



Michigan Department of State
Campaign Finance Complaint Form

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

RECEIVED/FILED
MICHIGAN DEPT OF STATE

2022 MAY 12 AM 11:08

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

Section 1. Complainant		
Your Name Dustin Wefel		Daytime Telephone Number 810-875-6301
Mailing Address 5020 Ford St.		
City Swartz Creek	State MI	Zip 48473
Email (optional) drwcampaigns@gmail.com		

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

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

Section(s) of the MCFA alleged to be violated: See attached.

Explain how those sections were violated:

See attached.

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

See attached.

Section 4. Certification (Required)

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

X

Signature of Complainant

Date

5/7/2022

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:

Protect MI Vote has, through Groundgame Political Solutions or potentially other entities, entered into agreements with circulators in addition to Dustin Wefel and DRW Campaigns, Inc. that pay the circulators to in part not provide any services to or in support of Secure MI Vote and has failed to properly report those payments.

X

Signature of Complainant

Date

5/7/2022

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

Section 6. Submission

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

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

Michigan Department of State Campaign Finance Complaint Form Attachments to Complaint filed by Dustin Wefel

Section 2. Alleged Violator

There are two alleged violators. The first is Groundgame Political Solutions, LLC, 217 E. Capitol Ave., Jefferson City, MO 65101. The second is Protect MI Vote, PO Box 545, Royal Oak, MI 48067.

Section 3. Allegations

Groundgame Political Solutions (“Groundgame”) and Protect MI Vote violated the MCFA by failing to report expenditures on services from Wefel, and others like him. The section of the MCFA alleged to be violated is MCL 169.243, which requires ballot-question committees to report expenditures made by those working for them. Groundgame is a political consultant working for Protect MI Vote, a ballot committee opposing the Secure MI Vote ballot petition. Groundgame entered into contracts paying Wefel and others like him in support of those efforts. Yet Groundgame did not provide, and Protect MI Vote did not report those expenditures. Accordingly, Groundgame and Protect MI Vote have violated the MCFA.

Background

Secure MI Vote Initiative Petition

On September 23, 2021, the Board of Canvassers approved a petition summary for the Secure MI Vote ballot-question committee’s initiation of legislation proposing various election reforms as amendments to the Michigan Election Law. The form of petition was approved by the Board of Canvassers on September 27, 2021 with a second form approved on February 11, 2022 in response to a Michigan Supreme Court order.

The Agreement

On November 24, 2021, Dustin Wefel and his company, DRW Campaigns, Inc. (collectively “Wefel”) entered into a Professional Services Agreement (the “Agreement”) with Groundgame.¹ The purported purpose of the Agreement was to “help further [Groundgame’s] business interests in Michigan, including but not limited to consulting on any potential campaigns or ballot measures for the November 6, 2022 election that relate to election reforms.”² The specific scope of work under the Agreement included:

1. Transmitting to Groundgame information concerning any actual or potential effort or campaign to qualify for the ballot through the collection of petition signatures in Michigan

¹ Professional Services Contract (attached as Attachment 1).

² *Id.* at Recitals, paragraph 3.

an initiative, proposition, or referendum measure relating to any measures regarding election reforms, including any of the election reform bills that have been introduced by the Michigan Legislature during the 2021 legislative session or to modify or change the intent, effect, or language contained in Proposal 3 of 2018.

2. Providing Groundgame with ground intelligence including best cities to circulate in, times of day to circulate, as well as best types of high traffic locations to circulate in.
3. Providing insight and be available to conduct voter education for an amount to be negotiated and determined with any issue related to election reforms in Michigan.³

The term of the Agreement extended through July 1, 2022.⁴ Groundgame paid Wefel a lump sum of \$50,000 for Wefel's "services."⁵ In addition, the Agreement included a covenant-not-to-compete provision that, among other things, purported to specifically prohibit Wefel from "either directly or as the subcontractor of any other entity, consulting on, working on, or providing services whatsoever relating to the election reforms, including but not limited to gathering initiative, referendum, or any other type of petition signatures on any local, statutory, or constitutional issue in the State of Michigan." The provision also required Wefel to notify Groundgame "immediately upon hearing about or being approached by any entity regarding any other election reforms-related project or other efforts to affect election reforms policy in the State of Michigan during the term of this Agreement, provided that such notification is consistent with applicable law."⁶

The Agreement also contained a liquidated-damages provision that purported to require Wefel to pay 4 times the contract price (\$200,000) to Groundgame if Wefel breaches the Agreement.⁷ Finally, the Agreement contained a confidentiality provision whereby Wefel could not "disclose the existence or terms of this Agreement to any third party" with some exceptions and could not "disclose any non-publicly available information, documents, data, or communications, whether oral or written, that relate in any way to this Agreement or to any potential local or statewide ballot measure for which [Wefel] may provide services to [Groundgame] under the terms of this Agreement, or that is related in any way to non-publicly available information or materials, whether written or oral, provided by [Groundgame] to [Wefel]" or any of Wefel's agents.⁸

In an addendum to the Agreement, Wefel provided Groundgame with self-evident "ground intelligence." Other than that, since November 24, 2021, Wefel has not shared any information with Groundgame or otherwise provided any services to Groundgame. Also, Groundgame has not shared any business information with Wefel.

Ballot-question committees opposing Secure MI Vote

³ *Id.* at Paragraph 2.

⁴ *Id.* at Paragraph 1.

⁵ Professional Services Contract at Paragraph 4.

⁶ *Id.* at Paragraph 5.

⁷ *Id.* at Paragraph 12(b).

⁸ *Id.* at Paragraph 15.

On May 28, 2021, a ballot-question committee named “Protect MI Vote” was formed.⁹ The purpose of Protect MI Vote is to oppose the Secure MI Vote Initiative Petition effort.¹⁰

A search on the date this complaint was filed confirmed that Groundgame is not a registered ballot-question committee. Rather, a search of expenditures on the Bureau of Elections website indicates that Groundgame is a political consultant for Protect MI Vote, which has made the following payments to Groundgame:

Committee Making Expenditure Committee ID-Type	Sched Type	Payee Name Address City, State Zip Exp Type-Purpose	Exp Date	Exp Amt or Value
PROTECT MI VOTE 520069-BAL	DIRECT	GROUNDGAME POLITICAL SOLUTIONS 217 E CAPITOL AVE JEFFERSON CITY, MO 65101-0000 CN-CONSULTING	06/09/21	\$300,000.00
PROTECT MI VOTE 520069-BAL	DIRECT	GROUNDGAME POLITICAL SOLUTIONS 217 E CAPITOL AVE JEFFERSON CITY, MO 65101-0000 CN-CONSULTING	11/23/21	\$58,000.00
PROTECT MI VOTE 520069-BAL	DIRECT	GROUNDGAME POLITICAL SOLUTIONS 217 E CAPITOL AVE JEFFERSON CITY, MO 65101-0000 CN-CONSULTING	06/14/21	\$25,000.00
PROTECT MI VOTE 520069-BAL	DIRECT	GROUNDGAME POLITICAL SOLUTIONS 217 E CAPITOL AVE JEFFERSON CITY, MO 65101-0000 CN-CONSULTING	12/08/21	\$10,000.00

The purpose listed for each of these expenditures is “consulting.”¹¹ The amounts that Protect MI Vote paid to Groundgame are not further itemized.

Groundgame’s actions after perceived breach

In February of 2022, Groundgame claims to have become aware of Wefel or one of Wefel’s agents providing signature-gathering services in violation of the Agreement.¹² One of Groundgame’s agents accused Wefel of gathering signatures for the Secure MI Vote Initiative Petition, and further alleged that Wefel should know that such conduct was prohibited by the Agreement, i.e., he should know how the system works.¹³ Apparently, it was discovered that a Secure MI Vote petition appeared among petitions that Wefel submitted for other initiatives. The particular circulator for that petition, however, mistakenly included the petition among other petitions for initiatives with which the circulator was working with Wefel. In fact, Wefel had not engaged in the Secure MI Vote Initiative Petition. Regardless, just that one alleged engagement

⁹ See <https://cfrsearch.nictusa.com/committees/520069>.

¹⁰ See Decline to Sign the Secure MI Vote Petition, Paid for by the Michigan Democratic State Central Committee (attached as Attachment 2) (“Protect MI Vote is a ballot committee opposing the Secure MI Vote petition.”).

¹¹ See <https://cfrsearch.nictusa.com/documents/513436/details/filing/expenditures?schedule=1B&changes=0>; see also <https://cfrsearch.nictusa.com/documents/519797/details/filing/expenditures?schedule=1B&changes=0>.

¹² See Correspondence from Josh Grabel dated February 14, 2022 (attached as Attachment 3).

¹³ See text chain between Wefel and Groundgame’s agent (attached as Attachment 4).

with the Secure MI Vote Initiative Petition caused Groundgame to unleash its agents and law firm against Wefel under the Agreement. Further, this situation was the first interaction between Wefel and Groundgame since the Agreement was entered into.

Other circulator agreements

Upon information and belief, Protect MI Vote has, through Groundgame or potentially other entities, entered into agreements similar to the Wefel Agreement with other circulators. Of course, the structure of these agreements—which include likely unenforceable confidentiality, covenant-not-to-compete, and liquidated-damages provisions—are meant to hide the activity from the Bureau of Elections and the public. But the actions of circulators on the ground in Michigan that are working on all other ballot questions except the Secure MI Vote Initiative Petition indicate the strong likelihood that Protect MI Vote has attempted to implement this scheme on a wide scale involving many other circulators.

Legal Analysis

Under the Michigan Campaign Finance Act (“MCFA”), an “expenditure” means “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” and 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.”¹⁴

When an agent or independent contractor of a committee makes expenditures on behalf of that committee, Section 43 of the MCFA requires the committee to report the expenditures as if the expenditures were made directly by the committee.¹⁵ And the agent or independent contractor must “make known to the committee all information required to be reported by the committee.”¹⁶ Failure to comply with this reporting requirement is a criminal offense: “A person who knowingly is in violation of this subsection is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.00, or imprisoned for not more than 90 days, or both, and if the person is other than an individual the person shall be fined not more than \$10,000.00.”¹⁷

The Bureau of Elections has provided guidance on how ballot-question committees must report expenditures made by agents and independent contractors (“IC Guidance”).¹⁸ Under the IC Guidance, in addition to the committee reporting the total amounts paid to an agent or independent contractor, “any expenditure made by an agent or independent contractor on behalf of a committee must be disclosed with the campaign statement that covers the reporting period in which the

¹⁴ MCL 169.206(1).

¹⁵ MCL 169.243. There is an exception to this requirement when the agent or independent contractor files a report of an independent expenditure.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Appendix L, Independent Contractors, <https://mertsplus.com/mertsuserguide/index.php?n=MANUALS.AppendixL>.

expenditure was made if . . . the expenditure was made to a subcontractor supplying services to the agent or independent contractor.”¹⁹ “To enable committees to meet this disclosure requirement, the Campaign Finance Act, MCL 169.243, requires agents and independent contractors working for a committee to provide the committee with a list of the expenditures made on the committee’s behalf.”²⁰ “The list of expenditures provided by an agent or independent contractor must include the following:

- the name and address of each individual or business that received more than \$50.00 through a single expenditure or through a series of expenditures made by the agent or independent contractor during the campaign statement reporting period;
- the purpose and amount of each expenditure; and
- the date each expenditure was made.”²¹

The Bureau of Elections’ Campaign Statement Form for ballot-question committees requires this reporting to be made on Schedule 4B, Itemized Direct Expenditures.²² Specifically, Schedule 4B requires a committee to report additional detail regarding an expenditure made to an agent or independent contractor through the “memo itemization” function. This function allows a committee to include the required information—such as the vendor’s name, purpose, date, and amount—for each expenditure that the agent or independent contractor makes on behalf of the committee using the funds that the agent or independent contractor received from the committee.²³

Here, the services provided by Wefel under the Agreement with Groundgame are expenditures under the MCFA. As explained above, the services that Wefel was to provide under the Agreement “would help further [Groundgame’s] business interests in Michigan, including but not limited to consulting on any potential campaigns or ballot measures for the November 6, 2022 election that relate to election reforms.” And, specifically, Wefel was to transmit to Groundgame information concerning any actual or potential effort or campaign to qualify for the ballot through the collection of petition signatures in Michigan an initiative, proposition, or referendum measure relating to any measures regarding election reforms and also provide Groundgame with ground intelligence including best cities to circulate in, times of day to circulate, as well as best types of high traffic locations to circulate in.

These services along with the Agreement’s prohibition against Wefel working on the Secure MI Vote Initiative Petition unquestionably influence the qualification, passage, or defeat of a ballot question, under Section 6(1) of the MCFA. Groundgame itself has treated them as such based on its actions. Wefel and Groundgame had no interactions under the Agreement until Groundgame believed that Wefel was engaging with the Secure MI Vote Initiative Petition. Indeed, the combination of the Agreement’s structure and Groundgame’s actions demonstrate that the Agreement’s primary purpose was to implement a scheme to secretly buy out circulators in Michigan so that it will be more difficult for Secure MI Vote to obtain enough signatures by June 1, thus directly influencing the qualification of the Secure MI Vote Initiative Petition. Accordingly,

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Itemized Direct Expenditures, Schedule 4B, Ballot Question Committee (attached as Attachment 5).

²³ *Id.*

the \$50,000 that Groundgame paid to Wefel in November of 2021 was an expenditure under the MCFA.

As an expenditure, the \$50,000 paid to Wefel was required to be reported. Based on searches of the Bureau of Elections' website, Groundgame has not registered as a ballot-question committee, has not made an in-kind expenditure or in-kind contribution in behalf of a ballot-question committee, and has not filed a report of an independent expenditure. Of course, if Groundgame used its own funds to make independent or in-kind expenditures, it would need to separately form as a ballot-question committee. But Protect MI Vote's campaign statements demonstrate that Groundgame is not acting independently but rather as a political consultant for Protect MI Vote. Protect MI Vote has paid Groundgame almost \$400,000 for "consulting", including a payment of \$56,000 on the day that Groundgame entered into the Agreement with Wefel to provide \$50,000 in services to Protect MI Vote through Groundgame. Therefore, Section 43 of the MCFA required Groundgame to provide Protect MI Vote with all required information related to the payment to Wefel. And Protect MI Vote was then required to itemize the expenditure made to Groundgame to include the payment to Wefel on the campaign statement covering the period the expenditure was made, which was the annual campaign statement due on January 31, 2022. The structure of the Agreement and the actions by Groundgame on behalf of Protect MI Vote demonstrate a knowing violation of Section 43.

Considering the potential criminal liability associated with Protect MI Vote's failure to report the payment to Wefel, Wefel is withdrawing from and reporting this scheme to avoid any allegation that Wefel has engaged in a conspiracy under MCL 750.157a or that Wefel is "aiding and abetting" the crime.

Conclusion

Protect MI Vote's scheme to pay off circulators not to engage in the Secure MI Vote Initiative Petition is deplorable on its face and has no place in Michigan elections. But its attempt to hide the scheme from the Bureau of Elections and the public through payments to independent contractors such as Groundgame blatantly violates Section 43 of the MCFA, which is specifically intended to prohibit committees from hiding expenditures through independent contractors. In addition, it is highly likely that a reasonable opportunity for further inquiry will uncover that Protect MI Vote's practice is widespread, and it has entered into similar agreements with many other circulators in an effort to influence the qualification of the Secure MI Vote Initiative Petition.

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PROFESSIONAL SERVICES CONTRACT

This Agreement ("Agreement") is effective this 11/24/2021 (Date) (the "Effective Date") between Dustin Wefel/ DRW Campaigns, INC. ("CONTRACTOR") and GROUNDGAME POLITICAL SOLUTIONS, LLC ("GROUNDGAME"). CONTRACTOR and GROUNDGAME are collectively referred to as the "Parties."

RECITALS

1. CONTRACTOR is a Dustin Wefel (State) S-Corp (business type) in the business of collecting petition signatures.
2. GROUNDGAME is a Delaware limited liability company in the business of providing general consulting services and working on state and local ballot measures nationwide.
3. The Parties desire to enter into this Agreement so that GROUNDGAME can retain and have available CONTRACTOR to help further GROUNDGAME's business interests in Michigan, including but not limited to consulting on any potential campaigns or ballot measures for the November 6, 2022 election that relate to election reforms.

AGREEMENT

IN CONSIDERATION of the mutual promises contained in this Agreement, the Parties agree, covenant, and warrant as follows:

1. **Terms of Service.** This Agreement will begin on the Effective Date and terminate on July 1, 2022 (the "Termination Date").
2. **Scope of Work provided by CONTRACTOR.** The Parties have agreed to the following services requested by GROUNDGAME to be performed by CONTRACTOR.
 - a. CONTRACTOR agrees to transmit to GROUNDGAME any and all public or non-public information, derived from any source, concerning any actual or potential effort or campaign to qualify for the ballot through the collection of petition signatures in Michigan an initiative, proposition, or referendum measure relating to any measures regarding election reforms, including but not limited to any statutory or constitutional initiative that in part or in whole seeks to enact any of the election reform bills that have been introduced by the Michigan Legislature during the 2021 legislative session or to modify or change the intent, effect, or language contained in Proposal 3 of 2018 (individually, a "Petition Campaign" and collectively, the "Petition Campaigns").
 - b. In Addendum A, CONTRACTOR will provide ground intelligence including best cities to circulate in, times of day to circulate, as well as best types of high traffic locations to circulate in.

