

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

RECEIVED/FILED
MICHIGAN DEPT OF STATE
2018 OCT 23 PM 1:54
ELECTIONS/GREAT SEAL

October 19, 2018

On October 17, 2018, an email was sent alerting the Mr. Timothy Lynch, Vice President and General Counsel/Legal Top Executive-General Counsel, Office of the President of the University of Michigan, concerning an alleged campaign finance violation by the University of Michigan/a faculty member employed by the university. Mr. Lynch's address is:


Office of the General Counsel
503 Thompson St Rm 5010
Ann Arbor MI 48109-1340

The name and address of the alleged faculty who violated Section 57 of the Michigan Campaign Finance Act which prohibits public bodies and anyone acting for a public body from using public resources to support or oppose a candidate or the qualification, defeat, or passage of a ballot proposal, is Jonathan Levine. Mr. Levine's address is:

Urban & Regional Planning
2150 Art & Arch Bldg
Ann Arbor MI 48109-2069

Mr. Levine has repeatedly used his @umich.edu email address to send out mass (BCC) emails to individuals in which Mr. Levine includes materials which he purports show a local candidate's unsuitability for office. His mass emails are sent using his @umich.edu email address in order to oppose a candidate running for Ann Arbor City Council in Ward 1. That candidate's name is Mr. Jeffrey Hayner. Mr. Levine's unfettered abuse of the University of Michigan's email server and resources is a violation of Section 57 of the Michigan Campaign Finance Act.

To the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of the complaint is supported by evidence, starting with the email below. It is also my belief that after further inquiry, multiple examples of The University of Michigan/Mr. Levine's alleged campaign finance violations would be uncovered. One need only search U-M email server records between July 2018 and October 2018 for evidence of Mr. Levine's violations.

Sincerely,
Elizabeth Hunter 
827 Bruce, Ann Arbor 48103

1. EVIDENCE

From: Jonathan Levine <jnthnlvn@gmail.com>
Subject: Washtenaw County Democratic Party
Date: October 10, 2018 at 1:29:32 PM EDT
To: Jonathan Levine <jnthnlvn@umich.edu>

Dear friends: At a recent meeting of the Washtenaw County Democratic Party (WCDP), the party declined, for reasons I discuss below, to include Mr. Jeff Hayner (the Democratic City Council nominee from Ann Arbor's Ward 1, who faces an independent challenger) in its slate of endorsed candidates for the general election. The question of endorsement will come up again at the WCDP Endorsement Meeting, Monday, October 22nd, 6:30 p.m., Washtenaw County Learning Resource Center, 4135 Washtenaw Ave, Ann Arbor.

I, together with others who joined WCDP no later than 9/22/2018, will be there to vote against endorsing this particular candidate. Mr. Hayner has, over the years, communicated publicly and prolifically, in venues including MLive.com, Twitter, and Nextdoor.com, values that are antithetical to my own and those to which I believe the Democratic Party should adhere. His writings have extended far beyond the usual issues of municipal politics over which reasonable Ann Arborites can disagree to conspiracy theories of the sort we see at the national level, views on hate crimes and acts of intimidation, Ann Arbor's efforts regarding safety from guns, policy for overcoming racial discrimination and bias, and more. I believe that this endorsement decision is an issue of importance beyond the borders of Ann Arbor's Ward 1, because it amounts to a statement about decency in political discourse. I'm attaching a selection of Mr. Hayner's writings and hope you'll consider helping spread the word about the upcoming meeting. Feel free to forward this note and attachment to potentially interested people, especially Ward 1 residents and WCDP members.

Sincerely,

Jonathan Levine

PS: If you're not a WCDP member, I hope you'll consider joining--it just takes \$10--so as to have a voice in its future course.

October 17, 2018 this email was sent to the University of Michigan alerting Mr. Timothy Lynch, Provost Philbert and Dean Massey to the alleged Campaign Finance violation:

Drs. Philbert and Massey, Mr. Lynch,

I received a forwarded email with the attached PDF. The return address of that email was jnthnlvn@umich.edu. This address belongs to Jonathan Levine, a faculty member in the Taubman School. The PDF contains information meant to influence my vote in the Ann Arbor City Council race in Ward 1, where I believe Mr. Levine lives.

Mr. Levine has repeatedly used his umich.edu address to send out his opinions about local politics, most recently about Mr. Jeff Hayner in an effort to campaign against Mr. Hayner and for Mr. Hayner's opponent, Ryan Hughes, a University of Michigan employee.

As Mr. Lynch undoubtedly knows, Section 57 of the Michigan Campaign Finance Act prohibits public bodies and anyone acting for a public body from using public resources to support or oppose a candidate or the qualification, defeat, or passage of a ballot proposal.

