

THE COMPLAINING WITNESS, ON INFORMATION AND BELIEF, SAYS:

1. I, Affiant, Jennifer Kapushinski, am a Special Agent Investigator with the Michigan Department of Attorney General (AG). I have 9 years of experience in law enforcement and criminal investigations. Prior to my time at the AG's office, I attended the Detroit Metropolitan Police Academy and worked as a Detroit police officer. Currently I am assigned to the Major Case Section of the AG's office and am a task force officer with the FBI. My job duties include the investigation of criminal activity as assigned by the department.
2. In the course of my regular duties, I was assigned to investigate allegations of violations of the Michigan Campaign Finance Act (MCFA) committed by the 501(c)(4) nonprofit organizations Michigan! My Michigan! (MMM) and Michigan Citizens for Fiscal Responsibility (MCFR). The allegations were that former Senate Majority Leader Mike Shirkey and fundraising consultant Heather Lombardini were soliciting funds on behalf of the ballot question committee Unlock Michigan but directing funds to MMM and/or MCFR to avoid disclosure required by ballot question committees under the MCFA. I submit this affidavit in support of my request for criminal charges.
3. In the beginning of January 2022, Affiant was assigned as the primary investigator of Department of Attorney General Case 2022-0355062-A. Affiant was assigned to investigate possible violations of state criminal statutes including those relating to the MCFA, in violation of MCL 169.224 and possibly MCL 169.23312, which occurred during the time frame of June 1, 2020 through September 2021.
4. The MCFA, MCL 169.201 et seq, regulates campaign financing and requires certain campaign statements and reports. Under the MCFA, a "ballot question committee" is an organization that receives contributions or makes expenditures for the purpose of influencing the qualification, passage, or defeat of a ballot question, per MCL 169.202(3). Such a "ballot question committee" is required to file a Statement of Organization under MCL 169.224(1), and periodic Campaign Finance Statements under MCL 169.234(1).
5. MCL 169.203(4) provides that when a person or organization solicits or receives contributions for the purpose of making an expenditure to a ballot question committee, that person or organization itself becomes a committee

required to file the appropriate Statement of Organization and periodic Campaign Finance Statements.

6. MCL 169.224 provides that a committee shall file a statement of organization within 10 days after the committee is formed. A person who fails to file a statement of organization required by this subsection shall pay a late filing fee of \$10.00 for each business day the statement remains not filed in violation of this subsection. The late filing fee must not exceed \$300.00. A person who violates this subsection by failing to file for more than 30 days after a statement of organization is required to be filed is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.
7. MCL 169.234 provides that a ballot question committee shall file preelection, postelection campaign statements, as well as statements in April and July every year. MCL 169.234 also provides a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing of a ballot question committee fails to file a statement as required by subsection (1) or (2) for more than 7 days, that treasurer or other designated individual is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 90 days, or both.
8. Unlock Michigan, 2145 Commons Parkway, Okemos, Michigan, was a ballot question committee registered under the MCFA with committee ID# 519796. In 2020, this committee launched a petition drive aimed at repealing the 1945 Emergency Powers of the Governor Act that Governor Whitmer used to extend a state of emergency during the height of the COVID-19 pandemic. The Michigan Supreme Court's decision in *Midwest Inst of Health v Governor*, 506 Mich 332 (2020) rendered the petition drive moot.
9. Michigan Citizens For Fiscal Responsibility (MCFR) and Michigan! My Michigan! (MMM) are 501(c)(4) tax-exempt organizations claiming to be organized and operated exclusively for the promotion of social welfare. Michigan law does not require the identity of persons making contributions to a 501(c)(4) organization to be reported.
10. On or about May 25, 2021, citizen Robert LaBrant filed a campaign finance complaint with Michigan Secretary of State (MSOS) as it related to MMM and MCFR. LaBrant was identified as a retired officer of the Michigan Chamber of Commerce who was long involved with the Michigan Republican Party. He

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served as a director of the Michigan Citizens for Fiscal Responsibility (MCFR) from 2014 to 2017. LeBrant had previously filed a complaint against MCFR in June of 2020 that was dismissed by MSOS for insufficient evidence. LeBrant's subsequent complaint alleged that former Senator Mike Shirkey, with the help of Heather Lombardini, the founder and lead of the fundraising team at Bright Sparks Strategies, used both MMM and MCFR to fund the Unlock Michigan ballot question initiative through a "dark money scheme" by soliciting or receiving donations for the specific purpose of making expenditures to Unlock Michigan, thus themselves becoming ballot question committees required to make reports under the Michigan Campaign Finance Act.

