

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR 7770

DATE COMPLAINT FILED: Aug. 4, 2020

DATE OF NOTIFICATION: Aug. 7, 2020

LAST RESPONSE RECEIVED: Sept. 21, 2020

DATE ACTIVATED: Dec. 4, 2020

EXPIRATION OF SOL:

Oct. 30, 2024–July 26, 2025

ELECTION CYCLE: 2020**COMPLAINANT:**

Monica Brinson

RESPONDENTS:

Singh for Senate and Elizabeth Curtis

in her official capacity as treasurer

Hirsh Singh

Shore News Network

Phil Stilton

Recall Murphy/Conservative NJ

**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30101(9)(B)(i)

52 U.S.C. § 30102

52 U.S.C. § 30103

52 U.S.C. § 30104

52 U.S.C. § 30116(a)

52 U.S.C. § 30120

11 C.F.R. § 100.52

11 C.F.R. § 100.73

11 C.F.R. § 100.132

11 C.F.R. § 109.20

11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Hirsh Singh, a candidate for U.S. Senate in New Jersey in 2020, and Singh for Senate and Elizabeth Curtis in her official capacity as treasurer (the “Singh

Committee”), paid Shore News Network (“SNN”), an independent for-profit news network, and its founder and editor Phil Stilton to publish purported news articles and a video in support of Singh and in opposition to Singh’s primary election opponent, Rikin Mehta, without proper disclaimers in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint also alleges that by doing so SNN provided a forum for the Singh Committee to criticize Mehta. The Complaint further alleges that the Singh Committee coordinated with SNN to send messages on social media to SNN followers defaming Mehta, and that SNN and a Facebook group operated by SNN, named Recall Murphy/Conservative NJ, was operating as an unregistered political committee. Respondents deny that SNN was paid to publish news articles in favor of Singh, or that SNN coordinated with the Singh Committee. Instead, SNN contends that its coverage permissibly reflects its conservative ideology. For the reasons set forth below, we recommend that the Commission dismiss the allegations and close the file.

II. FACTUAL BACKGROUND

Hirsh Singh was a 2020 candidate for U.S. Senate in New Jersey and Singh for Senate was his authorized committee.¹ SNN is a for-profit news organization founded in 2008 by Stilton and edited by him since that time.² SNN maintains a website,

¹ Hirsh Singh Statement of Candidacy (Apr. 25, 2019); Singh for Senate Amended Statement of Org. (Oct. 5, 2019). Singh lost the Republican primary election on July 7, 2020 to Rikin Mehta. Singh subsequently declared his candidacy for Governor of New Jersey on November 7, 2020. Hirsh Singh, Certificate of Organization and Designation of Campaign Treasurer and Depository, New Jersey Election Law Enforcement Commission (Oct. 6, 2020), <https://www.elec.nj.gov/ELECRpt/Redirector.aspx?did=374C42>.

² SNN’s website profile of Stilton is <https://www.shorenewsnetwork.com/author/pstilton> (last visited Mar. 24, 2021), and Phil Stilton’s LinkedIn Profile is <https://www.linkedin.com/in/pstilton> (last visited Mar. 24, 2021).

www.shorenewsnetwork.com, and it creates and maintains several Facebook groups, one of which was formerly named Recall Murphy and is now named Conservative NJ.³

The Complaint alleges that, between October 2019 and July 2020, SNN posted a series of articles on its website favorable to Singh and critical of Mehta; the Complaint contends that these articles are false and libelous.⁴ The Complaint further alleges that the Singh Committee paid SNN to write and publish these articles, which it states are actually “campaign commercials purporting to be objective news without a disclaimer.”⁵ In support, the Complaint cites \$5,000 in payments from the Singh Committee to JTown Magazine, which the Complaint alleges is a subsidiary of SNN.⁶

The Complaint further alleges that the Singh Committee’s paid campaign manager, Joseph Rullo, was featured in a video published by SNN in which Rullo promotes Singh and criticizes Mehta and which lacked a required disclaimer.⁷ The video is 37 minutes long and

³ Stilton and SNN Resp. at 2 (Aug. 24, 2020).

⁴ Compl. at 2-3 (Aug. 4, 2020).

⁵ *Id.*

⁶ *Id.* at 3-4; *see also* Singh for Senate 2019 October Quarterly Report at 45 (disclosing two \$1,000 disbursements to JTown Magazine on July 5 and September 3, 2019) (Oct. 15, 2019); Singh for Senate 2019 Year-End Report at 62-63 (Jan. 31, 2020) (disclosing three \$1,000 disbursements to JTown Magazine on Oct. 22, Nov. 4, and Dec. 12, 2019).

⁷ Compl. at 3 (citing *Straight Talk with Joe Rullo: Rick Mehta, Hid Staffer Who Got Kicked Out of College for N-Word Viral Video*, SHORE NEWS NETWORK, (June 3, 2020), <https://web.archive.org/web/20201125194353/https://www.shorenewsnetwork.com/2020/06/03/straight-talk-with-joe-rullo-rick-mehta-hid-staffer-who-got-kicked-out-of-college-for-n-word-viral-video> (“Rullo Video”)) (last visited Mar. 24, 2021). The Complaint specifically alleges a disclaimer violation in connection with SNN’s “articles” and lists the video among the articles. *Id.* After the Complaint was filed, SNN launched several affiliated websites (News Break, Not Exactly News, and the Zerg Report) in addition to maintaining the SNN website, although much of the content from the SNN website, including the Rullo Video, has migrated over to the News Break website, <https://www.newsbreak.com/news/1578300379663/straight-talk-with-joe-rullo-rick-mehta-hid-staffer-who-got-kicked-out-of-college-for-n-word-viral-video> (last visited: Mar. 24, 2021).

includes Rullo expressly advocating for Singh and against Mehta without disclosing Rullo's role with the Singh campaign.⁸ At the end of the video, Rullo solicits contributions for Singh and asks for campaign volunteers.⁹ Disclosure reports reflect that the Singh Committee reported paying Rullo \$11,000 between July 9, 2019 and June 1, 2020 for "strategic management services."¹⁰ The Complaint also alleges that by publishing the articles and the video, SNN provided a forum for the Singh Committee to criticize Mehta.¹¹

In addition, the Complaint alleges that the Singh Committee coordinated with SNN to send messages on social media to SNN followers defaming Mehta.¹² As support, the Complaint attached social media messages and comments from four separate individuals, which contained comments critical of Mehta, one of which includes a link to a SNN article.¹³ Lastly, the Complaint generally alleges that SNN and Recall Murphy/Conservative NJ operated as an unregistered political committee.¹⁴

⁸ *Id.*

⁹ *See* Rullo Video.

¹⁰ Singh for Senate 2019 October Quarterly Report at 55-56 (Oct. 15, 2019); Singh for Senate 2019 Year-End Report at 76 (Jan. 31, 2020); Singh for Senate 2020 April Quarterly at 97 (Apr. 15, 2020); Singh for Senate 2020 Pre-Primary Report at 297 (June 25, 2020). Rullo's exact position on the Committee is unclear, but publicly available sources indicate that Rullo was heavily involved in the Singh campaign. *See* Steven Kush, *US SENATE: Singh Won Ocean. Does This Mean We're Done With The 'System Is Rigged GOP Establishment' Garbage?*, BOB & STEVE SHOW, (Mar. 6, 2020), <https://www.bobandsteve.com/?offset=1589887800338&tag=Tricia+Flanagan> (quoting Singh stating that "the Singh for Senate campaign Ocean County effort was led by Joe Rullo").

