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March 21, 2024

Federal Election Commission
Attn: Christal Dennis, Paralegal
Office of Complaints Examination and Legal Administration
1050 First Street, NE
Washington, DC 20463

Re: Matter Under Review 8065 (WCAX-TV)

Dear Commission:

Our client, television station WCAX-TV ("WCAX"), received the Federal Election Commission's complaint in this matter by U.S. mail on February 20, 2024. On March 5, 2024, the Commission granted our request to extend the time for a response to March 21, 2024.

As a procedural matter, it appears that the original complaint was filed on September 14, 2022, but it did not name WCAX. The complainant appears to have named WCAX in a "2nd Supplement" dated October 28, 2022, and date stamped at the Commission on November 2, 2022. Fifteen months later, on or about February 13, 2024, the Commission apparently attempted to forward the complaint and supplement via email to WCAX's general manager, Mr. Jay Barton, but that transmission failed because the email address noted on the Commission's notification letter – "jaybarton@wcax.com" – is not a valid WCAX email address. The notification letter was received by U.S. mail on February 20, 2024.

Our client was legally entitled to notice "[w]ithin 5 days after receipt of [the] complaint," 52 U.S.C. § 30109(a), and has been prejudiced by the long delay in notification. The news coverage which is the subject of the complaint occurred on October 26, 2022. Had WCAX been notified when the complaint was filed, one week after the debate, it could have memorialized the newsroom decisions and events with perfect clarity. Coming as it does fifteen months later, our client is at a disadvantage to recall all details and marshal all newsroom actions in its defense. For this reason, the complaint should be dismissed.¹

In any event, the complaint must be dismissed for three independent substantive reasons:

- (1) The complaint does not set forth facts and evidence substantiating a violation of the Federal Election Campaign Act of 1971, as amended ("the Act");

¹ See Matter Under Review ("MUR") 7537, Statement of Reasons of Six Commissioners (Feb. 7, 2024) (dismissing matter because Commission failed to timely notify a clearly identified respondent resulting in prejudice).

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- (2) WCAX's in-studio news coverage is exempted from Commission regulation under the well-established Press Exemption and Free Press Clause of the First Amendment; and
- (3) WCAX's in-studio news debate is exempted from regulation under the Commission's debate regulation to the extent it is applicable.

BACKGROUND

WCAX is a local CBS affiliate television station located in South Burlington, Vermont, broadcasting on Channel 3.² It is owned by Gray Television, Inc. headquartered in Atlanta, Georgia ("Gray Television").³ Gray Television owns and operates television stations serving 114 television markets that collectively reach approximately 36 percent of U.S. television households.⁴ In most of its markets, Gray owns and operates at least one television station broadcasting a primary channel affiliated with one of the Big Four networks (ABC, CBS, FOX, NBC).⁵ Neither Gray Television nor WCAX is owned or controlled by any political committee, political party, or candidate.⁶

WCAX has broadcast news and entertainment in Vermont for almost 70 years.⁷ Its newsroom has covered politics, elections, candidates, and current events regularly since that time.⁸ Today, WCAX produces 6 ½ hours of local news every weekday.⁹ As part of its news coverage, WCAX has interviewed hundreds, if not thousands, of politicians and candidates for election at all levels of government (local, state, and federal) in a variety of formats, including one-on-one interviews, forums, townhalls, and debates.¹⁰

WCAX regularly advances its journalistic mission by hosting debates among candidates in primary and general election contests.¹¹ In most election cycles, WCAX produces primary and general election debates, as appropriate, for candidates running for Governor, Lieutenant

² Exhibit 1, Declaration of Roger Garrity ¶ 3 (hereinafter "Garrity Dec.").

³ Garrity Dec. ¶ 3.

⁴ See <https://gray.tv/companies>.

⁵ *Id.*

⁶ Garrity Dec. ¶ 3.

⁷ Garrity Dec. ¶ 4.

⁸ Garrity Dec. ¶ 4.

⁹ Garrity Dec. ¶ 4.

¹⁰ Garrity Dec. ¶ 5.

¹¹ Garrity Dec. ¶¶ 5, 6.

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Governor, U.S. Senate, and U.S. House.¹² WCAX's newsroom exercises its editorial discretion in choosing the elections that it deems most newsworthy and deserving of press coverage generally and candidate debates specifically.¹³

In the run up to the 2022 election in Vermont, WCAX's newsroom decided to inform Vermonters about the upcoming election of a U.S. Senator to fill the seat being vacated by Senator Patrick Leahy.¹⁴ Senator Leahy had served as Vermont's U.S. Senator for nearly 50 years, from 1975 to 2023. The election to replace Senator Leahy was historically significant, there was heightened public interest in the election, and Vermonters wanted to know more about the candidates seeking to succeed Senator Leahy. Accordingly, the Senate election was particularly newsworthy, and WCAX's newsroom made the journalistic decision to provide Vermonters more information about viable candidates offering to replace Senator Leahy. Throughout 2022, WCAX regularly covered the election on its news broadcasts and on its online website, www.wcax.com.

On October 26, 2022, WCAX broadcast a debate between the only two viable candidates in the general election for U.S. Senate: Peter Welch and Gerald Malloy.¹⁵ Peter Welch, the nominee of the Democratic Party, was a lawyer and had served in the Vermont Senate as its Pro Tem until he was elected to the United States House of Representatives in 2006, where he served until 2023.¹⁶ Gerald Malloy, the Republican nominee, was a West Point graduate who served as an officer in the U.S. Army from 1980 to 2006 and had been a businessman since his military retirement.¹⁷ The debate was held inside WCAX's news studio, and WCAX newscasters questioned the candidates.¹⁸ The October 26, 2022 debate can be viewed at www.wcax.com/2022/10/26/watch-live-vt-candidates-us-senate-debate-wcax/.¹⁹

In 2018, WCAX adopted the criteria that its newsroom currently uses to determine the most newsworthy candidates to interview as part of its in-studio debates:

1. The candidate has the nomination and/or outward support of one of the major political parties;

¹² Garrity Dec. ¶ 6.

¹³ Garrity Dec. ¶ 6.

¹⁴ Garrity Dec. ¶ 9.

¹⁵ Garrity Dec. ¶¶ 7, 9, 10. WCAX also broadcast five other debates in 2022: Democrat and Republican primary debates in connection with the U.S. House election to fill the seat being vacated by Congressman Welch and general election debates for Governor, Lieutenant Governor, and U.S. House.

¹⁶ Garrity Dec. ¶ 10.

¹⁷ Garrity Dec. ¶ 10.

¹⁸ Garrity Dec. ¶ 15.

¹⁹ Garrity Dec. ¶ 15.

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2. The candidate has been competitive in previous elections;
3. The candidate has drawn significant support to his/her campaign through fundraising, large rallies, etc.;
4. The candidate has drawn significant support to his/her campaign as measured in a reputable public opinion poll;
5. The candidate has broad name recognition for activities outside the political arena; and
6. The candidate has an unusual personal story that the public would find compelling or interesting.²⁰

Candidates do not have to meet all of these criteria but must satisfy at least two to be deemed sufficiently newsworthy to merit inclusion in WCAX's news debate coverage.²¹

These criteria guided WCAX's decision regarding which candidates to feature in the October 26 in-studio news debate.²² WCAX's newsroom determined that while Congressman Welch and Mr. Malloy satisfied several of the criteria, none of the other six candidates satisfied at least two of the criteria.²³

As set forth in the complaint, supplements to the complaint, and information set forth in those sworn documents, the complainant, Cris Ericson, has been a perennial candidate who has run for various public offices in every election since 2000. However, she has never won nor even been competitive in an election. In 2022, WCAX determined that Ms. Ericson did not meet at least two of its established newsroom criteria because:²⁴

1. Ms. Ericson ran as an independent candidate without the nomination or discernible support of any political party.²⁵
2. Although she had been a perennial candidate in virtually all elections since 2002, by her own admission Ms. Ericson was never a competitive candidate. She never garnered five percent in approximately 22 previous general elections, except in one election for Auditor where she received 15 percent of the vote as the formal nominee of the Progressive Party

²⁰ Garrity Dec. ¶ 8.

²¹ Garrity Dec. ¶ 8.

²² Garrity Dec. ¶¶ 10, 11.

²³ Garrity Dec. ¶¶ 10, 11.

²⁴ Garrity Dec. ¶¶ 12, 13, 14.

²⁵ Garrity Dec. ¶ 13.

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(in an election with no Republican candidate on the ballot).²⁶ That 20-year track record did not demonstrate electoral competitiveness or viability and the Auditor election was anomalous in any event because she had run as a party nominee.

3. Although Ms. Ericson filed a Statement of Candidacy on July 5, 2022,²⁷ a search of Commission records indicates that she did not file campaign finance reports, indicating that her campaign raised no contributions and spent no money in support of her candidacy (or that the campaign committee failed to comply with Commission disclosure regulations).²⁸ That evidences a complete absence of public support and a non-viable candidacy.
4. According to publicly available, independent polls, Ms. Ericson received no more than one percent (1%) in public support.²⁹ Indeed, Ms. Ericson subsequently finished in eighth place, receiving only .38 percent (less than 1%) of the general election vote.³⁰

As for the remaining criteria, in WCAX's judgment, she had not distinguished herself outside of politics and had no newsworthy personal story.³¹ One of her claims to distinction was that she had been banned from Facebook, but WCAX did not deem that fact newsworthy or qualifying. In sum, WCAX's news judgment was that Ms. Ericson was not a viable or newsworthy candidate who merited WCAX's limited news coverage.³² Therefore, she was not invited to WCAX's studio to be interviewed in the debate format.

The complaint includes an email that Ms. Ericson sent to WCAX on October 26, 2022, which apparently was received *after* the debate broadcast had commenced. Given the long passage of time, WCAX cannot definitively confirm whether it had any communication with Ms. Ericson in

²⁶ Garrity Dec. ¶ 13. *See also*, Exhibit 2, Cris Ericson Vermont Electoral History.

²⁷ *See* Exhibit 3, Cris Ericson FEC Statement of Candidacy.

²⁸ *See* Exhibit 4, FEC Search Result for Friends of Cris Ericson Campaign Finance Reports.

