



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

July 7, 2022

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

Re: Campaign Finance Complaint against The **American Civil Liberties Union
and Sixteen Thirty Fund**

To the Michigan Department of State:

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We achieve this mission by hanging a lantern over public officials who put their own interest over the interests of the public good. We submit this complaint, pursuant to the Michigan Campaign Finance Act section 169.215, to request the Department of State immediately investigate and take appropriate enforcement action against:

American Civil Liberties Union
125 Broad Street
New York, NY 10004
Telephone No. (212) 549-2500

Sixteen Thirty Fund
1828 L Street, NW, Suite 300B
Washington DC 20036
Telephone No. (202) 971-1337

The American Civil Liberties Union (ACLU) and Sixteen Thirty Fund are tax-exempt organizations that are not registered as a ballot question committee, but their activity clearly demonstrates they should have registered as a committee and filed the required reports.¹ **From**

¹ See, e.g., *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021) (attached as Exhibit A).

November 2021 to April 2022, The ACLU contributed \$2,606,199, and the Sixteen Thirty Fund contributed \$1,525,000 to a ballot question committee, Michiganders for Fair Lending (Fair Lending).² These contributions were “substantial” to Fair Lending—comprising 99.9% of Fair Lending’s total funding during that period.³

It is not a violation for an organization to make contributions to a ballot question committee.⁴ However it is “a violation of the Act for an organization to raise money on behalf of the ballot question committee in order to shield the organization’s donors from the reporting requirements of the Act.”⁵ The facts of this case demonstrate that this is precisely what occurred here, and they are analogous to a 2021 Department decision that found organizations “were soliciting or receiving funds for the purpose of collecting contributions with the intent of financially supporting the ballot question committee.” Thus, we request the Department investigate and find there is reason to believe that a violation of the MCFA occurred.⁶

I. Law.

Under Michigan law, a “committee” is defined as an organization:

“that receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party, if contributions received total \$500.00 or more in a calendar year or expenditures made total \$500.00 or more in a calendar year.”⁷

The statute further specifies that an organization does not meet the definition of a committee solely because it makes an expenditure to a ballot question committee or an independent expenditure committee.⁸ However, the organization does meet the definition of a committee if it

² Michiganders For Fair Lending, Michigan Campaign Finance Contribution Search, Department Of State, accessed July 5, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi.

³ *Id.*

⁴ *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021) (citing MCL 169.203(4)).

⁵ *Id.* (citing MCL 169.203(4)).

⁶ MCL 169.15(10).

⁷ MCL 169.203(4).

⁸ *Id.*

“solicits or receives contributions for the purpose of making an expenditure to that ballot question committee or independent expenditure committee.”⁹

Whether or not an organization meets the definition of a committee is consequential because a committee is required to report and publicly disclose information. An organization must file a statement of organization within ten days of formation and thereafter file statements disclosing the organization’s contributions and expenditures.¹⁰ If an organization fails to file the required statements, civil or criminal penalties are imposed.¹¹

To determine whether an organization has “solicited or received contributions for the purpose of making an expenditure to a ballot question committee” and thus has become a committee itself, the Department examines facts showing the two organizations are not independent of one another.¹² For instance, in cases prior to 2021, some specific facts the Department considered when it found a corporation has become a committee are: (1) the corporation and ballot question committee formed within a short period of time; (2) the organizations had the same officers; (3) a high percentage of the ballot question committee’s total funding was from the corporation; and (4) the flow of money between the corporation and ballot question committee demonstrated a relationship between the two groups.¹³

Then, in an October 27, 2021 decision, the Michigan Department of State considered the case of *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Finance Complaint filed May 25, 2021 (decision filed Oct. 27, 2021) (2021 Complaint). This

⁹ *Id.*; *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021); *LaBrant v. Unlock Michigan*, MI Campaign Finance Complaint filed Sept. 17, 2020 (decision filed April 9, 2021).

¹⁰ MCL 169.224.

¹¹ *See, e.g.*, MCL 169.234.

