

Michigan Campaign Finance Complaint

RECEIVED/FILED
MICHIGAN DEPT OF STAT
2022 JUN 28 AM 9:40
ELECTIONS/GREAT SEAL

Section 1. Complainant

Name: Matthew Ross Schonert

Daytime Telephone Number: +1 (231) 250-9931

Mailing Address: 22050 Boulder Ave, Eastpointe, MI 48021

Email: mrschonert@gmail.com

Section 2. Alleged Violator

Name: Regional Transit Authority of Southeast Michigan

Mailing Address: 1001 Woodward Ave., Suite 1400, Detroit, MI 48226

Email: info@rtamichigan.org

Section 3. Allegations

Sections of MCFA alleged to be violated:

MCL 169.257

Explain how those sections were violated:

1. On August 3, 2018, the Regional Transit Authority of Southeast Michigan (RTA) published a Facebook post which included the following text: "Vote YES this Tuesday on the SMART millage!" URL:
<https://www.facebook.com/rtamichigan/posts/pfbid02iF6nkBgPVvvcZaGRsxLbDiQ1MZyxkPRFL2PpkKoMBkmoN8UxtUPUVhyFC9iX2Ybkl>
2. On August 3, 2018, the RTA published a tweet which included the following text: "Vote YES this Tuesday on the SMART millage!" URL:
<https://twitter.com/RTAmichigan/status/1025510878739873793>
3. Both social media postings made by the RTA expressly advocated a "YES" vote on the Aug. 7 SMART millage proposal.
4. The RTA is a public body under MCL 169.211 and MCL 124.543.
5. The posts appeared on the RTA's official social media accounts, which are linked to from its official website at <https://rtamichigan.org>

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

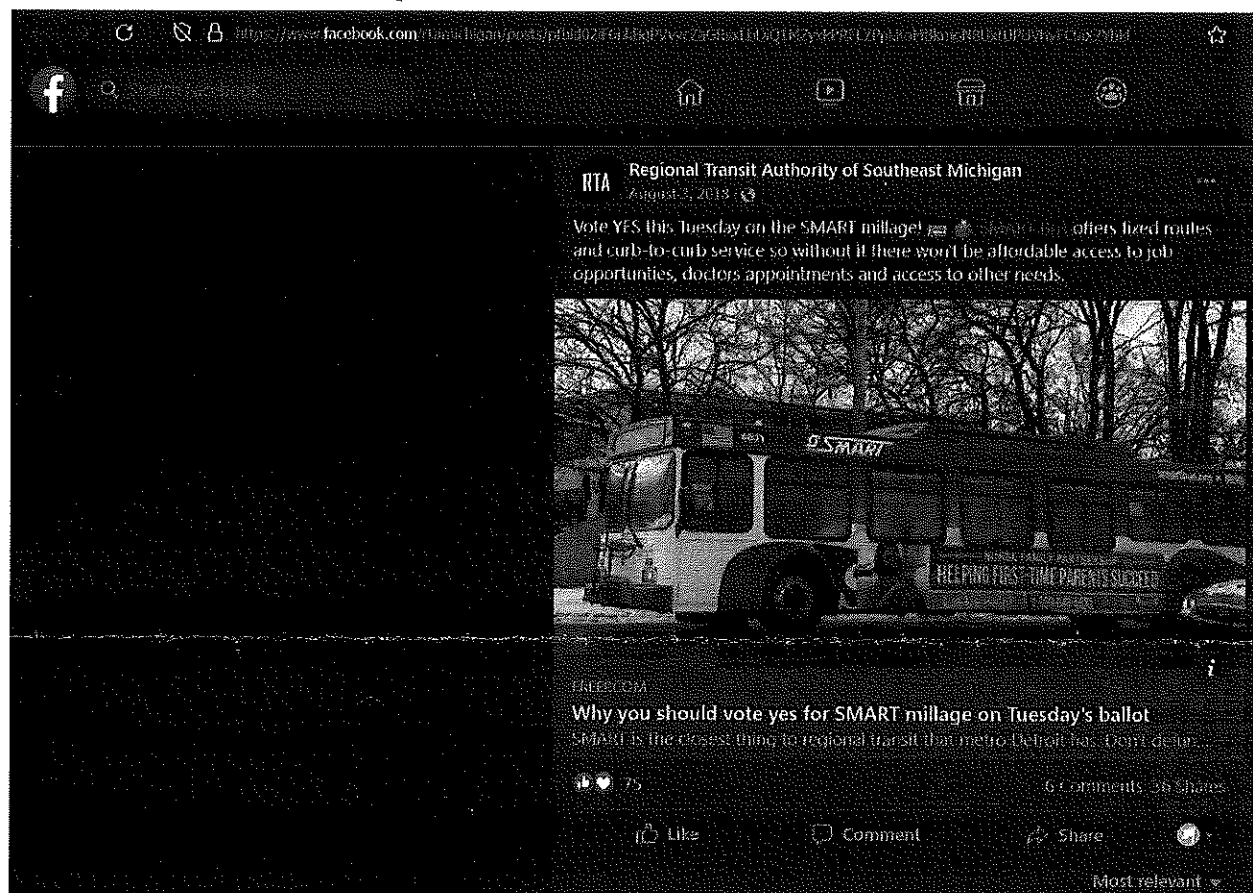
Facebook content

The Facebook post's URL is

<https://www.facebook.com/rtamichigan/posts/pfbid02iF6nkBgPVvvcZaGRsxLbDiQ1MZyxkPRFL2PpkKoMBkmoN8UxtUPUVhyFC9iX2Ybkl>

