

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 8087

DATE RECEIVED: Nov. 3, 2022

DATE OF NOTIFICATION: Nov. 10, 2022

DATE OF LAST RESPONSE: Jan. 5, 2023

DATE ACTIVATED: Mar. 28, 2023

EARLIEST EXPIRATION OF SOL: Feb. 10, 2026

LATEST EXPIRATION OF SOL: Nov. 8, 2027

ELECTION CYCLE: 2022

COMPLAINANT:

David Nierenberg

RESPONDENT:Joe Kent for Congress and Thomas Datwyler
in his official capacity as treasurer

Joseph Kent

American Enterprise Solutions

Advanced Enterprise Solutions, LLC (a.k.a.

Advanced Enterprise Solutions Group, LLC)¹**RELEVANT STATUTE
AND REGULATIONS:**

52 U.S.C. § 30116(a)(1)(A), (f)

52 U.S.C. § 30118(a)

11 C.F.R. § 106.4(b), (c)

11 C.F.R. § 110.1(b)

11 C.F.R. § 110.9

11 C.F.R. § 113.1(g)(6)(iii)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ Upon receiving the complaint, notification was sent to Respondent Advanced Enterprise Solutions Group, LLC at its Virginia address. The Respondent returned a designation of counsel for Respondent Advanced Enterprise Solutions Group, LLC and a response framed as being submitted by Advanced Enterprise Solutions, LLC. Advanced Enterprise Solutions, LLC, an LLC registered in Delaware, uses the name Advanced Enterprise Solutions Group, LLC to conduct business in Virginia. *See Business Entity Search*, VA STATE CORP. COMM'N, <https://cis.scc.virginia.gov/entitysearch/index> (last visited July 12, 2023) (search "Advanced Enterprise Solutions"). For purposes of this report, the distinction between these two names by which this entity does business is not relevant.

1 **I. INTRODUCTION**

2 The Complaint in this matter alleges that Joseph Kent, and Joe Kent for Congress and
3 Thomas Datwyler in his official capacity as treasurer (the “Committee”) violated the Federal
4 Election Campaign Act of 1971, as amended (the “Act”), by accepting excessive and potentially
5 prohibited corporate contributions from Kent’s employer, which the Complaint identifies as
6 being either American Enterprise Solutions or Advanced Enterprise Solutions, LLC (“AES”),
7 and correspondingly that American Enterprise Solutions or AES made the potentially excessive
8 and prohibited corporate contributions.

9 The Complaint details confusion over the name of Kent’s employer, noting that Kent
10 referred to his employer as “American Enterprise Solutions” rather than “Advanced Enterprise
11 Solutions” on his public financial disclosure forms and when making political contributions to
12 other candidates and committees, as observed in press reports. The Complaint further questions
13 whether the employer is a “shell company” paying Kent solely for the purpose of supporting his
14 campaign, raising doubts as to whether Kent was actually performing work for his purported
15 employer. Correspondingly, the Complaint alleges that Kent’s employer made “large-scale”
16 contributions to the Committee. Finally, the Complaint alleges that his employer may have also
17 made an in-kind contribution by paying for polling on behalf of Kent’s campaign.

18 Kent and the Committee did not submit a substantive response, stating through their
19 counsel that they “deny the allegations in their entirety, but [they] will not be filing a response to
20 the complaint at this time.”² AES provides a more fulsome response, attaching tax records and
21 other company documents to substantiate its statements that it is a for-profit LLC, and that AES,

² Joseph Kent and Joe Kent for Congress Resp. (Nov. 17, 2022) (“Kent. Resp.”).

1 rather than American Enterprise Solutions, was Kent's employer. More specifically, AES's
2 Response and the attached documents provide support for its claim that AES hired Kent nearly a
3 year and a half before he became a candidate, and that payments made to Kent were in
4 consideration of his *bona fide* employment with the company.

5 The AES Response further provides a sworn statement from Sean Reed, the company's
6 CEO, acknowledging that that he was involved in commissioning a poll using his personal funds
7 regarding the election in which Kent was running, but asserting that the poll was not coordinated
8 with Kent or his Committee.

