FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 18, 2023

VIA EMAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED
R. Emmett Madden, Esquire
The Philly Lawyers
711 West Avenue
Jenkintown, PA 19046
emadden@ThePhillyLawyers.com

RE: MUR 7963
Salem for Congress, *et al*.

Dear Mr. Madden:

This is in reference to the Complaint you filed with the Federal Election Commission on February 23, 2022, concerning Salem for Congress and Zane Knight in his official capacity as treasurer (the "Committee"), and Salem Snow. After considering the circumstances of this matter, the Commission, on July 11, 2023, determined to dismiss as an exercise of prosecutorial discretion the allegation that the Committee violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a), (b) by failing to file reports of receipts and disbursements and the allegation that the Committee violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(b) by failing to include a disclaimer on certain fundraising emails. At the same time, the Commission admonished the Committee for apparent violations of 52 U.S.C. §§ 30104(a) and (b), 30120(a) and 11 C.F.R. §§ 104.3(a), (b) and 110.11(b) by failing to file reports of receipts and disbursements and failing to include a disclaimer on certain fundraising emails. In addition, the Commission found no reason to believe that Salem Snow violated 52 U.S.C. §§ 30104(a) and (b), 30120(a) and 11 C.F.R. §§ 104.3(a), (b) and 110.11(b) by failing to file reports of receipts and disbursements and failing to include a disclaimer on certain fundraising emails. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the basis for the Commission's decision is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter at (202) 694-1650 or ddillenseger@fec.gov.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

BY: Aaron Rabinowitz
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Salem for Congress and Zane Knight in his official capacity as treasurer
Salem Snow

MUR 7963

I. INTRODUCTION

The Complaint alleges that Salem for Congress and Zane Knight in his official capacity as treasurer (the "Committee"), the principal campaign committee of Salem Snow, failed to file disclosure reports during the 2022 election cycle, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations. In support of the allegations, the Complaint alleges that fundraising emails sent by Respondents suggest that the Committee raised funds totaling at least $10,000, and potentially as much as $32,206.46, during the 2022 election cycle, but that the Committee failed to report this activity with the Commission. The Complaint also alleges that the Committee failed to include the required disclaimer in three of its fundraising emails.

In response, Respondents acknowledge raising approximately $35,000 and do not dispute having failed to file any reports with the Commission. Subsequent to the Response, on February 2, 2023, the Committee filed all missing disclosure reports for the 2022 election cycle, disclosing $79,499.98 in combined receipts and disbursements. With respect to the missing disclaimers, Respondents contend that they resulted from a "technical error," and point out that the Complaint discovered just three email pieces without a complete disclaimer out of many other emails which do comply with the disclaimer requirements.

While the Committee appears to have violated the Act's reporting requirements, the Commission elects not to pursue these allegations given Respondent's eventual compliance, albeit late, by filing all the missing reports. Therefore, the Commission exercises its

prosecutorial discretion and dismisses with admonishment the allegations that the Committee violated 52 U.S.C. § 30104(a) and (b), and 11 C.F.R. § 104.3(a) and (b) by failing to file reports of receipts and disbursements.[1]

Further, although the Committee failed to include disclaimers in at least three of its fundraising emails, those communications nonetheless contain sufficient information to identify the party who paid for the communication. The Commission has not pursued such disclaimer matters in the past. Therefore, the Commission exercises its prosecutorial discretion and dismisses with admonishment the allegations that the Committee violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(b).[2]

Finally, because the Complaint sets forth no information which would indicate that Snow, who was not the treasurer, was personally responsible for the Committee's alleged violations, the Commission finds no reason to believe that Snow violated 52 U.S.C. §§ 30104(a), (b), and 30120(a) and 11 C.F.R. §§ 104.3(a), (b), and 110.11(b).

II. FACTUAL BACKGROUND

Salem Snow was a registered candidate for the U.S. House of Representatives in Pennsylvania's Second District in the 2022 election cycle,[3] though he did not make the ballot for the Democratic primary.[4] Salem for Congress is Snow's principal campaign committee and

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1 *Heckler v. Chaney*, 470 U.S. 821 (1985).

2 *Id*.

3 Statement of Candidacy, Salem Snow (Dec. 9, 2019); Amended Statement of Candidacy, Salem Snow (Apr. 12, 2021); Amended Statement of Candidacy, Salem Snow (July 30, 2021).

