



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
LIVINGSTON COUNTY CLERK

AUG 08 2022

COUNTY CLERK
ELECTIONS / VITAL RECORDS

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 <i>Daniel J Wholihan</i>		Daytime Telephone Number <i>517-896-9992</i>
Mailing Address <i>PO Box 1182</i>		
City <i>Brighton</i>	State <i>MI</i>	Zip <i>48116</i>
Email (optional) <i>dwhol@shcglobal.net</i>		

Section 2. Alleged Violator

Name <i>Restore Integrity - Restore Humanity & Sarah M Cross</i>		
Mailing Address <i>6984 Challis Rd</i>		
City <i>Brighton</i>	State <i>MI</i>	Zip <i>48116</i>
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

8-8-21

Date

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

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

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

see Attached

X


Signature of Complainant

8-8-21

Date

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

MCFA Sections violated:

MCL 169.224 – Statement of Organization.

MCL 169.233 – Campaign statement

MCL 169.247 – Disclaimer

MCL 169.251 in alternative - \$100.01

STATEMENT OF FACTS

There were two recall petitions advocated by “Restore Integrity – Recall Hostility” and their Treasurer, Ms. Sarah Cross. This complaint arises from the actions taken during the recall signature gathering process. The recall petition against William Trombley was approved for circulation by the Election Commission on or around March 14, 2022. The recall against John Conely was approved by circulation by the Election Commission on or around May 6th, 2022.

An interpretive Statement by this office on November 1, 2012 stated that a recall is an election and subject to MCFA Regulations. https://www.michigan.gov/sos/-/media/Project/Websites/sos/03holland/Interpretive_Statement_nov_1_2011.pdf

MCL 169.224 – Statement of Organization:

The Statement of Organization for “Restore Integrity – Recall Hostility” was filed (improperly) with the Livingston County Clerk’s office on or around July 25, 2022. This was months after they first started raising and spending money for their campaign which was an attempt to recall two Brighton School Board of Education Members. At minimal, this committee was active on or around May 10, 2022.

Unfortunately, this committee failed to file the Statement of Organization in a timely matter as July 25, 2022 is more than 10 days after the first transactions occurred. A timeline of activity is shown in regards to the campaign statement. It also applies for the Statement of Organization.

MCL 169.233 – Campaign Statement:

“Restore Integrity – Recall Hostility” filed as a “Political Committee” on or around July 25, 2022. Prior to that date, this so called “Political Committee” made several transactions as far back as May 10, 2022 or earlier. This committee was required to file a July Quarterly report for the transactions that have occurred prior to July 20, 2022. Unfortunately, this committee failed to file the Quarterly Report with the Livingston County Clerk’s office as required by law.

Between May 6, 2022 and July 25, 2022, many resources were spent on the effort to recall these two individuals, very likely over the \$1000 reporting waiver. Screenshots of the evidence have been attached.

- A. The Website itself - <https://www.restore-integrity-recall-hostility.com/>, which did collect some donations through donorbox/transaction. - https://donorbox.org/restore-integrity-recall-hostility-1?default_interval=0
- B. On or before May 10, 2022 the Donorbox link was (and still is) on the website and has collected money from supporters. The link shows that \$200 has been collected.

- C. On or before May 10, 2022, petition copies have been printed and are out for circulation.
- D. On or before June 7, 2022 there was a billboard by the I-96/M-59 area which advertised for the recall.
- E. On or around June 18, 2022, activist and recall supporter Kasey Helton from Livingston County posted on social media that another billboard promoting the recall was on US-23, along with the one which was already up by I-96/M-59.
- F. On or around June 9, 2022, there were at least two separate Facebook advertisements for the recall, one for each elected official. These were paid advertisements on facebook which makes this an expenditure or in-kind contribution, not just individuals expressing an opinion.
- G. On or around June 19, 2022 there were signs supporting the recall on an individual's property. Those were also expenditures or in-kind contributions.
- H. In the days from June 20-July 6, there was a push by the committee for the last signatures for the petition. Every petition sheet printed is a cost incurred to the committee.
- I. On June 22nd, WHMI News reported that "thousands" of signatures have been collected. If even 2000 recall petition signatures have been collected, that is a minimum of 200 pages of signatures, a measurable cost to print. <https://www.whmi.com/news/article/recall-drive-against-conely-trombley>

Their Facebook group started on or around March 23, 2022.

<https://www.facebook.com/restoreintegrityinbrighton>

They advertised their website on or around May 21, 2022. The website was active long before that. Their website - <https://www.restore-integrity-recall-hostility.com/> is an expense to their campaign

[https://www.facebook.com/restoreintegrityinbrighton/posts/pfbid02BxhUu5JoPP464dA4zuUkCBaQxWpTQy8r3nuBvzxSxC3y4caWfW19QBqi66aWTol?_cft__\[0\]=AZUwX_rIDiUmZHY0PGVhYaAVODgR0JFQk2Z3CC0a4o8g5vKl;_ftid=1MbByPUWkD3TytVGzHpzkp_24IVxG1VfZbERVgsHXCjvSoXDVqOvZymNXf-kgp;_ftid=1O5jisWO2J1F5YLVs1gzSv5Zg1Qrih1YAOeKb-hBx1gavT7F18NEBXSvGw&_tn_=%2CO%2CP-R](https://www.facebook.com/restoreintegrityinbrighton/posts/pfbid02BxhUu5JoPP464dA4zuUkCBaQxWpTQy8r3nuBvzxSxC3y4caWfW19QBqi66aWTol?_cft__[0]=AZUwX_rIDiUmZHY0PGVhYaAVODgR0JFQk2Z3CC0a4o8g5vKl;_ftid=1MbByPUWkD3TytVGzHpzkp_24IVxG1VfZbERVgsHXCjvSoXDVqOvZymNXf-kgp;_ftid=1O5jisWO2J1F5YLVs1gzSv5Zg1Qrih1YAOeKb-hBx1gavT7F18NEBXSvGw&_tn_=%2CO%2CP-R)

Also as of May 21, 2022 the committee was still circulating their petitions.

MCL 169.247: - Disclaimer

None of the known materials paid for in relation to the recall have proper "Paid for by" disclaimers, whether it be, but not limited to the signs, billboards, or website.

MCL 169.251 - \$100.01 or more

If the above referenced was paid for by Ms. Sarah Cross independently, instead of by the committee "Restore Integrity – Recall Hostility", then some of these expenditures also have not been properly recorded. Billboards especially cost more than \$100.01.



