



# 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

Email: [elections@michigan.gov](mailto:elections@michigan.gov)

Re: Campaign Finance Complaint against **American Civil Liberties Union,  
ACLU Fund of Michigan, and Center for Reproductive Rights**

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

ACLU Fund of Michigan  
2966 Woodward Avenue  
Detroit, MI 48201  
Telephone No. 313.578.6800

Center for Reproductive Rights  
199 Water Street -22<sup>nd</sup> Floor  
New York, NY 10038  
Telephone No. 917.637.3600

The American Civil Liberties Union, ACLU Fund of Michigan, and the Center for Reproductive Rights are tax-exempt organizations that are not registered as ballot question committees, but their activity clearly demonstrates they should have registered as a committee and filed the required reports.<sup>1</sup> **In February and March 2022, the ACLU, ACLU-Michigan, and the Center for Reproductive Rights (Center) contributed a total of \$1,378,718.80 to a ballot question committee, Reproductive Freedom for All (RFFA).** The specific contributions from the organizations were: ACLU \$682,400, ACLU-Michigan \$596,318.80, and the Center \$100,000.<sup>2</sup> These contributions were substantial to RFFA—**comprising 98.31% of RFFA’s total funding during that period.**<sup>3</sup>

In addition to the fact that these three organizations were nearly the only source of funding for RFFA, the amounts and timing of payments further demonstrate the high level of coordination between the four organizations. Both the ACLU and the Center made substantial contributions on the exact same day to RFFA, occurring approximately one month after the RFFA was formed.<sup>4</sup> ACLU-Michigan’s contribution a month later was in the nearly-exact same amount of an RFFA expenditure of \$596,316.80.<sup>5</sup> If there was any doubt as to the control of RFFA, ACLU-Michigan’s own website states the RFFA campaign is led by ACLU-Michigan, an ACLU affiliate.<sup>6</sup> Further, the RFFA’s Treasurer is the Political Director for ACLU-Michigan.<sup>7</sup> These facts rise to the level of showing the organizations were not independent of one another.

It is not a violation for an organization to make contributions to a ballot question committee.<sup>8</sup> However it is “a violation of the Act for an organization to raise money on behalf of

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<sup>1</sup> 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).

<sup>2</sup> Reproductive Freedom For All, Campaign Finance Contribution Search, Department Of State, accessed July 4, 2022, available at: [https://miboecfr.nictusa.com/cgi-bin/cfr/contrib\\_anls\\_res.cgi](https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; Reproductive Freedom For All, Committee Statement Of Organization, filed Jan. 7, 2021, available at: <https://cfrsearch.nictusa.com/committees/520255>.

<sup>5</sup> Reproductive Freedom For All, Campaign Finance Expenditure Contribution Search, Department Of State, accessed July 4, 2022, available at: [https://miboecfr.nictusa.com/cgi-bin/cfr/exp\\_anls\\_res.cgi](https://miboecfr.nictusa.com/cgi-bin/cfr/exp_anls_res.cgi); Reproductive Freedom For All, Campaign Finance Contribution Search, Department Of State, accessed July 4, 2022, available at: [https://miboecfr.nictusa.com/cgi-bin/cfr/contrib\\_anls\\_res.cgi](https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi).

<sup>6</sup> Reproductive Freedom For all, ACLU Michigan, accessed July 4, 2022, available at: <https://www.aclumich.org/en/press-releases/reproductive-freedom-all-ballot-initiative-harnesses-unprecedented-momentum-post>.

<sup>7</sup> Shelli Weisberg, ACLU Michigan, accessed July 4, 2022, available at: <https://www.aclumich.org/en/biographies/shelli-weisberg>; Reproductive Freedom For All, Committee Statement Of Organization, filed Jan. 7, 2021, available at: <https://cfrsearch.nictusa.com/committees/520255>.

<sup>8</sup> *Id.* (citing MCL 169.203(4)).

the ballot question committee in order to shield the organization’s donors from the reporting requirements of the Act.”<sup>9</sup> The facts of this case demonstrate that this is precisely what occurred here, and they exceed the facts in 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.<sup>10</sup>

### **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.”<sup>11</sup>

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.<sup>12</sup> However, the organization does meet the definition of a committee if it “solicits or receives contributions for the purpose of making an expenditure to that ballot question committee or independent expenditure committee.”<sup>13</sup>

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.<sup>14</sup> If an organization fails to file the required statements, civil or criminal penalties are imposed.<sup>15</sup>

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<sup>9</sup> *Id.* (citing MCL 169.203(4)).

<sup>10</sup> MCL 169.15(10).

<sup>11</sup> MCL 169.203(4).