²⁹ *See* Exhibit 5, Publicly Available Polls for Vermont 2022 U.S. Senate Election. WCAX sponsored the "WCAX 2022 Vermont General Election Survey" conducted September 29 – October 3, 2022, so naturally WCAX was aware of Ms. Ericson's poll standing when it planned the October 26 news debate. The Data for Progress poll was conducted October 21 – October 26, 2022, so it likely was not available in time to plan the October 26 news debate. It nevertheless confirms WCAX's poll result.

³⁰ *See* Exhibit 6, Vermont 2022 U.S. Senate Election Results. Peter Welch won the election with 67.33% of the vote; Gerald Malloy finished second with 27.56%. The third highest vote total at 1.56% was "Blank Votes," meaning ballots with no vote in the U.S. Senate election recorded. No other candidate received even one percent (1%) of the vote.

³¹ Garrity Dec. ¶ 13.

³² Garrity Dec. ¶ 14.

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response to her inquiry.³³ However, it appears that the matter was moot by the time the communication was received, so it is possible no response was provided.

Of some relevance to the inquiry is WCAX's response to an inquiry about why WCAX decided not to include the Libertarian Party nominee for U.S. House, Ericka Redic, in WCAX's news debate in connection with the election for the U.S. House.³⁴ WCAX had covered Ms. Redick as part of a Republican Party primary debate, but did not include her in a general election news debate. In response to the inquiry, WCAX's News Director responded:

It is true we [WCAX's news department] have not invited Ms. Redic to our debate. Our goal is to help educate voters before they cast their ballots. That means focusing our coverage on the candidates most likely to be of interest to the voters. We examine many factors in determining who to cover and who to invite to our debates. Those factors include winning a major party nomination, past election success, performance in a political poll, fundraising, campaign apparatus and name recognition. Ms. Redic – and the 3 independents on the ballot – have not checked any of these boxes. I would also note that Ms. Redic already was given an opportunity to appear in our Republican primary debate. Despite acquitting herself well, it did not translate into victory on election day. Now, running as a third party candidate, it seems unlikely she would fare any better. Third party candidates rarely draw much support and Libertarians have a very poor track record. The last time any Libertarian even ran for congress in Vermont was in 2002. That candidate finished 5th and received 0.8% of the votes. With all of those factors taken together, we decided a one-on-one debate with the two major party candidates would be most informative to our viewers.³⁵

As is clear from that response, WCAX consistently has applied its well-established criteria, and as attested in the enclosed Declaration of Roger Garrity, WCAX's News Director, the news department applied those criteria to the in-studio Senate debate in October 2022.

ANALYSIS

The facts set forth in the complaint and above demonstrate that the complaint must be dismissed as a matter of law.

First, the complaint does not set forth sufficient facts or evidence establishing reason to believe that WCAX violated the Act. The only fact asserted is that Ms. Ericson was not invited to WCAX's news studio to be interviewed as part of WCAX's news program. That fact, standing alone, does not establish a violation of the Act.

³³ Garrity Dec. ¶ 16.

³⁴ Garrity Dec. ¶ 17.

³⁵ Garrity Dec. ¶ 17.

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Second, WCAX's in-studio debates are classic formats for news coverage exempted from Commission regulation under the Act's Press Exemption and protected by the Free Press Clause of the First Amendment. Congress foreclosed Commission authority to regulate and police candidate forums, joint interviews, and debates organized by bona fide press organizations in the performance of their press functions and news coverage.

Third, WCAX's use of objective editorial criteria complies with the Commission's debate regulation. There has been a running discussion within the Commission regarding the enforceability of the debate regulation to press organizations, like WCAX here, that organize debates as an integral part of their news coverage.³⁶ Application of the regulation to the press is especially strained as applied to interviews of two or more candidates, by news journalists, inside news studios, in debate format, because the Commission has no jurisdiction to prescribe newsroom editorial judgments about which candidates are newsworthy and which to cover. Furthermore, because a newsroom's debate participation criteria are editorial criteria, the Commission cannot force a press organization to reveal such journalistic judgments under the First Amendment.³⁷ This problem exposes the folly of the Commission's historical efforts to impose its debate regulation on press entities and force them to prove their innocence in response to complaints that allege nothing more than that a candidate (invariably a noncompetitive candidate) was not invited to the newsroom and afforded free press coverage.

For these reasons, the debate regulation has proved to be incompatible with the Press Exemption, which is a categorical exemption from regulation of the press.³⁸ Were the Commission nevertheless to attempt to reconcile its debate regulation with the Press Exemption, at most the Commission might be able to implement the debate regulation as a "safe harbor" for what the Commission deems "legitimate press function." The regulatory requirements could not be imposed upon newsrooms as a straitjacket because it is well-settled that press entities have wide

³⁶ Three Commissioners recently voted to dismiss a complaint involving a television station's in-studio debate under the Press Exemption for reasons set forth in a statement by Chair Cooksey. *See* MUR 7835 (WMTW-TV), Certification & Statement of Reasons of Commissioner Sean J. Cooksey (June 28, 2022). For a historical overview of how the debate regulation first was applied to press organizations, *see* Concurring Statement of Commissioner Lee E. Goodman on Notice of Disposition of Petition for Rulemaking on Candidate Debates (Nov. 9, 2015); *see also*, MUR 6703 (WCVB-TV), Statement of Reasons of Vice Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen (Dec. 19, 2013); MUR 5224 (Boston Globe & WBZ-TV), Statement of Reasons of Chairman David Mason, Vice Chairman Karl Sandstrom, Commissioner Bradley Smith, Commissioner Michael Toner (Sept. 3, 2002).

³⁷ *Reader's Digest Ass'n v. FEC*, 509 F.Supp. 1210, 1214 (S.D.N.Y. 1981) (rebuking the Commission's efforts to investigate the internal editorial decisions of a news publication on the basis that "until and unless the press exemption were found inapplicable, the FEC is barred from investigating the substance of the complaint").

³⁸ *See* MUR 6952 (Fox News Network LLC), Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman (June 28, 2016) at 3 ("Given the Office of General Counsel's recommendation and our colleagues' votes in this matter [to punish Fox News], this compromise [i.e., applying the debate regulation to press-sponsored debates] is no longer tenable. The Commission's debate regulation cannot be used to impose government restrictions on newsroom decisions and to punish, and even censor, American press organizations. We can no longer agree to avoid addressing freedom of the press.").

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editorial discretion to determine for themselves which candidates to cover. As the Supreme Court consistently has recognized, “television broadcasters enjoy the widest journalistic freedom consistent with their public responsibilities,” and government cannot force broadcasters to interview particular candidates even in debates because such mandates “would be antithetical, as a general rule, to the discretion that stations and their editorial staff must exercise to fulfill their journalistic purpose and statutory obligations.”³⁹ The upshot is that even an attempt to harmonize the regulation with the Press Exemption would have its limits under the Free Press Clause.

Here, in an effort to expedite dismissal of the complaint, WCAX is voluntarily sharing its editorial criteria with the government, and they are clearly within the bounds of WCAX’s legitimate press function as well as the Commission’s debate regulation.

I. The Complaint Does Not Submit Sufficient Evidence of an Unlawful Corporate Expenditure or Contribution.

The complaint alleges one fact in support of its theory that WCAX violated the Act: Ms. Ericson was not invited to WCAX’s news studio to be interviewed along with two other candidates. That fact, standing alone, does not substantiate a violation of the Act. The complaint would have to present evidence that WCAX acted outside the well-established bounds of its legitimate press functions (see Sec. II below) or, if the debate regulation applies, failed to use objective editorial criteria in choosing which candidates to interview in the in-studio debate (see Sec. III below).

The burden of proof at all times rests upon the complainant (and later the Commission) to prove that the press organization acted outside the bounds of its legitimate press functions and, to the extent applicable, the debate regulation. Here, no such evidence has been submitted to the Commission, so the complaint must be dismissed.

The mere allegation that a candidate was not invited to a news studio to receive free press coverage cannot shift the burden to the newsroom to “prove its innocence.” Such burden shifting would necessarily trigger a government requirement for news agencies to disclose their confidential editorial criteria upon the barest of factual allegations and invade the press rights of newsrooms and journalists.

II. The Press Exemption and First Amendment Require Dismissal of the Complaint.

The Act exempts from regulation all costs “incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political

³⁹ *Arkansas Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 674 (1998) (internal quotations omitted). Broadcasters “are not only permitted, but indeed required, to exercise substantial editorial discretion in the selection and presentation of their programming” under the protections of the Free Press Clause. *Id.*

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committee, or candidate.”⁴⁰ The exemption is known as the “Press Exemption” or “Media Exemption.”

Congress explained the intent of the Press Exemption is to protect and respect broad freedom of the press:

[I]t is not the intent of the Congress in the present legislation to limit or burden in any way the first amendment freedoms of the press and of association. Thus the exclusion assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns.⁴¹

The Press Exemption applies to press activity under a two-part test. First, the organization must be a “press entity.” Second, the press activity at issue must represent a “legitimate press function.”⁴²

As the Commission recognized in dismissing a complaint over a debate sponsored by the Boston Globe and WBZ-TV, “a news organization’s presentation of a debate is a ‘news story’ within the meaning of this provision of the FECA [the Press Exemption].”⁴³ A controlling group of the Commission also applied the Press Exemption to dismiss a complaint against Fox News, concluding that “Fox News’s sponsorship of these debates was squarely within its press function and [was] thus protected from the Commission’s regulation under the press exemption and the free press clause of the First Amendment.”⁴⁴ Three commissioners again voted to dismiss a complaint involving WMTW’s in-studio debate under the Press Exemption in MUR 7385.⁴⁵

⁴⁰ 52 U.S.C. § 30101(9)(B)(i).

⁴¹ H.R. Report No. 93-1239, 93d Congress, 2d Sess. at 4 (1974).

⁴² *See Reader’s Digest Association v. FEC*, 509 F.Supp. 1210, 1215 (S.D.N.Y. 1981); *FEC v. Phillips Publishing, Inc.*, 517 F.Supp. 1308, 1312-13 (D.D.C. 1981).

⁴³ MUR 5224 (Boston Globe & WBZ-TV), Statement of Reasons of Chairman David Mason, Vice Chairman Karl Sandstrom, Commissioner Bradley Smith, Commissioner Michael Toner (Sept. 3, 2002) at 2. The Commission majority’s treatment of WBZ-TV’s debate as “news coverage” is consistent with the Federal Communication Commission’s treatment of debates sponsored by broadcast station as “news coverage.” *See* Regarding Petitions of Henry Geller and the National Association of Broadcasters and the Radio-Television News Directors Association to Change Commission Interpretations of Certain Subsections of the Communications Act, 48 Fed. Reg. 53166-53171 (Nov. 25, 1983).

