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FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7062
DATE COMPLAINT FILED: 05/06/2016
DATE OF NOTIFICATION: 05/12/2016
LAST RESPONSE RECEIVED: 06/28/2016
DATE ACTIVATED: 09/01/2016

ELECTION CYCLES: 2014 – 16
EXPIRATION OF SOL: 04/30/2019 – ongoing

COMPLAINANT:

Glen Shaffer

RESPONDENTS:

Ro for Congress and Reena Rao in her official
capacity as treasurer
Ro Khanna
RevUp Software, Inc.
Steve Spinner

RELEVANT STATUTE:

52 U.S.C. § 30111(a)(4)
11 C.F.R. § 104.15

INTERNAL REPORTS CHECKED:

Disclosure Reports

AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that RevUp Software, Inc. (“RevUp”) is in violation of the “sale and use provision”¹ of the Federal Election Campaign Act of 1971, as amended (the “Act”), because it sells fundraising software that incorporates information taken from the Commission’s database of reports filed by political committees (“FEC data”). The Complaint further alleges that Ro Khanna and his authorized committee, Ro for Congress and Reena Rao in her official capacity as treasurer (the “Committee”), violated the same provision by using the RevUp software for the purpose of soliciting contributions. The Respondents deny the allegations.

¹ 52 U.S.C. § 30111(a)(4) (in relevant part); *see also* 11 C.F.R. § 104.15.

1 RevUp argues that it does not copy or obtain individual contributor names and addresses from
2 FEC reports and limits its sale and use of FEC data to individual contribution histories, and thus
3 does not implicate privacy concerns.² The Committee acknowledges that it used the RevUp
4 software in connection with its fundraising activities, but maintains that it received assurances
5 from RevUp that the software complied with the Act.³

6 Based on the available information, it appears that RevUp improperly sells and uses FEC
7 data for the purpose of soliciting contributions. The software analyzes individual contribution
8 histories to score and rank individuals based on their likelihood of contributing to the client
9 organization, and displays that information within the software's user interface. RevUp markets
10 the software as a solicitation tool, and various organizations, including the Khanna campaign,
11 have apparently used it to enhance their solicitation efforts. Thus, the RevUp software
12 implicates the privacy concerns at the heart of the sale and use provision, which was enacted to
13 protect individual contributors from having their names used for commercial purposes and from
14 being targeted as prime prospects for all kinds of solicitations.

15 Therefore, we recommend that the Commission find reason to believe that RevUp, Ro
16 Khanna, and the Committee violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a), and
17 authorize an investigation to conduct further fact-finding. In addition, we recommend that the
18 Commission dismiss the allegation that Steve Spinner violated 52 U.S.C. § 30111(a)(4) and
19 11 C.F.R. § 104.15(a), pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).⁴

² RevUp's founder and CEO, Steve Spinner, also a respondent in this matter, did not submit a response in his individual capacity.

³ Khanna did not submit a response in his individual capacity.

⁴ The Complaint also alleges that Khanna and the Committee obtained email addresses without permission. Compl. at 1-2 (May 6, 2016). Because this allegation does not involve copying, selling, or using FEC data (or any other activities that implicate the Act), we make no recommendation with respect to that conduct. *See also*

1 **II. FACTUAL BACKGROUND**

2 RevUp, a for-profit corporation based in Silicon Valley, sells web-based fundraising
3 software, which it describes as “a best-in-class data analytics software tool designed to maximize
4 fundraising outreach opportunities.”⁵ Steve Spinner is the company’s founder and CEO, and he
5 was also campaign chair for Ro Khanna’s successful 2016 congressional campaign.⁶ RevUp’s
6 clients — nonprofit organizations, academic institutions, and political organizations — gain
7 access to the RevUp software by purchasing an organization-wide license.⁷ According to a news
8 article cited in the Complaint,⁸ prices for licenses reportedly start at \$13,500 per year, and
9 RevUp has sold licenses to “congressmen, senators, and governors of both parties, as well as
10 most of the national party committees on both sides.”⁹ A license permits clients to distribute
11 credentials to multiple users.¹⁰

12 Clients create an organizational profile which, for a political campaign, might include
13 information such as the candidate’s background and stances on certain issues.¹¹ Individual users
14 upload their contact lists from an email program, LinkedIn, or a spreadsheet, and they can also

Committee Resp. at 1-2 (June 2, 2016) (stating that the Complaint does not allege any use of FEC data in connection with the campaign’s acquisition of email addresses, and factually refuting the alleged conduct).

⁵ Press Release, RevUp Software, Inc., *RevUp Announces Major Financing Update* (Mar. 24, 2016); see RevUp Resp. (June 28, 2016), Attach. ¶ 2 (Affidavit of Steve Spinner).

⁶ Spinner Aff. ¶ 1; Joshua Green, *Steve Spinner Just Fixed the Worst Thing About Being a Politician*, BLOOMBERG, Mar. 23, 2016; Compl., Attach. (email blast sent by Spinner on March 15, 2016, as campaign chair, advocating for Khanna’s election and soliciting contributions on behalf of the Committee).

⁷ Spinner Aff. ¶¶ 2-3, 7.

⁸ Compl. at 2.

⁹ Green, *supra* note 6; see Spinner Aff. ¶ 3. As of December 13, 2016, according to disclosure reports, 31 political committees have reported disbursements to RevUp totaling \$247,406 during the 2016 election cycle. The first reported disbursement to RevUp was made on April 30, 2014. Ro for Congress 2014 Pre-Primary Rpt. at 82 (May 22, 2014).

¹⁰ Spinner Aff. ¶ 8.

¹¹ *Id.* ¶ 7; RevUp Resp. at 2.

1 provide additional biographical information about each of the contacts.¹² The software returns a
2 ranked list of the individuals who appear on the uploaded contact lists — the names are scored
3 on a 100-point scale based on their likelihood of contributing to the client organization.¹³ Images
4 displayed on the company's website suggest that the scores are contained in a box (the color and
5 shade of which reflect the scores).¹⁴ RevUp claims that the scoring and ranking algorithm “gives
6 you actionable insight into your network, *accurately predicting your best prospects by analyzing*
7 *their ability and propensity to give.*”¹⁵

8 One factor that goes into generating an individual's score is his or her contribution
9 history — that is, the dates, amounts, and recipients of past contributions — taken from the
10 Commission's database of reports filed by political committees.¹⁶ The scoring and ranking
11 algorithm analyzes that information, along with about 100 other pieces of data (assuming all data
12 is available for a given individual).¹⁷ A related feature enables users to click on a name and view
13 that person's contribution history.¹⁸ It also shows other types of donation histories, and a text

¹² Spinner Aff. ¶ 9; *see also id.* ¶ 11 (“RevUp's Terms of Use require users to have the right to share the contact information they upload.”).

¹³ *Id.* ¶¶ 4, 12-14; RevUp Resp. at 2-3.