¹² *Id.*; *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021) (explaining evidence the corporation raised significant funds, contributed the funds to a ballot question committee within the calendar year the funds were raised, and the ballot question committee immediately paid vendors supported a finding the corporation was a committee and must register with the Department); *LaBrant v. Unlock Michigan*, MI Campaign Finance Complaint filed Sept. 17, 2020 (decision filed April 9, 2021) (explaining evidence the corporation and ballot question committee are controlled by the same individuals and functioning as the same entity support a finding the corporation is a committee and must register with the Department).

¹³ *LaBrant v. Unlock Michigan*, MI Campaign Finance Complaint filed Sept. 17, 2020 (decision filed April 9, 2021); *Turnaround Detroit v. Detroit Forward*, MI Campaign Finance Complaint (decision filed April 9, 2014), available at: https://www.michigan.gov/-/media/Project/Websites/sos/14delrio/Turnaround_Detroit_V_Detroit_Forward_and_MCEF_pt_2.pdf?rev=0e1efb6028ff45389da6de8c305aa677 (considering that the corporation contributed over 33% of the ballot question committee’s total funding during the entire Detroit mayoral election cycle).

case involved two 501(c)(4) organizations, Michigan Citizens for Fiscal Responsibility (MCFR) and Michigan! My Michigan! (MMM), which were not registered as committees themselves but had made contributions to a ballot question committee, Unlock Michigan (Unlock).¹⁴

The Department had two pieces of evidence which led to their ruling: (1) the organizations' 2019 form 990 showing their assets at the end of the year and (2) the amount of contributions they gave as disclosed by Unlock in 2020.¹⁵ MCFR had \$715,137 in assets at the end of calendar year 2019 and contributed approximately \$1,780,000 to Unlock from June to October 2020.¹⁶ MMM had \$172,452 in assets at the end of calendar year 2019 and contributed approximately \$550,000 to Unlock from June to October 2022.¹⁷

There was no evidence of the date or amount of contributions received by MCFR and MMM throughout 2020 or the total amount of their assets at any particular point during the year.¹⁸ Both MCFR and MMM filed affidavits stating that they neither "solicited or received contributions for the purpose of making an expenditure to Unlock Michigan or any other ballot question committee."¹⁹

After comparing MCFR and MMM's assets at the beginning of 2020 and the contributions each made to the ballot question committee during the year, the Department found that the assets MCFR and MMM each contributed to the ballot question committee during 2020 "far exceeds the assets controlled by the organizations" at the beginning of the year.²⁰ This demonstrated that MCFR and MMM were fundraising prior to or at the same time as their contributions to Unlock. Additionally, MCFR and MMM made contributions to the ballot question committee "within days of similarly sized payments" from the ballot question committee to its vendor, which demonstrated coordination "to some extent."²¹ The Department found there "may be reason to believe" that MCFR and MMM should have registered as committees themselves and filed the required statements:²²

¹⁴ *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

“As previously stated, it is not a violation of the Act for a group to raise funds in its normal course of conduct and make contributions to a ballot question committee or to coordinate with that ballot question committee. It is, however, a violation of the Act for an organization to raise money on behalf of the ballot question committee in order to shield the organization’s donors from the reporting requirements of the Act. The fundraising necessary to allow MCFR to contribute \$1,780,000 to Unlock and MMM to contribute \$550,000 to Unlock from June to October 2020 is substantial. Although it may be possible that each entity raised those funds in the first half of 2020 independently of each entity’s support for Unlock, to assume that the aggressive fundraising activity necessary for each organization to raise the sums that were then transferred to Unlock was completely independent strains credulity. The disparity between each organization’s assets going into 2020, the amount that each organization contributed to Unlock, and the timing of those contributions demonstrate a level of coordination showing the entities were not independent of each other.