<sup>12</sup> *Id.*

<sup>13</sup> *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).

<sup>14</sup> MCL 169.224.

<sup>15</sup> *See, e.g.*, MCL 169.234.

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.<sup>16</sup> For instance, prior to 2021, some specific facts the Department considered when it found a corporation has actually 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 came from the corporation; and (4) the flow of money between the corporation and ballot question committee demonstrated a relationship between the two groups.<sup>17</sup>

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 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).<sup>18</sup>

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.<sup>19</sup> MCFR had \$715,137 in assets at the end of calendar year 2019 and contributed approximately \$1,780,000 to Unlock from June to

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<sup>16</sup> *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 that 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 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).

<sup>17</sup> *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](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).

<sup>18</sup> *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021).

<sup>19</sup> *Id.*

October 2020.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> 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.”<sup>23</sup>

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.<sup>24</sup> 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.”<sup>25</sup> The Department found there “may be reason to believe” that MCFR and MMM should have registered as committees themselves and filed the required statements:

“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

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

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.”<sup>26</sup>

Therefore, in addition to the factors established by the Department prior to 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 solicits funds prior to or simultaneously with making contributions to a ballot question committee, and (2) the amount or timing of either contributions from the organization or payments that the ballot question committee makes to its vendors indicate coordination.

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<sup>26</sup> *Id.*

## II. Analysis

### Issue Presented: Whether The ACLU, ACLU-Michigan, and the Center Are Committees Thereby Mandating Registration Obligations With the Department.

The American Civil Liberties Union (ACLU), the ACLU's affiliate the ACLU Fund of Michigan (ACLU-Michigan), and the Center for Reproductive Rights (Center) are tax-exempt organizations formed pursuant to sections 501(c)(3) and (c)(4) of the Internal Revenue Code.<sup>27</sup> **From January 2022 to April 2022, the ACLU, ACLU-Michigan, and the Center contributed a total of \$1,378,718.80 to a ballot question committee, Reproductive Freedom for All (RFFA).** The specific contribution totals from the organizations were: ACLU \$682,400, ACLU-Michigan \$596,318.80, and the Center \$100,000.<sup>28</sup> These contributions were substantial to RFFA—**comprising 98.31% of RFFA's total funding during that period.**<sup>29</sup> Clearly the RFFA would not have exited without these contributions.

These organizations were practically the sole funders of the RFFA, and in addition the ACLU and its affiliate the ACLU-Michigan plainly state they are controlling the RFFA with the following statement on the ACLU-Michigan's website:

“Reproductive Freedom for All is organized and supported by a growing coalition of Michigan advocates from Detroit to the Upper Peninsula and throughout the

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<sup>27</sup> Center For Reproductive Rights Inc., Form 990, Internal Revenue Service, accessed July 4, 2022, available at: [https://apps.irs.gov/pub/epostcard/cor/133669731\\_202006\\_990\\_2021040617901471.pdf](https://apps.irs.gov/pub/epostcard/cor/133669731_202006_990_2021040617901471.pdf); American Civil Liberties Union Fund Of Michigan, Form 990, Internal Revenue Service, accessed July 4, 2022, available at: [https://apps.irs.gov/pub/epostcard/cor/237243421\\_202003\\_990\\_2021040617897487.pdf](https://apps.irs.gov/pub/epostcard/cor/237243421_202003_990_2021040617897487.pdf); American Civil Liberties Union Inc, Form 990, Internal Revenue Service, accessed July 4, 2022, available at: [https://apps.irs.gov/pub/epostcard/cor/133871360\\_202003\\_990O\\_2021060818292134.pdf](https://apps.irs.gov/pub/epostcard/cor/133871360_202003_990O_2021060818292134.pdf).

ACLU-Michigan is an affiliate of the ACLU. ACLU, *Find Your Local ACLU*, [aclu.org](https://aclu.org) (listing ACLU of Michigan as an affiliate).

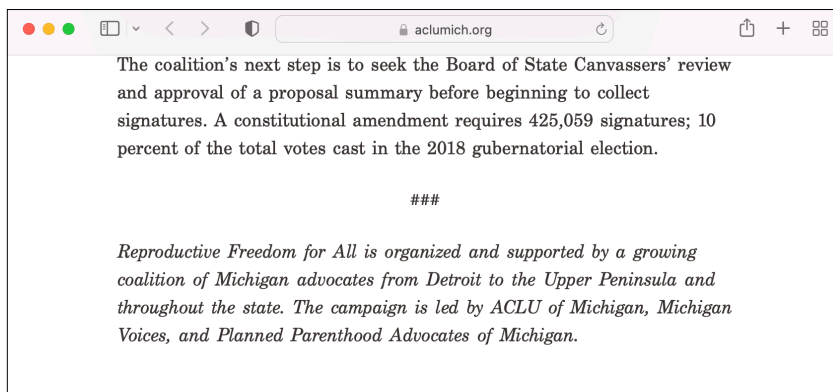
<sup>28</sup> Reproductive Freedom For All, Campaign Finance Contribution Search, Department Of State, accessed July 4, 2022, available at: [https://miboecfr.nictusa.com/cgi-bin/cfr/contrib\\_anls\\_res.cgi](https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls_res.cgi).