9 As discussed in further detail below, while the reported statements by Kent's former
10 campaign manager raise questions as to whether a violation has occurred, there is insufficient
11 information to find reason to believe that Kent, the Committee or AES violated the Act.

12 Accordingly, we recommend that the Commission find no reason to believe that Advanced
13 Enterprise Solutions made or that Joseph Kent and Joe Kent for Congress and Thomas Datwyler
14 in his official capacity as treasurer knowingly accepted excessive or prohibited contributions.

15 Further, as the inclusion of American Enterprise Solutions in the Complaint appears to
16 have been based solely on the candidate's confusing public statements over the name of his
17 employer, there is no information indicating that such a company violated the Act. Accordingly,
18 we recommend that the Commission find no reason to believe that American Enterprise
19 Solutions violated the Act by making excessive or prohibited contributions to Kent or the
20 Committee.

1 II. FACTUAL BACKGROUND

2 Joseph Kent was a candidate for Washington's third congressional district in the 2022
3 election.³ Joe Kent for Congress is his principal campaign committee.⁴ On Kent's personal
4 financial disclosures filed with the Clerk of the House of Representatives, he reported receiving a
5 salary from "American Enterprise Solutions" in 2021 and 2022.⁵ Similarly, between May 2020
6 and July 2021, reports filed with the Commission by various committees reflect that when Kent
7 made contributions he listed American Enterprise Solutions as his employer.⁶

8 The Complaint raises questions about Kent's employer, based in part on an October
9 2022 *Daily Beast* article discussing the lack of public records for any entity named "American
10 Enterprise Solutions" that would match Kent's description of the company.⁷ Within days of this
11 reporting, Kent amended his personal financial disclosures to reflect that the name of his

³ Joseph Kent, Statement of Candidacy (Feb. 10, 2021). Kent has also amended this statement of candidacy indicating his intention to be a candidate again for the same seat in 2024. Joseph Kent, Amended Statement of Candidacy (Jan. 11, 2023).

⁴ Joe Kent for Congress, Statement of Org. (June 3, 2022).

⁵ Joseph Kent, 2021 Personal Financial Disclosure ("PFD") at 1 (Feb. 3, 2022), https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2021/10044538.pdf (reporting \$105,000 from "American Enterprise Solutions" for "work, this is my full time [sic] job"); Joseph Kent, 2022 PFD at 1 (Apr. 19, 2022), https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2022/10046466.pdf (reporting \$32,307.32 year to date from "American enterprise solutions" for "salary").

⁶ *FEC Disbursements: Filtered Results*, FEC.GOV https://www.fec.gov/data/receipts/individual-contributions/?contributor_employer=american+enterprise+solutions&two_year_transaction_period=2020&two_year_transaction_period=2022&min_date=01%2F01%2F2019&max_date=12%2F31%2F2022 (last visited Apr. 18, 2023) (reflecting 34 contributions by Kent listing "American Enterprise Solutions" as his employer).

⁷ William Bredderman, *Mystery Surrounds Company Paying MAGA Candidate's Salary*, DAILY BEAST (Oct. 23, 2022), <https://www.thedailybeast.com/mystery-surrounds-company-paying-maga-republican-candidate-joe-kents-salary-as-he-runs-in-washington>. According to press reports and confirmed by the candidate, Kent also referred to his employer at campaign events as American Enterprise Solutions. Troy Brynson, *Joe Kent Releases Documents Amid Questions Over Who is Paying US House Candidate's Salary*, OREGON PUBLIC BROADCASTING (Oct. 25, 2022) ("OPB Article"), <https://www.opb.org/article/2022/10/25/congressional-candidate-joe-kent-releases-salary-documents-amid-questions-about-employer/> (describing that "Kent has been filmed calling his company 'American Enterprise Solutions'").