4 *Pennsylvania 2nd Congressional District Election, 2022,* BALLOTPEDIA, https://ballotpedia.org/Salem_Snow (last visited Mar. 21, 2023). The primary election was held on May 17, 2022. *Id.*

Zane Knight is its treasurer.[5] The Committee appears to have ceased operations in March 2022, well before the primary election on May 17, 2022, and has minimal cash on hand ($1,375.22 with a $1,500 debt).[6]

The Complaint alleges that the Committee failed to report contributions for the 2022 election cycle, citing to a series of emails sent by the Committee which reference its fundraising hauls during the cycle.[7] Taken together, the Complaint asserts that the contents of the emails demonstrate that Respondents raised in excess of $10,000, and as much as $32,446 if each amount claimed raised in each email is aggregated.[8]

The Complaint also alleges that the Committee failed to report expenditures during the 2022 cycle, referencing various additional communications by the Committee,[9] including a mass

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5 Amended Statement of Organization, Salem Snow for Congress (Apr. 12, 2021); Amended Statement of Organization (July 30, 2021).

6 Salem for Congress, 2022 Year-End Report at 2 (Jan. 31, 2023).

7 Compl. ¶ 55 (Feb. 23, 2022).

8 *Id*. ¶ 35. The Complaint includes emails sent by Respondents from June 28, 2021, through December 27, 2021, soliciting contributions through ActBlue Express, which indicate that the Committee raised funds in excess of $10,000, and as much as $32,446 during that period. Compl. ¶¶ 5-35, Exs. A-E. The emails were sent by the Snow campaign, from Salem Snow or "Team Salem Finance HQ" at the email address team@salemforcongress.com, or the domain name for Salem for Congress. The emails also displayed the logo "Salem Snow, Democrat for Congress PA-2" in a format similar to the logo on the Salem for Congress's website. The emails also contained the following statements:

1. July 29, 2021: "As it stands, we need to raise another $8,000 in order to meet our monthly fundraising goal for July."
2. July 31, 2021: ". . . we have just a few more hours to raise the $5,322 we need to reach our goal."
3. August 31, 2021: "…we are now only $1,632 away from the goal we set for online donations."
4. September 29, 2021: "If we can raise another $10,000 by tomorrow at midnight, it will set us up for a strong race."
5. November 24, 2021: "We need to bring AT LEAST another $9,000 before the month closes out."

The Complaint also included an email sent by Snow on December 27, 2021, from email info@salemforcongress.com, which states: "As we near the final days of December (our final FEC filing in 2021), we MUST make a big statement with our numbers, but I cannot do this work alone!" Compl. ¶¶ 36-40. Complainant alleges that Respondents show that they clearly understood FEC filing requirements and deadlines and falsely implied that they had filed disclosure reports. *Id*. ¶ 40.

9 Compl. ¶¶ 51, 55.

text message, dated September 30, 2021,[10] and a Facebook post on the Committee's Facebook page linking to a January 27, 2021, article, in *The Northeast Times*, a local Philadelphia newspaper, that was "sponsored" by the Committee.[11]

In response, Respondents acknowledge that the Committee raised no "more than $35,000 in contributions from donors throughout the 2022 cycle" and "received no more than 25 individual contributions that exceed $200."[12] ActBlue disclosure reports also show that the Committee received earmarked contributions totaling $32,206.46, including 22 itemizable contributions during the 2022 election cycle.[13]

Respondents do not dispute that the Committee failed to file disclosure reports but assert that the Committee had difficulty finding someone to assist it with compliance matters, and that "[m]ost contacted individuals refused to work with [the Committee]. . . because of unidentified 'conflicts of interest' or [because] they were afraid to work with anyone challenging [Snow's opponent] Brendan Boyle."[14] Respondents assert, however, that they have "solidified the ability

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[10] The text message included the statement "our FEC deadline is hours away" and a "remove2quit" option. *Id*. ¶¶ 46-47, Ex. H. The Complaint contends that the "remove2quit" option indicates the text message was automated and sent to a large number of people through a service paid for by Respondents. *Id*. ¶ 49. In response, Respondents argue that the "remove2quit" option in the text message does not suggest it was automated or sent to a large number of people through a service paid for by Respondents but only shows that Respondents gave recipients the opt out of receiving text messages from the Committee. Resp. ¶ 3 (Apr. 20, 2022).

[11] Compl. ¶ 49, Ex. I. The Complaint notes that the article is "Sponsored" and "Paid for by Salem for Congress," indicating that the post was being more widely circulated as a paid advertisement funded by the Committee through Facebook. Compl. ¶ 50. Publicly available information on the Facebook Ad Library shows that the Committee paid between $100 and $199 for the ad. Facebook Ad Library, Salem for Congress, https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=104664314346156&search_type=page&media_type=all; https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=104664314346156&search_type=page&media_type=all; https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=104664314346156&search_type=page&media_type=all.

