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Federal Election Commission
1050 First Street NE
Washington, DC 20463
VIA E-MAIL: CELA@fec.gov

Re: MUR 7716 – Response to Complaint from John James and John James for Senate, Inc.

Mr. Jordan,

We write on behalf of John James, John James for Senate, and Timothy Caughlin in his official capacity as Treasurer (collectively “the Campaign”) in response to a complaint filed by the Michigan Democratic Party alleging that Mr. James and the Campaign violated the Federal Election Campaign Act of 1974, as amended (“FECA” or “the Act”) by “establishing” Better Future Michigan (“BFM”), a 501(c)(4) public policy organization, through his supposed “agent” Victoria Sachs. For the Commission to understand this complaint, please recall the saying that “if ifs and buts were beer and nuts, we would have one hell of a party.” This Complaint is so full of tangential “ifs and buts” that it raises the question what kind of party the Michigan Democrats were having when they decided to spew this conjecture of what *could* have happened, which bears no relation to what *actually* happened. Notably, the Democrats’ own “sources” provide more support for our Response than they do for the Complaint. The Commission may find “reason to believe” only if a Complaint sets forth *sufficient specific facts*, which, if proven true, would constitute a violation of the FECA or Commission regulations.¹ The Complaint does not even come close to meeting this standard, which is why the Commission should dismiss the case and promptly close the file.

I. Factual Background

Mr. James is the Republican candidate challenging incumbent Senator Gary Peters for U.S. Senate in Michigan. Mr. James filed his Statement of Candidacy on June 6, 2019, designating John James for Senate as his principal campaign committee. Victoria Sachs was Mr. James’ campaign manager for his 2018 campaign. In early 2019, she continued as an

¹ Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas at 1, MUR 4960.

independent contractor to assist with 2018 vendor issues, 2018 donor maintenance, and Mr. James' 2020 testing-the-waters process to decide whether to run for office again, and if so, for what office. Ms. Sachs' role ended on May 3, 2019, which was before Mr. James decided to run for Senate or any preparations for a Senate campaign began. Approximately one month after she ceased her role with the Campaign, it was announced that she had become Executive Director for BFM.

Based on its own inferences and speculation,² the Complaint alleges that Mr. James somehow "established" BFM, a 501(c)(4) public policy organization, through his "agent" Ms. Sachs. This allegation is based on "available evidence" that alleges "it appears likely" that James, through Ms. Sachs, did so.³ However, there is no "available evidence" outside the Complaint's incorrect presumptions on what could have occurred. Of course, the Complaint has to rely on its own inferences for this publicity stunt of a complaint, because it knows that the Campaign has not violated FECA, Commission regulations, or any other law.

II. Legal Analysis

A. The Campaign Had No Role in Establishing Better Future Michigan.

The Commission prohibits a federal candidate, or an agent of a candidate, or an entity directly or indirectly established, financed, maintained or controlled (EFMC'd) by the candidate from soliciting, receiving, directing, transferring, or spending funds in connection with a federal election, unless the funds are subject to the contribution regulations placed on the candidate.⁴ The determination of whether an organization is EFMC'd by a candidate must be examined in the context of the overall relationship between the sponsor and the entity.⁵ Commission regulations provide a list of factors that may be considered when determining whether an entity is established by a federal candidate. One factor, which is discussed by the Complaint in this matter, is whether the candidate "directly, or through his agent, had an active or significant role in the formation of the entity."⁶

The Campaign, including specifically Mr. James, played no role in the establishment of Better Future Michigan, and the Complaint provides no evidence showing any sort of relationship between the Campaign and Better Future Michigan at the time Better Future Michigan was established. Based on the Complaint, the only commonality between the Campaign and Better Future Michigan is their mutual desire to advance conservative public policy, including by removing Senator Gary Peters from his seat in November. Supporting a

² See Compl. at 2 ("The history of Ms. Sach's payments from the James campaign *suggest* she worked for the James campaign through May 31. 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."); *Id.* at 4 ("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.").

³ Compl. at 5 ("Accordingly, based on the available evidence, it appears likely that John James, through his agent, Victoria Sachs, illegally established a dark money entity that is raising and spending funds outside of the federal contribution limits[.]")

⁴ 52 U.S.C. § 30125(e)(1).

⁵ 11 C.F.R. § 300.2(c)(2).

⁶ *Id.* at § 300.2(c)(2)(ix).

common policy goal has never been, and should never be, the basis for a violation of campaign-finance law.

