



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

Email: elections@michigan.gov

Re: Campaign Finance Complaint against **American Civil Liberties Union,
ACLU Fund of Michigan, and Center for Reproductive Rights**

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

ACLU Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48201
Telephone No. 313.578.6800

Center for Reproductive Rights
199 Water Street -22nd Floor
New York, NY 10038
Telephone No. 917.637.3600

The American Civil Liberties Union, ACLU Fund of Michigan, and the Center for Reproductive Rights are tax-exempt organizations that are not registered as ballot question committees, but their activity clearly demonstrates they should have registered as a committee and filed the required reports.¹ **In February and March 2022, the ACLU, ACLU-Michigan, and the Center for Reproductive Rights (Center) contributed a total of \$1,378,718.80 to a ballot question committee, Reproductive Freedom for All (RFFA).** The specific contributions from the organizations were: ACLU \$682,400, ACLU-Michigan \$596,318.80, and the Center \$100,000.² These contributions were substantial to RFFA—**comprising 98.31% of RFFA’s total funding during that period.**³

In addition to the fact that these three organizations were nearly the only source of funding for RFFA, the amounts and timing of payments further demonstrate the high level of coordination between the four organizations. Both the ACLU and the Center made substantial contributions on the exact same day to RFFA, occurring approximately one month after the RFFA was formed.⁴ ACLU-Michigan’s contribution a month later was in the nearly-exact same amount of an RFFA expenditure of \$596,316.80.⁵ If there was any doubt as to the control of RFFA, ACLU-Michigan’s own website states the RFFA campaign is led by ACLU-Michigan, an ACLU affiliate.⁶ Further, the RFFA’s Treasurer is the Political Director for ACLU-Michigan.⁷ These facts rise to the level of showing the organizations were not independent of one another.

It is not a violation for an organization to make contributions to a ballot question committee.⁸ However it is “a violation of the Act for an organization to raise money on behalf of

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).

² Reproductive Freedom For All, Campaign Finance Contribution Search, Department Of State, accessed July 4, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi.

³ *Id.*

⁴ *Id.*; Reproductive Freedom For All, Committee Statement Of Organization, filed Jan. 7, 2021, available at: <https://cfrsearch.nictusa.com/committees/520255>.

⁵ Reproductive Freedom For All, Campaign Finance Expenditure Contribution Search, Department Of State, accessed July 4, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/exp_anls_res.cgi; Reproductive Freedom For All, Campaign Finance Contribution Search, Department Of State, accessed July 4, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi.

⁶ Reproductive Freedom For all, ACLU Michigan, accessed July 4, 2022, available at: <https://www.aclumich.org/en/press-releases/reproductive-freedom-all-ballot-initiative-harnesses-unprecedented-momentum-post>.

⁷ Shelli Weisberg, ACLU Michigan, accessed July 4, 2022, available at: <https://www.aclumich.org/en/biographies/shelli-weisberg>; Reproductive Freedom For All, Committee Statement Of Organization, filed Jan. 7, 2021, available at: <https://cfrsearch.nictusa.com/committees/520255>.

⁸ *Id.* (citing MCL 169.203(4)).

the ballot question committee in order to shield the organization’s donors from the reporting requirements of the Act.”⁹ The facts of this case demonstrate that this is precisely what occurred here, and they exceed the facts in 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.¹⁰

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.”¹¹

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.¹² However, the organization does meet the definition of a committee if it “solicits or receives contributions for the purpose of making an expenditure to that ballot question committee or independent expenditure committee.”¹³

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.¹⁴ If an organization fails to file the required statements, civil or criminal penalties are imposed.¹⁵

⁹ *Id.* (citing MCL 169.203(4)).

¹⁰ MCL 169.15(10).

¹¹ MCL 169.203(4).

¹² *Id.*

¹³ *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).

¹⁴ MCL 169.224.

¹⁵ *See, e.g.*, MCL 169.234.

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.¹⁶ For instance, prior to 2021, some specific facts the Department considered when it found a corporation has actually 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 came from the corporation; and (4) the flow of money between the corporation and ballot question committee demonstrated a relationship between the two groups.¹⁷

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 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).¹⁸

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 2020.¹⁹ MCFR had \$715,137 in assets at the end of calendar year 2019 and contributed approximately \$1,780,000 to Unlock from June to

¹⁶ *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 that 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 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).

¹⁷ *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).

¹⁸ *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021).

¹⁹ *Id.*

October 2020.²⁰ MMM had \$172,452 in assets at the end of calendar year 2019 and contributed approximately \$550,000 to Unlock from June to October 2022.²¹

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.²² 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.”²³

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.²⁴ 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.”²⁵ The Department found there “may be reason to believe” that MCFR and MMM should have registered as committees themselves and filed the required statements:

“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

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

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.”²⁶

Therefore, in addition to the factors established by the Department prior to 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 solicits funds prior to or simultaneously with making contributions to a ballot question committee, and (2) the amount or timing of either contributions from the organization or payments that the ballot question committee makes to its vendors indicate coordination.

²⁶ *Id.*

II. Analysis

Issue Presented: Whether The ACLU, ACLU-Michigan, and the Center Are Committees Thereby Mandating Registration Obligations With the Department.

The American Civil Liberties Union (ACLU), the ACLU's affiliate the ACLU Fund of Michigan (ACLU-Michigan), and the Center for Reproductive Rights (Center) are tax-exempt organizations formed pursuant to sections 501(c)(3) and (c)(4) of the Internal Revenue Code.²⁷ **From January 2022 to April 2022, the ACLU, ACLU-Michigan, and the Center contributed a total of \$1,378,718.80 to a ballot question committee, Reproductive Freedom for All (RFFA).** The specific contribution totals from the organizations were: ACLU \$682,400, ACLU-Michigan \$596,318.80, and the Center \$100,000.²⁸ These contributions were substantial to RFFA—**comprising 98.31% of RFFA's total funding during that period.**²⁹ Clearly the RFFA would not have existed without these contributions.

These organizations were practically the sole funders of the RFFA, and in addition the ACLU and its affiliate the ACLU-Michigan plainly state they are controlling the RFFA with the following statement on the ACLU-Michigan's website:

“Reproductive Freedom for All is organized and supported by a growing coalition of Michigan advocates from Detroit to the Upper Peninsula and throughout the

²⁷ Center For Reproductive Rights Inc., Form 990, Internal Revenue Service, accessed July 4, 2022, available at: https://apps.irs.gov/pub/epostcard/cor/133669731_202006_990_2021040617901471.pdf; American Civil Liberties Union Fund Of Michigan, Form 990, Internal Revenue Service, accessed July 4, 2022, available at: https://apps.irs.gov/pub/epostcard/cor/237243421_202003_990_2021040617897487.pdf; American Civil Liberties Union Inc, Form 990, Internal Revenue Service, accessed July 4, 2022, available at: https://apps.irs.gov/pub/epostcard/cor/133871360_202003_990O_2021060818292134.pdf.

ACLU-Michigan is an affiliate of the ACLU. ACLU, *Find Your Local ACLU*, aclu.org (listing ACLU of Michigan as an affiliate).

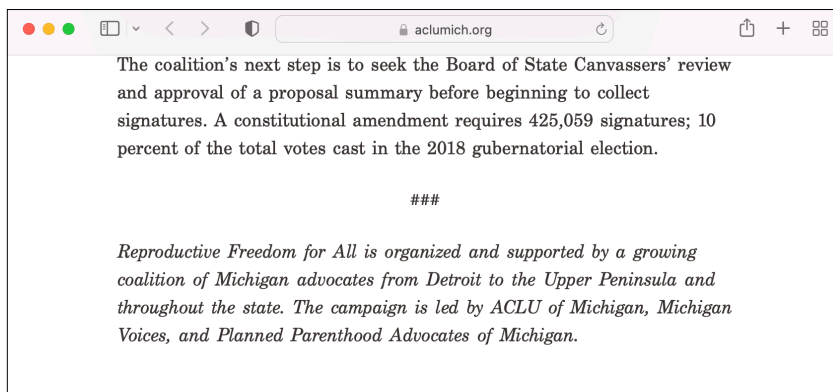
²⁸ Reproductive Freedom For All, Campaign Finance Contribution Search, Department Of State, accessed July 4, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi.

