

BEFORE THE FEDERAL ELECTION COMMISSION OF THE UNITED STATES OF AMERICA

OFFICE OF
GENERAL COUNSEL

2020 MAR 16 AM 10:45

In the Matter of:
 Representative Lucy McBath
 Friends of Lucy McBath
 Kendra-Sue Derby, Treasurer
 Everytown for Gun Safety Action Fund
 Everytown for Gun Safety Victory Fund
 Tara Paone, Treasurer

MUR No. 7753

COMPLAINT

1. Complainant brings this complaint before the Federal Election Commission ("FEC" or "Commission") seeking an immediate investigation and enforcement action against Representative Lucy McBath, Friends of Lucy McBath, and Kendra-Sue Derby as Treasurer ("Committee"), and Everytown for Gun Safety Action Fund, Everytown for Gun Safety Victory Fund, and Tara Paone as Treasurer of both organizations for violations of the Federal Election Campaign Act ("FECA" or "Act").
2. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that:
3. Respondents coordinated communications pursuant to 11 C.F.R. § 109.21, resulting in millions of dollars of illegal and excessive campaign funds not subject to federal prohibitions, limitations, and reporting requirements in violation of 52 U.S.C. §§ 30104, 30116, 30118. Ultimately, Representative McBath was the single largest beneficiary of Everytown's 2018 election cycle advocacy spending, accounting for over 80 percent of Everytown's advocacy expenditures.¹

STATEMENT OF THE LAW

4. 11 C.F.R. § 109.21 defines a coordinated communication as a communication that is coordinated with a candidate, authorized committee, or political party when the communication meets a 3-prong test:
 - (1) is paid for by a person other than the candidate or authorized candidate committee;
 - (2) meets certain content standards, including expressly advocating for the election or defeat of a clearly identified candidate;
 - (3) meets certain conduct standards showing coordination between the paying entity and the benefitting committee or committee's agents.
5. The conduct standard for coordination is satisfied – whether or not there is agreement or formal collaboration – if (1) "[t]he communication is created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party committee;" or

¹ Center for Responsive Politics, [OpensSecrets.org, Everytown for Gun Safety Action Fund, Targeted Candidates, 2018 Cycle](https://www.opensecrets.org/Everytown-for-Gun-Safety-Action-Fund/Targeted-Candidates/2018-Cycle); Center for Responsive Politics, [OpenSecrets.org, Everytown for Gun Safety Victory Fund, Targeted Candidates, 2018 Cycle](https://www.opensecrets.org/Everytown-for-Gun-Safety-Victory-Fund/Targeted-Candidates/2018-Cycle).

(2) “[t]he communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, or political party committee assents to the suggestion.”²

6. The conduct standard is also satisfied if “a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing” is “materially involved” in deciding the content or intended audience of the communication, the mode of communication, the media outlet to be used, the timing or frequency of the communication, or the size, prominence or duration of a communication.”³
7. Finally, the conduct standard is also satisfied by (1) substantial discussions between the person paying for a communication and the benefitting campaign; (2) use of a common vendor; or (3) the communication is facilitated via a former employee.⁴
8. If a communication satisfies all three of these standards to establish coordination, it is treated as an in-kind contribution subject to the prohibitions, limitations, and reporting requirements as mandated by 52 U.S.C. §§ 30104, 30116, 30118.

STATEMENT OF FACTS

9. Representative Lucy McBath was elected in 2018 to represent Georgia’s 6th Congressional District.⁵
10. Prior to her election to Congress, Representative McBath served as a paid national spokesperson for Everytown for Gun Safety.⁶ Since at least 2017, Representative McBath was paid an annual salary of \$100,000 by Everytown for Gun Safety Action Fund (“Action Fund”), a 501(c)(4) organization.⁷ The Action Fund is a related organization of Everytown for Gun Safety Victory Fund (“Victory Fund”), a federal super PAC.⁸ Tara Paone serves as Treasurer of both the Action Fund and Victory Fund (collectively “Everytown”).⁹
11. On March 5, 2018, Representative McBath filed a Statement of Candidacy for Georgia’s 6th Congressional District.¹⁰ Representative McBath was paid \$25,000 in salary from the Action Fund in 2018 and at the time when she filed her Statement of Candidacy and for weeks afterwards, she remained employed by Everytown.¹¹ In a March 11, 2018 interview on CNN, Representative McBath appeared in a dual capacity as “national spokeswoman for Everytown for Gun Safety” and “also running for Georgia’s 6th Congressional District.”¹²
12. On April 19, 2018, Representative McBath’s campaign uploaded their first campaign advertisement to YouTube.¹³ It is not publicly known what level of involvement Everytown had in the creation or paid promotion of this video.

