



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR 22 2019

Neil Reiff, Esq.
Sandler Reiff Lamb Rosenstein & Birkenstock, P.C.
1090 Vermont Ave, Suite 750
Washington, DC 20005

RE: MUR 7062
Ro for Congress and Linda Sell in
her official capacity as treasurer

Dear Mr. Reiff:

On May 12, 2016, the Federal Election Commission notified your client, Ro for Congress and Linda Sell in her official capacity as treasurer (the "Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your client at that time.

Upon review of the allegations contained in the complaint, and information supplied by you, the Commission, on April 11, 2019, found there is reason to believe that the Committee violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If your client is interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable

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cause conciliation after briefs on probable cause have been delivered to the respondent. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Claudio J. Pavia, the attorney assigned to this matter, at (202) 694-1597 or cpavia@fec.gov.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: Ro for Congress and Linda Sell MUR 7062
in her official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Glen Shaffer alleging that Ro for Congress and Reena Rao in her official capacity as treasurer (the “Committee”) violated the “sale and use provision”¹ of the Federal Election Campaign Act of 1971, as amended (the “Act”) by using the RevUp software for the purpose of soliciting contributions. The Committee acknowledges that it used the RevUp software in connection with its fundraising activities, but maintains that it received assurances from RevUp that the software complied with the Act. For the reasons stated below, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a).²

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.”³ Steve Spinner is the company’s founder and CEO, and he

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

² 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 finding with respect to that conduct. *See 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).

³ Press Release, RevUp Software, Inc., *RevUp Announces Major Financing Update* (Mar. 24, 2016).

1 was also campaign chair for Ro Khanna's successful 2016 congressional campaign.⁴ RevUp's
2 clients — nonprofit organizations, academic institutions, and political organizations — gain
3 access to the RevUp software by purchasing an organization-wide license. According to a news
4 article cited in the Complaint,⁵ prices for licenses reportedly start at \$13,500 per year, and
5 RevUp has sold licenses to "congressmen, senators, and governors of both parties, as well as
6 most of the national party committees on both sides."⁶ A license permits clients to distribute
7 credentials to multiple users.

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

⁴ 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).

⁵ Compl. at 2.

⁶ Green, *supra* note 4.

⁷ 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").

⁸ RevUp Methodology, *supra* note 7 (emphasis added).

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

Organizations, including political campaigns, have reportedly used the RevUp software to enhance their fundraising efforts.¹¹ Khanna, the representative from California's 17th congressional district, and his authorized committee, Ro for Congress, are prominent users of the software.¹² As mentioned above, Spinner is RevUp's CEO and was also Khanna's 2016 campaign chair. He reportedly stated that the software "has turned up hundreds of new donors" for Khanna "[b]y identifying people who share an affinity" with the candidate.¹³

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

Spinner . . . uploads his own 6,933 contacts and optimizes them for an imaginary Republican congressional candidate. Within minutes, the software merges 605 duplicate entries, then ranks the 6,328 people on a 100-point scale. Hundreds of

⁹ See Compl. at 2; Green, *supra* note 4.

¹⁰ RevUp Political Fundraising, *supra* note 7. 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.*

¹¹ Green, *supra* note 4.

¹² See *id.*; Committee Resp. at 2; Compl. at 1-2.

¹³ Green, *supra* note 4. (explaining that "only 30 percent of [Khanna's] supporters were previous donors").

Spinner's contacts are shaded red or pink, including several prominent venture capitalists who are major Democratic donors. Another click reveals the Republican candidates or causes to which Spinner's contacts have given, which the software correlates with our own (fictitious) Republican. Were he real, it would alert us if a prospective donor had already given the legal maximum or given to the opposing candidate, so we would know not to embarrass him with a phone call.¹⁴

Besides enabling clients to "maximize their fundraising efforts," RevUp claims that its software provides other benefits.¹⁵ For instance, clients "are able to avoid sending repetitive, intrusive and inappropriate solicitations" to uninterested individuals. In addition, by using the software to streamline fundraising efforts, "[p]ublic officials can spend less time fundraising and more time governing and legislating."¹⁶

III. LEGAL ANALYSIS

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

¹⁴ *Id.*

¹⁵ REVUP SOFTWARE – REVOLUTIONIZE YOUR FUNDRAISING, <http://www.revup.com> (last visited Dec. 17, 2016).

¹⁶ RevUp Political Fundraising, *supra* note 7; *see* Green, *supra* note 4.

¹⁷ 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).

¹⁸ *Id.* § 30111(a)(4).

committee to solicit contributions from such committee.”¹⁹ Congress enacted the sale and use provision “to protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party.”²⁰

Based on the legislative history, and the Congressional objective of protecting the privacy of individual contributors, the Commission has consistently interpreted the provision to prohibit the sale and use of individual contribution information — including the names and addresses of individual contributors, as well as their contribution histories — for the purpose of soliciting contributions.²¹ The Commission has approved the sale and use of individual contribution information only in “narrow circumstances” where the activities were informative in nature and unrelated to solicitation.²²

¹⁹ *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)."

²⁰ 117 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.”).

²¹ See, e.g., Advisory Op. 2004-24 (NGP) (“AO 2004-24”); Advisory Op. 1985-16 (Weiss) (“AO 1985-16”); 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).

²² 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 The available information indicates that the RevUp software incorporates individual
2 contribution histories obtained from the Commission's database to enhance its clients'
3 solicitation efforts. 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. Indeed, the Commission has prohibited the sale of individual
6 contribution histories where, as here, that data was displayed within fundraising-related software,
7 and has prohibited the use of such data where, as here, the purpose was to enhance a pre-existing
8 list of names by determining who among listed individuals was a political contributor.

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

²³ AO 1985-16 at 2.

²⁴ AO 2004-24 at 2-3.

1 It appears that the Committee violated the sale and use provision when it used the RevUp
2 software in connection with its fundraising activities. By uploading contact lists that were scored
3 and ranked, and then possibly reviewing the contribution histories, the Committee may have
4 used FEC data for the purpose of soliciting contributions. Further, RevUp was not simply an
5 ordinary vendor to the Committee; Spinner, the founder and CEO of RevUp, served as the
6 Committee's chairman.²⁵ Because of Spinner's knowledge, the Committee appears to have had
7 in-depth knowledge about the software, which, based on the current record, distinguishes it from
8 other committees who are customers of the company.

9 Therefore, the Commission finds reason to believe that Ro for Congress and Reena Rao
10 in her official capacity as treasurer violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a).

²⁵ Green, *supra* note 4.