The University of Michigan has posted information for faculty and staff concerning this here: <https://publicaffairs.vpcomm.umich.edu/key-issues/guidelines-for-political-campaigns-and-ballot-initiatives/>

Among the information presented on the webpage above, Mr. Lynch writes:

"Faculty, staff, and students cannot, however, use public resources to engage in political activities for or against a candidate or ballot initiative. Here are some examples of political activities that use public resources in a manner that is generally not permitted under Michigan law: Using an official University e-mail list or listserv to campaign for or against a ballot initiative or candidate running for office."

Mr. Levine has repeatedly used the University of Michigan's public resources to disseminate information which is in violation of the Michigan Campaign Finance Act.

You'll find his PDF attached. I would expect you will investigate the University's mail server records to determine how many times Jonathan Levine has used his @umich.edu email account to break the law and to precisely how many @umich.edu email addresses (as well as other email addresses) he sent the attached PDF in order to campaign against Mr. Hayner and for Mr. Hughes.

The University of Michigan and Mr. Levine owe Mr. Hayner a formal apology and an apology to every recipient of Jonathan Levine's unbalanced emails in which he has (as he does in this latest rant) linked to hacked Tweets, unsubstantiated allegations and sought to influence votes in an upcoming election.

Sincerely,

Patricia Lesko, '83, '87
817 Brookside Dr.
Ann Arbor, Michigan 48105
734-930-6854



STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

October 30, 2018

Jonathan Levine
Urban & Regional Planning
2150 Art & Arch Bldg.
Ann Arbor, Michigan 48109

Dear Mr. Levine:

The Department of State (Department) received a formal complaint filed by Elizabeth Hunter against you alleging you have violated the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* 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.* A copy of the complaint and supporting documentation is enclosed with this letter.

In Michigan it is unlawful for a public body or an individual acting on its behalf to use or authorize the use of equipment, supplies, personnel, funds, or other public resources to make a contribution or expenditure. MCL 169.257(1). The words "contribution" and "expenditure" are terms of art that are generally defined to include a payment or transfer of anything of ascertainable monetary value made for the purpose of influencing or made in assistance of the qualification, passage, or defeat of a ballot question. MCL 169.204(1), 169.206(1). A knowing violation of this provision is a misdemeanor offense. MCL 169.257(4).

Ms. Hunter alleges that you have improperly used your University of Michigan email account to urge individuals to oppose Mr. Jeffrey Hayner in an election for Ann Arbor City Council.

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.

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. All materials must be sent to the Department of State, Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918. If you fail to submit a response, the Department will render a decision based on the evidence furnished by the complainant.

A copy of your answer will be provided to Ms. Hunter, who will have an opportunity to submit a rebuttal statement to the Department. After reviewing all of the statements and materials provided by the parties, the Department will determine whether "there may be reason to believe

Jonathan Levine
October 30, 2018
Page 2

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 criminal penalty provided in section 57(4) of the Act.

If you have any questions concerning this matter, you may contact me at (517) 241-0395.

Sincerely,

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

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Elizabeth Hunter

RECEIVED/FILED
MICHIGAN DEPT OF STATE

2018 NOV 15 AM 10:54

ELECTIONS/GREAT SEAL

November 9, 2018

456 Hilldale Drive
Ann Arbor, MI 48105

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

Dear Mr. Fracassi:


Thank you for giving me the opportunity to clarify the e-mail that was the subject of the Michigan Campaign Finance Act complaint by Ms. Elizabeth Hunter.

1. As the e-mail printout included with the complaint makes clear, the message was sent from my personal Gmail account (inthnlvn@gmail.com) and not from my University of Michigan account (inthnlvn@umich.edu).
2. The complaint from Ms. Hunter asserts that I repeatedly used my University of Michigan e-mail address to send out mass political e-mails, yet the evidence provided includes only a single e-mail posted from a Gmail account and as such is irrelevant to the claim.
3. I always use my personal Gmail account when I sent out e-mails of political content. When the e-mails include a bcc: list, I enter my own address (inthnlvn@gmail.com) as the To: address.
4. In the e-mail in question, I unknowingly typed inthnlvn@umich.edu rather than inthnlvn@gmail.com in the To: line. I suspect that this oversight was a function of my fingers being very accustomed to my University of Michigan e-mail address.

Though I send political e-mails only from my Gmail account, the University of Michigan in fact permits incidental personal use of its e-mail systems by employees and does not seek to limit such use to non-political activities. (Source: <https://publicaffairs.vpcomm.umich.edu/key-issues/guidelines-for-political-campaigns-and-ballot-initiatives/frequently-asked-questions/>) Nonetheless, I have never used either my University of Michigan e-mail account or a University of Michigan listserv to distribute political e-mail.

