



FEDERAL ELECTION COMMISSION
WASHINGTON, D C. 20463

Elizabeth Kingsley, Esq.
Harmon, Curran, Spielberg & Eisenberg, LLP
1726 M Street, NW, Suite 600
Washington, DC 20463

MAY 18 2010

RE: MUR 6290
Karyn Gillette

Dear Ms. Kingsley:

On August 18, 2009, the Federal Election Commission notified you of the receipt of your submission pertaining to a possible violation by Karyn Gillette of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

Upon further review of the allegations contained in your original submission, as well as supplements to that submission, the Commission, on April 27, 2010, voted to dismiss the allegations as they pertain to Karyn Gillette. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Based on the information before the Commission, it appears that Karyn Gillette solicited individuals whose names appeared on a political committee disclosure report obtained from the Commission's website. Under the Act, any information copied from reports filed with the Commission 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 a political committee to solicit contributions from such committee. 2 U.S.C. § 438(a)(4); 11 C.F.R. § 104.15(a). The Commission cautions Ms. Gillette to take steps to ensure that this activity does not occur in the future.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

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If you have any questions, please contact Margaret Ritzert, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", with a long horizontal flourish extending to the right.

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Karyn Gillette

MUR: 6290

I. GENERATION OF MATTER

This matter was generated by a *sua sponte* submission filed with the Federal Election Commission by Project Vote and Karyn Gillette.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Project Vote is a non-profit 501(c)(3) corporation that organizes and implements national voter registration and get-out-the-vote programs. According to its mission statement, the organization "works to empower and mobilize low-income, minority, young, and other marginalized and under-represented voters."¹ Its website advertises three core programs focusing on traditional voter registration drives, election administration policy, and voter registration for clients of public assistance programs. Project Vote has not registered as a political committee with the Commission.

According to the *sua sponte* submission, in fall or winter of 2007, Project Vote's former Development Director, Karyn Gillette, downloaded the names and addresses of individuals who contributed to then-presidential candidate Barack Obama from his campaign's most recent report, published on the Commission's website. Gillette Affidavit ¶ 3. In May 2008, she used a subset of this list of names and addresses in a Project Vote direct mail solicitation. Gillette Affidavit ¶ 4 and Jacquot-Devries December 10, 2009 Affidavit ¶ 3. Ms. Gillette originally estimated that Project Vote solicited approximately 1,000 individuals from this list. *Id.*

¹ Available on the Project Vote website: <http://www.projectvote.org/our-mission.html> (last visited December 3, 2009).

1 However, Project Vote later submitted a list of 7,853 names and addresses that were included in
2 the direct mail solicitation, all of which were copied from the Obama committee's disclosure
3 report. Jacquot-Devries January 8, 2010 Affidavit ¶ 6 and Exhibit 1; Telephone Conversation
4 with Elizabeth Kingsley, Counsel to Project Vote (January 6, 2010). The solicitation consisted
5 of one piece of mail per individual. *Id.*

6 Project Vote received \$4,415 in donations from those individuals whose names and
7 addresses were downloaded from the Commission's website. Jacquot-Devries January 8, 2010
8 Affidavit ¶ 9. In the *sua sponte* submission, Ms. Gillette estimated that the organization received
9 less than \$5,000 from those individuals who had been improperly solicited, although she did not
10 formally track the donations. Gillette Affidavit ¶ 4 and Telephone Conversation with Elizabeth
11 Kingsley (November 5, 2009). To support this \$5,000 estimate, Project Vote attempted to
12 reconstruct a record of the improperly-solicited donations. Project Vote compared its list of new
13 donors in 2008 to the disclosure report from which it took the names and addresses, and it
14 submitted a list indicating that Project Vote received \$3,485 from 21 improperly-solicited
15 individuals. Jacquot-Devries Affidavit ¶¶ 5, 8 and Exhibit B. However, it was not clear that this
16 survey included funds received from all improperly solicited donors.