¹¹ Compl. at 1, 3.

¹² *Id.*

¹³ Compl. Ex. A at unnumbered 1-4.

¹⁴ Compl. at 1, 3.

Stilton responded on behalf of himself and SNN, stating that the SNN articles the Complaint addresses reflect the conservative ideals of the SSN newspaper and that all of the articles were true and based on legitimate sources.¹⁵ Stilton further states that the \$5,000 the Singh Committee paid in 2019 was for “web banner advertising on our campaign platform in 2019.”¹⁶ Stilton asserts that the Singh Committee did not advertise with SNN during 2020 and that Singh did not receive “any other compensation or courtesy for his advertising other than his banner ad.”¹⁷ Stilton acknowledges that SNN created the Facebook group Recall Phil Murphy/Conservative NJ, but contends that it was simply “a discussion forum for our readers” and that “once the recall committee failed to achieve their goal, we put notice on our social page that the ‘recall Phil Murphy news’ page was being renamed in order to allow like-minded readers to keep engaging with each other through our platform.”¹⁸ The Facebook group includes the following description:

This group was initially set up [f]or our Volunteers to receive and share information regarding the Recall Petition. Now that the Recall is over, we have repurposed this group as a forum for

¹⁵ Stilton and SNN Resp. at 4.

¹⁶ *Id.*

¹⁷ *Id.* Committee disclosure reports, however, show two expenditures to “Stilton Co, LLC” for “web advertising” on April 13, 2020 and October 6, 2020 for \$1,000 each. Singh for Senate 2020 Pre-Primary Report at 298 (June 25, 2020); Singh for Senate 2020 Post-General Report at 10 (Nov. 24, 2020). The footer section of the SNN website previously contained the text, “Shore News Network, Stilton Company.” See <https://web.archive.org/web/20190903133438/http://shorenewsnetwork.com/about-shore-news-network-your-news> (last visited Mar. 24, 2021), but was recently revised to reflect “Shore News Media & Marketing Ltd,” <https://www.shorenewsnetwork.com/about-shore-news-network-your-news/> (last visited: Mar. 24, 2021). Stilton is the sole member of both Stilton Company, LLC and Shore Media & Marketing LLC. See State of New Jersey, The Stilton Company, LLC *Certificate of Formation* (July 12, 2016); State of New Jersey, Shore Media & Marketing LLC, *Certificate of Formation* (Oct. 2, 2020).

¹⁸ Stilton and SNN Resp. at 3.

political discussion (Conservative/anti-Murphy leaning of course!).¹⁹

The Singh Committee and Singh responded that the Complaint should be dismissed for three main reasons: (1) it fails to set out a sufficient factual basis for the allegations; (2) it fails to identify a specific expenditure or specific public communication that would trigger a violation of the coordination regulations; and (3) the media exemption applies.²⁰

III. LEGAL ANALYSIS

A. The Commission Should Dismiss the Allegation That SNN's Articles and Videos Required Disclaimers

The Complaint alleges that SNN's articles and video required disclaimers because they were "campaign commercials purporting to be objective news" that were paid for by the Singh Committee.²¹ The Act and Commission regulations require a disclaimer whenever a political committee makes a disbursement for the purpose of financing any public communication through any broadcast, cable, satellite communication, newspaper, magazine, outdoor-advertising facility, mailing, or any other type of general public political advertising.²² If a communication requiring a disclaimer is paid for and authorized by a candidate, a candidate's authorized committee, or its agents, the disclaimer must clearly state that the communication was paid for by the authorized committee.²³

¹⁹ Recall Phil Murphy Petition Volunteers Facebook Group, FACEBOOK, <https://www.facebook.com/groups/454842615337653> (last visited Mar. 24, 2021).

²⁰ Singh Committee and Singh Resp. at 2 (Sept. 28, 2020).

²¹ Compl. at 1.

²² 52 U.S.C. §§ 30101(22), 30120; *see also* 11 C.F.R. §§ 100.26, 110.11.

²³ 52 U.S.C. § 30120(a)(1); *see also* 11 C.F.R. § 110.11(b)(1).

1 The available information does not indicate that the Singh Committee paid for the articles
2 or videos that were placed on the SNN website. The record does not contain any information to
3 substantiate the allegation in the Complaint that the Singh Committee's payments to JTown
4 Magazine were for the publishing of the articles or video and not for traditional advertising on
5 the SNN website.²⁴ Nor does the available information reveal whether Rullo was paid to create
6 and publish this video by either SNN or the Singh Committee. The Complaint alleges that Rullo
7 was Singh's campaign manager at the time the video was posted, and disclosure reports show
8 that Rullo was being paid by the Singh Committee for "strategic management services."²⁵
9 Although Rullo's affiliation with the Singh Committee was not disclosed in the video,
10 Commission regulations do not require that a press entity's political commentary disclose the
11 speaker's employment affiliations, and the Commission has not previously concluded that
12 because a political commentator is also paid by a campaign, that relationship means that the
13 political commentary constitutes an advertisement requiring a disclaimer. Because there are
14 insufficient facts to support a reasonable inference that SNN's articles and videos were actually
15 paid advertisements, these communications do not appear to have required disclaimers.
16 Accordingly, we recommend that the Commission dismiss the allegation that Hirsh Singh and
17 the Singh Committee violated 52 U.S.C. § 30120(a)(1) and 11 C.F.R. § 110.11(a) by failing to
18 include disclaimers on SNN's content.

²⁴ The Committee's payments to Stilton Co, LLC, for "web advertising" during 2020, similarly do not appear to substantiate the allegation. *See* above note 16 and accompanying text.

²⁵ Singh for Senate 2019 October Quarterly Report at 55-56 (Oct. 15, 2019); Singh for Senate 2019 Year-End Report at 76 (Jan. 31, 2020); Singh for Senate 2020 April Quarterly Report at 97 (Apr. 15, 2020); Singh for Senate 2020 Pre-Primary Report at 297 (June 25, 2020).

B. The Commission Should Dismiss the Allegation That SNN Made In-Kind Contributions to the Singh Committee

The Complaint alleges that the Singh Committee was “given a forum on [SNN] to perpetrate lies about Mehta.”²⁶ This allegation appears to assert that SNN made an in-kind contribution to the Singh Committee through the posting of the articles and videos critical of Mehta. The Act defines “contribution” and “expenditure” to include the gift of “anything of value” for the purpose of influencing a Federal election.²⁷ The term “anything of value” includes in-kind contributions such as coordinated expenditures.²⁸

However, the Act specifically exempts from the definition of expenditure “any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.”²⁹ This exemption is called the “press exemption” or “media exemption.”³⁰ Costs covered by the exemption are also exempt from the Act’s disclosure and reporting requirements.³¹ The Act’s legislative history indicates

²⁶ Compl. at 3.

