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700 13th Street, NW  
Suite 600  
Washington, D.C. 20005-3960

① +1.202.654.6200  
② +1.202.654.6211  
PerkinsCoie.com

May 13, 2016

OFFICE OF GENERAL  
COUNSEL

Marc Erik Elias  
MElias@perkinscoie.com  
D. +1.202.434.1609  
F. +1.202.654.9126

Jeff S. Jordan  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: MUR 7029  
EMILY's List and WOMEN VOTE!

Dear Mr. Jordan:

We write as counsel to EMILY's List and Ranny Cooper in her official capacity as Treasurer, and WOMEN VOTE! and Denise Feriozzi in her official capacity as Treasurer ("Respondents"), in response to the complaint filed by the Republican Party of Pennsylvania on March 28, 2016 ("the Complaint"). The Complaint falsely alleges that Respondents engaged in impermissible coordination with Katie McGinty for Senate ("the Committee").<sup>1</sup> The Complaint fails to provide any credible support for this claim, and fails to state any facts that, if true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended ("the Act").

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act.<sup>2</sup> Moreover, unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation.<sup>3</sup> Here, Respondents operate using a firewall that complies with the Act and Commission regulations and prevents impermissible coordination. Commission regulations recognize a "safe harbor" where such a firewall exists.<sup>4</sup> That safe harbor presumes that there has been no coordination unless "specific information" showing

<sup>1</sup> This Response addresses the Complaint's allegations of impermissible coordination between the Committee and WOMEN VOTE!. EMILY's List did not sponsor any independent expenditures in support of McGinty's candidacy. Because the law prohibits coordination only as it relates to communications that constitute independent expenditures, the Complaint's allegations against EMILY's List – an entity that has not sponsored any independent expenditures in the race – must fail.

<sup>2</sup> 11 C.F.R. § 111.4(a), (d); MUR 4960, Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas (Dec. 21, 2001).

<sup>3</sup> *Id.*

<sup>4</sup> See 11 C.F.R. § 109.21(h).

coordination is presented.<sup>5</sup> The Complaint fails to allege any specific information to overcome this presumption, and thus, fails to present facts, which, if proven true, would constitute a violation of the Act. Indeed, because WOMEN VOTE! did not engage in prohibited coordination with the Committee, such “specific information” evidencing coordination simply does not exist. The Commission should therefore find no reason to believe that Respondents violated the Act, and should dismiss the matter immediately.

## I. FACTUAL BACKGROUND

EMILY’s List is a federally registered political action committee whose purpose is to elect pro-choice Democratic women to federal, state, and local office. To support its purpose, EMILY’s List engages in a number of activities including making direct contributions to and soliciting contributions for its endorsed candidates. These activities are undertaken by designated staff, volunteers, and consultants. Separately, WOMEN VOTE! is a federally registered independent expenditure-only committee that engages in various forms of general public communications to encourage support for its positions and endorsed candidates among the public at large.

Unlike EMILY’s List’s general activities of direct candidate support, WOMEN VOTE! makes only independent expenditures and is undertaken by employees and consultants who are barred, as a matter of Respondents’ written firewall policy,<sup>6</sup> from interacting with federal candidates, political party committees, or agents of the foregoing. These employees and consultants are also barred from interacting with EMILY’s List’s staff who are on the “coordinated side” of the firewall regarding specified candidates or officeholders. Respondents implemented and enforce this firewall policy in compliance with the Commission’s coordination regulations in order to prevent information about candidate or political party plans, projects, activities, and needs from flowing to those employees and consultants involved in WOMEN VOTE!’s independent expenditure activity. Respondents’ staff and consultants have all received detailed training and instruction regarding the requirements of the firewall policy and how to comply with it. Pursuant to the firewall, no employee, independent contractor, vendor, or consultant involved in WOMEN VOTE!’s independent expenditure activity had any material contact with the Committee, its agents (including its vendors and “former employees” as that term is defined in Commission regulations), or any employee or consultant within EMILY’s List who has interacted with the Committee or its agents.

Katie McGinty is the Democratic nominee for U.S. Senate in Pennsylvania. At the time the Complaint was filed, Ms. McGinty was a candidate for the Democratic nomination in that race. EMILY’s List has endorsed Ms. McGinty’s candidacy, directly contributed to her campaign, and

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<sup>5</sup> *Id.*

<sup>6</sup> See Exhibit A (Respondents’ Firewall Policy).

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solicited contributions from its members for her campaign. EMILY's List did not sponsor any independent expenditures in support of Ms. McGinty's candidacy. Separately, during Ms. McGinty's primary election campaign, WOMEN VOTE! made independent expenditures in support of her candidacy. During the primary election campaign, WOMEN VOTE! announced its plans to sponsor independent expenditures in support of Ms. McGinty through several publicly available platforms, including letters to donors and press releases.<sup>7</sup> For example, on March 9, 2016, WOMEN VOTE! issued a press release announcing that WOMEN VOTE! would spend \$1 million on independent expenditures in support of Ms. McGinty's primary election campaign.<sup>8</sup> Each of WOMEN VOTE!'s independent expenditures were properly reported to the Commission. WOMEN VOTE!'s reports filed with the Commission reflect that it spent approximately \$1,750,447.90 on independent expenditures to support the Committee. The League of Conversation Voters was not involved in WOMEN VOTE!'s independent expenditure program in support of the Committee nor did it make any contributions to WOMEN VOTE! to support its independent expenditure efforts.

