

Campaign Finance Complaint Form
Michigan Department of State

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MICHIGAN DEPT OF STATE
2016 OCT 31 AM 8:59

This complaint form may be used to file a complaint alleging that someone violated the Michigan Campaign Finance Act (the MCFA, 1976 PA 388, as amended; MCL 169.201 *et seq.*). All information on the form must be provided along with an original signature and evidence. **Please print or type all information**

PLEASE PRINT OR TYPE ALL INFORMATION.

I allege that the MCFA was violated as follows:

SECTION 1. COMPLAINANT

Your Name: WILLIAM WAGNER Telephone Number: 616-350-0150
Mailing Address: 251 E. WASHINGTON ST.
City: IONIA State: MI Zip: 48846

SECTION 2. ALLEGED VIOLATOR

Name: Michigan Education Association Telephone Number: 616-794-0340
Mailing Address: 1129 S Bridge St
City: Belding State: MI Zip: 48809

SECTION 3. ALLEGED VIOLATIONS

Section(s) of the MCFA violated:

Section 47; and
Sections 51; or
Section 54

Explain how those sections were violated:

On its postcard featuring Ms. Taylor (the "Postcard"), the Michigan Education Association (the "Association") fails to identify who paid for the Postcard and makes a prohibited contribution by expressly advocating for a clearly identified candidate for public office.

The Association (along with its various local chapters) is a public labor organization in Michigan with the purpose of creating and maintaining an effective public education system in Michigan. As a labor organization, the Association is subject to limitations on campaign contributions under the Michigan Campaign Finance Act, Act 338 of 1976, MCL 169.201 *et seq.* (the “Act”). Lauren Taylor is a candidate for State Representative for Michigan’s 86th District.

Michigan Education Association’s advertisement featuring express advocacy for a clearly identified candidate for public office and without a disclaimer constitutes a violation of (1) Section 47 identification and disclaimer requirements; (2) Section 54 prohibitions on contributions by labor organizations; and (3) Section 51 independent expenditure reporting requirements.

1. The Association Has Violated Section 47 of the Act at least three times by Failing to Provide a proper Identification, Disclaimer or “Regulated Funds” notification on the Postcard.

The Postcard fails to include a legally-required disclaimer indicating the name and address of the person paying for it. Under the Act, the person who pays for a printed political advertisement must be identified on the advertisement. MCL 169.247(1). Specifically, printed material “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.” *Id.* A person who knowingly violates this provision is guilty of a misdemeanor punishable by a fine of not more than \$1,000, or imprisonment for not more than 93 days, or both. MCL 169.247(6).

The Postcard does not contain a disclaimer stating the name and address of the person responsible for paying for the advertisement. The Postcard contains only the Association’s seal and local chapter return address. Under Rule 36 (R 169.36(2), the identification required by the Act must include the words “Paid for by.” A disclaimer regarding candidate authorization is also required, but not included on this Postcard. Therefore, the Postcard violates Section 47.

In addition, the Postcard also violates Section 47(4) that requires each identification required by this section to “indicate that the printed matter...is paid for “with regulated funds”. Moreover, if the Postcard is an independent expenditure, as discussed below, it violates the requirement under Section 47(1) that such printed material contain the disclaimer: “Not authorized by any candidate committee.”

2. The Association’s Postcard Featuring Words of Express Advocacy Violates the Section 54 Prohibition on Contributions by Labor Organizations and Constitutes an Illegal Contribution to the Lauren Taylor for State Representative Campaign.

The Postcard constitutes an illegal contribution to the Lauren Taylor for State Representative campaign. Section 54 of the Act provides that “[e]xcept as otherwise provided in this section and section 55, . . . a labor organization shall not make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of a contribution under section 4(3)(a).” MCL § 169.254(1). The Act defines “contribution” as “a payment, gift, subscription, assessment, *expenditure*, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a

transfer of anything of ascertainable monetary value to a person, *made for the purpose of influencing the nomination or election of a candidate*, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party.” MCL § 169.204(1) (emphasis added). In the context of communication expenditures, the Act describes “communications containing express words of advocacy of election or defeat, such as . . . ‘elect’, . . . and ‘[candidate] for [office].” MCL § 169.206(2)(j). A knowing violation of Section 54 is a felony. MCL § 169.254(5).

Though it fails to provide a legally-required disclaimer, the Postcard indicates that it was sent by the Association. The Association is subject to Section 54 as a labor organization. The Postcard clearly identifies Ms. Taylor as a candidate for state representative. Moreover, the Association uses the word “elect” twice on the Postcard, once next to an image of Ms. Taylor. The Postcard also uses the phrase “Lauren Taylor for State Representative” and “Lauren Taylor for the 86th State House District!” These phrases are precisely the type of language characterized as express words of advocacy in MCL § 169.206(2)(j). Therefore, the Postcard is clearly “made for the purpose of influencing the nomination or election of a candidate” and is thus a contribution that runs afoul of Section 54 of the Act.

