



FEDERAL ELECTION COMMISSION
Washington, DC 20463

JUL 17 2012

Mr. Victor M. Arango, Registered Agent
Veritas Research, LLC
215 Ash St.
Denver, CO 80220

✓ Mr. Michael Corwin
1809 Moon NE St., Suite 9
Albuquerque, NM 87112

RE: MUR 6414
Veritas Research, LLC

Dear Mr. Arango:

On November 4, 2010, the Federal Election Commission ("Commission") notified Veritas Research, LLC ("Veritas"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). Subsequently, in a letter dated November 10, 2011, the Commission provided Veritas with an opportunity to respond to information suggesting that it may have provided to the Russ Carnahan in Congress Committee (the "Committee") investigative and research services without charge or at a discounted rate, resulting in a possible excessive or prohibited contribution. On July 10, 2012, the Commission found, on the basis of the information in the complaint, and information provided by Veritas and others, that there is no reason to believe Veritas violated the Act with respect to TheRealEdMartin.com website. The Commission also dismissed this matter as to Veritas with regard to any potential violations of 2 U.S.C. §§ 441a(a)(1)(A) or 441b in connection with the services provided to the Committee. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Accordingly, the Commission closed its file in this matter.

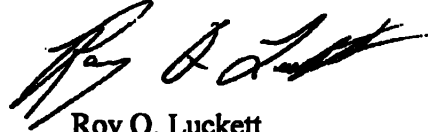
Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy Q. Lockett", written over a horizontal line.

Roy Q. Lockett
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** Veritas Research, LLC

MUR: 6414

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7 **I. GENERATION OF MATTER**

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9 This matter was generated by a complaint filed with the Federal Election
10 Commission by Edward R. Martin, Jr., on behalf of Ed Martin for Congress Committee.
11 See 2 U.S.C. § 437g(a)(1).

12 **II. INTRODUCTION**

13 This matter involves alleged coordination between Russ Carnahan and Russ Carnahan
14 in Congress Committee ("the Committee") and Veritas Research, LLC ("Veritas"), Michael
15 Corwin, and Jeannine Dillon, in the creation and publication of a website attacking Ed
16 Martin, Representative Carnahan's opponent in the 2010 general election in Missouri's 3rd
17 Congressional District. The website focuses on the results of a three-month investigation by
18 Corwin and Dillon, and it purports to document Martin's role as an employee in the St. Louis
19 Archdiocese in 1998-2001 as it responded to allegations of clergy sexual abuse. Corwin and
20 Dillon are prominently featured as the creators of the website, and notices on the site state
21 that they are solely responsible for its content. Complainant Ed Martin asserts that the
22 website, TheRealEdMartin.com, constituted an improperly disclosed coordinated
23 communication and should have included a disclaimer stating that it was paid for and
24 authorized by the Committee. The complaint bases its allegations on the Committee's
25 reported payments for media-related consulting and research to Veritas, a limited liability
26 company formed by Dillon, and the proximity in time of one of the payments to the date the

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1 website domain name was registered. The complainant concludes from these facts that the
2 Committee fully or partially paid for the website.

3 Upon review of the complaint, responses, and available information, it does not
4 appear that the website satisfies the content standard of the Commission's coordinated
5 communication regulations. Therefore, the Commission has determined to find no reason to
6 believe that Veritas violated the Federal Election Campaign Act of 1971, as amended ("the
7 Act"), with respect to the coordinated communication allegation involving the
8 TheRealEdMartin.com website.

9 The Joint Response of Corwin, Dillon, and Veritas ("Joint Response"),¹ however,
10 indicated that Veritas, through Corwin, provided some investigative services to the
11 Committee without charge, did not charge the Committee for media consulting and some
12 discrete research, and charged the Committee a discounted price for fieldwork. See Joint
13 Response, Ex. C, G, and H. These facts raised the possibility that the Veritas may have made
14 either an excessive or prohibited contribution in the form of services provided at no charge or
15 at less than the usual and normal charge, depending on the value of the services and Veritas's
16 treatment under tax law. Because these issues were not raised in the complaint, the
17 Commission notified the Committee and Veritas of these potential violations to provide them
18 with an opportunity to respond. The Committee and Corwin, who worked as a subcontractor
19 to Veritas through his own firm, filed supplemental responses. See Committee Suppl. Resp.
20 and Corwin Suppl. Resp.

¹Corwin, Dillon, and Victor Arango, Dillon's husband and the registered agent of Veritas, jointly submitted a sworn response to the complaint.

