

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PROGRESS MICHIGAN,

Plaintiff,

Case No. _____-CZ
Hon.

v.

MONICA PALMER, in her official
capacity as a member of the Wayne
County Board of Canvassers, and
WILLIAM HARTMANN, in his official
capacity as a member of the Wayne
County Board of Canvassers,

Defendants.

_____/

MARK BREWER
Goodman Acker, P.C.
Attorneys for Progress Michigan
17000 W. Ten Mile Road
Southfield, MI 48075
(248) 483-5000
mbrewer@goodmanacker.com

_____/

COMPLAINT FOR DISCLOSURE OF
PUBLIC RECORDS ILLEGALLY
WITHHELD FROM PUBLIC DISCLOSURE

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the Complaint.

/s/ Mark Brewer
Mark Brewer (P35661)

NOW COMES Plaintiff Progress Michigan, by and through its attorneys, Goodman Acker, P.C., pursuant to the Michigan Freedom of Information Act (FOIA), MCL 15.231 et seq., seeking a court order to compel disclosure of public records wrongfully withheld by Defendants, and in support of its Complaint states as follows:

PARTIES

1. Plaintiff Progress Michigan is a Michigan nonprofit corporation whose objectives are to advocate, educate, and inform the citizens of Michigan about progressive issues and policies at all levels of government. It investigates state and local governments and shares its findings with the public. It is a “person” as defined in MCL 15.232(g).

2. Defendant Monica Palmer (“Palmer”) is a member of the Wayne County Board of Canvassers which is a “public body” under MCL 15.232(h)(iii) that creates and maintains “public records” as defined in MCL 15.232(i).

3. Defendant William Hartmann (“Hartmann”) is a member of the Wayne County Board of Canvassers which is a “public body” under MCL 15.232(h)(iii) that maintains “public records” as defined in MCL 15.232(i).

JURISDICTION

4. This Court has jurisdiction under MCL 15.240(l)(b). Venue is proper under MCL 15.240(4).

FACTUAL ALLEGATIONS

5. Progress Michigan files FOIA requests of state and local government as part of its mission.

6. On November 23, 2020 Progress Michigan made this FOIA request to Wayne County:

All communications since November 1, 2020 between members of the Wayne County Board of Canvassers and anyone associated with the Michigan Republican Party and its local parties, the Republican National Committee, or Trump for President, including but not limited to elected officials, party officials, staff, attorneys, and consultants. This request includes any attachments that were part of these communications, such as word documents, spreadsheets, PDFs, or other types of documents. “Communications” include but are not limited to emails, text messages, direct messages, phone messages, and any form of communication whether made using a government-provided device, service, or account, or a personal device, service, or account.

Exhibit 1 at 1.

7. Progress Michigan received a bifurcated response to its FOIA request.

8. On December 2, 2020 Progress Michigan received a response from the Wayne County Department of Technology, which advised that no records existed which were responsive to the request because “none of the members of the Wayne County Board of Canvassers have been provided with a Wayne County email account or a Wayne County cell phone.” Exhibit 1 at 2.

9. The Department of Technology advised Progress Michigan on December 2, 2020 that its FOIA

request was also forwarded to the four members of the Wayne County Board of Canvassers. In the event that they possess public records that are responsive to your request, you will receive a separate response.

Id.

10. On December 18, 2020 Progress Michigan received a second response to its request, this response concerning the Board members:

Your request was forwarded to the four members of the Wayne County Board of Canvassers. They were asked to review the request and forward any responsive public records to our office. Your request must be denied, because, despite our request to the Wayne County Board of Canvassers, we have not received any responsive records.

Exhibit 2 at 2.

11. Upon information and belief, members of the Wayne County Board of Canvassers including Palmer and Hartmann have used and are using personal devices, services, and/or accounts to communicate about Board business via email, text messages, direct messages, and/or phone. Palmer and Hartmann have been observed before, during, and after Board meetings using personal devices, services, and/or accounts to communicate about Board business.

COUNT I – VIOLATION OF FOIA

12. Plaintiff adopts and incorporates by reference each and every allegation in Paragraphs 1-11 as if specifically set forth word for word and paragraph by paragraph.

13. FOIA requires public bodies to disclose public records upon request.

14. Members of public bodies who use personal devices, services, and/or accounts to perform official functions create public records subject to disclosure under FOIA.

15. Palmer and Hartmann’s refusal to disclose public records created using personal devices, services, and/or accounts violates FOIA.

RELIEF SOUGHT

WHEREFORE, Plaintiff prays that the Court:

1. Assign this action for hearing at the earliest practicable date and expedite it in every way pursuant to MCL 15.240(5);

2. Declare that communications concerning official functions sent or received by members of public bodies using personal devices, services, and/or accounts are “public records” subject to disclosure under FOIA.

3. Order the disclosure of the public records requested from Defendants by Progress Michigan on November 23, 2020;

4. Award attorneys' fees, costs, and disbursements to Plaintiff pursuant to MCL 15.240(6);
5. Award punitive damages for the arbitrary and capricious refusal and/or delays by Defendants in providing copies of public records to Plaintiff pursuant to MCL 15.240(7); and
6. Award such other relief as is appropriate and just.

