the first complaint filed and may dismiss any successive complaints. Upon the conclusion of the investigation, any complainant that filed a successive complaint that was summarily dismissed as duplicative will be notified of the resolution.

If the complaints are distinct enough to warrant investigation, the Department may merge complaints and render one determination for the purpose of administrative efficiency. If the complaints are merged, notice of the merger will be provided to all parties involved.

Notice to respondent

If the Department determines the complaint warrants an investigation, the Department will assign the complaint an identification number and mail a written Notice of the Complaint to the respondent. The notice will include the written notice, a copy of the complaint, all submitted evidence, information describing the Department's complaint procedures, and the contact information for the Bureau. MCL 169.215(5). A copy of the notice will also be provided to the complainant. *Id.*

The notice of the complaint alerts the respondent of the Department's intent to investigate the allegations contained within the notice. The Department may dismiss a portion of the claims raised in the complaint. Any claims dismissed, will be described in the notice.

Answering the complaint

The answer is the respondent's opportunity to clarify, correct, or supplement the information contained within the complaint or to otherwise demonstrate to the Department why the Department should not pursue compliance action. There is no prescribed format for answers. While not required, providing documentation or additional evidence or sworn affidavits from persons with first-hand knowledge of the facts, is helpful. It is also helpful for the respondent to directly answer every allegation in the complaint that has not been dismissed by the Department.

The respondent must respond to the notice of the complaint within **15 business days of the date of the notice of the complaint**. MCL 169.215(5). The answer should be submitted to the Department through the Bureau of Elections via mail, or hand delivery at the address provided above. The answer may also be emailed directly to the person investigating the complaint as identified in the Notice of the Complaint.

The respondent may request one 15-business day extension upon a showing of good cause. Requests for an extension should be sent to the Bureau and may be submitted via mail or email. Regardless of the way the extension is requested, the Department will respond via writing.

Failure to respond to the complaint will force the Department to render a determination based solely upon the allegations contained within the complaint.

Representation by counsel

Respondents have a right to be represented by counsel during all or any portion of the complaint process and may designate or change counsel at any point. A respondent who obtains legal representation must inform the Department by providing counsel's mailing address, telephone number, and email address.

This notification is most often done via the filing of the answer, but if counsel is obtained after the answer has been filed, the respondent or counsel must notify the Department as soon as practicable. Once counsel has been obtained, the Department will cease communicating directly with the respondent absent permission from counsel.

Rebuttal

Upon receipt of an answer, the Department will mail an Answer Notice which provides a copy of the answer and all evidence to the complainant. A copy of this notice will also be sent to the respondent. MCL 169.215(5).

The complainant has the final opportunity to respond to the Department via a rebuttal statement. If a complainant elects to file a rebuttal statement, the rebuttal statement should counter any arguments presented in the answer to the complaint. The purpose of the rebuttal is not to present new allegations or evidence.

The rebuttal statement should be submitted via mail, email, or hand delivery to the Bureau of Elections. The rebuttal statement is due **10 business days after the date contained at the top of the Answer Notice**. If a rebuttal is received, it will be mailed to the respondent, with a copy sent to the complainant.

The Department may extend this deadline once by an additional 10 business days upon a showing of good cause. Requests for an extension should be sent to the Bureau and may be submitted via mail or email. Regardless of the way the extension is requested, the Department will respond via writing.

IV. Making a Determination

Upon receipt of the rebuttal statement (or after time has elapsed for the filing of a rebuttal), the Department has 45 business days to determine whether there is reason to believe a violation of the Act has occurred. During this stage of the process, the Department will typically only correspond with the respondent.

Requests for additional information

In order to make a determination, the Department will review all documents submitted with the complaint, response, and rebuttal. The Department may also conduct in-person or telephone interviews with persons, including respondents or third-party witnesses, and make informal requests for information and documents from the parties or third-party witnesses. Staff may also examine relevant information from publicly available sources such as campaign finance reports filed with the Department or county clerks.

Informal resolution

If the Department determines that there is reason to believe a violation of the Act has occurred, the Department is required to endeavor to correct the violation or prevent a further violation through informal methods. MCL 169.215(10).

Informal resolutions include a conference, formal warning letter, or a conciliation agreement. Generally, an offer to informally resolve the complaint will be sent with the initial determination and will only be sent to the respondent.

Conciliation agreements

One method of informal resolution is entering into a conciliation agreement. If the Department enters into a conciliation agreement, the agreement is a complete bar to further action for four years unless the agreement is violated. MCL 169.215(10).

When a determination is made and the respondent receives a conciliation agreement, the respondent should sign the conciliation agreement if he or she accepts the Department's offer to resolve the complaint. The original copy must be mailed back to the Department. The conciliation agreement is considered received upon the receipt of the original by the Bureau of Elections.

Upon receipt of the conciliation agreement, the Department's authorized representative will sign the agreement. The agreement becomes effective upon the Department's signing. A copy of the fully executed agreement will be mailed to all parties and is required to be posted on the Department's website within 30 days of being signed.

Formal resolution

If the Department is unable to reach an informal resolution after 90 business days, the Department is required to either: (1) refer the matter to the Attorney General for enforcement of criminal penalties under the Act; or (2) commence an administrative hearing for enforcement of any civil violation.

If the Department commences an administrative hearing, the Department is authorized to seek a civil fine triple the amount of the improper contribution or expenditure plus up to \$1,000 for each violation of the Act. MCL 169.215(11). Hearings are conducted by an administrative hearings officer in accordance with the procedures set forth in chapter 4 of the Administrative Procedures Act (APA), 1969 PA 306, MCL 24.271 to 24.287.

A final decision and order issued by the Department after an administrative hearing is subject to judicial review as outlined under the APA. If a civil fine is imposed after a hearing, the Department may commence an action in circuit court to recover the fine.

Posting of file

Upon making a determination, the Department is required to post on its website whether there may be reason to believe a violation did or did not occur. MCL 169.215(10). Within 30 days of this determination, the Department must post the file. *Id.* At the conclusion of the process, all records that have been gathered during the course of the investigation will be posted online

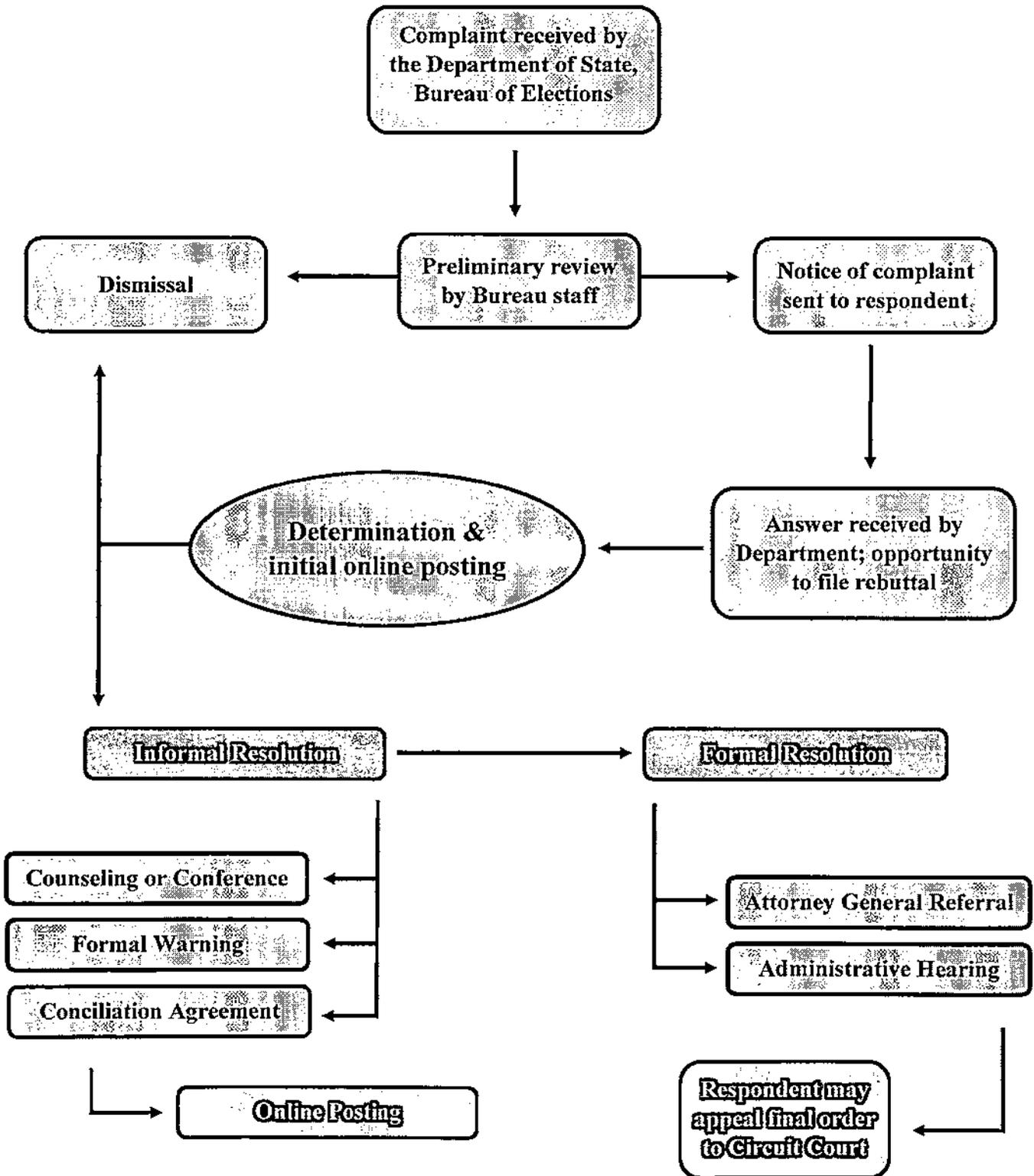
unless they are exempt under the Michigan Freedom of Information Act. Offers to resolve the complaint and general negotiations **will not** be sent to the complainant and **will not** be posted online.