The Complaint alleges that Respondents engaged in impermissible coordination with the Committee. To support this assertion, the Complaint relies solely on the allegation that on March 10, 2016, former Pennsylvania Governor Ed Rendell, the Chairman of the Committee, made the following statements to *Politico* regarding WOMEN VOTE!'s planned independent expenditure activity: (1) "EMILY's List will spend far more than \$1 million on the [McGinty] race"; (2) "EMILY's List would spend at least \$2 million on television, with some of the cash coming from the League of Conversation Voters"; and (3) "EMILY's List would be placed in charge of the pro-McGinty independent expenditure operation." See Compl. at 1. The Complaint offers no further evidence, other than Governor's Rendell's statements, which were either based on publicly available information or factually incorrect, to demonstrate that independent expenditures made by WOMEN VOTE! were coordinated with the Committee.

## II. LEGAL ANALYSIS

### A. Applicable Legal Standard

A payment for a coordinated communication is an in-kind contribution to the candidate's authorized committee with which it is coordinated and must be reported as an expenditure made

<sup>7</sup> See Exhibit B, (WOMEN VOTE! Memorandum, "Winning with Katie McGinty," January 14, 2016); Exhibit C, (WOMEN VOTE! Memorandum, "Taking Back the Senate with Katie McGinty," March 2016); Exhibit D, (WOMEN VOTE! Prospectus, "Pennsylvania WOMEN VOTE!").

<sup>8</sup> WOMEN VOTE! Press Release, "WOMEN VOTE! Launches \$1 million Program in Pennsylvania," March 9, 2016, available at <http://emilyslist.org/news/entry/women-vote-launches-1-million-program-in-pennsylvania>.

by that candidate's authorized committee.<sup>9</sup> To determine whether a communication is coordinated, 11 C.F.R. § 109.21 sets forth a three-pronged test: (1) the communication must be paid for by a person other than a federal candidate, a candidate's authorized committee, a political party committee, or any agent of any of the foregoing; (2) one or more of the four content standards set forth in 11 C.F.R. § 109.21(c) must be satisfied; and (3) one or more of the six conduct standards set forth in 11 C.F.R. § 109.21(d) must be satisfied.<sup>10</sup> The central – and indeed only – question posed by the Complaint is whether Respondents' independent expenditures meet the conduct standards of 11 C.F.R. § 109.21(d).

Commission regulations provide that the coordination conduct standards "are not met if . . . [a] political committee has established and implemented a firewall" that meets certain requirements.<sup>11</sup> The firewall must be designed and implemented to prohibit the flow of information between those providing services for the person paying for the communication, and those who have provided services to the affected candidate.<sup>12</sup> This safe harbor was patterned after EMILY's List's own firewall procedures, which the Commission considered in MUR 5506.<sup>13</sup> The Commission adopted this "safe harbor . . . as a way for organizations to respond to speculative complaints alleging coordination when organizations are faced with trying to 'prove a negative' by showing that coordination did not occur."<sup>14</sup> This safe harbor is applicable in all circumstances unless "specific information" showing coordination is presented. Here, the Complaint presents no specific facts to demonstrate that the conduct standard was met, and the true facts – principally Respondents' use of a firewall – demonstrate that it was not.

**B. The Complaint does not allege facts sufficient to show that impermissible coordination occurred between Respondents and the Committee**

As described *supra* Section I, Respondents operate using a firewall to prevent impermissible coordination from occurring, and to protect them from speculative allegations of coordination such as those made in the Complaint.<sup>15</sup> Commission regulations provide that when a firewall

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<sup>9</sup> 11 C.F.R. § 109.21(b)(1).

<sup>10</sup> *See id.* § 109.21(a).

<sup>11</sup> *Id.* § 109.21(h).

<sup>12</sup> *Id.*

<sup>13</sup> MUR 5506, First General Counsel's Report (Aug. 9, 2005).

<sup>14</sup> Explanation and Justification, Coordinated Communications, 71 Fed. Reg. 33,190, 33, 2016 (2006).

<sup>15</sup> *See* Exhibit A (Respondents' Firewall Policy).

exists, only “specific information” showing the flow of material information about a candidate’s plans, projects, activities, or needs to the sponsor is sufficient to defeat the presumption that the conduct standard has not been met.<sup>16</sup> The Complaint plainly fails to make that showing.