⁴⁴ MUR 6952 (Fox News Network LLC), Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman (June 28, 2018) at 3; *see also*, MUR 6703 (WCVB-TV), Statement of Reasons of Vice Chairman Lee E. Goodman, Commissioner Caroline C. Hunter and Commissioner Matthew S. Petersen (Dec. 19, 2013); Concurring Statement of Commissioner Lee E. Goodman on Notice of Disposition of Petition for Rulemaking on Candidate Debates (Nov. 9, 2015).

⁴⁵ MUR 7835 (WMTW-TV), Certification & Statement of Reasons of Commissioner Sean J. Cooksey (June 28, 2022).

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WCAX qualifies for the first prong of the Press Exemption because it is a bona fide press entity. As to the second prong, WCAX has regularly covered candidates in debate format as part of its news coverage, as have news outlets for many decades. The WCAX news department's in-studio interview of Messrs. Welch and Malloy, in debate format, is unquestionably a "legitimate press function." Accordingly, WCAX's October 26, 2022 news debate is not regulated under the Act under the Press Exemption and the Free Press Clause of the First Amendment.

III. WCAX's Editorial Criteria Complied with the Commission's Debate Regulation.

The Act generally prohibits corporations from making contributions to federal candidates.⁴⁶ However, in its regulations, the Commission has determined that corporate funds used or provided "to defray costs incurred in staging candidate debates" are not contributions, provided that the debates are conducted "in accordance with the provisions of 11 C.F.R. [§§] 110.13 and 114.4(f)."⁴⁷ As demanded by the Act's Press Exemption, "[b]roadcasters (including a cable television operator, programmer or producer) bona fide newspapers, magazines and other periodical publications" are specifically permitted to stage candidate debates.⁴⁸

The debate regulation leaves the structure of the debate to the discretion of the staging organization. The only requirements are that: (1) the debate includes at least two candidates; (2) the organization does not structure the debates to promote or advance one candidate over another; and (3) the staging organization uses "pre-established objective criteria to determine which candidates may participate in the debate."⁴⁹

As the Commission most recently summarized in MUR 7835 (WMTM-TV),⁵⁰ the debate regulation does not define "objective criteria" or "mandat[e] a single set of objective criteria all staging organizations must follow, but rather [gives] the individual organizations leeway to decide what specific criteria to use."⁵¹ Objective selection criteria are "not require[d] [to contain] rigid definitions or required percentages."⁵² To qualify as "objective," the criteria need not "be stripped of all subjectivity or be judged only in terms of tangible, arithmetical cut-offs.

⁴⁶ 52 U.S.C. § 30118(a).

⁴⁷ 11 C.F.R. § 100.92.

⁴⁸ 11 C.F.R. § 110.13(a)(2).

⁴⁹ 11 C.F.R. § 110.13(b)-(c).

⁵⁰ MUR 7835 (WMTW-TV), Factual and Legal Analysis at 5-7.

⁵¹ *Buchanan v. FEC*, 112 F. Supp. 2d 58, 73 (D.D.C. 2000) (quoting *Perot v. FEC*, 97 F.3d 553, 560 (D.C. Cir. 1996) (internal citations omitted)); see MURs 6869R & 6942R (Commission on Presidential Debates), Factual & Legal Analysis ("F&LA") at 22.

⁵² MUR 6383R (Ohio News Organization, et al.), Factual and Legal Analysis at 7 (quoting First Gen. Counsel's Rpt. ("First GCR") at 19 in MURs 4956, 4962 & 4963 (Union Leader Corp, et al.)).

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Rather, it appears that they must be free of ‘content bias’ and not geared to the ‘selection of certain pre-chosen participants.’”⁵³

Major party status can be a factor considered by a staging organization so long as it is not the only factor.⁵⁴ Both polling data and financial disclosures have been deemed objective criteria.⁵⁵ In MUR 5395 (Dow Jones), the Commission found no reason to believe that a violation occurred where a debate sponsor considered each candidate’s prior service in statewide office as an indicator that the candidate was a “serious candidate.”⁵⁶ Likewise the Commission has approved a debate sponsor’s consideration of successful fundraising to demonstrate public interest and competitiveness of candidates.⁵⁷ In MUR 6111 (Columbus Metropolitan Club), the Commission approved a 5 percent polling threshold to be an objective criterion⁵⁸ and the U.S. Court of Appeals for the District of Columbia has found a 15 percent threshold to be reasonable and

⁵³ F&LA at 7, MUR 6383R (quoting First GCR at 23, MUR 4956, 4962, 4963); *cf. Ark. Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 682 (1998) (observing in a case involving a First Amendment challenge to a state owned television network’s decision on a candidate’s exclusion from a televised debate that “objectivity” is based on a “reasonable, viewpoint neutral exercise of journalistic discretion”).

⁵⁴ 11 C.F.R. § 110.13(c); Explanation & Justification, Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates, 60 Fed. Reg. 64,260, 64,262 (Dec. 14, 1995) (“E&J”); MUR 6383R, F&LA at 7.

⁵⁵ *La Botz v. FEC*, 889 F. Supp. 2d 51, 63-64 (D.D.C. 2012); *Buchanan*, 112 F. Supp. 2d at 74 (concluding that polling data is objective); *Ark. Educ. Television Comm’n*, 523 U.S. at 682 (citing lack of financial support as an objective indicator); MURs 4956, 4962 & 4963 (Gore 2000, Inc., et al.), Certification ¶ 2 (Nov. 29, 2000) (approving First GCR’s recommendations) & First GCR at 31-32 (concluding “[t]he candidate’s ability to fundraise” and his ‘level of financial support’” to be “sufficiently ‘objective’ for purposes of the statute and regulations”).

⁵⁶ MUR 5395 (Dow Jones, *et al.*), First GCR at 14 & Certification ¶ 1 (Jan. 21, 2005) (approving First GCR’s recommendations). The debate sponsor in MUR 5395 staged a presidential primary debate for the 2004 Democratic nomination. The full criteria for participation in that debate was the filing of a formal declaration of candidacy with the Commission and *either* prior service in statewide office *or* support of at least one percent (1%) of the Democratic electorate. MUR 5395, First GCR at 13-14.

⁵⁷ MUR 5395, Certification ¶ 1 (Jan. 21, 2005) & First GCR at 9 (approving First GCR’s recommendations); *see also* MURs 7484 & 7514, Factual and Legal Analysis at 9 (finding \$50,000 fundraising threshold in Nevada senate race an objective debate criterion).

⁵⁸ MUR 6111 (Columbus Metropolitan Club), F&LA at 5; *cf. MUR 6383R* (Ohio News Organization, et al.), F&LA at 7-8 (citing *La Botz*, 889 F. Supp. 2d at 63-64) (noting on remand that the district court had found debate sponsor using polling, input from political reporters, and financial disclosures to pare debate down to the two frontrunners to be “acceptably ‘objective’”).

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lawful.⁵⁹ The Commission has also found the use of polling without thresholds to be an objective criterion.⁶⁰

Further, “the rule at section 110.13(c) . . . is not intended to maximize the number of debate participants; it is intended to ensure that staging organizations do not select participants in such a way that the costs of a debate constitute corporate contributions to the candidates taking part.”⁶¹ Moreover, “[c]ourts have approved debate criteria not only when debate sponsors wish to narrow large fields of candidates but also to ensure that voters hear only from viable candidates.”⁶²

Finally, the Commission has explained that section 110.13 does not require that candidate selection be reduced to writing or made available to all candidates.⁶³

Here, the complaint proffers no evidence that WCAX acted outside the bounds of the debate regulation, so the complaint does not support reason to believe that WCAX made an unlawful corporate contribution to candidates Welch and Malloy. WCAX has demonstrated that its news department used pre-established editorial criteria to determine which candidates were viable and newsworthy. WCAX’s criteria are consistent with those the Commission has found to be objective in other cases. Accordingly, the complaint must be dismissed under the debate regulation to the extent it even applies to WCAX.

CONCLUSION

The complaint fails to allege any facts that support its claim of a violation. The only fact it alleges is that Ms. Ericson was not invited to WCAX’s studio to participate in a news event, nothing more. That fact alone does not supply any evidence that WCAX organized its debate outside the bounds of its legitimate press function or the rules set forth in the Commission’s debate regulation. For that reason alone, the complaint must be dismissed.

⁵⁹ *Level the Playing Field v. FEC*, 961 F.3d 462, 468 (D.C. Cir. 2020) (upholding Commission finding that a 15% threshold was objective and permissible for a non-profit debate staging organization).

⁶⁰ *See* MUR 5395, First GCR at 7-9 & Certification ¶ 1 (Jan. 21, 2005) (approving First GCR’s recommendations approving general “standing in the public opinion polls” among criteria “geared towards examining the levels of public interest and organization of the candidate’s campaign,” not “geared towards selecting pre-chosen participants,” and not “appear[ing] to exclude candidates based on content bias”).

⁶¹ E&J, 60 Fed. Reg. at 64,262; *see* F&LA at 32, MUR 6869R & 6942R.

⁶² MUR 7484 & 7514, F&LA at 10; *see La Botz*, 889 F. Supp. 2d at 63 (polling data and fundraising reports may be used as “an objective measure of a candidate’s viability”); *cf. Buchanan*, 112 F. Supp. 2d at 75 (“It is difficult to understand why it would be unreasonable or subjective to consider the extent of a candidate’s electoral support prior to the debate to determine whether the candidate is viable enough to be included.”).

⁶³ MUR 7835 (WMTW-TV), Factual and Legal Analysis at 7 (“sharing of selection criteria is not required”) (*citing* E&J, 60 Fed. Reg. at 64,262; MUR 7541 (Columbus Metropolitan Club, et al.), Factual and Legal Analysis at 8-9).

Federal Election Commission

March 21, 2024

Page 13

In any event, the Press Exemption and the Free Press Clause of the First Amendment remove jurisdiction over WCAX's news coverage, and the complaint must be dismissed for that reason. And further, WCAX voluntarily has disclosed to the Commission its editorial criteria in deciding which candidates to invite to its news studio to be interviewed in a debate format, and those criteria are well within the bounds of the Commission's debate regulation even were it applicable to press organizations. The complaint must be dismissed for that independent reason too.