1/10/2020

Restore Integrity - Recall Hostility

\$200 3 \$5,000
By Set Donations Goal

Choose amount

Help Us Launch the Recall Drive

Don't donate yet

1/10/2020 1/10/2020 1/10/2020

1/10/2020

1/10/2020

Next

Available amount

Facebook

Twitter

May 10, 2022

Please Consider Making a Donation

Your donation to the Restore Integrity - Recall Hostility Committee will help support the recall drive.

\$5,000

Goal



Recall Drive

Monthly

\$ 100



Please Consider

Your donation to the Recall Committee will help support

\$200

3

Raised

Donations

Goal

Choose amount

Help Us Launch the Recall Drive



One-time

Weekly

Monthly

\$ 10

\$ 50

\$ 100

\$ Custom Amount

☐ Write us a comment

Next →

Powered by Donorbox

Woodland Plaza,
Michigan



Livingston County Democrats

Yesterday at 7:02 AM · 🌐

Recall petitions are available in our office, at 8028 Grand River, Woodland Plaza Suite 7, Brighton. Hours today are noon to 4 p.m. <https://mikeandjonpodcast.com/commission-approves-conely-recall-petition-signature-gathering-underway/>

MIKEANDJONPODCAST.COM

Commission approves Conely recall petition, signature gathering underway

As ordered by a local judge, the Livingston County Election Commission approved petition language for Brighton Area Schools Trustee Joh...

3 Shares

Like

Melanie Pauli
Cathleen Lamerton
Sarah M Cross
Dan Huth
Christine Gates Kaczowski

Share

Most relevant ▼

Livingston County Democrats

May 8 at 10:04 PM · 🌐

Mike & Jon
Got it going on!

5

Like

ALM
SHOOT

6-7-22





Kasey Helton
@LeakHonesty

...

You can find the billboard out by the Tanger Outlet Mall on 96 - first exit to Howell if you're heading eastbound.



C Elliott @CoryE1173173675 · Jun 18

Replying to @LeakHonesty @IRS_CI and @Moms4Liberty

Where are these located? I want to see one in person and get a pic to post everywhere!!

2:42 PM · Jun 18, 2022 · Twitter for iPhone

2 Retweets 11 Likes





Thread



Kasey Helton @LeakHonesty · Jun 18

You can find the billboard out by the Tanger Outlet Mall on 96 - first exit to Howell if you're heading eastbound.



CElliott @CoryEll73173675 · Jun 18

Replying to @LeakHonesty @IRS_OI and @Moms4Liberty

Where are these located? I want to see one in person and get a pic to post everywhere!!



3



2



11



Kasey Helton @LeakHonesty · Jun 18

If you're on US 23 in Brighton, look for this one also - Sarah has launched a recall election against Brighton BOE trustees William Trombley and former convict John Conley (seen here in his orange jumpsuit 🙄)

TORE INTEGRITY



1



2



6



Kasey Helton @LeakHonesty · Jun 18

* recall campaign



1



1



Kasey Helton

@LeakHonesty

Map of where you can find these billboards. If you see

RESTORE INTEGRITY



John Connelly



JOIN THE RECALL


BRIGHTON SCHOOL BOARD ELECTIONS

Q. U. O. J.


Q. U. O. J.

6-22-22

This page is dedicated to providing information about the recall effort for Brighton Area School Board Trustees William (Bill) Trombley and John Conely.



You think
that we can
read every
page? ...I am a
volunteer!



JOHN CONELY 2021

Restore Integrity Recall Hostility

This page is dedicated to providing information about the recall eff...

Send message

43 Comments

8

Share

Comment



Restore Integrity Recall Hostility
Sponsored · 📍

6-9-22

...

This page is dedicated to providing information about the recall effort for Brighton Area School Board Trustees William (Bill) Trombley and John Conely.



**"KICK
HER
OUT!"**

Restore Integrity Recall Hostility

This page is dedicated to providing information about the recall eff...

📧 Send message





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

September 13, 2022

Restore Integrity-Recall Hostility
Treasurer Sarah Cross
6984 Challis Rd.
Brighton, MI 48116

Re: *Wholihan v. Restore Integrity-Recall Hostility, Sarah Cross*
Campaign Finance Complaint No. 2022 – 08 – 78 – 224

Dear Restore Integrity-Recall Hostility and Ms. Cross:

The Department of State (Department) has received a formal complaint filed against you by Daniel J. Wholihan alleging that you violated the Michigan Campaign Finance Act (MCFA or Act). Specifically, the complaint alleges that you did not file your statement of organization in accordance with the statutory deadline, that you failed to file required campaign statements, that you failed to include the required “paid for by” statement on your materials, and, if Ms. Cross paid for the items in question, that she was required to file an independent expenditure report detailing the expenditures. A copy of the complaint is included with this notice.

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

By statutory definition, a committee is formed when “a person receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against [candidate, ballot question, etc.] if contributions received total \$500.00 or more in a calendar year or expenditures made total \$500.00 or more in a calendar year.” MCL 169.203(4). For purposes of determining whether a committee exists, the word “person” includes “a group of persons acting jointly.” 169.211(2).

The MCFA requires committees file contributions and expenditures with the appropriate filing official by specific dates. MCL 169.233(1) – (3). The Act requires a committee that receives or expends more than \$1,000 during any election to file campaign finance reports in compliance with the act. MCL 16.233(6). A person who knowingly omits or underreports expenditures

required to be disclosed by the Act is subject to a civil fine of not more than \$1,000 or the amount of the expenditures omitted or underreported, whichever is greater. MCL 169.233(11).

Additionally, the MCFA and corresponding administrative rules require a person who produces printed material that relates to an election include the phrase “Paid for by [name and address of the person who paid for the item].” MCL 169.247(1), R 169.36(2). A knowing violation constitutes a misdemeanor offense punishable by a fine of up to \$1,000.00, imprisonment for up to 93 days, or both. MCL 169.247(6).

Section 51 of the MCFA requires that a person, other than a committee, that makes an independent expenditure of \$100.01 or more must file an independent expenditure report within 10 days of making the expenditure. MCL 169.251(1). A person who fails to file a required report may be subject to late filing fees up to \$5,000 and a civil fine up to \$1,000, and/or imprisonment for no more than 90 days.

