



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

March 3, 2025

VIA ELECTRONIC MAIL

fstrigari@zhflaw.com

Frank M. Strigari, Esquire
Zaino Hall & Farrin LLC
41 S. High Street, Suite 3600
Columbus, OH 43215

RE: MUR 8065
VTDigger, *et al.*

Dear Mr. Datwyler:

On May 30, 2024, the Federal Election Commission notified your client, Gerald Malloy for US Senate, Limited (the "Committee,") and Thomas Datwyler in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to the Committee at that time.

Upon further review of the allegations contained in the complaint, and information supplied in response, the Commission, on January 28, 2025, voted to dismiss this matter and close the file effective March 3, 2025. The General Counsel's Report, which more fully explains the Commission's decision, is enclosed for your information.

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

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Wanda D. Brown

BY: Wanda D. Brown
Assistant General Counsel

Enclosure
General Counsel's Report

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM

DISMISSAL REPORT

MUR 8065

Respondents: VTDigger
 Necrason Group, PLLC
 Peter Welch
 Welch for Vermont and Julia Drost in
 her official capacity as treasurer
 Gerald Malloy
 Gerald Malloy for US Senate, Limited
 and Thomas Datwyler in his official
 capacity as treasurer
 Vermont Public Co.
 Public Broadcasting Service
 WCAX-TV
 [REDACTED]

Complaint Receipt Dates: Sept. 14, 2022; Sept. 26, 2022 (Supp. Compl.);
 Oct. 5, 2022 (Supp. Compl.); Nov. 2, 2022 (Supp. Compl.)

Last Response Date: June 13, 2024

[REDACTED]

**Alleged Statutory/
 Regulatory Violations:** 52 U.S.C. §§ 30116(a)(1)(A), 30118(a)
 11 C.F.R. §§ 110.1(b)(1), 110.13(a)(2), (b), (c), 114.2, 114.4(f)

The Complaint alleges that the Complainant, Cris Ericson, a 2022 independent candidate for U.S. Senate in Vermont, was wrongfully excluded from three general election debates between Peter Welch, the Democratic Party candidate, and Gerald Malloy, the Republican Party candidate, hosted by VTDigger, Vermont Public Co., and WCAX-TV (“WCAX”), resulting in prohibited in-kind corporate contributions from those Respondents to Welch and Malloy, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹

¹ Compl. at 1 (Sept. 14, 2022); First Supp. Compl. at 1 (Sept. 26, 2022); Third Supp. Compl. at 1 (Nov. 2, 2022). Ericson received 1,105 or 0.4% of the total votes cast in the general election. Cris Ericson, BALLOTPEDIA, https://ballotpedia.org/Cris_Ericson (last visited Dec. 12, 2024).

1 Respondents deny the allegations. The staging organizations all contend that they used pre-
 2 established, objective criteria and that Ericson did not satisfy the selection criteria.² WCAX further
 3 argues that its activities are protected under the press exemption.³ Necrason Group, PLLC which is
 4 alleged to have staged the debate with VTDigger, responds that it only sponsored the debate and
 5 had no input regarding the candidate selection process.⁴ The Public Broadcasting Service responds
 6 that it had no role in staging the debate with Vermont Public.⁵ Malloy states that he was not
 7 involved in the decision to exclude Ericson.⁶ Welch submitted a Response, in which his principal
 8 campaign committee Welch for Vermont and Julia Drost in her official capacity as treasurer (the
 9 “Welch Committee”) later joined,⁷ stating that he was not involved in the decision to exclude
 10 Ericson.⁸

11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]

² VTDigger Resp. at 3 (Oct. 5, 2022); Vermont Public Co. Resp. at 1 (Mar. 22, 2024); WCAX Resp. at 10-12 (Mar. 21, 2024).

³ WCAX Resp. at 8-10.

⁴ Necrason Group, PLLC Resp. at 4 (Oct. 5, 2022).

⁵ Public Broadcasting Service Resp. at 1 (Mar. 5, 2024).

⁶ Malloy Resp. at 2 (Sept. 30, 2022).

⁷ Welch for Vermont Resp. at 1 (June 13, 2024).

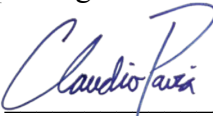
⁸ Welch Resp. at 2 (Dec. 16, 2022).

1 [REDACTED]
 2 [REDACTED]

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating, we recommend that the Commission dismiss the Complaint, consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources.¹¹ We also recommend that the Commission close the file effective 30 days from the date the certification of this vote is signed (or on the next business day after the 30th day, if the 30th day falls on a weekend or holiday) and send the appropriate letters.

December 20, 2024

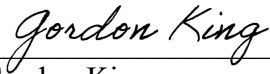
Date

Lisa J. Stevenson
Acting General Counsel
BY: 

Claudio J. Pavia
Deputy Associate General Counsel



Wanda D. Brown
Assistant General Counsel



Gordon King
Attorney

¹¹ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).