17 In response to these concerns, Project Vote contacted its direct mail vendor to obtain the
18 original list of names and addresses included in the solicitation. Jacquot-Devries January 8, 2010
19 Affidavit ¶ 6. The vendor provided Project Vote with the original list, consisting of 7,853 names
20 and addresses. *Id.* at ¶ 6 and Exhibit 1. As all of the names on the list were taken from the
21 Obama committee disclosure report, Project Vote cross-referenced this list with its list of donors
22 from May 1, 2008 through the end of the year, and identified 39 common donors who gave a

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1 total of \$4,415 in 2008. *Id* at ¶¶ 8, 9, and Exhibit 2; Telephone Conversation with Elizabeth
2 Kingsley (January 6, 2010).

3 Ms. Gillette states that she was not aware of the prohibition on this use of Commission
4 data at the time of her actions, and that when she learned of the prohibition, she disclosed her
5 actions to Project Vote's Executive Director, Michael Slater, in July or August of 2008. Gillette
6 Affidavit ¶ 5; Slater Affidavit ¶ 2. Mr. Slater conferred with Project Vote's legal counsel and
7 learned that Ms. Gillette's actions constituted a violation of the Federal Election Campaign Act
8 of 1971, as amended ("the Act"). Slater Affidavit ¶ 3. At that time, he instructed Ms. Gillette
9 that she should not use Commission data in solicitations and should ensure that her department
10 complied with this instruction as well. Slater Affidavit ¶ 4. Ms. Gillette states that the
11 solicitations in May 2008 appeared to be the only instance of Project Vote using Commission
12 data for solicitation purposes. Gillette Affidavit ¶ 6.

13 Ms. Gillette left her position at Project Vote on April 15, 2009. Slater Affidavit ¶ 5. A
14 few weeks later – approximately ten months after learning of the violation – Project Vote
15 reported the violation in this *sua sponte* submission. When asked to explain why it delayed in
16 reporting the violation, Project Vote stated that other more urgent matters required its attention
17 until recently, when a former Project Vote employee made public accusations that the Obama
18 campaign improperly coordinated with Project Vote during the 2008 election cycle, in part by
19 giving the organization its donor list. Telephone Conversation with Elizabeth Kingsley
20 (November 5, 2009). These allegations prompted Project Vote to address its limited
21 unauthorized use of the Obama Committee's donor list by filing this *sua sponte* submission. *Id*

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B. Legal Analysis

Under the Act, any information copied from reports filed with the Commission 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. 2 U.S.C. § 438(a)(4). Commission regulations provide that the phrase "soliciting contributions" includes soliciting any type of contribution or donation, such as political or charitable contributions. 11 C.F.R. § 104.15(a), (b). The statute is violated by use of Commission data that could subject the "public-spirited" citizens who contribute to political campaigns to "all kinds of solicitations." See General Counsel's Report #3, MUR 5155 (Friends for a Democratic White House) (quoting *Federal Election Comm'n v. Political Contributions Data, Inc.*, 943 F.2d 190, 197 (2d Cir. 1991)).

Based on the information provided in its submission, it appears that Project Vote has violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a). Project Vote's then-Development Director copied names and addresses from reports filed with the Commission for the purpose of soliciting donations to Project Vote. The solicitation of donations for a non-profit 501(c)(3) organization falls within the scope of "soliciting contributions," as defined in 11 C.F.R. § 104.15(b), and within the statement from *FEC v. Political Contributions Data* and relied on by the Commission in MUR 5155. Ms. Gillette included these names and addresses in a direct mail solicitation in May 2008, and they yielded a return of \$4,415. However, it appears that Ms. Gillette acted solely in her capacity as an agent of Project Vote in violating the Act, and not in her own independent personal interest. Accordingly, the Commission dismisses any alleged violation of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a) as to Ms. Gillette as a matter

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1 of prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Ms. Gillette is
2 cautioned to ensure compliance with 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a) in the
3 future.

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