² 11 C.F.R. §§ 109.21(d)(1)(i), 109.21(d)(1)(ii).

³ 11 C.F.R. § 109.21(d)(2).

⁴ 11 C.F.R. § 109.21(d).

⁵ Georgia Secretary of State, November 6, 2018 General Election, U.S. Representative, District 6 (Nov. 17, 2018).

⁶ Alexandra Hutzler, Who is Lucy McBath? Gun Control Advocate Upsets Republican Opponent to Win Georgia House Election, Newsweek (Nov. 8, 2018).

⁷ Clerk of the House of Representatives, Hon. Lucia Kay McBath, 2018 Financial Disclosure Report (May 16, 2019); Everytown for Gun Safety, Frequently Asked Questions.

⁸ Everytown for Gun Safety Action Fund Inc, Form 990, 61 (filed Nov. 21, 2018).

⁹ Federal Election Commission, Everytown for Gun Safety Action Fund, About this committee; Federal Election Commission, Everytown for Gun Safety Victory Fund, About this committee.

¹⁰ Federal Election Commission, Statement of Candidacy, Ms. Lucia Kay McBath (Mar. 5, 2018).

¹¹ Clerk of the House of Representatives, *supra* note 7.

¹² CNN New Day Sunday, Interview with Lucy McBath (Mar. 11, 2018).

¹³ YouTube, Lucy McBath for Congress, Lucy McBath for Congress -- "Common Sense Solutions" (1:15) (Apr. 19, 2018).

13. On April 23, 2018, the same month as Representative McBath's leave from employment, Everytown announced its endorsement of Representative McBath and initial financial commitment of over \$200,000 in digital ads and mailers to support her campaign.¹⁴ A filing with the FEC shows spending by the Action Fund in support of Representative McBath began on April 25, 2018.¹⁵ However, Everytown began spending in the election for Georgia's 6th Congressional District while Representative McBath was still serving as the group's national spokesperson.¹⁶ It is not publicly known what level of involvement Representative McBath had in Everytown's expenditures against her eventual general election opponent while she was still employed by Everytown.
14. Following Representative McBath's victory in the July 24 primary runoff, Everytown issued a press release stating the Action Fund worked "to elevate McBath's candidacy" and spent more than \$1.2 million on "television, digital, mail and radio advertisements."¹⁷
15. Following the general election in November, Everytown issued a press release detailing that in addition to the Action Fund's spending in the primary, the Victory Fund "ran independent expenditures of more than \$3 million in the general election."¹⁸ According to the Center for Responsive Politics, the Action Fund was the single largest contributor to the Victory Fund, contributing \$3.7 million of the \$3.9 million they raised in 2018.¹⁹
16. Cumulatively in the 2018 election cycle, Everytown spent over \$5 million on advocacy expenditures. Representative McBath was the single largest beneficiary of Everytown's spending, accounting for over 80 percent of Everytown's advocacy expenditures.²⁰

CAUSES OF ACTION

AGAINST RESPONDENTS REPRESENTATIVE LUCY MCBATH, COMMITTEE, AND EVERYTOWN

Coordination Between Representative Lucy McBath and Everytown Pursuant to 11 C.F.R. § 109.21

17. An expenditure made by any person in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, authorized committee, or their agent is considered an in-kind contribution to the committee if it (1) is paid for by an entity other than the committee; (2) meets certain content standards, including expressly advocating for the election or defeat of a clearly identified candidate; and (3) meets certain conduct standards showing coordination between the paying entity and the benefitting committee or committee's agents.
18. Based on Everytown's own statements and FEC reports, the communications for Representative Lucy McBath clearly satisfy the first two prongs: paid for by a third party and advocating for or against a particular candidate for federal office.²¹

¹⁴ Tamar Halleman, *Georgia 6th: Gun control groups line up behind McBath*, Atlanta Journal-Constitution (Apr. 23, 2018).

¹⁵ Everytown for Gun Safety Action Fund, FEC Form 5, 3 (filed Apr. 27, 2018); See YouTube, Everytown for Gun Safety, Everytown for Lucy McBath (May 14, 2018).

¹⁶ Everytown for Gun Safety Action Fund, FEC Form 5, 21, 114 (filed Apr. 13, 2018).

¹⁷ Press Release, Everytown for Gun Safety, Everytown for Gun Safety Action Fund Applauds Lucy McBath for Winning Democratic Primary Runoff Election in Georgia's Sixth Congressional District (July 24, 2018).

¹⁸ Press Release, Everytown for Gun Safety, Everytown, Georgia Moms Demand Action Declare Victory As Gun Sense Champion Lucy McBath Wins Congressional Race (Nov. 8, 2018).

