

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Charlie Crist for U.S. Senate and) MUR 6244
Frederick Carroll III, in his official)
capacity as treasurer; Richard J. Heffley;)
Heffley and Associates, Inc.; Strategic)
Direction.com, Inc.; Republican Party of)
Florida and Joel Pate, in his official)
capacity as treasurer)

CERTIFICATION

I, Darlene Harris, Acting Secretary of the Federal Election Commission,
do hereby certify that on May 27, 2010, the Commission decided by a vote of 6-0
to take the following actions in MUR 6244:

1. Find no reason to believe Charlie Crist for U.S. Senate and Frederick Carroll III, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) or 441b in this matter.
2. Find no reason to believe Richard Heffley violated 2 U.S.C. §§ 441a(a), 441b, or 441d.
3. Find no reason to believe that Heffley and Associates, Inc.; or Strategic Direction.com, Inc. violated 2 U.S.C. § 441b.
4. Find no reason to believe the Republican Party of Florida and Joel Pate, in his official capacity as treasurer, violated the Act in this matter.
5. Approve the Factual and Legal Analyses, as recommended in the First General Counsel's Report dated May 18, 2010.
6. Approve the appropriate letters.
7. Close the file.

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Federal Election Commission
MUR 6244
May 27, 2010

Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and
Weintraub voted affirmatively for the decision.

Attest:

May 28, 2010
Date

Darlene Harris
Darlene Harris
Acting Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 17 2010

Elizabeth S. Wessel

Tampa, Florida 33609-3813

RE: MUR 6244
Charlie Crist for U.S. Senate, et al.

Dear Ms. Wessel:

On May 27, 2010, the Federal Election Commission reviewed the allegations in your complaint dated December 22, 2009, and, on the basis of the information provided in your complaint, and information provided by the Respondents, made the following findings. First, the Commission found there is no reason to believe Charlie Crist for U.S. Senate and Frederick Carroll III, as treasurer, violated 2 U.S.C. §§ 441a(f) or 441b of the Federal Election Campaign Act of 1971, as amended ("the Act"). Second, the Commission found there is no reason to believe Richard J. Heffley violated 2 U.S.C. §§ 441a(a), 441b, or 441d of the Act. Third, the Commission found there is no reason to believe Heffley & Associates, Inc. or Strategic Directions.com, Inc. violated 2 U.S.C. § 441b of the Act. Finally, the Commission found there is no reason to believe the Republican Party of Florida and Joel Pate, as treasurer, violated the Act in this matter. Accordingly, on May 27, 2010, the Commission closed the 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). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Mark Allen
Assistant General Counsel

Enclosures
Factual and Legal Analyses

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 6244**

4
5 **RESPONDENTS:** Charlie Crist for U.S. Senate and Frederick Carroll III,
6 in his official capacity as treasurer

7
8 **I. INTRODUCTION**

9 The complaint alleges that lobbyist Richard Heffley and an unnamed collaborator
10 launched a website on October 27, 2009, that attacked U.S. Senate candidate Marco Rubio, the
11 Republican primary opponent of Governor Crist at that time. The complaint claims that, because
12 Mr. Heffley is a "common vendor" for the website, <http://truthaboutrubio.com>, and for Charlie
13 Crist for U.S. Senate ("Crist Committee"), the website is a coordinated communication in
14 violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). Further, the
15 complaint alleges that if Mr. Heffley used his lobbying corporation or political consulting group
16 to pay for the website, then the coordination would have constituted an illegal corporate
17 contribution to the Crist Committee. The complaint further alleges that Mr. Heffley is a paid
18 consultant of the Republican Party of Florida and that he shares office space with the Crist
19 Committee and the Republican Party of Florida. Because it does not appear that any costs
20 associated with the truthaboutrubio.com website are in-kind contributions to the Crist
21 Committee, the Commission finds no reason to believe that Charlie Crist for U.S. Senate and
22 Frederick Carroll III, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) or 441b.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 The Act limits the amount that may be contributed to Federal candidates, their authorized
3 committees, and to other political committees, and prohibits candidates and political committees
4 from accepting contributions in violation of those limits. *See* 2 U.S.C. §§ 441a(a) and 441a(f).

5 The Act also prohibits corporations from making federal political contributions. 2 U.S.C.
6 § 441b. Under the Act and the Commission's regulations, these contributions may take the form
7 of money or "anything of value," the latter signifying "in-kind" contributions. *See* 2 U.S.C.
8 § 431(8)(A)(i) and 11 C.F.R. § 100.52(d)(1). When a person pays for a communication that is
9 coordinated with a candidate or party committee, the communication is considered an in-kind
10 contribution from the person to that candidate or party committee and is subject to the limits,
11 prohibitions and reporting requirements of the Act, unless exempted under 11 C.F.R. part 100,
12 subpart C or E. *See* 11 C.F.R. § 109.21(b). One of the specific exemptions contained in subpart
13 C is uncompensated internet activity by individuals including, for example, "creating, hosting or
14 maintaining a website," which is not included in the definition of "contribution." 11 C.F.R.
15 § 100.94.

16 In general, a payment for a communication is "coordinated" if it is made in cooperation,
17 consultation or concert with, or at the request or suggestion of, a candidate, a candidate's
18 authorized committee or their agents, or a political party committee or its agents. *See* 2 U.S.C.
19 § 441a(a)(7)(B); 11 C.F.R. §§ 109.21 and 109.37. Commission regulations establish a
20 three-prong test to determine whether a communication is coordinated. All three prongs of the
21 test — payment, content and conduct — must be met for a communication to be deemed
22 coordinated and, thus, an in-kind contribution. The available information indicates that

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1 Mr. Heffley created and paid for the website, the costs of which were minimal, and that the Crist
2 committee did not pay the costs. However, it appears that truthaboutrubio.com fails the content
3 prong of the test for a coordinated communication. To satisfy the content prong, a
4 communication has to be either an "electioneering communication" or a "public
5 communication," *see* 11 C.F.R. §§ 109.21(c)(1)-(4) and 109.37(a)(2)(i)-(iii), and this website
6 appears to be neither.¹ Therefore, the content prong is not met, and the truthaboutrubio.com
7 website cannot be a coordinated communication, as alleged in the complaint.