B. Victoria Sachs Was Not an Agent of the Campaign When Better Future Michigan was Established.

Since the Complaint has zero evidence to establish that Mr. James and/or his campaign team established Better Future Michigan (because he did not), it instead has concocted a theory that Ms. Sachs, a former campaign manager and independent contractor on Mr. James' 2018 Campaign, created the organization as his agent. The Commission defines an agent as "any person who has *actual authority*, either express or implied, to solicit, receive, direct, transfer, or spend funds in connection with any election."⁷ "Actual authority" is created by manifestations of consent, either express or implied, made *by the principal to the agent*.⁸

The Complaint's interpretation of what constitutes an "agent of the Campaign" is impermissibly broad. In 2006, the Commission amended its definition of "agency" after the enactment of the Bipartisan Campaign Reform Act (BCRA) in response to concerns that candidates would use their staff to circumvent contribution limits and engage in corruptive activities.⁹ In explaining its changes, the Commission stated that the new definition was implemented to "create the appropriate incentives for candidates, party committees, and other political committees to ensure that *their employees and volunteers* are familiar with, and comply with [the Act and Commission regulations.]"¹⁰ While the Commission's amendment to the definition of "agency" was meant to broaden the scope of activity (and respondents) it covered, the "agency" definition was not expanded to *former employees* from a prior election cycle. If the Commission meant to apply the agency definition to former employees, it would have stated as such in its Explanation and Justification.

Assuming arguendo that Ms. Sachs *could* be considered an agent of the 2020 Campaign, she was never one. The Complaint presumes, without any sort of evidentiary support, that Ms. Sachs was an agent of the campaign based solely on her prior employment.¹¹ Let it be clear—Ms. Sachs developed Better Future Michigan on her own, or at least not on behalf of the Campaign. While we are not privy to information regarding who all was involved in the establishment of BFM, we do know that it was not agents of our client, the Campaign. And any "authority" Ms. Sachs had from the ongoing campaign committee was revoked when she resigned on May 3, 2019.

⁷ 11 C.F.R. § 300.2(b)(3)

⁸ Explanation and Justification (E&J): Definitions of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, FEC (2006), available at https://transition.fec.gov/law/cfr/ej_compilation/2006/2006-1.pdf

⁹ See Federal Election Commission Explanation and Justification ("E&J") 71 FR 4975 (Jan. 31, 2006).

¹⁰ *Id.* at 4978.

¹¹ Compl. at 4 ("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.").

C. The Complaint's Evidence Provides More Support for Dismissing the Complaint than Moving Forward with an Investigation.

Before concluding, we wish to express our concerns regarding the allegations presented by the Complaint. The Complaint gave the Commission five pages of “information” based solely on the Complaint’s own speculation. Interestingly, the articles it cites as “sources” have contradicted the exact allegations it makes in the Complaint. For example, while the Complaint claims these ads are a “functional equivalent of express advocacy,” the articles it cites call the exact ads “issue advocacy.”¹² Another cited article by the Complaint states that it was unclear if any laws were broken by the Campaign or Better Future Michigan.¹³ While we were not anticipating finding evidentiary support for this Response within the Complaint, we certainly appreciate the confirmation that no law was broken by Mr. James or the Campaign.

II. Conclusion

This complaint is yet another attempt by the Michigan Democratic Party to falsely smear Mr. James’ campaign for Senate. Given that their candidate, Senator Gary Peters, is widely considered one of the most vulnerable incumbents in the 2020 election,¹⁴ they will do whatever they can, even sending the Commission baseless complaints, in order to keep his seat blue. However, the Commission has consistently ruled that “unwarranted legal conclusions drawn from asserted facts based on mere speculation will not be accepted as true, and provide no independent basis for investigation.”¹⁵ The Commission may find “reason to believe” only if a Complaint sets forth *sufficient specific facts*, which, if proven true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended (“FECA”) or Federal Election Commission (“FEC”) regulations.¹⁶ We ask the Commission to follow its longstanding precedent by dismissing the case and closing the file.

¹² See Karl Evers-Hillstrom, *Candidates and Outside Groups Often Coordinate, Most Recently in Michigan*, OPENSECRETS.ORG (Jan. 22, 2020) (“But such *issue ads* are commonplace in the early months of an election year.”); Compl. at FN 11.

¹³ Malachi Barrett, *John James Campaign Accused of Coordinating with ‘Dark Money’ Group*, MLIVE (Jan. 24, 2020) (“Campaign finance experts said it’s not clear that Sachs broke the law”, “Michigan Campaign Finance Network Executive Director Simon Schuster said the FEC is unlikely to find a violation of law.”); Compl. at FN 1.

¹⁴ Bridget Bowman, Simone Pathe, and Stephanie Akin, *The 10 Most Vulnerable Senators in 2020: Republicans Play Defense*, ROLL CALL (Nov. 4, 2019), Amber Phillips, *The 10 Senate Seats Most Likely to Flip in 2020*, THE WASHINGTON POST (July 12, 2019).

¹⁵ The Commission does not authorize investigations based on mere speculation. See Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas at 1, MUR 4960 (Hillary Clinton for Senate Exploratory Committee); See also Resp. of Beto for Texas at 1, MUR 7505 (End Citizens United) (quoting language from the above Statement of Reasons).

¹⁶ Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas at 1, MUR 4960.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charlie Spies". The signature is fluid and cursive, with a large initial "C" and a trailing flourish.

Charlie Spies

Katie Reynolds

Counsel to John James and John James for Senate, Inc.