¹⁴ FUNDRAISING METHODOLOGY – REVUP SOFTWARE, <http://www.revup.com/our-methodology> (last visited Dec. 17, 2016) (“RevUp Methodology”); POLITICAL FUNDRAISING – REVUP SOFTWARE, <http://www.revup.com/political> (last visited Dec. 17, 2016) (“RevUp Political Fundraising”).

¹⁵ RevUp Methodology, *supra* note 14 (emphasis added).

¹⁶ RevUp Resp. at 2-3; *see* Spinner Aff. ¶ 12. RevUp maintains that the software includes a disclaimer regarding the sale and use provision. *Id.* ¶ 18 (“Federal law prohibits using contributor contact information that is obtained from FEC reports for the purpose of soliciting contributions or for any commercial purpose.”); *see* RevUp Resp. at 3.

¹⁷ *See* Compl. at 2; Green, *supra* note 6; Spinner Aff. ¶ 12.

¹⁸ Spinner Aff. ¶ 14; RevUp Resp. at 3.

1 box apparently pops up that states whether (and why) the selected name is a solicitation target
2 worth pursuing.¹⁹

3 Organizations, including political campaigns, have reportedly used the RevUp software
4 to enhance their fundraising efforts.²⁰ Khanna, the representative from California's 17th
5 congressional district, and his authorized committee, Ro for Congress, are prominent users of the
6 software.²¹ As mentioned above, Spinner is RevUp's CEO and was also Khanna's 2016
7 campaign chair. He reportedly stated that the software "has turned up hundreds of new donors"
8 for Khanna "[b]y identifying people who share an affinity" with the candidate.²²

9 Spinner demonstrated to a reporter how the RevUp software can enhance a campaign's
10 fundraising efforts, specifically, by identifying prospects who might have been dismissed using
11 traditional fundraising methods, because they associate with the opposite party:

12 Spinner . . . uploads his own 6,933 contacts and optimizes them for an imaginary
13 Republican congressional candidate. Within minutes, the software merges 605
14 duplicate entries, then ranks the 6,328 people on a 100-point scale. Hundreds of
15 Spinner's contacts are shaded red or pink, including several prominent venture
16 capitalists who are major Democratic donors. Another click reveals the
17 Republican candidates or causes to which Spinner's contacts have given, which
18 the software correlates with our own (fictitious) Republican. Were he real, it
19 would alert us if a prospective donor had already given the legal maximum or
20 given to the opposing candidate, so we would know not to embarrass him with a
21 phone call.²³

¹⁹ RevUp Political Fundraising, *supra* note 14. RevUp states on its website that "[h]aving information about past giving patterns puts you in a great position to suggest giving amounts that are appropriate, giving you the edge when making your ask." *Id.* The Response states that displaying individual contribution histories serves the function of preventing client organizations from soliciting excessive contributions. RevUp Resp. at 3.

²⁰ Green, *supra* note 6.

²¹ *See id.*; Committee Resp. at 2; Compl. at 1-2.

²² Green, *supra* note 6. (explaining that "only 30 percent of [Khanna's] supporters were previous donors").

²³ *Id.*

1 Besides enabling clients to “maximize their fundraising efforts,” RevUp claims that its
2 software provides other benefits.²⁴ For instance, clients “are able to avoid sending repetitive,
3 intrusive and inappropriate solicitations” to uninterested individuals.²⁵ In addition, by using the
4 software to streamline fundraising efforts, “[p]ublic officials can spend less time fundraising and
5 more time governing and legislating.”²⁶ RevUp states that the software “simultaneously
6 deprioritizes individuals who are less likely to be supportive.”²⁷

7 **III. LEGAL ANALYSIS**

8 **A. Relevant Law**

9 The Act requires political committees to report to the Commission the identification of
10 each person whose aggregate contributions exceed \$200 within the calendar year (or election
11 cycle, in the case of an authorized committee), along with the date and amount of any such
12 contribution.²⁸ Correspondingly, the Act requires the Commission to make all statements and
13 reports available for public inspection and copying.²⁹ Information copied from those statements
14 and reports, however, “may not be sold or used by any person for the purpose of soliciting
15 contributions or for commercial purposes, other than using the name and address of any political
16 committee to solicit contributions from such committee.”³⁰ Congress enacted the sale and use

²⁴ REVUP SOFTWARE – REVOLUTIONIZE YOUR FUNDRAISING, <http://www.revup.com> (last visited Dec. 17, 2016); *see* RevUp Resp. at 8; Spinner Aff. ¶ 2.

²⁵ Spinner Aff. ¶ 5.

²⁶ RevUp Political Fundraising, *supra* note 14; *see* Green, *supra* note 6; RevUp Resp. at 2.

²⁷ RevUp Resp. at 2.

²⁸ 52 U.S.C. § 30104(b)(3)(A). The term “identification,” in the case of an individual, is defined as the contributor’s name, mailing address, occupation, and employer. *Id.* § 30101(13)(A).

²⁹ *Id.* § 30111(a)(4).

³⁰ *Id.*; *see also* 11 C.F.R. § 104.15. The Commission’s implementing regulation provides that “*soliciting contributions* includes soliciting any type of contribution or donation, such as political or charitable contributions. 11 C.F.R. § 104.15(b) (emphasis in original).

1 provision “to protect the privacy of the generally very public-spirited citizens who may make a
 2 contribution to a political campaign or a political party.”³¹

3 Based on the legislative history, and the Congressional objective of protecting the privacy
 4 of individual contributors, the Commission has consistently interpreted the provision to prohibit
 5 the sale and use of individual contribution information — including the names and addresses of
 6 individual contributors, as well as their contribution histories — for the purpose of soliciting
 7 contributions.³² The Commission has approved the sale and use of individual contribution
 8 information only in “narrow circumstances” where the activities were informative in nature and
 9 unrelated to solicitation.³³

10 **B. There is Reason to Believe that RevUp Violated the Sale and Use Provision**

11 The available information indicates that RevUp impermissibly sells and uses FEC data
 12 because its software incorporates individual contribution histories obtained from the

³¹ 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon), *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581 (1981) (“These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment, and in that way tend to discourage them from helping out as we need to have them do.”).

³² See, e.g., MUR 6334 (Aristotle Int'l) (open matter); Advisory Op. 2004-24 (NGP); Advisory Op. 1985-16 (Weiss); *cf.* MURs 6053 & 6065 (HuffingtonPost.com) (permitting the sale and use of individual contribution information by a commercial entity where the principal purpose was informational, and there was no indication that the entity published the FEC data for the purpose of soliciting contributions); Advisory Op. 2015-12 (Ethiq) (same); Advisory Op. 2014-07 (Crowdpac) (same). The Commission has “filled the gap left by Congress while accommodating [] competing policy objectives,” which include, on the one hand, promoting the disclosure of information to inform the electorate where campaign money comes from (to deter corruption and enforce the Act’s limitations and prohibitions), and, on the other, protecting the privacy of individual contributors (such that they will not become prime prospects for all kinds of solicitation). *FEC v. Legi-Tech, Inc.*, 967 F. Supp. 523, 529-30 (D.D.C. 1997); *see FEC v. Political Contributions Data, Inc.*, 943 F.2d 190, 191 (2d Cir. 1991); (citing *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1974)); 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon), *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581 (1981).

