



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

VIA ELECTRONIC AND FIRST CLASS MAIL

AUG 09 2018

Chris Gober, Esq.  
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RE: MURs 7001, 7002, 7003, 7009  
Senator Rafael Edward "Ted" Cruz

Dear Mr. Gober:

The Federal Election Commission (the "Commission") notified your client, Senator Rafael Edward "Ted" Cruz, of four separate complaints (MURs 7001, 7002, 7003 and 7009) on January 22, 2016 and February 1, 4, and 16, 2016, alleging violations of the Federal Election Campaign Act of 1971, as amended.

On July 17 and 31, 2018, the Commission considered MUR 7002 but was equally divided on whether to find reason to believe Senator Ted Cruz violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9. Further, the Commission found, on the basis of the information in MUR 7002 and the other complaints, as well as information provided by Senator Cruz, that there is no reason to believe Senator Cruz violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4). The Factual and Legal Analysis, explaining the Commission's findings, is enclosed.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the file is closed.

If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Jin Lee".

Jin Lee  
Acting Assistant General Counsel

Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Senator Rafael Edward "Ted" Cruz **MURs:** 7001, 7002, 7003,  
4 Ted Cruz for Senate 7009 and 7455  
5 and Bradley S. Knippa  
6 in his official capacity as treasurer  
7

8 **I. INTRODUCTION**

9 MURs 7001, 7002, 7003 and 7009 involve allegations that Senator Rafael Edward "Ted"  
10 Cruz and Ted Cruz for Senate and Bradley Knippa in his official capacity as treasurer (the  
11 "Committee"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by  
12 misreporting that loans Cruz made to his 2012 Senate campaign were funded with Cruz's  
13 "personal funds," rather than a line of credit with Citibank and a margin loan from a Goldman  
14 Sachs brokerage account that he owned jointly with his wife. In MUR 7003, the Complaint  
15 alleges that the violations were knowing and willful. In RAD Referral 16L-09, the Reports  
16 Analysis Division ("RAD") also referred the Committee to the Office of General Counsel  
17 ("OGC") for failing to properly report those loans.<sup>1</sup>

18 The Committee and Senator Cruz ("Cruz Respondents") admit that Senator Cruz funded  
19 loans to the Committee with a line of credit from Citibank and a margin loan from a Goldman  
20 Sachs brokerage account. The Cruz Respondents also admit that the Committee failed to  
21 disclose those loan sources on the reports the Committee filed with the Commission.<sup>2</sup> The Cruz  
22 Respondents nevertheless argue that the Commission should dismiss the violations because the

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<sup>1</sup> See Memorandum from Patricia C. Orrock, Chief Compliance Officer, FEC, to Daniel A. Petalas, Acting General Counsel, FEC (June 2, 2016).

<sup>2</sup> Resp. of Cruz Respondents to MURs 7001, 7002, and 7003 (Apr. 4, 2016) ("Resp. of Cruz Respondents") at 1. The Cruz Respondents filed a single response to MURs 7001, 7002, and 7003 and asked the Commission to consider that response as their response to MUR 7009, as well as their response to the RAD Referral. E-mail from Chris Gober, counsel for the Cruz Respondents, to Jeff S. Jordan, Complaints Examination and Legal Administration ("CELA"), FEC (May 18, 2016, 12:51 EST); e-mail from Chris Gober to CELA, FEC (Dec. 20, 2016, 11:49 EST).

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1 overall reporting of the loans in Senator Cruz's 2012 Senate Financial Disclosure Report and in a  
2 Miscellaneous Text Document (Form 99) filed with the Commission in 2016, was substantially  
3 correct.<sup>3</sup>

4 The available information shows that the Committee inaccurately reported that the source  
5 of candidate loans totaling \$1,064,000 was Senator Cruz's personal funds, and that it failed to  
6 report required information about the true underlying sources of the loans. Therefore, the  
7 Commission finds reason to believe that Ted Cruz for Senate violated 52 U.S.C.  
8 § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4). The Commission also finds no reason to believe  
9 that Senator Cruz individually violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4).