Pursuant to Respondents’ firewall policy, all employees and consultants who work on WOMEN VOTE!’s independent expenditure program are barred from having, and indeed did not have, any material contact with any federal candidate supported by WOMEN VOTE! (or agents of any candidate or any candidate’s campaign), political party employee, or EMILY’s List staff or consultants who work with federal candidates and political party committees on the “coordinated side” of the firewall.<sup>17</sup> Thus, while employees and consultants on EMILY’s List’s “coordinated side” were permitted to communicate with agents of the Committee, including Governor Rendell, WOMEN VOTE! employees and consultants were not permitted to – and in fact, did not – have any material contact with the Committee, its agents, or any EMILY’s List employees or consultants who were in contact with the Committee.<sup>18</sup>

The only “evidence” of coordination that the Complaint can muster to overcome the legal presumption against coordination is Governor Rendell’s statements to *Politico*. Based on Governor Rendell’s statements, the Complaint jumps to the unwarranted conclusion that coordination *must* have occurred. However, without proffering sufficient specific facts that coordination occurred despite the implementation of Respondents’ firewall, this unsupported conclusion does not raise a “reason to believe” and should not be investigated by the Commission.<sup>19</sup> Moreover, tellingly, each of Governor Rendell’s statements were either factually incorrect or based on publicly available information, further supporting the fact that they were not based on impermissible communications with WOMEN VOTE! or its agents. In fact, contrary to Governor Rendell’s reported assertions, WOMEN VOTE! did *not* spend \$2 million in support of the Committee, and LCV did *not* make any contributions to WOMEN VOTE! for its independent expenditures in support of the Committee. Further, the fact that WOMEN VOTE! was planning a significant independent expenditure effort in support of the Committee was public knowledge and had been widely reported at the time that Governor Rendell reportedly spoke to *Politico*.<sup>20</sup> Thus, the Complaint does not set forth sufficient specific unrebutted facts,

<sup>16</sup> 11 C.F.R. § 109.21(h).

<sup>17</sup> *Id.*

<sup>18</sup> See Exhibit E (Decl. of Melissa Williams).

<sup>19</sup> MUR 4960, Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas (Dec. 21, 2001).

<sup>20</sup> See Exhibits B, C, and D; see also “WOMEN VOTE! Launches \$1 million Program in Pennsylvania,” Mar. 9, 2016, available at <http://emilyslist.org/news/entry/women-vote-launches-1-million-program-in-pennsylvania>; J. Mathis, *EMILY’s List Vows \$1M to Back McGinty*, Philadelphia, Mar. 10, 2016, available at <http://www.phillymag.com/tag/joe-sestak/>.

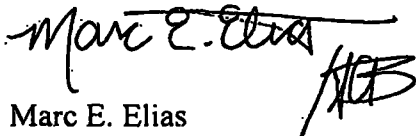
which, if proven true, would constitute a violation of the Act. The specific facts that it does allege – that Governor Rendell's statements to *Politico* must mean that coordination occurred – amount to unwarranted legal conclusions and do not provide "specific information" sufficient to overcome the legal presumption against coordination.

Furthermore, to the extent that the Complaint asserts that Governor Rendell's statements amounted to a prohibited "request or suggestion" for Respondents to engage in certain independent expenditure activity, that allegation, too, does not constitute a violation of the Act. The "request or suggestion" conduct standard is intended to cover only "requests or suggestions made to a select audience, but not those offered to the public generally."<sup>21</sup> As the Commission has explained, "a request that is posted on a web page that is available to the general public is a request to the general public and does not trigger the conduct standard in paragraph (d)(1)." Indeed, Commission precedent indicates that the Commission will not find "reason to believe" that coordination has occurred when, as here, a Complaint alleges that a "request or suggestion" was communicated through a publicly available news article.<sup>22</sup> Governor Rendell's statements did not constitute a "request or suggestion," but even if they had, they were posted on *Politico*'s website, an online news source that is available to the general public. As such, Governor Rendell's statements cannot be the basis to find that a prohibited "request or suggestion" was made, and the Complaint alleges no other facts showing that the conduct prong has been met.

### III. CONCLUSION

Because the Complaint has not alleged facts that provide a sufficient basis for the Commission to find "reason to believe" that the Act or Commission regulations have been violated, the Commission must reject the Complaint's request for an investigation. It should instead dismiss the Complaint and close the file.

Very truly yours,



Marc E. Elias  
Graham M. Wilson  
Aria C. Branch  
Counsel to EMILY's List and WOMEN VOTE!

<sup>21</sup> Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003).

<sup>22</sup> MUR 6411, First General Counsel's Report at 12-13 (May 16, 2011).

**1-800-272-6262**

TO: All Staff and Consultants

FROM: EMILY's List and WOMEN VOTE!

