

BEFORE THE FEDERAL ELECTION COMMISSION

CAMPAIGN LEGAL CENTER
1101 14th Street NW, Suite 400
Washington, DC 20005
(202) 736-2200

v.

MUR No. _____

TED CRUZ FOR SENATE
Bradley Knippa, Treasurer
815 A Brazos PMB 550
Austin, TX 78701

COMPLAINT

1. Senator Ted Cruz’s campaign committee, Ted Cruz for Senate, spent up to \$18,000 on Facebook advertisements exclusively promoting Cruz’s book that urged viewers to “Order your copy today,” with a link to purchase the book from online booksellers like Amazon. According to Cruz’s financial disclosure report, he receives 15% royalties on every hardcover copy sold, and received a \$400,000 advance from the publisher. Therefore, by using campaign funds to promote purchases of his book, there is reason to believe that Ted Cruz for Senate violated the ban on the personal use of campaign funds at 52 U.S.C. § 30114(b)(1).
2. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Ted Cruz for Senate (ID: C00492785), converted campaign funds to personal use, in violation of the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et. seq.* “If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [FECA] . . . [t]he

Commission *shall* make an investigation of such alleged violation” 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

FACTS

3. Ted Cruz for Senate is Senator Cruz’s authorized campaign committee.¹
4. In September 2020, Regnery Publishing released Cruz’s book *One Vote Away: How a Single Supreme Court Seat Can Change History*.²
5. On September 24, 2020, Ted Cruz’s Facebook page began running a series of ads promoting the book and urging viewers to “Order your copy today.”³ There were a few variations of the ads, but all linked to online booksellers Amazon, Barnes & Noble, or Books-A-Million, with the text “Buy my Book.”⁴ The ads also all included the disclaimer “Paid for by Ted Cruz for Senate.”⁵ One version of the ad included a video of Cruz describing the book, and concluded with Cruz telling viewers “if you’d like to get the full story, you can go, and buy a copy, right now.”⁶ Examples of the ads included:

¹ Ted Cruz for Senate, Statement of Organization, FEC Form 1 at 2 (amended Oct. 15, 2018), <https://docquery.fec.gov/pdf/975/201810159125135975/201810159125135975.pdf>. In the 2020 cycle, Ted Cruz for Senate reported \$768,228 in disbursements that contained “digital” in their purpose description. Ted Cruz for Senate, Disbursements for “digital,” 2019-20, FEC.gov, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00492785&two_year_transaction_period=2020&disbursement_description=digital (last visited Apr. 5, 2021).

² *One Vote Away: How a Single Supreme Court Seat Can Change History*, Regnery Publishing <https://www.regnery.com/9781684511341/one-vote-away/> (last visited Apr. 5, 2021) (describing publication date as September 2020).

³ *See* Ads from Ted Cruz, Facebook Ad Library, FACEBOOK, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=69983322463&search_type=page (last visited Apr. 5, 2021) (showing 34 individual ads, under 8 parent ad ID numbers (ID: 2649652922016535, which ran Oct. 2-5, 2020 and cost \$800-\$899; ID: 1229575244092935, which ran Oct. 2-5, 2020 and cost \$3,500-\$4,000; ID: 2712898792316523, which ran Oct. 2-5, 2020 and cost \$400-\$499; ID: 747624535786747, which ran Oct. 2-5, 2020 and cost \$1,000-\$1,500; ID: 3337178476378694, which ran Oct. 2-5, 2020 and cost \$1,000-\$1,500; ID: 1343918319321996, which ran Sept. 25-30, 2020 and cost \$6,000-\$7,000; ID: 372331704147074, which ran Sept. 25-30, 2020 and cost \$1,000-\$1,500; ID: 4622366714470583, which ran Sept. 25-30, 2020 and cost \$700-\$799) directly promoting Sen. Cruz’s book *One Vote Away*, with the cumulative amount spent on the ads totaling between \$14,400 and \$17,697).

