

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR: 7048

DATE COMPLAINT FILED: April 25, 2016

DATE OF NOTIFICATIONS: April 27, 2016

DATE OF LAST RESPONSE: June 20, 2016

DATE ACTIVATED: August 4, 2016

EXPIRATION OF SOL: December 30, 2020

ELECTION CYCLE: 2016

COMPLAINANT:

Crystal K. Perkins, Texas Democratic Party

RESPONDENTS:

Cruz for President and Bradley S. Knippa in his
official capacity as treasurer
Stand for Truth, Inc. and D. Eric Lycan in his
official capacity as treasurer
Senator Rafael Edward “Ted” Cruz
J. Keet Lewis

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30116

52 U.S.C. § 30118

52 U.S.C. § 30125(e)

11 C.F.R. § 102.17

11 C.F.R. § 300.2(b)

11 C.F.R. § 300.2(m)

11 C.F.R. § 300.60

11 C.F.R. § 300.61

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Cruz for President and Bradley S. Knippa in his official capacity as treasurer (the “Committee”) and Senator Ted Cruz, through an agent, J. Keet Lewis, solicited unlimited and corporate contributions to Stand for Truth, Inc. and D. Eric Lycan in his official capacity as treasurer (the “Super PAC”), an independent-expenditure-only political

committee, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations. The Complaint further alleges that the Committee and the Super PAC violated Commission regulations by failing to establish a joint fundraising committee.

Based on the available information, we recommend that the Commission find reason to believe that the Committee, through its agent Lewis, solicited nonfederal funds in violation of 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61, that the Commission enter into pre-probable cause conciliation with the Committee, and that the Commission take no action at this time as to Lewis and Cruz regarding the solicitation. Finally, we recommend that the Commission find no reason to believe that the Committee and the Super PAC improperly failed to establish a joint fundraising committee in violation of 11 C.F.R. § 102.17.

II. BACKGROUND

In March 2015, Cruz filed a Statement of Candidacy for President,¹ designating the Committee as his principal campaign committee.² Lewis “served as one of many volunteer fundraisers for the Ted Cruz for President campaign” during the period “[b]etween 2015 and 2016.”³ The Super PAC filed a Statement of Organization as an independent expenditure-only political committee (“IEOPC”) in November 2015.⁴

¹ Rafael Edward “Ted” Cruz, FEC Form 2 (Mar. 23, 2015), at 1, <http://docquery.fec.gov/pdf/891/15031403891/15031403891.pdf>.

² Cruz for President, FEC Form 1 (Mar. 23, 2015), at 2, <http://docquery.fec.gov/pdf/894/15031403894/15031403894.pdf>.

³ Lewis Resp., Lewis Affidavit (“Lewis Aff.”) ¶ 2.

⁴ Stand for Truth, Inc., FEC Form 1 (Nov. 18, 2015), at 2, <http://docquery.fec.gov/pdf/215/201511189003366215/201511189003366215.pdf>.

The Committee sponsored an official fundraiser on December 30, 2015.⁵ Lewis, who the Complaint alleges was a “National Co-Chair” of and bundler for the Committee,⁶ served as a co-host and the emcee of the event.⁷ According to an audio recording of Lewis’s remarks as emcee, he told the crowd that an “unlimited table” for “the Super PAC, Stand for Truth” was present and able to accept “corporate dollars.”⁸ The recording reflects that Lewis referenced the Super PAC immediately after soliciting a contribution for the campaign:

[Unintelligible] . . . 2700 per person, and then 5400 for the general. If you hit your max, we have a table for you that is the unlimited table. It can take corporate dollars, it can take partnership dollars and that’s the Super PAC Stand for Truth, so pick up some of that information. The method to our madness is this: you max out and then get engaged in the Super PAC. . . . It’s totally separate from . . . the campaign. . . . We want to make it a great night. . . .⁹

Cruz, the Committee, and Lewis maintain that the Complaint incorrectly labeled Lewis as National Co-Chair of Cruz’s campaign generally; they assert that Lewis was merely National Co-Chair of the campaign’s Small Business for Cruz Coalition, and Lewis asserts that he is not aware of the group engaging in any activities after its formation.¹⁰ Notwithstanding the dispute

⁵ Compl. at 2.

⁶ *Id.*

⁷ *Id.* Ex. A (placard noting “a special thanks” from “Heidi & Ted Cruz” to a list of co-hosts, including Lewis and his wife); Lewis Aff. ¶ 6 (asserting that Lewis was “the volunteer emcee” of the event).

⁸ See Compl. at 3 n.5 (citing Arthur Grayson, *Ted Cruz Fundraiser*, YOUTUBE (Apr. 6, 2016), <https://www.youtube.com/watch?v=N3dFpzANr5w&feature=youtu.be> (“YouTube Video”)). Although the YouTube video contains only audio and not visual elements, Lewis admits in his response that he spoke about the Super PAC in his role as emcee at the fundraising event. See Lewis Aff. ¶ 11.

⁹ YouTube Video; see also Committee and Cruz Resp. at 4 (transcribing recording of event). The YouTube video also reveals that, just after discussing the Super PAC, Lewis told the event audience that in “just a minute we’ll bring up Ted and Heidi” Cruz. YouTube Video; see also Compl. at 2-3 (transcribing recording of video).

¹⁰ Committee and Cruz Resp. at 2-3; Lewis Aff. ¶¶ 3-4.

over Lewis's title, Lewis describes himself as a fundraiser for the Committee,¹¹ and he acknowledges that individual contributions to the Committee were raised at the event in question.¹²

The respondents also dispute both that Lewis's words constitute a solicitation and that Lewis was an agent for Cruz, the Committee, or the Super PAC. Lewis asserts that he "was not an agent of the campaign and nor did [he] have any authority or legal responsibility for any decision-making with respect to any aspect of the campaign," and he acted as a "volunteer emcee" at the event where his "job . . . was to try to manage an overflow crowd of attendees."¹³ Lewis attests that he "did not consider [his] remarks at the Event to be a 'solicitation' for funds, but rather were informational" in response to "questions from several attendees."¹⁴ Moreover, he writes that as an "experienced volunteer fundraiser," he would have made "a clear call to action/commitment" and "conducted follow-up" if he intended to make a solicitation, which he asserts he did not do.¹⁵

III. ANALYSIS

The Complaint alleges that Lewis, the Committee, and Cruz impermissibly solicited nonfederal funds, and that the Committee and the Super PAC failed to properly establish a joint fundraising committee. This report addresses each alleged violation in turn.

¹¹ Lewis Aff. ¶ 2.

¹² *Id.* ¶ 7.

