

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

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

MUR # 7716

2020 MAR -9 AM 11:45

OFFICE OF  
GENERAL COUNSEL

Complainant,

v.

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

Victoria "Tori" Sachs  
601 Abbot Road  
East Lansing, MI 48823

Better Future Michigan  
601 Abbot Road  
East Lansing, MI 48823

Respondents.

**COMPLAINT**

This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) against John James; Victoria "Tori" Sachs; and Better Future Michigan, a section 501(c)(4) organization. Evidence strongly suggests that James, through his agent, Tori Sachs, established Better Future Michigan in violation of the Bipartisan Campaign Reform Act of 2002 ("BCRA") and Federal Election Commission ("FEC" or "Commission") regulations.

John James' campaign and Better Future Michigan have already been under scrutiny in this election cycle for blurring the lines that separate the activities of candidates from those of "dark money" organizations, which can raise and spend unlimited corporate money without

disclosing the source of their funding or the nature of their activity to the FEC.<sup>1</sup> In light of new facts which have revealed just how closely Better Future Michigan is tied to James and his campaign operation, I urge the Commission to immediately investigate whether Tori Sachs established Better Future Michigan as an agent of John James, in violation of federal law and Commission regulations.

### FACTUAL BACKGROUND

John James is a current Republican candidate for U.S. Senate in Michigan; he filed his initial 2020 statement of candidacy on June 6, 2019.<sup>2</sup> His principal campaign committee is John James for Senate, Inc. (“the James campaign”).<sup>3</sup> His potential general election opponent in the 2020 U.S. Senate race in Michigan is Democratic Senator Gary Peters, the current U.S. Senator from Michigan who is running for re-election in 2020.<sup>4</sup> Better Future Michigan is a section 501(c)(4) organization founded in 2019.<sup>5</sup>

Victoria “Tori” Sachs served as the campaign manager for Mr. James’s campaign for U.S. Senate in 2018.<sup>6</sup> She then worked as a paid consultant for Mr. James’s current campaign for

<sup>1</sup> Malachi Barrett, “John James Campaign Accused of Coordinating with ‘Dark Money’ Group,” MLive (Jan 24, 2020) <https://www.mlive.com/public-interest/2020/01/john-james-campaign-accused-of-coordinating-with-dark-money-group.html>.

<sup>2</sup> John James, FEC Form 2 Statement of Candidacy (filed June 6, 2019) <https://docquery.fec.gov/pdf/552/201906069149951552/201906069149951552.pdf>.

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

<sup>4</sup> Gary Peters, FEC Form 2 Statement of Candidacy (filed December 10, 2019) <https://docquery.fec.gov/pdf/629/201912109166168629/201912109166168629.pdf>.

<sup>5</sup> 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>.

<sup>6</sup> 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>.

U.S. Senate from January 2019 through May 2019.<sup>7</sup> Her employment with the James campaign was terminated sometime in May of 2019. The history of Ms. Sachs payments from the James campaign suggest she worked for the James campaign through May 31, 2019. For each month of her work in 2019 she was paid at the start of the month, presumably for the entire current month of services. Specifically, the James campaign paid her on January 10, 2019, March 1, 2019, April 2, 2019, and May 3, 2019.<sup>8</sup> She was hired as the founding executive director of Better Future Michigan on June 1, 2019, immediately after receipt of her final May payment from the James campaign.<sup>9</sup> On June 12, 2019 Better Future Michigan was incorporated in Michigan.<sup>10</sup>

Since its founding, Better Future Michigan has focused on attacking the political record of James' potential general election opponent, Senator Gary Peters.<sup>11</sup> It has spent approximately \$300,000 attacking Senator Peters through digital and television ads.<sup>12</sup>

### LEGAL ANALYSIS

BCRA prohibits federal candidates and their agents from directly or indirectly establishing an entity that solicits, receives, directs, transfers or spends funds in connection with a federal election that are not subject to the contribution limits, source prohibitions, and reporting

<sup>7</sup> 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](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00651208&recipient_name=sachs&two_year_transaction_period=2020).

<sup>8</sup> 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](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00651208&recipient_name=sachs&two_year_transaction_period=2020).

