



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 7753
Everytown for Gun Safety Action Fund, Inc.)	
)	
Everytown for Gun Safety Victory Fund and Tara Paone in her official capacity as Treasurer)	
)	
U.S. Rep. Lucy McBath)	
)	
Friends of Lucy McBath Inc. and Kendra-Sue Derby in her official capacity as Treasurer)	
)	

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

The Complaint in this matter alleges that two related organizations, Everytown for Gun Safety Action Fund and Everytown for Gun Safety Victory Fund (“Everytown Respondents”), illegally coordinated expenditures with Lucy McBath, a congressional candidate and one-time paid national spokesman for an associated Everytown for Gun Safety organization, and her campaign.¹ The Respondents deny the allegations and claim that the Complaint is too speculative to support a reason to believe finding.²

As we have stated before, “purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the [law] has occurred.”³ Here, the Commission has only suppositions that, because McBath was employed by an Everytown for Gun Safety organization, she must have engaged in substantial

¹ Complaint (March 16, 2020), MUR 7753 (Everytown for Gun Safety Action Fund, *et al.*) (“Complaint”).

² *See* Response of Lucy McBath, *et al.* (Aug. 10, 2020), MUR 7753 (Everytown for Gun Safety Action Fund, *et al.*) (“McBath Response”); Response of Everytown for Gun Safety Action Fund, *et al.* (Aug. 10, 2020), MUR 7753 (Everytown for Gun Safety Action Fund, *et al.*) (“Everytown Response”).

³ Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor III at 2 (June 28, 2021), MUR 7501 (Bill Nelson for U.S. Senate, *et al.*) (quoting Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 3 (Dec. 21, 2000), MUR 4960 (Hillary Rodham Clinton for Senate)).

discussions or provided material information related to Everytown’s political spending. But the mere employment of a candidate alone is insufficient to establish coordination or support a reason-to-believe finding, and there is no other supporting evidence for the Complaint’s claim. Therefore, we voted to dismiss this matter.

I. Factual Background

Everytown for Gun Safety is a collection of interrelated gun-control education and advocacy groups consisting of: Everytown for Gun Safety Support Fund (the “Support Fund”), a 501(c)(3) charitable organization engaged in education and research; Everytown for Gun Safety Victory Fund (the “Victory Fund”), an independent expenditure-only political action committee; and Everytown for Gun Safety Action Fund (the “Action Fund”), a 501(c)(4) social-welfare organization. The third organization describes its “primary activity” as “promoting gun safety legislation and initiatives and reducing gun violence through the education of policymakers, the public, and the media and organizing communities in support of gun safety.”⁴ Together, the Support Fund, the Victory Fund, and the Action Fund are all part of what Respondents characterize as “[t]he Everytown for Gun Safety family of organizations.”⁵

Congresswoman Lucy McBath was first elected to Georgia’s Sixth Congressional District in 2018. Prior to running for office, she was a spokesperson for Everytown for Gun Safety (although which specific organization employed her is disputed). The timeline of McBath’s decision to run for federal office in 2018 is as follows: On March 5, 2018, McBath filed her Statement of Candidacy and her campaign committee, Friends of Lucy McBath (the “McBath Committee”), filed its Statement of Organization.⁶ On April 2, 2018, McBath took unpaid leave from Everytown for Gun Safety in order to pursue her campaign.⁷ Following Georgia’s May 22, 2018, primary election for the Democratic nomination, McBath advanced to a primary run-off election, which she won on July 24, 2018.⁸ As the Democratic nominee, McBath then won the general election to represent the Sixth Congressional District on November 6, 2018.⁹

Throughout the election, but only after McBath had begun her unpaid leave, the Action Fund and the Victory Fund supported McBath’s election. The Action Fund spent \$1,256,290 on independent expenditures in support of McBath’s candidacy.¹⁰ In addition, it contributed

⁴ Everytown for Gun Safety Action Fund, 2018 Return of Organization Exempt From Tax (“2018 Action Fund Tax Return”), available at https://apps.irs.gov/pub/epostcard/cor/208802884_201812_990O_2020061217189577.pdf.

⁵ Everytown Response at 2.

