

OFFICE OF  
GENERAL COUNSEL

BEFORE THE  
FEDERAL ELECTION COMMISSION 2019 AUG -9 AM 10: 59

COOLIDGE-REAGAN FOUNDATION )  
 1629 K Street, N.W. )  
 Suite 300 )  
 Washington, D.C. 20006 )  
 )  
*Complainant,* )  
 )  
 v. )  
 )  
 JOAQUIN CASTRO )  
 P.O. Box 544 )  
 San Antonio, TX 78292 )  
 )  
*Respondent.* )  
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MUR # 7635

**VERIFIED COMPLAINT**

**Introduction**

In the aftermath of the tragic El Paso massacre, Congressman Joaquin Castro fanned the flames of public hatred by tweeting a list of President Donald J. Trump’s top donors from the San Antonio area. At a volatile time of widespread, intense, raw public emotion, Castro publicized a list of 44 American citizens living in San Antonio—and their employers—who have done nothing more than exercise their fundamental First Amendment right to make political contributions to the President of the United States, *see Buckley v. Valeo*, 424 U.S. 1 (1976) (per curium), in effect targeting them for repeated solicitations, public harassment, reprisals, intimidation, and potentially even violence. Such use of information about political contributors culled from Federal Election Commission (“FEC”) records violates the Federal Election Campaign Act (“FECA”).

### Parties

1. Complainant COOLIDGE-REAGAN FOUNDATION is a 501(c)(3) non-profit corporation organized under the laws of Virginia and headquartered in the District of Columbia. It seeks to defend, protect, and advance liberty.

2. Respondent JOAQUIN CASTRO is a Democratic Member of the U.S. House of Representatives representing Texas' 20th District.

### Alleged Violations of the FECA

3. On the morning of August 3, 2019, a deeply disturbed lone gunman killed 22 innocent people and injured approximately two dozen others at a Walmart store in El Paso, Texas.

4. Over the next day, several candidates for the Democratic nomination for President publicly condemned President Trump—and what they falsely characterized as his purported racist and white nationalist ideology—as responsible for the El Paso shooting. *See generally* Dartunorro Clark, *Beto O'Rourke Says Trump to Blame for El Paso Shooting Because He "Stokes Racism,"* NBC News (Aug. 4, 2019, 11:32 A.M. EDT), <https://www.nbcnews.com/politics/politics-news/beto-o-rourke-says-trump-blame-el-paso-shooting-because-n1039071>.

5. Presidential candidate and former Congressman Beto O'Rourke, who is well-known throughout Texas for his failed U.S. 2018 Senate campaign against Senator Ted Cruz, declared in response to the shooting Trump "is a racist and he stokes racism in this country. And it does not just offend our sensibilities, it fundamentally changes the character of this country and it leads to violence." *Id.*

6. Mayor Pete Buttigieg of South Bend, Indiana, proclaimed, "Well, there's no question that white nationalism is condoned at the highest level of our government. . . . Right now, you see it being echoed by the White House and there is a measure of responsibility that you just

can't get away from when you have case after case of racial rhetoric coming out of the White House.” Id.

7. Former Secretary of Housing and Urban Development Julian Castro—brother of Respondent Joaquin Castro—identified the shooting as one of the “results” of the President’s “toxic brew of white supremacy.” Jeremy Wallace, “*Toxic Brew of White Supremacy.*” *Beto O’Rourke and Julian Castro Slam Trump*, Houston Chronicle (Aug. 5, 2019), <https://www.houstonchronicle.com/news/politics/texas/article/Toxic-brew-of-white-supremacy-Beto-14281324.php>

