

**BEFORE THE
FEDERAL ELECTION COMMISSION**

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MUR # 7686

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OFFICE OF
GENERAL COUNSEL
2020 JAN 27 PM 12:37

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

Better Future Michigan
601 Abbot Road
East Lansing, MI 48823

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; and Better Future Michigan, a section 501(c)(4) organization (collectively, "Respondents"). The available facts strongly suggest that Respondents likely violated the Federal Election Campaign Act of 1971 ("the Act") and FEC

regulations by illegally coordinating on an advertisement paid for by Better Future Michigan to support the election of John James. The Commission should act immediately to investigate the full scope of the violation, prevent Better Future Michigan and the John James campaign from committing future violations of the law, and seek the appropriate penalties.

A. FACTUAL BACKGROUND

John James is a Republican candidate for U.S. Senate in Michigan.¹ His principal campaign committee is John James for Senate (“the James campaign”).² 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 2020.³ Senator Peters and Mr. James are therefore opponents in the 2020 U.S. Senate race in Michigan. Better Future Michigan is a section 501(c)(4) organization founded in 2019.⁴

Victoria “Tori” Sachs is the founding executive director of Better Future Michigan.⁵ Ms. Sachs previously served as the campaign manager for Mr. James’s campaign for U.S. Senate in 2018.⁶ Immediately before taking on the role of executive director of Better Future Michigan, she worked as a paid consultant for Mr. James’s current campaign for U.S. Senate.

¹ John James, FEC Form 2 Statement of Candidacy (filed December 3, 2019) <https://docquery.fec.gov/pdf/377/201912039166152377/201912039166152377.pdf>.

² John James for Senate, FEC Form 1 Statement of Organization (filed December 3, 2019) <https://docquery.fec.gov/pdf/368/201912039166152368/201912039166152368.pdf>.

³ Gary Peters, FEC Form 2 Statement of Candidacy (filed December 10, 2019) <https://docquery.fec.gov/pdf/629/201912109166168629/201912109166168629.pdf>.

⁴ Better Future Michigan, New Ad: Sen. Gary Peters Believes Medicare for All is the Path Forward, <https://www.betterfuturemichigan.com/news/medicareforall> (published July 31, 2019); Zachary Evans, Michigan Dem Senator Backs Green New Deal Goal of Net-Zero Emissions by 2050: ‘I Believe We Can Do That’, National Review (Dec. 2, 2019) <https://www.nationalreview.com/news/michigan-dem-senator-backs-green-new-deal-goal-of-net-zero-emissions-by-2050-i-believe-we-can-do-that/>; Malachi Barrett, Partisan groups announce Michigan organizing projects before 2020 elections, MLive (Dec. 11, 2019) <https://www.mlive.com/public-interest/2019/12/partisan-groups-announce-michigan-organizing-projects-before-2020-elections.html>.

⁵ Better Future Michigan, New Ad: Sen. Gary Peters Believes Medicare for All is the Path Forward, <https://www.betterfuturemichigan.com/news/medicareforall> (published July 31, 2019).

⁶ See Melissa Nann Burke and Jonathan Oosting, GOP research group aims to fight ‘liberal activism’ in Michigan, The Detroit News (Sept. 18, 2019) <https://www.detroitnews.com/story/news/politics/2019/09/19/gop-research-group-aims-fight-liberal-activism-michigan/2313467001/>; LinkedIn.com, Tori Sachs, <https://www.linkedin.com/in/torirexfordsachs> (last accessed Dec. 16, 2019).

The key timeline of events is as follows:

- **May 3, 2019:** The James campaign paid Ms. Sachs for management consulting services, presumably to cover the entire month of May. In 2019, the James campaign reported a total of four disbursements to Ms. Sachs for “management consulting.” The payments were made on January 10, 2019, March 1, 2019, April 2, 2019, and May 3, 2019, totaling \$20,000.⁷
- **June 12, 2019:** Better Future Michigan was formed, approximately one month after the James campaign’s final payment to Ms. Sachs and potentially only twelve days after Ms. Sachs stopped providing paid services to the James campaign.⁸
- **July 31, 2019:** By this date, if not earlier, Ms. Sachs was already serving as the founding executive director of Better Future Michigan.⁹
- **August 7-12, 2019:** During this date range, less than a hundred and twenty days after the James campaign made the May 3, 2019 payment to Ms. Sachs, Better Future Michigan produced and ran a paid advertisement on Facebook entitled “Eliminate” that attacked Senator Peters.¹⁰

⁷ FEC.gov, Search of Disbursements to Victoria Sachs from John James for Senate in 2019-2020, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00651208&recipient_name=sachs&two_year_transaction_period=2020 (last accessed Dec. 16, 2019).

