



July 7, 2021

Richard C. Pilger
Director, Election Crimes Branch
Public Integrity Section
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Director Pilger,

We write to request an investigation into whether Evan Muhlstein violated 18 U.S.C. § 1001(a) by knowingly and willfully concealing material facts before, and making false representations to, the Federal Election Commission (FEC). Moreover, the Department should investigate whether the individuals or entities behind America Progress Now (“APN”) knowingly and willfully violated federal campaign finance law.

In the final weeks of the 2018 election, a newly created Facebook page called “America Progress Now” reached hundreds of thousands of swing-state voters with paid ads expressly advocating for the election of Green Party candidates in five competitive U.S. Senate and House races. CLC filed a complaint with the FEC alleging that APN violated 52 U.S.C. § 30104(c) by failing to report these digital independent expenditures and the contributors who funded them, and violated 52 U.S.C. § 30120(a) by failing to include required “paid for by” disclaimers on the communications.¹

The FEC forwarded CLC’s complaint to Muhlstein,² who appeared on corporate records for APN, and Muhlstein responded to the complaint on behalf of America Progress Now.³

Muhlstein asserted that APN’s failure to comply with its legal reporting requirements was “entirely” the product of his “inexperience” with the political process.⁴ He asserted that “I have never spent money in any election related matter previously,” and “it is highly unlikely I will ever participate in it again.”⁵

Based on Muhlstein’s response, FEC officials concluded that Muhlstein created the APN Facebook page and placed APN’s Facebook ads,⁶ and that Muhlstein paid for those ads,⁷

¹ Complaint, MUR 7643 (America Progress Now) (Sept. 12, 2019), https://www.fec.gov/files/legal/murs/7643/7643_01.pdf.

² Notification of Complaint to America Progress Now, MUR 7643 (America Progress Now) (Apr. 1, 2020), https://www.fec.gov/files/legal/murs/7643/7643_03.pdf.

³ Response from America Progress Now, MUR 7643 (America Progress Now) (Apr. 15, 2020), https://www.fec.gov/files/legal/murs/7643/7643_04.pdf; see also MUR 7643 (America Progress Now), FEC.gov, <https://www.fec.gov/data/legal/matter-under-review/7643/> (classifying Muhlstein’s April 15, 2020 response as the “Response from America Progress Now”).

⁴ *Id.*

⁵ *Id.*

⁶ First Gen. Counsel’s Report at 2, 5, MUR 7643 (America Progress Now) (May 4, 2020), https://www.fec.gov/files/legal/murs/7643/7643_05.pdf.

⁷ Statement of Reasons of Commissioner Ellen L. Weintraub at 2, MUR 7643 (America Progress Now) (July 10, 2020), https://eqs.fec.gov/eqsdocsMUR/7643_10.pdf (“Mr. Muhlstein . . . seems to have been the true source of the funds.”)

as part of Muhlstein’s individual “support for several third-party candidates.”⁸ Muhlstein’s response convinced one FEC official that this was a case of an “unsophisticated individual trying to do the right thing but getting confused by the complex rules of federal campaign finance law.”⁹ Even though APN had clearly violated the law,¹⁰ the FEC agreed to dismiss the case against APN based on conclusions that the individual behind APN was “unsophisticated” and “confused,” and had not engaged in politics previously and would not do so again.¹¹

Leaked documents from an internal Facebook investigation show that Muhlstein’s response materially misled the FEC.¹²

The APN Facebook ads were not the work of an “inexperienced” political novice using his own money to place ads expressing support for his preferred candidates. Instead, the APN page was controlled by political professionals that had managed hundreds of thousands of dollars in FEC-reported independent expenditures. Specifically, an established Republican political consulting firm placed these ads in an apparent attempt to influence competitive congressional elections by driving left-leaning voters towards Green Party candidates. Contrary to his suggestions that he was personally responsible for APN’s activities, Muhlstein was not even an administrator on the Facebook page, so he neither managed the page nor placed the APN advertisements.

