

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR: 7635

DATE COMPLAINT FILED: Aug. 9, 2019

DATE OF NOTIFICATION: Aug. 14, 2019

DATE RESPONSE RECEIVED: Oct. 3, 2019

DATE ACTIVATED: Oct. 8, 2019

EXPIRATION OF SOL: Aug. 5, 2024

ELECTION CYCLE: 2020

COMPLAINANT: Coolidge-Reagan Foundation

RESPONDENT: Joaquin Castro

**RELEVANT STATUTE AND
REGULATION:** 52 U.S.C § 30111(a)(4)
11 C.F.R. § 104.15

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint alleges that Congressman Joaquin Castro violated the “sale and use provision” of the Federal Election Campaign Act of 1971, as amended (the “Act”),¹ when, shortly after the August 3, 2019, shooting in El Paso, Texas, he used information obtained from Commission disclosure reports (“FEC data”)² in a posting on Twitter, which contained the names and employer information of individuals in the San Antonio area who made maximum contributions to Donald J. Trump’s 2020 presidential re-election campaign.³ The Complaint asserts that Castro’s actions subjected these donors to a “substantial likelihood of repeated

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

² The term “FEC data” refers to any information published in the Commission’s online database of reports and statements filed by political committees.

³ Compl. ¶¶ 3, 9-12 (Aug. 9, 2019).

1 solicitations and other harassing communications, intimidation, and potentially even violence.”⁴
2 In response, Castro acknowledges that the tweet originated from his campaign but argues that the
3 Act’s sale and use provision places limits only with respect to using FEC data for the purpose of
4 soliciting contributions or commercial purposes, neither of which is present here.⁵ Castro
5 contends that the tweet was a “political communication” to which the sale and use provision does
6 not apply.⁶

7 As discussed below, the available information does not support an inference that Castro
8 used FEC data in violation of the sale and use provision. Accordingly, we recommend that the
9 Commission find no reason to believe that Joaquin Castro violated 52 U.S.C. § 30111(a)(4) and
10 11 C.F.R. § 104.15(a).

11 **II. FACTUAL BACKGROUND**

12 On August 5, 2019, two days after the shooting in a Walmart store in El Paso, Texas, the
13 campaign Twitter account of Joaquin Castro, who represents Texas’s 20th congressional district,
14 tweeted the following message:

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

18 Their contributions are fueling a campaign of hate that labels Hispanic
19 immigrants as ‘invaders.’⁷

⁴ *Id.* ¶ 19.

⁵ Resp. at 2 (Oct. 3, 2019).

⁶ *Id.* at 3.

⁷ Joaquin Castro (@Castro4Congress), Twitter (Aug. 5, 2019, 8:13 PM), <https://twitter.com/castro4congress/status/1158576680182718464?lang=en> (“Castro Tweet”) (accessed on December 5, 2019).

1 The tweet also includes an image showing the names of forty-four individuals from the
2 San Antonio area along with information about their occupations and employers.⁸ Each of these
3 individuals reportedly contributed maximum amounts to Donald J. Trump for President, Inc.
4 (“DJTFP”), the authorized committee of President Trump’s re-election campaign.⁹ The tweet
5 cites the source of the contribution information as “Federal Elections [sic] Commission.”¹⁰ As of
6 December 5, 2019, Castro’s tweet was re-tweeted over 23,000 times and had received over
7 47,000 likes.¹¹

8 In his Response, Castro admits distributing the message via Twitter but denies that it
9 resulted in a violation of the Act.¹² Castro argues that his use of FEC data constitutes core
10 “political speech” protected by the First Amendment.¹³ He contends that the tweet furthered the
11 disclosure interest underlying the Act by educating the public regarding the source of campaign

⁸ Appendix (screenshot of the Castro Tweet).

⁹ These individuals contributed \$5,600 to DJTFP (\$2,800 for the primary and \$2,800 for the general election). DJTFP, Amended July 2019 Quarterly Rpt. (Sept. 12, 2019); DJTFP, Amended Oct. 2019 Quarterly Rpt. (Nov. 13, 2019); *see* Price Index Adjustments for Contribution & Expenditure Limitations & Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2,504, 2,506 (Feb. 7, 2019).

¹⁰ Castro Tweet. As indicated above, we confirmed that each of the individuals were, in fact, reported to be maximum contributors to DJTFP for the 2020 election cycle. *See supra* note 9.

¹¹ *Id.*

¹² Resp. at 1. The Response states, however, that the image containing the donor information was not created by Castro or his campaign staff. *Id.* Castro does not provide any information regarding the source of the image or how it was obtained.

¹³ *Id.*

1 money.¹⁴ The Response also emphasizes that Castro's tweet did not contain a solicitation or
2 otherwise have a commercial purpose.¹⁵

3 **III. LEGAL ANALYSIS**

4 To further Congress's purposes of disclosing the sources of election-related spending,
5 including contributions to political candidates,¹⁶ the Act requires political committees to report
6 the identification of each person whose aggregate contributions exceed \$200 within the calendar
7 year (or election cycle, in the case of an authorized committee), along with the date and amount
8 of any such contributions.¹⁷ Correspondingly, the Act requires the Commission to make political
9 committees' reports available for public inspection and copying.¹⁸

10 Under the Act's sale and use provision, information copied from the reports "*may not be*
11 *sold or used by any person for the purpose of soliciting contributions or for commercial*
12 *purposes*, other than using the name and address of any political committee to solicit

¹⁴ See *id.* at 2 ("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 [A]ct's contribution limitation requirements." (citing *Buckley v. Valeo*, 424 U.S. 1, 66-68, (1974))).