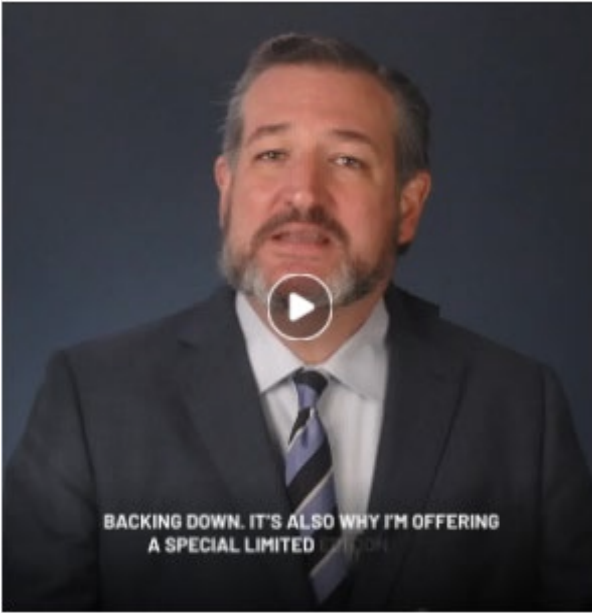
⁴ *Id.*

⁵ *Id.*

⁶ *See, e.g.*, Ted Cruz, *I have a new book coming out* (ID: 2649652922016535), Facebook Ad Library, FACEBOOK, <https://www.facebook.com/ads/library/?id=2649652922016535> (last visited Apr. 5, 2021).

Ted Cruz
Sponsored · Paid for by TED CRUZ FOR SENATE

I have a new book coming out that explains how this seat could fundamentally change American History. It's Called One Vote Away: How a Single Supreme Court Seat Can Change History. Please Order your copy today.



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6. According to Facebook’s political ad archive, the ads ran September 24, 2020 through October 5, 2020, and cost between \$14,400 and \$17,697.⁷
7. It is not known whether Ted Cruz for Senate financed similar ads on other digital platforms that have not created public archives of political advertisements.⁸

⁷ Ads from Ted Cruz, *supra* note 3.

⁸ See generally, e.g., Tony Romm, *Political ads are flooding Hulu, Roku and other streaming services, revealing loopholes in federal election laws*, WASH. POST (Feb. 20, 2020), <https://www.washingtonpost.com/technology/2020/02/20/hulu-roku-political-ads-streaming/> (describing how political committees are regularly running ads on platforms that have not created public archives of political ads); Fredreka Schouten, *Political advertising grows on streaming services, along with questions about disclosure*, CNN (June 3, 2020), <https://www.cnn.com/2020/06/03/politics/streaming-services-political-ads/index.html>.

8. In the three months following the publication of Cruz’s book, Ted Cruz for Senate paid third-party booksellers Books-A-Million and Barnes & Noble over \$154,000 for “books.”⁹ Other Facebook ads offered supporters a signed copy of the book in exchange for a contribution (while also urging viewers to “pre-order a copy today at Amazon or your local book retailer”)¹⁰ and linked to a Ted Cruz for Senate fundraising page.¹¹
9. According to Cruz’s personal financial disclosure report filed with the U.S. Senate, he entered into a royalty agreement with Regnery Publishing in March 2020, under which he would receive a \$400,000 advance, and 15% on net sales of hardcover editions, with varying royalty rates for other forms of sale.¹²

SUMMARY OF THE LAW

10. FECA provides that contributions accepted by a candidate may be used by the candidate for, *inter alia*, “otherwise authorized expenditures in connection with the campaign for Federal office of the candidate,” 52 U.S.C. § 30114(a)(1); *see also* 11 C.F.R. § 113.2(a)-(e), and that such contributions shall not be converted to the personal use of the candidate or any other person, 52 U.S.C. § 30114(b); *see also* 11 C.F.R. §§ 113.1(g), 113.2(e).
11. Campaign funds have been converted to “personal use” if the funds are used “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the

⁹ Ted Cruz for Senate, Disbursements for “books,” date range “09/01/2020” to “12/31/2020,” FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00492785&two_year_transaction_period=2020&min_date=09%2F01%2F2020&max_date=12%2F31%2F2020&disbursement_description=books (last visited Apr. 5, 2021). During this period, the committee also paid \$14.74 to Simply Books for “Books.”

¹⁰ *See, e.g.*, Ted Cruz, *I have a new book coming out* (ID: 645182589717652), Facebook Ad Library, FACEBOOK, <https://www.facebook.com/ads/library/?id=645182589717652> (last visited Apr. 5, 2021).

¹¹ Ted Cruz for Senate, *Thank you for supporting our efforts*, ANEDOT, https://secure.anedot.com/tedcruz/c9c6edf3823af63c6fafd?utm_source=Facebook_PG&utm_campaign=cruz&utm_medium=Newsfeed&utm_content=FBFR_Septemer_Bucket_Book_Offerings&fbclid=IwAR0RCODM9n92SgwphdFXTNZwjfcgVYSxSysNEIKPAkDa2h2rkjcuS76EDXg (last visited Apr. 5, 2021).