¹³ *Id.* ¶¶ 5-6, 10; *see also* Committee and Cruz Resp. at 3 (implying that Lewis was not an agent because he was a volunteer); Super PAC Resp. at 1 (asserting that Lewis was a volunteer for the Committee who, "[a]t no time was ... an agent, employee, volunteer, or otherwise in any way affiliated with" the Super PAC).

¹⁴ Lewis Aff. ¶¶ 12-13, 15.

¹⁵ *Id.* ¶ 14; *see also* Committee and Cruz Resp. at 4 (asserting Lewis's statement was "not a 'clear message' of exhortation" for a contribution).

A. There Is Reason to Believe that the Committee Violated the Ban on Soliciting Nonfederal Funds

This matter turns on whether Lewis made his remarks at the event as an “agent” of the campaign, and whether those comments constituted a “solicitation” of nonfederal funds.

1. Lewis Was an Agent of the Committee Because It Is Reasonable to Infer that He Had the Express or Implied Authority to Raise Funds

The Act prohibits certain persons and entities from soliciting nonfederal funds—those funds that fall outside “the limitations, prohibitions, and reporting requirements” of the Act—in connection with an election for federal office.¹⁶ This “soft money” prohibition applies specifically to (1) a candidate or individual holding federal office; (2) an “agent” of a candidate or an individual holding federal office; and (3) an “entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more” candidates or individuals holding federal office.¹⁷ As applied here, this prohibition potentially covers Cruz (a federal candidate and officeholder), Lewis (an alleged agent of Cruz and the Committee), and the Committee (an entity established, financed, maintained or controlled by or acting on behalf of Cruz).

For the purposes of the soft money prohibition, an “agent” of a federal candidate or officeholder is “any person who has actual authority, either express or implied, to engage in any of the following activities on behalf of” that candidate or officeholder: “solicit[ing], receiv[ing], direct[ing], transferr[ing], or spend[ing] funds in connection with any election.”¹⁸ In

¹⁶ See 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61; Advisory Op. 2015-09 (Senate Majority PAC *et al.*).

¹⁷ 52 U.S.C. § 30125(e)(1); *see also* 11 C.F.R. § 300.60.

¹⁸ 11 C.F.R. §§ 300.2(b), (b)(3).

1 promulgating this regulation in 2002, the Commission explained that the definition of “agent”
 2 must cover “implied” authority because “[o]therwise, agents with actual authority would be able
 3 to engage in activities that would not be imputed to their principals so long as the principal was
 4 careful enough to confer authority through conduct or a mix of conduct and spoken words.”¹⁹
 5 Thus, a principal may be held liable under an “implied actual authority theory” where “the
 6 principal’s own conduct reasonably causes the agent to believe that he or she had authority.”²⁰

7 In considering whether Lewis satisfies the definition of “agent,” the Commission need
 8 not analyze whether Lewis had the specific authority to raise *nonfederal* funds; a person who has
 9 the authority to raise *federal* funds on behalf of a candidate or individual holding federal office is
 10 an agent. As the Commission further explained the “agent” definition in 2006, the
 11 “Commission’s current definitions of ‘agent’ are sufficiently broad to capture actions by
 12 individuals where the candidate authorizes an individual to solicit Federal funds on his or her
 13 behalf, but privately instructs the individual to avoid raising non-Federal funds.”²¹ Indeed, “the
 14 candidate/principal may . . . be liable for any impermissible solicitations by the agent, despite
 15 specific instructions not to do so.”²² Thus, if Lewis had actual authority, express or implied, to

¹⁹ Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49064, 49082 (July 29, 2002) (“Original Agent E&J”). The Commission explained that the definition did not incorporate the common law approach to “apparent authority” agency—since the anti-circumvention purposes of the Act do not require an approach to agency based in “a concept created to protect innocent third parties who have suffered monetary damages as a result of reasonably relying on representations of individuals who purported to have, but did not actually have, authority to act on behalf of principals”—but did incorporate “implied” actual authority as a concept distinct from apparent authority to further the Act’s anti-circumvention purposes. *Id.* at 49082-83.

²⁰ *Id.* at 49083.

²¹ Definitions of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975, 4978 (Jan. 31, 2006) (“Revised Agent E&J”) (explaining further that “the candidate/principal may also be liable for any impermissible [soft money] solicitations by the agent, despite specific instructions to not do so”).

²² *Id.*

1 raise funds on behalf of Cruz and the Committee, it is irrelevant whether he was given any
 2 instruction on the raising of, or the authority to raise, nonfederal funds.

3 The record indicates that Lewis—who characterizes himself as an “experienced volunteer
 4 fundraiser,” generally, and a “volunteer fundraiser[]” for the Committee, specifically—co-hosted
 5 and emceed a Committee fundraiser.²³ He explicitly suggested guests “max out” contributions to
 6 the campaign, referenced the maximum individual per election contribution amount for the 2016
 7 cycle (“2700 per person, and then 5400 for the general”), and told the guests to “get engaged in
 8 the Super PAC” with “unlimited” or “corporate dollars.”²⁴ He instructed the crowd on the
 9 “method to *our* madness,”²⁵ and he stated that “*we*” [including possibly himself and “Ted and
 10 Heidi”] “want to make it a great night.”²⁶ The record contains no information that Cruz or the
 11 Committee disclaimed any of Lewis’s references to contributions at the events, and in their joint
 12 response, Cruz and the Committee do not offer any information to contradict Lewis’s assertion
 13 that he was a fundraiser for the campaign. These circumstances support the reasonable inference
 14 that Lewis had authority to raise funds on behalf of Cruz and the Committee at the Committee’s
 15 fundraising event, and Cruz and the Committee expressly or impliedly requested that Lewis to do
 16 so.

17 In their joint response, Cruz and the Committee suggest that even if Lewis could be
 18 considered an agent for some purposes, he was not acting on their behalf when he referenced
 19 nonfederal funds, because the Act “does not prohibit individuals who are agents . . . from also

²³ Lewis Aff. ¶¶ 2, 14.

²⁴ YouTube Video.

²⁵ *Id.* (emphasis added).

²⁶ *Id.* (emphasis added).

1 raising non-Federal funds for other political parties or outside groups.”²⁷ The Super PAC states
 2 in its response, however, that it “had no relationship with Lewis,”²⁸ specifically rebutting any
 3 argument that Lewis was acting on behalf of the Super PAC instead of Cruz and the Committee.

