No. 22-1014

In the United States Court of Appeals for the Sixth Circuit

RONALD WEISER;
THE MICHIGAN REPUBLICAN PARTY,

Plaintiffs-Appellants,

v.

JOCELYN BENSON
IN HER OFFICIAL CAPACITY AS SECRETARY OF STATE,

Defendant-Appellee,

WHITMER FOR GOVERNOR COMMITTEE

Intervenor-Appellee.

CORRECTED INITIAL BRIEF OF PLAINTIFFS–APPELLANTS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION (1) NO. 1:21-CV-00816-JTN-SJB

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CORPORATE DISCLOSURE STATEMENT

Counsel for the Plaintiffs-Appellants certify, under Federal Rule of Appellate Procedure 26.1 and Sixth Circuit Rule 26.1, that no party to this appeal is a subsidiary or affiliate of any publicly owned corporation and no publicly owned corporation that is not a party to this appeal has a financial interest in the outcome of it. Plaintiffs-Appellants are a private individual and a political-party organization.

/s/ Jason B. Torchinsky
JASON B. TORCHINSKY

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

This appeal raises consequential, and complex, questions related to the circumstances under which First and Fourteenth Amendment injuries arise when participants in the political marketplace of ideas are forced to abide by different rules. Resolution of the campaign-finance issues at the heart of this case will profoundly affect the way in which the remainder of Michigan's gubernatorial election cycle will proceed and will set critical rules of engagement in future political contests. Mr. Weiser and the Michigan Republican Party (collectively, "the Plaintiffs") believe that oral argument would assist the Court in reaching the correct result in this pressing case. *See* FED. R. APP. P. 34(a).

STATEMENT OF JURISDICTION

The district court had subject matter jurisdiction under 28 U.S.C. § 1331 because the Plaintiffs sued the Michigan Secretary of State to vindicate their federal First and Fourteenth Amendment rights. After the district court dismissed the Plaintiffs' complaint and entered final judgment on January 4, 2022, the Plaintiffs filed a timely notice of appeal on January 5, 2022. This Court therefore has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Blackletter constitutional law holds that "distinguishing among different speakers, allowing speech by some but not [by] others," runs afoul of the Constitution, *Citizens United v. FEC*, 558 U.S. 310, 340 (2010), as does creating a state-mandated fundraising disadvantage in the "competitive context of electoral politics," *see Davis v. FEC*, 554 U.S. 724, 739 (2008). Current Michigan Governor Gretchen Witmer has relied on a series of ill-fated recall efforts (not one of which has raised *any* money) and a 1980s-era Secretary of State declaratory ruling to amass $3.7 million in contributions from donors who have given her more than the Michigan Campaign Finance Act would otherwise allow (and more than the Plaintiffs are allowed to contribute to their preferred Michigan gubernatorial candidates), the vast majority of which she has now transferred to the Michigan Democratic Party.

Did the district court err when it concluded that the Plaintiffs have not suffered a cognizable injury in fact to their First and Fourteenth Amendment rights?

STATEMENT OF THE CASE & FACTS

I. BY ITS PLAIN TERMS, THE MICHIGAN CAMPAIGN FINANCE ACT HARMONIZES CAMPAIGN-CONTRIBUTION LIMITS FOR THOSE DONATING TO ALL CANDIDATES.

The Michigan Campaign Finance Act ("the Act"), like many others throughout the Nation, is intricate. *See* MICH. COMP. LAWS §§ 169.201 *et seq*. Enacted in 1976, the Act, among many other things, "regulate[s] political activity," "require[s] campaign statements and reports," and "prescribe[s] the powers and duties of certain state departments and state and local officials and employees." MICH. COMP. LAWS SERV. § 169 Act 388. In other words, it decrees the rules of engagement for politicians, political parties, candidates, donors (both corporate and individual), and the State actors tasked with administering the Michigan political machinery

Despite the Act's complexity, the provisions relevant to this dispute are straightforward. Section 169.252 states, unequivocally and without exception, that "a person other than an independent committee or a political party committee shall not make contributions to a candidate committee of a candidate for elective office that, with respect to an election cycle," exceeds "$6,800.00 for a candidate for state elective office." MICH. COMP. LAWS § 169.252(1)(a). "State central committee[s] of a political party," on the other hand, may "make contributions to . . . a candidate for state elective office" up to "20 times the amount" that "a person" may contribute. *Id*. § 169.252(4).

For the 2022 election cycle, Secretary of State Jocelyn Benson has raised the campaign-contribution limit for individual donors to $7,150, which automatically

increases the amount that State political party committees may contribute to $143,000. She increased this level based on the statutory mandate that she "compar[e] the percentage increase or decrease in the consumer price index for the preceding August by the corresponding consumer price index 4 years earlier." *See id*. § 169.246(2). Other than updating the campaign-contribution cap to account for inflation, the Act provides the Secretary with no authority to change its plain terms.

II. IN THE 1980S, SECRETARY BENSON'S PREDECESSOR CREATES THE RECALL EXCEPTION.

For roughly seven years after the statute's enactment, the amount of money that an incumbent politician may receive from any particular donor harmonized entirely with the amount of money that the incumbent's challenger may raise. That all changed in 1983, when then-Michigan Senate Majority Leader William Faust asked Secretary Benson's predecessor to interpret the "applicability of the . . . Act . . . to contributions received by a state legislator who is the subject of a recall campaign." Exhibit A to the Complaint, Secretary of State's Interpretive Statement to William Faust, RE 1-1. In response, the then-Michigan Secretary of State opined that, because "a recall vote does not fill a public office," and because the Act only caps contributions received by "candidate[s] for state elective office," the Act's caps "do[] not apply to contributions . . . designated for a recall election." *Id.*, Page ID # 20. In the then-Secretary's view, a contrary interpretation would be "absurd and unfair and could not

have been intended by the Legislature," because recall political committees have no caps on the amount of contributions they may receive. *Id*.

The 1983 letter did clarify that, if a recall election never comes to fruition, funds exceeding the Act's contribution limits may not be retained. But instead of mandating that the funds find their way back to the contributor, the then-Secretary specified that they may "be given . . . to a political party committee or to a tax[-]exempt charitable institution." *Id.*, Page ID # 21. The former, of course, can then either spend the money to assist a reelection campaign or donate directly to such reelection campaign at a level that is magnitudes higher than any individual may contribute. MICH. COMP. LAWS § 169.252(4).