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Based on the supplemental responses and in light of the small amounts potentially in violation, the Commission has determined to exercise its prosecutorial discretion and dismiss this matter as to Veritas regarding any potential violations of 2 U.S.C. §§ 441a(a)(1)(A) or 441b for making excessive or prohibited in-kind contributions in the form of services provided at no charge or at a discount.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

In or around April 2010, the Committee hired a media firm that subcontracted with Corwin, a New Mexico private investigator with extensive experience working in political campaigns, to conduct opposition research on Martin. The firm paid Corwin's firm, Corwin Research & Investigations, LLC ("CRI") a \$2,500 retainer for that research. Joint Response at 3, Ex. E. Subsequently, the Committee hired Veritas, a newly formed company, to develop information on Ed Martin's record, "including his past employment, with an eye toward use in future media communications." Committee Response at 2. Veritas, a Colorado limited liability company, was formed on July 23, 2010 by Corwin's former colleague, Jeannine Dillon, a former television investigative news producer. Colorado Secretary of State records; Corwin Suppl. Resp. at 2. Corwin apparently introduced her to the Committee. See Joint Response at Ex. G. According to Corwin, Dillon operated Veritas as a sole proprietorship. Corwin Suppl. Resp. at 1-2. Working together through Veritas, Corwin and Dillon conducted the research and investigative work as authorized by the Committee.

1 Veritas's work for the Committee entailed two research trips to St. Louis that,
2 according to Veritas's invoices, consisted of general and document research, fieldwork,
3 interviews, pre-production research, and pre-production fieldwork by Corwin and Dillon.
4 See Joint Response, Exs. A, B, C, and D. Dillon emailed the Committee an invoice in
5 advance of the first trip, from August 12-15, 2010, reflecting a charge for a \$4,500
6 retainer to be paid before the services began and generally describing the services to be
7 performed inclusive of travel expenses. *Id.*, Ex. A. More than two weeks after the
8 second trip, from September 4-5, 2010, Dillon emailed the Committee another invoice.
9 *Id.*, Ex. C. This second invoice contained a similar description of the services to be
10 performed inclusive of all research and travel expenses, and it also contained an itemized
11 breakdown for work billed at an hourly rate, a discounted flat rate for field work, source
12 fees, and itemized travel expenses, all totaling \$1,955. *Id.* This second invoice also
13 itemized services provided at "no charge," including updating a memo, discrete
14 narrowly-focused research topics, and media consulting (emphasis added). *Id.* The
15 Committee's reports to the Commission reflect payments of these invoices on August 2
16 and September 27, 2010, respectively.

17 In the course of providing services to the Committee, disagreements emerged over the
18 development and presentation of Veritas's research and "the scope of future work."
19 Committee Response at 2; Joint Response at 4; Committee Suppl. Resp. at 2. The
20 Committee states that Veritas wanted to produce "a journalistic exposé" on Martin's role in
21 the St. Louis Archdiocese's response to allegations of clergy sexual abuse of children, but the
22 exposé was out of step with the Committee's political interests. Committee Response at 2.
23 The Committee apparently believed Veritas's approach would alienate Catholic voters. See

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1 Joint Response at 4, Exs. F and G. Veritas, for its part, viewed the information it had
2 gathered as a matter of grave public interest, characterizing it as Martin's silence in the face
3 of alleged child sexual abuse. Joint Response at 4.

4 After increasingly heated discussions about the issue, including a mid-September
5 email exchange in which Corwin unsuccessfully argued that a recent comment by the Pope
6 about the Church's response to clergy-child abuse inoculated the Committee against charges
7 of anti-Catholic bias, Veritas terminated its working relationship with the Committee. *Id.*
8 at 4, Ex. F; see Committee Suppl. Resp. at 2. In an October 4, 2010, termination email from
9 Corwin to Committee campaign manager Angela Barranco, Corwin maintained that Barranco
10 had objected to releasing a video addressing the Martin-clergy abuse issue on You Tube.²
11 Joint Response, Exs. G and H. Corwin also said that he "*donated* huge amounts of time to an
12 investigation" of the issue (emphasis added). *Id.* He advised Barranco that he, Corwin, had
13 consulted with his own compliance lawyers and made clear that he viewed work conducted
14 on the issue as belonging variously to him ("the research is all mine") and to him and Dillon
15 ("[we] can take our work"); that they intended to take the work and use it in some way; and
16 that they would use it with "clear disclosure that the work is ours and not approved by a
17 campaign, candidate or committee." *Id.* Corwin also advised Barranco that Dillon would
18 continue working with him and would not do production-related work for the Committee. *Id.*

²Corwin's October 4, 2010, email does not expressly state that the You Tube video launch and the investigation he referred to concerned the Martin-clergy abuse issue, but the Joint Response makes clear that it was. See e.g., Joint Response at 3-5 ("Because of the exceptionally difficult nature of the subject of the investigation, pedophile priests and child molestation, a rift developed . . ."; ". . . Barranco . . . grew increasingly reluctant to use the information regarding Martin's role on the Curia and the pedophile priest scandal"; "[r]ealizing there was no way that Barranco would approve using the information, a decision was made . . . to break away from the campaign"; and ". . . Corwin and Dillon decided to proceed on their own, at their own expense with the Real EdMartin.com website *and video*") (emphasis added).