4 Even if Lewis and the Super PAC did have a relationship, an agent of a candidate or
 5 campaign may not raise nonfederal funds on behalf of outside groups unless acting “*exclusively*
 6 on behalf of the other organizations” and “*at different times*” from when he or she acts on behalf
 7 of the campaign.²⁹ Here, Lewis appeared to reference the Committee and the Super PAC in
 8 nearly the same breath, stating at the fundraiser: “The method to *our* madness is this: you max
 9 out [presumably contributions to the campaign] and then get engaged in the Super PAC.”³⁰

10 Having referenced the Committee and the Super PAC in the same sentence, while at a
 11 Committee fundraising event, Lewis cannot be considered to have been acting on behalf of the
 12 Super PAC exclusively.³¹

²⁷ Committee and Cruz Resp. at 3 (citing Revised Agent E&J at 4979).

²⁸ Super PAC Resp. at 1.

²⁹ Advisory Op. 2015-09 (Senate Majority PAC *et al.*) at 7 (emphasis added) (internal quotation marks omitted) (quoting Advisory Op. 2003-10 (Nevada State Democratic Party *et al.*) at 5; Advisory Op. 2007-05 (Iverson) at 5).

³⁰ YouTube video (emphasis added).

³¹ The Commission has recognized the specific precautions taken by agents to ensure that they separate themselves from the candidates while soliciting funds for outside groups. Such agents have (1) “identif[ied] themselves as raising funds only for” the outside group; (2) did “not use . . . campaign resources,” and (3) informed potential contributors that they are “making the solicitation on their own and not at the direction of the federal candidates or their agents.” Advisory Op. 2015-09 (Senate Majority PAC *et al.*) at 7 (internal quotation marks and alterations omitted) (quoting Advisory Op. 2003-10 (Nevada State Democratic Party *et al.*) at 5); Advisory Op. 2007-05 (Iverson) at 5. None of these circumstances reflects the situation here; Lewis apparently did not identify himself as raising funds only for the Super PAC (in fact, he denies soliciting *any* funds for the Super PAC), he may have used campaign resources (he was emceeding an official Committee event), and there is no indication that he told potential contributors that he was referring to the Super PAC on his own, and not at the direction of Cruz or his campaign.

1 The respondents also suggest that Lewis was not an agent because he had no “campaign
 2 position or title related to fundraising” and instead served as a volunteer.³² But the Commission
 3 has expressly included volunteers in its definition of an agent, emphasizing that the “number of
 4 individuals involved in fundraising for a campaign can reach . . . , in the case of presidential
 5 campaigns . . . , potentially thousands of individuals, *most of whom are volunteers.*”³³ Given that
 6 the Commission has acknowledged that its definition of “agent” may pull in “thousands” of
 7 volunteers for a presidential campaign, the respondents’ argument that Lewis’s official title or
 8 “volunteer” status exempts him from inclusion is not persuasive.

9 For his part, Lewis characterizes the Complaint as asserting an agency theory of
 10 “apparent” authority—whereby a principal’s words or conduct reasonably causes a third person
 11 to believe that the principal consents to have certain acts done by the purported agent—and notes
 12 that the Commission expressly omitted apparent authority from the definition of “agent.”³⁴ As
 13 explained above, however, the relevant definition of “agent” *does* include express and implied
 14 authority, and Lewis’s own words reflect that he was a fundraiser for the campaign, solicited
 15 contributions (see next section), and referenced “unlimited” and “corporate dollars,” supporting
 16 the reasonable inference that he had the express or implied authority to raise funds at the
 17 Committee’s fundraising event, and is thus an agent of Cruz and the Committee.

³² Committee and Cruz Resp. at 2; *see also* Lewis Resp. at 1.

³³ Revised Agent E&J at 4977 (emphasis added); *see also id.* at 4978 (explaining that “[a]ctual authority, either express or implied, is a broad concept that covers the wide range of activities prohibited by BCRA and the Act”).

³⁴ *See* Lewis Resp. at 2-3.

2. *Lewis Made a Solicitation for Nonfederal Funds Because His Words, Construed in the Context of a Campaign Fundraiser, Reflect that He Asked, Requested, or Recommended that Attendees Make a Contribution*

When raising funds for a political committee (including an IEOPC), an agent of a federal candidate or officeholder may not solicit unlimited or corporate contributions.³⁵ To “solicit” means “to ask, request, or recommend, explicitly or implicitly, that another person make a contribution”³⁶ A “solicitation” is:

An oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation may be made directly or indirectly. The context includes the conduct of the persons involved in the communication. A solicitation does not include mere statements of political support or mere guidance as to the applicability of a particular law or regulation.³⁷

Here, the record shows that Lewis stood up at a Cruz campaign fundraiser, apparently solicited contributions to the campaign, and then said, “If you hit your max, we have a table for you that is the unlimited table. It can take corporate dollars, it can take partnership dollars and that’s the Super PAC Stand for Truth.”³⁸ The act of referencing a Super PAC “tak[ing] . . . dollars” at an event where the very purpose was to raise funds, immediately after soliciting a campaign contribution, while also discussing “unlimited” and “corporate dollars,” constitutes

³⁵ See 52 U.S.C. §§ 30116(a)(1)(C) (imposing a \$5,000 limit on contributions to non-authorized, non-party committees), 30118 (prohibiting corporations from making contributions to candidate committees), 30125(e) (prohibiting federal candidates, officeholders, and their agents from soliciting nonfederal funds); Advisory Op. 2011-12 (Majority PAC *et al.*) at 3 (concluding that under the Act, federal candidates (either directly or through agents) “may not solicit unlimited contributions from individuals, corporations, or labor organizations on behalf of independent expenditure-only political committees”).

³⁶ 11 C.F.R. § 300.2(m).

³⁷ *Id.*

³⁸ YouTube Video.

1 “ask[ing], request[ing], recommend[ing],” explicitly or implicitly, that another person make a
 2 contribution.³⁹

3 Cruz and the Committee argue that Lewis’s remarks differ from each of the sixteen
 4 examples in the regulations of statements that constitute a solicitation,⁴⁰ and point out that Lewis
 5 declined to use a “clear message” with words such as “give,” “contribute,” and “donate.”⁴¹ But
 6 the determination of whether a solicitation occurred “does not rely on any ‘magic words’ or
 7 specific statements.”⁴² The Commission applies “an objective test that requires that written or
 8 oral communications be reasonably construed in the context in which they are made.”⁴³ The
 9 words here, construed in context, amply support a reasonable inference that Lewis made a
 10 solicitation.

11 Moreover, examples in the regulations actually confirm that Lewis’s statements here
 12 constitute a solicitation. For instance, it is a solicitation if a candidate says, “Group X has always
 13 helped me financially in my elections. Keep them in mind this fall.”⁴⁴ Lewis went a step further
 14 than the regulatory example’s recommendation that listeners should “[k]eep” an outside group
 15 “in mind”; Lewis asked listeners to “get engaged in the Super PAC” after they “max out” to the

³⁹ 11 C.F.R. § 300.2(m); *see* Factual and Legal Analysis, MURs 6563 & 6733 (Schock) (taking the statement “Look, I’m going to do \$25,000 specifically for the [campaign] for the television campaign” and “Can you match that?” as evidence of a solicitation) (internal alteration omitted).

