

FEDERAL ELECTION COMMISSION WASHINGTON, D.C. 20463

## VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Brendan M. Fischer Campaign Legal Center 1411 K Street, NW, Suite 1400 Washington, DC 20005 NOV 2 1 2018

RE: MUR 7329

Dear Mr. Fischer:

The Federal Election Commission has considered the allegations in your complaint dated February 22, 2018, but there was an insufficient number of votes to find reason to believe the Virgin Island Republican Party-Federal and Scott Mackenzie, in his official capacity as treasurer, violated the Federal Election Campaign Act of 1971, as amended, and an insufficient number of votes to exercise its prosecutorial discretion to dismiss the allegations as to the Virgin Island Republican Party-Federal and Scott Mackenzie, in his official capacity as treasurer. Accordingly, on November 14, 2018, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8). If you have any questions, please contact the attorney assigned to this matter, Don Campbell, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson Acting General Counsel

BY: Jeff S. Jordan Assistant General Counsel

Enclosure General Counsel's Report

## **BEFORE THE FEDERAL ELECTION COMMISSION**

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3	In the Matter of
<b>4</b> '	
5	MUR 7329
6	VIGOP (Virgin Islands Republican Party)
7	and Scott B. Mackenzie, as treasurer
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DISMISSAL AND CASE CLOSURE UNDER THE ENFORCEMENT PRIORITY SYSTEM

## **GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a 11 12 basis to allocate its resources and decide which matters to pursue. These criteria include, without 13 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into 14 account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the 15 16 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as 17 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing 18 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances and where appropriate, to find no reason to 19 20 believe that a violation occurred.

The Office of General Counsel has scored MUR 7329 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.<sup>1</sup> For the reasons set forth below, we recommend that the Commission dismiss the allegations that VIGOP (Virgin Island Republican Party) and Scott B. Mackenzie, in his official capacity as treasurer (the "Committee"),<sup>2</sup> violated the Act or Commission regulations.

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<sup>&</sup>lt;sup>1</sup> The EPS rating information is as follows: Complaint Filed: February 23, 2018. Response Filed: March 16, 2018.

<sup>&</sup>lt;sup>2</sup> For purposes of this Report, the term "Committee" refers to VIGOP's federal reporting account, while the state account is referred to as the "Territorial Committee."

Dismissal and Case Closure Under EPS — MUR 7329 (VIGOP (Virgin Islands Republican Party) General Counsel's Report Page 2

The Complaint notes that on March 30, 2017, Secretary of the U.S. Department of the Interior Ryan Zinke appeared at a fundraiser hosted by the Committee.<sup>3</sup> The Complaint alleges that although the Committee disclosed disbursements for expenses related to the event, its reports have not disclosed any related contributions.<sup>4</sup>
Respondents assert that the fundraiser did not violate the Act or Commission regulations

because it was a nonfederal event for the benefit of the Territorial Committee, the contributions were

deposited into a Territorial Committee bank account, and they were disclosed to the Virgin Islands

B Election System.<sup>5</sup> Respondents also state that the Committee made disbursements related to the

fundraiser in the amount of \$1,982.69, which were in accordance with Commission regulations.<sup>6</sup>

Political committees are required to file reports of receipts and disbursements with the

Commission, including itemizing contributions to the reporting committee from persons whose

12 contribution or contributions have an aggregate amount or value in excess of \$200 within the

<sup>5</sup> Resp. at 1-2. Respondents state that the contributions received at the event were deposited to a Territorial bank account, not in the VIGOP's federal bank accounts, therefore the Committee did not report any contributions from the event to the Commission on its disclosure reports. *Id.* at 1.

<sup>&</sup>lt;sup>3</sup> Compl. at 1 (Feb. 23, 2018). According to the Complaint, tickets to the event ranged between \$75 for an individual to \$5,000 for a couple, and attendees who contributed a minimum of \$1,500 would receive a picture with Zinke. *Id.* at 2-3.

<sup>&</sup>lt;sup>4</sup> *Id.* at 3. The Complaint also alleges that the VIGOP Territorial Committee has not reported any contributions for the March 30, 2017, event to the Virgin Islands Election System, nor has it ever filed any reports with the Virgin Islands Election System. *Id.* at 2, 6. Respondents deny these allegations and assert that they disclosed the contributions to the event as required to the Virgin Islands Election System. Resp. at 1 (Mar. 14, 2018). Available information indicates that VIGOP reported some financial information to the Virgin Islands Election System, including two May 26, 2017, deposits to a bank account that totaled \$10,115.96, but we cannot tell if these deposits relate to the March 30, 2017, fundraiser. The allegations concerning Territorial campaign finance reporting fall outside the Commission's jurisdiction, so we do not address them here. We note that the Complaint is also addressed to the Supervisor of the Virgin Islands Election System and the U.S. Attorney General for the Virgin Islands.

<sup>&</sup>lt;sup>6</sup> See 11 C.F.R. § 106.6(d) (direct fundraising costs may be paid by a combination of federal and nonfederal funds). The Response cites 11 C.F.R. § 106.7(d)(4), which applies to fundraising costs paid by state party committees using a combination of federal and nonfederal funds. Resp. at 2. We note, however, the Commission has not recognized VIGOP as a state party committee. The Complaint does not allege the Committee violated 11 C.F.R. §§ 106.6(d) or 106.7(d)(4).

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calendar year.<sup>7</sup> Political committees are also required to report and itemize expenditures in an
 aggregate amount or value in excess of \$200 within the calendar year made to meet the committee's
 operating expenses.<sup>8</sup>

In light of the Respondents' statements and the lack of contrary information, and in

5 furtherance of the Commission's priorities relative to other matters pending on the Enforcement

6 docket, the Office of General Counsel recommends that the Commission exercise its prosecutorial

7 discretion and dismiss the allegations against VIGOP (Virgin Island Republican Party) and Scott B.

8. Mackenzie, in his official capacity as treasurer, pursuant to Heckler v. Chaney, 470 U.S. 821, 831-32

9 (1985). Finally, we recommend that the Commission approve the attached Factual and Legal

10 Analysis, close the file as to all Respondents, and send the appropriate letters.

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<sup>7</sup> 52 U.S.C. § 30104(a), (b)(2)(A), (b)(3)(A), (b)(4)(A), (b)(5)(A); 11 C.F.R. § 104.3(2)(i)(A), (4)(i).

<sup>8</sup> 52 U.S.C. § 30104(b)(4)(A), (b)(5)(A); 11 C.F.R. § 104.3(3)(i).

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Date

7.12.18

## **RECOMMENDATIONS**

 Dismiss the allegations that VIGOP (Virgin Island Republican Party) and Scott B. Mackenzie, in his official capacity as treasurer, violated the Act and Commission regulations, pursuant to the Commission's prosecutorial discretion under *Heckler* v. Chaney, 470 U.S. 821, 831-32 (1985);

2. Approve the attached Factual and Legal Analysis and the appropriate letter; and

BY:

3. Close the file as to all Respondents.

Lisa J. Stevenson Acting General Counsel

Kathleen M. Guith Associate General Counsel

Stephen Gura Deputy Associate General Counsel

Jeff S. Jordan Assistant General Counsel

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Donald E. Campbell Attorney