



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC MAIL

Chris Gober
The Gober Group
PO Box 341016
Austin, TX 78734
cg@gobergroup.com

April 13, 2023

RE: MUR 7897
Ted Cruz for Senate and Bradley
Scott Knippa in his official
capacity as treasurer, *et al.*

Dear Mr. Gober,

On April 12, 2023, the Federal Election Commission found reason to believe that your clients, Ted Cruz and Ted Cruz for Senate and Bradley Scott Knippa in his official capacity as treasurer (the "Committee"), violated 52 U.S.C. § 30114(b) of the Federal Election Campaign Act of 1971, as amended (the "Act"), by converting \$13,900 in campaign funds to personal use by purchasing Facebook ads promoting sales of Cruz's book. The Commission also found no reason to believe that Cruz and the Committee violated 52 U.S.C. § 30114(b) by converting \$154,356 in campaign funds to personal use by purchasing copies of Cruz's book. 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 authorized the Office of General Counsel to enter into negotiations directed toward 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.

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If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 60 days, you should respond to this notification as soon as possible. Accordingly, if your clients are interested in engaging in pre-probable cause conciliation negotiations, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574 or jdigiovanni@fec.gov 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 60 days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). 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://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf. 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 your clients wish the matter to be made public.

We look forward to your response.

On behalf of the Commission,



Dara Lindenbaum
Chair

Enclosures:
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Ted Cruz for Senate and Bradley Scott Knippa **MUR 7897**
4 in his official capacity as treasurer
5 Rafael Edward “Ted” Cruz

6 **I. INTRODUCTION**

7 This matter arises from a Complaint alleging that Senator Rafael Edward “Ted” Cruz and
8 his authorized committee, Ted Cruz for Senate and Bradley Scott Knippa in his official capacity
9 as treasurer (the “Committee”), violated the Federal Election Campaign Act of 1971, as amended
10 (the “Act”), by converting campaign funds to personal use when the Committee purchased
11 between \$13,900 and \$20,748 in Facebook advertisements to promote Cruz’s recently published
12 book and when it spent approximately \$154,000 to purchase copies of the book from third-party
13 booksellers. Respondents deny they violated the Act. While Respondents do not dispute the
14 Complaint’s characterization of the terms of Cruz’s contract with his publisher and further
15 acknowledge that the Committee purchased copies of the book and paid more than a *de minimis*
16 amount for Facebook ads promoting it, they assert, however, that Cruz has not, to date, received
17 any royalties beyond an advance he received from the publisher, and recognize that copies
18 purchased by the Committee must be excluded from any royalty calculations. Respondents
19 argue that neither the book purchases nor the paid promotion were an impermissible personal use
20 of campaign funds.

21 As discussed below, the Committee’s payments to promote Cruz’s book on Facebook
22 appear to constitute personal use because the need to publicize the book existed irrespective of
23 his candidacy and the Committee spent more than *de minimis* campaign resources promoting
24 sales of the book. As to the book purchases, it appears that the Committee purchased the books
25 for distribution to contributors in reasonable amounts to accomplish that purpose and at fair

1 market prices available to the general public. Further, the available information indicates that
2 Cruz had not received any royalties from these purchases as of the dates of his Response and his
3 2021 Senate Financial Disclosure, and Respondents expressly acknowledge the need to have
4 Cruz’s publisher exclude the purchased copies from any royalty calculations. Under these
5 circumstances, the Committee’s book purchases do not appear to constitute personal use under
6 Commission precedent.

7 The Commission therefore finds reason to believe that Cruz and the Committee violated
8 52 U.S.C. § 30114(b) by converting \$13,900 in campaign funds to personal use by purchasing
9 Facebook ads promoting sales of Cruz’s book, and find no reason to believe that Cruz and the
10 Committee violated 52 U.S.C. § 30114(b) by converting \$154,356 in campaign funds to personal
11 use through the purchase of copies of Cruz’s book.