¹⁵ *Id.* at 1, 3.

¹⁶ *Buckley*, 424 U.S. at 66-67 (explaining how disclosure "provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office") (internal quotations omitted); Advisory Op. 2014-07 at 10 (CrowdPac) ("AO") (recognizing the Act's "broader aim of full disclosure" (quoting *FEC v. Political Contributions Data*, 943 F.2d 190, 196-97 (2d Cir. 1991) ("PCD"))).

¹⁷ 52 U.S.C. § 30104(b)(3)(A); see also 11 C.F.R. § 104.15(a). For contributions by individuals, "identification" consists of name, mailing address, occupation, and employer. 52 U.S.C. § 30101(13)(A).

¹⁸ 52 U.S.C. § 30111(a)(4).

1 contributions from such committee.”¹⁹ “[S]oliciting contributions includes soliciting any type of
2 contribution or donation, such as political or charitable contributions.”²⁰ The legislative history
3 indicates a level of Congressional intent to protect contributors against having their reported
4 identifying information used to solicit them for contributions and donations. During the passage
5 of the Act, the Senator sponsoring the amendment that would become the Act’s sale and use
6 provision explained his view of its purpose in the following exchange:

7 Mr. Bellmon: In the State of Oklahoma, our own tax division sells the names of
8 new car buyers to list brokers, for example, and I am sure similar practices are
9 widespread elsewhere. This amendment is intended to protect, at least to some
10 degree, the men and women who make contributions to candidates or political
11 parties from being victimized by that practice.

12 Mr. Nelson: Do I understand that the only purpose is to prohibit the lists from being used
13 for commercial purposes?

14 Mr. Bellmon: That is correct.²¹

¹⁹ *Id.* § 30111(a)(4) (emphasis added); *see also* 11 C.F.R. § 104.15(a). The Commission’s implementing regulation exempts “newspapers, magazines, books or other similar communications,” as long as “the principal purpose . . . is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.” 11 C.F.R. § 104.15(c).

²⁰ 11 C.F.R. § 104.15(b).

²¹ 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581-82 (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.”).

1 The Second Circuit, when reviewing the legislative history, concluded that Congress was
2 concerned with protecting contributors from the “harassment of solicitors.”²²

3 The Commission has stated that “the purpose of the prohibition is to prevent contributor
4 information from being used for commercial purposes or for making solicitations.”²³ Therefore,
5 in instances in which the use of FEC data was determined to be motivated by “political
6 purposes” or was “informational” in nature, the Commission has found there was no violation.²⁴

7 For example, in Advisory Opinion 1984-02 (Gramm), the Commission concluded that a
8 candidate could use contributor information contained in a non-connected political committee’s
9 disclosure reports to contact and inform contributors that the non-connected committee, which
10 had an allegedly misleading name, was not authorized.²⁵ As the Commission explained, “[t]he
11 prohibition is intended to prevent the use of contribution information taken from disclosure
12 documents . . . to make solicitations. It is not intended to foreclose the use of this information
13 for other, albeit *political purposes*”²⁶

14 In Advisory Opinion 1995-09 (NewtWatch), the Commission approved a political
15 committee’s proposal to operate a website upon which it would post the names, cities, and states

²² *PCD*, 943 F.2d at 196 (identifying “[C]ongress’s intent to expose this information to beneficial sunlight, while protecting contributors, as best as possible, from the harassment of solicitors”).

²³ AO 2013-16 at 6 (PoliticalRefund.org). “When determining if sale or use of information obtained from FEC disclosure reports constitutes a violation, the Commission has looked to whether the purpose was solicitation-related.” Factual & Legal Analysis at 5-6, MURs 6960 & 6991 (SW Technologies, LLC) (“F&LA”) (citing cases); *see, e.g.*, AO 1988-02 at 2 (Chicago Board of Options Exchange II); AO 1985-16 at 2 (Weiss).

²⁴ *E.g.*, F&LA at 6, MURs 6053 & 6065 (HuffingtonPost.com) (approving use of FEC data by a newspaper in connection with an online database that it operated where the purpose for using contributor information appeared to be “informational”); AO 1984-02 at 2 (Gramm); AO 1995-09 at 6 (NewtWatch).

²⁵ AO 1984-02 at 2 (Gramm).

²⁶ *Id.* (emphasis added).

1 of residence, but not addresses, of contributors who gave \$200 or more to select candidates.²⁷
2 The Commission found the proposal was similar to the circumstances considered by the Second
3 Circuit in *PCD*, which involved compilations of FEC data (names, recipients, occupations, and
4 amounts, but not addresses) for research into issues related to campaign finance.²⁸ The Second
5 Circuit deemed the usage of FEC data permissible because it was “*for informative purposes*
6 (similar to newspapers, magazines, and books), not for commercial purposes (similar to
7 soliciting contributions or selling cars).”²⁹ Relying on this holding, and further observing that
8 the website presented “little risk, if any, of solicitation or harassment of contributors,” the
9 Commission found that the use of FEC data was not prohibited.³⁰

10 Other instances in which the Commission found that the proposed use of FEC data was
11 for informative or political purposes, and thus permissible, include: (1) informing contributors
12 about a candidate’s change in position and of their right to seek a refund;³¹ (2) notifying
13 contributors that a candidate changed party affiliation and offered to refund contributions;³²
14 (3) posting contribution data on bulletin boards located in an area accessible by members of

²⁷ AO 1995-09 at 6-7 (NewtWatch).