²⁹ *Id.*

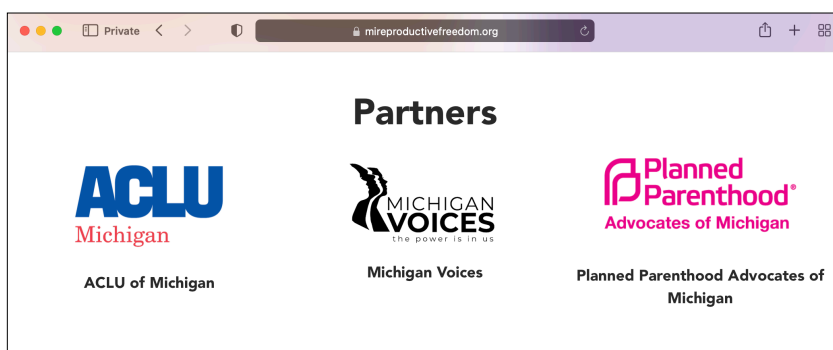
state. **The campaign is led by ACLU of Michigan, Michigan Voices, and Planned Parenthood Advocates of Michigan.**³⁰

The RFFA also lists ACLU-Michigan as a “partner” on its website.³¹ Further, evidence demonstrates there is no separation between ACLU-Michigan and the RFFA: the Treasurer of the RFFA is Shelli Weisberg, who is also the Political Director for ACLU-Michigan and the organization “leading” the RFFA.³² As the Department previously explained, a Treasurer of a ballot question committee is in a unique position to know the finances of an organization and when it is in need of a “cash infusion.”³³

³⁰ ACLU of Michigan, *Ballot Proposal to Protect Reproductive Freedom in Michigan Filed by Reproductive Freedom for All* (Jan. 7, 2022), available at: <https://www.aclumich.org/en/press-releases/ballot-proposal-protect-reproductive-freedom-michigan-filed-reproductive-freedom-all> (emphasis added).



³¹ Reproductive Freedom For All, accessed July 4, 2022, available at: <https://mireproductivefreedom.org>.



³² Reproductive Freedom for All, Michigan Committee Statement of Organization, available at <https://cfrsearch.nictusa.com/committees/520255>; ACLU-Michigan, Shelli Weisberg, ACLU Michigan, available at: <https://www.aclumich.org/en/biographies/shelli-weisberg>.

³³ *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.

Additionally, the timing and amounts of contributions and expenditures clearly demonstrate the coordination between the contributing organizations and the ballot question committee. RFFA was formed on January 7, 2022, and both the ACLU and the Center made substantial contributions of \$682,400 and \$100,000 on February 20, 2022—the exact same day—demonstrating the ACLU and Center were coordinating. Then the ACLU’s affiliate ACLU-Michigan made a contribution in the amount of \$596,318.80, a unique amount that was just \$2 more than an expenditure the RFFA made ten days earlier—both the amount and timing demonstrate the coordination. Selected transactions reported by RFFA are shown in the following chart:

Selected Transactions Reported by RFFA

Date	Contributing Organization or Vendor	Amount Contributed to RFFA	Amount Paid by RFFA	Running Balance
February 20, 2022	American Civil Liberties Union	\$682,400.00		\$688,766.63
February 20, 2022	Center for Reproductive Rights	\$100,000.00		\$788,766.63
March 11, 2022	Fieldworks LLC		\$596,316.80	\$187,831.75
March 21, 2022	ACLU Fund of MI	\$596,318.80		\$783,214.88
March 25, 2022	ALG Polling / Impact Research		\$60,100.00	\$723,774.88
March 29, 2022	Fieldworks LLC		\$522,410.48	\$191,599.71

Because the ACLU, ACLU-Michigan, and the Center do not publicly disclose their donations and expenditures, the total assets controlled by this entity or the timing of the contributions it received prior to January 2022 are not publicly known. Likewise, in the 2021 Complaint, the Department did not have this information for MCFR and MMM prior to their donations to Unlock. The Department found this information was unnecessary and, based on the other facts indicating coordination such as the timing of contributions and vendor payments, presumed any funds were raised for the purpose of financing Unlock in the 2021 Complaint. The same standard certainly must apply here.

As the Department stated in the 2021 Complaint and applying it to the facts of this case,

“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 [the ACLU to contribute \$682,400 to RFFA, ACLU-Michigan to contribute \$596,318.80 to RFFA, and the Center to contribute \$100,000 to RFFA] is substantial. . . . [The ACLU and its affiliate ACLU-Michigan were fundraising on their websites while ACLU-Michigan was simultaneously stating on its website that they were "leading" the RFFA], the amount each organization contributed to [RFFA], and the timing of those contributions demonstrate a level of coordination showing the entities were not independent of each other.

In particular, [the payments The ACLU and the Center made on the same date and the payment ACLU-Michigan made to RFFA days after RFFA made similarly sized payments to its vendor] suggest that [The ACLU, ACLU-Michigan, and the Center] were soliciting or receiving funds for the purpose of collecting contributions with the intent of financially supporting [RFFA]. Such fundraising for the purpose of supporting a ballot question committee, as is evidenced in the instant case, makes [The ACLU, ACLU-Michigan, and the Center] 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 [the organizations], the proximity of contributions made to [RFFA] and the expenditures made by [RFFA], and the fact that [ACLU-Michigan stated it was "leading" the RFFA while soliciting funds on its website], there is reason to believe [The ACLU, ACLU-Michigan, and the Center] may have solicited/received funds for the purpose of making contributions to [RFFA]."³⁴

There is one difference between the 2021 Complaint and this case. In the 2021 Complaint, the organizations' assets at the end of the prior year demonstrated they would need to raise funds before contributing to the ballot question committee. In the present case we do not know the organizations' assets at the end of the prior year, but that information is unnecessary to show the organizations were fundraising prior to or simultaneously with their support of the ballot question committee. In fact, ACLU-Michigan stated on its website that it was supporting

³⁴ *Id*; *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021).

the RFFA while also seeking donations on its website. All three organizations were coordinating with one another while simultaneously fundraising—clearly with an intent to support RFFA.³⁵

Moreover, there are actually more facts in this case that “demonstrate a level of coordination showing the entities were not independent of each other” and thus “solicited/ received funds for the purpose of making contributions” to RFFA: the RFFA’s Treasurer is the Political Director of ACLU-Michigan and ACLU-Michigan states it is leading the RFFA’s campaign; (2) the organization’s near total funding of RFFA; and (3) the timing and amount of the organizations’ contributions to RFFA showing coordination among the organizations and with RFFA.

The evidence in this case far exceeds the “reason to believe” standard that The ACLU, ACLU-Michigan, and the Center “may have taken actions that qualify them as a ballot question committee” and thus violated Michigan Campaign Finance Act sections 24 and 34.³⁶

III. Conclusion & Request for Action.

The facts support a finding that the ACLU, ACLU-Michigan, and the Center for Reproductive Rights 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, ACLU-Michigan, and the Center for Reproductive Rights have violated the Michigan Campaign Finance Act. It is clear, given the facts in this case and the precedent set forth 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.

³⁵ The ACLU, ACLU-Michigan, and the Center all have prominent “Donate” links on their main webpages.

³⁶ *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021).

Respectfully submitted,

The Foundation for Accountability and Civic Trust

A handwritten signature in blue ink that reads "Karnold". The signature is written in a cursive, flowing style.

By: Kendra Arnold

Executive Director

Foundation For Accountability and Civic Trust

1717 K Street NW, Suite 900, Washington, D.C., 20006

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

ACLU Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48201

Center for Reproductive Rights
199 Water Streets-22nd floor
New York, NY 10038

Re: *The Foundation for Accountability and Civic Trust v. American Civil Liberties Union et al.*
Campaign Finance Complaint No. 2022-07-43-215

Dear American Civil Liberties Union, ACLU Fund of Michigan, and Center for Reproductive Rights:

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 Reproductive Freedom for All (RFFA). 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

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

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 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

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). Please be advised that American Civil Liberties Union of Michigan, also named in the Complaint, is affiliated with ACLU National but is an autonomous legal entity not under the control of ACLU National and will be making its own response in this matter.

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 Reproductive Freedom for All, a Michigan ballot question committee ("RFFA"). ACLU National was not formed to support RFFA and does not have any shared corporate officers or directors with RFFA. The Complaint alleges that ACLU National should have registered as a Michigan ballot question committee as a result of its contributions to RFFA. 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

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



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 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 RFFA 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 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 February 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

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

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 RFFA 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.

