



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA EMAIL

dross@compasslegal.org

September 6, 2023

Derek H. Ross, Esq.
Compass Legal Group
300 Independence Avenue, S.E.
Washington, DC 20003

RE: MUR 8087
Joseph Kent
Joe Kent for Congress and Thomas
Datwyler in his official capacity as
treasurer

Dear Mr. Ross:

On November 10, 2022, the Federal Election Commission notified your clients, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On August 29, 2023, on the basis of the information in the complaint, and information provided by Respondents, the Commission found no reason to believe that 1) Joseph Kent and Joe Kent for Congress and Thomas Datwyler in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f) or 30118(a) by knowingly accepting excessive or prohibited corporate contributions through salary payments made by Kent's employer; and 2) Joe Kent for Congress and Thomas Datwyler in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f) or 30118(a) by knowingly accepting excessive or prohibited corporate in-kind contributions in the form of payments for polling. 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* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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Derek H. Ross, Esq.
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If you have any questions, please contact Nick Mueller, the attorney assigned to this matter, at (202) 694-1577 or nmueller@fec.gov.

Sincerely,

Ana J. Peña-Wallace
Ana J. Peña-Wallace
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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5 Respondents: Joe Kent for Congress and MUR 8087
6 Thomas Datwyler in his official
7 capacity as treasurer
8 Joseph Kent
9 American Enterprise Solutions
10 Advanced Enterprise Solutions, LLC (a.k.a.
11 Advanced Enterprise Solutions Group, LLC)
12

I. INTRODUCTION

13
14 The Complaint in this matter alleges that Joseph Kent, and Joe Kent for Congress and
15 Thomas Datwyler in his official capacity as treasurer (the “Committee”) violated the Federal
16 Election Campaign Act of 1971, as amended (the “Act”), by accepting excessive and potentially
17 prohibited corporate contributions from Kent’s employer, which the Complaint identifies as
18 being either American Enterprise Solutions or Advanced Enterprise Solutions, LLC (“AES”),
19 and correspondingly that American Enterprise Solutions or AES made the potentially excessive
20 and prohibited corporate contributions.

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

1 Kent and the Committee did not submit a substantive response, stating through their
2 counsel that they “deny the allegations in their entirety, but [they] will not be filing a response to
3 the complaint at this time.”¹ AES provides a more fulsome response, attaching tax records and
4 other company documents to substantiate its statements that it is a for-profit LLC, and that AES,
5 rather than American Enterprise Solutions, was Kent’s employer. More specifically, AES’s
6 Response and the attached documents provide support for its claim that AES hired Kent nearly a
7 year and a half before he became a candidate, and that payments made to Kent were in
8 consideration of his *bona fide* employment with the company.

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

13 As discussed in further detail below, while the reported statements by Kent’s former
14 campaign manager raise questions as to whether a violation has occurred, there is insufficient
15 information to find reason to believe that Kent, the Committee or AES violated the Act.
16 Accordingly, the Commission finds no reason to believe that Advanced Enterprise Solutions
17 made or that Joseph Kent and Joe Kent for Congress and Thomas Datwyler in his official
18 capacity as treasurer knowingly accepted excessive or prohibited contributions.

19 Further, as the inclusion of American Enterprise Solutions in the Complaint appears to
20 have been based solely on the candidate’s confusing public statements over the name of his
21 employer, there is no information indicating that such a company violated the Act. Accordingly,

¹ Joseph Kent and Joe Kent for Congress Resp. (Nov. 17, 2022) (“Kent. Resp.”).

1 the Commission finds no reason to believe that American Enterprise Solutions violated the Act
 2 by making excessive or prohibited contributions to Kent or the Committee.

3 **II. FACTUAL BACKGROUND**

4 Joseph Kent was a candidate for Washington’s third congressional district in the 2022
 5 election.² Joe Kent for Congress is his principal campaign committee.³ On Kent’s personal
 6 financial disclosures filed with the Clerk of the House of Representatives, he reported receiving a
 7 salary from “American Enterprise Solutions” in 2021 and 2022.⁴ Similarly, between May 2020
 8 and July 2021, reports filed with the Commission by various committees reflect that when Kent
 9 made contributions he listed American Enterprise Solutions as his employer.⁵

10 The Complaint raises questions about Kent’s employer, based in part on an October
 11 2022 *Daily Beast* article discussing the lack of public records for any entity named “American
 12 Enterprise Solutions” that would match Kent’s description of the company.⁶ Within days of this

² 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).