11. LaBrant provided information that MCFR and MMM together contributed over \$2.3 million in funding to Unlock from June 2020 to October 2020, "nearly 86%" of Unlock Michigan's total funding during that period. At the end of calendar year 2019, MCFR had \$715,137 in assets, and MMM had \$172,452 in assets. From June 2020 to October 2020, MCFR contributed approximately \$1,780,000 to Unlock, while MMM contributed approximately \$550,000.

12. In MCFR's response to LaBrant's initial June 2020 complaint, attorneys at Clark Hill included a document titled as an affidavit from Heather Lombardini contesting the allegations levied by LaBrant. The affidavit was missing a notary signature. In that affidavit, dated and signed September 9, 2020, Lombardini stated:

"To the best of my knowledge, MCFR has not solicited or received contributions for the purpose of making an expenditure to Unlock Michigan or any other ballot question committee."

13. The MSOS found that there may be reason to believe that MCFR and MMM violated the MCFA. In its decision letter, the MSOS outlined the amounts and dates of the contributions that Unlock Michigan received from MCFR and MMM, and the dates and amounts of the payments that Unlock Michigan then made to a firm hired to collect petition signatures called National Petition Management (NPM). These payments that Unlock Michigan made to NPM often occurred within days of contributions they received from MMM/MCFR. MSOS stated that the fundraising to allow MCFR to contribute \$1,780,000 and MMM to contribute \$550,000 to Unlock from June 2020 to

October 2020 would be substantial. MSOS further noted that MCFR and MMM may have taken actions that would qualify each organization as a ballot question committee although neither had filed the required Statement of Organization or any periodic Campaign Finance Statement.

14. That contributions by MCFR and MMM to Unlock Michigan were closely followed by expenditures made by Unlock Michigan to NPM, indicated coordination between MMM/MCFR and Unlock, and that these three entities were not independent of each other. After concluding that there may be reason to believe that MCFR and MMM solicited or received contributions for the purpose of making an expenditure to Unlock Michigan, and thus were themselves “ballot question committees” under the MCFA with unfulfilled filing obligations, the MSOS attempted informal methods to correct possible violations and prevent further violations. Such attempts were unsuccessful, and this matter was then referred to the AG’s office for a criminal investigation regarding MMM and MCFR.
15. The AG’s investigation revealed that Heather Lombardini and Ellen Kletzka were officers/directors of both MMM and MCFR. Both organizations also utilized the same address of 106 W. Allegan, Ste 200, Lansing, MI, 48933. MCFR reported that they utilized the fundraising services of Sterling Corporation which also had the same address of 106 W. Allegan. Sterling Corporation later became Lambert & Co, and eventually broke off into Bright Sparks Strategies. Heather Lombardini, who worked at both Sterling and Lambert, was listed as the founder of Bright Sparks. Ellen Kletzka is listed as the corporate controller of Bright Sparks.
16. The information filed with Licensing and Regulatory Affairs (LARA) for MMM lists Phil Hoffman as the President, Lombardini as the Treasurer, and Kletzka as the Secretary. The information filed with LARA for MCFR lists Lombardini as the President, Kletzka as the Treasurer, and Madalyn Holyfield as the Secretary. Shirkey’s name does not appear on the formal paperwork for either.
17. On January 18, 2023, a search warrant was executed for Bright Sparks Strategies located at 106 W. Allegan, Ste 200, Lansing, MI to retrieve documents from MMM/MCFR that would identify addresses and identities of individuals or companies that contributed to MMM/MCFR during the timeframe of June 9, 2020 through October 21, 2020 (the initial date range

LaBrant provided in his complaint). During the search, Lombardini stated that MMM utilized Comerica Bank and MCFR utilized Capitol National Bank. Seventy-one pages of documents were obtained for MMM and 163 pages for MCFR.

