

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR 7897**

6 DATE COMPLAINT FILED: Apr. 7, 2021

7 DATE OF NOTIFICATIONS: Apr. 9, 2021

8 RESPONSE RECEIVED: May 24, 2021

9 DATE ACTIVATED: Aug. 26, 2021

10 EXPIRATION OF SOL: Sept. 24, 2025 -

11 Dec. 1, 2025

12 ELECTION CYCLE: 2020

13
14
15 **COMPLAINANT:**

Campaign Legal Center

16
17 **RESPONDENTS:**

18 Ted Cruz for Senate and Bradley Scott Knippa in
19 his official capacity as treasurer
20 Rafael Edward "Ted" Cruz

21 **RELEVANT STATUTE**

22 **AND REGULATIONS:**

52 U.S.C. § 30114(b)

23 11 C.F.R. § 113.1(g)

24 11 C.F.R. § 113.2

25
26 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

27
28 **FEDERAL AGENCIES CHECKED:**

None

29 **I. INTRODUCTION**

30 The Complaint alleges that Senator Rafael Edward "Ted" Cruz and his authorized
31 committee, Ted Cruz for Senate and Bradley Scott Knippa in his official capacity as treasurer
32 (the "Committee"), violated the Federal Election Campaign Act of 1971, as amended (the
33 "Act"), by converting campaign funds to personal use when the Committee purchased between
34 \$13,900 and \$20,748 in Facebook advertisements to promote Cruz's recently published book and
35 when it spent approximately \$154,000 to purchase copies of the book from third-party
36 booksellers. Respondents deny they violated the Act. While Respondents do not dispute the
37 Complaint's characterization of the terms of Cruz's contract with his publisher and further

1 acknowledge that the Committee purchased copies of the book and paid more than a *de minimis*
2 amount for Facebook ads promoting it, they assert, however, that Cruz has not, to date, received
3 any royalties beyond an advance he received from the publisher, and recognize that copies
4 purchased by the Committee must be excluded from any royalty calculations. Respondents
5 argue that neither the book purchases nor the paid promotion were an impermissible personal use
6 of campaign funds.

7 As discussed below, the Committee's payments to promote Cruz's book on Facebook
8 appear to constitute personal use because the need to publicize the book existed irrespective of
9 his candidacy and the Committee spent more than *de minimis* campaign resources promoting
10 sales of the book. As to the book purchases, it appears that the Committee purchased the books
11 for distribution to contributors in reasonable amounts to accomplish that purpose and at fair
12 market prices available to the general public. Further, the available information indicates that
13 Cruz had not received any royalties from these purchases as of the dates of his Response and his
14 2021 Senate Financial Disclosure, and Respondents expressly acknowledge the need to have
15 Cruz's publisher exclude the purchased copies from any royalty calculations. Under these
16 circumstances, the Committee's book purchases do not appear to constitute personal use under
17 Commission precedent.

18 We therefore recommend that the Commission find reason to believe that Cruz and the
19 Committee violated 52 U.S.C. § 30114(b) by converting \$13,900 in campaign funds to personal
20 use by purchasing Facebook ads promoting sales of Cruz's book, and find no reason to believe
21 that Cruz and the Committee violated 52 U.S.C. § 30114(b) by converting \$154,356 in campaign
22 funds to personal use through the purchase of copies of Cruz's book. We also recommend that
23 the Commission authorize pre-probable cause conciliation with Cruz and the Committee.

1 **II. FACTUAL BACKGROUND**

2 Ted Cruz is an incumbent Senator from Texas and a candidate for U.S. Senate in the
 3 2024 election cycle.¹ Ted Cruz for Senate is his authorized committee, and Bradley Scott
 4 Knippa is the Committee's treasurer.²

5 In September 2020, Regnery Publishing released Cruz's book, *One Vote Away: How a*
 6 *Single Supreme Court Seat Can Change History* ("One Vote Away").³ According to Cruz's
 7 Senate financial disclosure reports, he has a "royalty agreement" contract with Regnery with the
 8 following terms:

9 Advance of \$400,000 payable in 3 installments; Hardcover 15% of
 10 net sales; on all net sales to the book trade of Publisher's hardcover
 11 editions at a discount of forty-eight percent (48%) or more off
 12 Publisher's catalog retail price, Author's royalty shall be reduced
 13 by one-half of one percentage point for each one percentage point
 14 that the discount exceeds forty-eight percent; Paperback 7.5% of
 15 net sales; Sales outside the US 15% net proceeds; e-book 25% of
 16 net proceeds.⁴

¹ Rafael Edward "Ted" Cruz, Amended Statement of Candidacy (Aug. 24, 2022), <https://docquery.fec.gov/pdf/719/202208249528238719/202208249528238719.pdf>.

