



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Evan Muhlstein, Chairman
America Progress Now
3317 S Highly Rd, Suite 114-205
Gilbert, AZ 85297

RE: MUR 7643
America Progress Now

Dear Mr. Muhlstein:

On April 1, 2020, the Federal Election Commission (“Commission”) notified America Progress Now of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission regulations. A copy of the complaint was forwarded to you at that time. On June 23, 2020, based upon the information contained in the complaint and information provided by respondents, the Commission voted to dismiss allegations that America Progress Now, and you, violated provisions of the Act and Commission regulations, pursuant to the Commission’s prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Accordingly, the Commission closed its file in this matter on June 23, 2020.

The Commission encourages you to review the enclosed Factual and Legal Analysis, which sets forth the statutory and regulatory provisions considered by the Commission in this matter. In particular, the Commission reminds you, pursuant to 52 U.S.C. § 30120(a) concerning the inclusion of required disclaimers on Facebook ads, and 52 U.S.C. § 30104(c) and (g), reporting independent expenditures, to take steps to ensure that your conduct is in compliance with the Act and Commission regulations. For further information on the Act, please refer to the Commission’s website at www.fec.gov or contact the Commission’s Public Information Division at (202) 694-1100

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

A handwritten signature in blue ink, appearing to read "Jeff S. Jordan".

BY: Jeff S. Jordan
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: America Progress Now
4 Evan Muhlstein

MUR: 7643

5 The Complaint alleges that unknown persons operating a Facebook page called America
6 Progress Now (“APN”) violated the Federal Election Campaign Act of 1971, as amended (the
7 “Act”), by failing to disclose independent expenditures and failing to include required
8 disclaimers on Facebook ads.¹ The Complaint alleges that APN has not reported any
9 independent expenditures, and questions whether an organization by that name exists.²

10 Evan Muhlstein responded on behalf of APN, and stated that he set up the APN Facebook
11 page and placed the ads to advocate for candidates he supported.³ Muhlstein states that any
12 errors were due to his inexperience, the amounts spent were small, and he intends to take
13 remedial action.⁴

14 The amount spent appears to have been between \$2,400 and \$8,000 and the Respondents
15 have indicated that they will take any necessary remedial action. Therefore, the Commission

¹ Compl. at 1-4 (September 12, 2019); *see also* America Progress Now, FACEBOOK, <https://www.facebook.com/AmericaProgressNow/>, and America Progress Now, Facebook Ad Library, FACEBOOK, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=751228941880577 (“America Progress Now, Facebook Ad Library”).

² Compl. at 1-2, 5, 7, 9-10.

³ Resp. at 1 (April 15, 2020). Although the Complaint was filed against unknown persons, the Office of General Counsel located an entity in Arizona named America Progress Now and notified it of the Complaint. Muhlstein filed a response on behalf of APN. *Id.*

⁴ *Id.*

1 exercises its prosecutorial discretion and dismisses the allegations that America Progress Now
2 and Evan Muhlstein violated 52 U.S.C. §§ 30120(a); 30104(c), and (g).

3 The Complaint states that on October 15, 2018, approximately three weeks before the
4 2018 midterm elections, a Facebook page labeled America Progress Now was created.⁵
5 According to the Complaint, that page ran ads expressly advocating for federal candidates in five
6 U.S. Senate or House races in Michigan, Missouri, Illinois, Iowa, and Ohio; the ads reached
7 hundreds of thousands of Facebook users; and the ads stopped running a week after Election
8 Day.⁶ A selection of the ads is shown below:⁷

⁵ Compl. at 1, 3.