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1 Barranco responded by email to both Corwin and Dillon on October 6, 2010. Joint
2 Response, Ex. H. Barranco expressed disappointment but not surprise "as it has been clear to
3 me for some time that you were interested in a different direction for the project than we [the
4 Committee] were." *Id.* She also disclaimed responsibility for Corwin and Dillon's future
5 actions involving the issue, stating: "[f]rom this point forward Carnahan in Congress has
6 nothing to do with this matter, and we wish to have no future involvement in it. We also
7 understand that we have no further debts to you, as per your final invoice." *Id.* The
8 following day, according to the Committee's amended 2010 Pre-General Report, the
9 Committee made a third payment to Veritas for "research" in the amount of \$1,188.99.³

10 Veritas asserts that it delayed terminating its work relationship with the Committee
11 until it had invoiced and received payment for the work done on the second St. Louis trip and
12 says it consulted with two attorneys before it severed the relationship. Joint Response at 4.
13 On September 29, 2010, two days after the Committee paid the second invoice, Corwin
14 purchased the domain name, "The Real Ed Martin.com," for \$12, and he subsequently
15 purchased a year of webhosting at a total cost of \$56. Complaint, Attachment J; Joint
16 Response at 5. TheRealEdMartin.com website launched on or about October 19, 2010.⁴ See
17 Jo Mannies, *Democratic Researcher Offers More Details on Creation of Anti-Martin*
18 *Website*, St. Louis Beacon, October 27, 2010 ("Mannies, *Democratic Researcher*").

³The Committee had originally reported this October 7, 2010 payment in its 2010 Pre-General Report as made to "VR Research" on 18th Street in Washington, DC. There is a company called "VR Research" with offices on 18th Street and in Oakland, California. The Committee apparently did employ "VR Research" as reflected by a November 4, 2010, payment to the Oakland office of the company disclosed in the Committee's 2010 Post-General Report. None of the responses shed any light on this issue.

⁴The website continues to be available at <http://therealedmartin.com/www.therealedmartin.com/HOME.html>, but it has now been revised.

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1 The website's home page describes its content as "the result of a three month
2 investigation that links Ed Martin—who is running for Missouri's 3rd Congressional
3 District—to the quiet movement of pedophile priests within the St. Louis Archdiocese during
4 the years he worked there." The "About Us & The Project" section of the website notes that
5 the investigation reveals important, previously unpublished facts "that raise serious concerns
6 about Candidate Martin's integrity, judgment and ability to serve the public as a United
7 States Congressman." A video prominently posted on the website features interviews of an
8 alleged clergy abuse victim, his mother, and a former Archdiocese employee. Corwin and
9 Dillon also uploaded the video to YouTube. Joint Response at 1. Other content on the
10 website includes an extensive narrative of Martin's role as a member of the Archdiocese
11 Curia (a governing board) and director of its Human Rights Office, the Archdiocese's
12 handling of child sexual abuse allegations, details of the lawsuit filed by the family of the
13 alleged victim against the Archdiocese, and other relevant information.

14 Donating their time and services, Corwin prepared the website's written content,
15 Dillon prepared the video, and Arango designed and created the website – all without
16 compensation. Joint Response at 5. Statements throughout the website read, in pertinent
17 part, that the website complies with FEC Regulations 11 C.F.R. §§ 100.26, 100.155 and
18 100.94, that the information within it has not been "paid for, endorsed, or approved by any . .
19 . candidate or campaign," and that Corwin and Dillon are solely responsible for its content.
20 Committee Response at 2; Joint Response at 5. The Committee issued a press statement
21 denying its "knowledge, encouragement or authorization" of the website. See Mannies,

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1 *Democratic Researcher, supra; see also Jake Wagman, Carnahan Campaign Blames Anti-*
2 *Martin Website on Rogue Researchers, St. Louis Times Dispatch, October 27, 2010.*⁵