1 employer was “Advanced Enterprise Solutions” rather than “American Enterprise Solutions.”⁸
2 Campaign staff explained that the error in the reports was a “typo” and took “full responsibility
3 for the transcription error.”⁹ Regarding Kent’s own previous use of the name “American
4 Enterprise Solutions,” he states that “[t]here’s a good chance I screwed it up.”¹⁰

5 This reporting also contained allegations made by Kent’s former campaign manager,
6 Byron Sanford,¹¹ that Kent’s work for AES was a “phantom job” and that Sanford did not “think
7 [Kent] put any actual hours into doing anything other than campaigning.”¹² Sanford told the
8 *Daily Beast* that he “made [Kent’s] schedule, there simply wasn’t any time in the day [to perform
9 work for AES].”¹³ Further, Sanford claimed that Kent told volunteers that he had “light hours”
10 thanks to an arrangement with the company’s owner.¹⁴

⁸ Joseph Kent, 2021 Amended PFD at 1 (Oct. 25, 2022), https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2021/10050529.pdf; Joseph Kent, 2022 Amended PFD at 1 (Oct. 25, 2022), https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2022/10050530.pdf.

⁹ OPB Article.

¹⁰ *Id.* While the OPB article states that “[a]ccording to Kent, the company was at some point called ‘American Enterprise Systems,’” we have not been able to verify a possible name change through any publicly available source. Additionally, the Response filed with the Commission by AES makes no mention of such a former name and the documents attached to the response, including Kent’s original signed engagement letter with the company as well as its 2019 Certificate of Formation with the State of Delaware refer only to “Advanced Enterprise Solutions.” See Advanced Enterprise Solutions Resp. (“AES Resp.”), Ex. A, C (Jan. 5, 2022).

¹¹ There is some dispute about the actual role that Sanford played in the Kent campaign and his reliability as a source. The *Daily Beast* article cited by the Complaint refers to him as the former campaign manager, but the campaign states that Sanford was “‘campaign manager in name only’ and lost his job for making offensive remarks” and thereafter “he has taken to making delusional accusations typical of a disgruntled employee.” William Bredderman, *MAGA House Candidate Joe Kent Never Worked for his Pay, Ex-Staffer Says*, DAILY BEAST (Oct. 27, 2022) <https://www.thedailybeast.com/maga-house-candidate-joe-kent-never-worked-for-his-pay-ex-staffer-says> (“Oct. 27 DAILY BEAST Article”); see AES Resp. at 2 (“Mr. Kent’s disgruntled and dismissed campaign manager, cited in the Complaint, has a motive to speak ill of former candidate, and no knowledge of AES’ business operations.”).

¹² Oct. 27 DAILY BEAST Article.

¹³ *Id.*

¹⁴ *Id.*

1 Kent has told the press that he does, in fact, perform work for AES, explaining that:
2 “There’s definitely work weeks that are lighter. . . . But then there are, you know, 30-hour work
3 weeks, 40-hour work weeks.”¹⁵ Kent elaborated, explaining that: “I do have flexibility, and I
4 can dictate my schedule. I don’t have a boss, you know, making sure I clock in and clock out
5 and report at a desk somewhere. . . . But it requires, you know, a fair amount of work on a daily
6 basis.”¹⁶

7 Further, AES explicitly denies that Kent was being paid for a “no show” job and provides
8 a consistent explanation that Kent’s work: “required that he be engaged on projects around the
9 world, working remotely with people in different international time zones. Mr. Kent’s work
10 therefore cannot be placed neatly within a typically American eight hours a day, five days per
11 week business schedule.”¹⁷ AES also provided the Commission with documentary support
12 regarding Kent’s employment in the form of Kent’s signed engagement letter from 2019, nearly
13 a year and a half prior to his candidacy, along with copies of Kent’s W-2 forms from 2019-
14 2021.¹⁸

15 The allegation in the Complaint regarding AES’s payment for polling also appears to be
16 derived from statements made by Sanford. The *Daily Beast* reported that “Sanford further
17 recalled sitting in on a conference call in which Kent revealed that his employer would finance a

¹⁵ OPB Article.

¹⁶ *Id.*

¹⁷ AES Resp. at 2; *see also Who We Are*, ADVANCED ENTERPRISE SOLUTIONS, www.advanced-ent.com (last visited July 12, 2023) (stating that “AES supports large international and multinational organizations with their toughest challenges. . . . AES has provided custom solutions in over 50 countries throughout the world to reduce the risk of investing internationally.”).

¹⁸ *Id.*, Ex. A, B.