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- c. CONTRACTOR will be retained to provide insight and be available to conduct voter education for an amount to be negotiated and determined with any issue related to election reforms in Michigan.
 - d. It is the intention of the Parties to this Agreement that the services rendered and the payments made hereunder are not in any way contingent upon the defeat or enactment of any initiative, referendum, legislative, regulatory or administrative proposal.
- e. CONTRACTOR is an independent contractor and is responsible to provide the services described herein. CONTRACTOR further agrees to provide such services on an exclusive basis such that CONTRACTOR and its owners, managers, officers, and affiliates shall not perform services for any other client or campaign to gather signatures, perform research or other work in Michigan on an initiative, proposition, or referendum measure to election reforms. Nothing in this Agreement shall be construed to create any partnership, joint venture, or agency relationship of any kind between the Parties. CONTRACTOR's directors, officers, employees, agents, and other representatives shall have no authority to enter into any agreements or contracts on behalf of GROUNDGAME, or to bind GROUNDGAME in any way, and they shall not represent, either explicitly or implicitly, that they possess any such authority. GROUNDGAME shall not be responsible to CONTRACTOR, its directors, officers, employees, agents, contractors or other representatives, or to any governmental authority, for the payment or withholding of federal, state, or local income, unemployment, or other employment-related taxes in connection with the performance of the services contemplated by this Agreement.
- f. GROUNDGAME is affiliated with the law firm of Husch Blackwell LLP, but under this Agreement, CONTRACTOR is not retaining or entering into an attorney-client relationship with the law firm of Husch Blackwell LLP. Absent a separate written engagement agreement between Husch Blackwell LLP and CONTRACTOR, there will be no attorney-client relationship between Husch Blackwell LLP and CONTRACTOR, and Husch Blackwell LLP shall have no duties whatsoever to CONTRACTOR.
- g. CONTRACTOR shall ensure that its conduct in providing the services described herein shall be consistent with the best standards of the industry and in compliance with applicable state and local laws. CONTRACTOR further warrants and agrees to file all other required forms, registrations, reports, and other filings, if any, and to pay all corresponding fees or other charges as may be required of CONTRACTOR, at the federal, state, and local levels, as a consequence of activities conducted by CONTRACTOR under the terms of this Agreement.
- h. CONTRACTOR shall treat and hold all information provided by GROUNDGAME and learned in the course of providing the services under this Agreement as confidential, unless such information is generally and publicly available through no action of CONTRACTOR. CONTRACTOR will not disclose such information without the express, prior written consent of GROUNDGAME.

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3. **Press Inquiries.** If CONTRACTOR is approached by the press regarding the services performed under this Agreement or Petition Campaigns, CONTRACTOR shall notify GROUNDGAME immediately and CONTRACTOR is not permitted to communicate to the press either by written or oral correspondence including the use of cellular applications 'apps'.
4. **Payment by GROUNDGAME.** GROUNDGAME agrees to compensate CONTRACTOR as follows:
- a. GROUNDGAME agrees to pay CONTRACTOR a total contract price of ~~50,000.00~~ for its services, which shall be made in a one-time payment in the amount of ~~50,000.00~~. In addition, GROUNDGAME reserves the right to request CONTRACTOR to help with signature collection efforts.
 - b. This payment to CONTRACTOR shall be made by wire transfer from an account with sufficient funds or by electronic transfer.
 - c. GROUNDGAME shall make payment to CONTRACTOR within seventy-two (72) hours of full execution of this Agreement.
 - d. CONTRACTOR shall fill out its banking wire information enclosed at the end of this Agreement.
5. **Covenant to Not Compete.** So that CONTRACTOR fully engages in support of GROUNDGAME's business interests that are the subject of this Agreement and does not conduct work that interferes or conflicts with those interests, CONTRACTOR agrees to the following reasonable restrictions through the Termination Date:
- a. CONTRACTOR represents and warrants that neither it nor any of its owners, principals, officers, employees, affiliates, or agents, are currently (as of the Effective Date), either directly or as the subcontractor of any other entity, consulting on, working on, or providing services whatsoever relating to the election reforms, including but not limited to gathering initiative, referendum, or any other type of petition signatures on any local, statutory, or constitutional issue in the State of Michigan, and CONTRACTOR further agrees that if it becomes aware at any time from the Effective Date of this Agreement until the Termination Date that it or any of its owners, principals, employees, affiliates, agents or subcontractors is so engaged, that it shall immediately notify GROUNDGAME of the full extent of these activities of which it has become aware.
 - b. CONTRACTOR represents and warrants that neither it nor any of its owners, principals, officers, employees, affiliates, or agents shall, either directly or as the subcontractor of any other entity, consult on, work on, or provide any services whatsoever relating to the election reforms, including but not limited to gathering initiative, referendum or any other type of petition signatures on any local, statutory, or constitutional issue, from the Effective Date of this Agreement until the Termination Date.

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- c. **CONTRACTOR** will notify **GROUNDGAME** immediately upon hearing about or being approached by any entity regarding any other election reforms-related project or other efforts to affect election reforms policy in the State of Michigan during the term of this Agreement, provided that such notification is consistent with applicable law. **CONTRACTOR** shall not disclose to **GROUNDGAME**, or bring to **GROUNDGAME**'s premises, or induce **GROUNDGAME** to receive or make use of, any confidential information that belongs to anyone other than **GROUNDGAME** or **CONTRACTOR**.
6. **Entire Agreement.** This Agreement is a fully integrated document and supersedes all prior agreements and discussions, whether written or oral, between the Parties.
7. **Binding Effect.** This Agreement is binding upon and shall inure to the benefit or detriment of the Parties, and their employees, heirs, successors, representatives, subsidiaries, and assigns.
8. **Modifications and Amendments.** There shall be no amendments or modifications to this Agreement unless it is in writing and signed by the Parties.
9. **Notice.** Any notice provided concerning this Agreement shall be in writing and be deemed sufficiently given when sent by certified or registered mail or hand-delivered to the other party at its respective address as set forth below.

To **CONTRACTOR**:

_____(address, City, State, Zip)_____ Dustin Wefel
5020 Ford st
Swartx creek, mi 48473

To **GROUNDGAME**:

Attn: Meghan Cox
300 M Street, Suite 875
Washington, D.C. 20003

10. **Construction.** The terms of this Agreement constitute the written expression of the Parties' mutual agreement and the Parties have had the opportunity to consult with counsel. This Agreement shall be construed neutrally and not for or against either party. The headings in this Agreement are inserted for convenience; the provisions of this Agreement shall control.
11. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.
12. **Enforcement.** The Parties agree that should **CONTRACTOR** breach this Agreement, **GROUNDGAME**'s sole remedies will be as follows:
- a. **Injunctive Relief.** The Parties agree that a breach of this Agreement, in particular sections 2.e-f, 4, and 14, will cause irreparable harm to **GROUNDGAME** because of (i) the specialized nature of **CONTRACTOR**'s services; (ii) the confidential information that the Consultant has obtained or likely will obtain pursuant to the Agreement, the disclosure of

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which to competitors would be significantly injurious to GROUNDGAME; (iii) short time frame of this Agreement; and (iv) the infeasibility of retaining suitable replacement services for which there is no adequate remedy at law, and that such a breach entitles GROUNDGAME to injunctive relief. Such relief may be sought by GROUNDGAME against CONTRACTOR in a court of competent jurisdiction sitting in Arizona. If GROUNDGAME obtains such injunctive relief, it shall be entitled to recover its reasonable attorneys' fees and costs from the breaching person or entity.

- b. **Liquidated Damages.** If a court finds that GROUNDGAME is not entitled to a temporary restraining order or injunctive relief, and/or if CONTRACTOR materially breaches any provision of this Agreement, CONTRACTOR and GROUNDGAME agree that, for all of the reasons stated above, a fair estimate of GROUNDGAME's actual damages from a material breach by Consultant would be a sum that is four (4) times the value of the total compensation received by CONTRACTOR to engage in the services as set forth in Paragraph 2 of this Agreement. The Parties have agreed to this liquidated damages sum after negotiation and not as a penalty but as an efficient estimate and exclusive remedy for CONTRACTOR's material breach of any provision of this Agreement. The Parties agree that Client shall be entitled to such liquidated damages without proof of actual damages at the time of breach.

13. Early Termination. This Agreement may be terminated prior to December 31, 2021 for the following reasons.

- a. GROUNDGAME may terminate this Agreement prior to the Termination Date for any reason or no reason upon thirty (30) calendar days' written notice to CONTRACTOR.
- b. This Agreement may be terminated at any time by mutual consent of the Parties evidenced by a writing signed by both Parties.
- c. If GROUNDGAME fails to pay CONTRACTOR for any amounts specified in this Agreement and under the terms set out herein, CONTRACTOR shall notify GROUNDGAME in writing of its failure to pay. GROUNDGAME shall have seventy-two (72) hours from receipt of notice to make the required payment. If GROUNDGAME does not timely pay CONTRACTOR, CONTRACTOR may terminate the Agreement and stop all further services, and all amounts owed to CONTRACTOR will become immediately due and payable.
- d. The provisions of Paragraphs 2.c-f., 8, 11, 13, 14, 15, 16, and 18 shall survive any termination or expiration of this Agreement. The provisions of Paragraph 4 shall survive any termination of this Agreement until the Termination Date.

14. Disputes and Governing law. This Agreement shall be governed by and construed in accordance with the laws of the state of Arizona without giving effect to any choice or conflict of law provision or rule (whether of the state of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of Arizona. The Parties

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agree that any action or proceeding arising out of or relating to this Agreement and all claims in respect of such action or proceeding may be heard and determined in a court of competent jurisdiction sitting in the state of Arizona. Each of the parties submits to the jurisdiction of such court, and hereby waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other party with respect thereto. Each party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit or on the judgment or in any other manner provided by law or in equity.

- 15. Confidentiality.** CONTRACTOR agrees not to disclose the existence or terms of this Agreement to any third party, except to (i) legal counsel (as long as counsel has not been or is not currently affiliated with or working in any way with any group in connection with a potential ballot measure in the election reforms in Michigan), (ii) accounting or tax professionals, or (iii) as required by law, in which case CONTRACTOR shall notify GROUNDGAME of the potential disclosure required by law so that GROUNDGAME has an opportunity to object. Further, CONTRACTOR shall not, and none of CONTRACTOR's owners, principals, officers, employees, affiliates, or agents shall, agree to disclose any non-publicly available information, documents, data, or communications, whether oral or written, that relate in any way to this Agreement or to any potential local or statewide ballot measure for which CONTRACTOR may provide services to GROUNDGAME under the terms of this Agreement, or that is related in any way to non-publicly available information or materials, whether written or oral, provided by GROUNDGAME to CONTRACTOR or to any of CONTRACTOR's owners, principals, officers, employees, affiliates, or agents or to any business contacts of CONTRACTOR. The terms of this Paragraph 14 shall continue after the termination of this Agreement.
- 16. Limitation of Liability.** To the fullest extent permitted by applicable law, and notwithstanding any other provision in this Agreement, the total aggregate liability of GROUNDGAME to CONTRACTOR and all of its affiliates (and their respective successors and permitted assigns) shall be limited to the amounts owed to CONTRACTOR for the services provided in accordance with this Agreement. This limitation shall apply regardless of the cause of action pled or legal theory advanced, unless otherwise prohibited by applicable law. In no event shall GROUNDGAME be liable to CONTRACTOR or any of its affiliates (or their respective successors or permitted assigns) for any consequential, incidental, indirect, punitive or special damages (including loss of profits, data, business or good will) arising out of any breach of this Agreement by GROUNDGAME.
- 17. Indemnification.** CONTRACTOR shall defend, protect, indemnify and hold harmless GROUNDGAME, and directly or indirectly, its directors, officers, employees, and agents ("Indemnified Parties"), against all claims, demands or causes of action, losses and expenses (including, without limitation, attorneys' fees and costs of litigation, whether incurred for an Indemnified Party's defense or for enforcement of its indemnification rights) which may be incurred by an Indemnified Party on account of or relating to the services rendered by CONTRACTOR pursuant to this Agreement.

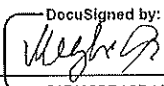
PRIVILEGED AND CONFIDENTIAL

Page 7 of 9

- 18. Severability.** If any provision of this Agreement is deemed void or unenforceable, the void or unenforceable provision shall be deemed severed from the Agreement and shall not affect any other provision, or the validity or enforceability of this Agreement as a whole.
- 19. Waiver.** The failure of either party hereto at any time to require performance by the other party of any provision of this Agreement shall in no way effect the right of such party thereafter to enforce the same, nor shall any waiver of any breach of any provision hereof by the other party be taken or held to be a waiver by such party of any succeeding breach of such provision, or as a waiver of the provision itself.

Each person executing this Agreement warrants that he or she has the authority, right, and legal capacity to execute this Agreement, including as on behalf of any entity.

HBS PLUS, LLC

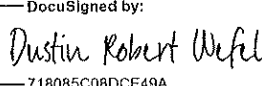
DocuSigned by:

51F133BDA8D4469...

Meghan Cox
Chief Executive Officer
Ground Game Political Solutions
300 M Street, Suite 875
Washington, D.C. 20003

CONTRACTOR

Dustin wefel

Authorized Representative (Print Name)

DocuSigned by:

718085C08DCE49A...
Authorized Representative (Signature)
Drw Campaigns Inc

Business Name

Date 11/24/2021

PRIVILEGED AND CONFIDENTIAL
Page 8 of 9

ADDENDUM A

Please list the best cities to petition in the state of Michigan:

1. Detroit
2. Flint
3. Saginaw

Please list the best types of high traffic locations for circulators to work at:

1. Libraries
2. Sec of state office
3. Welfare office

Please list the best time of day to petition:

1. 9-5

What is your petition capacity on a monthly basis? Please let us know how many signatures that you can collect?

50000

PRIVILEGED AND CONFIDENTIAL

Page 9 of 9

BANKING INFORMATION FOR RECEIVING INCOMING WIRES FOR YOU
OR YOUR BUSINESS (PLEASE MAKE SURE YOU ENTER IN CORRECT
INFO TO MATCH YOUR W-9):

1. BENEFICIARY NAME: Dustin wefel
2. BENEFICIARY ADDRESS: 5020 Ford Street
Swartz Creek, Mi 48473
3. BANK NAME: Chase
4. BANK ACCOUNT ADDRESS, CITY, STATE, ZIP)
5020 ford st swartz creek, mi 48473
5. BANK WIRING ROUTING NUMBER (DIFFERENT THAN REGULAR
ROUTING NUMBER)- 9 digits: 021000021
6. BANK ACCOUNT NUMBER- 12-15 digits 403495430

DECLINE TO *sign*

THE SECURE MI VOTE PETITION

WHAT IS THE SECURE MI VOTE PETITION?

The "Secure MI Vote" petition is a deceptive effort to silence the voice of the people. **It is not about election security. It's about making it harder to vote and more difficult for clerks to run elections. It's a continuation of the Big Lie that's anti-voter and anti-democracy.**

Michigan already has secure elections and strong, effective voter ID laws that work. We just had the most secure, accessible, high turnout election in our state's history. This is simply a deceitful ploy to change the rules because some people didn't like the results of the 2020 election.

WHAT WOULD THE SECURE MI VOTE PETITION DO?

- Require people to disclose partial social security numbers when registering to vote
- Eliminate the option that registered voters currently have to securely verify their identity and vote normally
- Require registered absentee voters to disclose driver's license, personal ID, or partial social security numbers when applying for their ballots
- Throw out the ballots of registered voters (in person and absentee) who can't satisfy these new restrictive identity requirements, unless they go in person to their clerk's office and present acceptable documentation within six days after the election
- Prohibit election officials from making absentee ballot applications available except upon the voter's request
- Ban charitable contributions, including volunteer time, to help administer elections

ARE THEY TRYING TO GET THIS ON THE BALLOT?

No. Signing the petition will not get anything on the ballot for voters to decide. Instead, Republicans are using a loophole in the system to pass their voter suppression agenda without a vote of the people and without it being subject to Governor Whitmer's veto. If they collect petition signatures from fewer than 4% of Michigan voters, their voter suppression package will go straight to the Legislature and will become law.

WHAT CAN WE DO TO STOP THIS ANTI-VOTER INITIATIVE?

Decline to Sign the Secure MI Vote petition, and tell everyone you know to Decline to Sign it! Paid petition circulators will say anything to get you to sign their petition. Don't fall for their lies! No matter what they say, their goal is not to get a proposal on the ballot, and it's not to "make it easier to vote." Read any petition you're asked to sign, and don't sign one that takes away voting rights.

You can also help by reporting the location of petition circulators to the Protect MI Vote petitioner sighting hotline. Protect MI Vote is a ballot committee opposing the Secure MI Vote petition. They will send field teams to help educate voters about the reasons not to sign the petition, but they need to know where the petition circulators are active. **Anytime you see a petition circulator, call or text 517-481-2165.**



HUSCH BLACKWELL

Josh Grabel
Office Managing Partner

2415 E. Camelback Road, Suite 500
Phoenix, AZ 85016
Direct: 480.824.7883
Fax: 480.824.7905
josh.grabel@huschblackwell.com

February 14, 2022

VIA EMAIL AND FEDERAL EXPRESS

Dustin Weff
Authorized Representatives
DRW Campaigns, Inc.
5020 Ford Street
Swartz Creek, MI 48473

Re: Demand Letter--Cease and Desist and Notification of Litigation Hold re: Breach
of Contract with Groundgame Political Solutions, LLC

Dear Mr. Weff:

This firm represents Groundgame Political Solutions, LLC ("Groundgame") regarding its Professional Services Contract ("the PSC") with you and your company, DRW Campaigns, Inc. ("DRW"). *See* PSC [Att. 1]. As you are aware, you and your company have, pursuant to the PSC, been provided with confidential and proprietary information by Groundgame exclusively for the purposes outlined in the PSC. The PSC makes explicitly clear that this confidential information is to be used solely and exclusively for the purposes of executing the PSC, and any use of that information in a manner not for Groundgame's benefit is a material breach of the terms of the PSC. The PSC also makes it explicitly clear that DRW is being retained solely and exclusively by Groundgame for the purposes outlined in the PSC, and there is an explicit non-compete requirement in the PSC which was negotiated and is a material term of the PSC.