Facebook opened an internal investigation into the America Progress Now page in late 2018, following the publication of a November 5, 2018 report on APN from *ProPublica* and *Vice*.¹³ According to documents from that investigation obtained by the *Guardian*, the Republican political consulting firm Rally Forge was responsible for the ads, and the page was administered by three individuals who also served as Facebook Page administrators for Turning Point USA, a conservative organization:

“These admins are connected to Turning Point USA,” one staffer from [Facebook’s] civic integrity team said, according to internal task management documents seen by the *Guardian*. “This is very inauthentic. I don’t know what the policy here is but this seems very sketchy.” Another staffer named Rally Forge as being responsible for the ads. APN had spent nearly \$5,000 to have the ads shown to users nearly 300,000 times, a third staffer noted.¹⁴

Rally Forge was founded and run by Jake Hoffman, who was one of the three APN page administrators.¹⁵ At the time, Hoffman was a member of the town council in Queen Creek, Arizona, where Muhlstein also lives.¹⁶ Later APN filings confirm that Rally Forge was responsible for placing APN’s Facebook ads.¹⁷

Hoffman and his firm are experienced political operators, and familiar with FEC reporting requirements. For example, in the 2016 election cycle, Hoffman founded, managed, and served as treasurer for a super PAC called “RallyPAC” that reported over

⁸ Statement of Reasons of Chair James E. “Trey” Trainor III at 2, MUR 7643 (America Progress Now) (July 28, 2020), https://eqs.fec.gov/eqsdocsMUR/7643_11.pdf.

⁹ *Id.* at 1.

¹⁰ *See, e.g.*, First Gen. Counsel’s Report at 6-12, MUR 7643 (America Progress Now).

¹¹ *Id.* at 2, 6, 11-12; Notification with Factual & Legal Analysis to America Progress Now at 1, MUR 7643 (America Progress Now), https://www.fec.gov/files/legal/murs/7643/7643_09.pdf.

¹² *See* Julia Carrie Wong, *Revealed: Rightwing Firm Posed as Leftist Group on Facebook to Divide Democrats*, *Guardian* (Jun. 11, 2021), <https://www.theguardian.com/technology/2021/jun/11/facebook-ads-turning-point-usa-rally-forge>.

¹³ *Id.*; Jeremy B. Merrill & William Turton, *A Mysterious Facebook Group Is Using Bernie Sanders’ Image to Urge Democrats to Vote for the Green Party*, *ProPublica* (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>.

¹⁴ Wong, *supra* note 12.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ America Progress Now, Report of Independent Expenditures Made and Contributions Received, FEC Form 3X at 2-3 (filed Dec. 23, 2020), <https://docquery.fec.gov/pdf/977/202012290300318977/202012290300318977.pdf>.

\$300,000 in independent expenditures to the FEC.¹⁸ All of the independent expenditures were paid through his firm, Rally Forge.¹⁹ In the 2018 cycle, the super PAC “KelliPAC” reported to the FEC that it paid Rally Forge \$50,000 for “digital outreach” independent expenditures.²⁰ In the 2020 cycle, the 501(c)(4) arm of Turning Point USA, Turning Point Action, reported to the FEC that it paid Rally Forge for over \$1 million in independent expenditures.²¹ Also in the 2020 cycle, Rally Forge ran a “troll farm” program on behalf of Turning Point Action, where it paid social media users to post messages without disclosing Turning Point Action’s role;²² this resulted in Facebook banning Rally Forge from the platform.²³

Muhlstein’s response to the FEC on behalf of APN appears to have intentionally concealed that an established political consulting firm placed APN’s ads, that the APN page was managed by professional political operatives with significant experience, and that he was not himself even an administrator for the APN Facebook page.

In short, Muhlstein misled the FEC, and in doing so, may have violated 18 U.S.C. § 1001(a).

Muhlstein’s misrepresentations were material. He successfully urged the FEC to dismiss the complaint against APN by asserting that he was responsible for APN’s Facebook advertisements, and that APN’s failure to comply with legal disclosure requirements was “entirely” the result of his “inexperience.” FEC officials found Muhlstein’s misrepresentations persuasive:

- Muhlstein led one Commissioner to conclude that “APN was established by an unsophisticated individual trying to show his support for several third-party candidates,” and that this was a case of an “unsophisticated individual trying to do the right thing but getting confused by the complex rules of federal campaign finance law.”²⁴ As described above, this was false.
- Muhlstein led the FEC’s Office of General Counsel to conclude that Muhlstein “set up the APN Facebook page and placed the ads to advocate for candidates he

¹⁸ RallyPAC, Statement of Organization, FEC Form 1 at 1, 3 (Sept. 26, 2016), <https://docquery.fec.gov/pdf/080/201609269032137080/201609269032137080.pdf> (listing Hoffman as RallyPAC’s treasurer and custodian of records); Brian Schwartz, *Pro-Trump Super PAC Backed Solely by Bank Executive Used Donations to Fund Facebook Conspiracy Meme Campaign*, CNBC (Apr. 2, 2019), <https://www.cnbc.com/2019/04/02/pro-trump-super-pac-used-donor-money-to-fund-right-wing-conspiracy-campaign.html> (describing RallyPAC as “founded and managed” by Hoffman, and noting that both the PAC and Rally Forge were located at the same address).

