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October 5, 2022

Roy Q. Lockett
Acting Asst. Gen. Counsel
Complaints Examination & Legal Administration
Federal Elections Commission
1050 First St. NE
Washington, D.C., 20463

Sent via email to: cela@fec.gov

Re: Necrason Group, PLLC response to FEC MUR 8065

Dear Atty. Lockett:

Necrason Group, PLLC (the "Necrason Group") hereby responds to your letter dated September 20, 2022 and designates the undersigned counsel to represent it in all Federal Election Commission ("FEC" or "Commission") investigations and proceedings related to MUR 8065. Thank you in advance for directing all future communications about this matter to me so that I can work with my client to cooperate further with your inquiry.

MUR 8065 pertains to a September 8, 2022 edition of the 2022 "Digger Debate Series" staged by the non-profit online news site known as VT Digger.org and sponsored by Necrason Group, PLLC¹. The debate featured two candidates for one of Vermont's U.S. Senate seats. The complaint alleges that a third candidate, independent Cris Ericson, was unlawfully excluded from participation in the debate. Because the debate in question was funded and staged in a manner consistent with applicable FEC regulations, Necrason Group respectfully submits that no action should be taken against Necrason Group, PLLC or any other entity that is the subject of the debate-related complaint.

I. Federal Regulations Permit the Necrason Group to Donate to the Nonprofit Vermont Journalism Trust (d/b/a as VT Digger) and/or to Purchase a Sponsorship from VT Digger to defray the Cost of Staging the Candidate Debate

¹ Staging organization promotional material available at <https://vtdigger.org/2022/08/22/vtdigger-launches-general-election-debates-with-us-senate-event-in-manchester-on-sept-8/>

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A. Regulatory Framework

Under FEC regulations, a business entity such as the Necrason Group may donate funds to a nonprofit organization qualified under 11 C.F.R. § 110.13(a)(1) to defray the cost of staging candidate debates that are held in accordance with the other requirements of the Commission’s regulations. Id. § 114.4(f)(1)-(3). To qualify as a staging organization under the regulation, a nonprofit organization must be:

- exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and
- must not endorse, support, or oppose political candidates or political parties.

Id. § 110.13(a)(1). In addition, the regulations authorize “bona fide newspapers, magazines and other periodical publications...provided that they are not owned or controlled by a political party, political committee or candidate” to stage candidate debates using their own funds. Id. § 110.13(a)(2).

While the regulations leave the structure of the debate to the discretion of the staging organization, they do set forth some mandatory compliance requirements, including for candidate selection. For general election debates such as the one at issue in MUR 8065, they provide as follows:

staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organizations(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.

Id. § 110.13(c).

B. Factual Background

Necrason Group, PLLC is a for-profit, professional limited liability company organized under the laws of the State of Vermont to provide government affairs services to its clients.

On May 26, 2022, Adam Necrason, President of the Necrason Group, received an email from Kate Olney, Director of Donor Engagement for the Vermont Journalism Trust. The Vermont Journalism Trust is a Vermont nonprofit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which does business under the name “VT Digger.”² Mr. Necrason recognized VT Digger as a leading, independent, nonprofit news organization in Vermont with an established, multi-cycle track record of, among other things, objectively covering election campaigns for state and federal office and staging debates among the candidates for those offices.

² 2020 IRS Form 990 as filed by the Vermont Journalism Trust *available at* <https://projects.propublica.org/nonprofits/organizations/271553931/202123159349302917/full> and Vermont Journalism Trust registration of Assumed Business name with the Vermont Secretary of State *available at* <https://bizfilings.vermont.gov/online/BusinessInquire/BusinessInformation?businessID=193204>

The subject line of the email was “2022 Digger Debate Series: Sponsorship opportunity.” The text of the email explained that “The nonprofit newsroom will host four primary debates this summer and four general election debates this Fall as part of its 2022 Digger Debate Series.”

The email went on to offer the Necrason Group opportunities to “sponsor” one or more of the debates. The “sponsorship” packages available at different donation levels included several promotional benefits for sponsors, including free tickets to and preferred seating at the debates and sponsorship acknowledgement at the beginning of the debate and on the VT Digger.org news site. None of the “sponsorship” benefits included the opportunity to assist the staging organization in determining which candidates would be selected to participate nor any other opportunity to provide input into the format of the debates.