V. Additional Resources

Summary of Deadlines

<u>Action Item</u>	<u>Due date</u>
Complaint	5 years from date of incident
Notice of complaint or summary dismissal	5 business days from date of receipt
Answer to complaint	15 business days from date of the notice of the complaint (absent extension)
Rebuttal	10 business days from the date of the notice of answer (absent extension)
Determination & online notification	45 business days from date of receipt of rebuttal statement or date rebuttal statement was due if none received.
Posting of entire file	30 days from date of determination
Informal resolution period	90 business days from date of determination
Posting of conciliation agreement	30 days from date of signing

Summary of compliance proceedings (flow chart)



September 16, 2022

State of Michigan
Department of State
Bureau of Elections
Regulatory Section
Submitted via email to BOERegulatory@michigan.gov



National Office
125 Broad Street
18th Floor
New York, NY 10004
aclu.org

Deborah N. Archer
President

Anthony D. Romero
Executive Director

Dear Bureau of Elections Regulatory Section:

We write in response to the complaint made against American Civil Liberties Union, Inc. filed by Foundation for Accountability and Civic Trust on July 7, 2022 (the "Complaint") and the notification of time to respond from the Michigan Department of State, Bureau of Elections, Regulatory Section, dated August 29, 2022.

This response is made only on behalf of American Civil Liberties Union, Inc. ("ACLU National"), a District of Columbia nonprofit corporation recognized as exempt from federal income tax under Internal Revenue Code Section 501(c)(4). American Civil Liberties Union of Michigan is not named in the Complaint, but, for clarity, please be advised that American Civil Liberties Union of Michigan is affiliated with ACLU National but is an autonomous legal entity not under the control of ACLU National.

ACLU National is a national organization that was founded in 1920 to defend and preserve the individual rights guaranteed under the United States Constitution. Though often best known for its litigation advocacy through its 501(c)(3) organization, American Civil Liberties Union Foundation, Inc., ACLU National also devotes some resources of its 501(c)(4) organization to advancing and defending constitutional rights through ballot question advocacy. To that end, ACLU National has made contributions to Michiganders for Fair Lending, a Michigan ballot question committee ("MFL"). ACLU National was not formed to support MFL and does not have any shared corporate officers or directors with MFL. The Complaint alleges that ACLU National should have registered as a Michigan ballot question committee as a result of its contributions to MFL. On the contrary, ACLU National had no obligation to register under the plain language of Michigan campaign finance law because ACLU National did not receive or solicit, and as a well-capitalized organization, did not need to receive or solicit, contributions for the purpose of supporting a Michigan ballot question committee. The Complaint attempts to demonstrate that registration was



required solely because it suggests ACLU National coordinated with the ballot question committee, which is a misapplication of the law.

For the reasons described here, we respectfully request that the Department of State (“Department”) find no reason to believe ACLU National violated the law in this matter pursuant to Mich. Comp. Stat. § 169.215.

I. The Law.

Under Michigan law, a committee is “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.” Mich. Comp. Stat. § 169.203(4). The law goes on to explain that an organization “making an expenditure to a ballot question 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.” *Id.* The Department’s guidance further explains this language by stating that “[t]herefore, if a Ballot Question Committee receives a contribution from a corporation, labor organization, domestic dependent sovereign or other organization transferring treasury funds to a Ballot Question Committee, the organization is not required to register under the MCFA as long as the funds were not solicited or received for that purpose.”¹

The Department applied these provisions in the enforcement matter of *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*. In its decision filed on October 27, 2021, the Department found reason to believe that the respondent organizations were obligated to register as committees because they had solicited funds for the purpose of supporting a Michigan ballot question committee. The Department based this finding on the fact that the organizations were severely undercapitalized, and thus must have needed to aggressively raise funds in order to make the reported contributions to the ballot committee involved, Unlock Michigan. The Department looked to the coordination between all of the entities and the proximity of payments from the respondents to the ballot question committee as evidence that the required fundraising being done by the respondents in order to make payments to the ballot question committee

¹ Department Ballot Question Committee Manual *available at* <https://mertsplus.com/mertsuserguide/index.php?n=MANUALBAL.TheStatementOfOrganizationFormingAndRegisteringABallotQuestionCommittee>



must have been for the purpose of supporting that ballot question committee. In doing so, the Department was careful to affirm that “it is not a violation of the Act for a group to raise funds in its normal course of conduct and make contributions to a ballot question committee or to coordinate with that ballot question committee.” *LaBrant* Decision filed October 27, 2021, pp 3-4.

Notably, the Department concluded that “[g]iven the coordination between Unlock, the proximity of contributions made to Unlock and the expenditures made by Unlock, *and* the fact that neither MCFR nor MMM would have been able to make such contributions to Unlock without soliciting/receiving additional funds during 2020, there is reason to believe that MCFR and MMM may have solicited/received funds for the purpose of making contributions to Unlock” (emphasis added). This analysis therefore examined the timing of contributions made to the committee and coordination among the entities, but ultimately turned on one required, necessary fact under Michigan law – that the organizations had to have raised money to make the contributions.

II. Analysis of ACLU National’s Activities under Michigan Law.

- a. **ACLU National is not required to register because it did not receive or solicit—and did not need to receive or solicit—contributions for the purpose of supporting a Michigan ballot question committee.**

ACLU National did not receive or solicit contributions for the purpose of supporting MFL or any other Michigan ballot question committee. Affidavit of Terence Dougherty, ACLU National Deputy Executive Director, para. 3, enclosed as Exhibit 1. Moreover, ACLU National maintains a practice within its Development Department of not soliciting donations for, and not linking any donation with, any particular piece of Michigan ballot question work. Dougherty Affidavit, para. 2.

Indeed, ACLU National is distinguishable as a threshold matter from the organizations that are the subject of the *LaBrant* decision, which the Complaint exclusively relies on, in that ACLU National is an over 100-year-old, well-capitalized national organization with no need to raise funds for the purpose of supporting a Michigan ballot question committee. Its most recently available Form 990, for the fiscal year closing March 31, 2021, shows an ending balance of net assets of \$161,495,601.² ACLU National is currently auditing financials for the fiscal year ending March 31, 2022, covering the period the Complaint focuses

² This Form 990 is publicly available on ACLU National’s website and is accessible here: https://www.aclu.org/sites/default/files/field_document/2020_aclu_form_990_public_disclosure_copy.pdf

on, but we enclose the monthly balance statements for ACLU National for January, February, and March 2022, showing net assets as of the close of those months, ranging from \$125,094,078 to \$143,103,693. Exhibit 2; Dougherty Affidavit, para. 4.