8 Further, the Commission's regulations regarding individual volunteer activity over the
9 internet appear to exempt the costs of the website from the definition of "contribution." The
10 available information indicates that Mr. Heffley served as an unpaid blogger who coordinated
11 with no one on the Crist Committee and created the content on the website on his own from
12 previously published materials. The Commission's internet regulations provide that volunteer
13 internet activities by an individual or group of individuals, "acting independently or in

¹ An electioneering communication is defined as a broadcast, cable or satellite communication that refers to a clearly identified federal candidate and is distributed to the relevant electorate 30 days before the primary election or 60 days before the general election. 11 C.F.R. § 100.29. The website was launched on October 27, 2009, more than 30 days before the primary election date of August 24, 2010. Further, "broadcast, cable, or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system. 11 C.F.R. § 100.29. Accordingly, the website is not an electioneering communication.

Nor is <http://truthaboutrubio.com> a public communication. "Public communication," *see* 11 C.F.R. §§ 109.21(c)(2)-(4) and 109.37(a)(2)(i)-(iii), is defined as a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising, which in turn is defined to exclude communications over the internet except for communications placed for a fee on another person's website. 11 C.F.R. § 100.26. The available information does not suggest that the Crist Committee paid any fees in connection with truthaboutrubio.com. The response from the Crist Committee states that Mr. Heffley and his companies do not receive any compensation from the Crist Committee for any services. Crist Committee Response at 1. The Crist Committee did not disclose any payments to Heffley or to any person described in a manner suggesting the website at issue. Because the available information does not indicate that material was placed on the website for a fee, the website does not appear to be a public communication.

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1 coordination with any candidate, authorized committee, or political party committee" is not a
2 contribution by that individual or group of individuals. 11 C.F.R. § 100.94; *see also* Internet
3 Communications Explanation and Justification, 71 Fed. Reg. 18589, 18603 (April 12, 2006) (the
4 funds expended by individuals engaging in volunteer internet activities and bloggers to create
5 and maintain websites do not constitute contributions or expenditures, and the websites
6 themselves are not subject to the Commission's coordination rules). Therefore, it seems that
7 Mr. Heffley's activity falls squarely into the internet exemption and is not an in-kind
8 contribution to the Crist Committee.² As a result, the Commission finds no reason to believe
9 that Charlie Crist for U.S. Senate and Frederick Carroll III, in his official capacity as treasurer,
10 violated 2 U.S.C. §§ 441a(f) or 441b by accepting excessive or prohibited in-kind contributions.³

² The complaint alleges that Mr. Heffley launched the website with an "undisclosed collaborator." According to the complaint, Mr. Heffley admitted the existence of a collaborator to a reporter but failed to name him/her. However, even if the undisclosed collaborator exists and is a member of the Crist Committee, the Commission's regulations still appear to exempt the website activity from the definition of "contribution." *See* 11 C.F.R. § 100.94.

³ There are broad allegations in the complaint that Mr. Heffley may have used one or both of his corporations, Heffley and Associates, Inc. and Strategic Direction.com, Inc., to pay for <http://truthabouttruthio.com>, resulting in impermissible corporate contributions. The available information does not suggest any corporate involvement in the website. *See* 2 U.S.C. § 441b(a).

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 6244**

4
5 **RESPONDENTS:** Richard Heffley; Heffley and Associates, Inc.;
6 and Strategic Direction.com, Inc.
7

8
9 **I. INTRODUCTION**

10 The complaint alleges that lobbyist Richard Heffley and an unnamed collaborator
11 launched a website on October 27, 2009, that attacked U.S. Senate candidate Marco Rubio, the
12 Republican primary opponent of Governor Crist at that time. The complaint claims that, because
13 Mr. Heffley is a "common vendor" for the website, <http://truthaboutrubio.com>, and for the Crist
14 Committee, the website is a coordinated communication in violation of the Federal Election
15 Campaign Act of 1971, as amended ("the Act"). Further, the complaint alleges that if
16 Mr. Heffley used his lobbying corporation or political consulting group to pay for the website,
17 then the coordination would have constituted an illegal corporate contribution to the Crist
18 Committee. The complaint further alleges that Mr. Heffley is a paid consultant of the
19 Republican Party of Florida and that he shares office space with the Crist Committee and the
20 Republican Party of Florida. Finally, the complaint alleges that the website lacked a disclaimer.
21 Because it does not appear that any costs associated with the truthaboutrubio.com website are
22 in-kind contributions to the Crist Committee, or that the website is a public communication
23 requiring a disclaimer, the Commission finds no reason to believe that Richard Heffley violated
24 2 U.S.C. §§ 441a(a), 441b, or 441d. Further, the Commission finds no reason to believe Richard

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1 Heffley's two companies, Heffley and Associates, Inc. and Strategic Direction.com, Inc.,
2 violated 2 U.S.C. § 441b.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 Richard Heffley created truthaboutrubio.com because he supported Charlic Crist over
5 Marco Rubio in the upcoming Florida U.S. Senate Republican primary. Heffley Response at 1.
6 Heffley describes truthaboutrubio.com as follows:

7 The content of the website was all articles and links to articles that
8 have appeared in places around Florida. There was no original
9 content on the site except for several 'flash poll' questions I wrote
10 to try and get viewers involved in the site. Nowhere on the site
11 was there a call for the election or defeat of Crist or Rubio or any
12 other candidate.

13 *Id.* Neither the complaint nor the responses included any screenshots of this website. Heffley
14 states that the website was coordinated with no one on the Crist Committee and that he created
15 the content of the website on his own from previously published materials. Heffley Response
16 at 2.

17 The Act limits the amount that may be contributed to Federal candidates, their authorized
18 committees, and to other political committees, and prohibits candidates and political committees
19 from accepting contributions in violation of those limits. *See* 2 U.S.C. §§ 441a(a) and 441a(f).
20 The Act also prohibits corporations from making federal political contributions. 2 U.S.C.
21 § 441b. Under the Act and the Commission's regulations, these contributions may take the form
22 of money or "anything of value," the latter signifying "in-kind" contributions. *See* 2 U.S.C.
23 § 431(8)(A)(i) and 11 C.F.R. § 100.52(d)(1). When a person pays for a communication that is

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1 coordinated with a candidate or party committee, the communication is considered an in-kind
2 contribution from the person to that candidate or party committee and is subject to the limits,
3 prohibitions and reporting requirements of the Act, unless exempted under 11 C.F.R. part 100,
4 subpart C or E. See 11 C.F.R. § 109.21(b). One of the specific exemptions contained in subpart
5 C is uncompensated internet activity by individuals including, for example, "creating, hosting or
6 maintaining a website," which is not included in the definition of "contribution." 11 C.F.R.
7 § 100.94.

