



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

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5 TO: The Commission
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7 FROM: Lisa J. Stevenson *LJS*
8 Acting General Counsel
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10 Peter G. Blumberg *PGB*
11 Acting Deputy Associate General Counsel
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15
16 SUBJECT: MUR 6334 (Aristotle International, Inc.)
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18 RE: Office of General Counsel's Notice to the Commission Following the Submission
19 of Probable Cause Briefs
20

21 **I. INTRODUCTION**

22 Aristotle International, Inc. ("Aristotle") is a technology company that sells software and
23 related services to political customers. In particular, it sells a software program, titled Aristotle
24 360, which contains a feature called Relationship Viewer ("RV"). The Complaint alleges that
25 Aristotle copied data from the FEC's database into RV for the purpose of assisting clients with
26 soliciting contributions in violation of the "sale and use restriction," at 52 U.S.C. § 30111(a)(4)
27 of the Federal Election Campaign Act of 1971, as amended (the "Act").

28 On February 28, 2018, the Office of General Counsel ("OGC") notified Aristotle that it
29 was prepared to recommend that the Commission find probable cause to believe that Aristotle
30 violated Section 30111(a)(4).¹ OGC included with this notification a General Counsel's Brief
31 setting forth the factual and legal basis for the recommendation.² On June 13, 2018, Aristotle

¹ See Letter to Stephen Hershkowitz, Counsel for Aristotle International, Inc., from Lisa J. Stevenson, Acting General Counsel, FEC (Feb. 28, 2018) ("General Counsel's Brief Transmittal Letter"); 52 U.S.C. § 30109(a)(3); 11 C.F.R. § 111.16; Agency Procedure Following the Submission of Probable Cause Briefs by the Office of General Counsel, 76 Fed. Reg. 63,570 (Oct. 13, 2011).

² See General Counsel's Brief Transmittal Letter. A copy of the General Counsel's Brief was circulated to the Commission informationally the same day.

1 submitted a Reply Brief and, on September 5, 2018, the Commission held a probable cause
2 hearing.

3 Pursuant to the *Agency Procedure Following the Submission of Probable Cause Briefs by*
4 *the Office of General Counsel*, 76 Fed. Reg. 63,570 (Oct. 13, 2011), OGC is hereby notifying the
5 Commission that it intends to proceed with the recommendation to find probable cause to believe
6 based on the factual and legal analysis set forth in the General Counsel's Brief. In addition, an
7 analysis of the arguments presented in Aristotle's Reply Brief and at the probable cause hearing
8 is provided below. A copy of this Notice is being sent to Aristotle at the same time that it is
9 circulated to the Commission.³

10 II. FACTUAL AND LEGAL ANALYSIS

11 Under the Act and Commission precedent, information about individual contributors
12 copied from the FEC's database — including name, address, and contribution history — may not
13 be sold or used "for the purpose of soliciting contributions or for commercial purposes."⁴ The
14 information in the record shows that the two fundamental elements of a sale and use violation are
15 present in this matter.

16 First, there is no dispute that RV copies contribution histories from the FEC's database
17 and displays them on a visualization map. RV works as follows: a client enters a name, and then
18 a visualization map and text list appear that display the names of the searched-for person and his
19 or her "relationships."⁵ The names of the searched-for person and his or her relationships are
20 limited to the client's database, and RV uses non-FEC sources to determine connections.⁶ RV

³ *Agency Procedure Following the Submission of Probable Cause Briefs by the Office of General Counsel*, 76 Fed. Reg. 63,570 (Oct. 13, 2011).

⁴ 52 U.S.C. § 30111(a)(4); 11 C.F.R. § 104.15(a); *see, e.g.*, Advisory Op. 2017-08 (Point Bridge Capital) ("AO"); AO 2015-12 (Ethiq); AO 2014-07 (Crowdpac); AO 2004-24 (NGP); AO 2003-24 (NCTFK); AO 1995-09 (NewtWatch); AO 1995-05 (TRIM); AO 1985-16 (Weiss); Factual & Legal Analysis at 9, MUR 6334 (Aristotle) ("F&LA"). The purpose of the statute is "to protect the privacy" of citizens who make contributions and to preserve "the exclusive right [of a political committee] to use its contributor list to solicit contributions." 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon) *reprinted in* Legislative History of the Fed. Election Campaign Act of 1971 at 581 (1981); *FEC v. Int'l Funding Inst., Inc.*, 969 F.2d 1110, 1113, 1116 (D.C. Cir. 1992) (*en banc*) (generally adopting the arguments presented by the FEC and conclusions drawn by the district court below).

