

**STATE OF MICHIGAN
BUREAU OF ELECTIONS**

CAMPAIGN FINANCE COMPLAINT

Section 1. COMPLAINANT

Christine Jensen
606 Townsend St.
Lansing, MI 48933
(517) 371-5410

Section 2. ALLEGED VIOLATOR

Unlock Michigan II
2145 Commons Parkway
Okemos, MI 48864

Section 3. ALLEGATIONS

Sections of Michigan Campaign Finance Act (MCFA) alleged to be violated: MCL 169.224(1), 169.225, 169.226, 169.233, and 169.234.

STATEMENT OF FACTS

1. “Committee” is defined in Sec. 3(4) of the MCFA, MCL 169.203(4), as a:

 person who received contributions or makes expenditures for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of a candidate, the qualification, passage or defeat of a ballot question or the qualification of a new political party, if contributions received total \$500.00 or more in a calendar year or expenditures total \$500.00 or more in a calendar year....An individual, other than a candidate, does not constitute a committee. A person, other than a committee registered under this act, making an expenditure to a ballot question committee or an independent expenditure committee, shall not, for that reason, be considered a committee or be required to file a report for the purposes of this act unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee or independent expenditure committee.

2. “Person” is defined in Sec. 11(2) of the MCFA, MCL 169.211(2) as:

a business, individual, proprietorship, limited liability company, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly.

3. “Contribution” is defined in Sec. 4(1) of the MCFA, MCL 169.204(1), as follows:

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

4. “Expenditure” is defined in Sec. 6(1)(a) of the MCFA, MCL 169.206(1)(a), as follows:

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

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

5. Section 24(1) of the MCFA, MCL 169.224(1), requires a committee to file a statement of organization within 10 days of its formation. A ballot question committee is required to file regular complete campaign finance statements. MCL 169.225, 169.226, 169.233, and 169.234.
6. Unlock Michigan filed a ballot question committee in June of 2020 with the Bureau of Elections to support its petition initiative to repeal the Emergency Powers of the Governor Act, also known as Public Act 302 of 1945, the emergency powers law used by Governor Gretchen Whitmer during the COVID-19 pandemic.

7. Now, Unlock Michigan is supporting an entirely different initiative petition that would limit state and local public health orders to 28 days unless given sign-off from an applicable governing body and has submitted a request to the Michigan Secretary of State for approval of the petition summary (“Unlock Michigan II”). *See* Exh. A, Deadline Established for Public Comments Regarding Petition Summary, Statewide Ballot Proposal Sponsored by Unlock Michigan, Dated June 22, 2021.
8. The new petition initiative language backed by Unlock Michigan II, according to the summary it submitted to the Secretary of State, would amend the Public Health Code, Public Act 368 of 1978, MCL 333.2453, and MCL 333.2253. *See* Exh. A.
9. As evidenced in multiple news articles, Unlock Michigan II has employed a spokesperson, Fred Wszolek (the same spokesperson for Unlock Michigan). *See* Exh B., *New Unlock MI Proposal Limits DHHS Epidemic Orders to 28 Days*, MIRS News (6/14/2021); *Vail, ‘Public Health Over Politicians’ Group Latest Opposition to Unlock MI*, MIRS News (7/8/2021).
10. Upon information and belief, Unlock Michigan II is receiving contributions and making expenditures in support of the petition initiative that seeks to amend the Public Health Code.
11. The Michigan Campaign Finance Act does not contemplate that one ballot question committee can support a different ballot question from the one it registered as supporting. Therefore, Unlock Michigan II must register as its own ballot question committee, separate from Unlock Michigan.
12. However, Unlock Michigan II has failed to file a statement of organization with the Bureau of Elections registering a ballot question committee as required by MCL 169.224(1).

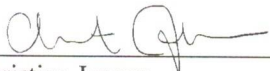
13. Summary of Alleged Violations

Based on these facts and the applicable law:

- A. Unlock Michigan II has failed to register as a ballot question committee in violation of MCL 169.224(1) because in calendar year 2021 it has received contributions in excess of \$500 and made expenditures in excess of \$500 in support of its petition initiative to amend the Public Health Code.
- B. Unlock Michigan II has failed to file campaign finance reports in violation of MCL 169.225, 169.226, and 169.234.

Section 4. CERTIFICATION

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



Christine Jensen

7/12/21

Date

EXHIBIT A



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

June 22, 2021

**DEADLINE ESTABLISHED FOR PUBLIC COMMENTS
REGARDING PETITION SUMMARY**
**STATEWIDE BALLOT PROPOSAL SPONSORED BY
UNLOCK MICHIGAN**

Under Michigan election law, the sponsor of an initiative, referendum, or constitutional amendment petition may request approval of the summary of the purpose of the petition prior to placing the petition in circulation. MCL 168.482b(1). If a petition sponsor avails itself of this process, a summary of the proposal's purpose must be prepared by the Director of Elections and presented to the Board of State Canvassers (Board) for approval or rejection. MCL 168.482b(2). The deadline for the Board to approve or reject the content of the petition summary is the 30th day following the sponsor's submission. MCL 168.482b(1).