Kindly let me know if there is any additional information I can provide.

Sincerely,


Jonathan Levine



STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

November 20, 2018

Elizabeth Hunter
827 Bruce
Ann Arbor, Michigan 48103

Re: Hunter v. Levine
Campaign Finance Complaint
No. 2018-10-84-57

Dear Ms. Hunter:

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Fracassi".

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Jonathan Levine

Mr. Adam Fracassi
Bureau of Elections
Michigan Department of State
Richard H. Austin Bldg., 1st Floor
430 W. Allegan
Lansing, MI 48918

RECEIVED/FILED
MICHIGAN DEPT. OF STATE
2018 DEC -4 AM 9:03
ELECTIONS/GREAT SEAL

November 26, 2018

Mr. Fracassi,

Thank you for this opportunity to respond to Mr. Levine's letter.

In essence, Mr. Levine claims the use of his @umich.edu email address/account to send the mass email provided to the Bureau of Elections with the complaint in which Mr. Levine urges recipients to oppose a candidate running for office, was an "oversight." Further, he asserts that personal use of the University of Michigan email systems by employees does not seek to limit "such use to non-political activities." Lastly, Mr. Levine does not refute the allegation that he sent multiple mass emails of a political nature using his @umich.edu email address— such as the one used in the complaint against him. Rather, he claims he was only caught once, that **"only one instance was identified."** (May I request that the Bureau of Elections asks the University of Michigan to produce all other emails of a political nature sent by Levine using his @umich.edu email via a simple search of the University's email server before concluding this investigation?)

"An oversight"

Mr. Levine argues the use of his @umich.edu address was an "oversight."

"Oversight," does not appear in the Michigan Campaign Finance Act as a mitigating factor for anyone who either knowingly or unknowingly violates the Act. Violators who claim "oversight" or "missteps" have not been exempted from penalties and prosecution under the auspices of the Michigan Campaign Finance Act.

For example, when candidates running for office in Michigan miss campaign filing deadlines imposed by the Bureau of Elections due to "oversight," the Michigan Campaign Finance Act calls for the imposition of fines, penalties, and even prosecution. Between 2010-2018, the Washtenaw County Clerk did, in fact, impose tens of thousands of dollars in such fines. The Michigan Campaign Finance Network reported in 2018 that half of Michigan's current lawmakers have faced penalties for their "missteps" which violated the Michigan Campaign Finance Act (<http://mcfn.org/node/6473/half-of-current-lawmakers-have-faced-penalties-for-campaign-finance-reporting-missteps>).

On Nov. 14, 2018, Michigan Senate candidate Anuja Rajendra was arraigned on criminal charges concerning "oversights" regarding that candidate's use of the English language in her campaign literature. Those "oversights" were reported as alleged CFA violations in a complaint to the Bureau of Elections. The complaint was turned over to the Washtenaw County Prosecutor's office.

"University of Michigan Email System"

Mr. Levine seeks to argue, further, that his sending mass emails to campaign against a candidate running for office using a University of Michigan email address, does not violate any University policy. He falsely claims that the University of Michigan does not restrict "personal use of its email systems by employees and does not seek to limit such use to non-political activities." What follows is from the University of Michigan Standard Practice Guidelines

concerning the use of electronic resources, policies which apply to "all faculty, staff, students, affiliates and alumni" (<http://spg.umich.edu/policy/601.07>) Section IV:B,1-7:

4. Do not use university resources, including official university email lists or listservs, to campaign for or against a ballot initiative or candidate running for office or to conduct a political campaign.
5. Do not send unsolicited mass communications unrelated to university business or activities.

This next excerpt is from the office of the University of Michigan Vice President for Communications, "Guidelines for Political Campaigns and Ballot Initiatives, Sept. 2018" [The link was included in the original complaint.] <https://publicaffairs.vpcomm.umich.edu/key-issues/guidelines-for-political-campaigns-and-ballot-initiatives/>

"Faculty, staff, and students cannot, however, use public resources to engage in political activities for or against a candidate or ballot initiative. Here are some examples of political activities that use public resources in a manner that is generally not permitted under Michigan law: Using University equipment to copy material supporting or opposing a ballot initiative or candidate, subject to existing departmental policies regarding personal use. Conducting a political campaign from a University office or other University facility, or otherwise using University resources, such as a University-provided telephone, computer, e-mail address, social media account, etc., to conduct such a campaign."

