



April 7, 2021

Chairman Christopher A. Coons
Vice Chairman James Lankford
U.S. Senate Select Committee on Ethics
220 Hart Building
United States Senate
Washington, D.C. 20510

Submitted via mailbox_office@ethics.senate.gov

Dear Chairman Coons and Vice Chairman Lankford:

Campaign Legal Center (“CLC”) respectfully requests that the U.S. Senate Select Committee on Ethics (“Ethics Committee”) review whether Senator Ted Cruz violated federal campaign finance law and Senate ethics rules by converting campaign funds to personal use. Senator Cruz’s campaign committee, Ted Cruz for Senate, spent up to \$18,000 on Facebook advertisements exclusively promoting Senator Cruz’s book and urging viewers of the ads to purchase the book from third-party sellers.¹ There is reason to believe that Senator Cruz is receiving royalties from sales of his

¹ 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. 6, 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 Senator Cruz’s book *One Vote Away*, with the cumulative amount spent on the ads totaling between \$14,400 and \$17,697). Screenshots of example ads attached as Exhibit A.

book.² Because these marketing expenses would exist irrespective of Senator Cruz’s duties as a candidate or officeholder, the use of campaign funds to market the book appears to violate the ban on the personal use of campaign funds.³

When elected officials use campaign contributions to advance their personal bottom lines, they compromise the integrity of the political process and undermine the public’s trust that their political contributions are being used legally—for campaign purposes or in connection with the officeholder’s duties, not to line the officeholder’s pockets. Senator Cruz has violated core principles of accountable government by using campaign funds to promote the sale of his book. As such, the Ethics Committee should reassure the public that the Senate enforces its well-established rules and laws that guard against corruption by conducting a swift investigation to identify and hold Senator Cruz accountable for any ethics violations.

Federal Law and Senate Rules Prohibit Personal Use of Campaign Funds

The Federal Election Campaign Act (“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,”⁴ and that such contributions “shall not be converted by any person to personal use.”⁵ 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 candidate’s election campaign or individual’s duties as a holder of Federal office.”⁶

Senate Rule 38.2 similarly prohibits conversion of campaign contributions to personal use. Rule 38.2 states that “No contribution shall be converted to the personal use of any Member or any former Member.”⁷ The Senate Ethics Manual elaborates: “Diversion of campaign funds to personal

² The Honorable Rafael E. Cruz (Cruz, Ted), Annual Report for Calendar Year 2019, U.S. Senate Financial Disclosures (filed Aug. 13, 2020), <https://efdsearch.senate.gov/search/view/annual/aa0ff377-219a-4427-a120-54966e07c954/>.

³ See 52 U.S.C. § 30114(b)(1); S. COMM. ON RULES AND ADMIN., 113TH CONG., STANDING RULES OF THE SENATE, Rule 38, available at <https://www.govinfo.gov/content/pkg/CDOC-113sdoc18/pdf/CDOC-113sdoc18.pdf#page=67>.

⁴ 52 U.S.C. § 30114(a)(1); see also 11 C.F.R. §§ 113.2(a)-(e).

⁵ 52 U.S.C. § 30114(b); see also 11 C.F.R. §§ 113.1(g), 113.2(e).

⁶ 52 U.S.C. § 30114(b)(2); see also 11 C.F.R. § 113.1(g).

⁷ STANDING RULES OF THE SENATE, Rule 38.2, *supra* note 3.

use is not only illegal under federal campaign law, but such diversion could also transform the funds into taxable personal income to the individual.”⁸

The Senate Ethics Manual refers senators to Federal Election Commission (“FEC”) regulations for guidance on what constitutes prohibited “personal use.”⁹ Those FEC regulations provide a non-exhaustive list of uses of campaign funds that are *per se* personal use,¹⁰ and uses of campaign funds not on this list are evaluated for illegal personal use on a case-by-case basis.¹¹ While the promotion or purchase of a candidate’s book by their authorized campaign committee is not one of the *per se* personal uses, the FEC, through Advisory Opinions, 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.”¹²

