



**FEDERAL ELECTION COMMISSION**  
**Washington, DC 20463**

Megan Sowards Newton, Esq:  
Jones Day  
51 Louisiana Ave., NW  
Washington, DC 20001

**APR 25 2019**

RE: MUR 7494

Dear Ms. Newton:

On September 12, 2018, the Federal Election Commission ("Commission") notified your clients John Culberson, Culberson for Congress, and Jennifer Naedler in her official capacity as treasurer of a complaint alleging that your clients had violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 23, 2019, the Commission, after considering the complaint and your clients' response, determined to dismiss the allegations and close the file in this matter. The Factual and Legal Analysis, which provides a basis for the Commission's determination, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8). If you have any questions, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Mark Shonkwiler by SG".

Mark Shonkwiler  
Assistant General Counsel

Encl.  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: John Culberson MUR 7494  
4 Culberson for Congress and  
5 Jennifer Naedler in her official  
6 capacity as treasurer  
7

8 **I. INTRODUCTION**

9 This matter was generated by a complaint filed with the Federal Election Commission  
10 (“Commission”) by Daniel J. Cohen. *See* 52 U.S.C. § 30109(a)(1). Complainant alleges that  
11 Congressman John Culberson and his authorized campaign committee, Culberson for Congress  
12 and Jennifer Naedler in her official capacity as treasurer (the “Committee”), converted campaign  
13 funds to personal use by spending approximately \$17,000 for donor and supporter gifts between  
14 2004 and 2018; and by spending approximately \$33,000 for books and other research materials  
15 between 2009 and 2018.<sup>1</sup> The Complaint also alleges that a \$375 disbursement made in 2009 for  
16 a membership in the Texas State Rifle Association (“TSRA”), as well as disbursements totaling  
17 \$309.66 in July and August of 2012 to the Black Hills Institute, were for Culberson’s personal  
18 use. Respondents contend that the Commission should dismiss these allegations on the ground  
19 that all of the expenditures at issue defrayed expenses relating to Culberson’s campaigns for  
20 federal office or his duties as a federal officeholder.<sup>2</sup> Based on the available information, the  
21 Commission dismisses the allegations that the Respondents violated 52 U.S.C. § 30114(b).

<sup>1</sup> 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.

<sup>2</sup> Resp. at 3-4 (Nov. 13, 2018).

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Background**

3 Culberson has represented Texas's Seventh Congressional District in Congress since  
4 2001, but lost his bid for reelection in the 2018 general election.<sup>3</sup> Throughout Culberson's time  
5 in federal office, the Committee has reported expenditures for gifts to donors, supporters, and for  
6 use in fundraising efforts.<sup>4</sup> Since 2014, the period within the five-year statute of limitations, the  
7 Committee has spent \$6,238.17 on "gifts" and \$14,904.43 for "research" materials.<sup>5</sup> The  
8 Complaint specifically notes that the Committee disbursed \$375 to the TSRA<sup>6</sup> on July 1, 2009,

<sup>3</sup> 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>.

<sup>4</sup> 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").

<sup>5</sup> 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](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](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).

<sup>6</sup> 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>.

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

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.<sup>9</sup> However, Complainant  
9 does not identify any specific gift or research expenditures by the Committee that allegedly  
10 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  
15 promote Culberson's "political brand."<sup>10</sup> Respondents acknowledge that Culberson runs a  
16 business that collects and sells military collectibles, but assert that the Committee "has not paid  
17 for those items, which are more valuable collectibles than the trinkets" that Culberson has given

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<sup>7</sup> 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](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.").

<sup>8</sup> 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).

<sup>9</sup> Compl. at 2-3.

<sup>10</sup> Resp. at 3.

1 to supporters as gifts.<sup>11</sup> Respondents also assert that books and other reference materials  
2 purchased by the Committee were to help educate and inform Culberson in carrying out his  
3 duties, and that many of these materials are currently kept in his congressional office.<sup>12</sup>

4 **B. A Candidate May Use Campaign Funds to Defray Costs Arising From His or**  
5 **Her Campaign or Official Duties as a Federal Officeholder**

6 The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that funds  
7 in a campaign account may be used for expenditures arising from a candidate's campaign for  
8 federal office or a federal officeholder's official duties, as well as for "any other lawful purpose"  
9 not otherwise prohibited under the Act.<sup>13</sup> However, the Act prohibits any person from  
10 converting a political contribution or donation to personal use.<sup>14</sup> Personal use is the use of  
11 campaign funds "to fulfill a commitment, obligation or expense of any person that would exist  
12 irrespective of the candidate's campaign or duties as a Federal officeholder."<sup>15</sup> Commission  
13 regulations list uses of campaign funds that are *per se* personal use,<sup>16</sup> which include the payment  
14 of "[d]ues, fees, or gratuities at a country club, health club, recreational facility or other  
15 nonpolitical organization, unless they are part of the costs of a specific fundraising event that  
16 takes place on the organization's premises."<sup>17</sup> With respect to the payment of membership dues,  
17 the Commission has explained, in light of the associational interests involved, that campaign

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<sup>11</sup> Resp. at 3 n.2.

<sup>12</sup> Resp. at 4.

<sup>13</sup> 52 U.S.C. § 30114(a).

<sup>14</sup> 52 U.S.C. § 30114(b).

<sup>15</sup> 11 C.F.R. § 113.1(g).