⁵ At the probable cause hearing, counsel demonstrated a new, updated version of RV not previously disclosed in this matter. *See* Probable Cause Hr'g Tr. at 4-8. The new version does not automatically display contribution amounts; instead, the client must hover over a name for the information to appear on screen. Probable Cause Hr'g Tr. at 6; *see* Reply Brief at 4. In addition, the new version does not display contact information on the visualization map, but contact information is still available by navigating to a previous screen within Aristotle 360. *See* Interview of Dean Aristotle Phillips (Jan. 26, 2012); *Aristotle Relationship Viewer: Details of Data Displayed* at 2, 6 (PowerPoint presentation delivered at probable cause hearing) (Sept. 5, 2018); Probable Cause Hr'g Tr. at 4, 13, 22. We see no material difference between the original and new version. Even if the Commission were to conclude any changes were material, Aristotle marketed the previous version, which the Commission already determined was problematic, for many years and would therefore be liable at a minimum for that activity.

⁶ Reply Brief at 4; Decl. of Dean Aristotle Phillips, President of Aristotle ¶ 7 (June 18, 2012) ("2012 Decl."); Resp. (Sept. 15, 2010), Attach. 1 ¶ 21 (Decl. of Dean Aristotle Phillips) (Sept. 13, 2010) ("2010 Decl.").

1 also displays the contribution history for each person on the visualization map, and the contact
2 information for each person whose name appears on screen is available to the client.⁷

3 Second, the objective evidence in the record, including Aristotle's own statements,
4 establishes that RV was designed to assist with solicitation. The response attempts to refute this
5 plain fact,⁸ but the evidence is clear. For example, prior to the Complaint, Aristotle made
6 various statements on its company website and in promotional materials that RV was designed
7 for the purpose of assisting clients with solicitation. On its website, Aristotle boasted that the
8 software can help "access Fat Cats" and "uncover[] relationships" that can be "targeted" for
9 "dollars."⁹ In a print ad, Aristotle said that: "The only other way to raise as much money could
10 land you in jail."¹⁰ Additionally, a patent application submitted by Aristotle for the technology
11 underlying RV states that it can "identify potential contributors," and "those who may likely be
12 positively disposed to contributing."¹¹ In a press release announcing the submission of the patent
13 application, Aristotle said that the software delivers a "significant advantage in terms of
14 solicitation."¹² The Reply Brief conspicuously avoids directly addressing the patent application
15 and its clear statement that at least one of RV's purposes was to act as a solicitation tool.¹³

16 Having established that the facts here fulfill the two elements of the sale and use
17 restriction, we now address more specifically Aristotle's primary arguments in the Reply Brief
18 and hearing presentation. In short, Aristotle essentially restated the same arguments previously
19 made in the initial Response, and already rejected by the Commission in its Factual and Legal
20 Analysis ("F&LA"). Namely, Aristotle argues again that MUR 5625 controls the outcome of the

⁷ Reply Brief at 4; 2012 Decl. ¶ 8; 2010 Decl. ¶ 21; *supra* note 5.

⁸ Reply Brief at 7-10.

⁹ Compl. (July 20, 2010), Attach. at 1; *Aristotle 360 – Relationship Viewer Demo – Aristotle – Now You Know*, ARISTOTLE.COM, <https://web.archive.org/web/20080513151232/http://www.aristotle.com/content/view/232/161/> (archived version from May 13, 2008).

¹⁰ Compl., Attach. at 21-22.

¹¹ *Integration of Voter and Contributor Data into Political Software and Compliance Systems for Purposes of Solicitation, Compliance, Vetting, and Calls to Action*, U.S. Patent Application No. 13/026,886, Pub. No. 2011/0202542 A1 at 4-5 (filed Feb. 14, 2011, claiming priority over a prior patent application filed Feb. 12, 2010) (published Aug. 18, 2011).