² Ted Cruz for Senate, Amended Statement of Organization (Aug. 24, 2022), <https://docquery.fec.gov/pdf/714/202208249528238714/202208249528238714.pdf>.

³ Compl. at 2 (Apr. 7, 2021); *One Vote Away: How a Single Supreme Court Seat Can Change History*, REGNERY PUBL'G, <https://www.regnery.com/9781684511341/one-vote-away> (last visited Jan. 23, 2023) (showing publication date of September 2020).

⁴ RAFAEL E. CRUZ, ANNUAL REPORT FOR CALENDAR 2019, Part 9 (Aug. 13, 2020) [hereinafter 2019 Financial Disclosure]; RAFAEL E. CRUZ, ANNUAL REPORT FOR CALENDAR 2020, Part 9 (Aug. 16, 2021) [hereinafter 2020 Financial Disclosure]; RAFAEL E. CRUZ, ANNUAL REPORT FOR CALENDAR 2021, Part 9 (Aug. 15, 2022) [hereinafter 2021 Financial Disclosure]. Senate financial disclosures are accessible online. See *Financial Disclosures*, U.S. SENATE, <https://efdsearch.senate.gov/search> (search for last name: Cruz; report type: annual) (last visited Jan. 23, 2023). Though the summary of the agreement does not specify that Cruz will only receive royalty payments after the publisher recoups his advance, this is generally how royalty agreements are applied in the publishing industry. See, e.g., *Book Advances and Royalties*, PENGUIN BOOKS LTD., <https://www.penguin.co.uk/articles/company-article/book-advances-and-royalties> (last visited Jan. 23, 2023) (quoting Penguin Random House's contracts director as stating that advances are "offset against future royalty payments once the book is on sale," and explaining that "[t]his means that an author won't start earning royalties until the initial sales of a book are equal to the size of their advance").

1 Cruz received a \$319,674 advance payment from Regnery Publishing in 2020, which is
2 approximately 80% of the advance he reported being owed by the publisher on his 2019 Senate
3 financial disclosure report.⁵ Cruz did not report receiving any royalty payments from Regnery in
4 calendar year 2021,⁶ and the financial disclosure report for calendar year 2022 is not yet
5 available.⁷

6 On September 24, 2020, the Ted Cruz Facebook page, which is administered by the
7 Committee, began running a series of paid posts advertising the book (collectively, the
8 “Facebook ads”) that included a button labeled “Learn More” by the text “Learn the Truth[,] Buy
9 my Book”; the “Learn More” button also linked to the book’s Amazon page where it was
10 available for purchase.⁸ Each of the ads was accompanied by Facebook-generated labels
11 indicating that the ads were “Sponsored” and “Paid for by TED CRUZ FOR SENATE.”⁹

12 As shown below, there are two versions of the ad: one with a video of Cruz and one with
13 a still picture of Cruz next to an image of the book and text reading “BUY MY NEW BOOK!”
14 above a red “ORDER IT HERE!” button.¹⁰ The text accompanying the ads is the same for both

⁵ 2019 Financial Disclosure, Part 9; 2020 Financial Disclosure, Part 2. The Senate requires reporting of gross income, which means the unreported remainder of the advance could be related to his literary agent’s commission or other such fees.

⁶ 2021 Financial Disclosure, Part 2.

⁷ Senate annual disclosures are due May 15 of each year, and filers may request up to 90-day extensions. *See Financial Disclosure*, U.S. SENATE SELECT COMM. ON ETHICS, <https://www.ethics.senate.gov/public/index.cfm/financialdisclosure> (last visited Jan. 23, 2023).

⁸ Compl. at 2-3; *see* META AD LIBRARY, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&q=book&view_all_page_id=69983322463&search_type=page&media_type=all (last visited Jan. 23, 2023) [hereinafter Facebook Ads] (showing ads placed on the Ted Cruz Facebook page with the keyword “book”).

⁹ *See, e.g.*, META AD LIBRARY, [https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&q=2649652922016535&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped&search_type=keyword_unordered&media_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&q=2649652922016535&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&search_type=keyword_unordered&media_type=all) (last visited Jan. 23, 2023) [hereinafter Example Video Ad] (showing advertisement displaying the text “Sponsored • Paid for by TED CRUZ FOR SENATE”).

¹⁰ Images from two of the ads were included in the Complaint. Compl. at 3.

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1 versions and contains no reference to Cruz's election. It reads: "I have a new book coming out
 2 that explains how this seat could fundamentally change American History. It's Called One Vote
 3 Away: How a Single Supreme Court Seat Can Change History. Please Order your copy
 4 today."¹¹

Ad with Video:

Ted Cruz
 Sponsored · Paid for by TED CRUZ FOR SENATE

I have a new book coming out that explains how this seat could fundamentally change American History. It's Called One Vote Away: How a Single Supreme Court Seat Can Change History. Please Order your copy today.