³³ Advisory Op. 1988-02 at 2 (Chicago Board of Options Exchange II) (posting FEC data on bulletin boards located in area accessible only by members of separate segregated fund); *see, e.g.*, Advisory Op. 2013-16 (PoliticalRefund.org) (informing contributors of their right to seek a refund); Advisory Op. 2009-19 (Club for Growth) (informing contributors that a candidate changed party affiliation); Advisory Op. 1995-09 (NewtWatch) (publishing information on Internet forum about select public officials); Advisory Op. 1984-02 (Gramm) (informing contributors that a committee with a misleading name was not connected to the authorized committee); Advisory Op. 1981-05 (Findley) (informing contributors about allegedly defamatory statements).

1 Commission's database to enhance its clients' solicitation efforts. RevUp markets the software
2 as a tool that can "accurately predict[] your best prospects by analyzing their ability and
3 propensity to give."³⁴ This contravenes the purpose of the sale and use provision which, as noted
4 above, was enacted to protect the privacy of individual contributors so that they will not become
5 prime prospects for solicitation, and thus constitutes a clear violation of the Act.

6 RevUp claims that it may legally sell and use FEC data to help clients maximize their
7 fundraising because it does not copy or obtain names and addresses from the Commission's
8 database.³⁵ We disagree. The Commission has prohibited the sale of individual contribution
9 histories where, as here, that data was displayed within fundraising-related software, and has
10 prohibited the use of such data where, as here, the purpose was to enhance a pre-existing list of
11 names by determining who among listed individuals was a political contributor.

12 In Advisory Opinion 1985-16 (Weiss), the Commission concluded that it was
13 impermissible to compare the names on a pre-existing list, which the requestor intended to
14 market for solicitation purposes, with the names of individual contributors contained in the
15 Commission's database.³⁶ This prohibited matching technique is a rudimentary example of an
16 algorithm that uses FEC data to identify individuals who are more likely to make a contribution,
17 akin to RevUp's scoring and ranking algorithm. Further, in Advisory Opinion 2004-24 (NGP),
18 the Commission concluded that it was impermissible to add a feature to political and reporting
19 software that would have enabled the requestor's clients to view the contribution histories of
20 individuals in their own database for the purpose of soliciting contributions.³⁷ That feature was

³⁴ RevUp Methodology, *supra* note 14.

³⁵ RevUp Resp. at 1-2; *see* Spinner Aff. ¶¶ 10, 15.

³⁶ Advisory Op. 1985-16 at 2 (Weiss) ("AO 1985-16").

³⁷ Advisory Op. 2004-24 at 2-3 (NGP) ("AO 2004-24").

1 fundamentally the same as the component of the RevUp software that displays contribution
2 histories, but far less sophisticated. Similarly, in MUR 6334 (Aristotle Int'l), the Commission
3 prohibited the respondent from incorporating individual contribution histories into a software
4 feature that mapped the relationships between individuals in the client's database and was
5 marketed by the Respondent for its ability to assist clients maximize their fundraising.³⁸

6 RevUp contends that two recent advisory opinions — Advisory Opinion 2015-12 (Ethiq)
7 and Advisory Opinion 2014-07 (Crowdpac) — support the notion that individual contribution
8 histories may be used in the context of fundraising analytics.³⁹ However, unlike RevUp, the
9 requestors there did not propose to use FEC data for solicitation purposes but sought to analyze
10 FEC data in order to glean insights about candidates and corporations to help users obtain
11 information about like-minded entities.⁴⁰ Further, the information was presented in an aggregate
12 form (no contact information was disclosed).⁴¹

13 RevUp's arguments elide the fact that its software matches the *names* of individuals on
14 the uploaded contact lists to the *names* of contributors in the Commission's database. The
15 relevant contribution histories are then copied and paired with the *names* on the contact lists.
16 These actions directly implicate the privacy concerns that Congress sought to mitigate, and
17 RevUp's own materials show it uses individual contributors' names for the purpose of soliciting

³⁸ Factual & Legal Analysis at 11, MUR 6334 (Aristotle Int'l) (open matter). In a prior matter involving the same respondent, the Commission found reason to believe that a software feature which incorporated and displayed the contribution histories of individuals in the client's database violated the sale and use provision, but split at the probable cause to believe stage, but not specifically on the legal issue of whether contribution histories fall within the purview of the sale and use provision. *See* MUR 5625 (Aristotle Int'l).

³⁹ RevUp Resp. at 7-8.

⁴⁰ For instance, the requestor in Advisory Op. 2015-12 ("AO 2015-12") sought to analyze contributions made by corporate executives to determine whether the user's ideology was consistent with a given corporation as represented by its leadership. The purpose was not to solicit those executives and they were not individually identified to the user. AO 2015-12 at 2, 4.

⁴¹ AO 2015-12 at 2; Advisory Op. 2014-07 at 9-11 (Crowdpac).

1 contributions (which RevUp concedes is a violation).⁴² And that privacy concern is amplified
2 where, as here, the data is not only used to identify who is a past contributor, but also to score
3 and rank those individuals based on their likelihood of making a contribution.

4 The fact that the RevUp software contains a disclaimer regarding usage of FEC data for
5 solicitation purposes does not defeat the allegation.⁴³ A disclaimer warning about misuse of FEC
6 data “may be confusing” if considered in conjunction with the solicitation purposes touted by the
7 company’s marketing materials.⁴⁴ “Taken together, the disclaimers and marketing claim could
8 be understood to suggest that, while directly accessing FEC data would be illegal, solicitations
9 made using data from the [software] would be permissible.”⁴⁵ Moreover, the RevUp disclaimer
10 indicates that the sale and use provision applies only to names and addresses, not contribution
11 histories, which might further confuse clients.

12 In conclusion, the Commission has prohibited the sale and use of individual contribution
13 histories for the purpose of soliciting contributions. In addition, it is clear that the RevUp
14 software uses FEC data in a manner that directly implicates the privacy concerns that Congress
15 sought to mitigate. Therefore, we recommend that the Commission find reason to believe that
16 RevUp violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a).

17 **C. The Commission Should Dismiss the Allegation that Spinner Violated the**
18 **Sale and Use Provision**

19 There is information that Spinner, RevUp’s founder and CEO, personally developed the
20 software and took part in marketing the product as a fundraising tool. A news article states that

⁴² RevUp Resp. at 9.