¹² Compl., Attach. at 15-17.

¹³ The only argument that Aristotle appears to make in reply is Aristotle's flimsy claim that OGC relies too heavily on promotional items. Reply Brief at 6. When confronted with the patent application at the hearing, counsel conceded that RV could be used for solicitation, but said that it would simply be to help the client better understand potential donors that the client already intends to solicit. Probable Cause Hr'g Tr. at 20-21 (asserting that RV can "help you . . . design your pitches"). Aristotle has not made any such assertion on the record previously, and we do not see how counsel can be certain that clients would use RV for this limited purpose only. Aristotle points to the term "solicitation tool" used in the General Counsel Brief and argues that is "overbroad and ambiguous," giving rise to vagueness concerns. Reply Brief at 8; Probable Cause Hr'g Tr. at 30. However, this term was used simply to refer to the fact that RV was designed to assist with solicitation. It is not a legal standard itself. Furthermore, Aristotle's own statements (including in an official document submitted to the U.S. Patent and Trademark Office) serve as *objective* evidence regarding RV's solicitation purpose.

1 instant matter;¹⁴ that contribution histories do not fall within the purview of the sale and use
2 restriction;¹⁵ and that the sale and use restriction only covers list brokers and the specific activity
3 of list brokering.¹⁶ Further, Aristotle makes several constitutional arguments for the first time,
4 but, as discussed in more detail below, they are not persuasive.

5 **A. MUR 5625 Does Not Control the Outcome of the Instant Matter Because**
6 **RV's Use of FEC Data is "More Extensive"**

7 The Reply Brief argues that a prior enforcement matter dealing with one of Aristotle's
8 earlier software products is controlling here and mandates dismissal. MUR 5625 (Aristotle),
9 which also involved a feature that enable clients to view contribution histories for people in their
10 database, ended in a 3-3 split and dismissal at the probable cause to believe stage.¹⁷ The Reply
11 Brief contends that the feature at issue in MUR 5625 is "materially indistinguishable" from
12 RV.¹⁸ However, the Commission has already opined on this issue when it was previously raised
13 by the Respondent in the initial Response, concluding that RV "presents a more far-reaching use
14 of FEC data" as compared to the feature in MUR 5625 because it displays contribution histories
15 for "both" the searched-for person and his or her network of relationships, whereas the software
16 at issue in MUR 5625 only allowed clients to view contribution histories for one individual at a
17 time *without* any relationship-mapping functionality.¹⁹ The centerpiece of RV, which is its
18 eponymous relationship-mapping feature, remains the same in the new, updated version of RV
19 described above which Aristotle unveiled at the hearing.

20 On several occasions, counsel has addressed issues or answered questions as if RV, like
21 the software in MUR 5625, returns contribution histories for only a single person at a time, thus
22 downplaying the extent to which RV uses of FEC data. For instance, Aristotle asserts that RV
23 shows the "same information" as a search on the Commission's website.²⁰ But the FEC website,
24 of course, only provides contribution histories for the person or persons whose names are entered
25 without showing their "relationships." In addition, the compliance-related uses for RV listed at
26 the probable cause hearing all related back to the searched-for person and did not account for
27 why the client would need the contribution histories of his or her relationships.²¹

¹⁴ Compare Resp. at 2-5, 17-20, 25-28 with F&LA at 9-10; see also Reply Brief at 2, 6, 10, 13-19, 25, 41.

¹⁵ Compare Resp. at 14, 17-18, 24-26, 31-32 with F&LA at 9-11; see also Reply Brief at 3, 5, 15, 19-29, 31.

¹⁶ Compare Resp. at 4, 17, 20, 24-25 with F&LA at 11; see also Reply Brief at 4-6, 9-10, 19-20, 29-32, 37.

¹⁷ See General Counsel's Brief at 9 n.34.

¹⁸ Reply Brief at 1-2; see Probable Cause Hr'g Tr. at 3. A main justification for the compliance/vetting functionality of the software in MUR 5625, the biennial aggregate contribution limit, is no longer a provision in the Act following *McCutcheon v. FEC*, 572 U.S. 185 (2014). See Reply Brief at 14 n.36.

¹⁹ F&LA at 9-10.