In particular, the number of payments that MCFR and/or MMM made to Unlock days before Unlock made similarly sized payments to NPM suggests that MCFR and MMM were soliciting or receiving funds for the purpose of collecting contributions with the intent of financially supporting Unlock. Such fundraising for the purpose of supporting a ballot question committee, as is evidenced in the instant case, makes MCFR and MMM themselves ballot question committees responsible for registration and for filing appropriate campaign statements under the MCFA, but neither organization, to date, has registered as a committee nor filed those campaign statements as required by sections 24 and 33 of the Act.

Given the coordination between Unlock, the proximity of contributions made to Unlock and the expenditures made by Unlock, and the fact that neither MCFR nor MMM would have been able to make such contributions to Unlock without soliciting/receiving additional funds during 2020, there is reason to believe that MCFR and MMM may have solicited/received funds for the purpose of making contributions to Unlock.”

Therefore, in addition to the factors established by the Department prior the 2021 Complaint, one factual scenario where the Department found an organization “solicits or receives contributions for the purpose of making an expenditure to that ballot question committee” and is thus a ballot question committee itself is when: (1) the organization solicited funds prior to or simultaneously with making contributions to a ballot question committee, and (2) the amount or timing of either contributions by an organization or payments by a ballot question committee to vendors indicate coordination.

II. Analysis

Issue Presented: Whether The ACLU and the Sixteen Thirty Fund Are Committees Thereby Mandating Registration Obligations With the Department.

The American Civil Liberties Union (ACLU) and the Sixteen Thirty Fund are social welfare organizations under section 501(c)(4) of the Internal Revenue Code.²³ The ballot question committee Fair Lending was formed on October 1, 2021.²⁴ From November 2021 to April 2022, the ACLU contributed \$2,606,199 to Fair Lending and Sixteen Thirty Fund contributed \$1,525,000 to Fair Lending, for a total of \$4,131,199.²⁵ These contributions were “substantial” to Fair Lending—**comprising 99.9% of Fair Lending’s total funding during that period.**²⁶ Clearly, Fair Lending simply would not have existed without this funding—the ACLU and Sixteen Thirty Fund **are** the ballot question committee.

The timing of the contributions and vendor payments further show the organizations were not independent. The initial contributions from the ACLU and the Sixteen Thirty Fund occurred immediately after Fair Lending’s formation. The ACLU and Sixteen Thirty Fund continued contributing, which was often timed with payments by Fair Lending to its vendors, as set out in the following chart:

²³ American Civil Liberties Union, Form 990, Internal Revenue Service, accessed July 5, 2022, available at: https://apps.irs.gov/pub/epostcard/cor/133871360_202003_990O_2021060818292134.pdf; Sixteen Thirty Fund, Form 990, Internal Revenue Service, accessed July 5, 2022, available at: https://apps.irs.gov/pub/epostcard/cor/264486735_201812_990O_2020020317100380.pdf.

²⁴ Michiganders for Fair Lending, Committee Statement Of Organization, filed Oct. 1, 2021, available at: <https://cfrsearch.nictusa.com/committees/520155>.

²⁵ Michiganders For Fair Lending, Michigan Campaign Finance Contribution Search, Department Of State, accessed July 5, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi.

²⁶ *Id.*

Selected transactions reported by Michiganders for Fair Lending²⁷

Date	Contributing Organization/Vendor	Amount Contributed to Michiganders for Fair Lending	Amount Paid by Michiganders for Fair Lending	Running balance
November 3, 2021	Sixteen Thirty Fund	\$25,000.00		\$25,055.00
February 3, 2022	American Civil Liberties Union	\$36,199.00		\$61,255.03
February 4, 2022	Sixteen Thirty Fund	\$500,000.00		\$561,255.03
February 11, 2022	Heather Ricketts		\$4,000.00	\$557,255.03
February 11, 2022	Miller Canfield		\$14,274.00	\$542,981.03
February 11, 2022	Miller Canfield		\$21,412.00	\$521,569.03
February 11, 2022	Fieldworks LLC		\$320,000.00	\$201,569.03
February 15, 2022	American Civil Liberties Union	\$325,000.00		\$526,569.03
February 16, 2022	Fieldworks LLC		\$320,000.00	\$206,569.03
February 18, 2022	Sixteen Thirty Fund	\$400,000.00		\$605,781.53
March 1, 2022	Fieldworks LLC		\$864,614.42	\$(260,705.24)
March 1, 2022	American Civil Liberties Union	\$430,000.00		\$169,294.76
March 10, 2022	American Civil Liberties Union	\$917,500.00		\$1,086,789.76
March 23, 2022	Fieldworks LLC		\$534,933.89	\$551,772.87
April 5, 2022	American Civil Liberties Union	\$897,500.00		\$1,449,273.08
April 7, 2022	Sixteen Thirty Fund	\$600,000.00		\$2,049,273.08

