

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7577

DATE COMPLAINT FILED: March 11, 2019
DATE OF NOTIFICATIONS: March 24, 2019
LAST RESPONSE RECEIVED: April 23, 2019
DATE ACTIVATED: November 21, 2019
EXPIRATION OF SOL: January 3, 2022
ELECTION CYCLE: N/A

COMPLAINANT: Campaign Legal Center
Margaret Christ

RESPONDENTS: Ander PAC (f/k/a Crenshaw for Congress) and Benjamin Ottenhoff in his official capacity as treasurer (terminated)¹ Ander Crenshaw

**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30114(b)
11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED: Disclosure Reports

AGENCIES CHECKED: None

I. INTRODUCTION

31 The Complaint in this matter alleges that former Congressman Ander Crenshaw, who
32 retired in 2017, made impermissible personal use of funds contributed to his principal campaign
33 committee, which was converted after his retirement into a multicandidate political committee
34 called Ander PAC. Respondents deny the allegations and maintain that the challenged

¹ On January 30, 2019, prior to the filing of this Complaint, the Commission’s Reports Analysis Division (“RAD”) approved Ander PAC’s termination. *See* Termination Report (Jan. 30, 2019). The fact that a committee has terminated has not prevented the Commission from considering possible enforcement action. *See* First Gen. Counsel’s Rpt. at n.1, MUR 7336 (Mulvaney for Congress).

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1 disbursements were for legitimate events related to the business of either Crenshaw's principal
2 campaign committee or Ander PAC.

3 Based on the allegations of the Complaint, the Response, and the available information, it
4 appears that Crenshaw converted some campaign funds to personal use by spending on travel
5 and meals that were unrelated to the business of Ander PAC. Accordingly, we recommend that
6 the Commission find reason to believe that Ander PAC and Benjamin Ottenhoff in his official
7 capacity as treasurer ("Ander PAC") and Crenshaw violated 52 U.S.C. § 30114(b).

8 **II. FACTUAL BACKGROUND**

9 Ander Crenshaw represented Florida's 4th District in the U.S. House of Representatives
10 from 2001 until 2017, during which time his principal campaign committee was called Crenshaw
11 for Congress.² In January 2017, following the congressman's retirement, Crenshaw for
12 Congress wound up its official activities, which included hosting thank-you events for supporters
13 and paying for administrative expenses, such as cell phone charges and credit card fees.³

14 On February 1, 2017, Crenshaw for Congress converted to a multicandidate PAC,
15 changing its name to Ander PAC.⁴ Ander PAC's disclosure reports indicate that between
16 February 2017 and January 14, 2019 — when it filed for termination — the PAC raised \$450 in
17 contributions and made \$62,317.84 in disbursements.

18 The Complaint alleges that Ander PAC made a series of disbursements in 2017 and 2018
19 that were for personal use because, among other things, Ander PAC reported virtually no receipts

² Resp. at 2 (Apr. 23, 2019).

³ *See id.*

⁴ *Id.*

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1 in this period,⁵ and, therefore, could not have been making the expenditures for fundraising
 2 purposes. The Complaint specifically calls attention to disbursements totaling over \$31,000 for
 3 food, travel, and phone service, which are listed in the table below.⁶

Mid-Year Report 2017			
Total Receipts: \$2,450.00		Total Disbursements: \$25,690.50	
Date	Recipient	Purpose	Amount
1/18/2017	AT&T	PHONE SERVICE	\$589.85
1/18/2017	AVIS RENTAL CAR	TRAVEL	\$506.78
1/18/2017	DELTA AIRLINES	TRAVEL	\$251.20
1/18/2017	III FORKS	CATERING/FACILITY RENTAL	\$978.18
1/18/2017	RIVERSIDE LIQUORS	CATERING	\$951.44
1/18/2017	SCHNEIDERS OF CAPITOL HILL	FOOD/BEVERAGE	\$518.23
1/18/2017	SI SMITHSONIAN	SUBSCRIPTION	\$202.85
1/18/2017	ST. CECILIA	FOOD/BEVERAGE	\$271.94
1/18/2017	THE ITALIAN STORE	FOOD/BEVERAGE	\$356.17
1/18/2017	YEAMANS HALL CLUB	TRAVEL	\$1,052.15
2/27/2017	AT&T	PHONE SERVICE	\$569.04
3/24/2017	AT&T	PHONE SERVICE	\$1,215.83
4/24/2017	AT&T	PHONE SERVICE	\$83.82
5/25/2017	AT&T	PHONE SERVICE	\$399.26

⁵ Compl. at 2-6 (Mar. 11, 2019).

