

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

Lavora Barnes, Chair  
Michigan Democratic Party  
606 Townsend Street  
Lansing, MI 48933

Complainant,

v.

John James for Senate  
P.O. Box 2969  
Farmington Hills, MI 48333

Timothy Caughlin, Treasurer  
P.O. Box 2969  
Farmington Hills, MI 48333

John James  
P.O. Box 2969  
Farmington Hills, MI 48333

Respondents.

**COMPLAINT**

This complaint is filed with the Federal Election Commission (the “FEC” or “Commission”) pursuant to 52 U.S.C. § 30109(a)(1) against John James; John James for Senate and its Treasurer, Timothy Caughlin (collectively, “Respondents”). The available facts strongly suggest that the James campaign likely violated the Federal Election Campaign Act of 1971 (“the Act”) and FEC regulations by soliciting and directing dark money spending in support of Mr. James’s election to the U.S. Senate through the use of a “Memorandum” leaked to *Politico*.<sup>1</sup>

The Commission should act immediately to investigate the full scope of the violation, prevent future illegal solicitation by Respondents and seek the appropriate penalties.

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<sup>1</sup> 11 C.F.R. § 300.61.

## A. FACTUAL BACKGROUND

John James is a Republican candidate for U.S. Senate in Michigan.<sup>2</sup> His principal campaign committee is John James for Senate (“the James campaign”).<sup>3</sup> Senator Gary Peters is a U.S. Senator from Michigan. Senator Peters is a Democratic candidate for re-election to the U.S. Senate in Michigan in 2020.<sup>4</sup> Senator Peters and Mr. James are therefore opponents in the 2020 U.S. Senate race in Michigan. One Nation is a section 501(c)(4) non-profit corporation that opposes the “Left” and “liberals.”<sup>5</sup> Duty and Honor is a section 501(c)(4) non-profit corporation.<sup>6</sup>

On August 11, 2020, the news outlet *Politico* reported that no major independent groups supporting the Republican Party had bought airtime to disseminate television advertisements between August 11, 2020 to November 3, 2020 in support of Mr. James.<sup>7</sup>

On August 18, 2020, 6:02 AM ET, *Politico* published a memorandum from the James campaign on paid media efforts in support of the James campaign (the “Memorandum”).<sup>8</sup> The Memorandum, dated August 17, 2020, was addressed from a general consultant for the James campaign and addressed to the finance and steering committees of the James campaign, and featured the James campaign’s logo.<sup>9</sup> In an accompanying article, *Politico* described the

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<sup>2</sup> John James, FEC Form 2 Statement of Candidacy (filed May 4, 2020)

<https://docquery.fec.gov/pdf/278/202005049232364278/202005049232364278.pdf>.

<sup>3</sup> John James for Senate, FEC Form 1 Statement of Organization (filed May 4, 2020)

<https://docquery.fec.gov/pdf/218/202005049232364218/202005049232364218.pdf>.

<sup>4</sup> Gary Peters, FEC Form 2 Statement of Candidacy (filed July 21, 2020)

<https://docquery.fec.gov/pdf/968/202007219260722968/202007219260722968.pdf>.

<sup>5</sup> One Nation, Issues, <https://www.onenationamerica.org/issues#protecting-tax-reform> (last accessed Aug. 19, 2020).

<sup>6</sup> International Revenue Service, Duty and Honor: Form 990,

[https://apps.irs.gov/pub/epostcard/cor/825359967\\_201812\\_990O\\_2020061617191511.pdf](https://apps.irs.gov/pub/epostcard/cor/825359967_201812_990O_2020061617191511.pdf).

<sup>7</sup> James Arkin, *Republicans retrench in fight for the Senate*, *Politico* (Aug. 11, 2020),

<https://www.politico.com/news/2020/08/11/republicans-senate-fight-393332>.

<sup>8</sup> John James for Senate, Memo Re: Two polls show MI Senate Race Tighten to Just Outside Margin of Error (Aug. 17, 2020), <https://www.politico.com/f/?id=00000173-fdf9-d721-a57f-fff38060000>.

<sup>9</sup> *Id.*

Memorandum as “calling for outside air support from Republican groups.”<sup>10</sup> The Memorandum stated that:

[John] James also has virtually the same cash on hand as Gary Peters. In the current campaign finance quarter, James and Peters have spent virtually the same amount on paid media. The difference is a Peters ally, Duty and Honor, is currently spending \$1.6 million against John James with no corresponding conservative ally on the air against Gary Peters.

**John James is in a strong position to win this race.** James has strong poll numbers, outstanding messaging, fantastic fundraising, solid cash on hand, and is a tremendous candidate. **With the proper resources, John James is poised to become the next U.S. Senator from Michigan.**<sup>11</sup>

*Politico* did not disclose how it obtained the Memorandum, which was internally addressed both to and from the James campaign. However, *Politico* did make clear that it was the James campaign that initially distributed the Memorandum to its allies: “Republican John James’ Senate campaign sent allies a new memo touting internal polling conducted last week . . . and calling for outside air support from Republican groups.”<sup>12</sup> Therefore, it appears that either the James campaign or an agent of the campaign disclosed the Memorandum to *Politico*.

On August 18, 2020, 1:11 PM EDT, a few hours after *Politico* published the Memorandum, the news outlet *Roll Call* reported that One Nation was “placing its first advertising buy this cycle in Michigan’s Senate race,” in the amount of \$4.5 million for television, cable, and radio time, to promote conservative policies in Michigan.<sup>13</sup>

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<sup>10</sup> Zach Montellaro, *Recapping the first night of the Democratic convention (and what’s coming tonight)*, *Politico* (Aug. 18, 2020), available in Exhibit A.