<sup>9</sup> See Exhibit A, Letter from Robert L. Avers, Counsel to Victoria Sachs, to Lavora Barnes, Chair, Michigan Democratic Party (January 23, 2020).

<sup>10</sup> Better Future Michigan, Articles of Incorporation, available at [https://cofs.lara.state.mi.us/CorpWeb/CorpSearch/CorpSummary.aspx?ID=802332604&SEARCH\\_TYPE=1](https://cofs.lara.state.mi.us/CorpWeb/CorpSearch/CorpSummary.aspx?ID=802332604&SEARCH_TYPE=1).

<sup>11</sup> See Karl Evers-Hillstrom, "Candidates and Outside Groups Often Coordinate, Most Recently in Michigan," OpenSecrets.org (Jan. 22, 2020) <https://www.opensecrets.org/news/2020/01/candidates-and-outside-groups-often-coordinate-most-recently-in-michigan/>.

<sup>12</sup> See Malachi Barrett, "Michigan TV stations replace 'false' attack ads on Gary Peters," Mlive (Dec. 17, 2019), available at <https://www.mlive.com/public-interest/2019/12/michigan-tv-stations-replace-false-attack-ads-on-gary-peters.html>; 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](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).

requirements of the Federal Election Campaign Act of 1971 (“the Act”).<sup>13</sup> When considering whether a candidate has “established” an entity, the Commission examines a number of factors. One key factor is whether the candidate “directly or through his agent, had an active or significant role in the formation of the entity.”<sup>14</sup>

Better Future Michigan’s founding executive director was Tori Sachs, John James’ former campaign manager, who was working for the James campaign just weeks before establishing Better Future Michigan. It is nearly impossible to believe that Ms. Sachs left the James campaign and immediately formed a nonprofit organization dedicated to attacking James’ political opponent on her own accord and not as an agent of James himself. As the Executive Director in place prior to incorporation of the entity, Ms. Sachs played a significant role in the establishment of Better Future Michigan, an organization that appears focused on attacking Mr. James’ chief political opponent - activity that is undoubtedly in connection with a federal election.<sup>15</sup> In fact, Better Future Michigan has already run at least one paid advertisement that is the functional equivalent of express advocacy against Senator Peters.<sup>16</sup> The advertisement, “Eliminate” is focused on Senator Peters, stating “Gary Peters. He’ll eliminate your private health plan.”<sup>17</sup> There is nothing at all in “Eliminate” that suggests a different, non-electoral meaning and the advertisement is susceptible of no reasonable interpretation other than as an appeal to vote against Senator Peters.

<sup>13</sup> 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § § 300.61; 300.60(c).

<sup>14</sup> 11 C.F.R. § 300.2(c)(2)(ix).

<sup>15</sup> See Karl Evers-Hillstrom, “Candidates and Outside Groups Often Coordinate, Most Recently in Michigan,” OpenSecrets.org (Jan. 22, 2020) <https://www.opensecrets.org/news/2020/01/candidates-and-outside-groups-often-coordinate-most-recently-in-michigan/>.

<sup>16</sup> 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](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).

<sup>17</sup> YouTube.com, Eliminate, [https://www.youtube.com/watch?v=ey-jiKKVCo8&feature=emb\\_logo](https://www.youtube.com/watch?v=ey-jiKKVCo8&feature=emb_logo) (published July 29, 2019).

As a 501(c)(4) organization, Better Future Michigan raises funds outside of the Act's contribution limits and source restrictions and is not required to report its contributions and expenditures to the FEC. Accordingly, based on the available evidence, it appears likely that John James, through his agent, Tori Sachs, illegally established a dark money entity that is raising and spending funds outside of the federal contribution limits, source restrictions and reporting requirements to support James' election campaign in plain violation of 52 U.S.C. § 30125(e)(1).

### REQUESTED ACTION

In light of the foregoing, I respectfully request that the Commission immediately investigate the above allegations to determine whether John James, through his agent Victoria Sachs, violated BCRA and FEC regulations by establishing an entity that raises and spend funds on federal elections outside of the limits, source prohibitions, and reporting requirements of the Act.