⁶ *Id.*

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6/27/2017	AT&T	PHONE SERVICE	\$220.04
6/27/2017	CAPITOL HILL CLUB	FOOD/BEVERAGE	\$412.00
2/13/2017	AT&T	PHONE SERVICE	\$163.22
3/14/2017	AT&T	PHONE SERVICE	\$163.51

Year-End Report 2017

Total Receipts: \$0		Total Disbursements: \$6,992.40	
Date	Recipient	Purpose	Amount
7/24/2017	AT&T	PHONE SERVICE	\$217.65
8/24/2017	AT&T	PHONE SERVICE	\$219.96
9/26/2017	EZ AIRPORT SHUTTLE	TRAVEL	\$55.00
10/18/2017	AT&T	PHONE SERVICE	\$594.33
10/18/2017	AMERICAN EXPRESS	ANNUAL FEE	\$225.00
12/12/2017	AT&T	PHONE SERVICE	\$217.96
12/12/2017	EZ AIRPORT SHUTTLE	TRAVEL	\$55.00
12/11/2017	APPLE STORE	PHONE EQUIPMENT/SERVICE	\$2,884.72

April Quarterly Report 2018

Total Receipts: \$0		Total Disbursements: \$3,223.69	
Date	Recipient	Purpose	Amount
1/22/2018	AT&T	PHONE SERVICE	\$452.67
1/22/2018	RIVER & POST	FOOD/BEVERAGE	\$452.67
2/20/2018	AT&T	PHONE SERVICE	\$898.98
2/20/2018	EZ AIRPORT SHUTTLE	TRAVEL	\$220.00
3/22/2018	EZ AIRPORT SHUTTLE	TRAVEL	\$110.00

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3/22/2018	AT&T	PHONE SERVICE	\$378.23
2/10/2018	CAPITOL HILL CLUB	FOOD/BEVERAGE	\$251.12

July Quarterly Report 2018

Total Receipts: \$0		Total Disbursements: \$7,130.38	
Date	Recipient	Purpose	Amount
5/24/2018	AT&T	PHONE SERVICE	\$373.83
6/24/2018	CAPITOL HILL CLUB	DUES	\$450.00
6/24/2018	AT&T	PHONE SERVICE	\$220.01

October Quarterly Report 2018

Total Receipts: \$0		Total Disbursements: \$3,176.83	
Date	Recipient	Purpose	Amount
7/24/2018	AT&T	PHONE SERVICE	\$462.19
8/30/2018	FOUR SEASONS	TRAVEL	\$556.88
8/30/2018	AMERICAN AIRLINES	TRAVEL	\$923.35
8/30/2018	AT&T	PHONE SERVICE	\$193.95
8/30/2018	VILLAGE HOTEL	TRAVEL	\$1,010.89
9/11/2018	BROADMOOR HOTEL	TRAVEL	\$1,091.90
9/11/2018	AT&T	PHONE SERVICE	\$374.22

Pre-General Report 2018

Total Receipts: \$0		Total Disbursements: \$12,071.35	
Date	Recipient	Purpose	Amount
10/15/2018	AT&T	PHONE SERVICE	\$392.07
10/15/2018	FOUR SEASONS	TRAVEL	\$2,770.26
10/15/2018	AMERICAN EXPRESS	RENEWAL FEE	\$225.00