BACKING DOWN. IT'S ALSO WHY I'M OFFERING A SPECIAL LIMITED EDITION

WWW.AMAZON.COM
 Learn the Truth
 Buy my Book

Learn more

Ad with Still Image:

Ted Cruz
 Sponsored · Paid for by TED CRUZ FOR SENATE

👍👍👍 I have a new book coming out that explains how this seat could fundamentally change American History. It's Called One Vote Away: How a Single Supreme Court Seat Can Change History. Please Order your copy today.

ONE VOTE AWAY
 How a Single Supreme Court Seat Can Change History
 TED CRUZ

BUY MY NEW BOOK!
 ORDER IT HERE!

AMAZON.COM
 Learn the Truth
 Buy my Book

Learn more

¹¹ *Id.*

1 The video ads contain the following dialog, spoken by Cruz:

2 Ted Cruz here. I'm working tirelessly to confirm President
3 Trump's Supreme Court nominee. We can't let the Democrats
4 hold this seat or this election hostage. That's why I'm working
5 day and night to hold the line and why I'm not backing down. It's
6 also why I'm offering a special, limited-edition offer. If you make
7 a donation right now, below, you will receive a copy of my new
8 book, *One Vote Away: How a Single Supreme Court Seat Can*
9 *Change History*. This moment is why I wrote the book, *One Vote*
10 *Away*. It explains the choice we face, right now, as a nation. And
11 if you'd like to get the full story, you can go and buy a copy right
12 now.¹²

13 Notwithstanding the video version of the ads' reference to making a "donation . . . below," these
14 ads were accompanied only by the above-depicted link to purchase a copy of the book from
15 Amazon. According to the Meta Archive of Facebook advertisements, the ads ran as 52 different
16 advertisements from September 24, 2020, through October 5, 2020, at a cost between \$13,900
17 and \$20,748, and were seen between 1,634,000 and 1,973,000 times across a variety of targeted
18 audiences.¹³

19 Respondents acknowledge making the disbursements cited in the Complaint but deny that
20 they resulted in realized financial gains for Cruz. Specifically, Respondents confirm that the
21 Committee paid for the Facebook advertisements, stating that the Committee "spent more than a

¹² *E.g.*, Example Video Ad.

¹³ META AD LIBRARY, [https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&id=2649652922016535&q=book&view_all_page_id=69983322463&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped&start_date\[min\]=2020-09-01&start_date\[max\]=2020-11-01&search_type=page&media_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&id=2649652922016535&q=book&view_all_page_id=69983322463&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&start_date[min]=2020-09-01&start_date[max]=2020-11-01&search_type=page&media_type=all) (last visited Jan. 23, 2023) (showing all ads placed by the Ted Cruz Facebook page between September 1, 2020, and October 31, 2020, with the keyword "book"). Of the 64 advertisements relating to *One Vote Away*, 12 refer to a giveaway of the book in exchange for campaign contributions; these advertisements have been excluded from the figures provided above. Meta explains that the amount spent on the ads is displayed in their Ad Library as a range because it is an estimate. *Meta Business Help Center: Amount Spent*, META, <https://www.facebook.com/business/help/1406571646230212> (last visited Jan. 23, 2023). The Complaint states that it is unknown whether the Committee paid for ads "on other digital platforms that have not created public archives of political advertisements," and we have not identified additional ads beyond those noted in the Complaint. Compl. at 3.

1 *de minimis* amount of campaign funds to promote [Cruz's] book through social media
2 advertising."¹⁴ Respondents assert that Cruz "has not received any royalties from any sales of
3 *One Vote Away*" as of the date of the Response and argue that he therefore has "not received any
4 financial benefit . . . as a result of the [Committee's] promotions."¹⁵ Although the Response
5 does not explain why Cruz had received no royalties, it also does not dispute the publicly
6 disclosed terms of his contract with Regnery, which would allow Cruz to receive royalty
7 payments only after net sales of his book generated royalties in excess of the \$400,000 required
8 for Regnery to recoup Cruz's advance.¹⁶

9 Respondents state that the Committee purchased copies "for distribution to the
10 Committee's supporters" and assert, without specifying how many copies of the book the
11 Committee purchased, that the quantity "did not exceed the number needed for that purpose."¹⁷
12 The Complaint cites \$154,356 in Committee disbursements for "books" between October 15 and
13 December 1, 2020, but it is unclear whether the entire \$154,356 was for copies of *One Vote*
14 *Away*.¹⁸ Assuming the entire amount was for hardcover copies of the book, which originally
15 retailed for \$28.99, this would indicate that the campaign purchased several thousand copies of
16 the book.¹⁹ Respondents present no information indicating that Cruz made formal arrangements

¹⁴ Resp. at 3 (May 25, 2021).

¹⁵ *Id.*

¹⁶ *Supra* notes 4-5 and accompanying text.

