

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR 7494**

4 COMPLAINT FILED: Sept. 10, 2018

5 NOTIFICATION DATE: Sept. 12, 2018

6 LAST RESPONSE FILED: Nov. 13, 2018

7 ACTIVATION DATE: Nov. 29, 2018

8 EXPIRATION OF SOL:

9 July 1, 2014 (earliest) / Sept. 21, 2023 (latest)

10 ELECTION CYCLES: 2014, 2016, 2018

11
12 **COMPLAINANT:** Daniel J. Cohen

13 **RESPONDENTS:** John Culberson
14 Culberson for Congress and Jennifer Naedler in her
15 official capacity as treasurer

16 **RELEVANT AUTHORITY:** 52 U.S.C. § 30114(b)
17 11 C.F.R. § 113.1(g)

18 **INTERNAL REPORTS CHECKED:** Disclosure Reports

19 **FEDERAL AGENCIES CHECKED:** U.S. House of Representatives Financial Disclosures

20 **I. INTRODUCTION**

21 Complainant alleges that Congressman John Culberson and his authorized campaign
22 committee, Culberson for Congress and Jennifer Naedler in her official capacity as treasurer (the
23 "Committee"), converted campaign funds to personal use by spending approximately \$17,000
24 for donor and supporter gifts between 2004 and 2018; and by spending approximately \$33,000
25 for books and other research materials between 2009 and 2018.¹ The Complaint also alleges that
26 a \$375 disbursement made in 2009 for a membership in the Texas State Rifle Association

¹ Compl. at 2-3 (Sept. 10, 2018). A significant portion of the alleged activity is outside the applicable five-year statute of limitations period. See 28 U.S.C. § 2462.

1 ("TSRA"), as well as disbursements totaling \$309.66 in July and August of 2012 to the Black
2 Hills Institute, were for Culberson's personal use.

3 Respondents contend that the Commission should dismiss these allegations on the ground
4 that all of the expenditures at issue defrayed expenses relating to Culberson's campaigns for
5 federal office or his duties as a federal officeholder.² Based on the available information, we
6 recommend that the Commission dismiss the allegations that the Respondents violated 52 U.S.C.
7 § 30114(b), and close the file.

8 II. FACTUAL BACKGROUND

9 Culberson has represented Texas's Seventh Congressional District in Congress since
10 2001, but lost his bid for reelection in the 2018 general election.³

11 Throughout Culberson's time in federal office, the Committee has reported expenditures
12 for gifts to donors, supporters, and for use in fundraising efforts.⁴ Since 2014, the period within
13 the five-year statute of limitations, the Committee has spent \$6,238.17 on "gifts" and \$14,904.43
14 for "research" materials.⁵ The Complaint specifically notes that the Committee disbursed \$375

² Resp. at 3-4 (Nov. 13, 2018).

³ Jeremy Blackman and Austin Bureau, *Fletcher Beats Culberson in Houston's Toss-Up 7th Congressional District*, HOUSTON CHRONICLE (Nov. 7, 2018), available at <https://www.chron.com/news/politics/texas/article/Fletcher-takes-early-lead-in-Houston-s-toss-up-13368933.php>.

⁴ See, e.g., Culberson Comm. 2017 July Quarterly Report at 89 (reporting \$59.54 disbursement to "Alexander's Fine Portraits" for "print of photo for host gift."); Culberson Comm. 2015 Apr. Quarterly Report at 64, 85 (reporting \$765.70 disbursement to "Graves Coins" for "coins for gifts" and \$285 disbursement to the "U.S. House Gift Shop" for "volunteer gifts.").

⁵ See, e.g., Culberson Comm. Disbursements to Amazon.com, 2017-2018, available at https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00343236&recipient_name=amazon&min_date=01%2F01%2F2017&max_date=11%2F28%2F2018; Culberson Comm. Disbursements to Barnes & Noble, 2015-2016, available at https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00343236&recipient_name=barnes&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

1 to the TSRA⁶ on July 1, 2009, for a "membership fee" and \$309.66 to the Black Hills Institute
2 (an organization that sells and rents fossils)⁷ in July and August 2012, for "research materials."⁸

3 Complainant alleges that Culberson's Congressional Financial Disclosure Statements
4 show that he appears to have an outside business that collects and sells military collectibles.
5 Complainant further alleges that Committee disbursements for civil war memorabilia to be used
6 as gifts, or unspecified "research materials," raise the question of whether the items were
7 purchased to support Culberson's business or were in connection with his personal hobby, rather
8 than in connection with his duties as a federal candidate or officeholder.⁹ However,
9 Complainant does not identify any specific gift or research expenditures by the Committee that
10 allegedly supported Culberson's business.