Although the Secretary's 1983 letter was "informational only and [did] not constitute a declaratory ruling," Exhibit A to the Complaint, Secretary of State's Interpretive Statement to William Faust, RE 1-1, Page ID # 20, the Michigan Secretary of State formalized this opinion the following year in response to a request by a prosecuting attorney who "disagree[d]" that any candidate should be allowed to flout the Act's plain terms, Exhibit B to the Complaint, Secretary of State's Declaratory Ruling to L. Brooks Patterson, RE 1-2, Page ID # 23. The Secretary, in his declaratory ruling, answered the response by, in large part, regurgitating the text of the 1983 letter. And although the then-Secretary cited U.S. Supreme Court precedent spotlighting the constitutional requirement that "contribution limits appl[y] equally to *incumbents* and

challengers," *see id.*, Page ID # 25 (emphases added) (quoting *Buckley v. Valeo*, 424 U.S. 1 (1976)), he nonetheless insisted that applying the Act's plain terms would "treat contributors to the proponents of a recall differently than contributors to the committee of the state official who is the subject of the recall," which would be "a result that clearly could not have been intended by the Legislature." *Id.*, Page ID # 25.

The then-Secretary's 1984 declaratory ruling has never been scrutinized by a court, either state or federal. The only analysis of the Act's plain text comes in the form of the then-Secretary's 1983 letter and its carbon-copying of the same into the 1984 declaratory ruling.[1] Of particular relevance to this case, the only inquiry into the constitutionality of this interpretation is the then-Secretary's lone cite to *Buckley v. Valeo* followed by his three-sentence *ipse dixit*.

[1] Indeed, even the textual basis for the then-Secretary's interpretation has been abrogated by subsequent amendments to the Act. In 2012, the Act was amended to clarify that a recall election does not result in the vacatur of an office. Instead, the candidate receiving the highest number of votes in a recall election assumes the office for the remainder of the term. *See* MICH. COMP. LAWS § 168.975. And in a gubernatorial recall election, the incumbent governor is replaced by the next person in line for the office under the Michigan Constitution. *See* MICH. COMP. LAWS § 168.975g. In other words, recall elections in Michigan now do in fact fill a public office.

Despite an evisceration of the trivial statutory basis her predecessor had for his interpretation of the Act, Secretary Benson has nonetheless maintained the position that incumbent candidates like Governor Whitmer may exploit the Recall Exception. *See* Exhibit C to the Complaint, Michigan Freedom Fund's Complaint to the Secretary of State, RE 1-3, Page ID # 27–32.

III. GOVERNOR WHITMER RAISES OVER $3.7 MILLION IN CONTRIBUTIONS EXCEEDING MICHIGAN'S CAMPAIGN CONTRIBUTION LIMITS AND TRANSFERS ROUGHLY 95 PERCENT OF IT TO HER POLITICAL PARTY.

On November 6, 2018, Gretchen Whitmer was elected as Michigan's forty-ninth governor. *See 2018 Michigan Official General Election Results*, https://mielections.us/election/results/2018GEN_CENR.html (last visited Feb. 21, 2022). Her time as the Chief Executive for the State, however, has not been without its controversy. She was thrust into the national spotlight after her selection to deliver the Democratic response to President Trump's 2020 State of the Union Address. So, too, did her handling of the COVID-19 pandemic just a few months later.

Largely in response to her COVID-19 stay-at-home orders, a handful of frustrated Michiganders lodged a series of recall efforts in 2020 and in 2021. Of the twenty-seven recall efforts commenced, seventeen were rejected by the Michigan State Board of Canvassers for procedural deficiencies. *See* Exhibit 1 to Whitmer for Governor's Response to Motion for Temporary Restraining Order, RE 41-2, Page ID # 289–97. Of the ten approved by the Board of Canvassers, only one resulted in formation of a recall committee. *See* MICH. COMP. LAWS § 168.955. That committee, in turn, raised no money whatsoever, nor is there any indication that it came even remotely close to gathering the requisite number of signatures. *See, e.g.*, *Michigan Campaign Statement Summary Page of Committee to Recall Governor Gretchen Whitmer*, https://cfrsearch.nictusa.com/documents/494426/details/filing/summary?changes=0

(last visited Feb. 21, 2022); *see also* Complaint, RE 1, Page ID # 27–32 (suggesting that the recall committee did not gather any signatures at all).

Notwithstanding the wholly unserious nature of these efforts, Governor Whitmer's campaign found utility in the façade of an actual threat to her gubernatorial tenure. In July 2021, Governor Whitmer reported that her campaign had received contributions from 157 separate donors who gave more than the Act's $7,150 limit. At the time, ten individuals had contributed at least $100,000; five contributed at least $250,000—*i.e.*, thirty-five times the Act's campaign-contribution limits. Exhibit C to the Complaint, Michigan Freedom Fund's Complaint to the Secretary of State, RE 1-3, Page ID # 27. Her total haul in excess of the Act's caps exceeded $3.7 million, *id.*, Page ID # 27–35, resulting in the largest war chest ever raised by a Michigan gubernatorial candidate in a non-election year.[2] And even though her coffers were hyper-inflated by a few dozen deep-pocket donors, her campaign spokesperson nonetheless spun her campaign's wealth as "a testament to the enormous trust people have in her ability to put Michigan first and continue leading our state forward, creating jobs and getting our economy moving again." Eggert, *supra* n. 2.

[2] David Eggert, *Michigan Governor Gretchen Whitmer reelection campaign breaks fundraising record*, NEWS NATION (July 21, 2021), https://www.newsnationnow.com/us-news/midwest/michigan-governor-gretchen-whitmer-raises-8-5m-for-reelection-campaign-in-7-months/.

On December 29, 2021, and in recognition that she could no longer justify raising unlimited sums based on non-existent recall efforts, Governor Whitmer's campaign disgorged the funds she had accumulated in excess of the Act's limits. She refunded $250,000 to one of her individual donors.[3] She then "donat[ed]" the remaining $3,548,865.61 to the Michigan Democratic Party. *Id.* Under the Act, the State's Democratic Party can contribute up to $143,000 (twenty-times the amount an individual can contribute) right back to Governor Whitmer's campaign. MICH. COMP. LAWS § 169.252(4). It can spend every dime of the remainder on independent expenditures to assist her reelection effort. *Id*.

IV. MR. WEISER AND THE MICHIGAN REPUBLICAN PARTY SUE TO END GOVERNOR' WHITMER'S MONEY-LAUNDERING SCHEME, BUT THE DISTRICT COURT CONCLUDES THAT THEY LACK ARTICLE III STANDING.