Please consider this letter to be notice that Groundgame is informed and believes that you have been acting in a manner that violates the Covenant to Not Compete of the PSC by, among other things, using resources provided through the PSC for the benefit of other parties. *See* PSC at §§ 2, 5, 12 & 17. These actions by you and DRW are not acceptable, and are clear and explicit violations of the terms of the PSC. Pursuant to Section 12 of the PSC, you have agreed that not only is Groundgame entitled to injunctive relief preventing your violations of the non-compete, but it is entitled to recover liquidated damages in the sum of \$200,000, plus interest, attorneys fees and costs associated with each of your material breaches of the PSC.

HUSCH BLACKWELL

Dustin Wefl
February 14, 2022
Page 2

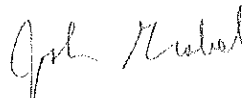
As a result, Groundgame demands that you immediately cease and desist the use of any materials obtained in relation to the PSC and, further, that you confirm, in writing, in a manner to be determined by Groundgame and my office, that you are not acting in a manner that materially breaches the PSC, its non-compete or its confidentiality provisions. This written confirmation must be agreed to within the next 48 hours, and you should contact my office immediately upon receipt of this letter to confirm how to comply.

Additionally, Groundgame further places you on notice that, given your apparent material breach of the Agreement, that you are to hold and maintain all potentially relevant documents, business records, electronic or other information that may be within your possession or control and implement a litigation hold for that material related to your performance under the PSC. This means that you, DRW and all persons associated with either are hereby obligated, pursuant to both Arizona and federal law, to maintain any and all hard copy or electronic data or information that may, in any way, be relevant to this dispute. This includes, but is not limited to, documents (electronic or hard copy), correspondence, emails, text messages, voicemails, metadata, Excel spreadsheets, Word documents, presentations, notes, logs, servers, hard drives, thumb drives or other information in any form that may, in any way, relate to your performance under the PSC. If you need assistance in implementing an appropriate litigation hold, we would suggest you retain counsel to ensure it is done properly.

THIS IS NOT THE FIRST IN A SERIES OF DEMAND LETTERS. This is the only letter you will receive before legal action is implemented against you. We look forward to your prompt and appropriate response to this letter.

Sincerely,

HUSCH BLACKWELL LLP



Josh Grabel
Office Managing Partner

JG

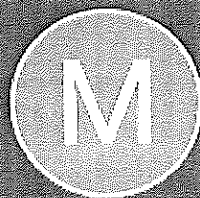
2:49



1015



ATTACHMENT 4



Mark Jacobi ▾

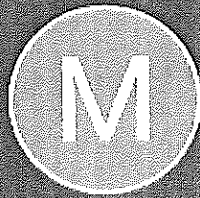
I didnt get bought
on the minimum w
petition.

Correct we're giving
you back all of it
including the ones

2:49



101.5



Mark Jacobi ▾

I didn't take any of those

And if someone gave them to me it was an accident

I've been trying to eat

2:49



Mark Jacobi

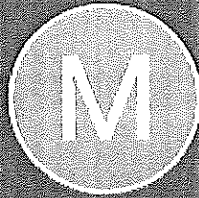
12:30 PM, Feb 12

I've been trying to calm down the client for 48 hours I'm not sure why you do the why take money if you didn't want to be part of it we know the system already already seen it you gotta be smart enough to understand these people have private investigators they have ways of finding out what is really going on you brought the

2:49



101.5

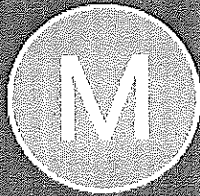


Mark Jacobi ▾

I have none of that
paper....period.

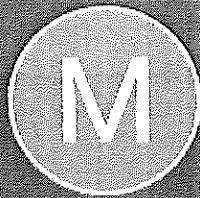
No one's keeping
any of the signatures
including those ones

2:49



Mark Jacobi ▾

We know the system and how it's being done also you realize minimum wage isn't suppose to be carried with the education issues ?

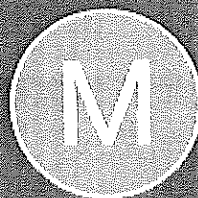


Mark Jacobi ▾

We're not even there
right now so it's
not happening this
moment it's not just
when you want

12:34 PM

2:49



Mark Jacobi ▾

No one has told me
otherwise and guess
what? Everyone is

Yep I know they are
however we're not
talking to you about



MICHIGAN DEPARTMENT OF STATE
BUREAU OF ELECTIONS

ITEMIZED DIRECT EXPENDITURES
SCHEDULE 4B
BALLOT QUESTION COMMITTEE

1. Committee I. D. Number _____

2. Committee Name _____

3. Name and address of person to whom paid	4. State purpose of expenditure. 5. Identify the ballot proposal involved. Indicate whether supported or opposed.	6. Date	7. Amount	8. Cumulative for election
Expenditure # 1 Name & Address:	4. Purpose: 5. Ballot Proposal: _____ Date of Expenditure _____		\$ _____ \$ _____	
<input type="checkbox"/> Check box if expenditure is payment of debt or obligation reported on previous statement	County: _____ <input type="checkbox"/> Support <input type="checkbox"/> Oppose <input type="checkbox"/> Statewide <input type="checkbox"/> Local	Click for Memo Itemization Type		
<input type="checkbox"/> Fund Raiser				
Expenditure # 2 Name & Address:	4. Purpose: 5. Ballot Proposal: _____ Date of Expenditure _____		\$ _____ \$ _____	
<input type="checkbox"/> Check box if expenditure is payment of debt or obligation reported on previous statement	County: _____ <input type="checkbox"/> Support <input type="checkbox"/> Oppose <input type="checkbox"/> Statewide <input type="checkbox"/> Local	Click for Memo Itemization Type		
<input type="checkbox"/> Fund Raiser				
Expenditure # 3 Name & Address:	4. Purpose: 5. Ballot Proposal: _____ Date of Expenditure _____		\$ _____ \$ _____	
<input type="checkbox"/> Check box if expenditure is payment of debt or obligation reported on previous statement	County: _____ <input type="checkbox"/> Support <input type="checkbox"/> Oppose <input type="checkbox"/> Statewide <input type="checkbox"/> Local	Click for Memo Itemization Type		
<input type="checkbox"/> Fund Raiser				
Expenditure # 4 Name & Address:	4. Purpose: 5. Ballot Proposal: _____ Date of Expenditure _____		\$ _____ \$ _____	
<input type="checkbox"/> Check box if expenditure is payment of debt or obligation reported on previous statement	County: _____ <input type="checkbox"/> Support <input type="checkbox"/> Oppose <input type="checkbox"/> Statewide <input type="checkbox"/> Local	Click for Memo Itemization Type		
<input type="checkbox"/> Fund Raiser				

Subtotal this page

Grand Total of Schedules 4B
(Complete on last page of Schedule)

Enter this total
on Line 8a of
the Summary
Page

COMPLETING BALLOT QUESTION COMMITTEE SCHEDULE 4B,
ITEMIZED DIRECT EXPENDITURES

ITEM 3: NAME AND ADDRESS OF PERSON PAID: Enter the name and address of:

- Each individual or business to whom the committee made an expenditure of more than \$50.00 through a single expenditure or through a series of expenditures during the period covered by the Campaign Statement.
- Each Ballot Question Committee to which the committee made an expenditure in any amount during the period covered by the Campaign Statement.

Report additional detail information for this expenditure as a Memo Itemization as explained below.

- **MEMO ITEMIZATIONS.** Report the gross expenditure made by the committee with the notation **“Memo Itemization Below”** written above the name of the person, business or vendor to whom the payment was made by the committee, the date of the payment, and the total amount paid.
- In the space for the next expenditure record immediately following this entry, enter the notation **“Memo Itemization”** and indicate the ballot proposal involved. Check the applicable boxes for in-kind or independent, support or oppose and enter the date of the expenditure. Report the allocated amount for the proposal in parenthesis as a reminder that it is not to be added into the total again. Enter the cumulative expenditure amount for that proposal (for the election) through the date of the expenditure being itemized. Repeat until the itemization is completed for each proposal related to the expenditure being itemized.

ITEM 4: PURPOSE: Describe the purpose of the expenditure.

When reporting a mileage reimbursement to a staff member, enter the word “mileage” along with the number of miles and the reimbursement rate in the purpose field of the expenditure record. An example of mileage reimbursement reporting is shown in the Schedule 4B examples.

ITEM 5: BALLOT QUESTION INFORMATION: If the expenditure was made in support or opposition to the qualification, passage or defeat of a ballot proposal sponsored by this committee or to another Ballot Question Committee in support or opposition to the qualification, passage or defeat of a different ballot proposal, identify the proposal and indicate whether it is a statewide, multi-county, or single county issue. If listing a single county issue, list the county involved. If listing a multi-county issue, list the county where the greatest number of electors eligible to vote on the issue resides. If it is a statewide proposal, leave the county name blank.

Check the box if the expenditure was made to repay a debt or obligation owed by the committee that was reported on a previous campaign statement.

Check the Fund Raiser box if the expenditure is related to a fund raising event sponsored or co-sponsored by this committee.

ITEM 6: DATE OF EXPENDITURE: Enter the date the expenditure was made.

ITEM 7: AMOUNT OF EXPENDITURE: Enter the full amount of the expenditure.

ITEM 8: CUMULATIVE FOR THE ELECTION: Enter the cumulative amount the committee has expended to support or oppose the proposal to date. Include all direct, in-kind expenditures and independent expenditures involved. Expenditures for or against a ballot proposal accumulate for the election in which the proposal appears on the ballot.



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

September 14, 2022

Groundgame Political Solutions, LLC
217 E. Capital Ave.
Jefferson City, MO 65101

Protect MI Vote
P.O. Box 545
Royal Oak, MI 48067

Re: *Wefel v. Groundgame Political Solutions, Protect MI Vote*
Campaign Finance Complaint No. 2022 – 05 – 14

Dear Groundgame Political Solutions and Protect MI Vote:

The Department of State (Department) has received a formal complaint filed against you by Dustin Wefel alleging that you violated the Michigan Campaign Finance Act (MCFA or Act). Specifically, the complaint alleges that you did not comply with the MCFA's reporting requirements regarding expenditures by an agent or independent contractor. A copy of the complaint is included with this notice.

Under section 43 of the MCFA, most expenditures by agents and independent contractors of a committee must either be reported by the committee as if the expenditure were made by the committee or must be reported in an independent expenditure report. MCL 169.243. In order to ensure compliance, the agent or independent contractor must make known to the committee all information necessary to fulfill this requirement. *Id.*

Violation of this requirement is a misdemeanor punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 90 days, or both, and if the person is other than an individual a fine of not more than \$10,000.00. MCL 169.243.

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 Mr. Wefel, 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: Dustin Wefel

Christopher M. Trebilcock
T (313) 965-8575
F (313) 309-6910
Email: ctrebilcock@ClarkHill.com

Clark Hill
500 Woodward Ave., Suite 3500
Detroit, MI 48226
T (313) 965-8300
F (313) 965-8252

October 26, 2022

Via Email

Adam Fracassi
Michigan Department of State
Bureau of Elections
Richard H. Austin Building – 1st Floor
430 W. Allegan St.
Lansing, MI 48918
FracassiA@michigan.gov
disclosure@michigan.gov

**Re: Response to Complaint – *Wefel v. Groundgame Political Solutions & Protect MI Vote*
Campaign Finance Complaint No. 2022-05-14**

Dear Mr. Fracassi:

As you know, this law firm represents Protect MI Vote (“PMV”). We have also been retained to represent Groundgame Political Solutions, LLC (“GPS”) in this matter (together, “Respondents”). Please allow this correspondence as Respondents’ combined, formal response¹ to the Complaint filed by Dustin Wefel (“Wefel”). There is no factual or legal basis for the Complaint and it should be summarily dismissed.

A. Wefel Is Merely A Shadow Complainant For Groups Opposed To The Expansion Of Voting Rights In Michigan.

As a threshold matter, this Complaint should be summarily dismissed because it is not filed by the real party in interest. By all appearances, Wefel is being used as a strawman by various right-wing groups opposing PMV and the expansion of voting rights in Michigan. As has been widely reported in the news, Wefel is represented by Troy Cummings, a partner in the Warner Norcross + Judd law firm. See [Complaint: Michigan group fighting voter ID ‘secretly’ bought out](#)

¹ Under applicable law and guidelines, Respondent’s response to the September 14, 2022 Notice of Complaint would have been due by October 5, 2022. On October 4, 2022, Respondents sought and obtained from you a 15 business day extension of its response deadline to October 26, 2022. Therefore, this response is timely.

[circulators](#) (“Wefel’s lawyer Troy Cummings told Bridge that Wefel did not know he was working for Protect MI Vote until earlier this year.”). Cummings currently serves as the Michigan statewide chair for the Republican National Lawyer’s Association. The Warner law firm is also representing Wefel in connection with litigation filed against him by Mark Jacoby, another petition circulator, over allegations that Wefel defamed Jacoby and tortiously interfered with Jacoby’s business. (Ex. 1, Docket Sheet and Answer.)

Michigan law requires that all actions “be prosecuted in the name of the real party in interest.” *See e.g.*, MCR 2.201(B); MCL 600.2041 (same). “The real party in interest is one who is vested with the right of action as to a particular claim, or, stated otherwise, is the party who under the substantive law in question owns the claim asserted.” *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v Pontiac No. 2*, 309 Mich App 611, 622; 873 NW2d 783 (2015). Stated differently, “the real-party-in-interest rule is essentially a prudential limitation on a litigant’s ability to raise the legal rights of another.” *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 355; 833 NW2d 384 (2013). A Complaint under the MCFA must be submitted by the real party-in-interest, and not by a shill for the Michigan Republican Party or Secure MI Vote.

B. PMV Retains GPS, FieldWorks, And K2K For Voter Education And Petition Circulation Monitoring.

PMV is a ballot question committee organized on May 28, 2021 under the Michigan Campaign Finance Act. PMV opposes the Secure MI Vote petition. PMV retained GPS to provide petition circulation monitoring services and made its first payments to GPS on June 9 and 14, 2021. These expenditures are reported on PMV’s July 2021 Campaign Finance Statement filed with the Bureau of Elections (“BOE”).

In September, to assist with its opposition to the Secure MI Vote petition drive, PMV retained two additional political consulting firms – FieldWorks and K2K. PMV made its first payments to FieldWorks on September 22 and October 6, 2022. K2K received its first payment from PMV on September 22, 2022. These expenditures were reported on PMV’s October Quarterly Campaign Finance Statement filed with the BOE.

Collectively, these three independent contractors of PMV provided professional services to PMV for voter education and petition circulation monitoring. Other than the points of contact at each of these three firms, PMV did not have contact with or request services from any other political consulting entities or independent contractors for voter education or petition circulation monitoring.

According to GPS records, five months after being retained by PMV, GPS retained Wefel and his company, DRW Campaigns, Inc. (collectively, “Wefel”). GPS and Wefel entered into a Professional Services Agreement (the “Agreement”) whereby Wefel would help to further GPS’ business interests in Michigan, including by providing information to GPS on any potential campaigns or ballot measures that started to circulate petitions in Michigan. (*See* Attachment 1 to

Complaint, also attached as Ex. 2). The Agreement was entered into on November 24, 2021 and ran through July 1, 2022.

Under the Agreement, Wefel was retained by GPS generally “to help further GPS’s business interests in Michigan” There is nothing in the Agreement between Wefel and GPS that references PMV or the ballot initiative supported by Secure MI Vote. In fact, the plain language of Section 2(c) of the Agreement specifically limits the scope of the services provided by Wefel, stating:

It is the intention of the Parties to this Agreement that the services rendered and the payments made hereunder are not in any way contingent upon the defeat or enactment of any initiative, referendum, legislative, regulatory or administrative proposal. [Ex. 2.]

Section 2(c) of the Agreement further makes states that Wefel “will be retained to provide insight and be available to conduct voter education for an amount to be negotiated and determined with any issues related to election reforms in Michigan.” (Ex. 2.) As such, the terms of the Agreement between GPS and Wefel were contractually determined by GPS in its best business discretion.

According to the Agreement, GPS paid Wefel a lump sum of \$50,000 for his services. Section 5 of the Agreement contained a restrictive covenant that prevented Wefel or any of his subcontractors from working on any other election reform campaigns in the State of Michigan. Importantly, this restriction was only in effect during the term of Wefel’s engagement, that is through July 1, 2022.

