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BEFORE THE
FEDERAL ELECTION COMMISSION

CELA

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

Complainant,

MUR # 7790

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*.¹

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

¹ 11 C.F.R. § 300.61.

A. FACTUAL BACKGROUND

John James is a Republican candidate for U.S. Senate in Michigan.² His principal campaign committee is John James for Senate (“the James campaign”).³ 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 2020.⁴ 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.”⁵ Duty and Honor is a section 501(c)(4) non-profit corporation.⁶

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.⁷

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”).⁸ 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.⁹ In an accompanying article, *Politico* described the

² John James, FEC Form 2 Statement of Candidacy (filed May 4, 2020)

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

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

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

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

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

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

⁶ International Revenue Service, Duty and Honor: Form 990,

https://apps.irs.gov/pub/epostcard/cor/825359967_201812_990O_2020061617191511.pdf.

⁷ 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>.

⁸ 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-fd19-d721-a57f-ffb38060000>.

⁹ *Id.*

Memorandum as “calling for outside air support from Republican groups.”¹⁰ 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.**¹¹

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.”¹² 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.¹³

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

¹¹ 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-fd19-d721-a57f-f9b38060000>, (emphasis in original).

¹² Exhibit A.

¹³ 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.¹⁴ This prohibition applies not just to the candidate himself, but also to the candidate's agents.¹⁵ 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.¹⁶

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."¹⁷ 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."¹⁸ A solicitation may be made directly or indirectly.¹⁹ 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

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

¹⁵ 11 C.F.R. §§ 300.60(c); 300.61.

¹⁶ *Id.* § 300.2(b)(3).

¹⁷ *Id.* § 300.2(m). (emphasis added).

¹⁸ *Id.* (emphasis added).

¹⁹ *Id.*

candidate, political committee or organization, for the receipt of such funds, or things of value.”²⁰ 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.²¹

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

²⁰ *Id.* § 300.2(n).

²¹ 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.

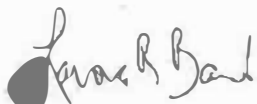
The intent of the Memorandum is clear - there is no way to read it other than as an ask for outside group spending on behalf of Mr. James. Accordingly, if as the facts suggest, either the James campaign or an agent of the campaign provided *Politico* with the Memorandum for publication to reach such 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, Chair
Michigan Democratic Party
606 Townsend Street
Lansing, MI 48933

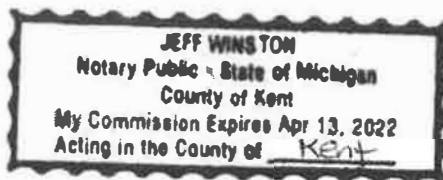
SUBSCRIBED AND SWORN to before me this 21st day of August, 2020.



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

EXHIBIT A

NEW FROM PRO

Projects is a new tool to help you track your policy priorities and keep your team aligned on policy goals. Try Projects, learn more or reach out to your Account Manager with questions. Looking for your Saved Items? All Saved Items migrated to your "Personal" Project.

TRY PROJECTS

NEWSLETTER

Morning Score

NEWSLETTER

Recapping the first night of the Democratic convention (and what's coming tonight)

BY ZACH MONTELLARO | 08/18/2020 06:02 AM EDT

Presented by the United States Postal Service

QUICK FIX

- **The first night of an all-virtual convention has come and gone**, with former First Lady Michelle Obama, the night's top-billed speaker, delivering the most memorable lines.
- **Postmaster General Louis DeJoy agreed to testify at a House hearing** next week, as both chambers of Congress prepare bills that include funding for the USPS.

8/18/2020

Newsletter

— **A handful of House incumbents have already lost primaries** this cycle. Embattled Rep. Ross Spano (R-Fla.) is the next one facing a serious challenge.

Good Tuesday morning. You can email me at zmontellaro@politico.com and follow me on Twitter at [@ZachMontellaro](https://twitter.com/ZachMontellaro).

Be sure to tune into our special “Plug In With Playbook” Democratic convention programming at 9 a.m. this morning. Playbook’s Jake Sherman and Anna Palmer will be interviewing DNC chair Tom Perez, and Campaign Pro chief Steve Shepard and national political reporter Elena Schneider have a virtual sit-down with Biden lead pollster John Anzalone. Here’s the link.