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10/15/2018	WALT DISNEY WORLD SERVICES	TRAVEL	\$2,440.00
Post-General Report 2018			
Total Receipts: \$0		Total Disbursements: \$1,186.29	
Date	Recipient	Purpose	Amount
11/22/2018	SAN LORENZO	FOOD/BEVERAGE	\$233.60
11/22/2018	THE LINE	FOOD/BEVERAGE	\$350.40
11/22/2018	GATE HOSPITALITY GROUP	TRAVEL	\$391.61
Termination Report			
Total Receipts: \$0		Total Disbursements: \$2,846.40	
Date	Recipient	Purpose	Amount
12/6/2018	CAPITOL HILL CLUB	TRAVEL	\$25.00
12/6/2018	BISTRO BIS	CATERING/FACILITY RENTAL	\$1,396.40
12/6/2018	CROSBY OTTENHOFF GROUP	COMPLIANCE CONSULTING	\$1,425.00

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2 In a footnote, the Complaint also alleges that certain travel and meal expenditures made
 3 while Crenshaw was still an officeholder might also constitute personal use because Crenshaw
 4 for Congress failed to raise any money in the same time period.⁷ Those expenses are:

⁷ *Id.* at n.1. The Complaint notes that Crenshaw for Congress categorized \$38,490 in expenditures for fundraising despite the fact that the committee did not raise any money in this time period. *Id.* The majority of those expenses appear to be a single payment of \$22,507 on November 16, 2016, to Kyle House Group, LLC in Washington, DC.

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October Quarterly 2016			
Total Receipts: \$0		Total Disbursements: \$100,980.63	
Date	Recipient	Purpose	Amount
8/19/2016	HAMMOCK BEACH LODGE	TRAVEL	\$828.38
9/23/2016	HAMMOCK BEACH LODGE	TRAVEL	\$3,612.98
9/23/2016	BROADMOOR HOTEL	TRAVEL	\$2,690.53
Year-End Report 2016			
Total Receipts: \$0		Total Disbursements: \$79,784.99	
Date	Recipient	Purpose	Amount
11/6/2016	HYATT REGENCY JACKSONVILLE	TRAVEL	\$1,699.96
9/21/2016	GRAMERCY PARK HOTEL	TRAVEL	\$2,411.54
9/29/2016	TRUMP INTERNATIONAL HOTEL	TRAVEL	\$1,990.68

1 The Response denies converting any funds to personal use and sets forth a brief
 2 explanation for most of the expenses.⁸ The Response contends generally that Ander PAC
 3 “operated like any other nonconnected committee. It solicited and received donations. It made
 4 contributions to candidates. It paid for general PAC operating expenses. It paid for meals,
 5 travel, and other costs associated with attending or hosting events.”⁹ More specifically, it claims
 6 that:

⁸ Resp. at 3-4.

⁹ *Id.* at 2.

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- 1 • The January 2017 food and beverage disbursements were for “thank you events for
2 campaign supporters” and all other meal expenses were for meals at which Ander
3 PAC business was discussed.¹⁰
- 4 • The January 2017 travel expenses were for campaign staff to wind down the
5 committee.¹¹
- 6 • The August 30 and September 11, 2018, expenses for travel were “related to the
7 attendance at Rep. Jerry Moran and Rep. Patrick McHenry events, and ANDER PAC
8 made contributions at both events.”¹² Likewise, the October 15, 2018, expenses for
9 travel were for “attendance at a Rep. Kay Granger event, and ANDER PAC made a
10 contribution at the event.”¹³

11 In addition, Crenshaw submitted an affidavit declaring that he had reviewed the alleged improper
12 disbursements and “based on my personal knowledge of the expenditures, believe each
13 expenditure was related to Crenshaw for Congress and/or ANDER PAC activities and was
14 permissible under the Act.”¹⁴ The Response does not specifically address the Complaint’s
15 allegation regarding the expenditures made while Crenshaw was still in office.

16 **III. LEGAL ANALYSIS**

17 **A. Legal Standard**

18 Under the Federal Election Campaign Act of 1971, as amended (the “Act”), a
19 contribution accepted by a candidate may be used for, *inter alia*, “otherwise authorized
20 expenditures in connection with the campaign for Federal office of the candidate.”¹⁵ However, a

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* Attach. ¶¶ 5-12.

¹⁵ 52 U.S.C. § 30114(a).

