



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 7790
John James; John James for Senate and)	
Timothy Caughlin in his official capacity)	
as treasurer)	

**STATEMENT OF REASONS OF CHAIRMAN ALLEN DICKERSON AND
COMMISSIONERS SEAN J. COOKSEY AND JAMES E. “TREY” TRAINOR, III**

The Complaint in this matter alleges that John James—then the Republican candidate for U.S. Senate from Michigan in the 2020 election—and his principal campaign committee, John James for Senate and Timothy Caughlin in his official capacity as treasurer, violated the soft-money ban of the Federal Election Campaign Act of 1971, as amended (the “Act”), by releasing an internal campaign memorandum to the news organization *Politico*. According to the Complaint, the memorandum solicited expenditures supporting his campaign from outside organizations, in violation of 52 U.S.C. § 30125(e)(1). The Respondents denied the allegations.

All six Commissioners agreed that the Complaint’s allegations should be dismissed.¹ But in reaching that conclusion, Commissioners relied on different legal reasoning, and we publish this statement to explain the basis for our votes.

I. Factual Background

In August 2020, the website *Politico* published as part of a news story a confidential James campaign memorandum addressed to the campaign’s finance and steering committees.² The memo provided the recipients with an update on the state of the race and focused on James’s recent fundraising numbers and cash on hand. It also touted recent public and internal polls showing the race between James and his opponent to be close.³

¹ Certification (June 23, 2022), MUR 7790 (John James, *et al.*).

² Complaint at 2 n.8 (Sept. 8, 2020), MUR 7790 (John James, *et al.*) (linking to John James for Senate, Memo Re: CONFIDENTIAL 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-fff38060000>) (“James Campaign Mem.”); Response at 1 (Sept. 29, 2020), MUR 7790 (John James, *et al.*) (“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 ... This memo was subsequently leaked to and published by *Politico*.”).

³ James Campaign Mem.

The memorandum further observed the presence of outside groups making expenditures in the race, noting that an organization called “Duty and Honor” was spending \$1.6 million against James “with no corresponding conservative ally on the air against Gary Peters.”⁴ The final paragraph of the memorandum stated:

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.**⁵

The Complaint generally argues that the memorandum violates 52 U.S.C. § 30125(e)(1) because it is a solicitation for “proper resources” from an outside organization—meaning that the campaign wanted others to make expenditures in support of the campaign or against its opponent.⁶ It further argues that the campaign made the solicitation because it must have intentionally leaked the memo to the media to communicate the request.⁷ The Respondents argue that the Complaint fails to properly allege a soft-money violation, that the memo does not make a solicitation, and that there is no evidence the campaign intentionally provided the memorandum to *Politico*.⁸

II. Legal Analysis

The Act prohibits federal candidates, federal officeholders, their agents, and entities established, financed, maintained, or controlled by federal candidates or officeholders from soliciting or directing funds outside “the limitations, prohibitions, and reporting requirements” of the Act in connection with a federal election.⁹ For purposes of the soft-money prohibition, an “agent” of a federal candidate or officeholder is “any person who has actual authority, either express or implied,” to engage in any of the following activities on behalf of that candidate or officeholder: “solicit[ing], receiv[ing], direct[ing], transfer[ing], or spend[ing] funds in connection with any election.”¹⁰

The Complaint’s theory of a soft-money solicitation is wrong for at least three reasons. First, the memorandum does not meet the legal requirements of a solicitation. Under Commission regulations, “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.”¹¹

⁴ *Id.*

⁵ *Id.* (emphasis in original).

⁶ Complaint at 2–5 (Sept. 8, 2020), MUR 7790 (John James, *et al.*).

⁷ *Id.* at 3.

⁸ Response at 1–3 (Sept. 29, 2020), MUR 7790 (John James, *et al.*).

⁹ 52 U.S.C. § 30125(e)(1).

¹⁰ 11 C.F.R. § 300.2(b)(3).

¹¹ 11 C.F.R. § 300.2(m).