⁸ Better Future Michigan, Article of Incorporation, available at https://cofs.lara.state.mi.us/CorpWeb/CorpSearch/CorpSummary.aspx?ID=802332604&SEARCH_TYPE=1.

⁹ Better Future Michigan, New Ad: Sen. Gary Peters Believes Medicare for All is the Path Forward, <https://www.betterfuturemichigan.com/news/medicareforall> (published July 31, 2019).

¹⁰ Better Future Michigan, Facebook Ad Library, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=1316423028507925 (last accessed Dec. 16, 2019).

B. LEGAL ANALYSIS

The available facts suggest that immediately after its formation, Better Future Michigan paid to run an attack ad against Senator Peters in coordination with the James campaign, resulting in an illegal corporate in-kind contribution to the James campaign.

A federal candidate may not accept a contribution in any amount, including an in-kind contribution, from a 501(c)(4) corporation.¹¹ Under FEC regulations, a payment for a “coordinated communication” is an in-kind contribution to the candidate with whom the communication is coordinated.¹² A communication is a “coordinated communication,” if it meets a three-pronged test: (1) the communication must be paid for by an entity other than the campaign (the “payment prong”);¹³ (2) it must satisfy any one of an enumerated list of content standards (the “content prong”) which includes a public communication that is the functional equivalent of express advocacy;¹⁴ and (3) it must satisfy any one of an enumerated list of conduct standards that establish coordination occurred (the “conduct prong”), which includes the receipt by the payor of material, non-public information about campaign “plans, projects, activities, or needs” from a former contractor of the benefitting campaign within 120 days of the contractor leaving the campaign.¹⁵

As a section 501(c)(4) corporation, Better Future Michigan is prohibited from making an in-kind contribution to a federal candidate’s campaign, including the James campaign. The available facts suggest that the advertisement “Eliminate” satisfies all three prongs of the

¹¹ See 52 U.S.C. §§ 30118(a); 30101(8)(A)(i) (defining “contribution” to include “any gift, subscription, loan, advance, or deposit of money or anything of value.”).

¹² 11 C.F.R. § 109.21(b)(1).

¹³ *Id.* § 109.21(a)(1).

¹⁴ *Id.* § 109.21(c)(5).

¹⁵ *Id.* § 109.21(d)(5).

coordinated communication test and therefore resulted in an illegal corporate in-kind contribution from Better Future Michigan to the James campaign.

First, “Eliminate” satisfies the payment prong of the coordinated communication test. The disclaimer of the advertisement clearly states that it was paid for by Better Future Michigan, which is an entity other than the James campaign.¹⁶

Second, the advertisement also satisfies the content prong of the coordinated communication test - it is a public communication that is the functional equivalent of express advocacy against Mr. James’s opponent, Senator Peters. A “public communication” includes communications placed for a fee on another entity’s website.¹⁷ Here, Better Future Michigan placed “Eliminate” for a fee on Facebook, making the advertisement a public communication.¹⁸ A public communication is the functional equivalent of express advocacy if “it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.”¹⁹ The clear and only reasonable interpretation of the point of “Eliminate” is to advocate against the re-election Senator Peters.

“Eliminate” uses ominous background music, dramatic jump-cuts, and darkly-tinted scenes to create a sense of alarm in viewers. The advertisement states, “Gary Peters. He’ll eliminate your private health plan.” There is nothing at all in “Eliminate” that suggests a different, non-electoral meaning. “Eliminate” does not contain a non-electoral call to action - the ad does not ask viewers to call Senator Peters’ office to voice their disapproval for his alleged

¹⁶ YouTube.com, Eliminate, https://www.youtube.com/watch?v=ey-jiKKVCo8&feature=emb_logo (published July 29, 2019).