¹⁷ Resp. at 2-3.

¹⁸ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00492785&two_year_transaction_period=2020&disbursement_description=book (reflecting \$154,628.80 in disbursements by the Committee in October 2020 and December 2020 for "books," including \$153,417.38 in disbursements to Books-A-Million, \$1,196.68 to Barnes & Noble, and \$14.74 to Simply Books).

¹⁹ Both Books-A-Million and Barnes & Noble list the original retail price of the hard cover edition as \$28.99. *One Vote Away: How a Single Supreme Court Seat Can Change History*, BOOKS-A-MILLION, <https://www.booksamillion.com/p/One-Vote-Away/Ted-Cruz/9781684511341> (last visited Jan. 23, 2023); *One Vote Away: How a*

1 with his publisher to have these book purchases excluded from net sales used to calculate his
2 royalties. Rather, Respondents state that “even if Senator Cruz were to receive royalties for *One*
3 *Vote Away* sales in the future, the Respondents recognize that any copies of the book purchased
4 by the Committee would have to be excluded from royalty calculations in compliance with the
5 Act and Regulations.”²⁰

6 III. LEGAL ANALYSIS

7 Under the Act and Commission regulations, an authorized committee may spend its funds
8 to finance activities “in connection with the [candidate’s] campaign for Federal office,” and the
9 Commission has determined that a candidate and the candidate’s campaign committee have wide
10 discretion in making expenditures to influence the candidate’s election.²¹ Campaign funds,
11 however, “shall not be converted by any person to personal use,” which is defined as using funds
12 “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the
13 candidate’s election campaign or individual’s duties as holder of Federal office.”²² In other
14 words, expenses “that would be incurred even if the candidate was not a candidate” are
15 considered personal rather than campaign-related.²³

16 Examples of *per se* personal use include utility payments, non-campaign related
17 automobile expenses, vacations or other non-campaign-related trips, household food items, and

Single Supreme Court Seat Can Change History, BARNES & NOBLE, <https://www.barnesandnoble.com/w/one-vote-away-ted-cruz/1136996896> (last visited Jan. 23, 2023).

²⁰ Resp. at 3.

²¹ 52 U.S.C. § 30114(a)(1); 11 C.F.R. § 113.2 (providing that campaign funds may be used to “defray[] expenses in connection with a campaign for federal office”); Commission Regulations on Personal Use of Campaign Funds, 60 Fed. Reg. 7867 (Feb. 9, 1995) [hereinafter 1995 Personal Use E&J]; *see also* Advisory Opinion 2011-02 (Brown) (“AO 2011-02”); Advisory Opinion 2006-07 (Hayworth) (“AO 2006-07”).

²² 52 U.S.C. § 30114(b). Permitted uses of campaign funds include, among other things, charitable donations and any other lawful purpose that is not personal use. *Id.* § 30114(a)(1)-(6); *see also* 11 C.F.R. § 113.2.

²³ 1995 Personal Use E&J at 7863.

1 tuition payments not associated with training campaign staff.²⁴ For all other disbursements, the
 2 regulation provides that the Commission shall determine on a case-by-case basis whether a given
 3 disbursement is personal use by applying the “irrespective test” formulated in the statute.²⁵
 4 Neither the purchase nor promotion of a candidate’s book are codified *per se* uses. Accordingly,
 5 the Commission determines “on a case-by-case basis”²⁶ whether such activities constitute
 6 personal use, and “[i]f the candidate can reasonably show that the expenses at issue resulted from
 7 campaign or officeholder activities, the Commission will not consider the use to be personal
 8 use.”²⁷

9 **A. The Commission Should Find Reason to Believe that the Committee’s**
 10 **Purchase of Facebook Ads to Promote *One Vote Away* Was Personal Use**

11 The Commission has previously concluded that expenses associated with marketing a
 12 commercially published book for which a candidate would receive royalties are expenses that
 13 would exist irrespective of the candidate’s election or duties as a federal officeholder.²⁸ Further,
 14 the Commission has concluded that an authorized committee “may post a *de minimis* amount of
 15 material promoting” a candidate’s book on the committee’s “website and social media sites at *de*
 16 *minimis* cost” without converting campaign funds to personal use.²⁹ The Commission has

²⁴ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

²⁵ 11 C.F.R. § 113.1(g)(1)(ii).

²⁶ *Id.* § 113.1(g)(1)(i), (ii).

²⁷ 1995 Personal Use E&J at 7863-64.

²⁸ See Advisory Opinion 2014-06 at 7 (Ryan) (“AO 2014-06”). In AO 2011-02, the Commission wrote that it had “previously determined that the expenses associated with marketing a book that a commercial publisher publishes and for which it pays royalties to the candidate are expenses that would exist irrespective of the candidate’s election campaign or duties as a holder of Federal office. Therefore, the use of an authorized committee’s asset, such as the Committee’s website, to promote the candidate’s book would ordinarily constitute a prohibited personal use.” AO 2011-02 at 6 (internal citations omitted). See also AO 2006-07 at 3; Advisory Opinion 2006-18 at 3 (Granger) (“AO 2006-18”).