Complainants emphasize that RFFA received contributions from ACLU National and another donor, Center for Reproductive Rights, on the same date. They suggest this demonstrates that ACLU National and the Center were “coordinating.” Even if that were true, and the timing of the committee’s receipt of contributions from two separate donors not mere coincidence, it would be irrelevant. Because ACLU National did not solicit or receive funds for the purpose of making contributions to RFFA, has demonstrated it is well-capitalized, and shares no corporate officers or directors with RFFA, the degree of coordination or lack thereof between ACLU National and RFFA or ACLU National and other organizations is inconsequential.

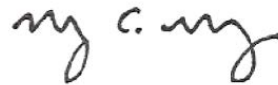
III. Conclusion.

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. Even if ACLU National coordinated with RFFA, that activity is 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,

A handwritten signature in black ink, appearing to read "m. c. rohl", is positioned above the typed name.

Margaret Rohlfing
Co-Chief Corporate Counsel
American Civil Liberties Union, Inc.
212-519-7865
mrohlfig@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 Reproductive Freedom for All ("RFFA") 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 RFFA.

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

CONFIDENTIAL

September 19, 2022

VIA E-MAIL

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

Re: Response of Center for Reproductive Rights to Complaint Dated July 7, 2022 Filed by Foundation for Accountability and Civic Trust

Dear Ms. Benson:

Arnold & Porter represents the Center for Reproductive Rights (the “Center”) in the above-referenced matter. This letter responds to your letter dated August 29, 2022, informing the Center of a complaint filed by the Foundation for Accountability and Civic Trust (“FACT”).

The Center is a global legal organization that for nearly 30 years has sought to advance reproductive rights as fundamental human rights. In furtherance of that mission, in 2022, the Center contributed \$150,000 to Reproductive Freedom for All (“RFFA”) to support the campaign to amend Michigan’s constitution to preserve abortion access and reproductive freedom.¹

The complaint filed by FACT acknowledges that it is “not a violation” of Michigan law for “an organization to make contributions to a ballot question committee” such as RFFA. The Center did precisely what Michigan law permits, and FACT’s speculation that the Center may have violated the Michigan Campaign Finance Act (“MFCA”) is factually baseless. As shown below, the Center did not solicit or receive funds for the purpose of making its contributions to RFFA. Rather, the Center’s contributions to RFFA came from its existing financial reserves, and the Center had more

¹ In addition to the \$100,000 contribution in February 2022 that FACT mentioned in their complaint, the Center made a contribution of \$50,000 to RFFA in June 2022.

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September 19, 2022

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than enough cash on hand to make these contributions, without engaging in any fundraising activities for this purpose.

Given that the Center did not raise money on behalf of RFFA, but instead lawfully contributed to RFFA from existing funds, the Center is not required to register or file reports as a ballot issue committee under the MFCA. FACT's complaint against the Center, accordingly, should be dismissed.

I. THE CENTER DID NOT SOLICIT OR RECEIVE FUNDS FOR THE PURPOSES OF MAKING ITS CONTRIBUTIONS TO RFFA

The Center is a 501(c)(3) corporation organized under the laws of Delaware with its headquarters in New York. Established in 1992, the Center has a long history of promoting and defending women's reproductive rights worldwide. The Center not only maintains offices in the United States, but also in Bogota, Colombia, Nairobi, Kenya, and Geneva, Switzerland.

Michigan law permits corporations, like the Center, to make direct contributions to ballot issue committees in Michigan without having to register as a political committee in the state. Under the MFCA, a person making an expenditure to a ballot question committee does not ordinarily become a committee for that reason. MCL § 169.203. This point is also clearly stated in the *Ballot Question Manual* published by the Michigan Bureau of Elections, which says:

What if my corporation contributed the money to an existing Ballot Question Committee?

The corporation would not have to establish and register its own Ballot Question Committee as the expenditure would be a direct contribution to the existing committee and funds involved were not solicited or received for the purpose of making the expenditure to that committee.²

The only exception to this general rule is when a person "solicits or receives contributions for the purpose of making an expenditure to that ballot question

² Michigan Bureau of Elections, Ballot Question Manual, The Statement of Organization Forming and Registering a Ballot Question Committee, <https://mertsplus.com/mertuserguide/index.php?n=MANUALBAL.TheStatementOfOrganizationFormingAndRegisteringABallotQuestionCommittee#bqsofoqas> (last modified Jan. 2, 2019).

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September 19, 2022
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committee.” MCL § 169.203. Indeed, the Department of State has affirmed in 2021 that an entity “is not obligated to register as a committee and file reports unless the evidence shows that [the entity] solicited or received contributions *for the purpose of making an expenditure* to” a ballot question committee.³ Therefore, the key question in assessing whether a contributor is required to register as a ballot question committee under the MCFA is whether that person solicited or received contributions for the purposes of making an expenditure to a ballot question committee, *not* whether there was coordination among the organizations.

The Center, an established legal advocacy organization with decades of history, did not solicit or receive contributions for the purposes of making a contribution to RFFA. As explained in the accompanying affidavit from Jill Berger, the Center’s Interim Chief Development Officer with 15 years of experience at the Center, the Center at no point undertook fundraising for RFFA or made solicitations in order to fund the Center’s contributions to RFFA. *See* Affidavit from Jill Berger. The Center also has received no donations earmarked for RFFA. *Id.* Nor would the Center accept donations earmarked for this purpose. *Id.*

Second, the Center had sufficient money available in its general treasury account to make contributions to RFFA without seeking additional funds. As Raji Kalra, the Center’s Chief Financial Officer, attests in the accompanying affidavit, when it contributed to RFFA in February and June 2022, the Center had more than enough cash on hand to cover these expenditures, without any need to engage in additional fundraising for this purpose. Ms. Kalra confirms that the contributions to RFFA were made directly from the Center’s existing financial reserves.

In prior proceedings, the Department looked to the assets of the contributor in assessing whether the contributor solicited or received contributions for the purposes of making contributions to a political committee. The form 990s that the Center filed with the Internal Revenue Service (“IRS”) corroborate Ms. Kalra’s assurances that the Center had more than enough assets to make the contributions to RFFA in question.⁴

³ LaBrant v. Michigan Citizens for Fiscal Responsibility, Department Letter dated April 9, 2021 on Resolution of the Complaint, at 2, https://www.michigan.gov/sos/-/media/Project/Websites/sos/19delrio/LaBrant_v_MCFR_Web_Posting.pdf?rev=a77a8b6e44a54a09bcb580717d3da41c&hash=CFE02876F238751F752FE43F00682FA1 (emphasis in original).

⁴ The FACT alleges that the Center does not publicly disclose its finances. *See* FACT’s Complaint, at 9. Contrary to such allegations, the Form 990s filed by the Center are publicly available on the IRS website and on the Center’s website. *See* Internal Revenue Services, Tax Exempt Organization Search, Center For Reproductive Rights Inc.,

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<u>Tax Year Ending</u>	<u>Net Assets at Year End</u>
June 30, 2021	\$62,367,006
June 30, 2020	\$40,858,911
June 30, 2019	\$45,382,050
June 30, 2018	\$45,149,359
June 30, 2017	\$39,860,906

As shown in the table above, the assets available to the Center far exceed the amount of the Center's two contributions to RFFA. The total value of those two contributions was \$150,000, which is less than 0.2 percent of the assets the Center had on hand at the end of the last tax year.

In light of the relatively small amount of contributions to RFFA compared to the overall assets that the Center had (and the history of activities unrelated to RFFA), it is evident that the Center was not acting as a shell organization for purposes of avoiding disclosure of the names of the true contributors like the entity discussed in the Michigan case cited in FACT's complaint. Therefore, the Center was free to make contributions to RFFA without having to register as a ballot question committee itself or file reports under the MFCA since it did not solicit or receive contributions for the purposes of contributing to RFFA.

II. THE CENTER AND RFFA ARE INDEPENDENT OF ONE ANOTHER

In prior enforcement proceedings where the Department of State found potential violations of the MFCA, the Department focused on facts that suggest collusion between the contributing organization and the ballot measure committee to conceal the original funding source and evade reporting and registration requirements.⁵ For example, in

<https://apps.irs.gov/app/eos/detailsPage?ein=133669731&name=Center%20for%20Reproductive%20Rights%20Inc.&city=New%20York&state=NY&countryAbbr=US&dba=&type=CHARITIES,%20COPYOFRETURNS&orgTags=CHARITIES&orgTags=COPYOFRETURNS> (last visited Aug. 2, 2022); Center for Reproductive Rights, Annual Reports, <https://reproductiverights.org/about-us/annual-reports/> (last visited Aug. 2, 2022).