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

⁴ 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”).

⁵ *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).

⁶ 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 cited in the Complaint, 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 reporting, Kent amended his personal financial disclosures to reflect that the name of his
 2 employer was “Advanced Enterprise Solutions” rather than “American Enterprise Solutions.”⁷
 3 Campaign staff explained that the error in the reports was a “typo” and took “full responsibility
 4 for the transcription error.”⁸ Regarding Kent’s own previous use of the name “American
 5 Enterprise Solutions,” he states that “[t]here’s a good chance I screwed it up.”⁹

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

⁷ 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.

⁸ OPB Article.

⁹ *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).

¹⁰ 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.”).

¹¹ Oct. 27 DAILY BEAST Article.

¹² *Id.*

¹³ *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.”¹⁴ 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.”¹⁵

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.”¹⁶ 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 2021.¹⁷

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

¹⁴ OPB Article.

¹⁵ *Id.*

¹⁶ 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.”).

¹⁷ *Id.*, Ex. A, B.

1 survey by Trafalgar Polling of voters in the House district.”¹⁸ 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 his personal funds to become a member of the Trafalgar Group in order to conduct such a
4 poll.¹⁹ 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.”²⁰

9 Reed denies coordinating the poll with Kent or the Committee.²¹ Further, he states that
10 he did not share the poll with Kent or the Committee or anyone else but authorized Trafalgar
11 Group to release the results publicly.²² 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.”²³

14 III. LEGAL ANALYSIS

15 A. The Commission Finds 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

¹⁸ Oct. 27 DAILY BEAST Article.

¹⁹ AES Resp. at 3, Attach. Sean Reed Decl. ¶ 4.

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

²¹ AES Resp., Attach. Reed Decl. ¶ 5.

²² *Id.* ¶ 4.

²³ *Id.* ¶ 6.

1 prohibited from knowingly receiving or accepting such contributions.²⁴ Further, the Act
2 prohibits any person from making, and any candidate or committee from knowingly accepting,
3 an excessive contribution.²⁵ 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.²⁶ 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.”²⁷

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.²⁸

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.

²⁴ See 52 U.S.C. §§ 30101(8)(A), 30118(a).

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

²⁶ See Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. 7867, 7869 (Feb. 2, 2021).

²⁷ 52 U.S.C. § 30101(8)(A)(i).

²⁸ 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.”²⁹ 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.

7 However, AES’s Response counters that it is in fact an active business, attaching to its
8 Response copies of its 2019 Limited Liability Company Certificate of Formation on file with the
9 state of Delaware and its 2021 federal tax return (Form 1065) showing substantial revenues,
10 expenses, and profits.³⁰ We are not aware of any available information to contradict this
11 documentation that appears to indicate that AES is an active company.

12 AES also provides a copy of Kent’s original engagement letter from 2019, nearly a year
13 and a half prior to his candidacy, and copies of his W-2s from 2019-2021.³¹ Kent’s employment
14 by AES significantly predating his candidacy, along with the other documents provided by AES
15 establishing the nature of its business as well as Kent’s employment, undermine the basis of the

²⁹ Compl. at 2-3.

³⁰ 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.*

³¹ 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.³²

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.³³ 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."³⁴

12 In its Response, AES dismisses Sanford's allegations, describing him as a "disgruntled
13 and dismissed" former employee that "has motive to speak ill" of Kent and that he has "no actual
14 knowledge of [AES's] business operations."³⁵ Further, AES explains how a heavy campaign
15 schedule could be compatible with Kent's work for the company, stating that his work "required
16 that he be engaged on projects around the world, working remotely with people in different

³² 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).

³³ See Oct. 27 DAILY BEAST Article.

³⁴ Oct. 27 DAILY BEAST Article.

³⁵ AES Resp. at 2; see also Oct. 27 DAILY BEAST Article (including statement from Kent campaign that Sanford was fired for making offensive remarks).

1 international time zones. Mr. Kent’s work therefore cannot be placed neatly within a typically
2 American eight hours a day, five days per week business schedule.”³⁶

3 On balance, the unsworn statements of a fired campaign employee quoted in the press,
4 when considered against the Respondents’ denials, the company’s plausible explanation of how
5 Kent could campaign full time and still perform his work duties, and documentation indicating
6 that Kent held and performed this work prior to his candidacy, are insufficient to demonstrate
7 that Kent’s compensation was not exclusively in consideration of services provided as part of
8 this employment.

