



June 12, 2024

VIA E-MAIL

Wanda Brown, Assistant General Counsel
Christal Dennis, Paralegal
Federal Election Commission
Office of Complaints Examination and Legal Administration
1050 First Street, NE
Washington, DC 20463
Email: CELA@fec.gov

Re: MUR 8065

Dear Ms. Brown:

We write as counsel to Welch for Congress (the “House Committee”), Welch for Vermont,¹ and Ms. Julia Drost in her official capacity as Treasurer (collectively, the “Committees”) in response to the Complaint, Supplemental Complaint, and Second Supplemental Complaint (collectively, the “Complaints”) submitted by Cris Ericson in Matter Under Review 8065. The Complaints claim—with no factual basis—that Ms. Ericson was wrongly excluded from two candidate debates during the 2022 election cycle. On November 4, 2022, and December 16, 2022, Senator Welch filed responses to the Complaint.

Nearly a year and a half later, on March 29, 2024, the Office of General Counsel (“OGC”) sent notification of the Complaints to the House Committee. OGC’s decision to identify the House Committee as a respondent is contrary to the Commission’s regulations. The regulations require, among other things, that a complaint “clearly identify each person or entity who is alleged to have committed a violation.”² Upon receipt of such complaint, OGC must “notify each respondent that the complaint has been filed” within five business days.³

Here, the Complaints do not name the House Committee as a respondent. Nor are there any allegations in the Complaints directed at the House Committee. Because the Complaints in this matter do not allege any violations against the House Committee, the Commission should not have named the House Committee as a respondent in this MUR. And even if the complaints did identify

¹ Although the Commission noticed Welch for Congress (C00413179), Welch for Vermont (C00795252) also joins in this response to avoid any further improper notifications in this matter. Welch for Congress was Senator Welch’s authorized campaign committee for his *U.S. House* campaigns. In 2021, Welch for Vermont was established as the authorized campaign committee for Senator Welch’s 2022 U.S. Senate campaign. The relevant time period in the complaints relates to Senator Welch’s 2022 U.S. Senate campaign. Welch for Congress terminated on February 28, 2023, and Welch for Vermont continues to be the Senator’s authorized campaign committee.

² 11 C.F.R. § 111.4(d).

³ *Id.* § 111.5(a).

the House Committee as a respondent, the Commission's notification certainly does not comply with the five-day notification requirement set out in the regulations. Accordingly, the Commission must immediately rescind sending the Complaints and should take no further action as to the House Committee.

In any event, the Committees incorporate by reference Senator Welch's responses filed on November 4, 2022, and December 16, 2022, as their response in this matter.⁴ Those responses demonstrate that the Complaints' allegations lack any basis in law or fact. Accordingly, for the reasons outlined in Senator Welch's responses, the Commission should find no reason to believe that the Committees have committed any violation of the Act or Commission regulations and promptly close the file in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. M. Wilson', with a stylized flourish at the end.

Graham M. Wilson
Jonathan A. Peterson
Dylon D. Busser
Counsel to Welch for Congress and Welch for Vermont

⁴ See Attachments A and B.

ATTACHMENT A



November 4, 2022

VIA E-MAIL

Roy Q. Luckett, 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. Luckett:

We write as counsel to Congressman Peter Welch (“*Respondent*” or “*Congressman Welch*”), in response to the complaint filed by Cris Ericson in MUR 8065 (the “*Complaint*”).¹ The Complaint claims that Ms. Ericson was wrongly excluded from a debate hosted by VTDigger and sponsored by the Necrason Group.² As it pertains to Congressman Welch, the Complaint’s sole allegation against him is that he “acted seriously and willfully and intentionally in conjunction with [VTDigger and Necrason Group].”³ The Complaint, however, fails to provide any support for these claims. Because the Complaint 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 VTDigger 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 is a frivolous complaint, exactly like the similar complaint that Ms. Ericson previously lodged with the Commission,⁴ and it should be dismissed immediately.

¹ Although the Office of General Counsel notified Respondent of Ms. Ericson’s supplemental complaint in MUR 8065, the supplement does not allege any wrongdoing by Respondent. Thus, it should be dismissed as to Respondent.