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. Wholihan, 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

McInerney, Jenny (MDOS)

From: Sarah Cross <sarahmaycross@aol.com>
Sent: Wednesday, September 28, 2022 7:18 PM
To: MDOS-BOERegulatory
Subject: 2022-08-78-224

Categories: Jenny

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

Please consider this email as a request for an extension of the deadline for filing a response to this complaint. For good cause in requesting the extension, I disclose to the Secretary of State that my mother, who lives with me, has been diagnosed with cancer two weeks ago. I have been consumed with taking her to a series of diagnostic procedures (biopsies, MRIs, and CT scans) which required a driver and 24 hour supervision post procedure. I only received this complaint late last week. I would like additional time to get a copy of the criminal complaint against John Conely for voter intimidation and filing a false police report against me to submit with my response. Mr. Wholihan, the complainant is Mr. Conely's attorney and I believe this complaint is related to the ongoing criminal investigation against him client, Mr. Conely. If the extension is not granted, I will submit my response with the information I currently have available.

Thank you for your time and consideration.

Sarah M. Cross
810-333-0483

From: [MDOS-BOERegulatory](#)
To: [Sarah Cross](#)
Subject: RE: 2022-08-78-224
Date: Thursday, September 29, 2022 9:07:00 AM

Ms. Cross,

Your request for an extension of an additional 15 business days is granted. Please submit any response to the complaint by October 26, 2022.

Thank you,

Regulatory Section
Bureau of Elections
Michigan Department of State

From: Sarah Cross <sarahmaycross@aol.com>
Sent: Wednesday, September 28, 2022 7:18 PM
To: MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>
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Thank you for your time and consideration.

Sarah M. Cross
810-333-0483



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

October 10, 2022

SECOND NOTICE

Restore Integrity-Recall Hostility
Treasurer Sarah Cross
6984 Challis Rd.
Brighton, MI 48116

Re: *Wholihan v. Restore Integrity-Recall Hostility, Sarah Cross*
Campaign Finance Complaint No. 2022 – 08 – 78 – 224

Dear Restore Integrity-Recall Hostility and Ms. Cross:

The Department of State (Department) has received a formal complaint filed against you by Daniel J. Wholihan alleging that you violated the Michigan Campaign Finance Act (MCFA or Act). Specifically, the complaint alleges that you did not file your statement of organization in accordance with the statutory deadline, that you failed to file required campaign statements, that you failed to include the required “paid for by” statement on your materials, and, if Ms. Cross paid for the items in question, that she was required to file an independent expenditure report detailing the expenditures. A copy of the complaint is included with this notice.

The Department sent you notice of this complaint in a letter dated September 14, 2022. That letter informed you that you had 15 business days from that date to provide a response to the complaint. **As a courtesy, the Department is extending you an opportunity to submit a response within 15 business days of the date of this second notice.** If you do not submit a response within 15 business days of the date of this notice, the Department will have no choice but to adjudicate the complaint based on the facts and allegations included in the complaint alone.

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

By statutory definition, a committee is formed when “a person receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against [candidate, ballot question, etc.] if contributions received total \$500.00 or more in a calendar year or expenditures made total \$500.00 or more in a calendar year.” MCL 169.203(4). For purposes of determining whether a committee exists, the word “person” includes “a group of persons acting jointly.” 169.211(2).

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

Additionally, the MCFA and corresponding administrative rules require a person who produces printed material that relates to an election include the phrase “Paid for by [name and address of the person who paid for the item].” MCL 169.247(1), R 169.36(2). A knowing violation constitutes a misdemeanor offense punishable by a fine of up to \$1,000.00, imprisonment for up to 93 days, or both. MCL 169.247(6).

Section 51 of the MCFA requires that a person, other than a committee, that makes an independent expenditure of \$100.01 or more must file an independent expenditure report within 10 days of making the expenditure. MCL 169.251(1). A person who fails to file a required report may be subject to late filing fees up to \$5,000 and a civil fine up to \$1,000, and/or imprisonment for no more than 90 days.

The purpose of this letter is to inform you of the Department’s examination of these matters and your right to respond to the allegations before the Department proceeds further. It is important to understand that the Department is neither making this complaint nor accepting the allegations as true. The investigation and resolution of this complaint is governed by section 15 of the Act and the corresponding administrative rules, R 169.51 *et seq.* An explanation of the process is available on the Department’s [website](#).

If you wish to file a written response to this complaint, you are required to do so within 15 business days of the date of this letter. Your response may include any written statement or additional documentary evidence you wish to submit. Materials may be emailed to BOERegulatory@michigan.gov or mailed to the Department of State, Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918. If you fail to submit a response, the Department will render a decision based on the evidence furnished by the complainant.

A copy of your answer will be provided to Mr. Wholihan, 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.

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

Sincerely,

Regulatory Section
Bureau of Elections
Michigan Department of State

From: Sarah Cross <sarahmaycross@aol.com>
Sent: Tuesday, October 25, 2022 8:01 AM
To: MDOS-BOERegulatory
Subject: Campaign Finance Complaint No. 2022-08-78-224

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

In Re: Wholihan v. Restore Integrity - Recall Hostility, Sarah Cross
Campaign Finance Complaint No. 2022-08-78-224

To Whom It May Concern:

Background

Approximately 1 year ago, I attended a PTO meeting where a supporter of Mr. Conely and Mr. Trombley, the School Board Trustees, at the heart of the recall drive, threatened to punch me in the face. At that meeting we had 6 armed police officers because of the incredibly adversarial state of school board meetings in our district. I went to the meeting because I wanted to address an email sent by Mr. Conley - "Mandates. You mean like Hitler did. We don't have laws to support them. We are not socialists." In addition, Mr. Trombley had coughed in a parent's face at a previous meeting. I wanted to address the complete lack of appropriate treatment of the public at our school board meetings.

I began the process of recalling the two trustees in early 2022. Mr. Wholihan represented Mr. Conely and Mr. Trombley at various points during the recall process. Since the start of the recall petition, my home has been vandalized. A woman came into my yard and tried to steal my dog. People have been driving by our home screaming at my teen and flipping her off to the point she's scared to go into her own yard. People have been parking across the street from my house and taking photos. I had someone try to give me a flat tire by propping a board with a nail in it behind the tire of my car while I was gathering petition signatures.



This ongoing harassment continued throughout the entire recall process. It culminated in my receiving a message that Mr. Conely had filed a false police report alleging that at some point between May 1st and May

15th I had conspired with a teacher at the middle school for her to prop open an exterior door to the school so I could trespass on school property to “illegally” collect recall petition signatures. The Michigan School Code requires crimes committed on school property to be reported to the State Police, not the local police. A lengthy police investigation ensued and there was no evidence whatsoever that his fabricated allegations had a shred of truth. In fact, the recall petition wasn’t even certified until, Friday, May 6th - so no petitions were printed or being collected prior to that. The following week I was at work during all of the school hours. In fact, from May 11th to May 15th I was in Minnesota at the Equal Justice Conference with the American Bar Association and National Legal Aid and Defender. I would point out that this incredibly specific allegation of propping open an exterior door was made just weeks after the tragedy in Uvalde - where it was originally believed that the shooter entered through an exterior door propped open by a teacher. The result of these false allegations is that the recall drive was halted. I could not allow teachers to be harassed in this manner. I believe the actions of Mr. Wholihan’s client were blatant voter intimidation. The purpose of that false police report was to terrify teachers and prevent them from participating in the recall drive. I further believe that this complaint has been filed at the behest of Mr. Conely to further the ongoing campaign of harassment and retaliation relating to the recall drive.