²⁷ 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

²⁸ 11 C.F.R. §§ 100.52(d)(1), 100.111(e)(1); 52 U.S.C. § 30116(a)(7)(B)(i) (treating as contributions any expenditures made “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate,” the candidate’s authorized committee, or their agents); *see* 11 C.F.R. § 109.20 (defining “coordinated”); *see also* *Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

²⁹ 52 U.S.C. § 30101(9)(B)(i). Commission regulations further provide that neither a “contribution” nor an “expenditure” results from “[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet, or electronic publication” unless the facility is “owned or controlled by any political party, political committee, or candidate.” 11 C.F.R. §§ 100.73, 100.132.

³⁰ *See* Advisory Opinion 2011-11 at 6 (Colbert) (“AO 2011-11”); Advisory Opinion 2008-14 at 3 (Melothe) (“AO 2008-14”).

³¹ *See* AO 2011-11 at 6, 8-10 (discussing costs that are within this exemption and costs that are not).

1 that Congress did not intend to “limit or burden in any way the First Amendment freedoms of the
 2 press and of association. [The exemption] assures the unfettered right of the newspapers, TV
 3 networks, and other media to cover and comment on political campaigns.”³²

4 To assess whether the press exemption applies, the Commission uses a two-part test.³³
 5 The first inquiry is whether the entity engaging in the activity is a “press entity.”³⁴ Second, the
 6 Commission determines the scope of the exemption by applying the two-part analysis presented
 7 in *Reader’s Digest Association v. FEC*: (1) whether the entity is owned or controlled by a
 8 political party, political committee, or candidate; and (2) whether the entity is acting within its
 9 “legitimate press function” in conducting the activity.³⁵

10 First, there appears to be no dispute that SNN is a press entity for purposes of the media
 11 exemption. In determining whether an entity is a “press entity,” “the Commission has focused
 12 on whether the entity in question produces on a regular basis a program that disseminates news
 13 stories, commentary, and/or editorials.”³⁶ The Commission has concluded that a website
 14 covered by the press exemption “was viewable by the general public and akin to a periodical or
 15 news program distributed to the general public.”³⁷ The SNN Response states that SNN “is an
 16 independent for-profit news organization that publishes community, police, tourism, food[,]

³² H.R. REP. NO. 93-1239 at 4 (1974).

³³ Advisory Opinion 2005-16 at 4 (Fired Up!) (“AO 2005-16”).

³⁴ *Id.*

³⁵ *See Reader’s Digest Ass’n v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981); AO 2011-11 at 6-7.

³⁶ Advisory Opinion 2010-08 at 5 (Citizens United).

³⁷ AO 2005-16 at 4 (citing *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 251 (1986)) and Advisory Opinion 2000-13 (iNEXTV)).

dining, sports and yes, political news.”³⁸ The Complaint itself similarly describes SNN as a “news service” and as a “media organization.”³⁹ SNN appears to be a press entity that produces news articles on a variety of topics on a daily basis that are available to the general public on its website.⁴⁰

Second, with respect to the ownership prong of the test, SNN appears to have been owned by Phil Stilton and The Stilton Company, LLC at the time of the activity.⁴¹ The Complaint does not allege that SNN is owned or controlled by a political party, committee or candidate, and the available information does not indicate that it is.

Finally, with respect to whether an entity is acting within its “legitimate press function,” the Commission has examined whether the entity’s materials are available to the general public and whether they are comparable in form to those ordinarily issued by the entity.⁴² The media exemption extends to a news story, commentary, or editorial that even lacks objectivity or expressly advocates for the election or defeat of a clearly identified candidate for Federal office.⁴³ Nonetheless, “the Commission is also mindful that a press entity’s press function is

³⁸ Stilton and SNN Resp. at 2.

³⁹ Compl. at 3.

⁴⁰ See <https://www.shorenewsnetwork.com/about-shore-news-network-your-news/>.

⁴¹ See above note 17 and accompanying text.

⁴² See *Reader’s Digest Ass’n*, 509 F. Supp. at 1215; Factual & Legal Analysis at 4, MUR 7231 (CNN); Advisory Opinion 2016-01 at 3 (Ethiq).

⁴³ AO 2005-16 at 6; Advisory Opinion 1982-44 at 3 (DNC/RNC) (discussing the “commentary” exemption: “Although the statute and regulations do not define ‘commentary,’ the Commission is of the view that commentary cannot be limited to the broadcaster. The exemption already includes the term ‘editorial’ which applies specifically to the broadcaster’s point of view. In the opinion of the Commission, ‘commentary’ was intended to allow the third person’s access to the media to discuss issues. The statute and regulations do not define the issues permitted to be discussed or the format in which they are to be presented under the ‘commentary’ exemption nor do they set a time limit as to the length of the commentary.”).

‘distinguishable from active participation in core campaign or electioneering functions.’”⁴⁴ In other words, “the press exemption covers press activity, not campaign activity by a press entity.”⁴⁵

In this case, the available information indicates that SNN was available to the general public — the news stories and videos were publicly available on its website. SNN has been in existence since 2008, and it appears to regularly feature articles with a specific political perspective and journalistic style.⁴⁶ The articles that SNN published regarding Singh and Mehta are consistent with both SNN’s perspective and journalistic style and are therefore comparable in form to those ordinarily issued by SNN.

The Rullo Video appears to be covered by the political commentary aspect of the press exemption. In the video, Rullo analyzes in detail the backgrounds and characters of Singh and Mehta in connection with the senatorial election. Rullo expressly advocates the election of Singh and the defeat of Mehta.⁴⁷ Rullo was paid by the Singh Committee during the same period

⁴⁴ AO 2011-11 at 8 (quoting AO 2008-14).

⁴⁵ *Id.*

⁴⁶ See, e.g., *Murphy’s “Anti-Hunger” Bill Is A Big Fat Nothing Burger That Won’t Feed A Single Person In New Jersey During COVID-19*, SHORE NEWS NETWORK, (May 9, 2020), <https://www.shorenewsnetwork.com/2020/05/09/murphys-anti-hunger-bill-is-a-big-fat-nothing-burger-that-wont-feed-a-single-person-in-new-jersey-during-covid-19>; *Cooking the Books? Murphy To “Significantly Increase” NJ COVID-19 Deaths On Monday*, SHORE NEWS NETWORK, (June 20, 2020), <https://www.shorenewsnetwork.com/2020/06/20/cooking-the-books-murphy-to-significantly-increase-nj-covid-19-deaths-on-monday>; *Nobody Shocked After Joe Biden Accused of Sexual Assault by Tara Reade*, SHORE NEWS NETWORK, (Apr. 27, 2020), <https://www.shorenewsnetwork.com/2020/04/27/nobody-shocked-after-joe-biden-accused-of-sexual-assault-by-tara-rea-de>; *Watch As Trump Press Secretary Destroys Fake News Media’s COVID-19 ‘Gotcha’ Question*, SHORE NEWS NETWORK, (May 7, 2020), <https://www.shorenewsnetwork.com/2020/05/07/watch-as-trump-press-secretary-destroys-fake-news-medias-covid-19-gotcha-question>.