RE: **Firewall Policy: Independent Expenditures and Restrictions on Communications**

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WOMEN VOTE! makes independent expenditures in federal races. Accordingly, WOMEN VOTE! and EMILY's List face the legal obligation of structuring our operations so that staff working on WOMEN VOTE! programs can maintain absolute independence from the campaigns affected by these expenditures throughout the entire period that WOMEN VOTE! is preparing, producing, and making them. Thus, we have imposed a "firewall" for the entire election cycle between employees and consultants involved in the WOMEN VOTE! expenditures, and employees and consultants that are working with federal candidates and political parties, in order to prevent information about candidate or political party plans, projects, activities and needs from flowing to those employees and consultants involved in the independent expenditures.

Employees and consultants working on WOMEN VOTE! programs must not:

- Create, produce, or distribute communications at the request, suggestion or with the assent of a political party committee, a candidate, a candidate's campaign committee, or their agents.
- Allow a political party committee, a candidate, a candidate's campaign committee, or their agents to be materially involved in decisions over a communication's content; intended audience; means or mode; specific media outlets; timing or frequency; or size, prominence or duration;
- Have one or more substantial discussions with a political party committee, a candidate, a candidate's campaign committee, or their agents where material information about plans, projects, activities, or needs is conveyed; or
- Use material information about the plans, projects, activities or needs of a political party committee, a candidate, or a candidate's committee that was obtained from someone who was an employee, independent contractor or vendor of a political party committee, a candidate, or a candidate's committee during the previous 120 days.



**If you are assigned to work on WOMEN VOTE! programs:**

If you are assigned to the WOMEN VOTE! independent expenditure program, you are prohibited from having any contact at all with any candidate supported by WOMEN VOTE!, including campaign and official employees working for that candidate, as well as agents of the candidate and her campaign (e.g., a campaign's pollsters, fundraisers, media consultants, associates in the state parties, and so forth) regarding that candidate's election. Should you hear from any such individuals, you should avoid any contact with them and refer the call to others at EMILY's List who may appropriately deal with them.

Nor may you have access to data within EMILY's List that contain nonpublic information related to a federal campaign's plans, projects, activities, or needs. Such data might include, but are not limited to, polls or research books in which the campaign was involved, internal campaign memoranda, other data reflecting campaign information, and non-public EMILY's List information used previously to provide services to a candidate. If you have any questions about whether information can appropriately be accessed, please ask first.

You are also prohibited from having any discussions concerning the elections in which WOMEN VOTE! is engaged with political party employees (including employees working for a party-independent expenditure operation), consultants who are working on that campaign (whether directly or through a political party), or EMILY's List staff or consultants that are working on the coordinated side for that election.

Work on other elections in the same state: If you are working on WOMEN VOTE!'s independent expenditures in an election in a particular state, and you are a consultant for another federal candidate who is running for election in that state (e.g., a different House or Senate candidate), then you will be prohibited from taking part in any WOMEN VOTE! communication in that state that includes a clear reference to either the candidate you are working for, his/her opponent, or a political party. There is an exception to this rule if the appearance of the other candidate in the WOMEN VOTE! advertisement is limited to an endorsement of the candidate WOMEN VOTE! is supporting, and there is no language promoting or supporting the other candidate, or opposing or attacking his or her opponent.

**If you are assigned to work on EMILY's List's coordinated programs:**

You should take care to avoid discussion of any election in which WOMEN VOTE! is involved with any WOMEN VOTE! staff or consultants, and do not provide them with any information obtained from campaigns or party committees. Employees and consultants assigned to the WOMEN VOTE! independent expenditure team for an election may not have access to data reflecting campaign-derived or party-derived information or non-public EMILY's List information used in providing services to a candidate or party committee. At meetings and in private conversations, people should avoid discussions that might convey such information from the coordinated side of the "wall" to the other independent side.

**Non-federal elections:**

WOMEN VOTE! may make independent expenditures related to non-federal elections. Absent any additional guidance, the same federal firewall policies outlined above should be followed with regard to any non-federal election. However, as each state has its own campaign finance rules, please seek guidance before engaging in independent communications in a non-federal election, as there may be additional restrictions related to coordination.

Should you have any questions related to any aspect of this policy, please direct them to EMILY's List's counsel.

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# Exhibit B

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# WOMEN VOTE!

1800 M Street NW, Suite 375N  
Washington DC, 20036

Phone: 202.326.1400

Fax: 202.326.1415

To: Interested Parties  
From: Melissa Williams, WOMEN VOTE!  
Date: January 14, 2016  
RE: Winning with Katie McGinty

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The path to winning back the U.S. Senate starts in Pennsylvania. Freshman Sen. Pat Toomey is the most vulnerable Republican in 2016. Our polling shows that we can help elect Pennsylvania's first female senator. As the top pick up opportunity in the Senate, we anticipate significant investment from outside groups in the general election. Defining McGinty early and shoring up the Democratic base will be critical to a general election victory.

Our November poll found a close race between Katie McGinty and Joe Sestak, with a third Democratic candidate, John Fetterman, trailing badly.<sup>1</sup> Joe Sestak, an admiral and former congressman, functionally has been running for office for five years. As a result, he had the highest name ID and warmest feelings among voters at the beginning of the poll.