18. Contained in those documents were copies of checks given as contributions. Many of the checks, including ones written by [REDACTED] and [REDACTED] included the mention of Shirkey or Unlock Michigan in the memo lines despite being made out to MMM or MCFR. The check written by [REDACTED] was accompanied by an email from Sandy Baxter titled "Senate Majority Leader Mike Shirkey – Unlock Michigan" that stated "[t]he C-4 account Michigan! My Michigan! can accept corporate or personal checks and they do not disclose donors".
19. In reviewing Unlock Michigan's campaign finance statements through the MSOS campaign finance database, it was discovered that MMM and MCFR continued to make donations to Unlock Michigan after October 2020 and through September of 2021. Contributions ceased after September of 2021. A new 501(c)(4) titled MI Guardians of Democracy then began donating large amounts to Unlock Michigan. This 501(c)(4) once again had the same address as MMM and MCFR (106 W. Allegan) and documents filed with LARA listed Lombardini as President and Kletzka as treasurer.
20. A search warrant was executed on MMM and MCFR's bank accounts at Comerica and Capitol National Bank respectively for an extended date range of June 1, 2020 through September 30, 2021. The banking information revealed that Lombardini and Kletzka were authorized signers for MCFR and Lombardini, Kletzka, and Mike Shirkey were authorized signers for MMM.
21. Investigative subpoenas were completed for [REDACTED] and [REDACTED] regarding their contributions and involvement. When [REDACTED] was asked why he wrote "Unlock Michigan" in the memo line of his \$20,000 check to MCFR, [REDACTED] stated that Mike Shirkey called him on the phone and told him about Unlock Michigan and directed him to donate to MCFR. [REDACTED] wrote a check to MMM with "Unlock Michigan" in the memo line, and when asked why he wrote it that way, he stated that Mike Shirkey called him on the phone and told him about Unlock Michigan and directed him to donate to MMM. Affiant also interviewed [REDACTED] who stated he was also contacted by Mike Shirkey to contribute for Unlock to "open businesses back

up” and acknowledged being in touch with Sandy Baxter regarding his donation to MMM.

22. On March 10, 2023, Sandra aka “Sandy” Baxter appeared for an investigative subpoena at the AG offices in Lansing, where she was advised of her rights and placed under oath, subject to perjury penalties if she knowingly provided false information. Baxter explained she was a fundraising consultant operating under the business name TopFundraising.com LLC. Baxter explained that sometimes the topic of Unlock Michigan would just come up in casual conversation and then she would direct those people to Lombardini/MMM. She stated she made a loose agreement with Lombardini where Baxter would receive 15% of each donation that she was responsible for obtaining and believed she made approximately \$12,000 over a few months. When asked if she ever did fundraising for Mike Shirkey, Baxter replied, “no”. When asked if she had any working relationship with Mike Shirkey, she stated, “no”. She was also asked if she had any direct contact with Mike Shirkey regarding helping out with donations for Unlock Michigan and she stated, “no”.

23. Search warrants were obtained and executed on Lombardini’s email account as well as two email accounts for Shirkey. Email evidence within both Shirkey’s accounts and Lombardini’s revealed that Baxter was more involved with the systematic raising of money for Unlock Michigan through MMM/MCFR than she admitted to in her investigative subpoena interview. In her interview, Baxter stated she did not do any fundraising for Shirkey, that she had no working relationship with him, and stated she did not speak with him. Several emails directly contradict this. Most notably, Baxter stated that she did not have any direct contact with Shirkey about raising money for Unlock Michigan. However, in an email dated August 6, 2020, that Baxter sent directly to Shirkey, she included a memo she wrote regarding her thoughts on how to approach fundraising for Unlock Michigan to him titled “Unlock MI Memo” along with a draft contract for her fundraising services. The memo includes that she would be “happy to make many of these calls” and is “ready to proceed – full steam ahead.” Other emails show Baxter, Lombardini, and Shirkey discussing calls Baxter was making to donors for Shirkey and donor checks for Unlock Michigan being sent to the undisclosed accounts.

