



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP -6 2011

VIA FIRST CLASS MAIL

Randall J. McArthur, Treasurer
Ed Martin for Congress
P.O. Box 29480
St. Louis, MO 63126

RE: MUR 6425

Dear Mr. McArthur:

On November 12, 2010, the Federal Election Commission notified Ed Martin for Congress and you, in your official capacity as treasurer, ("Committee") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and information provided by the Committee, on August 30, 2011, the Commission found no reason to believe that Ed Martin for Congress and you, in your official capacity as treasurer, violated 2 U.S.C. § 441b(a). Also on this date, the Commission voted to dismiss any violations of 2 U.S.C. §§ 441a(a), 434, and 441d by the Committee. Accordingly, the Commission closed its file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed for your information.

Based on the information before the Commission, it appears that the Committee may have violated 2 U.S.C. § 434 by failing to report the receipt of an in-kind contribution and 2 U.S.C. § 441d by failing to include a complete disclaimer on an e-mail and website. The Commission cautions the Committee to take steps to ensure that its conduct is in compliance with the Act and Commission regulations.

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. 70462 (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).

11644303108

Randall J. McArthur, Treasurer
Ed Martin for Congress
MUR 6425
Page 2

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

Sincerely,



Mark D. Shonkwiler
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

11044303109

11044303110

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Ed Martin MUR: 6425
Ed Martin for Congress and
Randall J. McArthur, in his
official capacity as treasurer

I. GENERATION OF MATTER

This matter was generated by a complaint filed by Russ Carnahan. See
2 U.S.C. § 437(g)(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Ed Martin was the Republican nominee for the U.S. House of Representatives from
Missouri's Third Congressional District for the 2010 election cycle. Mr. Martin filed his
Statement of Candidacy, designating Ed Martin for Congress as his principal campaign
committee, on July 21, 2009.

During the summer of 2008, prior to his 2010 candidacy, Mr. Martin started a grassroots
movement to oppose the impending sale of Anheuser-Busch Companies, Inc. to a foreign
company. Various individuals within the movement used their own funds to buy a domain name
and set up a website (www.SaveAB.com), which was used to gather signatures for an on-line
petition and create a list of supporters' e-mail addresses.¹ Response at 1. On July 3, 2008, in
response to the movement's rapid growth and apparent need for financial structure in terms of
future activities, Mr. Martin founded a non-profit corporation, SaveAB.com for America

¹ Although the response identifies Mike Smith of Miken Technologies as the individual who set up and continually maintained the website, it does not identify the individual who purchased the domain name. A printout of domain name search results, attached to the complaint as Exhibit C, shows that www.saveab.com was registered to Scott Leindecker as of January 14, 2010.

1 ("Corporation"). Response at 2. However, about two weeks later, on July 14, 2008, it was
2 announced that Anheuser-Busch would be sold to the foreign company. The sale became final in
3 November 2008. Although the movement was active during the summer of 2008, it had no
4 activity following the July 2008 announcement of the sale. See May 31, 2011, Response
5 Clarification ("Clarification") at 2. The Corporation dissolved on March 31, 2009,² and the
6 www.SaveAB.com website was deactivated. Complaint Exhibits B and D; Response
7 Attachment 1.

8 During the year after the sale of Anheuser-Busch, the former leaders of the SaveAB.com
9 movement continued to receive requests for comments and inquiries about leading possible
10 boycotts of, or protests against, the foreign-owned Anheuser-Busch. Clarification at 1.
11 According to Mr. Martin, the number of these inquiries began to increase as the one-year
12 anniversary of the Anheuser-Busch sale approached in late 2009. *Id.* In December 2009,
13 Mr. Martin, in conjunction with other individuals associated with the SaveAB.com movement,
14 reactivated the website. Complaint Exhibit B; Response at 2; Clarification at 1, 2. When the
15 website went live again, it featured a single letter lamenting the sale of Anheuser-Busch,
16 thanking businesses who supported the movement, and informing supporters of Mr. Martin's
17 candidacy. Notwithstanding the suggestion in the Response and Clarification about the need to
18 respond to inquiries about SaveAB.com's position on purported plans to engage in a boycott or
19 protest, the letter on the website makes no mention of these topics. The portion of the letter
20 regarding Mr. Martin's congressional campaign stated:

21 Also, one of the original Saveab.com founders, Ed Martin, has decided to take
22 this fighting spirit to Congress. He is running for Congress in the Third
23 Congressional District right here in Missouri – this district includes the old

² The Articles of Dissolution list the dissolution date as December 17, 2008; however, Mr. Martin did not file the Articles of Dissolution and Termination with the Missouri Secretary of State until March 31, 2009.