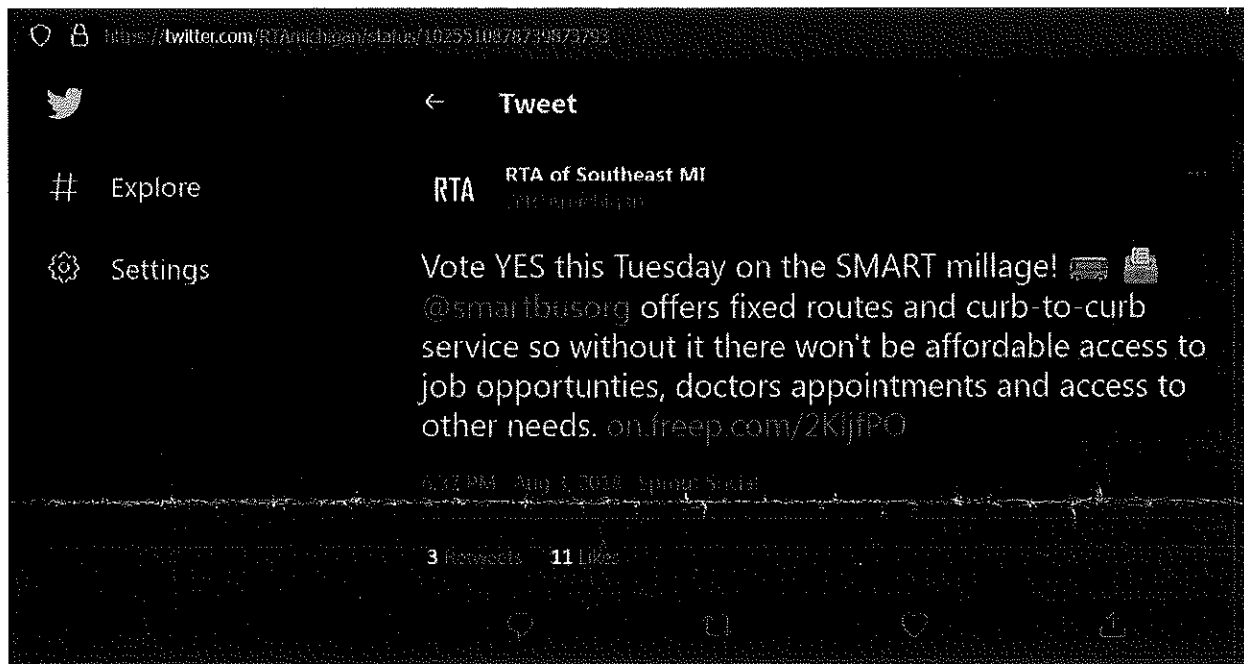
Instead of typing the above URL, you may also visit <https://www.facebook.com/rtamichigan> , click on the three dots to open a menu, and select the Search option. If you search for the phrase "vote yes" (including the quotation marks), the post should appear in the results.

A screenshot of the Facebook post is included below:



Twitter content

Tweet URL: <https://twitter.com/RTAmichigan/status/1025510878739873793>



Section 4. Certification

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

X 
Signature of Complainant

08/14/2022
Date

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

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

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

Not applicable.

X _____
Signature of Complainant Date

Section 6. Submission

This complaint is hereby submitted to:

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



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

July 29, 2022

Regional Transit Authority of Southeast Michigan
1001 Woodward Ave., Suite 1400
Detroit, MI 49226

Re: *Schonert v. Regional Transit Authority of Southeast Michigan*
Campaign Finance Complaint No. 2022-06-31-257

Dear Regional Transit Authority of Southeast Michigan,

The Department of State (Department) has received a formal complaint filed against you by Matthew Schonert. The complaint alleges that you posted on both Twitter and Facebook expressly advocating for a “yes” vote on the August 7 SMART millage proposal. A copy of the complaint is included with this notice.

In Michigan, it is unlawful for a public body or an individual acting on its behalf to use or authorize the use of equipment, supplies, personnel, funds, or other public resources to make a contribution or expenditure. MCL 169.257(1). The words “contribution” and “expenditure” are terms of art that are generally defined to include a payment or transfer of anything of ascertainable monetary value made for the purpose of influencing or made in assistance of the qualification, passage, or defeat of a ballot question. MCL 169.204(1), 169.206(1). If not an individual, a person who knowingly violates this section is guilty of a misdemeanor punishable by a fine up to \$20,000.00 or a fine equal to the amount of the improper expenditure – whichever is greater. MCL 169.257(4). A public body is, however, allowed to produce or disseminate factual information concerning issues relevant to the function of the public body. MCL 169.257(1)(b).

The purpose of this letter is to inform you of the Department’s examination of these matters and of 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 are governed by section 15 of the Act and the corresponding administrative rules, R 169.51 *et seq.* An explanation of the investigation process is enclosed with this letter and a copy is available on the Department’s [website](#).

If you wish to file a written response to this complaint, you are required to do so within 15 business days of the date of this letter. Your response may include any written statement or additional documentary evidence you wish to submit. Materials may be emailed to BOERegulatory@michigan.gov or mailed to the Michigan 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 Mr. Schonert, who will have an opportunity to submit a rebuttal statement to the Department. After reviewing all 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).

Sincerely,

Regulatory Section
Bureau of Elections
Michigan Department of State

c. Matthew Schonert



Dykema Gossett PLLC
Capitol View
201 Townsend Street, Suite 900
Lansing, MI 48933
WWW.DYKEMA.COM
Tel: (517) 374-9100
Fax: (517) 374-9191

W. Alan Wilk
Direct Dial: (517) 374-9122
Direct Fax: (855) 256-1485
Email: WAWilk@dykema.com

August 19, 2022

Via Email and First Class Mail

Mr. Adam Fracassi
Bureau of Elections
Michigan Department of State
Richard H. Austin Building - First Floor
430 West Allegan
Lansing, MI 48918

Re: Schonert v. Regional Transit Authority of Southeast Michigan
Campaign Finance Complaint No. 2022-06-31-257

Dear Mr. Fracassi:

This letter is in response to your letter dated July 29, 2022, regarding a complaint filed against the Regional Transit Authority of Southeast Michigan ("**Authority**") by Matthew Schonert ("**Complainant**"), alleging certain violations of the Michigan Campaign Finance Act (the "**Act**"), 1976 PA 388, as amended, MCL 169.201 *et seq* ("**Complaint**"). We respectfully request the Complaint be dismissed in its entirety for failing to establish that there is reason to believe that a violation of the Act has occurred. On behalf of the Authority, we state the following:

1. *Complainant has not met the Department's minimum standards for a valid complaint.*

At a minimum, Department rules require the Complainant to "describe in reasonable detail the alleged violation" Mich Admin Code, R 169.52(2). The rules do not provide any guidance on what is enough detail to be considered reasonable. *See id.* However, reasonable detail should at least include an explanation of how the alleged activities are a violation; otherwise, a complaint could merely present conclusory statements that a law has been violated without linking the facts to the violation. The Supreme Court generally requires a plaintiff to provide more than a formulaic recitation of the elements of a cause of action in a complaint. *See Bell Atl Corp. v. Twombly*, 550 US 544, 555 (2007); *Ashcroft v. Iqbal*, 556 US 662, 677 (2009). So, a complaint should be required to describe why certain actions violate Michigan law.

