



## || Election & Campaign Finance Law

Foster Swift has a premier election law practice. Our attorneys successfully represent clients before federal and state courts, as well as agencies such as the Federal Election Commission, the Michigan Department of State and the Internal Revenue Service. Clients include many of Michigan's largest corporations, trade associations, nonprofit organizations, governmental entities, public officials, political parties, ballot question committees, individual campaign committees and candidates. We regularly counsel clients on the laws and rules pertaining to federal and state lobbying, political contributions, political action committees, ethics, the use of corporate facilities for political purposes and corporate guidelines on related issues.

### **COUNSELING**

Members of the Election Law Group routinely counsel corporations, trade associations, political groups and individuals on compliance with federal and state laws regulating institutional and personal lobbying and political activity, fund raising and contributions.

### **CAMPAIGN FINANCE REPRESENTATION**

We assist corporations in following the complex restrictions governing workplace political activity, and advise political committees regarding Political Action Committee (PAC) administration and solicitation issues. We also provide guidance to corporate personnel on compliance with all of these laws and prepare guidelines for corporate handbooks.

### **LITIGATION**

We have an incomparable depth of experience in election law, First Amendment and other constitutional litigation. We successfully represent clients before federal and state courts. This representation involves First Amendment, equal protection and due process challenges to election laws, recounts, voting rights, redistricting, ballot access cases and defense of clients in Federal Election Commission and state litigation.

Our recent litigation experience includes:

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### **ATTORNEYS**

#### **Shareholder**

Laura J. Genovich

Anne M. Seuryneck

#### **Senior Attorney**

Courtney Gabbara Agrusa

#### **Associate**

Mallory E. Reader



*Michigan Chamber of Commerce, et al v Michigan Secretary of State*, \_\_\_\_ F. Supp. 2d. \_\_\_\_, 2010 WL 2925791 (W.D. Mich.). This civil rights case was brought on behalf of the Michigan Chamber of Commerce and others to prevent the Michigan Secretary of State from criminalizing free speech activities protected by the First Amendment. As a result of this case, corporations may now pool their resources to conduct independent expenditure activities in Michigan elections.

*Practical Political Consulting, Inc v Michigan Department of State*, 287 Mich. App. 434, 789 N.W.2d 178 (2010). Represented the Michigan Republican Party as an *Amicus Curiae* to obtain 2008 presidential primary voter records pursuant of the Freedom of Information act. The Secretary of State claimed that such records were of a "personal Nature" and their disclosure violated an individual voter's privacy; however, the court agreed with the Michigan Republican Party and held that the disclosure of 2008 presidential primary information was not personal information in nature and did not constitute an invasion of privacy.

*McClary v Michigan Secretary of State and Kyle Olson and Education action Group, Inc.*, (Kent County Circuit Court No. 09-10090-AA). Secured the dismissal of a lawsuit challenging the ability of a private citizen to finance independent expenditures with respect to the 2009 election for the Grand Rapids School Board.

*Maletski, et al v Republican National Committee, et al*, (E.D. Mich. Case No. 2:08-CV-13982). Successfully obtained a dismissal of this case brought by the Democrats in the wake of a fictitious claim that Republican were going to use for closure lists to challenge voter at the polls during the 2008 elections.

*Fleming v Macomb County Clerk*, (Court of Appeal Docket No. 279966). This case enjoined the Macomb County Clerk from sending unsolicited absent voter ballot applications. This case began in October 2006, when Macomb County Clerk Carmella Sabough announced her plans to send unsolicited absent voter ballot applications in Macomb County to bolster her efforts to increase Macomb County's turnout in her race for Secretary of State. A unanimous Court of Appeals opinion in 2008 agreed with our position that the Macomb County Clerk lacked the authority to mail unsolicited absent voter ballot applications.

*Grebner v State of Michigan*, 480 Mich 939 (2007). This case allowed the January 15, 2008 presidential primary to go forward in Michigan. The Ingham County Circuit Court and the Court of Appeals both held that Public Act 52 of 2007 (which established the 2008 presidential primary) violated Article IV, Section 30 of the Michigan Constitution because it served a private purpose without obtaining a 2/3 vote of both houses of the Michigan Legislature. The Michigan Supreme Court reversed, reasoning that Public Act 52 of 2007 served a public purpose, as previously determined by the Michigan Legislature, when it enacted Public Act 52 of 2007.