10 **II. FACTS**

11 In 2012, Senator Ted Cruz was a U.S. Senate candidate in Texas and Ted Cruz for Senate  
12 was his authorized campaign committee. During the 2012 Senate campaign, the Committee's  
13 disclosure reports showed that Cruz made loans to the Committee totaling \$1.43 million from  
14 "personal funds."<sup>4</sup> Most of the loans were provided shortly before the primary election on  
15 May 29, 2012, and the primary runoff election on July 31, 2012. In a 2013 interview with the  
16 *New York Times*, Senator Cruz reportedly stated that he and his wife, Heidi Cruz, a managing  
17 director at Goldman Sachs, agreed to "liquidate" their "entire net worth" to free up the funds  
18 necessary for the campaign.<sup>5</sup>

<sup>3</sup> Resp. of Cruz Respondents at 3.

<sup>4</sup> Ted Cruz for Senate 2011 April Quarterly Report at 229, 263 (Apr. 15, 2011); 2012 July Quarterly Report at 1,069, 1,196-97 (July 15, 2012); 2012 October Quarterly Report at 1,677, 872-71 (Oct. 15, 2012).

<sup>5</sup> See Ashley Parker, *A Wife Committed to Cruz's Ideals, but a Study in Contrasts to Him*, N.Y. TIMES, Oct. 23, 2013 (attached to MUR 7003 Compl.).

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1 Senator Cruz filed his United States Senate Financial Disclosure Reports for 2012 (“2012  
2 Senate Report”) on May 15, 2013.<sup>6</sup> The 2012 Senate Report includes two loans that Senator  
3 Cruz took out in 2012: a “line of credit” from Citibank and a “margin loan” from Goldman  
4 Sachs.<sup>7</sup> Each loan is listed in the \$250,000 to \$500,000 range,<sup>8</sup> with an interest rate of “prime  
5 floating” for the Citibank loan and “3% floating” for the margin loan from Goldman Sachs.<sup>9</sup>

6 On January 13, 2016 the *New York Times* reported that the Goldman Sachs margin loan  
7 and the Citibank line of credit, which both appear on the 2012 Senate Report but not on any FEC  
8 disclosure reports, were the underlying sources of his candidate loans. On January 14, 2016 the  
9 Committee filed a Miscellaneous Text Document (Form 99) with the Commission stating that  
10 the margin loan had been “inadvertently omitted” from the relevant 2012 FEC disclosure  
11 reports.<sup>10</sup> The Complaints allege that the Goldman Sachs margin loan, which appears on the  
12 2012 Senate Report but not on the Committee’s FEC disclosure reports, was the underlying  
13 source of Cruz’s candidate loans.<sup>11</sup> The Form 99 also provided the following information on the

<sup>6</sup> See United States Financial Disclosure Report for Annual and Termination Filers for 2012.  
<https://efdsearch.senate.gov/search/view/paper/12EFF92A-4EA8-44ED-AD2E-A32202BE5771/>.

<sup>7</sup> Senator Cruz initially disclosed the 2012 loans on his 2011 Senate Financial Disclosure Report, which was  
filed on July 12, 2012, and reflects that he incurred the loans in 2012. See United States Financial Disclosure Report  
for New Employee and Candidate Reports for 2011. <https://efdsearch.senate.gov/search/view/paper/7DA1762C-66E3-4CE2-8E6E-623FE52D7809/>.

<sup>8</sup> See United States Financial Disclosure Report for Annual and Termination Filers for 2012.  
<https://efdsearch.senate.gov/search/view/paper/12EFF92A-4EA8-44ED-AD2E-A32202BE5771/>.

<sup>9</sup> See Senate Report for 2012 at 8. An amendment to the 2012 report added “on demand” under the Term of  
loan for each of the loans. See <https://efdsearch.senate.gov/search/view/paper/929B15B0-D2E8-4B91-95CC-EF4DC76E9AF8/>.