These financial documents clearly demonstrate that ACLU National had no need to aggressively fundraise as the organizations discussed in *LaBrant* did, and indeed ACLU National did not fundraise for the purpose of these contributions at all. Dougherty Affidavit, para 3. ACLU National had millions of dollars in existing cash on hand in general treasury funds available to make contributions in early February, early March, and early April 2022.



The Complaint describes the *LaBrant* decision as a factual scenario in which the Department found an organization had solicited for the purpose of making ballot question contributions where “the organization solicits funds prior to or simultaneously with making contributions to a Michigan ballot question committee.” Complaint at 6. The Complaint then attempts to apply this conclusion, made in the case of what appear to be undercapitalized shell organizations, to ACLU National. This is not only a poor application of *LaBrant*, but a troubling proposition. If the argument in the Complaint is taken seriously, no national organization, indeed no organization at all with continuous and ongoing general fundraising, may contribute to a Michigan ballot question committee for fear of being deemed itself a committee. This entirely contradicts the Department’s assurances in *LaBrant* that “it is not a violation of the Act for a group to raise funds in its normal course of conduct and make contributions to a ballot question committee. . . .” *LaBrant* at 3-4.

b. The Complaint erroneously treats coordination as ipso facto solicitation.

Complainants further characterize the Department’s *LaBrant* decision as standing for the proposition that “coordination” is a basis for finding reason to believe a donor to a ballot question committee solicited or received contributions itself for the purpose of making an expenditure to the ballot question committee. But this is plainly not the case, as the Department clearly states in *LaBrant*, “it is not a violation of the Act for a group to raise funds in its normal course of conduct and make contributions to a ballot question committee or to *coordinate* with that ballot question committee.” *LaBrant* at 3-4 (emphasis added). Nevertheless, the Complaint attempts to unreasonably apply the findings in *LaBrant*, which are specific to undercapitalized organizations, to ACLU National.

In the absence of facts suggesting an organization did solicit or must have solicited funds for the purpose of making expenditures to a ballot question

committee, it is unnecessary and irrelevant to evaluate the proximity of donations to a ballot question committee and payments made by the ballot question committee to vendors, or other evidence of coordination between a donor and recipient committee. Unlike the organizations in the *LaBrant* matter, ACLU National had more than sufficient funds available to make contributions to MFL without soliciting or receiving funds for such purposes. ACLU National is also not a shell organization that gives all of its funds to ballot committees or exists only to give funds to ballot committees—rather, for more than 100 years, ACLU National has engaged in a robust program of activities across the nation to protect civil liberties.



Unremarkably, ACLU National did time its contributions to MFL based on discussions with MFL. Contributions were made to coincide with each phase of MFL’s signature-gathering effort rather than in one lump sum. This was done as a matter of fiscal prudence and to address the uncertainty of whether signature-gathering efforts could proceed at all during the ongoing COVID-19 pandemic. Dougherty Affidavit, para 6.

Regardless, given ACLU National did not solicit or receive funds for the purpose of making contributions to MFL, has demonstrated it is well-capitalized, and shares no corporate officers or directors with MFL, the degree of coordination or lack thereof between ACLU National and MFL is inconsequential.

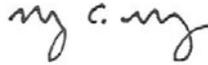
III. Conclusion.

As discussed above, ACLU National is not obligated to register as a ballot question committee because it did not solicit or receive funds for the purpose of supporting a Michigan ballot question committee. To the extent that ACLU National coordinated with MFL, that activity was clearly permissible under Michigan law and not an indication of any solicitation by ACLU National.

Thus, for the reasons discussed above, we respectfully request that the Department find no reason to believe ACLU National violated the law.

Should the Department require additional information in this matter, we request that the Department contact ACLU National at the contact information provided below.

Sincerely,



Margaret Rohlfing
Co-Chief Corporate Counsel
American Civil Liberties Union, Inc.
212-519-7865
mrohlfing@aclu.org



Enclosures (2)

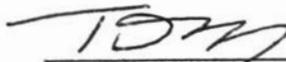
EXHIBIT 1

Affidavit of Terence Dougherty



1. I serve as Deputy Executive Director for Operations and General Counsel of American Civil Liberties Union, Inc. ("ACLU National"). In that role, I exercise oversight and supervision of ACLU National's Finance; Corporate Counsel; Business Operations, Compliance, and Facilities; Information Technology and Security; Data Governance; Product Technology; Analytics; and Human Resources units.
2. ACLU National's Development Department works with its Finance and Corporate Counsel teams to maintain a practice of not soliciting donations for, and not linking any donation with, any particular piece of Michigan ballot question work.
3. ACLU National's Corporate Counsel team has confirmed with all relevant teams that ACLU National did not solicit or receive contributions on behalf of ACLU National for the purpose of supporting Michiganders for Fair Lending ("MFL") or any other Michigan ballot question committee.
4. ACLU National has not completed its financial audit for the months named in the Complaint, but the monthly balance sheet statements for January, February, and March 2022 enclosed hereto as Exhibit 2 were produced by ACLU National's Finance unit and are a full and accurate reflection of ACLU National's financial position as of the indicated dates.
5. ACLU National shares no overlapping corporate officers or directors with MFL.
6. In overseeing the Finance and Business Operations units, I have oversight responsibilities with respect to ACLU National's transfers of funds, budget management, and COVID-19 protocols. MFL's signature gathering process occurred during the ongoing COVID-19 pandemic. Due to the constantly evolving nature of the pandemic and the fact that signature gathering in person might need to be paused or suspended, ACLU National made its contributions to coincide with each phase of signature gathering by MFL, allowing for evaluation of COVID-19 developments and protocols at the time of each contribution.

I swear and affirm that the above statements are true and correct to the best of my knowledge and belief.



Terence Dougherty

Date: 9/14/22

EXHIBIT 2

January, February, and March 2022 Balance Sheet Statements for
American Civil Liberties Union, Inc.



American Civil Liberties Union
ACLU Standalone Statement of Financial Position
Unaudited Monthly Comparison

	January 31, 2022	February 28, 2022	March 31, 2022
1 Assets:			
2 Cash and cash equivalents	\$ 14,365,440	5,177,123	\$ 21,373,492
3 Pledges and contributions receivable, net	710,755	2,694,765	2,694,765
4 Investments	115,794,996	113,711,400	111,644,667
5 Other assets	375,878	246,532	722,999
6 Due from affiliates	1,033,105	1,186,772	1,413,617
7 Due from affils - alloc. share of pens. liability	11,254,991	11,011,538	11,011,538
8 Office bldgs and furn. & equip, net of deprec.	161,362	312,183	296,584
9 Intangibles, net of amortization	1,797,638	1,870,019	1,786,182
10 Due from the ACLU Foundation for shared costs	35,095,969	84,515,004	18,983,114
11 Total Assets:	\$ 180,590,135	\$220,725,336	\$169,926,958
12 Liabilities and Net Assets			
13 Liabilities:			
14 Accounts payable and accrued expenses	\$ 7,028,466	\$5,521,507	\$13,896,841
15 Due to affiliates	6,132,013	12,299,780	6,658,359
16 Bill of Rights Trust held for affiliates	5,077,360	5,077,360	5,029,077
17 Accrued pension liability	19,248,602	19,248,602	19,248,602
18 Total Liabilities:	\$ 37,486,442	\$42,147,249	\$44,832,880
19 Net assets:	143,103,693	130,716,122	125,094,078
20 Total Liabilities and Net Assets	\$ 180,590,135	\$ 172,863,371	\$ 169,926,958

VIA EMAIL

September 19, 2022

Michigan Department of State
Bureau of Elections
Email: BOERegulatory@michigan.gov

Re: July 7, 2022 Foundation for Accountability and Civic Trust Campaign Finance Complaint

To Whom It May Concern:

We are counsel to Sixteen Thirty Fund (“*Sixteen Thirty*”) and write on behalf of our client to respond to the complaint filed by the Foundation for Accountability and Civic Trust (the “*Complainant*”) on July 7, 2022 (the “*Complaint*”) alleging that Sixteen Thirty should have registered as a committee under Michigan campaign finance law on the basis of the claim that it allegedly “solicited or received contributions for the purpose of making an expenditure to a ballot question committee.”¹ This claim is entirely without merit. As explained below, Sixteen Thirty did not solicit or receive contributions for the purpose of making expenditures to a Michigan ballot question committee and the Complaint provides no evidence to support its allegation. The Complaint should be summarily dismissed.