8 In general, a payment for a communication is "coordinated" if it is made in cooperation,
9 consultation or concert with, or at the request or suggestion of, a candidate, a candidate's
10 authorized committee or their agents, or a political party committee or its agents. See 2 U.S.C.
11 § 441a(a)(7)(B); 11 C.F.R. §§ 109.21 and 109.37. Commission regulations establish a
12 three-prong test to determine whether a communication is coordinated. All three prongs of the
13 test — payment, content and conduct — must be met for a communication to be deemed
14 coordinated and, thus, an in-kind contribution. In order to satisfy the payment prong, the
15 communication needs to be paid for, in whole or in part, by someone other than the candidate,
16 authorized committee, political party committee or an agent of the above. 11 C.F.R.
17 § 109.21(a)(1). This prong appears to be met in this matter because Mr. Heffley admits in his
18 response that he created and paid for the website, the costs of which were "minimal," and that
19 neither Charlic Crist for U.S. Senate ("Crist Committee") nor the Republican Party of Florida
20 ("RPOF") paid the costs. Heffley Response at 1. However, it appears that truthaboutrubio.com
21 fails the content prong of the test for a coordinated communication. To satisfy the content prong,
22 a communication has to be either an "electioneering communication" or a "public

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1 communication," *see* 11 C.F.R. §§ 109.21(c)(1)-(4) and 109.37(a)(2)(i)-(iii), and this website
2 appears to be neither.¹ Therefore, the content prong is not met, and the truthaboutrubio.com
3 website cannot be a coordinated communication, as alleged in the complaint.²

4 Further, the Commission's regulations regarding individual volunteer activity over the
5 internet appear to exempt the costs of the website from the definition of "contribution."
6 Mr. Heffley's describes his activity as that of "an unpaid blogger who coordinated with no one
7 on the Crist Committee and created the content of the website on [his] own from previously
8 published materials." Heffley Response at 2. The Commission's internet regulations provide
9 that volunteer internet activities by an individual or group of individuals, "acting independently
10 or in coordination with any candidate, authorized committee, or political party committee" is not

¹ An electioneering communication is defined as a broadcast, cable or satellite communication that refers to a clearly identified federal candidate and is distributed to the relevant electorate 30 days before the primary election or 60 days before the general election. 11 C.F.R. § 100.29. The website was launched on October 27, 2009, more than 30 days before the primary election date of August 24, 2010. Further, "broadcast, cable, or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system. 11 C.F.R. § 100.29. Accordingly, the website is not an electioneering communication.

Nor is <http://truthaboutrubio.com> a public communication. "Public communication," *see* 11 C.F.R. §§ 109.21(c)(2)-(4) and 109.37(a)(2)(i)-(iii), is defined as a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising, which in turn is defined to exclude communications over the internet except for communications placed for a fee on another person's website. 11 C.F.R. § 100.26. The available information does not suggest that either the Crist Committee or the RPOF paid any fees in connection with truthaboutrubio.com. Mr. Heffley states that neither the Crist Committee nor the RPOF paid any of the "very minimal costs for my website" and that Heffley himself did the work for the website on his own time and used freeware to create the site layout. Heffley Response at 1. Neither the Crist Committee nor the RPOF disclosed any payments to Heffley or to any person described in a manner suggesting the website at issue. Because the available information does not indicate that material was placed on the website for a fee, the website does not appear to be a public communication.

² Because it appears the content prong is not met, there is no need to discuss at any length the "common vendor" standard of the conduct prong. Mr. Heffley, in his response, states that he "did not talk to [Crist] or anyone with his campaign about this website" and, therefore, had no means to use or convey information about the plans or needs of the candidate or political party. Heffley Response at 1. *See* 11 C.F.R. § 109.21(d)(4).

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1 a contribution by that individual or group of individuals. 11 C.F.R. § 100.94; *see also* Internet
2 Communications Explanation and Justification, 71 Fed. Reg. 18589, 18603 (April 12, 2006) (the
3 funds expended by individuals engaging in volunteer internet activities and bloggers to create
4 and maintain websites do not constitute contributions or expenditures, and the websites
5 themselves are not subject to the Commission's coordination rules). Therefore, it seems that
6 Mr. Heffley's activity falls squarely into the internet exemption and is not an in-kind
7 contribution to the Crist Committee.³ *See* Heffley Response at 2. As a result, the Commission
8 finds no reason to believe that Richard Heffley violated 2 U.S.C. §§ 441a(a) or 441b. Further,
9 the Commission finds no reason to believe Richard Heffley's two companies, Heffley and
10 Associates, Inc. and Strategic Direction.com, Inc., violated 2 U.S.C. § 441b.⁴

11 The complaint also states that <http://truthaboutrubio.com> did not contain a disclaimer.
12 *See* 2 U.S.C. § 441d(a). Under the Commission's regulations, disclaimers are required on:
13 (1) A "public communication," as defined in 11 C.F.R. § 100.26, made by a political committee;
14 (2) electronic mail of more than 500 substantially similar communications when sent by a
15 political committee; (3) a political committee website available to the general public; and
16 (4) a "public communication," as defined in 11 C.F.R. § 100.26, made by any person that

³ The complaint alleges that Mr. Heffley launched the website with an "undisclosed collaborator." According to the complaint, Mr. Heffley admitted the existence of a collaborator to a reporter but failed to name him/her. Nor does Mr. Heffley refer to any collaborator in his response to the complaint. He does state that he "did not talk to [Crist] or anyone with his campaign about this website." Heffley Response at 1. However, even if the undisclosed collaborator exists and is a member of the RPOF or even the Crist Committee, the Commission's regulations still appear to exempt the website activity from the definition of "contribution." *See* 11 C.F.R. § 100.94.

⁴ There are broad allegations in the complaint that Mr. Heffley may have used one or both of his corporations, Heffley and Associates, Inc. and Strategic Direction.com, Inc., to pay for <http://truthaboutrubio.com>, resulting in impermissible corporate contributions. Mr. Heffley indicates in his response that he "did the work for the site on [his] own time and used freeware to create the site layout." Heffley Response at 1. The available information does not suggest any corporate involvement in the website. *See* 2 U.S.C. § 441b(a).