¹⁹ Center for Responsive Politics, OpensSecrets.org, Everytown for Gun Safety Victory Fund, Contributors, 2018 Cycle.

²⁰ *Supra* note 1.

²¹ Press Release, *supra* note 18; Everytown for Gun Safety Action Fund, *supra* note 15.

19. In addressing the conduct standard, the timing of Representative McBath's employment as the national spokesperson for the Action Fund and her own campaign launch, taken together with the near immediate paid advocacy efforts of the Action Fund, render it highly implausible that Representative McBath did not engage in substantial discussion regarding her election.²² Even after Representative McBath announced her candidacy in March, she remained a salaried employee of the Action Fund until April of 2018.²³ In her March 11, 2018 CNN interview, she made no attempt to hide her dual role as "national spokeswoman for Everytown for Gun Safety" while "also running for Georgia's 6th Congressional District."²⁴
20. The Action Fund announced spending on digital ads and mailers on April 23, 2018 and reported their first expenditure on April 25, 2018.²⁵ Clearly, an employer-employee relationship existed within 120 days of the first purchase or distribution of the communication sufficient to establish conduct as described in 11 C.F.R. § 109.21.
21. This employee-employer relationship guaranteed privacy for such coordination and is exactly why the former employee standard exists to establish conduct underlying coordination.²⁶ Further, Representative McBath has never addressed the extent to which she was involved in the Action Fund's advocacy communications against her eventual general election opponent. During her time as spokesperson and candidate, announced or unannounced, and immediately afterward, there was ample opportunity for coordination via substantial discussion and assent.
22. Everytown's expenditures made in the 2018 elections demonstrate substantively unique and preferential treatment to Representative McBath. Although the Action Fund did spend in opposition to other federal candidates, no expenditure exceeded \$1,000, while the assistance provided to Representative McBath was in excess of \$1.2 million. Moreover, the related Victory Fund spent over \$3 million in support of Representative McBath.²⁷ Cumulatively, spending on behalf of Representative McBath accounted for over 80 percent of Everytown's advocacy expenditures.²⁸ Despite the former employment relationship and timing of these expenditures, this spending on this race alone warrants investigation of coordination.

Prohibited, Excessive, and Unreported In-Kind Corporate Contributions in Violation of 52 U.S.C. §§ 30104, 30116, 30118

23. To the extent that Everytown's expenditures were made in coordination with Representative McBath, they constitute contributions to her campaign. Additionally, the Action Fund is considered a corporation, prohibited from making a contribution to a federal campaign committee.²⁹ As such, the Action Fund's contributions violate the prohibition on corporate contributions. Even if made by a permitted donor, the sum of Everytown's spending exceeds contribution limits and violates reporting requirements set forth in FECA.³⁰ Clearly, the spending by Everytown constitutes millions of dollars in illegal campaign contributions that were prohibited, excessive, and unreported.

²² See Federal Election Commission, Matter Under Review #7503 (July 23, 2019).

²³ Clerk of the House of Representatives, *supra* note 7.

²⁴ CNN New Day Sunday, *supra* note 12.

²⁵ Hallerman, *supra* note 14; Everytown for Gun Safety Action Fund, *supra* note 15.

²⁶ 11 C.F.R. § 109.21(d)(5).

²⁷ *Supra* note 1.

²⁸ *Id.*

²⁹ Everytown for Gun Safety, *supra* note 7; 52 U.S.C. § 30118.

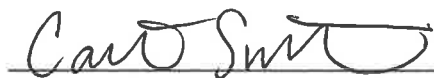
³⁰ 52 U.S.C. §§ 30104, 30116.

PRAYER FOR RELIEF

24. Wherefore, the Commission should find reason to believe that Representative Lucy McBath, Committee, and Everytown made coordinated communications pursuant to 11 C.F.R. § 109.21 constituting corporate contributions that are prohibited, excessive, and unreported in violation of 52 U.S.C. §§ 30104, 30116, 30118. The Commission should conduct an immediate investigation under 52 U.S.C. § 30109(a)(2) and determine and impose appropriate sanctions for any and all violations. Further, the Commission should enjoin respondents from any future violations, and impose any necessary and appropriate remedies to ensure respondents future compliance with FECA.

March 10, 2020

Respectfully Submitted,



Caitlin Sutherland, Executive Director
Americans for Public Trust
107 South West Street, Suite 442
Alexandria, VA 22314

VERIFICATION

25. The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

For Complainant "Americans for Public Trust"

Cait Sutherland
Caitlin Sutherland

City of Alexandria
Commonwealth of Virginia

The foregoing instrument was subscribed and sworn to before me this 10th day of March 2020 by Caitlin Sutherland.

Wade Hamilton Franklin
Notary Public

Notary registration number: 7539034

My commission expires: 01/31/2021