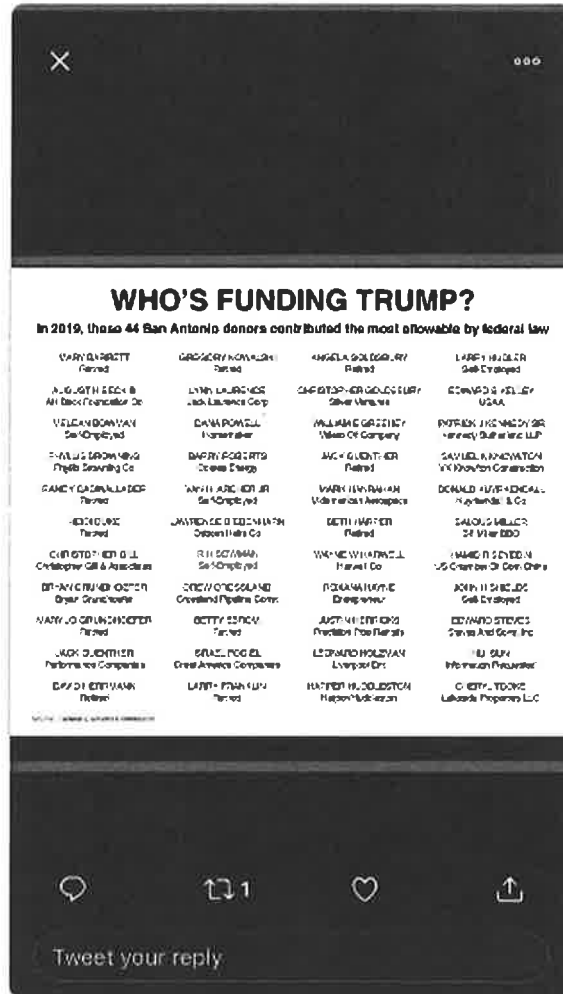
8. Senator Cory Booker of New Jersey announced, “We have a President who is particularly responsible. There is a complicity in the president’s hatred that undermines the goodness and decency of Americans.” Clark, *supra*.

9. Shortly around or after the time his brother and other nationally prominent Democrats blamed President Trump for the El Paso massacre, on August 5, 2019 at 11:13 P.M., the Twitter account for Respondent Joaquin Castro, @Castro4Congress, sent the following tweet:



Sad to see so many San Antonians as 2019 maximum donors to Donald Trump — the owner of @BillMillerBarBQ, owner of the @HistoricPearl, realtor Phyllis Browning, etc.

Their contributions are fueling a campaign of hate that labels Hispanic immigrants as 'invaders.'



11:13 PM · Aug 5, 2019 · Twitter for iPhone

23.2K Retweets 46.6K Likes

10. Castro’s tweet stated:

Sad to see so many San Antonians as 2019 maximum donors to Donald Trump—the owner of @BillMillerBarBQ, owner of the @HistoricPearl, realtor Phyllis Browning, etc.

Their contributions are fueling a campaign of hate that labels Hispanic immigrants as “invaders.”

11. The tweet was accompanied by a graphic with the heading “WHO’S FUNDING TRUMP?” The graphic stated, “In 2018, these 44 San Antonio donors contributed the most allowable by federal law.” It then listed 44 residents of San Antonio who, according to disclosure reports filed with the FEC, had contributed to President Trump.

12. For each contributor, the graphic Castro tweeted included their name and employer, along with the fact they lived in San Antonio and that they had contributed the maximum legal amount to President Trump.

13. The text of Castro’s tweet further singled out Bill Miller Bar-B-Q, the Historic Pearl Brewery, and a local realtor.

14. On information and belief, the information in the graphic Castro disseminated was obtained from statutorily required FEC reports.

15. As of August 8, 2019, the @Castro4Congress Twitter account had approximately 35,400 followers

16. Castro’s tweet was re-tweeted approximately 23,200 times, and liked by over 46,600 Twitter users.

17. Thus, less than two days after the El Paso massacre, relying on information obtained from FEC records, Castro publicized the identities of 44 contributors from San Antonio who he blamed for “fueling a campaign of hate” against Hispanics.

18. Castro did not mention at least one of the people on this list had also contributed to his campaign. Brooke Singman, *Joaquin Castro Outed His Own Donors in Bid to Shame Trump*

*Supporters*, Fox News (Aug. 7, 2019), <https://www.foxnews.com/politics/joaquin-castro-outed-one-of-his-own-donors-in-bid-to-shame-trump-supporters>.

19. By singling out and publicly identifying over the Internet a few dozen Trump donors concentrated in the San Antonio area and blaming them for fueling race-based hatred in the aftermath of the El Paso shooting—which numerous major Democratic candidates, including Julian Castro, tied to President Trump—Castro reasonably foreseeably, recklessly, and knowingly subjected them and their employers to a substantial likelihood of repeated solicitations and other harassing communications, intimidation, and potentially even violence.