11 Respondents assert that all of the disbursements cited by the Complainant were incurred
12 in connection with Culberson's reelection campaigns and duties as a federal officeholder.
13 Respondents contend that Committee payments for low-cost small collectibles as gifts to
14 campaign staff, volunteers, donors, and fellow members of Congress were permissible in order to

⁶ The TSRA appears to be an issue advocacy group based in Austin, Texas, and it has an associated state political action committee. Texas State Rifle Ass'n, *About Us*, available at <https://tsra.com/about-us> ("[Our] tens of thousands of members from across the state include individuals from all walks of life who have a common goal in protecting the rights of the law-abiding citizens to keep and bear arms."); Texas Ethics Comm'n, Active PAC List 2018, available at <https://www.ethics.state.tx.us/tedd/PacLst10.xlsx>.

⁷ The Black Hills Institute of Geological Research appears to be a private, incorporated business based in South Dakota, which primarily sells fossils and fossil replicas for research and educational purposes. Black Hills Institute of Geological Research, Inc., *What We Do*, available at http://www.bhigr.com/pages/wwd/wwd_main.htm ("The Institute's primary business is supplying professionally prepared fossils, fossil casts, and mineral specimens for research, teaching, and exhibit.").

⁸ See Culberson Comm. Amend. 2009 Oct. Quarterly Report at 65 (Feb. 22, 2010); Culberson Comm. 2012 Oct. Quarterly Report at 69, 78 (Oct. 15, 2012).

⁹ Compl. at 2-3.

1 promote Culberson's "political brand."¹⁰ Respondents acknowledge that Culberson runs a
2 business that collects and sells military collectibles, but assert that the Committee "has not paid
3 for those items, which are more valuable collectibles than the trinkets" that Culberson has given
4 to supporters as gifts.¹¹ Respondents also assert that books and other reference materials
5 purchased by the Committee were to help educate and inform Culberson in carrying out his
6 duties, and that many of these materials are currently kept in his congressional office.¹²

7 III. LEGAL ANALYSIS

8 A. A Candidate May Use Campaign Funds to Defray Costs Arising From His or 9 Her Campaign or Official Duties as a Federal Officeholder

10 The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that funds
11 in a campaign account may be used for expenditures arising from a candidate's campaign for
12 federal office or a federal officeholder's official duties, as well as for "any other lawful purpose"
13 not otherwise prohibited under the Act.¹³ However, the Act prohibits any person from
14 converting a political contribution or donation to personal use.¹⁴ Personal use is the use of
15 campaign funds "to fulfill a commitment, obligation or expense of any person that would exist
16 irrespective of the candidate's campaign or duties as a Federal officeholder."¹⁵ Commission
17 regulations list uses of campaign funds that are *per se* personal use,¹⁶ which include the payment

¹⁰ Resp. at 3.

¹¹ Resp. at 3 n.2.

¹² Resp. at 4.

¹³ 52 U.S.C. § 30114(a).

¹⁴ 52 U.S.C. § 30114(b).

¹⁵ 11 C.F.R. § 113.1(g).

¹⁶ 11 C.F.R. § 113.1(g)(1)(i).

1 of "[d]ues, fees, or gratuities at a country club, health club, recreational facility or other
2 nonpolitical organization, unless they are part of the costs of a specific fundraising event that
3 takes place on the organization's premises."¹⁷ With respect to the payment of membership dues,
4 the Commission has explained, in light of the associational interests involved, that campaign
5 funds may be used "to pay membership dues in an organization that may have political interests
6 [including] . . . community or civic organizations that a candidate or officeholder joins in his or
7 her district in order to maintain political contacts with constituents or the business community."¹⁸
8 In addition to examples of *per se* personal use, the "Commission will determine, on a case-by-
9 case basis, whether other uses" of campaign funds constitute personal use.¹⁹

10 Notwithstanding the personal use prohibition, the law otherwise provides broad
11 discretion regarding the use of campaign funds.²⁰ The Commission has previously approved the
12 use of campaign funds to purchase gifts that "are low in cost and have little monetary value" for
13 constituents, noting that paying for such gifts with campaign funds would be problematic only if
14 the gift went "beyond an honorific purpose" and "confer[red] a significant personal benefit on

¹⁷ 11 C.F.R. § 113.1(g)(1)(i)(G).