1 survey by Trafalgar Polling of voters in the House district.”¹⁹ In its response, AES states that the
2 company paid for no such poll but that its CEO Sean Reed paid between \$15,000 to \$22,000
3 from personal funds to become a member of the Trafalgar Group in order to conduct such a
4 poll.²⁰ In a sworn declaration attached to the response, Reed states that he “supported [Kent’s
5 campaign] by paying for polling research from my personal funds” for three reasons: (1) to
6 enable Reed “to recommend races about which to conduct polls;” (2) to determine whether AES
7 “was likely to lose a uniquely skilled and difficult-to-replace employee in the event Mr. Kent
8 won the election;” and (3) “because Mr. Reed wished Mr. Kent success in his endeavor.”²¹

9 Reed also denies coordinating the poll with Kent or the Committee.²² Further, he states
10 that he did not share the poll with Kent or the Committee or anyone else but authorized Trafalgar
11 Group to release the results publicly.²³ Finally, he notes that the poll released “did not contain
12 detailed, underlying raw data generated from a poll such as the cross-tabulations, questions
13 asked, and methodology.”²⁴

14 **III. LEGAL ANALYSIS**

15 **A. The Commission Should Find No Reason to Believe Regarding the Alleged** 16 **Contributions Relating to Kent’s Compensation for Employment**

17 Under the Act, corporations are prohibited from contributing to candidates, including
18 directly or indirectly paying for their services, and candidates and authorized committees are

¹⁹ Oct. 27 DAILY BEAST Article.

²⁰ AES Resp. at 3, Attach. Sean Reed Decl. ¶ 4.

²¹ AES Resp. at 3, Attach. Reed. Decl. ¶ 3.

²² AES Resp., Attach. Reed Decl. ¶ 5.

²³ *Id.* ¶ 4.

²⁴ *Id.* ¶ 6.

1 prohibited from knowingly receiving or accepting such contributions.²⁵ Further, the Act
2 prohibits any person from making, and any candidate or committee from knowingly accepting,
3 an excessive contribution.²⁶ For the 2022 election cycle, contributions by persons other than
4 multicandidate committees to any candidate and his or her authorized political committees were
5 limited to \$2,900 per election.²⁷ The term “contribution” includes “any gift, subscription, loan
6 advance or deposit of money or anything of value made by any person for the purpose of
7 influencing any election for Federal office.”²⁸

8 Compensation to candidates for employment, however, is not considered a contribution
9 when three conditions are met: (A) the compensation results from *bona fide* employment that is
10 genuinely independent of the candidacy; (B) the compensation is exclusively in consideration of
11 services provided by the employee as part of this employment; and (C) the compensation does
12 not exceed the amount of compensation which would be paid to any other similarly qualified
13 person for the same work over the same period of time.²⁹

14 While the statements of Kent’s former campaign manager raise questions as to whether
15 the payments from AES to Kent meet this test, on balance there is insufficient information
16 available to conclude that the payments were not for *bona fide* compensation.

²⁵ See 52 U.S.C. §§ 30101(8)(A), 30118(a).

²⁶ 52 U.S.C. § 30116(a)(1)(A), (f); 11 C.F.R. §§ 110.1(b), 110.9.

²⁷ See Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. 7867, 7869 (Feb. 2, 2021).

²⁸ 52 U.S.C. § 30101(8)(A)(i).

²⁹ 11 C.F.R. § 113.1(g)(6)(iii). See, e.g., Factual and Legal Analysis at 4-6, MURs 7373, 7386, & 7388 (Dunbar for Congress); Factual and Legal Analysis at 5, MUR 7044 (Jodey Cook Arrington); Factual and Legal Analysis at 4-6, MUR 6855 (Justin Amash, *et al.*); Factual and Legal Analysis at 3-6, MUR 6853 (Wamp for Congress).