If the Board approves a petition summary as prepared by the Director of Elections, the sponsor must print the approved summary in 12-point type in the heading of the petition, and the Board will be barred from considering a subsequent challenge alleging that the summary is misleading or deceptive. MCL 168.482(3), 168.482b(1), (3). Further, if the Board subsequently determines that the petition contains enough valid signatures to merit certification, the Director of Elections and Board are authorized to draft and approve ballot wording that differs from the petition summary. Opinion of the Attorney General No. 7310 (May 22, 2019).

The "summary of the purpose of the proposed amendment or question" prepared by the Director of Elections may be up to 100 words in length and must consist of a true and impartial statement in language that does not create prejudice for or against the proposal. MCL 168.482b(2). The summary also must inform signers of the subject matter of the petition but need not be legally precise, and use words having a common, everyday meaning to the public. *Id.*

UNLOCK MICHIGAN submitted a request for approval of the petition summary. A copy of the full text of the proposed initiated law is provided with this announcement. **The Director of Elections is inviting public comments regarding the summary of the purpose of this proposed initiative petition, including submissions of suggested language, as follows:**

<i>Deadline for submission of suggested petition summary and/or explanatory materials to staff:</i>	June 29, 2021, 5:00 p.m.
<i>Date of Board of State Canvassers meeting at which summaries will be considered:</i>	To be announced
<i>Deadline for Board of State Canvassers to approve or reject the summary of the content of the petitions:</i>	July 19, 2021 ¹

Submissions may be made via email (Elections@Michigan.gov), U.S. Mail (P.O. Box 20126, Lansing, Michigan 48901), or hand delivery (address provided below). **Submissions must be received in this office by the date and time specified to be considered.**

¹ The 30th day falls on Sunday, July 18, causing the deadline to be extended until the next business day. MCL 168.13.

INITIATION OF LEGISLATION

An initiation of legislation to amend Sections 2253 and 2453 of the Public Health Code, Public Act 368 of 1978, MCL 333.2253 and MCL 333.2453. The Act authorizes the director of the department of health and human services or a local health officer to determine that control of an epidemic is necessary to protect the public health through an emergency order. If enacted, the proposed initiated law would limit the time period that an emergency order is enforceable to 28 days unless the relevant elected governing body approves an extension.

Full text of the proposal (language that would be added is shown in capital letters and deleted language is struck out with a line)

An initiation of legislation to amend 1978 PA 368, entitled

"public health code,"

by amending sections 2253 and 2453 (MCL 333.2253 and MCL 333.2453), as amended by 2006 PA 157.

The People of the State of Michigan enact:

Sec. 2253. (1) If the director determines IN WRITING that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code. THE AUTHORITY OF THE DIRECTOR TO ISSUE, REVISE, REPLACE, AND ENFORCE AN EMERGENCY ORDER RELATED TO AN EPIDEMIC UNDER THIS SECTION SHALL CONTINUE FOR A PERIOD OF UP TO 28 DAYS AFTER THE DIRECTOR'S WRITTEN DETERMINATION THAT CONTROL OF THAT EPIDEMIC IS NECESSARY TO PROTECT THE PUBLIC HEALTH. AFTER THIS 28-DAY PERIOD, ANY EMERGENCY ORDER UNDER THIS SECTION RELATED TO THAT EPIDEMIC IS AUTOMATICALLY RESCINDED AND UNENFORCEABLE AND ANY NEW EMERGENCY ORDER UNDER THIS SECTION RELATED TO THAT EPIDEMIC SHALL NOT BE ISSUED UNLESS A REQUEST BY THE DIRECTOR FOR AN EXTENSION OF TIME TO ISSUE, REVISE, REPLACE, AND ENFORCE AN EMERGENCY ORDER RELATED TO THAT EPIDEMIC FOR A SPECIFIC NUMBER OF DAYS IS APPROVED BY RESOLUTION OF BOTH HOUSES OF THE LEGISLATURE.

(2) If an epidemic described in subsection (1) involves avian influenza or another virus or disease that is or may be spread by contact with animals, the department of agriculture shall cooperate with and assist the director in the director's response to the epidemic.

(3) Upon request from the director, the department of agriculture shall assist the department in any review or update of the department's pandemic influenza plan under section 5112.