3 **B. Legal Analysis**

4 1. Coordinated In-Kind Contribution with Respect to the Website

5 Under the Act, no person may make a contribution, including an in-kind
6 contribution, to a candidate and the candidate's authorized political committee with
7 respect to any election for Federal office that, in the aggregate, exceeds \$2,400. 2 U.S.C.
8 § 441a(a)(1)(A) (2010 election cycle); *see* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R.
9 § 100.52(d)(1) (defining "contribution" as including in-kind contributions). Corporations
10 are prohibited from making any contributions in connection with a federal election.
11 2 U.S.C. § 441b. The Act defines in-kind contributions as, *inter alia*, expenditures by
12 any person "in cooperation, consultation, or concert, with, or at the request or suggestion
13 of, a candidate, his authorized political committees, or their agents" 2 U.S.C.
14 § 441a(a)(7)(B)(i). No candidate or political committee may knowingly accept a
15 contribution in violation of the Act. 2 U.S.C. § 441a(f). A political committee must
16 disclose all contributions it receives, including in-kind contributions. 2 U.S.C. § 434(b);
17 11 C.F.R. §§ 104.3(a), 104.13(a)(1).

18 Under Commission regulations, a communication is coordinated with a candidate, an
19 authorized committee, a political party committee, or agent thereof if it meets a three-
20 pronged test: (1) it is paid for, in whole or part, by a third party (a person other than the

⁵The Committee initially misreported in its 2010 October Quarterly Report the first two payments to Veritas by listing an incorrect address for Veritas in Tucson, Arizona, rather than in Colorado. The Committee amended its reports after a blog traced the misreported Tucson address to a research program at the University of Arizona called the "Veritas Research Program." *See* 24thstate.com, *The Two Suspect Payments in the Carnahan Catholic Attack*, Oct. 25, 2010.

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1 candidate, authorized committee or political committee); (2) if at the time of the events at
2 issue, it satisfied one of four "content" standards;⁶ and (3) it satisfies one of six "conduct"
3 standards. *See* 11 C.F.R. § 109.21. Three of the four content standards pertinent to this
4 matter require that a communication be a "public communication" to be considered
5 coordinated.⁷ *See* 11 C.F.R. §§ 109.21(c)(2) (a public communication that republishes
6 campaign materials); 109.21(c)(3) (a public communication that expressly advocates the
7 election or defeat of a Federal candidate); and 109.21(c)(4) (a public communication that
8 references a clearly identified candidate and is publicly distributed in the candidate's
9 jurisdiction 90 days or fewer before an election). The term "public communication"
10 encompasses certain types of general public political advertising such as broadcasting,
11 newspaper, and mass mailings, including communications over the Internet placed for a fee
12 on another person's website. 11 C.F.R. § 100.26; *see also* 2 U.S.C. § 431(22).

13 Additionally, the Act and Commission regulations require all public communications
14 made by a political committee and political committee websites to include a disclaimer
15 stating that the committee paid for the communication. 2 U.S.C. § 441d; 11 C.F.R.
16 § 110.11(a). Communications paid for by other persons require disclaimers only if they
17 constitute electioneering communications or public communications that expressly advocate
18 the election or defeat of a clearly identified Federal candidate or solicit contributions.

⁶The Commission promulgated a fifth content standard to comply with a court decision in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008). That standard, which encompasses public communications that are the functional equivalent of express advocacy, is not applicable in this matter because it did not become effective until December 1, 2010. *See* Explanation and Justification, *Coordinated Communications*, 75 Fed. Reg. 55,947 (Sept. 15, 2010).

⁷The fourth content standard, electioneering communications, encompasses only broadcast, cable, and satellite communications and is not relevant here. *See* 11 C.F.R. § 100.29(c)(1); 2 U.S.C. § 434(f)(3)(A).

11 C.F.R. §§ 110.11(a)(2), (3), and (4); 2 U.S.C. § 441d. Such disclaimers must identify the person who paid for the communication and state whether or not they are authorized by a candidate or a candidate's authorized committee or agent. 11 C.F.R. §§ 110.11(b)(2) and (3).

The complaint maintains that the website constituted an improperly disclosed coordinated communication between the Committee and Representative Carnahan and Veritas, Corwin, and Dillon. *See* Complaint at 1, 4. It also alleges that the website failed to include a disclaimer noting that the Committee paid for and authorized the site. *Id.* at 2-3, 5.