⁴⁷ For example, Rullo states “start instant messaging every single person that you know to vote for Hirsh Singh” and “we are sick and tired of Rik . . . vote for a real republican.” See Rullo Video; 11 C.F.R. § 100.22(a) (expressly advocating includes, among other things, phrases such as “vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “vote against Old Hickory”).

of time that SNN posted the Rullo Video. However, SNN posted articles and videos by Rullo as a regular commentary feature on its website on various political issues unrelated to Singh and the Singh Committee.⁴⁸

In the Rullo Video, Rullo also asks for contributions and for volunteers for Singh. Rullo tells viewers that, “all you have to do is, real simple, is continue to share Hirsh’s posts everywhere, start instant messaging every single person that you know to vote for Hirsh Singh.”⁴⁹ Further, Rullo says:

[W]hat you can do, and I said before, is go to hirshsingh.com and donate to Hirsh even if it is \$5, 10, 20 30, whatever you can afford. In addition, if you want to make calls for Hirsh, instant message me, I will put you in the right direction. If you want to put a sign on your lawn we have a link you can click. If you are interested in, this is what you can do right away, write a letter to the editor and endorse Hirsh for the right reasons⁵⁰

In Advisory Opinion 2008-14 (Melothe), the Commission analyzed the proposed operation of an Internet TV station covering the campaigns of federal candidates, observing that “under the Commission’s previous interpretations of the press exemption nothing prohibits . . . commentators and guests to make express advocacy endorsements of certain candidates to viewers of its Web site content and, concurrently, to suggest that viewers support such candidates with their contributions, so long as neither Melothe, Inc. nor its Web site is owned or

⁴⁸ See, e.g., *Straight Talk with Joe Rullo: Murphy’s Hypocritical Governing Not Just About Restaurants*, SHORE NEWS NETWORK, (June 30, 2020), <https://www.shorenewsnetwork.com/2020/08/18/straight-talk-with-joe-rullo-milwaukee-jane-has-betrayed-the-republican-party-and-america> (discussing Governor Murphy’s approach to COVID-19 policies); *Straight Talk With Joe Rullo: NASCAR Owes Fans an Apology*, SHORE NEWS NETWORK, (June 23, 2020), <https://www.shorenewsnetwork.com/2020/06/23/straight-talk-with-joe-rullo-nascar-owes-fans-an-apology> (discussing an alleged hate crime of a noose that was found in a NASCAR driver’s garage).

⁴⁹ Rullo Video at 27:00-27:12.

⁵⁰ *Id.* at 33:16-33:46.

controlled by any candidate, political party, or political committee.”⁵¹ In explaining its rationale, the Commission relied on an earlier Advisory Opinion that concluded, pursuant to the press exemption, that an “endorsement of, including a contribution solicitation on behalf of [the candidate] in a commentary’ in a subscription periodical does not itself result in a contribution under the Act where the ‘commentary . . . appears as a regular feature in each issue,’ and where the periodical is not owned or controlled by any candidate, political party, or political committee.”⁵² Consistent with that line of analysis, because Rullo’s solicitation was only present in one video and Rullo provides political commentary in the form of videos as a regular feature on SNN, this specific video appears to fall within the scope of the press exemption.

Therefore, we recommend the Commission dismiss the allegation that Hirsh Singh and the Singh Committee violated 52 U.S.C. § 30104(b) by failing to disclose in-kind contributions from SNN and Stilton because SNN’s actions were exempt from being considered contributions under the press exemption.

C. The Commission Should Dismiss the Allegation That There Was an Unreported Coordinated Communication

The Complaint alleges that the Singh Committee coordinated with SNN to send messages on social media to SNN followers defaming Mehta.⁵³ Under Commission regulations, a communication is “coordinated” with a candidate, an authorized committee, a political party committee, or agent thereof, and is treated as an in-kind contribution, if the communication

⁵¹ AO 2008-14 at 7. The Commission was unable to render a definitive conclusion in the Advisory Opinion because it lacked necessary factual information on the frequency, character, and context of such solicitations.

⁵² *Id.* (citing Advisory Opinion 1980-109 (Ruff Times)).

⁵³ Compl. at 1, 3.

meets a three-part test: (1) payment for the communication by a third party; (2) satisfaction of one of five “content” standards of 11 C.F.R. § 109.21(c); and (3) satisfaction of one of six “conduct” standards of 11 C.F.R. § 109.21(d).⁵⁴ The available information does not indicate that SNN had any connection with the social media messages provided with the Complaint or that a third party payor paid for anything regarding the messages. Further, the social media messages do not qualify as electioneering communications or public communications, necessary elements of all of the content standards.⁵⁵ Because the communications here appear to fail both the payment and content prongs under the Commission’s regulations, we recommend that the Commission dismiss the allegation that Hirsh Singh and the Singh Committee violated 52 U.S.C. § 30104(b) by failing to disclose a contribution from SNN and Stilton resulting from a coordinated communication.

D. The Commission Should Dismiss the Allegation That SNN and Recall Murphy/Conservative NJ Improperly Failed to Register and Report as a Political Committee

Finally, the Complaint alleges that SNN and a Facebook group operated by SNN, Recall Murphy/Conservative NJ, acted as an unregistered political committee.⁵⁶ The Act defines a political committee as “any committee, club, association, or other group of persons” that receives aggregate contributions or makes aggregate expenditures in excess of \$1,000 during a calendar year.⁵⁷ Notwithstanding the statutory threshold for contributions and expenditures, an

⁵⁴ 11 C.F.R. § 109.21.

⁵⁵ *Id.*

⁵⁶ Compl. at 1, 3.

⁵⁷ 52 U.S.C. § 30101(4)(A).

organization will be considered a political committee only if its “major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)” or if it is controlled by a federal candidate.⁵⁸ Political committees are required to register with the Commission, meet organizational and recordkeeping requirements, and file periodic disclosure reports.⁵⁹ Because the articles and video SNN published fall within legitimate press functions by a press entity, for the reasons discussed above, the costs associated with them do not constitute contributions or expenditures.⁶⁰

With regard to the allegation regarding SNN's creation and operation of the Recall Murphy/Conservative NJ specific Facebook group, it is unclear whether the Act's statutory threshold of \$1,000 is met. Creating a Facebook group like the one at issue does not cost money and a review of the Facebook Ad Library does not reflect that there were any advertisements placed by Recall Murphy/Conservative NJ or by SNN itself.⁶¹ Neither does the available information suggest that Recall Murphy/Conservative NJ received contributions. Because the available information does not indicate that Recall Murphy/Conservative NJ met the \$1,000

⁵⁸ Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) (“Suppl. E&J”) (“[D]etermining political committee status under [the Act], as modified by the Supreme Court, requires an analysis of both an organization's specific conduct — whether it received \$1,000 in contributions or made \$1,000 in expenditures — as well as its overall conduct — whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”); *see Buckley*, 424 U.S. at 79; *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

⁵⁹ *See* 52 U.S.C. §§ 30102, 30103, 30104.

⁶⁰ 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132; *see also* Factual and Legal Analysis at 6, MUR 5928 (Kos Media, LLC) (concluding that respondent media entity did not fail to register as a political committee because its activity fell squarely within the scope of the media exemption).