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1 contribution to a candidate shall not be converted by any person to “personal use.”¹⁶ “Personal
 2 use” means any use of funds in a campaign account of a present or former candidate to fulfill a
 3 commitment, obligation, or expense of any person that would exist irrespective of the
 4 candidate’s campaign or duties as a Federal officeholder.¹⁷ The Commission’s regulations
 5 include a non-exhaustive list of personal uses of campaign funds, including household food
 6 items, clothing, mortgage, and utility payments.¹⁸ The Commission evaluates other expenses,
 7 such as travel, meal, and legal expenses on a case-by-case basis by applying the “irrespective
 8 test” to determine whether a personal use violation has occurred.¹⁹

9 In addition, the Commission’s regulations include a list of permissible non-campaign
 10 related expenses, including ordinary and necessary expenses incurred in connection with the
 11 recipient’s duties as a federal officeholder, travel costs associated with *bona fide* official duties
 12 such as speaking engagements, the cost of winding down an office for a period of six months
 13 after leaving office, and for any other lawful purpose, unless such use is “personal use.”²⁰

14 In Advisory Opinion 2004-03 (Dooley for the Valley), the Commission concluded that a
 15 former officeholder may convert a principal campaign committee to a multicandidate committee,
 16 but “[t]he funds received by the Committee when it was a principal campaign committee . . .

¹⁶ *Id.* § 30114(b)(1).

¹⁷ *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g); Explanation and Justification for Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,863 (Feb. 9, 1995) (“Personal Use E&J”).

¹⁸ 11 C.F.R. § 113.1(g)(1)(i)(A)-(J).

¹⁹ 11 C.F.R. § 113.1(g)(1)(ii).

²⁰ 11 C.F.R. § 113.2(a)-(e); Explanation and Justification for Final Rules on Use of Campaign Funds for Donations to Non-Federal Candidates and Any Other Lawful Purpose Other than Personal Use, 72 Fed. Reg. 56,245, 56,246 (Oct. 3, 2007) (“Use of Campaign Funds for Donations and Other Lawful Purpose E&J”).

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1 must not be converted to the personal use of any individual.”²¹ Likewise, in Advisory Opinion
 2 2012-06 (RickPerry.org), the Commission permitted then-Governor Perry’s principal campaign
 3 committee for the 2012 presidential election to convert to a nonconnected committee and to fund
 4 the nonconnected committee’s activities using its remaining primary election funds, to the extent
 5 the funds were not used for personal use.²² In Advisory Opinion 1983-27 (McDaniel), the
 6 Commission concluded that excess campaign funds may be used for a variety of specific
 7 purposes, and that such funds donated to a tax-exempt charitable organization could be used to
 8 defray “ordinary and necessary” expenses incurred by the former candidate in connection with
 9 his position on the board of that organization, so long as they were not for personal use.²³

10 Respondents do not contest that they were barred from converting Ander PAC’s funds to
 11 personal use.²⁴ Instead, they argue that “every expenditure the Complaint alleges may have been
 12 personal use was related to Crenshaw for Congress or ANDER PAC events.”²⁵

²¹ Advisory Op. 2004-03 has been superseded “to the extent that [it] placed certain limitations on an authorized committee that had converted into a multicandidate committee and its use . . . of funds that had been received when the committee was an authorized committee.” *See Use of Campaign Funds for Donations and Other Lawful Purpose* E&J at 56,246.

²² Advisory Op. 2012-06 at 2-4.

²³ Advisory Op. 1983-27 at 2.

²⁴ Resp. at 2-3 (“Although it’s reasonably clear that after the campaign committee converts to a nonconnected committee, the funds on hand cannot be converted to personal use, the Commission has provided scant guidance on what nonconnected committee activities would be considered personal use.”). In 2018, the Commission sought comments on a rulemaking petition to revise and amend 11 C.F.R. §§ 113.1(g) and 113.2 to clarify the permissible use of campaign funds for former candidates and officeholders. Rulemaking Petition: Former Candidates’ Personal Use, 83 Fed. Reg. 12,283 (Mar. 21, 2018); Rulemaking Petitions: Former Candidates’ Personal Use: Correction, 83 Fed. Reg. 17,509 (Apr. 20, 2018).