Identification Statement Missing

The CFA doesn't exempt electronic communications from the identification statement requirement. In campaigning against a candidate for local office, and in urging recipients to join a political organization, using University of Michigan resources, Mr. Levine's email provided with the complaint should also have included an identification statement as required by the CFA. It does not.

Mr. Levine, argues that his "oversight" was "irrelevant." It's akin to telling a police officer who has pulled you over that you ran the red light but, despite the traffic regulations in place, those regulations are "irrelevant" when the traffic violation is the result of a mere "oversight." It's a rather solipsistic argument in the face of the importance of the CFA and Michigan laws governing the use of university resources to campaign against candidates for office.

Sincerely,

Elizabeth Hunter
827 Bruce
Ann Arbor, MI 48103





STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

December 21, 2018

Jonathan Levine
456 Hilldale Drive
Ann Arbor, Michigan 48105

Re: *Hunter v. Levine*
Campaign Finance Complaint
No. 2018-08-84-33

Dear Mr. Levine:

This letter concerns the complaint that was recently filed against you, which relates to a purported violation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* The Department of State has received a rebuttal statement from the complainant, a copy of which is enclosed with this letter.

Section 15(10) of the MCFA, MCL 169.215(10), requires the Department to determine within 45 business days from the receipt of the rebuttal statement whether there is a reason to believe that a violation of the Act has occurred. The complaint remains under investigation at this time.

If the Department needs more information, you may be contacted. The complaint will remain under investigation until a final determination has been made. At the conclusion of the review, all parties will receive written notice of the outcome of the complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Fracassi".

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Elizabeth Hunter



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

February 12, 2019

Jonathan Levine
456 Hilldale Drive
Ann Arbor, Michigan 48105

Dear Mr. Levine:

The Department of State (Department) has concluded its investigation into the complaint filed against you by Elizabeth Hunter which alleges violations of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* This letter concerns the resolution of the complaint.

Ms. Hunter filed her complaint with the Department on October 23, 2018 and alleged that you had repeatedly used your University of Michigan (University) email address to send out mass emails to University employees which advocated against voting for a specific candidate for Ann Arbor City Council. Included as an exhibit was a copy of the email sent from your Gmail account to your University email in which an unknown number of individuals were "BCC'd." Ms. Hunter also provided an email sent to University officials alerting them of the potential policy violation.

By letter dated November 9, 2018, you responded and argued that no violation had occurred because the email was sent from your Gmail account, and that you erroneously sent the email to your University account rather than your Gmail account. You further alleged that this was incidental, and an oversight and you do not use your University account to distribute political emails.

Ms. Hunter filed a rebuttal on December 4, 2018 (dated November 26, 2018). In her rebuttal, Ms. Hunter alleged that additional emails were sent using your University account. She further disputes that this was an "oversight" and states that it is still a violation of University policy. A copy of the relevant policy was provided in her rebuttal.¹

¹ The Department notes that University policy states: "Do not use university resources, including official university email lists or listservs, to campaign for or against a ballot initiative or candidate running for office or to conduct a political campaign." Available at: <https://spg.umich.edu/policy/601.07>. The Department makes no determination as to whether this email has violated University policy.

In Michigan it is unlawful for a public body or an individual acting on its behalf to use or authorize the use of equipment, supplies, personnel, funds, or other public resources to make a contribution or expenditure. MCL 169.257(1). The words "contribution" and "expenditure" are terms of art that are generally defined to include a payment or transfer of anything of ascertainable monetary value made for the purpose of influencing or made in assistance of the qualification, passage, or defeat of a ballot question. MCL 169.204(1), 169.206(1). A knowing violation of this provision is a misdemeanor offense. MCL 169.257(4).

Under the Act, "public body" is defined as 1 or more of the following:

- (a) A state agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.
- (b) The legislature or an agency, board, commission, or council in the legislative branch of state government.
- (c) A county, city, township, village, intercounty, intercity, or regional governing body; a council, school district, special district, or municipal corporation; or a board, department, commission, or council or an agency of a board, department, commission, or council.
- (d) Any other body that is created by state or local authority or is primarily funded by or through state or local authority, if the body exercises governmental or proprietary authority or performs a governmental or proprietary function.**

MCL 169.211(7) (emphasis added). The University of Michigan is a corporate body created by the Michigan Constitution and funded directly through appropriations made by the State Legislature. Mich. Const. Art. 8, §§ 4, 5. Accordingly, it is subject to the requirements of Section 57.