*Walberg v Lenawee County Board of Election Commissioners*, (Lenawee County Circuit Court No. 07-2684-AW). Represented United States Congressman Timothy Walberg to obtain a declaratory judgment, injunction, and a Writ of Mandamus against the Lenawee County Board of Election Commissioners to dismiss recall proceedings against a Member of Congress. This was a case of first impression in Michigan. In Michigan, Members of Congress are subject to recall pursuant to state law. However, pursuant to the text of Article I of the United States Constitution and by operation of the Supremacy Clause of the United States Constitution, the recall provisions under Michigan law were held to be ineffective to recall a Member of Congress.



*In Re Request for Advisory Opinion Regarding Constitutionality of 2005 P. A. 71*, (Supreme Court Docket No. 130589). This case holds that the photo identification requirement contained in the Michigan Election Code is facially constitutional and is a reasonable, nondiscriminatory restriction designed to preserve the purity of elections and to prevent abuses of the electoral franchise, thereby preventing lawful voters from having their votes diluted by those cast by fraudulent voters. In this litigation, amicus curiae Michigan Republican Party presented the only evidence of fraudulent voting in Michigan as recognized by the Michigan Supreme Court:

“Interestingly, amicus curiae supporting the constitutionality of this statute presented certified death certificates for 46 persons who ‘voted’ in the November 2004 election, despite the ordinarily indisposing condition of being dead at the time. All of these persons died well in advance of the election, with dates of death ranging from 16 months to more than 12 years prior to the November 2004 election. A surprising number of these deceased ‘voters’ apparently voted at their precinct.”

A sampling of prior decisions obtained for our clients include:

*Committee to Elect Diane M. Rappleye, Probate Judge v Jackson County Clerk*, (Jackson County Circuit Court No. 06-1236-AW). On behalf of the Jackson County Clerk, defeated a request for a Writ of Mandamus to compel the Jackson County Clerk to reject nominating petitions in a judicial election. This case illustrates the complexity of the nominating petition process in Michigan, and in particular the judicial office designation requirement.

*DeLeeuw v Board of State Canvassers*, 263 Mich App 497 (2004). Obtained writ of mandamus against the Board of State Canvassers to place Ralph Nader's name on the Michigan ballot as an independent candidate for President of the United States in the November 2004 general election. This decision defined the role of the Board of State Canvassers as one limited to questioning the registration or the genuineness of the signature of the circulator or of a person signing a petition. The Michigan Court of Appeals established that other considerations, such as the motives of petition circulators and signors, is simply irrelevant.

*Citizens for the Protection of Marriage v Board of State Canvassers*, 263 Mich App 487 (2004). Obtained a writ of mandamus requiring the Board of State Canvassers and the Secretary of State to take all necessary measures to place the so-called "Protection of Marriage Petition" on the November 2004 general election ballot. In these proceedings, the Board of State Canvassers deadlocked 2 to 2 on the certification of the petitions for the ballot and the form of the proposed language which would appear on the ballot in the event that the proposal were ever placed on the ballot. The longstanding significance of this decision is that, in the event that the Board of State Canvassers cannot agree on the appropriate ballot language, the form of the proposed language prepared by the Director of Elections shall automatically become the ballot language submitted to voters.

*Faxon v Michigan Republican State Central Committee*, 244 Mich App 468 (2001). This landmark decision helps establish the necessary showing of actual malice that applies when a plaintiff in a defamation action is a public official or public figure. In this case, a former state senator unsuccessfully sued a political party for defamation based on a brochure, distributed during the senator's re-election campaign, which asserted that



the senator had sold a fake antique vase to an art collector and had claimed that the art collector could not sue him because of legislative immunity. This case established that the failure to investigate the allegations in newspaper reports before including them in a political brochure does not constitute the reckless disregard that underlies actual malice.