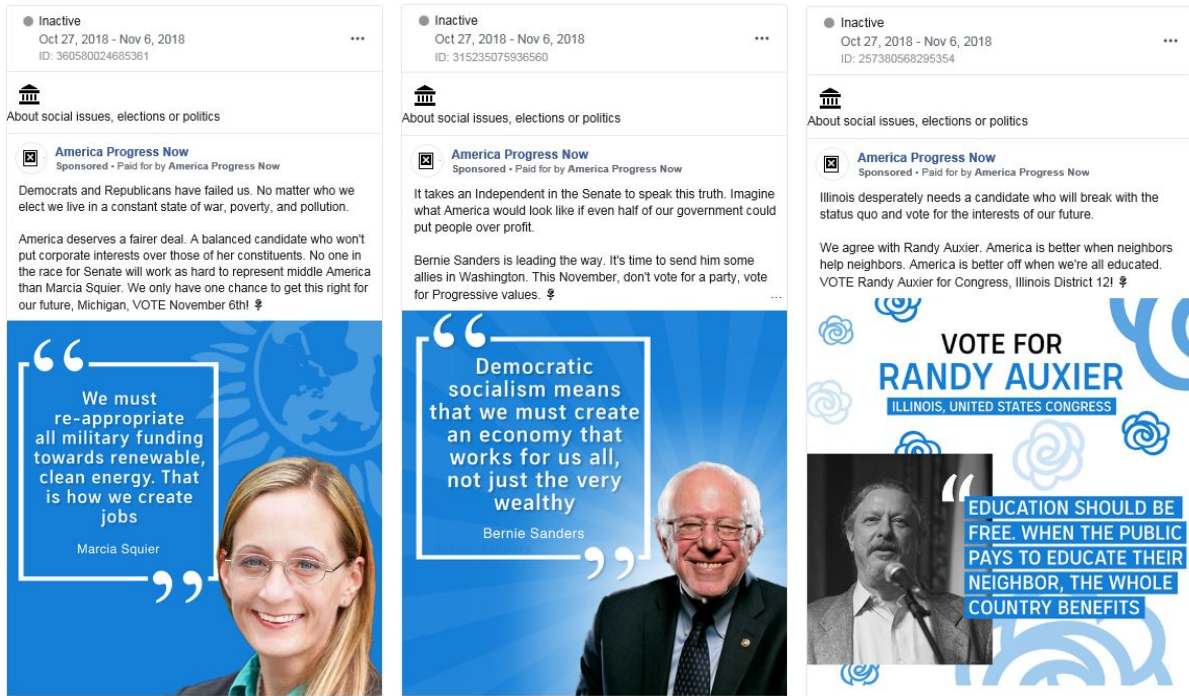
⁶ *Id.* at 1-4. Detailed Facebook ad data show that the number of times the ads at issue were seen fell in a range between 81,000 and 377,000. *See* America Progress Now, Facebook Ad Library. The following federal Green Party candidates were named and depicted in the APN ads: Marcia Squier (2018 Michigan Senate candidate), Jo Crain (2018 Missouri Senate candidate), Joe Manchik (2018 candidate for Ohio's 12th Congressional District), Randy Auxier (2018 candidate for Illinois's 12th Congressional District), and Paul Knupp (2018 candidate for Iowa's 3rd Congressional District). Compl. at 3-6. Some APN ads also named and depicted Senator Bernie Sanders, who was running for re-election to the Senate in the 2018 election as an Independent. *Id.* at 5-6. All candidates except Sanders were Green Party candidates, and all except Sanders lost in their respective general elections.

⁷ Facebook promotes Location Targeting for ads placed on Facebook, encouraging advertisers to “[r]each people based on locations such as country, region or city.” *See* <https://www.facebook.com/business/help/202297959811696?id=176276233019487>. The ads for Squier, Crain, Manchik, Auxier, and Knupp targeted either primarily or only the candidates' respective states, however the ads for Sanders targeted multiple states. Compl. at 5-6. *See also* America Progress Now, Facebook Ad Library.

MUR 7643 (America Progress Now)

Factual and Legal Analysis

Page 3 of 5



1

2 The Complaint states that each ad included the disclaimer “Paid for by America Progress

3 Now,” but alleges that no entity named America Progress Now exists in any form other than the

4 Facebook page.⁸ None of APN’s Facebook ads referenced in the Complaint or included in the

5 Facebook Ad Library contain disclaimers within the ads’ text fields or images, although it

6 appears that all of these Facebook ads were accompanied by Facebook-generated labels

7 indicating that the ads were “Sponsored” and “Paid for by America Progress Now.”⁹ None of

8 the Facebook-generated labels disclose the payor’s permanent street address, telephone number,

⁸ Compl. at 1-2, 7. The Complaint cites a news report that there was no record of APN at the address in the Bronx, NY, that was previously listed on APN’s Facebook page, and that after reporters spoke to the landlord of the listed Bronx address and reached out to APN, the Bronx address was removed from the Facebook page. Compl. at 7. The Office of General Counsel’s review of a corporate registrations database identified a nonprofit organization in Arizona called America Progress Now, and the Office of General Counsel notified it of the Complaint. See Arizona Corporation Commission Entity Information, available at <https://ecorp.azcc.gov/BusinessSearch/BusinessInfo?entityNumber=1873283>; see also APN, Articles of Incorporation, available at <https://ecorp.azcc.gov/CommonHelper/GetFilingDocuments?barcode=18070120287129>. APN filed a response admitting that it was responsible for the Facebook page and ads at issue. Resp. at 1.