Upon review, there is sufficient evidence to support the conclusion that a potential violation of the MCFA has occurred. The email at issue here falls into the category of materials in which public resources are prohibited from being used in order to circulate the message. Specifically, in the email, you discuss joining the Washtenaw County Democratic Party and the party declined to endorse a specific candidate for Ann Arbor City Council. Your email then discusses an upcoming meeting and how you will appear at the meeting to "vote against endorsing this particular candidate." Your email then specifically encourages others to attend the meeting and/or join the Washtenaw County Democratic Party. This email was sent from your Gmail account to your University account.

Based on the above, the Department determines that you improperly used public resources to expressly advocate against a candidate. You used your University account to send at least one email to an unknown number of individuals that urged them to defeat a particular candidate for city council. This amounts to a violation of section 57.

Accordingly, the Department concludes that there is sufficient evidence to support the conclusion that a potential violation of the MCFA has occurred. Upon the finding of a potential violation, the Act requires the Department to "endeavor to correct the violation or prevent a further violation by using informal methods [,]" if it finds that there may be reason to believe that

a violation has occurred, and if the Department is unable to correct or prevent additional violations, it must ask the Attorney General to prosecute if a crime has been committed. MCL 169.215(10)(a). The objective of an informal resolution is "to correct the violation or prevent a further violation [.]” *Id.*

The Department offers to resolve Ms. Hunter’s complaint informally through the execution of the enclosed conciliation agreement. The agreement requires payment of a \$100 fine to the State of Michigan. The purpose of this settlement is to correct the violation, ensure taxpayers are made whole, and deter you from committing any further violations of section 57 in the future.

If you wish to enter into the conciliation agreement, please return the original signed document to this office, along with payment of the \$100 fine to the State of Michigan by March 1, 2019.

Please be advised that if the Department is unable to resolve this informally, it is required by MCL 169.215(10)-(11) to:

- 1) Refer you to the Attorney General with a request that her office prosecute you for the crime of expending public funds to make an expenditure, a misdemeanor violation of MCL 169.257(1); or
- 2) Conduct an administrative hearing to enforce the civil penalty provided in MCL 169.215(11), which provides that the Secretary of State may seek a civil fine of triple the amount outline in 169.257(4), plus up to \$1,000.00 for each violation of the Act.

If you have any questions concerning this matter, you may contact me at (517) 335-3234.

Sincerely,

A handwritten signature in dark ink, appearing to read "Adam Fracassi", written in a cursive style.

Adam Fracassi
Bureau of Elections
Michigan Department of State

February 20, 2019

456 Hilldale Drive
Ann Arbor, MI 48105


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

Dear Mr. Fracassi:

Thank you for explaining the investigation of the Department of State into the Michigan Campaign Finance Act complaint by Ms. Elizabeth Hunter.

I respectfully request a continuance/extension of the deadline for entering into the conciliation agreement proposed by the Department until March 15, 2019 so that I may evaluate my options.

Sincerely,


Jonathan Levine

RECEIVED/FILED
MICHIGAN DEPT. OF STATE
2019 MAR -1 AM 10:25
ELECTIONS/GREAT SEAL

Fracassi, Adam (MDOS)

From: Fracassi, Adam (MDOS)
Sent: Tuesday, February 26, 2019 12:15 PM
To: 'Levine, Jonathan'
Subject: RE: Extension

Mr. Levine,

An extension is fine. You may have until March 15, 2019 to respond.

Adam Fracassi
Election Law Specialist
Bureau of Elections
Michigan Department of State
430 West Allegan Street
Lansing, Michigan 48918
(517) 335-3234

From: Levine, Jonathan <jnthnlvn@umich.edu>
Sent: Tuesday, February 26, 2019 12:14 PM
To: Fracassi, Adam (MDOS) <FracassiA@michigan.gov>
Subject: Extension

456 Hilldale Drive
Ann Arbor, MI 48105

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

Dear Mr. Fracassi:

Thank you for explaining the investigation of the Department of State into the Michigan Campaign Finance Act complaint by Ms. Elizabeth Hunter.

I respectfully request a continuance/extension of the deadline for entering into the conciliation agreement proposed by the Department until March 15, 2019 so that I may evaluate my options.