24. Shirkey's emails revealed several blatant solicitations for the Unlock Michigan's ballot initiative that directed donors to MMM and MCFR to avoid disclosure. There are numerous examples in which Shirkey emailed a person asking for money specifically for Unlock Michigan while directing them to make their check payable to MCFR or MMM, and subsequent, corresponding checks from those people written out to MMM or MCFR.
25. While some emails explicitly included the words "Unlock Michigan" Shirkey was more subtle than others by calling it "our cause" or the "citizen initiative." One email refers to "the Citizen Initiative" that you "may have heard it referred to as Unlock Michigan." When directing donors to send money to MMM/MCFR for supporting Unlock Michigan, Shirkey frequently cited the fact that MMM and MCFR are non-disclosed accounts that can accept an unlimited amount from individual and corporate donors.
26. In one email, while directing a contribution to MCFR, Shirkey stated, "100% of funds to this account will go to the cause" and in another email, he stated, "you can be assured all \$\$ will go to the subject cause" when referring to contributions made to MMM and MCFR. A flyer that Lombardini sent to Baxter describes MMM as Shirkey's C4 corporate account, and MCFR as a C4 corporate account under Heather Lombardini's contact information.
27. Email evidence from Lombardini's account revealed at least one example of Lombardini directly soliciting money from a donor herself for Unlock Michigan but instructing that donor to write a check to MCFR. Lombardini also sent an email to Shirkey titled "Unlock - \$\$ - for your call today" that contained a spreadsheet with donors that affiant later confirmed donated to MCFR. Additionally, Lombardini wrote an email to Fred Wszolek (lead organizer of Unlock Michigan) and Mary Doster (Treasurer for Unlock Michigan) stating she had more money for them, but "I just don't want to show money from my end coming in and then going out immediately." Lombardini's emails summarily show her following up with donors that Shirkey had contacted, scheduling Unlock Michigan pitch meetings, and dealing with the administrative work required for fundraising. It is clear she not only took part in the coordination between Unlock Michigan, MMM, and MCFR, but was aware of and facilitated the solicitations made by Shirkey for Unlock Michigan and received the resulting contributions for Unlock Michigan into MMM and MCFR accounts.

28. Based on the information outlined above, there is evidence that Shirkey, Lombardini, and Baxter solicited money for the Unlock Michigan ballot question committee through the 501(c)(4) organizations MMM and MCFR. Heather Lombardini routinely facilitated the logistics of these contributions, and on at least one occasion solicited a contribution herself. Under MCL 169.203(4), MMM and MCFR effectively became ballot question committees that were required to file Statements of Organization and Campaign Finance Statements in accordance with MCL 169.224 and MCL 169.234. MMM and MCFR did not file any statements under the MCFA.
29. Under MCL 169.234, only the treasurer or other individual designated as responsible for record keeping, report preparation, or report filing for the ballot question committee is obligated to file Statements of Organization and Campaign Finance Statements. Shirkey was not a candidate, treasurer, or person responsible for record keeping for MMM and MCFR. Hoffman and Holyfield were virtually non-existent in the investigation other than their names being on LARA paperwork. Ellen Kletzka was included in some email evidence but did not appear to take part in the solicitation for Unlock Michigan. Lombardini was the Treasurer of MMM and the President of MCFR, and had knowledge of and participated in the solicitation and receiving of funds for Unlock Michigan. Because of these roles, it was Lombardini's responsibility to file Statements of Organization for both organizations, and Campaign Finance Statements for MMM.
30. MCL 169.234 provides a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing of a ballot question committee fails to file a statement as required by subsection (1) or (2) for more than 7 days, that treasurer or other designated individual is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 90 days, or both.
31. The actions of Lombardini and Shirkey were not a mistake or error. Shirkey repeatedly told potential donors that they should donate to the undisclosed, unlimited accounts of MMM/MCFR instead of directly to Unlock Michigan. Lombardini had knowledge of all of this and helped facilitate the solicitations and received the resulting contributions. Lombardini's email to Fred Wszolek mentioned above is also demonstrative of knowledge and intent. Had she believed that what they were doing was not wrong, she would not have been

concerned about the money going directly into MMM/MCFR and then quickly out to Unlock Michigan. This is also evidenced by Lombardini's deception to the MSOS. Further, Baxter's false testimony to the AG's office indicates she also knew that they were not operating within the parameters of the law.