Sufficiency of the Complaint

If you believe someone has violated the Michigan Campaign Finance Act (MCFA) you may file a written complaint with the Department of State. A form for filing a complaint may be obtained out Website. The complaint [form](#) must include all of the following:

-
-
- Your name, address and telephone number.
-
-
-
- The alleged violator’s name and address.
-
-
-
- A description in reasonable detail of the alleged violation, including the section or sections of the MCFA you believe were violated, an explanation of how you believe the MCFA was violated, and any other pertinent information.
-
-
-
- Evidence that supports your allegations.
-
-
- A certification that:
 - **To the best of your knowledge, information, and belief, formed**
 - **after a reasonable inquiry under the circumstances, each factual contention of the complaint is supported by evidence.**
-
-
-
- However, in addition, if after a reasonable inquiry under the circumstances,
-
-
-

- you are unable to certify that certain specifically identified factual contentions
- of the complaint are supported by evidence, you may also certify that:
- **To the best of your knowledge, information, or belief, there**
- **are grounds to conclude that those specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry.**
-
-
-
- Your signature immediately after the certification or certifications.
-

Mr. Wholihan is an attorney. Based on the above rules, I would argue that his complaint is deficient in that his complaint is not formed after a reasonable inquiry under the circumstances. His entire complaint alleges no basis for the belief that any of the activities exceeded the filing threshold. He simply claims the actions taken in the recall must have been expensive, with no due diligence inquiry into the possible underlying costs of the activities he points to.

Issues Presented

There are two separate issues alleged. Firstly, was a timely statement of organization filed for Restore Integrity - Recall Hostility? Secondly, was I required to have “paid for by” and the address on social media ads and the billboard during the recall drive?

Issue 1: Was a timely statement of organization filed?

There is nothing alleged here that proves in any way that the required disclosures were not made timely. Mr. Wholihan makes some blanket allegations that he suspects that the costs must have exceeded the \$1000 limit for the itemized reporting waiver.

Firstly, Mr. Wholihan says that if I personally financed any part of the recall, I was required to file campaign finance disclosures. Mr. Wholihan could have verified that fact before making the unsupported accusation that the disclosures were not filed. He offers no proof that the disclosures were not filed by myself.

As to the Restore Integrity - Recall Hostility Committee, Section 24 of the MCFA requires a committee to file a statement of organization within 10 days after the committee is formed. A committee is formed when a person receives contributions of over \$500 or makes expenditures of \$500 or more in a calendar year.

By his own complaint, Mr. Wholihan acknowledges that \$200 in contributions were received. He offers no proof that contributions over \$500 were received. They were not. The expenses of the recall drive did not necessitate additional donations.

Mr. Wholihan also alleges that there must have been expenditures over \$500 and likely over \$1000 because there was a website, billboard, and sponsored ads. He offers, however, no proof that any of those costs exceeded \$1000. He simply alleges that it must have been expensive.

Again, a minimum amount of research or due diligence would show that these things are not burdensome expensive. Please see the below information from the Blipp Website. Campaigns can be run for as low as \$1 a day. So, even if a campaign ran for the 60 day period during which petitions were circulated, Mr. Wholihan has no proof that the cost of billboards would have exceeded \$60. I don’t feel that I should be required to itemize this expense based on nothing more than an allegation that billboards are expensive.



The amount a client spends on their billboard campaign is completely up to them! For more information on optimizing your campaigns, refer to the next module: *How to Optimize Your Campaign*. We highly recommend for all agencies to discuss a budget what fits best into their marketing plan. Unsure of how much to spend? New advertisers usually spend 5-20% of their total awareness advertising, like billboards, but more experienced advertisers may spend 20-60% or more.

As a marketing expert, help your clients understand the importance of brand building and guide them to choose a budget the performance indicators. Refer to our articles for ideas on how billboard fit in with other advertising mediums you're already c

- Facebook + Blip (download available in the next lesson)
- Google + Blip (download available in the next lesson)
- What is Broadcast Advertising?

You will set a maximum daily budget for each of your client's campaigns. This can be as little as \$1/day, although most of our

Similarly, Facebook Ads can be run for as little as \$1 a day. Mr. Wholihan points out that ads were run for 2 days. He has no proof that more than \$2 was expended on ads. Again, on its face, Mr. Wholihan's complaint does not provide substantial evidence that the \$500 threshold was surpassed more than 10 days prior to the filing of the disclosures or that the \$1000 wavier threshold was ever surpassed.

<https://www.facebook.com/business/help/203183363050448?id=629338044106215>

schedule in order to avoid under-delivery.

Note: You should see an alert in Meta Ads Manager if your budget doesn't meet our minimum requirements. You may see a recommendation in Ads Manager if your budget meets the minimum requirements, but may not be high enough to achieve optimal results.

We recommend the following best practices for minimum budgets:

- **Allocate enough budget for your chosen optimization event.** Some optimization events may require more budget than others, depending on how difficult they are to achieve. For example, if you optimize for purchases, you may need to allocate more budget than if you optimize for landing page views. If you don't want to increase your budget, you can try optimizing for an event that may be easier and cheaper to achieve. Learn more [about optimization](#).
- **For ad set budgets, most advertisers who are charged for impressions should allocate at least \$1 per day for daily budgets.** Minimum budget requirements may be different depending on when you choose to get charged for ads. The requirements for lifetime budgets and [Meta Advantage campaign budget](#) (formerly known as campaign budget optimization) may also be slightly different depending on your settings. With Advantage campaign budget, the risk of under-delivery is lower because budget is allocated freely across all ad sets.
- **If you use the cost per result goal bid strategy, your daily budget should be at least 5 times the amount of your cost per result goal.** For example, if you set a cost per result goal of \$5 your daily budget should be at least \$25.

[Help chosen fr](#)

[Why Some Ad Approved, Th Rejected](#)

Business Help Ce
56,086 views

[Troubleshoot Rejected Ad](#)

Business Help Ce
94,044 views

[What to Do If or Cryptocurr Application Is Rejected](#)

As stated above, I'm not required to disclose an itemization of those expenses.