²⁸ *Id.* at 6.

²⁹ *PCD*, 943 F.2d at 197 (emphasis added) (internal citation omitted); *accord* AO 1995-09 at 6 (NewtWatch). Notably, in both matters, contact information such as mailing addresses or phone numbers was not included in the publications. AO 1995-09 at 6 (NewtWatch) (concluding that the absence of mailing addresses or phone numbers is a factor weighing in favor of an informative purpose); *PCD*, 943 F.2d at 197 (same).

³⁰ AO 1995-09 at 6-7 (NewtWatch).

³¹ AO 2013-16 at 4-6 (PoliticalRefund.org).

³² AO 2009-19 at 3 (Club for Growth).

1 separate segregated fund;³³ and (4) a candidate contacting the contributors of his opponent to
2 respond to allegedly defamatory statements made by the opponent.³⁴

3 Considering these authorities and precedents, we recommend that the Commission find
4 that the available information does not indicate that there is reason to believe there was a
5 violation of the Act's sale and use provision. Castro used contributor information obtained from
6 FEC disclosure reports, which included contributors' names, cities, employers, contribution
7 amounts, and the fact that their contribution was made to Trump's campaign committee.³⁵ The
8 tweet at issue stated Castro's opinion that it was "[s]ad to see so many San Antonians as 2019
9 maximum donors to Donald Trump," and it included a list of names but did not provide address
10 or phone number information.³⁶ The Complaint alleges that Castro's use of FEC data was an
11 invasion of these donors' privacy and created a "strong likelihood of repeated and intrusive
12 harassment of them, including but not limited to solicitations of various sorts."³⁷

13 The Complaint does not provide any evidence or other support regarding its contention
14 that Castro's tweet may have resulted in the named individuals being solicited, nor are we aware
15 of any such information. Critically, Castro's tweet does not give rise to an inference of having a

³³ AO 1988-02 at 2 (Chicago Board of Options Exchange II); *see also* 11 C.F.R. § 114.5.

³⁴ AO 1981-05 at 2 (Findley). By contrast, the Commission denied a request to copy names of individual contributors to send those contributors a mailing consisting of a cover letter, four-page bulletin, and portion of the Constitution, because it was accompanied by an *offer to order more bulletins and a request for donations*. AO 1995-05 at 3 (Trim).

³⁵ *Supra* Part II.

³⁶ Castro Tweet. In prior matters, the Commission has approved the use of FEC data where there were no attached addresses or phone numbers to the names of contributors. *E.g.*, AO 2014-07 at 10 ("This conclusion is consistent with a long line of advisory opinions in which the Commission has approved proposals to sell or use information from reports filed with the Commission where that information did not include the names and addresses of individual contributors."); AO 1995-09 at 6-7 (NewtWatch).

³⁷ Compl. ¶ 33.

1 purpose of soliciting contributions or a commercial purpose. It does not include a solicitation,
2 engage in any form of commercial marketing, or include any call to action such as encouraging
3 Castro's followers to solicit the named individuals. Castro comments on the Trump campaign
4 and the identified individuals and businesses regarding their financial support of the Trump
5 campaign, thus providing information about the source of campaign money. It therefore appears
6 that Castro's tweet was for political or informational purposes which, in line with the
7 Commission's treatment of similar matters discussed above, does not contravene the Act's sale
8 and use provision.

9 The Complaint relies on AO 2003-24 (NCTFK) to argue that the sale and use provision
10 generally protects contributors from receiving "repetitive and intrusive communications,"³⁸ but
11 the facts of that matter did not involve the type of use at issue here. The National Center for
12 Tobacco-Free Kids sought to use FEC data to send contributors direct mail communications,
13 urging them to contact legislators, with the possibility of "open-ended" interaction.³⁹ Here, as
14 discussed above, Castro's tweet did not involve a solicitation or any call to action equivalent to a
15 solicitation, and, unlike in AO 2003-24, there are no allegations here, and we are not aware of
16 information to suggest, that anyone was solicited or even contacted because their names, taken
17 from the FEC database, appeared in Castro's tweet.⁴⁰

³⁸ Compl. ¶ 26 (quoting AO 2003-24 at 4 (NCTFK)). The Complaint also remarks that Castro's tweet did not contain a disclaimer regarding the sale or use of FEC data. Compl. ¶¶ 20, 31, 33. However, neither the Act nor Commission regulations require disclaimers, though they have been recommended by the Commission at times. AO 1998-04 at 4 (White Oak Techs.); AO 1988-02 at 2 (Chicago Board of Options Exchange II) (explaining that a disclaimer is not required); *see also* F&LA at 11, MUR 6334 (Aristotle Int'l, Inc.) (finding that a disclaimer was not dispositive regarding whether the purpose for using FEC data involved soliciting contributions).

³⁹ AO 2003-24 at 3-4, 5 (NCTFK).

⁴⁰ AO 2003-24 was approved 5-1, with one Commissioner stating that he voted in favor of the opinion, thus denying the request, because there was some indication of a commercial purpose. *See* Concurring Opinion of Commissioner Scott E. Thomas at 1, AO 2003-24.

APPENDIX



Joaquin Castro ✓
@Castro4Congress

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.'

← Tweet

WHO'S FUNDING TRUMP?