The initial vote is 35-28, with John Fetterman getting 9%. With only a seven point gap in the initial vote, McGinty is able to tighten the race and pull ahead by the end of the poll, besting Sestak 36-31. EMILY's List will play a critical role in helping her close the gap and push past Joe Sestak in the April 26 primary.

The race is unformed and there is a lot of work to do to secure a victory. In the primary, McGinty gains 16 points after her profile. She makes the biggest gains among African Americans, women and younger voters and in the Philadelphia media market. Much of her movement comes from self-described liberals. However, these cohorts are also sensitive to critiques about her. A strong introduction moves the dial and inoculates her from attacks if Sestak doesn't go on the offensive early.

Sestak has a ceiling, making few gains throughout the poll. His negatives are devastating. With easy vulnerabilities and tepid support, Sestak would undoubtedly lose to Sen. Toomey.

Our messaging and targets are clear: young women, college women, liberals and African Americans are largely undecided and move decisively to McGinty post-messaging. McGinty can benefit from third party validators: pro-choice and environmental groups earn strong ratings from primary voters. And the survey ends with 17% still undecided. Validators and endorsers will prove to be influential during the cycle. EMILY's List messaging will include women's issues, her working class background, and an inoculation on her fracking vulnerability.

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<sup>1</sup> GQRR Survey, Nov. 16-22, N=600 likely primary voters, MOE 4%.

We plan to spend \$1-2 million to secure the primary for McGinty, though the specific design will depend on the candidate's ability to introduce herself early.

There are also groups of voters who move away from Sestak after negative messaging: non-college men, older non-college and union households. We're partnering with the United Steelworkers on our independent expenditure. This is the group of voters that the Steelworkers would target in their program.

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a project of  
**EMILY'S LIST**

Paid for by WOMEN VOTE!, [www.womenvoteproject.org](http://www.womenvoteproject.org), and not authorized by any candidate or candidate's committee.

# TEDDY BOY

# WOMEN VOTE!

1800 M Street NW, Suite 375N  
Washington DC, 20036

Phone: 202.326.1400

Fax: 202.326.1415

To: Interested Parties  
From: Melissa Williams, Senior Director, WOMEN VOTE!  
Date: March 2016  
RE: Taking Back the Senate with Katie McGinty

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To take back control of the U.S. Senate this fall, Democrats must make a net gain of five seats – and that starts with EMILY's List and pro-choice Democratic women. EMILY's List spent 2015 working hard to recruit top tier candidates to run for the Senate. Our top opportunities are in presidential battleground states like Pennsylvania where Katie McGinty faces an April 26 primary against former Congressman Joe Sestak, and will ultimately challenge Senator Pat Toomey this fall.

According to the Rothenberg and Gonzales Report, freshman Senator Pat Toomey is the most vulnerable Republican up for reelection in 2016. Our polling shows that we can elect Katie McGinty as Pennsylvania's first female Senator, but first WOMEN VOTE! must run a smart, strategic program to support her through April's primary election.

## The Stakes

Katie McGinty is a progressive leader who's spent more than 25 years in public service finding positive ways to get things done for the middle- and working-class. With her interest in environmental issues, Katie worked as a congressional fellow and later as a senior environmental staffer in Al Gore's Senate office. Katie served as a member of the U.S. delegation to the United Nations Conference on Environment and Development and worked to reauthorize the Clean Air Act. In 2003, Pennsylvania Governor Ed Rendell appointed Katie to lead the Pennsylvania Department of Environmental Protection. Working in almost every county in the state, she championed clean water initiatives and created jobs by growing the state's energy economy, making Pennsylvania a leader in the nation in wind energy and solar power. Her election will be a game changer for the State of Pennsylvania, which has never sent a woman to the Senate.

Whereas, in his former career as a Wall Street banker, Pat Toomey helped design the financial structures that wreaked havoc on our economy and hurt American families. In the Senate, he voted against legislation to protect women from corporate CEOs interfering with their health care decisions, has supported multiple extreme abortion bans, and voted against reauthorizing the Violence Against Women Act. He opposes ending gender discrimination in pay and raising the minimum wage. And his record on standing up for special interests and voting against policies that give hardworking women and families a fair shot is among the worst in Washington. With all eyes on Pennsylvania in 2016, Tea Party Republicans and donors like the Koch Brothers will stop at nothing to keep Pat Toomey's seat for the GOP.

## Our Record

WOMEN VOTE! is the independent expenditure arm of EMILY's List which specializes in communicating with the key group of voters that decide most elections: *women*. Since our first WOMEN VOTE! program in 1994, we've educated women voters and turned them out for our candidates by combining polling and research, sophisticated message testing, data analytics and good old-fashioned voter contact.

The path to Katie's primary victory lies with young women and undecided women voters, and WOMEN VOTE! has a rich history of running strategic programs mobilizing those very audiences to win competitive primaries for women candidates. Most recently, in the 2014 election cycle, WOMEN VOTE! played a decisive role in the victory of Congresswoman Alma Adams (NC-12).

