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April 4, 2016

VIA ELECTRONIC MAIL

Mr. Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

RE: Response of Ted Cruz for Senate and Bradley Knippa, as Treasurer, and
Senator Ted Cruz in MURs 7001, 7002, and 7003

Dear Mr. Jordan:

Through counsel, Senator Ted Cruz, Ted Cruz for Senate (the "Committee"), and Bradley Knippa, as the Committee's Treasurer, provide the following response to the complaints filed by Texans for Public Justice (MUR 7001), Campaign Legal Center (MUR 7002), and Steven Schonberg (MUR 7003) (collectively, the "Complainants").

BACKGROUND

The complaints in MUR 7001, 7002, and 7003 involve the same factual background and are based on recycled press reports. In early January 2016, a media inquiry prompted an internal review of loans originally reported by the Committee during the 2011-2012 election cycle. Based upon the results of an initial review and in the interest of providing information on the public record as soon as feasible, the Committee made a *sua sponte* supplemental filing on January 14, 2016, to provide additional information regarding such loans.¹ In short, the Committee disclosed that the underlying source of some of the loans previously disclosed as personal loans from Senator Cruz were inadvertently omitted from the Committee's FEC reports. The three complaints in the above-captioned MURs were then filed subsequently to the Committee's *sua sponte* supplemental filing.

¹ See Misc. Report to FEC, available at http://docquery.fec.gov/cgi-bin/fecimg?_201601140200001722+0.

ANALYSIS

1. The Committee Has Reported the Source of the Funds and the Commission Should Dismiss these Matters

As our January 14, 2016 public filing explained, "the underlying source of some of the loan amounts, while previously and consistently disclosed on Senator Cruz's U.S. Senate Financial Disclosure Reports, was inadvertently omitted from the Committee's Federal Election Commission reports. As disclosed on the Senator's U.S. Senate Financial Disclosure Reports, the following underlying loan information should have also been reported as follows on the Committee's reports: Goldman Sachs Margin Loan, Incurred 2012, 3% Floating Interest Rate; Citibank Line of Credit, Incurred in 2012, Prime plus floating interest Rate."

Thus, through the Committee's January 14, 2016 letter, the Committee substantially disclosed the elements of the underlying loans at issue. Notwithstanding this voluntary filing, the Reports Analysis Division subsequently sent the Committee two Requests for Additional Information apparently prompted by the Committee's own supplemental filing for reports filed four years ago.² As we noted in our timely response to the Reports Analysis Division's Requests for Additional Information, given the fact that complaints had already been filed and the confidentiality of the enforcement process, the Committee respectfully declined to provide further information on the public record as the enforcement process moves to its conclusion. With this response, however, we are pleased to continue our cooperation in concluding the enforcement process and expeditiously bringing this matter to a close.

2. The Source and Terms of the Credit Have Been Disclosed

During the 2011-2012 election cycle, Ted Cruz for Senate disclosed personal loans received by the Committee.³ Each loan was disclosed on a Schedule C for the report covering the period during which the loan was received and each report thereafter until the loan was extinguished.

As noted above and acknowledged on the public record, certain loans to the Committee were funded by either an underlying margin loan or draws on a line of credit. The terms of these instruments were properly disclosed on Senator Cruz's Senate Financial Disclosure Reports and inadvertently omitted from the Committee's Federal Election Commission reports.

² See RQ-2 dated Feb. 2, 2016 (July Quarterly Report) (http://docquery.fec.gov/cgi-bin/fecimg?_201602020300010262+0); RQ-2 dated Feb. 2, 2016 (http://docquery.fec.gov/cgi-bin/fecimg?_201602020300010272+0).

³ The Committee was the subject of a Federal Election Commission audit covering the period January 18, 2011 through December 31, 2012; the audit made a finding regarding an aspect of the loans not raised by any of the complaints, however.

As you know, Schedule C-1 provides committees an opportunity to report information relating to personal loans, including lines of credit, when a loan or line of credit is obtained and a loan to the campaign is derived from such loan or line of credit.⁴ The loan and line of credit underlying the reported loans at issue were all made in the normal course of business and in accordance with commercially reasonable terms.

