

By email transmission: fracassiA@michigan.gov

August 5, 2022

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

RE: Request for Declaratory Ruling/Interpretative Statement Under MCL 169.215

Dear Mr. Fracassi:

As provided for in Section 15 (1)(e) and (2) of the Michigan Campaign Finance Act (MCFA) and Rule 169.6 of the Michigan Administrative Code, I am writing to request a declaratory ruling or in the alternative an interpretative statement providing an informational response to the questions presented within the same time limitations applicable to a declaratory ruling.

STATEMENT OF FACTS:

1. Under the Michigan Campaign Finance Act (MCFA), an Independent Expenditure Committee (hereinafter referred to as a Super PAC) is permitted to raise funds, including funds once forbidden from corporations, labor unions, and domestic dependent sovereigns. A Super PAC may make independent expenditures in support of or in opposition to candidates and ballot questions.
2. Corporations, labor unions, and domestic dependent sovereigns are still prohibited under Section 54 of the MCFA from making contributions or expenditures to candidates.
3. *Citizens United v Federal Election Commission*, 558 U.S. 310, (2010), reversing *Austin v Michigan Chamber of Commerce*. 494 U.S. 652 (1990) and *Michigan Chamber of Commerce v Land*, 725 F. Supp 2d 665 (2010), allowed corporations, labor unions and domestic dependent sovereigns to raise funds for an independent expenditure-only political committee (today an independent expenditure committee) to make independent expenditures that expressly advocate the election or defeat of a candidate. A basic tenet of these court rulings is that an independent expenditure cannot be coordinated with a candidate or the candidates' agents.
4. The MCFA defines "independent expenditure" in MCL 169.209(2) as follows:

"Independent expenditure means an expenditure by a person if the expenditure is not made in cooperation, consultation, or in concert with, or at the request or suggestion of, a ballot question committee or a candidate, a candidate committee or its agents or a political party or its agents, and if the expenditure is not a contribution to a committee."

5. Section 24c of the MCFA details how the “independent nature” of an independent expenditure can be defeated by demonstrating “coordination” between a Super PAC and a candidate.
6. In an interpretative statement issued by the Michigan Department of State to Kathleen Boyle on June 15, 2001, (1-01-CI), the Department said a hyperlink to a candidate’s website is an “expenditure” under the MCFA when it wrote:

“We see no reason to depart from the FEC’s rationale with regard to hyperlinks when interpreting the MCFA. A hyperlink is tantamount to a form of advertising, in that it is designed to induce the internet viewer to visit a website he or she would not ordinarily visit. It eliminates the need to learn about that the user supports or opposes, finding a candidate’s address (e-mail or traditional) and asking for more information. Instead, a hyperlink takes the viewer directly to the candidate—an electronic middleperson. While this process holds the potential to make campaigns and candidates more accessible, it is still something of value for the “linked” candidate and would thus constitute an expenditure as defined in Section 6 of the MCFA.”

QUESTIONS PRESENTED:

- (1) If a Super PAC pays for the placement of an internet advertisement on a third party’s site which expressly advocates to the general public the election or defeat of a candidate, is that advertisement required to have the identification or disclaimer required of a print or broadcast advertisement under Section 47 of the MCFA?
- (2) Is a Super PAC internet paid advertisement on a third party’s site that expressly advocates the election of a candidate permitted to include a “hyperlink,” which when clicked takes the ad’s viewer directly to a candidate’s own website?

On the candidate’s website, the internet user may learn more information about the candidate, such as the candidate’s biography, and position on issues. The viewer may also be asked to donate to the candidate’s committee, volunteer as a campaign worker, or request a yard sign, etc.

- (3) *Boyle* held a hyperlink has ascertainable monetary value. Does a hyperlink’s inclusion on a Super PAC internet paid advertisement become a prohibited in-kind contribution by a Super PAC to a candidate committee?
- (4) If the “independence” between a candidate and Super PAC is defeated, does the expenditure revert from independent expenditure status to an expenditure prohibited under Section 54 of the MCFA?

- (5) *Boyle* was issued before Super PACs were recognized in the MCFA. Back in 2001, *Boyle* said a labor organization, like the MEA, could provide a hyperlink on its website to a candidate's website if the MEA were reimbursed in advance by the MEA-PAC, at the actual or fair market value of creating and placing the hyperlink.

Confirm whether or not this interpretation is valid today.

Does the MCFA permit a candidate committee to reimburse a Super PAC in advance to place a hyperlink on a Super PAC internet paid advertisement to the general public to the candidate's website?

Would reimbursement itself defeat the independent nature of an independent expenditure under Section 24c by meeting the very definition of coordination: cooperation, consultation, or in concert between a Super PAC and a candidate, or a candidate committee?

Please contact me if you require anything further.

Sincerely,

s/Robert S. LaBrant

Robert S. LaBrant
12411 Pine Ridge Drive • Perry, Michigan 48872
Phone: (517) 881-5146 • E-mail: bob@boblabrant.com