<sup>11</sup> John James for Senate, Memo Re: Two polls show MI Senate Race Tighten to Just Outside Margin of Error (Aug. 17, 2020), <https://www.politico.com/f/?id=00000173-fdf9-d721-a57f-fff38060000>. (emphasis in original).

<sup>12</sup> Exhibit A.

<sup>13</sup> Kate Ackley, *GOP-aligned group to spend \$4.5 million in Michigan Senate race*, *Roll Call* (Aug. 18, 2020), <https://www.rollcall.com/2020/08/18/gop-aligned-group-to-spend-4-5-million-in-michigan-senate-race/>.

## B. LEGAL ANALYSIS

The available facts suggest that the James campaign or its agents provided the Memorandum to *Politico* for publication, in order to reach independent spenders and impermissibly solicit and direct 501(c)(4) dark money in violation of the Act.

A Federal candidate is prohibited from soliciting or directing funds in connection with an election for Federal office that are not subject to the federal contribution limits, source restrictions and reporting requirements.<sup>14</sup> This prohibition applies not just to the candidate himself, but also to the candidate's agents.<sup>15</sup> An "agent" in this context means any person who has actual authority, either express or implied, to solicit, receive, direct, transfer, or spend funds in connection with any election.<sup>16</sup>

The Memorandum published by *Politico* is clearly written to solicit and direct the spending of dark corporate money in support of Mr. James' campaign. To "solicit" means "to ask, request, or recommend, *explicitly or implicitly*, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value."<sup>17</sup> The term "solicitation" means "an oral or written communication that, construed *as reasonably understood in the context in which it is made*, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value."<sup>18</sup> A solicitation may be made directly or indirectly.<sup>19</sup> To "direct" means "to guide, directly or indirectly, a person who has expressed an intent to make a contribution, donation, transfer of funds, or otherwise provide anything of value, by identifying a

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<sup>14</sup> 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. §§ 300.61; 300.60(a).

<sup>15</sup> 11 C.F.R. §§ 300.60(c); 300.61.

<sup>16</sup> *Id.* § 300.2(b)(3).

<sup>17</sup> *Id.* § 300.2(m). (emphasis added).

<sup>18</sup> *Id.* (emphasis added).

<sup>19</sup> *Id.*

candidate, political committee or organization, for the receipt of such funds, or things of value.”<sup>20</sup> Funds that are not subject to the limitations, prohibitions, and reporting requirements of the Act include any funds spent by a 501(c)(4) corporate entity, which is an impermissible source.<sup>21</sup>

The available facts strongly indicate that the James campaign solicited and directed 501(c)(4) corporate funds, in connection with Mr. James’s efforts to win election to the U.S. Senate. The Memorandum is a written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking and guiding independent spenders to divert their resources to spend significant sums on television advertising in support of the James campaign. The Memorandum states that the James campaign wants a “corresponding conservative ally” to Duty and Honor, a section 501(c)(4) non-profit corporation, “on the air against Gary Peters.” Further, the last line of the Memorandum states in bold text: “With the proper resources, John James is poised to become the next U.S. Senator from Michigan.” It is clear that these “proper resources” must come from independent spenders such as section 501(c)(4) non-profit corporations, whose funds are not subject to the limitations, prohibitions, and reporting requirements of the Act and must be significant enough to close the gap in resources.

Based on the available facts, either the James campaign or an agent of the campaign appears to have given the Memorandum to *Politico*. The Memorandum is addressed to the James campaign’s finance committee and steering committee, individuals that undoubtedly have authority to solicit and direct funds on behalf of the campaign and therefore are campaign agents for purposes of the prohibition. Further, there is no logical reason why the James campaign

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<sup>20</sup> *Id.* § 300.2(n).

<sup>21</sup> 52 U.S.C. §§ 30118(a); 30116(a).

would have given its campaign agents the Memorandum other than to authorize those agents to make it public and solicit support for Mr. James.

The intent of the Memorandum is clear - there is no way to read it other than as an ask for outside group spending on behalf of Mr. James. Accordingly, if as the facts suggest, either the James campaign or an agent of the campaign provided *Politico* with the Memorandum for publication to reach such independent spenders, it impermissibly solicited and directed funds that are not subject to the limitations, prohibitions, and reporting requirements of the Act.

As such, the available facts suggest that the James campaign has likely violated 52 U.S.C. § 30125(e)(1) by soliciting and directing corporate funds in support of his campaign for the U.S. Senate.

**C. REQUESTED ACTION**

Based on the foregoing information, I respectfully request that the Commission conduct an immediate investigation of Respondents' likely impermissible soliciting and directing of corporate funds that exceed the Act's contribution limits. Further, the Commission should impose appropriate sanctions for any and all violations, enjoin the respondents from any and all violations in the future, and impose such additional remedies as are necessary and appropriate to ensure compliance with the Act.

Sincerely,

*Lavora Barnes*

Lavora Barnes, Chair  
Michigan Democratic Party  
606 Townsend Street  
Lansing, MI 48933

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of August, 2020.

*Jeff Winston*

Notary Public

My Commission Expires:

4-13-2022



I remotely notarized this document under Michigan Executive Order No. 2020-41 and certify:

The signatory signed this document while I was observing the signatory through a two-way real-time audiovisual technology that allowed direct, contemporaneous interaction by sight and sound between the signatory and me.

*Jeff Winston*

Jeff Winston