Sec. 2453. (1) If a local health officer determines IN WRITING that control of an epidemic is necessary to protect the public health, the local health officer may issue an emergency order to prohibit the gathering of people for any purpose and may establish procedures to be followed by persons, including a local governmental entity, during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code. THE AUTHORITY OF THE LOCAL HEALTH OFFICER TO ISSUE, REVISE, REPLACE, AND ENFORCE AN EMERGENCY ORDER RELATED TO AN EPIDEMIC UNDER THIS SECTION SHALL CONTINUE FOR A PERIOD OF UP TO 28 DAYS AFTER THE LOCAL HEALTH OFFICER'S WRITTEN DETERMINATION THAT CONTROL OF THAT EPIDEMIC IS NECESSARY TO PROTECT THE PUBLIC HEALTH. AFTER THIS 28-DAY PERIOD, ANY EMERGENCY ORDER UNDER THIS SECTION RELATED TO THAT EPIDEMIC IS AUTOMATICALLY RESCINDED AND UNENFORCEABLE AND ANY NEW EMERGENCY ORDER UNDER THIS SECTION RELATED TO THAT EPIDEMIC SHALL NOT BE ISSUED UNLESS A REQUEST BY THE LOCAL HEALTH OFFICER FOR AN EXTENSION OF TIME TO ISSUE, REVISE, REPLACE, AND ENFORCE AN EMERGENCY ORDER FOR A SPECIFIC NUMBER OF DAYS IS APPROVED BY RESOLUTION OF THE LOCAL GOVERNING ENTITY OF THE LOCAL HEALTH DEPARTMENT OR, IN THE CASE OF A LOCAL HEALTH OFFICER FROM A DISTRICT HEALTH DEPARTMENT, THE DISTRICT BOARD OF HEALTH.

(2) A local health department or the department may provide for the involuntary detention and treatment of individuals with hazardous communicable disease in the manner prescribed in sections 5201 to 5238.

EXHIBIT B

◀ Monday, June 14, 2021 ▶

New Unlock MI Proposal Limits DHHS Epidemic Orders To 28 Days

With the Legislature soon expected to vote on its proposal to do away with the 1945 gubernatorial emergency powers law, Unlock Michigan is turning next to curb the state-issued epidemic orders through the initiative petition process.

Gov. Gretchen WHITMER relied on the 1945 Emergency Powers Act to issue rolling executive orders during much of 2020 without the Legislature's consent to extend them beyond 28 days. That spurred ballot committee Unlock Michigan to lead a petition drive to get the law repealed.

But since the Michigan Supreme Court (MSC) deemed the '45 law unconstitutional, Whitmer has relied on the Michigan Department of Health and Human Services (DHHS) issuing state epidemic orders to carry on various mask and social gathering restrictions.

That's what Unlock Michigan has its collective eyes set on next, as spokesperson Fred **WSZOLEK** said the group will soon present language to amend the state's Public Health Act to have epidemic orders last 28 days and needing legislative approval to continue after that.

Wszolek said the move would bring that law in line with the 1976 Emergency Powers Act, the one that calls for legislative approval after 28 days of an issued emergency executive order.

The Legislature had previously sent a bill to Whitmer doing something similar – limiting DHHS epidemic orders to 28 days – but the Governor vetoed it (See "[Governor Vetoes 13 Bills, Signs 21 Into Law](#)," 12/30/20).

Wszolek said the latest initiative comes in response to Whitmer's "abuse" of the Public Health Act.

"We closed one door and she opened a window," he said.

The group is expecting to file paperwork with the Bureau of Elections (BOE) in the next few days, and the group will seek approval to form for the petition before going out in the field.

Wszolek said that early on in the pandemic, "the Legislature agreed to renew. It wasn't until later that they said, 'alright, we'll renew with some modifications and some conditions.' And that's when the Governor decided to fly solo. On a private jet. To Florida."

As for the original Unlock Michigan petition, while the MSC deemed the 1945 law unconstitutional, the initiative to repeal the law was deemed sufficient by the state Bureau of Elections. The group had

amassed 538,000 signatures, and it was estimated 460,000 were valid. A count of 340,047 valid signatures is needed for certification (See "Unlock MI Petition Could Be 10th Initiative Law Enacted By Legislature," 4/19/21).

The MSC recently ordered the previously-deadlocked Board of State Canvassers (BSC) to certify the petition and send it to the Legislature (See "Supremes Order Canvassers To Approve Unlock MI Signatures," 6/11/21).

[show less](#)

Vail, 'Public Health Over Politicians' Group Latest Opposition To Unlock MI

A new opposition group has formed to contest the next initiative petition backed by Unlock Michigan, which would limit state and local public health orders to 28 days unless given sign-off from an applicable governing body (See "New Unlock MI Proposal Limits DHHS Epidemic Orders To 28 Days," 6/14/21).