<sup>10</sup> Ted Cruz for Senate, Misc. Rpt. to FEC (Letter from Bradley Knippa, Treasurer, to RAD) (Jan. 14, 2016).

<sup>11</sup> See Mike McIntire, *Ted Cruz Didn't Report Goldman Sachs Loan in a Senate Race*, N.Y. TIMES, Jan. 13,  
2016, at 3 (attached to MUR 7001 Compl. and MUR 7009 Compl. and cited by MUR 7002 Compl. ¶ 7 n.5), Mike  
McIntire, *Ted Cruz Failed to Report a Second Campaign Loan in 2012*, N.Y. TIMES, Jan. 15, 2016 (attached to  
MUR 7003 Compl. and cited by MUR 7002 Compl. ¶ 10 n.9). The 2012 Senate Report does not reflect that assets  
were liquidated.

1 loans: “Goldman Sachs Margin Loan, Incurred 2012, 3% Floating Interest Rate; Citibank Line  
2 of Credit, Incurred in 2012, Prime plus floating Interest Rate.”<sup>12</sup>

3 Following receipt of the Form 99, RAD spoke to the Committee’s treasurer, assistant  
4 treasurer, or counsel on multiple occasions, instructed them on reporting requirements for loans  
5 funded by a financial institution, and urged them to amend the Committee’s disclosure reports to  
6 correctly disclose the required information for each loan on Schedules C (Loans) and C-1 (Loans  
7 and Lines of Credit from Lending Institutions).<sup>13</sup> The Committee initially agreed to file the  
8 amendments, requesting additional time to gather the documentation, but then told RAD that it  
9 was hesitant to do so given that complaints had been filed and an enforcement process initiated.<sup>14</sup>  
10 RAD instructed the Committee that it should still file amendments to the reports in which the  
11 loans were disclosed and sent the Committee Requests for Additional Information for the 2012  
12 July Quarterly and 2012 October Quarterly Reports, which covered the periods when the loans  
13 were incurred.<sup>15</sup> The RFAIs requested that the Committee amend its reports to provide correct  
14 loan information and submit the appropriate supporting schedules.<sup>16</sup> Though RAD only sent  
15 RFAIs on these two reports, it advised the committee to amend all reports in which the loans  
16 were disclosed.<sup>17</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> Referral at 2-3.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Senator Cruz’s amended 2012 Senate Report notes that both the Citibank Line of Credit and Goldman Sachs Margin Loan were paid off in 2012.

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1 In response to the RFAs, the Committee filed another Form 99 stating that it had  
2 “proactively provided additional information.”<sup>18</sup> On May 4, 2016, RAD advised the Committee  
3 that its response to the RFAs was inadequate and the matter would be referred for further  
4 review.<sup>19</sup> The Committee replied that it would not be filing any amendments at that time and has  
5 not done so to date.<sup>20</sup>

6 The Commission also conducted an audit of the Committee’s 2012 election cycle  
7 activity, and the Commission issued the Final Audit Report (“FAR”) on June 22, 2017.<sup>21</sup> The  
8 Commission approved a finding that the Committee “failed to properly disclose \$1,064,000 in  
9 candidate loans that originated with commercial lenders and failed to file the correct schedules C  
10 and C-1.”<sup>22</sup> The FAR determined that of the \$1.43 million in loans that the Committee reported  
11 as having come from Senator Cruz’s personal funds, he actually borrowed \$800,000 from three  
12 margin loans with a floating interest rate of 3% secured by a Goldman Sachs brokerage account  
13 he jointly held with his wife, Heidi Cruz<sup>23</sup> (\$400,000 on 5/18/12; \$250,000 on 7/23/12; and  
14 \$150,000 on 8/7/12) and \$264,000 (on 5/22/12) from a Citibank line of credit with a floating  
15 interest rate that enabled him to draw cash advances against a limit of \$275,000.<sup>24</sup> Unlike the

<sup>18</sup> *Id.* at 3; Ted Cruz for Senate, Misc. Rpt. To FEC (Letter from Bradley Knippa, Treasurer, to RAD) (Mar. 8, 2016).

