FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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**MEMORANDUM**

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**SUBJECT:** Interim Audit Report on the Ted Cruz for Senate Committee (LRA 976)

## I. INTRODUCTION

The Office of the General Counsel has reviewed the Interim Audit Report ("IAR") on the Ted Cruz for Senate committee ("the Committee"). The IAR contains two findings: Receipt of Contributions in Excess of Net Debt (Finding 1); and Reporting of Candidate Loan as a Contribution (Finding 2). Our comments address Finding 1 only, as we concur with Finding 2. If you have any questions, please contact Joshua Blume, the attorney assigned to this audit.

## II. RECEIPT OF CONTRIBUTIONS IN EXCESS OF NET DEBT (Finding 1)

Finding 1 concerns eight contributions totaling $19,000 made by various political committees[1] to the Committee, all of which were made after the date of the general election. The IAR concludes that all eight of the contributions were designated for the general election. The Audit Division relied on disclosure reports filed by the contributing political committees to determine that these contributions were designated for the general election. The Audit Division, however, found that the Committee had no net debts outstanding associated with the general election when it received these contributions.[2] The IAR, therefore, concludes that the Committee was not eligible to receive general election contributions. *See* 11 C.F.R. §§ 110.1(b)(3)(i), 110.2(b)(3)(i) (contributions designated in writing for a particular election but made after that election may be accepted only to the extent necessary to retire net debts outstanding from that election).

We conclude that some, but not all, of the eight contributions were designated for the general election. We set forth our specific conclusions for each of the three categories of contribution discussed in the IAR below.

The first category includes four contributions totaling $12,000 containing such annotations as "general election," "general debt retirement," or "debt retirement." We conclude that the contributors designated these contributions for the general election. This conclusion, however, is based on the annotations that appear on the contributions and not on the contributing committees' disclosure reports.[3] The annotations "general election" and "general debt retirement" clearly indicate the particular election for which the respective contributions were made. 11 C.F.R. §§ 110.1(b)(4)(i), 110.2(b)(4)(i). The contributions bearing the annotation "debt retirement" do not

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[1] We understand that all but one of the political committee contributors discussed in the IAR are, or were, multicandidate committees, as that term is defined in the Federal Election Campaign Act of 1971, as amended, and in Commission regulations. *See* 52 U.S.C. § 30116(a)(4); 11 C.F.R. § 100.5(e)(3). Since all but one of the contributors discussed in Finding 1 are or were multicandidate committees, we recommend that the Audit Division revise the Legal Standard section of the Finding to incorporate references to section 110.2, and determine whether the application of section 110.2 to any of the contributions made by a multicandidate committee would change the resulting analysis.

[2] The IAR does not present the calculation that the Audit staff performed to determine that the Committee had no net debts outstanding associated with the general election at the time it received these contributions. To provide more support for the finding and to allow the Committee to respond to it, we would recommend that the Audit Division revise the IAR to provide details of the calculation.

[3] The Audit Division used the disclosure reports to determine the designations not only to resolve apparent ambiguities in the status of certain of the contributions discussed in the Finding, but also so as to be consistent with its decision to exclude one apparent excessive contribution of $2,500 from the Finding. We recommend that the Audit Division revise the IAR to remove any analysis that relies on the disclosure reports to determine the contributors' designation of the contributions. The Commission previously considered and rejected a proposal to allow contributing political committees to designate their contributions by indicating those designations in their disclosure reports. *See* Explanation and Justification for Final Rule on Contribution and Expenditure Limitations and Prohibitions [and] Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760, 762-63 (Jan. 9, 1987) ("1987 E&J"). Therefore, we do not believe that the contributors' disclosure reports can serve as a source of contribution designation information.

on their face indicate which election debt they are intended to help reduce, but given the timing of the contributions, we believe they should also be considered general election contributions. This conclusion is consistent with the result in Re: AOR 1976-101 (Moynihan).[4] In that matter, the Commission concluded that persons making contributions after the general election to retire a committee's debts should designate in writing the specific election debt to which their contributions relate, and that, if the contributors make no designation as to which election debt the funds should be applied, then the contributions should be deemed made with respect to the general election. Re: AOR 1976-101 (Moynihan).[5]

Although these contributions should be considered designated for the general election, the Committee could not accept these contributions for that election. To accept a contribution that is designated for the general election, but received after that election, a committee must have net debts outstanding. 11 C.F.R. §§ 110.1(b)(3)(i), 110.2(b)(3)(i) The four contributions designated for the general election could not have been properly received for that election because according to the Audit Division there were no net debts outstanding associated with the general election.[6]

Second, we believe that the three contribution checks totaling $4,500 should be considered as undesignated because they apparently bore no annotations, nor were they accompanied by a signed writing designating the contributions for specific elections. 11 C.F.R. §§ 110.1(b)(4)(i)-(ii), 110.2(b)(4)(i)-(ii). Given these facts, we believe that the contributions should be deemed to have been made with respect to the 2018 primary election for the U.S. Senate – the next election for the same Federal office occurring after the contributions were made. 11 C.F.R. §§ 110.1(b)(2)(ii), 110.2(b)(2)(ii). These three contributions totaling $4,500 therefore also would require evidence of redesignation if the Committee sought to use them to retire 2012 election debt.

Finally, we believe that the single contribution of $2,500 containing the annotation "run-off election" should be considered to have been made with respect to the primary run-off election since the annotation clearly indicates the particular election for which the contribution was made. 11 C.F.R. §§ 110.1(b)(4)(i), 110.2(b)(4)(i). Given this conclusion, the single $2,500 contribution designated for the run-off election would not require evidence of redesignation to the extent that: (1) there was net debt outstanding from the run-off election under the rules; and (2) the Committee used the contribution to help reduce this run-off election debt. 11 C.F.R. §§ 110.1(b)(3)(i), 110.2(b)(3)(i).

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[4] The Commission issued this document in response to an advisory opinion request, but noted that it should be regarded as informational only and not as an advisory opinion, because it was based in part on proposed Commission regulations. Re:AOR 1976-101 (Moynihan for Senate).

[5] The Moynihan committee had accumulated both primary election debt and general election debt. Re: AOR 1976-101 (Moynihan for Senate).

[6] Commission regulations provide that the net debt outstanding rules do not otherwise preclude candidates who participate in the general election from using general election contributions to pay primary election debt. 11 C.F.R. § 110.1(b)(3)(iv); *see also* Advisory Opinion 1990-30 (Helms) (concluding that committee could treat total $1 million indebtedness as general election indebtedness pursuant to section 110.1(b)(3)(iv)). In its explanation of this rule, the Commission clarified that it allows the use of funds "properly received" for the general election for this purpose. 1987 E&J, at 762. Funds received for the general election that exceed net debts outstanding for that election would not be properly received.