²⁹ AO 2011-02 at 6.

1 determined that “a single sentence, or, at most two sentences of promotional material” on a
2 “substantial” committee website would constitute a small amount of material at *de minimis* cost,
3 but that 25% of a website and Facebook and LinkedIn pages and 10% of a Twitter feed would
4 not be *de minimis*.³⁰ By contrast, the Commission has advised that the use of a larger amount of
5 authorized committee assets to promote a candidate’s book ordinarily would constitute a
6 prohibited personal use of campaign funds.³¹

7 Here, Respondents acknowledge that the Committee’s disbursements of at least \$13,900
8 to Facebook constituted “more than a *de minimis* amount of campaign funds to promote [Cruz’s]
9 book through social media advertising.”³² Furthermore, the Facebook ads at issue have a limited
10 nexus to the campaign and appear to be commercial exhortations, as the ads contained links to
11 purchase retail copies of Cruz’s book from Amazon. Neither of the two ad formats identifies
12 Cruz as a candidate and, aside from the video ads’ passing mention of “if you make a donation,”

³⁰ See *id.* at 6-7 (determining that material promoting the candidate’s book comprising up to 25% of the Committee website’s homepage, 25% of the Committee’s Facebook page, 10% of the Committee’s Twitter page, and 25% of the candidate’s LinkedIn page would be more than *de minimis* and therefore prohibited); AO 2014-06 at 7 (determining that adding “one or two sentences” of promotional language to the committee’s website, accompanied by hyperlinks to the publisher’s website or online booksellers, and posting similarly limited information to the Committee’s social media accounts was *de minimis* and would not constitute personal use even though the candidate could receive future royalties); AO 2006-07 at 3 (determining that a *de minimis* amount of promotional language added to the Committee’s website would not constitute personal use even though the candidate would receive royalties from any future book sales); *but see* AO 2006-18 at 3-4 (determining that more than *de minimis* use of the campaign website to promote the candidate’s book was not personal use where the candidate had arranged for all resulting royalties to be donated to charity).

³¹ *Supra* note 30.

³² Resp. at 3. In AO 2014-06, the Commission specifically addressed the use of an authorized committee’s social media accounts to promote the candidate’s book, opining that limited unpaid posts promoting a candidate’s book and linking to booksellers would be *de minimis* use of committee assets, but specifically noted that the requestors explicitly omitted paid social media advertising from their request, stating that paid social media “[was] not contemplated.” AO 2014-06 at 7. Because the issue of paid posts was not included in the request, the Commission did not make any explicit determinations regarding paid social posts in the final Opinion. By analogy, however, the Commission’s disparate treatment of unpaid social media posts and paid social media posts in the context of the definition of “public communication” is instructive here, and as such, there seems to be no basis for considering \$13,900-\$20,748 in paid Facebook ads to be *de minimis*.

1 they do not appear to contain an expressly campaign-related message.³³ While Cruz's video
2 statements refer to Cruz's actions as a Senator with respect to the Supreme Court and arguably
3 imply that his reelection would give him an opportunity to continue his efforts, and the
4 September and October 2020 timing of the ads occurred just before the 2020 presidential
5 election, the nexus to that election is significantly diminished by the fact that Cruz was not a
6 candidate in 2020 election because his senate seat is up for election in 2024.³⁴ The ads' timing
7 thus appears to be related more directly to the publication of the book and to promote its retail
8 sales. Because the Committee used more than *de minimis* campaign resources for promotional
9 expenses that existed irrespective of Cruz's election, these disbursements appear to constitute
10 personal use.

11 Notwithstanding this limited nexus with the campaign and explicit promotion of
12 commercial sales, however, Respondents argue that the circumstances surrounding these
13 disbursements are materially indistinguishable from the facts in Advisory Opinion 2006-18
14 (Granger) ("AO 2006-18"), where the Commission determined that proposed non-*de minimis*
15 disbursements for promoting the candidate's book would not constitute personal use.
16 Respondents argue that the Committee's disbursements did not constitute personal use because,
17 "like Representative Granger [in AO 2006-18], Senator Cruz has not received any financial
18 benefit, such as through royalty payments, as a result of the promotions."³⁵

19 The facts here, however, differ substantially and materially from the facts presented to
20 the Commission in AO 2006-18. Granger had a contract with her publisher that assigned all

³³ *Supra* notes 10-12 and accompanying text.

³⁴ *See supra* note 1 and accompanying text.

³⁵ Resp. at 3.