⁶¹ *See How Do I Create A Facebook Group*, FACEBOOK, <https://www.facebook.com/help/167970719931213>, (last visited Mar. 24, 2021); Facebook Ad Library, FACEBOOK, <https://www.facebook.com/ads/library> (last visited: Mar. 24, 2021).

1 statutory threshold , we recommend the Commission dismiss the allegation that SNN and Recall
2 Murphy/Conservative NJ violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register
3 and report as a political committee.

4 **IV. RECOMMENDATIONS**

- 5 1. Dismiss the allegation that Hirsh Singh and Singh for Senate and Elizabeth Curtis in
6 her official capacity as treasurer violated 52 U.S.C. § 30120(a)(1) and 11 C.F.R.
7 § 110.11(a), by failing to include required disclaimers;
8
- 9 2. Dismiss the allegation that Hirsh Singh and Singh for Senate and Elizabeth Curtis in
10 her official capacity as treasurer violated 52 U.S.C. § 30104(b) by failing to
11 disclose in-kind contributions from Shore News Network and Phil Stilton;
12
- 13 3. Dismiss the allegation that Hirsh Singh and Singh for Senate and Elizabeth Curtis in
14 her official capacity as treasurer violated 52 U.S.C. § 30104(b) by failing to
15 disclose a contribution from Shore News Network and Phil Stilton resulting from a
16 coordinated communication with Shore News Network;
17
- 18 4. Dismiss the allegation that Shore News Network and Recall Murphy/Conservative
19 NJ violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register and report
20 as a political committee;
21
- 22 5. Approve the attached Factual and Legal Analysis;
23
- 24 6. Close the file; and
25

7. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

April 2, 2021
Date

Charles Kitcher by MA
Charles Kitcher
Acting Associate General Counsel
for Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Richard L. Weiss
Richard L. Weiss
Attorney

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Singh for Senate and Elizabeth Curtis **MUR 7770**
in her official capacity as treasurer
Hirsh Singh
Shore News Network
Phil Stilton
Recall Murphy/Conservative NJ

I. INTRODUCTION

The Complaint alleges that Hirsh Singh, a candidate for U.S. Senate in New Jersey in 2020, and Singh for Senate and Elizabeth Curtis in her official capacity as treasurer (the “Singh Committee”), paid Shore News Network (“SNN”), an independent for-profit news network, and its founder and editor Phil Stilton to publish articles and a video in support of Singh and in opposition to Singh’s primary election opponent, Rikin Mehta, without proper disclaimers in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint also alleges that by doing so, SNN provided a forum for the Singh Committee to criticize Mehta. The Complaint further alleges that the Singh Committee coordinated with SNN to send messages on social media to SNN followers defaming Mehta, and that SNN and a Facebook group operated by SNN, named Recall Murphy/Conservative NJ, was operating as an unregistered political committee. Respondents deny that SNN was paid to publish news articles in favor of Singh, or that SNN coordinated with the Singh Committee. Instead, SNN contends that its coverage permissibly reflects its conservative ideology. For the reasons set forth below, the Commission finds no reason to believe that Hirsh Singh and the Singh Committee violated 52 U.S.C. § 30120(a)(1) and 11 C.F.R. § 110.11(a) by failing to include disclaimers on SNN’s news articles and video; that SNN made in-kind contributions to the Singh Committee and Hirsh Singh and the Singh Committee violated 52 U.S.C. § 30104(b) by failing to report the news

articles and video as in-kind contributions from SNN and Stilton; that Hirsh Singh and the Singh Committee violated 52 U.S.C. § 30104(b) by failing to disclose a contribution from SNN and Stilton resulting from a coordinated communication; or that SNN and Recall Murphy/Conservative NJ violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register and report as a political committee.

II. FACTUAL BACKGROUND

Hirsh Singh was a 2020 candidate for U.S. Senate in New Jersey and Singh for Senate was his authorized committee.¹ SNN is a for-profit news organization founded in 2008 by Stilton and edited by him since that time.² SNN maintains a website, www.shorenewsnetwork.com, and it maintains several Facebook groups, one of which was formerly named Recall Murphy and is now named Conservative NJ.³

The Complaint alleges that, between October 2019 and July 2020, SNN posted a series of articles on its website favorable to Singh and critical of Mehta; the Complaint contends that these articles are false and libelous.⁴ The Complaint further alleges that the Singh Committee paid SNN to write and publish these articles, which it states are actually “campaign commercials purporting to be objective news without a disclaimer.”⁵ In support, the Complaint cites \$5,000

¹ Hirsh Singh Statement of Candidacy (Apr. 25, 2019); Singh for Senate Amended Statement of Org. (Oct. 5, 2019). Singh lost the Republican primary election on July 7, 2020 to Rikin Mehta. .

² SNN’s website profile of Stilton is available at <https://www.shorenewsnetwork.com/author/pstilton> (last visited Mar. 24, 2021), and Phil Stilton’s LinkedIn Profile is available at <https://www.linkedin.com/in/pstilton> (last visited Mar. 24, 2021).

³ Stilton and SNN Resp. at 2 (Aug. 24, 2020).

⁴ Compl. at 2-3 (Aug. 4, 2020).

⁵ *Id.*

in payments from the Singh Committee to JTown Magazine, which the Complaint alleges is a subsidiary of SNN.⁶

The Complaint further alleges that the Singh Committee's paid campaign manager, Joseph Rullo, was featured in a video published by SNN, in which Rullo promotes Singh and criticizes Mehta and which lacked a required disclaimer.⁷ The video is 37 minutes long and includes Rullo expressly advocating for Singh and against Mehta without disclosing Rullo's role with the Singh campaign.⁸ At the end of the video, Rullo solicits contributions for Singh and asks for campaign volunteers.⁹ Disclosure reports reflect that the Singh Committee reported paying Rullo \$11,000 between July 9, 2019 and June 1, 2020 for "strategic management services."¹⁰ The Complaint also alleges that by publishing the articles and the video, SNN provided a forum for the Singh Committee to criticize Mehta.¹¹

⁶ *Id.* at 3-4; *see also* Singh for Senate 2019 October Quarterly Report at 45 (disclosing two \$1,000 disbursements to JTown Magazine on July 5 and September 3, 2019) (Oct. 15, 2019); Singh for Senate 2019 Year-End Report at 62-63 (Jan. 31, 2020) (disclosing three \$1,000 disbursements to JTown Magazine on Oct. 22, Nov. 4, and Dec. 12, 2019).

⁷ Compl. at 3 (citing *Straight Talk with Joe Rullo: Rick Mehta, Hid Staffer Who Got Kicked Out of College for N-Word Viral Video*, SHORE NEWS NETWORK, (June 3, 2020), <https://web.archive.org/web/20201125194353/https://www.shorenewsnetwork.com/2020/06/03/straight-talk-with-joe-rullo-rick-mehta-hid-staffer-who-got-kicked-out-of-college-for-n-word-viral-video> ("Rullo Video") (last visited Mar. 24, 2021). The Complaint specifically alleges a disclaimer violation in connection with SNN's "articles" and lists the video among the articles. *Id.*

⁸ *Id.*

⁹ *See* Rullo Video.

