

# THE LAW OFFICE OF MARTIN GOLANDO, PLLC

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October 3, 2019

Mr. Jeff S. Jordan  
Assistant General Counsel,  
Complaints Examination & Legal Administration  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

RE: Confidential Response to Coolidge-Reagan Foundation Complaint, MUR 7635

Dear Mr. Jordan:

Please accept this written response on behalf of Congressman Joaquin Castro demonstrating why no action is warranted by the Federal Election Commission ("FEC") based on the above referenced complaint. In summary, the allegation by the Coolidge-Reagan Foundation is without form and void. It has no basis in the law or fact. It is, at best, an invitation to unlawful and unconstitutional misadventure. At worst, it is a violation of our most sacred protections, including the First Amendment and the doctrine of separation of powers. The information tweeted by Rep. Castro is public information. The tweet was not a solicitation nor was it communicated for a commercial purpose. Therefore, the use of the publicly available information for a constitutionally protected purpose cannot violate the Federal Election Campaign Act ("FECA"). Thus, this complaint must be dismissed.

## I. Facts

On August 5, 2019, Congressman Castro distributed a message via Twitter that disclosed the names of several political contributors to President Trump that reside in San Antonio, Texas. This donor information is public information by law. *See* 52 U.S.C. 3011 (a) (4). The image depicting the donor information that was attached to Rep. Castro's tweet was not created by Rep. Castro nor his political committee staff. Rep. Castro did not make a campaign solicitation along with this tweet. In addition, he did not sell this data to any person for any purpose nor did he engage in a commercial purpose in publishing this tweet.

## II. Legal Analysis

The complainant's sole allegation is that Rep. Castro misused publicly-available information from FEC Disclosure reports by publicizing "contributor information ... without warning, limits, or disclaimers." *See* Coolidge-Reagan Complaint, ¶ 33. Quite simply, there is no

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statutory, regulatory, or jurisprudential requirement to provide any kind of disclaimer for this specific type of communication, because the principal purpose of the communication is not commercial nor a solicitation for a political contribution. *Public Data Access, Inc.*, A.O. 1986-25, at 3.

Congress enacted FECA in order to require the disclosure of campaign contributions and contributors. This disclosure was necessary in order to inform the electorate where campaign money comes from, to deter corruption, and to effectively enforce the act's contribution limitation requirements. *See generally Buckley v. Valeo*, 424 U.S. 1, 66-68, 96 S.Ct. 612, 657-58, 46 L.Ed.2d 659 (1974). It is undisputed that Congress believed in enacting FECA that "[p]ublicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best disinfectant; electric light the most efficient policeman." Brandeis, *What Publicity Can Do*, *Harper's Weekly*, Dec. 20, 1913, at 10 (quoted in Senate Comm. on Commerce, Federal Election Campaign Act of 1971, S.Rep. 96, 92d Cong., 2d Sess.).

For contributions by individuals, FECA disclosure requires the reporting the individual's name, mailing address, occupation, and employer's name. 2 U.S.C. § 431(13)(A); 11 C.F.R. § 100.12. These reports which include individual donor information is available for public inspection and copying. 2 U.S.C. § 438(a)(4); *see also* 2 U.S.C. § 438a. (requiring Commission to make all reports publicly available online). It is important to note that this information is publicly available in a number of non-governmental websites and throughout other forms of media. Congress did place a limitation on the use of this information. "Any information copied, or otherwise obtained, from any report or statement, or any copy, reproduction, or publication thereof, filed under the Act, shall not be sold or used by any person for the purpose of **soliciting contributions or for any commercial purpose.**" 52 U.S.C. 30111(a)(4); 11 CFR § 104.15 (a). (emphasis added). However, the use of this information "in newspapers, magazines, books or 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." 11 CFR § 104.15 (c). There is no allegation in the complaint nor evidence that the tweet was sent on account of soliciting contributions or for a commercial purpose.

However, FECA has long allowed the use and disclosure of donors for political purposes. "The prohibition is intended to prevent the use of contribution information taken from disclosure documents filed under [FECA] to make solicitations. It is not intended to foreclose the use of this information for other, albeit political, purposes, such as correcting contributor misperceptions." *Gramm*, A.O. 1984-02, at 2. The commercial/solicitation prohibition was never intended to prevent the use of the data for a political purpose, including the use of the information of a political opponent's donors to publicize information about that opponent. *See Findley*, A.O. 1981-5, at 2. ("Accordingly, the Commission concludes that copying the names and addresses of contributors listed on reports, which were filed under the Act by your opponent's campaign committee ... would not be a prohibited use of contributor information.").

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The complainant spends a majority of its discussion of the “facts” by making slanted and biased aspersions on the characters of several prominent political opponents of the President. Curiously, the complainant provides no allegations that would raise any “fact issue” as to whether the tweet, itself, was a solicitation or used for a commercial purpose. Instead, the complainant alleges that the tweet was seen and promoted by thousands of twitter users. In their words, “@Castro4Congress Twitter account had approximately 35,400 followers. Castro’s tweet was re-tweeted approximately 23,200 and liked by over 46,600 Twitter users.” *See Coolidge-Reagan Complaint*, ¶ 15-16. These allegations prove that this tweet was a mass media political communication to which the commercial/solicitation prohibition does not apply. 11 CFR § 104.15 (c). The publication of this information by tweet is not commercial nor was it a solicitation. Without these critical factual allegations, this complaint must be dismissed.

### **III. Conclusion**

Sadly, this complaint is just another sordid attempt to restrict political communication that the complainant finds objectionable. The complainant does not even attempt to allege that the communication by Rep. Castro was commercial or solicitous. Instead, the Coolidge-Reagan Foundation blithely ignores statutory law, which allows mass media communications involving individual donor data as long as the publication is not for an explicit commercial purpose. The Foundation further ignores its own cited legal cases, which describe the constitutional problem of an overly inclusive prohibition on the use of donor data. Finally, the complainants ignore the vast line of advisory opinions of this Commission, which have historically protected the use of donor data for political purposes just like the communication at issue here. If political speech, even speech some might find detestable, becomes mislabeled as commercial or solicitous by political opponents and the Commission is marshalled into the political arena to referee political communications without congressional authorization, then that invites a constitutional misadventure which endangers the core mission of FECA. The Commission should decline this invitation and dismiss this complaint.

For the reasons stated herein, Rep. Castro respectfully submits that the Coolidge-Reagan Foundation complaint should be dismissed as it sets forth no possible violation of FECA.

Respectfully Submitted,

*/s/ Martin Golando*

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FEDERAL ELECTION COMMISSION  
1050 First Street, NE  
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**STATEMENT OF DESIGNATION OF COUNSEL**

Provide one form for each Respondent/Witness

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FAX 202-219-3923

AR/MUR/RR/P-MUR# 7635

Name of Counsel: Martin Golando

Firm: The Law office of Martin Golando, PLLC

Address: 405 N. Saint Mary's St., Ste. 700

San Antonio, Texas 78205

Office#: 210-892-8543 Fax#: N/A

Mobile#: \_\_\_\_\_

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/3/2019  
Date

[Signature]  
(Signature - Respondent/Agent/Treasurer) Title

Congressman Joaquin Castro  
(Name - Please Print)

**RESPONDENT:** Congressman Joaquin Castro  
(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: PO Box 544  
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This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.