1 future royalties to two charitable organizations, so it was impossible for any increased sales
2 resulting from her committee's promotion of her book to result in any personal financial gain. In
3 contrast, under the disclosed terms of Cruz's publishing contract, at the time the disbursements
4 were made for these ads, all purchases of Cruz's book — including by people responding to the
5 paid Facebook ads — would have been counted towards calculating Cruz's royalties. The
6 Committee's disbursements for paid advertisements — complete with links to retail booksellers
7 where it could be purchased — urged sales of a book for which Cruz stood, and still stands, to be
8 paid royalties.

9 Respondents also appear to misconstrue the basis for the Commission's advisory opinion
10 in Granger. The Commission determined that the Granger committee's proposed promotion
11 would be permissible both because it was consistent with the Commission's treatment of
12 charitable donations and because the disbursements *could not possibly* benefit the candidate
13 personally, not because they had not benefitted her *yet*.³⁶ Neither factor is present in this matter.
14 Instead, when Cruz's campaign committee made disbursements to promote the book, the
15 Facebook ads directly increased Cruz's opportunity to earn royalties if sales of his book generate
16 sufficient revenue for his publisher to recoup his advance.³⁷ Critically, unlike the Committee's
17 direct purchases of copies of the book, which would be a known and finite quantity, it is not clear
18 that Respondents could know how many copies of the book were sold as a result of the paid

³⁶ AO 2006-18 at 3-4 (“Representative Granger’s contract with her publisher requires the publisher to donate any royalties she earns to two charitable organizations. Because Representative Granger’s royalties will be donated to charitable organizations, she will not personally gain from the use of Committee funds or assets for the contemplated activities. All of the examples of prohibited personal use specified in the Act involve personal benefits or obligations of a candidate, a candidate’s family, or another person. Therefore, in light of the absence of any such personal benefit from the proposed activities, the Commission determines that the proposed activities do not constitute a prohibited personal use of campaign funds.”) (internal citations omitted).

³⁷ *Supra* notes 4-5 and accompanying text.

1 promotions such that these purchases could be excluded from royalty calculations in order to
2 avoid a financial benefit to Cruz. This evident financial benefit renders the instant circumstances
3 materially distinguishable from the facts presented to the Commission in AO 2006-18.

4 In sum, the available information indicates that the ads primarily promoted retail sales of
5 Cruz's book; the Committee's disbursements for Facebook ads were more than *de minimis* and
6 increased Cruz's opportunity to receive future royalties; and, as discussed above, it may be
7 difficult or impossible to retroactively exclude all sales resulting from those promotional ads
8 from future royalty calculations through agreement with Regnery. In light of the financial
9 benefit to Cruz through the Committee-funded Facebook ads promoting *One Vote Away*, the
10 Committee's disbursements for these ads appear to constitute personal use. Accordingly, we
11 recommend that the Commission find reason to believe that Cruz and the Committee violated
12 52 U.S.C. § 30114(b) by converting at least \$13,900 in campaign funds to personal use by
13 purchasing Facebook ads promoting sales of his book.

14 **B. The Commission Should Find No Reason to Believe that the Committee's**
15 **Purchase of Copies of *One Vote Away* Constituted Personal Use**

16 The purchase of a candidate's book is not one of the *per se* personal uses listed in the Act
17 and Commission regulations.³⁸ However, the Commission has issued several advisory opinions
18 addressing questions surrounding campaign committees purchasing copies of candidates' books.
19 In those opinions, the Commission has examined the details of the proposed purchases and
20 whether the candidates derived a personal financial benefit from the transaction.³⁹ The
21 Commission concluded in these advisory opinions that, where the purchase of a candidate's book

³⁸ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

³⁹ Advisory Opinion 1993-20 (Nighthorse Campbell) ("AO 1993-20"); Advisory Opinion 1995-46 (D'Amato) ("AO 1995-46"); Advisory Opinion 2001-08 (Specter) ("AO 2001-08"); Advisory Opinion 2004-18 (Lieberman) ("AO 2004-18"); AO 2011-02; AO 2014-06.

1 was for distribution to the committees' supporters in quantities limited to that purpose, campaign
2 funds were being used "to defray an expense that would not exist irrespective of the campaign"
3 and therefore the book purchase was "in connection with" a federal election.⁴⁰ The Committee's
4 purchase of Cruz's book here appears to be analogous in that the copies of the book were
5 purchased for distribution to campaign supporters and, as discussed in more detail below, limited
6 to quantities sufficient for that purpose.