I. Factual Background

Sixteen Thirty, established in 2009, is a national 501(c)(4) non-partisan organization that supports social impact initiatives and campaigns to create a more just, fair, and equitable society.² For the past thirteen years, Sixteen Thirty has engaged in activity across the country, operating for the purpose of promoting social welfare, including providing public education on and advocating for progressive policies.³

Sixteen Thirty provides funding to progressive entities across the country. As reported in Sixteen Thirty’s most recently publicly released IRS Form 990, Sixteen Thirty spent more than \$410 million in 2020.⁴ And, an internal review of Sixteen Thirty’s financial records shows that Sixteen Thirty spent more than \$173 million in 2021 and started the 2022 fiscal year with \$97,684,457

¹ Foundation for Accountability and Civic Trust Complaint against Sixteen Thirty Fund at 3 (July 7, 2022) [hereinafter, the “Complaint”].

² Sixteen Thirty Fund, IRS Form 990 (2020), available at <https://www.sixteenthrityfund.org/wp-content/uploads/2021/11/Sixteen-Thirty-Fund-2020-Public-Disclosure-Copy.pdf> [hereinafter, “Sixteen Thirty 2020 Form 990”].

³ See, e.g., *id.*

⁴ *Id.*

assets on hand.⁵ It is anticipated that Sixteen Thirty’s spending during the 2022 fiscal year will be similar to spending from previous years.⁶

Between November 3, 2021 and July 19, 2022, Sixteen Thirty made \$4,795,681.69 in expenditures to Michiganders for Fair Lending (“**Fair Lending**”), a Michigan ballot question committee.⁷ These expenditures, which were made consistent with Michigan law, are detailed below:

Date	Amount
11/03/21	\$25,000.00
12/07/21	\$55,450.00 (in-kind)
02/04/22	\$500,000.00
02/18/22	\$400,000.00
03/09/22	\$39,150.00 (in-kind)
04/07/22	\$600,000.00
05/13/22	\$900,000.00
05/16/22	\$1,575,000.00
06/22/22	\$700,000.00
07/19/22	\$1,081.69 (in-kind)

Contrary to the allegations made in the Complaint, Sixteen Thirty did *not* solicit or receive contributions for the purposes of making expenditures to a Michigan ballot question committee.⁸ Donors give to Sixteen Thirty without designating funds for any particular election, activity, or jurisdiction.⁹ Each expenditure to Fair Lending was accompanied by a letter indicating that no funds were solicited or received by Sixteen Thirty for the purpose of making the expenditure.¹⁰ The decision to contribute to Fair Lending was made under the direction of the Sixteen Thirty board of directors; no Sixteen Thirty donors were involved in that decision.¹¹ Moreover, once Fair Lending received the expenditures from Sixteen Thirty, Fair Lending fully controlled how the funds were used.¹² Notably, Sixteen Thirty and Fair Lending do not have any of the same officers or directors.¹³

⁵ Affidavit of Amy L. Kurtz, Exhibit A.

⁶ *Id.*

⁷ Michiganders for Fair Lending, Quarterly Campaign Statements, available at <https://cfrsearch.nictusa.com/committees/520155>.

⁸ Affidavit of Amy L. Kurtz, Exhibit A.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See Sixteen Thirty 2020 Form 990; Affidavit of Amy L. Kurtz, Exhibit A. The Treasurer of Michiganders for Fair Lending is Dallas Lenear. See Michiganders for Fair Lending, Quarterly Campaign Statements, available at <https://cfrsearch.nictusa.com/committees/520155>.

II. Legal Analysis

The Complaint argues that Sixteen Thirty was required to register as a committee under Michigan law because Sixteen Thirty allegedly “solicited or received contributions for the purpose of making an expenditure to a ballot question committee.”¹⁴ This is false, and the Complaint provides no evidence to support its allegation. The Complaint’s only support for its allegations is an unsuccessful attempt to shoehorn the decision in a recent Michigan Department of State (“*Department*”) case to the present matter. That decision has no applicability to Sixteen Thirty’s expenditures here, and the Complaint misapplies that caselaw and prior decisions to reach conclusions that have no basis in fact. The Complaint should be dismissed as set forth below.

A. The Complaint Should Be Summarily Dismissed for Lack of Evidence.

As a threshold matter, the Complaint should be dismissed for failing to provide evidence that Sixteen Thirty committed a violation under Michigan law. Under Department rules, the Complaint may be summarily dismissed if the Department determines that it is “frivolous ... or does not ... allege a violation of the act,” or if it contains no evidence of a violation.¹⁵

The Complaint filed against Sixteen Thirty is based on speculation and innuendo and provides no evidentiary basis for finding any reason to believe that Sixteen Thirty solicited or received a contribution for the purposes of making expenditures to Fair Lending.¹⁶ The Complaint does not include any evidence because it cannot – such evidence does not exist. For these reasons, the Department should follow its own guidance, take no further action, and summarily dismiss the Complaint.

B. The Complaint Should Be Dismissed Under Mich. Comp. Laws § 169.203 Because Sixteen Thirty is Not a Committee.

Under Michigan law, a “committee” is defined as a “person that receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against ... the 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.”¹⁷ And, a “ballot question committee” is a committee (as defined above) “acting

¹⁴ Complaint at 3.

¹⁵ Mich. Admin. Code R. 169.53; *see also id.* R. 169.52(2); State of Michigan, Secretary of State Bureau of Elections, Guidebook for Complainants and Respondents on the Campaign Finance Complaint Process at 8 (June 2019), available at https://www.michigan.gov/sos/-/media/Project/Websites/sos/05delrio/Complaint_Guidebook_Procedures.pdf?rev=0ddd8315230c45d7b3dfbe3b6a31a0ca&hash=10C809C8617D59113F19E726E9DF8D5C.

¹⁶ Some of the allegations in the Complaint are downright bizarre. For example, the Complaint attempts to imply that the American Civil Liberties Union (“*ACLU*”) and Sixteen Thirty are somehow connected based solely on the fact that both entities made expenditures to Fair Lending. This insinuation is false and not based in reality.

¹⁷ Mich. Comp. Laws § 169.203(4).

in support of, or in opposition to, the qualification, passage, or defeat of a ballot question but that does not receive contributions or make expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate.”¹⁸ Mich. Comp. Laws § 169.203(4) explicitly exempts from the definition of “committee” entities that make expenditures to ballot question committees provided that the entity does not solicit or receive funds “*for the purpose of making an expenditure to [a] ballot question committee[.]*”¹⁹ Put another way, making expenditures to a ballot question committee, alone, does not trigger committee status. The Complaint acknowledges the law is clear on this point.

Given the clear statutory text, the only relevant question is whether Sixteen Thirty solicited or received any funds for the purpose of making an expenditure to a ballot question committee. It did not. The attached affidavit of Sixteen Thirty Fund President Amy L. Kurtz avers to this fact, confirming that Sixteen Thirty did not solicit or receive funds for the purpose of making an expenditure to Fair Lending or any other Michigan ballot question committee.²⁰ As a result, Sixteen Thirty falls clearly within the statutory language exempting such organizations. The Complaint offers only unsubstantiated speculation, failing to show any reason to believe that Sixteen Thirty has violated the law. For that reason, the Complaint should be summarily dismissed.

C. The Complaint Should Be Dismissed As Under Established Department Precedent, Sixteen Thirty is Not a Committee.

Under established Department precedent, Sixteen Thirty is not a “committee” under Michigan campaign finance law.

i. *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*

Sixteen Thirty’s status is very different from the situation found in *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, making the Complaint’s reliance on *LaBrant* meritless. In *LaBrant*, the Department reviewed a complaint alleging that two entities that made expenditures to a ballot question committee should have registered as committees themselves.²¹

¹⁸ *Id.* § 169.202(3).