Email the rest of the POLITICO campaigns team at sshepard@politico.com, jarkin@politico.com and amutnick@politico.com. Follow them on Twitter: [@POLITICO_Steve](https://twitter.com/POLITICO_Steve), [@JamesArkin](https://twitter.com/JamesArkin) and [@allymutnick](https://twitter.com/allymutnick).

Days until the Republican convention: 6

Days until the OK-05 GOP runoff: 7

Days until the Massachusetts primary: 14

Days until the 2020 election: 77

A message from the United States Postal Service:

Whether your objective is to introduce your candidate, fundraise, or Get Out the Vote (GOTV), it’s important to connect with your target audience on a deeper, more personal level. Winning their votes starts with understanding what drives them to take action.

TOPLINE

NIGHT ONE — Eva Longoria, the celebrity emcee of night one of the Democratic National Convention, perhaps summed up the first all-virtual party convention the best: It is an unconventional convention. Night one largely escaped any real technical glitches, aside from an errant staffer or two being caught on a mic telling their boss to start speaking, in what felt thoroughly disconnected from the gladhanding, partying affairs of cycles past.

In a night that featured probably the widest ideological diversity any night of the convention will feature — running from former Ohio Republican Gov. John Kasich to Sen. Bernie Sanders (I-Vt.), who made the case for Biden in a policy-heavy speech — Michelle Obama’s closing speech will likely be the one with the longest tail. The former first lady lacerated President Donald Trump and made the case for Joe Biden, saying that the president

“simply cannot be who we need him to be for us,” while praising Biden as a “profoundly decent man.”

The speech that seemingly ticked the president off the most, however, was New York Gov. Andrew Cuomo, with the president tweeting about Cuomo’s handling of the coronavirus in nursing homes soon after the convention ended. Another line that could stick around for a bit was from Kirstin Urquiza, a woman whose father died from Covid-19, saying her father’s “only pre-existing condition was trusting Donald Trump.”

Another major reference point throughout the night was the battle over the USPS and vote-by-mail, with a video package criticizing Trump over the postal service and Obama devoting a chunk of her roughly 18-minute speech to getting Democrats to vote. “We’ve got to vote early, in person if we can. We’ve got to request our mail-in ballots right now, tonight, and send them back immediately and follow-up to make sure they’re received,” she said in her speech. “And then, make sure our friends and families do the same.”

Night two starts at the same time as last night’s show (9 p.m. Eastern, make sure you head to POLITICO’s homepage for live analysis). Big events tonight include the roll call vote, the 17-person keynote address, and speeches from Rep. Alexandria Ocasio-Cortez (D-N.Y.), former President Bill Clinton and Jill Biden.

— **Some speakers for the Republican National Convention** are starting to trickle out. The Washington Post’s Josh Dawsey reported that Patricia and Mark McCloskey, a St. Louis couple who flashed guns at protesters, will be part of the convention. Other speakers: Nick Sandmann, the Covington Catholic student from a controversy of yore; Andrew Pollack, the father of a Parkland shooting victim; Abby Johnson, an anti-abortion activist; South Dakota Gov. Kristi Noem and PA-17 GOP nominee Sean Parnell, per Breitbart’s Matthew Boyle.

PRESIDENTIAL BIG BOARD

GOING POSTAL — DeJoy is going to Congress. The postmaster general agreed to participate in a House Oversight hearing next week, alongside Mike Duncan, chairman of the Postal Service’s Board of Governors and a former RNC chair, POLITICO’s Daniel Lippman first reported. Expect the hearing to be contentious: Multiple House Democrats reacted to the news on Twitter promising a grilling.

Meanwhile, both chambers of Congress are readying bills that include USPS funding. House Democrats’ bill, which will be voted on on Saturday, will give the postal service \$25 billion in funding, along with blocking recent organizational changes from DeJoy, POLITICO’s Heather Caygle, Sarah Ferris and Marianne LeVine reported. In the other chamber, Senate Republicans plan on soon introducing a “skinny” coronavirus relief bill, which includes \$10

billion for the USPS, more PPP money, \$300 in federal unemployment benefits and more, Marianne wrote.