Sincerely,

A handwritten signature in blue ink that reads "Lee E. Goodman". The signature is fluid and cursive, with the first and last names being more prominent.

Lee E. Goodman
Ari Meltzer

Enclosures:

- Exhibit 1: Declaration of Roger Garrity
- Exhibit 2: Cris Ericson Vermont Electoral History
- Exhibit 3: Cris Ericson FEC Statement of Candidacy
- Exhibit 4: FEC Search Result for Friends of Cris Ericson Financial Reports
- Exhibit 5: Vermont U.S. Senate 2022 Polls
- Exhibit 6: Vermont U.S. Senate 2022 Election Results

EXHIBIT 1

Federal Election Commission)
Matter Under Review 8065)
WCAX-TV)

DECLARATION OF ROGER GARRITY

1. I am Roger Garrity, I am over 18 years of age and competent to testify. The information set forth in this Declaration is based upon my personal knowledge.
2. I have been employed by WCAX-TV since 1987, and I have served as the News Director since 2017. In this position, I have direct oversight of news production practices and editorial standards, including WCAX's production of news interviews, forums, and debates.
3. WCAX is a broadcast television station located in South Burlington, Vermont. WCAX is an affiliate of CBS. The station is owned by Gray Television, Inc., a national media company based in Atlanta, Georgia. Neither WCAX nor Gray Television, Inc. is owned or operated by any political committee, political party, or candidate.
4. For decades, WCAX has broadcast local and national news on air and, more recently, disseminated news online (at www.wcax.com). Since its founding, WCAX's news department has produced original journalism about public affairs, current events, politics and elections, sports, weather, and human-interest stories. Our news department posts breaking news throughout the day online and we present 6 ½ hours of local news each weekday in nine separate newscasts (in addition to broadcasting national CBS news programs). Our news department also produces special reports and news events about newsworthy issues. WCAX's journalists are trained to practice well-accepted journalistic standards of conduct and ethics.
5. Since our founding, as an integral part of our journalism, the station has interviewed hundreds if not thousands of politicians and candidates for election at all levels of government (local, state, and federal) in a variety of formats, including one-on-one interviews, forums, townhalls, and debates. WCAX journalists have conducted these interviews in the field, at political and governmental events, and inside our news studio. WCAX also has covered debates sponsored by other organizations.
6. As an integral part of our news coverage, WCAX regularly produces debates between two or more candidates for public offices. In most election cycles, WCAX produces

primary and general election debates, as appropriate, for candidates running for Governor, Lieutenant Governor, U.S. Senate, and U.S. House. WCAX's newsroom has exercised its editorial discretion in choosing the elections that it deems most newsworthy and deserving of press coverage generally and candidate debates specifically.

7. In 2022, WCAX hosted six total debates, including Democrat and Republican primary debates in connection with the U.S. House election to fill the seat being vacated by Congressman Peter Welch and general election debates in connection with the elections for Governor, Lieutenant Governor, U.S. House, and U.S. Senate.
8. WCAX's news department has developed over the years a set of editorial criteria it considers to determine the most newsworthy candidates to include in WCAX debates. WCAX's criteria are intended to cover the most newsworthy candidates for public office. In 2018, WCAX adopted its current editorial criteria for general election debates, which were (and remain) as follows:
 - a. The candidate has the nomination and/or outward support of one of the major political parties;
 - b. The candidate has been competitive in previous elections;
 - c. The candidate has drawn significant support to his/her campaign through fundraising, large rallies, etc.;
 - d. The candidate has drawn significant support to his/her campaign as measured in a reputable public opinion poll;
 - e. The candidate has broad name recognition for activities outside the political arena; and
 - f. The candidate has an unusual personal story that the public would find compelling or interesting.

Candidates do not have to meet all of these criteria but generally must satisfy at least two to be deemed sufficiently newsworthy to merit inclusion in WCAX's news debate coverage.

9. In 2022, WCAX's news department decided to produce and broadcast several in-studio debates to provide the public greater information about candidates in upcoming elections. Among the debates was a general election debate between candidates competing to fill the U.S. Senate seat being vacated by U.S. Senator Patrick Leahy. Senator Leahy had represented Vermont in the Senate for nearly 50 years. The election to replace Senator Leahy was historically significant, there was heightened public interest in the election, and Vermonters wanted to know more about the candidates seeking to succeed Senator

Leahy. Accordingly, the Senate election was particularly newsworthy, and WCAX's newsroom made the journalistic decision to provide Vermonters more information about viable candidates offering to replace Senator Leahy.

10. In deciding which candidates to include in our news coverage, our newsroom applied our standard criteria set forth above. Applying those criteria, WCAX's newsroom determined that only two candidates satisfied our criteria. These candidates were Peter Welch, the nominee of the Democratic Party and incumbent U.S. Congressman, and Gerald Malloy, the nominee of the Republican Party, a businessman, and former U.S. Army officer.
11. Our newsroom determined that the six other candidates for U.S. Senate did not meet our editorial criteria and that including one or more of them in the debate would have diminished the newsworthiness of the debates as a whole.
12. Cris Ericson was an independent candidate with no party nomination or demonstrable public support. She was well known to our newsroom because she had been a perennial candidate for a variety of public offices over nearly twenty years.
13. With regard to the general election debate among candidates for U.S. Senate, Ms. Ericson did not meet at least two of its established newsroom criteria because:
 - a. Ms. Ericson ran as an independent candidate without the nomination or discernible support of any political party;
 - b. Ms. Ericson had never been a competitive candidate;
 - c. Ms. Ericson had not demonstrated any wide public support or financial support from the public;
 - d. According to publicly available, independent polls, Ms. Ericson received no more than one percent (1%) in public support;
 - e. Ms. Ericson had not distinguished herself outside of politics; and
 - f. Ms. Ericson had no compelling or newsworthy personal story that made her particularly newsworthy notwithstanding the other criteria.
14. Based on these criteria, WCAX's newsroom did not invite Ms. Ericson to participate and be covered in our news debate.
15. WCAX journalists conducted the debate in WCAX's news studio on October 26, 2022. Every effort was made to treat Congressman Welch and Mr. Malloy fairly and to focus on major policy issues of public interest. WCAX broadcast the debate live. WCAX further reported on the debate and posted the debate on its news website. The debate can

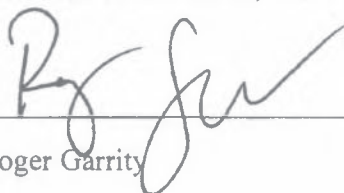
be viewed at www.wcax.com/2022/10/26/watch-live-vt-candidates-us-senate-debate-wcax/.

16. I do not have any record of having received or responded to Ms. Ericson's email to me dated October 26, 2022. Since that date, and prior to receiving the instant complaint, however, I engaged in routine maintenance of my email account that included deleting emails to free up additional storage space. It is possible that Ms. Ericson's email and any response thereto were purged as part of that process. Although I have a general recollection of speaking and/or corresponding with Ms. Ericson in the past, I do not specifically recall receiving or responding to Ms. Ericson's email of October 26, 2022.
17. I do, however, recall receiving a similar inquiry in advance of our general election debate in connection with the election for U.S. House. On September 27, 2022, a viewer wrote to inquire if WCAX was holding a debate and excluding Libertarian Party candidate Ericka Redic. In response to the inquiry about Ms. Redic, I explained:

It is true we [WCAX's news department] have not invited Ms. Redic to our debate. Our goal is to help educate voters before they cast their ballots. That means focusing our coverage on the candidates most likely to be of interest to the voters. We examine many factors in determining who to cover and who to invite to our debates. Those factors include winning a major party nomination, past election success, performance in a political poll, fundraising, campaign apparatus and name recognition. Ms. Redic – and the 3 independents on the ballot – have not checked any of these boxes. I would also note that Ms. Redic already was given an opportunity to appear in our Republican primary debate. Despite acquitting herself well, it did not translate into victory on election day. Now, running as a third party candidate, it seems unlikely she would fare any better. Third party candidates rarely draw much support and Libertarians have a very poor track record. The last time any Libertarian even ran for congress in Vermont was in 2002. That candidate finished 5th and received 0.8% of the votes. With all of those factors taken together, we decided a one-on-one debate with the two major party candidates would be most informative to our viewers.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 13, 2024



Roger Garrity

EXHIBIT 2

Cris Ericson – Vermont Electoral History

Year	Office	Vote Total	Vote %
2022	Senate	1,105	0.4%
2020	Attorney General	15,846	4.6%
2020	Treasurer	14,142	4.1%
2020	Secretary of State	11,171	3.2%
2020	Lieutenant Governor	7,862	2.2%
2020	Auditor	48,731	15.4%
2018	Governor	2,129	0.8%
2018	House	9,110	3.3%
2016	Senate	9,156	2.9%
2014	Governor	1,089	0.6%
2014	House	2,750	1.4%
2012	Governor	5,583	1.9%
2012	Senate	5,924	2.0%
2010	Governor	1,819	0.8%
2010	Senate	2,731	1.2%
2008	Governor	1,704	0.5%
2008	House	7,841	2.6%
2006	Governor	2,477	0.9%
2006	Senate	1,735	0.7%
2004	Governor	4,221	1.4%
2004	Senate	6,486	2.1%
2002	Governor	1,737	0.8%

Source: Vermont Official State Website, Election Results Archive – Cris Ericson
<https://electionarchive.vermont.gov/candidates/view/Cris-Ericson>)

EXHIBIT 3

Image# 202207059517789581

PAGE 1 / 1

FEC FORM 2

STATEMENT OF CANDIDACY

1. (a) Name of Candidate (in full) Ericson, Cris, , Ms.,		
(b) Address (number and street) 87 Church Street		<input type="checkbox"/> Check if address changed
(c) City, State, and ZIP Code Chester VT 05143		2. Candidate's FEC Identification Number S2VT00326
4. Party Affiliation INDEPENDENT	5. Office Sought Senate	3. Is This Statement <input checked="" type="checkbox"/> New (N) OR <input type="checkbox"/> Amended (A)
6. State & District of Candidate VT 00		

DESIGNATION OF PRINCIPAL CAMPAIGN COMMITTEE

7. I hereby designate the following named political committee as my Principal Campaign Committee for the 2022 election(s).
(year of election)

NOTE: This designation should be filed with the appropriate office listed in the instructions.