²⁵ Resp. at 3.

1 **B. There is Reason to Believe that Respondents Improperly Converted**
 2 **Campaign Funds to Personal Use**
 3

4 Despite Ander PAC's contention that it "solicited and received donations,"²⁶ the
 5 committee's reports show contributions of only \$450 across the entire period in question.²⁷
 6 Meanwhile, Ander PAC spent more than one hundred times that amount on disbursements,
 7 which totaled over \$62,000 from January 2017 through its termination in January 2019. Of that
 8 \$62,000, Ander PAC categorized only \$8,000 as contributions to other committees, leaving more
 9 than \$50,000 of the committee's spending on other items. Based on a review of these expenses
 10 and the Response, we conclude there is reason to believe that the disbursements specifically
 11 described below were made for personal use.

12 First, the travel expenses related to "attendance at Rep. Jerry Moran and Rep. Patrick
 13 McHenry events" and "attendance at a Rep. Kay Granger event" likely constituted personal use.
 14 The Response attempts to justify these trips by noting that Ander PAC made contributions to all
 15 three candidates. However, as noted above, the Commission has permitted former candidates to
 16 use former campaign funds to cover their own expenses only where such expenses are "ordinary
 17 and necessary."²⁸ In MUR 7292 (Stearns), the Commission drew a distinction between the
 18 permissible purpose of donating money to an organization and the impermissible purpose of
 19 traveling to a specific location for the purpose of making that donation.²⁹ In this case, it appears

26 *Id.* at 2.

27 Ander PAC, Mid-Year Report 2016, at 3.

28 Advisory Opinion 1983-27 at 2.

29 See *id.* at 10 ("While the Committee could permissibly make charitable donations to a group such as Awakening, Inc., which appears to be a section 501(c)(3) organization, at least some portion of these payments appear to be in exchange for Stearns to attend and eat meals at Awakening's annual conferences and thus were not donations within the scope of 11 C.F.R. § 113.1(g)(2).").

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1 Crenshaw spent over \$8,000 traveling to the Four Seasons at Disney World, the Broadmoor
2 Destination Resort in Colorado Springs, and the Biltmore Estate in North Carolina—travel that
3 does not appear necessary to Ander PAC making contributions to these candidates. Similarly,
4 \$440 in disbursements made for airport shuttle transportation and \$392 to a Florida resort do not
5 appear to have any purpose related to the functioning of Ander PAC. The Response does not
6 offer an explanation for these charges, and given Crenshaw's status as a retired Congressman,
7 the facts support a reasonable inference that the travel disbursements described here appear to
8 fulfill a comment, obligation, or expense that would exist irrespective of Crenshaw's campaign
9 or duties as a federal officeholder.

10 Second, Ander PAC's payment of \$450 for membership dues at Capitol Hill Club appear
11 to constitute personal use. Generally speaking, candidates or federal officeholders may pay
12 membership dues in an organization that may have political interests "in order to maintain
13 political contacts with constituents or the business community."³⁰ The Commission, however,
14 has found that a former congressman, who was neither a candidate nor a current officeholder at
15 the time of the challenged disbursements, violated the personal use provision in connection with
16 social club membership dues and fees, as well as lodging and meal expenses at a conference,
17 because such expenses would have existed irrespective of his former duties as a federal
18 officeholder.³¹

³⁰ See 11 C.F.R. § 113.1(g)(1)(i)(G); Personal Use E&J, 60 Fed. Reg. at 7,866.

³¹ Factual & Legal Analysis at 9-11, MUR 7292 (Stearns)

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1 Finally, the meal expenses Ander PAC incurred after January 2017 appear to have been
 2 made for personal use. Meals, like travel, fall into the category of expenditures that are not *per*
 3 *se* personal use, and instead require inquiry into whether they “would exist irrespective of the
 4 candidate’s election campaign or individual’s duties as a holder of Federal office.”³² In this
 5 case, for meal expenses in January 2017, the time during which the committee was winding
 6 down the campaign, the Response is able to articulate a specific purpose for those expenses,
 7 stating that they were made for “thank you events for campaign supporters.”³³ In contrast, for
 8 meal expenses after that time, the Response generally states that that such expenses were to
 9 discuss “Ander PAC purposes” or “Ander PAC business,”³⁴ without more. Given that Ander
 10 PAC received only two contributions totaling \$450 and made only three contributions totaling
 11 \$8,000 over its entire existence, it is difficult to determine whether Ander PAC’s more than
 12 \$3,000 in spending on food and beverages were related to ordinary and necessary expenses of the
 13 committee.