¹² The Honorable Rafael E. Cruz (Cruz, Ted), Annual Report for Calendar 2019, United States Senate Financial Disclosures (filed Aug. 13, 2020), <https://efdsearch.senate.gov/search/view/annual/aa0ff377-219a-4427-a120-54966e07c954/>.

candidate's election campaign or individual's duties as a holder of Federal office." 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g). FECA and Commission regulations provide a non-exhaustive list of uses of campaign funds that are *per se* personal use. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i). For uses of campaign funds not on this list, the Commission determines, on a case-by-case basis, whether they constitute personal use. 11 C.F.R. § 113.1(g)(1)(ii). The promotion or purchase of a candidate's book by their authorized committee is not one of the *per se* personal uses, so the Commission considers, on a case-by-basis, whether the use of campaign funds for such purposes is a prohibited personal use. *See, e.g.,* [Advisory Opinion 2014-06](#) (Ryan); [Advisory Opinion 2011-02](#) (Brown); [Advisory Opinion 2006-18](#) (Granger); [Advisory Opinion 2004-18](#) (Lieberman); [Advisory Opinion 2001-08](#) (Specter); [Advisory Opinion 1995-46](#) (D'Amato); [Advisory Opinion 1993-20](#) (Nighthorse Campbell).

12. The Commission has repeatedly concluded that "expenses associated with marketing a book that a commercial publisher has published and for which it pays royalties to the author are expenses that exist irrespective of the candidate's election campaign or duties as a holder of Federal office." [Advisory Opinion 2006-07](#) (Hayworth) at 3; *see also, e.g.,* [Advisory Opinion 2006-18](#) (Granger) at 3; [Advisory Opinion 2008-17](#) (KITPAC); [Advisory Opinion 2011-02](#) (Brown) at 5-6; [Advisory Opinion 2014-06](#) (Ryan) at 7. Therefore, if a candidate is receiving royalties on book sales, the use of campaign funds to promote the book is a prohibited personal use.
13. In limited circumstances, the Commission has permitted a candidate to include a *de minimis* amount of information about their book on an already existing campaign website, as long as doing so incurs no more than a *de minimis* additional cost. *See, e.g.,*

[Advisory Opinion 2006-07](#) (Hayworth) at 3; [Advisory Opinion 2014-06](#) (Ryan) at 7. The Commission has found that the addition of a single sentence, or, at most, two sentences of promotional material about a candidate’s book on an existing and otherwise substantial website was *de minimis* and therefore permissible. [Advisory Opinion 2006-07](#) (Hayworth) at 3; *see also* [Advisory Opinion 2011-02](#) (Brown) at 7. Promotional material that constituted between 10% and 25% of a candidate’s website or social media page would represent more than a *de minimis* amount of material. [Advisory Opinion 2011-02](#) (Brown) at 7.

14. Additionally, the Commission has permitted the use of campaign funds to purchase a candidate’s book from its publisher solely for distribution to the campaign’s contributors and supporters, provided that the candidate is not receiving royalties for those purchases. *See, e.g.,* [Advisory Opinion 2014-10](#) (Farr) at 2-3; [Advisory Opinion 2014-06](#) (Ryan) at 5; [Advisory Opinion 2011-02](#) (Brown) at 5-6; [Advisory Opinion 2001-08](#) (Specter) at 3. In Advisory Opinions where it has approved such purchases, the Commission concluded that such expenses would not exist irrespective of the campaign because the books were purchased *solely* for distribution to the campaign’s supporters. [Advisory Opinion 2014-10](#) (Farr) at 2-3; [Advisory Opinion 2014-06](#) (Ryan) at 5; [Advisory Opinion 2011-02](#) (Brown) at 5-6; [Advisory Opinion 2001-08](#) (Specter) at 3. The Commission in those Advisory Opinions *only* permitted a campaign committee to purchase the candidate’s book when the purchases were made directly from the publisher, and when the publisher had been instructed in advance to withhold royalties on those purchases or donate the royalties to charity. *See, e.g.,* [Advisory Opinion 2014-06](#) (Ryan) at 2 (“Both Ryan for Congress and Prosperity Action would purchase the book in bulk directly from the

Publisher . . . The Publisher will be instructed to exclude all associated royalties from the bulk purchases by both entities from the royalty calculation, and the Publisher will donate any royalties generated by these purchases directly to a section 501(c)(3) charitable organization that is not in any way associated with Representative Ryan or his family.”); [Advisory Opinion 2001-08](#) (Specter) at 1 (“You have been advised by the publisher that royalties due on sales of the book have now exceeded the publisher’s advance on royalties which you previously received. Moreover, the copies purchased by the Committee will not be included in any count that increases or escalates the royalty calculation (percentage earned) based on the number of copies sold (regardless of method of sale).”).

