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Michigan Secretary of State  
Bureau of Elections  
Richard H. Austin Building – 1<sup>st</sup> Floor  
430 West Allegan Street  
Lansing, MI 48918

**Re: Emergency Complaint – Illegal Contributions Received by Gretchen Whitmer for Governor; Committee Identification No. 518014, 325 S. Walnut, Lansing, MI 48933 Telephone No. 517.763.2955**

This Complaint outlines an illegal scheme by Gretchen Whitmer for Governor (the “Whitmer Campaign”) to evade and eviscerate Michigan candidate contribution limits. The Whitmer Campaign has disclosed accepting contributions from at least 154 individual donors in excess of the contribution limits in MCL 169.252.<sup>1</sup> This Complaint is time sensitive and requires immediate action before the Whitmer Campaign spends funds which were obtained in violation of the Michigan Campaign Finance Act (“MCFA”). The Whitmer Campaign has admitted to these wholesale violations of the MCFA’s contribution limitations, but claims that there is an exception to contribution limits for officeholders facing a recall election. However, even if such an exception exists, there is no recall of Governor Whitmer currently being *actively sought*, a condition precedent to any claim to the potential contribution limit exception for recall elections. Whitmer’s illegal scheme is inconsistent with the text and purpose of the MCFA, absurd, unfair and could not have been intended by the Legislature.

## I. Background

MCL 169.252 sets limits for individual contributions to candidates for public office. The current legal contribution limit for an individual is \$7,150 in an election cycle.<sup>2</sup> In its latest campaign finance disclosure, the Whitmer Campaign reported it collected \$3.4 million from contributions over the legal limits.<sup>3</sup> At least 154 donors gave the Whitmer Campaign contributions in excess of the statutory limits.<sup>4</sup> The Whitmer Campaign’s response to violating the MCFA:<sup>5</sup>

“Gov. Gretchen Whitmer's re-election campaign, citing a 37-year-old administrative ruling related to candidates facing recall elections, is not observing

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<sup>1</sup> Gretchen Whitmer for Governor, July Quarterly 2021, <https://cfrsearch.nictusa.com/documents/513607/details?type=web#>.

<sup>2</sup> MCL 169.252.

<sup>3</sup> See note 1.

<sup>4</sup> See note 1.

<sup>5</sup> Egan, Paul *Whitmer reelection campaign blows by donor caps, draws big cash from Hollywood*, *New York, Detroit Free Press* (July 27, 2021).

the donation limits that normally apply to candidates under Michigan law, allowing her to raise millions more through wealthy donors than would normally be allowed.”

Accordingly, this Complaint represents the largest money grab ever seen in Michigan to ignore contribution limits under the MCFA.

## II. Legal Analysis

### The Text of the MCFA prohibits the Whitmer Campaign’s Fundraising Scheme

Michigan law is clear regarding contribution limits to statewide candidates – an individual may only contribute \$7,150 in an election cycle.<sup>6</sup> As the Michigan Department of State recognizes:<sup>7</sup>

“Without further legislative or judicial action with respect to these provisions, the Department is bound to enforce the Act's limitations on the amounts that individuals may contribute to candidate committees established by candidates for state elective office.”

The foregoing statement is nothing more than the well-settled principle that the Michigan Secretary of State has absolutely no authority to amend the MCFA. To this end, Article III, Section 2 of the Michigan Constitution provides:

“The powers of government are divided into three branches: legislative, executive, and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.”<sup>8</sup>

The Michigan Constitution vests the legislative power of the State of Michigan—i.e., the power to enact substantive law—in the Legislature.<sup>9</sup> Specifically, Article II, Section 4(2) of the Michigan Constitution provides:

“Except as otherwise provided in this constitution or in the constitution or laws of the United States the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, except as otherwise provided in this constitution or in the constitution and laws of the United States. The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. No law shall be enacted which permits a candidate in any partisan primary or partisan election to have a ballot designation

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<sup>6</sup> MCL 169.252.

<sup>7</sup> Interpretative Statement (IS) issued to Constance Cumbey dated December 28, 1979.