In 2019, these 44 San Antonio donors contributed the most allowable by federal law

MARY BARRETT Retired	GREGORY KOWALSKI Retired	ANGELA GOLDSBURY Retired	LARRY HUDLER Self-Employed
AUGUST H BECK III AH Beck Foundation Co	LYNN LAURENCE Jack Laurence Corp	CHRISTOPHER GOLDSBURY Silver Ventures	EDWARD B KELLEY USAA
MELAN BOWMAN Self-Employed	DANA POWELL Homemaker	WILLIAM E GREEHEY Valero Oil Company	PATRICK J KENNEDY SR Kennedy/Sutherland LLP
PHYLLIS BROWNING Phyllis Browning Co	BARRY ROBERTS Coates Energy	JACK GUENTHER Retired	SAMUEL K KNOWLTON VK Knowlton Construction
RANDY CADWALLADER Retired	VAN H ARCHER JR Self-Employed	MARK HANRAHAN Midamerican Aerospace	DONALD KUYRKENDALL Kuyrkendall & Co
HEIDI DUKE Retired	LAWRENCE BIEDENHARN Cibcom Heirs Co	BETH HARPER Retired	BALOUS MILLER Bill Miller BSO
CHRISTOPHER GILL Christopher Gill & Associates	R H BOWMAN Self-Employed	WAYNE W HARRWELL Harwell Co	HAMD R SEYEDIN US Chamber Of Corn China
BRYAN GRUNDHOEFER Bryan Grundhoefer	DREW CROSSLAND Crossland Pipeline Const	ROXANA HAYNE Entrepreneur	JOHN H SHIELDS Self-Employed
MARY JO GRUNDHOEFER Retired	BETTY EBROM Retired	JUSTIN HERRICKS Precision Pipe Rentals	EDWARD STEVES Steves And Sons, Inc
JACK GUENTHER Performance Companies	ISRAEL FOGIEL Great America Companies	LEONARD HOLZMAN Liverpool Ent	HUI SUN Information Requested
DAVID HERRMANN Retired	LARRY FRANKLIN Retired	HARPER HUDDLESTON HarperHuddleston	CHERYL TOOKE Lakeside Properties LLC

Source: Federal Elections Commission

🗨️ ↻ 1 ❤️ ↗

Tweet your reply

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

23.6K Retweets 47.5K Likes

THIS PROPOSED DRAFT WAS VOTED ON BUT
NOT APPROVED BY THE COMMISSION.

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Joaquin Castro MUR 7635
4
5

6 This matter was generated by a Complaint filed with the Federal Election Commission
7 (the “Commission”).¹ The Complaint alleges that Congressman Joaquin Castro violated the
8 “sale and use provision” of the Federal Election Campaign Act of 1971, as amended (the
9 “Act”),² when, shortly after the August 3, 2019, shooting in El Paso, Texas, he used information
10 obtained from Commission disclosure reports (“FEC data”)³ in a posting on Twitter, which
11 contained the names and employer information of individuals in the San Antonio area who made
12 maximum contributions to Donald J. Trump’s 2020 presidential re-election campaign.⁴ The
13 Complaint asserts that Castro’s actions subjected these donors to a “substantial likelihood of
14 repeated solicitations and other harassing communications, intimidation, and potentially even
15 violence.”⁵ In response, Castro acknowledges that the tweet originated from his campaign but
16 argues that the Act’s sale and use provision places limits only with respect to using FEC data for
17 the purpose of soliciting contributions or commercial purposes, neither of which is present here.⁶

1 ¹ See 52 U.S.C. § 30109(a)(1).

2 ² *Id.* § 30111(a)(4); *see also* 11 C.F.R. § 104.15.

3 ³ The term “FEC data” refers to any information published in the Commission’s online database of reports and statements filed by political committees.

4 ⁴ Compl. ¶¶ 3, 9-12 (Aug. 9, 2019).

5 ⁵ *Id.* ¶ 19.

6 ⁶ Resp. at 2 (Oct. 3, 2019).

1 Castro contends that the tweet was a “political communication” to which the sale and use
2 provision does not apply.⁷

3 As discussed below, the available information does not support an inference that Castro
4 used FEC data in violation of the sale and use provision. Accordingly, the Commission finds no
5 reason to believe that Joaquin Castro violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R.
6 § 104.15(a).

7 **I. FACTUAL BACKGROUND**

8 On August 5, 2019, two days after the shooting in a Walmart store in El Paso, Texas, the
9 campaign Twitter account of Joaquin Castro, who represents Texas’s 20th congressional district,
10 tweeted the following message:

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12 the owner of @BillMillerBarBQ, owner of the @HistoricPearl, relator Phyllis
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14 Their contributions are fueling a campaign of hate that labels Hispanic
15 immigrants as ‘invaders.’⁸

16 The tweet also includes an image showing the names of forty-four individuals from the
17 San Antonio area along with information about their occupations and employers.⁹ Each of these
18 individuals reportedly contributed maximum amounts to Donald J. Trump for President, Inc.

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⁹ Appendix (screenshot of the Castro Tweet).

