



November 30, 2022

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

Submitted via email (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”) investigate whether Senator Ted Cruz is violating the ban on senators accepting gifts from lobbyists. Specifically, Senator Cruz announced that iHeartMedia, Inc. (“iHeart”), a registered lobbyist, is providing free production and marketing services for his podcast under an unprecedented national syndication agreement for a sitting member of Congress. The Ethics Committee should investigate whether Senator Cruz and iHeart are violating the lobbyist gift ban of the Honest Leadership and Open Government Act (“HLOGA”).

Although Senator Cruz is not the only member of Congress to host a podcast, he is the only member who is apparently violating federal law because there is substantial evidence that an illegal source finances the podcast. Moreover, iHeart lobbies on media industry bills before Senator Cruz’s committee while the podcast boasts that iHeart will “fund production [and] dump a whole bunch of money into marketing” Senator Cruz’s show.¹

The significance of Senator Cruz’s public disregard of federal law and Senate ethics rules is that it adds to the trend of senators engaging in unethical activities

¹ Nicole Silverio, *Ted Cruz Gets Syndication Deal, Expands Podcast to Three Times a Week*, Daily Caller (Oct. 10, 2022) <https://dailycaller.com/2022/10/10/ted-cruz-syndication-deal-expands-podcast-three-times-a-week/>.

without the Ethics Committee taking any action.² The lobbyist gift ban is intended to ensure that senators “exercise impartial judgement in performing their duties.”³ This foundation of the conflict of interest laws will continue to crumble if Chairman Coons and Vice Chairman Lankford ignore the most blatant violations. Voters have a right to know that the ethics officials responsible for guarding the integrity of the Senate are not asleep at their post.

Federal Law Bans Senators from Receiving Gifts from Registered Lobbyists

HLOGA amended the Standing Rules of the Senate to prohibit senators from “knowingly accept[ing] a gift from a registered lobbyist . . . or a private entity that retains or employs a registered lobbyist.”⁴ The Senate Code of Official Conduct (“Senate Rules”) define a “gift” as “any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value . . . **including gifts of services.**”⁵

Lobbyists who provide gifts in violation of the rule are subject to criminal liability. Pursuant to HLOGA, lobbyists are prohibited from making a gift to a member of Congress if they have “knowledge that the gift . . . may not be accepted by that covered legislative branch official under . . . the Standing Rules of the Senate.”⁶ Lobbyists are required to certify, in their semiannual contribution report,

² See e.g., CLC Complaint Regarding Sen. Tommy Tuberville (requesting Ethics Committee investigation into possible Stop Trading on Congressional Knowledge Act violation) (July 29, 2021), https://campaignlegal.org/sites/default/files/2021-07/Senate%20Ethics%20Complaint%20-%20Tuberville_Final%207-29.pdf; CLC Complaint Regarding Sen. Ted Cruz (requesting Ethics Committee to investigate possible violation of the personal use ban) (April 7, 2021), https://campaignlegal.org/sites/default/files/2021-04/Letter%20from%20CLC%20to%20Senate%20Ethics%20Committee%20Regarding%20Senator%20Cruz_%20April%207%202021.pdf; CLC Complaint Regarding Sen. Lindsey Graham (requesting Ethics Committee investigation into potential impermissible campaign contribution solicitation) (Oct. 15, 2020), https://campaignlegal.org/sites/default/files/2020-10/Campaign%20Legal%20Center%20Complaint%20Against%20Sen%20Graham_Oct%2015%202020.pdf; CLC Letter Regarding Senate Ethics Committee Staff (requesting information from Ethics Committee about whether it authorized senior committee staff to hold conflicting stock) (Mar. 17, 2022), <https://campaignlegal.org/document/letter-clc-senate-ethics-committee-regarding-committee-staff-stock-ban>; see also Chris Marquette, *Senate Ethics has not sanctioned a member in 14 years*, Roll Call (Feb. 1, 2021), <https://rollcall.com/2021/02/01/senate-ethics-has-not-sanctioned-a-member-in-14-years/>.

