

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Project Vote (Pre-Probable Cause) MUR 6290
 Conciliation))

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on July 02, 2010, the Commission decided by a vote of 6-0 to take the following actions in MUR 6290:

1. Accept the conciliation agreement with Project Vote, as recommended in the General Counsel's Memorandum dated June 22, 2010.
2. Approve the appropriate letter.
3. Close the file.

Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

July 2, 2010
 Date

Shawn Woodhead Werth
 Shawn Woodhead Werth
 Secretary and Clerk of the Commission

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) PRE-MUR 489
Project Vote; Karyn Gillette)

CERTIFICATION

I, Darlene Harris, recording secretary for the Federal Election Commission executive session on April 27, 2010, do hereby certify that the Commission decided by a vote of 6-0, on an amended pre-meeting tally, to take the following actions in Pre-MUR 489:

MUR # 6290

1. Open a MUR.
2. Find reason to believe that Project Vote violated 2 U.S.C. § 438(a)(4) and 11 CFR § 104.15(a).
3. Dismiss, as a matter of prosecutorial discretion, any allegation that Karyn Gillette violated 2 U.S.C. § 438(a)(4) and 11 CFR § 104.15(a), and send a cautionary letter.
4. Approve the Factual and Legal Analyses, as recommended in the First General Counsel's Report dated January 28, 2010.
5.
6.
7. Approve the appropriate letters.

Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther and Weintraub

voted affirmatively for the decision.

Attest:

May 12, 2010
Date

Darlene Harris
Darlene Harris
Acting Secretary of the Commission

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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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Elizabeth Kingsley, Esq.
MUR 6290
Page 2

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 D. 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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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENT: Karyn Gillette

MUR: 6290

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8 **I. GENERATION OF MATTER**

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

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. Factual Background**

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

20 According to the *sua sponte* submission, in fall or winter of 2007, Project Vote's former
21 Development Director, Karyn Gillette, downloaded the names and addresses of individuals who
22 contributed to then-presidential candidate Barack Obama from his campaign's most recent
23 report, published on the Commission's website. Gillette Affidavit ¶ 3. In May 2008, she used a
24 subset of this list of names and addresses in a Project Vote direct mail solicitation. Gillette
25 Affidavit ¶ 4 and Jacquot-Devries December 10, 2009 Affidavit ¶ 3. Ms. Gillette originally
26 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).

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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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1 **B. Legal Analysis**

2 Under the Act, any information copied from reports filed with the Commission may not
3 be sold or used by any person for the purpose of soliciting contributions or for commercial
4 purposes, other than using the name and address of any political committee to solicit
5 contributions from such committee. 2 U.S.C. § 438(a)(4). Commission regulations provide that
6 the phrase "soliciting contributions" includes soliciting any type of contribution or donation,
7 such as political or charitable contributions. 11 C.F.R. § 104.15(a), (b). The statute is violated
8 by use of Commission data that could subject the "public-spirited" citizens who contribute to
9 political campaigns to "all kinds of solicitations." See General Counsel's Report #3, MUR 5155
10 (Friends for a Democratic White House) (quoting *Federal Election Comm'n v. Political*
11 *Contributions Data, Inc.*, 943 F.2d 190, 197 (2d Cir. 1991)).

12 Based on the information provided in its submission, it appears that Project Vote has
13 violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a). Project Vote's then-Development
14 Director copied names and addresses from reports filed with the Commission for the purpose of
15 soliciting donations to Project Vote. The solicitation of donations for a non-profit 501(c)(3)
16 organization falls within the scope of "soliciting contributions," as defined in
17 11 C.F.R. § 104.15(b), and within the statement from *FEC v. Political Contributions Data* and
18 relied on by the Commission in MUR 5155. Ms. Gillette included these names and addresses in
19 a direct mail solicitation in May 2008, and they yielded a return of \$4,415. However, it appears
20 that Ms. Gillette acted solely in her capacity as an agent of Project Vote in violating the Act, and
21 not in her own independent personal interest. Accordingly, the Commission dismisses any
22 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

