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# The DiSantis Law Firm, LLC

August 10, 2020

**DELIVERED VIA ELECTRONIC MAIL TO CELA@FEC.GOV AND CDENNIS@FEC.GOV**

Jeff S. Jordan, Esq.  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
1050 First Street, N.E.  
Washington, DC 20463

Re: Response of Friends of Lucy McBath Inc. and Treasurer Kendra-Sue Derby to complaint in MUR 7753

Dear Mr. Jordan:

I serve as counsel for U.S. Rep. Lucy McBath, Friends of Lucy McBath Inc. (the “Committee”), and Committee Treasurer Kendra-Sue Derby (the “Respondents”) in the matter of MUR 7753. Please accept this letter as the response of those parties to the complaint filed by Caitlin Sutherland, Executive Director of Americans for Public Trust (the “Complainant”).

The complaint falsely alleges that Respondents unlawfully coordinated with Everytown for Gun Safety Action Fund and Everytown for Gun Safety Victory Fund (collectively “Everytown”) during U.S. Rep. Lucy McBath’s successful 2018 campaign to represent Georgia’s Sixth Congressional District. The complaint itself is insufficient on its face to justify further action by the FEC, as it is based on pure speculation and does not identify any public communication by either the Committee or Everytown that is alleged to have been unlawfully coordinated.

It should be noted for context that the Complainant is a former employee of the National Republican Congressional Committee and the National Rifle Association.<sup>1</sup> While not dispositive of the legitimacy of her complaint, those facts certainly explain why she would file a facially insufficient complaint that targets a Democratic Member of Congress as well as organizations that oppose the NRA’s policy and political goals, and publicize the complaint to news media in Georgia.<sup>2</sup>

FEC precedent clearly establishes that it may find “reason to believe” and proceed with further action only if a complaint sets forth sufficient facts, which if proven true, would constitute a violation of the Federal Election Campaign Act or FEC regulations.<sup>3</sup> Mere speculation, paired with facts that do not constitute a violation even if true, are not sufficient for the FEC to move forward with an investigation.

<sup>1</sup> <https://www.linkedin.com/in/caitlin-sullivan-sutherland-a1564b15/>; <http://www.humphreyforhouse.org/files/nra-pvf-humphrey.pdf> (Complainant identified by her former name “Caitlin Sullivan”)

<sup>2</sup> <https://www.ajc.com/blog/politics/the-jolt-joe-biden-has-big-head-start-georgia/0EyWfLs8VfOPGcElEhqAK/>

<sup>3</sup> MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas

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Rep. McBath filed her statement of candidacy with the FEC on March 5, 2018. She took an unpaid leave of absence from her employment with Everytown beginning April 2, 2018. Because she was elected to Congress in the 2018 general election, Rep. McBath never returned to active employment at Everytown after April 2, 2018.

Rep. McBath's former employment by Everytown, which is the only actual fact asserted in the complaint, does nothing to establish unlawful coordination between Everytown and Rep. McBath, the Committee, or her agents. Rep. McBath was employed by Everytown's "Support Fund," a 501(c)(3) organization, serving as spokeswoman for the organization's educational programs regarding gun safety issues. Consistent with the legal restrictions placed on 501(c)(3) organizations, she was not involved in any electioneering activity through her employment. As such, Rep. McBath was not involved in the planning or implementation of Everytown's electioneering activities through its "Action Fund" or "Victory Fund."

Further, the complaint asserts no fact that would indicate any unlawful coordination occurred between Rep. McBath, the Committee, or their agents and Everytown's Action Fund or Support Fund during her campaign for Congress. The complaint falsely asserts that Rep. McBath was employed by the organizations that made independent expenditures on behalf of her candidacy. As stated above, she was not. Further, the Complainant references the "conduct standard" detailed by 11 CFR § 109.21d, but asserts no fact that she believes would satisfy the requirements of it beyond the false and irrelevant assertion that she was employed by the organizations that later spent independently to support her candidacy.

It should also be noted that coordination of plans, strategy and/or information would only be relevant to establish unlawful coordination if Rep. McBath's material information was communicated unlawfully to Everytown. The complaint asserts no fact that if true indicates that such unlawful coordination occurred, and no such fact is asserted by the Complainant because no such fact exists. Rep. McBath, the Committee and her agents did not engage in unlawful coordination with Everytown. The Complainant's mere speculation that it might have happened is totally insufficient to justify action by the FEC.

Respondents respectfully request that the FEC, based on the insufficient complaint and FEC precedent, find no reason to believe that further action is warranted in this matter.

Sincerely,



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