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1 (“DJTFP”), the authorized committee of President Trump’s re-election campaign.¹⁰ The tweet
2 cites the source of the contribution information as “Federal Elections [sic] Commission.”¹¹ As of
3 December 5, 2019, Castro’s tweet was re-tweeted over 23,000 times and had received over
4 47,000 likes.¹²

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6 resulted in a violation of the Act.¹³ Castro argues that his use of FEC data constitutes core
7 “political speech” protected by the First Amendment.¹⁴ He contends that the tweet furthered the
8 disclosure interest underlying the Act by educating the public regarding the source of campaign
9 money.¹⁵ The Response also emphasizes that Castro’s tweet did not contain a solicitation or
10 otherwise have a commercial purpose.¹⁶

¹⁰ These individuals contributed \$5,600 to DJTFP (\$2,800 for the primary and \$2,800 for the general election). DJTFP, Amended July 2019 Quarterly Rpt. (Sept. 12, 2019); DJTFP, Amended Oct. 2019 Quarterly Rpt. (Nov. 13, 2019); *see* Price Index Adjustments for Contribution & Expenditure Limitations & Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2,504, 2,506 (Feb. 7, 2019).

¹¹ Castro Tweet. According to Commission disclosure reports, each of the individuals were, in fact, reported to be maximum contributors to DJTFP for the 2020 election cycle. *See supra* note 10.

¹² *Id.*

¹³ Resp. at 1. The Response states, however, that the image containing the donor information was not created by Castro or his campaign staff. *Id.* Castro does not provide any information regarding the source of the image or how it was obtained.

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1 **III. LEGAL ANALYSIS**

2 To further Congress’s purposes of disclosing the sources of election-related spending,
3 including contributions to political candidates,¹⁷ the Act requires political committees to report
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7 committees’ reports available for public inspection and copying.¹⁹

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11 contributions from such committee.”²⁰ “[S]oliciting contributions includes soliciting any type of
12 contribution or donation, such as political or charitable contributions.”²¹ The legislative history
13 indicates a level of Congressional intent to protect contributors against having their reported
14 identifying information used to solicit them for contributions and donations. During the passage

¹⁷ *Buckley*, 424 U.S.at 66-67 (explaining how disclosure “provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office”) (internal quotations omitted); Advisory Op. 2014-07 at 10 (Crowdpac) (“AO”) (recognizing the Act’s “broader aim of full disclosure” (quoting *FEC v. Political Contributions Data*, 943 F.2d 190, 196-97 (2d Cir. 1991) (“PCD”))).

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¹⁹ 52 U.S.C. § 30111(a)(4).

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4 new car buyers to list brokers, for example, and I am sure similar practices are
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9 for commercial purposes?

10 Mr. Bellmon: That is correct.²²

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1 in instances in which the use of FEC data was determined to be motivated by “political
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13 The Commission found the proposal was similar to the circumstances considered by the Second
14 Circuit in *PCD*, which involved compilations of FEC data (names, recipients, occupations, and
15 amounts, but not addresses) for research into issues related to campaign finance.²⁹ The Second
16 Circuit deemed the usage of FEC data permissible because it was “*for informative purposes*
17 (similar to newspapers, magazines, and books), not for commercial purposes (similar to

²⁵ *E.g.*, F&LA at 6, MURs 6053 & 6065 (HuffingtonPost.com) (approving use of FEC data by a newspaper in connection with an online database that it operated where the purpose for using contributor information appeared to be “informational”); AO 1984-02 at 2 (Gramm); AO 1995-09 at 6 (NewtWatch).

²⁶ AO 1984-02 at 2 (Gramm).

²⁷ *Id.* (emphasis added).

²⁸ AO 1995-09 at 6-7 (NewtWatch).

²⁹ *Id.* at 6.

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1 soliciting contributions or selling cars).³⁰ Relying on this holding, and further observing that
2 the website presented “little risk, if any, of solicitation or harassment of contributors,” the
3 Commission found that the use of FEC data was not prohibited.³¹

4 Other instances in which the Commission found that the proposed use of FEC data was
5 for informative or political purposes, and thus permissible, include: (1) informing contributors
6 about a candidate’s change in position and of their right to seek a refund;³² (2) notifying
7 contributors that a candidate changed party affiliation and offered to refund contributions;³³
8 (3) posting contribution data on bulletin boards located in an area accessible by members of
9 separate segregated fund;³⁴ and (4) a candidate contacting the contributors of his opponent to
10 respond to allegedly defamatory statements made by the opponent.³⁵

11 Considering these authorities and precedents, the Commission finds that the available
12 information does not indicate that there is reason to believe there was a violation of the Act’s
13 sale and use provision. Castro used contributor information obtained from FEC disclosure
14 reports, which included contributors’ names, cities, employers, contribution amounts, and the

³⁰ *PCD*, 943 F.2d at 197 (emphasis added) (internal citation omitted); *accord* AO 1995-09 at 6 (NewtWatch). Notably, in both matters, contact information such as mailing addresses or phone numbers was not included in the publications. AO 1995-09 at 6 (NewtWatch) (concluding that the absence of mailing addresses or phone numbers is a factor weighing in favor of an informative purpose); *PCD*, 943 F.2d at 197 (same).

³¹ AO 1995-09 at 6-7 (NewtWatch).

³² AO 2013-16 at 4-6 (PoliticalRefund.org).

³³ AO 2009-19 at 3 (Club for Growth).

³⁴ AO 1988-02 at 2 (Chicago Board of Options Exchange II); *see also* 11 C.F.R. § 114.5.

³⁵ AO 1981-05 at 2 (Findley). By contrast, the Commission denied a request to copy names of individual contributors to send those contributors a mailing consisting of a cover letter, four-page bulletin, and portion of the Constitution, because it was accompanied by an *offer to order more bulletins and a request for donations*. AO 1995-05 at 3 (Trim).