A. In September 2021, Ronald Weiser and the Michigan Republican Party filed a Section 1983 action against Secretary of State Jocelyn Benson. *See* Complaint, RE 1, Page ID # 1. Their complaint (1) alleged that the asymmetrical campaign-contribution limits fabricated by Secretary Benson's predecessor violate the First Amendment's Free Speech Clause and the Fourteenth Amendment's Equal Protection Clause, both facially and as-applied to them, and (2) asked the district court to enjoin the exception. Regarding their injury, the Plaintiffs alleged that the Recall Exception "leaves every Republican

[3] *See Itemized Direct Expenditures of Gretchen Whitmer for Governor Committee*, https://cfrsearch.nictusa.com/documents/519803/details/filing/expenditures?schedule=1B&changes=0 (last visited Feb. 21, 2022).

gubernatorial candidate—and the donors who wish to express their political speech by supporting them—at a distinct disadvantage." *Id.*, Page ID # 8.

Shortly after Mr. Weiser and the Michigan Republican Party filed suit, the Whitmer for Governor Committee moved to intervene as a defendant. Renewed Motion to Intervene by Whitmer for Governor, RE 11, Page ID # 61. In support, Governor Whitmer proclaimed that, "[t]hrough this litigation, the Michigan Republican Party directly seeks to financially handicap its political opponent—Whitmer and her campaign committee—during the on-going recall election cycle and upcoming gubernatorial election." *Id.*, Page ID # 63. None of the parties objected to Governor Whitmer's request, *see* Plaintiffs' Notice of Non-Objection to the Whitmer for Governor Committee's Motion for Permissive Intervention, RE 22, Page ID # 105, the district court granted it, *see* Order Granting Motion to Intervene, RE 27, Page ID # 125, and the parties began the process of scheduling briefing on their respective motions to dismiss and request for a preliminary injunction. *See* Order Setting Pre-Motion Conference, RE 33, Page ID # 144. At the time, Governor Whitmer seemed content to cling to the Recall Exception funds she had squirreled away.

B. On November 15, 2021, the landscape of this litigation changed dramatically. On that day, counsel for Governor Whitmer told the Michigan State Board of Canvassers that her campaign was preparing to disgorge the millions of dollars she had received in excess of the Act's contribution limits. Declaration of Paul J. Cordes in Support of

Motion for Temporary Restraining Order, RE 37-1, Page ID # 209. Her counsel made no mention of where the campaign would send these funds, but, fearing the irreparable injury that would occur if the funds were laundered through either the Michigan Democratic Party or a politically aligned soft money Section 501(c)(3) organization (both of which remained options under the Recall Exception), the Plaintiffs filed an emergency motion for a temporary restraining order on November 18, 2022. Motion for Temporary Restraining Order, RE 34, Page ID # 145. In it, they asked the district court to enjoin Governor Whitmer "from transferring those funds to the Michigan Democratic Party, or any other organization, until" it resolved the Plaintiffs forthcoming motion for a preliminary injunction. Plaintiff's Memorandum in Support of Application for Temporary Restraining Order, RE 34-1, Page ID # 152.

The district court conducted a hearing to resolve the Plaintiffs' motion on December 1, 2022. Order Scheduling TRO Hearing, RE 38, Page ID # 248. It ultimately denied the Plaintiffs' request and ordered the parties to submit additional briefing addressing the Plaintiffs' Article III standing. Order Denying Motion for Temporary Restraining Order, RE 44, Page ID # 385. In their brief, the Plaintiffs argued that (1) allowing Governor Whitmer to keep the funds she had amassed ostensibly to fend off recall efforts would necessarily discriminate against her reelection challengers, and (2) permitting her to dump millions of ill-gotten dollars into the State political party supporting her reelection necessarily means that she will receive an unfair, and

constitutionally infirm, advantage over those who wish to donate to her political rivals and the State political party opposing her reelection. Plaintiffs' Supplemental Brief Regarding Article III Standing, RE 48, Page ID # 461.

C. On January 4, 2022, the district court dismissed the Plaintiffs' complaint for lack of Article III standing. Opinion and Order Dismissing Complaint for Lack of Article III Standing, RE 50, Page ID # 485. Rather than analyzing the Plaintiffs' allegations the way they pleaded them (*i.e.*, that the Recall Exception allows Governor Whitmer to use her uncapped *recall* funds to benefit her *reelection* campaign, *see* Plaintiffs' Supplemental Brief Regarding Article III Standing, RE 48, Page ID # 460, the district court "focused its inquiry on whether Plaintiffs' alleged injury *related to the recall* is concrete and particularized and actual and imminent." Opinion and Order Dismissing Complaint for Lack of Article III Standing, RE 50, Page ID # 492 (emphasis added). In other words, the district court misconstrued the Plaintiffs allegations as an objection solely to the way in which Michigan orders its recall elections. *Id.*

From that first error, the rest necessarily followed. Although Plaintiffs have maintained that Governor Whitmer is unconstitutionally receiving money many multiples above that which Mr. Weiser and the Michigan Republican Party are allowed to give to their preferred candidates, the district court nonetheless described their allegations as challenging "elevated or unlimited contribution limits applied *across the board* to detractors and supports in recall campaigns." *Id.*, Page ID # 493 (emphasis

added). The district court then glossed the Plaintiffs' complaint as a "generalized grievance . . . that the Michigan Government should make the recall individual contribution limits more in harmony with the contribution limits for elections for a public office." *Id.*, Page ID # 494. Finally, the district court shrugged off the Plaintiffs' injury as "self-inflicted" because "they could have contributed unlimited amounts to a recall committee opposing the Governor but did not do so." *Id.*, Page ID # 495.

This appeal followed. Notice of Appeal, RE 51, Page ID # 497–98.

SUMMARY OF THE ARGUMENT

After Governor Whitmer's campaign disclosed that she had received approximately $3.7 million in campaign-contributions from donations that exceeded the limits enumerated by the Act, the Plaintiffs filed suit. Specifically, they alleged that asymmetrical campaign-contribution limits violate their rights under the First Amendment's Free Speech Clause and the Fourteenth Amendment's Equal Protection Clause. Before reaching the merits of their constitutional claims, the district court dismissed their claim because, in its view, the Plaintiffs had not satisfied Article III's requirement that they demonstrate a concrete and particularized injury in fact. That was error.