Senator Cruz Used Campaign Funds to Promote His Book

In September 2020, Regnery Publishing released Senator Cruz’s book, *One Vote Away: How a Single Supreme Court Seat Can Change History*.¹³ On September 24, 2020, Senator Cruz’s Facebook page began running a series of ads promoting the book and urging viewers to “Order your copy today.”¹⁴ There were a few variations of the ads, but all linked to online booksellers Amazon, Barnes & Noble, and Books-A-Million, with the text “Buy My New Book!”¹⁵ The ads also all included the disclaimer, “Paid for by Ted Cruz for Senate.”¹⁶ One version of the ad included a video of Senator Cruz describing the book, and concluded with Senator Cruz telling viewers “if you’d like to get the full story, you can go, and buy a copy, right now.”¹⁷ According to

⁸ S. SELECT COMM. ON ETHICS, 108TH CONG., SENATE ETHICS MANUAL 154 (2003), *available at* https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=F2EB14E3-1123-48EB-9334-8C4717102A6E.

⁹ *See id.* at 154, n.428.

¹⁰ *See* 11 C.F.R. § 113.1(g)(1)(i).

¹¹ *See id.* § 113.1(g)(1)(ii).

¹² *See, e.g.*, FEC Advisory Opinion 2014-06 (Ryan, et al.); FEC Advisory Opinion 2011-02 (Brown); FEC Advisory Opinion 2006-18 (Granger); FEC Advisory Opinion 2004-18 (Lieberman); FEC Advisory Opinion 2001-08 (Specter); FEC Advisory Opinion 1995-46 (D’Amato); FEC Advisory Opinion 1993-20 (Nighthorse Campbell).

¹³ *See One Vote Away: How a Single Supreme Court Seat Can Change History*, Regnery Publishing <https://www.regnery.com/9781684511341/one-vote-away/> (describing publication date as September 2020).

¹⁴ *See* Ads from Ted Cruz, Facebook Ad Library, FACEBOOK, *supra* note 1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See, e.g.*, Ads from Ted Cruz, ID: 2649652922016535, Facebook Ad Library, FACEBOOK, <https://www.facebook.com/ads/library/?id=2649652922016535>.

Facebook’s political ad archive, the ads ran from September 24, 2020 through October 6, 2020, and cost between \$14,400 and \$17,697.¹⁸

According to Senator 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 Senator Cruz would receive a \$400,000 advance, and 15% of net sales of hardcover editions, with varying royalty rates for other forms of sale.¹⁹

Senator Cruz Appears to Have Illegally Converted Campaign Funds to Personal Use

Senator Cruz’s use of campaign funds for expenses associated with marketing a book that a commercial publisher has published and for which it pays royalties to Senator Cruz appears to be illegal personal use of campaign funds, in violation of federal law, FEC regulations, and Senate rules.

First, Senator Cruz’s campaign committee paid for marketing expenses for Senator Cruz’s book, which was published by a commercial publisher. Senator Cruz’s campaign committee has, by its own admission, used campaign funds to publish Facebook ads promoting Sen Cruz’s book: all the ads included the disclaimer, “Paid for by Ted Cruz for Senate.”²⁰ The ads were clearly designed exclusively to market Senator Cruz’s book, not to promote his campaign or highlight any accomplishments he made as a senator. Viewers were marketed to as book buyers, not as potential campaign donors or constituents. They were told by Senator Cruz in one ad that “if you’d like to get the full story, you can go, and buy a copy, right now.”²¹ In fact, the ads repeatedly urged the viewer to “Buy my new book!”²² The ads linked to third-party commercial book retailers, not a campaign donation platform.

¹⁸ See Ads from Ted Cruz, Facebook Ad Library, FACEBOOK, *supra* note 1. 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. 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>.

¹⁹ Cruz Annual Report for Calendar Year 2019, *supra* note 2.

²⁰ See Ads from Ted Cruz, Facebook Ad Library, FACEBOOK, *supra* note 1.

²¹ See, e.g., Ads from Ted Cruz, ID: 2649652922016535, Facebook Ad Library, FACEBOOK, <https://www.facebook.com/ads/library/?id=2649652922016535>.