THE CASH DASH — Several pro-Biden super PACs have received a combined \$45 million of contributions in dark money, Business Insider's Dave Levinthal reported, about seven times the amount of dark money pro-Hillary Clinton super PACs brought in during 2016.

— **America's Progressive Promise PAC, a super PAC** founded by former Sanders aides to boost Biden with progressives, reported its first independent expenditure to the FEC: \$138,000 for ad production and an ad buy.

2024 ALREADY? — Perez, the DNC chairman, said that he thinks the 2024 nominating process shouldn't include any caucuses. "I think by 2024 we ought to have everyone being a primary state," Perez told the AP's Bill Barrow. (Perez's tenure as chair will end before the 2024 process is set.)

THE PROCESS — Louisiana Secretary of State Kyle Adrdoon, a Republican, proposed an emergency plan for November, that "would modestly expand early voting amid the coronavirus outbreak, but still require most people to cast their ballots in person in the pandemic," the AP's Melinda Deslatte reported.

VOTING BLOCS — The latest incarnation of "soccer moms" is ... "rage moms." "With millions of American families facing an uncertain start to the school year, the struggle for child care, education and economic stability is fueling a political uprising, built on the anger of women who find themselves constantly — and indefinitely — expected to be teacher, caregiver, employee and parent," The New York Times' Lisa Lerer and Jennifer Medina wrote.

DOWN THE BALLOT

ABOUT TONIGHT — It isn't just a convention night tonight. Three states are holding primaries — Alaska, Florida and Wyoming — and all the action we're following is down in the Sunshine State.

Hands down, the most interesting district is in FL-15, a borderline battleground district where the embattled Spano is facing a competitive primary challenge. The freshman representative is under federal investigation for possible campaign-finance violations with Lakeland City Commissioner Scott Franklin looking to unceremoniously send him packing after one term. Democrats smell blood in the water, especially if Spano wins. Their competitive primary in the district is between state Rep. Adam Hattersley and former TV journalist Alan Cohn.

Meanwhile, most of the other battleground seats have fairly uncompetitive primaries. We appear headed for a rematch between now-freshman Democratic Rep. Donna Shalala and Maria Elvira Salazar in FL-27, Miami-Dade Mayor Carlos Gimenez is heavily favored to win the GOP primary to challenge freshman Democratic Rep. Debbie Mucarsel-Powell in FL-26, and Democrat Margaret Good has a clear run at GOP Rep. Vern Buchanan in FL-16. In FL-18, a reach seat for Democrats, Pam Keith and Oz Vazquez are facing off for the right to challenge GOP Rep. Brian Mast. There are also a couple of safe Republican districts up for grabs to replace retiring GOP Reps. Ted Yoho and Francis Rooney in FL-03 and FL-19, respectively, where the likely members-in-waiting will be picked tonight

MI MEMO — Republican John James' Senate campaign sent allies a new memo touting internal polling conducted last week showing him trailing Democratic Sen. Gary Peters by less than 5 percentage points, and calling for outside air support from Republican groups. The campaign cited a poll from Tarrance Group showing Peters leading, 49 percent to 44 percent (602 registered voters; Aug. 10-13; +/- 4.1 percentage point MoE). The campaign cited its own fundraising, which has outpaced Peters this year, but noted that a Democratic outside group is spending \$1.6 million “against John James with no corresponding conservative ally on the air against Gary Peters.”

FIRST IN SCORE — (INTERNAL) POLL POSITION — An internal poll from Democrat Nancy Goroff in NY-01 shows a tight race. The poll, which was conducted by Global Strategy Group, found GOP Rep. Lee Zeldin narrowly leading, 47 percent to 42 percent. Biden and Trump are close in a district the president carried by 12 points in 2016: 46 percent for Trump to Biden's 42 percent (400 likely voters; Aug. 3-5; +/- 4.9 percentage point MoE).

— **An internal poll from Alex Morse, who is primarying** Democratic Rep. Richie Neal in MA-01, shows a tight race. The poll from Beacon Research has Neal at 46 percent, to 41 percent for Morse (391 Democratic primary voters; Aug. 15-16; MoE not provided).