C. PMV Is Not Required To Report GPS’ Payments to Independent Contractors As Expenditures.

The crux of Wefel’s Complaint is that GPS and PMV violated the Michigan Campaign Finance Act, specifically MCL 168.243, by failing to report expenditures on services received from Wefel and other alleged independent contractors. Wefel argues that payments made to him by GPS should have been reported by PMV as though they were made by PMV directly to Wefel. MCL 169.243 provides in full, as follows:

An expenditure shall not be made, other than for overhead or normal operating expenses, by an agent or an independent contractor, including an advertising agency, on behalf of or for the benefit of a person unless the expenditure is reported by the committee as if the expenditure were made directly by the committee, or unless the agent or independent contractor files a report of an independent expenditure as provided in section 51. The agent or independent contractor shall make known to the committee all information required to be reported by the committee. A person who knowingly is in violation of this subsection is guilty of a misdemeanor and shall

be punished by a fine of not more than \$1,000.00, or imprisoned for not more than 90 days, or both, and if the person is other than an individual the person shall be fined not more than \$10,000.00.

At the outset, Respondents note that no court has interpreted MCL 169.243 since its enactment. Nor has the office of the Secretary of State issued an interpretative statement or a declaratory ruling on MCL 169.243 in last 40 years. Neither the Secretary of State nor the BOE have ever issued any rules under the Administrative Procedures Act implementing MCL 169.243 either. As such, ballot question committees seeking to comply with MCL 169.243 are required to adhere to the plain language of the statute.

Nevertheless, the BOE published informal guidance on the MERTS website regarding the application of MCL 169.243, which Wefel cites to and relies upon. *See* Appendix L, Independent Contractors (the “MERTS Guidance”). However, the MERTS Guidance makes clear that Wefel fundamentally misunderstands MCL 169.243 and what it requires of committees like PMV.

First, the MERTS Guidance by its plain language is focused on committees retaining agents or independent contractors for media services as opposed to other types of services such as petition signature companies. Indeed, the caption of Appendix L states that it governs “**Media Buyers and Other Vendors Purchasing Goods for the Committee.**” (emphasis added). In this case, neither GPS nor PMV purchased goods. Rather, as indicated above, GPS was retained to provide professional services to the ballot question committee.

Second, the MERTS Guidance advises committees that the services typically provided to committees by agents and independent contractors include: purchasing or producing radio, television, and online advertising; purchasing or producing still photographs, printed materials, and buttons, hats, bumper stickers, and other campaign materials; conducting polls and surveys; purchasing mailing lists; conducting direct mail activities; and employing temporary help. Again, as the MERTS Guidance makes clear, the examples of the types of agents and contractors required to track and report each subcontractor relate to media buyers and vendors providing goods directly or indirectly to committees.

Third, and finally, the MERTS Guidance also contains a Frequently Asked Questions section that contains the following question-and-answer reaffirming the memo:

My committee hired an agent/independent contractor, do I have to memo-itemize this expenditure on my campaign statement?

Maybe. If the agent or independent contractor made expenditures on the committee’s behalf, they are required to provide the committee with a breakdown of their expenditures and this must be memo-itemized on the committee’s campaign statements. If the agent or independent contractor did not make expenditures on behalf of the committee *other than normal operating expenses*, then no memo-itemization is required. (emphasis added).

This is not the case here. PMV retained GPS to provide petition signature gathering research and advice on opposition strategies for any ballot measure in Michigan seeking to make changes to the Michigan Election Law. GPS in turn needed additional support and retained Wefel to assist it in carrying out various engagements, including that with PMV. This is not a situation where PMV retained GPS for the purpose of making a payment to Wefel, which is what MCL 169.243 is designed to prevent. Rather, the retention of additional expertise by GPS to fulfill its obligations to PMV is a normal operating expense of GPS.

Indeed, as required by the IRS, GPS reported the payment to Wefel on Form 1099-NEC, Nonemployee Compensation, and Form 1096, to report the payments for services performed to GPS. Under the Internal Revenue Code, payments to independent contractors who provide services to a company are a normal operating expense deductible from its taxes. *See* 28 USC § 162(a). Thus, payments to a Wefel by GPS were normal operating expenses just as if GPS hired Wefel directly as an employee. Accordingly, PMV was not required to report GPS's payments to Wefel as an expenditure.

D. Past Practice And BOE Enforcement Policy Does Not Require Disclosure.

The interpretation advanced by Wefel and his handlers would produce absurd results in violation of long-standing canons of statutory interpretation. *Detroit Int'l Bridge Co v Commodities Export Co*, 279 Mich App 662, 674; 760 NW2d 565 (2008) (statutes "should be construed to avoid absurd results that are manifestly inconsistent with legislative intent[.]"). Wefel's interpretation would mean that if a ballot question committee retains a graphic design firm who in turn hires independent contractors to meet temporary staffing needs spurred by an influx of requests by the ballot question committee, the graphic design firm would have to disclose all of the independent contractors it hired to work on the ballot question committee's projects and the ballot question committee would have to report those expenditures on his campaign finance reporting statements.

Or, as another example, take polling and research consultants. Virtually all pollsters use multiple independent contractors/subcontractors to accomplish what committees retain them to do. For example, pollsters typically retain data providers, call houses, statistical software providers, online surveying companies and the like to complete the task they were hired to do – field and deliver the results of the poll. Yet, not one campaign finance report in Michigan lists more than one vendor or contractor for the polls and research that almost every campaign conducts. They simply list the principal vendor that is responsible for delivering the research or polling in a completed package.

And this is the case for good reason. The interpretation advanced by Wefel would result in a never-ending stream of disclosure obligations for committees that would make compliance and enforcement unmanageable for the committees and for the BOE. *Detroit Int'l Bridge Co*, 279 Mich App at 674. This is why ballot question committees (or any committee) – including those retaining the same exact types of entities – have not adopted the interpretation of MCL 169.243 advanced by Wefel and his backers. Indeed, this approach is belied by decades of practice by other ballot question committees filing with the BOE and hiring the exact same types of vendors.

Take for example Unlock Michigan's recent practices.² Unlock Michigan retained National Petition Management, Inc., a California company with ties to Michigan, to collect signatures on its behalf in support of its efforts. National Petition Management hired In the Field to assist in Unlock Michigan's campaign. National Petition Management also retained Let the Voters Decide, which is owned by Jacoby. (Ex. 3, Article.)

Unlock Michigan's publicly available campaign statements reveal hundreds of thousands of dollars in payments to National Petition Management. For example, Unlock Michigan's July 2020 Quarterly CS reported a \$300,000 payment to National Petition Management for signature gathering services:

UNLOCK MICHIGAN	519796-BAL	DIRECT	NATIONAL PETITION MANAGEMENT 5281 RIVER RIDGE DR BRIGHTON, MI 48116	06/25/2020	CN	PETITION CIRCULATION AND PRINTING	\$300,000.00	Support REPEAL 1945PA302
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Unlock Michigan's 2021 Annual CS reported hundreds of thousands more in payments to National Petition Management for signature gathering services:

UNLOCK MICHIGAN	519796-BAL	DIRECT	NATIONAL PETITION MANAGEMENT 5281 RIVER RIDGE DR BRIGHTON, MI 48116	08/21/2020	CN	PETITION CIRCULATION	\$330,000.00	Support REPEAL 1945PA302
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UNLOCK MICHIGAN	519796-BAL	DIRECT	NATIONAL PETITION MANAGEMENT 5281 RIVER RIDGE DR BRIGHTON, MI 48116	08/06/2020	CN	PETITION CIRCULATION	\$228,212.00	Support REPEAL 1945PA302
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UNLOCK MICHIGAN	519796-BAL	DIRECT	NATIONAL PETITION MANAGEMENT 5281 RIVER RIDGE DR BRIGHTON, MI 48116	10/05/2020	CN	PETITION CIRCULATION	\$218,203.96	Support REPEAL 1945PA302
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UNLOCK MICHIGAN	519796-BAL	DIRECT	NATIONAL PETITION MANAGEMENT 5281 RIVER RIDGE DR BRIGHTON, MI 48116	09/11/2020	CN	PETITION CIRCULATION	\$183,298.30	Support REPEAL 1945PA302
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UNLOCK MICHIGAN	519796-BAL	DIRECT	NATIONAL PETITION MANAGEMENT 5281 RIVER RIDGE DR BRIGHTON, MI 48116	08/28/2020	CN	PETITION CIRCULATION	\$166,248.86	Support REPEAL 1945PA302
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² If the BOE would like additional examples from other committees, Respondents can provide those upon request.

UNLOCK MICHIGAN	519796-BAL	DIRECT	NATIONAL PETITION MANAGEMENT 5281 RIVER RIDGE DR BRIGHTON, MI 48116	09/18/2020	CN	PETITION CIRCULATION	\$150,000.00	Support REPEAL 1945PA302
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In its October 2021 Quarterly CS, Unlock Michigan reported a \$200,000 payment to National Petition Management for signature gathering:

UNLOCK MICHIGAN	519796-BAL	DIRECT	NATIONAL PETITION MANAGEMENT 5281 RIVER RIDGE DR BRIGHTON, MI 48116	09/02/2021	CN	PETITION/SIGNATURE GATHERING	\$200,000.00	Support AMEND HEALTH CARE CODE
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Yet, noticeably absent from of Unlock Michigan’s campaign statements are disclosures of the expenditures National Petition Management made to In the Field or Let Voters Decide for signature collecting services or Schedule 4(b) disclosures. Rather, only expenditures by Unlock Michigan directly to National Petition Management were disclosed. This is consistent with decades of practice and prior interpretation of the obligations to report subcontractors by ballot question committees. Of course Unlock Michigan, who, like Secure MI Vote, also retained Fred Wszolek, would not deny that National Petition Management hired In the Field or Let Voters Decide. Nor would they have any reason to do so, just like PMV does not deny that GPS hired Wefel.

The same is true of Secure MI Vote. According to its 2022 April Quarterly CS, Secure MI Vote paid Advance Micro Targeting \$250,000 for “consulting” services.

SECURE MI VOTE	519963-BAL	DIRECT	ADVANCED MICRO TARGETING 5757 ALPHA RD. STE. 501 DALLAS, TX 75240	04/04/2022	CN	CONSULTING (DONE IN HOUSE)	\$250,000.00	
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Secure MI Vote also paid a combined \$240,000 for signature gathering to Advanced Micro Targeting in June 2022 according to its 2022 July Quarterly CS.

SECURE MI VOTE	519963-BAL	DIRECT	ADVANCED MICRO TARGETING 5757 ALPHA RD. STE. 501 DALLAS, TX 75240	06/29/2022	CN	SIGNATURE GATHERING (DONE IN HOUSE)	\$140,000.00	
SECURE MI VOTE	519963-BAL	DIRECT	ADVANCED MICRO TARGETING 5757 ALPHA RD. STE. 501 DALLAS, TX 75240	06/08/2022	CN	CONSULTING (DONE IN HOUSE)	\$100,000.00	

As shown by Secure MI Vote’s 2022 Amended Annual CS, it also paid \$300,000 to National Petition Management for “petition expenses,” which presumably is for signature gathering too.

October 26, 2022

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SECURE MI VOTE	519963-BAL	DIRECT	NATIONAL PETITION MGMT. 4596 GOLF VIEW BRIGHTON, MI 48116	11/09/2021	CN	PETITION EXPENSE (DONE IN HOUSE)	\$300,000.00
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These petition management and signature gathering entities in turn retained individuals or firms – either directly or on an independent contractor basis – to support Secure MI Vote’s efforts without disclosing who those individuals or entities were.

The same is true of Let MI Kids Learn. Let MI Kids Learn’s 2022 April Quarterly CS discloses over \$1.3 million in payments to National Petition Management for signature gathering. There are also additional payments to Strategy Works for signature gathering as well. Again, Let MI Kids Learn did not disclose any of the individuals or entities that these firms retained to actually gather signatures.

Finally, the Michigan Civil Rights Initiative retained National Signature Management to collect signatures on its behalf. According to Michigan Civil Rights Initiative’s 2005 Annual CS, it paid hundreds of thousands of dollars to National Signature Management and yet none of the entities or individuals retained by National Petition Management were disclosed.

As shown throughout, no ballot question committees – not even Secure MI Vote, who is behind this Complaint – disclose with whom their agents or contractors employ or subcontract with to collect signatures or perform voter education. Thus, to the extent the BOE finds any violation of the MCFA by Respondents, it would not have been willful and was based on its good-faith interpretation of the MCFA and long-standing and accepted practices by the BOE.

For these reasons, Respondents request that the BOE dismiss the Complaint filed by Wefel without further action. Thank you for your attention to this matter. Should you require any further information or have any questions, please do not hesitate to reach out to me directly.

Sincerely,

CLARK HILL



Christopher M. Trebilcock

CMT:vcs
Exhibits

EXHIBIT 1

[Query](#) [Reports](#) [Utilities](#) [Help](#) [Log Out](#)

**U.S. District Court
Eastern District of Michigan (Detroit)
CIVIL DOCKET FOR CASE #: 2:22-cv-11816-DML-DRG**

Jacoby v. Wefel
Assigned to: District Judge David M. Lawson
Referred to: Magistrate Judge David R. Grand
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 08/04/2022
Jury Demand: Plaintiff
Nature of Suit: 320 Assault Libel & Slander
Jurisdiction: Diversity

Plaintiff

Mark A Jacoby

represented by **Joshua Grabel**
Dickinson Wright PLLC
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ATTORNEY TO BE NOTICED

V.

Defendant

Dustin R Wefel

represented by **Jonathan E. Lauderbach**
Warner Norcross & Judd, LLP
715 E. Main Street
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United Sta
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/04/2022	<u>1</u>	COMPLAINT filed by Mark A Jacoby against Dustin R Wefel with Jury Demand. Plaintiff requests summons issued. Fee Required - Fee Not Paid. County of 1st Plaintiff:

		Orange, FL - County Where Action Arose: Genesee - County of 1st Defendant: Genesee, MI. [Previously dismissed case: No] [Possible companion case(s): None] (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1-Texts, # 3 Exhibit 2-FB Post 1, # 4 Exhibit 3-FB Post 2, # 5 Exhibit 4-FB Post 3, # 6 Exhibit 5-FB Post 4, # 7 Exhibit 6-FB Message, # 8 Exhibit 7-Post 5, # 9 Exhibit 8-May 31, 2022 Letter) (Burrell, Aaron) (Entered: 08/04/2022)
08/05/2022		A United States Magistrate Judge of this Court is available to conduct all proceedings in this civil action in accordance with 28 U.S.C. 636c and FRCP 73. The Notice, Consent, and Reference of a Civil Action to a Magistrate Judge form is available for download at http://www.mied.uscourts.gov (TTho) (Entered: 08/05/2022)
08/05/2022		FILING FEE Received in the amount of 402.00 by Mark A Jacoby - Receipt No. 150001208 [No Image Associated with this docket entry] (BHAn) (Entered: 08/05/2022)
08/09/2022	2	SUMMONS Issued for *Dustin R Wefel* (SSch) (Entered: 08/09/2022)
08/19/2022	3	CERTIFICATE of Service/Summons Returned Executed. Dustin R Wefel served on 8/10/2022, answer due 8/31/2022. (Burrell, Aaron) (Entered: 08/19/2022)
08/31/2022	4	NOTICE of Appearance by Jonathan E. Lauderbach on behalf of Dustin R Wefel. (Lauderbach, Jonathan) (Entered: 08/31/2022)
08/31/2022	5	ANSWER to Complaint with Affirmative Defenses by Dustin R Wefel. (Lauderbach, Jonathan) (Entered: 08/31/2022)
09/09/2022	6	NOTICE TO APPEAR BY TELEPHONE: Scheduling Conference set for 10/17/2022 at 2:00 PM before District Judge David M. Lawson. See image for document deadline. (SPin) (Entered: 09/09/2022)
10/14/2022	7	[STRICKEN per 10/17 Order] DISCOVERY plan jointly filed pursuant to Federal Rules of Civil Procedure 26(f) (Burrell, Aaron) Modified on 10/18/2022 (SSch). (Entered: 10/14/2022)
10/14/2022	8	NOTICE of Appearance by Joshua Grabel on behalf of Mark A Jacoby. (Grabel, Joshua) (Entered: 10/14/2022)
10/17/2022	9	DISCOVERY plan jointly filed pursuant to Federal Rules of Civil Procedure 26(f) (Lauderbach, Jonathan) (Entered: 10/17/2022)
10/17/2022		Minute Entry for telephonic proceedings before District Judge David M. Lawson: Telephonic Scheduling Conference held on 10/17/2022. (Court Reporter: None Present, Not on the Record) (SPin) (Entered: 10/17/2022)
10/17/2022	10	ORDER to Strike 7 Discovery Plan - Rule 26f. Signed by District Judge David M. Lawson. (SSch) (Entered: 10/18/2022)
10/18/2022	11	SCHEDULING ORDER: Interim Status Conference set for 2/13/2023 at 4:00 PM; Discovery due by 5/1/2023; Dispositive Motion Cut-off set for 5/25/2023; Final Pretrial Conference set for 2/1/2024 at 3:00 PM; Jury Trial set for 2/13/2024 at 8:30 AM before District Judge David M. Lawson. Signed by District Judge David M. Lawson. (Refer to image for additional dates) (SPin) (Entered: 10/19/2022)

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Description:	Docket Report	Search Criteria:	2:22-cv-11816-DML-DRG
Billable Pages:	2	Cost:	0.20

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK A. JACOBY,

Plaintiff,

Case No. 22-cv-11816-DML-DRG

Hon. David M. Lawson

v .

DUSTIN R. WEFEL,

Defendant.

DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES

Defendant Dustin Wefel states as follows as his Answer and Affirmative Defenses to Plaintiff Mark A. Jacoby’s Complaint:

ANSWER

PARTIES

1. Jacoby resides in and is a citizen of the state of Florida.

ANSWER: Defendant admits the allegations contained in this paragraph.