³ Select Committee on Ethics, *Senate Ethics Manual* 21 (2003), https://www.ethics.senate.gov/public/_cache/files/f2eb14e3-1123-48eb-9334-8c4717102a6e/2003-senate-ethics-manual.pdf#page=31.

⁴ Honest Leadership and Open Government Act of 2007, Pub. L. No. 110-81 § 541 (Sep. 14, 2007).

⁵ Senate Rule 35(b)(1) (emphasis added).

⁶ 2 U.S.C. §1613(a).

that they have read and understand the Senate Rules gift provisions and that they have not knowingly violated the gift rules.⁷

A lobbyist who violates the gift ban is subject to 2 U.S.C §1606, which provides that whoever knowingly violates fails to comply with the Lobbying Disclosure Act (“LDA”), may be subject to a civil fine up to \$200,000, and may face criminal penalties. Additionally, anyone who makes any materially false statements or representations to the legislative branch faces additional criminal penalties under 18 U.S.C. §1001, including a fine up to \$10,000 and up to 5 years imprisonment.⁸

Senator Cruz is Receiving Free Production and Marketing Services from a Lobbyist

Senator Cruz began a podcast a few years ago that he apparently produced himself, but he recently agreed to accept substantial funding from one of the top podcast production and marketing companies.

On January 23, 2020, Senator Cruz started a podcast called Verdict with Ted Cruz (“Verdict”).⁹ On the podcast, Senator Cruz and his co-host, Ben Ferguson, discuss the news and take listeners “behind the scenes of the political debate that defines our country.”¹⁰ Prior to the iHeart syndication deal, Verdict recorded from “a basement” in Washington, DC with co-host Michael Knowles.¹¹ According to Senator Cruz’s financial disclosure forms, he has not received any income from his podcast.

iHeart is a media company with multiple listening platforms, including podcasting.¹² It is publicly traded on NASDAQ and retains in-house lobbyists.¹³ The syndication deal between iHeart and Senator Cruz includes iHeart promoting his podcast across 850 stations, providing Verdict with a co-host, and expanding the number of episodes from one to three per week.¹⁴ According to public statements on the podcast, the funding Verdict is receiving from iHeart is enough to “fund production, dump a whole bunch of money into marketing” and “make this show sustainable . . . for the next years.”¹⁵

⁷ *Lobbying Disclosure Act Guidance*, https://lobbyingdisclosure.house.gov/amended_lda_guide.html (last revised Feb. 28, 2021).

⁸ 18 U.S.C. § 1001(a)(3).

⁹ @tedcruz, Twitter (Jan. 22, 2020), <https://twitter.com/tedcruz/status/1220069926595190792?s=20>.

¹⁰ Ted Cruz and Ben Ferguson, *Verdict with Ted Cruz*, iHeart Podcasts (last updated Nov. 28, 2022), <https://www.iheart.com/podcast/867-verdict-with-ted-cruz-56253661/>.

¹¹ Silverio, *supra* note 1.

¹² iHeartMedia, <https://www.iheartmedia.com/>.

¹³ iHeartMedia LD-2 Lobbying Report (Q4 2018), <https://lda.senate.gov/filings/public/filing/a24b9f7f-80b6-4696-b6c6-cc364869dcef/print/>.

¹⁴ *The Future of Verdict*, Verdict with Ted Cruz 6:16-8:31 (Oct. 7, 2022).