¹⁷ 11 CFR § 100.26.

¹⁸ Better Future Michigan, Facebook Ad Library, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=1316423028507925. (last accessed Dec. 16, 2019).

¹⁹ 11 C.F.R. § 109.2(c)(5).

policies or take any other kind of action; instead, the advertisement is susceptible of no reasonable interpretation other than as an appeal to vote against Senator Peters.

Third, "Eliminate" likely satisfies the conduct prong of the coordinated communication test, due to Tori Sachs's work for both the James campaign and Better Future Michigan. Ms. Sachs served as the James campaign's 2018 campaign manager. The James campaign then retained Tori Sachs as an independent contractor for management consulting services at least through May 3, 2019, and likely through the entire month of May based on the payment schedule. Tori Sachs started serving as executive director for Better Future Michigan no later than July 31, 2019, less than 120 days before Better Future Michigan paid to run "Eliminate" on Facebook. FEC regulations provide that the conduct prong is met if an employee or independent contractor of the payor of an advertisement stopped working for the campaign that benefits from the advertisement within the previous 120 days and uses or conveys to the payor material, non-public information regarding the benefitting campaign's projects, plans, activities, or needs. The rationale for this rule is obvious - if a campaign employee or independent contractor stops working for a candidate, immediately moves over to work for a dark money group and uses non-public campaign strategy to shape the dark money group's advertisements, there is a clear benefit to the candidate. In this scenario, the dark money group is using its unregulated corporate funds to promote the candidate's strategy.

Tori Sachs stopped receiving a consulting fee from the James campaign less than 120 days before Better Future Michigan produced and ran "Eliminate" on Facebook. If Ms. Sachs used or conveyed any material, non-public information regarding the James campaign's projects, plans, activities or needs, the conduct prong is clearly met. By the nature of her role as executive director, it is almost impossible to believe that Tori Sachs is not substantially involved in the

strategy and content of all of Better Future Michigan's paid communications. As "Eliminate" appears to be the first advertisement that Better Future Michigan has produced, Ms. Sachs was even more likely to have been especially involved in its creation, production, and distribution.²⁰ Indeed, in the news release announcing the release of "Eliminate," Better Future Michigan quoted Ms. Sachs on the importance of the advertisement.²¹

Accordingly, "Eliminate" likely meets all three prongs of the FEC's coordinated communication test, resulting in a prohibited in-kind contribution²² from Better Future Michigan to the James campaign. Accordingly, the available facts suggest that the James campaign has likely violated 52 U.S.C. 30125(e)(1) by receiving an illegal contribution, and Better Future Michigan has likely violated 52 U.S.C. 30118(a)(1) by making an illegal contribution.

C. REQUESTED ACTION

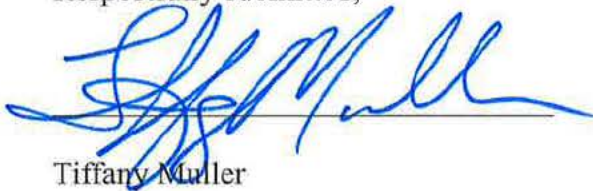
Better Future Michigan's apparent disregard out of the gate for the prohibition on coordinating with a federal candidate must be immediately investigated and addressed. Based on the foregoing information, I respectfully request that the Commission conduct an immediate investigation into this matter. 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.

²⁰ See Better Future Michigan, News (earliest news release announces the production of "Eliminate"), <https://www.betterfuturemichigan.com/news>.

²¹ Better Future Michigan, New Ad: Sen. Gary Peters Believes Medicare for All is the Path Forward, <https://www.betterfuturemichigan.com/news/medicareforall> (published July 31, 2019).

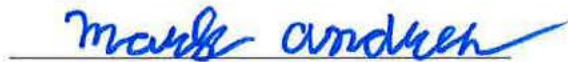
²² 11 C.F.R. § 109.22.

Respectfully submitted,



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SUBSCRIBED AND SWORN to before me this 23 day of January 2020.



Notary Public

My Commission Expires:
MARK ANDREWS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 14, 2024