14 In sum, the record suggests that the following expenses were personal use:

Date	Recipient	Purpose	Amount
6/27/2017	CAPITOL HILL CLUB	FOOD/BEVERAGE	\$412.00
9/26/2017	EZ AIRPORT SHUTTLE	TRAVEL	\$55.00
12/12/2017	EZ AIRPORT SHUTTLE	TRAVEL	\$55.00
1/22/2018	RIVER & POST	FOOD/BEVERAGE	\$452.67
2/10/2018	CAPITOL HILL CLUB	FOOD/BEVERAGE	\$251.12

³² 52 U.S.C. § 30114(b).

³³ Resp. at 4.

³⁴ *Id.* at 3-4.

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Date	Recipient	Purpose	Amount
2/20/2018	EZ AIRPORT SHUTTLE	TRAVEL	\$220.00
3/22/2018	EZ AIRPORT SHUTTLE	TRAVEL	\$110.00
6/24/2018	CAPITOL HILL CLUB	DUES	\$450.00
8/30/2018	FOUR SEASONS	TRAVEL	\$556.88
8/30/2018	AMERICAN AIRLINES	TRAVEL	\$923.35
8/30/2018	VILLAGE HOTEL	TRAVEL	\$1,010.89
9/11/2018	BROADMOOR HOTEL	TRAVEL	\$1,091.90
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11/22/2018	SAN LORENZO	FOOD/BEVERAGE	\$233.60
11/22/2018	THE LINE	FOOD/BEVERAGE	\$350.40
12/6/2018	CAPITOL HILL CLUB	TRAVEL	\$25.00
12/6/2018	BISTRO BIS	CATERING/FACILITY RENTAL	\$1,396.40
Total			\$13,196.08

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2 We therefore recommend that the Commission find reason to believe that Ander PAC
 3 violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use.³⁵

³⁵ With respect to the remaining disbursements identified by the Complaint, there is insufficient information to find reason to believe that they were for personal use. The Complaint does not provide support, beyond a lack of fundraising, for its allegation that travel and meal expenses constituted personal use while Crenshaw was still in office. We do not generally recommend the Commission find reason to believe funds were converted to personal use based on the mere existence of high spending for a sitting officeholder. *See* First Gen. Counsel's Rpt. at 11-12, MUR 7534 (Huizenga). Moreover, the Response claims that a number of January 2017 expenses were made for the

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purpose of winding up Crenshaw for Congress, which would be appropriate spending for a committee to make. There is no supporting evidence in the Complaint that the remaining expenses were personal use.

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Ander PAC (f/k/a Crenshaw for Congress) and Benjamin Ottenhoff in his official capacity as treasurer (terminated) Ander Crenshaw MUR 7577

I. INTRODUCTION

The Complaint in this matter alleges that former Congressman Ander Crenshaw, who retired in 2017, made impermissible personal use of funds contributed to his principal campaign committee, which was converted after his retirement into a multicandidate political committee called Ander PAC. Respondents deny the allegations and maintain that the challenged disbursements were for legitimate events related to the business of either Crenshaw's principal campaign committee or Ander PAC.

Based on the allegations of the Complaint, the Response, and the available information, it appears that Crenshaw converted some campaign funds to personal use by spending on travel and meals that were unrelated to the business of Ander PAC. Accordingly, the Commission finds reason to believe that Ander PAC and Benjamin Ottenhoff in his official capacity as treasurer (“Ander PAC”) and Crenshaw violated 52 U.S.C. § 30114(b).

II. FACTUAL BACKGROUND

Ander Crenshaw represented Florida's 4th District in the U.S. House of Representatives from 2001 until 2017, during which time his principal campaign committee was called Crenshaw for Congress.¹ In January 2017, following the congressman's retirement, Crenshaw for

¹ Resp. at 2 (Apr. 23, 2019).

