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 Federal Election Commission
 1050 First Street NE
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VIA E-MAIL: cela@fec.gov

Re: MUR 7790: Response for John James and John James for Senate, Inc.

We write on behalf of John James, John James for Senate, Inc., and Timothy Caughlin, in his official capacity as Treasurer, (collectively “the Respondents”) in response to a complaint alleging that the Respondents violated the Federal Election Campaign Act of 1974, as amended (“FECA”) and Commission regulations by “soliciting and directing dark money” through the use of a “Memorandum” that was leaked to and published by *Politico*.¹ A complaint must set forth sufficient specific facts which, if proven true, would constitute a violation of FECA or Commission regulations.² The Complaint here provides *none* of this necessary information, and instead only provides the Commission with speculation and unjust inferences. Therefore, we ask the Commission to promptly close the file.

I. Facts and Legal Analysis.

John James is the Republican candidate for U.S. Senate in Michigan.³ His principal campaign committee is John James for Senate, Inc.⁴ On August 17, 2020, the James campaign sent an internal memorandum, titled “CONFIDENTIAL: Two polls show MI Senate Race Tighten to Just Outside Margin of Error” to the John James for Senate Steering and Finance Committees.⁵ The Memorandum primarily discusses several polls that show the Michigan’s Senate race is tightening between James and his opponent, Senator Gary Peters. At the very end of the Memorandum, it states that a “Senator Peters ally,” misnamed Duty and Honor, was

¹ Compl. at 1.

² Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas at 1, MUR 4960.

³ John James, FEC Form 2 Statement of Candidacy (filed May 4, 2020).

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

⁵ 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-fffb38060000>.

spending \$1.6 million against James, while James did not have a “similar ally.” The Memorandum concluded with the factual statement that “[w]ith the proper resources, John James is poised to become the next U.S. Senator from Michigan.” This memo was subsequently leaked to and published by *Politico*.

Based on the information above, the Complaint alleges that “the available facts suggest” that the Respondents provided the Memorandum for publication with the specific purpose of soliciting and directing “dark money” in violation of FECA and Commission regulations.⁶ Not only is this inaccurate, but the Complainant’s basis behind making such claim is purely based on speculation and inference. Specifically, the Complaint fails to establish (1) that the Memorandum was soliciting or directing funds; (2) that the Memorandum was targeted to outside organizations, specifically 501(c)(4) organizations; and (3) that the Memorandum was leaked by the Campaign with the specific intent to solicit outside organizations to spend money to support James.

A federal candidate (or any agent of the candidate) is prohibited from soliciting, receiving, directing, transferring, or spending funds for any election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.⁷ A solicitation is defined as “to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds or otherwise provide anything of value.”⁸ In the context in which it is made, it must contain “*a clear message asking, requesting, or recommending*” that another person provide something of value to the campaign.⁹ Additionally, a direction is defined as “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 candidate, political committee or organization, for the receipt of such funds, or things of value.*”¹⁰

Upon reading the Memorandum, there was no solicitation or direction of soft money. As the Commission regulations state, a solicitation requires a *clear message* indicating an ask, request, or recommendation to another individual to provide something of value. That does not exist in this memo. The language the Complaint relies heavily on, “[w]ith the proper resources, John James is poised to become the next U.S. Senator from Michigan[,]” is a factual statement that does not ask, request, or recommend something of value. This Memorandum was also not a direction, as defined by Commission regulations. There was no information to show that the Memorandum was geared towards any individual who wanted to make a contribution to the James campaign, and no language about any specific organization to give something of value to. Bottom line: there is no solicitation or direction of soft money in the Memorandum.

Even assuming *arguendo* there was a solicitation or direction, it was not targeted at any 501(c)(4) organization or any other outside organization. In fact, given the context of the Memorandum, which was sent *internally* to Respondents’ agents and current hard-dollar donors and was labeled *CONFIDENTIAL*, it was clearly **not** targeted for external viewing. While the

⁶ Compl. at 4.

⁷ 52 U.S.C. § 30125(e)(1).

⁸ 11 C.F.R. § 300.2(m).

⁹ *Id.* (emphasis added).

¹⁰ 11 C.F.R. § 300.2(n).

Complainant asserts that “there is no logical reason why the James campaign would have given its campaign agents the Memorandum other than to authorize those agents to make it public and solicit support for Mr. James,” that is nonsensical. Complainant (Chair of the Michigan Democratic Party and under pressure because Respondent is out-performing against her lackluster choice Gary Peters) apparently did not comprehend the Memorandum, specifically the headline “CONFIDENTIAL,” as that word indicates the absolute opposite of what she is claiming. Given that the Memorandum’s recipients were the Finance and Steering Committee, there are several reasons why the Campaign would want to send them this information. Good polling numbers, especially in a race as competitive as Michigan’s Senate race, are great tools for garnering support because they provide tangible evidence of a successful political campaign. Getting increased resources would put the Campaign in a better place to win the race, and there is no better group to discuss this with James’ Finance and Steering Committees. Importantly, there is nothing in the Memorandum that suggests, recommends, or otherwise implies that any of these “proper resources” should come from illegal sources, much less 501(c)(4) organizations.

Contrary to the Complainant’s assertions, there is also *no* evidence showing (a) that the Campaign leaked the Memorandum and (b) that the Campaign leaked the Memorandum to attract specific organizations to support James’ candidacy. While the Complainant is conclusory in her assertions on this issue,¹¹ a reasonable reader can see it is rooted in nothing more than speculation and inferences.¹² Although the Complainant states many times that “the available facts” show that the Respondents leaked the Memorandum, she never provides any specific evidentiary support for that claim outside of her own assumptions.

II. Conclusion.

John James is a war hero and a businessman who has emerged as one of the biggest threats to Democrats in their attempt to regain the Senate, so it is natural that the Democrat Party would exhaust its resources to diminish the success of his Campaign. While we recognize that the race for Michigan’s Senate seat is one of the nation’s tightest contests, and both sides are determined to win, there is absolutely no excuse for Michigan’s Democrat Party Chair, the Complainant in this matter, to continuously¹³ and knowingly spread lies about the Respondent.

Ultimately, this Complaint is really about political messaging for flailing Democrats. It is filled with controversial theories and exaggerated rhetoric but lacks any sort of legal substance. The Commission has consistently made clear 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.”¹⁴ We ask the Commission to follow its longstanding precedent and promptly close the file.

¹¹ See Compl. at 5 (stating that “[i]t is clear that the ‘proper resources’ must come from independent spenders” without providing any evidentiary support to assert this claim).

¹² See *generally* Comp. (“The available facts *strongly indicate*...”; “Based on the available facts, either the James campaign or an agent of the campaign *appears* to have given the Memorandum to Politico”);

¹³ This is not the first time the Complainant is gone out of her way to file frivolous complaints against the Respondents with the Commission. See Complaint, MUR 7716. This is unfortunately yet another example.

¹⁴ 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 written in a cursive style with a large initial "C" and a long, sweeping underline.

Charlie Spies

Katie Reynolds

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