A. Legion of U.S. Supreme Court precedent stands for an unassailable principle—the Plaintiffs, like all others, have a legally cognizable First Amendment right to express themselves in the political marketplace. While some political-speech

regulations survive constitutional scrutiny, laws that preference one person's speech over another never do. Indeed, uniform treatment is part and parcel not only of the fundamental rights Plaintiffs enjoy by virtue of the First Amendment but also by virtue of the Fourteenth Amendment's Equal Protection Clause.

B. The Recall Exception, in turn, inflicts a concrete and particularized injury on the Plaintiffs' First and Fourteenth Amendment rights. Mr. Weiser is permitted to contribute no more than $7,150 to the gubernatorial candidate he prefers, while some of Governor Whitmer's supporters have contributed roughly thirty-five times as much to her. Governor Whitmer has, in turn, used this loophole to flaunt her artificially inflated, record-breaking, fundraising efforts to persuade the Michigan electorate that she should be reelected, and has now moved virtually all the funds to her political party, which may expend every dime of it to support her reelection campaign. The profound inequality between Governor Whitmer, her party, and her supporters (on one side), and Mr. Weiser and the Michigan Republican Party (on the other), amounts to a concrete and particularized injury in fact to the Plaintiffs' constitutional rights.

C. The district court's contrary conclusion was premised on a fundamental error—specifically, that because they could (and should) have donated unlimited sums to support an effort to recall Governor Whitmer, their injuries were non-cognizable and self-inflicted general grievances. The Plaintiffs, however, are not interested in lending their constitutionally protected speech to support a recall effort that will result in

Michigan's current Lieutenant Governor ascending to the role of the State's Chief Executive. They want, and have a constitutionally protected right, to express their support for the candidate of their choosing, and to do so on equal terms as their political rivals. Because the district court misconstrued this point, its dismissal order should be reversed.

D. Governor Whitmer's decision to shuttle most of her ill-gotten gains to the Michigan Democratic Party does not moot this case. Because the Michigan Democratic Party has complete discretion to spend every cent of it to help her reelection efforts, the Plaintiffs' injury remains as acute as if she were to spend them herself. And because the district court has authority under both Federal Rule of Civil Procedure 65(d) and the All Writs Act, 28 U.S.C. § 1651, to remedy this injury, the case remains live.

STANDARD OF REVIEW

This Court "review[s] de novo whether the [P]laintiffs have standing." *Price v. Medicaid Dir.*, 838 F.3d 739, 745 (6th Cir. 2016) (citing *Stalley v. Methodist Healthcare*, 517 F.3d 911, 916 (6th Cir. 2008)).

ARGUMENT

This Court has long recognized that "[t]o uphold the constitutional requirement that federal courts hear only active cases or controversies, as required by Article III, section 2 of the federal constitution, a plaintiff must have a personal interest at the commencement of the litigation (standing) that continues throughout the litigation (lack

of mootness). *Barry v. Lyon*, 834 F.3d 706, 714 (6th Cir. 2016) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). Standing requires the Plaintiffs to demonstrate: (1) an injury in fact; (2) traceability; and (3) redressability. *Online Merchs. Guild v. Cameron*, 995 F.3d 540, 547 (6th Cir. 2021) (citing *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)). The sole question the Court must decide is whether Mr. Weiser and the Michigan Republican Party have shown that the Recall Exception inflicts on them a cognizable injury in fact. *See* Opinion and Order Dismissing Complaint for Lack of Article III Standing, RE 50, Page ID # 492–95.

For Article III purposes, the Plaintiffs' respective injuries "must be both '(a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical.'" *Buchholz v. Tanick*, 946 F.3d 855, 861 (6th Cir. 2020) (quoting *Lujan*, 504 U.S. at 560). "For an injury to be 'particularized,' it 'must affect the plaintiff in a personal and individual way.'" *Spokeo, Inc.*, 578 U.S. at 339 (quoting *Lujan*, 504 U.S. at 560 n.1). For an injury to be "concrete," is "must be '*de facto*'; that is, it must actually exist," *id*. at 340 (quoting BLACK'S LAW DICTIONARY 506 (10th ed. 2014)). That said, "'intangible injuries can nevertheless be concrete,'" *Buchholz*, 946 F.3d at 861 (quoting *Spokeo, Inc.*, 578 U.S. at 339), particularly in the First Amendment context, *id*.[4]

[4] *See also Buchholz*, 946 F.3d at 861 (citing *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009) (free speech); *Church of Lukumi Babalu Aye, Inc. v. Hialeah*,

And "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice." *Id*. This is so because, "on a motion to dismiss" the Court must "presume that general allegations embrace those specific facts that are necessary to support the claim.'" *Parsons v. U.S. DOJ*, 801 F.3d 701, 710 (6th Cir. 2015) (quoting *Lujan*, 504 U.S. at 561). "First Amendment cases," moreover, "raise unique standing considerations that tilt dramatically toward a finding of standing." *Lopez v. Candaele*, 630 F.3d 775, 781 (9th Cir. 2010) (citation and internal quotation marks omitted)). For these reasons and those set out below, both Plaintiffs have carried their respective burdens and the district court's contrary conclusion should be reversed.

I. THE PLAINTIFFS BOTH HAVE FIRST AND FOURTEENTH AMENDMENT INTERESTS THAT ARE PROTECTED BY UNIFORM CAMPAIGN-CONTRIBUTION LIMITS.

The first question the Court must answer is whether Mr. Weiser and the Michigan Republican Party each have "a legally cognizable right" to uniform campaign-contribution limits. *See Parsons*, 801 F.3d at 710–11 (citing *McConnell v. FEC*, 540 U.S. 93 (2003) (overruled on other grounds); *Citizens United v. FEC*, 558 U.S. 310 (2010); *Diamond v. Charles*, 476 U.S. 54, 64 (1986)). Plainly, they do. And the Plaintiffs have pleaded the same. *See* Complaint, RE 1, Page ID # 8–16.

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508 U.S. 520 (1993) (free exercise)); *id*. (citing Rachel Bayefsky, *Psychological Harm and Constitutional Standing*, 81 BROOK. L. REV. 1555, 1557 (2016) ("The idea that certain intangible interests can count for Article III standing is by no means novel.").