⁴³ Spinner Aff. ¶ 18 (“Federal law prohibits using contributor contact information that is obtained from FEC reports for the purpose of soliciting contributions or for any commercial purpose.”); *see* RevUp Resp. at 3.

⁴⁴ Factual & Legal Analysis at 10-11, MUR 6334 (Aristotle Int’l) (open matter).

⁴⁵ *Id.* at 11.

1 Spinner leveraged his fundraising and data analytics skills to write the software's code with a
2 computer engineer.⁴⁶ The same article includes a demonstration by Spinner showing how the
3 software can identify targets for solicitation. In addition, there is information that, as campaign
4 chair of the Khanna campaign, Spinner may have used RevUp to solicit contributions.⁴⁷

5 We do not believe that bringing an enforcement action as to Spinner would be an
6 efficient use of the Commission's resources. Although the sale and use provision restricts "any
7 person" from impermissibly using FEC data,⁴⁸ the transactions at issue were between a corporate
8 entity and its clients, and do not appear to involve Spinner in his individual capacity. The
9 Commission's interest in safeguarding its data is served by enforcing the provision against the
10 corporation, RevUp. Moreover, there is no information that Spinner concealed the software's
11 use of FEC data. When demonstrating the software to a reporter, he acknowledged that the
12 product uses individual contribution histories. Furthermore, with respect to Spinner's activities
13 as campaign chair, it appears that Spinner acted in his capacity as an agent of the Committee.⁴⁹

14 Therefore, we recommend that the Commission dismiss the allegation that Spinner
15 violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a), pursuant to *Heckler v. Chaney*, 470
16 U.S. 821 (1985).

17 **D. There is Reason to Believe that Khanna and the Committee Violated the Sale**
18 **and Use Provision**

19 It appears that Khanna and the Committee violated the sale and use provision when they
20 used the RevUp software in connection with their fundraising activities. By uploading contact

⁴⁶ Green, *supra* note 6.

⁴⁷ See *id.*; Compl., Attach. (email blast sent by Spinner on March 15, 2016, as campaign chair, advocating for Khanna's election and soliciting contributions on behalf of the Committee).

⁴⁸ 52 U.S.C. § 30111(a)(4); see also 11 C.F.R. § 104.15(a).

⁴⁹ See Factual and Legal Analysis at 4-5, MUR 6290 (Gillette) (dismissing sale and use allegation as to an individual who acted in the scope of her agency as a committee official).

1 lists that were scored and ranked, and then possibly reviewing the contribution histories, Khanna
2 and the Committee may have used FEC data for the purpose of soliciting contributions.⁵⁰ The
3 Committee maintains that it received assurances from RevUp that the software was compliant
4 with the Act.⁵¹ However, the software's incorporation of FEC data for solicitation purposes
5 would have been apparent to anyone operating the software, and, further, Spinner apparently
6 engaged in fundraising activities on behalf of the Committee with in-depth knowledge about how
7 FEC data was incorporated into the scoring and ranking algorithm.

8 Therefore, because the Khanna campaign apparently used FEC data to identify prime
9 prospects for solicitation, we recommend that the Commission find reason to believe that
10 Khanna and the Committee violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a).

11 **IV. PROPOSED INVESTIGATION**

12 We recommend that the Commission authorize an investigation to ascertain the amounts
13 in violation, and to uncover additional facts regarding how the Khanna campaign used the
14 RevUp software. We will attempt to conduct our investigation through voluntary means, but we
15 recommend that the Commission authorize the use of compulsory process.

16 **V. RECOMMENDATIONS**

- 17 1. Find reason to believe that RevUp Software, Inc., Ro Khanna, and Ro for
18 Congress and Reena Rao in her official capacity as treasurer violated of 52 U.S.C.
19 § 30111(a)(4) and 11 C.F.R. § 104.15(a);
- 20 2. Dismiss the allegation that Steve Spinner violated 52 U.S.C. § 30111(a)(4) and
21 11 C.F.R. § 104.15(a);
- 22 3. Approve the attached Factual and Legal Analyses;

⁵⁰ There is information that the Committee made disbursements to RevUp, and that the Khanna campaign, including Khanna himself, were users of the RevUp software. Compl. at 2; Green, *supra* note 6.

⁵¹ Moreover, we note that all users would have seen disclaimers erroneously warning that only the use of names and addresses (not provided by the software) violates the Act. Spinner Aff. ¶ 18. The disclaimer, by omission, implied that the use of individual contribution histories (provided by the software) is permissible.

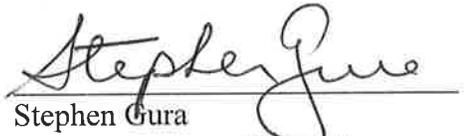
- 1 4. Authorize the use of compulsory process; and
- 2 5. Approve the appropriate letters.

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Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Acting Associate General Counsel

Date: 1.9.17



 Stephen Gura
 Deputy Associate General Counsel



 Jin Lee
 Acting Assistant General Counsel



 Claudio J. Pavia
 Attorney

25 Attachments:
26 Factual and Legal Analyses for RevUp, Steve Spinner, Ro Khanna, and the Committee

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

Respondent: RevUp Software, Inc.

MUR 7062

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Glen Shaffer alleging that RevUp Software, Inc. (“RevUp”) is in violation of the “sale and use provision”¹ of the Federal Election Campaign Act of 1971, as amended (the “Act”), because it sells fundraising software that incorporates information taken from the Commission’s database of reports filed by political committees (“FEC data”). RevUp denies the allegations, and argues that it does not copy or obtain individual contributor names and addresses from FEC reports and limits its sale and use of FEC data to individual contribution histories, and thus does not implicate privacy concerns. For the reasons stated below, the Commission finds reason to believe that RevUp violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a).

II. FACTUAL BACKGROUND

RevUp, a for-profit corporation based in Silicon Valley, sells web-based fundraising software, which it describes as “a best-in-class data analytics software tool designed to maximize fundraising outreach opportunities.”² Steve Spinner is the company’s founder and CEO.³ RevUp’s clients — nonprofit organizations, academic institutions, and political organizations —

¹ 52 U.S.C. § 30111(a)(4) (in relevant part); *see also* 11 C.F.R. § 104.15.

² Press Release, RevUp Software, Inc., *RevUp Announces Major Financing Update* (Mar. 24, 2016); *see* RevUp Resp. (June 28, 2016), Attach. ¶ 2 (Affidavit of Steve Spinner).

³ Spinner Aff. ¶ 1; Joshua Green, *Steve Spinner Just Fixed the Worst Thing About Being a Politician*, BLOOMBERG, Mar. 23, 2016.