12 **II. FACTUAL BACKGROUND**

13 Ted Cruz is an incumbent Senator from Texas and a candidate for U.S. Senate in the
14 2024 election cycle.¹ Ted Cruz for Senate is his authorized committee, and Bradley Scott
15 Knippa is the Committee’s treasurer.²

16 In September 2020, Regnery Publishing released Cruz’s book, *One Vote Away: How a*
17 *Single Supreme Court Seat Can Change History* (“*One Vote Away*”).³ According to Cruz’s

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).

1 Senate financial disclosure reports, he has a “royalty agreement” contract with Regnery with the
2 following terms:

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

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

16 On September 24, 2020, the Ted Cruz Facebook page, which is administered by the
17 Committee, began running a series of paid posts advertising the book (collectively, the

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”).

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).

1 “Facebook ads”) that included a button labeled “Learn More” by the text “Learn the Truth[,] Buy
2 my Book”; the “Learn More” button also linked to the book’s Amazon page where it was
3 available for purchase.⁸ Each of the ads was accompanied by Facebook-generated labels
4 indicating that the ads were “Sponsored” and “Paid for by TED CRUZ FOR SENATE.”⁹

5 As shown below, there are two versions of the ad: one with a video of Cruz and one with
6 a still picture of Cruz next to an image of the book and text reading “BUY MY NEW BOOK!”
7 above a red “ORDER IT HERE!” button.¹⁰ The text accompanying the ads is the same for both
8 versions and contains no reference to Cruz’s election. It reads: “I have a new book coming out
9 that explains how this seat could fundamentally change American History. It’s Called One Vote
10 Away: How a Single Supreme Court Seat Can Change History. Please Order your copy
11 today.”¹¹

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.

¹¹ *Id.*

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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

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

¹² E.g., Example Video Ad.

1 advertisements from September 24, 2020, through October 5, 2020, at a cost between \$13,900
2 and \$20,748, and were seen between 1,634,000 and 1,973,000 times across a variety of targeted
3 audiences.¹³

4 Respondents acknowledge making the disbursements cited in the Complaint but deny that
5 they resulted in realized financial gains for Cruz. Specifically, Respondents confirm that the
6 Committee paid for the Facebook advertisements, stating that the Committee “spent more than a
7 *de minimis* amount of campaign funds to promote [Cruz’s] book through social media
8 advertising.”¹⁴ Respondents assert that Cruz “has not received any royalties from any sales of
9 *One Vote Away*” as of the date of the Response and argue that he therefore has “not received any
10 financial benefit . . . as a result of the [Committee’s] promotions.”¹⁵ Although the Response
11 does not explain why Cruz had received no royalties, it also does not dispute the publicly
12 disclosed terms of his contract with Regnery, which would allow Cruz to receive royalty
13 payments only after net sales of his book generated royalties in excess of the \$400,000 required
14 for Regnery to recoup Cruz’s advance.¹⁶

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 the Commission has not identified additional ads beyond those noted in the Complaint. Compl. at 3.

¹⁴ Resp. at 3 (May 25, 2021).

¹⁵ *Id.*

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

1 Respondents state that the Committee purchased copies “for distribution to the
2 Committee’s supporters” and assert, without specifying how many copies of the book the
3 Committee purchased, that the quantity “did not exceed the number needed for that purpose.”¹⁷
4 The Complaint cites \$154,356 in Committee disbursements for “books” between October 15 and
5 December 1, 2020, but it is unclear whether the entire \$154,356 was for copies of *One Vote*
6 *Away*.¹⁸ Assuming the entire amount was for hardcover copies of the book, which originally
7 retailed for \$28.99, this would indicate that the campaign purchased several thousand copies of
8 the book.¹⁹ Respondents present no information indicating that Cruz made formal arrangements
9 with his publisher to have these book purchases excluded from net sales used to calculate his
10 royalties. Rather, Respondents state that “even if Senator Cruz were to receive royalties for *One*
11 *Vote Away* sales in the future, the Respondents recognize that any copies of the book purchased
12 by the Committee would have to be excluded from royalty calculations in compliance with the
13 Act and Regulations.”²⁰

14 III. LEGAL ANALYSIS

15 Under the Act and Commission regulations, an authorized committee may spend its funds
16 to finance activities “in connection with the [candidate’s] campaign for Federal office,” and the

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 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.