1 Regarding the first condition of the test — that the compensation results from *bona fide*
2 employment that is genuinely independent of the candidacy — the Complaint alleges that the
3 purported employer is merely a “shell company” acting as a donor to the campaign, rather than
4 an “an actual ongoing and active business.”³⁰ In support of this premise, the Complaint points to
5 Kent misstating the name of his employer, including on his personal financial disclosures, and
6 media reports regarding the lack of publicly available information about the company. AES’s
7 limited presence on the internet is also potentially notable; while the company does have a
8 website, it is rudimentary, containing a polished looking homepage but no additional content.³¹

9 However, AES’s Response counters that it is in fact an active business, attaching to its
10 Response copies of its 2019 Limited Liability Company Certificate of Formation on file with the
11 state of Delaware and its 2021 federal tax return (Form 1065) showing substantial revenues,
12 expenses, and profits.³² We are not aware of any available information to contradict this
13 documentation that appears to indicate that AES is an active company.

14 AES also provides a copy of Kent’s original engagement letter from 2019, nearly a year
15 and a half prior to his candidacy, and copies of his W-2s from 2019-2021.³³ Kent’s employment
16 by AES significantly predating his candidacy, along with the other documents provided by AES
17 establishing the nature of its business as well as Kent’s employment, undermine the basis of the

³⁰ Compl. at 2-3.

³¹ See ADVANCED ENTERPRISE SOLUTIONS, <https://www.advanced-ent.com/> (last visited July 12, 2023).

³² AES Resp., Exs. C & D. Further, it explains the nature of its business, confirming a statement by Kent describing that the company “collects research/intelligence throughout the world on cellular infrastructure which is then sent to telecommunications firms who are pursuing contracts to upgrade that infrastructure, most recently involving the transition to 5G technology.” AES Resp. at 2. It also confirms Kent’s role at the company with “hiring and overseeing ‘contractors around the world who conduct the research on the ground and then to validate that research with [Advanced Enterprise Solutions] engineers and turn it into a marketable product.’” *Id.*

³³ AES Resp., Exs. A & B.

1 allegation and are strong evidence that this compensation is for *bona fide* employment that is
2 genuinely independent of the candidacy.³⁴

3 To meet the second condition of the test, the compensation must be exclusively in
4 consideration of services provided by the employee as part of this employment. Sanford, Kent's
5 former campaign manager, raises questions as to whether Kent's compensation during the
6 campaign continued to be in consideration of the services he was previously hired to perform, or
7 whether he continued to receive his full pay while providing less or no work to AES during the
8 campaign.³⁵ According to Sanford, he made Kent's schedule, putting him in a position to know
9 whether Kent was regularly performing work for AES and potentially lending credibility to his
10 statement that he didn't "think [Kent] put any actual hours into doing anything other than
11 campaigning."³⁶ If true, Sanford's assertion that Kent told volunteers that he had "light hours"
12 thanks to an arrangement with his company's owner would further support the premise that Kent
13 was collecting his full pay check without completing his ordinary work and thus was not being
14 paid "exclusively in consideration of services provided by the employee as part of this
15 employment."³⁷

16 In its Response, AES dismisses Sanford's allegations, describing him as a "disgruntled
17 and dismissed" former employee that "has motive to speak ill" of Kent and that he has "no actual

³⁴ See Factual and Legal Analysis at 5, MUR 7044 (Jodey Cook Arrington) (citing the candidate beginning his employment 15 months prior to becoming a candidate as evidence of *bona fide* employment); Factual and Legal Analysis at 6, MUR 6853 (Wamp for Congress) (citing the candidate beginning his employment nearly four years prior to becoming a candidate as evidence of *bona fide* employment); see also Advisory Op. 2013-03 at 5 (Bilbray-Kohn) (candidate's consulting arrangement would constitute *bona fide* employment that was "genuinely independent" of her candidacy because the corporation's reasons for retaining the candidate were not dependent upon her candidacy).

³⁵ See Oct. 27 DAILY BEAST Article.

³⁶ Oct. 27 DAILY BEAST Article.

³⁷ *Id.*; 11 C.F.R. § 113.1(g)(6)(iii)(B).

