

SANDLER REIFF

SANDLER REIFF LAMB
ROSENSTEIN & BIRKENSTOCK, P.C.

1090 Vermont Ave NW, Suite 750
Washington, DC 20005
www.sandlerreiff.com
T: 202-479-1111
F: 202-479-1115

June 28, 2019

Mr. Jeff S. Jordan
Assistant General Counsel
Office of Complaints Examination
and Legal Administration
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

Re: MUR 7062

Dear Mr. Jordan:

The undersigned serves as counsel to Representative Ro Khanna, in his personal capacity, (“Rep. Khanna”), and Ro for Congress and Linda Sell, in her official capacity as Treasurer (“the Committee”) (together the “Parties”). This letter responds on behalf of the Parties to the Commission’s notification that it found reason to believe that the Parties violated 52 U.S.C. § 30111(a)(4) of the Federal Election Campaign Act of 1971, as amended (the “Act”) and 11 C.F.R. § 104.15(a).

First and foremost, the Parties object to their inclusion by the Commission as the sole customer of RevUp included in the investigation pursuant to this matter, when RevUp has more than one hundred political committee customers that use its software.¹ Furthermore, the Parties object to the Commission’s claim that they are “prominent users” of the software. The Commission alleges that RevUp was “not simply an ordinary vendor to the Committee” and that because of RevUp’s founder, Steve Spinner’s “knowledge, the Campaign appears to have had in-depth knowledge about the software, which, based on the current record, distinguishes it from other committees who are customers of the company.”² The Commission bases this allegation solely on three sentences of a promotional article about RevUp that was published without any input from the Parties.³ The Commission relies on the connection between Spinner’s role as volunteer Chair of Ro for Congress and his role as founder of RevUp to conclude without any other facts that the Parties must have had in-depth knowledge of the software.⁴ The Parties categorically refute that assertion.

While Mr. Spinner was the campaign chair of Rep. Khanna’s 2016 re-election campaign, his role in the overall campaign operations was limited. Mr. Spinner was a volunteer for the

¹ See, Federal Election Commission Disbursement Data, Recipient Name “RevUp.”

² Federal Election Commission Factual and Legal Analysis at 6-7.

³ *Id.* at 3, 7.

⁴ *Id.* at 7.

Committee. In addition to Mr. Spinner's role as volunteer chair, there were also four volunteer vice-chairs for the Committee. At no time did Mr. Spinner serve as an agent of the Committee for the purpose of making disbursements or have any ultimate decision-making or expenditure authority for the Committee.⁵ Mr. Spinner's knowledge of RevUp should not be imputed onto the Parties based on his limited role. Furthermore, the Committee was, contrary to the Commission's assertion, an ordinary client of RevUp. The agreement between the Committee and RevUp was an arms-length transaction. Commission records show that the Committee paid approximately \$1,000 per month for use of the software — as did other committee customers of RevUp.⁶ The Committee, its employees, and agents did not have any specialized knowledge of the software, and the Commission cites to no facts supporting an assertion otherwise. Additionally, the article upon which the Commission relies is factually inaccurate with regard to its statements about the Parties. The Parties deny that RevUp was the source of "hundreds of new donors" and note that the statement in the article asserting that fact is not specifically attributed to Mr. Spinner and appears to be an inaccurate conclusion drawn by the reporter.

Notwithstanding the Parties' objection to their inclusion and characterization in this matter, the Parties also deny any violation of the Act or its regulations through their limited use of the RevUp software. Contrary to the Commission's assertions, RevUp was used by a small number of campaign volunteers to identify potential donors, volunteers, and supporters.⁷ These volunteers used the software sparingly because of its limited utility.⁸ The Parties' mere existence as a customer of RevUp and limited use of the software without any facts suggesting improper use of the software cannot be enough to support finding a violation of the Act. It is also the Parties' understanding and recollection that RevUp's software contains a warning that the tool should not be used for soliciting donations. The Commission makes a bare assertion that the Parties used the software "in connection with fundraising activities ... by uploading contact lists that were scored and ranked, and then possibly reviewing contribution histories ..." Specifically, the Commission goes on to assert that Rep. Khanna personally used RevUp to solicit contributions based on an assertion by the original Complainant in this matter that his email address was added to the Committee's email list through RevUp. The Parties deny this assertion. As indicated in our initial Response dated June 2, 2016, Mr. Shaffer and Ms. Chesler "were both prior acquaintances of Mr. Khanna and ... [the Committee] has sent fundraising emails to individuals on his personal email lists to raise funds for his campaign." The RevUp software played no role in the acquisition of the email addresses in question, nor did it play a role in the mass emails attached to the Complaint. The Commission offers no additional evidence that Parties impermissibly used FEC data as part of their use of RevUp. The Commission should dismiss the complaint as it pertains to Rep. Khanna because there are insufficient facts alleged in either the Complaint or Commission's Factual & Legal Analysis to sustain any assertion that Rep. Khanna violated the sale and use prohibition.⁹

⁵ See, Declaration of Brian Parvizshahi at ¶ 2.

⁶ See, Federal Election Commission Disbursement Data, Recipient Name "RevUp."

⁷ See, Declaration of Brian Parvizshahi at ¶ 3.

⁸ *Id.* at ¶ 5.

⁹ See, MUR 5952 (Hillary Clinton for President) where the Commission found no reason to believe a violation occurred when the Complaint failed to provide any specific allegations or factual information to support the alleged violation.