The complaint alleges that the Committee's payments to Veritas wholly or partially financed the website. The complaint specifically alleges that the website satisfies the coordinated communications content standard at 11 C.F.R. § 109.21(c)(4) because it clearly identified Ed Martin as a candidate and was publicly distributed in Martin's congressional district 90 days or fewer before the November 2, 2010, election, as it was widely available on the Internet as of October 18, 2010. *Id.* at 3-4. The complaint also asserts that the website satisfies either the "substantial discussion" or "former employee/independent contractor" standards of the conduct prong at 11 C.F.R. §§ 109.21(d)(1) and (5), respectively, and relies on the same central facts for both allegations: that Corwin, Dillon, and/or Veritas created and produced the website after substantial discussion with, or based on the Committee's plans and needs as conveyed by, the Committee, Carnahan, or their agents, because (1) the Committee made payments to Veritas; (2) Corwin and Dillon are associated with Veritas; and (3) Corwin and Dillon, the website creators, registered the website's domain name just two days after the Committee's last apparent payment to Veritas and launched it just before the general

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1 election to help Carnahan by attacking Martin. *Id.* at 3-4. Finally, the complaint posits
2 that the payment prong is satisfied because the Committee “fully or partially” paid for the
3 website, citing the August and September payments to Veritas totaling \$6,495. *Id.*

4 The Joint Response and Representative Carnahan’s response, which the
5 Committee has adopted, maintain that the website fails to constitute a coordinated
6 communication, noting that the content prong has not been met because only Internet
7 communications placed for a fee on another’s website are considered “public
8 communications.” Committee Response at 3; Joint Response at 1-2. The Committee
9 states that it believes Corwin and Dillon developed and published the website after
10 Veritas ended its relationship with the Committee. Committee Response at 2. Although
11 the Committee acknowledges the possibility that the website “may have drawn on
12 research” Corwin and Dillon conducted while working for the Committee, it denies that
13 Carnahan or the Committee authorized the website or had control over its content or the
14 circumstances of its publication. *Id.*

15 The Joint Response instead asserts that Corwin and Dillon proceeded independently
16 with the website at their own expense following their disagreement with and break with the
17 Committee. Joint Response at 4-5. They explicitly deny that the Committee compensated
18 Veritas or the individuals associated with creating the website for any work relating to the
19 website. *Id.* at 3. The Joint Response specifically explains that Corwin prepared the
20 website’s written content, Dillon prepared the video, and Arango designed and created the
21 website through the voluntary donation of their time and services. *Id.* at 5. Although the
22 Joint Response acknowledges they were paid for work conducted for the Committee, the
23 Joint Response asserts that Veritas was paid for “other actions unrelated to Internet activity,”

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1 and that there was no legal bar that precluded Veritas and its related individuals from
2 creating the website. *Id.* at 2. Finally, the Joint Response states that they had no discussions
3 with Barranco about publishing a website to release information about the Martin-clergy
4 abuse issue, that neither Barranco nor the Committee ultimately approved a video, that the
5 Committee did not endorse or authorize the website or the video, and that neither the website
6 nor the video was ever presented to the Committee. *Id.* at 4 and 5.

7 It does not appear that there is reason to believe that the respondents engaged in
8 unlawful coordination under the Act and Commission regulations. While the payment prong
9 of the coordinated communication test, 11 C.F.R. § 109.21(a)(1), is satisfied because Dillon
10 and Corwin are a third-party payor, the content standard is not satisfied because the website
11 does not appear to constitute a public communication. Although it appears that the
12 Committee may have paid Veritas, at least in part, to gather some of the information
13 ultimately displayed on the website, on the facts presented here, such payments do not
14 amount to the Committee having placed an Internet communication on another's website for
15 a fee.⁸ Furthermore, the Joint Response makes clear that the individuals responsible for the
16 website were not compensated for their work in hosting, designing or creating the website or
17 its written content.⁹

18 Moreover, the September and October emails between the Committee and individuals
19 associated with Veritas present a compelling case that the Committee did not, in fact, engage
20 in coordinated conduct. *See* 11 C.F.R. § 109.21(a)(3), (d). Those contemporaneous

⁸The same analysis would apply to the placement of the website video on YouTube since one does not pay a fee to place items on YouTube.

⁹ An individual or group of individuals' uncompensated personal services related to Internet activities, like creating, maintaining or hosting a website, is not a contribution under the Act. 11 C.F.R. § 100.94.

1 exchanges demonstrate that the Committee did not want to rely on the Martin-clergy abuse
2 allegations because it believed that such an attack would backfire by alienating Catholic
3 voters. Joint Response, Exs. F, G and H. Rather, the preponderance of the available facts –
4 including those emails – shows that Corwin and Dillon crafted and developed the narrative
5 and prepared the video content on the website because *they* wanted to communicate *their*
6 view of the issue to a mass audience notwithstanding that the Committee declined to do so.
7 *Id.* Corwin's October 4 resignation email, *id.*, Ex. G, further amplified by the dismissal in
8 the Joint Response, indicates that a video concerning the Martin-clergy abuse issue was
9 discussed with the Committee. But the Joint Response specifically states that no discussion
10 took place with Barranco about setting up a website to release the information, and no one
11 from the Committee was shown or approved the website content or video. Joint Response
12 at 4.¹⁰

13 Therefore, Veritas, Corwin and Dillon did not make a coordinated in-kind
14 contribution to the Committee. Additionally, as noted, because the website does not
15 constitute a "public communication" or an electioneering communication, none of the
16 Respondents was required to post a disclaimer on it. Accordingly, the Commission has
17 determined that there is no reason to believe that Veritas violated the Act with regard to
18 TheRealEdMartin.com website.

