

BEFORE THE FEDERAL ELECTION COMMISSION

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MUR 7494

**RESPONSE OF REPRESENTATIVE JOHN CULBERSON AND
CULBERSON FOR CONGRESS AND JENNIFER NAEDLER, AS TREASURER**

Representative John Culberson and his principal campaign committee, Culberson for Congress and its Treasurer Jennifer Naedler (“the Committee”), hereby submit this response to the Complaint in the above-captioned MUR. The Complaint, an orchestrated political stunt filed weeks before the general election,¹ alleges that certain reported Committee disbursements might have been prohibited personal uses of campaign funds. It erroneously bases this claim not on any evidence but rather on Complainants’ own wishful assumptions. Yet the payments – most of which were made and reported by the Committee well over five years ago – defrayed costs incurred in connection with Rep. Culberson’s campaign or duties as a federal officeholder and were appropriate uses of campaign funds. Respondents thus respectfully request that the Commission dismiss this matter immediately, as Rep. Culberson is leaving Congress and wishes to terminate the Committee as soon as practicable.

Under the Federal Election Campaign Act and FEC regulations, candidate campaign committees “have wide discretion over the use of campaign funds.” *Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7,862, 7,867 (Feb. 9, 1995). A campaign committee may use contributions for any lawful purpose, so long as the funds are not spent for “personal use.” 52 U.S.C. § 30114(a)(6); accord 11 C.F.R. § 113.2(e).

¹ Complainant is a well-known Democratic activist in Rep. Culberson’s congressional district who openly admitted that he brought his Complaint at the direction of the Democratic Congressional Campaign Committee and state Democratic party officials in Texas. See Kevin Diaz, *Democrats question \$50k in books and collectibles that Rep. Culberson bought with campaign funds*, Houston Chronicle, Aug. 30, 2018, available at <https://www.houstonchronicle.com/news/politics/texas/article/Democrats-question-50-000-in-books-and-13186560.php>.

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“Personal use results” only when campaign contributions are “used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.” 52 U.S.C. § 30114(b)(2); *accord* 11 C.F.R. § 113.1(g). “If campaign funds are used for a financial obligation that is caused by campaign activity or the activities of an officeholder, that use is not personal use.” 60 Fed. Reg. at 7,863–64. Accordingly, “[t]he Commission has long recognized that if a candidate ‘can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.’” Advisory Op. 2011-17 (Giffords) at 3 (quoting 60 Fed. Reg. at 7,867).

Here, the Complaint does not – and cannot – offer any evidence of prohibited personal use. It instead consists only of bald speculation and conclusory allegations, which the Commission repeatedly has made clear “do not form the adequate basis to find reason to believe that a violation of [the Act] has occurred.” First General Counsel’s Report, MUR 5467 (Michael Moore), at 5 (citation omitted); *see also* Statement of Reasons of Comm’rs Mason, Sandstrom, Smith & Thomas, MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee, Inc.), at 2 (“Unwarranted legal conclusions from asserted facts . . . will not be accepted as true.”). Indeed, due process and fundamental fairness demand dismissal of complaints like this one – which wrongly try to make respondents prove a negative. *See, e.g.*, Statement of Reasons of Comm’rs Wold, Mason & Thomas, MUR 4850 (Deloitte & Touche, LLP), at 2 (“A mere conclusory allegation without any supporting evidence does not shift the burden of proof to the respondents.”); *see also* *Machinists Non-partisan Political Action Comm. v. FEC*, 655 F.2d 380, 388 (D.C. Cir. 1981) (establishing that mere “‘official curiosity’ will not suffice as the basis for FEC investigations”).

Nonetheless, the disbursements at issue only defrayed costs in connection with Rep. Culberson's campaign and responsibilities as an officeholder and thus were permissible uses of campaign funds. For example, the Complaint asserts that a 2009 payment for Rep. Culberson's membership fee to the Texas State Rifle Association ("TSRA") was *per se* personal use under 11 C.F.R. § 113.1(g)(1)(i)(G). Yet Rep. Culberson has been a vocal advocate for Second Amendment rights, and his membership in the TSRA has allowed him to maintain important political contacts with constituents. Although conveniently ignored in the Complaint, the Commission has made clear that campaigns may pay for dues to such organizations that have "political aspects" or "political interests." See 60 Fed. Reg. at 7,866 ("The rule also allows a candidate or officeholder to use campaign funds to pay membership dues in an organization that may have political interests.").

The Complaint similarly assumes that Committee payments for certain low-cost small collectibles (such as historical pins, prints, coins/pesos, and Texas hat stars) constituted personal use.² Rep. Culberson, however, consistently ran on a Tenth Amendment-based platform advocating to "Let Texans Run Texas," and from the time he took office, routinely handed out these small tokens of Texas history as gifts to his campaign staff and volunteers, donors, and fellow Members of Congress to help promote his political brand. The costs in acquiring those items of little monetary value would not have existed absent his campaign or officeholder position. See, e.g., Advisory Op. 2000-37 (Udall) at 3-4 (permitting campaign purchase of low-cost replica Liberty Medals to present to veterans).

² The Complaint notes that Rep. Culberson runs an outside business that collects and sells military collectibles. While that is true and fully disclosed on Rep. Culberson's annual financial disclosure, the Campaign has not paid for those items, which are more valuable collectibles than the trinkets Rep. Culberson has given away.

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The Complaint also questions certain disbursements the Committee made to purchase various books and other reference materials pertaining to issues of government, law, and history. These items were purchased to help educate and inform Rep. Culberson in carrying out his obligations in Congress, and many of them are currently in his congressional office. Since they were in connection with Rep. Culberson's duties as an officeholder, payments of their costs were an appropriate use of campaign funds.

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For the foregoing reasons, the Complaint must be dismissed. It provides no evidence whatsoever to support its conclusory allegations, and the Committee's payments at issue were consistent with Commission regulations and precedents and entirely appropriate. Accordingly, Respondents ask that the Commission dismiss this matter so that the Committee may look to terminate.

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