Complainant has failed to reasonably detail the alleged violation well because the Complaint does not state how the Authority violated Michigan law. The Complaint alleges that the Authority

violated MCL 169.257.¹ (Complaint ¶ 1). The Complainant also says that the Authority allegedly published certain information on its Facebook and Twitter accounts. (Complaint ¶ 2). The Complainant does not provide any detail as to how the alleged activities violate Michigan law. (Complaint ¶ 3-6). Instead, the Complainant relies on conclusory statements without providing arguments or evidence in favor. (Complaint ¶ 3-6). Without linking the facts to the cited section, the Authority is left to reverse engineer how this could have violated the law and describe the Authority has not done so. For these reasons, the Complaint should be dismissed.

2. *Even if the Complainant's Complaint met the minimum requirements, it would not have alleged a violation of the Act.*
 - a. The Authority was working with a third-party company, which posted the material included in the Complaint.

The Authority contracted with a third party to prepare a master plan, a planning document ("**Contractor**"). The Contractor subcontracted a portion of the contract to another business ("**Subcontractor**"). The Subcontractor's agreement with the Contractor was to educate the public about the benefits of public transportation, including using social media on the Authority's behalf. The Authority provided the Subcontractor guidance on how to communicate with the public. The Authority also stated that the Subcontractor could not cross the line into advocating for a particular side of an election issue. However, the Authority did not pre-approve or draft materials for the Subcontractor. The Complainant highlights social media posts that the Subcontractor created. Please note that the Facebook post in the Complaint explicitly says that the material was published by a group other than the Authority:



- b. The Authority did not publish or authorize anyone to publish the material alleged to be a contribution or expenditure.

Michigan law states that "[a] public body or a person acting for a public body shall not use or authorize the use of [public resources] to make a contribution or expenditure." MCL 169.257(1). So, the Authority must use public resources for a contribution/expenditure or authorize someone else to use the resource. In the present case, the Authority did not publish the material the Complainant lists in its Complaint; rather, the Subcontractor or other companies published the material. The Facebook post states that the material was published by "MILO Detroit Inc. dba

¹ Please note that the Claimant does not say which subsection of this statute the Authority has violated, further bolstering the point that the Authority is left to infer how it allegedly violated the law.

Milo.” The Twitter post similarly says that “Sprout Social” published the post. The Authority did not authorize either of these posts included in the Complaint. Instead, the Authority explicitly told the Subcontractor NOT to publish any material that advocates for a particular position. Specifically, the Authority instructed the Subcontractor in writing to “[m]ake sure [published material] doesn't cross the line into the advocacy side, but [instead] highlight[s] the facts that are included in the resolution that [was] passed unanimously last Thursday.” E-mail (Jul 24, 2018, 10:22am.) The Complaint does not, and cannot, show the Authority authorized the Subcontractor to publish these materials.

- c. The Authority's contract with the Contractor was only for a master plan, not for election services; so it cannot be a contribution or an expenditure.

The Act's definition of a "contribution":

means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made *for the purpose* of 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.

MCL 169.204 (emphasis added). So, an action is not a violation of the Act unless it is made for the purpose of influencing a ballot question. The Act also defines an "expenditure" as:

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 . . . [a] contribution or a 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.

MCL 169.206(1). The Authority's contract with the Contractor was solely for a master plan; the contract's purpose was not to influence an election, so the Authority certainly did not make a contribution. Nor was the contract a payment for services to pass a ballot proposal, so the contract was not an expenditure. Complainant has provided no evidence to suggest otherwise.

- d. The alleged activity occurred years ago, and the posts have since been removed.

The social media posts included in the Complaint were posted in August of 2018, which is over four years ago. Since that time, the Authority has removed these posts from its account. The Complaint cannot demonstrate that the Authority authorized the publication of these materials, nor could it as other groups published these materials despite clear instructions to the contrary. In addition, the Authority and the Subcontractor agreements for any such projects have ended. So,

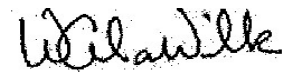
the Authority has worked to remedy any concerns the Bureau may have about these isolated incidents.

In short, Complainant has not offered the minimal "reasonable detail" necessary to allege a valid complaint. Even if the Complaint articulated how the activities violated Michigan law, the Complainant does not show that the Authority authorized the activity or that the unauthorized activity was a contribution or expenditure by the Authority.

It is respectfully requested that the Complaint be dismissed.

Sincerely,

Dykema Gossett PLLC

A handwritten signature in black ink, appearing to read "W. Alan Wilk". The signature is written in a cursive, slightly stylized font.

W. Alan Wilk



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

September 13, 2022

Matthew Schonert
22050 Boulder Ave
Eastpointe, MI 48021

Dear Mr. Schonert:

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

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

Sincerely,

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: W. Alan Wilk, Attorney

September 22, 2022

22050 Boulder Ave.
Eastpointe, Mich. 48021

Mr. Adam Fracassi
Bureau of Elections
Michigan Department of State
Richard H. Austin Building - First Floor
430 West Allegan St.
Lansing, Mich. 48918

Re: Schonert v. Regional Transit Authority of Southeast Michigan (MCFA complaint no. 2022-06-31-257)

Dear Mr. Fracassi:

This letter is in response to your letter dated September 13, 2022, regarding the Regional Transit Authority of Southeast Michigan's answer to complaint no. 2022-06-31-257.

I hereby respectfully submit my rebuttal, in which I respond point-by point to some of the Authority's key statements. (I have styled the Authority's statements in enlarged bold text; my remarks follow each statement.)

Authority: "Complainant has not met the Department's minimum standards for a valid complaint."