— **A poll from the Texas Hispanic Policy Foundation/Rice University**, conducted by YouGov, has GOP Sen. John Cornyn leading Democrat MJ Hegar, 44 percent to 37 percent. Trump also leads Biden, 48 percent to 41 percent (846 registered voters; Aug 4-13; MoE not provided).

THE MONEY MAN — Former New York City Mayor Mike Bloomberg plans on dropping \$60 million to boost House Democrats, The Washington Post's Michael Scherer reported, citing an “adviser familiar” with hizzoner's plans. The money will both revive Bloomberg's super PAC Independence USA and go out to various other groups (including HMP).

ON THE AIRWAVES — The ads will never stop.

Battle for the Senate: Everytown for Gun Safety, the group co-founded by Bloomberg, is launching \$5 million TV ad buy in North Carolina and Iowa, James reported. The group is running ads in each state attacking Sens. Joni Ernst (R-Iowa) and Thom Tillis (R-N.C.), the first major investment in Senate races from the organization.

— **AL-Sen:** Duty and Honor, a nonprofit aligned with Democratic leaders, launched its first ad in Alabama defending Sen. Doug Jones, the most vulnerable incumbent on the ballot this year. The ad, which focuses on Covid-19 and health care, is backed by a \$500,000 statewide buy.

— **GA-Sen:** GOP Sen. Kelly Loeffler is out with an ad attacking GOP Rep. Doug Collins, saying he voted with Stacey Abrams and Nancy Pelosi, while highlighting Trump praising her. (Trump, notably, has not endorsed in the race.)

— **IA-Sen:** The U.S. Chamber of Commerce is up with a new ad praising Ernst on drug pricing. It is airing for two weeks in the Cedar Rapids and Des Moines markets.

— **MT-Gov:** The RGA's affiliate in the state is out with a TV ad criticizing Democratic Lt. Gov. Mike Cooney as "just wrong on taxes."

— **MA-01:** Morse is also out with a new ad criticizing Neal, saying he "still takes money from the fossil fuel industry."

— **ME-02:** Freshman Democratic Rep. Jared Golden is out with a new ad, attacking "Washington Republicans" over health care and corporate PACs.

— **MI-08:** Freshman Democratic Rep. Elissa Slotkin is out with her first ad, talking about her service with the CIA — and featuring her with pictures of both Presidents George W. Bush and Barack Obama.

— **MO-02:** GOP Rep. Ann Wagner is out with an ad attacking Jill Schupp, saying she is "soft on crime."

— **NY-21:** GOP Rep. Elise Stefanik is up with a pair of ads. In one ad, the narrator says she's "fighting for our seniors," while the second ad attacks Democratic nominee Tedra Cobb as "taxin' Tedra Cobb," a "Cuomo clone."

— **NJ-07:** Freshman Democratic Rep. Tom Malinowski is out with his first TV ad. The ad (which has some ... active? camera work) has Malinowski saying he's "working with both parties" to help small businesses save jobs.

— **OK-05:** Club for Growth Action is out with a new ad ahead of the GOP runoff, one of the more low-key bonkers ads this cycle. The ad has a person in a unicorn mask dancing, while saying Stephanie Bice is "strangely liberal."

THE MAP LINES — Michigan selected its group of 13 random Michiganders to serve on its “Citizen’s Redistricting Commission,” a group of four Democrats, four Republicans and five independents, per the Detroit Free Press’ David Boucher.

CODA — QUOTE OF THE DAY: “You know the nickname [my daughter] gave me when she was growing up? She called me Joey B. So we may be related.” — Biden, talking to Cardi B (who interviewed him for Elle).

A message from the United States Postal Service:

In today’s political landscape, it’s all about reaching voters where they are—whether it’s on their phone or checking their mailbox. And by understanding what really makes them tick, you can speak directly to what matters to them most. Connecting with constituents wherever they are in their journey to the polls is essential to capturing attention and sparking voter action.

AUTHORS



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NEWSLETTER ARCHIVE

MORNING SCORE

Recapping the first night of the Democratic convention (and what’s coming tonight)

08/18/2020 06:02 AM EDT

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Democrats’ scattershot keynote address

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MORNING SCORE

Trump threatens USPS, census for perceived gain

08/14/2020 05:45 AM EDT

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8/18/2020

Newsletter

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08/13/2020 06:00 AM EDT

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