Specifically, the Plaintiffs' first two counts allege violations to their First Amendment rights. U.S. CONST. Amend. I; *see* Complaint, RE 1, Page ID # 8–11.[5] For decades, the U.S. Supreme Court has reiterated that the First Amendment protects campaign contributions. *See, e.g.*, *Citizens United*, 558 U.S. at 340.[6] "Speech" surrounding elections is, of course, "an essential mechanism of democracy, for it is the means to hold officials accountable to the people," and for that reason, "[t]he First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office.'" *Id.* at 339–40 (quoting *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989) (quoting, in turn, *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971))).

State action that "burdens political speech," then, "is subject to strict scrutiny." *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 464 (2007).[7] Laws "that impose[] different contribution limits for candidates who are competing against each other" are particularly suspect, and the U.S. Supreme Court has "*never upheld*" one. *Davis v. FEC*, 554 U.S.

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[5] In *Gitlow v. New York*, the U.S. Supreme Court made clear that the protections of the First Amendment apply to actions taken by the States. 268 U.S. 652, 666 (1925).

[6] *See also, e.g.*, *Randall v. Sorrell*, 548 U.S. 230, 246 (2006); *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 209 n. 16 (1981); *Buckley v. Valeo*, 424 U.S. 1, 15 (1976).

[7] *See also, e.g.*, *McConnell*, 540 U.S. at 205; *Austin v. Mich. Chamber of Com.*, 494 U.S. 652, 658, (1990); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S., 238, 252 (1986) (plurality opinion); *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 786 (1978); *Buckley*, 424 U.S. at 44–45.

724, 738 (2008) (emphasis added). In particular, asymmetrical contribution caps that favor an "incumbent officerholder[]" limit the ability of an officerholder's opponents to "mount[] effective campaigns against" them, "thereby reducing democratic accountability." *Randall v. Sorrell*, 548 U.S. 230, 248–49 (2006). In other words, both Mr. Weiser and the Michigan Republican Party have a First Amendment protected, legally cognizable right to participate in the political marketplace of ideas on level terms with their political adversaries.

This right to evenhanded State treatment is also protected by the Fourteenth Amendment's Equal Protection Clause, a point that the Plaintiffs set out in Counts III and IV. *See* Complaint, RE 1, Page ID # 11–14. By disallowing all States from "deny[ing] to any person within its jurisdiction the equal protection of the laws," U.S. CONST. Amend. 14, § 1, the Equal Protection Clause, distilled to its core, means that the State must treat similarly situated individuals in a similar fashion, *see, e.g.*, *Andrews v. City of Mentor*, 11 F.4th 462, 473 (6th Cir. 2021). And because "the right to contribute" is "a form of political expression," *Riddle v. Hickenlooper*, 742 F.3d 922, 927 (10th Cir. 2014) (citing *Meyer v. Grant*, 486 U.S. 414, 420 (1988); *Buckley*, 424 U.S. at 23), the Plaintiffs' legally protected interest in equal treatment is magnified, *see Austin*, 494 U.S. at 666; *Police Dep't v. Mosley*, 408 U.S. 92, 101 (1972).

II. BY ALLOWING GOVERNOR WHITMER TO RAISE MONEY THAT VASTLY EXCEEDS MICHIGAN'S CAMPAIGN-CONTRIBUTION LIMITS, THE RECALL EXCEPTION INFLICTS AN ACTUAL, COGNIZABLE, CONCRETE, INJURY ON BOTH PLAINTIFFS.

Because Mr. Weiser and the Michigan Republican Party have legally cognizable interests (protected by the First and Fourteenth Amendments) in uniform campaign contribution limits, the next question is whether the Recall Exception harms those interests in a concrete and particularized way. Plainly it does, and this becomes conspicuous when the way in which the Recall Exception functions is placed in the broader context of Governor Whitmer's gubernatorial reelection campaign. Indeed, legally cognizable injuries arose when Governor Whitmer raised and possessed the Recall Exception funds, and they were aggravated when she shuttled them to her political party.

A. Governor Whitmer's ability to raise unlimited recall funds necessarily (and unfairly) benefits her reelection campaign.

The obvious bears reiterating. Governor Whitmer is running for reelection in 2022. Both she and the Michigan Democratic Party are actively working on her campaign. For this reason, she is, and until Wednesday, November 9, 2022, will remain, "a candidate for state elective office." MICH. COMP. LAWS § 169.252(1)(a).

In other words, this is not a situation in which Governor Whitmer must fend off a recall effort in isolation. As "a candidate for state elective office," *id.*, she is simultaneously trying to convince the Michigan electorate that they should reelect her. Given the obviously foredoomed nature of every recall effort scraped together, *see supra*

at 7–8, it stands to reason that her primary focus is on reelection, rather than any recall attempt.

It beggars belief, then, to suggest that there currently exists more than one competitive political environment in 2022 Michigan. The reality is that Michigan is going to have to decide whether Gretchen Whitmer should remain the State's governor. Her 2022 reelection campaign and her efforts to fend off recall petitions are both geared towards convincing Michigan voters to answer that same question in the affirmative.

For that reason, every dollar that was raised by Governor Whitmer, superficially to fight off a recall effort, helped show undecided Michigan voters that others have faith in the job she is doing, because that is what she used the raised funds for. Every dollar then spent, in turn, emphasizes that she "fight[s] for the things that matter to people" and "puts them first."[8] This is not a hypothetical or an abstract risk; after she used the capless Recall Exception to bust Michigan's fundraising record in a non-election year, her campaign spokesperson touted her numbers as a testament to the "enormous trust" "people have" in her commitment "to put Michigan first and continue leading our state forward, creating jobs and getting our economy moving again." Eggert, *supra* n. 2.

Therein lies the problem. A handful, less than a dozen, of Governor Whitmer's supporters donated more than $100,000 a piece to her war chest. A little more than one-

[8] *See* Gretchen Whitmer for Governor, https://gretchenwhitmer.com/ (last visited Feb. 22, 2022).

hundred donors donated amounts more than the Act's $7,150 contribution cap. In total, they contributed over $3.7 million. This small, yet motivated (and quite wealthy) cadre was nonetheless used by Governor Whitmer's *reelection* "campaign spokesman" to shore up her reputation by convincing the Michigan electorate that "the people" have "enormous trust" in her to "continue" as Michigan's Governor. Eggert, *supra* n. 2.

Whereas Governor Whitmer's supports may (and have) contributed north of a quarter-million dollars apiece to help her perpetuate this message, Mr. Weiser, on pain of criminal sanction, may not. Because his preferred candidate (the ultimate GOP nominee) may accept no more than $7,150 from him, Mr. Weiser is deprived of his expressive right to demonstrate, on equal terms, the "enormous trust" he has in someone *other than* Gretchen Whitmer to serve as Michigan's Chief Executive. The same is true of all members of the Michigan Republican Party.