Mr. Wholihan also argues that the website must have caused the \$1000 waiver limit to be exceeded. The recall drive website is hosted on Wix. As you can see, websites can be hosted on Wix for as low as \$11 a month. So, once again, any amount of basic due diligence could have been used to show that the website is not extremely expensive. There is nothing on the face of this complaint that proves that these expenditures caused the \$500 expenditure limit to be surpassed more than 10 days prior to the filing of the paperwork.

Upgrade Your Site with a Premium Plan

14 Day Money Back Guarantee on All Premium Plans

Website Plans
Great for showcasing a professional site

Business and eCommerce Plans
Essential for accepting online payments

Enterprise Plans
Custom solutions tailored for you

50% OFF

VIP
First Priority Support

\$22⁵⁰ /month
~~\$45.00~~

50% OFF

Pro
Complete Online Branding

\$13⁵⁰ /month
~~\$27.00~~

50% OFF

Unlimited
Entrepreneurs & Freelancers

\$11 /month
~~\$22.00~~

And, again, I filed a waiver. I should not be forced to give an itemization of expenditures based on mere allegations without any proof.

Finally, Mr. Wholihan alleges that the printing costs of the recall petitions exceeded. Again, reasonable due diligence would have illustrated that there is no proof that printing costs were excessive.

Staples makes copies for \$.19 a page. Approximately 5600 signatures were required for certification of each drive. There are 12 signatures per page. If a person needed 6000 signatures at 12 signatures a page that would mean 500 printed pages. At \$.19 a page that is \$95. So, even if we look at his allegations using basic math, the printing costs for both petitions would be around \$200, not \$1000. Additionally, there was no prohibition on providing people with blank petitions and allowing them to run off their own copies. The sponsor of the recall had no legal duty to be the only person printing copies. Any individuals who may or may not have made their own copies of the petitions would only be required to report their expenses if they exceeded \$100. So, again, I filed a waiver and should not be required to give receipts or itemized lists of printing costs. Mr. Wholihan is simply trying to use this complaint to try to discover how many petition pages were printed in an attempt to assess how many signatures may have been gathered. The signatures were never filed for certification. As the sponsor of the recall, I am under no legal obligation - either under the recall statute or under the MCFA to disclose that information. On its face there is no proof that expenses exceeded \$200 for printing, nor should these baseless allegations even create a reasonable suspicion that the expenses exceeded \$1000.

Staples

All Products ▾Business Cards ▾Signs, Banners & Posters ▾Cards & Invitations ▾Document Printing ▾Same-Day

Home » Document Printing » Simple Print

Simple Print

\$15 Off Document Printing When You Spend \$50 Or More. Coupon Code: 69637¹

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Streamlined printing options for your documents, from reports, memos and letters to invoices, maps and infographics.

From \$0.10 per page in black & white

CONSENT FORM

FINANCIAL PERFORMANCE

RECORDS

ACCOUNTING

HUMAN RESOURCES

5

Waivers are allowed under the MCFA. If a group can be forced to itemize their expenditures simply because someone files a complaint that says I think they spent more than they said they did, what is the point of the waiver?

Mr. Wholihan also states that there was an undisclosed in kind donation because there were 2 banners displayed on private property. They were on my property and given that he's listed my address on this complaint, he should have known that. There were 2 2'x2' banners. Again, a reasonable amount of due diligence could have been used to discover the cost of that.

HUGE BANNER SALE - 45% Off Banners + New LOW Shipping Rates! SHIPS IN 24 H

BANNERS ON THE CHEAP Chat Now | NEED HELP? (877) 710-1876 Regi

Custom Banners Graduation Banners Step & Repeat Mesh Banners Retractable Banners Flags Fabric Banners X-Ba

Cheap Banners,
Amazing Quality!

- Order Today, Ships Tomorrow
- High Quality, Fade-Resistant Printing
- Grommets & Reinforcement Options
- ★★★★★ (15,847 Reviews)

In this situation, there is no proof that I failed to properly or timely file the required disclosures or that I exceeded the \$1000 or intentionally under-reported expenses.

Mr. Wholihan, who represented Mr. Conely and Mr. Trombley in various stages of the recall process, is trying to force me to disclose the number of signatures gathered by claiming, without any sort of proof, that the costs of printing exceeded the \$1000 threshold.

Finally, Mr. Wholihan alleges that my filing was defective. My filing did contain an error. I received an email from the Election Clerk disclosing the error and it was immediately remedied with a corrected filing.

In sum, on the face, the allegations made in the complaint offer no substantial proof that any violations of the reporting requirements occurred.

Issue 2: Were the proper disclosures made on recall materials?

Section 47 of the Michigan Campaign Finance Act (MCFA) provides that certain political communications or paid political advertisements must identify the person or persons paying for the communication. The communication can be to further the nomination or election of a candidate or the qualification, passage or defeat of the ballot question. Communications are made in a number of formats:

-
-
- **Printed items include signs and mailers, novelty items such as pens, pencils and stickers**
-
-
-

- **Broadcast media includes radio and TV advertisements**
-
-
-
- **Robotic Calls are automated messages sent via telephone**
-
-
-
- **Electronic media includes email, websites and social media such as Twitter and Facebook.**
-

To determine if an identifier/disclaimer statement is needed, a clear understanding of the following definitions is required.

Identification Statement: Tells the person reading or hearing the advertisement who paid for the message or materials and provides their address or other contact information. This is commonly referred to as an "identifier."

Disclaimer Statement: Tells the person reading or hearing the advertisement that the candidate or candidate committee did not authorize the message or materials. This is commonly referred to as a "disclaimer."

Express Advocacy: Refers to words or references in a communication that expressly advocate for the election or defeat of a candidate or the passage or defeat of a ballot proposal. Specific words of express advocacy include words such as "VOTE FOR," "ELECT," "SUPPORT," "CAST YOUR BALLOT FOR," "SMITH FOR GOVERNOR," "VOTE AGAINST," "DEFEAT," or "REJECT" or similar words or phrases. These are often referred to as the magic words.

The recall drive is not a political candidate or candidate committee, therefore it falls under the "all others" part of the analysis regarding required disclosures. As such, the first step in deciding if a disclosure is required is analyzing whether the communication contains "express advocacy".

Sponsored Facebook Posts

Mr. Wholihan points to two sponsored Facebook posts and claims that they did not contain required disclosures. One of the sponsored posts in question is below:



Restore Integrity Recall Hostility

..

Sponsored · 🌐

This page is dedicated to providing information about the recall effort for Brighton Area School Board Trustees William (Bill) Trombley and John Conely.