1 headquarters of A-B down on Pestalozzi Street. (Third Congressional District
2 consists of St. Louis City, St. Louis County, Jefferson County and St.
3 Genevieve)[.]
4

5 Ed Martin is running, as he said, to "fight for jobs, for the future and for the
6 American dream – which is all in jeopardy if we don't stop shipping our jobs to
7 Mexico and India and running up our debt to China!"
8

9 If you are interested in finding out more, or joining Ed Martin in this endeavor,
10 visit his website TODAY:

11 The letter then linked to a page on the Committee's website titled, "Welcome SaveAB.com
12 Friends." This page invited visitors to sign up for e-mail updates, volunteer to help, and
13 "consider a financial contribution." Complaint Exhibit E. The letter was also e-mailed, along
14 with the link to the Committee's website, from a www.SaveAB.com e-mail account to
15 SaveAB.com supporters. Although the letter claims to be reaching 85,000 supporters, both the
16 complaint and various news articles report that the e-mail was sent to 40,000 supporters. See,
17 e.g., Complaint Exhibit B.

18 Complainant alleges that the December 2009 www.SaveAB.com website and e-mail
19 constitute prohibited corporate contributions in the form of SaveAB.com for America's corporate
20 name, logo, website, and mailing list, in violation of 2 U.S.C. § 441b(a). Complainant further
21 alleges that Mr. Martin and the Committee failed to include proper disclaimers on the website
22 and e-mail, in violation of 2 U.S.C. § 441d(a).

23 Mr. Martin, on behalf of all of the respondents, expressly denies the allegations.

24 Mr. Martin asserts that the short-lived corporation never held any assets, made any purchases, or
25 conducted any organizational meetings. Response at 2; Clarification at 1. Rather, the activity of
26 the SaveAB.com movement was paid for out-of-pocket by the individuals associated with it, and,
27 upon dissolution, "anything that the participants created or gathered during the grassroots effort –
28 whether information, photographs, placard [sic], shirts, etc. – . . . was kept by each person

11044303112

1 individually." Clarification at 1. Specifically, the website and the data it collected were
2 continually maintained by Mike Smith, the same individual who set up the website at the
3 beginning of the movement, much as the telephone system was continually maintained by
4 Mr. Martin. Response at 1; Clarification at 1. As the Corporation held no assets, it did not have
5 any assets to distribute when it dissolved. Response at 2.

6 Mr. Martin also asserts that the decision to create the December 2009 letter was primarily
7 his, and not that of any legal entity. Clarification at 1-2. Although he does not recall other
8 persons with whom he discussed the decision, Mr. Martin "feel[s] certain" that he spoke with
9 Mr. Smith because "[he] was the operator of the website and e-mail system." Clarification at 1.
10 He further explains that the letter was in response to multiple requests for interviews and
11 statements on the one-year anniversary of the Anheuser-Busch sale, and was meant to thank
12 supporters and "end the discussion and questions" about the SaveAB.com effort. *Id.* There is no
13 indication from the response that any marginal costs were incurred or funds disbursed to place
14 the letter on the SaveAB.com website or to send the accompanying e-mail.

15 **B. Legal Analysis**

16 **1. Alleged Corporate Contributions**

17 A contribution is any gift, subscription, loan, advance, or anything of value made by any
18 person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(a)(1).
19 Commission regulations define "anything of value" to include in-kind contributions: the
20 provision of goods or services without charge or at a charge that is less than the usual and normal
21 charge. 11 C.F.R. § 100.52(d)(1).

22 The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits
23 corporations from making contributions from their general treasury funds in connection with any

11044303113

1 election of any candidate for federal office. 2 U.S.C. § 441b(a). A candidate, political
2 committee, or other person is prohibited from knowingly accepting or receiving any corporate
3 contribution. *Id.*

4 The assets that allegedly constitute the in-kind corporate contribution – the SaveAB.com
5 name and logo, domain name, and e-mail list – were developed while SaveAB.com was a
6 grassroots movement, before it incorporated. Mr. Martin explains, for example, that two
7 individuals bought a domain name and set up a website at the time the movement was founded.
8 Furthermore, it appears that the Corporation did nothing to take control of these assets in the two
9 weeks it was operational: Mr. Martin specifically asserts that the Corporation never held any
10 assets and therefore had no assets to distribute upon dissolution. Rather, these items were
11 continually maintained by the individuals who created them. Moreover, the Corporation
12 officially dissolved four months before Mr. Martin became a candidate and eight months before
13 the decision to send an e-mail to the movement's supporters. That is, the Corporation did not
14 exist at any time that the assets could have been transferred to Mr. Martin in his capacity as an
15 agent of the Committee. Accordingly, the Commission found no reason to believe that Ed
16 Martin or Ed Martin for Congress violated 2 U.S.C. § 441b(a).