Sincerely,

Jonathan Levine

TAUBMAN COLLEGE

Jonathan Levine | Professor of Urban and Regional Planning

Taubman College of Architecture and Urban Planning | University of Michigan

2350 Art & Architecture, Taubman Wing | 2000 Bonisteel Boulevard | Ann Arbor, MI 48109-2069

Phone: 734-763-0039 | jnthnlvn@umich.edu

Office-hour [sign-up](#)



Dykema Gossett PLLC
Capitol View
201 Townsend Street, Suite 900
Lansing, MI 48933

WWW.DYKEMA.COM

Tel: (517) 374-9100

Fax: (517) 374-9191

Steven C. Liedel

Direct Dial: (517) 374-9184

Direct Fax: (855) 259-3571

Email: SLiedel@dykema.com

June 6, 2019

Hand Delivered

Mr. Adam Fracassi:
Bureau of Elections
Michigan Department of State
Richard H. Austin Building, 1st Floor
Lansing, MI 48918
E-Mail: FracassiA@michigan.gov

Re: Response to Information Submitted by Elizabeth Hunter re Jonathan Levine

Dear Mr. Fracassi:

On behalf of our client, Professor Jonathan Levine, I write to propose an alternative to the resolution by the Department of State in response to the information originally submitted by Elizabeth Hunter in a letter dated October 19, 2018, which alleged that Professor Levine sent an email from his University of Michigan email account in violation of the Michigan Campaign Finance Act.

As Professor Levine has indicated, the email in question was sent from his private Gmail account, not his University of Michigan email account. Given that the Department of State has taken respondents at their word in similar situations, we proposed the following alternative resolution using informal methods:

- (1) Professor Levine submits a signed statement (see attachment) confirming that (A) the email in question was inadvertently sent to his University of Michigan email account from his personal, private email account, (B) he fully understands that the Act prohibits the use of public resources to advocate for or against a candidate for public office, and (C) he has taken steps to avoid inadvertently sending emails to his University of Michigan email account in the future by disabling the auto-complete function within Gmail for his University of Michigan email address.
- (2) Professor Levine would accept a reminder letter from the Department of State.

We believe that this proposed resolution is both appropriate and consistent with the Department's prior resolution of similar matters involving the use of email. See, for example: *In re Schuette*, May 19, 2016 (inadvertently sent campaign email using state email account), *In re Kruger*, June

DyKEMA

Mr. Adam Fracassi:
June 6, 2019
Page 2

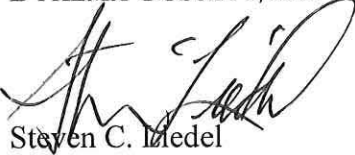
27, 2014 (inadvertently sent emails soliciting contributions to numerous individuals using county email); *In re Romick*, August 7, 2015 (indicating public body's receipt of an email message does not trigger violation of Act; and *In re Simon*, October 24, 2018 (use of email address in and of itself not sufficient to show Township funds used).

We also believe that this proposed alternative resolution would be effective in preventing any future violation of the Act.

Please let us know if you would like to discuss this proposed resolution using informal methods.

Sincerely,

DYKEMA GOSSETT, PLLC



Steven C. Medel

SCL
Attachment

cc: Jonathan Levine
Gary Gordon

108286.000003 4837-8632-1813.3

May 31, 2019

456 Hilldale Drive
Ann Arbor, MI 48105

Mr. Adam Fracassi
Bureau of Elections
Michigan Department of State
Richard H. Austin Building, 1st Floor
Lansing, MI 48918

Dear Mr. Fracassi:

This signed and acknowledged statement is in further response to the information referred to your office in a letter dated October 19, 2018 from Elizabeth Hunter.

While I did send the email dated October 10, 2018 relating to the Washtenaw County Democratic Party, the message was sent from my personal, private Gmail account (jnthnlvn@gmail.com), not from my email account at the University of Michigan (jnthnlvn@umich.edu) as Ms. Hunter indicated in her letter.

I send political emails only from my Gmail account, not from my University of Michigan email account. When the emails are sent to a group, it is my practice to use the "bcc:" feature, sending the email to myself (rather than the entire group) by entering my personal email address in the "To:" field. In the referenced email, I inadvertently and unknowingly inserted my University of Michigan email address (jnthnlvn@umich.edu) instead of my Gmail address (jnthnlvn@gmail.com). The prefixes of the two emails are identical and I mistakenly thought that I had sent the message to my personal Gmail address rather than my University of Michigan email address.

I fully understand that the Michigan Campaign Finance Act prohibits a public body, including the University of Michigan, or an individual acting on behalf of the public body, from using public equipment, supplies, personnel, or other public resources to make a contribution or an expenditure under the Act. I also understand that public resources cannot be used to advocate for or against a candidate for public office.

I have never sent an email from my University of Michigan email account that expressly advocated for or against a candidate for public office or a ballot question and will not do so in the future. That would be inconsistent with both university policy and state law.