This species of discrimination is repugnant to the First and Fourteenth Amendments. The Supreme Court has long held that "distinguishing among different speakers, allowing speech by some but not [by] others," runs afoul of the Constitution except in the rare instances in which such restrictions are necessary to advance a compelling governmental interest. *Citizens United*, 558 U.S. at 340; *see also Kiser v. Reitz*, 765 F.3d 601, 610 (6th Cir. 2014) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))). Most relevant here, a state-created

fundraising disadvantage in the "competitive context of electoral politics" violates the U.S. Constitution and, necessarily, inflicts a tangible, cognizable injury in fact for purposes of Article III. *See Davis*, 554 U.S. at 735.

For that reason, Mr. Weiser has standing to seek federal redress for the First and Fourteenth Amendment injuries inflicted by the Recall Exception. So too, does the Michigan Republican Party, both under an associational-standing theory, *see Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977), and in its own right. Because the Michigan GOP will indeed nominate a candidate to challenge Governor Whitmer, and the GOP's candidate will remain subject to the Act's normal contribution caps, Governor Whitmer's unfair ability to demonstrate (faux) fundraising momentum, to use ill-gotten funds to repair her tarnished reputation, or to contrive a false sense of political inevitability, inflicts a unique, concrete injury on the Party whose candidate is not permitted to receive similarly hefty contributions. Indeed, and for this reason, federal courts throughout the Nation have routinely held that political parties have standing to challenge campaign-finance restrictions, ballot-access laws, and similar political regulations that advantage their competitors at their expense.[9]

[9] *See, e.g.*, *Green Party of Tenn. v. Hargett,* 791 F.3d 684, 696 (6th Cir. 2015); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586–88 (5th Cir. 2006); *Shays v. FEC*, 414 F.3d 76, 85–87 (D.C. Cir. 2005); *Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 573 (6th Cir. 2004).

B. Donating Recall Exception funds to the Michigan Democratic Party will assist her reelection effort.

As noted above, publicly available filings indicate that Governor Whitmer has in fact disgorged the funds she accrued in excess of the Act's limits. But of the $3.7 million Recall Fund purse, only $250,000 found its way back to the original donor. *See supra* n.3. The remaining $3,548,865.61 is currently in the coffers of the to the Michigan Democratic Party. *Id.*

Secretary Benson's submission that, by sending millions of ill-gotten dollars to the State political party striving to reelect her, Governor Whitmer has erased "[a]ny supposed disadvantage to the Plaintiffs under the 'recall exception,'" Appellee Secretary Benson's Resp. in Opp'n to Mot. to Expedite 16, suggests a startling abuse of the way in which Michigan campaign finance operates. While an individual may not contribute more than $7,150 to Governor Whitmer's reelection campaign, MICH. COMP. LAWS § 169.252(1)(a), the Michigan Democrat Party may contribute up to $143,000 (twenty-times the amount an individual can contribute) to her campaign, *id*. § 169.252(4). "Donating" money she never should have received to her party, which can then donate back to her a sum twenty-times the amount an individual may donate—and can then spend unlimited funds generally in support of her campaign efforts—fixes nothing. The Court need not lend its imprimatur to a scheme functioning identical to a money-laundering operation.

Political parties are permitted by the Act to spend as much money as they can move on independent expenditures. MICH. COMP. LAWS § 169.252. And for a gubernatorial race that is already polling close,[10] there can be no question that some of the Michigan Democratic Party's $3.5 million windfall will be spent to bolster Governor Whitmer and to attack her challenger. In other words, Governor Whitmer has (1) raised money that she cannot use for her reelection campaign, and then (2) sent that money to the one entity that is certainly going to use it on her reelection campaign. To suggest that the transfer of cash between accounts alleviates the constitutional injury experienced by Mr. Weiser and the Michigan Republican Party blinks reality.

No gubernatorial candidate that the Michigan Republican Party will nominate, nor any candidate that Mr. Weiser would support financially, may (1) collect contributions in excess of the Act's limits and then (2) move that money to an entity that will spend it to help on the campaign trail. For this reason, Mr. Weiser is foreclosed from engaging in constitutionally protected expressive conduct to the same degree as similarly situated Governor Whitmer supporters. So too, are all members of the Michigan Republican Party, an entity that, per the Recall Exception, compete at a constitutionally infirm disadvantage with the otherwise similarly situated Michigan Democratic Party. These constitute "'(a) concrete and particularized . . . and (b) actual or imminent, not

[10] *See* 2022 Michigan Gubernatorial Election Polling, https://www.realclearpolitics.com/epolls/2022/governor/mi/michigan-governor-craig-vs-whitmer-7369.html (last visited Feb. 22, 2022).

conjectural or hypothetical,'" injuries in fact for purposes of Article III standing. *See Buchholz*, 946 F.3d at 861 (quoting *Lujan*, 504 U.S. at 560).

III. THE DISTRICT COURT ERRED BY CONCLUDING OTHERWISE.

In assessing the Plaintiffs' standing, the district court, noted, first, that "[u]nder this recall election scheme, . . . individual contribution limits do not apply; individual contributions are unlimited and apply across the board to both supporters and opponents of the recall election." Opinion and Order Dismissing Complaint for Lack of Article III Standing, RE 50, Page ID # 488. Despite acknowledging the Plaintiffs' argument that "'[a]lthough a recall campaign is, as a purely formal matter, distinct from a reelection campaign, there is no realistic way to differentiate the two," *id*., Page ID # 489 (quoting Plaintiff's Supplemental Brief Regarding Article III Standing, RE 48, Page ID # 463, 466), the district court "focuse[d] its inquiry" solely "on whether Plaintiffs' alleged injury *related to the recall* is concrete and particularized and actual and imminent." *Id*., Page ID # 492 (emphasis added). In other words, the district court limited its inquiry to the question whether the Plaintiffs could participate on level playing in the effort to *recall* Governor Whitmer.

That was error. The Plaintiffs are not interested in recalling Governor Whitmer; indeed, recalling Governor Whitmer would not accomplish the mission toward which they want to contribute. In a gubernatorial recall election, the incumbent governor is replaced by the next person in line for the office under the Michigan Constitution. *See*

MICH. COMP. LAWS § 168.975g. Specifically, a successful recall means that "the lieutenant governor, the elected secretary of state, [and] the elected attorney general . . . shall in that order be governor for the remainder of the governor's term." MICH. CONST. Art. V, § 26. Rather than nix Governor Whitmer and then shuffle around Michigan's existing elected leaders, the Plaintiffs have made it crystal clear that they want to support, on equal terms with their political rivals, a candidate of their own choosing. Complaint, RE 1, Page ID # 3.