¹⁹ *Id.* § 169.203(4) (emphasis added) (“A person, other than a committee registered under this act, making an expenditure to a ballot question 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.”).

²⁰ Affidavit of Amy L. Kurtz, Exhibit A.

²¹ State of Michigan, Department of State, *LaBrant v. Michigan Citizens for Fiscal Responsibility Michigan! My Michigan!*, 1-2 (decided October 27, 2021), available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/CFR-Complaints/Labrant-v-MCFR-and-MMM.pdf?rev=6514c4206c264bcd818281874c0ec26a&hash=2C32C3686A36C795A97DB8C6E9F6133D> [hereinafter, “*LaBrant* Decision”].

There, the Department found there was reason to believe that the two entities “may have solicited/received funds for the purpose of making contributions [to a ballot question committee]” based on three factors – (1) the fact that neither group had enough available assets to make such expenditures without soliciting and receiving additional funds during the time period they were contributing to the committee; (2) the proximity of the expenditures to the committee and the committee’s own spending; and (3) coordination between the groups and the recipient committee.²² The circumstances at issue in *LaBrant* are not remotely analogous to those here and the reasoning in that decision does not support finding that Sixteen Thirty meets the statutory definition of a committee.

Specifically, the Department in *LaBrant* noted that because the two groups reported starting the year with significantly fewer assets than they ultimately contributed to the committee, “the fundraising necessary to allow each organization [to make the expenditures was] substantial.” The decision reasoned that because the donating entities were contributing more money than they had available at the end of the most recent reporting period, they *must* have fundraised for the purpose of making expenditures to the ballot question committee.²³ The Department further pointed to expenditures from the donating groups which mirrored the amounts paid by the recipient committee, in some cases, *the very same day* to conclude that the donating groups and the recipient committee were not independent of one another.²⁴

First, unlike the two donating entities in the *LaBrant* decision, Sixteen Thirty had more than enough available assets at the start of 2021 and 2022 to fund its expenditures to Fair Lending.²⁵ Specifically, Sixteen Thirty started the 2022 fiscal year with \$97,684,457 assets on hand.²⁶ Sixteen Thirty did not need to fundraise a single dollar in order to make its expenditures to Fair Lending. As demonstrated, Sixteen Thirty came nowhere close to contributing all of its assets to Fair Lending. As such, there is no basis to conclude that Sixteen Thirty’s ongoing fundraising efforts show “they were accepting contributions with the intent of financially supporting Fair Lending.”

Second, the Complaint desperately relies on *LaBrant* to argue that Sixteen Thirty must have accepted contributions “with the intent of financially supporting Fair Lending” on the basis that Sixteen Thirty “presumably continued to fundraise” as it simultaneously made expenditures to Fair Lending.²⁷ This assertion not only wrongly interprets the *LaBrant* analysis, it would create an unrealistic and wholly unworkable standard. According to the Complainant, an entity would be required to cease all fundraising activities any time it was contemplating making expenditures to Michigan ballot question committees – even if those expenditures made up a tiny fraction of

²² *Id.* at 4. While the Department did note that the *LaBrant* complaint alleged that the donating entities in that case contributed a large portion of the committee’s overall budget, that factor was not part of the Department’s legal analysis, and as such, is irrelevant to the present matter. *Id.* at 1.

²³ *Id.*

²⁴ *Id.* at 3-4.

²⁵ Affidavit of Amy L. Kurtz, Exhibit A.

²⁶ *Id.*

²⁷ Complaint at 8-9.

the donating entity's overall assets. This outcome is clearly not intended by the statute or supported by the Department's own precedent. In fact, the Department has already said it best: "it is **not** a violation of [Michigan campaign finance law] for a group to raise funds in its normal course of conduct and make contributions to a ballot question committee[.]"²⁸

Finally, the pattern and degree of coordination in *LaBrant* is simply not present here. Nothing in the timing of Sixteen Thirty's expenditures suggests any level of coordination and the Complaint offers no evidence to substantiate this claim.²⁹ Instead, as attested to in the attached Affidavit, Sixteen Thirty made expenditures to Fair Lending under the direction of its board of directors and without respect to any future payments made by Fair Lending to its vendors.³⁰ Sixteen Thirty did not condition those expenditures on any specific use and decisions about how to use the expenditures were made entirely by Fair Lending, not by Sixteen Thirty.³¹

ii. *D'Assandro v. Home Care First Inc.*

Sixteen Thirty is also not a committee under the test established set in *D'Assandro v. Home Care First, Inc.* In *D'Assandro*, the Department examined whether an unregistered entity solicited contributions for the sole purpose of making expenditures to a ballot question committee.³² In finding reason to believe a violation may have occurred, the Department found that the evidence demonstrated that there was an arrangement between the unregistered entity and the ballot question committee because (1) the unregistered entity and committee that it contributed to were formed around the same time; (2) the unregistered entity and committee that it contributed to had the same officers; and (3) the contributions between the unregistered entity and the committee were commingled and the exchange of money between the two entities demonstrated that contributions were being solicited by the unregistered entity on behalf the committee.³³ None of these factors is present in the current case, and thus none supports finding in favor of the Complainant.

First, Sixteen Thirty and Fair Lending were not formed anywhere near the same time. Sixteen Thirty was established in 2009 – over twelve years ago – to support progressive programs across the country; whereas, based on public records, it appears that Fair Lending organized as a ballot

²⁸ *LaBrant* Decision at 3.

²⁹ Notably, the Complaint does not point to a single expenditure by Sixteen Thirty when alleging that Sixteen Thirty coordinated with Fair Lending. Complaint at 7.

³⁰ Affidavit of Amy L. Kurtz, Exhibit A.

³¹ *Id.*

³² See State of Michigan, Department of State, *D'Assandro v. Home Care First Inc.*, 2-5 (decided Feb. 7, 2014), available at https://www.michigan.gov/sos/-/media/Project/Websites/sos/06diljak/DAssandro_v_Home_Care_and_Citizens_CA_cover_letter_and_Conciliation_Agreement.pdf?rev=1aa8a102696646e9a671d843e59a7615&hash=521FDCB46AB644E379E058A18AAC1AB3.

³³ *Id.*

question committee on October 1, 2021³⁴ and incorporated on June 22, 2022.³⁵ In other words, more than a decade separates the formation of the two entities.

Second, Sixteen Thirty and Fair Lending do not have any of the same officers or directors.³⁶ They are entirely separate entities. The Sixteen Thirty directors chose to make expenditures to Fair Lending, and once Fair Lending received the expenditures, all decisions about how the expenditures were made by Fair Lending, not Sixteen Thirty.³⁷ There is absolutely no evidence that Sixteen Thirty controlled Fair Lending or any of its decisions. And in fact, the Complaint cites no evidence to the contrary.

Third, there is no evidence that shows that Sixteen Thirty moved funds to Fair Lending in a way that demonstrates that Sixteen Thirty was acting to solicit funds on behalf of Fair Lending. No funds were commingled between Sixteen Thirty and Fair Lending. Sixteen Thirty simply made expenditures to Fair Lending and Fair Lending then made all decisions about how to use those assets.³⁸

iii. Turnaround Detroit v. Detroit Forward and Michigan Community Education Fund

Finally, Sixteen Thirty Fund does not meet the tests noted in *Turnaround Detroit v. Detroit Forward and Michigan Community Education Fund*. In *Detroit Forward*, the Department investigated whether an entity failed to properly register as a committee under Michigan campaign finance law. There, the sole incorporator of an unregistered entity also served as the treasurer of a committee.³⁹ The incorporator/treasurer controlled both the unregistered entity and the committee's funds due to his "unique interlocking positions" which allowed him to treat the unregistered entity's funds as the committee's funds "almost immediately and before the transfer" of such funds.⁴⁰ Notably, the unregistered entity transferred over 80% of all of its funds to the committee.⁴¹ In finding reason to believe a violation of Michigan campaign finance law

³⁴ Michiganders for Fair Lending, Statement of Organization (Oct. 2021), available at <https://cfrsearch.nictusa.com/committees/520155>.