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 Factual and Legal Analysis

1 Congress wound up its official activities, which included hosting thank-you events for supporters
 2 and paying for administrative expenses, such as cell phone charges and credit card fees.²

3 On February 1, 2017, Crenshaw for Congress converted to a multicandidate PAC,
 4 changing its name to Ander PAC.³ Ander PAC's disclosure reports indicate that between
 5 February 2017 and January 14, 2019 — when it filed for termination — the PAC raised \$450 in
 6 contributions and made \$62,317.84 in disbursements.

7 The Complaint alleges that Ander PAC made a series of disbursements in 2017 and 2018
 8 that were for personal use because, among other things, Ander PAC reported virtually no receipts
 9 in this period,⁴ and, therefore, could not have been making the expenditures for fundraising
 10 purposes. The Complaint specifically calls attention to disbursements totaling over \$31,000 for
 11 food, travel, and phone service, which are listed in the table below.⁵

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1/18/2017	III FORKS	CATERING/FACILITY RENTAL	\$978.18
1/18/2017	RIVERSIDE LIQUORS	CATERING	\$951.44

² See *id.*

³ *Id.*

⁴ Compl. at 2-6 (Mar. 11, 2019).

⁵ *Id.*

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1/18/2017	SCHNEIDERS OF CAPITOL HILL	FOOD/BEVERAGE	\$518.23
1/18/2017	SI SMITHSONIAN	SUBSCRIPTION	\$202.85
1/18/2017	ST. CECILIA	FOOD/BEVERAGE	\$271.94
1/18/2017	THE ITALIAN STORE	FOOD/BEVERAGE	\$356.17
1/18/2017	YEAMANS HALL CLUB	TRAVEL	\$1,052.15
2/27/2017	AT&T	PHONE SERVICE	\$569.04
3/24/2017	AT&T	PHONE SERVICE	\$1,215.83
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5/25/2017	AT&T	PHONE SERVICE	\$399.26
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3/14/2017	AT&T	PHONE SERVICE	\$163.51

Year-End Report 2017

Total Receipts: \$0		Total Disbursements: \$6,992.40	
Date	Recipient	Purpose	Amount
7/24/2017	AT&T	PHONE SERVICE	\$217.65
8/24/2017	AT&T	PHONE SERVICE	\$219.96
9/26/2017	EZ AIRPORT SHUTTLE	TRAVEL	\$55.00
10/18/2017	AT&T	PHONE SERVICE	\$594.33
10/18/2017	AMERICAN EXPRESS	ANNUAL FEE	\$225.00
12/12/2017	AT&T	PHONE SERVICE	\$217.96
12/12/2017	EZ AIRPORT SHUTTLE	TRAVEL	\$55.00

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12/11/2017	APPLE STORE	PHONE EQUIPMENT/SERVICE	\$2,884.72
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April Quarterly Report 2018

Total Receipts: \$0		Total Disbursements: \$3,223.69	
Date	Recipient	Purpose	Amount
1/22/2018	AT&T	PHONE SERVICE	\$452.67
1/22/2018	RIVER & POST	FOOD/BEVERAGE	\$452.67
2/20/2018	AT&T	PHONE SERVICE	\$898.98
2/20/2018	EZ AIRPORT SHUTTLE	TRAVEL	\$220.00
3/22/2018	EZ AIRPORT SHUTTLE	TRAVEL	\$110.00
3/22/2018	AT&T	PHONE SERVICE	\$378.23
2/10/2018	CAPITOL HILL CLUB	FOOD/BEVERAGE	\$251.12

July Quarterly Report 2018

Total Receipts: \$0		Total Disbursements: \$7,130.38	
Date	Recipient	Purpose	Amount
5/24/2018	AT&T	PHONE SERVICE	\$373.83
6/24/2018	CAPITOL HILL CLUB	DUES	\$450.00
6/24/2018	AT&T	PHONE SERVICE	\$220.01