⁶ First General Counsel’s Report at 3 (Jan. 28, 2021), MUR 7753 (Everytown for Gun Safety Action Fund, *et al.*).

⁷ Everytown Resp., Attach. 1 ¶ 2.

⁸ First General Counsel’s Report at 3 (Jan. 28, 2021), MUR 7753 (Everytown for Gun Safety Action Fund, *et al.*).

⁹ Georgia Secretary of State, November 6, 2018 General Election: Official Results, available at https://results.enr.clarityelections.com/GA/91639/Web02-state.221451/#/c/C_2/s/C_2_1.

¹⁰ 2017-2018 Independent Expenditures, Everytown for Gun Safety Action Fund, available at <https://www.fec.gov/data/committee/C90015025/?tab=spending>.

\$3,712,786 to the Victory Fund in 2018.¹¹ The Victory Fund, in turn, spent \$2,953,240 on independent expenditures in support of McBath.¹²

On March 16, 2020, this Complaint was filed against McBath, the McBath Committee, the Action Fund, and the Victory Fund. It alleges that the Action Fund and Victory Fund's independent expenditures were coordinated with McBath and her campaign based on her ties to Everytown for Gun Safety. In support of the allegation, the Complaint points to the initial overlap in McBath's candidacy and her employment, as well as information in McBath's congressional Financial Disclosure Report indicating that she drew a salary from the Action Fund. It also suggests that the timing and scale of the independent expenditures indicates coordination, such that it is "highly implausible that Representative McBath did not engage in substantial discussion regarding her election."¹³

The Respondents deny the allegations and argue the Complaint is entirely speculative. McBath and her campaign committee dispute that she was ever an employee of the Action Fund, and the Action Fund and Victory Fund submitted an affidavit supporting the claim that she was actually employed by the Support Fund. The Respondents further argue that there is no relevant conduct that would make the independent expenditures into prohibited coordinated communications, and that there was a firewall and anti-coordination policy in place at the time of McBath's candidacy.

II. The Law

The Federal Election Campaign Act of 1971, as amended (the "Act") prohibits corporations from making contributions to candidates for federal office, and further prohibits the officers and directors of any corporation from consenting to such a contribution.¹⁴ "[E]xpenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents" are considered "contributions" under the Act.¹⁵

Commission regulations setting out the parameters of the coordinated-communications prohibition are byzantine. They consist of various multi-factor tests and standards, many of which have sub-parts, and then further exceptions to the sub-parts. But stated as simply as possible, the Commission uses a three-part test to determine whether a communication was coordinated with a campaign. The Commission looks to: (1) who paid for the expenditures, (2) what was the content of the expenditures, and (3) and what, if any, coordinating conduct there was between the campaign and the outside party.

¹¹ First General Counsel's Report at 6 (Jan. 28, 2021), MUR 7753 (Everytown for Gun Safety Action Fund, *et al.*) (citing 2017-2018 Individual Contributions, Everytown for Gun Safety Victory Fund, *available at* <https://www.fec.gov/data/committee/C00688655/?cycle=2018&tab=raising#individual-contribution-transactions>).

¹² 2017-2018 Independent Expenditures, Everytown for Gun Safety Victory Fund, *available at* <https://www.fec.gov/data/committee/C00688655/?cycle=2018&tab=spending#independent-expenditures>.

¹³ Complaint at 4.

¹⁴ 52 U.S.C. § 30118(a).

¹⁵ 52 U.S.C. § 30116(a)(7)(B)(i).

The Respondents acknowledge that the first two elements related to payment and content are satisfied. The Action Fund and the Victory Fund are outside parties who paid for public communications, and those communications were independent expenditures in support of McBath's candidacy or in opposition to her opponent. But the Respondents argue that there is no evidence they meet the conduct standard for coordinated communications.

Commission regulations set out six types of conduct that, if any one is present along with the payment and content standards, indicate a prohibited coordinated communication. The six types of conduct are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign material.¹⁶

The Complaint contends that available evidence suggests two of these conduct categories have been met between the Everytown Respondents and the McBath Committee: substantial discussion and the use of a former employee or independent contractor. For both, the Commission has set out specific guidelines for how the standards are met.