During the 2014 cycle, WOMEN VOTE! conducted a ground-breaking program that has changed the way we run – and win – Democratic primary elections for Democratic women. Combining standard polling techniques with the latest in statistical modeling, we used a hybrid two-phase polling process to not just determine the best message with which to target voters, but also to identify the specific voters who would be most persuaded by that message. In the end, we educated nearly 35,000 likely Democratic primary voters on issues impacting women and families, such as policies promoting education, and support for middle class families. Adams not only won the Democratic primary with 43% of the vote, but WOMEN VOTE! helped her avoid a costly runoff race. The nearest challenger came in with 23.6%.

In 2012, WOMEN VOTE! invested in nine primary elections, winning eight, including Congresswoman Elizabeth Esty's (CT-05) primary race, where we played a deciding role. Esty's biography and accomplishments moved people, and it was clear that she had the resources and was the best messenger to deliver that message. The polling did show however, that to win, Esty also needed to peel votes away from her primary opponent, and that the most persuadable universe was women over age 45 district-wide. WOMEN VOTE! designed a direct mail program reaching more than 26,000 micro-targeted Democratic primary voting women in order to do this. The women received six pieces of direct mail.

WOMEN VOTE! also produced a positive TV spot highlighting Esty's endorsements by *The New York Times*, *The Register Citizen* and *The Hartford Courant*. The buy included nearly 500 GRPs on Hartford broadcast and a massive district-wide cable buy, with heavier rotation in Litchfield (the most conservative cable zone) and Hartford (where the most undecided voters live). In the end, Esty defeated her closest primary opponent by more than 10 points.

WOMEN VOTE! will apply the lessons learned in primary races like these, and utilize cutting edge technology, to secure a primary victory for Katie McGinty.

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## **The Political Situation**

Our internal benchmark poll found a close race between Katie McGinty and Joe Sestak, with a third Democratic candidate, John Fetterman, trailing badly. Multiple public polls published since our internal polling tell the same story. Joe Sestak, an admiral and former congressman, has been functionally running for office for five years. As a result, he had the highest name identification and warmest feelings among voters at the beginning of the poll.

The poll shows Sestak leading by seven points in the initial vote, but McGinty is able to tighten the race and pull ahead by the end of the poll, besting Sestak by five points. Additionally, a January Harper Survey poll shows an even closer initial vote, with Sestak at 33%, McGinty at 28%, Fetterman at 11% and more than a quarter of the primary electorate undecided.

McGinty is off to great fundraising start. Since announcing her candidacy in August of last year, her campaign has raised a little more than \$2M as of December 31. The McGinty campaign has also earned several key endorsements, including the United Steelworkers, the Service Employees International (?) Union, AFSCME, the League of Conservation Voters, the International Brotherhood of Electrical Workers and Governor Tom Wolf. And former Pennsylvania Governor, Ed Rendell, serves as her campaign's finance chair.

Current fundraising reports show Sestak's campaign struggling to meet goals, with only an additional \$373,000 raised as of December 31. However, Sestak benefits from more than a 2:1 cash on hand advantage of \$2.6M to McGinty's \$1.2M. Fetterman trails well behind with only \$131,000 cash on hand.

As the top pick up opportunity in the Senate, we anticipate significant investment from outside groups in the general election – in fact, \$3.5M has already been spent to bolster Sen. Toomey. Toomey also finished 2015 strong, having raised an additional \$1M to add to his \$10M war chest.

## **The Path to Victory**

Introducing McGinty to primary voters and shoring up the Democratic base will be critical to a general election victory. The primary race is still unformed, with nearly a third of voters undecided, and there is a lot of work to do to secure a victory. McGinty gains 16 points after voters hear her profile. In the Philadelphia market alone, she gains 20 points. She makes the biggest gains among African Americans, women and younger voters. Much of her positive movement comes from self-described liberals. However, these cohorts are also sensitive to critiques about her. A strong and early introduction can help to move the dial in her favor, and preempt attacks from Sestak.

Our benchmark survey highlighted two key needs in the primary: making the Philadelphia media market competitive and credentialing McGinty with third party endorsements. We're working with environmental and labor groups to run an independent expenditure that validates her as an environmental champion and shores up her support among strong Democrats. With these groups, we're

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building a direct mail program that highlights key endorsements, showcases her working class background, and lays out her career as an environmental activist.

In Philadelphia, McGinty starts 17 points down. After potential voters read her background, she gains 20 points. With more than 40% of the Democratic primary electorate in the Philadelphia media market, we can't afford to be silent here. A comparable vote block cannot be created by cobbling together the nine other "out markets" in the state. We must keep her competitive in Philadelphia to win the primary.

Among Democratic primary voters in this market, 60% are African American and 61% are women. These are critical voting blocks to McGinty's success. But, with the Philadelphia cost per point ranking it among the most expensive in the country, we can bet that the McGinty campaign will need to conserve cash by investing lightly here. Her campaign has signaled that they need help covering the Philadelphia market.