A ballot committee called Public Health Over Politicians was formed July 1. The treasurer listed on the committee is Ingham County Health Officer Linda VAIL, who confirmed she's involved in the effort.

Unlock Michigan initially circulated an initiative petition to do away with the 1945 emergency powers law used by Gov. Gretchen WHITMER during COVID-19. Now, Unlock Michigan wants to limit state epidemic orders or those issued by local health officials to 28 days, unless the relevant elected governing body approves an extension, according to the group's proposed summary language.

After the 1945 law was deemed unconstitutional by the Michigan Supreme Court (MSC), Whitmer and the Michigan Department of Health and Human Services (DHHS) switched to issuing epidemic orders to continue COVID-19 restrictions.

Vail said the new Unlock Michigan petition isn't so much about the Governor's powers but more so affects the abilities of local public health officers across the state to help protect public health.

While the language is going after the issuance of epidemic orders, she said, "I don't think you can in fairness cherry-pick the health code on the things you like and the things you don't like." She compared the proposal to someone going to the doctor for treatment for a chronic illness and the doctor having to go to a "board of directors" to continue treatment after 28 days.

Vail said she's involved with the new opposition committee to provide perspective from someone who works in public health. As for who else is jumping on board, Vail did not say. She referred further questions to Mark FISK with Byrum & Fisk Communications, who said there are a number of public health officials who are concerned about the proposal.

Fisk said they're in the beginning phases of putting a campaign together, but the main focus for the group now is ensuring an accurate summary of the proposal, which is on the agenda for consideration by the Board of State Canvassers (BSC) meeting next Tuesday.

Prior to the meeting, the Bureau of Elections took comments on Unlock Michigan's suggested

summary of its new petition. Christopher **TREBILCOCK** and Mark **BREWER**, who both listed themselves as attorneys for Public Health Over Politicians, filed comments on Unlock Michigan's proposed language, which opened with the statement, "this radical proposal is a dire threat to the health and lives of all Michiganders."

Trebilcock and Brewer continued: "It will seriously undermine the ability of public health experts to quickly and flexibly stop the spread of dangerous infectious diseases resulting in the needless illness, suffering, and death of Michigan citizens, particularly vulnerable senior citizens and children."

Also in the packet of comments submitted by Public Health Over Politicians was a letter of concerned officials that included Flint water crisis whistleblower Dr. Mona **HANNA-ATTISHA**, Dr. Farhan **BHATTI** from the Committee to Protect Health Care, as well as officials representing AFSCME Council 25, the Michigan Nurses Association and the Michigan Alliance for Retired Americans.

Told about the formation of the new opposition committee, Unlock Michigan spokesperson Fred **WSZOLEK** today referenced Trebilcock and Brewer's filing and said, "I suspect we'll see a replay of all their antics from last year in trying to discredit the Unlock petition drive. I suspect they'll fail just as completely."

Unlock Michigan's first petition was recommended for certification, but the BSC initially deadlocked on certification. Later, the MSC unanimously ordered the Canvassers to certify the petition, which would send it to the Legislature for a likely vote and approval.

However, Keep Michigan Safe -- which Trebilcock and Brewer also represent -- asked MSC to reconsider its order, which prompted the Canvassers to cancel their meeting (See "Canvassers Cancel Unlock MI Vote After Supremes Asked To Reconsider," 6/22/21).



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

October 6, 2022

Unlock Michigan II
2145 Commons Parkway
Okemos, MI 48864

Re: *Jensen v. Unlock Michigan II*
Campaign Finance Complaint No. 2022 – 10 – 131 – 24, 25, 26, 33, 34

Dear Unlock Michigan II:

The Department of State (Department) has received a formal complaint filed against you by Christine Jensen alleging that you violated the Michigan Campaign Finance Act (MCFA or Act). Specifically, the complaint alleges that you failed to register as a ballot question committee and failed to file campaign finance reports, having met the statutory thresholds to trigger those requirements. The complaint alleges that Unlock Michigan II, as a separate ballot question from Unlock Michigan, required the formation of a separate ballot question committee to further its adoption. A copy of the complaint is included with this notice.

The Act defines a ballot question committee as “a committee acting in support of, or in opposition to, the qualification, passage, or defeat of a ballot question but that does not receive contributions or make expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate.” MCL 169.202(3).

By statutory definition, a committee is formed when “a person receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against [candidate, ballot question, etc.] 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). For purposes of determining whether a committee exists, the word “person” includes “a group of persons acting jointly.” 169.211(2).