⁴⁰ *See* 11 C.F.R. § 300.2(m)(2)(i)–(xvi).

⁴¹ Committee and Cruz Resp. at 8.

⁴² Definitions of “Solicit” and “Direct,” 71 Fed. Reg. 13926, 13927 (Mar. 20, 2006). When adopting the regulatory examples of solicitations, the Commission emphasized that the list of examples is “not intended to be exhaustive.” *Id.* at 13931.

⁴³ *Id.*

⁴⁴ 11 C.F.R. § 300.2(m)(2)(iii).

Committee.⁴⁵ Similarly, it is a solicitation to say “Group X is having a fundraiser this week; you should go,”⁴⁶ which is substantively the same as notifying listeners that “we have a table for you” to “get engaged in the Super PAC,” which can accept “unlimited” and “corporate dollars.”

Cruz and the Committee also assert that it would be “arbitrary and capricious” for the Commission to proceed in this matter because in the past it has not pursued an “impromptu remark outside of the context of a specific amount.”⁴⁷ The only matter cited in support of this argument concerned a website that housed a link to “contribute” but “was not specifically dedicated to making donations.”⁴⁸ But whether websites and links constitute solicitations, which was the issue addressed in that matter, is specifically addressed under a different regulatory provision in the definition of “solicit” and is not relevant to this matter.⁴⁹ Here, by contrast to a website’s “contribute” button, Lewis spoke live at a fundraising event and gave a clear message about giving “unlimited” funds from a specific source (“corporate”) to a specific entity (“get engaged in the Super PAC”) at a specific and proximate location (“the unlimited table”).⁵⁰ Given the specific circumstances of the event, the respondents have cited no authority that persuasively supports their position that Lewis did not make a solicitation.

⁴⁵ See also *id.* § 300.2(m)(2)(ix) (“You have reached the limit of what you may contribute directly to my campaign, but you can further help my campaign by assisting the State party.”).

⁴⁶ *Id.* § 300.2(m)(2)(viii).

⁴⁷ Committee and Cruz Resp. at 6 (citing MUR 5711 (Feinstein)).

⁴⁸ Statement of Reasons of Chairman Lenhard, Vice Chairman Mason, and Commissioners von Spakovsky and Walther, MUR 5711 (Feinstein), at 5.

⁴⁹ See *id.* (noting the then-new definition of “solicit” adopted after the activity at issue in MUR 5711); see also 11 C.F.R. § 300.2(m)(1)(iii) (specifying rules concerning solicitations on web pages and via links).

⁵⁰ See 11 C.F.R. § 300.2(m)(1)(ii) (specifying that “a communication that provides instructions on how or where to send contributions or donations” constitutes a solicitation).

1 Last, the respondents (most notably Lewis) argue that Lewis's remarks were "[p]roviding
 2 information in response to questions from citizen supporters about legally permissible ways to
 3 participate in a presidential campaign."⁵¹ Lewis asserts in his affidavit that he "did not consider
 4 [his] remarks at the Event to be a 'solicitation' for funds, but were rather informational," and that
 5 "[s]ome people at the Event had asked [him] what the guidelines were regarding ways to support
 6 Sen. Cruz's campaign and [he] was providing information as to the legally permissible ways to
 7 participate, as [h]e understood them as a lay person."⁵² But, as explained above, Lewis's
 8 remarks at the event, made in the context of a fundraiser and seconds after a solicitation for
 9 contributions to the campaign, constitute a specific solicitation of funds that go beyond providing
 10 "mere information." Further, just because a statement responds to requests for information does
 11 not mean it is not a solicitation.⁵³ Lewis quotes the Commission's "concern[] that the ability to
 12 impute intent [to solicit funds] could lead to finding a violation when the individual who made
 13 the comment may have had no intention whatever of soliciting a contribution,"⁵⁴ but that
 14 guidance addresses remarks made in the context of a "private conversation . . . when the
 15 conversation is not clear on its face."⁵⁵ Lewis's remarks, recorded in public, were clear on their

⁵¹ Lewis Resp. at 3.

⁵² Lewis Aff. ¶¶ 12-13.

⁵³ See, e.g. 11 C.F.R. § 300.2(m)(2)(vi) (providing that a communication saying "Send all contributions to the following address***" is a solicitation); *but see id.* at § 300.2(m)(1)(ii) (noting that a communication does not satisfy the definition of "solicit" "merely because it includes a mailing address or phone number that is not specifically dedicated to facilitating the making of contributions or donations").

⁵⁴ Original Agent E&J at 49087.

⁵⁵ *Id.*

face that he was asking for, requesting, or recommending a contribution.⁵⁶ Thus, Lewis's remarks show that he made a solicitation of nonfederal funds.

3. *There Is Reason to Believe that the Committee Violated the Prohibition on Soliciting Nonfederal Funds*

Based on the foregoing, we recommend that the Commission find reason to believe that the Committee, through its agent Lewis, solicited nonfederal funds in violation of 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61. We also recommend that the Commission take no action at this time with respect to Lewis, and should the Committee conciliate with the Commission as recommended we intend to recommend dismissal as to Lewis.⁵⁷ While we lack information regarding Cruz's involvement in the solicitation or event at issue, it is conceivable that additional factual information could surface during conciliation (*see* Section IV), thus, we recommend that the Commission take no action at this time with respect to him, and should the Committee conciliate with the Commission as recommended we also intend to recommend dismissal as to Cruz.

B. There Is No Reason to Believe that the Committee or the Super PAC Violated Rules Regarding Proper Procedures for Conducting Joint Fundraising

The Complaint also alleges that the Committee and Super PAC "violated the Commission's rules regarding the proper procedures and processes for conducting joint

⁵⁶ Cruz and the Committee argue that the Complaint is "defective" because "it is based on an article and anonymous recording," *see* Committee and Cruz Resp. at 1, but they cite no authority for the proposition that a complainant must disclose the names of persons who recorded evidence cited in the complaint. Moreover, the complainant relies on statements that were accompanied by a recording, *see* 11 C.F.R. § 111.4(d)(2) (providing that statements not based on personal knowledge can be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements), and there is no indication that the complainant knew of, or had available, any supplemental documentation supporting the facts alleged, *see id.* § 111.4(d)(4).

⁵⁷ *See* MUR 7122 (American Pacific International Capital, Inc. *et al.*) (open matter) (finding reason to believe that a committee, acting through an agent, knowingly solicited and accepted contributions from a foreign national, and entering into pre-probable cause conciliation).