I have put in place the following safeguards to assure that any political messages—particularly any constituting a contribution or expenditure under the Michigan Campaign Finance Act—sent from my private Gmail account are not sent to my University of Michigan email account and to reduce or eliminate the possibility of inadvertent messages:

(1) when sending emails of a political nature to a group, I will be sure to confirm a second time that the correct email address is included in the To: field before sending the email; and

(2) I have disabled the auto-complete function within Gmail associated with my University of Michigan email address so that when I begin typing "jnthnlvn ..." within Gmail, the Gmail software does not complete in an automated manner the email address using my University of Michigan email address

and instead completes the address using my private Gmail address. This will require proactive manual entry of my University of Michigan email address in full before an email can be sent to that address from my Gmail account.

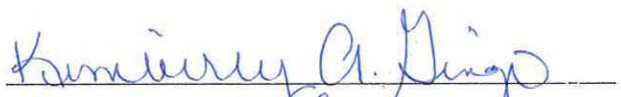
Sincerely,



Jonathan Levine

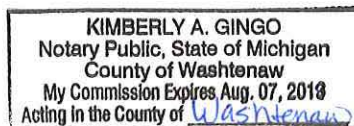
STATE OF MICHIGAN)
) SS
COUNTY OF WASHTENAW)

The foregoing instrument was acknowledged before me this 31 day of May, 2019 by Jonathan Levine.


Kimberly A. Gingo, Notary Public
Washtenaw County, State of MI

My Commission Expires: 8/7/2019

Acting in Washtenaw County



Fracassi, Adam (MDOS)

From: Fracassi, Adam (MDOS)
Sent: Thursday, November 14, 2019 1:29 PM
To: Liedel, Steven
Subject: Hunter v. Levine - Final Resolution
Attachments: Final Resolution.pdf

Steve:

Please find attached correspondence related to the above-mentioned campaign finance complaint. If you have any questions, please let me know.

Adam Fracassi, Election Law Specialist
Michigan Bureau of Elections
P.O. Box 20126
Lansing, Michigan 48901



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

November 14, 2019

Steven C. Liedel
Attorney for Jonathan Levine
Dykema Gossett PLLC
Capitol View
201 Townsend Street, Suite 900
Lansing, Michigan 48933

Re: *Hunter v. Levine*
Campaign Finance Complaint
No. 2018-10-84-57

Dear Mr. Liedel:

The Department of State (Department) has concluded its investigation into the complaint filed against your client by Elizabeth Hunter which alleges violations of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* This letter concerns the resolution of the complaint.

Ms. Hunter filed her complaint with the Department on October 23, 2018 and alleged that your client, Professor Jonathan Levine, had repeatedly used his University of Michigan (University) email address to send out mass emails to University employees which advocated against voting for a specific candidate for Ann Arbor City Council. Included as an exhibit was a copy of the email sent from Professor Levine's Gmail account to his University email in which an unknown number of individuals were "BCC'd." Ms. Hunter also provided an email sent to University officials alerting them of the potential violation.

By letter dated November 9, 2018, Professor Levine responded and argued that no violation had occurred because the email was sent from his Gmail account, and that he erroneously sent the email to his University account rather than his Gmail account. Professor Levine further alleged that this was incidental, and an oversight and he does not use his University account to distribute political emails.

Ms. Hunter filed a rebuttal on December 4, 2018 (dated November 26, 2018). In her rebuttal, Ms. Hunter alleged that additional emails were sent using Professor Levine's University account, but she did not provide any additional evidence to support her claim that University email had been misused on multiple occasions. She further disputes that this was an "oversight" and states

that it is still a violation of University policy. A copy of the relevant policy was provided in her rebuttal.¹

By letter dated February 12, 2019, the Department determined that the evidence supports the conclusion that a potential violation of the Act has occurred and attempted to informally resolve the complaint. Since then, you have been negotiating in good faith with the Department to reach an informal resolution.

In Michigan it is unlawful for a public body or an individual acting on its behalf to use or authorize the use of equipment, supplies, personnel, funds, or other public resources to make a contribution or expenditure. MCL 169.257(1). The words “contribution” and “expenditure” are terms of art that are generally defined to include a payment or transfer of anything of ascertainable monetary value made for the purpose of influencing or made in assistance of the qualification, passage, or defeat of a ballot question. MCL 169.204(1), 169.206(1). A knowing violation of this provision is a misdemeanor offense. MCL 169.257(4).

Under the Act, “public body” is defined as 1 or more of the following:

- (a) A state agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.
- (b) The legislature or an agency, board, commission, or council in the legislative branch of state government.
- (c) A county, city, township, village, intercounty, intercity, or regional governing body; a council, school district, special district, or municipal corporation; or a board, department, commission, or council or an agency of a board, department, commission, or council.
- (d) Any other body that is created by state or local authority or is primarily funded by or through state or local authority, if the body exercises governmental or proprietary authority or performs a governmental or proprietary function.**

MCL 169.211(7) (emphasis added). The University of Michigan is a corporate body created by the Michigan Constitution and funded directly through appropriations made by the State Legislature. Mich. Const. Art. 8, §§ 4, 5. Accordingly, it is subject to the requirements of Section 57 along with the University’s paid employees.

