



December 16, 2022

VIA E-MAIL

Roy Q. Lockett, Acting Assistant General Counsel
Christal Dennis, Paralegal
Federal Election Commission
Office of Complaints Examination and Legal Administration
1050 First Street, NE
Washington, D.C. 20463
Email: cela@fec.gov

Re: Matter Under Review 8065 (Congressman Peter Welch)

Dear Mr. Lockett:

We write as counsel to Congressman Peter Welch (“*Respondent*” or “*Congressman Welch*”), in response to the second supplement to the complaint filed by Cris Ericson in MUR 8065 (the “*Supplement*”). The Supplement recycles the same baseless claims in the original complaint to allege that Ms. Ericson was wrongly excluded from another debate. The Supplement’s sole allegation against Representative Welch is that he “conspir[ed]” with WCAX and the Democratic Party to exclude the complainant from its debate.¹ Like the original complaint, the Supplement fails to provide any support for this claim. Because it fails to allege any facts that, if true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended (the “*Act*”), the Commission should find no reason to believe that Respondent violated the Act and close the file without taking any further action in this matter.

Moreover, it is Respondent’s understanding that WCAX did conduct and invite candidates to the debate in full compliance with the Commission’s regulations concerning the sponsoring of debates and as a press entity. This Supplement is as frivolous as the original complaint and should be dismissed immediately.

FACTUAL BACKGROUND

On October 26, 2022, Congressman Welch participated in a candidate debate hosted by WCAX (“*Debate*”).² WCAX is a TV station based in Burlington, VT and licensed with the Federal Communications Commission.³ Respondent does not own or control WCAX and there is no allegation that WCAX is owned or controlled by any candidate, political party, or political

¹ Second Supplemental Compl. at 1.

² See Calvin Cutler, Vt. US Senate candidates debate on WCAX, WCAX (Oct. 26, 2022), <https://www.wcax.com/2022/10/26/watch-live-vt-candidates-us-senate-debate-wcax/>.

³ Federal Communications Commission, Television Broadcast Station License (Nov. 25, 2019), <https://enterpriseefiling.fcc.gov/dataentry/api/download/lm/authorization/25076ff36df59575016dfe4d8a390744>.

committee. Neither Congressman Welch nor his agents had any involvement in the decision not to invite Ms. Erickson to the Debate. However, it is Respondent's understanding that WCAX had a number of pre-established objective criteria which is legitimately used to determine who it would include in the Debate and that it otherwise complied with the Commission's regulations regarding staging debates and conducting press activities.⁴

LEGAL DISCUSSION

The Complaint alleges that Respondent violated the Act by conspiring with WCAX and the Democratic Party to exclude Ms. Ericson from the Debate. The Complaint provides no facts to support these claims. Respondent was not involved in any way in the decision not to invite Ms. Ericson to the Debate, and the Complaint has failed to provide any evidence to the contrary. Further, the debate regulations under 11 C.F.R. § 110.13 are directed at the staging organization, not the candidate. The regulation's plain language does not apply to Respondent. Rather, the regulation places the burden on the staging organization for compliance with 11 C.F.R. § 110.13.

Nevertheless, it is Respondent's understanding that WCAX did conduct the Debate in compliance with the Act and Commission regulations. The regulation requires that the staging organization use "pre-established objective criteria to determine which candidates may participate in [the] debate."⁵ On October 19, 2022, WCAX News Director Roger Garrity wrote to Congressman Welch's campaign to provide the station's debate policy and candidate selection criteria.⁶ Mr. Garrity stated "[w]e use a set of criteria to determine who to invite to our debates ... include[ing] winning a major party nomination, past election success, performance in a political poll, fundraising, campaign apparatus and name recognition."⁷

There is nothing in the Complaint that indicates that WCAX did not follow its pre-determined criteria for determining candidate selection for the Debate or otherwise violate any requirement of the Commission's regulations. Moreover, as a legitimate press entity not controlled by any candidate, committee, or political party, WCAX's activities were also subject to the "media exemption."⁸

CONCLUSION

Based on the foregoing, the Commission should find no reason to believe that Respondent violated the Act and dismiss this matter against Respondent immediately.

⁴ See Exhibit A, Email from Roger Garrity.

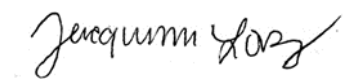
⁵ 11 CFR §§ 110.13(a), (c). While the regulations do not define "objective criteria," the Commission has previously stated that it includes the "percentage of votes by a candidate received in a previous election; the level of campaign activity by the candidate; his or her fundraising ability and/or standing in the polls; and eligibility for ballot access." *La Botz v. FEC*, 889 F. Supp. 2d 51, 63 (D.D.C. 2012) (citing Administrative Record at 119).

⁶ Exhibit A, Email from Roger Garrity.

⁷ *Id.*

⁸ See 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. § 100.132. See also FEC MUR 7835, Statement of Reasons of Commissioner Sean J. Cooksey (Jun. 28, 2022) https://www.fec.gov/files/legal/murs/7835/7835_09.pdf.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jacqueline Lopez". The signature is fluid and cursive, with a prominent loop at the end.

Jacqueline Lopez
Jonathan Peterson
Dylon Busser
Counsel to Respondent

Exhibit A

From: **Roger Garrity** <roger.garrity@wcax.com>

Date: Wed, Oct 19, 2022 at 12:31 PM

Subject: RE: wcax debate

To: Hank Butler <hank@welchforvermont.com>

Hi Hank,

We use a set of criteria to determine who to invite to our debates – with a goal of providing meaningful engagement between the candidates that will be informative to voters. Those criteria include winning a major party nomination, past election success, performance in a political poll, fundraising, campaign apparatus and name recognition. Candidates must check at least some of these boxes to be considered. In this case, Rep. Welch and Mr. Malloy were invited.

For COVID, we are limiting the number of guests and asking anyone who's sick not to come. We are not requiring proof of vaccination.

Each candidate will have two opportunities to question the other candidate.

Most of the questions have a one minute or 90 second time limit. Rebuttals are generally limited to 30 seconds.

In last night's congressional debate, each candidate was asked 18 questions. That's in part because in many instances they did not use their allotted time to answer. So the total could be fewer if the answers are longer.

There are two commercial breaks.

The debate will be posted online, but not re-aired.

I hope that answers your questions. I'm happy to discuss further. Don't hesitate to call me.

Roger Garrity
News Director

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