³⁵ Michiganders for Fair Lending, LARA Corporations Online Filing System, <https://cofs.lara.state.mi.us/CorpWeb/CorpSearch/CorpSummary.aspx?token=nBxILn58HwVtv4JMRDwTm1cWblOpjnzIgg3FCQzRMH7Z0mRAdeXC1L6M82PZHUSlv6UZxduyzu0zScW5kYvAD2fUWxP/B1fNy82V0simfcVXabLRKANKTFx380HRHN2IvSEiiLMWNw0MBBBIuX4kWeE50brvIKAZijlztNkX8t9eQbHRq2QxnIDBF3PJd5V3y79WCBI61xNFakYQOCghLnFYcBNa75luPx2ov9nQ7iSUoaJVcGLFralKtEcbTk9kteP7qdD8dYOLKuV2ZFhM ohhHhvZ6+bAupGCQU+P0Od3l2iryK/JFLQt1SwMGMUg85O9614wBrZ/YIHZjJMF4JaGGLQRPxJx7> (last accessed Aug. 8, 2022).

³⁶ Affidavit of Amy L. Kurtz, Exhibit A.

³⁷ *Id.*

³⁸ *Id.*

³⁹ State of Michigan, Department of State, *Turnaround Detroit v. Detroit Forward and Michigan Community Education Fund*, 3 (decided Mar. 6, 2014), available at https://www.michigan.gov/-/media/Project/Websites/sos/14delrio/Turnaround_Detroit_V_Detroit_Forward_and_MCEF_pt_2.pdf?rev=0e1efb6028ff45389da6de8c305aa677 [hereinafter, the "*Detroit Forward Decision*"].

⁴⁰ *Id.* at 2-3.

⁴¹ *Id.* at 3.

may have occurred, the Department noted that the incorporator/treasurer solicited donors to “contribute to [the unregistered entity] and then transferred over 80% of all funds obtained by the unregistered entity to the committee, which meant he had “orchestrated ... effort[s] to thwart the disclosure purposes of” Michigan campaign finance law.⁴²

Here, none of the *Detroit Forward* factors are present. As stated above, Sixteen Thirty and Fair Lending do not have any of the same officers or directors, and Sixteen Thirty simply made expenditures to Fair Lending, which then in turn, decided how to spend those funds. Furthermore, unlike the unregistered entity in *Detroit Forward*, Sixteen Thirty’s expenditures to Fair Lending comprise a small fraction of Sixteen Thirty’s overall budget. Sixteen Thirty is a large non-profit organization that spends millions of dollars to fund programming across the country each year.⁴³ Sixteen Thirty spent over \$410 million in 2020, over \$173 million in 2021, and anticipates spending along similar lines in 2022.⁴⁴ While Sixteen Thirty made \$4,795,681.69 in expenditures to Fair Lending,⁴⁵ these expenditures constitute a tiny fraction of Sixteen Thirty’s total spending on programming during this period – a far cry from the *eighty percent* noted in the *Detroit Forward* decision.

Strangely, the Complaint argues that Sixteen Thirty meets the definition of a “committee” because Sixteen Thirty’s expenditures were “‘substantial’ to Fair Lending.”⁴⁶ In support of this argument, the Complaint cites *Detroit Forward*. However, as noted above, the *Detroit Forward* decision predictably focuses on how significant the expenditures were *from the donor*, not how substantial those expenditures were *to the recipient committee*.⁴⁷ As noted above, Sixteen Thirty’s expenditures to Fair Lending constituted a small fraction of its total spending during the relevant period.

Moreover, if this argument were accepted, it would create an entirely unworkable standard for entities wishing to make expenditures to ballot question committees. Under the Complaint’s theory, contributors would be expected to know and predict the recipient committee’s budget to avoid committee registration obligations. This is not only an unreasonable legal standard, but it would require a level of coordination that could then trigger committee registration – an outcome clearly not intended by the statute.⁴⁸ And indeed, looking at the budget of the recipient committee does not shed light on whether the donor was acting as a pass-through entity to shield donors, which is precisely what the Department was trying to understand in *Detroit Forward* and its opinions discussed above.

⁴² *Id.*

⁴³ Affidavit of Amy L. Kurtz, Exhibit A.

⁴⁴ *Id.*

⁴⁵ Michiganders for Fair Lending, Quarterly Campaign Statements, available at <https://cfrsearch.nictusa.com/committees/520155>.

⁴⁶ Complaint at 2.

⁴⁷ *Detroit Forward* Decision at 3.

⁴⁸ Mich. Comp. Laws § 169.203(4).

For the above reasons, it is clear that Sixteen Thirty does not meet the definition of a committee under Michigan campaign finance law.

III. Conclusion

As demonstrated in this response and the attached Affidavit of Amy L. Kurtz, the Complaint is entirely without merit, misinterprets the Department's own precedent on this issue, and is not supported by any factual evidence. We respectfully request that the Department dismiss this Complaint and find no reason to believe that a violation has occurred.

Respectfully,



Ezra W. Reese
Emma Olson Sharkey
Dylon D. Busser
Elias Law Group, LLP

Sarah Prescott
Salvatore, Prescott, Porter, & Porter

Counsel for Sixteen Thirty Fund

AFFIDAVIT OF AMY L. KURTZ

I, Amy L. Kurtz, declare:

1. I am the President of Sixteen Thirty Fund (“Sixteen Thirty”). I submit this affidavit to provide information related to Sixteen Thirty’s response to the complaint filed by the Foundation for Accountability and Civic Trust on July 7, 2022 against Sixteen Thirty. I have personal knowledge of the matters set forth in this affidavit and, if called upon to do so, I could and would competently testify as to them.

2. As stated in Sixteen Thirty’s IRS Form 990 for Fiscal Year 2020, Sixteen Thirty spent a total of \$410,038,247 in 2020.

3. Sixteen Thirty’s 2021 total expenditures will not be publicly reported on its 2021 Form 990 until November 2022; however, Sixteen Thirty’s audited financial statements reflect total expenditures for 2021. In 2021, Sixteen Thirty spent a total of \$173,900,287.

4. Sixteen Thirty’s total expenditures for the 2022 fiscal year will not be known until the fiscal year is completed. However, based on the audited financials for 2021, Sixteen Thirty started the 2022 fiscal year with \$97,684,457 assets on hand.

5. I anticipate that Sixteen Thirty’s spending during the 2022 fiscal year will be similar to its spending from previous years.

6. Sixteen Thirty made the following expenditures to Michiganders for Fair Lending (collectively, “Expenditures”) between November 3, 2021 and July 19, 2022:

Date	Amount
11/03/21	\$25,000.00
12/07/21	\$55,450.00 (in-kind)
02/04/22	\$500,000.00
02/18/22	\$400,000.00
03/09/22	\$39,150.00 (in-kind)
04/07/22	\$600,000.00

05/13/22	\$900,000.00
05/16/22	\$1,575,000.00
06/22/22	\$700,000.00
07/19/22	\$1,081.69 (in-kind)

7. Sixteen Thirty did not solicit or receive contributions for the purpose of making expenditures to Michiganders for Fair Lending or any other Michigan ballot question committee. Donors give to Sixteen Thirty without designating funds for any particular election, activity, or jurisdiction, and final decisions on the use of donated funds are left to the control of the Sixteen Thirty board of directors.

8. In connection with each monetary Expenditure, Sixteen Thirty sent a letter to Michiganders for Fair Lending; an exemplar letter is attached as Exhibit 1.

9. In connection with each monetary Expenditure, Sixteen Thirty also sent a “treasury letter” to Michiganders for Fair Lending as a courtesy notice to the committee that no funds were solicited or received by Sixteen Thirty to make that Expenditure; an exemplar letter is attached as Exhibit 2.

10. In connection with each non-monetary Expenditure, Sixteen Thirty sent an in-kind letter to Michiganders for Fair Lending; an in-kind exemplar letter is attached as Exhibit 3.

11. The decision to make the Expenditures to Michiganders for Fair Lending was a decision made under the control of the Sixteen Thirty board of directors; no Sixteen Thirty donors were involved in the decision to make the Expenditures.

