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SANDLER REIFF LAMB
ROSENSTEIN & BIRKENSTOCK, P.C.

1090 Vermont Ave NW, Suite 750
Washington, DC 20005
www.sandlerreiff.com
T: 202-479-1111
F: 202-479-1115

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June 27, 2022

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Lisa J. Stevenson
Acting General Counsel
Office of General Counsel
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

Re: Advisory Opinion Request

Dear Ms. Stevenson:

We write on behalf of Harley Rouda and Harley Rouda for Congress (the "Committee") to request an advisory opinion regarding repaying loans that Mr. Rouda made to the Committee in light of the U.S. Supreme Court's decision in *Federal Election Commission v. Ted Cruz for Senate* ("*FEC v. Cruz*").[1] Specifically, the Committee requests that the Commission confirm that the Committee may reinstate the loans that Mr. Rouda previously forgave, as was then required by 11 CFR § 116.11(c)(2), and repay those loans with Committee funds, either cash on hand or raised to retire the debt.

**Background**

Mr. Rouda first declared his candidacy for Congress in February of 2017. During the course of the 2017 – 2018 cycle, Mr. Rouda loaned the Committee a total of $1,625,000.00 for his primary election. Of the total loaned, the Committee repaid Mr. Rouda $472,127.93 prior to or within twenty days of the primary election pursuant to 11 C.F.R. § 116.11(c)(1). Of the remaining $1,152,872.07, Mr. Rouda forgave $907,872.07 on June 30, 2018, converting the loans to contributions pursuant to 116.11(c)(2).[2] The Committee subsequently repaid the remaining $250,000 over the remainder of 2018 and 2019 as permitted under 11 C.F.R. § 116.12(a).[3] Mr. Rouda was a Member of Congress from January 2019 through January 2021. He did not make any additional loans to the Committee in subsequent election cycles.

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[1] *Fed. Election Comm'n v. Cruz et al.*, 596 U.S. ___, 142 S. Ct. 1638 (2022) [hereinafter "*FEC v. Cruz*"].

[2] Of note, the Committee received a Request for Additional Information (RFAI) from their Reports Analysis Division Analyst instructing the Committee to "treat the portion of the aggregate outstanding balance that exceeds $250,000.00 as a contribution from the candidate, which cannot be repaid." Fed. Election Comm'n, *Req. for Addt'l Info.* at 1-2 (Sept. 27, 2018), available at https://docquery.fec.gov/pdf/782/201809270300020782/201809270300020782.pdf [hereinafter "Sept. 2018 RFAI"].

[3] *See* FEC Disbursement Search – Harley Rouda for Congress, available at https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00633982&recipient_name=harley+rouda&two_year_transaction_period=2018&two_year_transaction_period=2020&disbursement_description=loan.

Lisa Stevenson
Acting General Counsel
Federal Election Commission
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On May 16, 2022, the Supreme Court of the United States found Section 304 of the Bipartisan Campaign Reform Act of 2002 ("BCRA") to be unconstitutional thereby invalidating 52 U.S.C. § 30116(j) and its implementing regulations.[4]

**Question Presented**

In light of *FEC v. Cruz*, may the Committee reinstate the loans that Mr. Rouda previously made to the Committee and repay those loans with Committee funds either currently on hand or raised to retire the reinstated debt?

**Analysis**

On May 16, 2022, the Supreme Court found that Section 304 of BCRA unconstitutionally "burdens core political speech without proper justification" and upheld the District Court's ruling to that effect.[5] Section 304 states that any candidate who incurs loans to their campaign cannot repay the loans in excess of $250,000 with contributions made to the candidate after the election.[6] To implement this statute, the Commission promulgated regulations at 11 C.F.R. §§ 116.11 and 116.12. Under those regulations, the candidate's authorized committee had twenty days following the election to repay any loans to the candidate using contributions received prior to election day.[7] After those twenty days, any loans remaining over $250,000 had to be treated as contributions from the candidate and therefore could no longer be repaid under the regulations at issue.[8]

Mr. Rouda and the Committee complied with the statute and regulations as they stood in 2018. Mr. Rouda loaned more than $1.6 million to the Committee and forgave nearly $1 million of those loans shortly after his primary election win in 2018.[9] In fact, the Committee received a letter from the Commission instructing him to do so.[10] In subsequent years, Mr. Rouda went on to raise over $7 million,[11] none of which he was permitted to use to repay the funds he had

[4] *FEC v. Cruz*, 142 S. Ct. at 1656.

[5] *Id.*; *see also* Cruz et al. v. Fed. Election Comm'n, 542 F. Supp. 3d 1, 4-5 (D.D.C. 2021).