1 knowledge of [AES's] business operations.”³⁸ Further, AES explains how a heavy campaign
2 schedule could be compatible with Kent's work for the company, stating that his work “required
3 that he be engaged on projects around the world, working remotely with people in different
4 international time zones. Mr. Kent's work therefore cannot be placed neatly within a typically
5 American eight hours a day, five days per week business schedule.”³⁹

6 Despite a muddled factual record on the question of Kent's employment during the
7 campaign, on balance, the unsworn statements of a fired campaign employee quoted in the press,
8 when considered against the Respondents' denials, the company's plausible explanation of how
9 Kent could campaign full time and still perform his work duties, and documentation indicating
10 that Kent held and performed this work prior to his candidacy are insufficient to demonstrate that
11 Kent's compensation was not exclusively in consideration of services provided as part of this
12 employment.

13 Finally, regarding the third condition of the Commission's regulation — that the
14 compensation does not exceed the amount of compensation which would be paid to any other
15 similarly qualified person for the same work over the same period of time — the Complaint has
16 provided no information indicating that Kent was paid disproportionately to his peers.⁴⁰ To the
17 contrary, AES states in its Response that it employs three other individuals doing similar work to
18 Kent and that he earns less than two of these employees, who possess an additional degree, and

³⁸ AES Resp. at 2; *see also* Oct. 27 DAILY BEAST Article (including statement from Kent campaign that Sanford was fired for making offensive remarks).

³⁹ AES Resp. at 2. This statement was included in the response submitted by counsel, but notably the sworn declaration of CEO Sean Reed relates only to his personal activity regarding polling he commissioned, discussed below. *See id.*, Reed Decl.

⁴⁰ 11 C.F.R. § 113.1(g)(6)(iii)(C).

1 more than one employee, who is less senior.⁴¹ Given the absence of contrary information, it
2 appears this condition is met.

3 Although the Commission has not encountered this precise fact pattern in prior matters,
4 the Commission has typically not pursued enforcement in similar matters where, despite an
5 inconsistent factual record, there was evidence that the candidate's employment began well
6 before his or her candidacy. For instance, in MUR 7044 (Jodey Cook Arrington), the
7 Commission found no reason to believe that the candidate's payments from his employer were
8 contributions after considering allegations that were based on reports of him campaigning
9 heavily, financial disclosures showing him collecting a substantial salary, and his comments in a
10 radio interview indicating that his job afforded him flexibility to campaign while continuing to
11 work.⁴² These allegations were weighed against information, including a sworn declaration from
12 the candidate's employer, showing that Arrington began his employment more than 15 months
13 prior to becoming a candidate, and that his work schedule afforded him flexibility to both
14 perform his work duties and campaign.⁴³ Similarly, in MUR 6853 (Wamp for Congress), the
15 Commission found no reason to believe that a candidate had accepted an impermissible salary,
16 weighing allegations that were based on a news report quoting a founder and partner at the firm
17 that the candidate was on paid leave while campaigning against a sworn statement provided to
18 the Commission by another partner at the firm in asserting that the candidate continued to work
19 remotely during the campaign.⁴⁴ In reaching its conclusion, the Commission also noted the

⁴¹ AES Resp. at 2.

⁴² Factual and Legal Analysis at 2-3, MUR 7044 (Jodey Cook Arrington).

⁴³ *Id.*

⁴⁴ Factual and Legal Analysis at 1-2, 3-6 MUR 6853 (Wamp for Congress).

1 employer's response stating that non-traditional hours and working remotely were common
2 practice at the company and that Wamp began working for the firm nearly four years prior to
3 becoming a candidate.⁴⁵ The present matter similarly includes a conflicting record and a strong
4 indication that the candidate was employed by the employer for a significant period prior to his
5 candidacy. Therefore, consistent with these prior matters, the record here, is insufficient to
6 conclude that Kent's payments from AES were contributions rather than the product of *bona fide*
7 employment.

8 Accordingly, we recommend that the Commission find no reason to believe that the
9 Joseph Kent and Joe Kent for Congress and Thomas Datwyler in his official capacity as treasurer
10 violated the Act by knowingly accepting excessive and prohibited corporate contributions
11 through salary payments from Kent's employer. Similarly, we recommend that the Commission
12 find no reason to believe that Advanced Enterprise Solutions, LLC violated the Act by making
13 excessive and prohibited corporate contributions through salary payments to Kent.