Section 15 of the Michigan Campaign Finance Act states that upon the Department's receipt of a complaint, the Department determines if it meets the requirements in subsection 6. If a complaint meets the requirements, notice given to the alleged violator. (See subsection 5.) Based on the Department's decision to notify the alleged violator of my complaint on July 29, 2022, it is reasonable to conclude that the department has already deemed the complaint to have been submitted in valid form, based on the requirements of subsection 6 of the Act.

My complaint meets all of the requirements of Subsection 6. I identified the section of the Act believed to have been violated, put forth factual contentions, and provided all evidence then available to support them.

The Department is then responsible for determining the validity of the complaint and investigating its merits. The Department, not the complainant, is also responsible for interpreting the applicable laws that bear upon the situation.

In practical terms, if the Department were to dismiss my complaint based on the Authority's hypertechnical fault-finding, the result would preclude anyone without specialized legal knowledge from ever reporting a potential violation of Michigan's campaign finance laws. To do so would fly in the face of both the letter and spirit of Section 15 of the Act. To reject this complaint would also break with the custom of the Department, which has many times reached decisions on complaints stated in less formal terms and in less detail than mine was presented.

For these reasons, I respectfully urge that the Department continue its investigation of the allegations set forth in my complaint and determine whether there is reason to believe that a violation has occurred.

Authority: "The Authority was working with a third-party company, which posted the material included in the Complaint."

The Authority seeks to disavow responsibility for the statements made on its official pages by attributing those posts to so-called third parties. These entities mentioned were hired by the Authority to conduct certain activities on the Authority's behalf.

The Authority claims that it told its subcontractor not to engage in express advocacy for the millage. The Authority makes reference to an email but apparently did not provide this email in its answer. Consequently, I am unable to verify precisely what the Authority said to the subcontractor.

Despite the Authority's claim that its subcontractor was told not to engage in express advocacy, the Authority's subsequent inaction allowed the subcontractor—while being funded (directly or indirectly) with public dollars and having privileges to publish posts under the public body's own name—to engage in express advocacy using public resources. The Authority was so remiss in its oversight that the inappropriate posts remained published nearly four years later.

The Authority further claims that its Facebook post explicitly stated that it was published by a third party ("Published by MILO Detroit Inc. dba MILO"). This is also incorrect. These "Published by" statements are only shown to users with administrator privileges to the Authority's Facebook Page.


Please refer to the following Facebook Help Center article, which states that "There are several ways to see who published something on your Page. Keep in mind that only people who help

manage your Page can see this information.” URL:
<https://www.facebook.com/help/225783087608655>

Using Facebook > Pages

If multiple people help manage my Facebook Page, how can I see who published something?

Computer Help ▼

 Copy link

Pages that you manage may be in the new Pages experience. Learn more about new Pages.

There are several ways to see who published something on your Page. Keep in mind that only people who help manage your Page can see this information.

- On a Page post, the name of the person who published will be listed next to **Published by**. On a Page comment, the name of the person who commented will be listed below the comment next to **Commented on by**.
- Click **Publishing Tools** at the top of your Page. From the column on the left, click **Published Posts**, **Scheduled Posts** or **Drafts** to see who published, scheduled or drafted Page posts.
- You can also see who published or scheduled posts in your Page's activity log.

Note: This information will only be visible on posts or comments created on or after February 20, 2014.

Therefore, members of the public who do not have administrator privileges on the Authority's Page would have never seen a message indicating that the message was published by a third party. As you may observe from the screenshot below or by visiting the post URL yourself, this message appears nowhere on the post.

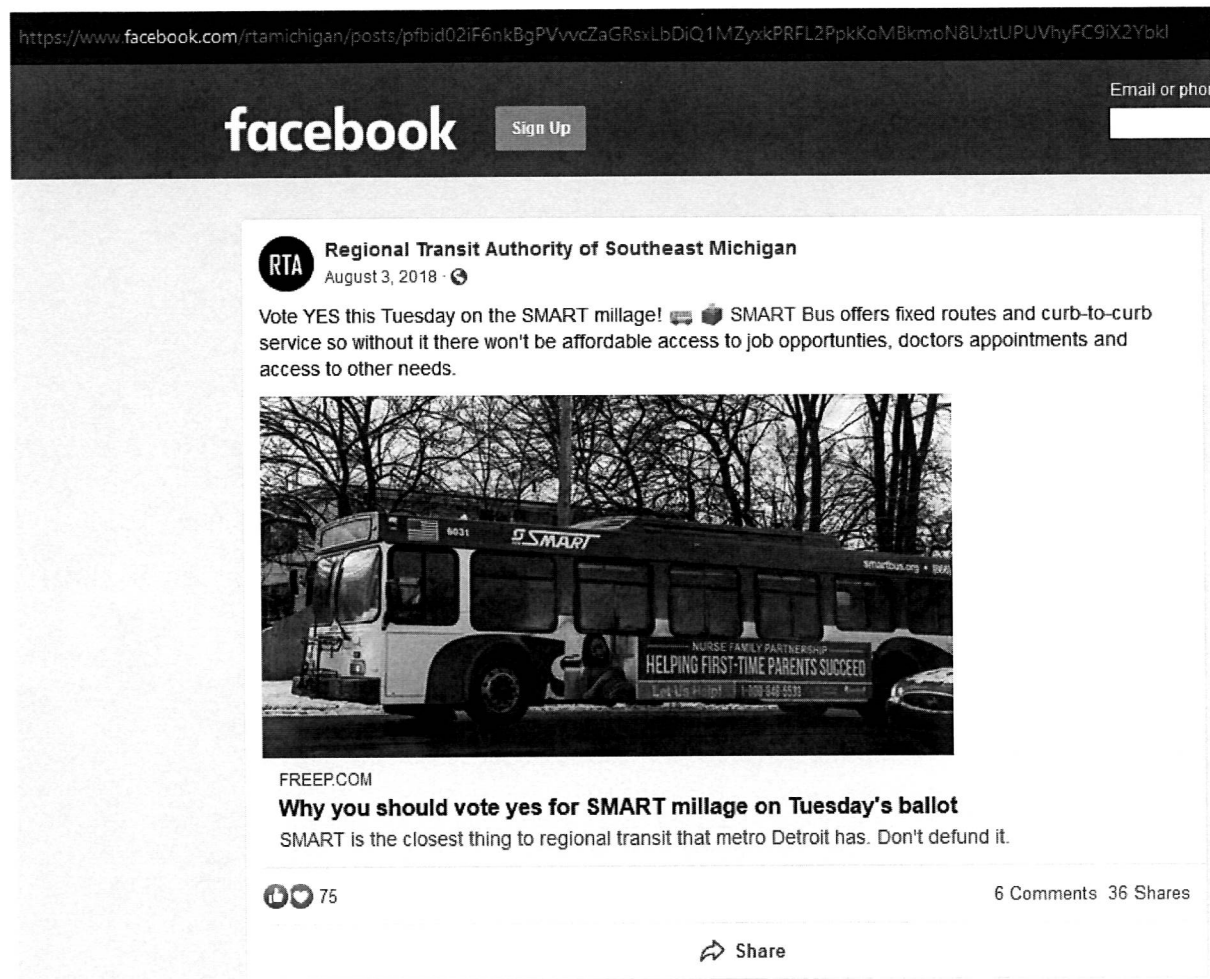
In any case, the matter of which Page administrator published the post is of little consequence. The post was published to the Authority's Facebook account under its own name by a person whose activities were funded, one way or another, using public resources.