² Compl. at 1 (Sept. 12, 2022).

³ *Id.*

⁴ See FEC MUR 7619, Enforcement Priority System Dismissal Report (Jul. 31, 2019) https://www.fec.gov/files/legal/murs/7619/7619_09.pdf.

FACTUAL BACKGROUND

Congressman Welch is a candidate for U.S. Senate in Vermont.⁵ On September 8, 2022, he participated in a candidate debate hosted by VTDigger (the “*Debate*”).⁶ VTDigger is a project of The Vermont Journalism Trust, a 501(c)(3) nonprofit organization.⁷ Respondent does not own or control VTDigger and there is no allegation that VTDigger is owned or controlled by any candidate, political party, or political committee. Prior to the Debate, neither Respondent nor his agents communicated with VTDigger about what the criteria should be for selecting candidates to participate in the debate in question. 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 VTDigger had a number of pre-established objective criteria which it 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.⁸

LEGAL DISCUSSION

The Complaint alleges that Respondent violated the Act by conspiring with VTDigger to exclude Ms. Ericson from the Debate. The Complaint speculates that Respondent “acted seriously and willfully and intentionally in conjunction with [VTDigger and Necrason Group].”⁹ The Complaint provides no facts to support this claim. 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 VTDigger 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.”¹⁰ In response to the complaint, VTDigger included a sworn affidavit from its managing editor, Paul Heintz, in which he provides the organization’s debate policy and candidate

⁵ Peter Welch, FEC Form 2: Statement of Candidacy (March 11, 2022), <https://docquery.fec.gov/cgi-bin/forms/S2VT00235/1573396/>.

⁶ See VTD Editor, VTDigger launches general election debates with US Senate event in Manchester on Sept. 8, VTDigger (Aug. 22, 2022), <https://vtdigger.org/2022/08/22/vtdigger-launches-general-election-debates-with-us-senate-event-in-manchester-on-sept-8/>.

⁷ VTDigger, <https://vtdigger.org/about-vtdigger-2/> (last visited Oct. 29, 2022).

⁸ See VTDigger Response to MUR 8065, Declaration of Paul Heintz at 1-2.

⁹ Compl. at 1.

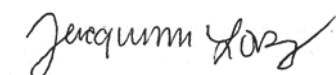
¹⁰ 11 CFR §§ 110.13(a), (c). While the regulations do not define “objective criteria,” the Commission has previously stated that it includes the “percentage of votes by a candidate received in a previous election; the level of campaign activity by the candidate; his or her fundraising ability and/or 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).

selection criteria.¹¹ Heintz attests that VTDigger determined that Ms. Ericson did not qualify to participate because “over the course of approximately 20 years running for numerous statewide offices, Ericson had not succeeded at garnering public support, raising enough money to run a competitive campaign, operating a statewide campaign, securing public office, or holding a leadership position in the public or private sector.”¹² There is nothing in the Complaint that refutes Heintz’s sworn declaration or indicates that VTDigger did not follow its pre-established 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, VTDigger’s activities were also subject to the “media exemption.”¹³

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.

Very truly yours,



Jacqueline Lopez
Jonathan Peterson
Dylon Busser
Counsel to Respondent

¹¹ According to the declaration, the organization considered a number of factors in determining candidate selection for debates: 1) filing status with the Commission; 2) past or present leadership in the public or private sector; 3) major party status; 4) past performance in political campaigns; 5) public polling; and 6) fundraising and other indications of support such as public sentiment or demonstrated reach and appeal to the electorate. VTDigger Response to MUR 8065, Declaration of Paul Heintz at 1-2.

¹² *Id.* at 2.

¹³ 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.

ATTACHMENT B



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.

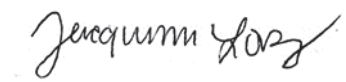
⁵ 11 CFR §§ 110.13(a), (c). While the regulations do not define "objective criteria," the Commission has previously stated that it includes the "percentage of votes by a candidate received in a previous election; the level of campaign activity by the candidate; his or her fundraising ability and/or standing 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", with a stylized flourish 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

www.wcax.com
30 Joy Drive
South Burlington, VT 05403
Em: garrity@wcax.com
Ph: 802-652-6370