¹⁵ Silverio, *supra* note 1.

iHeart is providing these services to Senator Cruz while also being registered as a lobbyist. iHeart has been registered since 2003.¹⁶ In 2021, iHeart spent \$4,560,000 on lobbying efforts, and so far in 2022, they've spent \$3,410,000.¹⁷

iHeart's lobbying efforts include lobbying Senator Cruz's committee, the Committee on Commerce, Science, and Transportation. In their most recent lobbying report, iHeart reported lobbying on the following two bills currently before the Committee:

- S.4713, a bill that would “authorize the Federal Communications Commission to specify additional sources from which a radio station licensee must obtain information to enable the licensee to announce that a foreign governmental entity has paid for a broadcast;”¹⁸ and
- S.2427 the FAIR Contributions Act, which would require the FCC to study and report the feasibility of funding the Universal Service Fund through contributions from edge providers.¹⁹

In addition to lobbying a committee on which Senator Cruz serves, iHeart's PAC has contributed to Senator Cruz's campaign. In 2018, the iHeart's PAC contributed \$2,000 to Senator Cruz's Senate reelection campaign.²⁰

In sum, iHeart actively seeks to influence and support Senator Cruz through lobbying and campaign contributions, which is legal political activity. However, iHeart took a step too far with syndicating the podcast, which appears to violate the letter and the spirit of the well-established gift laws.

The Evidence of Senator Cruz Violating the Lobbyist Gift Ban Warrants an Ethics Committee Investigation

The Ethics Committee investigates allegations of ethics violations if it receives “a sworn complaint, or other allegation of, or information about, alleged misconduct or violations.”²¹ The facts in this matter have led us to submit this complaint alleging that Senator Cruz and iHeart have violated the gift ban.

¹⁶ Search Results for iHeart, U.S. Senate Lobbying Disclosure Act Reports, Registrations & Quarterly Activity, <https://tinyurl.com/5vpyp45> (last accessed Nov. 29, 2022).

¹⁷ *Id.*

¹⁸ S.4713 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/senate-bill/4713/committees>.

¹⁹ S.2427 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/senate-bill/2427>.

²⁰ iHeartMedia Inc PAC Contributions to Federal Candidates in 2018, Open Secrets, <https://www.opensecrets.org/political-action-committees-pacs/iheartmedia-inc/C00279216/candidate-recipients/2018> (last accessed Nov. 29, 2022).

²¹ Select Committee on Ethics, *Rules of Procedure* 25-26 (Oct. 2021), <https://www.ethics.senate.gov/public/cache/files/01f06ea2-b5e1-4887-9250-dc84bdf88cb5/2021---blue-book---rules-of-procedure.pdf>.

First, Senator Cruz and his associates have publicly admitted that iHeart is providing him with gifts of service by funding and marketing his podcast, as well as providing him with a co-host.²² There is no indication that Senator Cruz has paid fair market value or any other amount for these free services.

Second, iHeart is a registered lobbyist that is subject to the lobbyist gift ban.

Third, even if Senator Cruz argues that he does not personally receive a salary or compensation from iHeart, the gift ban still applies because he cannot receive anything of monetary value, including the production and marketing services.

Finally, even if Senator Cruz argues that the podcast is connected with his campaign committee or leadership PAC, he is still in violation of federal law. If the podcast is deemed to be campaign activity, iHeart is providing in-kind contributions directly to a campaign, which is a violation of the ban on direct corporate contributions to campaigns.²³

For this reason, not only is there overwhelming evidence that Senator Cruz violated Senate Rule 35, but iHeart may be subject to criminal liability for violating HLOGA and the LDA.

Conclusion

The facts surrounding Senator Cruz and iHeart's syndication deal suggest a clear and flagrant violation of federal law and Senate Rules. Senator Cruz is receiving enough money to continue his podcast for years and to market the podcast across 850 stations, while iHeart continues to lobby Senator Cruz's committee.

HLOGA amended the Senate Rules to prohibit lobbyists from giving senators gifts because it creates actual and perceived conflicts of interest. The American people deserve to know that their representatives are acting impartially and on the public's behalf, not in a way to benefit those who are enriching their personal financial wellbeing.

We request that the Ethics Committee demonstrate a willingness to build public confidence and signal that it does not condone overt violations of the most basic ethics rules.

²² *The Future of Verdict*, Verdict with Ted Cruz 6:16-7:8:31 (Oct. 7, 2022).

²³ Tillman Act of 1907, 34 Stat. 864 (Jan. 26, 1907).

Respectfully Submitted,

_____/s/_____

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