(a) Name of Committee (in full) Friends of Cris Ericson		
(b) Address (number and street) 879 Church Street		
(c) City, State, and ZIP Code Chester VT 05143		

DESIGNATION OF OTHER AUTHORIZED COMMITTEES

(Including Joint Fundraising Representatives)

8. I hereby authorize the following named committee, which is NOT my principal campaign committee, to receive and expend funds on behalf of my candidacy.

NOTE: This designation should be filed with the principal campaign committee.

(a) Name of Committee (in full)
(b) Address (number and street)
(c) City, State, and ZIP Code

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Signature of Candidate Ericson, Cris, , Ms., [Electronically Filed]	Date 07/05/2022
---	--------------------

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to penalties of 2 U.S.C. §437g.

--	--	--	--	--	--	--	--	--

EXHIBIT 4



Edit filters

Committees

This table has no data to export.

Export

COMMITTEE NAME OR ID

Friends of Chris Ericson



Viewing 0 filtered results for:

Friends of Chris Ericson

Clear all filters

YEARS ACTIVE

More



Committee details

Committee type

Committees

Viewing 0 filtered results for:

Friends of Chris Ericson

Clear all filters

Name

Committee ID

Treasurer

Type

Designation

Registration date

No data available in table

Results per page: 30



Showing 0 to 0 of 0 entries



MUR806500110

EXHIBIT 5



UPDATED MAR. 15, 2024, AT 3:46 PM

Latest Polls

Check out our popular polling averages

Who's Ahead in Ohio Senate Primary Polls?

State polling average

How Popular Is Joe Biden?

Approval polling average

Do Americans Want to Cancel Donald Trump's Favorability?

Favorability polling average

POLL TYPE	STATE	CYCLE
U.S. Senate	Vermont	2022

SORT BY DATE

Added	Surveyed
-------	----------

Search polls



U.S. Senate, Vermont, 2022, General election

Oct. 21-26	1,039 LV	Data for Progress	Welch 63%32% Malloy	Welch+31
Sept. 29-Oct. 3	765 LV	University of New Hampshire Survey Center	Welch 62%28% Malloy	Welch+34
Sept. 3-7	1,072 LV	♦ Trafalgar Group	Welch 50%43% Malloy	Welch +7
April 14-18	583 LV	University of New Hampshire Survey Center	Welch 62%27% Nolan	Welch+35
Sept. 3-15	604 RV	Braun Research	● Leahy 38%41% Scott	Scott +3
		Vermont Public Radio, Vermont PBS		

↗️ AVG. Indicates a polling average for this poll type Candidate is an incumbent

PARTISAN

♦

DEMOCRATIC-FUNDED

♦

OTHER PARTY-FUNDED

CAMPAIGN POLL

The position of the flag indicates whether the organization is partisan. Organizations are considered partisan if they operate on behalf of a candidate, party, campaign committee, [PAC](#), [super PAC](#), [hybrid PAC](#), 501(c)(4), 501(c)(5) or 501(c)(6) organization that conducts a large majority of its political activity on behalf of one political party.

More on the polls

Read about how we use polls

Download the data



University of New Hampshire

The Survey Center

WCAX 2022 Vermont General Election Survey October 2022

Prepared by:

Sean P. McKinley, M.A.
Zachary S. Azem, M.A.
J. Mitchell Scacchi, M.A.
Andrew E. Smith, P.h.D

The Survey Center
University of New Hampshire
October, 2022

The University of New Hampshire
Survey Center

The UNH Survey Center is an independent, non-partisan academic survey research organization and division of the UNH College of Liberal Arts.

The Survey Center conducts telephone, mail, web, and intercept surveys, as well as focus groups and other qualitative research for university researchers, government agencies, public non-profit organizations, private businesses and media clients.

Our senior staff have over 50 years experience in designing and conducting custom research on a broad range of political, social, health care, and other public policy issues.

Dr. Andrew E. Smith, Director
UNH Survey Center
9 Madbury Road, Suite 402
Durham, New Hampshire 03824
603-862-2226
Andrew.Smith@unh.edu

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Executive Summary

The University of New Hampshire Survey Center conducted a survey for WCAX designed to gauge public opinion among Vermonters in the run-up to the 2022 general election. Seven hundred sixty-five (765) Green Mountain State Panel members completed the survey online between September 29 and October 3, 2022. The margin of sampling error for the survey is +/- 3.5 percent.

Included in the sample were 737 likely general election voters (margin of sampling error +/- 3.6%).

The following figures display survey results, detailed tabular results may be found in Appendix A, and Appendix B contains the survey instrument. Due to rounding, percentages may not add to 100%.

Key Findings

U.S. Senate Election

Democrat Peter Welch holds a commanding lead over Republican Gerald Malloy in the race for the U.S. Senate in Vermont. Only a small number support the Independent candidates in the race while one in twelve are undecided. The vast majority of Democrats support Welch while the bulk of Republicans support Malloy and three in eight Independents are undecided. Welch is well-known and popular in the state while Malloy is neither well-known nor popular. Outgoing Senator Patrick Leahy and Vermont's other Senator Bernie Sanders are also broadly popular in the state.

U.S. House of Representatives Election

A majority of Vermonters support Democrat Becca Balint in the race for Vermont's at-large House of Representatives seat, with Republican Liam Madden and Libertarian Ericka Redic leading the rest of the field and very small numbers supporting the other candidates in the race. The vast majority of Democrats plan to vote for Balint, but only just over half of Republicans plan to vote for their party's nominee, Madden, with more than a quarter supporting his former Republican primary opponent turned Libertarian nominee, Redic. A plurality of Independents are undecided. Balint has become considerably more popular and well-known in the state since April, while majorities don't know enough about Madden or Redic to have an opinion of them.

Governor & Lieutenant Governor Elections

Incumbent Republican Governor Phil Scott holds a double-digit lead over Democratic and Progressive nominee Brenda Siegel in the race for the Vermont governorship. Only half of Democrats plan on voting for Siegel, while nearly four in ten Democrats and most Independents and Republicans plan on voting for Scott. Scott continues to enjoy high approval of his handling of his job, with about equal approval from Democrats and Republicans. Scott also remains personally popular in the state, while Vermonters are divided in their opinion of his opponent Siegel, who remains unknown to two-fifths of Vermont residents.

In the race for Lieutenant Governor, Progressive and Democratic nominee David Zuckerman holds a double-digit lead over Republican Joe Benning, with a very small number supporting Green Mountain nominee Ian Diamondstone. Vermonters are split in their opinion of Zuckerman and Benning, but Zuckerman is much more well-known among Vermonters.

2022 Vermont Constitutional Amendment & Issues Attitudes

Three-quarters of likely Vermont voters support a proposed amendment to the state constitution adding an article outlining an individual's right to personal reproductive autonomy, with the vast majority of Democrats in favor and Republicans closely divided on the issue. Most say they understand the amendment very or somewhat well. Nearly half of Vermont residents want gun control laws in the state to be more strict, with sharp disagreements based on party identification and gun ownership, and residents are closely divided on the idea of opening safe injection sites in Vermont. A plurality of respondents say that they have some trust in their local law enforcement. Republicans and older respondents tend to have higher levels of trust, while young people, those with a high school education or less, and those who identify as a race or ethnicity other than Caucasian/White have lower levels of trust.

Direction of the Country

Six in ten Vermonters approve of President Biden's handling of his job, a notable increase since July. However, only about a quarter think the country is headed in the right direction, while six in ten think it is on the wrong track. Those who think the country is headed in the right direction most frequently say they feel this way because they believe President Biden or Democrats are doing a good job, because former President Trump or Republicans are no longer in power, or due to recent legislation or executive actions, while those who think the country is on the wrong track most frequently cite inflation, the economy, or spending and polarization or partisanship as the reason they feel that way.

Voting Attitudes

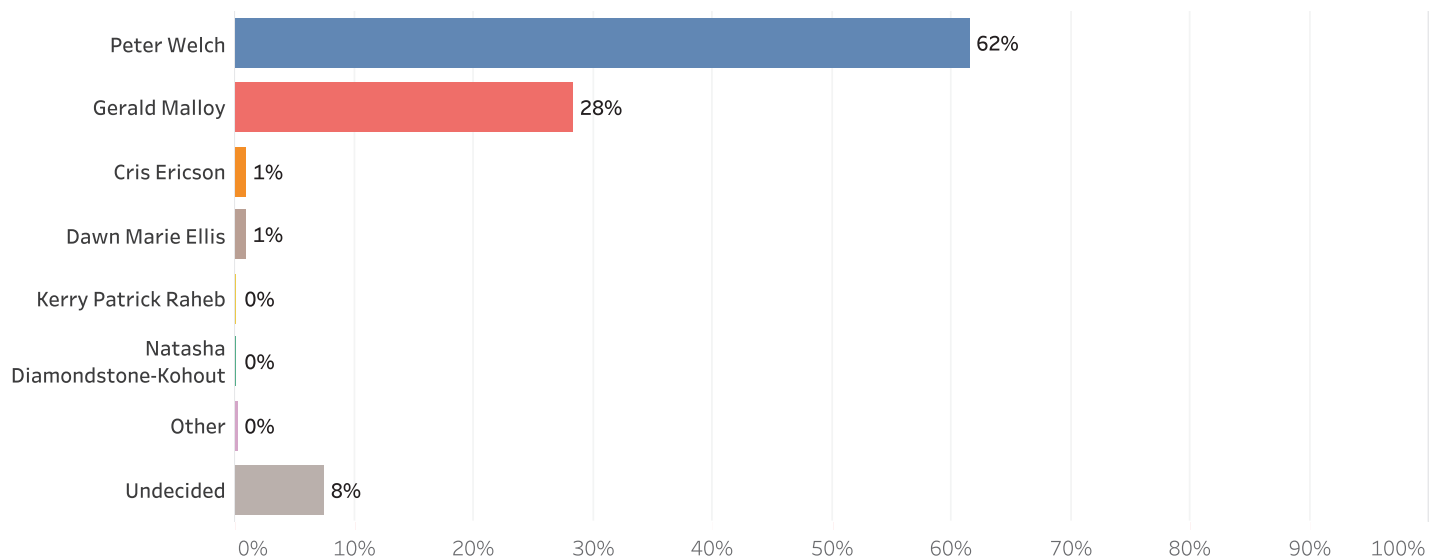
More than four in five Vermont residents say they are very interested in the 2022 general election and that they will definitely vote in it. However, historical trends indicate that far fewer will actually vote in November. A majority say they have been paying a lot of attention to the election and nine in ten say that they voted in the 2018 midterm election. Independents are less interested in the election, have been paying less attention, and say they are less likely to vote than Democrats and Republicans.