9 Finally, regarding the third condition of the Commission’s regulation — that the
10 compensation does not exceed the amount of compensation which would be paid to any other
11 similarly qualified person for the same work over the same period of time — the Complaint has
12 provided no information indicating that Kent was paid disproportionately to his peers.³⁷ To the
13 contrary, AES states in its Response that it employs three other individuals doing similar work to
14 Kent and that he earns less than two of these employees, who possess an additional degree, and
15 more than one employee, who is less senior.³⁸ Given the absence of contrary information, it
16 appears this condition is met.

17 Although the Commission has not encountered this precise fact pattern in prior matters,
18 the Commission has typically not pursued enforcement where, despite an inconsistent factual
19 record, there was evidence that the candidate’s employment began well before his or her

³⁶ 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.

³⁷ 11 C.F.R. § 113.1(g)(6)(iii)(C).

³⁸ AES Resp. at 2.

1 candidacy. For instance, in MUR 7044 (Jodey Cook Arrington), the Commission found no
2 reason to believe that the candidate's payments from his employer were contributions after
3 considering allegations that were based on reports of him campaigning heavily, financial
4 disclosures showing him collecting a substantial salary, and his comments in a radio interview
5 indicating that his job afforded him flexibility to campaign while continuing to work.³⁹ These
6 allegations were weighed against information, including a sworn declaration from the
7 candidate's employer, showing that Arrington began his employment more than 15 months prior
8 to becoming a candidate, and that his work schedule afforded him flexibility to both perform his
9 work duties and campaign.⁴⁰ Similarly, in MUR 6853 (Wamp for Congress), the Commission
10 found no reason to believe that a candidate had accepted an impermissible salary, weighing
11 allegations that were based on a news report quoting a founder and partner at the firm that the
12 candidate was on paid leave while campaigning against a sworn statement provided to the
13 Commission by another partner at the firm in asserting that the candidate continued to work
14 remotely during the campaign.⁴¹ In reaching its conclusion, the Commission also noted the
15 employer's response stating that non-traditional hours and working remotely were common
16 practice at the company and that Wamp began working for the firm nearly four years prior to
17 becoming a candidate.⁴² The present matter similarly includes a conflicting record and a strong
18 indication that the candidate was employed by the employer for a significant period prior to his
19 candidacy. Therefore, consistent with these prior matters, the record here, is insufficient to

³⁹ Factual and Legal Analysis at 2-3, MUR 7044 (Jodey Cook Arrington).

⁴⁰ *Id.*

⁴¹ Factual and Legal Analysis at 1-2, 3-6 MUR 6853 (Wamp for Congress).

⁴² *Id.* at 3-6.

1 conclude that Kent’s payments from AES were contributions rather than the product of *bona fide*
2 employment.

3 Accordingly, the Commission finds no reason to believe that the Joseph Kent and Joe
4 Kent for Congress and Thomas Datwyler in his official capacity as treasurer violated the Act by
5 knowingly accepting excessive and prohibited corporate contributions through salary payments
6 from Kent’s employer. Similarly, the Commission finds no reason to believe that Advanced
7 Enterprise Solutions, LLC violated the Act by making excessive and prohibited corporate
8 contributions through salary payments to Kent.

9 **B. The Commission Finds No Reason to Believe Regarding Alleged In-Kind**
10 **Contributions Relating to Payments for Polling**

11 In the context of polling, Commission regulations specify that the purchase of opinion
12 poll results by a “person not authorized by a candidate to make expenditures and the subsequent
13 acceptance of the poll results by a candidate or a candidate’s authorized committee or agent . . .
14 is a contribution in-kind by the purchaser to the candidate.”⁴³ Poll results are “accepted” when
15 the candidate, his committee, or his agent (1) requests the poll results; (2) uses the poll results; or
16 (3) does not notify the contributor that the results are refused.⁴⁴ However, Commission
17 regulations also state that “acceptance of any part of a poll’s results which part, prior to receipt,
18 has been made public without any request, authorization, prearrangement, or coordination by the

⁴³ 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.”).

⁴⁴ 11 C.F.R. § 106.4(b)(1)-(3).