As you can see, this post contains no words of express advocacy. Nothing about this post advocates for or against the candidate pictured. In fact, it states that

Express Advocacy: Refers to words or references in a communication that expressly advocate for the election or defeat of a candidate or the passage or defeat of a ballot proposal. Specific words of express advocacy include words such as "VOTE FOR," "ELECT," "SUPPORT," "CAST YOUR BALLOT FOR," "SMITH FOR GOVERNOR," "VOTE AGAINST," "DEFEAT," or "REJECT" or similar words or phrases. These are often referred to as the magic words.

The other post in question is pictured below:



Restore Integrity Recall Hostility

Sponsored ·

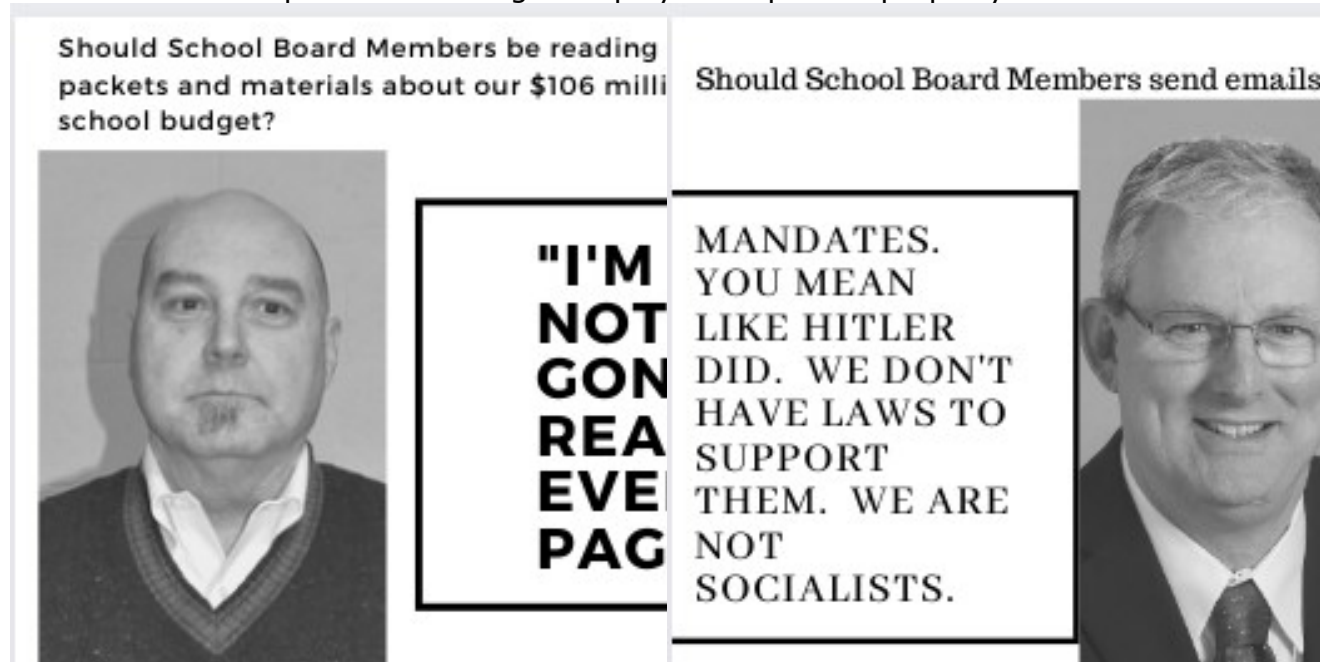


This page is dedicated to providing information about the recall effort for Brighton Area School Board Trustees William (Bill) Trombley and John Conely.



Again, these sponsored posts contain no express advocacy.

Mr. Wholihan also points to two signs displayed on private property:



Again, neither of these signs (which are no longer displayed) contain any words of express advocacy. Therefore, there is no requirement that they contain the name and address of who paid for them.

There is also a question as to whether the billboard falls under these requirements. In 1976, the United States Supreme Court interpreted several sections of the Federal Election Campaign Act (FECA) in *Buckley v. Valeo*, 424 US 1 (1976). FECA defined "expenditure" as "the use of money or other assets for the purpose of influencing a federal election." The Supreme Court, finding the definition vague and overbroad, created the "express advocacy" test for determining which communications were considered expenditures under FECA and which were issue ads, exempt from FECA's reach. The court held that only those communications that contained words of express advocacy-"vote for", "vote against", "elect", "defeat", etc.-could be deemed expenditures under the FECA.

There is no express advocacy on the billboard. It does not contain language that states people should vote for or against these candidates. The recall group was an informational group designed to provide information and education to voters in order to allow them to form their own opinions as to whether to support or decline to support the recall drive. I would again argue that the billboards did not require disclosures because they do not contain words of express advocacy. The disclosure "Sponsored By" was required by the billboard company.



Even if the billboard was interpreted to contain words of express advocacy, the billboards have not been displayed since June. No corrective measures can be made at this time, but the billboard will no longer be displayed and have not been displayed since June.

The complaint also alleges that the website must state "paid for by".

MICHIGAN CAMPAIGN FINANCE ACT (EXCERPT)

Act 388 of 1976

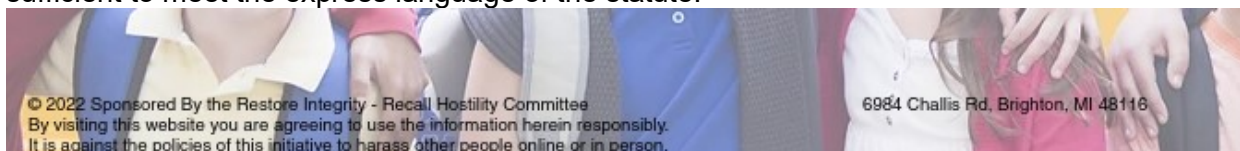
169.247 Printed matter or radio or television paid advertisement having reference to election, candidate, or ballot question; name and address; identification or disclaimer; size and placement; rules; exemption; statement that payment made "with regulated funds"; communication exempted under section 6(2)(j); violation as misdemeanor; penalty; prerecorded telephone message.

Sec. 47.

(1) Except as otherwise provided in this subsection and subject to subsections (3) and (4), a billboard, placard, poster, pamphlet, or other printed matter having reference to an election, a candidate, or a ballot question, shall bear upon it an identification that contains the name and address of the person paying for the matter.

The recall website contained the language "sponsored by" instead of "paid for by". The actual statute states that materials shall bear an identification that contains the name and address of the person paying for the matter. The statutory language does not require the words to specifically be "paid for by". "Sponsored by" is a

notification that the website was paid for by the Restore Integrity - Recall Hostility Committee that was legally sufficient to meet the express language of the statute.



