

RECEIVED  
 FEDERAL ELECTION  
 COMMISSION  
 IN AND BEFORE THE  
 2016 JUN 20 PM 3:14  
 FEDERAL ELECTION COMMISSION

RECEIVED  
 FED MAIL CENTER  
 2016 JUN 20 PM 1:54

In re: J. Keet Lewis, Respondent )  
 )  
 )

OFFICE OF GENERAL  
 COUNSEL

MUR 7048

## RESPONSE TO COMPLAINT

---

This is filed by and on behalf of Mr J. Keet Lewis, an individual, (“Respondent” or “Mr. Lewis”) in response to the Complaint filed by the Democratic Party of Texas (“Complainant”) on April 25, 2016 (“the Complaint”). Respondent affirmatively states that he has not violated the law and the Complaint should be dismissed.

### Allegations of the Complaint

The Complaint is based on a number of faulty and incorrect assertions which render the allegations false and the Complaint baseless. The Complaint wrongly asserts that Mr. Lewis was the national Co-Chairman of the Ted Cruz for President campaign during the 2015-16 election cycle (“Cruz Campaign”), that Mr. Lewis was an agent of the Cruz Campaign and that Mr. Lewis solicited funds for Stand for Truth, an independent expenditures only committee. *See Complaint, pp. 1, 2.* None of those allegations are correct. The Complaint must, therefore, be dismissed.

### Factual Background:

**1. Mr. Lewis was solely a volunteer fundraiser for the Cruz Campaign, nothing more.** Mr. Lewis, contrary to the assertions in the Complaint, was not the national co-chairman of the Cruz campaign; rather, he was a volunteer fundraiser for the Cruz Campaign, and had no other functioning role with the campaign<sup>1</sup> and had no authority, express or implied, to act for or on behalf of the Cruz Campaign. *See Affidavit of Mr. J. Keet Lewis.*

Even the sole exhibit provided by Complainant to the Commission reflects that Mr. Lewis and his wife were “co-hosts” of a Cruz Campaign fundraising event. *See Exhibit A, Attached to Complaint.* The Exhibit does not identify Mr. Lewis as a national co-chairman of the Cruz Campaign, because he was not the national co-chairman of the Cruz Campaign.

---

<sup>1</sup> Mr. Lewis had been announced as Co-Chairman of a Small Business for Cruz Coalition, but the group never materialized or engaged in any activities *See Affidavit of Mr. J. Keet Lewis.*

2. **Mr. Lewis provided an informational response to questions at a Cruz Campaign event, but did *not* solicit contributions for a superPAC.** Mr. Lewis was the volunteer emcee at a Cruz Campaign fundraising event on December 30, 2015. During the course of the evening, several attendees asked for information about permissible ways to assist Sen. Cruz's campaign. Mr. Lewis's brief reference to Stand for Truth was in response to those questions and requests for information. Mr. Lewis did not solicit contributions for the SuperPAC, nor did he ask people to contribute. Mr. Lewis simply directed interested people to materials where they could obtain more information. *See* Affidavit of Mr. J. Keet Lewis.

3. **The December 30, 2015 event was solely a Cruz Campaign fundraising event, and not a joint fundraising event.** As stated by Mr. Lewis, he did not solicit contributions to Stand for Truth nor, to his knowledge, were any contributions made to Stand for Truth or any other SuperPAC at the December 30, 2015 event. Accordingly, no joint fundraising occurred and no joint fundraising apparatus was triggered or required. *See* Affidavit of Mr. J. Keet Lewis.

### **Legal Analysis:**

The Complaint falls short of all legal requirements for the finding of a violation of the Federal Election Campaigns Act, Title 52 United States Code, Subtitle III, Chapter 301, Subchapter I ("the Act") and the regulations promulgated thereunder by the Federal Election Commission ("FEC" or "the Commission").

There are three specific alleged violations of the Act, none of which are established by the Complaint, because the factual allegations are incorrect and do not meet the legal tests required by the Act.

1. **Mr. Lewis was not an agent of the Cruz Campaign.** As Mr. Lewis states in his affidavit, the allegations that he was an 'agent' of the Cruz Campaign are false. Mr. Lewis was one of many volunteer fundraisers for the campaign, but was cloaked with no actual or express authority to act for or on behalf of the Cruz Campaign. The FEC's regulations promulgated in the wake of the statutory changes in the Bipartisan Campaign Reform Act of 2002 ("BCRA") specifically noted that 'apparent' authority does not confer agency status on an individual, such as to make a federal candidate or his/her campaign committee liable for the acts of a third party.

In the *Explanation and Justification* of the FEC's post-BCRA regulations, the Commission noted that "the definition of 'agent' in the final regulations does not incorporate apparent authority. '[A]pparent authority to do an act is created as to a third party by written or spoken words or by any other conduct of the principal, which, reasonably interpreted, causes the third party to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.'" (citing) Restatement (Second) of Agency. 27." *Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money. Final Rule.* 67 Fed. Reg. 49082 (July 29, 2002)<sup>2</sup>

---

<sup>2</sup> The definitions published by the Commission in its Final Rules on July 29, 2002 have been the subject of ongoing litigation in *Shays and Meehan v. Federal Election Commission*, 414 F. 3d 76 (D.C.

