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December 23, 2010

Jeff S. Jordan, Esq.  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

Re: MUR 6414

Dear Mr. Jordan:

As counsel to Congressman Russ Carnahan, I write in response to the Complaint in MUR 6414, which the Commission received on October 29, 2010. The Complaint presents no violation of the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.*, and the Commission should dismiss it.

#### FACTUAL BACKGROUND

The Complaint was filed by Edward R. Martin, Jr., who ran unsuccessfully against Congressman Carnahan in the 2010 general election. The Complaint involves a web site created, published and posted by Michael Corwin and Jeanne Dillon. See Compl. at 2. Located at [www.therealedmartin.com](http://www.therealedmartin.com), the site raised questions about Mr. Martin's conduct while he worked for the Roman Catholic Archdiocese of St. Louis, and while the Archdiocese was responding to allegations of clergy sexual abuse.

Still online at this writing, the home page of the site contains a statement reading:

We at TheRealEdMartin.com, a free internet-based website distributing publicly available information, reiterate that this website was not paid for or endorsed by ANY campaign, candidate, or interest group, and was done by two individuals exercising their First Amendment Rights. TheRealEdMartin.com contains NO communications that were "placed for a fee" by any candidate, campaign, or interest group. As such, and per FEC

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regulation Sec. 100.26, the website does not constitute "public political advertising," and hence, the 120 day restriction does not apply.

<http://therealedmartin.com/www.therealedmartin.com/HOME.html>. Similarly, the "Contact Us" page of the site reads:

This website complies with FEC Regulations, Sec. 100.26, 100.155 and 100.94. This website, and all its contents, including the investigation, the video report, and the written report are distributed free to the public via the Internet. The information distributed herein has not been paid for, endorsed, or approved by any political party, interest group, candidate, or campaign. All background evidence/source material included on the website and used in the reports was and is available to the public at no cost. Michael Corwin and Jeannine Dillon are solely responsible for the content of this website.

<http://therealedmartin.com/www.therealedmartin.com/CONTACT.html>. Such language was on the site at the time of filing. *See* Compl. at 5. And, as the Complaint acknowledges, Mr. Corwin and Ms. Dillon registered the domain name. *See id.*

Mr. Corwin and Ms. Dillon were associated with a firm called Veritas Research, which was a vendor to the Russ Carnahan in Congress Committee, Congressman Carnahan's principal campaign committee. The Committee engaged Veritas in 2010 to develop information on Mr. Martin's record, including his past employment, with an eye toward use in future media communications. Over time, however, disagreement grew between the vendor and Committee staff over the development and presentation of the research. The vendor became committed to producing a journalistic expose of the Archdiocese's response to sexual abuse allegations and Mr. Martin's role in that response. Committee staff found the vendor's approach unresponsive to the campaign's political interests. The Committee made its last payment to Veritas on September 27, 2010, and its relationship with Veritas ended.

The Committee understands that Mr. Corwin and Ms. Dillon developed and posted [www.therealedmartin.com](http://www.therealedmartin.com) on or around October 18, 2010, after Veritas ceased to be a Committee vendor. While the Committee understands that the web site may have drawn on research that Mr. Corwin and Ms. Dillon had previously done while working for the campaign, neither it nor Congressman Carnahan authorized the site. Nor did the Committee or the Congressman have any control over the site's ultimate content, or the circumstances of its posting.

#### LEGAL ANALYSIS

The Complaint alleges two violations. First, it asserts that the web site "was in fact a coordinated expenditure ... under 11 C.F.R. § 109.21." Compl. at 1. Second, it asserts that the campaign

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failed "to place the proper disclaimer on the website www.therealedmartin.com ..." *Id.* at 2. Both of these claims are meritless.

**A. The Web Site Did Not Result in a Coordinated Communication**

A third party's payment for the development and hosting of a web site does not result in a coordinated communication under section 109.21<sup>1</sup>. Under the rules in place for the 2010 general election,<sup>2</sup> a communication is coordinated when it is paid for by a third party, meets a "content" test, and meets a "condition" test. To meet the "content" test, the communication must be either an electioneering communication or a public communication. See 11 C.F.R. § 109.21(c). An electioneering communication includes only broadcast, cable or satellite communications. See 11 C.F.R. § 100.29(a). A public communication includes other forms of general public political advertising, but not "communications over the Internet, except for communications placed for a fee on another person's Web site." *Id.* § 100.26.