The cumulative information available on the public record regarding these transactions demonstrates that the Committee has clearly met the "substantially correct" standard established in MUR 5421 for evaluating these matters.⁵ In that matter, the Commission concluded that the reporting of a loan was "accurate in most respects" and therefore deserving of the Office of General Counsel's conclusion and recommendation that it would not be an efficient use of the Commission's resources to pursue the matter.⁶

Finally, the claim in the MUR 7003 complaint that any potential violation was knowing and willful is ludicrous. As Chairman Petersen, Commissioner Hunter, and former Commissioner McGahn noted in a Statement of Reasons in MUR 6386 (Fincher), "the Commission has not demanded civil penalties for this type of reporting error [involving candidate loans with underlying sources]." In that Statement of Reasons, those Commissioners explained:

[T]he Fincher Committee was not the first to make the mistake of reasonably reporting the source of such loans as the "personal funds" of a candidate. As Counsel in the Cantwell matter noted, "the preparer [of the Cantwell Committee's reports] held a perfectly logical belief – and one supported by generally accepted accounting principles – that if the funds were obtained by the candidate personally, using the candidate's own assets, then the sources of the funds should be disclosed as the candidate."⁷

Furthermore, these Commissioners concluded that

this is an issue that trips up many candidates, especially novice candidates who may have nonprofessional staff or volunteers assisting with their administrative obligations, and it is not surprising because this regulation is counter-intuitive. In cases such as this and Cantwell, the underlying activity was wholly legal and any harm resulting from the way the Committee reported the loan was minimal and subsequently clarified.⁸

The Committee respectfully submits that, in the light of such prior treatment, a finding that any potential violation is knowing and willful is inappropriate, if not downright

⁴ 11 C.F.R. § 104.3(d)(1).

⁵ MUR 5421 (John Kerry for President), General Counsel's Report #2 at 9 (Dec. 6, 2005).

⁶ *Id.* at 11.

⁷ Statement of Reasons in MUR 6386 (Fincher), Chairman Petersen, Commissioner Hunter, and Commissioner McGahn, Sept. 15, 2011 (quoting MUR 5198 (Cantwell), Response at 7-8).

⁸ *Id.* at 7.

inconceivable given Senator Cruz's disclosure of these loans on his U.S. Senate Financial Disclosure Reports.

Indeed, the Commission has previously chosen not to impose monetary penalties at all for alleged reporting violations of this nature in a number of more significant matters, including a MUR involving an approximately \$4 million line of credit that was not properly disclosed.⁹ In the Cantwell matter, the Office of the General Counsel simply recommended sending that campaign an admonishment letter instead of a civil penalty.¹⁰

CONCLUSION

As noted in our response to the Reports Analysis Division's Requests for Additional Information, we look forward to working with the Commission to bring this matter to a close in a quick and equitable manner; however, the Respondents and the undersigned counsel need clarification as to how to best work with the Commission to do so. As you know, the Commission issued the Committee a request for additional information related to loans at issue in the above-captioned MURs, and the Committee indicated in its response that "we intend to file our responses as they relate to this matter in accordance with the agency's standard practices and procedures." The Commission, through Rhonda Gillingwater, subsequently notified the Committee on March 16, 2016, that it will be required to "provide [additional] banking documentation pertaining to the loans from the Candidate" in conjunction with a previous audit that had resulted in a "Draft Final Audit Report of the Audit Division on Ted Cruz for Senate" with no material findings.

Given that the loans at issue in the above-captioned MURs will be reviewed by the Commission's Audit Division and the fact the Committee has already explained that the underlying source of some of the loans previously disclosed as personal loans from Senator Cruz were inadvertently omitted from the Committee's FEC reports, it is our expectation that the Audit Division could ultimately make a similar finding. Therefore, we are respectfully seeking guidance from the Commission as to how the Committee can best cooperate with the Commission while the audit and the above-captioned MURs remain pending simultaneously.

I look forward to working with the Commission to conclude this matter. Please contact me directly at (512) 354-1783 or cg@gobergroup.com with any questions or with the clarification sought above.

Sincerely,



Chris K. Gober
Counsel to Ted Cruz for Senate and Bradley Knippa, as Treasurer, and Senator Ted Cruz

⁹ See MUR 5198 (Cantwell).

¹⁰ *Id.*, First General Counsel's Report at 15.