



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via Email and First Class Mail

Chris K. Gober, Esq.
The Gober Group PLLC
P.O. Box 341016
Austin, TX 78734
cg@gobergroup.com

APR 17 2019

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

Dear Mr. Gober:

On April 27, 2016, the Federal Election Commission notified your clients, Cruz for President and Bradley S. Knippa in his official capacity as treasurer ("Committee"), of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time. On June 20, 2016, we received your clients' response to the complaint.

After reviewing the allegations contained in the complaint, and other available information, the Commission on April 9, 2019, found reason to believe the Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61. The Commission also found no reason to believe that the Committee violated 11 C.F.R. § 102.17. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

See 52 U.S.C. § 30109(a)(5); 11 C.F.R. § 111.24(a)(1).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See 18 U.S.C. § 1519.*

Chris K. Gober, Esq.
MUR 7048
Page 2

If your clients are interested in engaging in pre-probable cause conciliation, please contact Joseph P. Wenzinger, the attorney assigned to this matter, at (202) 694-1350 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a); 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at https://transition.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis

1 t

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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).