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1 contains express advocacy, solicits a contribution, or qualifies as an "electioneering
2 communication" under 11 C.F.R. § 100.29. 11 C.F.R. § 110.11(a); *see also* Internet
3 Communications Explanation and Justification, 71 Fed. Reg. 18589, 18602 (April 12, 2006).
4 Because <http://truthaboutrubio.com> is an internet communication and neither RPOF nor the Crist
5 Committee appears to have paid for the costs of the website, it appears that a disclaimer is not
6 required. Therefore, the Commission finds no reason to believe that Richard Heffley violated
7 2 U.S.C. § 441d.

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 6244**

4
5 **RESPONDENTS:** Republican Party of Florida and Joel Pate, in
6 his official capacity as treasurer
7
8

9 **I. INTRODUCTION**

10 The complaint alleges that lobbyist Richard Heffley and an unnamed collaborator
11 launched a website on October 27, 2009, that attacked U.S. Senate candidate Marco Rubio, the
12 Republican primary opponent of Governor Crist at that time. The complaint claims that, because
13 Mr. Heffley is a "common vendor" for the website, <http://truthaboutrubio.com>, and for the Crist
14 Committee, the website is a coordinated communication in violation of the Federal Election
15 Campaign Act of 1971, as amended ("the Act"). The complaint further alleges that Mr. Heffley
16 is a paid consultant of the Republican Party of Florida and that he shares office space with the
17 Crist Committee and the Republican Party of Florida. Because it does not appear that any costs
18 associated with the truthaboutrubio.com website are in-kind contributions, the Commission finds
19 no reason to believe that the Act was violated by the Republican Party of Florida and Joel Pate,
20 in his official capacity as treasurer.

21 **II. FACTUAL AND LEGAL ANALYSIS**

22 The Act limits the amount that may be contributed to Federal candidates, their authorized
23 committees, and to other political committees, and prohibits candidates and political committees
24 from accepting contributions in violation of those limits. See 2 U.S.C. §§ 441a(a) and 441a(f).

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1 The Act also prohibits corporations from making federal political contributions. 2 U.S.C.
2 § 441b. Under the Act and the Commission's regulations, these contributions may take the form
3 of money or "anything of value," the latter signifying "in-kind" contributions. See 2 U.S.C.
4 § 431(8)(A)(i) and 11 C.F.R. § 100.52(d)(1). When a person pays for a communication that is
5 coordinated with a candidate or party committee, the communication is considered an in-kind
6 contribution from the person to that candidate or party committee and is subject to the limits,
7 prohibitions and reporting requirements of the Act, unless exempted under 11 C.F.R. part 100,
8 subpart C or E. See 11 C.F.R. § 109.21(b). One of the specific exemptions contained in subpart
9 C is uncompensated internet activity by individuals including, for example, "creating, hosting or
10 maintaining a website," which is not included in the definition of "contribution." 11 C.F.R.
11 § 100.94.

12 In general, a payment for a communication is "coordinated" if it is made in cooperation,
13 consultation or concert with, or at the request or suggestion of, a candidate, a candidate's
14 authorized committee or their agents, or a political party committee or its agents. See 2 U.S.C.
15 § 441a(a)(7)(B); 11 C.F.R. §§ 109.21 and 109.37. Commission regulations establish a
16 three-prong test to determine whether a communication is coordinated. All three prongs of the
17 test — payment, content and conduct — must be met for a communication to be deemed
18 coordinated and, thus, an in-kind contribution. The available information indicates that
19 Mr. Heffley created and paid for the website, the costs of which were minimal, and that the
20 Republican Party of Florida did not pay the costs. However, it appears that truthaboutrubio.com
21 fails the content prong of the test for a coordinated communication. To satisfy the content prong,
22 a communication has to be either an "electioneering communication" or a "public

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1 communication," *see* 11 C.F.R. §§ 109.21(e)(1)-(4) and 109.37(a)(2)(i)-(iii), and this website
2 appears to be neither.¹ Therefore, the content prong is not met, and the truthaboutrubio.com
3 website cannot be a coordinated communication, as alleged in the complaint.

4 Further, the Commission's regulations regarding individual volunteer activity over the
5 internet appear to exempt the costs of the website from the definition of "contribution." The
6 available information indicates that Mr. Heffley served as an unpaid blogger who created the
7 content on the website on his own from previously published materials. The Commission's
8 internet regulations provide that volunteer internet activities by an individual or group of
9 individuals, "acting independently or in coordination with any candidate, authorized committee,
10 or political party committee" is not a contribution by that individual or group of individuals.
11 11 C.F.R. § 100.94; *see also* Internet Communications Explanation and Justification, 71 Fed.
12 Reg. 18589, 18603 (April 12, 2006) (the funds expended by individuals engaging in volunteer
13 internet activities and bloggers to create and maintain websites do not constitute contributions or
14 expenditures, and the websites themselves are not subject to the Commission's coordination

¹ An electioneering communication is defined as a broadcast, cable or satellite communication that refers to a clearly identified federal candidate and is distributed to the relevant electorate 30 days before the primary election or 60 days before the general election. 11 C.F.R. § 100.29. The website was launched on October 27, 2009, more than 30 days before the primary election date of August 24, 2010. Further, "broadcast, cable, or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system. 11 C.F.R. § 100.29. Accordingly, the website is not an electioneering communication.

Nor is <http://truthaboutrubio.com> a public communication. "Public communication," *see* 11 C.F.R. §§ 109.21(c)(2)-(4) and 109.37(a)(2)(i)-(iii), is defined as a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising, which in turn is defined to exclude communications over the internet except for communications placed for a fee on another person's website. 11 C.F.R. § 100.26. The available information does not suggest that the RPOF paid any fees in connection with truthaboutrubio.com. The RPOF did not disclose any payments to Heffley or to any person described in a manner suggesting the website at issue. Because the available information does not indicate that material was placed on the website for a fee, the website does not appear to be a public communication.

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- 1 rules).² As a result, the Commission finds no reason to believe that the Republican Party of
- 2 Florida and Joel Pate, in his official capacity as treasurer violated the Act in this matter.³

² The complaint alleges that Mr. Heffley launched the website with an "undisclosed collaborator." According to the complaint, Mr. Heffley admitted the existence of a collaborator to a reporter but failed to name him/her. However, even if the undisclosed collaborator exists and is a member of the RPOF, the Commission's regulations still appear to exempt the website activity from the definition of "contribution." See 11 C.F.R. § 100.94.