⁵ See, e.g., D'Assandro v. Citizens for Affordable Quality Home Care & Home Care First, Inc., Department Letter dated February 7, 2014 on Resolution of the Complaint, at 5, 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 ("This bifurcation enabled Hoyle, DeLisle, and Thomas to conceal the true funding source behind Proposal 4, and deprived voters of this vital information until after Election Day."); Turnaround Detroit v. Detroit Forward & Michigan Community Education Fund, Department Letter dated April 9, 2014 on Resolution of the Complaint, at 3, https://www.michigan.gov/sos/-/media/Project/Websites/sos/14delrio/Turnaround_Detroit_V_Detroit_Forward_and_MCEF_pt_2.pdf?rev=

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discussing two previous enforcement proceedings, the Department of State stated that they “stand for . . . the proposition that a ballot question committee cannot shield its contributors by funneling the money through a corporation when the evidence clearly demonstrates that the ballot question committee and the corporation are the same entity or are controlled by the same individuals.”⁶

The Center and RFFA are independent from each other, and the Center is certainly not a “shell” for any other organization. Unlike in the matters that FACT relies on in its complaint, the Center and RFFA do not share any officers. The Center and RFFA also maintain separate offices and bank accounts. Moreover, unlike in prior matters where the Department found potential violations, the amount and timing of the Center’s contributions do not closely match the subsequent expenditures incurred by RFFA.

FACT’s allegations do not suggest otherwise. For example, FACT claims that the Center’s contributions, when combined with the contributions made by the American Civil Liberties Union (“ACLU”) and the ACLU Fund of Michigan (“ACLU-Michigan”), comprised “98.31% of RFFA’s total funding during” the relevant period. But the Center is an entirely distinct organization from the ACLU and ACLU-Michigan, and lumping together the contributions of all three organizations is misleading. Considered on its own, the Center’s contribution to RFFA in the first quarter of 2022 represented about 7.13% of RFFA’s total direct contributions received during the quarterly reporting period

[0e1efb6028ff45389da6de8c305aa677&hash=B9A8D3FA4931681FE310CA7A08685AC7](https://www.michigan.gov/sos/-/media/Project/Websites/sos/19delrio/LaBrant_v_MCFR_Web_Posting.pdf?rev=a77a8b6e44a54a09bcb580717d3da41c&hash=CFE02876F238751F752FE43F00682FA1) (“Thus, it appears that MCEF’s original, primary purpose was to shield the names of contributors to Detroit Forward from public disclosure, not fund a coordinated education campaign on voter registration and participation.”).

⁶ LaBrant v. Michigan Citizens for Fiscal Responsibility, Department Letter dated April 9, 2021 on Resolution of the Complaint, at 4, https://www.michigan.gov/sos/-/media/Project/Websites/sos/19delrio/LaBrant_v_MCFR_Web_Posting.pdf?rev=a77a8b6e44a54a09bcb580717d3da41c&hash=CFE02876F238751F752FE43F00682FA1.

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in question,⁷ and its contribution in the second quarter of 2022 represented about 0.61% of RFFA's total direct contributions received during that quarterly period.⁸

The sole "evidence" FACT cites in its complaint to justify its treatment of the Center, the ACLU, and ACLU-Michigan as a single entity is the fact that the Center and the ACLU both made contributions to RFFA on February 20, 2022. This was a coincidence and not evidence of collusion. The timing of the Center's contribution was determined by the Center based on the conclusion of a grant agreement with RFFA. The timing had nothing whatsoever to do with the ACLU's contribution to RFFA, and the Center had no knowledge of the details of the ACLU's contribution before it was made.

* * *

The Department should immediately dismiss the complaint filed by FACT against the Center for the foregoing reasons.

Sincerely,



Nicholas L. Townsend
Arnold & Porter Kaye Scholer LLP
Nicholas.Townsend@arnoldporter.com
202-942-5249

⁷ During the first quarter of 2022, RFFA received a total of \$1,402,457.80 in direct contributions. In addition, during the same period, RFFA also received \$502,750.19 in in-kind contributions. *See* Reproductive Freedom for All, Qualification Amendments, Summary Page, <https://cfrsearch.nictusa.com/documents/525094/details/filing/summary?changes=0>. If we account for the in-kind contributions, the Center's contributions to RFFA only represent about 5.25% of RFFA's total direct contributions received during that period.

⁸ During the second quarter of 2022, RFFA received a total of \$8,159,999.68 in direct contributions. In addition, during the same period, RFFA also received \$572,546.02 in in-kind contributions. *See* Reproductive Freedom for All, Amended July Quarterly CS, Summary Page, <https://cfrsearch.nictusa.com/documents/528867/details/filing/summary?changes=0>. If we account for the in-kind contributions, the Center's contributions to RFFA only represent about 0.57% of RFFA's total direct contributions received during that period.

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Attachments

- Affidavit from Jill Berger
- Affidavit from Raji Kalra

AFFIDAVIT OF JILL BERGER

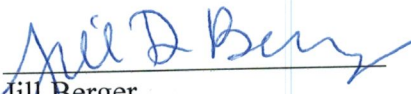
AFFIDAVIT OF JILL BERGER

State of NEW YORK)
) ss.
County of NEW YORK)

Jill Berger, being first duly sworn, deposes and states as follows:

1. I am the Interim Chief Development Officer for the Center for Reproductive Rights (the "Center"). I have held this role since July 2022. I also held the same role between July 2021 and December 2021.
2. I joined the Center in June 2007 and held various roles within the Center, including Deputy Chief Development Officer (March 2022 - Present); Senior Director of Development (July 2015 - March 2022); Interim Chief Development Officer (July 2021 - December 2021); Director of Institutional Giving (July 2013 - June 2015); and Director of Foundation Relations (June 2007 - June 2013).
3. As the Interim Chief Development Officer, I oversee the day-to-day operations of the Center's Development Department and the Center's planning and integration of all fundraising revenue streams. I have personal knowledge as to how the Center solicits and receives contributions.
4. To the best of my knowledge, the Center has not solicited or received contributions for the purposes of making an expenditure or otherwise contributing to Reproductive Freedom for All ("RFFA") or any other ballot question committee in Michigan.
5. To the best of my knowledge, the Center also has not received any donations that were earmarked for RFFA nor would the Center accept donations earmarked for that purpose.

FURTHER AFFIANT SAYTH NOT.


Jill Berger

AFFIDAVIT OF RAJI KALRA

AFFIDAVIT OF RAJI KALRA

State of NEW YORK)
) ss.
County of NEW YORK)

Raji Kalra, being first duly sworn, deposes and states as follows:

1. I am the Chief Financial and Administrative Officer for the Center for Reproductive Rights (the “Center”). I have held this role since February 2022.
2. As the Chief Financial and Administrative Officer, I oversee the Center’s financial strategy, financial planning and analysis, budgeting, and general accounting. I have personal knowledge as to the assets and cash available to the Center when the Center contributed to Reproductive Freedom for All (“RFFA”) in February and June 2022 and with what assets the Center made the contributions to RFFA.
3. The Center had sufficient cash on hand in February and June 2022 to make contributions to RFFA in the amount of \$100,000 and \$50,000, respectively. The Center had no need to engage in additional fundraising to make those contributions to RFFA.
4. The Center’s contributions to RFFA in February and June 2022 were made directly from the Center’s existing financial reserves.

FURTHER AFFIANT SAYTH NOT.


Raji Kalra



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

September 27, 2022

SECOND NOTICE

ACLU Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48201

Re: *The Foundation for Accountability and Civic Trust v. American Civil Liberties Union et al.*

Campaign Finance Complaint No. 2022 – 07 – 43 – 215

Dear ACLU Fund of Michigan:

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 organization for the purpose of collecting contributions with the intent of financially supporting the ballot question committee Reproductive Freedom for All (RFFA). A copy of the complaint is included with this notice.

The Department sent you notice of this complaint on August 29, 2022. That letter informed you that you had 15 business days from that date to provide a response to the complaint. **As a courtesy, the Department is extending you an opportunity to submit a response within 15 business days of the date of this second notice.** If you do not submit a response within 15 business days of the date of this notice, the Department will have no choice but to adjudicate the complaint based on the facts and allegations included in the complaint alone.

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.

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

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 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 available on the Department's [website](#).