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

The MCFA requires committees to file contributions and expenditures with the appropriate filing official by specific dates. MCL 169.233(1) – (3). The Act requires a committee that receives or expends more than \$1,000 during any election to file campaign finance reports in compliance with the act. MCL 16.233(6). A person who knowingly omits or underreports expenditures required to be disclosed by the Act is subject to a civil fine of not more than \$1,000 or the amount of the expenditures omitted or underreported, whichever is greater. MCL 169.233(11). Further, section 34 of the MCFA lists filing requirements specific to ballot question committees.

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 Ms. Jensen, 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

Enclosure
c: Christine Jensen

DOSTER LAW OFFICES, PLLC

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Okemos, MI 48864

Eric E. Doster
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October 26, 2022

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

BY EMAIL TRANSMISSION
Adam Fracassi fracassia@michigan.gov

Re: Jensen v. Unlock Michigan II (a nonexistent entity); Campaign Finance Complaint No. 2022-10-131-24, 25, 26. 33, 34; Response to Campaign Finance Complaint (the “Complaint”) Filed by Christine Jensen (the “Complainant”) dated July 12, 2021

Dear Mr. Fracassi:

This office represents Unlock Michigan. We have received your letter dated October 6, 2022, which contained the Complaint, and which was knowingly filed against a nonexistent entity called “Unlock Michigan II”. The Complaint was filed by Christine Jensen, the Executive Director of the Michigan Democratic Party. <https://michigandems.com/teststaff/>. As your October 6, 2022 letter indicates, the Complaint makes the following allegations:

“Specifically, the complaint alleges that you [referring to the nonexistent entity named by the Complaint as “Unlock Michigan II”] failed to register as a ballot question committee and failed to file campaign finance reports, having met the statutory thresholds to trigger those requirements. The complaint alleges that Unlock Michigan II, as a separate ballot question from Unlock Michigan, required the formation of a separate ballot question committee to further its adoption.”

This case represents an abuse of the campaign finance process to file a frivolous complaint with knowingly false factual contentions based on activities that are not remotely or arguably violations of the Michigan Campaign Finance Act.

As a preliminary matter, Unlock Michigan objects to receiving this Complaint well after 5 business days after the date of filing, as required in Section 15(5) of the Michigan Campaign Finance Act. If the Michigan Department of State is making a statutory exception in this case, please so state for future reference.

For the following reasons, to the extent that any allegations in the Complaint apply to Unlock Michigan, such allegations were made knowing that they were false and lack any merit, and the Complaint must be dismissed as to Unlock Michigan.

UNLOCK MICHIGAN’S ACTIONS TO SUPPORT A BALLOT QUESTION TO AMEND THE PUBLIC HEALTH CODE WERE FULLY COMPLIANT WITH THE MICHIGAN CAMPAIGN FINANCE ACT

The rather unremarkable steps taken by Unlock Michigan are as follows:

1. On or about June 18, 2021, Unlock Michigan (an existing statewide ballot question committee created in 2020) filed its request for approval as to form and approval as to the petition summary with respect a petition to amend the Public Health Code with the Bureau of Elections.
2. As admitted by the Complainant by the submission of both Exhibits A and B of the Complaint, Unlock Michigan (not some nonexistent entity called “Unlock Michigan II”) was the sponsor of this petition to amend the Public Health Code. Significantly, these documents FILED BY THE COMPLAINANT reference only Unlock Michigan as the sponsor of this petition to amend the Public Health Code. Therefore, the Complaint’s repeated reference to a nonexistent entity known as “Unlock Michigan II” represents a knowingly false contention of fact.
3. The actual physical petition to amend the Public Health Code clearly states that it is paid for by Unlock Michigan. See Michigan Board of State Canvassers website at [Board of State Canvassers \(michigan.gov\)](https://www.michigan.gov/bosc).
4. Pursuant to Section 24(4) of the Michigan Campaign Finance Act, Unlock Michigan amended its Statement of Organization to reflect the “brief statement identifying the substance of each ballot question supported or opposed by the committee” (see MCL 169.224(1)(e)) to include this petition to amend the Public Health Code.
5. Unlock Michigan has filed all required reports of its contributions received, and expenditures made, with respect to its petition to amend the Public Health Code. See MCL 169.233 and MCL 169.234. Consequently, the Complaint does not (and cannot) make any claim that the public has been denied any information with respect to Unlock Michigan’s support of its petition to amend the Public Health Code.

Accordingly, Unlock Michigan has taken all actions required of it pursuant to the Michigan Campaign Finance Act with respect to this petition to amend the Public Health Code.