2. Jacoby is an individual who is involved in various businesses in politics in the state of Michigan and the United States.

ANSWER: Defendant admits the allegations contained in this paragraph.

3. Defendant is a resident of the state of Michigan.

ANSWER: Defendant admits the allegations contained in this paragraph.

4. Defendant is involved in various businesses in politics in the state of Michigan and the United States. Defendant's businesses often are involved in areas similar to Jacoby's, and Defendant is aware that the activities described below are being promoted in those communities.

ANSWER: Defendant admits the allegations contained in this paragraph insofar as he is involved in one business related to political consulting in Michigan and other states. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in this paragraph.

JURISDICTION

5. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

ANSWER: Defendant admits the allegations contained in this paragraph.

6. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Jacoby is a citizen of Florida, whereas Defendant is a citizen of Michigan.

ANSWER: Defendant admits the allegations contained in this paragraph.

VENUE

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant resides in Michigan and in this District.

ANSWER: Defendant admits the allegations contained in this paragraph.

FACTUAL BACKGROUND

8. Jacoby is a political operative and owns and operates multiple companies that work to gather petition signatures for ballot initiatives and referendums throughout the United States, including in Michigan. Jacoby has been involved in this business for approximately 22 years, and has been involved in collecting signatures on a number of campaigns for the 2022 election cycle, including multiple campaigns in Michigan, Missouri, and California.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in this paragraph.

9. Defendant is also a political operative who owns and operates multiple companies that work to gather signatures for ballot initiatives and referendums throughout the United States, including in Michigan. Defendant (and/or his entities) has, in fact, been a subcontractor for Jacoby (and/or his entities) on a number of occasions, and is definitely familiar with Jacoby both personally and professionally. Moreover, Defendant and Jacoby are both members/participants of multiple online communities within the political sphere where those who are involved in hiring and

retaining entities to perform the type of electioneering work that they both perform occurs. Those communities include various Facebook pages, slack chats and related online communities (collectively "the Online Political Community"). The Online Political Community consists of clients, potential clients, coordinators and circulators within the political circles that the Parties operate, and are critical parties in the professional political arena that Jacoby operates.

ANSWER: Defendant denies the allegations contained in this paragraph.

10. In May 2022, Defendant began to publicly defame Jacoby and cast him in a false light through a series of internet posts and text messages containing false and defamatory statements regarding Jacoby to the Online Political Community and to individuals within that Community.

ANSWER: Defendant denies the allegations contained in this paragraph.

11. Defendant's false and defamatory statements concerned Jacoby's professional and personal reputation.

ANSWER: Defendant denies the allegations contained in this paragraph.

12. For example, Defendant made multiple false and defamatory statements regarding Jacoby's professional reputation as a political organizer and operative that he knew were false, and that he knew could cause harm to Jacoby's professional and personal reputation. These knowing, false statements can be characterized in three ways: (1) statements that Jacoby will steal money or otherwise

not operate in a professional/legal manner in business dealings; (2) statements that Jacoby's businesses failed to obtain the necessary signatures related to a projects in Michigan, Missouri, and California, including projects that were not complete; and (3) statements impugning Jacoby's personal integrity and/or personal relationships in a manner that is harmful and potentially repugnant. All such statements, whichever category they fit into, shall be referred to as the “Defamatory Statements.”

ANSWER: Defendant denies the allegations contained in this paragraph.

13. Specifically, the Defamatory Statements related to Jacoby’s general business dealings are currently known to include the following:

(a) Defendant’s text to a member of the Online Political Community where Defendant wrote “Fuck [Jacoby] He has ripped off so many people . . .” *See* Exhibit 1.

(b) Defendant’s text where Defendant wrote that Jacoby will “rip[] you off like he does everyone else.” *See* Exhibit 1.

(c) Defendant’s Facebook post within the Online Political Community where he wrote “I’m still joyful that PCI blacklisted [Jacoby].” *See* Exhibit 2.

(d) Defendant’s Facebook post within the Online Political Community where he falsely asserted that Jacoby was involved in collusion in connection with his profession. *See* Exhibit 3.

In actuality, all actions taken by Jacoby were legal and appropriate within the political realm that the parties operate within.

ANSWER: Defendant denies the allegations contained in this paragraph and all of its subparts.

14. Defendant either knew, or should have known, when these Defamatory Statements were made that they were false, and he published them in various public forums with the intent to harm Jacoby.

ANSWER: Defendant denies the allegations contained in this paragraph.

15. The Defamatory Statements related to Jacoby's specific job performance when he was retained to gather ballot signatures in California include, but are not limited to:

(a) Defendant's Facebook post within the relevant Online Community where he "predicted [Jacoby's] failure in California and what a black eye for NPM." *See* Exhibit 4.

(b) Defendant's Facebook post within the relevant Online Community, "Who else predicted Mark Jacoby would fail in California?" *See* Exhibit 5.

ANSWER: Defendant denies the allegations contained in this paragraph.

16. Again, Defendant either knew, or should have known, when these Defamatory Statements were made that they were false, and he published them in

various public forums with the intent to harm Jacoby. In fact, when Defendant publicized these Defamatory Statements, Jacoby was still in the process of gathering signatures in California. Thus, it was false for Defendant to publicly state that Jacoby had failed in California.

ANSWER: Defendant denies the allegations contained in this paragraph.

17. Defendant's public and false statements that Jacoby had failed in California caused those that Jacoby hired to stop gathering signatures because, based on Defendant's statements, they were led to believe that the initiative had already failed. They further caused harm to his reputation, and to his relationship with the party who had Jacoby collecting signatures at the time.

ANSWER: Defendant denies the allegations contained in this paragraph.

18. The Defamatory Statements related to Jacoby's specific job performance in other states include, but are not limited to:

(a) Defendant's Facebook message to a member of the Online Political Community that "Been told [Jacoby] is weeks behind on back ends in Michigan. *See* Exhibit 6.

(b) Defendant's Facebook message to a member of the Online Political Community "[Jacoby] failed Missouri too." *See* Exhibit 6.

ANSWER: Defendant denies the allegations contained in this paragraph and all of its subparts.

19. Defendant also wrote false and defamatory statements regarding Jacoby's personal relationships in a manner that was unquestionably false and unquestionably designed to cause harm to Jacoby's personal reputation. As one example, Defendant inferred that Jacoby was in an inappropriate and/or illegal relationship in his personal life by posting on Facebook: "How old is Mark Jacoby? How young is his bf Chris? Dont ask questions just keep taking the money." *See* Exhibit 7.

ANSWER: Defendant denies the allegations contained in this paragraph.

20. Upon information and belief, Defendant has made and published numerous other defamatory and false statements regarding Jacoby. Upon information and belief, Jacoby will supplement this Complaint to add those statements via discovery.

ANSWER: Defendant denies the allegations contained in this paragraph.

21. On May 31, 2022, Jacoby sent Defendant a letter pursuant to MCL 600.2911(2)(b) demanding Defendant issue a retraction of all false and defamatory statements that he had made against Jacoby by June 7, 2022. *See* Exhibit 8.

ANSWER: Defendant admits the allegations contained in this paragraph.

22. On June 7, 2022, Defendant, through his purported counsel, confirmed receipt of the demand and assured Jacoby that they were "analyzing the issues raised

by your letter and commit to responding as soon as we can We will follow up shortly.”

ANSWER: Defendant admits the allegations contained in this paragraph.

23. As of the date of this filing—more than two months after Jacoby sent his demand—Defendant has failed and refused to retract any of the false and defamatory statements he made against Jacoby or to respond to the demand in any substantive manner.

ANSWER: Defendant admits the allegations contained in this paragraph, but further responds that the statements made by Defendant were not “false and defamatory” and therefore no retraction was due.

24. As a result of Defendant’s false and defamatory statements, Jacoby has suffered significant financial losses and severe emotional distress as well as damages to his reputation and business prospects.

ANSWER: Defendant denies the allegations contained in this paragraph.

COUNT I DEFAMATION

25. Plaintiff incorporates paragraphs 1-24 above as if fully restated herein.

ANSWER: Defendant incorporates herein by reference the answers to the allegations contained above.

26. Defendant’s statements regarding Jacoby, as set forth above, are materially false.

ANSWER: Defendant denies the allegations contained in this paragraph.

27. The statements made by Defendant about Jacoby have the tendency to harm, and have harmed, Jacoby's reputation and business prospects.

ANSWER: Defendant denies the allegations contained in this paragraph.

28. Defendant made these statement about Jacoby to third parties, and specifically made them in the Online Political Community that both he and Jacoby are a part of with knowledge that they would potentially cause substantial harm to Jacoby. Indeed, upon information and belief, that was his intent.

ANSWER: Defendant denies the allegations contained in this paragraph.

29. Defendant made these statements regarding Jacoby with knowledge of the falsity of the statements, or in reckless disregard of their truth or falsity.

ANSWER: Defendant denies the allegations contained in this paragraph.

30. Defendant's statements are injurious to Jacoby in his profession or employment.

ANSWER: Defendant denies the allegations contained in this paragraph.

31. Defendant's statements tend to harm Jacoby's reputation as to lower him in the estimation of the community or to deter third-persons from associating with him.

ANSWER: Defendant denies the allegations contained in this paragraph.

32. Jacoby has suffered actual damages in respect to his business, trade, and profession as a result of Defendant's defamatory statements.

ANSWER: Defendant denies the allegations contained in this paragraph.

33. Jacoby has suffered actual damages resulting in severe emotional distress as a result of Defendant's defamatory statements.

ANSWER: Defendant denies the allegations contained in this paragraph.

34. Defendant's defamatory and false statements against Jacoby were made with a malicious intent and have held Jacoby up to hatred, scorn, contempt, and/or ridicule, and they constitute defamation per se.

ANSWER: Defendant denies the allegations contained in this paragraph.

35. As set forth above, Defendant made numerous false statement and comments regarding Jacoby as part of a campaign by Defendant to defame Jacoby and to cause him harm because of personal animus towards Jacoby.

ANSWER: Defendant denies the allegations contained in this paragraph.

**COUNT II
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

36. Plaintiff incorporates paragraphs 1-35 above as if fully restated.

ANSWER: Defendant incorporates herein by reference the answers to the allegations contained above.

37. Defendant's statements regarding Jacoby constitute extreme and outrageous conduct.

ANSWER: Defendant denies the allegations contained in this paragraph.

38. Defendant intended to cause emotional distress to Jacoby by making the statements alleged herein about Jacoby.

ANSWER: Defendant denies the allegations contained in this paragraph.

39. Defendant was reckless as to whether Jacoby would suffer emotional distress as the result of Defendant's statements.

ANSWER: Defendant denies the allegations contained in this paragraph.

40. Any reasonable person would know that emotional distress would result from the accusations made by Defendant about Jacoby.

ANSWER: Defendant denies the allegations contained in this paragraph.

41. Defendant's defamatory and wrongful conduct did, in fact, cause Jacoby to suffer severe emotional distress.

ANSWER: Defendant denies the allegations contained in this paragraph.

42. The publication of these false and defamatory statements by Defendant has resulted in severe damage to Jacoby's reputation, has caused Jacoby to suffer severe emotional distress, and has caused Jacoby significant economic loss.

ANSWER: Defendant denies the allegations contained in this paragraph.

43. Jacoby, therefore, seeks a Judgment against Defendant in an amount the Court deems just and equitable, including exemplary and punitive damages, plus

attorneys' fees, interest and costs, and such other relief the Court deems appropriate, as outlined below.

ANSWER: Defendant admits the allegations contained in this paragraph insofar as Plaintiff seeks the relief alleged. Defendant denies that Plaintiff is entitled to any such relief.

**COUNT III
TORTIOUS INTERFERENCE WITH BUSINESS
RELATIONSHIPS OR EXPECTANCIES**

44. Plaintiff incorporates paragraphs 1-43 above as if fully restated here.

ANSWER: Defendant incorporates herein by reference the answers to the allegations contained above.

45. Jacoby has done business with and/or continues to do business with the individuals to whom Defendant made his defamatory allegations, including but not limited to certain individuals in the Online Political Community.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in this paragraph.

46. Defendant was aware when making his defamatory statements that Jacoby had a business relationship with the individuals to whom Defendant was making his statements.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in this paragraph.

47. Upon information and belief, at least some of these individuals with whom Jacoby had a business relationship opted not to pursue potential future or additional business deals with Jacoby based on Defendant's defamatory statements.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in this paragraph.

48. Jacoby has been damaged in amounts yet to be determined based on the disruption by Defendant of Jacoby's business relationships and expectancies.

ANSWER: Defendant denies the allegations contained in this paragraph.

49. Jacoby, therefore, seeks a Judgment against Defendant in an amount the Court deems just and equitable, including exemplary and punitive damages, plus attorneys' fees, interest and costs, and such other relief the Court deems appropriate, as outlined below.

ANSWER: Defendant denies the allegations contained in this paragraph.

COUNT IV FALSE LIGHT DEFAMATION

50. Plaintiff incorporates paragraphs 1-49 above as if fully restated here.

ANSWER: Defendant incorporates herein by reference the answers to the allegations contained above.

51. As set forth above, Defendant made numerous false statements and comments regarding Jacoby as part of a campaign by Defendant to defame Jacoby.

ANSWER: Defendant denies the allegations contained in this paragraph.

52. Defendant published these remarks to third parties on the internet with knowledge of the falsity of the statements, or in reckless disregard of their truth or falsity.

ANSWER: Defendant denies the allegations contained in this paragraph.

53. The publications of these false and defamatory statements by Defendant has placed Plaintiff in a false and negative light in the public eye.

ANSWER: Defendant denies the allegations contained in this paragraph.

54. The publications of these false and defamatory statements by Defendant has also resulted in severe damage to Jacoby's reputation, has caused Jacoby to suffer severe emotional distress, and has caused Jacoby significant economic loss.

ANSWER: Defendant denies the allegations contained in this paragraph.

55. Jacoby, therefore, seeks a Judgment against Defendant in an amount the Court deems just and equitable, including exemplary and punitive damages, plus attorneys' fees, interest and costs, and such other relief the Court deems appropriate, as outlined below.

ANSWER: Defendant admits the allegations contained in this paragraph insofar as Plaintiff seeks the relief alleged. Defendant denies that Plaintiff is entitled to any such relief.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. The publications of which Plaintiff complains included discussions of matters of public interest and concern, concerning a public figure, received from reliable sources and published without fault, negligence, malice, actual malice, knowledge of falsity, subjective awareness of probable falsity or reckless disregard of falsity, and their publication was privileged and unactionable under MCL §600.2911, the First and Fourteenth Amendments to the Constitution of the United States and Article I, Section 5, of the Constitution of the State of Michigan.
3. The publications of which Plaintiff complains were substantially true and accurate, and Plaintiff therefore cannot carry his burden of proving the falsity of any and all allegedly actionable statements.
4. The publications of which Plaintiff complains related to matters of public interest and concern, and was privileged under the Michigan Doctrine of Qualified Privilege, and Article I, Section 5, of the Constitution of the State of Michigan.
5. Plaintiff's action is barred by the "libel-proof" or incremental harm doctrine, in that his reputation was already so bad that the complained of publication caused him no additional damage.

6. Any damages suffered by the Plaintiff were solely, proximately and directly caused by his own actions and misconduct, and/or by the actions of third parties, over whom Defendant exercised no control, and for whom Defendant has no responsibility.

7. Plaintiff is a public figure required to satisfy the attendant burdens of federal and Michigan constitutional law to prevail in an action alleging injury resulting from the publication of newsworthy information.

8. The allegedly false and actionable statements complained of were only rhetorical hyperbole or opinions based on disclosed facts, and not factual statements, and are therefore Constitutionally privileged and unactionable.

9. Plaintiff has suffered no economic damages, and his action is, accordingly, barred.

10. Plaintiff's claims are barred by the doctrine of unclean hands.

11. Plaintiff was contributorily responsible for all or some of his alleged damages.

12. The matters complained of by Plaintiff are protected by the doctrine of fair comment. Accordingly, those matters cannot provide a basis for the lawsuit.

13. Plaintiff's complaint is barred as a result of his failure to mitigate his damages.

14. Defendant was privileged to make any relevant statements they may have made.

Respectfully Submitted,

WARNER NORCROSS + JUDD LLP

Date: August 31, 2022

By: /s/ Jonathan E. Lauderbach
Jonathan E. Lauderbach (P51313)
715 East Main Street, Suite 110
Midland, Michigan 48640
Telephone 989-698-3700
Email: jlauderbach@wnj.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned states that on August 31, 2022, the foregoing document was served via the court's electronic filing system, which will send notification of such filing to all attorneys on record.

/s/ Jonathan E. Lauderbach

Jonathan E. Lauderbach (P51313)

EXHIBIT 2

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PROFESSIONAL SERVICES CONTRACT

This Agreement ("Agreement") is effective this 11/24/2021 (Date) (the "Effective Date") between Dustin Wefel / DRW Campaigns, INC. ("CONTRACTOR") and GROUNDGAME POLITICAL SOLUTIONS, LLC ("GROUNDGAME"). CONTRACTOR and GROUNDGAME are collectively referred to as the "Parties."

RECITALS

1. CONTRACTOR is a Dustin Wefel (State) S-Corp (business type) in the business of collecting petition signatures.
2. GROUNDGAME is a Delaware limited liability company in the business of providing general consulting services and working on state and local ballot measures nationwide.
3. The Parties desire to enter into this Agreement so that GROUNDGAME can retain and have available CONTRACTOR to help further GROUNDGAME's business interests in Michigan, including but not limited to consulting on any potential campaigns or ballot measures for the November 6, 2022 election that relate to election reforms.