The Commission "carefully tailored" the definition of "public communication"—and hence the coordinating rules -- "to avoid infringing on the free and low-cost uses of the Internet that enable individuals and groups to engage in political discussion and advocacy on equal footing with corporations and labor organizations (through their SSFs) and other political committees, without the need to raise large amounts of funds." Internet Communications, 71 Fed. Reg. 18,589, 18,594 (2006).

Accordingly, in multiple enforcement actions, the Commission has refused to treat private web sites as coordinated under part 109. For example, the Commission found no reason to believe that a blog hosted by an Iowa political activist was coordinated with President Obama's campaign: "the Obama Committee could coordinate with an Internet website being operated as a political blog that does not pay a fee to place information on another's website without any resulting violation since this category of Internet activity has been specifically exempted from the definition of a 'public communication.'" *Factual and Legal Analysis*, MUR 5949, at 4. See also First General Counsel's Report, MJR 5461 (recommending dismissal of complaint because, *inter alia*, "[a]ll communications covered by section 109.21 must be 'public communications' as defined in section 100.26 ...").

<sup>1</sup> It is not evident what financial consequences the Complaint claims to have occurred from the supposed coordination, since it contends at the same time that "the Carnahan for Congress Campaign Committee is the source of funding" of the site. Compl. at 3.

<sup>2</sup> The Commission's revised coordination rules did not take effect until December 1, 2010, after the alleged conduct in this matter had already occurred. See Coordinated Communications, 75 Fed. Reg. 55,947 (Sep. 15, 2010). Had the revised rules been in effect, the outcome of this matter would be the same.

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Thus, the Complaint's allegation of coordination is mistaken. *See* Compl. at 4. It claims that the content element of section 109.21 was met, because the web site mentioned Martin and "was disseminated on the world wide web within 90 days before the November 2, 2010 election." *Id.* But this claim is wrong as a matter of law.

**B. The Web Site Was Not Required to Carry a Disclaimer**

Nor is there any merit to the Complaint's claim of a disclaimer violation. The Act's disclaimer requirements apply when "a political committee *makes a disbursement* for the purpose of financing any nomination through any ... type of general public political advertising ..." 2 U.S.C. § 441d(n) (emphasis added). Commission rules limit the circumstances in which Internet communications must carry disclaimers. *See* 71 Fed. Reg. at 18,600, 18,602. Under those rules, the disclaimer requirements apply only to public communications, electioneering communications, email of more than 500 substantially similar communications that are sent by a political committee, and "all Internet websites of political committees available to the general public." 11 C.F.R. § 110.11(a)(1).

"Persons other than political committees are not required to include disclaimers on their websites." 71 Fed. Reg. at 18,600. Past interactions between a committee and a web site sponsor, or even a history of payments from the committee to the sponsor, do not trigger the disclaimer requirements. For example, the Act "does not require a disclaimer when a blogger or other person accepts payment from a Federal candidate", although "disbursements for particular communications might still require disclaimers", as when a "political committee pays a fee to place an advertisement on the website of a blogger ..." *Id.* at 18,602.

The web site in this matter was not required to carry a disclaimer. Even the Complaint acknowledges that "Jeannine Dillon and Michael Corwin registered the domain name", Compl. at 2, and that "Michael Corwin and Jeannine Dillon published online [the] website," Compl. at 3. While the Complaint alleges that the Committee had previously made payments to their company, Veritas, it shows no payment by the Committee for the web site. Rather, it simply assumes from the timing of the payments that the Committee "authorized the message on the website in violation of 11 C.F.R. 110.11(b)." Compl. at 4.

But, in fact, as the Complaint acknowledges, the web site *did* carry a disclaimer, saying that the site "has not been paid for, endorsed or approved by any political party, interest group, candidate or campaign" and that "Michael Corwin and Jeannine Dillon are solely responsible for the content of this website." Compl. at 5. The Complaint would have forced the sponsor to say that Congressman Carnahan "did pay for and authorize the creation and distribution of the website" when, in fact, this was not true. Compl. at 5.

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For the foregoing reasons, we respectfully request that the Commission find no reason to believe that any violation occurred, and that it dismiss the Complaint.

Very truly yours,

A handwritten signature in black ink, appearing to read 'B. G. Svoboda', followed by a long horizontal flourish.

Brian G. Svoboda  
Counsel to Congressman Carnahan