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1 fact that their contribution was made to Trump’s campaign committee.³⁶ The tweet at issue
2 stated Castro’s opinion that it was “[s]ad to see so many San Antonians as 2019 maximum
3 donors to Donald Trump,” and it included a list of names but did not provide address or phone
4 number information.³⁷ The Complaint alleges that Castro’s use of FEC data was an invasion of
5 these donors’ privacy and created a “strong likelihood of repeated and intrusive harassment of
6 them, including but not limited to solicitations of various sorts.”³⁸

7 The Complaint does not provide any evidence or other support regarding its contention
8 that Castro’s tweet may have resulted in the named individuals being solicited, nor are we aware
9 of any such information. Critically, Castro’s tweet does not give rise to an inference of having a
10 purpose of soliciting contributions or a commercial purpose. It does not include a solicitation,
11 engage in any form of commercial marketing, or include any call to action such as encouraging
12 Castro’s followers to solicit the named individuals. Castro comments on the Trump campaign
13 and the identified individuals and businesses regarding their financial support of the Trump
14 campaign, thus providing information about the source of campaign money. It therefore appears
15 that Castro’s tweet was for political or informational purposes which, in line with the
16 Commission’s treatment of similar matters discussed above, does not contravene the Act’s sale
17 and use provision.

³⁶ *Supra* Part II.

³⁷ Castro Tweet. In prior matters, the Commission has approved the use of FEC data where there were no attached addresses or phone numbers to the names of contributors. *E.g.*, AO 2014-07 at 10 (“This conclusion is consistent with a long line of advisory opinions in which the Commission has approved proposals to sell or use information from reports filed with the Commission where that information did not include the names and addresses of individual contributors.”); AO 1995-09 at 6-7 (NewtWatch).

³⁸ Compl. ¶ 33.

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1 The Complaint relies on AO 2003-24 (NCTFK) to argue that the sale and use provision
2 generally protects contributors from receiving “repetitive and intrusive communications,”³⁹ but
3 the facts of that matter did not involve the type of use at issue here. The National Center for
4 Tobacco-Free Kids sought to use FEC data to send contributors direct mail communications,
5 urging them to contact legislators, with the possibility of “open-ended” interaction.⁴⁰ Here, as
6 discussed above, Castro’s tweet did not involve a solicitation or any call to action equivalent to a
7 solicitation, and, unlike in AO 2003-24, there are no allegations here, and we are not aware of
8 information to suggest, that anyone was solicited or even contacted because their names, taken
9 from the FEC database, appeared in Castro’s tweet.⁴¹

10 Because the available information does not indicate that FEC data was misused in
11 contravention of the Act, the Commission finds no reason to believe that Castro violated
12 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a).

³⁹ Compl. ¶ 26 (quoting AO 2003-24 at 4 (NCTFK)). The Complaint also remarks that Castro’s tweet did not contain a disclaimer regarding the sale or use of FEC data. Compl. ¶¶ 20, 31, 33. However, neither the Act nor Commission regulations require disclaimers, though they have been recommended by the Commission at times. AO 1998-04 at 4 (White Oak Techs.); AO 1988-02 at 2 (Chicago Board of Options Exchange II) (explaining that a disclaimer is not required); *see also* F&LA at 11, MUR 6334 (Aristotle Int’l, Inc.) (finding that a disclaimer was not dispositive regarding whether the purpose for using FEC data involved soliciting contributions).

⁴⁰ AO 2003-24 at 3-4, 5 (NCTFK).

⁴¹ AO 2003-24 was approved 5-1, with one Commissioner stating that he voted in favor of the opinion, thus denying the request, because there was some indication of a commercial purpose. *See* Concurring Opinion of Commissioner Scott E. Thomas at 1, AO 2003-24.

APPENDIX



Joaquin Castro ✓
@Castro4Congress

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

23.6K Retweets 47.5K Likes

Cooksey Office Edits

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Joaquin Castro MUR 7635

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”).¹ The Complaint alleges that Congressman Joaquin Castro violated the “sale and use provision” of the Federal Election Campaign Act of 1971, as amended (the “Act”),² when, shortly after the August 3, 2019, shooting in El Paso, Texas, he used information obtained from Commission disclosure reports (“FEC data”)³ in a posting on Twitter, which contained the names and employer information of individuals in the San Antonio area who made maximum contributions to Donald J. Trump’s 2020 presidential re-election campaign.⁴ The Complaint asserts that Castro’s actions subjected these donors to a “substantial likelihood of repeated solicitations and other harassing communications, intimidation, and potentially even violence.”⁵ In response, Castro acknowledges that the tweet originated from his campaign but argues that the Act’s sale and use provision places limits only with respect to using FEC data for the purpose of soliciting contributions or commercial purposes, neither of which is present here.⁶

¹ See 52 U.S.C. § 30109(a)(1).

² *Id.* § 30111(a)(4); see also 11 C.F.R. § 104.15.

³ The term “FEC data” refers to any information published in the Commission’s online database of reports and statements filed by political committees.

⁴ Compl. ¶¶ 3, 9-12 (Aug. 9, 2019).

⁵ *Id.* ¶ 19.

⁶ Resp. at 2 (Oct. 3, 2019).

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MUR 7635 (Joaquin Castro)
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1 Castro contends that the tweet was a “political communication” to which the sale and use
2 provision does not apply.⁷

3 As discussed below, the available information does not support an inference that Castro
4 used FEC data in violation of the sale and use provision. Accordingly, the Commission finds no
5 reason to believe that Joaquin Castro violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R.
6 § 104.15(a).