For that reason, the district court was wrong to conclude that the "Plaintiffs' Complaint is . . . based on elevated or unlimited contribution limits applied across the board to detractors and supporters in recall campaigns." Opinion and Order Dismissing Complaint for Lack of Article III Standing, RE 50, Page ID # 493. Nor is it any answer to say that the Plaintiffs should have "express[ed] themselves by contributing unlimited amounts to recall committees opposing the Governor," *id*., or accurate to construe their allegations as a plea "that the Michigan Government should make the recall individual contribution limits more in harmony with the contribution limits for elections for a public office," *id.*, Page ID # 494. Finally, the Plaintiffs' "conce[ssion] that they could have contributed unlimited amounts to a recall committee opposing the Governor but did not do so" does not render "[t]he unequal playing field scenario created by the recall rule . . . self-generated." *Id*., Page ID # 495. The recall "playing field" is simply not the arena in which the Plaintiffs want to compete. *Id*.

And even assuming the district court were correct, that would still not level the playing field because the act of opposing a clearly identified incumbent and supporting one are not the same as Plaintiffs supporting *their* candidate and the Governor supporting herself and her party. What's more, a committee opposing the Governor does not necessarily have the same intimate relationship to a clearly identified future candidate and existing political party as the Governor does. Therefore, the Governor soliciting donations for herself to then be donated to the State party so that it can then, once again, be used towards her reelection campaign is not the same as an unaligned recall committee soliciting funds to defeat her in a recall election.

For all these reasons (and those discussed above), the district court erred when it dismissed the Plaintiffs' complaint. They have indeed suffered cognizable injuries in fact due to the Recall Exception, and the district court's contrary conclusion was driven by a misunderstanding of both the pleadings and the reality of election-year politics in Michigan. This Court should reverse it.

IV. GOVERNOR WHITMER HAS NOT MOOTED THIS CASE BY LAUNDERING HER ILL-GOTTEN GAINS THROUGH THE MICHIGAN DEMOCRATIC PARTY.

Finally, it bears noting that Governor Whitmer's decision to transfer the Recall Exception funds to the Michigan Democratic Party has not mooted this case. As noted throughout their district court briefing, *see* Plaintiff's Memorandum in Support of Application for Temporary Restraining Order, RE 34-1, Page ID # 155, the only way to remedy the Plaintiffs' constitutional injuries is if the Recall Funds find their way back

to the individuals who contributed them to Governor Whitmer. This remedy remains available.

Specifically, Federal Rule of Civil Procedure 65(d) provides that a federal court injunction binds not only the parties but also all "other persons who are in active concert or participation" with them. "The purpose of [this] rule is to ensure that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding." *Blockowicz v. Williams*, 630 F.3d 563, 567 (7th Cir. 2010) (internal citation and quotation marks omitted). For that reason, the federal courts have jurisdiction to bind not only Governor Whitmer (as they attempted to do via their emergency motion for a temporary restraining order, Plaintiff's Memorandum in Support of Application for Temporary Restraining Order, RE 34-1, Page ID # 152), but also the Michigan Democratic Party.

Beyond Rule 65(d), federal courts have recourse to the All Writs Act, which is a "residual source of authority to issue writs that are not otherwise covered by statute." *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100 (11th Cir. 2004) "Such writs," in turn, "may be directed toward not only the immediate parties to a proceeding, but to 'persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice, and encompasses even those who have not taken any affirmative action to hinder justice.'" *Id*. (quoting *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 174 (1977)).

In other words, the All Writs Act exists to prevent non-parties from "frustrat[ing] the implementation of a court order." *Id*. Its existence, then, makes the Plaintiffs' injuries redressable even though Governor Whitmer has moved the Recall Funds to a non-party.

CONCLUSION

For the foregoing reasons, the Plaintiffs respectfully request that the Court reverse the order of dismissal and remand to the district court for purposes of addressing the Plaintiffs' constitutional claims.

Dated: February 23, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume and word-count limits of Federal Rule of Appellate Procedure 27(d) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 6,638 words.

2. This document complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27(d) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Jason B. Torchinsky
JASON B. TORCHINSKY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 23rd day of February, 2022, a true copy of the foregoing motion was filed electronically with the Clerk of Court using the Court's CM/ECF system, which will send by e-mail a notice of docketing activity to the registered Attorney Filer listed on the attached electronic service list.

/s/ Jason B. Torchinsky
JASON B. TORCHINSK

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* The Opinion and Order Dismissing the Complaint for Lack of Article III Standing was filed by the District Court without Page ID numeration. Nevertheless, the 12 pages of the Opinion and Order immediately succeed Page ID # 484 and may be labeled as Page ID # 485–496.

STATUTORY ADDENDUM

Constitution of Michigan of 1963
Article V, Section 26

Succession to governorship.

Sec. 26.

In case of the conviction of the governor on impeachment, his removal from office, his resignation or his death, the lieutenant governor, the elected secretary of state, the elected attorney general and such other persons designated by law shall in that order be governor for the remainder of the governor's term.

Death of governor-elect. In case of the death of the governor-elect, the lieutenant governor-elect, the secretary of state-elect, the attorney general-elect and such other persons designated by law shall become governor in that order at the commencement of the governor-elect's term.

Duration of successor's term as governor. If the governor or the person in line of succession to serve as governor is absent from the state, or suffering under an inability, the powers and duties of the office of governor shall devolve in order of precedence until the absence or inability giving rise to the devolution of powers ceases.

Determination of inability. The inability of the governor or person acting as governor shall be determined by a majority of the supreme court on joint request of the president pro tempore of the senate and the speaker of the house of representatives. Such determination shall be final and conclusive. The supreme court shall upon its own initiative determine if and when the inability ceases.

MICH. COMP. LAWS § 168.955.

Recall petition; number of signatures; certification.

Sec. 955.

The petitions shall be signed by registered and qualified electors equal to not less than 25% of the number of votes cast for candidates for the office of governor at the last preceding general election in the electoral district of the officer sought to be recalled. Upon written demand, the county clerk, within 5 days, shall certify the minimum number of signatures required for the recall of an officer in the governmental unit in which recall is sought.