15. The Commission has concluded that even though it may be permissible for the *publisher* to donate royalties from campaign book purchases to charity, it would be an impermissible use of campaign funds for a *candidate* to receive such royalties and then donate them to charity. [Advisory Opinion 2011-02](#) (Brown) at 6 (“Senator Brown may not personally accept royalties for sales of the book to the Committee, even if he then makes charitable contributions equal to that amount.”).

TED CRUZ FOR SENATE ILLEGALLY CONVERTED FUNDS TO PERSONAL USE

16. There is reason to believe that Ted Cruz for Senate violated 52 U.S.C. § 30114(b) by using campaign funds to finance Facebook ads that promoted the sale of Ted Cruz’s book.
17. There is reason to believe Cruz receives royalties on the sale of his book, *One Vote Away: How a Single Supreme Court Seat Can Change History*: his royalty agreement

stated that he would receive a \$400,000 advance from the publisher, and a 15% royalty on all net sales of hardcover editions.¹³

18. In the weeks after Cruz’s book was released, Ted Cruz for Senate spent up to \$17,697 on Facebook ads that exclusively promoted the sale of Cruz’s book. The ads described the book, urged viewers to “Order your copy today,” and included a link to purchase the book from online booksellers next to the text “Buy my Book.”¹⁴
19. Although the Commission has permitted a candidate to include a *de minimis* amount of information about their book on an already existing campaign website for no more than a *de minimis* cost, that narrow exception does not apply here. Ted Cruz for Senate did not post a single sentence of promotional material on a campaign website at little to no cost; rather, the committee spent thousands of dollars of campaign funds on standalone ads that were entirely focused on promoting the sale of Cruz’s book.¹⁵
20. Additionally, the Commission under limited circumstances has advised that the personal use prohibition may not apply if a candidate purchases books directly from a publisher and arranges with the publisher to forgo royalties on those purchases, but such an arrangement is not possible in this scenario. If an authorized committee is buying books directly from a publisher, the publisher can track and withhold royalties on those purchases; such a calculation would appear to be impossible here, where there is no reliable way to identify how many supporters purchased books at the behest of the Cruz campaign.¹⁶ Even if Ted Cruz for Senate could track how many online purchases were

¹³ See sources cited *supra* ¶ 10.

¹⁴ See sources cited *supra* ¶¶ 6-7.

¹⁵ See sources cited *supra* ¶¶ 6-7.

¹⁶ When Ted Cruz for Senate did purchase books, it did so from third-party booksellers like Books-A-Million and Barnes & Noble, rather than directly from the publisher. See sources cited *supra* ¶ 9. The Commission’s Advisory Opinions have not addressed book purchases from third-party book sellers; such purchases would only be permissible if the books were used for distribution to the campaign’s supporters, and if Cruz did not receive royalties

made immediately after a user clicked through one of its Facebook ads, there is no way of tracking how many individuals were motivated by the ad and purchased the book at a later date or from a brick-and-mortar location.

21. Finally, the Commission has only permitted royalty-free book purchases when made *solely* for distribution to the campaign's contributors and supporters, concluding that such purchases are made only for the purpose of influencing its candidate's election and therefore are not expenses that would exist irrespective of the campaign. That's not the case here, where the Facebook ads in question had no discernible connection to Cruz's campaign or duties as an officeholder, and were solely focused on marketing Cruz's book. Such book marketing expenses exist irrespective of Cruz's campaign, and using campaign funds for such purposes constitutes personal use.
22. As a result, there is reason to believe that Ted Cruz for Senate converted campaign contributions to personal use, in violation of 52 U.S.C. § 30114(b)(1). Because there is reason to believe with respect to the campaign's Facebook ads, the Commission should investigate the full extent of the violation, and examine whether Ted Cruz for Senate ran similar ads on platforms that have not created public archives of political ads.

PRAYER FOR RELIEF

23. Wherefore, the Commission should find reason to believe that Ted Cruz for Senate has violated 52 U.S.C. § 30101, *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
24. Further, the Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations, and should seek such

on those purchases. The Commission should inquire as to whether Ted Cruz for Senate tracked the number of books purchased and communicated to Regnery Publishing that Cruz not receive royalties on those sales.

additional remedies as are necessary and appropriate to ensure compliance with the
Federal Election Campaign Act.

Respectfully submitted,

Campaign Legal Center, by
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Counsel to the Campaign Legal Center
April 7, 2021

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center

Brendan M. Fischer

Sworn to and subscribed before me this ____ day of April 2021.

Notary Public