<sup>29</sup> *Id.*

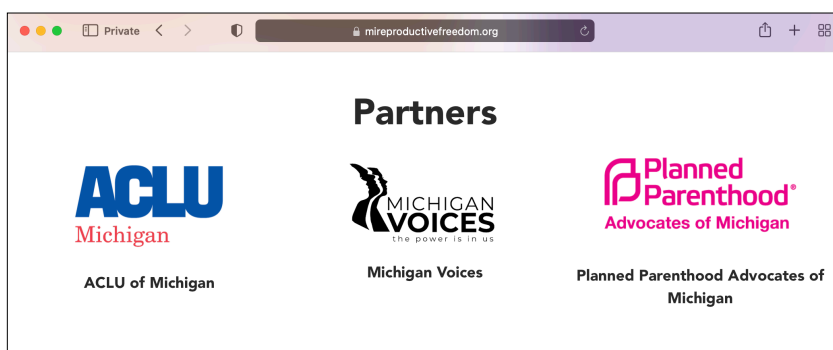
state. **The campaign is led by ACLU of Michigan, Michigan Voices, and Planned Parenthood Advocates of Michigan.**<sup>30</sup>

The RFFA also lists ACLU-Michigan as a “partner” on its website.<sup>31</sup> Further, evidence demonstrates there is no separation between ACLU-Michigan and the RFFA: the Treasurer of the RFFA is Shelli Weisberg, who is also the Political Director for ACLU-Michigan and the organization “leading” the RFFA.<sup>32</sup> As the Department previously explained, a Treasurer of a ballot question committee is in a unique position to know the finances of an organization and when it is in need of a “cash infusion.”<sup>33</sup>

<sup>30</sup> ACLU of Michigan, *Ballot Proposal to Protect Reproductive Freedom in Michigan Filed by Reproductive Freedom for All* (Jan. 7, 2022), available at: <https://www.aclumich.org/en/press-releases/ballot-proposal-protect-reproductive-freedom-michigan-filed-reproductive-freedom-all> (emphasis added).



<sup>31</sup> Reproductive Freedom For All, accessed July 4, 2022, available at: <https://mireproductivefreedom.org>.



<sup>32</sup> Reproductive Freedom for All, Michigan Committee Statement of Organization, available at <https://cfrsearch.nictusa.com/committees/520255>; ACLU-Michigan, Shelli Weisberg, ACLU Michigan, available at: <https://www.aclumich.org/en/biographies/shelli-weisberg>.

<sup>33</sup> *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](https://www.michigan.gov/-/media/Project/Websites/sos/14delrio/Turnaround_Detroit_V_Detroit_Forward_and_MCEF_pt_2.pdf?rev=0e1efb6028ff45389da6de8c305aa677).



Additionally, the timing and amounts of contributions and expenditures clearly demonstrate the coordination between the contributing organizations and the ballot question committee. RFFA was formed on January 7, 2022, and both the ACLU and the Center made substantial contributions of \$682,400 and \$100,000 on February 20, 2022—the exact same day—demonstrating the ACLU and Center were coordinating. Then the ACLU’s affiliate ACLU-Michigan made a contribution in the amount of \$596,318.80, a unique amount that was just \$2 more than an expenditure the RFFA made ten days earlier—both the amount and timing demonstrate the coordination. Selected transactions reported by RFFA are shown in the following chart:

**Selected Transactions Reported by RFFA**

Date	Contributing Organization or Vendor	Amount Contributed to RFFA	Amount Paid by RFFA	Running Balance
February 20, 2022	American Civil Liberties Union	\$682,400.00		\$688,766.63
February 20, 2022	Center for Reproductive Rights	\$100,000.00		\$788,766.63
March 11, 2022	Fieldworks LLC		\$596,316.80	\$187,831.75
March 21, 2022	ACLU Fund of MI	\$596,318.80		\$783,214.88
March 25, 2022	ALG Polling / Impact Research		\$60,100.00	\$723,774.88
March 29, 2022	Fieldworks LLC		\$522,410.48	\$191,599.71

Because the ACLU, ACLU-Michigan, and the Center do not publicly disclose their donations and expenditures, the total assets controlled by this entity or the timing of the contributions it received prior to January 2022 are not publicly known. Likewise, in the 2021 Complaint, the Department did not have this information for MCFR and MMM prior to their donations to Unlock. The Department found this information was unnecessary and, based on the other facts indicating coordination such as the timing of contributions and vendor payments, presumed any funds were raised for the purpose of financing Unlock in the 2021 Complaint. The same standard certainly must apply here.