A member of the public who visited the page and saw the post could only reasonably conclude that the post's contents were a statement by the Authority and no one else.

Authority: “The alleged activity occurred years ago, and the posts have since been removed.”

Contrary to the claims of the Authority, the posts in question have not been entirely removed. The following Facebook post, mentioned in my original complaint, remains publicly visible on September 22, 2022. (The screenshot below was taken on the same date.)

<https://www.facebook.com/rtamichigan/posts/pfbid02iF6nkBgPVvvcZaGRsxLbDiQ1MZyxkPRFL2PpkKoMBkmoN8UxtUPUVhyFC9iX2Ybkl>



Also, the Authority's claim that the alleged activity took place years ago is irrelevant.

Although the social media posts at the heart of this complaint were made in 2018, I first learned of these posts in 2022—less than four years later. I brought the complaint to the Department as soon as I became aware of the potential violations. At the time of my complaint, the posts remained published, and I could find no evidence that the Authority had yet done anything to remedy the apparent inappropriate use of its social media accounts.

This complaint asks the Department to investigate whether a violation occurred at the time that the acts are alleged to have taken place. Removing the posts years after the fact does not negate a violation or undo any ill effects that such a violation may have had on the public.

The misuse of the Authority's social media accounts for electioneering is no trivial matter, especially in an election that was decided in Macomb County by only 39 votes, or by 0.025 percent of the total votes cast, according to the county clerk's records.

<https://clerk.macombgov.org/sites/default/files/content/government/clerk/electionresults/2018/August18/1430.html>

Investigation of my complaint will help to ensure that the Authority complies with the law in future elections. Shortly after I mailed my complaint, some Metro Detroit communities announced that they would place SMART millage proposals on the ballot during the November 2022 general election.

<https://www.freep.com/story/news/local/michigan/wayne/2022/08/11/wayne-county-board-smart-millage-ballot-question/10303578002/>

If the Authority is not held responsible for the posts made in its name on its official social media accounts, there will be nothing to dissuade it or other public bodies in the future from allowing (through inaction or otherwise) the use of public resources to expressly advocate political positions.

In conclusion, I respectfully ask that the Department hold the Authority responsible for a violation of Section 57, impose all appropriate penalties, and take whatever action may be necessary to prevent future violations.

Sincerely,



Matthew R. Schonert



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

November 30, 2022

W. Alan Wilk
Dykema Gossett PLLC
Attorney for Regional Transit Authority of Southeast Michigan
Capitol View
201 Townsend Street, Suite 900
Lansing, MI 48933

Via email

Re: *Schonert v. Regional Transit Authority of Southeast Michigan*
Campaign Finance Complaint No. 2022 – 06 – 31 – 257

Dear Mr. Wilk,

The Department of State (Department) has finished investigating the campaign finance complaint filed against Regional Transit Authority of Southeast Michigan (“RTA”) by Matthew Schonert on June 28, 2022. The complaint alleges that your client violated the Michigan Campaign Finance Act (MCFA or Act) by posting on both Twitter and Facebook expressly advocating for a “yes” vote on the August 7 SMART millage proposal.

You responded to the complaint on August 19, 2022. In your response, you indicated that Mr. Schonert did not meet the Department’s minimum standards for a valid complaint, as he did not describe in reasonable detail the alleged violation. Your response went on to indicate that even if the complaint met the minimum requirements, it did not allege a violation of the Act. Specifically, you indicated that RTA was working with a third-party company and the company posted the material included in the complaint. You argued that RTA did not publish or authorize anyone to publish the material alleged to be a violation in the complaint. Instead, you stated that the Facebook post explicitly indicated that MILO Detroit, INC dba Milo published the post, and that the Twitter post explicitly indicated that “Sprout Social” published the post. Finally, you stated that after learning of the posts, RTA worked to remedy any concerns the Bureau may have about these unauthorized postings by removing the posts from its accounts.

Mr. Schonert provided a rebuttal to your response on September 23, 2022. In his rebuttal, Mr. Schonert stated that despite RTA’s claim that its subcontractor was told not to engage in express advocacy, RTA’s subsequent inaction allowed the subcontractor, while being funded with public dollars, to engage in express advocacy using public resources. Mr. Schonert indicated that the inappropriate posts remained published nearly four years after their initial posting. Mr. Schonert also pointed out that the “published by” statements were not visible to the public, but only to users with administrator privileges to RTA’s Facebook page.

In Michigan, it is unlawful for a public body or an individual acting on its behalf to use or authorize the use of equipment, supplies, personnel, funds, or other public resources to make a contribution or expenditure. MCL 169.257(1). The words “contribution” and “expenditure” are terms of art that are generally defined to include a payment or transfer of anything of ascertainable monetary value made for the purpose of influencing or made in assistance of the qualification, passage, or defeat of a ballot question. MCL 169.204(1), 169.206(1). If not an individual, a person who knowingly violates this section is guilty of a misdemeanor punishable by a fine up to \$20,000.00 or a fine equal to the amount of the improper expenditure – whichever is greater. MCL 169.257(4). A public body is, however, allowed to produce or disseminate factual information concerning issues relevant to the function of the public body. MCL 169.257(1)(b).