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

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

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 Headquarters**

2966 Woodward Avenue
Detroit, MI 48201
Phone 313.578.6800
Fax 313.578.6811
E-mail aclu@aclumich.org
www.aclumich.org

Legislative Office

115 West Allegan Street
Lansing, MI 48933
Phone 517.372.8503
Fax 517.372.5121
E-mail aclu@aclumich.org
www.aclumich.org

West Michigan Regional Office

1514 Wealthy St. SE, Suite 260
Grand Rapids, MI 49506
Phone 616.301.0930
Fax 616.301.0640
Email aclu@aclumich.org
www.aclumich.org

Pursuant to MCL 169.215, this letter serves as the response of the ACLU of Michigan, inaccurately identified as the ACLU Fund of Michigan, to the complaint filed by the Foundation for Accountability and Civic Trust (“FACT”) on July 7, 2022 (the “Complaint”). For the reasons discussed below, FACT’s complaint is wholly without merit and presents no bases to even question whether the ACLU of Michigan violated the Michigan Campaign Finance Act (“MCFA” or “Act”), MCL 169.201, *et. seq.* The ACLU of Michigan requests that the Complaint be dismissed with prejudice and without further action.

I. BACKGROUND

The ACLU of Michigan was established in 1959 with the mission of “realizing the promise of the Bill of Rights for all and expanding the reach of its guarantees to new areas through all the tools at our disposal: public education, advocacy, organizing, and litigation.”¹ Two entities pursue this mission: the ACLU Fund of Michigan (“Fund”) and the ACLU of Michigan (“Union”). *See* Greene Aff. ¶¶ 2-5.

The Fund is organized and operates within the scope of section 501(c)(3) of the Internal Revenue Code. The Fund is the entity with which the public is familiar through its public interest litigation and public education. *Id.* ¶ 4. The Fund has successfully litigated thousands of cases, defending the constitutional rights of individuals and organizations without regard to political affiliation.

¹<https://www.aclumich.org/en/about/about-us>

The Union, formed in 1959, is organized and operates within the scope of section 501(c)(4) of the Internal Revenue Code. *Id.* ¶ 5. Its operative purpose is to advocate for the passage of legislation consistent with its mission of protecting the constitutional rights of all citizens. *Id.*

The Union is financially supported through a wide array of donors who wish to support its goal to protect the civil rights guaranteed under the Constitution. *Id.* ¶ 6. With those funds in its general treasury, the Union contributes to numerous causes, including certain ballot questions. *Id.* ¶ 7. Importantly, the Union has never solicited or received contributions or made expenditures for the purpose of influencing a ballot question. *Id.* ¶ 8. The Union is soundly capitalized; for the fiscal year ending March 31, 2021, it had an ending balance of net assets of \$3,922,477. *See* Ex. 1 to Greene Aff. Internal Revenue Code Form 990.

As part of the 2022 election cycle, the Union contributed funds from its general treasury to Reproductive Freedom for All (“RFFA”), a ballot question committee that is seeking to qualify and pass a measure that would enshrine in the Michigan Constitution “the fundamental right to reproductive freedom, which involves the right to make and carry out decisions without political interference about all matters relating to pregnancy, including birth control, abortion, prenatal care, and childbirth.”² From January 2022 to April 2022, the Union contributed a total of \$596,318.80 to RFFA.³ This amount represents approximately 15% of the organization’s general treasury during the relevant period of time. *See* Greene Aff. ¶ 9; *see also* Form 990.

In the Complaint, FACT alleges that these contributions, along with contributions by the Center for Reproductive Rights (“CRR”), and the American Civil Liberties Union (“ACLU”) (a

² <https://mireproductivefreedom.org/learn-more/>

³ Although the Complaint and certain campaign finance records identify the Fund as the entity that made the contributions at issue, the contributions were not made by the Fund. The contributions were made by the Union. *See* Greene Aff. ¶¶ 9, 11.

separately incorporated and independently operated affiliate of the ACLU of Michigan), violated the MCFA. FACT alleges that these contributions rendered the organizations “committees” under the MCFA and that, by failing to register as committees with the State, the organizations ran afoul of the Act. For the following reasons, FACT’s Complaint against the Union lacks any legal basis and should be dismissed with prejudice.

II. ARGUMENT

A. The Union Did Not Solicit or Receive Any Contribution for the Purpose of Influencing the Passage of the RFFA

The MCFA defines a “committee” as an organization that “receives contributions or makes expenditures for the purpose of influencing or attempting to influence” the nomination or election of a candidate, the qualification of a new political party or “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.” MCL 169.203(4); *see also* MCL 169.202(2) (defining a “ballot question committee” as a “committee acting in support of, or in opposition to, the qualification, passage, or defeat of a ballot question.”). If an organization meets these criteria, it is subject to various reporting requirements under the MCFA, including filing statements setting forth its contributions and expenses with the Department of State. MCL 169.234.

The Act makes clear that an organization, simply by virtue of “making an expenditure to a ballot question committee . . . shall not . . . be considered a committee or be required to file a report for the purposes of this act.” MCL 169.203(4). The only exception to this rule is if the organization “solicits or receives contributions for the purpose of making an expenditure to that ballot question committee . . .” *Id.* An organization is, therefore, properly and legitimately able to donate funds

from its general treasury so long as it did not and does not engage in the solicitation or receipt of contributions for the purpose of donating to a ballot question committee.

This rule is emphasized by the Michigan Bureau of Elections (“MBE”), a division of the Department, on its website. In addressing Frequently Asked Questions, the MBE provides guidance on when a donor must register as a committee through highlighting a hypothetical circumstance where a corporation intends to spend \$95,000 to run advertisements in a local newspaper, put up billboards, and circulate brochures in support of a ballot proposal. The MBE advises that such actions would require the company to register as a committee under the Act. By contrast, however, when asked if the company would be required to register if it contributed the money to an existing committee, the MBE advises that “[t]he corporation would not have to establish and register its own Ballot Question Committee as the expenditure would be a direct contribution to the existing committee and funds involved were not solicited or received for the purpose of making the expenditure to that committee.”⁴

Here, the Union has not solicited or received any contributions for the purpose of making an expenditure to the RFFA ballot question committee. *See* Greene Aff. ¶ 10. At the time the Union made the contributions at issue in the Complaint, the Union had nearly \$4 million in its general treasury. All funds contributed by the Union were derived from its general treasury, which holds the funds generated from donors supporting the general mission of the Union. *See* Greene Aff. ¶¶ 7-10. Again, none of the funds in the Union’s general treasury were solicited or received for the purpose of supporting the RFFA. *Id.* ¶ 10.

⁴<https://mertsplus.com/mertsuserguide/index.php?n=MANUALBAL.TheStatementOfOrganizationFormingAndRegisteringABallotQuestionCommittee#bqsofoqas> (last visited July 18, 2022).

FACT's Complaint is devoid of any evidence that would even suggest that the Union engaged in the solicitation or receipt of contributions for the purpose of donating to the RFFA campaign. It relies on a series of irrelevant facts and inapposite decisions from this Department to imply that the Union engaged in the improper solicitation of funds for the purpose of supporting this ballot proposal. Its principal authority, the Department's decision in *LaBrant v. Michigan Citizens for Fiscal Responsibility, et al.*, is entirely distinguishable from this case.

In *LaBrant*, the Department addressed whether two organizations, Michigan Citizens for Fiscal Responsibility ("MCFR") and Michigan! My Michigan! ("MMM"), were required to register as ballot question committees due to their support of Unlock Michigan, a ballot question committee formed to support the qualification and passage of a ballot initiative to repeal the Emergency Powers of Governor Act of 1945. In finding that MCFR and MMM may have solicited or received contributions for the purpose of making expenditures to Unlock Michigan, and were therefore required to register as ballot question committees, the Department relied heavily on the finances of the two respondents. The Department was persuaded by the following facts:

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 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.

Accordingly, as the Department noted, MCFR would have had to have raised at least \$1,064,863 from January 1, 2020 through October 1, 2020 to make its contributions to Unlock Michigan, representing 133% more than all the cash MCFR had on hand at the end of 2019. Similarly, to contribute \$550,000 to Unlock Michigan, MMM would have had to have raised \$377,548, representing 155% more than all the cash MMM had on hand at the end of 2019. MCFR's and MMM's contributions of \$1,780,000 and \$500,000, respectively, likely depleted

most if not all of their funds. This gave rise to a well-founded inference that MMM (formed only in 2018⁵) and MCFR were actually undercapitalized shell organizations used to conceal the identities of donors to Unlock Michigan. In the words of the Department, “[a]lthough 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.”

