



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

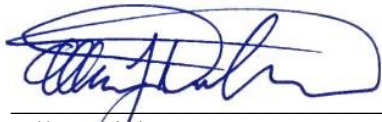
BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Joaquin Castro) MUR 7635
)

**STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON AND
COMMISSIONERS SEAN J. COOKSEY AND JAMES E. "TREY" TRAINOR, III**

In this matter, we voted to approve the Office of General Counsel's recommendations to find no reason to believe that Joaquin Castro violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a).

For the purposes of 52 U.S.C. § 30109(a)(8), we attach our proposed Factual and Legal Analysis in this matter.



Allen Dickerson
Vice Chair

December 3, 2021


Date



Sean J. Cooksey
Commissioner

December 3, 2021

Date



James E. "Trey" Trainor, III
Commissioner

December 3, 2021

Date

**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).

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

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

I. FACTUAL BACKGROUND

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

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.’⁸

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

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

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

III. LEGAL ANALYSIS

The Act requires political committees to report the identification of each person whose aggregate contributions exceed \$200 within the calendar year (or election cycle, in the case of an 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).

Correspondingly, the Act requires the Commission to make political committees' reports available for public inspection and copying.¹⁸

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

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

For example, in Advisory Opinion 1984-02 (Gramm), the Commission concluded that a candidate could use contributor information contained in a non-connected political committee's disclosure reports to contact and inform contributors that the non-connected committee, which had an allegedly misleading name, was not authorized.²³ As the Commission explained, "[t]he

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).

²³ AO 1984-02 at 2 (Gramm).

prohibition is intended to prevent the use of contribution information taken from disclosure documents . . . to make solicitations. It is not intended to foreclose the use of this information for other, albeit *political purposes . . .*”²⁴

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

Other instances in which the Commission found that the proposed use of FEC data was for informative or political purposes, and thus permissible, include: (1) informing contributors about a candidate’s change in position and of their right to seek a refund;²⁹ (2) notifying

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).

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

contributors that a candidate changed party affiliation and offered to refund contributions;³⁰ (3) posting contribution data on bulletin boards located in an area accessible by members of separate segregated fund;³¹ and (4) a candidate contacting the contributors of his opponent to respond to allegedly defamatory statements made by the opponent.³²

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

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).

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

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 Ari 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 Hair's 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 Harper/Huddleston	CHERYL TOOKE Lakeside Properties LLC

Source: Federal Elections Commission

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Tweet your reply

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

23.6K Retweets 47.5K Likes