From the outset, the Department must consider whether these two posts constitute express advocacy. Both the Facebook and Twitter posts use express advocacy terms including “Vote YES.” The specific language, together with the discussion of issues relevant to the ballot proposal, is enough to conclude that it was published with the intention of expressly advocating for the passage of a ballot question. Because these posts were designed to expressly advocate for the passage of a ballot question, they are covered by the Act’s requirements.

Despite your argument that RTA did not authorize these posts, rather they were made by a subcontractor of RTA, the Department finds the argument unpersuasive. A reasonable person viewing the posts would not have had any indication the posts were made by third parties; these posts appeared directly on RTA’s official Facebook and Twitter pages without any publicly viewable “published by” statement. Because these posts contain express advocacy, for the purpose of influencing the passage of a ballot question, RTA was prohibited from using public resources for this purpose under MCL 169.257(1). Because RTA used public resources to post on their official Facebook and Twitter pages, engaging in express advocacy, the Department concludes there may be reason to believe that a potential violation of the Act has occurred.

Resolution

Upon review, the evidence submitted supports the conclusion that a potential violation of the Act has occurred. When the Department finds that there may be reason to believe a violation has occurred, the Act requires the Department to use “informal methods such as a conference [or] conciliation” to correct the potential violation or to prevent further violation. MCL 169.215(10). The Department has 90 business days to reach an informal resolution of the matter. *Id.*

Given this, please contact the undersigned by emailing BOERegulatory@Michigan.gov to informally resolve this complaint. If the Department is unable to informally resolve the complaint by April 14, 2023, the Act requires the Department to refer the matter to the Department of Attorney General with a request that her office prosecute the criminal penalties outlined under the Act. MCL 169.233(11).

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam Fracassi". The signature is fluid and cursive, with the first name "Adam" and last name "Fracassi" clearly distinguishable.

Adam Fracassi, Regulatory Manager
Bureau of Elections
Michigan Department of State

c: Matthew Schonert

From: [Wilk, W. Alan](#)
To: [MDOS-BOERegulatory](#)
Subject: RE: Schonert v. Regional Transit Authority of Southeast Michigan Campaign Finance Complaint No. 2022 – 06 – 31 – 257
Date: Thursday, April 20, 2023 5:00:07 PM
Attachments: [image001.png](#)
[DYK21006-logo_RGB_FINAL\(Custom\)_d7656d32-7389-4b1f-8183-04753cc3fce5.png](#)
[Scan - 2023-04-20 16.51.41.pdf](#)

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

Ms. McNerney:

At 4:41pm, we received the vendor invoice with the credit of the correct amount. It is attached for your records.

Thanks. -Alan.

W. Alan Wilk

Member

D 517-374-9122 ▪ M 517-881-3857
WAWilk@dykema.com ▪ dykema.com

BIO VCARD

201 Townsend Street, Suite 900
Lansing, Michigan 48933



From: Wilk, W. Alan
Sent: Thursday, April 20, 2023 1:59 PM
To: 'MDOS-BOERegulatory' <MDOS-BOERegulatory@michigan.gov>
Subject: RE: Schonert v. Regional Transit Authority of Southeast Michigan Campaign Finance Complaint No. 2022 – 06 – 31 – 257
Importance: High

Ms. McNerney:

Thank you for the email on this matter that we are trying to resolve, with the confirmation of the payment being the last outstanding item. We have two emails from the vendor (with text as below) that shows the agreement to the payment (credit) provided to RTA. We believe that demonstrates the credit has been provided to RTA and is hopefully responsive to your request in advance of the deadline provided.

If we also need to add this text into the conciliation agreement, as a certification by RTA of that

payment/credit, we can do that. If so, please advise and I can revise the conciliation agreement and get it to you by close of business today.

After receiving your email yesterday, we have also attempted to expedite the invoice that reflects the credit, but we have not yet been provided with a copy.

Alternatively, if neither the evidence or certification of the payment/credit is sufficient or the invoice is not provided in time for transmittal by close of business today, we would respectfully ask for an extension of time to submit whatever document satisfies the Bureau that the payment /credit has been provided.

Please let me know if you have any questions.

Thanks. -Alan.

===

Text from April 6, 2023, 9:42am email from vendor to RTA:

..."[vendor] agrees to provide an invoice credit in the amount of \$112.36 on behalf of [sub-vendor] to resolve this matter expeditiously. [vendor] was not aware that the tweets were made and [sub-vendor's] actions were not sanctioned or approved by [vendor] but in an effort to resolve this matter, [vendor] will provide the invoice credit."

Text from April 19, 2023, 4:15pm email from vendor to RTA:

"Following up on this conversation from a couple of weeks back. Our billing team has been informed of the \$112.36 credit referenced below and it will appear on the March invoice. That invoice is currently under review and should be received by the RTA prior to the end of the month."

From: MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>

Sent: Wednesday, April 19, 2023 3:33 PM

To: Wilk, W. Alan <WAWilk@dykema.com>

Subject: Re: Schonert v. Regional Transit Authority of Southeast Michigan Campaign Finance Complaint No. 2022 – 06 – 31 – 257

***** EXTERNAL *****

Dear Mr. Wilk,

Please submit evidence of the payment by close of business tomorrow, April 20, or the matter will be referred to the Department of Attorney General on Friday.

Thank you,

Jenny McInerney

From: MDOS-BOERegulatory

Sent: Wednesday, April 12, 2023 12:32:05 PM

To: Wilk, W. Alan <WAWilk@dykema.com>

Subject: RE: Schonert v. Regional Transit Authority of Southeast Michigan Campaign Finance Complaint No. 2022 – 06 – 31 – 257

Dear Mr. Wilk,

Thank you for your email and proposed conciliation agreement. Your resolution—payment of \$112.36 to RTA, adoption of the compliance plan, and execution of the conciliation agreement—is acceptable. Please submit evidence of the payment so that we can conclude this matter.