14 **B. The Commission Should Find No Reason to Believe Regarding Alleged**
15 **In-Kind Contributions Relating to Payments for Polling**

16 In the context of polling, Commission regulations specify that the purchase of opinion
17 poll results by a "person not authorized by a candidate to make expenditures and the subsequent
18 acceptance of the poll results by a candidate or a candidate's authorized committee or agent . . .
19 is a contribution in-kind by the purchaser to the candidate."⁴⁶ Poll results are "accepted" when
20 the candidate, his committee, or his agent (1) requests the poll results; (2) uses the poll results; or

⁴⁵ *Id.* at 3-6.

⁴⁶ 11 C.F.R. § 106.4(b); *see* Advisory Opinion 1990-12 at 2 (Strub) ("The purchase of opinion poll results by a political committee or other person not authorized by a candidate to make expenditures and the subsequent acceptance of the poll results by a candidate or a candidate's authorized committee or agent is a contribution in-kind by the purchaser to the candidate and an expenditure by the candidate.").

1 (3) does not notify the contributor that the results are refused.⁴⁷ However, Commission
2 regulations also state that “acceptance of any part of a poll’s results which part, prior to receipt,
3 has been made public without any request, authorization, prearrangement, or coordination by the
4 candidate-recipient or political committee-recipient, shall not be treated as a contribution in-
5 kind.”⁴⁸

6 As a preliminary point, based on information provided in the AES Response, it appears
7 that the company did not pay for the poll in question. Instead, based on the sworn statement by
8 AES CEO, Sean Reed, he personally paid for a “membership” to the Trafalgar Group, which
9 then did the polling.⁴⁹ Thus, if it were determined that a contribution resulted, Reed rather than
10 AES would have made the contribution. As explained below, however, the available information
11 does not lead us to conclude that the poll in question resulted in a contribution.

12 Reed states that he “never released the results of the poll directly to anyone—including
13 Mr. Kent and his campaign—but rather authorized the Trafalgar Group to release the results.”⁵⁰
14 Our review of the public record indicates that Trafalgar Group did make public three polls
15 regarding the relevant election, two of which were conducted prior to the release of the *Daily*
16 *Beast* article, making it possible one of them is the poll in question.⁵¹

⁴⁷ 11 C.F.R. § 106.4(b)(1)-(3).

⁴⁸ 11 C.F.R. § 106.4(c); *see* Advisory Opinion 2006-04 at 6 (Tancredo) (“if the poll results were to be made public prior to receipt [], and were made public without any request, authorization, prearrangement, or coordination between [the entities], then there would not be an in-kind contribution”).

⁴⁹ AES Resp., Reed Decl. ¶¶ 2-3.

⁵⁰ *Id.* ¶ 4.

⁵¹ *See* 2022 Washington 3rd District – Open Primary, REALCLEARPOLITICS.COM, https://www.realclearpolitics.com/epolls/2022/house/wa/washington_3rd_district_open_primary-7566.html (last visited July 12, 2023).

1 However, according to Kent's former campaign manager, Sanford, Kent indicated
2 knowledge that the poll was being commissioned prior to its public release. According to the
3 press reports cited in the Complaint, Sanford alleges that Kent stated on a conference call that his
4 employer would be financing a survey of voters in his district by Trafalgar Polling, implying that
5 the polling may have been "prearranged or coordinated."⁵² In his sworn declaration, Reed denies
6 such coordination regarding the poll stating that he "did not commission the poll at the request or
7 suggestion of Mr. Kent or his PAC" and that "neither Mr. Kent nor his PAC were substantially
8 involved in creating the content of the poll or selecting its audience."⁵³

9 Considering that Sanford, the individual with first-hand knowledge of any specter of
10 prearrangement or coordination, is not the sworn complainant in this matter, and may have
11 credibility concerns resulting from being fired by Kent's campaign, and that the explicit denial of
12 coordination comes from a sworn statement, the available information is insufficient to support a
13 reasonable inference that the polling in question was prearranged or coordinated. Moreover,
14 even assuming that Sanford's statement that Kent knew ahead of time that his employer would
15 be conducting a poll through Trafalgar Group is true, simply being made aware that a poll was
16 forthcoming is likely insufficient to make such a public poll "prearranged or coordinated."⁵⁴
17 Under Commission regulations, coordination requires that the act be "made in cooperation,

⁵² See 11 C.F.R. § 106.4(c). Commission regulations define coordinated as "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee." 11 C.F.R. § 109.20(a).