3. The Association Violated Section 51 By Failing to Report the Postcard as an Independent Expenditure.

Alternatively, the Association is permitted to make independent expenditures as a labor organization pursuant to MCL § 169.254(4), but it must follow the rules when so doing. An independent expenditure is an expenditure that “is not made in cooperation, consultation, or concert with, or at the request or suggestion of . . . a candidate [or] a candidate committee, . . . and if the expenditure is not a contribution to a committee. MCL § 169.209(2). Persons (including labor organizations) that make independent expenditures of \$100.01 or more advocating “the election or defeat of a candidate for state elective office” shall file a report with the secretary of state within ten (10) days of the independent expenditure. MCL § 169.251(1). Failure to file a report as required by Section 51 is punishable by fines and, in some cases, a misdemeanor. MCL § 169.251(2).

As discussed above, the Postcard advocates for the election of a clearly identified candidate. Thus, Section 51 of the Act requires the Association to file an independent expenditure report form as provided by the Secretary of State, together with the name, address, occupation, employer, and principal place of business of each person that contributed \$100.01 or more to the expenditure. By mailing the Postcard, the Association has made a reportable independent expenditures but has not filed the necessary reports.

Evidence that supports those allegations (attach copies of pertinent documents and other information):

Exhibit A “Elect Friends of Public Education” postcard

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 William Wagner
Signature of Complainant

OCT 30, 18
Date

SECTION 5. Certification (Supplemental to Section 4)

Section 15(6) of the MCFA (MCL 169.215) requires that the signed certification found in section 4 of this form be included in every complaint. However, if, after a reasonable inquiry under the circumstances, you are unable to certify that certain factual contentions are supported by evidence, you may also 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:

X _____
Signature of Complainant

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 filing the complaint.

Mail or deliver the completed complaint form with an original signature and evidence to the following address:

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

Exhibit A

ELECTION DAY

**TUESDAY,
NOV. 6**

**POLLS OPEN
7a.m.-8p.m.**

**ELECT
FRIENDS OF
PUBLIC
EDUCATION!**

**VALUE STUDENTS
RESPECT EDUCATORS
FUND OUR SCHOOLS**

Belding MEA Office
1129 South Bridge Street
Belding, MI 48809



**THIS FALL,
CHECK 'EM ALL!**

For more information on MEA
recommendations, visit
MEA.YourVoter.Guide

PRESORTED
FIRST CLASS

U.S. POSTAGE » PITNEY BOWES
ZIP 48823 \$ 000.42⁴
02 4W
0000337338 OCT 25 2018



MI-SMB 48809

**ON NOV. 6,
LET'S ELECT
LEADERS
WHO WILL**

**VALUE
STUDENTS
RESPECT
EDUCATORS
FUND OUR
SCHOOLS**



**L A U R E N
TAYLOR**

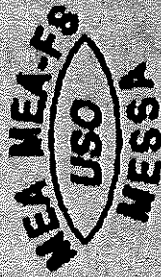
for State Representative

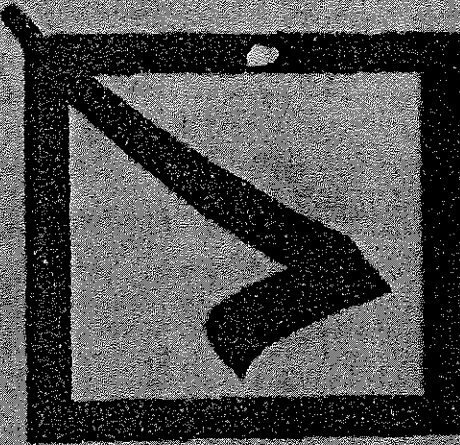
As a state legislator Lauren Taylor will defend public education, understanding that quality public schools strengthen our communities and build a better economy for all. "If we want to invest in job growth, income growth, and productivity, we need to invest in our workforce. The best way to do that is to prioritize public education funding. The future of our communities and our state depends on it."

Lauren Taylor for the 86th State House District!

1129 South Bridge

Belding, MI 48801



 THIS CHECK



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

November 7, 2018

Mark Brewer
Counsel for Michigan Education Association
17000 West Ten Mile, Second Floor
Southfield, Michigan 48075

Dear Mr. Brewer:

The Department of State (Department) received a formal complaint filed by William Wagner against the Michigan Education Association (MEA), alleging that it 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.