THE MICHIGAN CAMPAIGN FINANCE ACT DOES NOT REQUIRE A BALLOT QUESTION COMMITTEE TO CREATE A SEPARATE BALLOT QUESTION COMMITTEE WITH RESPECT TO EVERY BALLOT QUESTION SUPPORTED OR OPPOSED BY THAT BALLOT QUESTION COMMITTEE

The Michigan Campaign Finance Act expressly allows a ballot question committee to support or oppose different ballot questions without the requirement to establish a separate ballot question committee for each additional ballot question supported or opposed. According to Section 24(1)(e) of the Michigan Campaign Finance Act, the Statement of Organization of a ballot question committee must contain:

“A brief statement identifying the substance of each ballot question supported or opposed by the committee.” (Emphasis added)

Significantly, if a single ballot question committee could not support or oppose more than one ballot question, the foregoing requirement would read (which it clearly does not) as follows:

“A brief statement identifying the substance of the ballot question supported or opposed by the committee.” (Emphasis added)

Therefore, the statutory use of the word “each” can only mean that a single ballot question committee may support or oppose more than one ballot question.

Similarly, the Statement of Organization form for a ballot question committee expressly allows a ballot question committee to support or oppose different ballot questions without the requirement to establish a separate ballot question committee for each additional ballot question supported or opposed. According to the Statement of Organization form:

“List the specific ballot proposal(s) involved using the official ballot designation if available and mark support or oppose as appropriate.”

The word “proposal(s)” instead of “proposal” speaks for itself. Therefore, the use of the word “proposal(s)” can only mean that a single ballot question committee may support or oppose more than one ballot question.

Furthermore, other than making expenditures for candidate-related activities, the Michigan Campaign Finance Act allows a ballot question committee to expend its funds for any lawful purpose—which necessarily includes supporting or opposing different ballot questions. According to the Michigan Department of State, a “Ballot Question Committee may not make expenditures to, in support of, or in opposition to, a Candidate Committee, Political Party Committee, Political Committee (PAC), Independent Committee (PAC), or any committee that supports or opposes candidates.” Michigan Department of State Bureau of Elections, *Ballot Question Committee Manual* (modified May 3, 2017) (available on MDOS website,

www.michigan.gov/SOS). Other than making contributions to or on behalf of candidate-related types of committees registered under the Michigan Campaign Finance Act, the Michigan Campaign Finance Act does not restrict the purpose for which a ballot question committee may expend its funds. See MCL 169.203(4) (“Except as restricted or prohibited by this act or other state or federal law, a committee may also make other lawful disbursements.”); Interpretative Statement issued to Mark Heinen dated June 3, 1982. In fact, as stated in the Interpretative Statement issued to William Faust dated October 22, 1980:

“A review of the Act discloses no direct or indirect prohibition against contributions by one ballot question committee to another....The only limitations on ballot question committees are that section 2(2) of the Act limit a ballot question committee to activities for or against ballot questions and does not permit such a committee to contribute or make 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.”

This means that, subject to the prohibition that a ballot question committee may not contribute to certain other types of committees registered under the Michigan Campaign Finance Act, a ballot question committee may expend its funds for any lawful purpose-- which includes supporting or opposing different ballot questions. See Interpretative Statement issued to Jon Jenkins dated October 23, 1981; Declaratory Ruling issued to Gary Campbell dated August 21, 2006.

Accordingly, while the Complaint does not (and cannot) cite to any requirement to expressly prevent a ballot question committee from supporting or opposing different ballot questions without first establishing a separate ballot question committee, the text of the Michigan Campaign Finance Act itself, and the relevant interpretations by the Michigan Department of State, illustrate that no such requirement exists and doom the Complaint to its inevitable dismissal.

* * *

Thank you for your consideration of our comments in this matter. If you have any questions or require additional information, please contact the undersigned.

Sincerely,

DOSTER LAW OFFICES, PLLC



Eric Doster



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

November 3, 2022

Christine Jensen
606 Townsend St.
Lansing, MI 48933

Re: *Jensen v. Unlock Michigan II*
Campaign Finance Complaint No. 2022 – 10 – 131 – 24, 25, 26, 33, 34

Dear Ms. Jensen:

The Department of State received a response from Unlock Michigan II 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

Enclosure
c: Eric Doster

MDOS-BOERegulatory

From: MDOS-BOERegulatory
Sent: Thursday, February 2, 2023 11:01 AM
To: Eric Doster
Subject: RE: Campaign finance complaint

Thank you for your response, Eric. You are correct: no rebuttal was received.

From: Eric Doster <eric@ericdoster.com>
Sent: Wednesday, February 1, 2023 2:53 PM
To: MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>
Subject: RE: Campaign finance complaint

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

Jenny:

Thank you for the message.

I have been advised by the Treasurer that since Gmail automatically deletes messages after a period of time, I no longer have the ability to provide the information relating to the amended Statement of Organization to include Unlock Michigan's support for the petition that would amend the Public Health Code.