⁵³ AES Resp., Reed Decl, ¶ 5.

⁵⁴ See *FEC v. Christian Coal.*, 52 F. Supp. 2d 45, 95 (D.D.C. 1999) ("the First Amendment does not allow coordination to be inferred merely from a corporation's possession of insider knowledge from a federal candidate's campaign. Some more overt acts of coordination are required").

1 consultation or concert with, or at the request or suggestion of” the candidate or his committee,
2 which are steps beyond mere knowledge.⁵⁵ Accordingly, we recommend that the Commission
3 find no reason to believe that Advanced Enterprise Solutions, LLC made and Joe Kent for
4 Congress and Thomas Datwyler in his official capacity as treasurer accepted potentially
5 excessive or prohibited in-kind contributions in the form of payments for polling.

6 **C. The Commission Should Find No Reason to Believe that American**
7 **Enterprise Solutions Made Excessive or Prohibited Contributions**

8 Although Kent had publicly named “American Enterprise Solutions” as his employer,
9 Kent has since amended his personal financial disclosures filed with the Clerk of the House of
10 Representatives to correct that misstatement and to properly name AES instead.⁵⁶ Additionally,
11 AES has provided compelling documentation, in the form of Kent’s 2019 engagement letter and
12 his 2020 and 2021 W-2s, to demonstrate that AES rather than American Enterprise Solutions,
13 was in fact Kent’s employer during the relevant period.⁵⁷ In light of this information, there is no
14 basis to support any allegation that American Enterprise Solutions paid Kent to subsidize his
15 campaign and thereby made contributions to the Committee. Accordingly, we recommend that
16 the Commission find no reason to believe that American Enterprise Solutions violated 52 U.S.C.
17 §§ 30116(a)(1)(A), 30118(a) by making excessive or prohibited corporate contributions to Kent
18 or the Committee.

⁵⁵ 11 C.F.R. § 109.20(a).

⁵⁶ *See supra* note 8.

⁵⁷ AES Resp., Ex. A, B.

1 **IV. RECOMMENDATIONS**

- 2 1. Find no reason to believe that Joseph Kent and Joe Kent for Congress and
 3 Thomas Datwyler in his official capacity as treasurer violated 52 U.S.C.
 4 §§ 30116(f) or 30118(a) by knowingly accepting excessive or prohibited
 5 corporate contributions through salary payments made by Kent's employer;
- 6 2. Find no reason to believe that Advanced Enterprise Solutions, LLC violated
 7 52 U.S.C. §§ 30116(a)(1)(A) or 30118(a) by making excessive or prohibited
 8 corporate contributions through salary payments to Kent;
- 9 3. Find no reason to believe that Joe Kent for Congress and Thomas Datwyler in his
 10 official capacity as treasurer violated 52 U.S.C. §§ 30116(f) or 30118(a) by
 11 knowingly accepting excessive or prohibited corporate in-kind contributions in
 12 the form of payments for polling;
- 13 4. Find no reason to believe that Advanced Enterprise Solutions, LLC violated
 14 52 U.S.C. §§ 30116(a)(1)(A) or 30118(a) by making excessive or prohibited
 15 corporate in-kind contributions in the form of payments for polling;
- 16 5. Find no reason to believe that American Enterprise Solutions violated 52 U.S.C.
 17 §§ 30116(a)(1)(A) or 30118(a) by making excessive or prohibited corporate
 18 contributions to Joseph Kent or Joe Kent for Congress;
- 19 6. Approve the attached Factual and Legal Analysis;
- 20 7. Approve the appropriate letter; and
- 21 8. Close the file.

22 Lisa J. Stevenson
 23 Acting General Counsel

24 Charles Kitcher
 25 Associate General Counsel for Enforcement

26
 27
 28
 29 7/13/2023
 30 Date

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 33 Acting Deputy Associate General Counsel
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