Michigan's Trusted Law Firm
GOODMAN ACKER P.C.

Good Decision

**BARRY J. GOODMAN
TIM SULOLLI
JORDAN B. ACKER
***BRADLEY M. PERI
MARK BREWER
AMANDA B. WARNER

RONITA BAHRI
NICOLE M. McCARTHY
JOSHUA C. MAYOWSKI
ROWAN E. CONYBEARE
DAVID E. GORNEY

**ALSO ADMITTED IN FL
***ALSO ADMITTED IN NY

WWW.GOODMANACKER.COM

February 6, 2025

Stephanie Grace
Analyst to Chief Legal Counsel;
Opinions & Ethics; and
Legislative Affairs
Michigan Department of Attorney General
P.O. Box 30212
Lansing, MI 48909

Re: *Charette v Jocelyn Benson*

Dear Ms. Grace,

We are legal counsel to Jocelyn Benson for Governor and write to respond to this complaint. We respond to both allegations. They are meritless and the complaint should be dismissed.

I. Press Interviews Conducted In The Public Lobby Of The Richard Austin Building.

The Richard Austin Building has a large spacious first floor public lobby, a common area used by public visitors to access the building's elevators and offices. Many candidates and representatives of ballot question committees have conducted press interviews in that lobby. It is a natural place for such interviews to occur—outside the Bureau of Elections office where candidates and ballot question committees file. The undersigned himself has given dozens of press interviews in that lobby over several years on behalf of clients or about lawsuits served on the Department of State. Jocelyn Benson did press interviews in that lobby the day she announced her candidacy for Governor.

None of this activity is forbidden by MCL 169.257(1) for several reasons:

> (1) A public body or a person acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a). This subsection does not apply to any of the following:
>
> • • •

SOUTHFIELD • MAIN OFFICE
17000 WEST TEN MILE ROAD, SECOND FLOOR • SOUTHFIELD, MICHIGAN 48075 • PHONE 248.483.5000 • FAX 248.483.3131

GRAND RAPIDS
1500 E BELTLINE AVE SE, SUITE 235 • GRAND RAPIDS, MICHIGAN 49506 • PHONE 616.582.7225

> (d) The use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility.
>
> • • •
>
> (f) An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on the public official's or employee's personal time, is expressing the public official's or employee's personal views, is expending the public official's or employee's personal funds, or is providing the public official's or employee's personal volunteer services.

First, Ms. Benson was not a "person acting for a public body" when she gave those interviews. As the content of the interviews reveal, she was there in her personal capacity as a candidate for Governor. Section 57(1) did not apply to her when she gave those interviews.

Second, even if Section 57(1) applied to her in that setting—and it did not—subsection (d) exempts her. That lobby has been and is equally available to other committees and candidates to use to give press interviews.

Finally, even if Section 57(1) applied to her in that situation—and it did not—subsection (f) also exempts her. She was not "acting for a public body" but was there on her own personal time expressing her personal views.

That Ms. Benson's press interviews in the lobby were exempt from Section 57(1) is a legal conclusion also compelled by the First Amendment.

As political speech, Ms. Benson's campaign activities enjoy the highest level of First Amendment protection. As the Michigan Supreme Court has long held, "[d]iscussions of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution." *In re Chmura*, 461 Mich 517, 532; 608 NW2d 31 (2000) (*en banc*). As such, "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Id*. at 533.

Restrictions on access to and use of the common area in the Austin Building's first floor lobby for free speech activity are subject to a reasonableness standard. *See, e.g.*, *Miller v Cincinnati*, 622 F3d 524, 533–535 (CA 6, 2010). That is a demanding standard. It requires the State to prove that any limit on access and use is reasonable. *See, e.g.*, *UFCW Local 1099 v Southwest Ohio Regional Transit Auth*, 163 F3d 341, 357–358 (CA 6, 1998). The State must demonstrate that any limit on access and use serves a legitimate interest and that the conduct it bans—here, press interviews—would "actually interfere" with the lobby's purposes. *Id*. at 358.

Prohibiting the use of the common area of the Austin Building's first floor lobby cannot meet the reasonableness standard for several reasons. First, it serves no legitimate interest; indeed, it *disserves* the First Amendment rights of candidates and the press, and the rights of all who use

the lobby to receive important election information. Second, the State cannot demonstrate that Ms. Benson's press interviews "actually interfered" with the activities in the lobby or the operations of the Austin Building because they did not.

Construing Section 57(1) to prohibit candidate press interviews in that lobby would render Section 57(1) unconstitutional in that application. The Department of State has correctly interpreted Section 57 to "not restrict the constitutionally protected right to . . . engage in political speech" Interpretive Statement at 5 (September 3, 1996).

For all of these reasons, Section 57(1) does not apply to Ms. Benson's press interviews; if it did apply, her interviews would be exempt; and if Section 57(1) were applied to bar her interviews, that application would violate the First Amendment.

II. Community Conversations.

The second alleged violation of Section 57(1) is that Ms. Benson "admitted to using her office . . . to conduct Community Conversations . . . which helped inform herself of the issues [to eventually run for Governor]." The only evidence submitted in support of this allegation is a TV video of her press conference in the Austin Building's first floor lobby.

The interview provides no support for that allegation. In that interview, Ms. Benson made no "admission"—she simply referenced what she learned in those Conversations. Those Conversations involved no use of public resources—they were paid for by a political action committee, the Legacy PAC. Nor was there any discussion of her gubernatorial candidacy during those Conversations. This allegation of a Section 57(1) violation is groundless.

CONCLUSION

For all of these reasons, the complaint should be dismissed.

Sincerely,

Mark Brewer

Mark Brewer