³ There are broad allegations in the complaint that Mr. Heffley may have used one or both of his corporations, Heffley and Associates, Inc. and Strategic Direction.com, Inc., to pay for <http://truthaboutrubio.com>, resulting in impermissible corporate contributions. The available information does not suggest any corporate involvement in the website. See 2 U.S.C. § 441h(a).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Daniel Nordby, Esquire
Ausley & McMullen, P.A.
123 South Calhoun Street
Tallahassee, Florida 32301

JUN 17 2010

RE: MUR 6244
Republican Party of Florida and Joel Pate,
in his official capacity as treasurer

Dear Mr. Nordby:

On December 29, 2009, the Federal Election Commission notified your clients, the Republican Party of Florida and Joel Pate, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 27, 2010, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe your clients violated the Act in this matter. 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). The Factual and Legal Analysis, which explains the Commission's finding(s), is enclosed for your information.

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

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

10094272271

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 6244**

4
5 **RESPONDENTS:** Republican Party of Florida and Joel Pate, in
6 his official capacity as treasurer
7
8

9 **I. INTRODUCTION**

10 The complaint alleges that lobbyist Richard Heffley and an unnamed collaborator
11 launched a website on October 27, 2009, that attacked U.S. Senate candidate Marco Rubio, the
12 Republican primary opponent of Governor Crist at that time. The complaint claims that, because
13 Mr. Heffley is a "common vendor" for the website, <http://truthaboutrubio.com>, and for the Crist
14 Committee, the website is a coordinated communication in violation of the Federal Election
15 Campaign Act of 1971, as amended ("the Act"). The complaint further alleges that Mr. Heffley
16 is a paid consultant of the Republican Party of Florida and that he shares office space with the
17 Crist Committee and the Republican Party of Florida. Because it does not appear that any costs
18 associated with the truthaboutrubio.com website are in-kind contributions, the Commission finds
19 no reason to believe that the Act was violated by the Republican Party of Florida and Joel Pate,
20 in his official capacity as treasurer.

21 **II. FACTUAL AND LEGAL ANALYSIS**

22 The Act limits the amount that may be contributed to Federal candidates, their authorized
23 committees, and to other political committees, and prohibits candidates and political committees
24 from accepting contributions in violation of those limits. See 2 U.S.C. §§ 441a(a) and 441a(f).

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1 The Act also prohibits corporations from making federal political contributions. 2 U.S.C.
2 § 441b. Under the Act and the Commission's regulations, these contributions may take the form
3 of money or "anything of value," the latter signifying "in-kind" contributions. See 2 U.S.C.
4 § 431(8)(A)(i) and 11 C.F.R. § 100.52(d)(1). When a person pays for a communication that is
5 coordinated with a candidate or party committee, the communication is considered an in-kind
6 contribution from the person to that candidate or party committee and is subject to the limits,
7 prohibitions and reporting requirements of the Act, unless exempted under 11 C.F.R. part 100,
8 subpart C or E. See 11 C.F.R. § 109.21(b). One of the specific exemptions contained in subpart
9 C is uncompensated internet activity by individuals including, for example, "creating, hosting or
10 maintaining a website," which is not included in the definition of "contribution." 11 C.F.R.
11 § 100.94.

12 In general, a payment for a communication is "coordinated" if it is made in cooperation,
13 consultation or concert with, or at the request or suggestion of, a candidate, a candidate's
14 authorized committee or their agents, or a political party committee or its agents. See 2 U.S.C.
15 § 441a(a)(7)(B); 11 C.F.R. §§ 109.21 and 109.37. Commission regulations establish a
16 three-prong test to determine whether a communication is coordinated. All three prongs of the
17 test — payment, content and conduct — must be met for a communication to be deemed
18 coordinated and, thus, an in-kind contribution. The available information indicates that
19 Mr. Heffley created and paid for the website, the costs of which were minimal, and that the
20 Republican Party of Florida did not pay the costs. However, it appears that truthaboutrubio.com
21 fails the content prong of the test for a coordinated communication. To satisfy the content prong,
22 a communication has to be either an "electioneering communication" or a "public

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1 communication," *see* 11 C.F.R. §§ 109.21(c)(1)-(4) and 109.37(a)(2)(i)-(iii), and this website
2 appears to be neither.¹ Therefore, the content prong is not met, and the truthaboutrubio.com
3 website cannot be a coordinated communication, as alleged in the complaint.

4 Further, the Commission's regulations regarding individual volunteer activity over the
5 internet appear to exempt the costs of the website from the definition of "contribution." The
6 available information indicates that Mr. Heffley served as an unpaid blogger who created the
7 content on the website on his own from previously published materials. The Commission's
8 internet regulations provide that volunteer internet activities by an individual or group of
9 individuals, "acting independently or in coordination with any candidate, authorized committee,
10 or political party committee" is not a contribution by that individual or group of individuals.
11 11 C.F.R. § 100.94; *see also* Internet Communications Explanation and Justification, 71 Fed.
12 Reg. 18589, 18603 (April 12, 2006) (the funds expended by individuals engaging in volunteer
13 internet activities and bloggers to create and maintain websites do not constitute contributions or
14 expenditures, and the websites themselves are not subject to the Commission's coordination

¹ An electioneering communication is defined as a broadcast, cable or satellite communication that refers to a clearly identified federal candidate and is distributed to the relevant electorate 30 days before the primary election or 60 days before the general election. 11 C.F.R. § 100.29. The website was launched on October 27, 2009, more than 30 days before the primary election date of August 24, 2010. Further, "broadcast, cable, or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system. 11 C.F.R. § 100.29. Accordingly, the website is not an electioneering communication.

Nor is <http://truthaboutrubio.com> a public communication. "Public communication," *see* 11 C.F.R. §§ 109.21(c)(2)-(4) and 109.37(a)(2)(i)-(iii), is defined as a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising, which in turn is defined to exclude communications over the internet except for communications placed for a fee on another person's website. 11 C.F.R. § 100.26. The available information does not suggest that the RPOF paid any fees in connection with truthaboutrubio.com. The RPOF did not disclose any payments to Heffley or to any person described in a manner suggesting the website at issue. Because the available information does not indicate that material was placed on the website for a fee, the website does not appear to be a public communication.