1 Commission has determined that a candidate and the candidate’s campaign committee have wide
2 discretion in making expenditures to influence the candidate’s election.²¹ Campaign funds,
3 however, “shall not be converted by any person to personal use,” which is defined as using funds
4 “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the
5 candidate’s election campaign or individual’s duties as holder of Federal office.”²² In other
6 words, expenses “that would be incurred even if the candidate was not a candidate” are
7 considered personal rather than campaign-related.²³

8 Examples of *per se* personal use include utility payments, non-campaign related
9 automobile expenses, vacations or other non-campaign-related trips, household food items, and
10 tuition payments not associated with training campaign staff.²⁴ For all other disbursements, the
11 regulation provides that the Commission shall determine on a case-by-case basis whether a given
12 disbursement is personal use by applying the “irrespective test” formulated in the statute.²⁵
13 Neither the purchase nor promotion of a candidate’s book are codified *per se* uses. Accordingly,
14 the Commission determines “on a case-by-case basis”²⁶ whether such activities constitute
15 personal use, and “[i]f the candidate can reasonably show that the expenses at issue resulted from

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.

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).

1 campaign or officeholder activities, the Commission will not consider the use to be personal
2 use.”²⁷

3 **A. The Commission Finds Reason to Believe that the Committee’s Purchase of**
4 **Facebook Ads to Promote *One Vote Away* Was Personal Use**

5 The Commission has previously concluded that expenses associated with marketing a
6 commercially published book for which a candidate would receive royalties are expenses that
7 would exist irrespective of the candidate’s election or duties as a federal officeholder.²⁸ Further,
8 the Commission has concluded that an authorized committee “may post a *de minimis* amount of
9 material promoting” a candidate’s book on the committee’s “website and social media sites at *de*
10 *minimis* cost” without converting campaign funds to personal use.²⁹ The Commission has
11 determined that “a single sentence, or, at most two sentences of promotional material” on a
12 “substantial” committee website would constitute a small amount of material at *de minimis* cost,
13 but that 25% of a website and Facebook and LinkedIn pages and 10% of a Twitter feed would

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 not be *de minimis*.³⁰ By contrast, the Commission has advised that the use of a larger amount of
2 authorized committee assets to promote a candidate’s book ordinarily would constitute a
3 prohibited personal use of campaign funds.³¹

4 Here, Respondents acknowledge that the Committee’s disbursements of at least \$13,900
5 to Facebook constituted “more than a *de minimis* amount of campaign funds to promote [Cruz’s]
6 book through social media advertising.”³² Furthermore, the Facebook ads at issue have a limited
7 nexus to the campaign and appear to be commercial exhortations, as the ads contained links to
8 purchase retail copies of Cruz’s book from Amazon. Neither of the two ad formats identifies
9 Cruz as a candidate and, aside from the video ads’ passing mention of “if you make a donation,”
10 they do not appear to contain an expressly campaign-related message.³³ While Cruz’s video
11 statements refer to Cruz’s actions as a Senator with respect to the Supreme Court and arguably
12 imply that his reelection would give him an opportunity to continue his efforts, and the

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*.

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

1 September and October 2020 timing of the ads occurred just before the 2020 presidential
2 election, the nexus to that election is significantly diminished by the fact that Cruz was not a
3 candidate in 2020 election because his senate seat is up for election in 2024.³⁴ The ads' timing
4 thus appears to be related more directly to the publication of the book and to promote its retail
5 sales. Because the Committee used more than *de minimis* campaign resources for promotional
6 expenses that existed irrespective of Cruz's election, these disbursements appear to constitute
7 personal use.

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

16 The facts here, however, differ substantially and materially from the facts presented to
17 the Commission in AO 2006-18. Granger had a contract with her publisher that assigned all
18 future royalties to two charitable organizations, so it was impossible for any increased sales
19 resulting from her committee's promotion of her book to result in any personal financial gain. In
20 contrast, under the disclosed terms of Cruz's publishing contract, at the time the disbursements
21 were made for these ads, all purchases of Cruz's book — including by people responding to the

³⁴ See *supra* note 1 and accompanying text.