Thank you,

Jenny McInerney

Regulatory Attorney

Regulatory Section

[Michigan Bureau of Elections](#)

Main: 517-335-3234

McInerneyJ1@Michigan.gov

From: Wilk, W. Alan <WAWilk@dykema.com>

Sent: Friday, April 7, 2023 1:34 PM

To: MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>

Subject: RE: Schonert v. Regional Transit Authority of Southeast Michigan Campaign Finance Complaint No. 2022 – 06 – 31 – 257

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

Regulatory Section, Bureau of Elections:

On behalf of our client, the RTA of SE Michigan, we are following up on the Conciliation Agreement in response to the matter of *Schonert v. Regional Transit Authority of Southeast Michigan*, Campaign Finance Company Complaint No. 2022-06-31-257

We apologize for the delay, as we and our client have been trying to get information on the fair market value (or actual cost) of the two social media posts in question, so that a reimbursement of any public funding could be made to correct the alleged violation. We note that the activity in question took place in advance of the August 2018 primary election and the sub-vendor who made the post is no longer in business. Please also note that our proposed resolution in this matter is similar to what the Bureau approved in *Schonert v. Macomb County Veteran Services*, Campaign Finance Complaint No. 2022-10-155-247, 257. The reimbursement as noted in the attached draft of a Conciliation Agreement was confirmed yesterday morning (April 6, 2023) by the primary vendor.

For background and to draft the Conciliation Agreement terms (and again, similar to the prior resolution method by the Bureau of the previous complaint filed by Mr. Schonert), we asked the following questions and received the following answers:

=====

1 Can you get hourly rate in effect when the posting occurred?

I was able to find the hourly rates (attached). I have no way of knowing who did the post so we can just take the highest rate (\$56.18).

2 What was the source of funding with respect to payment for services?

It was funded through an FTA grant [to the RTA of SE Michigan].

3 What was the extent of the services provided by vendor related to the ballot initiative social media posts? You indicated that there were two posts.

a. Did the posts change over time?

These were posted one time each.

b. Do you know what vendor did in preparing the post from the initial request until the final product, and the approximate amount of time spent? For example, did they meet with RTA...?

[Sub-vendor] was in charge of the RTA's social media and they posted educational material on a regular basis. This was a mistake that they made in two instances. It's not like it was a fully planned and funded campaign. As far as I can tell, [Sub-vendor] emailed the RTA and asked if they could post something about the upcoming elections. RTA [] responded that they could post something educational, but to be careful to post anything that would run afoul of campaign finance laws. If we are being generous, we could say that each of these took an hour of planning and posting (2 hours total).

5 With respect to Q3 if you don't know the answers, can you check with []? If our approach will be to offer to refund money spent with respect to the posts, we will want to make a good faith proposal, knowing at best it will be based upon estimates.

If we say 2 hours then we would be looking at \$112.36.

=====

Based on this information, we have drafted the attached Conciliation Agreement for your review.

Please let me know if you have any changes or questions.

Thanks. -Alan.

W. Alan Wilk
Member

D 517-374-9122 • M 517-881-3857
WAWilk@dykema.com • dykema.com

BIO [VCARD](#)

201 Townsend Street, Suite 900
Lansing, Michigan 48933



*** Notice from Dykema Gossett PLLC: This Internet message may contain information that is privileged, confidential, and exempt from disclosure. It is intended for use only by the person to whom it is addressed. If you have received this in error, please (1) do not forward or use this information in any way; and (2) contact me immediately.

Neither this information block, the typed name of the sender, nor anything else in this message is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.

From: MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>

Sent: Wednesday, November 30, 2022 12:21 PM

To: Wilk, W. Alan <WAWilk@dykema.com>

Subject: Schonert v. Regional Transit Authority of Southeast Michigan Campaign Finance Complaint
No. 2022 – 06 – 31 – 257

*** EXTERNAL ***

Please see the attached.

Thank you,

Regulatory Section
Bureau of Elections
Michigan Department of State

		Page 1	SEQUENCE NO. 34
ISSUING COMPANY AND REMITTANCE ADDRESS		CO. NO. MDOT #2017-0119	DATE 4/21/2023
CLIENT NAME AND ADDRESS Regional Transit Authority of Southeast Michigan 1001 Woodward Avenue Suite 1400 Detroit, MI 48226 Attention: Virginia Lickliter		PROJECT NO. 78426	INVOICE A/R NO. 34-78426-PL-001
PROJECT TITLE RTA On-Call Planning / CIP 78426-PL-001		PERIOD COVERED FROM: 2/25/2023	TO: 3/31/2023
		TOTAL INVOICE AMOUNT: \$16,007.02	

INVOICE SUMMARY SHEET			
	Total this Period	Total to Date	Total Allocation
Direct Labor	\$ 6,089.64	\$ 209,071.54	\$ 239,101.40
Facility Capital Cost of Money (0.10% x Direct Labor)	\$ 6.09	\$ 491.44	\$ 574.76
Payroll Burden and Overhead (138.38% x Direct Labor)	\$ 8,426.84	\$ 286,802.44	\$ 329,046.18
TOTAL SALARY COSTS	\$ 14,522.57	\$ 496,365.42	\$ 568,722.34
Percent Complete	2.55%	87.28%	
Fee for Profit (11% Complete x Total Allocation)	\$ 1,596.81	\$ 54,546.14	\$ 62,496.24
TOTAL SALARY COSTS & FEE	\$ 16,119.38	\$ 550,911.56	\$ 631,218.58
Other Direct Labor (Premium Time)	\$ -	\$ -	\$ -
Direct Costs	\$ -	\$ 393.61	\$ 17,111.20
GROSS INVOICE	\$ 16,119.38	\$ 551,305.17	\$ 648,329.78
VENDER / SUBCONSULTANT SERVICES	\$ -	\$ -	\$ -
TOTAL VENDER / SUBCONSULTANT SERVICES	\$ -	\$ -	\$ -
*CREDIT for 2018 reconciliation	\$ (112.36)	\$ (112.36)	\$ -
NET INVOICE - TOTAL COSTS	\$ 16,007.02	\$ 551,192.81	\$ 648,329.78



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

April 26, 2023

W. Alan Wilk
Dykema Gossett PLLC
Counsel for Regional Transit Authority of Southeast Michigan
Capitol View
201 Townsend Street, Suite 900
Lansing, MI 48933

Via email

Re: *Schonert v. Regional Transit Authority of Southeast Michigan*
Campaign Finance Complaint No. 2022 – 06 – 31 – 257

Dear Mr. Wilk:

The Department of State (Department) is in receipt of your April 7, 2023 email and proposed conciliation agreement, submitted in response to the Department's November 30, 2022 determination that there may be reason to believe that your clients violated the Michigan Campaign Finance Act (MCFA or Act).