MICH. COMP. LAWS § 169.252.

Limitations on contributions to candidate committee; contribution from candidate's immediate family; contribution for particular election cycle; violation as misdemeanor; penalty; contributions made by political or independent committees established by corporation, joint stock company, domestic dependent sovereign, or labor organization; bundled contributions.

Sec. 52.

(1) Except as provided in subsection (5) or (11) and subject to section 46 and subsection (8), a person other than an independent committee or a political party committee shall not make contributions to a candidate committee of a candidate for elective office that, with respect to an election cycle, are more than the following:

> **(a)** $6,800.00 for a candidate for state elective office other than the office of state legislator, or for a candidate for local elective office if the district from which he or she is seeking office has a population of more than 250,000.
>
> **(b)** $2,000.00 for a candidate for state senator, or for a candidate for local elective office if the district from which he or she is seeking office has a population of more than 85,000 but 250,000 or less.
>
> **(c)** $1,000.00 for a candidate for state representative, or for a candidate for local elective office if the district from which he or she is seeking office has a population of 85,000 or less.

(2) Except as otherwise provided in this subsection and subsection (12), an independent committee shall not make contributions to a candidate committee of a candidate for elective office that, in the aggregate for that election cycle, are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1). A house political party caucus committee or a senate political party caucus committee is not limited under this subsection in the amount of contributions made to the candidate committee of a candidate for the office of state legislator, except as follows:

> **(a)** A house political party caucus committee or a senate political party caucus committee shall not pay a debt incurred by a candidate if that debt was incurred while the candidate was seeking nomination at a primary election and the candidate was opposed at that primary.
>
> **(b)** A house political party caucus committee or a senate political party caucus committee shall not make a contribution to or make an expenditure on behalf of a

candidate if that candidate is seeking nomination at a primary election and the candidate is opposed at that primary.

(3) A political party committee other than a state central committee shall not make contributions to the candidate committee of a candidate for elective office that are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1).

(4) A state central committee of a political party shall not make contributions to the candidate committee of a candidate for state elective office other than a candidate for the legislature that are more than 20 times the amount permitted a person other than an independent committee or political party committee in subsection (1). A state central committee of a political party shall not make contributions to the candidate committee of a candidate for state senator, state representative, or local elective office that are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1).

(5) A contribution from a member of a candidate's immediate family to the candidate committee of that candidate is exempt from the limitations of subsection (1).

(6) Consistent with the provisions of this section, a contribution designated in writing for a particular election cycle is considered made for that election cycle. A contribution made after the close of a particular election cycle and designated in writing for that election cycle shall be made only to the extent that the contribution does not exceed the candidate committee's net outstanding debts and obligations from the election cycle so designated. If a contribution is not designated in writing for a particular election cycle, all of the following apply to that contribution:

(a) The contribution is considered made for the election cycle that corresponds to the date of the written instrument.

(b) The contribution limits for the current election cycle apply to that contribution.

(c) A candidate committee may use that contribution to pay outstanding debts and obligations from a previous election cycle regardless of whether the contribution, when aggregated with any contributions made in that previous election cycle, would exceed the contribution limits for that previous election cycle.

(7) A candidate committee, a candidate, or a treasurer or agent of a candidate committee shall not accept a contribution with respect to an election cycle that exceeds the limitations in subsection (1), (2), (3), (4), (11), or (12).

(8) The contribution limits in subsection (1) for a candidate for local elective office are effective on the effective date of the amendatory act that provides for those contribution limits, however, only contributions received by that candidate on and after that date shall be used to determine if the contribution limit has been reached.

(9) A person who knowingly violates this section is guilty of a misdemeanor punishable, if the person is an individual, by a fine of not more than $1,000.00 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.

(10) For purposes of the limitations provided in subsections (1) and (2), all contributions made by political committees or independent committees established by any corporation, joint stock company, domestic dependent sovereign, or labor organization, including any parent, subsidiary, branch, division, department, or local unit thereof, shall be considered to have been made by a single independent committee. By way of illustration and not limitation, all of the following apply as a result of the application of this requirement:

> **(a)** All of the political committees and independent committees established by a for profit corporation or joint stock company, by a subsidiary of the for profit corporation or joint stock company, or by any combination thereof, are treated as a single independent committee.
>
> **(b)** All of the political committees and independent committees established by a single national or international labor organization, by a labor organization of that national or international labor organization, by a local labor organization of that national or international labor organization, or by any other subordinate organization of that national or international labor organization, or by any combination thereof, are treated as a single independent committee.
>
> **(c)** All of the political committees and independent committees established by an organization of national or international unions, by a state central body of that organization, by a local central body of that organization, or by any combination thereof, are treated as a single independent committee.
>
> **(d)** All of the political committees and independent committees established by a nonprofit corporation, by a related state entity of that nonprofit corporation, by a related local entity of that nonprofit corporation, or by any combination thereof, are treated as a single independent committee.

(11) The limitation on a political committee's contributions under subsection (1) does not apply to contributions that are part of 1 or more bundled contributions delivered to the candidate committee of a candidate for statewide elective office and that are attributed to

the political committee as prescribed in section 31. A political committee shall not make contributions to a candidate committee of a candidate for statewide elective office that are part of 1 or more bundled contributions delivered to that candidate committee, that are attributed to the political committee as prescribed in section 31, and that, in the aggregate for that election cycle, are more than the amount permitted a person other than an independent committee or political party committee in subsection (1).

(12) The limitation on an independent committee's contributions under subsection (2) does not apply to contributions that are part of 1 or more bundled contributions delivered to the candidate committee of a candidate for statewide elective office and that are attributed to the independent committee as prescribed in section 31. An independent committee shall not make contributions to a candidate committee of a candidate for statewide elective office that are part of 1 or more bundled contributions delivered to that candidate committee, that are attributed to the independent committee as prescribed in section 31, and that, in the aggregate for that election cycle, are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1).

MICH. COMP. LAWS § 168.975.

Candidate deemed elected.

Sec. 975.

The candidate receiving the highest number of votes in the recall election is elected for the remainder of the term.

MICH. COMP. LAWS § 168.975g.
Majority of votes in favor of recall; certification of result; replacement of governor.

Sec. 975g.

If the board of state canvassers determines that a majority of the votes are in favor of recall, the board of state canvassers immediately upon the determination shall certify the result to the officer with whom the recall petition was filed. Upon certification, the governor shall be replaced as provided under section 26 of article V of the state constitution of 1963.