¹⁰ Singh for Senate 2019 October Quarterly Report at 55-56 (Oct. 15, 2019); Singh for Senate 2019 Year-End Report at 76 (Jan. 31, 2020); Singh for Senate 2020 April Quarterly at 97 (Apr. 15, 2020); Singh for Senate 2020 Pre-Primary Report at 297 (June 25, 2020). .

¹¹ Compl. at 1, 3.

In addition, the Complaint alleges that the Singh Committee coordinated with SNN to send messages on social media to SNN followers defaming Mehta.¹² As support, the Complaint attached social media messages and comments from four separate individuals, which contained comments critical of Mehta, one of which includes a link to a SNN article.¹³ Lastly, the Complaint generally alleges that SNN and Recall Murphy/Conservative NJ operated as an unregistered political committee.¹⁴

Stilton responded on behalf of himself and SNN, stating that the SNN articles the Complaint addresses reflect the conservative ideals of the SNN newspaper and that all of the articles were true and based on legitimate sources.¹⁵ Stilton further states that the \$5,000 the Singh Committee paid in 2019 was for “web banner advertising on our campaign platform in 2019.”¹⁶ Stilton asserts that the Singh Committee did not advertise with SNN during 2020 and that Singh did not receive “any other compensation or courtesy for his advertising other than his banner ad.”¹⁷ Stilton acknowledges that SNN created the Facebook group Recall Phil

¹² *Id.*

¹³ Compl. Ex. A at unnumbered 1-4.

¹⁴ Compl. at 1, 3.

¹⁵ Stilton and SNN Resp. at 4.

¹⁶ *Id.*

¹⁷ *Id.* Committee disclosure reports show two expenditures to “Stilton Co, LLC” for “web advertising” on April 13, 2020 and October 6, 2020 for \$1,000 each. Singh for Senate 2020 Pre-Primary Report at 298 (June 25, 2020); Singh for Senate 2020 Post-General Report at 10 (Nov. 24, 2020). The footer section of the SNN website previously contained the text, “Shore News Network, Stilton Company.” See <https://web.archive.org/web/20190903133438/http://shorenewsnetwork.com/about-shore-news-network-your-news> (last visited Mar. 24, 2021), but was recently revised to reflect “Shore News Media & Marketing Ltd,” <https://www.shorenewsnetwork.com/about-shore-news-network-your-news/> (last visited: Mar. 24, 2021). Stilton is the sole member of both Stilton Company, LLC and Shore Media & Marketing LLC. See State of New Jersey, The Stilton Company, LLC *Certificate of Formation* (July 12, 2016); State of New Jersey, Shore Media & Marketing LLC, *Certificate of Formation* (Oct. 2, 2020).

Murphy/Conservative NJ, but contends that it was simply “a discussion forum for our readers” and that “once the recall committee failed to achieve their goal, we put notice on our social page that the ‘recall Phil Murphy news’ page was being renamed in order to allow like-minded readers to keep engaging with each other through our platform.”¹⁸ The Facebook group includes the following description:

This group was initially set up [f]or our Volunteers to receive and share information regarding the Recall Petition. Now that the Recall is over, we have repurposed this group as a forum for political discussion (Conservative/anti-Murphy leaning of course!).¹⁹

The Singh Committee and Singh responded that the Complaint should be dismissed for three main reasons: (1) it fails to set out a sufficient factual basis for the allegations; (2) it fails to identify a specific expenditure or specific public communication that would trigger a violation of the coordination regulations; and (3) the media exemption applies.²⁰

III. LEGAL ANALYSIS

A. The Commission Finds No Reason to Believe That SNN’s Articles and Videos Required Disclaimers

The Complaint alleges that SNN’s articles and video required disclaimers because they were “campaign commercials purporting to be objective news” that were paid for by the Singh Committee.²¹ The Act and Commission regulations require a disclaimer whenever a political committee makes a disbursement for the purpose of financing any public communication through

¹⁸ Stilton and SNN Resp. at 3.

¹⁹ Recall Phil Murphy Petition Volunteers Facebook Group, FACEBOOK, <https://www.facebook.com/groups/454842615337653> (last visited Mar. 24, 2021).

²⁰ Singh Committee and Singh Resp. at 2 (Sept. 28, 2020).

²¹ Compl. at 1.

any broadcast, cable, satellite communication, newspaper, magazine, outdoor-advertising facility, mailing, or any other type of general public political advertising.²² If a communication requiring a disclaimer is paid for and authorized by a candidate, a candidate's authorized committee, or its agents, the disclaimer must clearly state that the communication was paid for by the authorized committee.²³

The available information does not indicate that the Singh Committee paid for the articles or video that were placed on the SNN website. The record does not contain any information to substantiate the allegation in the Complaint that the Singh Committee's payments to JTown Magazine were for the publishing of the articles or video and not for traditional advertising on the SNN website.²⁴ Nor does the available information show Rullo was paid to create and publish this video by either SNN or the Singh Committee. The Complaint alleges that Rullo was Singh's campaign manager at the time the video was posted, and disclosure reports show that Rullo was being paid by the Singh Committee for "strategic management services."²⁵ Although Rullo's affiliation with the Singh Committee was not disclosed in the video, Commission regulations do not require that a press entity's political commentary disclose the speaker's employment affiliations, and the Commission has not previously concluded that because a political commentator is also paid by a campaign, that relationship means that the political commentary constitutes an advertisement requiring a disclaimer. Because there are insufficient

²² 52 U.S.C. §§ 30101(22), 30120; *see also* 11 C.F.R. §§ 100.26, 110.11.

²³ 52 U.S.C. § 30120(a)(1); *see also* 11 C.F.R. § 110.11(b)(1).

²⁴ The Committee's payments to Stilton Co, LLC, for "web advertising" during 2020, similarly do not appear to substantiate the allegation. *See* above note 16 and accompanying text.

²⁵ Singh for Senate 2019 October Quarterly Report at 55-56 (Oct. 15, 2019); Singh for Senate 2019 Year-End Report at 76 (Jan. 31, 2020); Singh for Senate 2020 April Quarterly Report at 97 (Apr. 15, 2020); Singh for Senate 2020 Pre-Primary Report at 297 (June 25, 2020).

facts to support that SNN’s articles and video were actually paid advertisements, these communications did not require disclaimers. Accordingly, the Commission finds no reason to believe that Hirsh Singh and the Singh Committee violated 52 U.S.C. § 30120(a)(1) and 11 C.F.R. § 110.11(a) by failing to include disclaimers on SNN’s content.

B. The Commission Finds No Reason to Believe That SNN Made In-Kind Contributions to the Singh Committee

The Complaint alleges that the Singh Committee was “given a forum on [SNN] to perpetrate lies about Mehta.”²⁶ This allegation appears to assert that SNN made an in-kind contribution to the Singh Committee through the posting of the articles and video critical of Mehta. The Act defines “contribution” and “expenditure” to include the gift of “anything of value” for the purpose of influencing a Federal election.²⁷ The term “anything of value” includes in-kind contributions such as coordinated expenditures.²⁸

However, the Act specifically exempts from the definition of expenditure “any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.”²⁹ This exemption is called

²⁶ Compl. at 3.