Notably, on February 15, 2022, the ACLU contributed \$325,000, and the very next day Fair Lending paid a vendor \$320,000. Similarly, on March 1, 2022, Fair Lending paid a vendor \$864,614.42, an amount that would have placed Fair Lending in a deficit, if not for a \$430,000 contribution made on the same day by the American Civil Liberties Union. Given that contributions by the ACLU and Sixteen Thirty Fund to Fair Lending were closely followed by

²⁷ Michiganders For Fair Lending, Michigan Campaign Finance Contribution Search, Department Of State, accessed July 5, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi; Michiganders For Fair Lending, Michigan Campaign Finance Expenditure Search, Department Of State, accessed July 5, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/exp_anls_res.cgi.

expenditures Fair Lending made to its vendors totaling a similar value, it is clear that the ACLU and Sixteen Thirty Fund continued to coordinate with Fair Lending after its formation.

Because the ACLU and the Sixteen Thirty Fund do not publicly disclose their donations and expenditures, the total assets controlled by these entities or the timing of the contributions they received prior to November 2021 are not publicly known. First, the 2021 Complaint instructed this information is not required. The Department did not have this information for MCFR and MMM prior to their donations to Unlock, however, it was found to be unnecessary and it was presumed any funds raised were for the purpose of financing Unlock. The same standard certainly must apply here. Second, it is not relevant to the facts of this case. Both the ACLU and Sixteen Thirty Fund were the sole funders of Fair Lending. After their initial contribution, both the ACLU and Sixteen Thirty Fund presumably continued to fundraise while at the same time knowing they would continue to pay for **all** of Fair Lending's expenses. Thus, they were "collecting contributions with the intent of financially supporting" Fair Lending.

Applying the analysis in the 2021 Complaint to the facts in the present case: "[I]t is not a violation of the Act for a group to raise funds in its normal course of conduct and make contributions to a ballot question committee or to coordinate with that ballot question committee. It is, however, a violation of the Act for an organization to raise money on behalf of the ballot question committee in order to shield the organization's donors from the reporting requirements of the Act."²⁸

Shortly after it was formed the ACLU and Sixteen Thirty Fund became Fair Lending's first and essentially only contributors. From November 2021 to April 2022, the ACLU contributed \$2,606,199 to Fair Lending and Sixteen Thirty Fund contributed \$1,525,000 to Fair Lending. These are substantial contributions, and "the timing of those contributions demonstrate a level of coordination showing the entities were not independent of each other."²⁹

"In particular, the number of payments that [the ACLU] and/or [Sixteen Thirty Fund] made to [Fair Lending] days before [Fair Lending] made similarly sized payments to [its vendors] suggests that [the ACLU] and [Sixteen Thirty Fund] were soliciting or receiving funds for the purpose of collecting contributions with the intent of financially supporting [Fair

²⁸ *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021).