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- 1 rules).² As a result, the Commission finds no reason to believe that the Republican Party of
2 Florida and Joel Pate, in his official capacity as treasurer violated the Act in this matter.³

² The complaint alleges that Mr. Heffley launched the website with an "undisclosed collaborator." According to the complaint, Mr. Heffley admitted the existence of a collaborator to a reporter but failed to name him/her. However, even if the undisclosed collaborator exists and is a member of the RPOF, the Commission's regulations still appear to exempt the website activity from the definition of "contribution." See 11 C.F.R. § 100.94.

³ There are broad allegations in the complaint that Mr. Heffley may have used one or both of his corporations, Heffley and Associates, Inc. and Strategic Direction.com, Inc., to pay for <http://truthabouttribo.com>, resulting in impermissible corporate contributions. The available information does not suggest any corporate involvement in the website. See 2 U.S.C. § 441b(a).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William J. McGinley, Esquire
Patton Hoggs LLP
2550 M Street, NW
Washington, DC 20007

JUN 17 2010

RE: MUR 6244
Charlie Crist for US Senate and
Frederick Carroll III, in his official
capacity as treasurer

Dear Mr. McGinley:

On December 29, 2009, the Federal Election Commission notified your clients, Charlie Crist for U.S. Senate and Frederick Carroll III, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 27, 2010, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe your clients violated 2 U.S.C. §§ 441a(f) or 441b. 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). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

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

Sincerely,

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

10044272277

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 6244**

4
5 **RESPONDENTS:** Charlie Crist for U.S. Senate and Frederick Carroll III,
6 in his official capacity as treasurer

7
8 **I. INTRODUCTION**

9 The complaint alleges that lobbyist Richard Heffley and an unnamed collaborator
10 launched a website on October 27, 2009, that attacked U.S. Senate candidate Marco Rubio, the
11 Republican primary opponent of Governor Crist at that time. The complaint claims that, because
12 Mr. Heffley is a "common vendor" for the website, <http://truthaboutrubio.com>, and for Charlie
13 Crist for U.S. Senate ("Crist Committee"), the website is a coordinated communication in
14 violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). Further, the
15 complaint alleges that if Mr. Heffley used his lobbying corporation or political consulting group
16 to pay for the website, then the coordination would have constituted an illegal corporate
17 contribution to the Crist Committee. The complaint further alleges that Mr. Heffley is a paid
18 consultant of the Republican Party of Florida and that he shares office space with the Crist
19 Committee and the Republican Party of Florida. Because it does not appear that any costs
20 associated with the truthaboutrubio.com website are in-kind contributions to the Crist
21 Committee, the Commission finds no reason to believe that Charlie Crist for U.S. Senate and
22 Frederick Carroll III, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) or 441b.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 The Act limits the amount that may be contributed to Federal candidates, their authorized
3 committees, and to other political committees, and prohibits candidates and political committees
4 from accepting contributions in violation of those limits. *See* 2 U.S.C. §§ 441a(a) and 441a(f).
5 The Act also prohibits corporations from making federal political contributions. 2 U.S.C.
6 § 441b. Under the Act and the Commission's regulations, these contributions may take the form
7 of money or "anything of value," the latter signifying "in-kind" contributions. *See* 2 U.S.C.
8 § 431(8)(A)(i) and 11 C.F.R. § 100.52(d)(1). When a person pays for a communication that is
9 coordinated with a candidate or party committee, the communication is considered an in-kind
10 contribution from the person to that candidate or party committee and is subject to the limits,
11 prohibitions and reporting requirements of the Act, unless exempted under 11 C.F.R. part 100,
12 subpart C or E. *See* 11 C.F.R. § 109.21(b). One of the specific exemptions contained in subpart
13 C is uncompensated internet activity by individuals including, for example, "creating, hosting or
14 maintaining a website," which is not included in the definition of "contribution." 11 C.F.R.
15 § 100.94.

16 In general, a payment for a communication is "coordinated" if it is made in cooperation,
17 consultation or concert with, or at the request or suggestion of, a candidate, a candidate's
18 authorized committee or their agents, or a political party committee or its agents. *See* 2 U.S.C.
19 § 441a(a)(7)(B); 11 C.F.R. §§ 109.21 and 109.37. Commission regulations establish a
20 three-prong test to determine whether a communication is coordinated. All three prongs of the
21 test — payment, content and conduct — must be met for a communication to be deemed
22 coordinated and, thus, an in-kind contribution. The available information indicates that

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1 Mr. Heffley created and paid for the website, the costs of which were minimal, and that the Crist
2 committee did not pay the costs. However, it appears that truthaboutrubio.com fails the content
3 prong of the test for a coordinated communication. To satisfy the content prong, a
4 communication has to be either an "electioneering communication" or a "public
5 communication," see 11 C.F.R. §§ 109.21(e)(1)-(4) and 109.37(a)(2)(i)-(iii), and this website
6 appears to be neither.¹ Therefore, the content prong is not met, and the truthaboutrubio.com
7 website cannot be a coordinated communication, as alleged in the complaint.

8 Further, the Commission's regulations regarding individual volunteer activity over the
9 internet appear to exempt the costs of the website from the definition of "contribution." The
10 available information indicates that Mr. Heffley served as an unpaid blogger who coordinated
11 with no one on the Crist Committee and created the content on the website on his own from
12 previously published materials. The Commission's internet regulations provide that volunteer
13 internet activities by an individual or group of individuals, "acting independently or in

¹ An electioneering communication is defined as a broadcast, cable or satellite communication that refers to a clearly identified federal candidate and is distributed to the relevant electorate 30 days before the primary election or 60 days before the general election. 11 C.F.R. § 100.29. The website was launched on October 27, 2009, more than 30 days before the primary election date of August 24, 2010. Further, "broadcast, cable, or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system. 11 C.F.R. § 100.29. Accordingly, the website is not an electioneering communication.

Nor is <http://truthaboutrubio.com> a public communication. "Public communication," see 11 C.F.R. §§ 109.21(e)(2)-(4) and 109.37(a)(2)(i)-(iii), is defined as a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising, which in turn is defined to exclude communications over the internet except for communications placed for a fee on another person's website. 11 C.F.R. § 100.26. The available information does not suggest that the Crist Committee paid any fees in connection with truthaboutrubio.com. The response from the Crist Committee states that Mr. Heffley and his companies do not receive any compensation from the Crist Committee for any services. Crist Committee Response at 1. The Crist Committee did not disclose any payments to Heffley or to any person described in a manner suggesting the website at issue. Because the available information does not indicate that material was placed on the website for a fee, the website does not appear to be a public communication.