Through negotiations, you have argued that Professor Levine did not violate the requirements of Section 57. Specifically, you expressed your view that the contents of Professor Levine’s email

¹ The Department notes that University policy states: “Do not use university resources, including official university email lists or listservs, to campaign for or against a ballot initiative or candidate running for office or to conduct a political campaign.” Available at: <https://spg.umich.edu/policy/601.07>. The Department’s authority is limited to alleged violations of the MCFA and leaves to the University the question as to whether its policy was violated.

did not constitute either a “contribution” or “expenditure” as defined under the MCFA. You also argued that Professor Levine’s email did not constitute conduct prohibited by the plain text of the first sentence of section 57 because Professor Levine is not a public body and the Regents of the University of Michigan, which is a public body pursuant to Const 1963, art 8, § 5, never authorized Professor Levine to use funds, computer hardware or software or other University resources to make a contribution or expenditure. You have also indicated that Professor Levine sent the email using his private Gmail account and that email was inadvertently sent to his similar University of Michigan email address. In addition, you expressed your assessment that Ms. Hunter’s complaint did not satisfy the requirements of Section 15 of the MCFA and rules promulgated by the Secretary of State promulgated under the MCFA.

To these points, the Department respectfully disagrees. As a University of Michigan employee, Professor Levine has direct access and control over his university email account and by virtue of his employment, is an individual that acts on behalf of the university when (during normal working hours) he uses university/public resources to conduct political activity. Granted, there are set restrictions outlined under the University’s comprehensive policy that prohibit university employees from conducting political activity using their university office or email account. See Guidelines for Political Campaigns and Ballot Initiatives.² While the Department understands that the Board of Trustees explicitly through policy prohibits this type of conduct, the University Trustees’ policy does not somehow negate the violation once it has occurred or bar the Department from enforcing section 57 against individuals who violate the Act. To do so would render section 57 unenforceable as to universities that are subsidized by public resources through the State of Michigan.

Additionally, while the Department agrees that there is a distinction between sending an email and receiving the email, that distinction is without a difference when the person controls both email accounts. For example, if a public official receives an email in his government-owned email account from a third-party encouraging the recipients to vote against a ballot question, the Department has held this not to be a violation because the public official has no control over what is received. However, when the public official forwards an email containing express advocacy from his private email account to his government-owned email account, the Department has consistently held that a violation of section 57 has occurred because public resources have been used because the public official controls both accounts and taxpayer resources are expended to maintain the government-owned email account.

Therefore, the Department cannot agree with your position that because Professor Levine was not authorized by the Regents of the University of Michigan and used no public resources when inadvertently sending the email from his private Gmail account to his University-owned email address, no violation has occurred. Professor Levine had control of both accounts and used public resources by sending the email to his university account and blind copying third parties.

With these positions in mind, you have been negotiating with the Department the proper resolution to this complaint. During the negotiations, Professor Levine has submitted a signed and notarized statement in which he has stated that he mistakenly sent the message to his

² <https://publicaffairs.vpcomm.umich.edu/key-issues/guidelines-for-political-campaigns-and-ballot-initiatives/>

university account rather than his personal account. In this statement, Professor Levine agrees that the MCFA prohibits the University of Michigan and those acting on its behalf from using public equipment, supplies, or other public resources to make a contribution or expenditure that expressly advocates for the election or defeat of a candidate or ballot question. Moreover, Professor Levine indicates that he has put several safeguards in place to ensure that he does not erroneously use his University of Michigan email account to send political messages in the future.

Upon review, the Department concludes that the letter submitted by Professor Levine together with this warning letter is an appropriate resolution to the complaint. Please be advised that it is a violation of section 57 of the MCFA to use a university email account to send emails that expressly advocate for a candidate or ballot question. Moreover, the Department clarifies that it is also a violation of section 57 for public officials to send emails expressly advocating for a candidate or ballot question from his or her private email account to a publicly owned email account when the public official controls both accounts.

Please be advised that this notice has served to remind Professor Levine of his obligations under the Act to refrain from using public resources to make a contribution or expenditure and may be used in future proceedings as evidence that tends to establish a knowing violation of the Act. A knowing violation is a misdemeanor offense and may merit referral to the Attorney General for enforcement action. MCL 169.257 (4), 215(10).

If you have any questions concerning this matter, you may contact me at (517) 335-3234.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Fracassi", written in a cursive style.

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Elizabeth Hunter