²⁹ Michiganders For Fair Lending, Michigan Campaign Finance Contribution Search, Department Of State, accessed July 5, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi; Michiganders For Fair Lending, Michigan Campaign Finance Expenditure Search, Department Of State, accessed July 5, 2022, available at: https://miboecfr.nictusa.com/cgi-bin/cfr/exp_anls_res.cgi. *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021)

Lending].”³⁰ Both the ACLU and Fair Lending presumably continued to fundraise over the time period they were continuing to contribute to Fair Lending, showing they were accepting contributions with the intent of financially supporting Fair Lending. Thus, making “[the ACLU] and [Sixteen Thirty Fund] themselves ballot question committees responsible for registration and for filing appropriate campaign statements under the MCFA, but neither organization, to date, has registered as a committee nor filed those campaign statements as required by sections 24 and 33 of the Act.”³¹

“Given the coordination between [Fair Lending], the proximity of contributions made to [Fair Lending] and the expenditures made by [Fair Lending], and the [presumed] fact that [the ACLU] nor [Sixteen Thirty Fund] stopped fundraising before or during the time it supported Fair Lending], there is reason to believe that [the ACLU] and [Sixteen Thirty Fund] may have solicited/received funds for the purpose of making contributions to [Fair Lending].”³²

III. Conclusion & Request for Action.

The facts support a finding that the ACLU and the Sixteen Thirty Fund solicited contributions for the sole purpose of making expenditures to a ballot question committee. We respectfully request the Department of State immediately investigate the apparent violations set forth in this Complaint and find reason to believe that the ACLU and the Sixteen Thirty Fund have violated the Michigan Campaign Finance Act sections 24 and 34. It is clear, given the facts in this case and the precedent established by the 2021 Complaint, that these organizations must file as a committee, including filing all outstanding statements and reports, paying any late filing fees, and any applicable civil or criminal penalties.

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.

Respectfully submitted,
The Foundation for Accountability and Civic Trust



By: Kendra Arnold, Executive Director
Foundation For Accountability and Civic Truést
1717 K Street NW, Suite 900, Washington, D.C., 20006

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

Exhibit A



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

October 27, 2021

Brian D. Shekell
Clark Hill
500 Woodward Ave., Suite 3500
Detroit, MI 48226

Dear Mr. Shekell:

The Department of State (Department) has finished its initial investigation of the campaign finance complaint filed against your clients Michigan Citizens for Fiscal Responsibility (MCFR) and Michigan! My Michigan! (MMM), as well as against Unlock Michigan (Unlock), by Robert LaBrant alleging violations of the Michigan Campaign Finance Act (MCFA or Act). This letter concerns the current disposition of the complaint against your clients.

The complaint alleged that MCFR and MMM solicited or received donations for the purpose of making expenditures to Unlock. Unlock is a ballot question committee regulated by the MCFA. In support of these claims, Mr. LaBrant stated that MCFR and MMM together contributed over \$2.3 million in funding to Unlock from June to October 2020, "nearly 86%" of Unlock's total funding during that period. The complaint also showed that MCFR and/or MMM frequently provided large amounts of funding to Unlock within days of Unlock making a large payment to the outside signature-gathering firm National Petition Management (NPM).

MCFR and MMM also jointly responded to the complaint.¹ In their response, MCFR and MMM claimed that neither organization "solicited or received contributions for the purpose of making an expenditure to Unlock Michigan or any other ballot question committee." MCFR and MMM included a September 9, 2020 affidavit from Heather Lombardini stating that "MCFR ha[d] not

¹ MCFR and MMM also alleged that the instant complaint should be dismissed as a successive complaint. However, as indicated in the Department's April 9, 2021 dismissal to Mr. LaBrant, the prior complaint asked the Department only to investigate whether 5 contributions were violative of the Act. Because the instant complaint raises allegations not previously addressed in the first complaint, and adds an additional party, the Department does not treat this as a successive complaint.

solicited or received contributions for the purpose of making an expenditure to Unlock Michigan or any other ballot question committee.”²

Mr. LaBrant provided a rebuttal statement. In his rebuttal, Mr. LaBrant cited the failure of MCFR or MMM to provide financial statements or other information showing that the organizations did not violate the MCFA as evidence that the organizations had in fact violated the Act.