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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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
Project Vote

Dear Ms. Kingsley:

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

After reviewing your initial submission, as well as supplements to that submission, the Commission, on April 27, 2010, found reason to believe that Project Vote violated 2 U.S.C. § 438(a)(4), a provision of the Act, and 11 C.F.R. § 104.15(a) of the Commission's regulations. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

On behalf of the Commission,



Matthew S. Petersen
Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT: Project Vote**

MUR: 6290

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17 focusing on traditional voter registration drives, election administration policy, and voter
18 registration for clients of public assistance programs. Project Vote has not registered as a
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21 Development Director, Karyn Gillette, downloaded the names and addresses of individuals who
22 contributed to then-presidential candidate Barack Obama from his campaign's most recent
23 report, published on the Commission's website. Gillette Affidavit ¶ 3. In May 2008, she used a
24 subset of this list of names and addresses in a Project Vote direct mail solicitation. Gillette
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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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1 **B. Legal Analysis**

2 Under the Act, any information copied from reports filed with the Commission may not
3 be sold or used by any person for the purpose of soliciting contributions or for commercial
4 purposes, other than using the name and address of any political committee to solicit
5 contributions from such committee. 2 U.S.C. § 438(a)(4). Commission regulations provide that
6 the phrase "soliciting contributions" includes soliciting any type of contribution or donation,
7 such as political or charitable contributions. 11 C.F.R. § 104.15(a), (b). The statute is violated
8 by use of Commission data that could subject the "public-spirited" citizens who contribute to
9 political campaigns to "all kinds of solicitations." *See General Counsel's Report #3, MUR 5155*
10 (*Friends for a Democratic White House*) (quoting *Federal Election Comm'n v. Political*
11 *Contributions Data, Inc.*, 943 F.2d 190, 197 (2d Cir. 1991)).

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14 Director copied names and addresses from reports filed with the Commission for the purpose of
15 soliciting donations to Project Vote. The solicitation of donations for a non-profit 501(c)(3)
16 organization falls within the scope of "soliciting contributions," as defined in
17 11 C.F.R. § 104.15(b), and within the statement from *FEC v. Political Contributions Data* and
18 relied on by the Commission in MUR 5155. Ms. Gillette included these names and addresses in
19 a direct mail solicitation in May 2008, and they yielded a return of \$4,415. Therefore, the
20 Commission opens a MUR and finds reason to believe that Project Vote violated
21 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 23 2010

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MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan
General Counsel

Stephen Gura
Deputy Associate General Counsel

BY: Mark Shonkwiler *MS*
Assistant General Counsel

Margaret Ritzert *MR*
Attorney

SUBJECT: MUR 6290 (Project Vote) - _____

RECEIVED
FEDERAL ELECTION
COMMISSION

2010 JUN 22 PM 5:10

CELA

Attached is a _____ conciliation agreement which settles Project Vote's violation of 2 U.S.C. § 438(a)(4) by soliciting donations from individuals whose names and addresses were downloaded from a disclosure report on the Commission's website. Attachment 1.

_____ The improper solicitation occurred more than two years ago and many of the donations received were in very small amounts ranging from \$25 to \$50. Project Vote is concerned that many of the refund checks either would not reach the original donors due to stale address information or that the small dollar amount checks would remain uncashed. Given the perceived burden, Project Vote prefers disgorgement.

_____ The funds in question are not "contributions" under the FECA, and thus are not governed by Commission regulations requiring refunds of contributions. See, e.g., 11 C.F.R. § 103.3(b). The purpose of this provision was to ensure that Project Vote did not benefit from its improper solicitation. The disgorgement fulfills this purpose. Therefore, in the interest of resolving this matter, we recommend that the Commission accept the attached conciliation agreement and close the file.

RECOMMENDATIONS:

1. **Accept the attached conciliation agreement with Project Vote.**
2. **Approve the appropriate letter.**
3. **Close the file.**

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