I did, however, review the Bureau of Elections website for the Unlock Michigan Statement of Organization and there is no public notification anywhere of what ballot question or ballot questions are being supported by Unlock Michigan. If no one can access this information as to the ballot question or ballot questions which are being supported by Unlock Michigan, does this information even matter? This is a particularly relevant question given that all financial information relating to Unlock Michigan's ballot question activity related to the Public Health Code has been fully disclosed and the Complaint in this matter challenges only Unlock Michigan's ability to support more than one ballot question. Again, as set forth in our October 26, 2022 Response, while the Complaint does not (and cannot) cite to any requirement to expressly prevent a ballot question committee from supporting or opposing different ballot questions without first establishing a separate ballot question committee, the text of the Michigan Campaign Finance Act itself, and the relevant interpretations by the Michigan Department of State, illustrate that no such requirement exists and doom the Complaint to its inevitable dismissal.

Thank you for the opportunity to provide additional information.

EED

PS: Is it correct to conclude that no Rebuttal Statement was filed in this matter pursuant to the attached letter?

Eric E. Doster
Attorney
Doster Law Offices, PLLC
2145 Commons Parkway
Okemos, MI 48864
Phone: 517.977.0147 (Direct)

eric@ericdoster.com
www.ericdoster.com

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From: MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>
Sent: Tuesday, January 31, 2023 5:49 PM
To: Eric Doster <eric@ericdoster.com>
Subject: Campaign finance complaint

Eric,
The Department is reviewing all submitted materials in the Jensen v. Unlock Michigan II complaint. You stated in your response to that complaint that Unlock Michigan amended its Statement of Organization to include its support for the petition that would amend the Public Health Code. The Department does not have a record of an amended Statement of Organization on its campaign finance [website](#), and the Statement of Organization submitted by Unlock on June 26, 2020 lists only "Repeal of 1945 PA 302" as the ballot proposal supported or opposed. Could you send along any documentation of the amended SofO to aid in the Department's determination?

Thank you,

Jenny McNerney
Regulatory Attorney
Regulatory Section
[Michigan Bureau of Elections](#)
Main: 517-335-3234
McNerneyJ1@Michigan.gov



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

February 9, 2023

Eric Doster
Attorney for Unlock Michigan
2145 Commons Parkway
Okemos, MI 48864

Re: *Jensen v. Unlock Michigan II*
Campaign Finance Complaint No. 2022 – 10 – 131 – 24, 25, 26, 33, 34

Dear Mr. Doster:

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

Specifically, the complaint alleges that “Unlock Michigan II” failed to register as a ballot question committee and failed to file campaign finance reports, having met the statutory thresholds to trigger those requirements. The complaint alleges that Unlock Michigan II, as a separate ballot question from Unlock Michigan, required the formation of a separate ballot question committee to further the adoption of the ballot question.

In a letter dated October 26, 2022, you responded to the complaint. In your response, you argued that the complaint was knowingly filed against a nonexistent entity—Unlock Michigan II—and that filing of this frivolous complaint represents an abuse of the campaign finance complaint process.

You stipulated that Unlock Michigan (an existing statewide ballot question committee created in 2020) sponsored a petition to amend the Public Health Code, sought approval for its form and a petition summary, circulated the petition, and filed the required reports pertaining to that ballot question. While the petition was generally referred to as “Unlock Michigan II” to distinguish it from the petition sponsored by Unlock Michigan that sought to repeal the Emergency Powers of the Governor Act, you note that all documents filed by your client reference only “Unlock Michigan” as the sponsor of the petition in question.

You stated that, in an effort to reflect the support of the two ballot questions, Unlock Michigan amended its Statement of Organization to include support of the petition seeking to amend the Public Health Code.

In a letter dated November 3, 2022, Ms. Jensen was provided an opportunity to submit a rebuttal statement. To date, no rebuttal has been received.

In a January 31, 2023 email, the Department requested documentation of the amended Statement of Organization you referenced in your response, as [it had no record of such an amendment](#).

You responded on February 1, 2023 and stated that the committee's treasurer has no documentation of the alleged amended Statement of Organization because her email service automatically deleted it after a period of time. However, you argued, such an amendment was unnecessary because the names of the ballot questions supported or opposed are not visible to the public on the Department's website. Further, all of Unlock Michigan's financial information related to its ballot question regarding the Public Health Code has been fully disclosed, you argue.

The Act defines a ballot question committee as "a committee acting in support of, or in opposition to, the qualification, passage, or defeat of a ballot question but that does not receive contributions or make expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate." MCL 169.202(3).

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

Specifically, a committee's Statement of Organization must include "[a] brief statement identifying the substance of each ballot question supported or opposed by the committee." MCL 169.224(1)(e).