AGREEMENT

IN CONSIDERATION of the mutual promises contained in this Agreement, the Parties agree, covenant, and warrant as follows:

1. **Terms of Service.** This Agreement will begin on the Effective Date and terminate on July 1, 2022 (the "Termination Date").
2. **Scope of Work provided by CONTRACTOR.** The Parties have agreed to the following services requested by GROUNDGAME to be performed by CONTRACTOR.
 - a. CONTRACTOR agrees to transmit to GROUNDGAME any and all public or non-public information, derived from any source, concerning any actual or potential effort or campaign to qualify for the ballot through the collection of petition signatures in Michigan an initiative, proposition, or referendum measure relating to any measures regarding election reforms, including but not limited to any statutory or constitutional initiative that in part or in whole seeks to enact any of the election reform bills that have been introduced by the Michigan Legislature during the 2021 legislative session or to modify or change the intent, effect, or language contained in Proposal 3 of 2018 (individually, a "Petition Campaign" and collectively, the "Petition Campaigns").
 - b. In Addendum A, CONTRACTOR will provide ground intelligence including best cities to circulate in, times of day to circulate, as well as best types of high traffic locations to circulate in.

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- c. CONTRACTOR will be retained to provide insight and be available to conduct voter education for an amount to be negotiated and determined with any issue related to election reforms in Michigan.
- d. It is the intention of the Parties to this Agreement that the services rendered and the payments made hereunder are not in any way contingent upon the defeat or enactment of any initiative, referendum, legislative, regulatory or administrative proposal.
- e. CONTRACTOR is an independent contractor and is responsible to provide the services described herein. CONTRACTOR further agrees to provide such services on an exclusive basis such that CONTRACTOR and its owners, managers, officers, and affiliates shall not perform services for any other client or campaign to gather signatures, perform research or other work in Michigan on an initiative, proposition, or referendum measure to election reforms. Nothing in this Agreement shall be construed to create any partnership, joint venture, or agency relationship of any kind between the Parties. CONTRACTOR's directors, officers, employees, agents, and other representatives shall have no authority to enter into any agreements or contracts on behalf of GROUNDGAME, or to bind GROUNDGAME in any way, and they shall not represent, either explicitly or implicitly, that they possess any such authority. GROUNDGAME shall not be responsible to CONTRACTOR, its directors, officers, employees, agents, contractors or other representatives, or to any governmental authority, for the payment or withholding of federal, state, or local income, unemployment, or other employment-related taxes in connection with the performance of the services contemplated by this Agreement.
- f. GROUNDGAME is affiliated with the law firm of Husch Blackwell LLP, but under this Agreement, CONTRACTOR is not retaining or entering into an attorney-client relationship with the law firm of Husch Blackwell LLP. Absent a separate written engagement agreement between Husch Blackwell LLP and CONTRACTOR, there will be no attorney-client relationship between Husch Blackwell LLP and CONTRACTOR, and Husch Blackwell LLP shall have no duties whatsoever to CONTRACTOR.
- g. CONTRACTOR shall ensure that its conduct in providing the services described herein shall be consistent with the best standards of the industry and in compliance with applicable state and local laws. CONTRACTOR further warrants and agrees to file all other required forms, registrations, reports, and other filings, if any, and to pay all corresponding fees or other charges as may be required of CONTRACTOR, at the federal, state, and local levels, as a consequence of activities conducted by CONTRACTOR under the terms of this Agreement.
- h. CONTRACTOR shall treat and hold all information provided by GROUNDGAME and learned in the course of providing the services under this Agreement as confidential, unless such information is generally and publicly available through no action of CONTRACTOR. CONTRACTOR will not disclose such information without the express, prior written consent of GROUNDGAME.

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3. **Press Inquiries.** If CONTRACTOR is approached by the press regarding the services performed under this Agreement or Petition Campaigns, CONTRACTOR shall notify GROUNDGAME immediately and CONTRACTOR is not permitted to communicate to the press either by written or oral correspondence including the use of cellular applications 'apps'.
4. **Payment by GROUNDGAME.** GROUNDGAME agrees to compensate CONTRACTOR as follows:
 - a. GROUNDGAME agrees to pay CONTRACTOR a total contract price of ~~\$50,000.00~~ for its services, which shall be made in a one-time payment in the amount of ~~\$50,000.00~~. In addition, GROUNDGAME reserves the right to request CONTRACTOR to help with signature collection efforts.
 - b. This payment to CONTRACTOR shall be made by wire transfer from an account with sufficient funds or by electronic transfer.
 - c. GROUNDGAME shall make payment to CONTRACTOR within seventy-two (72) hours of full execution of this Agreement.
 - d. CONTRACTOR shall fill out its banking wire information enclosed at the end of this Agreement.
5. **Covenant to Not Compete.** So that CONTRACTOR fully engages in support of GROUNDGAME's business interests that are the subject of this Agreement and does not conduct work that interferes or conflicts with those interests, CONTRACTOR agrees to the following reasonable restrictions through the Termination Date:
 - a. CONTRACTOR represents and warrants that neither it nor any of its owners, principals, officers, employees, affiliates, or agents, are currently (as of the Effective Date), either directly or as the subcontractor of any other entity, consulting on, working on, or providing services whatsoever relating to the election reforms, including but not limited to gathering initiative, referendum, or any other type of petition signatures on any local, statutory, or constitutional issue in the State of Michigan, and CONTRACTOR further agrees that if it becomes aware at any time from the Effective Date of this Agreement until the Termination Date that it or any of its owners, principals, employees, affiliates, agents or subcontractors is so engaged, that it shall immediately notify GROUNDGAME of the full extent of these activities of which it has become aware.
 - b. CONTRACTOR represents and warrants that neither it nor any of its owners, principals, officers, employees, affiliates, or agents shall, either directly or as the subcontractor of any other entity, consult on, work on, or provide any services whatsoever relating to the election reforms, including but not limited to gathering initiative, referendum or any other type of petition signatures on any local, statutory, or constitutional issue, from the Effective Date of this Agreement until the Termination Date.

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- c. CONTRACTOR will notify GROUNDGAME immediately upon hearing about or being approached by any entity regarding any other election reforms-related project or other efforts to affect election reforms policy in the State of Michigan during the term of this Agreement, provided that such notification is consistent with applicable law. CONTRACTOR shall not disclose to GROUNDGAME, or bring to GROUNDGAME's premises, or induce GROUNDGAME to receive or make use of, any confidential information that belongs to anyone other than GROUNDGAME or CONTRACTOR.
6. **Entire Agreement.** This Agreement is a fully integrated document and supersedes all prior agreements and discussions, whether written or oral, between the Parties.
7. **Binding Effect.** This Agreement is binding upon and shall inure to the benefit or detriment of the Parties, and their employees, heirs, successors, representatives, subsidiaries, and assigns.
8. **Modifications and Amendments.** There shall be no amendments or modifications to this Agreement unless it is in writing and signed by the Parties.
9. **Notice.** Any notice provided concerning this Agreement shall be in writing and be deemed sufficiently given when sent by certified or registered mail or hand-delivered to the other party at its respective address as set forth below.

To CONTRACTOR:

(address, City, State, Zip) Dustin Wefel
5020 Ford st
Swartx creek, mi 48473

To GROUNDGAME:

Attn: Meghan Cox
300 M Street, Suite 875
Washington, D.C. 20003

10. **Construction.** The terms of this Agreement constitute the written expression of the Parties' mutual agreement and the Parties have had the opportunity to consult with counsel. This Agreement shall be construed neutrally and not for or against either party. The headings in this Agreement are inserted for convenience; the provisions of this Agreement shall control.
11. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.
12. **Enforcement.** The Parties agree that should CONTRACTOR breach this Agreement, GROUNDGAME's sole remedies will be as follows:
 - a. **Injunctive Relief.** The Parties agree that a breach of this Agreement, in particular sections 2.e-f, 4, and 14, will cause irreparable harm to GROUNDGAME because of (i) the specialized nature of CONTRACTOR's services; (ii) the confidential information that the Consultant has obtained or likely will obtain pursuant to the Agreement, the disclosure of

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which to competitors would be significantly injurious to GROUNDGAME; (iii) short time frame of this Agreement; and (iv) the infeasibility of retaining suitable replacement services for which there is no adequate remedy at law, and that such a breach entitles GROUNDGAME to injunctive relief. Such relief may be sought by GROUNDGAME against CONTRACTOR in a court of competent jurisdiction sitting in Arizona. If GROUNDGAME obtains such injunctive relief, it shall be entitled to recover its reasonable attorneys' fees and costs from the breaching person or entity.

- b. **Liquidated Damages.** If a court finds that GROUNDGAME is not entitled to a temporary restraining order or injunctive relief, and/or if CONTRACTOR materially breaches any provision of this Agreement, CONTRACTOR and GROUNDGAME agree that, for all of the reasons stated above, a fair estimate of GROUNDGAME's actual damages from a material breach by Consultant would be a sum that is four (4) times the value of the total compensation received by CONTRACTOR to engage in the services as set forth in Paragraph 2 of this Agreement. The Parties have agreed to this liquidated damages sum after negotiation and not as a penalty but as an efficient estimate and exclusive remedy for CONTRACTOR's material breach of any provision of this Agreement. The Parties agree that Client shall be entitled to such liquidated damages without proof of actual damages at the time of breach.

13. Early Termination. This Agreement may be terminated prior to December 31, 2021 for the following reasons.

- a. GROUNDGAME may terminate this Agreement prior to the Termination Date for any reason or no reason upon thirty (30) calendar days' written notice to CONTRACTOR.
- b. This Agreement may be terminated at any time by mutual consent of the Parties evidenced by a writing signed by both Parties.
- c. If GROUNDGAME fails to pay CONTRACTOR for any amounts specified in this Agreement and under the terms set out herein, CONTRACTOR shall notify GROUNDGAME in writing of its failure to pay. GROUNDGAME shall have seventy-two (72) hours from receipt of notice to make the required payment. If GROUNDGAME does not timely pay CONTRACTOR, CONTRACTOR may terminate the Agreement and stop all further services, and all amounts owed to CONTRACTOR will become immediately due and payable.
- d. The provisions of Paragraphs 2.c-f, 8, 11, 13, 14, 15, 16, and 18 shall survive any termination or expiration of this Agreement. The provisions of Paragraph 4 shall survive any termination of this Agreement until the Termination Date.

14. Disputes and Governing law. This Agreement shall be governed by and construed in accordance with the laws of the state of Arizona without giving effect to any choice or conflict of law provision or rule (whether of the state of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of Arizona. The Parties

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agree that any action or proceeding arising out of or relating to this Agreement and all claims in respect of such action or proceeding may be heard and determined in a court of competent jurisdiction sitting in the state of Arizona. Each of the parties submits to the jurisdiction of such court, and hereby waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other party with respect thereto. Each party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit or on the judgment or in any other manner provided by law or in equity.

15. **Confidentiality.** CONTRACTOR agrees not to disclose the existence or terms of this Agreement to any third party, except to (i) legal counsel (as long as counsel has not been or is not currently affiliated with or working in any way with any group in connection with a potential ballot measure in the election reforms in Michigan), (ii) accounting or tax professionals, or (iii) as required by law, in which case CONTRACTOR shall notify GROUNDGAME of the potential disclosure required by law so that GROUNDGAME has an opportunity to object. Further, CONTRACTOR shall not, and none of CONTRACTOR's owners, principals, officers, employees, affiliates, or agents shall, agree to disclose any non-publicly available information, documents, data, or communications, whether oral or written, that relate in any way to this Agreement or to any potential local or statewide ballot measure for which CONTRACTOR may provide services to GROUNDGAME under the terms of this Agreement, or that is related in any way to non-publicly available information or materials, whether written or oral, provided by GROUNDGAME to CONTRACTOR or to any of CONTRACTOR's owners, principals, officers, employees, affiliates, or agents or to any business contacts of CONTRACTOR. The terms of this Paragraph 14 shall continue after the termination of this Agreement.
16. **Limitation of Liability.** To the fullest extent permitted by applicable law, and notwithstanding any other provision in this Agreement, the total aggregate liability of GROUNDGAME to CONTRACTOR and all of its affiliates (and their respective successors and permitted assigns) shall be limited to the amounts owed to CONTRACTOR for the services provided in accordance with this Agreement. This limitation shall apply regardless of the cause of action pled or legal theory advanced, unless otherwise prohibited by applicable law. In no event shall GROUNDGAME be liable to CONTRACTOR or any of its affiliates (or their respective successors or permitted assigns) for any consequential, incidental, indirect, punitive or special damages (including loss of profits, data, business or good will) arising out of any breach of this Agreement by GROUNDGAME.
17. **Indemnification.** CONTRACTOR shall defend, protect, indemnify and hold harmless GROUNDGAME, and directly or indirectly, its directors, officers, employees, and agents ("Indemnified Parties"), against all claims, demands or causes of action, losses and expenses (including, without limitation, attorneys' fees and costs of litigation, whether incurred for an Indemnified Party's defense or for enforcement of its indemnification rights) which may be incurred by an Indemnified Party on account of or relating to the services rendered by CONTRACTOR pursuant to this Agreement.

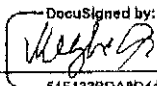
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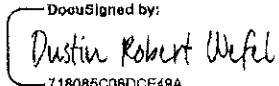
18. **Severability.** If any provision of this Agreement is deemed void or unenforceable, the void or unenforceable provision shall be deemed severed from the Agreement and shall not affect any other provision, or the validity or enforceability of this Agreement as a whole.
19. **Waiver.** The failure of either party hereto at any time to require performance by the other party of any provision of this Agreement shall in no way effect the right of such party thereafter to enforce the same, nor shall any waiver of any breach of any provision hereof by the other party be taken or held to be a waiver by such party of any succeeding breach of such provision, or as a waiver of the provision itself.

Each person executing this Agreement warrants that he or she has the authority, right, and legal capacity to execute this Agreement, including as on behalf of any entity.

HBS PLUS, LLC

DocuSigned by:

51F1338DA8D4469...
Meghan Cox
Chief Executive Officer
Ground Game Political Solutions
300 M Street, Suite 875
Washington, D.C. 20003

CONTRACTOR

Dustin wefel
Authorized Representative (Print Name)
DocuSigned by:

718085C08DCE48A...
Authorized Representative (Signature)
Drw Campaigns Inc
Business Name
11/24/2021
Date

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ADDENDUM A

Please list the best cities to petition in the state of Michigan:

1. Detroit
2. Flint
3. Saginaw

Please list the best types of high traffic locations for circulators to work at:

1. Libraries
2. Sec of state office
3. Welfare office

Please list the best time of day to petition:

1. 9-5

What is your petition capacity on a monthly basis? Please let us know how many signatures that you can collect?

50000

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BANKING INFORMATION FOR RECEIVING INCOMING WIRES FOR YOU
OR YOUR BUSINESS (PLEASE MAKE SURE YOU ENTER IN CORRECT
INFO TO MATCH YOUR W-9):

1. BENEFICIARY NAME: Dustin Wefel
2. BENEFICIARY ADDRESS: 5020 Ford Street
Swartz Creek, Mi 48473
3. BANK NAME: chase
4. BANK ACCOUNT ADDRESS, CITY, STATE, ZIP)
5020 ford st swartz creek, mi 48473
5. BANK WIRING ROUTING NUMBER (DIFFERENT THAN REGULAR
ROUTING NUMBER)- 9 digits: 021000021
6. BANK ACCOUNT NUMBER- 12-15 digits 403495430

EXHIBIT 3



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Public Interest

Unlock Michigan petition effort was ‘sleazy,’ but not illegal, AG says

Updated: Apr. 21, 2021, 4:50 p.m. | Published: Apr. 21, 2021, 4:50 p.m.



Unlock Michigan turns in signatures on a petition to limit Gov. Gretchen Whitmer's emergency powers on Oct. 2, 2020.

1,537
shares

NEW!

By [Gus Burns | gus.burns@mlive.com](mailto:gus.burns@mlive.com)

Following a seven-month investigation into conduct by petition circulators for Unlock Michigan, an organization that seeks to eliminate the governor's emergency powers, state Attorney General Dana Nessel said she will issue no criminal charges.

The investigation is the result of a heated political war between Unlock Michigan and Keep Michigan Safe, a group that formed with the sole intent of stopping Unlock Michigan's initiative.

Nessel said Wednesday that while the investigation revealed "unsavory practices and sleazy tactics by petition circulators, similarly unethical conduct by witnesses to such activities makes prosecution untenable."

The investigation found "clear evidence of misrepresentations by petition circulators and questionable training by persons who recruited and supervised paid circulators," but the actions didn't rise to criminal behavior, the attorney general's office said.

Documents: [Memo recommending case closure](#)

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Keep Michigan Safe, through political operatives it hired, secretly recorded Unlock Michigan petition circulators during training and while collecting signatures.

Unlock Michigan hired its own firm, National Petition Management, to manage its signature collection process. National Petition Management in turn hired two more companies, In the Field and Let the Voters Decide, to help with the process.

Nessel said an attendee of one petition circulator training session, who was working on behalf of Keep Michigan Safe, used a hidden pen camera to record an In the Field trainer "promoting unethical signature gathering tactics."

Related: [Petition to repeal emergency powers had forged signatures, misleading language, opposition group claims](#)

Secretly recorded video showed the trainer advising signature collectors to deceive voters about the intent of the initiative, collect signatures on private property, leave petitions with store clerks to obtain signatures on their behalf and commit perjury during depositions if questioned about signature validity, Nessel's office found.