7 The Commission's advisory opinions concerning committee book purchases also
8 considered whether the candidate received a benefit in the form of royalties as a factor in the
9 personal use analysis, and under the fact patterns presented, determined that no personal use
10 would result from such purchases in instances in which the publisher donated the candidate's
11 royalties for their campaign's book purchases directly to a charitable organization that was not
12 associated with the candidate⁴¹ or in instances which otherwise excluded the committees'
13 purchases from the calculation of royalties accruing to the candidate.⁴²

14 Three of the most recent opinions discuss non-receipt of royalties as a key factor in the
15 Commission's personal use analysis. In Advisory Opinion 2001-08 (Specter), the Commission
16 explained that there would be no personal use as a result of the committee's purchase of the
17 candidate's book because the purchase would neither result in the candidate receiving income or
18 tax deductions nor "increase [the candidate's] opportunity to receive future royalties," and stated
19 that the candidate's "non-receipt of such royalties or other benefits indicates that the sale to the

⁴⁰ See, e.g., AO 2001-08 at 3; AO 2004-18 at 4; AO 2011-02 at 5; AO 2014-06 at 4.

⁴¹ AO 2001-08 (royalties to be donated to charity by publisher); AO 2011-02 (same); AO 2014-06 (same).

⁴² AO 1993-20 at 1 (noting that the request stated that the candidate will "receive no royalties or profits from sale of" the candidate's book); AO 1995-46 (rights to all royalties assigned by candidate to Chaminade High School in Mineola, New York); AO 2004-18 (candidate waived all potential royalties from committee purchases by agreement with the publisher).

1 Committee is not, in reality, a device to use the Committee to benefit [the candidate]
2 financially.”⁴³ In Advisory Opinion 2011-02 (Brown), the Commission explained its rationale in
3 approving the request by quoting the statute and regulations prohibiting personal use and stating
4 that the candidate:

5 may not personally accept royalties for sales of the book to the
6 Committee, even if he then makes charitable contributions equal to
7 that amount . . . [and] must also not receive any personal benefit,
8 tangible or intangible, for the royalties the Publisher donates to
9 charity for the sales of the book to the Committee.⁴⁴

10 And in Advisory Opinion 2014-06 (Ryan), citing both the Specter and Brown advisory opinions,
11 the Commission similarly stated that no personal use would result where “all royalties
12 attributable to the committee’s purchase would be paid by the publisher to charity; and the
13 committee’s purchase would be excluded by the publisher from the royalty calculation.”⁴⁵ Thus,
14 neither the Act nor Commission regulations expressly prohibit the use of campaign funds to
15 purchase copies of a candidate’s book, and the Commission’s advisory opinions considering a
16 variety of book purchase arrangements indicate that campaign committee book purchases that
17 appear to otherwise pass the irrespective test must also avoid creating a financial benefit for the
18 candidate to be consistent with the Act and Commission regulations concerning personal use.⁴⁶

⁴³ AO 2001-08 at 3.

⁴⁴ AO 2011-02 at 6.

⁴⁵ AO 2014-06 at 5. AO 1993-20 and AO 1995-46 also involved exclusion of committee purchases from royalty calculations, although the Commission did not cite non-receipt of royalties as prominently as a factor in its analysis in those opinions. AO 1993-20 at 1 (noting that the request indicated that the candidate would “receive no royalties or profits from the sale of [his] biography” to the campaign); AO 1995-06 at 2 (stating that “[t]he fact that Senator D’Amato will not receive proceeds from the proposed transactions also indicates that personal use of campaign funds will not result”).

⁴⁶ See AO 1993-20; AO 1995-46; AO 2001-08; AO 2004-18; AO 2011-02; AO 2014-06. This Office previously analyzed the Commission’s advisory opinions to examine whether campaign purchases of a candidate’s book constituted personal use, although the case at issue involved a co-publishing contract that did not include royalties, but under which the candidate was personally obligated to purchase a specific number of books. See First Gen. Counsel’s Rpt. at 9-10, 12-13, MUR 6638 (Long) (discussing AO 2004-18 and AO 2001-08, applying the

1 Here, Respondents assert that the Committee purchased copies of *One Vote Away* for
2 distribution to the Committee's supporters in an amount (estimated by this Office to be several
3 thousand copies) that is not unreasonably high in light of the overall size of Cruz's campaign,⁴⁷
4 and which the Committee represents did not exceed the number needed for that purpose.⁴⁸
5 Further, the number of books purchased here is relatively high, but still consistent with prior,
6 Commission-approved purchases.⁴⁹ These disbursements appear to have been made for a *bona*
7 *fide* campaign-related expense that would not have existed irrespective of Cruz's candidacy.⁵⁰
8 Additionally, the Committee's disclosure reports filed with the Commission indicate that the
9 books were purchased through retail booksellers, and there is no available information indicating
10 that the Committee paid other than full retail price.⁵¹ Respondents also assert that Cruz has, to
11 date, received no royalties from sales of his book, and state that "even if Senator Cruz were to
12 receive royalties for One Vote Away sales in the future, the *Respondents recognize that any*
13 *copies of the book purchased by the Committee would have to be excluded from royalty*

Commission's analytical framework from those opinions to the facts of the matter, and determining that the purchases may have been personal use where the candidate's co-publishing contract required him to purchase a definite quantity of books); *see also* Factual & Legal Analysis, MUR 6638 (dismissing as an exercise of prosecutorial discretion without concluding that Long received a personal benefit from the committee's purchase of his book).