¹⁹ Rally Forge, Independent Expenditures (24- and 48-hour Reports), 2015-16, FEC.gov, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00626432&is_notice=true&most_recent=true&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016, Rally Forge, Independent Expenditures (Regularly Scheduled Reports), 2015-16, FEC.gov, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00626432&is_notice=false&most_recent=true&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016 (disclosing all independent expenditures paid to Rally Forge).

²⁰ KelliPAC, 24/48 Hour Report of Independent Expenditures (July 30, 2018), <https://docquery.fec.gov/cgi-bin/fecimg/?201807309119332875>.

²¹ Independent Expenditures to Rally Forge (24- and 48-hour reports), 2019-20, FEC.gov, https://www.fec.gov/data/independent-expenditures/?data_type=processed&cycle=2020&is_notice=true&most_recent=true&payee_name=rally+forge; Independent Expenditures to Rally Forge (regularly scheduled reports), 2019-20, FEC.gov, https://www.fec.gov/data/independent-expenditures/?data_type=processed&cycle=2020&is_notice=false&most_recent=true&payee_name=rally+forge.

²² Isaac Stanley-Becker, *Pro-Trump Youth Group Enlists Teens in Secretive Campaign Likened to a ‘Troll Farm,’ Prompting Rebuke by Facebook and Twitter*, WASH. POST (Sept. 15, 2020), https://www.washingtonpost.com/politics/turning-point-teens-disinformation-trump/2020/09/15/c84091ae-f20a-11ea-b796-2dd09962649c_story.html.

²³ Isaac Stanley-Becker, *Facebook Bans Marketing Firm Running ‘Troll Farm’ for Pro-Trump Youth Group*, WASH. POST (Oct. 8, 2020), <https://www.washingtonpost.com/technology/2020/10/08/facebook-bans-media-consultancy-running-troll-farm-pro-trump-youth-group/>.

²⁴ Statement of Reasons of Chair James E. “Trey” Trainor III at 1-2, MUR 7643 (America Progress Now).

supported.”²⁵ As described above, this conclusion regarding Muhlstein’s involvement was incorrect. Moreover, the consulting firm that actually placed the APN Facebook ads exclusively worked for Republicans and right-leaning causes, so it appears exceedingly doubtful that the individuals who placed APN’s ads truly “supported” far-left Green Party candidates.

- Muhlstein also led the Office of General Counsel to conclude that the “Respondents”—America Progress Now and Muhlstein—had not participated in election activity before and “were unlikely to participate in election activity again,”²⁶ factors that it cited when recommending dismissal of the matter. As described above, this was false.

These conclusions, which were drawn from Muhlstein’s misrepresentations, led the FEC to dismiss the complaint against APN, despite there being no dispute that APN violated the law.

The Department should investigate whether Muhlstein violated 18 U.S.C. § 1001(a).

Moreover, the Department should investigate whether those behind America Progress Now knowingly and willfully violated 52 U.S.C. §§ 30104(c) and 30120(a) by failing to timely disclose spending and include accurate on-ad disclaimers. The individuals and entities who operated APN had substantial past experience with federal reporting requirements, so had knowledge of APN’s legal disclosure obligations.

Available facts also indicate that those individuals or entities had a motive to evade those disclosure laws, and may have done so willingly. Swing state voters who saw “America Progress Now” ads promoting Green Party candidates would have had no idea that they were the handiwork of Republican political operatives. Voters would surely have responded differently to the ads had those connections been known at the time, so it appears that APN sought to keep them secret.

Disclosure and disclaimer requirements are intended to prevent such deception. These laws protect the public’s “interest in knowing who is speaking about a candidate shortly before an election,” as such “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”²⁷ Evading the disclosure laws that inform voters appears to have been critical to the design of APN’s ad campaign.

Muhlstein’s misrepresentations to the FEC, moreover, impeded the FEC’s ability to enforce those laws, and further impeded the public’s right to know who was behind APN’s ads.

Thank you for your attention to this matter,

_____/s/_____

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Copy to:
Shana Broussard, Chair, Federal Election Commission
Allen Dickerson, Vice Chair, Federal Election Commission

²⁵ First Gen. Counsel’s Report at 2, 5 MUR 7643 (America Progress Now).

²⁶ *Id.* at 2, 6, 11-12.

²⁷ *Citizens United v. FEC*, 558 U.S. 310, 369-71 (2010).