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**BEFORE THE FEDERAL ELECTION COMMISSION CELA**

In the Matter of	)	
	)	
Cruz for President; and	)	MUR 7351
Bradley S. Knippa, in his	)	
official capacity as Treasurer	)	

**RESPONSE**

Through counsel, Cruz for President and Bradley S. Knippa, in his official capacity as Treasurer (collectively, "the Parties"), provide the following response to the complaint filed by Common Cause ("Complainant") in the matter designated by the Commission as MUR 7351.

The Office of Complaints Examination and Legal Administration ("CELA") has improperly named the Parties as respondents in this matter. Complainant, an experienced and sophisticated actor in the area of campaign-finance law, has clearly avoided alleging the Parties violated or are in violation of the Federal Election Campaign Act of 1971, as amended ("FECA"), and Commission regulations. Thus, we respectfully request that the Commission remove the Parties from MUR 7351 and dismiss them from the matter accordingly. In the alternative, the Commission should find no reason to believe that the Parties violated any provision of FECA or Commission regulations.

**I. BACKGROUND**

Complainant alleges that Cambridge Analytica LTD, SCL Group Limited, five named foreign national individuals, and unknown and unnamed foreign nationals ("Eight Named Respondents") violated FECA and Commission regulations by participating in the decision-making process involving election-related activities.<sup>1</sup> Complainant then goes into length presenting alleged facts, as reported by a variety of news organizations, suggesting that such a violation may have occurred, along with a summary of the law on "Prohibitions on Foreign National Election Activities," one "count" of a cause of action on the Eight Named Respondents, and a prayer for relief.<sup>2</sup> What Complainant does *not* do, however, is allege any violations on the part of the Parties.

<sup>1</sup> FEC MUR 7351; Complaint at 1.

<sup>2</sup> FEC MUR 7351; Complaint at 2 – 27.

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## II. LEGAL ANALYSIS

### A. CELA Improperly Named the Parties as Respondents in this Matter

Upon receiving notice of this matter, counsel to the Parties asked CELA to reconsider its unilateral decision to name the Parties respondents. CELA refused that request, insisting on maintaining its incorrect determination that the Parties were actually named in the complaint as being alleged to have violated FECA.<sup>3</sup>

As the Commission well knows, FECA states, “Within 5 days after receipt of a complaint, the Commission shall notify, in writing, *any person alleged in the complaint* to have committed such a violation.”<sup>4</sup> Also, Commission regulations state that the complaint “should clearly identify as a respondent each person or entity who is alleged to have committed a violation.”<sup>5</sup>

The Complainant, Common Cause, has filed dozens—if not hundreds—of FEC complaints in the past, and they are clearly a sophisticated actor in the area of campaign-finance law. They know the particulars of the enforcement process at the FEC, and they certainly know how to name and not name potential respondents. In this instance, the Complainant chose to draft a broad narrative without alleging that the Parties have violated the Act or Commission regulations. In fact, they “clearly identify” the Eight Named Respondents who they believe committed a violation but clearly avoid identifying any of the political committees mentioned in the complaint as a “respondent . . . alleged to have committed a violation.”<sup>6</sup>

Given the Complainant’s sophistication in this area of the law and experience filing FEC complaints, it is clear the complaint was carefully worded to avoid alleging that any of the committees involved with Cambridge Analytica during the 2014 and 2016 election cycles, including Cruz for President, violated FECA. This is demonstrated by:

1. The caption in the complaint includes the Eight Named Respondents, but not the Parties;<sup>7</sup>
2. The specific allegations of violations, which are listed in paragraphs 1 and 2 of the complaint, only mention the Eight Named Respondents included in the caption;<sup>8</sup>

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<sup>3</sup> Counsel for the Parties emailed CELA on May 2, 2018, explaining its analysis and asking for CELA to reconsider its decision. CELA responded that it was “firm” in its decision.

<sup>4</sup> 52 U.S.C. § 30109(a)(1) (emphasis added).

<sup>5</sup> 11 C.F.R. § 111.4(d)(1).

<sup>6</sup> *Id.*

<sup>7</sup> FEC MUR 7351; Complaint at 1.

<sup>8</sup> FEC MUR 7351; Complaint at 2-3.

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3. The list of respondents in “Count One” of the complaint only includes the Eight Named Respondents included in the caption;<sup>9</sup> and

4. The “Prayer for Relief” only alleges that the Eight Named Respondents violated FECA and Commission regulations.<sup>10</sup>

In short, the Parties are not “alleged in the complaint to have committed [] a violation”<sup>11</sup> despite the Complainant alleging in at least four instances that the Eight Named Respondents violated FEC and Commission regulations. Therefore, the Commission should remove the Parties from this matter.

## **B. The Parties Categorically Deny Any Wrongdoing**

Notwithstanding CELA’s improper naming of the Parties as respondents in this matter, the Parties categorically deny any wrongdoing in its relations with the actual respondents in this matter. In fact, in the “Services Agreement” between Cambridge Analytica and Cruz for President, Cambridge Analytica was contractually obligated to comply with all applicable laws, including FEC, in its activities on behalf of the Parties. For example, that Services Agreement included the following provisions:

Each party represents and warrants to and covenants with the other party that (i) it has all requisite power and authority to execute, deliver and perform this Agreement, (ii) it has duly authorized, executed and delivered this Agreement and this Agreement is its legal, valid and binding obligation enforceable against it in accordance with its terms, (iii) the execution, delivery and performance of this Agreement will not violate or breach any provision of any other agreement, law or order to which it is subject, (iv) it holds all necessary permits, licenses and consents to conduct its operations and to perform this Agreement and (v) it shall conduct its operations in accordance with all applicable laws and regulations.

...

Client (Cruz for President) shall be responsible for all final determinations regarding the creative content, format, and the placement of appropriate disclaimers and on any and all messages developed by employing the deliverables of Cambridge Analytica. In addition, Client acknowledges that it is solely responsible for all decisions and final determinations regarding the scheduling of delivery (timing), recipients of placement (audience), and budgeting (expenditures) for any such developed messages. For clarity,

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<sup>9</sup> FEC MUR 7351; Complaint at 24.

<sup>10</sup> FEC MUR 7351; Complaint at 25.

<sup>11</sup> 52 U.S.C. § 30109(a)(1).

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Cambridge Analytica services are restricted to the provision of technical services and advisory services.

To the best of the Parties' knowledge, neither Cambridge Analytica nor Cruz for President breached their respective contractual obligations in a manner that could support Complainant's allegations that foreign nationals participated in decisions involving election-related activities. Without such knowledge or actual evidence to the contrary, the Commission must find no reason to believe that the Parties violated any provision of FECA or Commission regulations.

### III. CONCLUSION

The Parties are improperly named as respondents in this matter; therefore, the Commission should simply remove them from this enforcement proceeding. In the alternative, the Commission should find no reason to believe that the Parties violated any provision of FECA or Commission regulations.

Sincerely,



Chris K. Gober

Troy A. McCurry

Counsel to Cruz for President

and Bradley S. Knippa, in his official capacity as Treasurer