²⁷ 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

²⁸ 11 C.F.R. §§ 100.52(d)(1), 100.111(e)(1); 52 U.S.C. § 30116(a)(7)(B)(i) (treating as contributions any expenditures made “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate,” the candidate’s authorized committee, or their agents); *see* 11 C.F.R. § 109.20 (defining “coordinated”); *see also* *Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

²⁹ 52 U.S.C. § 30101(9)(B)(i). Commission regulations further provide that neither a “contribution” nor an “expenditure” results from “[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet, or electronic publication” unless the facility is “owned or controlled by any political party, political committee, or candidate.” 11 C.F.R. §§ 100.73, 100.132.

the “press exemption” or “media exemption.”³⁰ Costs covered by the exemption are also exempt from the Act’s disclosure and reporting requirements.³¹ The Act’s legislative history indicates that Congress did not intend to “limit or burden in any way the First Amendment freedoms of the press and of association. [The exemption] assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns.”³²

To assess whether the press exemption applies, the Commission uses a two-part test.³³ The first inquiry is whether the entity engaging in the activity is a “press entity.”³⁴ Second, the Commission determines the scope of the exemption by applying the two-part analysis presented in *Reader’s Digest Association v. FEC*: (1) whether the entity is owned or controlled by a political party, political committee, or candidate; and (2) whether the entity is acting within its “legitimate press function” in conducting the activity.³⁵

First, there appears to be no dispute that SNN is a press entity for purposes of the media exemption. The SNN Response states that SNN “is an independent for-profit news organization that publishes community, police, tourism, food[,] dining, sports and yes, political news.”³⁶ The Complaint itself similarly describes SNN as a “news service” and as a “media organization.”³⁷

³⁰ See Advisory Opinion 2011-11 at 6 (Colbert) (“AO 2011-11”); Advisory Opinion 2008-14 at 3 (Melothe) (“AO 2008-14”).

³¹ See AO 2011-11 at 6, 8-10 (discussing costs that are within this exemption and costs that are not).

³² H.R. REP. NO. 93-1239 at 4 (1974).

³³ Advisory Opinion 2005-16 at 4 (Fired Up!) (“AO 2005-16”).

³⁴ *Id.*

³⁵ See *Reader’s Digest Ass’n v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981); AO 2011-11 at 6-7.

³⁶ Stilton and SNN Resp. at 2.

³⁷ Compl. at 3.

SNN appears to be a press entity that produces news articles on a variety of topics on a daily basis that are available to the general public on its website.³⁸

Second, with respect to the ownership prong of the test, SNN appears to have been owned by Phil Stilton and The Stilton Company, LLC at the time of the activity.³⁹ The Complaint does not allege that SNN is owned or controlled by a political party, committee or candidate, and the available information does not indicate that it is.

Finally, with respect to whether an entity is acting within its “legitimate press function,” the Commission has examined whether the entity’s materials are available to the general public and whether they are comparable in form to those ordinarily issued by the entity.⁴⁰ The media exemption extends to a news story, commentary, or editorial that lacks objectivity or expressly advocates for the election or defeat of a clearly identified candidate for federal office.⁴¹ Nonetheless, “the Commission is also mindful that a press entity’s press function is ‘distinguishable from active participation in core campaign or electioneering functions.’”⁴² In

³⁸ See <https://www.shorenewsnetwork.com/about-shore-news-network-your-news/>.

³⁹ See above note 17 and accompanying text.

⁴⁰ See *Reader’s Digest Ass’n*, 509 F. Supp. at 1215; Factual & Legal Analysis at 4, MUR 7231 (CNN); Advisory Opinion 2016-01 at 3 (Ethiq).

⁴¹ AO 2005-16 at 6; Advisory Opinion 1982-44 at 3 (DNC/RNC) (discussing the “commentary” exemption: “Although the statute and regulations do not define ‘commentary,’ the Commission is of the view that commentary cannot be limited to the broadcaster. The exemption already includes the term ‘editorial’ which applies specifically to the broadcaster’s point of view. In the opinion of the Commission, ‘commentary’ was intended to allow the third person’s access to the media to discuss issues. The statute and regulations do not define the issues permitted to be discussed or the format in which they are to be presented under the ‘commentary’ exemption nor do they set a time limit as to the length of the commentary.”).

⁴² AO 2011-11 at 8 (quoting AO 2008-14).

other words, “the press exemption covers press activity, not campaign activity by a press entity.”⁴³

In this case, the available information indicates that SNN was available to the general public — the news stories and videos were publicly available on its website. SNN has been in existence since 2008, and it appears to regularly feature articles with a specific political perspective and journalistic style.⁴⁴ The articles that SNN published regarding Singh and Mehta are consistent with both SNN’s perspective and journalistic style and are therefore comparable in form to those ordinarily issued by SNN.

The Rullo Video also is covered by the political commentary aspect of the press exemption. In the video, Rullo analyzes in detail the backgrounds and characters of Singh and Mehta in connection with the senatorial election. Rullo expressly advocates the election of Singh and the defeat of Mehta.⁴⁵ Rullo was paid by the Singh Committee during the same period of time that SNN posted the Rullo Video. However, SNN posted articles and videos by Rullo as

⁴³ *Id.*

⁴⁴ See, e.g., *Murphy’s “Anti-Hunger” Bill Is A Big Fat Nothing Burger That Won’t Feed A Single Person In New Jersey During COVID-19*, SHORE NEWS NETWORK, (May 9, 2020), <https://www.shorenewsnetwork.com/2020/05/09/murphys-anti-hunger-bill-is-a-big-fat-nothing-burger-that-wont-feed-a-single-person-in-new-jersey-during-covid-19>; *Cooking the Books? Murphy To “Significantly Increase” NJ COVID-19 Deaths On Monday*, SHORE NEWS NETWORK, (June 20, 2020), <https://www.shorenewsnetwork.com/2020/06/20/cooking-the-books-murphy-to-significantly-increase-nj-covid-19-deaths-on-monday>; *Nobody Shocked After Joe Biden Accused of Sexual Assault by Tara Reade*, SHORE NEWS NETWORK, (Apr. 27, 2020), <https://www.shorenewsnetwork.com/2020/04/27/nobody-shocked-after-joe-biden-accused-of-sexual-assault-by-tara-reade>; *Watch As Trump Press Secretary Destroys Fake News Media’s COVID-19 ‘Gotchya’ Question*, SHORE NEWS NETWORK, (May 7, 2020), <https://www.shorenewsnetwork.com/2020/05/07/watch-as-trump-press-secretary-destroys-fake-news-medias-covid-19-gotchya-question>.

⁴⁵ For example, Rullo states “start instant messaging every single person that you know to vote for Hirsh Singh” and “we are sick and tired of Rik . . . vote for a real republican.” See Rullo Video; 11 C.F.R. § 100.22(a) (expressly advocating includes, among other things, phrases such as “vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “vote against Old Hickory”).