As the Department stated in the 2021 Complaint and applying it to the facts of this case,

“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 [the ACLU to contribute \$682,400 to RFFA, ACLU-Michigan to contribute \$596,318.80 to RFFA, and the Center to contribute \$100,000 to RFFA] is substantial. . . . [The ACLU and its affiliate ACLU-Michigan were fundraising on their websites while ACLU-Michigan was simultaneously stating on its website that they were "leading" the RFFA], the amount each organization contributed to [RFFA], and the timing of those contributions demonstrate a level of coordination showing the entities were not independent of each other.

In particular, [the payments The ACLU and the Center made on the same date and the payment ACLU-Michigan made to RFFA days after RFFA made similarly sized payments to its vendor] suggest that [The ACLU, ACLU-Michigan, and the Center] were soliciting or receiving funds for the purpose of collecting contributions with the intent of financially supporting [RFFA]. Such fundraising for the purpose of supporting a ballot question committee, as is evidenced in the instant case, makes [The ACLU, ACLU-Michigan, and the Center] 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 [the organizations], the proximity of contributions made to [RFFA] and the expenditures made by [RFFA], and the fact that [ACLU-Michigan stated it was "leading" the RFFA while soliciting funds on its website], there is reason to believe [The ACLU, ACLU-Michigan, and the Center] may have solicited/received funds for the purpose of making contributions to [RFFA]."<sup>34</sup>

There is one difference between the 2021 Complaint and this case. In the 2021 Complaint, the organizations' assets at the end of the prior year demonstrated they would need to raise funds before contributing to the ballot question committee. In the present case we do not know the organizations' assets at the end of the prior year, but that information is unnecessary to show the organizations were fundraising prior to or simultaneously with their support of the ballot question committee. In fact, ACLU-Michigan stated on its website that it was supporting

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<sup>34</sup> *Id*; *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021).

the RFFA while also seeking donations on its website. All three organizations were coordinating with one another while simultaneously fundraising—clearly with an intent to support RFFA.<sup>35</sup>

Moreover, there are actually more facts in this case that “demonstrate a level of coordination showing the entities were not independent of each other” and thus “solicited/ received funds for the purpose of making contributions” to RFFA: the RFFA’s Treasurer is the Political Director of ACLU-Michigan and ACLU-Michigan states it is leading the RFFA’s campaign; (2) the organization’s near total funding of RFFA; and (3) the timing and amount of the organizations’ contributions to RFFA showing coordination among the organizations and with RFFA.

The evidence in this case far exceeds the “reason to believe” standard that The ACLU, ACLU-Michigan, and the Center “may have taken actions that qualify them as a ballot question committee” and thus violated Michigan Campaign Finance Act sections 24 and 34.<sup>36</sup>

### **III. Conclusion & Request for Action.**

The facts support a finding that the ACLU, ACLU-Michigan, and the Center for Reproductive Rights 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, ACLU-Michigan, and the Center for Reproductive Rights have violated the Michigan Campaign Finance Act. It is clear, given the facts in this case and the precedent set forth 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.

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<sup>35</sup> The ACLU, ACLU-Michigan, and the Center all have prominent “Donate” links on their main webpages.

<sup>36</sup> *LaBrant v. Michigan Citizens for Fiscal Responsibility, Michigan! My Michigan!*, MI Campaign Finance Complaint filed May, 25, 2021 (decision filed Oct. 27, 2021).

Respectfully submitted,

The Foundation for Accountability and Civic Trust

A handwritten signature in blue ink that reads "Karnold". The signature is written in a cursive, slightly stylized font.

By: Kendra Arnold

Executive Director

Foundation For Accountability and Civic Trust

1717 K Street NW, Suite 900, Washington, D.C., 20006

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.<sup>1</sup> 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

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<sup>1</sup> 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.”<sup>2</sup>

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

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<sup>2</sup> 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:

<b>Date</b>	<b>Contributing Organization</b>	<b>Amount Contributed to Unlock</b>	<b>Amount Paid by Unlock to NPM</b>
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."<sup>3</sup> MCL 169.15(10). Once the

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<sup>3</sup> 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](mailto: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