This Democratic primary contest has begun in earnest, with McGinty's campaign placing \$230,000 worth of biographical broadcast ads in both the Pittsburgh and Philadelphia media markets. And a super PAC has come in on behalf of Sestak, with a \$250,000 statewide buy of 30 second ads. Sestak's campaign has not yet aired any television ads. Braddock Mayor John Fetterman has aired some in the Pittsburgh media market, and others on MSNBC during the Iowa caucus results.

To help the McGinty campaign conserve funding to reply to any negative attacks by Sestak or Fetterman, WOMEN VOTE! has announced a \$1 million program to promote Katie McGinty in the weeks leading up to the April 26 primary. Our program will include airing television ads on Philadelphia broadcast stations starting April 5. Our ads are scheduled to run through the primary election, as are McGinty's.

WOMEN VOTE! will play a critical role in helping Katie close the gap and push past Joe Sestak in the April 26 primary. Though McGinty's fundraising numbers are impressive, Joe Sestak still has more than twice the cash on hand. We will step up to the plate to provide cover against his more than \$1 million advantage.

Sestak has a ceiling, making few gains throughout our poll. His negatives are devastating. With easy vulnerabilities and tepid support, Sestak would undoubtedly lose to Sen. Toomey.

#### **Conclusion**

WOMEN VOTE! will spend a minimum of \$1M to secure the primary for McGinty by persuading young women and undecided women voters through broadcast media in the Philadelphia market starting April 5. We must raise \$1M immediately to launch this critical program.

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# Exhibit D

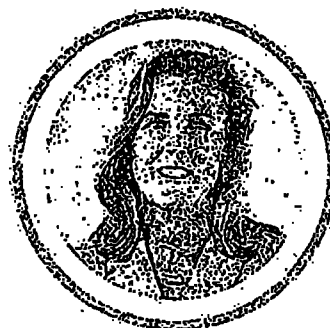
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# Pennsylvania

# WOMEN VOTE!

a project of  
**EMILY'S LIST**

*Despite the Democrats' tough loss of the U.S. Senate in 2014, EMILY's List is one of the few political organizations that can point to success. We're building on that success in 2016. EMILY's List is well positioned to play offense and help win the majority back. Pennsylvania's senate race is a top offensive target for Democrats, as Senator Toomey is one of the most vulnerable sitting senators and Katie McGinty is a top tier recruit. McGinty is the best positioned candidate to win the general election in November. With our help, Pennsylvania can send their first woman to the senate.*



## The Stakes

In his former career as a Wall Street banker, Pennsylvania Senator Pat Toomey helped design the financial structures that wreaked havoc on our economy and hurt American families. In the Senate, he voted against legislation to protect women from corporate CEOs interfering with their health care decisions, supported multiple extreme abortion bans, and voted against reauthorizing the Violence Against Women Act. He opposes ending gender discrimination in pay and raising the minimum wage. He's even recently voted to defund Planned Parenthood—twice. None of which should come as a surprise, as Toomey is the former president of the conservative Club for Growth. With all eyes on Pennsylvania in 2016, Tea Party Republicans and donors like the Koch brothers will stop at nothing to keep Pat Toomey's seat for the GOP.

Katie McGinty is a progressive leader who's spent more than 25 years in public service finding positive ways to get things done for the middle- and working-class. The former chief of staff to Pennsylvania Governor Tom Wolf, McGinty brings a lifetime of work on environmental issues. In Washington, D.C., she worked as a congressional fellow and later as a senior environmental staffer in Al Gore's senate office. McGinty served as a member of the U.S. delegation to the United Nations Conference on Environment and Development and worked to reauthorize the Clean Air Act.

When she was just 29 years old, McGinty was appointed by President Clinton to serve as his special assistant for environmental and energy affairs, later chairing the White House Council on Environmental Quality, which no woman had ever led. In 2003, Pennsylvania Governor Ed Rendell appointed McGinty to lead the Pennsylvania Department of Environmental Protection. Working in almost every county in the state, she championed clean water initiatives and created jobs by growing the state's energy economy, making Pennsylvania a leader in the nation in wind energy and solar power.

## The Political Situation

McGinty is running in a three-way Democratic primary set for April of next year. Her opponents include Joe Sestak, a former congressman and Navy admiral and John Fetterman, the mayor of Braddock, Pennsylvania. Sestak's entry into the race was greeted with a lukewarm reception from Pennsylvania and national Democrats as he lost to Toomey by two points in 2010 after running in the primary against sitting Democratic Senator Arlen Specter.

Fetterman recently entered the primary and brings with him a slew of national media attention as the face of Rust Belt renewal. He embraces a do-it-yourself aesthetic and has invested his own money attempting to revitalize struggling Braddock, a town of 2,100. Fetterman, with his Washington, D.C. outsider image and unique look, has starred in a Levi's jeans commercial and threw his campaign kick-off at a bar.