In your email, you indicated that you and your client sought and obtained information on the fair market value of the two social media posts in question so that a reimbursement could be made. Your proposed conciliation agreement indicates that your client's primary vendor confirmed reimbursement of \$112.36 to the Regional Transit Authority of Southeast Michigan on April 6, 2023, and that your client plans to adopt a compliance plan to address vendor posts to your client's social media outlets. Further, on April 20, 2023, you emailed the Department a copy of the vendor invoice that included the \$112.36 credit.

Given this, the Department concludes that a formal warning is a sufficient resolution to the complaint and considers the matter concluded. Additionally, the Department will execute the conciliation agreement provided by you and will send you a copy. Thank you for your resolution of this matter.

Sincerely,

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

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

c: Matthew Schonert

STATE OF MICHIGAN
DEPARTMENT OF STATE

In the Matter of:

Schonert v. Regional Transit Authority of Southeast Michigan
Campaign Finance Company Complaint No. 2022-06-31-257

_____ /

CONCILIATION AGREEMENT

Pursuant to MCL §169.215(10) of the Michigan Campaign Finance Act (the Act), MCL §169.201 et seq., the Secretary of State and Regional Transit Authority of Southeast Michigan (Respondent) hereby enter into a conciliation agreement with respect to certain alleged acts, omissions, methods, or practices prohibited by the Act.

The Secretary of State alleges that there may be reason to believe that Respondent violated MCL § 169.257(1) by posting on social media expressly advocating for a “yes” vote on the August 7, 2018 SMART millage proposal.

Respondent maintains that the posts were made without the authorization of Respondent and that there was no direct expenditure of public funds.¹

¹ The vendor directly responsible for the social media posts was a sub-vendor of Respondent and was only directly contracted with Respondent’s primary vendor. The sub-vendor is no longer a vendor of Respondent and in fact is no longer in business. Respondent maintains a relationship with its primary vendor, which is the “vendor” referred to in this Agreement.

However, without admitting specific liability, Respondent voluntarily enters into this Conciliation Agreement and assures the Secretary of State that Respondent will comply with the Act and Rules promulgated thereunder. Specifically, in order to prevent any future similar unauthorized vendor actions, Respondent will adopt the Compliance Plan as set forth in Exhibit A, which is created to address vendor posts to Respondent's social media outlets.

Respondent further agrees that it has, as part of this agreement, requested and secured Respondent's vendor's payment/credit to Respondent of the public funds attributable to the post on social media in the amount of \$112.36 on April 6, 2023.

The Secretary of State and Respondent further agree that this amount represents a good faith estimate of the public funds paid by Respondent to its vendor hired to plan, create, and publish social media posts, including the posts at issue.

The Secretary of State and Respondent acknowledge this amount is equivalent to two (2) hours of service performed by a Project Lead of the sub-vendor, based on the rates and invoices provided by the vendor to Respondent (calculated at the highest hourly rate of \$56.18). Respondent determined that no more than one hour of work was incurred for each social media post that the Secretary of State has determined to contain express advocacy.

The Secretary of State and Respondent further agree that this agreement is in effect and enforceable for four years from the date it is signed by the Secretary of State or her duly authorized representative.

The Secretary of State and Respondent further agree that this agreement, unless violated, shall constitute a complete bar to any further action by the Secretary of State with respect to the alleged violations that resulted in the execution of this agreement.

The Secretary of State and Respondent further agree that the complaint and investigation that resulted in this agreement is disposed of and will not be the basis for further proceedings, except pursuant to this agreement.

The Secretary of State and Respondent further agree that this agreement will not prevent the Secretary of State from taking action for violations of this agreement.

The Secretary of State and Respondent further agree that Respondent's performance under this agreement shall be given due consideration in any subsequent proceedings.

The Secretary of State and Respondent further agree that this agreement, when signed, shall become a part of the permanent public records of the Department of State.

The Secretary of State and Respondent finally agree that the signatories below are authorized to enter into and bind the parties to this agreement, and have done so by signing this agreement on the date below.

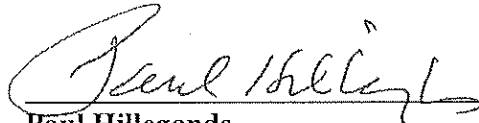
JOCELYN BENSON
SECRETARY OF STATE



Jonathan Brater, Director
Bureau of Elections

Date: 04/27/2023

RESPONDENT



Paul Hillegonds

Date: April 25, 2023

EXHIBIT A

REGIONAL TRANSIT AUTHORITY OF SOUTHEAST MICHIGAN

Michigan Campaign Finance Compliance Plan

In efforts to increase oversight of third-party vendors or contractors who are retained to speak on behalf of the Regional Transit Authority of Southeast Michigan ("RTA"), RTA will require all third-party vendors or contractors to agree to the following terms:

- Contractors may not post, publish, or otherwise advertise any information on social media pages belonging to RTA without the explicit review and written authorization from RTA.
- Contractors will not be authorized to promote, advocate for, or otherwise support a ballot question or candidate for public office either explicitly or implicitly to influence an election.
- All communications posted on RTA's social media pages by a contractor may not contain express advocacy, as defined by applicable law, and must comply with the Michigan Campaign Finance Act.

RTA will also implement its own procedures to minimize the likelihood of a repeated violation of the Act, including but not limited to:

- RTA will provide that all personnel, including third-party vendors and contractors, with authority to speak on behalf of RTA, are familiar with the requirements of the Michigan Campaign Finance Act and provide guidelines as needed.
- RTA will regularly review all posts made on its social media pages for express advocacy terms and immediately remove all posts that may reasonably be understood as express advocacy.