⁹ Compl. at 3-6.

1 or website address, or state whether the communication is authorized by any candidate or
2 candidate's committee.¹⁰

3 The Complaint also cites a news report that the APN ads had falsely attributed quotes to
4 the federal candidates they were supporting.¹¹ According to this article, candidate Auxier stated
5 "I did not say or write the text that is with my picture, although I do agree with the content, for
6 the most part,"¹² and candidate Squier wrote in a comment on APN's Facebook page "This site
7 is NOT authorized to make up quotes I never said or run ads on my behalf," and "Cease and
8 desist NOW!"¹³

9 The Complaint alleges that the ads did not provide sufficient disclaimer information, and
10 thus that APN violated 52 U.S.C. § 30120(a)(3).¹⁴ The Complaint also alleges that because APN
11 did not file reports of independent expenditures, APN violated 52 U.S.C. § 30104(c).¹⁵

12 Muhlstein, responding on behalf of APN, stated that he set up the APN Facebook page
13 and placed the ads to advocate for candidates he supported.¹⁶ Muhlstein states that he was
14 unfamiliar with proper procedures for disclosure when he placed the ads, and that any errors

¹⁰ *Id.* See also America Progress Now, Facebook Ad Library.

¹¹ Compl. at 6-7, citing Jeremy Merrill and William Turton, *A Mysterious Facebook Group Is Using Bernie Sanders' Image to Urge Democrats to Vote for the Green Party*, ProPublica and VICE News (Nov. 5, 2018), <https://www.propublica.org/article/a-mysterious-facebook-group-is-using-bernie-sanders-image-to-urge-democrats-to-vote-for-the-green-party>.

¹² *Id.*

¹³ *Id.* See also America Progress Now, FACEBOOK, October 18, 2018 at 7:21 PM, available at <https://www.facebook.com/AmericaProgressNow/posts/752920488378089>.

¹⁴ Compl. at 1, 9-10. See also 11 C.F.R. § 110.11(b)(3).

¹⁵ Compl. at 1, 9. See also 11 C.F.R. § 109.10.

¹⁶ Resp. at 1.

1 were oversights due to inexperience with the political process.¹⁷ The Response states the total
2 amount spent supporting the candidates was \$2,467.54.¹⁸ According to the Facebook ad library,
3 the total amount spent on all APN ads of any kind was \$7,665.¹⁹ A review of that ad library
4 reveals that APN's ads were a mixture of express advocacy and issue advocacy.²⁰

5 The Response argues that APN's ads qualify for the "small items" exception to the
6 disclaimer requirement.²¹ Muhlstein also notes "the apparent obstacles and unknowns of
7 participating in the election process in this manner," and said it was "highly unlikely" he would
8 "participate in it again" and that he intends to work with the Commission to correct the errors as
9 quickly as possible.²²

10 In light of the response and the particular circumstances of the matter, including the
11 amounts at issue and Respondents' statement that they will take remedial actions, the
12 Commission exercises its prosecutorial discretion pursuant to *Heckler v. Chaney* and dismisses
13 the allegations that APN and Evan Muhlstein violated 52 U.S.C. §§ 30120(a), 30104(c) and (g) by
14 failing to include required disclaimers on Facebook ads and failing to report the ads as
15 independent expenditures.²³

¹⁷ *Id.*

¹⁸ *Id.* at 1-2. The Response specified the candidates supported and amounts spent: Jo Crain, Missouri Senate candidate: \$610 total; Marcia Squier, Michigan Senate candidate: \$317.54 total; Joe Manchik, Ohio 12th District candidate: \$920 total; Randy Auxier, Illinois 12th District candidate: \$310, and Paul Knupp, Iowa 3rd District candidate: \$310.

¹⁹ *See* America Progress Now, Facebook Ad Library.

²⁰ *Id.*

²¹ *Id.* at 2.

²² *Id.*

²³ 470 U.S. 821 (1985).