Additionally, remedial measures were taken to correct the wording of the statement to read “paid for by” as seen below.



In summary, even if there was one minor violation of the rules because the language “sponsored by” was used instead of “paid for by”, it has now been remediated. This complaint is an attempt to force a disclosure of who donated and exactly how funds were spent that circumvents the waiver rules. Given the level of harassment I have experienced in this campaign, I would rather pay a fine than disclose the names of the people who donated. Mr. Wholihan’s client filed a false police report against myself and a teacher who signed a recall petition. During the recall drive, someone tried to steal my dog from my yard twice, all of my holiday lights were cut, my child has been screamed at and flipped off in the yard, she’s been called a nigger at school multiple times (something that never happened prior to this recall drive). I’ve lived in my home for 35 years and I’ve now how to put in security cameras. The people opposed to the recall are extremely aggressive and unethical in their tactics at opposing the recall. What will happen to people who donated to the recall drive if I am forced to disclose their identities? I’m not going to open more people up to the sort of harassment and intimidation I have undergone during this process. I believe I’ve substantially complied with the rules and that Mr. Wholihan has offered no proof to the contrary that warrants any additional investigation.

Sarah M. Cross, Esq.810-333-0483



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

October 25, 2022

Daniel J. Wholihan
P.O. Box 1182
Brighton, MI 48116

Re: *Wholihan v. Restore Integrity-Recall Hostility, Sarah Cross*
Campaign Finance Complaint No. 2022 – 08 – 78 – 224

Dear Mr. Wholihan:

The Department of State received a response from Sarah Cross, the treasurer of Restore Integrity-Recall Hostility, 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

DANIEL J WHOLIHAN – Attorney at Law
P.O. Box 1182
Brighton, MI 48116
(517) 896-9992

November 9, 2022

Bureau of Elections
Richard H Austin Building 1st Fl
430 W Allegan
Lansing, MI 48933

Dear Bureau of Elections:

Re: *Wholihan v Restore Integrity-Recall Hostility, Sarah Cross*, Complaint No 2022-07-78-224

On or around August 8th, I filed a campaign finance complaint against Ms. Sarah Cross and her PAC, “Restore Integrity-Recall Hostility.” Ms. Cross filed her response on October 25, 2022. This is a rebuttal to her response.

The issues to be decided here are all MFCA related. Much of the “background” mentioned at the beginning and end of her response, whether it is true or false, is irrelevant to the issues at hand here. Regardless, I am not representing any individual in the complaint that is filed with the BOE. I drafted this as a private citizen and as a resident of the Brighton Area School District.

All of Ms. Cross’s response have a lot of the word “may.” “Does not have substantial evidence.” Campaigns are required to disclose their donations and their expenditures over \$1000. I am not a stranger to political campaigns or campaign finance reports ranging from the township level to federal office. Billboards, printing, websites, and digital ads are common expenditures. Most billboard advertisements on a major highway cost between \$1000-\$1200 per week. The combination of the \$200 in donations, billboards, printing, website, signs and digital ads very likely are more than \$1000 collectively.

However, even if Ms. Cross claimed the waiver, all of the activity that was documented occurred before July 15, 2022, which is ten days before the original filing that was filed on or around July 25, 2022. The original Statement of Organization should have been filed as soon as she started raising contributions on her website. The transactions occurred before Ms. Cross ever claimed a reporting waiver.

Ms. Cross references *Buckley v Valero*’s magic words to claim that these are not expenditures. While those words are not necessarily the “magic words.”, “join the recall” is a very clear express message. The Bureau of Elections in “Taxpayers for Accountability” judged a similar “Say no to the no slate” to be express advocacy. “The essential nature is a specific call to

action with provides in effect an explicit directive....who are clearly identified in names and photos.“ <https://www.mml.org/pdf/advocacy/TFA-Final-Decision.pdf> . A recall is considered an election under Michigan law. “Join the recall” is express advocacy. In a California recall election in 2006, former Governor Arnold Schwarzenegger used the slogan “Join Arnold” in his commercials and signs. <https://www.youtube.com/watch?v=qPDA05pO0b0> There is precedence that this language is considered express advocacy.

In regards to the disclaimer, Ms. Cross, an attorney, is well aware of the law in regards to requirements of disclaimers as she has filed multiple complaints with the Bureau of Elections against other individuals for improper disclaimers. She is not a novice to that statute. The rules are clear when it comes to proper disclaimers.

Ms. Cross said much in regards to issues unrelated to the MCFA. However, she never addressed activities that were made before she CLAIMED the \$1000 reporting waiver. That was never even contested. Thank you for your time.

Sincerely:

Daniel J. Wholihan
PO Box 1182
Brighton, MI 48116
(517) 896-9992
dwhol@sbcglobal.net



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

January 31, 2023

Restore Integrity-Recall Hostility
Treasurer Sarah Cross
6984 Challis Rd.
Brighton, MI 48116

Re: *Wholihan v. Restore Integrity-Recall Hostility, Sarah Cross*
Campaign Finance Complaint No. 2022 – 08 – 78 – 224

Dear Restore Integrity-Recall Hostility and Ms. Cross:

The Department of State (Department) has finished investigating the campaign finance complaint filed against you by Daniel J. Wholihan on August 8, 2022. The complaint alleges you violated the Michigan Campaign Finance Act (MCFA or Act) by failing to file your statement of organization in accordance with the statutory deadline, failing to file required campaign statements, and failing to include the required “paid for by” statement on your materials. In the alternative, if Ms. Cross paid for the items in question, the complaint alleges that she was required to file an independent expenditure report detailing the expenditures.

You responded to the complaint on October 25, 2022. In your response, you indicated that you began the process of recalling two School Board trustees in early 2022. Your response goes on to indicate that nothing alleged in the complaint establishes that the required disclosures were not made timely, nor was any proof submitted that contributions over \$500 were received by the Recall Hostility Committee. You also acknowledge that there was a website, billboards, and sponsored ads, but you decline to rebut his allegation that the cost of these items surpassed the \$500 contribution level to trigger the filing of a statement of organization and attendant reports by disclosing the costs of those items. Instead, you argue that he failed to prove how much you spent on them by providing generic low-cost options available to individuals.

You go on to claim that campaigns can be run for as low as \$1 a day, and that Mr. Wholihan failed to provide substantial evidence that the cost of billboards and the cost of Facebook ads exceeded the \$500 threshold amount. You argue that Mr. Wholihan alleges that the printing costs of the recall petitions exceed the threshold; however, you also explain, based on Staples’ copying cost of \$.19 a page, the 500 pages required for 6,000 signatures would result in \$95 worth of copying. You also point out that the sponsor of the recall had no duty to be the only person printing copies, and that any individuals who may have done so would only be required to report their expenses if they exceeded \$100.