1 fundraising” by, for example, failing to “establish a separate committee” or otherwise establish a
2 joint fundraising representative when fundraising for multiple entities at one fundraising event.⁵⁸
3 The joint fundraising rules apply to political committees that “engage in joint fundraising with
4 other political committees or with unregistered committees or organizations.”⁵⁹ Here, Lewis, as
5 an agent of Cruz and the Committee, solicited funds for both the Committee and the Super PAC
6 at a single fundraising event, but the Complaint contains no information or evidence that the two
7 committees engaged in a joint fundraising effort such as, for example, through contributors
8 issuing a single payment to be split between the two committees. Thus, we recommend that the
9 Commission find no reason to believe that the Committee and the Super PAC violated the
10 Commission’s rules applicable to joint fundraising committees.

⁵⁸ Compl. at 5 (citing 11 C.F.R. § 102.17(a)(1)(i)).

⁵⁹ 11 C.F.R. § 102.17(a)(1)(i).

V. RECOMMENDATIONS

1. Find reason to believe that Cruz for President and Bradley S. Knippa in his official capacity as treasurer violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61;
2. Enter into conciliation with Cruz for President and Bradley S. Knippa in his official capacity as treasurer prior to a finding of probable cause to believe;
3. Take no action at this time as to the allegation that J. Keet Lewis violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61;
4. Take no action at this time as to the allegation that Senator Ted Cruz violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61;
5. Find no reason to believe that Cruz for President and Bradley S. Knippa in his official capacity as treasurer violated 11 C.F.R. § 102.17;
6. Find no reason to believe that Stand for Truth, Inc. and D. Eric Lyman in his official capacity as treasurer violated 11 C.F.R. § 102.17, and close the file as to them;
7. Approve the attached Conciliation Agreement;
8. Approve the attached Factual & Legal Analyses; and

9. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Date: 3/5/2019

Stephen Gura by MA
Stephen Gura
Deputy Associate General Counsel for
Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Joseph P. Wenzinger
Joseph P. Wenzinger
Attorney

Attachments

1. Factual and Legal Analysis for Cruz for President
2. Factual and Legal Analysis for Stand for Truth, Inc.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Cruz for President and Bradley S. Knippa MUR 7048
in his official capacity as treasurer

I. INTRODUCTION

The Complaint alleges that Cruz for President and Bradley S. Knippa in his official capacity as treasurer (the "Committee"), through an agent, J. Keet Lewis, solicited unlimited and corporate contributions to Stand for Truth, Inc. and D. Eric Lyman in his official capacity as treasurer (the "Super PAC"), an independent-expenditure-only political committee, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations. The Complaint further alleges that the Committee violated Commission regulations by failing to establish a joint fundraising committee with the Super PAC.

Based on the available information, the Commission finds reason to believe that the Committee, through its agent Lewis, solicited nonfederal funds in violation of 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61. Moreover, the Commission finds no reason to believe that the Committee improperly failed to establish a joint fundraising committee with the Super PAC in violation of 11 C.F.R. § 102.17.

II. FACTUAL AND LEGAL ANALYSIS**A. Factual Background**

In March 2015, Senator Rafael Edward "Ted" Cruz filed a Statement of Candidacy for President,¹ designating the Committee as his principal campaign committee.² Lewis served as a

¹ Rafael Edward "Ted" Cruz, FEC Form 2 (Mar. 23, 2015), at 1, <http://docquery.fec.gov/pdf/891/15031403891/15031403891.pdf>.

1 volunteer fundraiser for the Committee. The Super PAC filed a Statement of Organization as an
 2 independent-expenditure-only political committee (“IEOPC”) in November 2015.³

3 The Committee sponsored an official fundraiser on December 30, 2015.⁴ Lewis, who the
 4 Complaint alleges was a “National Co-Chair” of and bundler for the Committee,⁵ served as a co-
 5 host and the emcee of the event.⁶ According to an audio recording of Lewis’s remarks as emcee,
 6 he told the crowd that an “unlimited table” for “the Super PAC, Stand for Truth” was present and
 7 able to accept “corporate dollars.”⁷ The recording reflects that Lewis referenced the Super PAC
 8 immediately after soliciting a contribution for the campaign:

9 [Unintelligible] . . . 2700 per person, and then 5400 for the general.
 10 If you hit your max, we have a table for you that is the unlimited
 11 table. It can take corporate dollars, it can take partnership dollars
 12 and that’s the Super PAC Stand for Truth, so pick up some of that
 13 information. The method to our madness is this: you max out and
 14 then get engaged in the Super PAC. . . . It’s totally separate from
 15 . . . the campaign. . . . We want to make it a great night. . . .⁸
 16

² Cruz for President, FEC Form 1 (Mar. 23, 2015), at 2, <http://docquery.fec.gov/pdf/894/15031403894/15031403894.pdf>.

³ Stand for Truth, Inc., FEC Form 1 (Nov. 18, 2015), at 2, <http://docquery.fec.gov/pdf/215/201511189003366215/201511189003366215.pdf>.

⁴ Compl. at 2.

⁵ *Id.*

⁶ *Id.* Ex. A (placard noting “a special thanks” from “Heidi & Ted Cruz” to a list of co-hosts, including Lewis and his wife).

⁷ See Compl. at 3 n.5 (citing Arthur Grayson, *Ted Cruz Fundraiser*, YOUTUBE (Apr. 6, 2016), <https://www.youtube.com/watch?v=N3dFpzANr5w&feature=youtu.be> (“YouTube Video”)). Although the YouTube video contains only audio and not visual elements, Lewis admits in his response that he spoke about the Super PAC in his role as emcee at the fundraising event.

⁸ YouTube Video; see also Committee Resp. at 4 (transcribing recording of event). The YouTube video also reveals that, just after discussing the Super PAC, Lewis told the event audience that in “just a minute we’ll bring up Ted and Heidi” Cruz. YouTube Video; see also Compl. at 2-3 (transcribing recording of video).

The Committee maintains that the Complaint incorrectly labeled Lewis as National Co-Chair of Cruz’s campaign generally; it asserts that Lewis was merely National Co-Chair of the campaign’s Small Business for Cruz Coalition.⁹ The available information indicates that individual contributions to the Committee were raised at the event in question. The Committee also disputes both that Lewis’s words constitute a solicitation and that Lewis was an agent for the Committee, asserting that Lewis’s statement was “not a ‘clear message’ of exhortation” for a contribution.¹⁰

B. Legal Analysis

The Complaint alleges that the Committee impermissibly solicited nonfederal funds, and that the Committee failed to properly establish a joint fundraising committee with the Super PAC. The Commission addresses each alleged violation in turn.

i. There Is Reason to Believe that the Committee Violated the Ban on Soliciting Nonfederal Funds

This matter turns on whether Lewis made his remarks at the event as an “agent” of the Committee, and whether those comments constituted a “solicitation” of nonfederal funds.