By contrast, the Union, formed in 1959, had \$3,922,477 in its general treasury at the time it made the donations that form the basis of the Complaint. The contributions by the Union that are referenced in the Complaint total \$596,318.80, a figure that represents 15.2% of the Union’s general treasury. The circumstance here is entirely different from that in *LaBrant*, where the respondents contributed over double the amount of their funds from the end of the previous year to the ballot question committee at issue. Unlike in *LaBrant*, the Union did not have to engage in “aggressive fundraising activity” to make its contribution to RFFA. It was able to take a small percentage of its general funds – all of which were raised for purposes in support of the mission of the Union – and contribute them to the committee. This is expressly permitted by the MCFA and does not require the Union to register as a committee.

B. None of the Actions Identified By FACT Support a Claim that the Union Violated the MCFA

FACT makes much of coordination between the Union and RFFA. *LaBrant* makes clear, however, that “it is not a violation of the Act for a group . . . to coordinate with [a] ballot question committee.” FACT asserts that (i) contributions by the Union, along with the ACLU and CRR,

⁵ <https://www.detroitnews.com/story/news/politics/2021/02/01/shirkey-tied-nonprofit-unlock-michigan-campaign/4339104001/>

constitute the majority of the contributions to RFFA; (ii) many of these contributions were made close in time to expenditures by RFFA; (iii) the Union publicly encouraged support for RFFA's passage and qualification; and (iv) and its political director serves as treasurer for RFFA. None of these facts are probative of the dispositive issue in this case, namely, whether these organizations solicited or received contributions for the purpose of supporting RFFA.

1. The Amount and Timing of the Union's Contributions

The fact that the Union's contributions, in addition to other organizations, were substantial contributions to RFFA and that its contributions were made close in time to expenditures by the committee (*Complaint at 7-10*) is not evidence that the Union solicited or received contributions for the purpose of making an expenditure to RFFA. It is instead evidence that the Union *itself* was solicited by RFFA to contribute amounts necessary for the committee's operations. *See* Greene Aff. ¶ 9. There is nothing improper about a committee soliciting contributions from an organization to help fund its operations, and, reciprocally, there is nothing improper about an organization making a contribution without registering as a committee. If that were the case, each organization that was solicited by an existing committee to assist with expenses would be required to register as a separate committee under the Act. That is simply not the intent of the MCFA, which makes clear that organizations are free to contribute any amounts it desires to a committee, so long as those amounts were not solicited or received for the purpose of making an expenditure to that committee.

FACT's focus on the timing of the Union's contributions in relation to expenditures of the committee stems from *LaBrant*, and is inapposite here. In *LaBrant*, the Department noted that several of the respondents' contributions were made contemporaneously with expenditures made by Unlock Michigan to a vendor. These facts were only significant in that case due to the

respondents' lack of capital. MCFR and MMM's contributions to Unlock Michigan in close proximity to expenditures made by Unlock were significant because they reinforced that the respondents' "aggressive fundraising activity" was for the sole purpose of supporting the committee. *Labrant at 3-4*. That circumstance confirmed that the disproportionate amount of money being brought into MCFR and MMM was being funneled directly to Unlock Michigan to pay its expenses. Here, there is no evidence that the Union engaged in any out-of-the-ordinary, much less "aggressive" fundraising activity in the months preceding its contributions to RFFA. The Union's Form 990 shows that it had nearly \$4 million in its general treasury 10 months before its first contribution to RFFA.

FACT's focus on the amount of funds contributed by the Union, the ACLU, and the CRR – allegedly accounting for 98% of RFFA's contributions for the relevant time period – appears to derive from *Turnaround Detroit v. Detroit Forward and Michigan Community Education Fund*, a decision by the Department that is also easily distinguishable from the facts and circumstances here. FACT latches onto the fact that Detroit Forward, an independent expenditure PAC, received 33% of its contributions during the 2013 Detroit mayoral cycle from the Michigan Community Education fund ("MCEF"). That circumstance, however, was not the basis for the Department's finding that MCEF (a 501(c)(4) organization registered five months after Detroit Forward was formed), was required to register as a committee. Like in *LaBrant*, the Department's finding in *Detroit Forward* rested on the fact that MCEF was an undercapitalized organization that spent virtually all of its funds on contributions to Detroit Forward shortly after those funds were received. *Detroit Forward at 2-3*. Indeed, the Department noted that "over 80% of all funds obtained by MCEF from time of its inception until Election Day" were transferred to the Detroit Forward committee. *Id. at 3*. The Department also noted a sworn statement by MCEF's principal that, when

soliciting donations to MCEF, he informed potential donors that “MCEF could engage in direct advocacy for or against a candidate, or provide financial support to other groups engaging in direct candidate advocacy.” *Id. Detroit Forward*, therefore, involved an explicit admission that the organization was soliciting contributions for the purpose of making an expenditure to a committee.

Detroit Forward is completely irrelevant to the claim asserted against the Union in FACT’s Complaint. The Union was formed over 60 years prior to RFFA, it is not an undercapitalized organization, and it did not spend most of its funds on RFFA. As discussed, the Union’s contributions to RFFA account for 15.2% of its general treasury. That fact alone reflects that the Union had no need to solicit or receive contributions for the purpose of making an expenditure to RFFA. And unlike *Detroit Forward*, there is no admission in this case that the Union solicited donations by stating that it would use those donations for the advocacy of a committee. Quite the opposite, the evidence proves that the Union has never made any such solicitation. *See Greene Aff.* ¶¶ 8, 10.

2. The Union’s Vocal Support of RFFA

FACT also points to the Union’s public support of RFFA, noting a statement on the Union’s website that RFFA is “organized and supported by a growing coalition of Michigan advocates” and that this support is “led by the ACLU of Michigan, Michigan Voices, and Planned Parenthood Advocates of Michigan.” Similar to the amount and timing of the Union’s contribution, this circumstance does not create an inference (much less present evidence) that the Union solicited or received contributions for the purpose of making expenditures to the committee. The Union is permitted to publicly commit its support to RFFA, both through voicing its support for the qualification and passage of the initiative and through its own monetary donations. Simply put, supporting a committee is irrelevant to the question of fundraising.

3. The Union's Political Director

Finally, FACT implies that since the Union's Political Director, Shelli Weisberg, serves as the Treasurer of RFFA, the Department should infer that the Union solicited funds for the purpose of supporting RFFA. There is simply no basis to accept this assertion. Neither Ms. Weisberg nor any other employee of the Union has ever solicited or received funds on behalf of the Union for the purpose of influencing a ballot question, including RFFA. *See* Weisberg Aff. ¶ 6. The Union's fundraising activities are conducted by its Development Director, not its Political Director. *Id.* ¶ 4. As Political Director, Ms. Weisberg's general responsibilities do not include fundraising. Ms. Weisberg is primarily responsible for the oversight of programming, legislative advocacy, lobbying, and organizing. *Id.* ¶ 3. Ms. Weisberg's involvement in fundraising is limited to supporting the Development Director in discussions with donors on occasions where her subject-matter knowledge can be of assistance. *Id.* ¶ 5. And in those limited circumstances, there has been no occasion where Ms. Weisberg has ever solicited or received contributions for the purpose of influencing the passage of RFFA or any other ballot question. *Id.* ¶ 6.

In her separate role as Treasurer of RFFA, Ms. Weisberg has engaged in fundraising activity. *Id.* ¶¶ 7-8. The money raised by Ms. Weisberg in that capacity has gone directly to RFFA, which ensures that all donors are publicly known. *Id.* ¶ 9. Contrary to the assertions in the Complaint, all of Ms. Weisberg's fundraising on behalf of RFFA has involved the public disclosure of its donors. *Id.* Ms. Weisberg's roles with the Union and the RFFA are not incongruous with the MCFA.

III. CONCLUSION

FACT's Complaint fails to present any evidence that the Union violated the MCFA. The sole issue determinative of the claim is whether the Union solicited or received funds for the

purpose of supporting RFFA. The organization's sworn testimony – the only evidence in the record – shows that it did not. As a long-standing, well-capitalized organization, the Union had no need to solicit or receive funds for the purpose of donating to RFFA. The Union was able to contribute the funds at issue from its general treasury, which was generated over time through general contributions. This case is entirely distinguishable from the previous opinions by the Department upon which FACT relies. There is no cognizable claim that the Union violated the MCFA.

For the foregoing reasons, the ACLU of Michigan respectfully requests that the Department dismiss FACT's Complaint with prejudice, and without further action.

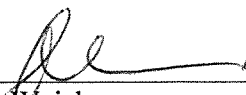
Very Truly Yours,

A handwritten signature in black ink, appearing to read "Bonsitu Kitaba-Gaviglio", with a stylized, flowing script.