[12] Resp. ¶¶ 7, 8.

[13] *See* Act Blue, Disbursements to Salem for Congress, 2020 and 2022 cycles. FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00401224&recipient_name=C00725739&two_year_transaction_period=2020&two_year_transaction_period=2022Link.

[14] Resp. ¶¶ 3-6.

to submit and upkeep compliance, and are in the process of getting our finances current with the FEC."[15] Subsequently, the Committee, on February 2, 2023, filed all of its reports for the 2022 election cycle, disclosing $79,499.98 in combined receipts and disbursements.

Finally, the Complaint cites to three Committee fundraising emails dated June 28, 2021, July 29, 2021, and July 31, 2021, that the Complaint alleges lacked a disclaimer indicating who paid for the emails.[16] The emails display the "Salem Snow, Democrat for Congress PA-2" logo, an invitation to "Visit Salem's Website," and the Salem for Congress address, but do not contain a "Paid For" Statement.[17] The Committee does not dispute that the disclaimers were missing but argues that only a few of email blasts lacked a disclaimer which resulted from a "technical error."[18]

III. LEGAL ANALYSIS

A. The Commission Dismisses with Admonishment the Allegations that Salem for Congress Failed to File Reports of Receipts and Disbursements

An individual becomes a candidate under the Act when: (a) such individual receives contributions or makes expenditures in excess of $5,000; or (b) such individual gives his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions or has made such expenditures in excess of $5,000.[19] Once the has been met, the candidate has 15 days to designate a principal campaign committee by filing a Statement of Candidacy with the

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15 *Id.* ¶ 6.

16 *Id.* ¶¶ 41-45, Exs. A, B, and G.

17 *Id.*

18 *Id.* ¶ 2.

19 52 U.S.C. § 30101(2).

Commission.[20] The principal campaign committee must file a Statement of Organization within ten days of its designation.[21] An individual or authorized committee of an individual may voluntarily register and report but the individual does not become a candidate solely by voluntarily filing a report, and the individual's committee does not become a political committee and is not required to file reports unless the individual becomes a candidate under 11 C.F.R. § 100.3 [22] Thus, in short, the reporting for an authorized committee is .

Political committees must file reports of receipts and disbursements according to the schedules prescribed in the Act and Commission regulations.[23] Those reports must include, *inter alia*, the total amount of receipts and disbursements.[24] Reports also must itemize contributions and disbursements aggregating more than $200 from a contributor or to a payee during the election cycle for an authorized committee.[25] Authorized committees of individuals running for House or Senate are required to file quarterly reports with the Commission, which are due on April 15, July 15 and October 15, as well as a year-end report due on January 31 of the following year.[26] A political committee must continue to file regular reports with the Commission until it terminates as a political committee.[27]

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20 *Id.* § 30102(e)(1); 11 C.F.R. § 101.1(a).

21 *See* 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

22 11 C.F.R. § 100.5(d), 104.1(b).

23 52 U.S.C. § 30104(a); 11 C.F.R. §§ 104.1(a), 104.5.

24 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(a)(1), (2), (4), (b)(1), (3), and (d).

25 52 U.S.C. § 30104(b)(2), (3), (5).

26 52 U.S.C. § 30104(a)(2); 11 C.F.R. § 104.5(a).

27 52 U.S.C. § 30104(a)(1), (4) 30103(d); 11 C.F.R. §§ 104.1, 102.3.

Salem became a candidate in June 2021, when, according to a review of the Committee's earmarked contributions on ActBlue and its disclosure reports, Salem (or his agents) accepted more than $5,000 in contributions.[28] Once Salem became a candidate, the Committee satisfied the definition of a political committee pursuant to 11 C.F.R. § 100.5(d) and was required to begin filing disclosure reports. As a quarterly filer, its first required disclosure report would have been the 2021 July Quarterly Report, which was due on July 15, 2021.[29] However, the Committee did not file any disclosure reports until 19 months later, on February 2, 2023, when it filed all of its 2022 disclosure reports, disclosing receipts and disbursements totaling $79,499.98.[30]

While it appears that the Committee violated the Act's reporting requirements, the Commission elects not to expend the resources to pursue this matter further given Respondent's eventual compliance, albeit late, by filing all the missing reports, and the minimal electoral impact of the initial lack of compliance. None of the reports were election sensitive and Respondent did not appear on the primary ballot. Moreover, the violations do not appear to have been intentional, but rather, were due, in part, to the Committee's inability to find a compliance specialist.

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[28] 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3. ActBlue disclosure reports show that the Committee had raised more than $5,000 by June 6, 2021. The 2021 July Quarterly Report shows that the Committee had spent more than $5,000 by June 11, 2021.