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1 coordination with any candidate, authorized committee, or political party committee” is not a
2 contribution by that individual or group of individuals. 11 C.F.R. § 100.94; *see also* Internet
3 Communications Explanation and Justification, 71 Fed. Reg. 18589, 18603 (April 12, 2006) (the
4 funds expended by individuals engaging in volunteer internet activities and bloggers to create
5 and maintain websites do not constitute contributions or expenditures, and the websites
6 themselves are not subject to the Commission’s coordination rules). Therefore, it seems that
7 Mr. Heffley’s activity falls squarely into the internet exemption and is not an in-kind
8 contribution to the Christ Committee.² As a result, the Commission finds no reason to believe
9 that Charlie Crist for U.S. Senate and Frederick Carroll III, in his official capacity as treasurer,
10 violated 2 U.S.C. §§ 441a(f) or 441b by accepting excessive or prohibited in-kind contributions.³

² The complaint alleges that Mr. Heffley launched the website with an “undisclosed collaborator.” According to the complaint, Mr. Heffley admitted the existence of a collaborator to a reporter but failed to name him/her. However, even if the undisclosed collaborator exists and is a member of the Crist Committee, the Commission’s regulations still appear to exempt the website activity from the definition of “contribution.” *See* 11 C.F.R. § 100.94.

³ There are broad allegations in the complaint that Mr. Heffley may have used one or both of his corporations, Heffley and Associates, Inc. and Strategic Direction.com, Inc., to pay for <http://truthaboutrubio.com>, resulting in impermissible corporate contributions. The available information does not suggest any corporate involvement in the website. *See* 2 U.S.C. § 441b(a).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Richard J. Heffley
Tallahassee, Florida 32312

JUN 17 2010

RE: MUR 6244
Richard J. Heffley
Heffley & Associates, Inc.
Strategic Directions.com, Inc.

Dear Mr. Heffley:

On December 29, 2009, the Federal Election Commission notified Heffley & Associates, Inc., Strategic Directions.com, Inc., and you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 27, 2010, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe you violated 2 U.S.C. §§ 441a(a), 441b, or 441d and that there is no reason to believe Heffley & Associates, Inc. or Strategic Directions.com, Inc. violated 2 U.S.C. § 441b. 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). The Factual and Legal Analysis, which explains the Commission's finding(s), is enclosed for your information.

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

Sincerely,

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 6244**

4
5 **RESPONDENTS:** Richard Heffley; Heffley and Associates, Inc.;
6 and Strategie Direction.com, Inc.
7

8
9 **I. INTRODUCTION**

10 The complaint alleges that lobbyist Richard Heffley and an unnamed collaborator
11 launched a website on October 27, 2009, that attacked U.S. Senate candidate Marco Rubio, the
12 Republican primary opponent of Governor Crist at that time. The complaint claims that, because
13 Mr. Heffley is a "common vendor" for the website, <http://truthaboutrubio.com>, and for the Crist
14 Committee, the website is a coordinated communication in violation of the Federal Election
15 Campaign Act of 1971, as amended ("the Act"). Further, the complaint alleges that if
16 Mr. Heffley used his lobbying corporation or political consulting group to pay for the website,
17 then the coordination would have constituted an illegal corporate contribution to the Crist
18 Committee. The complaint further alleges that Mr. Heffley is a paid consultant of the
19 Republican Party of Florida and that he shares office space with the Crist Committee and the
20 Republican Party of Florida. Finally, the complaint alleges that the website lacked a disclaimer.
21 Because it does not appear that any costs associated with the truthaboutrubio.com website are
22 in-kind contributions to the Crist Committee, or that the website is a public communication
23 requiring a disclaimer, the Commission finds no reason to believe that Richard Heffley violated
24 2 U.S.C. §§ 441a(a), 441b, or 441d. Further, the Commission finds no reason to believe Richard

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1 Heffley's two companies, Heffley and Associates, Inc. and Strategic Direction.com, Inc.,
2 violated 2 U.S.C. § 441b.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 Richard Heffley created truthaboutrubio.com because he supported Charlie Crist over
5 Marco Rubio in the upcoming Florida U.S. Senate Republican primary. Heffley Response at 1.
6 Heffley describes truthaboutrubio.com as follows:

7 The content of the website was all articles and links to articles that
8 have appeared in places around Florida. There was no original
9 content on the site except for several 'flash poll' questions I wrote
10 to try and get viewers involved in the site. Nowhere on the site
11 was there a call for the election or defeat of Crist or Rubio or any
12 other candidate.

13 *Id.* Neither the complaint nor the responses included any screenshots of this website. Heffley
14 states that the website was coordinated with no one on the Crist Committee and that he created
15 the content of the website on his own from previously published materials. Heffley Response
16 at 2.

17 The Act limits the amount that may be contributed to Federal candidates, their authorized
18 committees, and to other political committees, and prohibits candidates and political committees
19 from accepting contributions in violation of those limits. See 2 U.S.C. §§ 441a(a) and 441a(f).
20 The Act also prohibits corporations from making federal political contributions. 2 U.S.C.
21 § 441b. Under the Act and the Commission's regulations, these contributions may take the form
22 of money or "anything of value," the latter signifying "in-kind" contributions. See 2 U.S.C.
23 § 431(8)(A)(i) and 11 C.F.R. § 100.52(d)(1). When a person pays for a communication that is

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1 coordinated with a candidate or party committee, the communication is considered an in-kind
2 contribution from the person to that candidate or party committee and is subject to the limits,
3 prohibitions and reporting requirements of the Act, unless exempted under 11 C.F.R. part 100,
4 subpart C or E. See 11 C.F.R. § 109.21(b). One of the specific exemptions contained in subpart
5 C is uncompensated internet activity by individuals including, for example, “creating, hosting or
6 maintaining a website,” which is not included in the definition of “contribution.” 11 C.F.R.
7 § 100.94.

