



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEB 23 10 25 AM '95

February 23, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

SUBJECT: Draft AO 1995-5

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for March 2, 1995.

Attachment

AGENDA ITEM
For Meeting of: MAR 2 1995

DRAFT

ADVISORY OPINION 1995-5

Gregory Galassini
14th District TRIM Committee
30-31 34 St. #15
Astoria, NY 11103

Dear Mr. Galassini:

This responds to your letter dated January 12, 1995, requesting an advisory opinion on behalf of the 14th District TRIM Committee ("TRIM" or "your committee").^{1/} Your request concerns application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the distribution of literature describing the voting record of a Member of Congress to persons who contributed to the Member's campaign.

According to your materials, TRIM is a "network" of committees and individuals organized "to bring about lower taxes through less government." Your committee's full name is the Tax Reform Immediately Committee for New York's 14th District, apparently in reference to the 14th Congressional District which is represented by Representative Carolyn B. Maloney.

TRIM proposes to copy names of individual contributors to Ms. Maloney's authorized campaign committees from committee reports filed with the Commission pursuant to 2 U.S.C. §434(a). Your committee proposes to send a mailing to these contributors consisting of a cover letter, a four-page TRIM bulletin, and a copy of Article 1, Section 8 of the U.S.

^{1/} TRIM is an acronym for Tax Reform Immediately.

3 Constitution, listing the areas of jurisdiction of Congress.

4 The cover letter begins by stating that the recipient's
5 name appears in the Commission's public records. It then
6 states that TRIM wants to "share" Ms. Maloney's voting record
7 on major spending bills with the recipient, and that TRIM
8 bulletins are published three times a year in all
9 Congressional districts and list the same bills for all
10 representatives. The letter concludes by stating: "The
11 purpose of TRIM is strictly educational. TRIM does not
12 endorse any candidates, Democrat, Republican, or Independent,
13 and this letter is not a solicitation, simply a part of our
14 educational program."

15 The bulletin features a number of short articles and
16 graphics focusing on proposals for government spending,
17 particularly health care proposals. The articles are
18 critical of Federal government spending and what TRIM
19 considers the excessive exercise of Federal governmental
20 power. The back page contains a chart focusing on Ms.
21 Maloney, characterized as a "report card" and entitled "How
22 did YOUR Representative Vote?" The chart lists and describes
23 (using several pejorative terms) eight "money bills" chosen
24 by TRIM because of their significant effect on taxes and
25 spending, or because they entail "unconstitutional" spending.
26 The chart lists each of Ms. Maloney's votes as being for
27 "high taxes and big government," (as opposed to "lower taxes
28 and less government").

29 The bulletin also contains an offer informing the
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3 readers that they may order more TRIM bulletins by phone
4 using a credit card or by mail using a coupon displayed
5 below. The coupon presents three options that may be checked
6 off by the reader. The first option states: "For \$10.00
7 enclosed, send me 100 TRIM Bulletins for" and then leaves
8 spaces for the state, district, and representative's name.
9 The second states: "Please have someone contact me about
10 TRIM." The third states: "Enclosed is a donation of \$__ to
11 help print and distribute TRIM Bulletins in my congressional
12 district."

13 You ask whether sending the materials described above
14 to contributor names, which are obtained from reports filed
15 with the Commission by Ms. Maloney's authorized campaign
16 committees, is a permissible use of those names.

17 The Act provides that the Commission shall make reports
18 and statements filed with it available to the public for
19 inspection and copying within 48 hours after receipt. 2
20 U.S.C. §438(a)(4). No information copied from such reports
21 or statements, however, may be "sold or used by any person
22 for the purpose of soliciting contributions or for commercial
23 purposes, other than using the name and address of any
24 political committee to solicit contributions from such
25 committee." 2 U.S.C. §438(a)(4); 11 CFR 104.15(a).

26 Based on the legislative history of the Act, the
27 Commission has previously stated that the principal purpose
28 of restricting the sale or use of information copied from
29 reports is to protect individual contributors from having
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3 their names sold or used for commercial purposes.^{2/} See
4 Advisory Opinions 1989-19, 1984-2, and 1980-101. The
5 prohibition against use for commercial purposes extends the
6 protection of individual contributors beyond the solicitation
7 for contributions to encompass commercial purposes that could
8 make contributors vulnerable to all kinds of solicitations,
9 "i.e., not merely for solicitations for 'contributions', but
10 solicitations for cars, credit cards, magazine subscriptions,
11 cheap vacations, and the like." Federal Election Commission
12 v. Political Contributions Data, 943 F.2d 190, 197 (2d Cir.
13 1991).

14 The Commission has determined that the Act permits the
15 use of other information contained in reports for
16 solicitation or for commercial purposes, e.g., the use of
17 candidate's names and addresses to solicit ads from them, the
18 solicitation of information and subscriptions from persons
19 disclosed as receiving committee expenditures, and the use in
20 candidate solicitation letters of expenditure totals obtained
21 from reports filed by other candidates. Advisory Opinions
22 1983-44, 1981-38, and 1980-78. The Commission has also
23 determined that the Act permits communications to persons
24 whose names were obtained from reports of contributors as
25 long as no solicitation or commercial purpose is involved. A
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28 ^{2/} The sponsor of the amendment creating this restriction
29 stated that the purpose was the protection of the privacy of
30 the "very public-spirited citizens" who make contributions to
campaigns. 117 Cong. Rec. 30057-58 (1971) (remarks of
Senator Bellmon).

3 candidate was permitted to contact contributors to an
4 unauthorized campaign committee to tell those contributors
5 that the committee was unauthorized and to suggest that they
6 seek refunds, but was not permitted to solicit contributions
7 to the authorized committee. Advisory Opinion 1984-2. A
8 candidate was permitted to send a letter to his opponent's
9 contributors to correct allegedly defamatory statements made
10 by his opponent. Advisory Opinion 1981-5.

11 The materials that TRIM proposes to send to contributors
12 whose names were obtained from Ms. Maloney's reports contain
13 an offer to sell TRIM bulletins to the reader and a request
14 for donations from the reader. You propose therefore to use
15 the names of contributors whose privacy is protected by 2
16 U.S.C. §438(a)(4) for purposes that fall within the
17 proscriptions of that section. The Commission concludes,
18 therefore, that your committee's proposed activity would not
19 be permissible under 2 U.S.C. §438(a)(4) and 11 CFR 104.15.^{3/}

20 You have not asked the Commission to decide whether the
21 bulletin or any part of its contents would result in an
22 expenditure that would be reportable under 2 U.S.C. 434(c),
23 or prohibited under 2 U.S.C. §441b(a), if TRIM is
24 incorporated. See 2 U.S.C. §431(17) and 11 CFR 109.1. This
25 opinion, therefore, does not address those issues.

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3/ The Commission is making a determination on the cover
29 letter, the bulletin, and the copy of Article 1, Section 8,
30 as a group. The letter was written with reference to the
materials in the bulletin, and the constitutional excerpt is
meant as a reference point for the bulletin.

3 This response constitutes an advisory opinion concerning
4 application of the Act, or regulations prescribed by the
5 Commission, to the specific transaction or activity set forth
6 in your request. See 2 U.S.C. §437f.

7 Sincerely,

8
9 Danny L. McDonald
10 Chairman

11 Enclosures (AOs 1989-19, 1984-2, 1983-44, 1981-38, 1981-5,
12 and 1980-78)
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