U.S. Senate Election

If the 2022 U.S. Senate general election in Vermont were being held today, 62% of likely voters would vote for Democratic nominee Peter Welch, 28% would vote for Republican nominee Gerald Malloy, 1% would vote for Independent Cris Ericson, 1% would vote for Independent Dawn Marie Ellis, less than 1% each would vote for Independent Kerry Patrick Raheb, Green Mountain nominee Natasha Diamondstone-Kohout, or for another candidate, and 8% are undecided.

Among self-identified Democrats, 93% plan to vote for Welch, while 83% of Republicans plan to vote for Malloy. Among Independents, 25% support Welch, 18% support Ericson, and 17% support Malloy.

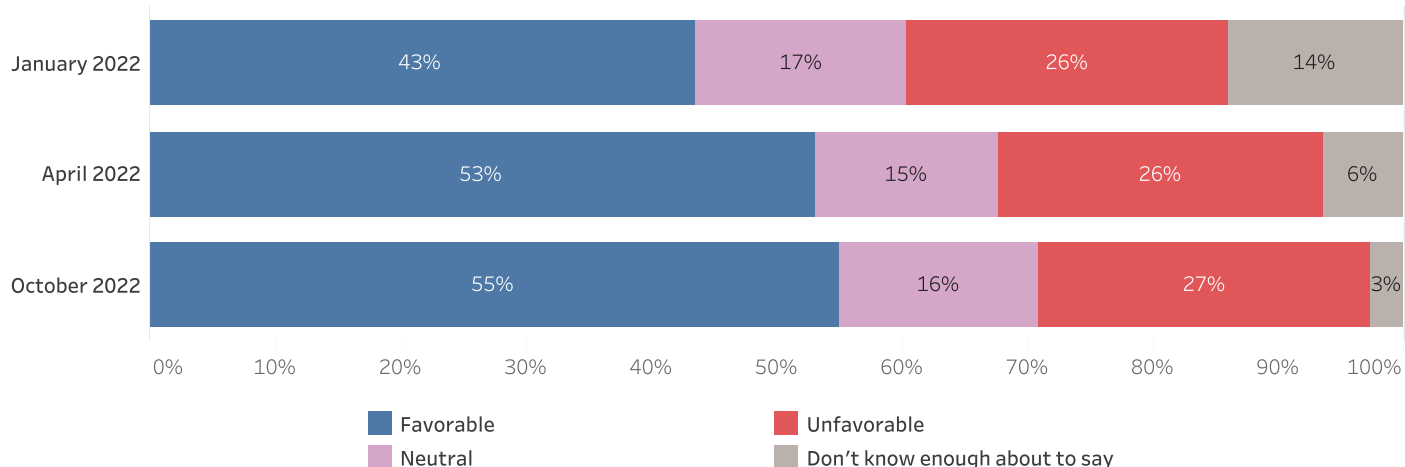
Figure 1: If the election for the U.S. Senate were held today, would you vote for...



Having served in Vermont's statewide House of Representatives District since 2007, Welch is popular and well-known in the state. Fifty-five percent of Vermonters have a favorable opinion of Welch, 16% have a neutral opinion of him, 27% have an unfavorable opinion of him, and only 3% don't know enough about him to have an opinion. Welch's net favorability rating (the percentage who have a favorable opinion of him minus the percentage who have an unfavorable opinion) is +28, largely unchanged since April (+27).

Welch is very popular among Democrats (+82) in the state but is somewhat unpopular among Independents (-26) and is very unpopular among Republicans (-62).

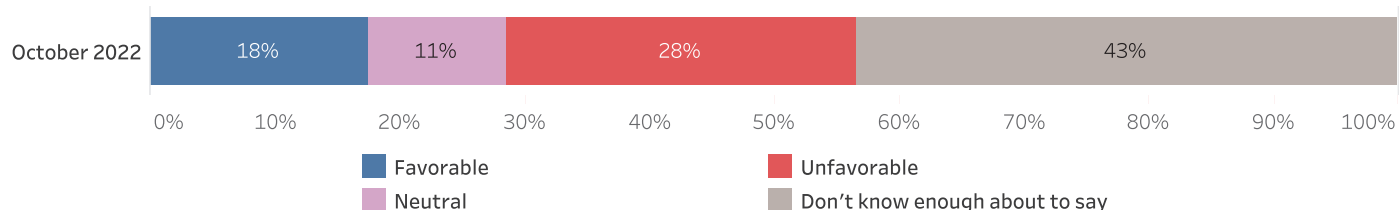
Figure 2: Below is a list of public figures in Vermont, some of whom are running for office in the 2022 General Election. Please indicate whether you have a favorable or unfavorable opinion of each of them or if you don't know enough about them to say - Peter Welch



In contrast with Welch, Malloy has not previously run for or served in elected office and remains not very well-known in Vermont. Eighteen percent of Vermonters have a favorable opinion of Malloy, 11% have a neutral opinion of him, 28% have an unfavorable opinion of him, and 43% don't know enough about him to have an opinion. Malloy's net favorability rating is -11.

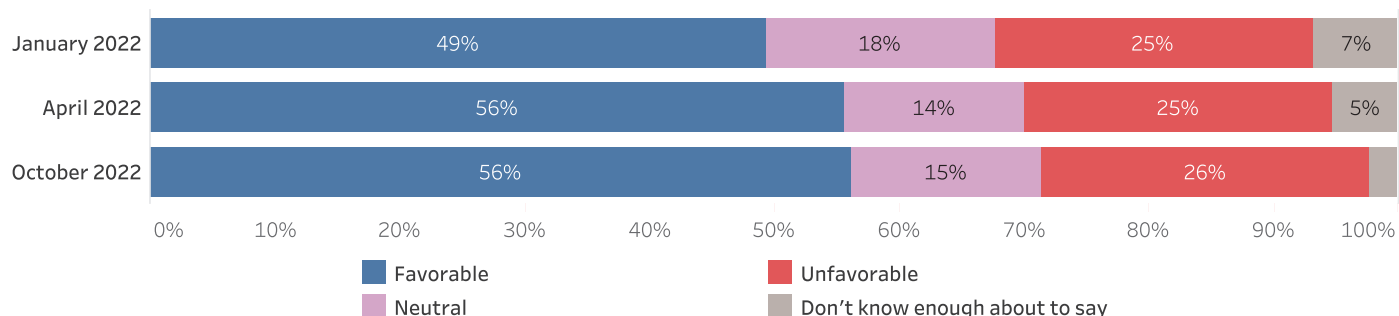
Malloy is popular among Republicans (+46) in the state but is somewhat unpopular among Independents (-21) and is unpopular among Democrats (-41). Nearly half of Democrats (49%) and Independents (49%) don't know enough about him to have an opinion.

Figure 3: Below is a list of public figures in Vermont, some of whom are running for office in the 2022 General Election. Please indicate whether you have a favorable or unfavorable opinion of each of them or if you don't know enough about them to say - Gerald Malloy



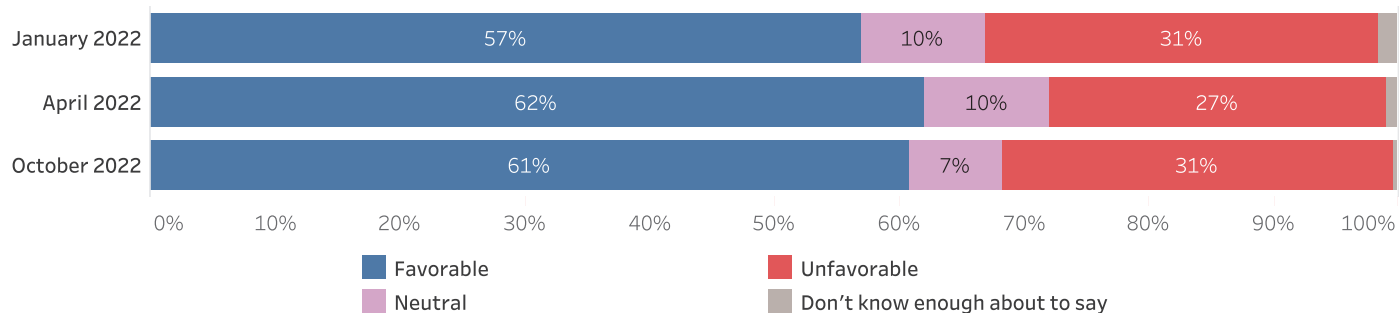
Having served in the U.S. Senate since 1975, outgoing Senator Patrick Leahy leaves office largely popular in Vermont. Fifty-six percent of Vermonters have a favorable opinion of Leahy, 15% have a neutral opinion of him, 26% have an unfavorable opinion of him, and only 2% don't know enough about him to have an opinion. Leahy's net favorability rating is +30. Leahy is very popular among Democrats (+80) in the state and is somewhat popular among Independents (+21) but is very unpopular among Republicans (-63).

Figure 4: Below is a list of public figures in Vermont, some of whom are running for office in the 2022 General Election. Please indicate whether you have a favorable or unfavorable opinion of each of them or if you don't know enough about them to say - Patrick Leahy



Vermont's other Senator, Bernie Sanders, remains popular in the state. Sixty-one percent of Vermonters have a favorable opinion of Sanders, 7% have a neutral opinion of him, 31% have an unfavorable opinion of him, and less than 1% don't know enough about him to have an opinion. Sanders' net favorability rating is +30. Sanders is very popular among Democrats (+88) in the state and is very unpopular among Republicans (-72) while Independents are divided in their opinion of him (-8).

Figure 5: Below is a list of public figures in Vermont, some of whom are running for office in the 2022 General Election. Please indicate whether you have a favorable or unfavorable opinion of each of them or if you don't know enough about them to say - Bernie Sanders





The Lesson of Trafalgar:

Superior strategy, innovative tactics, and bold leadership can prevail even over larger numbers and greater resources.