<sup>19</sup> Referral at 3.

<sup>20</sup> *Id.* at 4; Resp. of Cruz Respondents at 2.

<sup>21</sup> Final Audit Report of the Commission on Ted Cruz for Senate (June 22, 2017).

<sup>22</sup> *Id.* at 3

<sup>23</sup> Senate Rpt. at 8. A margin loan is a financial instrument that allows account holders to borrow from a brokerage firm against the value of assets in their portfolio.

<sup>24</sup> FAR at 8. The FAR found that \$366,000 in loans from Senator Cruz to the Committee were from Cruz’s personal funds.

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1 Goldman Sachs margin loans, no person other than the candidate himself was liable for the  
2 Citibank line of credit.<sup>25</sup> The documentation available from the Cruzes' Goldman Sachs account  
3 indicates that the account was opened on January 17, 2006, as an account held by Senator Cruz  
4 and his wife as Joint Tenants with Rights of Survivorship. The Customer Agreement for the  
5 account states that ownership "will be held in the manner indicated in the title of the account."  
6 The available account documentation does not indicate each account holder's ownership interest  
7 in the account.

### 8 III. LEGAL ANALYSIS

#### 9 A. Alleged Failure to Disclose Required Information about Candidate Loans

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11 The candidate's principal campaign committee must report all loans derived from an  
12 advance on the candidate's brokerage account, credit card, home equity line of credit, or other  
13 line of credit available to the candidate.<sup>26</sup> The disclosure report must identify the person who  
14 makes a loan to the committee during the reporting period, together with the identification of any  
15 endorser or guarantor of such loan, and the date and amount or value of such loans.<sup>27</sup>  
16 Commission regulations provide that a committee must disclose information about loans from  
17 the candidate to the campaign on Schedules C and C-1.<sup>28</sup> If the candidate finances a loan to the  
18 campaign with an underlying loan or line of credit, section 104.3(d)(4) of the Commission's  
19 regulations requires the committee to disclose on Schedule C-1, among other things: (1) date,

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<sup>25</sup> Citibank, N.A., Revolving Credit/Time Note, Variable Rate (Individuals/Lawyers) at 1, dated May 11, 2012 (signed by Rafael E. Cruz) (providing that the rate of interest shall be the highest of: (1) Citibank's base rate; (2) the Federal Funds Rate plus 2.0%; or (3) the LIBOR rate plus 2.0%). Cruz's 2012 Senate Disclosure stated only that the line of credit had a "prime - floating" interest rate. Senate Report at 8.

<sup>26</sup> 11 C.F.R. § 100.83(e).

<sup>27</sup> See 52 U.S.C. § 30104(b)(3)(E). 11 C.F.R. § 104.3(a)(4)(iv).

<sup>28</sup> 11 C.F.R. § 104.3(d).

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1 amount, and interest rate of the loan or line of credit; (2) name and address of the lending  
2 institution; and (3) types and value of collateral or other sources of repayment that secured the  
3 loan.<sup>29</sup>

4 Although Senator Cruz used funds borrowed from Citibank and Goldman Sachs to make  
5 loans totaling \$1,064,000 to his 2012 Senate campaign, the Committee inaccurately reported on  
6 Schedule C that he made the loans to the Committee with his “personal funds,” and failed to file  
7 a Schedule C-1 to properly disclose the details of the margin loan and line of credit. Thus, the  
8 Committee did not comply with the reporting requirements of the Act or the Commission’s  
9 regulations.