The Complaint cites to no evidence that Mr. Lewis was possessed of express or implied authority to act as an agent for the Cruz Campaign, because no such evidence exists. Apparent authority is not sufficient to impose legal liability on the Cruz Campaign or on Mr. Lewis for violation of 11 C.F.R. §300.2(b)(3), based on the facts of this matter.

**2. Mr. Lewis did not solicit funds for Stand for Truth or other superPAC at the December 30, 2015 Cruz Campaign event.** Providing information in response to questions from citizen supporters about legally permissible ways to participate in a presidential campaign does not constitute a ‘solicitation’. The regulations at 11 C.F.R. §300.2(m) define solicit for these purposes to mean “... to ask, request or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.”

In this instance, Mr. Lewis believed he was providing information only, which constitutes neither a solicitation nor a ‘directing’ of a contribution. “Merely providing information or guidance as to the requirements of particular law is not solicitation or direction.” 67 Fed. Reg. 49087 (July 29, 2002)

Further, Mr. Lewis did not explicitly or implicitly ‘ask, request, or recommend’ that the attendees at the Cruz Campaign event contribute to Stand for Truth. He provided brief information as to what Stand for Truth could legally accept, but he did not ask the attendees to make such contributions. He *did* specifically ask those in attendance to contribute the maximum of \$2700 to the Cruz Campaign, which was the only solicitation he made or intended to make.

Mr. Lewis has specifically testified that he did not intend to ‘solicit’ contributions to Stand for Truth at the Cruz Campaign event and does not believe that he made a solicitation. *See* Affidavit of Mr J. Keet Lewis.

As the Commission noted in the *Explanation and Justification* for the BCRA regulations defining solicitation “...The Commission is concerned that the ability to impute intent could lead to finding a violation when the individual who made the comment may have had no intention whatever of soliciting a contribution. Such a result is not dictated by BCRA’s statutory language and would raise constitutional concerns.” *Id.*

### **Conclusion**

The Complaint fails to state facts that give rise to a violation of the Act. Under the applicable law and regulations, applied to these facts, there is no reason to believe that a violation has occurred, and the Complaint should be dismissed.

---

Cir. 2005), including a challenge to the definitions of “solicit” and “agent”. The *Explanation & Justification* regarding the definitions for this fact situation are still applicable and relevant.

Respectfully submitted,

A handwritten signature in black ink that reads "Cleta Mitchell". The signature is written in a cursive style with a large, prominent initial "C".

Cleta Mitchell, Esq.  
Counsel for J. Keet Lewis  
FOLEY & LARDNER, LLP  
3000 K Street, NW #600  
Washington, DC 20007  
(202) 295-4081  
[cmitchell@foley.com](mailto:cmitchell@foley.com)

June 17, 2016

**AFFIDAVIT OF J. KEET LEWIS**

I, J. Keet Lewis, do hereby affirm and state the following:

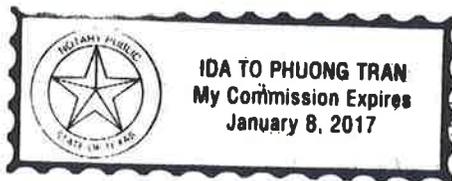
1. I am an adult citizen and a lawful resident of the State of Texas.
2. Between 2015 and 2016, I served as one of many volunteer fundraisers for the Ted Cruz for President campaign.
3. I was not the national co-chairman of the Cruz Campaign. There was a National Chairman and that was Chad Sweet.
4. I was named to co-chair a Small Business for Cruz Coalition, but after the group was announced, I am not aware of any activities that it did, not even one group/coalition phone call.
5. I was not an agent of the campaign and nor did I have any authority or legal responsibility for any decision-making with respect to any aspect of the campaign.
6. I was the volunteer emcee at a fundraising event on December 30, 2015 for the Ted Cruz for President campaign, which is the event referenced in the Texas Democratic Party's complaint ("the Event").
7. The only entity for which funds were raised at the Event were individual contributions in support of the Ted Cruz for President campaign.
8. I did not solicit contributions for Stand for Truth or any other SuperPAC at the Event.
9. To the best of my knowledge, there were no funds raised or contributed to Stand for Truth or any other SuperPAC at the Event.
10. My job as emcee of the Event was to try to manage an overflow crowd of attendees.
11. My mention of the Stand for Truth SuperPAC was simply to point out information while I was waiting for the main speakers to approach the microphone.
12. Some people at the Event had asked me what the guidelines were regarding ways to support Sen. Cruz's campaign and I was providing information as to the legally permissible ways to participate, as I understood them as a lay person.
13. I did not consider my remarks at the Event to be a 'solicitation' for funds, but rather were informational.
14. I am an experienced volunteer fundraiser and if I had intended to solicit contributions for Stand for Truth, I would have made different statements, a clear call to action/commitment during and at the end of the Event, as well as conducted follow-up. I did none of those things.
15. My comments were an informational response to questions from several attendees and not a solicitation.



I affirm and state that the above and foregoing statements are true and correct to the best of my knowledge and belief.

  
J. Keet Lewis

J. Keet Lewis appeared before me this 16<sup>th</sup> day of June, 2016 and affirmed under penalty of perjury that the above and foregoing statements are true and correct to the best of his knowledge and belief.



  
\_\_\_\_\_  
Notary Public

S E A L

My Commission Expires: Jan 8, 2017