1 gain access to the RevUp software by purchasing an organization-wide license.⁴ According to a
 2 news article cited in the Complaint,⁵ prices for licenses reportedly start at \$13,500 per year, and
 3 RevUp has sold licenses to “congressmen, senators, and governors of both parties, as well as
 4 most of the national party committees on both sides.”⁶ A license permits clients to distribute
 5 credentials to multiple users.⁷

6 Clients create an organizational profile which, for a political campaign, might include
 7 information such as the candidate’s background and stances on certain issues.⁸ Individual users
 8 upload their contact lists from an email program, LinkedIn, or a spreadsheet, and they can also
 9 provide additional biographical information about each of the contacts.⁹ The software returns a
 10 ranked list of the individuals who appear on the uploaded contact lists — the names are scored
 11 on a 100-point scale based on their likelihood of contributing to the client organization.¹⁰ Images
 12 displayed on the company’s website suggest that the scores are contained in a box (the color and
 13 shade of which reflect the scores).¹¹ RevUp claims that the scoring and ranking algorithm “gives
 14 you actionable insight into your network, *accurately predicting your best prospects by analyzing*
 15 *their ability and propensity to give.*”¹²

⁴ Spinner Aff. ¶¶ 2-3, 7.

⁵ Compl. at 2.

⁶ Green, *supra* note 3; *see* Spinner Aff. ¶ 3.

⁷ Spinner Aff. ¶ 8.

⁸ *Id.* ¶ 7; RevUp Resp. at 2.

⁹ Spinner Aff. ¶ 9; *see also id.* ¶ 11 (“RevUp’s Terms of Use require users to have the right to share the contact information they upload.”).

¹⁰ *Id.* ¶¶ 4, 12-14; RevUp Resp. at 2-3.

¹¹ FUNDRAISING METHODOLOGY – REVUP SOFTWARE, <http://www.revup.com/our-methodology> (last visited Dec. 17, 2016) (“RevUp Methodology”); POLITICAL FUNDRAISING – REVUP SOFTWARE, <http://www.revup.com/political> (last visited Dec. 17, 2016) (“RevUp Political Fundraising”).

¹² RevUp Methodology, *supra* note 11 (emphasis added).

1 One factor that goes into generating an individual’s score is his or her contribution
2 history — that is, the dates, amounts, and recipients of past contributions — taken from the
3 Commission’s database of reports filed by political committees.¹³ The scoring and ranking
4 algorithm analyzes that information, along with about 100 other pieces of data (assuming all data
5 is available for a given individual).¹⁴ A related feature enables users to click on a name and view
6 that person’s contribution history.¹⁵ It also shows other types of donation histories, and a text
7 box apparently pops up that states whether (and why) the selected name is a solicitation target
8 worth pursuing.¹⁶

9 Organizations, including political campaigns, have reportedly used the RevUp software
10 to enhance their fundraising efforts.¹⁷ Spinner demonstrated to a reporter how the RevUp
11 software can enhance a campaign’s fundraising efforts, specifically, by identifying prospects
12 who might have been dismissed using traditional fundraising methods, because they associate
13 with the opposite party:

14 Spinner . . . uploads his own 6,933 contacts and optimizes them for an imaginary
15 Republican congressional candidate. Within minutes, the software merges 605
16 duplicate entries, then ranks the 6,328 people on a 100-point scale. Hundreds of
17 Spinner’s contacts are shaded red or pink, including several prominent venture
18 capitalists who are major Democratic donors. Another click reveals the
19 Republican candidates or causes to which Spinner’s contacts have given, which

¹³ RevUp Resp. at 2-3; *see* Spinner Aff. ¶ 12. RevUp maintains that the software includes a disclaimer regarding the sale and use provision. *Id.* ¶ 18 (“Federal law prohibits using contributor contact information that is obtained from FEC reports for the purpose of soliciting contributions or for any commercial purpose.”); *see* RevUp Resp. at 3.

¹⁴ *See* Compl. at 2; Green, *supra* note 3; Spinner Aff. ¶ 12.

¹⁵ Spinner Aff. ¶ 14; RevUp Resp. at 3.

¹⁶ RevUp Political Fundraising, *supra* note 11. RevUp states on its website that “[h]aving information about past giving patterns puts you in a great position to suggest giving amounts that are appropriate, giving you the edge when making your ask.” *Id.* The Response states that displaying individual contribution histories serves the function of preventing client organizations from soliciting excessive contributions. RevUp Resp. at 3.

¹⁷ Green, *supra* note 3.

1 the software correlates with our own (fictitious) Republican. Were he real, it
2 would alert us if a prospective donor had already given the legal maximum or
3 given to the opposing candidate, so we would know not to embarrass him with a
4 phone call.¹⁸

5 Besides enabling clients to “maximize their fundraising efforts,” RevUp claims that its
6 software provides other benefits.¹⁹ For instance, clients “are able to avoid sending repetitive,
7 intrusive and inappropriate solicitations” to uninterested individuals.²⁰ In addition, by using the
8 software to streamline fundraising efforts, “[p]ublic officials can spend less time fundraising and
9 more time governing and legislating.”²¹ RevUp states that the software “simultaneously
10 deprioritizes individuals who are less likely to be supportive.”²²

11 **III. LEGAL ANALYSIS**

12 The Act requires political committees to report to the Commission the identification of
13 each person whose aggregate contributions exceed \$200 within the calendar year (or election
14 cycle, in the case of an authorized committee), along with the date and amount of any such
15 contribution.²³ Correspondingly, the Act requires the Commission to make all statements and
16 reports available for public inspection and copying.²⁴ Information copied from those statements
17 and reports, however, “may not be sold or used by any person for the purpose of soliciting
18 contributions or for commercial purposes, other than using the name and address of any political

¹⁸ *Id.*

¹⁹ REVUP SOFTWARE – REVOLUTIONIZE YOUR FUNDRAISING, <http://www.revup.com> (last visited Dec. 17, 2016); *see* RevUp Resp. at 8; Spinner Aff. ¶ 2.

²⁰ Spinner Aff. ¶ 5.

²¹ RevUp Political Fundraising, *supra* note 11; *see* Green, *supra* note 3; RevUp Resp. at 2.

²² RevUp Resp. at 2.

²³ 52 U.S.C. § 30104(b)(3)(A). The term “identification,” in the case of an individual, is defined as the contributor’s name, mailing address, occupation, and employer. *Id.* § 30101(13)(A).

²⁴ *Id.* § 30111(a)(4).

1 committee to solicit contributions from such committee.”²⁵ Congress enacted the sale and use
 2 provision “to protect the privacy of the generally very public-spirited citizens who may make a
 3 contribution to a political campaign or a political party.”²⁶

4 Based on the legislative history, and the Congressional objective of protecting the privacy
 5 of individual contributors, the Commission has consistently interpreted the provision to prohibit
 6 the sale and use of individual contribution information — including the names and addresses of
 7 individual contributors, as well as their contribution histories — for the purpose of soliciting
 8 contributions.²⁷ The Commission has approved the sale and use of individual contribution
 9 information only in “narrow circumstances” where the activities were informative in nature and
 10 unrelated to solicitation.²⁸

²⁵ *Id.*; see also 11 C.F.R. § 104.15. The Commission’s implementing regulation provides that “*soliciting contributions* includes soliciting any type of contribution or donation, such as political or charitable contributions. 11 C.F.R. § 104.15(b) (emphasis in original).