<sup>8</sup> MICH. CONST. 1963 art. III, § 2.

<sup>9</sup> MICH. CONST. 1963 art. IV, § 1.

except when required for identification of candidates for the same office who have the same or similar surnames.”<sup>10</sup>

Commenting on this constitutional provision, the Michigan Attorney General noted:

“Thus, pursuant to the preceding broad mandate, *Schell v Waterford Township*, 381 Mich 123, 128; 159 NW2d 833, 835 (1968), it is within the exclusive province of the legislature to laws providing for the registration of voters, and the time, place, and manner of conducting elections. *Andrews v Wayne County Clerk*, 21 Mich App 568, 572; 175 NW2d 839 (1970); 2 Official Record, Constitutional Convention 1961, p. 3366.”<sup>11</sup>

As recognized by the Michigan Court of Appeals in *Andrews v. Branigin*,<sup>12</sup> the Legislature’s exclusive role in the election process is a time-honored principle dating back to at least the 1890 Michigan Supreme Court case of *Common Council v Rush*.<sup>13</sup> Discussing *Rush*, the Court of Appeals in *Andrews* stated that, “[u]nder these broad provisions, it has been frequently held to be the exclusive province of the Legislature to enact laws providing for the registration of voters, and the time, place, and manner of conducting elections.”<sup>14</sup> Consequently, as the foregoing authorities demonstrate, the Michigan Secretary of State may not amend the MCFA, such authority being vested exclusively in the Legislature by Article II, Section 4 of the Michigan Constitution.<sup>15</sup>

In *Sittler v. Board of Control*, the Michigan Supreme Court set forth the following well-settled rules of law: “The extent of the authority of the people's public agents is measured by the statute from which they derive their authority, not by their own acts and assumption of authority.”<sup>16</sup>

“Public officers have and can exercise only such powers as are conferred on them by law.”<sup>17</sup> According to *Michigan Chiropractic Council v. Commissioner*, “Administrative interpretation is not binding on the courts and must be rejected if not in accord with the intent of the Legislature.”<sup>18</sup> Stated differently, “an agency's interpretation cannot overcome the plain meaning of the statute.”<sup>19</sup>

Therefore, the Michigan Secretary of State may neither amend the MCFA nor interpret the MCFA in a manner to overcome its plain meaning, viz. such as to interpret MCL 169.252 to allow contributions to the Whitmer Campaign in excess of \$7,150 in an election cycle.

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<sup>10</sup> MICH. CONST. 1963 art. II, § 4.

<sup>11</sup> Op. Att’y Gen. 5194 (1977) (emphasis added).

<sup>12</sup> *Andrews v. Branigin*, 21 Mich. App 568, 175 N.W.2d 839 (1970).

<sup>13</sup> *Common Council of City of Detroit v. Rush*, 82 Mich. 532, 46 N.W. 951 (1890).

<sup>14</sup> *Andrews*, 21 Mich. App. at 572, 175 N.W.2d at 841.

<sup>15</sup> MICH. CONST. 1963 art. II, § 4

<sup>16</sup> *Sittler v. Bd. of Control of Mich. Coll. of Mining & Tech.*, 333 Mich. 681, 687, 53 N.W.2d 681, 684 (1952) (quoting *Twp. of Lake v. Millar*, 257 Mich. 135, 142, 241 N.W. 237, 240 (1932)).

<sup>17</sup> *Id.*

<sup>18</sup> *Mich. Chiropractic Council v. Comm’r of Office of Fin. & Ins. Servs.*, 262 Mich. App. 228, 233, 685 N.W.2d 428, 431 (2004), *vacated*, 475 Mich. 363, 716 N.W.2d 561 (2006) (citing *Lanzo Constr. Co., Inc. v. Dep’t of Labor*, 86 Mich. App. 408, 414, 272 N.W.2d 662 (1978)).

<sup>19</sup> *In re Complaint of Consumers Energy Co.*, 255 Mich. App. 496, 504, 660 N.W.2d 785, 789 (2002) (citing *Ludington Serv. Corp. v. Acting Comm’r of Ins.*, 444 Mich. 481, 505, 511 N.W.2d 661 (1994)).