Furthermore, the Act and regulations do not regulate the acquisition and maintenance of email addresses by a committee. The only issue here is whether the Parties, through their limited use of RevUp software, violated the sale and use prohibitions in 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a). They did not. As indicated in the Commission’s Factual and Legal Analysis, the purpose of the sale and use prohibition is to “protect the privacy of the generally very public-spirited citizens who make a contribution to a political campaign or political party.”¹⁰ First, as noted above, the Parties used RevUp to identify potential supporters of the Committee. Second, RevUp’s software merely allows its customers to better understand their *existing* contacts — it does not provide *new* contacts to the campaign. There is no issue of privacy where the Parties already possessed the contact information of the individuals analyzed by the RevUp software.

Finally, this matter should be reviewed in light of the Controlling Statement of Reasons in Aristotle International, Inc. (MUR 6334). The software at issue in that matter included a tool called “Relationship Viewer” which allowed customers to identify relationships between existing contacts within the customer’s database.¹¹ The Relationship Viewer also allowed the customer to view FEC contribution history.¹² The Commission voted to find reason to believe a violation of the sale and use prohibition had occurred and Aristotle took several corrective measures to allay the Commission’s concerns. Those corrective measures are worth noting because of the similarities with the RevUp software and because those measures led to the Commission find no probable cause of a violation in that matter.

Both Relationship Viewer and RevUp require a user to take an extra step to view an individual’s contribution history; it is not automatically displayed. Relationship Viewer users must click on or hover over a name to display contribution history.¹³ RevUp requires the user to “click on a name and view that person’s contribution history.”¹⁴ As stated by Commissioners Hunter and Petersen, this “limits the amount of Commission data ... at any given time and puts the onus on each customer to seek it out” making the data less far reaching.¹⁵ To be sure, the act of viewing an individual’s contribution history is not a violation of the sale and use prohibition. Second, like Relationship Viewer, based on the Parties’ understanding and recollection, the RevUp software does not allow its users to electronically manipulate the data by sorting, saving, downloading, exporting, or otherwise integrate the FEC data into their own databases.¹⁶ The RevUp software also contains a warning stating that it is impermissible to use contact information from FEC data for solicitation purposes, as did Relationship Viewer.¹⁷ According to Commissioners Hunter and Petersen, these safeguards provide “reasonable assurances against misuse of the data”.¹⁸ In addition, according to the Campaign Manager’s recollection, the information about donor history was of little utility to the campaign’s volunteers.¹⁹

¹⁰ Federal Election Commission Factual and Legal Analysis at 4.

¹¹ Statement of Reasons of Commissioners Petersen & Hunter at 2, MUR 6334 (Aristotle International, Inc.)

¹² *Id.*

¹³ *Id.* at 3.

¹⁴ Federal Election Commission Factual and Legal Analysis at 2.

¹⁵ Statement of Reasons of Commissioners Petersen & Hunter at 3, MUR 6334 (Aristotle International, Inc.)

¹⁶ *Id.* at 4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See*, Declaration of Brian Parvizshahi at ¶ 3.

Due to the similarities between RevUp and Relationship Viewer and the safeguards built into RevUp to protect against misuse of data and a violation of the sale and use prohibition, the FEC should follow its own precedent and dismiss this case. The Parties are one customer out of more than one hundred political committees that use RevUp's software. Singling them out without any concrete facts supporting that they used the software in a way that violated the Act is unfair. Ultimately, there is no evidence to support a probable cause finding of a violation of 52 U.S.C. § 30111(a)(4) of the Act or 11 C.F.R. § 104.15(a).

If you have any questions, my daytime number is (202) 479-1111. My email address is reiff@sandlerreiff.com.

Sincerely,



Neil P. Reiff
Counsel to Representative Ro Khanna; Ro
for Congress; and Linda Sell, in her official
capacity as Treasurer

**BEFORE THE
FEDERAL ELECTION COMMISSION**

IN RE)	
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)	MUR 7062
Ro for Congress &)	
Ro Khanna)	
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DECLARATION OF BRIAN PARVIZSHAHI

1. My name is Brian Parvizshahi. I was the Campaign Manager of Ro for Congress from January 2015 through September 2016.
2. During my period as Campaign Manager, Steve Spinner was the volunteer Chair of Ro for Congress. Mr. Spinner was not compensated, nor did Mr. Spinner have any actual or implied authority to act as an agent for Ro for Congress. Although Mr. Spinner participated in many phone calls and meetings of the campaign, as well as provide assistance as a volunteer fundraiser, Mr. Spinner did not have a major role in the day to day conduct or operation of the campaign.
3. My recollection is that the RevUp software was primarily used by a small number of campaign volunteers to identify potential supporters of Ro for Congress. These supporters would have been asked to provide financial contributions to the campaign, as well as participate as a volunteer in the campaign. From my understanding, the RevUp software is designed to identify the friends and colleagues of its users.
4. My recollection of the purpose of the RevUp software was that it allowed a donor to upload their own personal contacts into the software, and using a multi-factored algorithm, it would prioritize which individuals should be contacted.

5. My recollection is that since RevUp was in its early stages during the 2016 election, RevUp had a very limited utility to those volunteers and therefore, the volunteers used the software sparingly.
6. Although I recall that the RevUp software contained some level of functionality that allowed the user to view an individual's donor history, it is my recollection that the feature did not provide much, if any, utility to its users.
7. I declare under penalty of perjury that the foregoing is true and correct to best of my recollection. Executed on June __26__, 2019.


Brian Parvizshahi