²⁶ 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon), *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581 (1981) (“These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment, and in that way tend to discourage them from helping out as we need to have them do.”).

²⁷ See, e.g., Advisory Op. 2004-24 (NGP); Advisory Op. 1985-16 (Weiss); *cf.* MURs 6053 & 6065 (HuffingtonPost.com) (permitting the sale and use of individual contribution information by a commercial entity where the principal purpose was informational, and there was no indication that the entity published the FEC data for the purpose of soliciting contributions); Advisory Op. 2015-12 (Ethiq) (same); Advisory Op. 2014-07 (Crowdpac) (same). The Commission has “filled the gap left by Congress while accommodating [] competing policy objectives,” which include, on the one hand, promoting the disclosure of information to inform the electorate where campaign money comes from (to deter corruption and enforce the Act’s limitations and prohibitions), and, on the other, protecting the privacy of individual contributors (such that they will not become prime prospects for all kinds of solicitation). *FEC v. Legi-Tech, Inc.*, 967 F. Supp. 523, 529-30 (D.D.C. 1997); see *FEC v. Political Contributions Data, Inc.*, 943 F.2d 190, 191 (2d Cir. 1991); (citing *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1974)); 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon), *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581 (1981).

²⁸ Advisory Op. 1988-02 at 2 (Chicago Board of Options Exchange II) (posting FEC data on bulletin boards located in area accessible only by members of separate segregated fund); see, e.g., Advisory Op. 2013-16 (PoliticalRefund.org) (informing contributors of their right to seek a refund); Advisory Op. 2009-19 (Club for Growth) (informing contributors that a candidate changed party affiliation); Advisory Op. 1995-09 (NewtWatch) (publishing information on Internet forum about select public officials); Advisory Op. 1984-02 (Gramm) (informing

1 The available information indicates that RevUp impermissibly sells and uses FEC data
2 because its software incorporates individual contribution histories obtained from the
3 Commission’s database to enhance its clients’ solicitation efforts. RevUp markets the software
4 as a tool that can “accurately predict[] your best prospects by analyzing their ability and
5 propensity to give.”²⁹ This contravenes the purpose of the sale and use provision which, as noted
6 above, was enacted to protect the privacy of individual contributors so that they will not become
7 prime prospects for solicitation, and thus constitutes a clear violation of the Act.

8 RevUp claims that it may legally sell and use FEC data to help clients maximize their
9 fundraising because it does not copy or obtain names and addresses from the Commission’s
10 database.³⁰ However, the Commission has prohibited the sale of individual contribution histories
11 where, as here, that data was displayed within fundraising-related software, and has prohibited
12 the use of such data where, as here, the purpose was to enhance a pre-existing list of names by
13 determining who among listed individuals was a political contributor.

14 In Advisory Opinion 1985-16 (Weiss), the Commission concluded that it was
15 impermissible to compare the names on a pre-existing list, which the requestor intended to
16 market for solicitation purposes, with the names of individual contributors contained in the
17 Commission’s database.³¹ This prohibited matching technique is a rudimentary example of an
18 algorithm that uses FEC data to identify individuals who are more likely to make a contribution,
19 akin to RevUp’s scoring and ranking algorithm. Further, in Advisory Opinion 2004-24 (NGP),

contributors that a committee with a misleading name was not connected to the authorized committee); Advisory Op. 1981-05 (Findley) (informing contributors about allegedly defamatory statements).

²⁹ RevUp Methodology, *supra* note 11.

³⁰ RevUp Resp. at 1-2; *see* Spinner Aff. ¶¶ 10, 15.

³¹ Advisory Op. 1985-16 at 2 (Weiss) (“AO 1985-16”).

1 the Commission concluded that it was impermissible to add a feature to political and reporting
2 software that would have enabled the requestor's clients to view the contribution histories of
3 individuals in their own database for the purpose of soliciting contributions.³² That feature was
4 fundamentally the same as the component of the RevUp software that displays contribution
5 histories, but far less sophisticated.

6 RevUp contends that two recent advisory opinions — Advisory Opinion 2015-12 (Ethiq)
7 and Advisory Opinion 2014-07 (Crowdpac) — support the notion that individual contribution
8 histories may be used in the context of fundraising analytics.³³ However, unlike RevUp, the
9 requestors there did not propose to use FEC data for solicitation purposes but sought to analyze
10 FEC data in order to glean insights about candidates and corporations to help users obtain
11 information about like-minded entities.³⁴ Further, the information was presented in an aggregate
12 form (no contact information was disclosed).³⁵

13 RevUp's arguments elide the fact that its software matches the *names* of individuals on
14 the uploaded contact lists to the *names* of contributors in the Commission's database. The
15 relevant contribution histories are then copied and paired with the *names* on the contact lists.
16 These actions directly implicate the privacy concerns that Congress sought to mitigate, and
17 RevUp's own materials show it uses individual contributors' names for the purpose of soliciting

³² Advisory Op. 2004-24 at 2-3 (NGP) ("AO 2004-24").

³³ RevUp Resp. at 7-8.

³⁴ For instance, the requestor in Advisory Op. 2015-12 ("AO 2015-12") sought to analyze contributions made by corporate executives to determine whether the user's ideology was consistent with a given corporation as represented by its leadership. The purpose was not to solicit those executives and they were not individually identified to the user. AO 2015-12 at 2, 4.

³⁵ AO 2015-12 at 2; Advisory Op. 2014-07 at 9-11 (Crowdpac).

1 contributions (which RevUp concedes is a violation).³⁶ And that privacy concern is amplified
2 where, as here, the data is not only used to identify who is a past contributor, but also to score
3 and rank those individuals based on their likelihood of making a contribution.

4 The fact that the RevUp software contains a disclaimer regarding usage of FEC data for
5 solicitation purposes does not defeat the allegation.³⁷ A disclaimer warning about misuse of FEC
6 data may be confusing if considered in conjunction with the solicitation purposes touted by the
7 company's marketing materials. Taken together, the disclaimers and marketing claim could be
8 understood to suggest that, while directly accessing FEC data would be illegal, solicitations
9 made using data from the software would be permissible. Moreover, the RevUp disclaimer
10 indicates that the sale and use provision applies only to names and addresses, not contribution
11 histories, which might further confuse clients.

12 In conclusion, the Commission has prohibited the sale and use of individual contribution
13 histories for the purpose of soliciting contributions. In addition, it is clear that the RevUp
14 software uses FEC data in a manner that directly implicates the privacy concerns that Congress
15 sought to mitigate. Therefore, the Commission finds reason to believe that RevUp violated
16 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a).

³⁶ RevUp Resp. at 9.