*Baldwin v. Calhoun County Clerk and Moore*, (Calhoun County Circuit Court No. 08-2085-NW). Secured the dismissal of a law suit challenging the residency status of a candidate for the Michigan House of Representatives who had previously established residency in the electoral district in question, but later moved out of the electoral district to effectuate major renovations to the candidate's domicile.

### **ADMINISTRATIVE AGENCY REPRESENTATION**

Our attorneys frequently represent clients in matters regulated by the Michigan Department of State, the Federal Election Commission, elections commissions and boards of canvassers. Our experience in this area includes:

- Creating federal and state PACs.
- Reviewing campaign finance and lobbying reports before submission to the appropriate agency.
- Assisting clients in outsourcing their PAC reporting responsibilities.
- Assisting clients in seeking advisory opinions and rulings from agencies.
- Representing clients against whom administrative complaints have been filed in enforcement actions.
- Recounts
- Recalls

### **TAX-EXEMPT ORGANIZATIONS**

We assist in the formation and operation of many types of tax-exempt organizations, including public charities, issue advocacy groups, trade associations and political organizations. We advise our election law clients on corporate and tax matters, including complying with state registration requirements and obtaining and maintaining tax-exempt status. Many of our tax-exempt clients are subject to regulation by state and local campaign, corporate and tax agencies. We are uniquely positioned to guide clients through these multiple, complex and ever-changing rules.

### **PUBLICATIONS & ALERTS**

Polling Place and Voter Etiquette Guidelines: Election Day Q&A, *Foster Swift Municipal Law News*, October 3, 2024

New NLRB Rule Speeds Up Union Election Process, *Foster Swift Labor & Employment Law News*, August 25, 2023

What Municipal Attorneys Should Know About the Campaign Finance Act, *Briefly, A Publication of the Public Corporation Law Section of the State Bar of Michigan*, December 2016

Can I Vote "Straight Ticket" in Michigan?, *LinkedIn*, November 2, 2016



I Demand a Recount: Options for Local Michigan Candidates on November 9, *LinkedIn*, November 2, 2016

Michigan Election Law: How to Be a Write-In Candidate, *LinkedIn*, November 2, 2016

U.S. Supreme Court Declines to Step into Michigan Battle Over "Straight Ticket Voting", *Foster Swift Municipal Law News*, October 31, 2016

Federal Court Temporarily Bans State From Enforcing New Election Law That "Gags" Local Governments and Schools, *Foster Swift Municipal Law News*, February 5, 2016

Election Law Updates and How They May Affect Your Local Government, *Foster Swift Municipal Law News*, January 26, 2016

New Law Silences Local Governments During 60 Days Before Elections, *Foster Swift Municipal Law News*, January 8, 2016

New Law Mandates that Municipalities' Election Commission Must Appoint a Receiving Board, *Foster Swift Municipal Law Bulletin*, October 4, 2012

Complying With Michigan Campaign Finance Act, *Foster Swift Municipal Law News*, February 2008

## **NEWS**

Municipal Attorney Courtney Gabbara Agrusa Joins Foster Swift, *Detroit Legal News*, August 21, 2023

Foster Swift Welcomes Associate to Municipal Practice, *Grand Rapids Legal News*, March 28, 2023

Firm Launches New Campaign and Election Law Blog in Time for Elections, August 3, 2020

## **EVENTS**

Election Day 2024: A Guide to Essential Polling Etiquette, *Second Wednesday Sessions*, August 14, 2024

Campaign Finance Act: What Can We Say?, *Michigan Township Association (MTA) Conference 2024*, April 24, 2024

Can They FOIA That?, *Michigan Township Association (MTA) Conference 2024*, April 24, 2024

What Can My Business Contribute to a Campaign?, *Legal Strategies for Women Leaders*, March 5, 2024

The Who, What, When and How of Campaign Finance, *Foster Swift Second Wednesday Morning Break*, June 8, 2022

WEBINAR | Millage Proposals and Campaign Finance Issues, March 29, 2016

WEBINAR | What Municipalities Need to Know about Michigan Campaign Finance Law, *Foster Swift*, October 8, 2013

Implications of State Mandated Criteria on Redistricting Plans, *National Republican Redistricting Conference*, May 1, 2010

Campaign Finance Law, *Michigan Political Leadership Program*, June 2009