32. A person who knowingly makes a false statement under oath in an examination conducted by a prosecuting attorney pursuant to a subpoena issued to investigate the commission of a felony is guilty of perjury under MCL 767A.9(1)(a).
33. MCL 750.249 provides that any person who utters and publishes as true a false, forged, altered, or counterfeit record, instrument, or other writing listed in section 248 knowing it to be false, altered, forged, or counterfeit with intent to injure or defraud is guilty of a felony punishable by imprisonment for not more than 14 years. The uttering and publishing of a false affidavit submitted to MSOS done with the intent to defraud violates this statute.
34. Lombardini signed and submitted a document titled as an affidavit, as described previously, which stated that to her knowledge MCFR did not solicit or receive contributions for the purpose of making an expenditure to Unlock Michigan. The email evidence previously discussed shows that the statement she provided to the MSOS was false. Not only was Lombardini aware of the solicitation and receiving of contributions to be used for Unlock Michigan, but she also participated in the process.
35. Baxter took an oath authorized by MCL 767A.1 at her investigative subpoena interview. As documented in the investigative subpoena transcript, Baxter was advised twice during her interview that she was subject to penalties of perjury if she provided false information. She was also given the opportunity to correct any of her testimony at the end of the interview. The email evidence obtained through Lombardini and Shirkey's email accounts after Baxter's investigative subpoena interview revealed that Baxter made several false statements while under oath and knew that she was making false statements as described previously above pertaining to her relationship with Shirkey and her involvement with fundraising for MMM/Unlock Michigan.
36. Based on the information contained in paragraphs 1–35, I am seeking a warrant charging (1) Heather Lombardini:

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Count 1 – Campaign Finance – Failing to File a Statement of Organization

On or about June 1, 2020, Heather Lombardini failed to file a statement of organization for Michigan Citizens for Fiscal Responsibility for more than 30 days after such a statement was required to be filed; contrary to MCL 169.224, a \$1,000 misdemeanor fine.

Count 2 – Campaign Finance – Failing to File a Statement of Organization

On or about June 1, 2020, Heather Lombardini failed to file a statement of organization for Michigan! My Michigan for more than 30 days after such a statement was required to be filed; contrary to MCL 169.224, a \$1,000 misdemeanor fine.

Count 3 – Campaign Finance – Ballot Committee – Failure to File a Campaign Statement

On or about July 25, 2020, Heather Lombardini being the treasurer of Michigan! My Michigan!, a ballot question committee, failed to file a campaign statement as required by MCL 169.234(1) for more than 7 days after the filing deadline; contrary to MCL 169.234, a 90-day misdemeanor.

Count 4 – Uttering and Publishing

On or about September 9, 2020, Heather Lombardini did utter and publish as true, a certain false record, instrument, or other writing, with intent to injure or defraud, knowing said instrument to be false, said instrument more fully described as follows: a document titled as an affidavit, signed by Heather Lombardini on September 9, 2020, and submitted to the Michigan Department of State as a response to a complaint filed under MCL 169.215; contrary to MCL 750.249, a 14-year felony.

37. Based on the information contained in paragraphs 1-34, I am also seeking a warrant charging (2) Sandra Baxter with the following:

Count 1 – Prosecutors Investigative Subpoenas – Perjury

On or about March 10, 2023, Sandra Baxter did knowingly make a false statement under oath in an examination conducted by a prosecuting attorney pursuant to a subpoena issued to investigation the commission of Conspiracy

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to Do a Lawful Act in an Unlawful Matter, by testifying as follows: she did not have direct contact with Mike Shirkey about helping out with donations for Unlock Michigan; and/or she did not do fundraising for Mike Shirkey; and/or she did not have a working relationship with Shirkey; contrary to MCL 767A.9(1)(a), a 15-year felony.

WHEREFORE, the facts and circumstances developed during an investigation demonstrate probable cause to believe that each of the 2 Michigan residents named herein committed criminal offenses under Michigan Law.

Jennifer Kapushinski

Jennifer Kapushinski

Affiant

/s/ *Danielle Hagaman-Clark*

Reviewed on 02/20/2024

Michigan Department of Attorney General
Danielle Hagaman-Clark, P63017
Assistant Attorney General
3030 W. Grand Blvd. Ste. 10-200
Detroit, MI 48202
(517)-927-3356

Subscribed and Sworn before me on: February 21, 2024

Stacia Buchanan P61500
Honorable Stacia Buchanan
Judge/Magistrate -54A District Court

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