³⁷ Spinner Aff. ¶ 18 ("Federal law prohibits using contributor contact information that is obtained from FEC reports for the purpose of soliciting contributions or for any commercial purpose."); *see* RevUp Resp. at 3.

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

8 Respondent: Steve Spinner

MUR 7062

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I. INTRODUCTION

16 This matter was generated by a complaint filed with the Federal Election Commission by
17 Glen Shaffer involving allegations that Steve Spinner violated the “sale and use provision”¹ of
18 the Federal Election Campaign Act of 1971, as amended (the “Act”) in connection with
19 fundraising software developed by RevUp Software, Inc. (“RevUp”). Spinner did not file a
20 response in his individual capacity. For the reasons stated below, the Commission dismisses the
21 allegation that Spinner violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a), pursuant to
22 *Heckler v. Chaney*, 470 U.S. 821 (1985).

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24

II. FACTUAL BACKGROUND

17 RevUp, a for-profit corporation based in Silicon Valley, sells web-based fundraising
18 software, which it describes as “a best-in-class data analytics software tool designed to maximize
19 fundraising outreach opportunities.”² Steve Spinner is the company’s founder and CEO, and he
20 was also campaign chair for Ro Khanna’s successful 2016 congressional campaign.³ RevUp’s
21 clients — nonprofit organizations, academic institutions, and political organizations — gain
22 access to the RevUp software by purchasing an organization-wide license. According to a news
23 article cited in the Complaint,⁴ prices for licenses reportedly start at \$13,500 per year, and
24 RevUp has sold licenses to “congressmen, senators, and governors of both parties, as well as

¹ 52 U.S.C. § 30111(a)(4) (in relevant part); *see also* 11 C.F.R. § 104.15.

1 most of the national party committees on both sides.”⁵ A license permits clients to distribute
2 credentials to multiple users.

3 Clients create an organizational profile which, for a political campaign, might include
4 information such as the candidate’s background and stances on certain issues. Individual users
5 upload their contact lists from an email program, LinkedIn, or a spreadsheet, and they can also
6 provide additional biographical information about each of the contacts. The software returns a
7 ranked list of the individuals who appear on the uploaded contact lists — the names are scored
8 on a 100-point scale based on their likelihood of contributing to the client organization. Images
9 displayed on the company’s website suggest that the scores are contained in a box (the color and
10 shade of which reflect the scores).⁶ RevUp claims that the scoring and ranking algorithm “gives
11 you actionable insight into your network, *accurately predicting your best prospects by analyzing*
12 *their ability and propensity to give.*”⁷

13 One factor that goes into generating an individual’s score is his or her contribution
14 history — that is, the dates, amounts, and recipients of past contributions — taken from the
15 Commission’s database of reports filed by political committees. The scoring and ranking
16 algorithm analyzes that information, along with about 100 other pieces of data (assuming all data

² Press Release, RevUp Software, Inc., *RevUp Announces Major Financing Update* (Mar. 24, 2016).

³ Joshua Green, *Steve Spinner Just Fixed the Worst Thing About Being a Politician*, BLOOMBERG, Mar. 23, 2016; Compl. (May 6, 2016), Attach. (email blast sent by Spinner on March 15, 2016, as campaign chair, advocating for Khanna’s election and soliciting contributions on behalf of the Committee).

⁴ Compl. at 2.

⁵ Green, *supra* note 3.

⁶ FUNDRAISING METHODOLOGY – REVUP SOFTWARE, <http://www.revup.com/our-methodology> (last visited Dec. 17, 2016) (“RevUp Methodology”); POLITICAL FUNDRAISING – REVUP SOFTWARE, <http://www.revup.com/political> (last visited Dec. 17, 2016) (“RevUp Political Fundraising”).

⁷ RevUp Methodology, *supra* note 6 (emphasis added).

1 is available for a given individual).⁸ A related feature enables users to click on a name and view
2 that person's contribution history. It also shows other types of donation histories, and a text box
3 apparently pops up that states whether (and why) the selected name is a solicitation target worth
4 pursuing.⁹

5 Organizations, including political campaigns, have reportedly used the RevUp software
6 to enhance their fundraising efforts.¹⁰ Khanna, the representative from California's 17th
7 congressional district, and his authorized committee, Ro for Congress, are prominent users of the
8 software.¹¹ As mentioned above, Spinner is RevUp's CEO and was also Khanna's 2016
9 campaign chair. He reportedly stated that the software "has turned up hundreds of new donors"
10 for Khanna "[b]y identifying people who share an affinity" with the candidate.¹²

11 Spinner demonstrated to a reporter how the RevUp software can enhance a campaign's
12 fundraising efforts, specifically, by identifying prospects who might have been dismissed using
13 traditional fundraising methods, because they associate with the opposite party:

14 Spinner . . . uploads his own 6,933 contacts and optimizes them for an imaginary
15 Republican congressional candidate. Within minutes, the software merges 605
16 duplicate entries, then ranks the 6,328 people on a 100-point scale. Hundreds of
17 Spinner's contacts are shaded red or pink, including several prominent venture
18 capitalists who are major Democratic donors. Another click reveals the
19 Republican candidates or causes to which Spinner's contacts have given, which
20 the software correlates with our own (fictitious) Republican. Were he real, it
21 would alert us if a prospective donor had already given the legal maximum or

⁸ See Compl. at 2; Green, *supra* note 3.

⁹ RevUp Political Fundraising, *supra* note 6. RevUp states on its website that "[h]aving information about past giving patterns puts you in a great position to suggest giving amounts that are appropriate, giving you the edge when making your ask." *Id.*

¹⁰ Green, *supra* note 3.

¹¹ See *id.*; Compl. at 1-2.

¹² Green, *supra* note 3. (explaining that "only 30 percent of [Khanna's] supporters were previous donors").

1 given to the opposing candidate, so we would know not to embarrass him with a
2 phone call.¹³

3 Besides enabling clients to “maximize their fundraising efforts,” RevUp claims that its
4 software provides other benefits.¹⁴ For instance, clients “are able to avoid sending repetitive,
5 intrusive and inappropriate solicitations” to uninterested individuals. In addition, by using the
6 software to streamline fundraising efforts, “[p]ublic officials can spend less time fundraising and
7 more time governing and legislating.”¹⁵

8 III. LEGAL ANALYSIS

9 The Act requires political committees to report to the Commission the identification of
10 each person whose aggregate contributions exceed \$200 within the calendar year (or election
11 cycle, in the case of an authorized committee), along with the date and amount of any such
12 contribution.¹⁶ Correspondingly, the Act requires the Commission to make all statements and
13 reports available for public inspection and copying.¹⁷ Information copied from those statements
14 and reports, however, “may not be sold or used by any person for the purpose of soliciting
15 contributions or for commercial purposes, other than using the name and address of any political
16 committee to solicit contributions from such committee.”¹⁸ Congress enacted the sale and use

¹³ *Id.*

¹⁴ REVUP SOFTWARE – REVOLUTIONIZE YOUR FUNDRAISING, <http://www.revup.com> (last visited Dec. 17, 2016).