7 I. FACTUAL BACKGROUND

8 On August 5, 2019, two days after the shooting in a Walmart store in El Paso, Texas, the
9 campaign Twitter account of Joaquin Castro, who represents Texas’s 20th congressional district,
10 tweeted the following message:

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

14 Their contributions are fueling a campaign of hate that labels Hispanic
15 immigrants as ‘invaders.’⁸

16 The tweet also includes an image showing the names of forty-four individuals from the
17 San Antonio area along with information about their occupations and employers.⁹ Each of these
18 individuals reportedly contributed maximum amounts to Donald J. Trump for President, Inc.
19 (“DJTFP”), the authorized committee of President Trump’s re-election campaign.¹⁰ The tweet

⁷ *Id.* at 3.

⁸ Joaquin Castro (@Castro4Congress), Twitter (Aug. 5, 2019, 8:13 PM), <https://twitter.com/castro4congress/status/1158576680182718464?lang=en> (“Castro Tweet”) (accessed on December 5, 2019).

⁹ Appendix (screenshot of the Castro Tweet).

¹⁰ These individuals contributed \$5,600 to DJTFP (\$2,800 for the primary and \$2,800 for the general election). DJTFP, Amended July 2019 Quarterly Rpt. (Sept. 12, 2019); DJTFP, Amended Oct. 2019 Quarterly Rpt. (Nov. 13, 2019); *see* Price Index Adjustments for Contribution & Expenditure Limitations & Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2,504, 2,506 (Feb. 7, 2019).

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MUR 7635 (Joaquin Castro)
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1 cites the source of the contribution information as “Federal Elections [sic] Commission.”¹¹ As
2 of December 5, 2019, Castro’s tweet was re-tweeted over 23,000 times and had received over
3 47,000 likes.¹²

4 In his Response, Castro admits distributing the message via Twitter but denies that it
5 resulted in a violation of the Act.¹³ Castro argues that his use of FEC data constitutes core
6 “political speech” protected by the First Amendment.¹⁴ He contends that the tweet furthered the
7 disclosure interest underlying the Act by educating the public regarding the source of campaign
8 money.¹⁵ The Response also emphasizes that Castro’s tweet did not contain a solicitation or
9 otherwise have a commercial purpose.¹⁶

10 III. LEGAL ANALYSIS

11 The Act requires political committees to report the identification of each person whose
12 aggregate contributions exceed \$200 within the calendar year (or election cycle, in the case of an
13 authorized committee), along with the date and amount of any such contributions.¹⁷

¹¹ Castro Tweet. According to Commission disclosure reports, each of the individuals were, in fact, reported to be maximum contributors to DJTFP for the 2020 election cycle. *See supra* note 10.

¹² *Id.*

¹³ Resp. at 1. The Response states, however, that the image containing the donor information was not created by Castro or his campaign staff. *Id.* Castro does not provide any information regarding the source of the image or how it was obtained.

¹⁴ *Id.*

¹⁵ *See id.* at 2 (“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 [A]ct’s contribution limitation requirements.” (citing *Buckley v. Valeo*, 424 U.S. 1, 66-68, (1974))).

¹⁶ *Id.* at 1, 3.

¹⁷ 52 U.S.C. § 30104(b)(3)(A); *see also* 11 C.F.R. § 104.15(a). For contributions by individuals, “identification” consists of name, mailing address, occupation, and employer. 52 U.S.C. § 30101(13)(A).

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MUR 7635 (Joaquin Castro)
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1 Correspondingly, the Act requires the Commission to make political committees' reports
2 available for public inspection and copying.¹⁸

3 Under the Act's sale and use provision, information copied from the reports "*may not be*
4 *sold or used by any person for the purpose of soliciting contributions or for commercial*
5 *purposes*, other than using the name and address of any political committee to solicit
6 contributions from such committee."¹⁹ "[S]oliciting contributions includes soliciting any type of
7 contribution or donation, such as political or charitable contributions."²⁰

8 The Commission has stated that "the purpose of the prohibition is to prevent contributor
9 information from being used for commercial purposes or for making solicitations."²¹ Therefore,
10 in instances in which the use of FEC data was determined to be motivated by "political
11 purposes" or was "informational" in nature, the Commission has found there was no violation.²²

12 For example, in Advisory Opinion 1984-02 (Gramm), the Commission concluded that a
13 candidate could use contributor information contained in a non-connected political committee's
14 disclosure reports to contact and inform contributors that the non-connected committee, which

¹⁸ 52 U.S.C. § 30111(a)(4).

¹⁹ *Id.* § 30111(a)(4) (emphasis added); *see also* 11 C.F.R. § 104.15(a). The Commission's implementing regulation exempts "newspapers, magazines, books or other similar communications," as long as "the principal purpose . . . is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes." 11 C.F.R. § 104.15(c).

²⁰ 11 C.F.R. § 104.15(b).

²¹ AO 2013-16 at 6 (PoliticalRefund.org). "When determining if sale or use of information obtained from FEC disclosure reports constitutes a violation, the Commission has looked to whether the purpose was solicitation-related." Factual & Legal Analysis at 5-6, MURs 6960 & 6991 (SW Technologies, LLC) ("F&LA") (citing cases); *see, e.g.*, AO 1988-02 at 2 (Chicago Board of Options Exchange II); AO 1985-16 at 2 (Weiss).

²² *E.g.*, F&LA at 6, MURs 6053 & 6065 (HuffingtonPost.com) (approving use of FEC data by a newspaper in connection with an online database that it operated where the purpose for using contributor information appeared to be "informational"); AO 1984-02 at 2 (Gramm); AO 1995-09 at 6 (NewtWatch).