The same regulation goes on to state that “[a] solicitation does not include mere statements of political support or mere guidance as to the applicability of a particular law or regulation.”¹² The Commission’s understanding of solicitation is further informed by background principles of criminal law for the same offense.¹³

Nothing in the memorandum asks, requests, or recommends that anyone contribute or spend money. Taken as a whole, the memo instead provides a brief descriptive update to inform key supporters about the state of the campaign, focusing especially on fundraising numbers and two recent polls showing a neck-and-neck race.¹⁴ The ultimate paragraph on which the Complaint focuses contains nothing that can be reasonably construed as a request for financial support, but only declarative statements or predictions: “With the proper resources, John James is poised to become the next U.S. Senator from Michigan”¹⁵ is a categorically different sentence than a solicitation like, “Please donate today to help John James win this election.”¹⁶ And nothing else about the memorandum, such as the fact that it was sent to the James campaign’s own finance and steering committees, causes these statements to be reasonably construed as solicitations. Without the necessary element of an ask or request, the memo is not a solicitation, and the Complaint’s theory fails.

Second, even if the memorandum were a solicitation, it is not a solicitation of *soft money*. The internal memo was directed to members of the campaign—many of them presumably hard-money donors to James already. The Complaint’s assertion that the memorandum “*states* that the James campaign wants a ‘corresponding conservative ally’”¹⁷ is wrong—the memorandum does not explicitly say that. The use of the term “proper resources” does not necessarily refer to contributions or spending outside the limitations, prohibitions, and reporting requirements of the Act, nor does any part of the memorandum mention or gesture at a request for soft money.¹⁸ Consequently, even if one concluded that the memo was a solicitation, the plainest reading is that it was a lawful one to campaign supporters.

Third, even assuming arguendo that the memorandum constituted a solicitation, there is no evidence it was communicated by James, the campaign, or an agent thereof, which is necessary to substantiate a violation of § 30125(e).¹⁹ The memorandum was marked as confidential, and as the

¹² *Id.*

¹³ See Factual & Legal Analysis for Great America PAC at 8 & n.23 (Mar. 2, 2021), MURs 7165 and 7196 (Great America PAC).

¹⁴ James Campaign Mem.

¹⁵ *Id.*

¹⁶ See, e.g., 11 C.F.R. § 300.2(m)(2)(i) (providing the example “Please give \$100,000 to Group X” as a statement constituting a solicitation).

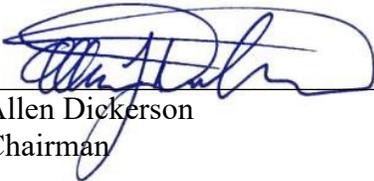
¹⁷ Complaint at 5 (Sept. 8, 2020), MUR 7790 (John James, *et al.*).

¹⁸ James Campaign Mem.

¹⁹ See 11 C.F.R. § 300.2(m) (“[T]o 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.”) (emphasis added).

Respondents correctly point out, nothing in the record indicates how *Politico* obtained the memo.²⁰ Without evidence that a covered individual actually conveyed the message at issue, there is no “communication” and thus no solicitation. Like writing a letter but never putting it in the mail, a request that is never delivered is not a completed solicitation under the Act, and there is no liability under the Act for attempted violations.²¹

Any one of the foregoing reasons independently defeats the Complaint’s allegations of a soft-money solicitation. For all three reasons, we voted to dismiss the Complaint’s allegations.²²


 Allen Dickerson
 Chairman

July 21, 2022
 Date


 Sean J. Cooksey
 Commissioner

July 21, 2022
 Date


 James E. “Trey” Trainor, III
 Commissioner

July 21, 2022
 Date

²⁰ James Campaign Mem.; Response at 3 (Sept. 29, 2020), MUR 7790 (John James, *et al.*).

²¹ See *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1115–16 (D. Utah 2018) (holding that the Commission exceeded its statutory authority in promulgating a regulation imposing secondary liability for aiding and abetting contributions in the name of another).

²² Certification (June 23, 2022), MUR 7790 (John James, *et al.*).