¹⁵ RevUp Political Fundraising, *supra* note 6; *see Green, supra* note 3.

¹⁶ 52 U.S.C. § 30104(b)(3)(A). The term “identification,” in the case of an individual, is defined as the contributor’s name, mailing address, occupation, and employer. *Id.* § 30101(13)(A).

¹⁷ *Id.* § 30111(a)(4).

¹⁸ *Id.*; *see also* 11 C.F.R. § 104.15. The Commission’s implementing regulation provides that “*soliciting contributions* includes soliciting any type of contribution or donation, such as political or charitable contributions. 11 C.F.R. § 104.15(b) (emphasis in original).

1 provision “to protect the privacy of the generally very public-spirited citizens who may make a
 2 contribution to a political campaign or a political party.”¹⁹

3 Based on the legislative history, and the Congressional objective of protecting the privacy
 4 of individual contributors, the Commission has consistently interpreted the provision to prohibit
 5 the sale and use of individual contribution information — including the names and addresses of
 6 individual contributors, as well as their contribution histories — for the purpose of soliciting
 7 contributions.²⁰ The Commission has approved the sale and use of individual contribution
 8 information only in “narrow circumstances” where the activities were informative in nature and
 9 unrelated to solicitation.²¹

10 The available information indicates that the RevUp software incorporates individual
 11 contribution histories obtained from the Commission’s database to enhance its clients’
 12 solicitation efforts. This contravenes the purpose of the sale and use provision which, as noted

¹⁹ 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon), *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581 (1981) (“These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment, and in that way tend to discourage them from helping out as we need to have them do.”).

²⁰ *See, e.g.*, Advisory Op. 2004-24 (NGP); Advisory Op. 1985-16 (Weiss); *cf.* MURs 6053 & 6065 (HuffingtonPost.com) (permitting the sale and use of individual contribution information by a commercial entity where the principal purpose was informational, and there was no indication that the entity published the FEC data for the purpose of soliciting contributions); Advisory Op. 2015-12 (Ethiq) (same); Advisory Op. 2014-07 (Crowdpac) (same). The Commission has “filled the gap left by Congress while accommodating [] competing policy objectives,” which include, on the one hand, promoting the disclosure of information to inform the electorate where campaign money comes from (to deter corruption and enforce the Act’s limitations and prohibitions), and, on the other, protecting the privacy of individual contributors (such that they will not become prime prospects for all kinds of solicitation). *FEC v. Legi-Tech, Inc.*, 967 F. Supp. 523, 529-30 (D.D.C. 1997); *see FEC v. Political Contributions Data, Inc.*, 943 F.2d 190, 191 (2d Cir. 1991); (citing *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1974)); 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon), *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581 (1981).

²¹ Advisory Op. 1988-02 at 2 (Chicago Board of Options Exchange II) (posting FEC data on bulletin boards located in area accessible only by members of separate segregated fund); *see, e.g.*, Advisory Op. 2013-16 (PoliticalRefund.org) (informing contributors of their right to seek a refund); Advisory Op. 2009-19 (Club for Growth) (informing contributors that a candidate changed party affiliation); Advisory Op. 1995-09 (NewtWatch) (publishing information on Internet forum about select public officials); Advisory Op. 1984-02 (Gramm) (informing contributors that a committee with a misleading name was not connected to the authorized committee); Advisory Op. 1981-05 (Findley) (informing contributors about allegedly defamatory statements).

1 above, was enacted to protect the privacy of individual contributors so that they will not become
2 prime prospects for solicitation. Indeed, the Commission has prohibited the sale of individual
3 contribution histories where, as here, that data was displayed within fundraising-related software,
4 and has prohibited the use of such data where, as here, the purpose was to enhance a pre-existing
5 list of names by determining who among listed individuals was a political contributor.

6 In Advisory Opinion 1985-16 (Weiss), the Commission concluded that it was
7 impermissible to compare the names on a pre-existing list, which the requestor intended to
8 market for solicitation purposes, with the names of individual contributors contained in the
9 Commission's database.²² This prohibited matching technique is a rudimentary example of an
10 algorithm that uses FEC data to identify individuals who are more likely to make a contribution,
11 akin to RevUp's scoring and ranking algorithm. Further, in Advisory Opinion 2004-24 (NGP),
12 the Commission concluded that it was impermissible to add a feature to political and reporting
13 software that would have enabled the requestor's clients to view the contribution histories of
14 individuals in their own database for the purpose of soliciting contributions.²³ That feature was
15 fundamentally the same as the component of the RevUp software that displays contribution
16 histories, but far less sophisticated. The privacy concerns in those matters are amplified where,
17 as here, FEC data is not only used to identify who is a past contributor, but also to score and rank
18 those individuals based on their likelihood of making a contribution.

19 There is information that Spinner personally developed the software and took part in
20 marketing the product as a fundraising tool. A news article states that he leveraged his

²² Advisory Op. 1985-16 at 2 (Weiss) ("AO 1985-16").

²³ Advisory Op. 2004-24 at 2-3 (NGP) ("AO 2004-24").

1 fundraising and data analytics skills to write the software's code with a computer engineer.²⁴
2 The same article includes a demonstration by Spinner showing how the software can identify
3 targets for solicitation. In addition, there is information that, as campaign chair of the Khanna
4 campaign, Spinner may have used RevUp to solicit contributions.²⁵

5 Although the sale and use provision restricts "any person" from impermissibly using FEC
6 data,²⁶ the transactions at issue were between a corporate entity and its clients, and do not appear
7 to involve Spinner in his individual capacity. Moreover, there is no information that Spinner
8 concealed the software's use of FEC data. When demonstrating the software to a reporter, he
9 acknowledged that the product uses individual contribution histories. Furthermore, with respect
10 to Spinner's activities as campaign chair, it appears that he acted in his capacity as an agent of
11 the Committee.²⁷

12 Therefore, the Commission dismisses the allegation that Spinner violated 52 U.S.C.
13 § 30111(a)(4) and 11 C.F.R. § 104.15(a), as a matter of prosecutorial discretion, pursuant to
14 *Heckler v. Chaney*, 470 U.S. 821 (1985).

²⁴ Green, *supra* note 3.

²⁵ See *id.*; Compl., Attach. (email blast sent by Spinner on March 15, 2016, as campaign chair, advocating for Khanna's election and soliciting contributions on behalf of the Committee).

²⁶ 52 U.S.C. § 30111(a)(4); see also 11 C.F.R. § 104.15(a).

²⁷ See Factual and Legal Analysis at 4-5, MUR 6290 (Gillette) (dismissing sale and use allegation as to an individual who acted in the scope of her agency as a committee official).