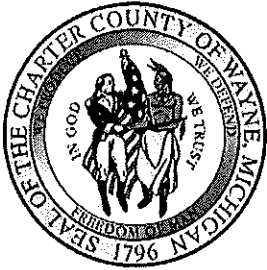
Respectfully submitted,

/s/ Mark Brewer

By: Mark Brewer (P35661)
Attorneys for Plaintiff Progress Michigan
17000 W. Ten Mile Road
Southfield, MI 48075
(248) 483-5000
mbrewer@goodmanacker.com

Dated: January 18, 2021

EXHIBIT 1



WARREN C. EVANS
County Executive

December 2, 2020

Dana Sutton, Digital Organizer
Progress Michigan
614 Seymour Ave.
Lansing, MI 48933
dana@progressmichigan.org

Re: FOIA Request Dated 11/23/20 Seeking Copies of Communications Between Members of the Wayne County Board of Canvassers and Specific Entities Since 11/1/20¹

Dear Mr. Sutton:

Wayne County received the following request for records by email on November 23, 2020:

All communications since November 1, 2020 between members of the Wayne County Board of Canvassers and anyone associated with the Michigan Republican Party and its local parties, the Republican National Committee, or Trump for President, including but not limited to elected officials, party officials, staff, attorneys, and consultants. This request includes any attachments that were part of these communications, such as word documents, spreadsheets, PDFs, or other types of documents. "Communications" include but are not limited to emails, text messages, direct messages, phone messages, and any form of communication whether made using a government-provided device, service, or account, or a personal device, service, or account.

¹ The legally required posting of the "Wayne County Freedom of Information Act Procedures & Guidelines," as well as the "Wayne County Summary of FOIA Procedures & Guidelines," are available for viewing under the "Public Records" section of the County's website at the following web address: <http://www.waynecounty.com/county/foia.htm>

This letter is from the Department of Technology only. Your request was also forwarded to the four members of the Wayne County Board of Canvassers. In the event that they possess public records that are responsive to your request, you will receive a separate response.

To the extent that your request does not identify specific persons with whom the requested communications took place, it is denied for failing to describe the record sufficiently to enable the County to locate it. MCL 15.233(1).

To the extent that your request seeks information that was not "prepared, owned, used, in the possession of, or retained by a public body *in the performance of [the] official function*" of a member of the Wayne County Board of Canvassers, it is denied because the requested records are not public records as defined by MCL 15.232(i).

With regard to that portion of your request that falls within the definition of a public record, please be advised that none of the members of the Wayne County Board of Canvassers have been provided with a Wayne County email account or a Wayne County cell phone. Therefore, after a diligent search, we have determined and certify that the requested records do not exist within the Wayne County Department of Technology.

You have the right to do either of the following with regard to the denial of your request:

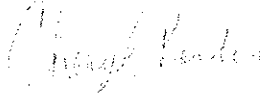
Submit a written appeal to the County Executive, which specifically states the word "appeal" and states the reason or reasons the denial should be reversed.

OR

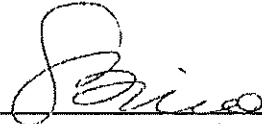
Commence an action in the circuit court to compel disclosure. Should you prevail, you will be entitled to have reasonable attorneys' fees, costs and disbursements assessed against the County by the court. If you or the County prevails in part, the court may, in its discretion, award you all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. If the court determines that the County has been arbitrary and capricious in its denial, you will also be entitled to punitive damages in the amount of \$1,000.00.

Sincerely,

Denial approved:



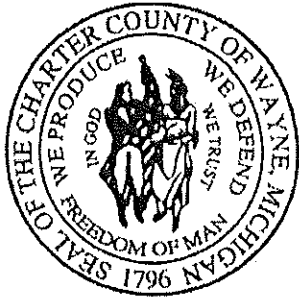
FOIA Officer
Dept. of Information Technology



Department of Corporation Counsel

cc: FOIA Coordinator

EXHIBIT 2



Office of the County Clerk

Cathy M. Garrett
Wayne County Clerk

December 18, 2020

Dana Sutton, Digital Organizer
Progress Michigan
614 Seymour Ave.
Lansing, MI 48933
dana@progressmichigan.org

Re: FOIA Request Dated 11/23/20 Seeking Copies of Communications Between Members of the Wayne County Board of Canvassers and Specific Entities Since 11/1/20¹

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Your request was forwarded to the four members of the Wayne County Board of Canvassers.² They were asked to review the request and forward any responsive public records to our office. Your request must be denied, because, despite our request to the Wayne County Board of Canvassers, we have not received any responsive records.

You have the right to do either of the following with regard to the denial of your request:

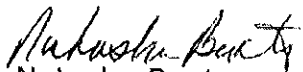
Submit a written appeal to the County Executive, which specifically states the word "appeal" and states the reason or reasons the denial should be reversed.

OR

Commence an action in the circuit court to compel disclosure. Should you prevail, you will be entitled to have reasonable attorneys' fees, costs and disbursements assessed against the County by the court. If you or the County prevails in part, the court may, in its discretion, award you all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. If the court determines that the County has been arbitrary and capricious in its denial, you will also be entitled to punitive damages in the amount of \$1,000.00.

Sincerely,

Denial approved:


Natasha Baxter
FOIA Officer
Wayne County Clerk's Office


Department of Corporation Counsel

cc: FOIA Coordinator
Janet Anderson-Davis
Candice Smith-Parker

² Your request was also forwarded to the Wayne County Department of Technology for a review of the request as it pertains to County records.