The Department has reviewed the evidence submitted in this matter and finds that sufficient evidence has been presented to support a finding of a potential violation of the MCFA.

Ms. Jensen alleges in her complaint that the Unlock Michigan II ballot question (the proposed amendment to the Public Health Code), as a separate ballot question from Unlock Michigan's initial ballot question that would have repealed the Emergency Powers of the Governor Act, required the formation of a separate ballot question committee. While it is indisputable that the two ballot questions address different acts, it has never been the position of the Department that

each ballot question requires the formation of a distinct ballot question committee. Therefore, as to Ms. Jensen's allegation that Unlock Michigan violated the MCFA by failing to form a separate ballot question committee and file applicable campaign finance reports for that committee, the Department determines that no violation occurred and dismisses the allegation.

However, a ballot question committee must disclose the names of all ballot questions it supports or opposes. Section 24 of the Act requires that a ballot question committee's Statement of Organization include "[a] brief statement identifying the substance of each ballot question supported or opposed by the committee." (emphasis added) (MCL 169.224(1)(e)).

Additionally, the instructions on the Department's Statement of Organization for ballot question committees requires committees to "list the specific ballot proposal(s) involved...and mark support or oppose as appropriate[.]" (emphasis added)

The use of the word "each" is controlling and must be given effect. "Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire & Cas. Co. v. Old Republic Ins. Co.*, 466 Mich. 142 (2002). You seem to acknowledge as much in your response. Your response includes in its list of "rather unremarkable steps" that you took to be "fully compliant with the Michigan Campaign Finance Act" the following:

Pursuant to Section 24(4) of the Michigan Campaign Finance Act, Unlock Michigan amended its Statement of Organization to reflect the "brief statement identifying the substance of each ballot question supported or opposed by the committee" (see MCL 169.224(1)(e)) to include this petition to amend the Public Health Code.

The Department has no record of such an amended Statement of Organization. When the Department contacted you on January 31, 2023 to ask for any documentation of the alleged amendment, you replied that the treasurer no longer has any record of it.

The Department finds unpersuasive your argument that an indication of the ballot questions supported or opposed by a ballot question committee is unnecessary because that information is not readily visible to the public on the Department's website. As described above, and as you acknowledge in your response, that information is required by section 24 of the MCFA and is available to the public upon request. Further, this information remains available to the public.

After considering the evidence submitted by the parties, the campaign finance filings, and the relevant MCFA sections, the Department finds that sufficient evidence has been presented to support a finding of a potential violation of the MCFA. The MCFA requires a ballot question to indicate each ballot question supported or opposed by the committee on its Statement of Organization, and Unlock Michigan's Statement of Organization currently only indicates support of the ballot question to repeal the Emergency Powers of the Governor Act. Please amend Unlock Michigan's Statement of Organization accordingly.

Because this failure to amend your Statement of Organization appears to be unintentional, especially given the acknowledgement in your response that you believed you had already

submitted the required amendment, the Department concludes that a warning is a sufficient resolution to the matter and will consider the matter concluded once you have submitted documentation of the amended filing.

Should you have any questions, please do not hesitate to contact the undersigned at BOERegulatory@Michigan.gov.

Sincerely,

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

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



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

May 11, 2023

Eric Doster
Attorney for Unlock Michigan
2145 Commons Parkway
Okemos, MI 48864

Re: *Jensen v. Unlock Michigan II*
Campaign Finance Complaint No. 2022-10-131-24, 25, 26, 33, 34

Dear Mr. Doster:

The Department of State (Department) is in receipt of your amended Statement of Organization, submitted February 16, 2023 in response to the Department's February 9, 2023 determination that there may be reason to believe that you violated the Michigan Campaign Finance Act (MCFA or Act).

In its determination, after considering the evidence submitted by the parties, the campaign finance filings, and the relevant MCFA sections, the Department found that sufficient evidence had been presented to support a finding of a potential violation of the MCFA. The MCFA requires a ballot question to indicate each ballot question supported or opposed by the committee on its Statement of Organization, and Unlock Michigan's Statement of Organization only indicated support of the ballot question to repeal the Emergency Powers of the Governor Act.

Your amended Statement of Organization, submitted February 16, 2023, indicates support for a ballot question to amend the Public Health Code.¹

Given this, the Department concludes that a formal warning is a sufficient resolution to the complaint and considers the matter concluded. Thank you for your resolution of this matter.

Sincerely,

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

c: Christine Jensen

¹ Public Act 77 of 2021, effective March 30, 2022, repealed the Emergency Powers of Governor Act. Given that Unlock Michigan could take no further action in support or opposition of its initial position, the Department determines that removal of that position and replacement with its current position is appropriate.