20. Neither Castro’s tweet nor the graphic he circulated contained a disclaimer stating the information may not be used for the purpose of solicitations or any commercial purpose.

#### **Relevant Legal Provisions**

21. Although campaign finance reports are a matter of public record, the amalgamation of millions of such records in the FEC’s databases renders information about any individual donor protected by “practical obscurity.” *U.S. Dep’t of Justice v. Reporters’ Comm. on Freedom of the Press*, 489 U.S. 749, 780 (1989). Accordingly, the FEC has construed the FECA broadly to prohibit the use of information originating in publicly disclosed campaign finance reports in a way likely to lead to invasions of contributors’ privacy, solicitations of contributors, or harassing repeated communications to them.

22. 52 U.S.C. § 30111(a)(4) requires the FEC to make the campaign finance disclosure reports political committees are statutorily required to file “available for public inspection, and copying.” This provision further specifies, “[A]ny information copied from such reports or statements may not be . . . used by any person for the purpose of soliciting contributions or for commercial purposes.” *Accord* 11 C.F.R. § 104.15(a); *cf. id.* § 104.15(c) (providing the use of

information copied or obtained from FEC reports in newspapers, books, and other “similar communications” is “permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes”).

23. The D.C. Circuit has recognized § 30111(a)(4) leaves the FEC a “gap to fill” in determining what types of activities violate this provision. *Nat’l Republican Cong. Comm. v. Legi-Tech Corp.*, 795 F.2d 190, 192-93 (D.C. Cir. 1986). Though the plain text of these provisions mentions “commercial purposes,” the FEC has construed this prohibition broadly, in light of its fundamental underlying purpose of preventing harassment of contributors.

24. Senator Bellmon introduced the amendment that was ultimately adopted as § 30111(a)(4). He explained its purpose “is to protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign.” 117 Cong. Rec. 30,057 (Aug. 5, 1971) (statement of Sen. Bellmon). He was concerned about subjecting contributors “to *all kinds of harassment*, and in that way tend to discourage them from helping out as we need to have them do.” *Id.* (emphasis added).

25. Consistent with this legislative history, the FEC reads § 30114(a)(4) “to be a *broad prophylactic measure* intended to protect the privacy of the contributors about whom information is disclosed in FEC public records.” *Nat’l Coalition for Tobacco-Free Kids (“NCTFK”)*, A.O. 2003-24, at 4 (emphasis added); *accord PoliticalRefund.org*, A.O. 2013-16, at 5; *NGP Software, Inc.*, A.O. 2004-24, at 2. The Commission “has permitted the use of individual contributor information *only in narrow circumstances* not related to solicitation or commercial purposes.” *Weiss*, A.O. 1985-16, at 2 (emphasis added); *accord Chicago Board Options Exchange, Inc.*, A.O. 1988-2, at 2.

26. The FEC has concluded contributor information may not be used in ways that “present the possibility of repetitive and intrusive communications to contributors,” because that is the very sort of “‘harassment’ Congress wanted to prevent.” *NCTFK*, A.O. 2003-24, at 4 (citing 117 Cong. Rec. 30,057); *cf. PoliticalRefund.org*, A.O. 2013-16, at 7 (allowing disclosure and use of information from campaign finance reports that would not lead to “open-ended interaction with contributors”). Similarly, in *FEC v. Political Contributions Data, Inc.*, 943 F.2d 190, 198 (2d Cir. 1991), the U.S. Court of Appeals for the Second Circuit held § 30111(a)(4) prohibits disclosures “of a type that could infringe on the contributors’ privacy interests.” *See also Ethiq*, A.O. 2015-12, at 4 (noting the “privacy concerns at the heart of section 30111(a)(4)”). Being singled out—along with the city where you live and your place of work—on a small list distributed worldwide in the aftermath of a massacre as responsible for funding the racist hate that led to the tragedy is a tremendous invasion of privacy likely to lead to repetitive, intrusive, and harassing solicitations and other communications to those contributors.