¹⁰Once the website went live, the campaign called upon Martin to address the issue raised by the website. See Jo Mannies, *Democratic Researcher, supra*; see also Jack Wagman, *Martin Files Complaint over Website Done by Researchers Who Worked for Carnahan*, St. Louis Post Dispatch, Oct. 29, 2010. Nonetheless, that action does not support a conclusion that there is reason to believe the Respondents engaged in unlawful coordination. First, the activity does not constitute actionable "coordination" standing alone, and no other evidence suggests that the parties in fact secretly coordinated here. And most importantly, not only do the Respondents deny coordination, their contemporaneous internal email traffic from the time in question refutes any inference that they did.

2. In-Kind Contribution in the Form of Investigative/Opposition Research
Services Provided at No Charge or at a Discount

The services listed as provided at a discount or at "no charge" in Veritas's second invoice and Corwin's statement that he donated "huge amounts of time" to the investigation raise concerns that Veritas may have made a prohibited contribution, depending on Veritas's tax status, or an excessive contribution. See Joint Response, Exs. C, G, and H. Unless specifically exempted, the provision of goods or services without charge or at a charge which is less than the usual and normal charge for goods and services is a contribution. 11 C.F.R. § 100.52(d)(1). The usual and normal charge for any services, other than those provided by an unpaid volunteer, is determined by reference to the hourly or piecework charge for the services at the commercially reasonable rate prevailing at the time the services were rendered. 11 C.F.R. § 100.52(d)(2). A committee's receipt from a vendor of a complimentary item or the purchase of goods or service at a discount does not result in a contribution if the discounted goods or services or the complimentary item are made available in the ordinary course of business and on the same terms and conditions offered to a vendor's other customers that are not political committees. See MUR 5942 (Rudolph Giuliani Presidential Committee); Advisory Opinion 1994-10.

Both the Committee and Corwin maintain in their supplemental responses that no in-kind contribution resulted from Veritas's discounted or "no charge" services. Veritas did not file a response, and appears to be inactive, as it is considered "delinquent" under Colorado law for failing to file a periodic report that was due on September 30, 2011. And, in any event, Corwin states that he provided virtually all of the services at issue as a subcontractor

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1 to Veritas, and he provides information about those services as well as the uncharged
2 services Dillon provided under Veritas's aegis.¹¹

3 The Committee asserts that it paid the usual and normal charge for Veritas's services
4 because it understood Veritas would bill it on a flat-rate, per-project basis rather than at an
5 hourly rate, a common arrangement with research consultants. Committee Suppl. Resp. at 1,
6 3. According to the Committee, the second invoice reflects this arrangement in its statement
7 that the "[f]ee includes all research services and all travel-related expenses for two-person
8 team." *Id.* at 2; *see* Joint Response at Ex. C. As further support that the full fee was paid, it
9 also points to Barranco's statement in the October 6, 2010, email that the Committee
10 understood it owed nothing further for Veritas's work and the absence of a demand for
11 payment in Corwin's October 4th email, sent after he consulted with his own compliance
12 lawyers. Committee Suppl. Resp. at 2-3. As for the invoice's itemized list of services
13 provided at no charge or at a discount and Corwin's email reference to donated time, the
14 Committee simply states it "cannot speak" to what led Veritas to identify discounts on the
15 invoice or to Corwin's statement, and it has no information that Veritas provided it with any
16 special accommodation not extended to other customers. *Id.* at 3.

17 Corwin makes no mention of a flat-rate arrangement in his sworn supplemental
18 response. Instead, he states that he helped Dillon prepare Veritas's invoice as the more
19 experienced investigator based on his own customary business practice and that the \$85 per
20 hour rate was the same rate CRI charged all of its clients. Corwin Suppl. Resp. at 2, 4.

¹¹In the email forwarding his response, Corwin indicates he had been in touch with Dillon who had not decided whether to respond.

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1 Presumably, Corwin used CRI's rate because Veritas, a two-month old company operated by
2 Dillon, a full time graduate student at the time, had no ongoing business practice.