12. Once Michiganders for Fair Lending received the Expenditures, all decisions about how to use the Expenditures were made by Michiganders for Fair Lending, not by Sixteen Thirty.

13. Sixteen Thirty’s directors and officers as of 2020 are listed on Sixteen Thirty’s IRS Form 990 for Fiscal Year 2020; no officers or directors have left or joined Sixteen Thirty’s board

of directors since 2020.

14. No Sixteen Thirty directors or officers are also Michiganders for Fair Lending directors or officers.

[Signature Page of Affidavit to Follow]

EXHIBIT 1



<date>

<organization>
<contact><title>
<address >
<city, state zip>

Dear <contact>:

The Sixteen Thirty Fund is pleased to make a contribution in the amount of \$<amount> from our <project name> project to <organization>.

By accepting this contribution, <organization> certifies the following: no tangible benefits, goods or services have been provided to the organization in exchange for this contribution; this contribution will not be used to satisfy payment of any pledge or other personal financial obligation on behalf of the named donors or advisors; and this contribution will be used for activities consistent with rules under section 501(c)(4) of the Internal Revenue Code. All activities will be conducted in compliance with all applicable laws or regulations in any jurisdiction in which <organization> operates, as well as in compliance with any applicable campaign finance rules, and Ethics Rules, including but not limited to, restrictions applicable to Congressional or Executive Branch Officials. No funds provided under this contribution may be used for an “exempt function” (i.e., electioneering activities or political activity), as such term is defined under section 527(e)(2) of the Code; for voter registration or candidate “Get-Out-the-Vote” (“GOTV”) activities; or to fund activities that constitute “lobbying” under state lobbying disclosure laws in California, Massachusetts, Minnesota, New Mexico and New York. <Organization> also agrees not to disclose the name of or any information concerning Sixteen Thirty Fund, <project name> or any Sixteen Thirty Fund donors without the explicit written consent of Sixteen Thirty Fund, except as required by applicable campaign finance reports. <Organization> agrees to provide Sixteen Thirty Fund with the date(s) on which this contribution will be publicly disclosed by organization on any campaign finance filings and/or other legally required disclosures with the state or any other public entity.

Once the funds have been fully expended, please provide a letter confirming that none of the funds were used for prohibited political activity described above.

<Organization> confirms that it operates as a [501(c)(4) social welfare organization; ballot question committee duly registered under state law, to the extent required; 527 organization; etc.], and will notify Sixteen Thirty Fund of any changes to this status.

Please contact <account manager> at <account manager email> if you have any questions concerning this letter.

Sincerely,

Agreed to and accepted on behalf of <organization>:

Signature

Date

Name:

Title

EXHIBIT 2



<date>

<organization>

<contact><title>

<address >

<city, state zip>

Dear <contact>:

The Sixteen Thirty Fund is pleased to make a contribution in the amount of \$<amount> from our <project name> project to <organization>. This letter serves as a courtesy notice to the Committee that no funds were solicited or received by Sixteen Thirty Fund to make this contribution.

Please contact <account manager> at <account manager email> or <account manager phone> if you have any questions concerning this letter.

Sincerely,

Signature

Name

Title

EXHIBIT 3

sixteenthirty
FUND

<date>
<organization>
<contact><title>
<address >
<city, state zip>

Dear <contact>:

This letter confirms Sixteen Thirty Fund’s in-kind contribution to <organization>, a ballot question committee. The Sixteen Thirty Fund covered polling at a value of \$<amount>.

By accepting this contribution the <organization> certifies the following:

- no tangible benefits, goods or services were provided to the organization in exchange for this contribution;
- this contribution was not used to satisfy payment of any pledge or other personal financial obligation on behalf of the named donors or advisors;
- this contribution was used for activities consistent with rules under section 501(c)(4) of the Internal Revenue Code;
- all activities conducted using this contribution were in compliance with any applicable Ethics Rules, including but not limited to, restrictions applicable to Congressional or Executive Branch Officials;
- none of the activities conducted using this contribution constituted an “exempt function” (i.e., electioneering activities or political activity), as such term is defined under section 527(e)(2) of the Code; voter registration or candidate “Get-Out-the-Vote” (“GOTV”) activities; or activities that constitute “lobbying” under state lobbying disclosure laws in California, Massachusetts, Minnesota and New Mexico; and
- <organization> will not use this contribution to make any expenditures that will lead to a requirement that Sixteen Thirty Fund disclose its own source of funds.

Additionally, if <organization> produces an annual report or other report on its overall activities, please send Sixteen Thirty Fund a copy at your convenience. If <organization>’s use of this contribution contravenes the terms of this letter, then Sixteen Thirty Fund may discontinue any further contributions to <organization>.

Please let us know if you have any questions about Sixteen Thirty Fund’s in-kind contribution.

Sincerely,

Signature

Name

Title



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

September 20, 2022

Foundation for Accountability and Civic Trust
1717 K Street NW
Suite 900
Washington, D.C. 20006

Re: *Foundation for Accountability and Civic Trust v. ACLU, Sixteen Thirty Fund*
Campaign Finance Complaint No. 2022 – 07 – 42 – 215

Dear Foundation for Accountability and Civic Trust:

The Department of State received responses from ACLU-National and the Sixteen Thirty Fund 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 or mailed to the Department of State, Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918.

Sincerely,

Regulatory Section
Bureau of Elections
Michigan Department of State

From: MDOS-BOERegulatory
Sent: Tuesday, September 27, 2022 9:16 AM
To: info@factdc.org
Subject: RE: Status of Complaints
Attachments: 2022.09.16 Response (ACLU Natl) Foundation v. ACLU, Sixteen thirty.pdf; 2022.09.19 evidence (Sixteen thirty) Foundation v. ACLU, Sixteen thirty.pdf; 2022.09.19 Response (Sixteen thirty) Foundation v. ACLU, Sixteen thirty.pdf; 2022.09.20 Rebuttal letter Foundation v. ACLU, Sixteen thirteen.pdf

Dear Ms. Arnold,
Notices of all five complaints were mailed on August 29, 2022, to the addresses you provided for the respondents and to you. Your delayed receipt of the notices is an indication of the delays in mail delivery. We have received responses from both respondents in your "Michiganders for Fair Lending" complaint and mailed those responses to you on September 20, 2022. They are also included here, and I will make a note to conduct all further correspondence with you via email. The other respondents have been issued second notices of the complaint.

Regulatory Section
Bureau of Elections
Michigan Department of State

From: info@factdc.org <info@factdc.org>
Sent: Tuesday, September 27, 2022 8:45 AM
To: MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>
Subject: RE: Status of Complaints

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

Good morning, and thank you for your response below. Could you please advise me as to the status of these complaints? In the past couple of weeks I received copies of the letters dated August 29, 2022, notifying the respondents in two of the five complaints. It appears the deadline for the respondents to respond to the complaints was September 19, 2022.

Because our organization has received only two of the five letters and they were mailed to us weeks later, we want to ensure we are receiving your correspondence. Also, if possible, we'd appreciate it if we could be emailed copies of all correspondence as well. Thank you,

Kendra

Kendra Arnold
Executive Director of the Foundation for Accountability and Civic Trust

----- Original Message -----
Subject: RE: Status of Complaints
From: "MDOS-BOERegulatory" <MDOS-BOERegulatory@michigan.gov>
Date: 8/30/22 8:29 am

To: "info@factdc.org" <info@factdc.org>

Dear Ms. Arnold,

Notices regarding those complaints have been sent to the applicable respondents. We will send along their responses as we receive them.

Thank you,

Regulatory Section

Bureau of Elections

Michigan Department of State

From: info@factdc.org <info@factdc.org>

Sent: Friday, August 26, 2022 11:20 AM

To: SOS, Disclosure <Disclosure@michigan.gov>

Subject: Status of Complaints

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

Good morning. Our organization filed the complaint attached and four other on July 6 and 7. All were filed by email and mail. Can you please advise me as to their status?