As a fundraiser, McGinty has been able to make up financial ground on Sestak. In the six weeks following her campaign launch, McGinty raised an impressive \$1 million. In addition, former Governor and National Democratic Convention chair Ed Rendell is serving as McGinty's campaign chair and is a proven powerhouse when it comes to raising funds. The endorsement of Governor Wolf last month will also provide a boost. In the same quarter, Sestak's fundraising has slowed, having raised only an additional \$551,000. However, his campaign is sitting on a war chest of \$2.4 million.

McGinty's path to victory in the primary is clear. Recent polling shows that while Sestak has higher name ID, McGinty's biography and issue positions rocket her to the front of the pack. We'll need to mirror the campaign's work to introduce McGinty to regular primary voters. We'll also need to carry the water on communicating Joe Sestak's negatives: he backed a budget plan that would hurt seniors on Medicare and Social Security, voted to protect Wall Street CEO bonuses, and had the worst attendance record of all Pennsylvania House members while in Congress.

In the general election, with Hillary Clinton at the top of the Democratic ticket, freshman Senator Pat Toomey's challenge will be to attract split-ticket voters. That tough task makes him one of the most vulnerable senators in the country, and a top target for Democrats as we need to pick up 5 seats to ensure senate control. In fact, this general election race tops Roll Call's list of the top 10 races to watch in 2016.

## Our Record

WOMEN VOTE! is the independent expenditure arm of EMILY's List which specializes in communicating with the key group of voters that decide most elections—women. Since our first WOMEN VOTE! program in 1994, we've educated women voters and turned them out for our candidates by combining polling and research, sophisticated message testing, data analytics and good old-fashioned voter contact.

WOMEN VOTE! has a rich history of running strategic programs mobilizing those very audiences to win competitive primaries for women candidates. In the 2012 cycle, WOMEN VOTE! invested in eight primaries, winning seven. In the 2014 election cycle, WOMEN VOTE! played a decisive role in the primary election victories of Congresswomen Brenda Lawrence (MI-14) and Alma Adams (NC-12).

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# INTERNATIONAL

To do this, WOMEN VOTE! will first invest in the polling and modeling we need to determine which exact voters are moved by which messages—whether it's McGinty's unique story or her advocacy on issues like increasing the minimum wage, protecting a woman's right to choose or climate change. We have secured Anna Greenberg of GQRR to conduct our qualitative and quantitative research. Greenberg serves as Governor Wolf's pollster and as the pollster of record for the Pennsylvania caucus. With Greenberg's research, we will educate and mobilize the voters that are critical to McGinty's success.

June polling shows that while Sestak begins the race with higher name identification, McGinty easily bests him when voters hear about her background and skillset. Armed with refreshed polling data, we will build a plan to support McGinty's campaign across the state. Currently, WOMEN VOTE! is planning on a combination of mail and paid media to engage these voters but the exact targets, messages and budget will be determined once we complete our polling and modeling in the fall.

30 years ago, EMILY's List made history by electing Barbara Mikulski as the first woman Senator from Maryland. We have the opportunity to make history again by electing Katie McGinty as the first woman to represent Pennsylvania in the Senate.

With proper funding, we are prepared to run a strategic, effective program that mobilizes women voters to vote for Katie McGinty. This effort will be crucial in order for McGinty to level the playing field against two male primary opponents, and mobilize the core constituencies—women voters—to win.

**Your immediate investment will allow us to do just that. If you have any further questions, please don't hesitate to contact Anna Lidman, Director of Strategic Initiatives, at (207) 415-3612 or [alidman@emilyslist.org](mailto:alidman@emilyslist.org).**

**0800-444-61**

BEFORE THE  
FEDERAL ELECTION COMMISSION

IN RE

Katie McGinty for Senate, *et al.*

MUR 7029

Declaration of Melissa Williams

1. I am the Senior Director of WOMEN VOTE!, a federally registered independent expenditure-only committee affiliated with EMILY's List. I am responsible for overseeing WOMEN VOTE!'s independent expenditure program, including all of the independent expenditures that WOMEN VOTE! has made in support of Katie McGinty for Senate.
2. EMILY's List and WOMEN VOTE! have implemented and enforce a firewall policy to prevent WOMEN VOTE!'s independent expenditures from being coordinated with candidates, their authorized campaign committees, political party committees, and agents of the foregoing, included herewith as Exhibit A (the "Firewall Policy"). I have complied with the Firewall Policy, including with respect to the independent expenditures made in support of Katie McGinty for Senate, and to the best of my knowledge, the staff and consultants of EMILY's List and WOMEN VOTE! have also all complied with the Firewall Policy, including with regard to the independent expenditures made in support of Katie McGinty for Senate.
3. I am over 21 years of age, of sound mind, and I have personal knowledge of the facts stated above.

I declare under penalty of perjury that this declaration is true and correct.

  
Melissa Williams

May 12, 2016  
Date

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