3 Corwin essentially makes two arguments: (1) that donated, discounted and "no
4 charge" services were provided in the ordinary course of business and on the same term and
5 conditions as provided to non-political clients, and (2) presumably in the alternative, that
6 even if the uncompensated and discounted services were in-kind contributions, their total
7 value was less than the \$2,400 contribution limit in 2010 so Veritas, which Corwin represents
8 was a "single member" LLC "treated as a sole proprietorship," made no excessive or
9 prohibited contribution. *Id.* at 1-2. Corwin does not specifically state that Veritas was
10 treated as a sole proprietorship "by the IRS," a phrase he expressly uses to describe his own
11 firm, CRI. *Id.* An LLC's tax treatment governs whether any contributions made by it are
12 treated as a corporate contribution, or in the case of a single natural member LLC, as a
13 contribution by the member. *See* 11 C.F.R. §§ 110.1(g)(3) and (4).

14 In support of his "ordinary course of business" argument, Corwin provided numerous
15 redacted invoices and a few emails related to CRI's main business, investigating cases for
16 civil plaintiff and criminal defense counsel, to show that he sometimes waived his own
17 compensation or provided some services connected with investigations at no charge to non-
18 political clients. *Id.* at 2-4 and attachments. For the most part, the invoices show Corwin
19 customarily issued itemized invoices billing these clients at an \$85 hourly rate plus travel and
20 expenses but did not charge for certain isolated items such as initial client meetings, mileage
21 related to particular trips, and email updates. Several of the invoices reflect flat-rates for pre-
22 employment background research and witness location information.

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1 Importantly, Corwin also provided information about the nature and value of the
2 invoiced “no charge” services and the “huge amounts” of donated time Corwin refers to in
3 the October 4th email. Based on that information, it appears that the total value of those
4 services was \$3,743. This figure can be broken down into three sets of services: (1) services
5 directed at gathering and presenting information aimed at convincing the Committee to
6 pursue the Martin-clergy abuse issue, totaling \$2,040; (2) discounted field work valued at
7 \$1,580; and (3) updated research and a background check, apparently unrelated to the second
8 St. Louis trip valued at \$123.

9 The first set of services, efforts Corwin and Dillon undertook to persuade the
10 Committee to raise the Martin-clergy abuse issue in the campaign, accounts for more than
11 half of the \$3,743 total amount. A significant portion of Veritas’s invoiced “no charge”
12 services are attributable to these efforts – items described as “Prep Time Line/Updated
13 Memo/7 hrs @ \$85” and “Media Consulting.” The time line/updated memo item refers to
14 time Corwin spent immediately following the second St. Louis trip updating a prior
15 opposition memo in the hope that the additional information would convince the Committee
16 to use the Martin-clergy abuse issue (\$595). *Id.* at 4-5. The media consulting item involved
17 two hours (\$170) spent by Dillon educating the campaign about using “the power of video”
18 to raise the issue. *Id.* at 5-6. Corwin maintains that Veritas chose not to charge for these
19 services because it was unable to convince the Committee to use the issue. *Id.*

20 Veritas’s efforts to persuade the Committee to go forward with making the Martin-
21 clergy abuse issue public also include Corwin’s email reference to “huge amounts” of
22 donated time. Corwin says he was referring in the email to the seven hours he spent updating
23 an opposition memo (the “Prep Time Line/Updated Memo” item) and about 15 hours he

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1 spent searching for news articles about Martin's involvement in the Archdiocese. *Id.* at 6.
2 Corwin explained that his characterization of the amount of time donated to the investigation
3 represented a "deep feeling of frustration" with the campaign for not "exposing Martin's
4 inaction in the face of real harm" to children. *Id.* Corwin says he did not charge the
5 Committee for the 15 hours (\$1,275) he spent searching for news articles because the
6 Committee did not approve the work in advance. *Id.* The \$2,040 total value of these services
7 is based on Corwin's use of his \$85 per hour customary rate, including the services Dillon
8 provided. *Id.* at 5-7.

9 Corwin does not address the second set of services: the discounted field work
10 reflected in the invoice. None of the CRI invoices he provided indicates that CRI
11 customarily offered discounted rates for fieldwork, and we have no information from Veritas
12 to explain the discount. The value of the discount appears to be \$1,580. This figure was
13 calculated by subtracting the \$800 discounted fee Veritas charged and the Committee paid
14 from \$2,380, the non-discounted price for fieldwork performed by a two person team for two
15 days (2 people x 14 hours [two 7-hour days] x \$85/hour = \$2,380; \$2,380 - \$800 = \$1,580).