Three additional videos reviewed by state investigators depicted an attorney who was also working on behalf of Keep Michigan Safe approaching a circulator and asking if she could sign her husband's name. In each case she was told that would be OK, Nessel said.

"It is clearly not permissible for a voter to sign someone else's name," the attorney general said. "However, the circulator would not directly commit a crime unless and until he or she actually signed the certification of circulator on the petition attesting to the fact that the voter's signature is believed to be a genuine signature of the voter."

Nessel said the Keep Michigan Safe operative "crossed the line between simply witnessing and recording events and inducing criminal conduct."

The operative "went from simply recording illegal conduct to engaging in criminal conduct herself," Nessel said. The woman who made the recordings declined to be interviewed by the attorney general's office unless she was offered immunity and Nessel had concerns that the videos would not be admitted in court during prosecution of the circulators.

"Criminal prosecution is simply not feasible here," Nessel said.

The criminal investigation announcement comes two days after Secretary of State Jocelyn Benson's office announced it [would recommend the Board of State Canvassers certify](#) the Unlock Michigan signatures when it meets Thursday, April 22.

The Bureau of Elections reviewed 506 petition signatures drawn from approximately 536,700 signatures submitted by Unlock Michigan in September, finding that 434 were valid. State petition law requires at least 338 valid signatures from the sample for the bureau to recommend certification.

Upon certification, the Republican-led Legislature could vote to repeal the 1945 law that grants the governor emergency powers and bypass a veto. If the Legislature declined to do so, the repeal measure could appear on a statewide ballot in 2022.

Ten days after Unlock Michigan submitted its petition signatures, the [Michigan Supreme Court ruled](#) governors do not have the authority to unilaterally issue executive orders for as long as necessary, as outlined in the [1945 Emergency Powers of Governor Act](#), calling that law unconstitutional. This effectively struck down Whitmer's initial executive orders, though [public health orders still remain constitutional](#) through a different law.

The [1945 Emergency Powers of Governor Act](#) allows a governor to unilaterally declare a state of emergency for 28 days, but the state Supreme Court ruled Whitmer didn't have the power to continue renewing the state of emergency beyond the initial 28 days without support of the Legislature.

Related: [They keep trying, but lawmakers have been unable to limit Michigan health department's authority](#).

Unlock Michigan didn't drop its ballot initiative in hopes that it reaches the Republican-led state Legislature and the law is taken off the books completely.

In a separate effort by Keep Michigan Safe to thwart the Unlock Michigan ballot initiative, [it filed a lawsuit against Benson](#), claiming the petitions should be placed on hold and not certified until "uniform standards for the verification of ballot question petition signatures" are established.

More on MLive:

[Unlock Michigan petition signatures deemed valid](#)

[Keep Michigan Safe filed lawsuit](#)

[AG investigating Unlock Michigan petition group accused of improper signature collection](#)

[Petitioners say they have 500K signatures in bid to strip Whitmer of emergency powers](#)

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Unlock Michigan petition circulator has criminal record, history of 'bait and switch'

<https://www.freep.com/story/news/politics/elections/2020/08/28/unlock-michigan-mark-jacoby-criminal-record-bait-switch/5633064002/>

LANSING — The owner of a firm collecting signatures to repeal a law granting emergency powers to Michigan's governor has a criminal record for falsifying his voter registration and a history of alleged "bait and switch" tactics in paid petition drives around the U.S.

Mark A. Jacoby, 37, whose company, Let the Voters Decide, is publicizing that it will pay petition circulators \$3.50 for each valid signature to repeal the Emergency Powers of Governor Act of 1945, was arrested for suspected voter registration fraud and perjury in California and pleaded guilty in 2009 to a lesser charge of registering to vote at an address where he did not live.

When Jacoby was arrested in 2008, his company at the time, Young Political Majors, was registering voters for the California Republican Party and facing allegations its workers tricked voters into registering as Republicans by telling them they were signing a petition to toughen penalties for child molesters, the Los Angeles Times reported.

The "bait and switch" allegation is similar to ones that have arisen in connection with the Unlock Michigan campaign, where voters have said they were asked to sign a petition to help Gov. Gretchen Whitmer, help small business, or help hire more police and firefighters — not to repeal a law Whitmer says she badly needs to control the pandemic.

Though Michigan has no law barring petition circulators from lying about the purpose of petitions, Whitmer has denounced such tactics as "unscrupulous." Jacoby earlier faced similar allegations not just in California, but in Florida. And instructions from Jacoby's petition circulators on how to inaccurately "pitch" the repeal to Whitmer supporters — such as by describing the measure as one that would take pressure off Whitmer by putting more responsibility on the Legislature — posted July 17 and 23 on a private company Facebook page administered by Jacoby had not been removed as of Thursday morning.

A Free Press reporter was granted access to the private Facebook page Thursday morning after making an online request Tuesday.

Fred Wszolek, a spokesman for Unlock Michigan, said Thursday he has "never heard" of Let the Voters Decide, whose private Facebook page includes photos posted by its workers of Unlock Michigan signing events around the state, tips on how to avoid being asked to leave grocery store parking lots, and details about a Warren office where petition gatherers can drop off signatures and collect their pay.

Jacoby said he is a subcontractor to National Petition Management, the firm Unlock Michigan hired to head up its drive to collect about 500,000 signatures. But he said he expects his company will provide nearly 60% of the signatures Unlock Michigan collects.

Wszolek disputed that. "Our army of volunteer activists will be collecting more than 60% of the signatures," he said. "Maybe he's collecting some fraction of the remaining 40%."

As of July 20, Unlock Michigan had paid National Petition Management \$300,000 in the relatively early stages of the petition drive, records show. The California company, which also lists a Brighton address, did not respond to a Thursday email inquiring about its relationship with Let the Voters Decide.

The California case is not the only "bait and switch" allegation faced by Jacoby, who in a text message to the Free Press dismissed the concerns as old or unsubstantiated.

"I was pretty young back then, but I am not now," Jacoby said.

In Florida in 2004, the St. Petersburg Times reported that Gainesville Elections Supervisor Beverly Hill became suspicious when Jacoby appeared at the election office with a box of about 1,200 voter registration cards, including cards for 510 voters who had switched their registration to the GOP.

She said she randomly called the voters to verify they wanted to switch their affiliation. "All of them said, 'Absolutely not,'" Hill said. "They didn't even know they had signed a registration form."

The newspaper reported that the Florida Department of Law Enforcement opened an investigation in 2004 after hundreds of college students at campuses in Tampa, Tallahassee, Gainesville and Orlando said they had their voter registrations switched to Republican without their knowledge, after signing petitions circulated by Jacoby's firm at the time, YPM.

Joe Burns, a University of South Florida sophomore, said he filled out a petition for stiffer sentences for child abusers and questioned why they needed him to fill out a second form.

"It is just something I need to do," he said they told him.

He signed his name and checked no party affiliation. When he got his voter card, it was marked Republican. "It was somebody else's handwriting," Burns told the newspaper.

It does not appear any charges arose from the Florida investigation.

Jacoby said in a text message Wednesday the Free Press is "trying to beat a long dead horse," and "talking about unsubstantiated claims which are 10-15 years old."

Jacoby said there are "multiple companies working on" the Unlock Michigan petition drive, "including an (sic) felon who was convicted of actual voter fraud!!! (Which I wasn't)," he texted.

He later provided a name of someone he said is involved as a subcontractor in the Unlock Michigan campaign, who has a voter fraud conviction. The Free Press is investigating.

Whitmer's state of emergency under the Emergency Powers of Governor Act, which now extends through Sept. 4, is the major underpinning for Whitmer's emergency orders such as one requiring face masks in enclosed public spaces and another limiting capacity in restaurants to 50%. She has had to rely on the 1945 legislation since a judge ruled she cannot extend a state of emergency under the Emergency Management Act of 1976 without approval of the GOP-controlled Legislature, which has refused to grant such approval since late April.

If Unlock Michigan collects the required number of valid signatures and the Legislature votes to repeal the emergency law, Whitmer would not have the ability to veto the repeal and no vote of the public would be required, either.

In the California case, Jacoby's misdemeanor conviction came with three years of probation and 30 days of community service, according to the Inland Valley Daily Bulletin in Ontario, California.

Signature gatherers in California must sign a declaration stating they are either registered to vote in California or that they are eligible to do so.

Jacoby admitted to registering as a voter at his childhood home in Los Angeles, where he no longer lived.

Jacoby's attorney at the time, Michael Goldstein, told the media the charges against Jacoby and his arrest involving several law enforcement vehicles were politically motivated and a form of harassment. He said Jacoby was a lifelong California resident who, since eligible, did not even have to register in California to circulate petitions. He said Jacoby registered at his childhood home to try to prevent a disgruntled employee from finding out where he really lived.

Similar "bait and switch" allegations have surfaced recently in Michigan.

Ken Said of Livonia, a tool and die maker for an auto company, said he was approached at a grocery store by a man who asked him whether he would sign a petition to "help the governor." He said he read the petition, and when he saw what it was about said he did not think it would help Whitmer. The man said it would help her balance her duties, said Said, who refused to sign it.

Robin Pettypiece, who has a summer home in Rochester, said she was visiting the farmers market in St. Joseph on July 11 when she was twice approached by a woman asking her to sign a petition to "help the governor." Pettypiece said the woman would not answer follow-up questions about the petition, and although she did not look at or sign the petition, she believes the woman was circulating the petition to repeal the emergency law, and describing it inaccurately to try to get her to sign.

In Michigan, there is no state law making it illegal for petition circulators to lie about the purpose of a ballot initiative, though bills have been introduced in the Legislature in recent years to make it a crime to lie to voters asked to sign a petition.

Jacoby said Thursday he does "not condone, nor would we ever allow, bait-and-switch tactics."

But what Said and Pettypiece experienced is consistent with advice shared by signature collectors on the Let the Voters Decide private Facebook group, where Jacoby is one of the administrators, and where he shares information with signature gatherers who follow his company from state to state on various petition campaigns.

"If your (sic) working Michigan try this pitch," one of the group members posted on July 23, and which remained on the page as of Thursday morning.

"Ask if they are a Whitmer supporter," he said. If they are not, "it's a slam dunk."

If they are a Whitmer supporter, or they are on the fence, say, "Great, we have a petition to repeal the 1945 law so the Legislature will take some of the responsibility and it will not all be on her shoulders." Potential signers should be told: "That's why she catches so much flak; it's all on her."

"Give it a shot and let me know how well it works for you."

"Great advice," one member of the group replied.

"Nicely done," said another.

But one signature gatherer protested. "Why lie; be professional," he said.

Asked about that conversation on his company Facebook page, Jacoby claimed he had not seen the post. He said the petition circulators are independent contractors and "my group page allows everyone to share their opinions."

However, the person who made the post "no longer works for LTVD in part due to some of the issues you brought up," he said. "I will look into that post."

Earlier, on July 17, one signature gatherer posted: "How are you guys pitching this Michigan petition to Democrats?"

"Just trying to open up the state so small businesses don't go bankrupt," another signature gatherer replied.

That post had also not been removed as of Thursday.

Mark Fisk, a spokesman for Keep Michigan Safe, which opposes the Unlock Michigan Initiative, said the Free Press disclosures about Jacoby and his company are disturbing.

"They got caught red-handed" in California, Fisk said. In Michigan, "he's clearly in a leadership role," and "he has people working for him."

The disclosures underline the need for heightened scrutiny of any signatures Unlock Michigan submits, Fisk said.

Jacoby said his company is nonpartisan and is unfairly portrayed as only working on Republican causes. The same Let the Voters Decide social media post that advertised payments of \$3.50 for each Unlock Michigan signature also publicized payments of \$2.75 per signature for the Fair and Equal Michigan petition, to enshrine civil rights for LGBTQ people.

Jacoby said he wanted the story to include the fact that he was also circulating the Fair and Equal Michigan petition, working as a subcontractor for a vendor he would not disclose. He said he expects his firm will also collect nearly 60% of the LGBTQ signatures.

But Josh Hovey, a spokesman for Fair and Equal Michigan, said the initiative wants nothing to do with Jacoby, or his company.

"Fair and Equal Michigan has strict signature collection standards and requires anyone engaged with us to commit to exclusively working on our issue," Hovey said.

"Mr. Jacoby has no contract with our campaign nor our vendors. We have asked him to stop communicating in social media suggesting that he is an agent of our campaign and have informed him in writing that we will not use any signatures he sends to us."



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

November 3, 2022

Dustin Wefel
5020 Ford St.
Swartz Creek, MI 48473

Re: *Wefel v. Groundgame Political Solutions & Protect MI Vote*
Campaign Finance Complaint No. 2022 – 05 – 14

Dear Mr. Wefel:

The Department of State received a response from Groundgame Political Solutions, LLC, and Protect MI Vote 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: *Groundgame Political Solutions & Protect MI Vote*



Warner Norcross + Judd LLP

December 9, 2022

Via Email

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

Re: **Rebuttal Statement**
Wefel v. Groundgame Political Solutions & Protect MI Vote
Campaign Finance Complaint No. 2022-05-14

Dear Mr. Fracassi:

On behalf of Dustin Wefel, this letter serves as the Rebuttal Statement in the matter of *Wefel v. Groundgame Political Solutions & Protect MI Vote*.¹ In short, the response filed by Mr. Trebilcock (the “Response”) demonstrates that the arrangement for Groundgame to pay Mr. Wefel to provide services for the benefit of Protect MI Vote and not to circulate petitions for Secure MI Vote should have been itemized in Protect MI Vote’s annual campaign statement filed on January 31, 2022.

1. Mr. Wefel is a proper complainant.

Under MCL 169.215, any person may file a complaint under the Michigan Campaign Finance Act (“MCFA”). Mr. Wefel has followed the requirements of MCL 169.215 and is a proper complainant. In the Response, Mr. Trebilcock attempts to make an argument that Mr. Wefel is not the true party under the Revised Judicature Code based only on the fact that one of his attorneys is a known Republican. This argument can be summarily dismissed. Not only is MCL 169.215 and not the Revised Judicature Code controlling here, but Warner Norcross does not represent Secure MI Vote as Mr. Trebilcock implies. To the contrary, Mr. Trebilcock acknowledges that Warner Norcross represents Mr. Wefel. Mr. Trebilcock’s argument is a veiled attempt to inject partisan politics into this matter and nothing else.

¹ Mr. Fracassi approved a 10-business day extension to file the Rebuttal Statement, so this filing is timely.

2. Protect MI Vote is required to report the payments made by Groundgame to Mr. Wefel.

In the Response, Mr Trebilcock confirms all the elements of MCL 169.243. First, Mr. Trebilcock confirms that Groundgame is an agent or independent contractor of Protect MI Vote, which retained Groundgame to provide petition circulation monitoring services in opposition to Secure MI Vote. Second, the payments to Mr. Wefel are “expenditures” under the MCFA made “on behalf of or for the benefit of” Protect MI Vote. Mr. Trebilcock explains that Groundgame needed additional support and retained Wefel to assist Groundgame in carrying out its services to Protect MI Vote. Indeed, as Mr. Wefel explained in his complaint, he actually did not perform any services for Groundgame. Rather, the \$50,000 he was paid was in fact intended to buy him out so Secure MI Vote could not work with him. This is a tactic that is increasingly be used around the country to interfere with a ballot-initiative proponent’s signature-gathering activities. Regardless, the payments to Wefel were in opposition to a ballot question and, thus, “expenditures” under the MCFA.²

a. The payments to Wefel were not “overhead or normal operating expenses.”

Faced with meeting the elements of MCL 169.243, Mr. Trebilcock alleges that the payments made to Wefel were “overhead or normal operating expenses” and, thus, excluded from the requirements of MCL 169.243. Mr. Trebilcock argues that “overhead or normal operating expenses” means the same thing as “ordinary and necessary expenses” under 28 U.S.C. §162. This is incorrect. If the legislature desired that result, it could have used the phrase “ordinary and necessary expenses” like it did in defining an “incidental expense.” But it chose to use a different phrase. Moreover, even when the legislature does use the phrase “ordinary and necessary expense” in the MCFA, the legislature removed the reference to 28 U.S.C. §162, so even that phrase is not tied to the federal definition.³ Further, Mr. Trebilcock’s interpretation would render all services from a sub-contractor of an independent contractor to be excluded from the reporting requirements of MCL 169.243, which is specifically intended to require the reporting of payments made to a subcontractor of a committee’s independent contractor. This would allow a committee to avoid reporting most of its expenditures by simply paying a political consultant to enter into sub-contracting arrangements with other consultants rather than engaging the consultants directly.

The meaning of “overhead or normal operating expenses” can be determined on a case-by-case basis. For example, any portion of a payment to an independent contractor that is attributed to things like office utility costs and general support staff (such as administrative assistants,

² Mr. Trebilcock attempts to argue that Groundgame hired Wefel to generally assist Groundgame in its business ventures rather than to oppose Secure MI Vote specifically. The contract, however, is limited to election-related initiatives, which are defined in a manner that only included Secure MI Vote. Regardless, the activities and prohibitions against Wefel working on other ballot initiatives covered by the contract unquestionably influenced a ballot question and are, therefore, “expenditures.”