⁴⁷ In Cruz's previous 2018 senate campaign, for example, the Committee received contributions from over 51,000 people. *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/individual-contributions/?committee_id=C00492785&two_year_transaction_period=2014&two_year_transaction_period=2016&two_year_transaction_period=2018 (last visited Jan. 23, 2023) (showing 173,320 individual contributions associated with 51,431 unique names).

⁴⁸ Resp. at 2-3.

⁴⁹ AO 2011-02 at 6 (approving purchase of "several thousand" copies of the candidate's book); AO 1995-46 at 1 (approving purchase of "up to several thousand" copies of the candidate's book).

⁵⁰ *See* AOs, collectively discussing that purchasing a candidate's book for distribution to supporters has an electoral purpose, and if purchased in reasonable quantities for that purpose, satisfies the irrespective test.

⁵¹ *Supra* notes 18-19 and accompanying text.

1 *calculations in compliance with the Act and Commission regulations.*”⁵² Because Cruz has not
2 received royalties from these purchases and Respondents expressly acknowledge the need to
3 eliminate the possibility of earning such royalties from the Committee’s purchase of his book,
4 the Committee’s purchases of *One Vote Away* appear to be consistent with the prior
5 circumstances in which the Commission has permitted proposed purchases of candidate books in
6 the advisory opinion context.⁵³

7 In light of the available information, because the Committee’s purchases of Cruz’s book
8 do not appear to constitute personal use, we recommend that the Commission find no reason to
9 believe that Cruz and the Committee violated 52 U.S.C. § 30114(b) by converting \$154,356 in
10 campaign funds to personal use by purchasing copies of *One Vote Away*.

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⁵² Resp. at 3 (emphasis added).

⁵³ Although we do not know whether Cruz has executed an agreement with Regnery or otherwise yet arranged affairs to ensure that he receives no royalties from the Committee’s purchases of *One Vote Away*, we note that in a footnote in AO 2004-18, the Commission explained that any benefit to the publisher due to the candidate’s waiver of royalties “comes directly from the [candidate’s] personal funds and not from [his committee’s] expenditures. . . . Accordingly, the waiver of royalties would not constitute a personal use by the Publisher.” AO 2004-18 at 4. While he remains a Senator, Cruz is required to file an annual financial disclosure that must disclose the source, type, and amount of any earned income and non-investment (excluding income from the U.S. government) income aggregating \$200 or more during the reporting period. U.S. SENATE SELECT COMMITTEE ON ETHICS, FINANCIAL DISCLOSURE INSTRUCTIONS FOR CALENDAR YEAR 2021 at 13 (Mar. 2022), https://www.ethics.senate.gov/public/_cache/files/c6120c2b-e45b-4a2b-9d67-9f4ebfbd7fbf/cy-2021-financial-disclosure-instructions.pdf (providing guidance on what must be reported in Part 2 of the disclosure form). Cruz filed his Calendar Year 2021 Financial Disclosure Report on August 15, 2022; the report disclosed his ongoing royalty agreement for *One Vote Away* but did not disclose any earned income from Regnery. 2021 Financial Disclosure, Part 2. Cruz also disclosed a new publishing contract with Regnery that includes a \$1,100,000 advance for two future books and similar royalty terms to his contract for *One Vote Away*. *Id.*

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3 **V. RECOMMENDATIONS**

4 1. Find reason to believe that Ted Cruz and Ted Cruz for Senate and Bradley Scott
5 Knippa as treasurer violated 52 U.S.C. § 30114(b) by converting \$13,900 in
6 campaign funds to personal use by purchasing Facebook ads promoting sales of
7 Cruz's book;

8 2. Find no reason to believe that Ted Cruz and Ted Cruz for Senate and Bradley
9 Scott Knippa as treasurer violated 52 U.S.C. § 30114(b) by converting \$154,356
10 in campaign funds to personal use by purchasing copies of Cruz's book;

11 3. Approve the attached Factual and Legal Analysis;

12 4. Authorize pre-probable cause conciliation with Ted Cruz and Ted Cruz for Senate
13 and Bradley Scott Knippa as treasurer;

14 5. Approve the attached proposed conciliation agreement; and

1 6. Approve the appropriate letters.

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Lisa J. Stevenson
Acting General Counsel

January 24, 2023
Date

Charles Kitcher

Charles Kitcher
Associate General Counsel for Enforcement

Ana J. Peña-Wallace

Ana J. Peña-Wallace
Assistant General Counsel

Justine A. di Giovanni

Justine A. di Giovanni
Attorney

Previously assigned: Ray Wolcott