The MCFA prohibits a corporation from making a contribution or expenditure that are excluded from the definition of "contribution." Under the MCFA, a contribution is defined as "a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party." MCL 169.204(1). A contribution is not an independent expenditure. MCL 169.204(3)(e). Corporations and Labor organizations are barred from directly making political contributions. MCL A knowing violation of this section is a felony, punishable by a fine of not more than \$10,000 or imprisonment. MCL 169.254(5).

Corporations and labor organizations are permitted to make independent expenditures under the MCFA, but are required to file an independent expenditure report within ten (10) days of independent expenditures totaling \$100.01 or more. MCL 169.251(1). A person who fails to file a report required may be subjected to a late filing fees up to \$5,000 and a civil fine up to \$1,000 and/or imprisonment for no more than 90 days.

Finally, the MCFA and corresponding administrative rules require a person who produces printed material that relates to an election to include the phrase "Paid for by [name and address of the person who paid for the item]." MCL 169.247(1), Mich. Admin. R 169.36(2). A paid television or radio ad that relates to a candidate must include a disclaimer which states whether it was authorized by a candidate. MCL 169.247(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).

Mr. Wagner alleges that the MEA made a prohibited contribution by mailing a postcard that contained express advocacy and failed to contain a proper paid for by statement. The postcard expressly advocated for the election of Lauren Taylor, Candidate for State Representative.

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. Should you elect to file a response, please address the allegations in the complaint and submit copies of all available evidence to support your response.

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 Mr. Wagner, 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 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 penalties provided in section 54 of the Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Fracassi", with a stylized, cursive script.

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: William Wagner

Fracassi, Adam (MDOS)

From: Mark Brewer <mbrewer@goodmanacker.com>
Sent: Wednesday, November 21, 2018 12:59 PM
To: Fracassi, Adam (MDOS)
Subject: Response to Complaint of William Wagner
Attachments: 20181121130649223.pdf

Adam,

Attached please find the response to this complaint. It is meritless and should be dismissed. Please advise whether you need a hard copy of the response.

Mark Brewer

Mark Brewer
Attorney
Goodman Acker P.C.
17000 West Ten Mile, Second Floor
Southfield, Michigan 48075
MBrewer@goodmanacker.com

248-483-5000 Phone
248-483-3131 Fax

www.goodmanacker.com

November 21, 2018

Adam Fracassi
Bureau of Elections
430 W. Allegan, 1st Floor
Lansing, MI 48918

Re: Complaint of William Wagner

Dear Mr. Fracassi:

* GERALD H. ACKER
** BARRY J. GOODMAN
TIM SULOLLI
LARRY R. MAITLAND II
BRADLEY M. PERI
MARK BREWER
JORDAN B. ACKER
RONITA BAHRI
MICHELLE T. AARON
LEAH S. HOUGABOOM
AMANDA B. WARNER
BART P. O'NEILL

*ALSO ADMITTED IN DC
**ALSO ADMITTED IN FLORIDA
www.goodmanacker.com

This is the response of the Michigan Education Association to the complaint of William Wagner included with your letter dated November 7, 2018.

Mr. Wagner complains of an MEA mailer concerning Lauren Taylor, a candidate for State Representative in the 86th State House District. He alleges violations of the Michigan Campaign Finance Act (MCFA) based on the lack of identification, use of labor organization funds, and failure to report.

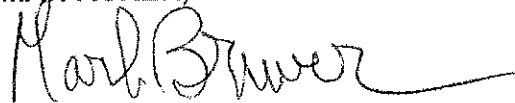
The MCFA regulates certain "contributions" and "expenditures" in Michigan state and local elections. However, there are a number of exceptions to its requirements which apply here. Applicable here are the exemption from the definition of "expenditure" of a labor organization's "communications...with [its] paid members," MCL 169.206(2)(a), and the exemption from the identification requirement for a "communication [with] individuals who can be solicited for contributions to [a] separate segregated fund," MCL 169.247(1).

As set forth in the Affidavit of Sharon Janes, attached hereto, the mailer "was sent exclusively to paid members of the MEA." Paragraph 5. As such, it was an exempt communication under MCL 169.206(2)(a) and MCL 169.247(1) because paid members can be solicited for contributions to MEA's separate segregated fund. See MCL 169.255(4)(a).

The Complaint lacks merit and should be dismissed.

Very truly yours,

GOODMAN ACKER, P.C.



Mark Brewer

STATE OF MICHIGAN
DEPARTMENT OF STATE
BUREAU OF ELECTIONS

AFFIDAVIT OF SHARON JANES

Sharon Janes, being first duly sworn, deposes and says that she makes this Affidavit based on personal knowledge of the facts stated herein and if sworn as a witness she can competently testify to the following facts to the best of her knowledge:

1. I am an employee of the Michigan Education Association and my job title is Data Coordinator.
2. Among my duties are working on communications with MEA's paid members.
3. I have reviewed the copy of the mailer attached as **Exhibit A** to the complaint of William Wagner dated October 30, 2018.
4. I am familiar with that mailer because I assisted in its mailing.
5. That mailer was sent exclusively to paid members of the MEA.