³⁵ Resp. at 3.

1 paid Facebook ads — would have been counted towards calculating Cruz’s royalties. The
2 available information indicates that the Committee’s disbursements for paid advertisements —
3 complete with links to retail booksellers where it could be purchased — urged sales of a book for
4 which Cruz stood, and still stands, to be paid royalties. Beyond their assertion, Respondents
5 have provided no information explaining how Cruz received no financial benefit from such sales.

6 In sum, the available information indicates that the ads primarily promoted retail sales of
7 Cruz’s book; the Committee’s disbursements for Facebook ads were more than *de minimis* and
8 increased Cruz’s opportunity to receive future royalties. In light of the apparent financial benefit
9 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, the
11 Commission finds reason to believe that Cruz and the Committee violated 52 U.S.C. § 30114(b)
12 by converting at least \$13,900 in campaign funds to personal use by purchasing Facebook ads
13 promoting sales of his book.

14 **B. The Commission Finds No Reason to Believe that the Committee’s Purchase**
15 **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.³⁶ 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.³⁷ The
21 Commission concluded in these advisory opinions that, where the purchase of a candidate’s book

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

³⁷ 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.³⁸ 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 candidate³⁹ or in instances which otherwise excluded the committees'
13 purchases from the calculation of royalties accruing to the candidate.⁴⁰

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

³⁸ See, e.g., AO 2001-08 at 3; AO 2004-18 at 4; AO 2011-02 at 5; AO 2014-06 at 4.

³⁹ AO 2001-08 (royalties to be donated to charity by publisher); AO 2011-02 (same); AO 2014-06 (same).

⁴⁰ 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.”⁴¹ 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.⁴²

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.”⁴³ 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

⁴¹ AO 2001-08 at 3.

⁴² AO 2011-02 at 6.

⁴³ 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”).

1 appear to otherwise pass the irrespective test must also avoid creating a financial benefit for the
2 candidate to be consistent with the Act and Commission regulations concerning personal use.⁴⁴

3 Here, Respondents assert that the Committee purchased copies of *One Vote Away* for
4 distribution to the Committee's supporters in an amount (estimated by this Office to be several
5 thousand copies) that is not unreasonably high in light of the overall size of Cruz's campaign,⁴⁵
6 and which the Committee represents did not exceed the number needed for that purpose.⁴⁶

7 Further, the number of books purchased here is relatively high, but still consistent with prior,
8 Commission-approved purchases.⁴⁷ These disbursements appear to have been made for a *bona*
9 *fide* campaign-related expense that would not have existed irrespective of Cruz's candidacy.⁴⁸

10 Additionally, the Committee's disclosure reports filed with the Commission indicate that the
11 books were purchased through retail booksellers, and there is no available information indicating
12 that the Committee paid other than full retail price.⁴⁹ Respondents also assert that Cruz has, to

⁴⁴ 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 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).

⁴⁵ 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).

⁴⁶ Resp. at 2-3.

⁴⁷ 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).

⁴⁸ 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.

⁴⁹ *Supra* notes 18-19 and accompanying text.

1 date, received no royalties from sales of his book, and state that “even if Senator Cruz were to
2 receive royalties for One Vote Away sales in the future, the *Respondents recognize that any*
3 *copies of the book purchased by the Committee would have to be excluded from royalty*
4 *calculations in compliance with the Act and Commission regulations.”*⁵⁰ Because Cruz has not
5 received royalties from these purchases and Respondents expressly acknowledge the need to
6 eliminate the possibility of earning such royalties from the Committee’s purchase of his book,
7 the Committee’s purchases of *One Vote Away* appear to be consistent with the prior
8 circumstances in which the Commission has permitted proposed purchases of candidate books in
9 the advisory opinion context.⁵¹

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

⁵⁰ Resp. at 3 (emphasis added).

⁵¹ Although the Commission does 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*, 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.*