First, the "substantial discussion" standard is satisfied when:

The communication is created, produced, or distributed after one or more substantial discussions about the communication between the person paying for the communication, or the employees or agents of the person paying for the communication, and the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee. A discussion is substantial within the meaning of this paragraph if information about the candidate's or political party committee's campaign plans, projects, activities, or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication.¹⁷

The substantial discussion standard is closely related to material involvement, and in both cases the standard "is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source."¹⁸

Second, the former employee or independent contractor standard looks to overlapping personnel between the outside party and the campaign. The standard is met when two conditions are true:

[1.] The communication is paid for by a person, or by the employer of a person, who was an employee or independent contractor of the candidate who is clearly identified in the communication, or the candidate's authorized committee, the

¹⁶ 11 C.F.R. § 109.21(d)(1)–(6).

¹⁷ 11 C.F.R. § 109.21(d)(3).

¹⁸ *Id.*

candidate's opponent, the opponent's authorized committee, or a political party committee, during the previous 120 days; and ...

[2.] That former employee or independent contractor uses or conveys to the person paying for the communication: (A) [i]nformation about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate's opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or (B) [i]nformation used by the former employee or independent contractor in providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, and that information is material to the creation, production, or distribution of the communication.¹⁹

Like the standard for substantial discussion, this standard is not met when the information used or conveyed is publicly available.²⁰

III. Analysis

As noted above, the disposition of this matter turns entirely on whether the Respondents satisfy either of the conduct standards described above: substantial discussion or use of a former employee or contractor. The Complaint alleges that Respondents meet both,²¹ but for the reasons set forth below, we disagree.

First, the plain text of the former employee standard makes it inapplicable to the facts at hand. The former employee standard applies to “the employer of a person, who was an employee or independent contractor *of the candidate*.”²² McBath was the candidate; she was not an “employee or independent contractor of the candidate.” Thus, as the Office of the General Counsel (“OGC”) explained in their First General Counsel’s Report, “[g]iven that the plain text of the regulation clearly applies to ‘an employee or independent contractor of the candidate,’ it does not appear that the facts as alleged by the Complaint satisfy the conduct standard at section 109.21(d)(5).”²³

¹⁹ 11 C.F.R. § 109.21(d)(5).

²⁰ *Id.*

²¹ The Complaint does not distinguish between the substantial discussion standard and the former employee standard in its analysis; however, it appears to be applying both. *See* Complaint at 3–4. It also references the request or suggestion standard in its recitation of the applicable law but does not raise it in the “Cause of Action” section applying the asserted facts to the law. Respondents specifically deny that any communication was created, produced, or disseminated at the request or suggestion of McBath or her campaign. *See* Everytown Response, Attachment A, Affidavit of Tara Paone, Chief Financial Officer of the Action Fund and Support Fund and Treasurer of the Victory Fund.

²² 11 C.F.R. § 109.21(d)(5) (emphasis added).

²³ First General Counsel’s Report at 13 (Jan. 28, 2021), MUR 7753 (Everytown for Gun Safety Action Fund, *et al.*).

Second, there is insufficient information to find reason to believe that substantial discussion or material involvement occurred. The substantial discussion standard requires the candidate or the campaign to convey non-public information to the person paying for a qualifying communication. The Complaint alleges “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.”²⁴ The Complaint further alleges that “Everytown’s expenditures made in the 2018 elections demonstrate substantively unique and preferential treatment to Representative McBath ... [that] alone warrants investigation of coordination.”²⁵

As we have previously stated, “purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the [law] has occurred.”²⁶ “[M]ere ‘official curiosity’ will not suffice as the basis for FEC investigations.”²⁷ Therefore, “[t]he Commission cannot launch investigations into Americans’ political activities based on speculation or official curiosity, or shift the burden to respondents to prove their innocence.”²⁸

The Complaint alleges no specific facts that would show substantial discussions or material involvement occurred other than the fact of McBath’s prior employment.²⁹ Instead, the Complaint hypothesizes that such discussions must have occurred by virtue of McBath’s employment and the Action Fund and Victory Fund’s subsequent spending. The Action Fund and the Victory Fund are advocacy organizations. They exist to support policies and candidates that share their policy positions. It is hardly surprising—nor is it necessarily reflective of any coordination—that an advocacy organization would quickly and enthusiastically support a candidate who is closely associated with their issues and policy views. Shared interests provide a more plausible alternative explanation for the Action Fund and Victory Fund’s spending that is not rebutted by any evidence in the record.³⁰

²⁴ Complaint at 4.