Bonsitu Kitaba-Gaviglio
Deputy Legal Director
American Civil Liberties Union of Michigan
2966 Woodward Ave.
Detroit, MI 48201
bkitaba@aclumich.org

AFFIDAVIT OF SHELLI WEISBERG

1. I, Shelli Weisberg, being first duly sworn, state as follows:
2. I am the political director of the ACLU of Michigan ("Union").
3. As political director for the Union, my responsibilities primarily include overseeing the organization's programming, legislative advocacy, lobbying, and organizing.
4. All fundraising activity is led and conducted by the Union's development director.
5. My involvement in the Union's fundraising activities are limited, and consist of supporting the development director in discussions with donors where my subject-matter knowledge can be of assistance.
6. Neither during these discussions nor at any other time in my role as political director have I ever solicited or received contributions for the purpose of influencing the passage of Reproductive Freedom for All ("RFFA") or any other ballot question.
7. Separate and apart from my role as political director for the Union, I serve as the Treasurer for RFFA.
8. As Treasurer, I have engaged in fundraising activity on behalf of RFFA.
9. Each donation that I have received on behalf of RFFA has gone directly to RFFA. This ensures that all donors to the campaign for whom I am responsible are publicly known.
10. I base this affidavit on my personal knowledge, and if sworn as a witness, I can competently testify as to the factual matter set forth herein.



Shelli Weisberg

Sworn to before me and subscribed in my
presence this 16 day of September, 2022.

Am J Maef
Notary Public

Wayne County, Michigan

My Commission Expires: 02/17/2027

Acting in the County of: Wayne

AFFIDAVIT OF WILLIAM GREENE

1. I, WILLIAM GREENE, being first duly sworn, state as follows:

2. I am the Chief Operating Officer (“COO”) of the ACLU of Michigan (“the Union”). In my role as COO of the Union, I have knowledge of its operations and mission. I also have knowledge of the operation and mission of the ACLU Fund of Michigan (“Fund”). I am responsible for overseeing the finances and day-to-day operations of both organizations.

3. The Fund and the Union are separate entities, that are staffed and operated separately.

4. The Fund is the entity with which the public is familiar through its public interest litigation and public education. The Fund is organized and operates within the scope of section 501(c)(3) of the Internal Revenue Code.

5. The Union, formed in 1959, is organized and operates within the scope of section 501(c)(4) of the Internal Revenue Code. It was created to advocate for the passage of legislation consistent with its mission to protect the constitutional rights of all citizens.

6. The Union receives financial support from a wide array of donors.

7. The Union contributes to numerous causes from its general treasury. These causes sometimes include certain ballot questions.

8. The Union has never solicited or received contributions or made expenditures for the purpose of influencing a ballot question.

9. From January 2022 through April 2022, the Union contributed a total of \$596,318.80 to Reproductive Freedom for All. While certain public records and the Complaint in this matter identify the Fund as the contributor, the Union was the organization that made those contributions. The Fund has never made contributions to Reproductive Freedom for All.


10. None of the funds contributed by the Union to Reproductive Freedom for All were solicited or received for the purpose of influencing that or any other ballot question.

11. Exhibit 1 to my Affidavit is a true and correct copy of the Union's Internal Revenue Code Form 990 for the year 2021. It reflects that, at the end of the 2020-2021 fiscal year ending on March 31, 2021, the Union had an ending balance of net assets of \$3,922,477.

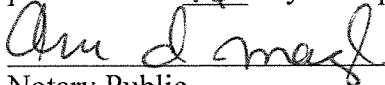
12. The Union plans to file its Form 990 for the 2021-2022 fiscal year in October 2022, in accordance with the schedule set forth by the Internal Revenue Service. I expect the ending balance of net assets to be substantially similar to those published in the previous year's Form 990.

13. While affiliated with the American Civil Liberties Union, the Union and the Fund are separate entities that are operated by separate staff and independent Boards of Directors.

14. I base this affidavit on my personal knowledge, and if sworn as a witness, I can competently testify as to the factual matter set forth herein.


William Greene

Sworn to before me and subscribed in my presence this 16 day of September, 2022.


Notary Public

Wayne County, Michigan

My Commission Expires: 02/17/2027

Acting in the County of: Wayne



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

October 5, 2022

Kendra Arnold
Foundation for Accountability and Civic Trust
1717 K Street NW, Suite 900
Washington, DC 20006

Via email: info@factdc.org

Re: *The Foundation for Accountability and Civic Trust v. ACLU et al.*
Campaign Finance Complaint No. 2022 – 07 – 43 – 215

Dear Ms. Arnold:

The Department of State received response from the American Civil Liberties Union, ACLU of Michigan, and Center for Reproductive Rights 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



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

October 19, 2022

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

Via Email: BOERegulatory@michigan.gov

Re: The Foundation for Accountability and Civic Trust (FACT) v. ACLU, ACLU of Michigan (ACLU-MI), Center for Reproductive Rights (Center), Campaign Finance Complaint No. 2022 – 07 – 43 – 215

To the Michigan Department of State:

FACT submits this rebuttal in the case identified above. The facts of this case show the ACLU, ACLU-MI, and Center nearly completely funded RFFA and that their coordination rose to a level such that the RFFA was not independent, while the organizations were simultaneously fundraising to support it. To briefly summarize the facts: The RFFA received \$1,378,718.80 from the three entities, which was 98% of its total funding. The amounts and timing of the entities contributions demonstrate coordination—two were made within a month of the RFFA forming and the third was made in an odd amount of \$596,318.80, which was nearly exactly the same as an RFFA expense paid around the same time. If there was any doubt as to the control of RFFA, the ACLU-MI and the RFFA themselves described the RFFA as being “led by” the ACLU-MI and the ACLU-MI as a “partner,” and the RFFA’s Treasurer is the Political Director for ACLU-Michigan. In fact, ACLU-MI stated on its own website that it was supporting the RFFA while also seeking donations on its website.

ACLU-MI’s response makes two arguments. First it claims it did not solicit or receive any contributions to support the RFFA because (1) it had sufficient funds in its general treasury fund to make the contribution; and (2) it submitted an affidavit stating “none of the funds in the Union’s general treasury were solicited or received for the purpose of supporting the RFFA.” However, the facts as set forth in the complaint indicate it did. Simply because the ACLU-MI had funds in their general treasury does not mean they did not solicit funds with the purpose of supporting RFFA. Of course the ACLU-MI would be required to solicit funds and deposit them

into their general treasury before making the contribution to RFFA. The issue is whether they were soliciting any of their general treasury funds with an intent to support the RFFA. The facts demonstrate they were because ACLU-MI and RFFA were not independent entities and the ACLU-MI was fundraising. In fact, on its website the ACLU-MI simultaneously stated it was supporting the RFFA while also fundraising.

This case does present a factual difference from *LaBrant v. Michigan Citizens for Fiscal Responsibility* (MCFR) and *Michigan! My Michigan!* (MMM), but this case is also more egregious in many respects. In the MCFR/MMM case the organizations' assets at the beginning of the year were less than the contributions they made to the ballot question committee later in the year. It was unknown at what point in the year the organizations raised the funds or what percentage of funds they raised were contributed to the ballot question committee. Contrary to ACLU-MI's argument, there is nothing in the MCFR/MMM case that requires an organization to be undercapitalized. The disparity between the assets at the beginning of the year and those contributed to the ballot question committee only demonstrated that they had to fundraise in the months before making a contribution to the ballot question committee. The ACLU-MI does not deny that it was fundraising during the time it was supporting the RFFA, and the facts showing the coordination with RFFA were more egregious—to an extent it was not independent.

In the MCFR/MMM case, both entities 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.” The Department found this was unpersuasive given the facts that suggested otherwise. ACLU-MI filed the same statement in this case, which is also unpersuasive given the multitude of facts that suggest otherwise.

Next, the ACLU-MI argues the facts summarized above do not support finding a violation. They don't deny that it and the RFFA were not independent from one another, rather they attempt to argue it was permissible coordination between two organizations. However, in this case the coordination rose to a level where the ACLU-MI and RFFA were not independent of one another. The organizations were so intertwined that it would have been impossible for the ACLU-MI to fundraise without intending to support the RFFA—as the decision to support them had clearly been made prior.