[29] The 2021 July Quarterly Report was filed on February 2, 2023.

[30] Salem for Congress, 2022 Year-End Report (Feb. 2, 2023); Salem for Congress, 2022 October Quarterly Report (Feb. 2, 2023); Salem for Congress, 2022 July Quarterly Report (Feb. 2, 2023); Salem for Congress, 2022 Pre-Primary Report (Feb. 2, 2023); Salem for Congress, 2022 April Quarterly Report (Feb. 2, 2023); Salem for Congress, 2021 Year-End Report (Feb. 2, 2023); Salem for Congress, 2021 October Quarterly Report (Feb. 2, 2023); Salem for Congress, 2021 July Quarterly Report (Feb. 2, 2023); Salem for Congress, 2021 April Quarterly Report (Feb. 2, 2023).

Therefore, the Commission exercises its prosecutorial discretion and dismisses with admonishment the allegations that the Committee violated 52 U.S.C. § 30104(a), (b) and 11 C.F.R § 104.3(a), (b), by failing to file reports of receipts and disbursements.[31]

B. The Commission Dismisses with Admonishment the Allegation that Salem for Congress Failed to Include Disclaimers in Certain Solicitation Emails

The Act and Commission regulations require that all public communications, as defined in 11 C.F.R. § 100.26, made by a political committee; electronic mail of more than 500 substantially similar communications when sent by a political committee; and all internet websites of political committees available to the general public include a disclaimer.[32] If a candidate, an authorized committee of a candidate, or an agent of either pays for and authorizes a communication, the communication requires a disclaimer, and the disclaimer must state that the communication "has been paid for by the authorized political committee."[33]

The Complaint provided copies of several fundraising emails sent by the Committee that do not contain the "paid for" disclaimer.[34] However, the Committee does not dispute that the disclaimers were missing but contends that was the result of a "technical error" and in any event, only a handful, *i.e.*, three, identified by the Complaint lacked proper disclaimers, and all of its emails clearly indicate who paid for and is responsible for the emails — namely, the name of the

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31 *Heckler v. Chaney*, 470 U.S. 821 (1985).

32 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1).

33 52 U.S.C. § 30120(a)(1); 11 C.F.R. § 110.11(b)(1).

34 Compl., Exs. A, B, and G. The Committee does not indicate how many emails it sent thus it is unclear whether the Committee crossed the for disclaimers. However, the Committee refers to the disclaimers as required and does not dispute that the emails lacked disclaimers. Resp. ¶ 2.

Committee "Salem for Congress" and the Committee's mailing address are on the email, and the required disclaimer is present in links that are required to be visited before donating.[35]

The information in the fundraising emails provided sufficient information to identify that the Committee was the party responsible for the solicitation and would be the recipient of any contributions. The Commission has not pursued disclaimer violations where the communication lacked the requisite disclaimer but contained sufficient information to identify the party responsible for the communication.[36] Under these circumstances, the Commission exercises its prosecutorial discretion and dismisses with admonishment the allegation that the Committee violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(b)(1).[37]

C. The Commission Finds No Reason to Believe that Salem Snow Violated the Act and Commission Regulations

A candidate who is not also the treasurer is not liable under the Act for reporting or disclaimer violations.[38] Therefore, the Commission finds no reason to believe that Salem Snow violated 52 U.S.C. §§ 30104(a) and (b), 30120(a) and 11 C.F.R. §§ 104.3(a) and (b), 110.11(b).

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35 Resp. ¶ 2.

36 *See, e.g.*, Gen. Counsel's Rpt. at 2, MUR 6278 (Committee to Elect Joyce B. Segers for Congress) (EPS Dismissal) (dismissing allegations that campaign websites and flyers lacked requisite disclaimers where the website includes partial payor information in the form of contact information, including identifying information such as the logo "Joyce Segers for U.S. Congress," and the Committee's name, address, telephone number, website, and email address, but did not say whether the Committee had paid for the communications).

37 *Heckler v. Chaney*, 470 U.S. 821 (1985).

38 The reporting and disclaimer violations apply to the committee and treasurer. 52 U.S.C. §§ 30104(a), (b), 30120; *see* F&LA at 2, MUR 6556 (Broun) (concluding that the candidate had no personal liability for reporting violations). There are various provisions of the Act that specifically provide for candidate liability. *See, e.g.,* 52 U.S.C. §§ 30116(f), 30118(a) and 30119. There are also other provisions of the Act that impose liability for "any person." *See, e.g.,* 52 U.S.C. §§ 30120 and 30122. However, the applicable provisions of sections 30104 and 30120 are limited to the liability of a political committee and its treasurer.