10 The Cruz Respondents admit that the Committee failed to provide the required  
11 information regarding the loans and concede that they have yet to amend their reports.<sup>30</sup> They  
12 argue, however, that the matter should be dismissed because the public record has been corrected  
13 as a result of the information disclosed in the 2012 Senate Report filed in May 2013, and in the  
14 Form 99 filed in January 2016.<sup>31</sup> Respondents specifically cite to MUR 5421 (John Kerry for  
15 President) and argue that their reporting meets the “substantially correct” standard set forth in  
16 that matter.<sup>32</sup>

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<sup>29</sup> *Id.* § 104.3(d)(4).

<sup>30</sup> As mentioned above, Respondents explain that the Committee refrained from submitting amendments because “the complaints [have] already been filed and [given] the confidentiality of the enforcement process.” Resp. of Cruz Respondents at 2.

<sup>31</sup> *See id.*

<sup>32</sup> *Id.*; *see also* Second General Counsel’s Rpt. at 9, MUR 5421 (John Kerry for President) (concluding that the reporting of the loan in question was substantially correct because the reporting of the loan was “accurate in most respects”). Respondents also cite MUR 6386 (Steve Fincher for Congress) for the proposition that a civil penalty is unwarranted for “this type of reporting error” for a legal loan with subsequent clarification. Resp. at 3. But, this matter is distinguishable from MUR 6386, where the Commission could not agree as to whether it should impose a civil penalty after the committee *had* amended its report to disclose the required loan information. *See* First General Counsel’s Report at 6, MUR 6386; Certification, MUR 6386 (June 4, 2011). *See also* MUR 5198 (Cantwell) (no civil penalty where Committee amended reports prior to initiation of matter).

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1 Schedule C-1, including: (1) the dates and amounts of the loans; and (2) the types and value of  
2 collateral or other sources of repayment that secured the loan.<sup>36</sup>

3 Therefore, the Commission finds reason to believe that Ted Cruz for Senate violated  
4 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4) by failing to disclose accurate  
5 information about \$1,064,000 in candidate loans in its initial filings for the loans on the 2012  
6 July and October Quarterly Reports and in subsequent reports detailing the loans. Further,  
7 because the complaints did not articulate any factual or legal basis for finding Senator Cruz  
8 personally liable for the reporting violation, and the Commission sees no basis under the facts of  
9 this case to hold the candidate individually responsible for filing accurate and complete  
10 disclosure reports, the Commission finds no reason to believe that Senator Cruz violated  
11 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4).<sup>37</sup>

12 The Commission does not find that the Committee's reporting violations are knowing and  
13 willful as alleged by the Complaint in MUR 7003. That Complaint does not allege sufficient  
14 facts to demonstrate that the Respondents intentionally failed to disclose the underlying sources

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<sup>36</sup> See 11 CFR. § 104.3(d)(4) (setting forth information required on schedule C-1).

<sup>37</sup> See *e.g.*, Factual & Legal Analysis at 3, MUR 6066 (Hartley-Nagle for Congress, *et al.*) (finding no reason to believe that a candidate violated alleged reporting violations because Complainant did not articulate any factual or legal basis for finding the candidate personally liable).

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1 despite a known legal obligation.<sup>38</sup> Further, it does not appear that the Senator “secretly”<sup>39</sup> took  
2 out the loans from Goldman Sachs and Citibank as alleged, given that he disclosed them on his  
3 Senate Financial Disclosure Report.

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<sup>38</sup> A violation of the Act is knowing and willful when the “acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976). This does not require proving knowledge of the specific statute or regulation the respondent allegedly violated. *See United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that her conduct was unlawful, not knowledge of the specific statutory provision violated). Rather, it is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was unlawful.” *Id.* (internal quotation marks omitted). This awareness may be shown through circumstantial evidence, such as a “defendant’s elaborate scheme for disguising” her actions, or other “facts and circumstances from which the jury reasonably could infer [the defendant] knew her conduct was unauthorized and illegal.” *United States v. Hopkins*, 916 F.2d 207, 213-15 (5th Cir. 1990) (internal quotation marks omitted). As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

<sup>39</sup> MUR 7003 Compl. at 1.

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