Sincerely,

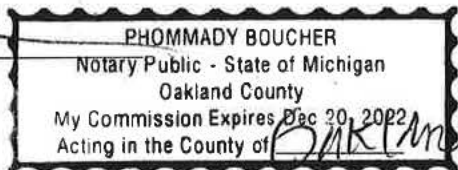
*Lavora Barnes*  
Lavora Barnes  
Michigan Democratic Party  
606 Townsend, Lansing, MI 48933

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of February 21, 2020.

*[Signature]*  
Notary Public

My Commission Expires:

12/20/22



**Exhibit A**



350 S. MAIN STREET, SUITE 300  
ANN ARBOR, MI 48104-2131  
TELEPHONE: (734) 623-7075  
FACSIMILE: (844) 670-6009  
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ROBERT L. AVERS  
RAvers@dickinsonwright.com  
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VIA EMAIL: [lavorabarnes@michigandems.com](mailto:lavorabarnes@michigandems.com)

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

Dear Ms. Barnes,

We are counsel for Mrs. Victoria Sachs and write you regarding false and defamatory statements published by agents of the Michigan Democratic Party, Alex Japko and Claire Salzman, on January 22, 2020. While Mrs. Sachs appreciates diversity of opinion and First Amendment protections for opinion, the publication of a false statement of fact alleging that Mrs. Sachs violated FEC coordination laws crosses the line from opinion to defamation because it both falsely and maliciously accuses another of a crime, which constitutes libel *per se*. While we respect your party's right to continue criticizing the conservative policy solutions advocated by Better Future Michigan, John James, President Trump, and other Republicans, we hereby demand that, in this particular case, you, and by extension your agents, cease and desist from publishing provably false lies about Mrs. Sachs.

Your agents state as a fact (with no evidence or citation) in multiple tweets that Mrs. Sachs violated the law.<sup>1</sup> While one of the tweets is a broad accusation of lawlessness by Mrs. Sachs, the other alleges a violation that, if true, would be a serious crime; 11 C.F.R. § 109.22 makes it a felony for corporations (including non-profit 501(c)(4)'s like Better Future Michigan and Super PACs) and federal candidates to make coordinated expenditures. The assertion that Mrs. Sachs violated federal coordination laws is a false statement that she has committed a felony, and now that you are on notice of such falsehood, it would be malicious not to retract the statement, and any repetition constitutes an additional offense of libel *per se*.

### The Facts

During the 2018 election cycle, Mrs. Sachs was an employee of John James for Senate, Inc. ("JJFS"). Mrs. Sachs' employment with the JJFS committee terminated in May of 2019. On June 1, 2019, Mrs. Sachs was hired as Executive Director of Better Future Michigan. Better Future Michigan has not run any advertisements advocating for or against any political candidates.

<sup>1</sup> Alex Japko, Twitter (Jan. 22, 2020), <https://twitter.com/ajapko/status/1220090998111588353?s=21>.  
Claire Salzman, Twitter (Jan. 22, 2020), <https://twitter.com/clairezalzman/status/1220113485310414848?s=11>.



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 Chair, Michigan Democratic Party  
 January 23, 2020  
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### **Actual Malice**

In *New York Times v. Sullivan*, 376 U.S. 254 (1964), the Supreme Court held that for a public figure to sustain a claim of defamation or libel, the First Amendment requires that the plaintiff show that the defendant knew that a statement was false or was reckless in deciding to publish the information without investigating whether it was accurate.

Both Mr. Japko and Ms. Salzman linked the Open Secrets article by Karl Evers-Hillstrom (the "Article") to their defamatory tweets. The Article very clearly states Mrs. Sachs did not violate FEC coordination rules. In fact, the Article quotes Brendan Fischer, director of federal reform at the Campaign Legal center who stated, "The coordination rules are only implicated if the content of the ad expressly advocates for or against the candidate or is run shortly before the election" adding that the ad has to be aired within the 120 day period after the staffer leaves the campaign.<sup>5</sup> Either Mr. Japko and Ms. Salzman recklessly tweeted without reading the Article—failing to investigate whether it was accurate—or read the Article and chose to tweet defamatory statements regardless of the truth—either way, their actions rise to the standard set in *New York Times v. Sullivan*.