³ See Public Act 275 of 2012 (deleting the phrase “as described in section 162 of the internal revenue code of 1986, 26 U.S.C. 162” relating to an ordinary and necessary expense within the definition of “incidental expense” under Section 9 of the MCFA).

janitors, human-resource professionals, etc.) would unquestionably be excluded from the reporting requirements of MCL 169.243. Other types of costs may be more difficult to categorize. But there is no reasonable interpretation of “overhead and normal operating expenses” that would include the payment to Wefel. As Mr. Trebilcock explained in the Response, Wefel was hired specifically to support Groundgame’s services to Protect MI Vote to oppose the Secure MI Vote initiative. When an independent contractor hires a sub-contractor to perform the very services the independent contractor is performing for a committee, the payments to that sub-contractor are neither overhead nor normal. Further, as mentioned above, if the payments to Mr. Wefel were to be deemed “overhead or normal operating expenses”, it would be difficult to imagine what services would ever be reportable under MCL 169.243.

b. The Bureau of Elections guidance requires disclosure.

Mr. Trebilcock also argues that the Bureau of Elections guidance document limits the application of MCL 169.243 to only media buyers and vendors providing goods directly or indirectly to committees—relying on the title of the guidance document: “Media Buyers and Other Vendors Purchasing Goods for the Committee.” The body of the guidance document, however, clarifies that the application of MCL 169.243 is not so limited. For example, most relevant to this matter, the guidance document states:

[A]n expenditure made by an agent or independent contractor on behalf of a committee must be disclosed with the campaign statement that covers the reporting period in which the expenditure was made if:

- 1) the expenditure is one that the committee would have made itself, or
- 2) the expenditure was made to a subcontractor supplying services to the agent or independent contractor.

This is neither limited to media buyers or goods. Groundgame was an independent contractor of Protect MI Vote and made an expenditure to a sub-contractor, Wefel, supplying services to Groundgame for the benefit of Protect MI Vote. Thus, the payment to Wefel must be disclosed on Protect MI Vote’s campaign statement.

The Bureau of Elections guidance document goes further and clarifies that the obligation to report expenditures to committees extends down to each sub-contractor:

If the independent contractor sub-contracts the work to another person, itemization is also required from the sub-contractor to report the names and addresses, dates and amounts for expenditures made by the sub-contractor on behalf of the Committee.

So, the Bureau of Elections interprets the requirements of MCL 169.243 as following each sub-contractor. For example, if Wefel made any expenditures for the benefit of Protect MI Vote, it would need to notify Protect MI Vote even though its arrangement was with Groundgame. This

proper interpretation ensures that committees cannot hide expenditures through creating a network of independent contractors and sub-contractors.

c. Incorrect past practice does not justify limiting the plain language of MCL 169.243.

In the Response, Mr. Trebilcock goes to great lengths arguing that the past practice of committees under the MCFA is to not report payments that independent contractors make to sub-contractors. He cites examples that purport to demonstrate this past practice. Frankly, we don't know all the details or the arrangements in the examples Mr. Trebilcock cites. Some or all of those examples may not stand for what he claims. Regardless, even if these committees failed to report expenditures made by independent contractors to sub-contractors, that fact has no relevance in interpreting the MCFA. Mr. Trebilcock is essentially arguing that he believes committees have historically ignored MCL 169.243, so the Bureau of Elections should interpret that section in a manner that is contrary to the plain wording and the clear intent of the section. We agree with Mr. Trebilcock that MCL 169.243 has never been interpreted through an interpretive statement, ruling, or response to a complaint. We suggest that this is the case because it is rare for a "smoking gun" to be found. The arrangements between a committee's independent contractors and their subcontractors occur in private. But here, Mr. Wefel has produced the contract that clearly demonstrates the arrangement should have been reported.

Finally, Mr. Trebilcock argues that the proper interpretation of MCL 16.243 would lead to endless reporting obligations. But what Mr. Trebilcock fails to realize is that if Protect MI Vote retained Wefel and other consultants directly, they would need to report the engagements. MCL 169.243 is intended to close the independent-contractor loophole that would allow committees to hide expenditures. Of course, committees need to itemize expenditures under MCL 169.243 that they would not need to do in the absence of that section. But that's what the MCFA requires.

3. Transparency related to the paid-circulator industry is needed.

One needs to look no further than the recent actions by paid circulators working on gubernatorial campaigns in Michigan to understand the need for more transparency in relation to the paid-circulator industry. Mr. Trebilcock's interpretation of MCL 169.243 would allow the paid-circulator industry to operate largely in the shadows. Further, the tactic that Protect MI Vote used to "buy off" paid circulators through its independent contractor, Groundgame, is a practice that will flourish under Mr. Trebilcock's interpretation. The proper application of MCL 169.243 will ensure that arrangements with paid circulators in Michigan are publicly disclosed.

Very truly yours,



Troy M. Cumings



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

February 17, 2023

Christopher Trebilcock
Clark Hill
Attorney for Groundgame Political Solutions and Protect MI Vote
500 Woodward Ave., Suite 3500
Detroit, MI 48226

Re: *Wefel v. Groundgame Political Solutions and Protect MI Vote*
Campaign Finance Complaint No. 2022-05-14

Dear Mr. Trebilcock:

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

The complaint alleged that Groundgame Political Solutions (GPS) and Protect MI Vote (PMV) failed to comply with the MCFA's reporting requirements regarding expenditures by an agent or independent contractor. According to the complaint, GPS is a political consultant working for the PMV ballot question committee and entered into contracts with Wefel and other organizations to support those efforts, but neither GPS nor PMV reported those expenditures.

You responded to the complaint in a letter dated October 26, 2022. In your response, you claimed that the complaint should be dismissed because Wefel filed the complaint as a strawman on behalf of various right-wing groups opposing PMV and the expansion of voting rights in Michigan. You argued that Michigan's Revised Judicature Act (RJA)¹ provides that actions may only be prosecuted in the name of the real party in interest and that Wefel's purported interest in the matter is intended to conceal the identities of the true complainants.

You acknowledged that PMV made its first payments to GPS on June 9 and 14 and that GPS subsequently retained Wefel to "help further GPS' business interests in Michigan," with that agreement entered into on November 24, 2021. Further, you argued that the GPS-Wefel agreement stated that it was not contingent upon the defeat or enactment of any initiative, referendum, legislative, regulatory or administrative proposal.

¹ 1961 PA 236, MCL 600.101-600.9948

In response to Wefel's assertion that GPS and PMV violated section 43 of the MCFA when they failed to report expenditures by Wefel as if they themselves made them, you noted that no court has interpreted section 43 since its enactment and that the Secretary of State has not issued a declaratory ruling, interpretive statement, or rules in furtherance of its enforcement under the Administrative Procedures Act.

Instead, you argued, Wefel relied upon the Bureau of Elections' guidance regarding expenditures of agents or independent contractors, but he misapplied the guidance. You argue that the guidance is listed as "Media Buyers and Other Vendors Purchasing Goods for the Committee" and that, coupled with the fact that examples on the page pertain to agents and independent contractors providing media support and purchasing items for the committee, it is inapplicable to the Wefel-GPS/PMV arrangement. Additionally, you rely on a Frequently Asked Question in the guidance that states that memo-itemization of expenditures by an agent or independent contractor is only required when it is for expenditures "other than normal operating expenses." You argue that GPS' retention of Wefel's company to fulfill its obligations to PMV is a normal operating expense of GPS and requires no additional reporting by GPS or PMV.

Finally, you include examples of a number of other ballot question committees in Michigan whose campaign finance reports include only disclosure of expenditures to an initial company, and not to other organizations retained by the company. As evidence of this assertion, you include examples of expenditures of hundreds of thousands of dollars by Unlock Michigan to National Petition Management (NPM), and note that NPM, in turn, hired In the Field and Let the Voters Decide to assist in signature collection. Additionally, you include similar examples from ballot questions Secure MI Vote, Let MI Kids Learn, and Michigan Civil Rights Initiative.

Mr. Wefel provided a rebuttal statement in a letter dated December 9, 2022.

In that statement, Wefel argued that the MCFA allows any person to file a campaign finance complaint, and that the MCFA rather than the Revised Judicature Act controls campaign finance complaints.

Next, Wefel argued that you confirm the same assertions made by Wefel in complaint—that GPS is an agent or contractor of PMV and that the payments to Wefel were "expenditures" made on behalf of or for the benefit of PMV. However, he asserts that, rather than performing services for GPS in order to fulfill GPS' obligation to PMV, the payment to Wefel was attached to a non-compete clause that prevented Wefel to work for the competing ballot question, Secure MI Vote.

Wefel went on to state that the reporting exception for "normal operating expenses" applies to items like utility staff and general support staff, rather than all services by a sub-contractor of an independent contractor, as he states is argued by GPS and PMV. Such an extreme position would allow a ballot question committee to make all expenditures to a political consultant who would enter into sub-contracting agreements with other consultants rather than engaging with the contractors directly, Wefel argued.

In response to your assertion that the BOE guidance document limits the provisions of section 43 to only media buyers and vender, Wefel argued that several portions of the guidance indicate that the application is more expansive. As an example, he points to a section that states:

[A]n expenditure made by an agent or independent contractor on behalf of a committee must be disclosed with the campaign statement that covers the reporting period in which the expenditure was made if:

- 1) the expenditure is one that the committee would have made itself, or
- 2) the expenditure was made to a subcontractor supplying services to the agent or independent contractor.

Further, he indicated that the guidance clarifies that the obligation to report expenditures to committees extends down to each sub-contractor:

If the independent contractor sub-contracts the work to another person, itemization is also required from the sub-contractor to report the names and addresses, dates and amounts for expenditures made by the sub-contractor on behalf of the Committee.

Finally, Wefel argued that your examples (of other ballot question committees that allegedly failed to report the expenditures of agents or independent contractors on behalf of the ballot question committee) are irrelevant to the instant complaint. Instead, he argued that even if the requirement has historically been ignored, the Department should not perpetuate that application contrary to the plain wording and clear intent of the section.

Under section 43 of the MCFA, expenditures, other than those for overhead or normal operating expenses, by agents and independent contractors of a committee must either be reported by the committee as if the expenditure were made by the committee or must be reported in an independent expenditure report. MCL 169.243. In order to ensure compliance, the agent or independent contractor must make known to the committee all information necessary to fulfill this requirement. *Id.*

Violation of this requirement is a misdemeanor punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 90 days, or both, and if the person is other than an individual a fine of not more than \$10,000.00. MCL 169.243.

Determination

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.

First, the Department notes that the MCFA does not limit the persons who may file a complaint, instead stating “[a] person may file with the secretary of state a complaint that alleges a violation

of this act.” MCL 169.215(5). Although you allege that Mr. Wefel filed the complaint on behalf of other groups, that is not relevant to the consideration of an alleged violation. Neither is information regarding other clients of Mr. Wefel’s attorney or an unrelated lawsuit against Mr. Wefel, both of which you included in your response.

Second, while you acknowledge that, in the absence of other guidance, the plain meaning of section 43 should govern the reporting requirements regarding an agent or independent contractor, your arguments tend to contradict that statement. You argue that the requirement to disclose payments by agents and contractors applies only to media buyers, although that term is not present in the statute. The full text of section 43 is as follows:

An expenditure shall not be made, other than for overhead or normal operating expenses, by an agent or an independent contractor, including an advertising agency, on behalf of or for the benefit of a person unless the expenditure is reported by the committee as if the expenditure were made directly by the committee, or unless the agent or independent contractor files a report of an independent expenditure as provided in section 51. The agent or independent contractor shall make known to the committee all information required to be reported by the committee. A person who knowingly is in violation of this subsection is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.00, or imprisoned for not more than 90 days, or both, and if the person is other than an individual the person shall be fined not more than \$10,000.00.

MCL 169.243.

The plain text of section 43 requires a committee to report expenditures made by an agent or independent contractor on behalf of or for the benefit of a person just as if those expenditures were made by the committee. While the Act exempts from disclosure expenditures for overhead or normal operating expenses, the Department agrees with Mr. Wefel that this exemption applies to utilities and administrative staff rather than your assertion that all expenditures from GPS to Wefel were normal operating expenses because they allowed GPS “to fulfill its obligations to PMV[.]” You argue that “[t]his is not a situation where PMV retained GPS for the purpose of making a payment to Wefel, which is what MCL 169.243 is designed to prevent.” However, whether that was the intent of section 43, the statute includes no such indication of its intent.

You argue that the GPS-Wefel agreement did not include reference to PMV and that the contract states that services by and payments to Wefel “are not in any way contingent upon the defeat or enactment of any initiative, referendum, legislative, regulatory, or administrative proposal.” However, the agreement states that Wefel agrees to transmit to GPS information regarding petition gathering for “an initiative, proposition, or referendum measure relating to any measures regarding election reforms,” including those that would enact election reform bills introduced in the Michigan legislature “during the 2021 legislative session or to modify or change the intent, effect, or language contained in Proposal 3 of 2018.” While several ballot questions were active during the period of the GPS-Wefel agreement, this language is specific enough to identify Wefel as working on behalf of PMV, even though PMV is not mentioned specifically. Indeed, if Wefel had instead worked for GPS on election-related ballot questions other than PMV, surely you would have indicated as much in your response.

Finally, your response includes evidence of several other ballot question committees that allegedly failed to disclose the expenditures of their agents or independent contractors. However, those ballot question committees are not parties to this complaint and the Department makes no determination as to their reporting requirements or any attendant violation of the MCFA.

Under section 43, either PMV must either report all expenditures made by GPS on behalf of or for the benefit of a person or GPS must file an independent expenditure report as provided in section 51. If your clients opt for the former, GPS must further make known to PMV all information required to be reported by PMV.

This letter serves to notify you and your clients that the Department has determined there may be reason to believe that you have violated the Act and to notify you and your clients that the Department is beginning the informal resolution process. "If, after 90 business days, the secretary of state is unable to correct or prevent further violation by these informal methods, the secretary of state shall do either of the following:

(a) Refer the matter to the attorney general for the enforcement of any criminal penalty provided by this act.

(b) Commence a hearing as provided in subsection (11) for enforcement of any civil violation."

MCL 169.215(11).

Please contact the undersigned at BOERegulatory@michigan.gov by June 29, 2023 to discuss a resolution to this matter.

Sincerely,

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

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

c: Dustin Wefel

From: [MDOS-BOERegulatory](#)
To: [Trebilcock, Christopher M.](#)
Subject: FW: Wefel v. Ground Game Strategies
Date: Friday, August 25, 2023 3:08:00 PM

Chris,

As you know, the close of the 90-business day conciliation period for this matter was June 29, 2023. In its February 17, 2023, determination, the Department issued the finding below. Your client may take those actions, or you may contact me as indicated below. However, if this matter is not concluded by Wednesday, August 30, 2023, the Department will have no choice but to refer this matter to the Department of Attorney General.

Jenny McInerney

Regulatory Attorney

Regulatory Section

[Michigan Bureau of Elections](#)

Main: 517-335-3234

McInerneyJ1@Michigan.gov

From: MDOS-BOERegulatory
Sent: Wednesday, July 5, 2023 11:21 AM
To: Trebilcock, Christopher M. <ctrebilcock@clarkhill.com>
Subject: RE: Wefel v. Ground Game Strategies

Mr. Trebilcock,

I apologize; we've had a busy month and this email was inadvertently overlooked in the shuffle. Given your interest in conciliation, we will delay in sending the complaint to the Department of Attorney General as we determine whether we can resolve the matter.

The Department made the following finding in its 2/17 determination:

Under section 43, PMV must either report all expenditures made by GPS on behalf of or for the benefit of a person or GPS must file an independent expenditure report as provided in section 51. If your clients opt for the former, GPS must further make known to PMV all information required to be reported by PMV.

If neither of these is acceptable to your client, please let us know what you would propose. If you feel further discussion is needed, I am available today after 3pm or Friday after 1pm. My work cell is (517)331-7825.

Jenny McInerney

Regulatory Attorney

Regulatory Section

[Michigan Bureau of Elections](#)

Main: 517-335-3234

McInerneyJ1@Michigan.gov

From: Trebilcock, Christopher M. <ctrebilcock@clarkhill.com>
Sent: Thursday, May 25, 2023 12:14 PM
To: MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>
Cc: Trebilcock, Christopher M. <ctrebilcock@clarkhill.com>
Subject: Wefel v. Ground Game Strategies

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

Ms. McInerny:

As you may know, this Firm and I represent the responsive parties in the above-referenced Complaint. We received your February 17, 2023 letter regarding your findings (attached for your convenience). Please let me know when we can find a mutually agreeable date and time to discuss a potential resolution of this Complaint.

Thank you for your attention to this matter.

Regards,

Christopher M. Trebilcock

Member

Clark Hill

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

September 8, 2023

Christopher Trebilcock
Clark Hill
Attorney for Groundgame Political Solutions and Protect MI Vote
500 Woodward Ave., Suite 3500
Detroit, MI 48226

Re: *Wefel v. Groundgame Political Solutions and Protect MI Vote*
Campaign Finance Complaint No. 2022-05-14

Dear Mr. Trebilcock:

The Department of State (Department) is in receipt of Protect MI Vote's amended July 2021 quarterly campaign statement, which includes memo-itemized expenditures to the entities subcontracted by Groundgame Political Solutions to do work for Protect MI Vote. The statement was submitted in response to the Department's February 17, 2023, determination that there may be reason to believe that your clients violated the Michigan Campaign Finance Act (MCFA or Act).

In your communications with the Department, you indicated that your clients believed they had disclosed expenditures sufficiently, but that they were willing to memo-itemize these expenditures in accordance with the Department's finding that section 43 of the Michigan Campaign Finance Act required more detailed disclosure. Because the memo-itemized expenditures in the amended report did not exceed the amount initially disclosed as an expenditure to Groundgame, the Department determined that no monetary fine was required.

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,

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

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

c: Dustin Wefel