FURTHER AFFIANT SAYETH NOT

Sharon Janes
SHARON JANES

Subscribed and sworn to before me this
20th day of November, 2018.

Patricia M. Helmer
Notary Public

PATRICIA M. HELMER
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF SHIAWASSEE
My Commission Expires August 5, 2020
Noting in the County of Ingham



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

November 26, 2018

William Wagner
251 E. Washington Street
Ionia, Michigan 48846

Re: *Wagner v. Michigan Education Association*
Campaign Finance Complaint
No. 2018-10-94-47

Dear Mr. Wagner:

The Department of State received a response to the complaint you filed against the Michigan Education Association, 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: Mark Brewer, Attorney for MEA



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

February 15, 2019

William Wagner
251 East Washington Street
Ionia, Michigan 48846

Re: *Wagner v. Michigan Education Association*
Campaign Finance Complaint
No. 2018-10-94-47

Dear Mr. Wagner:

The Department of State (Department) has concluded its investigation into the formal complaint you filed against the Michigan Education Association (MEA), alleging that it violated the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* This letter concerns the disposition of your complaint.

Your complaint was filed with the Department on October 31, 2018 and alleged that the MEA violated sections 47, 51, and 54. Specifically, you stated that the MEA is a public labor organization and mailed a postcard that expressly advocated for Lauren Taylor, a candidate for State Representative in the 2018 general election. You further indicated that this postcard failed to contain a proper paid for by statement and it was an improper contribution to the Lauren Taylor for State Representative campaign in violation of section 54. Finally, you allege that the failure to report the expenditure was a violation of section 51. Copies of the postcard were submitted with your complaint.

By letter dated November 21, 2018, Mark Brewer, counsel for the MEA, filed a response to your complaint. Mr. Brewer stated that the postcard was mailed exclusively to paid members for the purpose of soliciting contributions to the MEA's separate segregated fund. In support of this, an affidavit of Sharon Janes was submitted with the response. Ms. Janes indicated that she assisted in sending out the mailing in her employment capacity with the MEA. Ms. Janes stated that it was only sent to paid members of the MEA. Finally, Mr. Brewer alleged the postcard was not an expenditure and was not required to comply with section 47 according to the exemptions outlined under the Act. No rebuttal was filed with the Department.

The MCFA prohibits a corporation from making a contribution or expenditure that are excluded from the definition of "contribution." Under the MCFA, a contribution is defined as "a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, for the qualification, passage, or defeat of

a ballot question, or for the qualification of a new political party.” MCL 169.204(1). A contribution is not an independent expenditure. MCL 169.204(3)(e). Corporations and Labor organizations are barred from directly making political contributions. MCL A knowing violation of this section is a felony, punishable by a fine of not more than \$10,000 or imprisonment. MCL 169.254(5).

Corporations and labor organizations are permitted to make independent expenditures under the MCFA, but are required to file an independent expenditure report within ten (10) days of independent expenditures totaling \$100.01 or more. MCL 169.251(1). A person who fails to file a report required may be subjected to a late filing fees up to \$5,000 and a civil fine up to \$1,000 and/or imprisonment for no more than 90 days.

Finally, the MCFA and corresponding administrative rules require a person who produces printed material that relates to an election to include the phrase “Paid for by [name and address of the person who paid for the item].” MCL 169.247(1), Mich. Admin. R 169.36(2). A paid television or radio ad that relates to a candidate must include a disclaimer which states whether it was authorized by a candidate. MCL 169.247(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).

However, under the Act, an expenditure does not include “An expenditure for communication by a person with eh person’s paid members or shareholders and those individuals who can be solicited for contributions to a separate segregated fund under section 55.” MCL 169.206(2)(a). Additionally, the requirements of section 47 do not “apply to communications between a separate segregated fund established under section 55 and individuals who can be solicited for contributions to that separate segregated fund under section 55.” MCL 169.247(1).

With the response to the complaint, Mr. Brewer submitted an affidavit of an MEA employee responsible for the mailing of the postcard who swears under penalty of perjury that the postcard was sent exclusively to paid members of the MEA. In the absence of evidence to the contrary, the Department takes Ms. Janes at her word that this postcard was a communication to paid members and is exempted from the requirements of section 47. Furthermore, because it is not considered an expenditure under the Act, there is no violation of section 54 or 51.

Therefore, the Department concludes that the evidence does not support the conclusion that a possible violation of the Act has occurred. Accordingly, the Department dismisses the complaint. The file on the matter is now closed and no further enforcement action will be taken.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Fracassi', with a stylized flourish at the end.

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Mark Brewer, via email