27. The Commission has further explained, “The prohibition against use for commercial purposes extends the protection of individual contributors beyond the solicitation for contributions to encompass commercial purposes that could make contributors vulnerable to all kinds of solicitations, ‘i.e., not merely for solicitations for ‘contributions’, but solicitations for cars, credit cards, magazine subscriptions, cheap vacations, and the like.’” *TRIM*, A.O. 1995-5, at 2 (quoting *FEC v. Political Contributions Data, Inc.*, 943 F.2d 190, 197 (2d Cir. 1991)).

28. The identification of the contributors’ employers, the tweet’s inflammatory accusations about them, the affirmative circulation of the tweet to tens of thousands of recipients, and its circulation in the aftermath of the El Paso shootings, distinguish this case from *NewtWatch*, A.O. 1995-9, at 6-7. Unlike in that case, the circulation of this information, in context, invades the



contributors' privacy, subjecting them to a substantial risk of harassment, repeated communications, and invasive solicitations.

29. The U.S. Court of Appeals for the D.C. Circuit has held, “[T]he use restriction protects political discourse from the adverse effect” the FECA’s reporting requirements would otherwise have. *FEC v. Int’l Funding Inst., Inc.*, 969 F.2d 1110, 1117 (D.C. Cir. 1992). Allowing candidates to use information from FEC records to publicly identify and accuse contributors of racism and hatred in the aftermath of a national tragedy undermines § 30111(a)(4)’s purposes. It creates a tremendous chilling effect for other potential contributors’ constitutionally protected political speech and association. *Cf. Brown v. Socialist Workers Comm.*, 459 U.S. 87, 101 (1982) (recognizing, under certain circumstances, disclosure of political contributions creates a “reasonable probability of threats, harassment, or reprisals”).

30. Section 30111(a)(4) prohibits these uses of contributor information originating from federal campaign finance reports, even if Castro did not himself directly cull the data from those reports. *See Brewster*, A.O. 1975-124, at 1-2.

31. At a minimum, the FEC has specified republication of information from FEC records relating to political contributors should contain cautionary language prohibiting people from using the information to solicit those contributors or for other commercial purposes. *White Oak Technologies, Inc.*, A.O. 1998-4, at 4; *see also Political Contributors Data*, 943 F.2d at 197 (holding the defendant did not violate federal restrictions on using information from FEC reports in part because its communications included a “caveat . . . against solicitation and commercial use” of the data). Not only did Castro fail to include any such disclaimer, he completely failed to take any other steps to “safeguard the contributor information against misuse . . . by third parties.” *PoliticalRefund.org*, A.O. 2013-16, at 6.

**Count I**  
**Improper Use of Information from FEC Disclosure Reports in**  
**Violation of 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a)**

32. Complainant re-alleges the allegations of the foregoing paragraphs as if set forth fully herein.

33. Respondent violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a) by tweeting contributor information known to originate in FEC disclosure reports—including contributors' names, city of residence, employers, contribution amount (*i.e.*, the “maximum”), and candidate supported—without any warning, limits, or disclaimers on the permissible uses of that information. This tweet undermines those contributors' privacy and creating a strong likelihood of repeated and intrusive harassment of them, including but not limited to solicitations of various sorts.

WHEREFORE Respondent Joaquin Castro violated 52 U.S.C. § 30111(a)(4).

**CONCLUSION**

For these reasons, Complainant Coolidge-Reagan Foundation respectfully requests the Federal Election Commission commence enforcement proceedings against Respondent Joaquin Castro.

VERIFICATION

I declare under penalty of perjury the foregoing is true and correct to the best of my personal knowledge.

Dated August 9, 2019

Respectfully submitted,



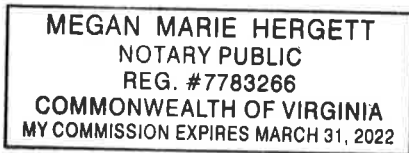
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COMPLETED BEFORE A NOTARY PUBLIC

State of Virginia

City of Alexandria

County of \_\_\_\_\_



Subscribed and sworn to before me on this 9<sup>th</sup> day of August, 2019.

My Commission expires on 03.31.2022.