<sup>16</sup> 11 C.F.R. § 113.1(g)(1)(i).

<sup>17</sup> 11 C.F.R. § 113.1(g)(1)(i)(G).

1 funds may be used “to pay membership dues in an organization that may have political interests  
2 [including] . . . community or civic organizations that a candidate or officeholder joins in his or  
3 her district in order to maintain political contacts with constituents or the business community.”<sup>18</sup>  
4 In addition to examples of *per se* personal use, the “Commission will determine, on a case-by-  
5 case basis, whether other uses” of campaign funds constitute personal use.<sup>19</sup>

6 Notwithstanding the personal use prohibition, the law otherwise provides broad  
7 discretion regarding the use of campaign funds.<sup>20</sup> The Commission has previously approved the  
8 use of campaign funds to purchase gifts that “are low in cost and have little monetary value” for  
9 constituents, noting that paying for such gifts with campaign funds would be problematic only if  
10 the gift went “beyond an honorific purpose” and “confer[red] a significant personal benefit on  
11 the recipient.”<sup>21</sup> The Commission has also approved the use of campaign funds to purchase  
12 copies of a candidate’s autobiography to be given as gifts to donors and political supporters.<sup>22</sup>

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

<sup>19</sup> 11 C.F.R. § 113.1(g)(1)(ii).

<sup>20</sup> 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).

<sup>21</sup> 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[.]”).

<sup>22</sup> 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).

1           **C.     The Available Information Does Not Support an Inference that Culberson or**  
2           **the Committee Converted Campaign Funds to Personal Use**

3           The available information does not raise a reasonable inference that the Committee's  
4           expenditures for antiques and military collectibles supported Culberson's "personal hobby" or  
5           business of collecting and selling such items.<sup>23</sup> Respondents assert that these expenditures were  
6           to purchase "small tokens of Texas history" for "campaign staff and volunteers, donors, and  
7           fellow Members of Congress," and that the "costs in acquiring those items of little monetary  
8           value would not have existed absent [Culberson's] campaign or officeholder position."<sup>24</sup>  
9           Respondents also assert that the Committee has not paid for items connected to Culberson's  
10          military collectible business, which deals in higher-value items than the "trinkets" that Culberson  
11          has given to supporters as gifts.<sup>25</sup>

12          The Commission has approved the use of campaign funds to purchase gifts of nominal  
13          value, which are given in connection with a candidate's campaign or duties as a federal  
14          officeholder, for staff, volunteers, constituents, and political supporters. While disclosure reports  
15          indicate that the Committee spent a total of \$5,130 on items purchased at civil war shows during  
16          the 2010 election cycle, each of those disbursements was for items described as a gift, an office  
17          display, or for use at an auction, and the highest-value purchase was reported as \$950.<sup>26</sup> There is  
18          no reasonably discernable connection between any of these Committee purchases and the sale of

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<sup>23</sup> Compl. at 5.

<sup>24</sup> 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.

<sup>25</sup> Resp. at 3 n.2.

<sup>26</sup> 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](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.

1 military collectibles that Culberson reported in his Congressional Financial Disclosure  
2 Statements. Within the five-year statute of limitations period, Culberson reported only thirteen  
3 such sale transactions, none of which was for less than \$15,000 — he reported that four such  
4 transactions were for between \$15,000 and \$50,000, six were for between \$50,000 and \$100,000,  
5 and the remaining three were for more than \$100,000.<sup>27</sup> This significant disparity in value  
6 circumstantially indicates that the items the Committee had previously purchased during the  
7 2010 election cycle were not the same kind of items that Culberson was selling through his  
8 personal business.<sup>28</sup> In light of Respondents' assertions and the available information, there is no  
9 reasonable basis to infer that these Committee expenditures were for personal use rather than for  
10 nominal gifts, as permitted under the law.

11 There is likewise no reasonable basis to conclude that the Committee's expenditures for  
12 research materials were for personal use. The Complaint alleges that these expenditures were  
13 "excessive" in comparison to other political committees and thus may have been "for purposes  
14 unrelated to the campaign."<sup>29</sup> However, there is nothing inherently suggestive about the fact that  
15 the Committee reported spending more on research materials than other committees. The Act

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<sup>27</sup> 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](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](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](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](http://clerk.house.gov/public_disc/financial-pdfs/2014/9106987.pdf).

<sup>28</sup> 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.

<sup>29</sup> Compl. at 3, 6.



1 grants broad discretion regarding the use of the campaign funds,<sup>30</sup> and a candidate may — as  
2 Respondents contend — spend funds in a campaign account on “books and other reference  
3 materials pertaining to issues of government, law, and history . . . to help educate and inform [the  
4 candidate] in carrying out his [or her] obligations in Congress”<sup>31</sup> rather than using those funds to  
5 campaign for reelection. The available information also establishes no connection between these  
6 research expenditures and Culberson’s business or personal interests in antiques and military  
7 memorabilia.

8 The Committee’s 2009 payment for a membership to the TSRA and its 2012 payments to  
9 the Black Hills Institute are both beyond the applicable five-year statute of limitations.<sup>32</sup> As  
10 such, the Commission dismisses the allegations that the Respondents violated 52 U.S.C.  
11 § 30114(b).

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<sup>30</sup> 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).

<sup>31</sup> 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).

<sup>32</sup> See 28 U.S.C. § 2462.