¹⁸ Contribution and Expenditure Limitations and Prohibitions: Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7866 (Feb. 9, 1995).

¹⁹ 11 C.F.R. § 113.1(g)(1)(ii).

²⁰ 52 U.S.C. § 30114(a)(6); 11 C.F.R. § 113.2(e) (campaign funds may be used "for any other lawful purpose" unless prohibited as personal use).

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1 the recipient.”²¹ The Commission has also approved the use of campaign funds to purchase
2 copies of a candidate’s autobiography to be given as gifts to donors and political supporters.²²

3 **B. The Available Information Does Not Support an Inference that Culberson or**
4 **the Committee Converted Campaign Funds to Personal Use**

5 The available information does not raise a reasonable inference that the Committee’s
6 expenditures for antiques and military collectibles supported Culberson’s “personal hobby” or
7 business of collecting and selling such items.²³ Respondents assert that these expenditures were
8 to purchase “small tokens of Texas history” for “campaign staff and volunteers, donors, and
9 fellow Members of Congress,” and that the “costs in acquiring those items of little monetary
10 value would not have existed absent [Culberson’s] campaign or officeholder position.”²⁴

11 Respondents also assert that the Committee has not paid for items connected to Culberson’s
12 military collectible business, which deals in higher-value items than the “trinkets” that Culberson
13 has given to supporters as gifts.²⁵

14 The Commission has approved the use of campaign funds to purchase gifts of nominal
15 value, which are given in connection with a candidate’s campaign or duties as a federal
16 officeholder, for staff, volunteers, constituents, and political supporters. While disclosure reports

²¹ Advisory Op. 2000-37 at 3 (Udall) (finding that use of campaign funds to purchase replica medals to honor military veterans would not constitute personal use because this activity “is a form of community service that is an integral part of the duties of a Member of Congress”); *see also* 11 C.F.R. § 113.1(g)(4) (permitting the use of campaign funds to pay for “gifts of nominal value and donations of a nominal amount made on a special occasion[.]”).

²² Advisory Op. 1995-46 at 1-2 (D’Amato); *see* Advisory Op. 1993-20 at 2 (Campbell) (same); *see also* Advisory Op. 1983-05 at 1 (Flippo) (approving the use of campaign funds to pay for “certificates, mementos, newsletters, special receptions, and possibly other social events” to recognize regular donors).

²³ Compl. at 5.

²⁴ Resp. at 3. Disclosure reports show that since April 30, 2014, the Committee has made twenty-one expenditures described as “gifts,” totaling \$6,238.17.

²⁵ Resp. at 3 n.2.

1 indicate that the Committee spent a total of \$5,130 on items purchased at civil war shows during
2 the 2010 election cycle, each of those disbursements was for items described as a gift, an office
3 display, or for use at an auction, and the highest-value purchase was reported as \$950.²⁶ There is
4 no reasonably discernable connection between any of these Committee purchases and the sale of
5 military collectibles that Culberson reported in his Congressional Financial Disclosure
6 Statements. Within the five-year statute of limitations period, Culberson reported only thirteen
7 such sale transactions, none of which was for less than \$15,000 — he reported that four such
8 transactions were for between \$15,000 and \$50,000, six were for between \$50,000 and \$100,000,
9 and the remaining three were for more than \$100,000.²⁷ This significant disparity in value
10 circumstantially indicates that the items the Committee had previously purchased during the
11 2010 election cycle were not the same kind of items that Culberson was selling through his
12 personal business.²⁸ In light of Respondents' assertions and the available information, there is
13 no reasonable basis to infer that these Committee expenditures were for personal use rather than
14 for nominal gifts, as permitted under the law.

²⁶ Culberson Comm. Disbursements to "Civil War" Recipients, 2009-2010, available at https://www.fec.gov/data/disbursements/?two_year_transaction_period=2010&data_type=processed&committee_id=C00343236&recipient_name=war&min_date=01%2F01%2F2009&max_date=12%2F31%2F2010. The Committee made no similar purchases during any subsequent election cycle.