1. The Record Indicates that Lewis Was an Agent of the Committee

The Act prohibits certain persons and entities from soliciting nonfederal funds—those funds that fall outside “the limitations, prohibitions, and reporting requirements” of the Act—in connection with an election for federal office.¹¹ This “soft money” prohibition applies

⁹ Committee Resp. at 2-3.

¹⁰ See Committee Resp. at 4; see also *id.* at 3 (implying that Lewis was not an agent because he was a volunteer).

¹¹ See 52 U.S.C. § 30125(e)(1)(A); see also 11 C.F.R. § 300.61; Advisory Op. 2015-09 (Senate Majority PAC *et al.*).

1 specifically to (1) a candidate or individual holding federal office; (2) an “agent” of a candidate
2 or an individual holding federal office; and (3) an “entity directly or indirectly established,
3 financed, maintained or controlled by or acting on behalf of 1 or more” candidates or individuals
4 holding federal office.¹² As applied here, this prohibition covers the Committee (an entity
5 established, financed, maintained or controlled by or acting on behalf of Cruz).

6 For the purposes of the soft money prohibition, an “agent” of a federal candidate or
7 officeholder is “any person who has actual authority, either express or implied, to engage in any
8 of the following activities on behalf of” that candidate or officeholder: “solicit[ing], receiv[ing],
9 direct[ing], transferr[ing], or spend[ing] funds in connection with any election.”¹³ In
10 promulgating this regulation in 2002, the Commission explained that the definition of “agent”
11 must cover “implied” authority because “[o]therwise, agents with actual authority would be able
12 to engage in activities that would not be imputed to their principals so long as the principal was
13 careful enough to confer authority through conduct or a mix of conduct and spoken words.”¹⁴
14 Thus, a principal may be held liable under an “implied actual authority theory” where “the
15 principal’s own conduct reasonably causes the agent to believe that he or she had authority.”¹⁵

16 In considering whether Lewis satisfies the definition of “agent,” the Commission need not
17 analyze whether Lewis had the specific authority to raise *nonfederal* funds; a person who has the

¹² 52 U.S.C. § 30125(e)(1); *see also* 11 C.F.R. § 300.60.

¹³ 11 C.F.R. §§ 300.2(b), (b)(3).

¹⁴ Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49064, 49082 (July 29, 2002) (“Original Agent E&J”). The Commission explained that the definition did not incorporate the common law approach to “apparent authority” agency—since the anti-circumvention purposes of the Act do not require an approach to agency based in “a concept created to protect innocent third parties who have suffered monetary damages as a result of reasonably relying on representations of individuals who purported to have, but did not actually have, authority to act on behalf of principals”—but did incorporate “implied” actual authority as a concept distinct from apparent authority to further the Act’s anti-circumvention purposes. *Id.* at 49082-83.

1 authority to raise *federal* funds on behalf of a candidate or individual holding federal office is an
 2 agent. As the Commission further explained the “agent” definition in 2006, the “Commission’s
 3 current definitions of ‘agent’ are sufficiently broad to capture actions by individuals where the
 4 candidate authorizes an individual to solicit Federal funds on his or her behalf, but privately
 5 instructs the individual to avoid raising non-Federal funds.”¹⁶ Indeed, “the candidate/principal
 6 may . . . be liable for any impermissible solicitations by the agent, despite specific instructions
 7 not to do so.”¹⁷ Thus, if Lewis had actual authority, express or implied, to raise funds on behalf
 8 of the Committee, it is irrelevant whether he was given any instruction on the raising of, or the
 9 authority to raise, nonfederal funds.

10 The record indicates that Lewis—who the available information characterizes as an
 11 experienced volunteer fundraiser, generally, and a volunteer fundraiser for the Committee,
 12 specifically—co-hosted and emceed a Committee fundraiser. He explicitly suggested guests
 13 “max out” contributions to the campaign, referenced the maximum individual per election
 14 contribution amount for the 2016 cycle (“2700 per person, and then 5400 for the general”), and
 15 told the guests to “get engaged in the Super PAC” with “unlimited” or “corporate dollars.”¹⁸ He
 16 instructed the crowd on the “method to *our* madness,”¹⁹ and he stated that “*we*” [including

¹⁵ *Id.* at 49083.

¹⁶ Definitions of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975, 4978 (Jan. 31, 2006) (“Revised Agent E&J”) (explaining further that “the candidate/principal may also be liable for any impermissible [soft money] solicitations by the agent, despite specific instructions to not do so”).

¹⁷ *Id.*

¹⁸ YouTube Video.

¹⁹ *Id.* (emphasis added).

1 possibly himself and “Ted and Heidi”] “want to make it a great night.”²⁰ The record contains no
2 information that the Committee disclaimed any of Lewis’s references to contributions at the
3 events. These circumstances indicate that Lewis had authority to raise funds on behalf of the
4 Committee at the Committee’s fundraising event, and the Committee expressly or impliedly
5 requested that Lewis to do so.

6 The Committee suggests that even if Lewis could be considered an agent for some
7 purposes, he was not acting on their behalf when he referenced nonfederal funds, because the Act
8 “does not prohibit individuals who are agents . . . from also raising non-Federal funds for other
9 political parties or outside groups.”²¹ The available information, however, indicates that Lewis
10 did not have a relationship with the Super PAC, and thus was not acting on behalf of the Super
11 PAC instead of the Committee.

12 Even if Lewis and the Super PAC did have a relationship, an agent of a candidate or
13 campaign may not raise nonfederal funds on behalf of outside groups unless acting “*exclusively*
14 on behalf of the other organizations” and “*at different times*” from when he or she acts on behalf
15 of the campaign.²² Here, Lewis appeared to reference the Committee and the Super PAC in
16 nearly the same breath, stating at the fundraiser: “The method to *our* madness is this: you max
17 out [presumably contributions to the campaign] and then get engaged in the Super PAC.”²³
18 Having referenced the Committee and the Super PAC in the same sentence, while at a

²⁰ *Id.* (emphasis added).

²¹ Committee Resp. at 3 (citing Revised Agent E&J at 4979).

²² Advisory Op. 2015-09 (Senate Majority PAC *et al.*) at 7 (emphasis added) (internal quotation marks omitted) (quoting Advisory Op. 2003-10 (Nevada State Democratic Party *et al.*) at 5; Advisory Op. 2007-05 (Iverson) at 5).

²³ YouTube video (emphasis added).