Thank you,

Kenra Arnold

Executive Director of FACT

----- Original Message -----

Subject: Campaign Finance Complaint against Bipartisan Solutions

From: "info@factdc.org" <info@factdc.org>

Date: 7/6/22 7:33 pm

To: "elections@michigan.gov" <elections@michigan.gov>

Good evening,

Please find attached a campaign finance complaint against Bipartisan Solutions. Please let us know if you require a paper copy to be delivered to your office. Thank you,

Kendra Arnold

Executive Director

The Foundation for Accountability and Civic Trust



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

December 15, 2022

American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

Sixteen Thirty Fund
1828 L Street, NW, Suite 300B
Washington DC 20036

Re: *The Foundation for Accountability and Civic Trust v. American Civil Liberties Union, Sixteen Thirty Fund*
Campaign Finance Complaint No. 2022 – 07 – 42 – 215

Dear American Civil Liberties Union and Sixteen Thirty Fund:

The Department of State (Department) has finished investigating the campaign finance complaint filed against you by The Foundation for Accountability and Civic Trust (FACT) alleging that you violated the Michigan Campaign Finance Act (MCFA or Act). This letter concerns the disposition of that complaint.

The complaint alleged that you solicited or received funds to your organizations for the purpose of collecting contributions with the intent of financially supporting the ballot question committee Michiganders for Fair Lending (Fair Lending). According to the complaint, between November 2021 and April 2022, the American Civil Liberties Union (ACLU) contributed \$2,606,199 to Fair Lending and Sixteen Thirty Fund contributed \$1,525,000 to Fair Lending. The complaint alleges that these contributions account for 99.9% of Fair Lending's total funding during that period. The complaint relied heavily on the Department's finding in complaint by Bob LaBrant against Michigan Citizens for Fiscal Responsibility (MCFR) and Michigan! My Michigan (MMM), hereinafter referred to as *LaBrant*.¹

Both respondents replied to the complaint.

In its September 16, 2022 response, the ACLU explained that ACLU National is a separate legal entity from the ACLU of Michigan, and that the latter is not under the control of the former.

¹ [*LaBrant v. Michigan Citizens for Fiscal Responsibility, and Michigan! My Michigan!*](#) MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021)

While it acknowledged that ACLU National made contributions to Fair Lending, it argued that ACLU National was not formed to support Fair Lending and did not undertake any fundraising for the purpose of supporting Fair Lending. In support of its position, it stated that its most recent Form 990, for the fiscal year closing March 31, 2021, showed an ending balance of net assets of \$161,495,601.² It also included in its response ACLU National's unaudited financial statement ending March 31, 2022, showing an ending balance of net assets of \$125,094,078. ACLU National argued that the millions of dollars in cash on hand available at the beginning and end of the time period in question show that ACLU National had no need to aggressively fundraise in support of Fair Lending as the complaint alleges.

To the extent that ACLU National coordinated with Fair Lending, ACLU National contends that this was permissible because, as outlined in the *LaBrant* determination, coordination is only prohibited when other factors show that the entities are not independent of one another—in essence, when the contributing organization is a shell organization that gives all of its funds to a ballot committee. ACLU National argues that it is not such an organization.

Sixteen Thirty Fund responded on September 19, 2022 and made similar argument, largely related to its long history, its sizeable assets, and its contributions to numerous other organizations. Sixteen Thirty submitted an affidavit from its president indicating that its IRS 990 form for Fiscal Year 2020 shows that Sixteen Thirty spent a total of \$410,038,247 in 2020 and its audited financial statements for 2021 show that it spent a total of \$173,900,287 in 2021 and began the 2022 fiscal year with \$97,684,457. In contrast, Sixteen Thirty indicated that it made expenditures of \$4,795,681.69 to Fair Lending between November 2021 and the end of July 2022. Given this, Sixteen Thirty argued that it had more than enough available assets at the start of 2021 and 2022 to fund its expenditures to Fair Lending, and that no fundraising was needed to support those expenditures.

Sixteen Thirty also included with its response an example “treasury letter” and indicated that it included such a letter with each monetary expenditure to Fair Lending. The letter states that “no funds were solicited or received by Sixteen Thirty Fund to make this contribution.”

FACT was sent a rebuttal notice and a copy of your responses in a letter dated September 20, 2022 and in response to an email inquiry on September 27, 2022. To date, a rebuttal has not been received.

In Michigan, a committee is an organization which “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

² [2020 aclu form 990 public disclosure copy.pdf](#)

year.” MCL 169.203(4). The MCFA requires committees to file certain campaign statements detailing contributions and expenditures. See, e.g., MCL 169.234. Failure to file these required statements can result in civil and criminal penalties. *Id.* An organization making an expenditure to a ballot committee is not a committee under the MCFA and is not subject to the reporting requirements of the MCFA, however, unless that organization “solicits or receives contributions for the purpose of making an expenditure to that ballot question committee.” MCL 169.203(4). Upon meeting the definition of committee, the organization is obligated to file a statement of organization with the appropriate filing official within 10 days of the committee’s formation. MCL 169.224.

As the Department stated in the *LaBrant* determination, “it is not a violation of the Act for a group to raise funds in its normal course of conduct and make contributions to a ballot question committee or to coordinate with that ballot question committee. It is, however, a violation of the Act for an organization to raise money on behalf of the ballot question committee in order to shield the organization’s donors from the reporting requirements of the Act.” FACT argued that this statement was applicable in regards to your contributions to Fair Lending because a large part of Fair Lending’s funding came from your organizations.

However, this reading results from a misunderstanding of the Department’s finding in *LaBrant*. The MCFA exempts from the definition of “committee” organizations that make expenditures to a ballot committee unless the organization “solicits or receives contributions *for the purpose of* making an expenditure to a ballot question committee.” MCL 169.203(4). (emphasis added) The question, there and here, is not whether the funds contributed from a group to a ballot question committee accounted for an outsized proportion of total contributions received by the committee; rather, it is whether the contributions accounted for an outsized proportion of total contributions from the contributing group. As the Department stated in *LaBrant*, “The disparity between [the contributing groups’] assets going into 2020, the amount that each organization contributed to [the ballot question committee], and the timing of those contributions demonstrate a level of coordination showing the entities were not independent of each other.” In that case, the only way that the contributing groups could have contributed the amounts they did to the ballot question committee was through aggressive fundraising, with virtually all of those funds raised going to the ballot question committee.

That is not the case here. While the amounts contributed to Fair Lending—as indicated in the complaint, \$2,606,199 from ACLU National and \$1,525,000 from Sixteen Thirty Fund—were substantial, they accounted for 1.6% of the ACLU’s net assets for the fiscal year closing March 31, 2021 and 0.88% of the funds Sixteen Thirty Fund spent in 2021.³ Stated differently, both

³ As stated above, Sixteen Thirty indicated in its response that it made expenditures of \$4,795,681.69 to Fair Lending between November 2021 and the end of July 2022, which includes a time period beyond the scope of the complaint. It also indicated that its audited financial statements for 2021 show that it spent a total of \$173,900,287 in 2021 and began the 2022 fiscal year with \$97,684,457. While the comparison of these expenditures to Sixteen

ACLU National and Sixteen Thirty Fund could have made these contributions without *any* fundraising.

Moreover, as ACLU-National stated in its response, both contributing groups are easily distinguishable from the organizations that were the subject of the *LaBrant* decision, in that “ACLU National is an over 100-year-old, well-capitalized national organization with no need to raise funds for the purpose of supporting a Michigan ballot question committee.” Sixteen Thirty was founded in 2009 and is similarly well-capitalized.

The Department has reviewed the evidence submitted in this matter and finds that insufficient evidence has been presented to support a finding of a potential violation of the MCFA. Both organizations possessed far more than the funds they contributed to Fair Lending before and after the periods of contribution, and those contributions represented a small fraction of the funds expended by both organizations during the time period in question, indicating that neither group needed to engage in fundraising *for the purpose of* making an expenditure to the ballot question committee. Additionally, both groups far predated the formation of the ballot question committee, indicating that the groups were not formed and capitalized for the purpose of funneling money to the ballot question committee.

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

Sincerely,



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

c: The Foundation for Accountability and Civic Trust

Thirty's total expenditures at various times would yield different proportions, the fact remains that its contributions to Fair Lending represents a small proportion of its total assets or contributions.