C. The Vermont Journalism Trust is a “Qualified” “Nonprofit Organization”

At all times relevant to the complaint, the Necrason Group was aware that the staging organization—VT Digger.org, as a project of the Vermont Journalism Trust—was a 501(c)(3) tax-exempt nonprofit corporation. The information about VT Digger’s tax-exempt status and independent governance is publicly available on its website.³ Necrason Group was also aware, as a result of its officers and employees being regular VT Digger readers, that the news site does not endorse, support, or oppose political candidates or political parties. Accordingly, under FEC Regulations, VT Digger.org qualified as a nonprofit staging organization eligible to receive donations from the Necrason Group in support of VT Digger’s Debate Series.

D. VT Digger is also a Bona fide Journalistic Enterprise “Not Owned or Controlled By a Political Party, Political Committee Or Candidate”

In addition to being a qualified nonprofit organization, VT Digger.org is also qualified to stage debates under FEC regulations as a bona fide journalistic enterprise unaffiliated with political entities. Information about its journalistic bona fides, including awards it has won from the The New England Newspaper and Press Association, among others, are available on its website.⁴ Under FEC regulations, VT Digger.org was thus qualified to stage a debate using its own funds, including funds obtained from entities it solicited as debate “sponsors” such as the Necrason Group.

E. The Vermont Journalism Trust Applied Pre-Established, Objective Candidate Selection Criteria to Determine Which Candidates Could Participate in the Debate Sponsored by the Necrason Group

Given VT Digger.org’s status as a 501(c)(3) tax-exempt nonprofit subject to IRS regulation on nonpartisanship, its track record for award-winning nonpartisan journalism, and its experience staging candidate debates in previous election cycles, Necrason Group reasonably relied on VT Digger.org to select candidates for the debate it was sponsoring based on pre-established, objective criteria. Necrason Group’s reliance was justified.

³ VT Digger.org “Our Story” at <https://vtdigger.org/about-vtdigger-2/>

⁴ *Supra* fn.3.

As you will note in VT Digger's response to MUR 8065, VT Digger applied multiple, pre-established, objective criteria in determining that Democratic Party nominee, Rep. Peter Welch and, Republican Party nominee Gerald Malloy would be the two candidates featured in the debate. One such criterion was major party status affiliation, a criterion expressly recognized as being appropriate under FEC regulations and one that Ms. Ericson did not satisfy.⁵ VT Digger.org also applied additional criteria as required for general election debates under FEC regulations. These criteria are found in VT Digger.org's own internal policy adopted May 3, 2022, which expressly prohibits input into its editorial staff's debate candidate selection decision-making process. The additional candidate selection criteria in VT Digger.org's debate policy also include:

- Filing Status with the Federal Election Commission and/or Vermont Secretary of State's Office
- Past or present leadership in the public or private sector
- Past Performance in political campaigns
- Public polling
- Fundraising and other indications of support such as public sentiment or demonstrated reach and appeal to the electorate.

Necrason Group had no opportunity to participate in the VT Digger.org editorial process through which VT Digger.org applied the foregoing pre-established, objective criteria to determine that Ms. Ericson would not be invited to the debate the Necrason Group sponsored. But such participation in candidate selection was neither required by FEC regulations, nor arguably allowed by them. The FEC regulations require only that any group to whom a business entity like Necrason Group donates in connection with a federal candidate's debate has such pre-established criteria and applies them objectively in the candidate selection process related to staging the debate. Necrason group is confident that occurred in this case.

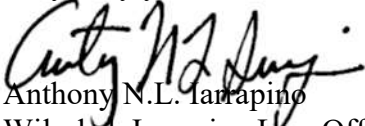
Conclusion

Necrason Group's sponsorship of the VT Digger.org General Election U.S. Senate Candidates' Debate complied with FEC Regulations. VT Digger.org was qualified to stage candidate debates under both tests set forth in the pertinent regulations, and to accept donations and sponsorships from entities such as Necrason Group. While Necrason Group, appropriately, had no input into or control over the nonprofit journalism enterprise's candidate selection criteria, it was justified in believing that VT Digger.org would apply pre-established, objective criteria as required by FEC regulations. VT Digger.org did in fact apply such criteria, consistent with FEC regulations, in determining that Ms. Ericson would not be selected for the General Election U.S. Senate Candidates' Debate. No violation occurred because of the events complained of in MUR 8065.

⁵ 11 C.F.R. § 110.13(c).

Necrason Group looks forward to your prompt resolution of MUR 8065 with a determination that no action is justified against Necrason Group. Necrason Group stands by to further cooperate as need be.

Very truly yours,

A handwritten signature in black ink, appearing to read "Anthony N.L. Iarrapino". The signature is fluid and cursive, with a prominent initial "A".

Anthony N.L. Iarrapino

Wilschek Iarrapino Law Office, PLLC

Designated Counsel for Necrason Group, PLLC