1 a regular commentary feature on its website on various political issues unrelated to Singh and the
 2 Singh Committee.⁴⁶

3 In the Rullo Video, Rullo also asks for contributions and for volunteers for Singh. Rullo
 4 tells viewers that, “all you have to do is, real simple, is continue to share Hirsh’s posts
 5 everywhere, start instant messaging every single person that you know to vote for Hirsh
 6 Singh.”⁴⁷ Further, Rullo says:

7 [W]hat you can do, and I said before, is go to hirshsingh.com and
 8 donate to Hirsh even if it is \$5, 10, 20 30, whatever you can afford.
 9 In addition, if you want to make calls for Hirsh, instant message
 10 me, I will put you in the right direction. If you want to put a sign
 11 on your lawn we have a link you can click. If you are interested in,
 12 this is what you can do right away, write a letter to the editor and
 13 endorse Hirsh for the right reasons⁴⁸

14 In Advisory Opinion 2008-14 (Melothe), the Commission analyzed the proposed
 15 operation of an Internet TV station covering the campaigns of federal candidates, observing that
 16 “under the Commission’s previous interpretations of the press exemption nothing prohibits . . .
 17 commentators and guests to make express advocacy endorsements of certain candidates to
 18 viewers of its Web site content and, concurrently, to suggest that viewers support such
 19 candidates with their contributions, so long as neither Melothe, Inc. nor its Web site is owned or

⁴⁶ See, e.g., *Straight Talk with Joe Rullo: Murphy’s Hypocritical Governing Not Just About Restaurants*, SHORE NEWS NETWORK, (June 30, 2020), <https://www.shorenewsnetwork.com/2020/08/18/straight-talk-with-joe-rullo-milwaukee-jane-has-betrayed-the-republican-party-and-america> (discussing Governor Murphy’s approach to COVID-19 policies); *Straight Talk With Joe Rullo: NASCAR Owes Fans an Apology*, SHORE NEWS NETWORK, (June 23, 2020), <https://www.shorenewsnetwork.com/2020/06/23/straight-talk-with-joe-rullo-nascar-owes-fans-an-apology> (discussing an alleged hate crime of a noose that was found in a NASCAR driver’s garage).

⁴⁷ Rullo Video at 27:00-27:12.

⁴⁸ *Id.* at 33:16-33:46.

controlled by any candidate, political party, or political committee.”⁴⁹ In explaining its rationale, the Commission relied on an earlier Advisory Opinion that concluded, pursuant to the press exemption, that an “endorsement of, including a contribution solicitation on behalf of [the candidate] in a commentary’ in a subscription periodical does not itself result in a contribution under the Act where the ‘commentary . . . appears as a regular feature in each issue,’ and where the periodical is not owned or controlled by any candidate, political party, or political committee.”⁵⁰ Consistent with that line of analysis, because Rullo’s solicitation was only present in one video and Rullo provides political commentary in the form of videos as a regular feature on SNN, this specific video appears to fall within the scope of the press exemption.

Therefore, the Commission finds no reason to believe that SNN made, or that the Singh Committee received, in-kind contributions, and finds no reason to believe Hirsh Singh and the Singh Committee violated 52 U.S.C. § 30104(b) by failing to disclose in-kind contributions from SNN and Stilton, because SNN’s actions were exempt from being considered contributions under the press exemption.

C. The Commission Finds No Reason to Believe That There Was an Unreported Coordinated Communication

The Complaint alleges that the Singh Committee coordinated with SNN to send messages on social media to SNN followers defaming Mehta.⁵¹ Under Commission regulations, a communication is “coordinated” with a candidate, an authorized committee, a political party committee, or agent thereof, and is treated as an in-kind contribution, if the communication

⁴⁹ AO 2008-14 at 7. The Commission was unable to render a definitive conclusion in the Advisory Opinion because it lacked necessary factual information on the frequency, character, and context of such solicitations.

⁵⁰ *Id.* (citing Advisory Opinion 1980-109 (Ruff Times)).

⁵¹ Compl. at 1, 3.

meets a three-part test: (1) payment for the communication by a third party; (2) satisfaction of one of five “content” standards of 11 C.F.R. § 109.21(c); and (3) satisfaction of one of six “conduct” standards of 11 C.F.R. § 109.21(d).⁵² The available information does not indicate that SNN had any connection with the social media messages provided with the Complaint or that a third party paid for anything regarding the messages. Further, the social media messages do not qualify as electioneering communications or public communications, necessary elements of the content standards.⁵³ Because the communications here fail both the payment and content prongs under the Commission’s regulations, the Commission finds no reason to believe that Hirsh Singh and the Singh Committee violated 52 U.S.C. § 30104(b) by failing to disclose a contribution from SNN and Stilton resulting from a coordinated communication.

D. The Commission Finds No Reason to Believe That SNN and Recall Murphy/Conservative NJ Improperly Failed to Register and Report as a Political Committee

Finally, the Complaint alleges that SNN and a Facebook group operated by SNN, Recall Murphy/Conservative NJ, acted as an unregistered political committee.⁵⁴ The Act defines a political committee as “any committee, club, association, or other group of persons” that receives aggregate contributions or makes aggregate expenditures in excess of \$1,000 during a calendar year.⁵⁵ Notwithstanding the statutory threshold for contributions and expenditures, an organization will be considered a political committee only if its “major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)” or if it is controlled

⁵² 11 C.F.R. § 109.21.

⁵³ *Id.*

⁵⁴ Compl. at 1, 3.

⁵⁵ 52 U.S.C. § 30101(4)(A).

by a federal candidate.⁵⁶ Political committees are required to register with the Commission, meet organizational and recordkeeping requirements, and file periodic disclosure reports.⁵⁷ Because the articles and video SNN published fall within legitimate press functions by a press entity, for the reasons discussed above, the costs associated with them do not constitute contributions or expenditures.⁵⁸

With regard to the allegation regarding SNN's creation and operation of the Recall Murphy/Conservative NJ specific Facebook group, the available information does not indicate that the Act's statutory threshold of \$1,000 is met or that SNN or the Facebook group were controlled by a federal candidate or had the "major purpose" of federal campaign activity. Creating a Facebook group like the one at issue does not cost money and the Commission has no information about any advertisements placed by Recall Murphy/Conservative NJ or by SNN itself. Nor does the available information suggest that Recall Murphy/Conservative NJ received contributions or had the "major purpose" of supporting or opposing a federal candidate. Because the available information does not indicate that Recall Murphy/Conservative NJ met the \$1,000 statutory threshold or the "major purpose" requirement, the Commission finds no reason to believe that SNN and Recall Murphy/Conservative NJ violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register and report as a political committee.

⁵⁶ Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) ("Suppl. E&J") ("[D]etermining political committee status under [the Act], as modified by the Supreme Court, requires an analysis of both an organization's specific conduct — whether it received \$1,000 in contributions or made \$1,000 in expenditures — as well as its overall conduct — whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)."); *see Buckley*, 424 U.S. at 79; *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

⁵⁷ *See* 52 U.S.C. §§ 30102, 30103, 30104.

⁵⁸ 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132; *see also* Factual and Legal Analysis at 6, MUR 5928 (Kos Media, LLC) (concluding that respondent media entity did not fail to register as a political committee because its activity fell squarely within the scope of the media exemption).