²⁰ Reply Brief at 4; see Probable Cause Hr'g Tr. at 18.

²¹ See Probable Cause Hr'g Tr. at 15-18.

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1 **B. The Sale and Use Restriction Applies to Individual Contribution Histories**

2 In the F&LA, the Commission premised its legal theory that Aristotle violated the sale
3 and use provision on the fact that RV enables the client to “*view the contribution histories*” of
4 both the subject of the search and other individuals with whom the software determines there is a
5 relationship.²² That conclusion followed from the analysis in two prior advisory opinions, both
6 of which involved matching pre-existing names and addresses to the FEC’s database to
7 determine who is a known contributor — the exact activity at issue here.²³ Aristotle seeks to re-
8 litigate this issue.

9 Aristotle attempts to argue that, despite Commission precedent and its findings in the
10 F&LA, the Commission’s “focus” has been on the sale and use of names and addresses, and
11 therefore the sale and use of contribution histories does not fall within the statute.²⁴ Aristotle
12 relies chiefly on AO 2014-07 (Crowdpac), which involved a website that provides voters
13 information to help them identify candidates they may want to support.²⁵ The algorithm that
14 Crowdpac uses to make these identifications looks at candidates’ legislative records, but also
15 makes inferences from FEC contributor data.²⁶ The Commission concluded that Crowdpac’s use
16 of FEC data is permissible because “[m]ere aggregations of data . . . do not implicate the privacy
17 concerns” that the sale and use restriction is intended to mitigate.²⁷ The Reply Brief describes
18 the product at issue in AO 2014-17 as “strikingly similar” to RV.²⁸ This simply mischaracterizes
19 the facts. As the Commission recognized, unlike RV, Crowdpac merely displays *aggregate*
20 contributor data (e.g., “total number” and “total amount”).²⁹ It is impossible to learn anything
21 about a particular individual from aggregate data.³⁰ Additionally, as noted, Crowdpac’s purpose

²² F&LA at 9-10.

²³ Those opinions, Advisory Op. 1985-16 (Weiss) (“AO”) and AO 2004-24 (NGP), are summarized in the General Counsel’s Brief, and their applicability is clear. See General Counsel’s Brief at 14-15. Aristotle attempts to sidestep them, first, by arguing that they both involved “self-professed list brokers.” Reply Brief at 27. However, in reality, NGP also sells political software and public record information. See AO 2004-24 at 1. Thus, to the extent that NGP is a list broker, the same would be true about Aristotle. Nevertheless, whether or not these two opinions involved traditional list brokering is of no consequence to the legal conclusions. *Infra* Part II.C. Second, Aristotle argues that AO 1985-16 and AO 2004-24 involved “downloading data in bulk” rather than “on a name-by-name basis.” Reply Brief at 27. We see no reason why the frequency of misusing FEC data has any effect on whether there is a justiciable violation. Moreover, RV’s relationship-mapping functionality shows contribution histories for *multiple* people not merely on a name-by-name basis.

²⁴ Reply Brief at 20-23; Probable Cause Hr’g Tr. at 9, 32, 34-36.

²⁵ AO 2014-07 at 1-2.

²⁶ *Id.*

²⁷ AO 2014-07 at 10.

²⁸ Reply Brief at 20.

²⁹ AO 2014-07 at 3.

³⁰ See AO 2017-08 at 3 (Point Bridge Capital); AO 2015-12 at 4 (Ethiq). The Commission, in AO 2014-07 (Crowdpac) also permitted the requestor to use FEC data in its algorithm, but this was limited to “analyzing the patterns of which contributors support which candidates” and, again, did not reveal any information about specific individuals that could be used for solicitation purposes. AO 2014-07 at 2, 10.

