

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

Re: Illegal Contributions Received by Jocelyn Benson for Secretary of State; Committee Identification No. 514336, P.O. Box 21369, Detroit, MI. 48221 Telephone No. 517.881.7490

This Complaint outlines an attempt by Jocelyn Benson for Secretary of State (the “Benson Campaign”) to exceed Michigan candidate contribution limits. The Benson Campaign has disclosed accepting contributions from one donor in excess of the contribution limits in MCL 169.252.¹

I. Background

MCL 169.252 sets limits for individual contributions to candidates for public office. The current legal contribution limit for an independent committee is 10 times the amount permitted a person, which is \$71,500 in an election cycle.² In its latest campaign finance disclosure, the Benson Campaign reported it collected \$81,150 from the Michigan Regional Council of Carpenters and Millwrights. This amount is \$10,000 in excess of the legal limits.³

Michigan Regional Council of Carpenters and Millwrights	\$26,500	12/20/2021
Michigan Regional Council of Carpenters and Millwrights	\$10,000	10/17/2021
Michigan Regional Council of Carpenters and Millwrights	\$25,000	12/21/2020
Michigan Regional Council of Carpenters and Millwrights	\$20,000	06/02/2019

II. Legal Analysis

The Text of the MCFA prohibits the Benson Campaign’s Actions

Michigan law is clear regarding contribution limits to statewide candidates – an independent committee may only contribute \$71,500 in an election cycle.⁴ As the Michigan Department of State recognizes:⁵

“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

¹Jocelyn Benson for Secretary of State, July Quarterly 2021, <https://cfrsearch.nictusa.com/documents/513360/details?type=web>.

² MCL 169.252.

³ See note 1.

⁴ MCL 169.252.

⁵ Interpretative Statement (IS) issued to Constance Cumbey dated December 28, 1979.

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.”⁶

The Michigan Constitution vests the legislative power of the State of Michigan—i.e., the power to enact substantive law—in the Legislature.⁷ 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 except when required for identification of candidates for the same office who have the same or similar surnames.”⁸

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.”⁹

As recognized by the Michigan Court of Appeals in *Andrews v. Branigin*,¹⁰ 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*.¹¹ Discussing *Rush*, the

⁶ MICH. CONST. 1963 art. III, § 2.

⁷ MICH. CONST. 1963 art. IV, § 1.

⁸ MICH. CONST. 1963 art. II, § 4.

⁹ Op. Att’y Gen. 5194 (1977) (emphasis added).

¹⁰ *Andrews v. Branigin*, 21 Mich. App 568, 175 N.W.2d 839 (1970).

¹¹ *Common Council of City of Detroit v. Rush*, 82 Mich. 532, 46 N.W. 951 (1890).

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.”¹² 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.¹³

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.”¹⁴

“Public officers have and can exercise only such powers as are conferred on them by law.”¹⁵ 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.”¹⁶ Stated differently, “an agency's interpretation cannot overcome the plain meaning of the statute.”¹⁷

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 Benson Campaign in excess of \$71,500 in an election cycle.

III. Conclusion

The Attorney General, pursuant to MCL 169.215(9), should swiftly investigate the Benson Campaign’s illegal circumvention of the contribution limits under MCL 169.252 of the MCFA. As the elected Secretary of State, Ms. Benson should be fully aware of contribution limits.

Secretary Benson, Michigan’s chief elections official and an Ivy League educated attorney, has either intentionally broken Michigan’s campaign finance laws, or does not understand the fundamentals of campaign finance contribution limits. As the elected official responsible for enforcing the laws, Jocelyn Benson should know better, and it is incumbent upon the Attorney General to take immediate action to remedy this blatant violation.

The penalties for the Respondent’s violation of Section 52 of the MCFA violation is: “A person who knowingly violates Section 52 is guilty of a misdemeanor punishable, if the person is an individual, by a fine of not more than \$1,000 or imprisonment for not more than 90 days, or both, or, if the person is not an individual, by a fine of not more than \$10,000.00” MCL 169.252(9).

¹² *Andrews*, 21. Mich. App. at 572, 175 N.W.2d at 841.

¹³ MICH. CONST. 1963 art. II, § 4

¹⁴ *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)).

¹⁵ *Id.*

¹⁶ *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)).

¹⁷ *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)).

Accordingly, the Complainant respectfully requests that the Attorney General investigate the violation set forth in this Complaint, and determine that the Respondent has violated Section 52 of the MCFA and to assess all appropriate penalties.

In addition to the penalties put forth by the Michigan Campaign Finance Act, I am calling on Secretary Benson to recuse herself from any consideration of campaign finance complaints concerning Section 52 of the MCFA. Secretary Benson's own violation of Section 52 of the Act make her an inherently biased party, and unable to opine in a fair manner.

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: February 1, 2022

Eric Ventimiglia
Executive Director, Michigan Rising Action