²⁷ U.S. House of Representatives, 2017 Financial Disclosure Statement of John Culberson at 3 (Feb. 1, 2019) available at http://clerk.house.gov/public_disc/financial-pdfs/2019/9114345.pdf; U.S. House of Representatives, 2016 Financial Disclosure Statement of John Culberson at 3 (May 10, 2017), available at http://clerk.house.gov/public_disc/financial-pdfs/2016/9111040.pdf; U.S. House of Representatives, 2015 Financial Disclosure Statement of John Culberson at 3 (May 12, 2016), available at http://clerk.house.gov/public_disc/financial-pdfs/2015/9109106.pdf; U.S. House of Representatives, 2014 Financial Disclosure Statement of John Culberson at 3 (May 15, 2015), available at http://clerk.house.gov/public_disc/financial-pdfs/2014/9106987.pdf.

²⁸ Complainant acknowledges this significant disparity in value, noting that Culberson's business reported selling "\$13.5 million worth of "Military Collectibles" since 2010" but that the Committee reported spending \$17,000 on donor gifts, including over \$5,000 on civil war memorabilia in during the 2010 election cycle. Compl. at 2-3.

1 There is likewise no reasonable basis to conclude that the Committee's expenditures for
2 research materials were for personal use. The Complaint alleges that these expenditures were
3 "excessive" in comparison to other political committees and thus may have been "for purposes
4 unrelated to the campaign."²⁹ However, there is nothing inherently suggestive about the fact that
5 the Committee reported spending more on research materials than other committees. The Act
6 grants broad discretion regarding the use of the campaign funds,³⁰ and a candidate may — as
7 Respondents contend — spend funds in a campaign account on "books and other reference
8 materials pertaining to issues of government, law, and history . . . to help educate and inform [the
9 candidate] in carrying out his [or her] obligations in Congress"³¹ rather than using those funds to
10 campaign for reelection. The available information also establishes no connection between these
11 research expenditures and Culberson's business or personal interests in antiques and military
12 memorabilia.

13 The Committee's 2009 payment for a membership to the TSRA and its 2012 payments to
14 the Black Hills Institute are both beyond the applicable five-year statute of limitations.³²
15 Moreover, there is no apparent basis on which to conclude that these disbursements constituted
16 personal use of campaign funds. The Commission has explained that campaign funds may be
17 used to obtain membership in a nonpolitical civic organization that has a political purpose, and

²⁹ Compl. at 3, 6.

³⁰ 52 U.S.C. § 30114(a)(6); 11 C.F.R. § 113.2(e) (campaign funds may be used "for any other lawful purpose" unless prohibited as personal use).

³¹ Resp. at 4. The Response also indicates that "many of [the research materials] are currently in [Culberson's] congressional office." *Id.* Because the materials were purchased using the Committee's funds and are thus the Committee's property, if any of the materials are transferred to Culberson after he leaves office, he must pay the Committee the fair market value for them, incorporating the appropriate allocation of any depreciation in their value. *See* 11 C.F.R. § 113.1(g)(3).

³² *See* 28 U.S.C. § 2462.

1 the TSRA appears to meet those criteria.³³ In addition, even if it is unclear whether the
2 Committee disbursements to the Black Hills Institute were for items that would have been
3 purchased irrespective of Culberson's position as a federal candidate or officeholder, the
4 Complaint's mere assertion that "it is very unlikely that a congressional campaign committee
5 needs to buy or rent fossils to win a federal election,"³⁴ is speculative and unsupported. Without
6 additional information, the record does not raise a reasonable inference that these disbursements
7 were, in fact, for personal use.

8 As such, we recommend that the Commission dismiss the allegations that the
9 Respondents violated 52 U.S.C. § 30114(b), and close the file.

10 **IV. RECOMMENDATIONS**

- 11 1. Dismiss the allegations that John Culberson, Culberson for Congress, and Jennifer
12 Naedler in her official capacity as treasurer violated 52 U.S.C. § 30114(b);
13 2. Approve the attached Factual and Legal Analysis;
14 3. Approve the appropriate letters; and

³³ See *supra* note 18 and associated text.

³⁴ Compl. at 5.

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1 4. Close the file.

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Lisa J. Stevenson
Acting General Counsel

4 April 3, 2019

5 Date

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