Your response goes on to address whether proper disclosures were made on recall materials created by the Recall Hostility Committee. You claim that the Facebook posts did not contain

express advocacy, therefore exempting them from the disclosure requirements in Section 47. You also indicate that the billboard created to support your recall effort, stating “Join the Recall” does not contain express advocacy. Finally, you argue that the recall website includes the language “sponsored by” instead of “paid for by,” which meets the statutory requirement that the materials identify the name and address of the person paying for the materials.

Your response included allegations that Mr. Wholihan filed the complaint as part of a series of retaliatory actions in response to your recall campaign against his clients. While the Department strongly discourages retaliatory actions in the complaint process, the Department only has authority to investigate potential violations of the MCFA, not allegations of vandalism and harassment.

Mr. Wholihan provided a rebuttal to your response on November 11, 2022. In his rebuttal, Mr. Wholihan states that most billboard advertisements on a major highway cost between \$1000-\$1200 per week. He goes on to state that the combination of the \$200 in donations, the cost of the billboards, printing of petitions, website, signs and digital ads very likely are more than \$1000 collectively. Mr. Wholihan further states that all of the activity that was documented occurred before July 15, 2022 which is ten days before the original filing on or around July 25, 2022. Mr. Wholihan also states that the “magic words” of express advocacy referenced in your response are not an exhaustive list and that “join the recall” is a very clear message of express advocacy.

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

By statutory definition, a committee is formed when “a person receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against [candidate, ballot question, etc.] if contributions received total \$500 or more in a calendar year or expenditures made total \$500 or more in a calendar year.” MCL 169.203(4). For purposes of determining whether a committee exists, the word “person” includes “a group of persons acting jointly.” 169.211(2).

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

Additionally, the MCFA and corresponding administrative rules require a person who produces printed material that relates to an election include the phrase “Paid for by [name and address of

the person who paid for the item].” MCL 169.247(1), R 169.36(2). A knowing violation constitutes a misdemeanor offense punishable by a fine of up to \$1,000.00, imprisonment for up to 93 days, or both. MCL 169.247(6).

Section 51 of the MCFA requires that a person, other than a committee, that makes an independent expenditure of \$100.01 or more must file an independent expenditure report within 10 days of making the expenditure. MCL 169.251(1). A person who fails to file a required report may be subject to late filing fees up to \$5,000 and a civil fine up to \$1,000, and/or imprisonment for no more than 90 days.

Upon review, the evidence submitted supports the conclusion that a potential violation of the Act has occurred. Despite your arguments that the recall committee did not exceed the threshold amounts, the Department finds the argument unpersuasive. Nowhere in your response do you rebut Mr. Wholihan’s claims that expenditures for petition copies, a billboard by the I-96/M-59 area, social media posts, another billboard on US-23, two separate Facebook advertisements, two banners on private property, and a recall website were made on or before July 15, 2022, more than 10 days prior to the formation of the recall committee. Additionally, the Department finds that the evidence supports a finding that combination of expenditures described above likely exceed the \$1,000 limitation under which the recall committee may qualify for a reporting waiver. Because there is reason to believe that Restore Integrity-Recall Hostility made numerous expenditures in excess of \$500 more than 10 days before the filing of their statement of organization, the Department concludes that there may be reason to believe that a potential violation of section 24 occurred. Additionally, because the total expenditures during the recall campaign likely exceeded \$1,000, the Department concludes that there may be reason to believe that a potential violation of Section 33 occurred.

Additionally, while the statute (MCL 169.247) does not state the specific words that must be used in identifying who paid for campaign-related materials, the Administrative Code (R 169.36) does. Specifically, section 36(2) states that “The identification required by section 47 of the act for printed material shall include the words ‘Paid for by,’ followed by the full name of the person or committee paying for the material and the person’s or committee’s street number or post office box, city or town, state, and zip code.” R 169.36(2). As stated in the notice letter to you, a knowing violation constitutes a misdemeanor offense punishable by a fine of up to \$1,000.00, imprisonment for up to 93 days, or both. MCL 169.247(6).

From the outset, the Department must consider whether the Facebook advertisements and billboard fall within the ambit of the MCFA. The Facebook advertisements display Board of Trustees images coupled with purported quotes by those trustees and appear as sponsored by the “Restore Integrity-Recall Hostility” official Facebook page. The Department determines the content of these advertisements, combined with its placement showing as sponsored by the recall committee, makes them a statement which is “susceptible of no reasonable interpretation other than as an appeal” to recall a specific candidate and thus an expenditure under the MCFA that required a disclosure statement. Additionally, the Department finds that, in the case of the billboard which states “join the recall” explicitly advocates readers to join the effort led by the recall committee, the materials fall within the purview of express advocacy and the MCFA. MCL

169.206(2)(j). Based on the above, the Department finds that the evidence supports the conclusion that a potential violation of Section 47 has occurred.

Finally, Ms. Cross does not address the allegation that there may have been a violation of section 51 of the MCFA if the expenditures were made by her rather than by the committee. However, based on the costs laid out above, the evidence supports a conclusion that, if she indeed made the expenditures independently, a potential violation of section 51 occurred based on her failure to file those independent expenditure reports.

Resolution

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

Given this, please contact the undersigned by emailing BOERegulatory@Michigan.gov to informally resolve this complaint. If the Department is unable to informally resolve the complaint by June 9, 2023, the Act requires the Department to refer the matter to the Department of Attorney General with a request that her office prosecute the criminal penalties outlined under the Act. MCL 169.233(11).

Sincerely,



Jenny McInerney
Regulatory Attorney
Bureau of Elections
Michigan Department of State

c: Daniel J. Wholihan



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

June 20, 2023

The Honorable Dana Nessel
Department of Attorney General
G. Mennen Williams Building
525 West Ottawa Street
Lansing, MI 48933

Re: *Wholihan v. Restore Integrity, Recall Hostility, Sarah Cross*
Michigan Campaign Finance Complaint

Dear Attorney General Nessel:

Please allow this letter to serve as a referral to the Attorney General of the above referenced campaign finance matter for the enforcement of any criminal penalties under the Michigan Campaign Finance Act. MCL 169.215(10)(a).

If you or your staff would like any additional information regarding this case, please contact this office.

Sincerely

s/ Michael J. Brady

Michael J. Brady, Chief Legal Director
Michigan Secretary of State

cc: Heather Meingast, Division Chief, CLEE Division