On October 8, 2021, the Department requested that MCFR and MMM provide the Department with IRS Form 990s for calendar year 2019 and 2020. The Department also requested that each organization provide the date and amount of each donation received in excess of \$500 or expenditure made in excess of \$500 between January 1, 2020 and the present, as well as the total value of assets controlled by each organization after each of those donations and expenditures. MCFR and MMM each provided a Form 990 for calendar year 2019 but declined to provide a Form 990 for calendar year 2020 and declined to provide the requested information about expenditures, contributions, and assets.

In Michigan, a committee is an organization which “receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party, 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). The MCFA requires committees to file certain campaign statements detailing contributions and expenditures. See, e.g., MCL 169.234. Failure to file these required statements can result in civil and criminal penalties. *Id.* An organization making an expenditure to a ballot question committee is not a committee under the MCFA and is not subject to the reporting requirements of the MCFA, however, unless that organization “solicits or receives contributions for the purpose of making an expenditure to that ballot question committee.” MCL 169.203(4). Upon meeting the definition of committee, the organization is obligated to file a statement of organization with the appropriate filing official within 10 days of the committee’s formation, MCL 169.224, and is also required to file various campaign statements detailing the organization’s contributions and expenditures.

As discussed below, the Department finds that there may be reason to believe that MCFR and MMM violated the MCFA. Both MCFR and MMM may have taken actions that qualify each organization as ballot question committees under the MCFA. At the end of calendar year 2019, MCFR had \$715,137 in assets, and MMM had \$172,452 in assets. From June to October 2020, MCFR contributed approximately \$1,780,000 to Unlock, while MMM contributed

² For the reasons more fully set forth below, despite these statements presented in the affidavit, they are not enough to overcome the other evidence submitted.

approximately \$550,000. In each case, the contributions by each organization to Unlock during 2020 far exceeds the assets controlled by each entity at the start of 2020. Moreover, the contributions by MCFR and/or MMM to Unlock were often made within days of similarly sized payments by Unlock to NPM, as set out in the following chart:

Date	Contributing Organization	Amount Contributed to Unlock	Amount Paid by Unlock to NPM
June 9, 2020	MCFR	\$10,000	-
June 18, 2020	MCFR	\$150,000	-
June 24, 2020	MCFR	\$400,000	-
June 25, 2020	-	-	\$300,000
July 20, 2020	MCFR	\$100,000	-
July 21, 2020	-	-	\$100,276.21
July 31, 2020	MCFR	\$35,000	\$100,000
August 3, 2020	-	-	\$44,784.85
August 6, 2020	MCFR	\$150,000	-
August 6, 2020	MMM	\$100,000	\$228,212
August 14, 2020	MCFR	\$25,000	-
August 20, 2020	MMM	\$100,000	-
August 21, 2020	MCFR	\$110,000	-
August 21, 2020	MMM	\$100,000	\$330,000
August 27, 2020	MCFR	\$700,000	-
August 28, 2020	-	-	\$166,248.86
August 31, 2020	-	-	\$160,317.68
September 11, 2020	-	-	\$183,298.30
September 18, 2020	-	-	\$150,000
October 1, 2020	MCFR	\$100,000	-
October 1, 2020	MMM	\$150,000	-
October 5, 2020	-	-	\$218,203.96
October 21, 2020	MMM	\$100,000	-

Given that contributions by MCFR and MMM to Unlock were closely followed by expenditures Unlock made to NPM totaling an almost identical value, it is clear that MCFR and MMM coordinated to some extent with Unlock. Accounting for the assets controlled by each organization at the end of calendar year 2019, between January 1, 2020, and October 1, 2020, MCFR solicited/received at least \$1,064,863 in contributions, while between January 1, 2020, and October 21, 2020, MMM solicited/received at least \$377,548.