1 is to help voters “find and support” candidates.³¹ By contrast, RV helps political committees
2 identify solicitation prospects. At the probable cause hearing, counsel was careful to describe the
3 Crowdpac activities as “fundraising,”³² because they do not actually involve solicitation. The
4 Commission has never permitted the sale or use of individual contributor data for the purpose of
5 soliciting contributions.³³

6 **C. The Sale and Use Restriction Applies to More Than List Brokering**

7 Aristotle submits that the sale and use restriction was enacted by Congress for the limited
8 purpose of preventing *list brokers* from copying and selling individual contributor data obtained
9 from the FEC’s database.³⁴ However, the Commission has never concluded that the sale and use
10 restriction applies only to list brokers or the specific activity of list brokering. The Commission
11 has always examined whether the given facts implicate the privacy interest, regardless of
12 whether list brokering is involved. Accordingly, in the F&LA, the Commission found it
13 insignificant that RV does not generate an exportable list, as “nothing prevents end-users from
14 using the contributor list displayed on the results page to solicit those individuals.”³⁵ Clients
15 may be even “more likely to decide to solicit an individual because his or her contribution
16 history is immediately known.”³⁶

17 Moreover, Aristotle’s products include a voter file of over 204 million names and a
18 consumer file of over 228 million names, which are sold for solicitation purposes.³⁷ Although
19 Aristotle asserts that its RV customers search only lists populated by data the clients already
20 own, Aristotle is in a position to sell its customers these lists. Moreover, there is no restriction
21 that assures individuals analyzed by Aristotle’s customers using RV have a pre-existing
22 relationship with that client.³⁸

³¹, AO 2014-07 at 2.

³² Probable Cause Hr’g Tr. at 34; *see also* Reply Brief at 21 (using the term “contribution platform”).

³³ The General Counsel’s Brief at 13 states that: “The Commission has never permitted the sale or use of FEC data where the purpose related to solicitation.” The Reply Brief at 38 asserts that this is incorrect and points to AO 1980-101 (Weinberger), which permitted the use of FEC data in the solicitation context, but this was limited to *non-individual contributor information concerning political action committees* (to facilitate coordination among PACs and help candidates better target their funding requests). To clarify, the Commission has never allowed any person to use individual contribution information for the purpose of soliciting contributions.

³⁴ Reply Brief at 29-32.

³⁵ F&LA at 11; *but see* Reply Brief at 9 (asserting that RV does not violate the statute because it “has no list making, list brokering, or list enhancing capabilities”).

³⁶ F&LA at 11.

³⁷ ARISTOTLE, <http://aristotle.com/data/datasolutions/> (last visited Nov. 1, 2018).

³⁸ Probable Cause Hr’g Tr. at 27-29; Interview of Dean Aristotle Phillips (Jan. 26, 2012).

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1 **D. The Sale and Use Restriction is Narrowly Tailored to Advance an Important**
2 **Government Interest**

3 In 1992, the D.C. Circuit upheld the constitutionality of the sale and use restriction,³⁹ but
4 Aristotle argues that “recent decisions of the Supreme Court cast doubt” on the constitutionality
5 of the statute.⁴⁰ Contrary to Aristotle’s position, which seeks essentially a complete invalidation,
6 the sale and use restriction does not impermissibly distinguish between media and non-media
7 corporations and is justified by an important government interest, which is protecting individual
8 contributors from being solicited because their names appear in the FEC database.⁴¹

9 First, the Reply Brief points to language in *Citizens United*, stating that “[t]here is no
10 precedent supporting laws that attempt to distinguish between corporations which are deemed to
11 be exempt as media corporations and those which are not.”⁴² We fail to see the relevance of this
12 statement. Aristotle violates the plain text of the statute, which prohibits *any person* from selling
13 or using FEC data “for the purpose of soliciting contributions.”⁴³

14 Second, the Reply Brief cites to *Sorrell v. IMS Health* and *Reed v. Town of Gilbert*.⁴⁴ In
15 both matters the Court found that the state laws at issue were not justified by the asserted
16 government interests, that is, they were not narrowly tailored to further the interests.⁴⁵ In *Sorrell*,
17 a Vermont law restricted the sale, disclosure, and use of pharmacy records “for marketing by
18 pharmaceutical manufacturers,” to protect medical privacy and achieve certain healthcare policy
19 objectives.⁴⁶ Not only was the law not well-tailored to further the government interest (because
20 privacy would be infringed by those other than pharmaceutical manufacturers) but the Court
21 found that the legislature was attempting to “hamstring” the speech of those on the other side of
22 a healthcare policy debate.⁴⁷ In *Reed*, an Arizona town ordinance placed heightened restrictions

³⁹ *FEC v. Int’l Funding Inst., Inc.*, 969 F.2d 1110, 1118 (D.C. Cir. 1992).