1 candidate-recipient or political committee-recipient, shall not be treated as a contribution in-
2 kind.”⁴⁵

3 As a preliminary point, based on information provided in the AES Response, it appears
4 that the company did not pay for the poll in question. Instead, based on the sworn statement by
5 AES CEO, Sean Reed, it appears that Mr. Reed personally paid for a “membership” to the
6 Trafalgar Group, which then did the polling.⁴⁶ If this poll resulted in an illegal contribution, it
7 would have been made by Reed, not Respondent AES. Nevertheless, as explained below, the
8 available information does not lead us to conclude that the poll in question resulted in a
9 contribution.

10 Reed states that he “never released the results of the poll directly to anyone— including
11 Mr. Kent and his campaign—but rather authorized the Trafalgar Group to release the results.”⁴⁷
12 Our review of the public record indicates that Trafalgar Group did make public three polls
13 regarding the relevant election, two of which were conducted prior to the release of the *Daily*
14 *Beast* article, making it possible one of them is the poll in question.⁴⁸

15 However, according to Kent’s former campaign manager, Sanford, Kent indicated
16 knowledge that the poll was being commissioned prior to its public release. According to the
17 press reports cited in the Complaint, Sanford alleges that Kent stated on a conference call that his
18 employer would be financing a survey of voters in his district by Trafalgar Polling, implying that

⁴⁵ 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”).

⁴⁶ AES Resp., Reed Decl. ¶¶ 2-3.

⁴⁷ *Id.* ¶ 4.

⁴⁸ *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 the polling may have been “prearranged or coordinated.”⁴⁹ In his sworn declaration, Reed denies
2 such coordination regarding the poll, stating that he “did not commission the poll at the request
3 or suggestion of Mr. Kent or his PAC” and that “neither Mr. Kent nor his PAC were
4 substantially involved in creating the content of the poll or selecting its audience.”⁵⁰

5 Sanford’s unsworn statements in the press are outweighed by the explicit denial of
6 coordination in a sworn statement. Therefore, the available information is insufficient to support
7 a reasonable inference that the polling in question was prearranged or coordinated. Moreover,
8 even if the Commission were to credit Sanford’s statement that Kent knew ahead of time that his
9 employer would be conducting a poll through Trafalgar Group, there would not be a sufficient
10 basis to find reason to believe. Simply being made aware that a poll was forthcoming does not
11 make such a public poll “prearranged or coordinated.”⁵¹ Under Commission regulations,
12 coordination requires that the act be “made in cooperation, consultation or concert with, or at the
13 request or suggestion of” the candidate or his committee, which are steps beyond mere
14 knowledge.⁵² Accordingly, the Commission finds no reason to believe that Advanced Enterprise
15 Solutions, LLC made and Joe Kent for Congress and Thomas Datwyler in his official capacity as
16 treasurer accepted potentially excessive or prohibited in-kind contributions in the form of
17 payments for polling.

⁴⁹ 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).

⁵⁰ AES Resp., Reed Decl. ¶ 5.

⁵¹ See *FEC v. Christian Coal.*, 52 F. Supp. 2d 45, 95 (D.D.C. 1999) (“[T]he 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”).

⁵² 11 C.F.R. § 109.20(a).

1 **C. The Commission Finds No Reason to Believe that American Enterprise**
2 **Solutions Made Excessive or Prohibited Contributions**

3 Although Kent had publicly named “American Enterprise Solutions” as his employer,
4 Kent has since amended his personal financial disclosures filed with the Clerk of the House of
5 Representatives to correct that misstatement and to properly name AES instead.⁵³ Additionally,
6 AES has provided compelling documentation, in the form of Kent’s 2019 engagement letter and
7 his 2020 and 2021 W-2s, to demonstrate that AES rather than American Enterprise Solutions,
8 was in fact Kent’s employer during the relevant period.⁵⁴ In light of this information, there is no
9 basis to support any allegation that American Enterprise Solutions paid Kent to subsidize his
10 campaign and thereby made contributions to the Committee. Accordingly, the Commission finds
11 no reason to believe that American Enterprise Solutions violated 52 U.S.C. §§ 30116(a)(1)(A),
12 30118(a) by making excessive or prohibited corporate contributions to Kent or the Committee.

⁵³ *See supra* note 7.

⁵⁴ AES Resp., Ex. A, B.