The false assertion that Tori Sachs committed a felony by illegally coordinating expenditures is libel *per se*. You are now on notice of the falsity of these statements, and therefore any repetition of said false statements will be deemed malicious.

### **Demand**

We hereby demand: (1) that you and your agents immediately cease and desist from any further publication of false claims that Mrs. Sachs violated "the law" and/or specifically federal coordination laws or regulations; and (2) that you and your agents remove the defamatory tweets and issue public apologies on Twitter to correct these blatantly false claims about individuals.

In addition, you are now on notice regarding your legal obligation to cease and desist from making false factual claims about Mrs. Sachs. We understand and respect your right to express your policy differences with conservatives, but you may not make up and publish false factual claims.

### **Preservation Obligations**

In light of your actions, we demand that you affirmatively preserve, and not destroy, delete, hide or misplace documents and materials of all kinds, without limitation, regarding the creation of the tweets. Please also instruct Alex Japko and Claire Salzman to immediately implement litigation document holds regarding communications and verification of the factual claims in their tweets.

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<sup>5</sup> *Id.*



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On January 22, 2020 at 4:08 PM EST, Alex Japko, Michigan Democratic Party Spokesperson, tweeted from @ajapko: "READ: John James' former staffer Tori Sachs violated FEC coordination law...AGAIN. #MISen" and linked an article from OpenSecrets.org by Karl Evers-Hillstrom (the "Article") clearly stating that in fact Mrs. Sachs did not violate the law.<sup>2</sup>

On January 22, 2020 at 2:38 PM Claire Salzman, employee of the Michigan Democratic Party, tweeted from @clairesalzman, "bold move to flagrantly disregard the law but hey the GOP isn't known for its aptitude for rule-following #MISen" linking a tweet with the Article.<sup>3</sup>

Had Mr. Japko or Ms. Salzman bothered to read the Article before posting the libelous and factually inaccurate tweets, they would have known that, as the article very clearly states, Mrs. Sachs did not violate any law.<sup>4</sup> As we are sure you are aware, it is incumbent upon spokespersons to be fully informed of facts before speaking out on behalf of a political organization.

Further, by concluding his tweet with "AGAIN" Mr. Japko falsely states that Mrs. Sachs has committed illegal coordination multiple times. The reality is that Mrs. Sachs has never undertaken illegal coordination, and to falsely assert that she has only amplifies her claim of libel *per se*.

### Libel Per Se

Michigan law defines libel as a written or published false assertion of fact to a third party medium which subsequently causes injury or harm to another party's reputation. There are four elements to prevail on a libel action: 1) a false and defamatory statement concerning the plaintiff; 2) an unprivileged communication to a third party; 3) fault amount to at least negligence on the part of the publisher; and 4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication. *Smith v. Anonymous Joint Enterprise*, 793 N.W.2d 533, 540 (2010). Importantly, Michigan recognizes certain types of statements as so inherently defamatory and damaging that the plaintiff need not actually show the defamatory statements in question actually caused damage to them. Indeed, libel per se is applied to false statements—such as the statements made about Mrs. Sachs—that a person has committed a crime. *Burden v. Elia Bros Big Boy Rests.*, 240 Mich. App. 723, 728, 613 N.W.2d 378, 381-82 (2000).

<sup>2</sup> Alex Japko, Twitter (Jan. 20, 2020), <https://twitter.com/ajapko/status/1220090998111588353?s=21>.

<sup>3</sup> Claire Salzman, Twitter (Jan. 22, 2020), <https://twitter.com/clairesalzman/status/1220113485310414848?s=11>.

<sup>4</sup> Karl Evers-Hillstrom, *Candidates and outside groups often coordinate, most recently in Michigan*, Open Secrets (Jan. 22, 2020), <https://www.opensecrets.org/news/2020/01/candidates-and-outside-groups-often-coordinate-most-recently-in-michigan/>.

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Chair, Michigan Democratic Party  
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Please respond to me directly at [ravers@dickinsonwright.com](mailto:ravers@dickinsonwright.com) by 5:00 PM EST on Friday, January 24, 2020, to confirm your compliance with these demands.

Cordially,

/s/ Robert L. Avers

Robert Avers  
Jessica Brouckaert  
*Counsel to Victoria Sachs*