⁴⁰ Reply Brief at 42.

⁴¹ See Probable Cause Hr’g Tr. at 25-26 (arguing the privacy interest underlying the statute is “void” because the Commission is mandated to publicize the identities of individual contributors). Congress knew, when it enacted the sale and use restriction, that the identities of individual contributors would not be “private” *per se* given that the Act requires disclosure. As discussed below, the drafter of the statute articulated a more nuanced concern which is that citizens would be targeted for solicitation. RV was precisely designed to assist Aristotle’s clients with soliciting contributions and thus implicates the concerns at the heart of the statute.

⁴² *Citizens United v. FEC*, 558 U.S. 310, 352 (2010); see also Reply Brief at 43.

⁴³ The Commission’s regulation contains a “media exemption,” but it would not permit a media entity to engage in the same activity as Aristotle. See 11 C.F.R. § 104.15 (prohibiting media and non-media entities alike from using FEC data with the principal purpose of “communicat[ing] any contributor information [in the FEC’s database] for the purpose of soliciting contributions”). The outcome in this matter does not turn on whether the Respondent is a media or non-media corporation.

⁴⁴ *Reed v. Town of Gilbert*, 576 U.S. ___, 135 S.Ct. 2218 (2015); *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011); see also Reply Brief at 46, 48.

⁴⁵ See *Reed*, 135 S.Ct. at 2231-32; *Sorrell*, 564 U.S. at 576-580.

⁴⁶ *Sorrell*, 564 U.S. at 557.

⁴⁷ *Id.* at 578-80.

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1 on a certain category of outdoor signs, but not others, premised on preserving aesthetic appeal
2 and traffic safety.⁴⁸ The Court determined that the ordinance was unjustifiably underinclusive.⁴⁹

3 In contrast to the cases cited by the Reply Brief, the sale and use restriction is narrowly
4 tailored to further an important government interest — protecting the privacy of individuals who
5 make political contributions. As the drafter of the statute explained during his floor statement, if
6 citizens are solicited because they appear in the FEC's database, they might be "discourage[ed]"
7 from making contributions, and this would have a negative effect.⁵⁰ The privacy interest here is
8 broader than simply protecting individuals from having their identities published, but rather
9 making certain that they are not solicited simply because they are on the public record as having
10 made a past contribution. As applied here, the sale and use restriction is thus narrowly targeted
11 because it is designed to prevent the activity described in the legislative history (solicitation of
12 any kind) and covers only the protected class (those who make contributions to federal political
13 campaigns).⁵¹ Pursuant to Aristotle's own statements on the record, the relationship-mapping
14 functionality of its software can be used to identify and then solicit those individuals whom the
15 software reveals to federal political contributors.

16 **III. CONCLUSION**

17 Aristotle cannot deny that RV was designed to assist clients with solicitation, in light of
18 the company's statements in promotional items, on its website, and in a patent application for the
19 technology underlying RV. There is no limit imposed by Aristotle that would assure its clients
20 may only use RV to solicit people with whom the client has a pre-existing relationship. Indeed,
21 clients are free to upload names and addresses acquired from a list swap or purchase and then use
22 RV to identify the best solicitation prospects. This activity violates the plain text of the statute
23 and directly implicates the privacy interest underlying the statute.

24 **IV. RECOMMENDATION**

25 Find probable cause to believe that Aristotle International, Inc. violated 52 U.S.C.
26 § 30111(a)(4).

⁴⁸ *Reed*, 135 S.Ct. at 2231-32.

⁴⁹ *Id.* at 2232.

⁵⁰ 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) *reprinted in* Legislative History of the Fed. Election Campaign Act of 1971 at 581 (1981) (statement of Sen. Bellmon).

⁵¹ In the General Counsel's Brief at 16-18, we explained how Aristotle's conduct directly implicates the government interests advanced by the statute. The Reply Brief at 39 misunderstands our discussion as creating an "unprecedented enforcement theory" whereby privacy protection is "independent basis for enforcing the sale and use restriction." To be clear, the violation is based on the statute, which prohibits using FEC data for solicitation purposes. As discussed above, the objective evidence establishes that Aristotle designed RV for just that purpose.