²² See Ads from Ted Cruz, Facebook Ad Library, FACEBOOK, *supra* note 1.

Second, Senator Cruz is receiving royalties for the book, and it seems unlikely that he is foregoing royalties for those purchases made in response to his campaign's Facebook ads. Thus, any purchases that resulted from the ads—either immediate purchases from the third-party retailers linked in the ads, or purchases of the book made elsewhere by buyers after viewing the marketing messages on Facebook—lined Senator Cruz's own pockets due to the royalties he stands to receive.

While there are circumstances where Senator Cruz could market or purchase his own book using campaign funds without running afoul of the law, none of them seem to apply here. He could have included a *de minimis* amount of information about his book on an already existing campaign website, as long as doing so incurred no more than a *de minimis* additional cost.²³ His campaign also could have purchased his book directly from the publisher to offer as gifts to supporters, if the publisher withheld royalties on those purchases; in that case, purchases would be made only for the purpose of influencing the candidate, i.e. Senator Cruz's election and, therefore, would not be expenses that would exist irrespective of the campaign.²⁴ But Senator Cruz did not do either of these things. Instead, Senator Cruz used campaign funds for online ads that exclusively promoted his book, and directed supporters to purchase it from third-party booksellers.

The law and Senate rules are clear that using campaign funds for expenses that would exist irrespective of the Senator's campaign or duties as a federal officeholder is prohibited. Senator Cruz's use of campaign funds to bankroll the marketing costs of a personal endeavor on its face implicates personal use: he spent thousands of campaign dollars on standalone ads that were focused entirely on promoting the sale of his book, ads that appear to have little plausible connection to his campaign or his official duties. And because Senator Cruz appears to be receiving royalties from purchases of the book that resulted from the ads, there is reason to believe that personal profit was among the particular benefits that Senator Cruz reaped here.

In using campaign funds for a personal marketing endeavor designed to sell more copies of his book, Senator Cruz appears to have broken the law and violated Senate rules. In light of these facts, Campaign Legal Center respectfully requests that you investigate whether Senator Cruz has violated FECA, FEC regulations, and Senate rules.

²³ See, e.g., FEC Advisory Opinion 2006-07 (Hayworth) at 3; FEC Advisory Opinion 2014-06 (Ryan) at 7.

²⁴ See, e.g., FEC Advisory Opinion 2014-10 (Farr) at 2-3; FEC Advisory Opinion 2014-06 (Ryan) at 5; FEC Advisory Opinion 2011-02 (Brown) at 5-6; FEC Advisory Opinion 2001-08 (Specter) at 3.

Sincerely,


_____/s/_____

Kedric L. Payne
General Counsel and Senior Director,
Ethics

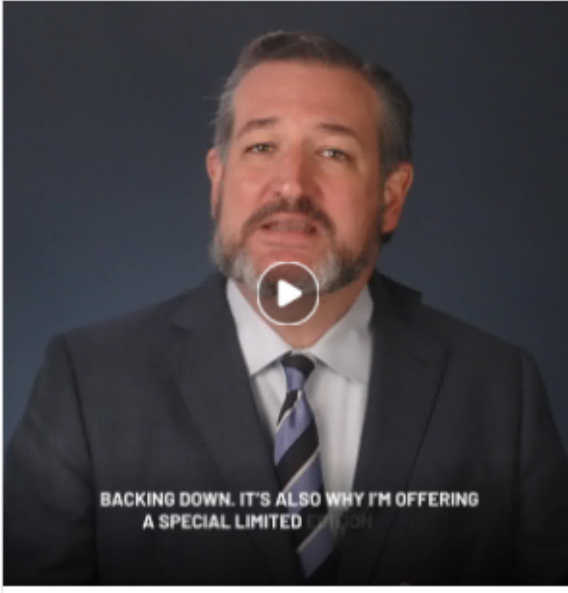
_____/s/_____

Delaney N. Marsco
Senior Legal Counsel, Ethics

Exhibit A

 **Ted Cruz**
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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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