8 In general, a payment for a communication is “coordinated” if it is made in cooperation,
9 consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s
10 authorized committee or their agents, or a political party committee or its agents. See 2 U.S.C.
11 § 441a(a)(7)(B); 11 C.F.R. §§ 109.21 and 109.37. Commission regulations establish a
12 three-prong test to determine whether a communication is coordinated. All three prongs of the
13 test — payment, content and conduct — must be met for a communication to be deemed
14 coordinated and, thus, an in-kind contribution. In order to satisfy the payment prong, the
15 communication needs to be paid for, in whole or in part, by someone other than the candidate,
16 authorized committee, political party committee or an agent of the above. 11 C.F.R.
17 § 109.21(a)(1). This prong appears to be met in this matter because Mr. Heffley admits in his
18 response that he created and paid for the website, the costs of which were “minimal,” and that
19 neither Charlie Crist for U.S. Senate (“Crist Committee”) nor the Republican Party of Florida
20 (“RPOF”) paid the costs. Heffley Response at 1. However, it appears that truthaboutrubio.com
21 fails the content prong of the test for a coordinated communication. To satisfy the content prong,
22 a communication has to be either an “electioneering communication” or a “public

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1 communication," *see* 11 C.F.R. §§ 109.21(c)(1)-(4) and 109.37(a)(2)(i)-(iii), and this website
2 appears to be neither.¹ Therefore, the content prong is not met, and the truthaboutrubio.com
3 website cannot be a coordinated communication, as alleged in the complaint.²

4 Further, the Commission's regulations regarding individual volunteer activity over the
5 internet appear to exempt the costs of the website from the definition of "contribution."
6 Mr. Heffley's describes his activity as that of "an unpaid blogger who coordinated with no one
7 on the Crist Committee and created the content of the website on [his] own from previously
8 published materials." Heffley Response at 2. The Commission's internet regulations provide
9 that volunteer internet activities by an individual or group of individuals, "acting independently
10 or in coordination with any candidate, authorized committee, or political party committee" is not

¹ An electioneering communication is defined as a broadcast, cable or satellite communication that refers to a clearly identified federal candidate and is distributed to the relevant electorate 30 days before the primary election or 60 days before the general election. 11 C.F.R. § 100.29. The website was launched on October 27, 2009, more than 30 days before the primary election date of August 24, 2010. Further, "broadcast, cable, or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system. 11 C.F.R. § 100.29. Accordingly, the website is not an electioneering communication.

Nor is <http://truthaboutrubio.com> a public communication. "Public communication," *see* 11 C.F.R. §§ 109.21(c)(2)-(4) and 109.37(a)(2)(i)-(iii), is defined as a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising, which in turn is defined to exclude communications over the internet except for communications placed for a fee on another person's website. 11 C.F.R. § 100.26. The available information does not suggest that either the Crist Committee or the RPOF paid any fees in connection with truthaboutrubio.com. Mr. Heffley states that neither the Crist Committee nor the RPOF paid any of the "very minimal costs for my website" and that Heffley himself did the work for the website on his own time and used fireware to create the site layout. Heffley Response at 1. Neither the Crist Committee nor the RPOF disclosed any payments to Heffley or to any person described in a manner suggesting the website at issue. Because the available information does not indicate that material was placed on the website for a fee, the website does not appear to be a public communication.

² Because it appears the content prong is not met, there is no need to discuss at any length the "common vendor" standard of the conduct prong. Mr. Heffley, in his response, states that he "did not talk to [Crist] or anyone with his campaign about this website" and, therefore, had no means to use or convey information about the plans or needs of the candidate or political party. Heffley Response at 1. *See* 11 C.F.R. § 109.21(d)(4).

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1 a contribution by that individual or group of individuals. 11 C.F.R. § 100.94; *see also* Internet
2 Communications Explanation and Justification, 71 Fed. Reg. 18589, 18603 (April 12, 2006) (the
3 funds expended by individuals engaging in volunteer internet activities and bloggers to create
4 and maintain websites do not constitute contributions or expenditures, and the websites
5 themselves are not subject to the Commission's coordination rules). Therefore, it seems that
6 Mr. Heffley's activity falls squarely into the internet exemption and is not an in-kind
7 contribution to the Crist Committee.³ *See* Heffley Response at 2. As a result, the Commission
8 finds no reason to believe that Richard Heffley violated 2 U.S.C. §§ 441a(a) or 441b. Further,
9 the Commission finds no reason to believe Richard Heffley's two companies, Heffley and
10 Associates, Inc. and Strategic Direction.com, Inc., violated 2 U.S.C. § 441b.⁴

11 The complaint also states that <http://truthaboutrubio.com> did not contain a disclaimer.
12 *See* 2 U.S.C. § 441d(a). Under the Commission's regulations, disclaimers are required on:
13 (1) A "public communication," as defined in 11 C.F.R. § 100.26, made by a political committee;
14 (2) electronic mail of more than 500 substantially similar communications when sent by a
15 political committee; (3) a political committee website available to the general public; and
16 (4) a "public communication," as defined in 11 C.F.R. § 100.26, made by any person that

³ The complaint alleges that Mr. Heffley launched the website with an "undisclosed collaborator." According to the complaint, Mr. Heffley admitted the existence of a collaborator to a reporter but failed to name him/her. Nor does Mr. Heffley refer to any collaborator in his response to the complaint. He does state that he "did not talk to [Crist] or anyone with his campaign about this website." Heffley Response at 1. However, even if the undisclosed collaborator exists and is a member of the RPOI or even the Crist Committee, the Commission's regulations still appear to exempt the website activity from the definition of "contribution." *See* 11 C.F.R. § 100.94.

⁴ There are broad allegations in the complaint that Mr. Heffley may have used one or both of his corporations, Heffley and Associates, Inc. and Strategic Direction.com, Inc., to pay for <http://truthaboutrubio.com>, resulting in impermissible corporate contributions. Mr. Heffley indicates in his response that he "did the work for the site on [his] own time and used freeware to create the site layout." Heffley Response at 1. The available information does not suggest any corporate involvement in the website. *See* 2 U.S.C. § 441b(a).

1 contains express advocacy, solicits a contribution, or qualifies as an "electioneering
2 communication" under 11 C.F.R. § 100.29. 11 C.F.R. § 110.11(a); *see also* Internet
3 Communications Explanation and Justification, 71 Fed. Reg. 18589, 18602 (April 12, 2006).
4 Because <http://truthaboutrubio.com> is an internet communication and neither RPOF nor the Crist
5 Committee appears to have paid for the costs of the website, it appears that a disclaimer is not
6 required. Therefore, the Commission finds no reason to believe that Richard Heffley violated
7 2 U.S.C. § 441d.

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