## The Guidance Relied Upon by the Whitmer Campaign is Inapplicable Here

Michigan law is clear regarding contribution limits to statewide candidates – an individual may only contribute \$7,150 in an election cycle. As indicated earlier in this Complaint, the Michigan Secretary of State may neither amend the MCFA nor interpret the MCFA in a manner to overcome its plain meaning. Nonetheless, the Whitmer Campaign relies upon two rulings made by the Michigan Department of State to justify the most egregious violation of contribution limits in Michigan history.<sup>20</sup> These rulings seek to establish a narrow exception to contribution limits under MCL 169.252, which are not valid under the MCFA. To take advantage of these invalid rulings, four elements must be met: 1) a political committee must have been organized; 2) to gather petition signatures; 3) to promote a particular officeholder’s recall; and importantly, 4) the officeholder’s recall must be *actively sought*.<sup>21</sup> The Whitmer Campaign may not avail itself of this so-called recall “exception” because all four elements have not been met, therefore all contributions obtained in excess of the statutory limits are still in violation of MCFA.

Though these Secretary of State rulings are invalid, for the reasons stated before, even if the Whitmer Campaign believed they were valid in order to invoke these (invalid) rulings, the central issue here would hinge on whether or not Governor Whitmer’s recall is *actively being sought*. While there is no definition of “actively being sought” in the context of these recall rulings, the process for seeking a recall election sheds light on what it takes to actively seek. The first step in the process of seeking a recall election is approval on the language of the recall petition from the State Board of Canvassers.<sup>22</sup> The State Board of Canvassers must determine the petition is factual and of sufficient clarity before it is circulated for signatures.<sup>23</sup> Once the petition is approved, a recall committee may prepare and circulate the petition for signatures. The number of signatures required to trigger a recall election for Governor is equal to 25% of the votes cast for Governor in the last gubernatorial election.<sup>24</sup> Those signatures must be gathered within 60 days of collecting the first signature.<sup>25</sup> Once the requisite signatures are collected, the petition is filed with the Department of State’s Bureau of Elections. Upon filing, the Bureau of Elections has 7 days to examine it and determine if: a) the petition is in the proper form; and b) the petition contains the requisite number of signatures.<sup>26</sup> After the preliminary check, assuming it passes muster, the Bureau begins a registration check to determine if all signers are registered to vote and if their signatures match the voter file.<sup>27</sup>

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<sup>20</sup> IS issued to William Faust dated October 7, 1983; Declaratory Ruling (DR) issued to L. Brooks Patterson dated January 3, 1984.

<sup>21</sup> IS issued to William Faust dated October 7, 1983; DR issued to L. Brooks Patterson dated January 3, 1984.

<sup>22</sup> MCL 168.951a.

<sup>23</sup> MCL 168.951a.

<sup>24</sup> MCL 168.955.

<sup>25</sup> MCL 168.961(2)(d).

<sup>26</sup> MCL 168.961.

<sup>27</sup> MCL 168.961.

The bottom line is for a committee to *actively seek* a recall election, they must first get petition approval from the State Board of Canvassers then collect 1,062,647 signatures from registered voters within 60 days.<sup>28</sup>

Governor Whitmer's scandal plagued Spring has led to sinking poll numbers and growing calls for her to be removed as Governor, but an upset constituency is not the legal standard here. In fact, there are no political committees that are or were actively seeking the recall of Governor Whitmer. In 2020, twenty recall efforts were launched against Governor Whitmer.<sup>29</sup> Ten of those petitions were rejected by the State Board of Canvassers, one was withdrawn and nine have since ended.<sup>30</sup> The most recent recall petition approved by the State Board of Canvassers against Governor Whitmer was filed by a John Parkinson, and approved on September 10, 2020, and due to appeal the signature expiration deadline was April 29, 2021.<sup>31</sup> Therefore, after April 29, 2021, no valid recall petition was even in existence!