Vermont Statewide General Election Survey

Sept 2022

info@trf-grp.com

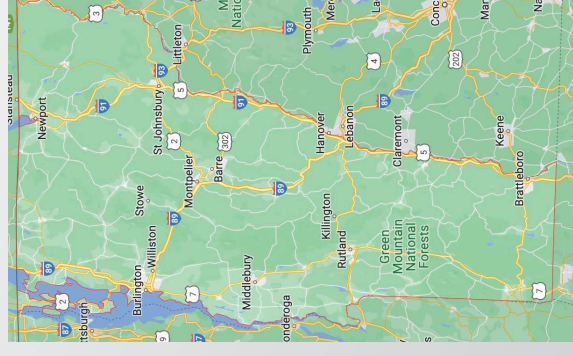
 The Trafalgar Group

thetrafalgargroup.org

 @trafalgar_group

VT Statewide Survey

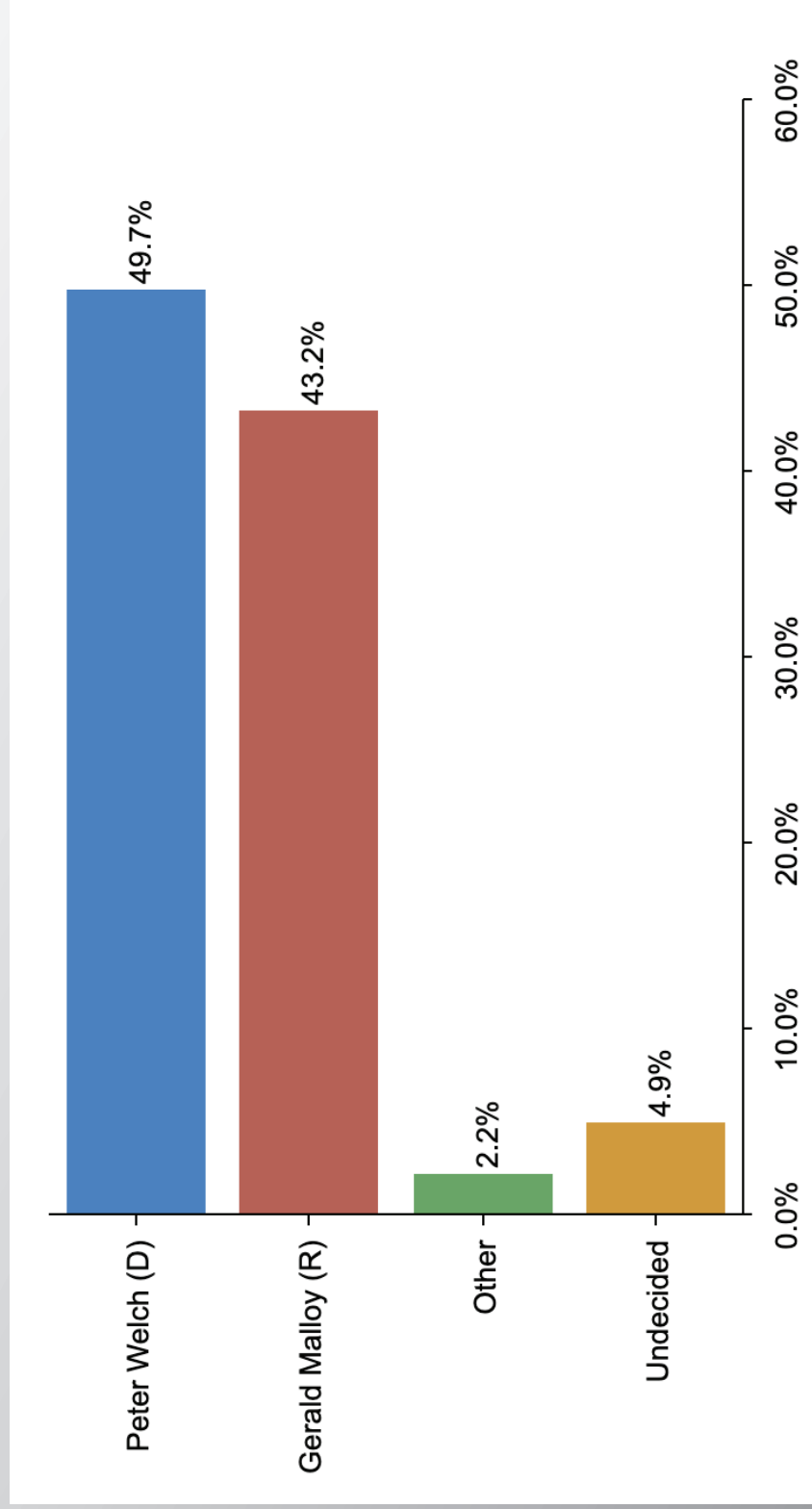
- **Conducted 09/03/22 - 09/07/22**
- **1072 Respondents**
- **Likely General Election Voters**
- **Response Rate: 1.43%**
- **Margin of Error: 2.9%**
- **Confidence: 95%**
- **Response Distribution: 50%**
- **Methodology: TheTrafalgarGroup.org/Polling-Methodology**



VT Senate Ballot



If the election for US Senate were today, for whom would you vote?



DATA FOR **PROGRESS**

From October 21 to 26, 2022, Data for Progress conducted a survey of 1,039 likely voters in Vermont using SMS and web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, geography, and voting history. The survey was conducted in English. The margin of error is ± 3 percentage points.

NB: subgroups with a n-size less than 50 (<50) are not shown on these cross-tabs. We choose not to display N<50 subgroups because the sample is too small to have statistical significance. We did, however, take samples of these subgroups for representational and weighting purposes to accurately reflect the electorate makeup. Some values may not add up to 100 due to rounding.

N=1,039 unless otherwise specified.

[1] If the **2022 election for U.S. Senator from Vermont** was held tomorrow, and these were the candidates, who would you vote for?

Response	Topline	Democrat	Independent / Third party	Republican	Female	Male	Under 45	45+	No College	College	Definitely will vote	I have already voted in this election
Democrat Peter Welch	63	97	63	9	67	58	64	62	51	79	58	79
Republican Gerald Malloy	32	1	27	90	28	36	27	34	42	16	36	20
Independent Mark Coester	0	0	1	0	0	1	1	0	0	1	0	0
Green Mountain Party candidate Natasha Diamondstone-Kohout	0	0	1	0	0	0	1	0	0	1	1	0
Independent Stephen Duke	0	0	0	0	0	0	0	0	0	0	0	0
Independent Dawn Marie Ellis	0	0	1	0	0	1	0	0	0	0	0	0
Independent Ms. Cris Ericson	0	0	0	0	0	0	1	0	0	0	0	0
Independent Kerry Patrick Raheb	0	0	1	0	1	0	0	0	0	0	1	0
Not sure	4	1	7	2	3	5	7	3	5	3	4	0
Weighted N	1,039	348	470	221	542	497	300	739	608	431	717	261

EXHIBIT 6

2022 General Election Federal Office Results (Official)

Use this table to view results for Federal offices. There are additional tabs at the bottom of this window to view tables for the Statewide, Senate, House, and County offices. By default, this table will display the statewide totals of all Federal offices. Use the filters to view one office at a time, or view votes by district or county. If you would like to see the town-by-town totals, you can click on the + before the candidate name to see where their votes came from, or view the "Town by Town" tab below.

OFFICE

REPRESENTATIVE TO CONGRESS

US SENATOR

HOUSE DISTRICT	(All)
SENATE DISTRICT	(All)
COUNTY	(All)

OFFICE/CANDIDATES	TOTAL VOTES CAST	% OF TOTAL VOTES CAST
US SENATOR		
PETER WELCH	196,575	67.33%
GERALD MALLOY	80,468	27.56%
BLANK VOTES	4,542	1.56%
DAWN MARIE ELLIS	2,752	0.94%
NATASHA DIAMONDSTONE-KOHOUT	1,574	0.54%
KERRY PATRICK RAHEB	1,532	0.52%
MARK COESTER	1,273	0.44%
STEPHEN DUKE	1,209	0.41%
MS. CRIS ERICSON	1,105	0.38%
OVERVOTES	313	0.11%
OTHER WRITE-IN	91	0.03%
CHRISTINA NOLAN	74	0.03%
MOLLY GRAY	26	0.01%
OTHERS	19	0.01%
BLANK	19	0.01%
JOHN KLAR	11	0.00%
CHRISTINE NOLAN	11	0.00%
PHIL SCOTT	10	0.00%
BERNIE SANDERS	8	0.00%
LELAND MORGAN	6	0.00%
JIM DOUGLAS	6	0.00%
BECCA BALINT	5	0.00%
ISAAC EVANS FRANZ	5	0.00%
JAMES DOUGLAS	5	0.00%
PATRICK LEAHY	5	0.00%
JOSH FERGUSON	4	0.00%
MYERS MERMEL	4	0.00%
DONALD TRUMP	4	0.00%
ISSAC EVANS-FRANZ	3	0.00%

ISAAC EVAN FRANTZ	3	0.00%
FICTIONAL	3	0.00%
LUKE TALBOT	3	0.00%
ISAAC EVANS FRANTZ	3	0.00%
ROBERT NORRIS	3	0.00%
TIM BRIGLIN	3	0.00%
JAY SHEPARD	3	0.00%
BRAD PEACOCK	3	0.00%
ISAAC EVANS-FRANTZ	3	0.00%
NO NAME	3	0.00%
KRISTEN CONNORS	2	0.00%
ISSAC EVANS-FRANTZ	2	0.00%
KESHA RAM	2	0.00%
JT DODGE	2	0.00%
ILLEGIBLE	2	0.00%
BLANK (2)	2	0.00%
STAN WILKINSON	2	0.00%
PAT LEAHY	2	0.00%
FICTIONAL CHARACTER	2	0.00%
STEPHEN BELLOW	2	0.00%
REED TUINNEREIM	2	0.00%
JULIA ANDREWS	2	0.00%
TERRENCE KING	2	0.00%
H. BROOKE PAIGE	2	0.00%
CHRIS HELALI	2	0.00%
KEISHA RAM	2	0.00%
SHAWN CORROW	2	0.00%
PHIL LEAHY	1	0.00%
BRENDA PAZVO	1	0.00%
CHRIS FELKER	1	0.00%
DEE GISH	1	0.00%
MADDEN	1	0.00%
CHRISTIAN NOLAN	1	0.00%
BROCK, RANDY	1	0.00%
JAMES OSBORN	1	0.00%
TREVOR CALLENS	1	0.00%
OVAL FILLED NO NAME	1	0.00%
TED COHEN	1	0.00%
RODNEY GRAHAM	1	0.00%
KERRY REHEB	1	0.00%
LLOYD DIKE	1	0.00%
TARA NEWHOOK	1	0.00%
PETER CALDWELL	1	0.00%
STEPHEN BAMEY	1	0.00%
RIKKI RISATTI	1	0.00%
ANDREW YANG	1	0.00%
DAVID ZUCKERMAN	1	0.00%