As previously stated, it is not a violation of the Act for a group to raise funds in its normal course of conduct and make contributions to a ballot question committee or to coordinate with that ballot question committee. It is, however, a violation of the Act for an organization to raise

money on behalf of the ballot question committee in order to shield the organization's donors from the reporting requirements of the Act. The fundraising necessary to allow MCFR to contribute \$1,780,000 to Unlock and MMM to contribute \$550,000 to Unlock from June to October 2020 is substantial. Although it may be possible that each entity raised those funds in the first half of 2020 independently of each entity's support for Unlock, to assume that the aggressive fundraising activity necessary for each organization to raise the sums that were then transferred to Unlock was completely independent strains credulity. The disparity between each organization's assets going into 2020, the amount that each organization contributed to Unlock, and the timing of those contributions demonstrate a level of coordination showing the entities were not independent of each other.

In particular, the number of payments that MCFR and/or MMM made to Unlock days before Unlock made similarly sized payments to NPM suggests that MCFR and MMM were soliciting or receiving funds for the purpose of collecting contributions with the intent of financially supporting Unlock. Such fundraising for the purpose of supporting a ballot question committee, as is evidenced in the instant case, makes MCFR and MMM themselves ballot question committees responsible for registration and for filing appropriate campaign statements under the MCFA, but neither organization, to date, has registered as a committee nor filed those campaign statements as required by sections 24 and 33 of the Act.

Given the coordination between Unlock, the proximity of contributions made to Unlock and the expenditures made by Unlock, and the fact that neither MCFR nor MMM would have been able to make such contributions to Unlock without soliciting/receiving additional funds during 2020, there is reason to believe that MCFR and MMM may have solicited/received funds for the purpose of making contributions to Unlock.

When presented with a complaint, the Department is tasked to determine "whether or not there may be reason to believe that a violation of [the MCFA] occurred."³ MCL 169.15(10). Once the

³ The MCFA directs the Department to initiate the resolution process if "there may be reason to believe that a violation of [the MCFA] occurred." MCL 169.15(10). The Department notes that, under federal law, the Federal Election Commission (FEC) will initiate an investigation into a campaign finance complaint if the Commission finds that "reason to believe that a violation of [federal law] has occurred or is about to occur." 11 CFR § 111.10. The FEC will find that "reason to believe" a violation has occurred or is about to occur when "the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation." Federal Election Commission; Policy Statement; Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 51, 12545 (March 16, 2007). Because the MCFA sets a lower threshold for the Department to initiate an informal resolution process – whether there "*may be* reason to believe that a violation of [the MCFA] occurred" (emphasis added) – than federal law sets for the FEC to initiate an investigation – whether there *is* "reason to believe" – the Department's longstanding practice is to initiate the informal resolution process when the evidence available to the Department at the time that a determination is issued can reasonably support an inference that the MCFA has been violated.

Department has made this determination, the Department must employ “informal methods such as a conference [or] conciliation” to correct the potential violation or to prevent further violation. *Id.* As part of the informal resolution process, parties may furnish the Department with evidence showing that a potential violation of the MCFA has not actually occurred. It is possible that MCFR and/or MMM can provide information tending to show that its fundraising activities in 2020 were in fact independent of subsequent or concurrent donations to Unlock, and thus demonstrate that MCFR and/or MMM are not ballot question committees regulated by the MCFA. However, such information has not been made available to the Department, and the evidence available to the Department at this time suggests that “there may be reason to believe” that MCFR and MMM “solicit[ed] or receiv[ed] contributions for the purpose of making an expenditure” to Unlock, and thus that MCFR and MMM are ballot question committees under the MCFA with corresponding and unfulfilled filing obligations.

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

- (a) Refer the matter to the attorney general for the enforcement of any criminal penalty provided by this act.
- (b) Commence a hearing as provided in subsection (11) for enforcement of any civil violation.”

MCL 169.215(11).

Please contact the undersigned at fracassia@michigan.gov by 5:00 p.m. on Friday, November 5 to discuss a resolution to matter, including additional information your clients may be able to provide that may affect the Department’s determination of the scope of any violation that may have occurred.

Sincerely,

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

Adam Fracassi
Bureau of Elections