



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

October 12, 2021

**MEMORANDUM**

**TO:** The Commission

**FROM:** Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Associate General Counsel for Enforcement

**BY:** CJ Pavia *CP*  
Acting Deputy Associate General Counsel

Justine A. di Giovanni *JAG*  
Attorney

**SUBJECT:** MUR 7062 (Ro for Congress) Pre-Probable Cause Conciliation

On April 11, 2019, the Commission found reason to believe that Ro for Congress and Linda Sell in her official capacity as treasurer (the “Committee”) 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) of the Commission’s regulations by using software marketed by RevUp, Inc., for the purpose of soliciting contributions.<sup>1</sup> The RevUp software used information taken from the Commission’s database (“FEC data”) in order to rank individuals by their likelihood of making a contribution to the user’s chosen candidate and display their contribution histories.<sup>2</sup> On June 24, 2021, following an investigation, the Commission authorized the Office of General Counsel (“OGC”) to engage in pre-probable cause conciliation with the Committee with an opening settlement offer of .<sup>3</sup>

<sup>1</sup> Certification (“Cert.”) ¶ 3.a (Apr. 11, 2019); Factual & Legal Analysis (“F&LA”) at 7 (Ro for Congress).

<sup>2</sup> Second Gen. Counsel’s Rpt. (“Second GCR”) at 4-10.

<sup>3</sup> Cert. ¶ 3.c (June 29, 2021). The Commission also voted to take no further action as to the allegations against RevUp itself because the company dissolved, and there was “no indication a successor company was formed” and “no risk that the defunct company will commit further violations of the Act.” *Id.* ¶ 3.a; Second GCR at 21. The Commission did not have sufficient votes to find reason to believe as to Numero, Inc., the company that apparently purchased and resold the RevUp software. *See* Cert. ¶¶ 1.c, 4.a (June 29, 2021).

As detailed below, we assess that the Agreement is satisfactory under the circumstances of this case. There is significant value in resolving this nearly six-year-old matter, which will provide useful guidance regarding the Commission's interpretation and enforcement of the sale and use provision in the context of fundraising software. Moreover, though the investigation uncovered compelling evidence of the Committee's use of the RevUp software in the 2016 election cycle, the record is less complete regarding more recent use even if the available evidence presents a strong inference that the Committee continued to use the RevUp software into the 2020 cycle. There are also challenges in calculating a precise amount in violation given how the Committee used the RevUp software to enhance fundraising activities, making it difficult to identify specific contributions that directly resulted from improper use of FEC data. Given the time already invested in this matter, further investigation into the allegations or moving to the next stage of the enforcement process would not be an efficient use of the Commission's resources.

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Therefore, we recommend that the Commission accept the  
signed Conciliation Agreement with the Committee and close the file.

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**RECOMMENDATIONS:**

1. Accept the attached Conciliation Agreement;
2. Approve the appropriate letters; and
3. Close the file as to all respondents.