Put simply and incontrovertibly, the RFFA would not exist without the ACLU, ACLU-MI, and the Center's contributions—they **comprised 98% of RFFA's total funding**. The timing of those contributions also show they were coordinating. Two of the entities made contributions one month after the RFFA was formed and the ACLU-MI's contribution was in an odd amount—almost exactly the same as an RFFA expenditure of \$596,316.80. The ACLU-MI attempts to minimize the amount and timing of the contributions, stating in their reply that in the MCFR/MMM case those facts only “confirmed the disproportionate amount of money being brought into MCFR and MMM was being funneled directly to Unlock Michigan to pay its expenses.” This is not accurate and, in fact, there was **no evidence** of MCFR and MMM's fundraising or the

amount of funds they had at any point in the year, let alone that their contributions were disproportionate. The contributions could have been a small or large percentage of the funds the organizations raised that year, but it was unknown and irrelevant to the Department's decision. Contrary to ACLU-MI's argument, the timing of the contributions was important because, as the Department stated numerous times, it demonstrated the coordination between the two entities and that they were not independent.

The ACLU-MI and RFFA stated that ACLU-MI "led" the RFFA and was a "partner," and they had common individuals to both organizations. In fact, on its own website, ACLU-MI stated it was supporting the RFFA while simultaneously requesting donations. The ACLU-MI argues it is permitted to comment on its support for the RFFA. Of course it may do so, but it also may be used as evidence of the true relationship between the two entities.

Finally, the same person was serving as the ACLU-MI political director and RFFA treasurer. This further demonstrates the interdependence between the two organizations, and specifically a person serving in this dual role would be able to communicate the RFFA's financial needs to the ACLU-MI as they arose. This is evident in the timing of the ACLU-MI's odd contribution at the time the RFFA had a debt in nearly the identical amount. ACLU-MI states that Political Director / Treasurer Weisburg has engaged in fundraising activity for the RFFA, and presumably this was soliciting ACLU-MI given that the entities contributed 98% of RFFA's funds.

The RFFA simply would not have existed without the three respondents in this case. The Department must decide if the Act allows for ballot question committees to be wholly propped up by other organizations and ultimately exist with no disclosed donors. The facts of this case show a level of coordination between the ACLU-MI and RFFA such that the entities were not independent of one another and that the ACLU-MI was fundraising to support it—and the ACLU-MI doesn't offer anything to refute this. We request the Department examine the facts in this case, apply its prior case precedents, and find ACLU-MI's activity demonstrates it should have registered as a committee and filed the required reports.

Respectfully submitted,
/s/Kendra Arnold
Executive Director
Foundation For Accountability and Civic Trueth
1717 K Street NW, Suite 900, Washington, D.C., 20006



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

December 1582022

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

ACLU of Michigan
2966 Woodward Avenue
Detroit, MI 48201

Center for Reproductive Rights
199 Water Streets-22nd floor
New York, NY 10038

Re: *The Foundation for Accountability and Civic Trust v. American Civil Liberties Union, et al.*
Campaign Finance Complaint No. 2022 – 07 – 43 – 215

Dear American Civil Liberties Union, ACLU Fund of Michigan, and Center for Reproductive Rights:

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 Reproductive Freedom for All (RFFA), and that you should have therefore registered as ballot question committees and filed the required reports. According to the complaint, in February and March 2022, the ACLU, ACLU of Michigan, and the Center for Reproductive Rights (Center) contributed a total of \$1,378,718.80 to RFFA. Allegedly, the specific contributions for that time period were \$682,400 from the ACLU National, \$596,318.80 from ACLU of Michigan, and \$100,000 from the Center. The complaint alleged that these contributions account for 98.31% of RFFA's total funding during that period. Finally, the complaint alleges that ACLU of Michigan's website states that the RFFA campaign "is led by ACLU of Michigan, an ACLU affiliate[.]" and that RFFA's Treasurer is the political director for ACLU of Michigan.

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

All three 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. While it acknowledged that ACLU National made contributions to RFFA, it argued that ACLU National was not formed to support RFFA and did not undertake any fundraising for the purpose of supporting RFFA. 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, or to fundraise at all, in support of RFFA as the complaint alleges.

To the extent that ACLU National coordinated with RFFA, ACLU National contended 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 argued that it is not such an organization.

The Center responded to the complaint in a letter dated September 19, 2022. In it, the Center stated that it contributed \$150,000³ to RFFA as part of its nearly-30-year global mission to advance reproductive rights. The Center argued that it never undertook fundraising to support RFFA, made solicitations to fund the Center's contributions to RFFA, or received donations earmarked for RFFA. In support of its argument, the Center included its form 990s for the tax years ending in June 2017-2021 and showing that the Center had between \$39,860,906 and \$62,367,006 in net assets at the end of those tax years. Further, it argued that the Center's two contribution accounting for \$150,000 is less than 0.2% of the assets the Center had on hand at the end of the last tax year. Finally, the Center argued that grouping the three respondents together is misleading, given that "the Center's contribution to RFFA in the first quarter of 2022 represented about 7.13% of RFFA's total direct contributions received during the quarterly reporting period in question, and its contributions in the second quarter of 2022 represented about 0.61% of RFFA's total direct contributions received during that quarterly period."

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)

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

³ The Center indicated that it made a contribution to RFFA of \$50,000 in addition to the \$100,000 contribution that was the subject of the complaint.

ACLU of Michigan submitted a response on October 4, 2022, advancing many of the same arguments as ACLU National and the Center, but seeking to clarify the entities composing ACLU of Michigan: the ACLU Fund of Michigan (“Fund”) and the ACLU of Michigan (“Union”). According to the response, the Fund is the 501(c)(3) organization better known to the public through its public interest litigation and public education. By contrast, the Union is a 501(c)(4) organization that advocates for legislation in furtherance of “its mission of protecting the constitutional rights of all citizens.” While FACT identified “ACLU Fund of Michigan” as a respondent in its complaint, ACLU-Michigan indicated that the Union is the entity that contributed to RFFA.

According to the response, the Union had nearly \$4 million in its general treasury at the time it contributed to RFFA, and none of the funds in its treasury were solicited or received for the purpose of supporting RFFA. This is distinguishable from the Department’s determination in *LaBrant*, according to the Union, because in that case the contributing organizations contributed 133% and 155% of their cash on hand in the time directly preceding the contributions, necessitating aggressive fundraising; the contributions identified in the complaint as coming from the Union, on the other hand, represent 15.2% of the Union’s general treasury. It argued that the Union took “a small percentage of its general funds—all of which were raised for purposes in support of the mission of the Union—and contribute[d] them to the committee. This is expressly permitted by the MCFA and does not require the Union to register as a committee.”

In response to the complaint’s allegation that the fact that the Union’s political director, Shelli Weisberg, also served as treasurer of RFFA indicated coordination between the entities, the Union replied that her roles in the two organizations were very different and did not constitute a violation of the MCFA. While Ms. Weisberg engaged in fundraising activity as treasurer of RFFA, fundraising activities are conducted by the Union’s development director, not its political director, the Union replied. Further, the Union argued that “all of Ms. Weisberg’s fundraising on behalf of RFFA has involved the public disclosure of its donors.”

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. On October 19, 2022, FACT submitted a rebuttal reiterating several of its points from the initial complaint and replying specifically to arguments in the Union’s response. First, it pointed out again that RFFA received 98% of its contributions from the three organizations. Second, it pointed to the fact that “ACLU-MI stated it was supporting the RFFA while simultaneously requesting donations.” Finally, it argued that part of Ms. Weisberg’s role as treasurer of RFFA was presumably “soliciting ACLU-MI given that the entities contributed 98% of RFFA’s funds.”

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 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 RFFA because a large part of RFFA’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.

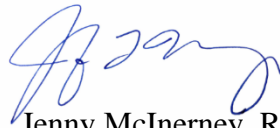
That is not the case here. While the amounts contributed to RFFA—as indicated in the complaint, \$682,400 from ACLU National, \$596,318.80 from the Union, and \$100,000 from the Center—were substantial, they accounted for 0.4% of the ACLU’s net assets for the fiscal year closing March 31, 2021, 15.2% of the amount in the Union’s general treasury at the time of the contributions, and 0.2% of the Center’s net assets for the tax year ending June 30, 2021. All three groups also submitted evidence that they have been in existence for a number of years before the formation of RFFA—since 1920 for ACLU National, since 1959 in the case of the Union, and since 1992 for the Center.

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. All three organizations possessed far more than the funds they contributed to RFFA before and after the

periods of contribution, and those contributions represented a small fraction of the funds expended by the organizations during the time period in question, indicating that none of the groups needed to engage in fundraising *for the purpose of* making an expenditure to the ballot question committee. Additionally, all 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