1 Committee fundraising event, Lewis cannot be considered to have been acting on behalf of the
2 Super PAC exclusively.²⁴

3 The Committee also suggests that Lewis was not an agent because he had no “campaign
4 position or title related to fundraising” and instead served as a volunteer.²⁵ But the Commission
5 has expressly included volunteers in its definition of an agent, emphasizing that the “number of
6 individuals involved in fundraising for a campaign can reach . . . , in the case of presidential
7 campaigns . . . , potentially thousands of individuals, *most of whom are volunteers.*”²⁶ Given that
8 the Commission has acknowledged that its definition of “agent” may pull in “thousands” of
9 volunteers for a presidential campaign, the Committee’s argument that Lewis’s official title or
10 “volunteer” status exempts him from inclusion is not persuasive.

²⁴ The Commission has recognized the specific precautions taken by agents to ensure that they separate themselves from the candidates while soliciting funds for outside groups. Such agents have (1) “identif[ied] themselves as raising funds only for” the outside group; (2) did “not use . . . campaign resources,” and (3) informed potential contributors that they are “making the solicitation on their own and not at the direction of the federal candidates or their agents.” Advisory Op. 2015-09 (Senate Majority PAC *et al.*) at 7 (internal quotation marks and alterations omitted) (quoting Advisory Op. 2003-10 (Nevada State Democratic Party *et al.*) at 5); Advisory Op. 2007-05 (Iverson) at 5. None of these circumstances reflects the situation here; Lewis apparently did not identify himself as raising funds only for the Super PAC, he may have used campaign resources (he was emceeding an official Committee event), and there is no indication that he told potential contributors that he was referring to the Super PAC on his own, and not at the direction of the campaign.

²⁵ Committee Resp. at 2.

²⁶ Revised Agent E&J at 4977 (emphasis added); *see also id.* at 4978 (explaining that “[a]ctual authority, either express or implied, is a broad concept that covers the wide range of activities prohibited by BCRA and the Act”).

2. *Lewis Made a Solicitation for Nonfederal Funds Because His Words, Construed in the Context of a Campaign Fundraiser, Reflect that He Asked, Requested, or Recommended that Attendees Make a Contribution*

When raising funds for a political committee (including an IEOPC), an agent of a federal candidate or officeholder may not solicit unlimited or corporate contributions.²⁷ To “solicit” means “to ask, request, or recommend, explicitly or implicitly, that another person make a contribution”²⁸ A “solicitation” is:

An oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation may be made directly or indirectly. The context includes the conduct of the persons involved in the communication. A solicitation does not include mere statements of political support or mere guidance as to the applicability of a particular law or regulation.²⁹

Here, the record shows that Lewis stood up at a Cruz campaign fundraiser, apparently solicited contributions to the campaign, and then said, “If you hit your max, we have a table for you that is the unlimited table. It can take corporate dollars, it can take partnership dollars and that’s the Super PAC Stand for Truth.”³⁰ The act of referencing a Super PAC “tak[ing] . . . dollars” at an event where the very purpose was to raise funds, immediately after soliciting a

²⁷ See 52 U.S.C. §§ 30116(a)(1)(C) (imposing a \$5,000 limit on contributions to non-authorized, non-party committees), 30118 (prohibiting corporations from making contributions to candidate committees), 30125(e) (prohibiting federal candidates, officeholders, and their agents from soliciting nonfederal funds); Advisory Op. 2011-12 (Majority PAC *et al.*) at 3 (concluding that under the Act, federal candidates (either directly or through agents) “may not solicit unlimited contributions from individuals, corporations, or labor organizations on behalf of independent expenditure-only political committees”).

²⁸ 11 C.F.R. § 300.2(m).

²⁹ *Id.*

³⁰ YouTube Video.

campaign contribution, while also discussing “unlimited” and “corporate dollars,” constitutes “ask[ing], request[ing], recommend[ing],” explicitly or implicitly, that another person make a contribution.³¹

The Committee argues that Lewis’s remarks differ from each of the sixteen examples in the regulations of statements that constitute a solicitation,³² and point out that Lewis declined to use a “clear message” with words such as “give,” “contribute,” and “donate.”³³ But the determination of whether a solicitation occurred “does not rely on any ‘magic words’ or specific statements.”³⁴ The Commission applies “an objective test that requires that written or oral communications be reasonably construed in the context in which they are made.”³⁵ The words here, construed in context, indicate that Lewis made a solicitation.

Moreover, examples in the regulations actually confirm that Lewis’s statements here constitute a solicitation. For instance, it is a solicitation if a candidate says, “Group X has always helped me financially in my elections. Keep them in mind this fall.”³⁶ Lewis went a step further than the regulatory example’s recommendation that listeners should “[k]eep” an outside group “in mind”; Lewis asked listeners to “get engaged in the Super PAC” after they “max out” to the

³¹ 11 C.F.R. § 300.2(m); *see* Factual and Legal Analysis, MURs 6563 & 6733 (Schock) (taking the statement “Look, I’m going to do \$25,000 specifically for the [campaign] for the television campaign” and “Can you match that?” as evidence of a solicitation) (internal alteration omitted).

³² *See* 11 C.F.R. § 300.2(m)(2)(i)-(xvi).

³³ Committee Resp. at 8.

³⁴ Definitions of “Solicit” and “Direct,” 71 Fed. Reg. 13926, 13927 (Mar. 20, 2006). When adopting the regulatory examples of solicitations, the Commission emphasized that the list of examples is “not intended to be exhaustive.” *Id.* at 13931.

³⁵ *Id.*

³⁶ 11 C.F.R. § 300.2(m)(2)(iii).

1 Committee.³⁷ Similarly, it is a solicitation to say “Group X is having a fundraiser this week; you
2 should go,”³⁸ which is substantively the same as notifying listeners that “we have a table for you”
3 to “get engaged in the Super PAC,” which can accept “unlimited” and “corporate dollars.”

4 The Committee also asserts that it would be “arbitrary and capricious” for the
5 Commission to proceed in this matter because in the past it has not pursued an “impromptu
6 remark outside of the context of a specific amount.”³⁹ The only matter cited in support of this
7 argument concerned a website that housed a link to “contribute” but “was not specifically
8 dedicated to making donations.”⁴⁰ But whether websites and links constitute solicitations, which
9 was the issue addressed in that matter, is specifically addressed under a different regulatory
10 provision in the definition of “solicit” and is not relevant to this matter.⁴¹ Here, by contrast to a
11 website’s “contribute” button, Lewis spoke live at a fundraising event and gave a clear message
12 about giving “unlimited” funds from a specific source (“corporate”) to a specific entity (“get
13 engaged in the Super PAC”) at a specific and proximate location (“the unlimited table”).⁴²

³⁷ See also *id.* § 300.2(m)(2)(ix) (“You have reached the limit of what you may contribute directly to my campaign, but you can further help my campaign by assisting the State party.”).