17 2. Potential Excessive Contribution

18 The provision of the assets could constitute an in-kind contribution to the Committee.
19 And if the amount of any contribution exceeded \$2,400, and was made by someone other than
20 Mr. Martin, it could violate the applicable contribution limit. See 2 U.S.C. § 441a(a)(1)(A).

21 However, it is not clear which person or persons owned the assets at the time of the
22 December 2009 communication, and thus would have made the contribution. Individual
23 members associated with the SaveAB.com movement set up and continually maintained the

11044303114

1 assets using their own funds; for example, Mr. Smith operated the website and Mr. Martin
2 provided the telephone system. It appears that these assets may have been available to any of the
3 founders of the movement, and were not necessarily possessed by one individual. Accordingly,
4 Mr. Martin, who as the candidate was not subject to the \$2,400 contribution limit, may have had
5 a valid claim to the use of the website and mailing list.

6 Moreover, the value of these assets has not been determined. The Commission has, in
7 prior instances, considered corporate names and trademarks and email lists to be things of value.
8 See, e.g., MUR 6322 (Sowers for Congress); MURs 5876 (Bowman for Congress) and 6127
9 (Obama for America). Although a widely-recognized trademarked corporate name and logo may
10 have significant value, see, e.g., MUR 4340 (Tweezerman), the value of a short-lived
11 organization's un-trademarked name, logo and domain name is less clear. With respect to email
12 lists generally, the Commission has determined the value of such lists by considering factors
13 such as: criteria used to develop the list, the age of the list, and whether the list has been
14 maintained/updated since its creation. See, e.g., MURs 5876 (Bowman for Congress) and 6127
15 (Obama for America). Given the uncertainty of the ownership of these assets, the additional
16 effort required to ascertain the value of these assets, and considering that the amount of any
17 potential contribution is relatively small, further use of Commission resources for an
18 investigation is not warranted. Accordingly, the Commission dismissed any possible violation of
19 2 U.S.C. § 441a(a). The Commission also dismissed any possible violation of 2 U.S.C. § 434 for
20 the Committee's failure to report the receipt of any in-kind contribution, and sent a cautionary
21 letter.

26

3. Alleged Disclaimer Violations

The Act, as implemented through Commission regulations, requires that e-mail of more than 500 substantially similar communications include a disclaimer when sent by a political committee. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1). Additionally, disclaimers must be included on all internet websites of political committees that are available to the general public.

Id. If the communication is authorized by the candidate, his committee, or the agent of either, but is paid for by any other person, the disclaimer must clearly state that the communication is paid for by such other person and authorized by such candidate, committee, or agent.

2 U.S.C. § 441d(a)(2); 11 C.F.R. § 110.11(b)(2).

The December 2009 letter sent under the SaveAB.com logo was initiated and created primarily by Mr. Martin, and appears to have been posted on the website and e-mailed to 40,000 recipients. Mr. Martin used Mr. Smith's access to and control over the e-mail list to disseminate the e-mail. Mr. Martin, who is an agent of the Committee, authorized the e-mail and the use of the Committee's logo in the e-mails with the link to the Committee's website. It appears, however, that Mr. Smith paid whatever costs were associated with the dissemination of the e-mail. Accordingly, the e-mail should have included a disclaimer stating that it was paid for by Mr. Smith and authorized by Ed Martin for Congress.

Similarly, Mr. Martin primarily decided to reactivate the www.SaveAB.com website in December 2009. Given that the letter referenced Mr. Martin's federal candidacy, he can be viewed as acting as an agent of the Committee. At that time, however, the website was operated by Mr. Smith, and the domain name was owned by Mr. Leiendecker. Accordingly, the website should have included a disclaimer stating that the communication was paid for by Mr. Smith and Mr. Leiendecker and authorized by Ed Martin for Congress.

11044303116

1 It thus appears that Ed Martin for Congress violated 2 U.S.C. § 441d by failing to include
2 appropriate disclaimers on the website and e-mail, over which Mr. Martin, as its agent, had some
3 measure of control. However, while the communications did not contain the language required
4 by the statute, they did include some identifying information. The communications included the
5 Committee's logo, which clearly stated "Ed Martin for Congress," as the link to the campaign's
6 website. Given these circumstances, the Commission dismissed the violations of 2 U.S.C.
7 § 441d, and sent a cautionary letter.

11044303117