[6] 52 U.S.C. § 30116(j).

[7] 11 C.F.R. § 116.11(c)(1).

[8] 11 C.F.R. § 116.11(c)(2).

[9] Harley Rouda Decl.

[10] *See* Sept. 2018 RFAI at 1-2.

[11] *See* Harley Rouda for Congress – Financial Summary, available at https://www.fec.gov/data/committee/C00633982/?cycle=2020#total-raised (2019-2020 cycle) and https://www.fec.gov/data/committee/C00633982/?cycle=2022#total-raised (2021-2022 cycle).

loaned to his campaign. In light of the Supreme Court's ruling in *FEC v. Cruz*, Mr. Rouda is requesting that the Commission allow the Committee to convert the forgiven amounts back to loans and allow the Committee to repay those loans with the Committee's current cash on hand, with the option to raise funds to retire the remainder of the debt.

In making their decision, the Supreme Court noted that there is "only one permissible ground for restricting political speech: the prevention of 'quid pro quo' corruption or its appearance."[12] Further, the Court stated "[i]ndividual contributions to candidates for federal office, including those made after the candidate has won the election, are already regulated in order to prevent corruption or its appearance. Such contributions are capped at $2,900 per election, see 86 Fed. Reg. 7869, and nontrivial contributions must be publicly disclosed, see 52 U. S. C. §§30104(b)(3)(A), (c)(1)."[13]

Furthermore, and of particular importance in Mr. Rouda's case since he is no longer in office, the Court noted that "for losing candidates, they are of course in no position to grant official favors, and the Government does not provide any anticorruption rationale to explain why post-election contributions to those candidates should be restricted."[14]

But for the statute and Commission regulations, along with a letter from the Commission instructing him to do so, Mr. Rouda would not have forgiven any of his loans to the Committee immediately following his 2018 Primary Election.[15] Just as was done with the remaining $250,000, the Committee would have used campaign funds as they became available to make payments to Mr. Rouda over time. Given that the statute and its implementing regulation now have been ruled unconstitutional and there is absolutely no justifiable anticorruption rationale precluding it, the Commission should permit the Committee to convert the $907,872.07 in loans that were forgiven and treated as contributions back into loans and debts of the Committee that are eligible for repayment with existing campaign funds or funds raised to retire that additional debt.

Lastly, the Commission has a history of appropriately granting equitable relief where the "underlying act would have been lawful," including a previous instance involving candidate loans.[16] The repayment of the full amount of a candidate's outstanding loans from existing

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[12] *FEC v. Cruz*, 142 S. Ct. at 1652.

[13] *Id.*

[14] *Id.* at 1656.

[15] Harley Rouda Decl.

[16] See, e.g., Advisory Opinion 2008-20 (National Right to Life Committee, Inc.), permitting a corporation to reimburse its SSF where the corporation could have originally paid for the expense; Advisory Opinion 2007-07 (Craig for Congress), permitting a candidate to reclassify contributions he made as loans when his intent was to make loans to his campaign; Advisory Opinion 1990-27 (Connecticut Republicans), permitting the state party to

committee funds now would be lawful. Consequently, the Commission should grant equitable relief to Mr. Rouda and permit the Committee to repay the outstanding loans.

If you have any questions or need additional information in connection with this Advisory Opinion Request, please contact me by email at birkenstock@sandlerreiff.com or by phone at (202) 479-1111.

Sincerely,

Joseph M. Birkenstock
Erin Tibe
Aaron Barden
Counsel to Harley Rouda for Congress

transfer funds from its non-federal account to its federal account where the party had mistakenly deposited the funds in the wrong account.

**BEFORE THE**
**FEDERAL ELECTION COMMISSION**

**Declaration of Harley Rouda**

1. My name is Harley Rouda. I am over 21 years of age, of sound mind, and I have personal knowledge of the facts stated below.

2. I am a former Member of Congress and was a successful candidate for the U.S. House of Representatives in the 2018 election cycle.

3. In connection with that campaign, I made loans from my personal funds to my principal campaign committee, Rouda for Congress, as reflected in that committee's periodic reports to the Federal Election Commission.

4. Shortly after winning the Democratic primary election for my district, in or around June of 2018 I forgave $907,872.07 of those loans as required by existing law at the time, and as instructed by the FEC.

5. But for the legal requirements applicable at the time, I would not have forgiven those loans.

6. Instead, I would have had my committee repay those loans over time, as was done with the balance of the loan amounts that were not forgiven.

Harley Rouda
Date: 6-26-22