²⁵ *Id.*

²⁶ Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor III at 2 (June 28, 2021), MUR 7501 (Bill Nelson for U.S. Senate, *et al.*) (quoting Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 3 (Dec. 21, 2000), MUR 4960 (Hillary Rodham Clinton for Senate)).

²⁷ *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981).

²⁸ Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor III at 2 (June 28, 2021), MUR 7501 (Bill Nelson for U.S. Senate, *et al.*) (quoting Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Lee E. Goodman and Matthew S. Petersen at 2 (Feb. 15, 2017), MUR 6747 (Rick Santorum for President)).

²⁹ Indeed, as OGC acknowledges, “the available information does not establish that the Action Fund’s communications in support of McBath were in fact coordinated expenditures.” First General Counsel’s Report at 20 (Jan. 28, 2021), MUR 7753 (Everytown for Gun Safety Action Fund, *et al.*).

³⁰ OGC in its First General Counsel’s Report states, “[t]he Responses do not sufficiently rebut the allegations.” First General Counsel’s Report at 17 (Jan. 28, 2021), MUR 7753 (Everytown for Gun Safety Action Fund, *et al.*). This inappropriately shifts the burden of proof onto the Respondents in our view. Notwithstanding the reason-to-believe standard being lower than belief beyond a reasonable doubt, respondents are presumed innocent until there is

The Complaint's approach suggests that mere employment alone establishes a likelihood of substantial discussion and supports a reason to believe finding. But this effectively collapses the substantial discussion and former employee standards and fails to accord each requirement its due weight. The Complaint's theory shifts the burden to Respondents to prove that coordination does not occur anytime an organization employs a candidate or their former employee.³¹ This cannot be correct. Even under the former employee standard, mere employment alone is not enough to establish coordination. The employee must still convey material information.³² By the same logic, mere former employment also does not establish substantial discussion.

The Complaint does not identify what material information the Complainant believes was passed along to the Action Fund or the Victory Fund or how it was done, nor does it identify which specific communications were created using such information. In a sworn statement Respondents specifically deny that material information was conveyed and claim that they maintained a firewall policy to prevent coordination.³³ Thus, the Complaint presents vague allegations, which are directly refuted by sworn statements from the Respondents.

IV. Conclusion


At bottom, there is simply no evidence to support an inference of coordinating conduct between the McBath Committee and the Everytown Respondents. The Complaint is too speculative to support a reason to believe finding. So, we voted to dismiss.

sufficient evidence to the contrary. *See* Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 2 (July 20, 2000), MUR 4850 (Deloitte & Touche, LLP, *et al.*) (“The burden of proof does not shift to a respondent merely because a complaint is filed.”).

³¹ The Complaint does not draw a clear distinction between the former employee standard and the substantial discussion standard. OGC does in its First General Counsel's Report. As noted above, OGC correctly concluded that the former employee standard does not apply to the candidate themselves. Rather, OGC analyzes the situation under the substantial discussion and material involvement standards, and states that the candidate's employment creates “a reasonable basis to question whether McBath shared material information about her campaign's plans, projects, and activities with the Action Fund.” First General Counsel's Report at 16 (Jan. 28, 2021), MUR 7753 (Everytown for Gun Safety Action Fund, *et al.*). We disagree. The standard, after all, is “reason to believe,” not reason to question.

³² *See* 11 C.F.R. § 109.21(d)(5)(ii).

³³ Everytown Response, Attachment A, Affidavit of Tara Paone, Chief Financial Officer of the Action Fund and Support Fund and Treasurer of the Victory Fund.



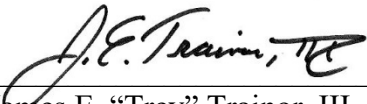
Allen Dickerson
Vice Chair

October 8, 2021
Date



Sean J. Cooksey
Commissioner

October 8, 2021
Date



James E. "Trey" Trainor, III
Commissioner

October 8, 2021
Date