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1 had an allegedly misleading name, was not authorized.²³ As the Commission explained, “[t]he
2 prohibition is intended to prevent the use of contribution information taken from disclosure
3 documents . . . to make solicitations. It is not intended to foreclose the use of this information
4 for other, albeit *political purposes*”²⁴

5 In Advisory Opinion 1995-09 (NewtWatch), the Commission approved a political
6 committee’s proposal to operate a website upon which it would post the names, cities, and states
7 of residence, but not addresses, of contributors who gave \$200 or more to select candidates.²⁵
8 The Commission found the proposal was similar to the circumstances considered by the Second
9 Circuit in *FEC v. Political Contributions Data*, which involved compilations of FEC data
10 (names, recipients, occupations, and amounts, but not addresses) for research into issues related
11 to campaign finance.²⁶ The Second Circuit deemed the usage of FEC data permissible because it
12 was “*for informative purposes* (similar to newspapers, magazines, and books), not for
13 commercial purposes (similar to soliciting contributions or selling cars).”²⁷ Relying on this
14 holding, and further observing that the website presented “little risk, if any, of solicitation or
15 harassment of contributors,” the Commission found that the use of FEC data was not
16 prohibited.²⁸

²³ AO 1984-02 at 2 (Gramm).

²⁴ *Id.* (emphasis added).

²⁵ AO 1995-09 at 6-7 (NewtWatch).

²⁶ *Id.* at 6.

²⁷ *FEC v. Political Contributions Data*, 943 F.2d 190, 196-97 (2d Cir. 1991) (“PCD”); accord AO 1995-09 at 6 (NewtWatch).

²⁸ AO 1995-09 at 6-7 (NewtWatch).

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1 Other instances in which the Commission found that the proposed use of FEC data was
2 for informative or political purposes, and thus permissible, include: (1) informing contributors
3 about a candidate's change in position and of their right to seek a refund;²⁹ (2) notifying
4 contributors that a candidate changed party affiliation and offered to refund contributions;³⁰
5 (3) posting contribution data on bulletin boards located in an area accessible by members of
6 separate segregated fund;³¹ and (4) a candidate contacting the contributors of his opponent to
7 respond to allegedly defamatory statements made by the opponent.³²

8 Considering these authorities and precedents, the Commission finds that the available
9 information does not indicate that there is reason to believe there was a violation of the Act's
10 sale and use provision. It appears that Castro's tweet was for political or informational purposes
11 which, in line with the Commission's treatment of similar matters discussed above, does not
12 contravene the Act's sale and use provision. Because the available information does not indicate
13 that FEC data was misused in contravention of the Act, the Commission finds no reason to
14 believe that Castro violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a).

²⁹ AO 2013-16 at 4-6 (PoliticalRefund.org).

³⁰ AO 2009-19 at 3 (Club for Growth).

³¹ AO 1988-02 at 2 (Chicago Board of Options Exchange II); *see also* 11 C.F.R. § 114.5.

³² AO 1981-05 at 2 (Findley).

APPENDIX



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.’

← Tweet

WHO'S FUNDING TRUMP?

In 2019, these 44 San Antonio donors contributed the most allowable by federal law

MARY BARRETT Retired	GREGORY KOWALSKI Retired	ANGELA GOLDSBURY Retired	LARRY HUDLER Self-Employed
AUGUST H BECK III AH Beck Foundation Co	LYNN LAURENCE Jack Laurence Corp	CHRISTOPHER GOLDSBURY Silver Ventures	EDWARD B KELLEY USAA
MELAN BOWMAN Self-Employed	DANA POWELL Homemaker	WILLIAM E GREEHEY Valero Oil Company	PATRICK J KENNEDY SR Kennedy/Sutherland LLP
PHYLLIS BROWNING Phyllis Browning Co	BARRY ROBERTS Coates Energy	JACK GUENTHER Retired	SAMUEL K KNOWLTON VK Knowlton Construction
RANDY CADWALLADER Retired	VAN H ARCHER JR Self-Employed	MARK HANRAHAN Midamerican Aerospace	DONALD KUYRKENDALL Kuyrkendall & Co
HEIDI DUKE Retired	LAWRENCE BIEDENHARN Cibcom Heirs Co	BETH HARPER Retired	BALOUS MILLER Bill Miller BSO
CHRISTOPHER GILL Christopher Gill & Associates	R H BOWMAN Self-Employed	WAYNE W HARRWELL Harwell Co	HAMD R SEVEDIN US Chamber Of Corn China
BRYAN GRUNDHOEFER Bryan Grundhoefer	DREW CROSSLAND Crossland Pipeline Const	ROXANA HAYNE Entrepreneur	JOHN H SHIELDS Self-Employed
MARY JO GRUNDHOEFER Retired	BETTY EBROM Retired	JUSTIN HERRICKS Precision Pipe Rentals	EDWARD STEVES Steves And Sons, Inc
JACK GUENTHER Performance Companies	ISRAEL FOGIEL Great America Companies	LEONARD HOLZMAN Liverpool Ent	HUI SUN Information Requested
DAVID HERRMANN Retired	LARRY FRANKLIN Retired	HARPER HUDDLESTON HarperHuddleston	CHERYL TOOKE Lakeside Properties LLC

Source: Federal Elections Commission

1

Tweet your reply

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

23.6K Retweets 47.5K Likes