³⁸ *Id.* § 300.2(m)(2)(viii).

³⁹ Committee Resp. at 6 (citing MUR 5711 (Feinstein)).

⁴⁰ Statement of Reasons of Chairman Lenhard, Vice Chairman Mason, and Commissioners von Spakovsky and Walther, MUR 5711 (Feinstein), at 5.

⁴¹ See *id.* (noting the then-new definition of “solicit” adopted after the activity at issue in MUR 5711); see also 11 C.F.R. § 300.2(m)(1)(iii) (specifying rules concerning solicitations on web pages and via links).

⁴² See 11 C.F.R. § 300.2(m)(1)(ii) (specifying that “a communication that provides instructions on how or where to send contributions or donations” constitutes a solicitation).

Based on the foregoing, the Commission finds reason to believe that the Committee, through its agent Lewis, solicited nonfederal funds in violation of 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61.

The Complaint also alleges that the Committee “violated the Commission’s rules regarding the proper procedures and processes for conducting joint fundraising” by, for example, failing to “establish a separate committee” with the Super PAC or otherwise establish a joint fundraising representative when fundraising for multiple entities at one fundraising event.⁴³ The joint fundraising rules in 11 C.F.R. § 102.17 apply to political committees that “engage in joint fundraising with other political committees or with unregistered committees or organizations.”⁴⁴ Here, Lewis, as an agent of the Committee, solicited funds for both the Committee and the Super PAC at a single fundraising event, but the Complaint contains no information or evidence that the two committees engaged in a joint fundraising effort such as, for example, through contributors issuing a single payment to be split between the two committees. Thus, the Commission finds no reason to believe that the Committee violated the Commission’s rules applicable to joint fundraising committees in 11 C.F.R. § 107.12.

44 11 C.F.R. § 102.17(a)(1)(i).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Stand for Truth, Inc. and D. Eric Lycan MUR 7048
in his official capacity as treasurer

I. INTRODUCTION

The Complaint alleges that Stand for Truth, Inc. and D. Eric Lycan in his official capacity as treasurer (the “Super PAC”), an independent-expenditure-only political committee, failed to establish a joint fundraising committee with Cruz for President and Bradley S. Knippa in his official capacity as treasurer (the “Cruz Committee”), in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations. The Complaint bases its allegation on its assertion that J. Keet Lewis, an alleged agent of Senator Rafael Edward “Ted” Cruz and the Cruz Committee, solicited unlimited and corporate contributions to the Super PAC during an official fundraising event of the Cruz Committee.

Based on the available information, the Commission finds no reason to believe that the Super PAC improperly failed to establish a joint fundraising committee with the Cruz Committee in violation of 11 C.F.R. § 102.17.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

In March 2015, Cruz filed a Statement of Candidacy for President,¹ designating the Cruz Committee as his principal campaign committee.² Lewis served as a volunteer fundraiser for the

¹ Rafael Edward “Ted” Cruz, FEC Form 2 (Mar. 23, 2015), at 1, <http://docquery.fec.gov/pdf/891/15031403891/15031403891.pdf>.

² Cruz for President, FEC Form 1 (Mar. 23, 2015), at 2, <http://docquery.fec.gov/pdf/894/15031403894/15031403894.pdf>.

Cruz Committee. The Super PAC filed a Statement of Organization as an independent-expenditure-only political committee (“IEOPC”) in November 2015.³

The Cruz Committee sponsored an official fundraiser on December 30, 2015.⁴ Lewis, who the Complaint alleges was a “National Co-Chair” of and bundler for the Cruz Committee,⁵ served as a co-host and the emcee of the event.⁶ According to an audio recording of Lewis’s remarks as emcee, he told the crowd that an “unlimited table” for “the Super PAC, Stand for Truth” was present and able to accept “corporate dollars.”⁷ The recording reflects that Lewis referenced the Super PAC immediately after soliciting a contribution for the campaign:

[Unintelligible] . . . 2700 per person, and then 5400 for the general. If you hit your max, we have a table for you that is the unlimited table. It can take corporate dollars, it can take partnership dollars and that’s the Super PAC Stand for Truth, so pick up some of that information. The method to our madness is this: you max out and then get engaged in the Super PAC. . . . It’s totally separate from . . . the campaign. . . . We want to make it a great night. . . .⁸

The Super PAC asserts that it “had no relationship with Lewis, who it clearly appears was merely an individual volunteering his time for the Cruz campaign.”⁹

³ Stand for Truth, Inc., FEC Form 1 (Nov. 18, 2015), at 2, <http://docquery.fec.gov/pdf/215/201511189003366215/201511189003366215.pdf>.

⁴ Compl. at 2.

⁵ *Id.*

⁶ *Id.* Ex. A (placard noting “a special thanks” from “Heidi & Ted Cruz” to a list of co-hosts, including Lewis and his wife).

⁷ See Compl. at 3 n.5 (citing Arthur Grayson, *Ted Cruz Fundraiser*, YOUTUBE (Apr. 6, 2016), <https://www.youtube.com/watch?v=N3dFpzANr5w&feature=youtu.be> (“YouTube Video”)).

⁸ YouTube Video. The YouTube video also reveals that, just after discussing the Super PAC, Lewis told the event audience that in “just a minute we’ll bring up Ted and Heidi” Cruz. YouTube Video; see also Compl. at 2-3 (transcribing recording of video).

⁹ Super PAC Resp. at 1.

1 **B. Legal Analysis**

2 The Complaint alleges that the Super PAC “violated the Commission’s rules regarding
3 the proper procedures and processes for conducting joint fundraising” by, for example, failing to
4 “establish a separate committee” with the Cruz Committee or otherwise establish a joint
5 fundraising representative when fundraising for multiple entities at one fundraising event.¹⁰ The
6 joint fundraising rules in 11 C.F.R. § 102.17 apply to political committees that “engage in joint
7 fundraising with other political committees or with unregistered committees or organizations.”¹¹
8 Here, regardless of whether Lewis was an agent of the Cruz Committee or solicited funds for
9 both the Cruz Committee and the Super PAC at a single fundraising event, the Complaint
10 contains no information or evidence that the two committees engaged in a joint fundraising effort
11 such as, for example, through contributors issuing a single payment to be split between the two
12 committees.

13 Thus, the Commission finds no reason to believe that the Super PAC improperly failed to
14 establish a joint fundraising committee with the Cruz Committee in violation of 11 C.F.R.
15 § 102.17.

¹⁰ Compl. at 5 (citing 11 C.F.R. § 102.17(a)(1)(i)).

¹¹ 11 C.F.R. § 102.17(a)(1)(i).