DAN MARCUM	1	0.00%
KAYNE WEST	1	0.00%
MIKE HACKETT	1	0.00%
EDWARD WUCIK	1	0.00%
GEORGE AIKEN	1	0.00%
KURT WRIGHT	1	0.00%
LIAM MULHOLLAND	1	0.00%
INFINITE CULCLEASURE	1	0.00%
SCOOTER HARDY	1	0.00%
ERIC PRINTZ	1	0.00%
SPOILED	1	0.00%
THOMAS DEE	1	0.00%
COLE NOTMAN-WILMERDING	1	0.00%
FRED TUTTLE	1	0.00%
LLEWELLYN POWELL	1	0.00%
JOHN REYNOLDS	1	0.00%
JOE HOUSTON	1	0.00%
TRIS COFFIN	1	0.00%
MICHAEL BLANCHARD	1	0.00%
CHERYL PRATT	1	0.00%
CHRISTINA KNOWLTON	1	0.00%
JOE GERVAIS	1	0.00%
JULIAN ASSANGE	1	0.00%
JACK WILLIAMS	1	0.00%
EVAN K HOFFMAN	1	0.00%
SARAH BUXTON	1	0.00%
SCOTT LANDRY	1	0.00%
MARK YOUNG	1	0.00%
JON ARRISON	1	0.00%
JAKE WOOD	1	0.00%
NICK	1	0.00%
TOM DEE	1	0.00%
CHRIS NOLAN	1	0.00%
SAMUEL DOUGLASS	1	0.00%
STEPHEN WHITAKER	1	0.00%
TRUMP	1	0.00%
OWEN SPRAGUE	1	0.00%
ANNA TYNIO	1	0.00%
JOHN DONALDSON	1	0.00%
BERNAND SCHMITT	1	0.00%
ROBERT MATZ III	1	0.00%
JOHN ROGERS	1	0.00%
ALAN WHITCOMB	1	0.00%
ROSS PEROT	1	0.00%
KURT KING	1	0.00%
JOSHUA LAVALLEE	1	0.00%
NIKKI THRAN	1	0.00%

CRAIG COLLINS	1	0.00%
HANK RORDEN	1	0.00%
BRENDA SIEGEL	1	0.00%
STEVE WEBSTER	1	0.00%
RON SUTTER	1	0.00%
INFINITE	1	0.00%
NEGRO DAMUS	1	0.00%
DOROM METCAY	1	0.00%
HANNAH DEMERS	1	0.00%
CARINA DRISCOLL	1	0.00%
JOSEPH BARRETT	1	0.00%
MATTHEW LIMA	1	0.00%
DANIEL HUDSON	1	0.00%
BAXTER DOTY	1	0.00%
RACHEL SMITH	1	0.00%
JOE N (ILLEGIBLE LAST NAME)	1	0.00%
JAHALA DUDLEY	1	0.00%
MARK GALLAGHER	1	0.00%
MATT SMITH	1	0.00%
RICHARD ROSS	1	0.00%
WYATT TUCKER	1	0.00%
SAMUEL TAYLOR	1	0.00%
DWAYNE TUCKER	1	0.00%
COLIN O'BRIEN-LUCAS	1	0.00%
ISAAC EVANS-FRANZ	1	0.00%
SARAH SCIORTINO	1	0.00%
MARK MAGNAN	1	0.00%
B LIPMAN	1	0.00%
JANE KATZ FIELD	1	0.00%
JASON HAMMEL	1	0.00%
BENSON WANG	1	0.00%
BLANK WRITE-IN	1	0.00%
GABRIELLE EMERSON	1	0.00%
ELLIE ROCHFORD	1	0.00%
KESHA RAM HINSDALE	1	0.00%
BRUCE HIGHLAND	1	0.00%
ANNE RADICE (EMELDA)	1	0.00%
GABRIEL FIRMAN	1	0.00%
MOLLY GARY	1	0.00%
BRUCE ROY	1	0.00%
RUSSELL NOEL	1	0.00%
TOM MYERS	1	0.00%
SCOTT GILLETTE	1	0.00%
LIAM MADDEN	1	0.00%
CHASE OLIVER	1	0.00%
SUSANNE YOUNG	1	0.00%
HOWARD DEAN	1	0.00%

JOSEPH IZZO	1	0.00%
KESHA RAM HINS DAL	1	0.00%
DAN BOLDUC	1	0.00%
WYLDER GLUCK	1	0.00%
SHAE WITZU	1	0.00%
DEXTER LAFAVOUR	1	0.00%
RUSTY DEWEES	1	0.00%
KEVIN HOYT	1	0.00%
DINA CAMPBELL	1	0.00%
BILL LEE	1	0.00%
BOB WEIR	1	0.00%
SUSAN WAGNER	1	0.00%
ROBERT BINDENT	1	0.00%
MALLOY	1	0.00%
JOHN CLERKIN	1	0.00%
WILLIAM GREER	1	0.00%
TOMMY CHANG	1	0.00%
EVAN SMITH	1	0.00%
GREGG COFFIN	1	0.00%
ERIKA LEVI	1	0.00%
MARK LEVINE	1	0.00%
CHRISTINA NOLIN	1	0.00%
JOHN KENNEDY	1	0.00%
JAMES LEVY	1	0.00%
TERRY WILLIAMS	1	0.00%
WILEY SEARLES	1	0.00%
STONE, DOUG	1	0.00%
RUARI CLACY	1	0.00%
RACHEL PUTNEY	1	0.00%
ALEX MORGAN	1	0.00%
ERIC VIOLA	1	0.00%
STEVE CHAGNON	1	0.00%
STEWART SKRILL	1	0.00%
LUCAS HERRING	1	0.00%
CELIA DALY	1	0.00%
KYLE FLEURY	1	0.00%
SARAH GEORGE	1	0.00%
POST MALONE	1	0.00%
DEBORAH LORNING	1	0.00%
STEVE COPPING	1	0.00%
DANIEL G COHEN	1	0.00%
AURIC GOLDFINGER	1	0.00%
ISAAC EVENS FRANTZ	1	0.00%
STEVE RADONIS	1	0.00%
MARTHA ABBOTT	1	0.00%
THERESA WOOD	1	0.00%
STEVIE	1	0.00%

BRIAN GILMARTIN	1	0.00%
JESSICA GARCIA	1	0.00%
BERNARD SANDERS	1	0.00%
PAUL MARCHANT	1	0.00%
JOSEPH CARBEE	1	0.00%
BAYLEY PALZER	1	0.00%
GREG DENNIS	1	0.00%
DAVID SMITH	1	0.00%
COREY HAMBLETT	1	0.00%
BRENT DOUGLASS	1	0.00%
JOHN HAMBLETT JR	1	0.00%
SATOSHI NAKAMOTO	1	0.00%
ERNESTO CENTO	1	0.00%
MARK BARNIER	1	0.00%
ELI RENKIN	1	0.00%
SARAH HANZAS	1	0.00%
BRIDGID GUTMACHER	1	0.00%
BENJAMIN ROBERTS	1	0.00%
MADISON WEST	1	0.00%
JACK ALEXANDER	1	0.00%
RASHAD CATCHINGS	1	0.00%
ERIC MORTENSON	1	0.00%
BRET PETERSON	1	0.00%
EMPTY	1	0.00%
REED SARGENT	1	0.00%
ERIC ZUESSE	1	0.00%
BRIAN DUBE	1	0.00%
UNIVERSAL BASIC INCOME	1	0.00%
CARL HAUSLER	1	0.00%
ANTA DYNASC	1	0.00%
CLAUDE CHEVALIER	1	0.00%
DON PRUDHOMMS	1	0.00%
KEITH MARINO	1	0.00%
ROBERT SCORELLI	1	0.00%
BARNEY HODGES JR.	1	0.00%
KYLE REXFORD	1	0.00%
CARLA JOHNSON	1	0.00%
MICHAEL ROBICHAUD	1	0.00%
MIKE SMITH	1	0.00%
CHRIS HAAH	1	0.00%
DOUG KORB	1	0.00%
HEATHER MCGRATH	1	0.00%
BOB HELM	1	0.00%
JOSHUA JAY	1	0.00%
VALERIE HICKEY	1	0.00%
JOHN TRACY	1	0.00%
KELLY MELEKIS	1	0.00%

PAT HANLEY	1	0.00%
TRAVIS GAY	1	0.00%
KENT CASELLA	1	0.00%
DANA COLSON	1	0.00%
DAVE JENKS	1	0.00%
JAMIE CARTER	1	0.00%
SIANAY CHASE CLIFFORD	1	0.00%
ALFREY WALSKEY	1	0.00%
NICOLE MCNABB	1	0.00%
VINCENT MCGEE	1	0.00%
CHARLES CALDWELL	1	0.00%
CHRIS BRAY	1	0.00%
LILAC BROWN	1	0.00%
REBECCA B.	1	0.00%
EMMA GOLDMAN	1	0.00%
TIMOTHY NEWARA	1	0.00%
KESHA HINSDALE RAM	1	0.00%
ROBERT MORGAN	1	0.00%
DUSTIN BRUSO	1	0.00%
JOHN WILSON	1	0.00%
VARPILAH CHASE	1	0.00%
BRAIN DUBIE	1	0.00%
ANNETTE LORRAINE	1	0.00%
JOSH ALLEN	1	0.00%
US SENATOR Sum	291,955	

Source: Vermont Secretary of State, Elections Division – 2022 General Election Detailed Results – Candidates (See <https://sos.vermont.gov/elections/election-info-resources/elections-results-data/> and <https://outside.vermont.gov/dept/sos/Elections%20Division/election%20info%20and%20resources/elections%20results%20and%20data/2022%20GE%20Candidate%20Vote%20Totals%20for%20Website.xlsx>)