Moreover, it is absurd for anyone to believe that any of the proponents of these recall petitions against Governor Whitmer were actively seeking a recall election. One of these recall proponents is Chad Baase, an Albion resident who was recently released from prison.<sup>32</sup> The recall committee formed by Baase, Committee to Recall Gretchen Whitmer has no funds.<sup>33</sup> According to Baase, the committee's funds were "stolen" by his ex-girlfriend, "Becka" (no last name).<sup>34</sup> It has also been reported that Baase has a gambling addiction.<sup>35</sup> Upon information and belief, Baase appeared at the July 13, 2021 State Board of Canvassers meeting where the Board asked him whether or not the committee has gathered any signatures, Mr. Baase stated it had not. This is consistent with news reports.<sup>36</sup> The so-called Committee to Recall Gretchen Whitmer, which the Whitmer Campaign may claim is actively seeking Governor Whitmer's recall, has no money, gathered no signatures, publicly stated its signature gathering is "on hold,"<sup>37</sup> failed to file multiple campaign finance reports<sup>38</sup> and is run by an individual with a criminal record and reported gambling addiction.

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<sup>28</sup> 4,250,585 total votes were cast in the 2018 Michigan gubernatorial election. Michigan gubernatorial and lieutenant gubernatorial election, 2018, Ballotpedia, [https://ballotpedia.org/Michigan\\_gubernatorial\\_and\\_lieutenant\\_gubernatorial\\_election,\\_2018](https://ballotpedia.org/Michigan_gubernatorial_and_lieutenant_gubernatorial_election,_2018).

<sup>29</sup> See Gretchen Whitmer recall, Governor of Michigan (2020-2021), Ballotpedia, [https://ballotpedia.org/Gretchen\\_Whitmer\\_recall,\\_Governor\\_of\\_Michigan\\_\(2020-2021\)](https://ballotpedia.org/Gretchen_Whitmer_recall,_Governor_of_Michigan_(2020-2021)).

<sup>30</sup> See note 29.

<sup>31</sup> See note 29.

<sup>32</sup> Michigan Department of Corrections, Biographical Information, Chad Everett Baase, <https://mdocweb.state.mi.us/OTIS2/otis2profile.aspx?mdocNumber=581491>.

<sup>33</sup> Committee to Recall Governor Gretchen Whitmer, April Quarterly 2020 Report, <https://cfrsearch.nictusa.com/documents/494426/details/filing/summary?changes=0>.

<sup>34</sup> *Man Leading Bid to Oust Whitmer Says Ex-Girlfriend Becka, Last Name Unknown, Stole Money From Campaign*, Deadline Detroit (Aug. 4, 2020), [https://www.deadlinedetroit.com/articles/25902/man\\_leading\\_bid\\_to\\_oust\\_whitmer\\_says\\_ex-girlfriend\\_becka\\_last\\_name\\_unknown\\_stole\\_money\\_from\\_campaign](https://www.deadlinedetroit.com/articles/25902/man_leading_bid_to_oust_whitmer_says_ex-girlfriend_becka_last_name_unknown_stole_money_from_campaign).

<sup>35</sup> See note 34.

<sup>36</sup> See note 34.

<sup>37</sup> See note 34.

<sup>38</sup> Committee to Recall Governor Gretchen Whitmer, Documents on File, <https://cfrsearch.nictusa.com/committees/519594#documents>.

### **III. Conclusion**

The Bureau of Elections should swiftly investigate the Whitmer Campaign's illegal circumvention of the contribution limits under MCL 169.252 of the MCFA. Governor Whitmer is illegally using a so-called recall "exception" to raise unlimited funds, which violates the text of the MCFA. If this Bureau does not require the Whitmer Campaign to return the improperly obtained funds and sanction it accordingly, there will undoubtedly be additional sham recall committees created in the future so candidates may circumvent the law.

Governor Whitmer has consistently made clear that she believes rules for others do not apply to her own behavior. If your office refuses to enforce Michigan law against Governor Whitmer, then you can be sure that candidates will also take advantage of the newly created "Whitmer Loophole!!"

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,

Dated: July 28, 2021

Victoria Sachs  
*Executive Director, Michigan Freedom Fund*