16 The third set of services involves updated research and a background check, the
17 remaining "no charge" invoiced services totaling \$123. Those services consisted of 15
18 minutes Corwin spent updating a prior search on Amgen, a funder of stem cell research in
19 which Martin's family apparently owned stock (\$21 [rounded] based on an \$85 hourly rate)
20 and a second pre-employment background check on a campaign canvasser suspected of arson
21 at campaign headquarters to determine whether a prior vendor had missed anything in its
22 background check (\$102 [rounded], equivalent to the rate charged for background checks in
23 CRI invoices Corwin provided). *Id.* at 5.

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1 Of the \$3,743 in services Veritas provided at no charge or at a discount, the \$2,040 in
2 services reflecting Veritas's unsuccessful efforts to convince the Committee to pursue the
3 Martin-clergy abuse issue and representing time spent researching the matter that the
4 Committee did not approve of in advance, does not appear to constitute an in-kind
5 contribution. Accordingly, it appears that at most, Veritas may have made an in-kind or
6 prohibited contribution totaling \$1,703 ($\$3,743 - \$2,040 = \$1,703$).

7 At this point, the Commission lacks sufficient information to attribute a definitive
8 valuation to any in-kind or prohibited contribution resulting from Veritas's unbilled or
9 reduced cost services to the Committee. It is unclear whether the parties had a project-
10 based/flat-fee or hourly-fee based arrangement, whether the third payment to Veritas was
11 attributable to the second invoice, and whether or not Veritas elected to be treated as a
12 corporation by the IRS. The available information suggests three possible formulations:
13 (1) that no or at most a \$102 in-kind or prohibited contribution resulted because the parties
14 had a flat-rate/project-based payment arrangement for the second St. Louis trip that the
15 Committee paid in full; (2) assuming that Veritas did not elect tax treatment as a corporation,
16 that an in-kind contribution resulted ranging from \$514 to \$1,703 such that Veritas did not
17 make an excessive contribution; or (3) assuming that Veritas elected to be treated as a
18 corporation by the IRS, that a prohibited contribution resulted ranging from \$514 to \$1,703.
19 In any event, the amount at issue appears to be relatively modest and does not appear to
20 warrant further inquiry.

21 First, if the Committee had a project-based, flat rate fee arrangement with Veritas for
22 the second trip, including each of the invoiced items with "no charge," then Veritas did not
23 make a prohibited or in-kind contribution. However, the "no charge" services pertaining to

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1 the Amgen search and Chris Powers background check, totaling \$123, appear to have been
2 unrelated to the second St. Louis trip, and, if so, may not have been covered by a project-
3 based fee resulting in a non-excessive or prohibited in-kind contribution. Since the minimal
4 time spent on the Amgen research appears similar in size and type to the uncharged services
5 Corwin extended to non-political clients as reflected in the CRI invoices he provided, the
6 amount may be closer to \$102 (\$123 - \$21 [Amgen research rate for 15 minutes] = \$102).

7 Second, if Veritas did not elect to be treated as a corporation and the parties had no
8 flat-rate agreement, at most the total value of services provided without charge and at a
9 discount that could be construed as an in-kind contribution was \$1,703. In that case, Veritas
10 did not make an excessive contribution because the contribution limit for 2010 was \$2,400
11 and neither Corwin nor Dillon made contributions to the Committee. That amount may be
12 reduced from \$1,703 to \$514 if the Committee's reported third payment of \$1,188.99 to
13 Veritas was attributable to any of the services listed in the second invoice, a plausible
14 scenario given that the available information indicates that Veritas performed no other
15 services for the Committee. *See supra* at 6 and fn 3. Under either or both of these
16 circumstances, Veritas did not make an excessive in-kind contribution.

17 Finally, if Veritas elected to be treated as a corporation by the IRS, it is conceivable
18 that Veritas may have made an in-kind corporate contribution. The value of any such
19 contribution would most likely range from \$514 to \$1,703, depending on whether the
20 Committee's reported third payment of \$1,188.99 applies.

21 Given the lack of clarity about the fee arrangement between the Committee and
22 Veritas, which directly relates to the value of any prohibited or unreported excessive
23 contribution, the absence of information about the purpose of the third payment to Veritas,

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1 and the uncertainty about Veritas's tax status as an LLC, an investigation would be necessary
2 to determine whether Respondents violated the Act in connection with the "no charge" and
3 discounted services listed in the invoice. In light of the relatively small amount potentially at
4 issue, however, an investigation is unwarranted. Accordingly, the Commission has
5 determined to exercise its prosecutorial discretion and dismiss this matter as to Veritas
6 regarding any potential violations of 2 U.S.C. §§ 441a(a)(1)(A) or 441b by making an
7 excessive or prohibited in-kind contributions in the form of services provided at no charge or
8 at a discount. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

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