October Quarterly Report 2018

Total Receipts: \$0		Total Disbursements: \$3,176.83	
Date	Recipient	Purpose	Amount
7/24/2018	AT&T	PHONE SERVICE	\$462.19
8/30/2018	FOUR SEASONS	TRAVEL	\$556.88
8/30/2018	AMERICAN AIRLINES	TRAVEL	\$923.35

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8/30/2018	AT&T	PHONE SERVICE	\$193.95
8/30/2018	VILLAGE HOTEL	TRAVEL	\$1,010.89
9/11/2018	BROADMOOR HOTEL	TRAVEL	\$1,091.90
9/11/2018	AT&T	PHONE SERVICE	\$374.22

Pre-General Report 2018

Total Receipts: \$0		Total Disbursements: \$12,071.35	
Date	Recipient	Purpose	Amount
10/15/2018	AT&T	PHONE SERVICE	\$392.07
10/15/2018	FOUR SEASONS	TRAVEL	\$2,770.26
10/15/2018	AMERICAN EXPRESS	RENEWAL FEE	\$225.00
10/15/2018	WALT DISNEY WORLD SERVICES	TRAVEL	\$2,440.00

Post-General Report 2018

Total Receipts: \$0		Total Disbursements: \$1,186.29	
Date	Recipient	Purpose	Amount
11/22/2018	SAN LORENZO	FOOD/BEVERAGE	\$233.60
11/22/2018	THE LINE	FOOD/BEVERAGE	\$350.40
11/22/2018	GATE HOSPITALITY GROUP	TRAVEL	\$391.61

Termination Report

Total Receipts: \$0		Total Disbursements: \$2,846.40	
Date	Recipient	Purpose	Amount
12/6/2018	CAPITOL HILL CLUB	TRAVEL	\$25.00
12/6/2018	BISTRO BIS	CATERING/FACILITY RENTAL	\$1,396.40

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12/6/2018	CROSBY OTTENHOFF GROUP	COMPLIANCE CONSULTING	\$1,425.00
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1
 2 In a footnote, the Complaint also alleges that certain travel and meal expenditures made
 3 while Crenshaw was still an officeholder might also constitute personal use because Crenshaw
 4 for Congress failed to raise any money in the same time period.⁶ Those expenses are:

October Quarterly 2016			
Total Receipts: \$0		Total Disbursements: \$100,980.63	
Date	Recipient	Purpose	Amount
8/19/2016	HAMMOCK BEACH LODGE	TRAVEL	\$828.38
9/23/2016	HAMMOCK BEACH LODGE	TRAVEL	\$3,612.98
9/23/2016	BROADMOOR HOTEL	TRAVEL	\$2,690.53

Year-End Report 2016			
Total Receipts: \$0		Total Disbursements: \$79,784.99	
Date	Recipient	Purpose	Amount
11/6/2016	HYATT REGENCY JACKSONVILLE	TRAVEL	\$1,699.96
9/21/2016	GRAMERCY PARK HOTEL	TRAVEL	\$2,411.54
9/29/2016	TRUMP INTERNATIONAL HOTEL	TRAVEL	\$1,990.68

⁶ *Id.* at n.1. The Complaint notes that Crenshaw for Congress categorized \$38,490 in expenditures for fundraising despite the fact that the committee did not raise any money in this time period. *Id.* The majority of those expenses appear to be a single payment of \$22,507 on November 16, 2016, to Kyle House Group, LLC in Washington, DC.

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1 The Response denies converting any funds to personal use and sets forth a brief
 2 explanation for most of the expenses.⁷ The Response contends generally that Ander PAC
 3 “operated like any other nonconnected committee. It solicited and received donations. It made
 4 contributions to candidates. It paid for general PAC operating expenses. It paid for meals,
 5 travel, and other costs associated with attending or hosting events.”⁸ More specifically, it claims
 6 that:

7 • The January 2017 food and beverage disbursements were for “thank you events for
 8 campaign supporters” and all other meal expenses were for meals at which Ander
 9 PAC business was discussed.⁹

10 • The January 2017 travel expenses were for campaign staff to wind down the
 11 committee.¹⁰

12 • The August 30 and September 11, 2018, expenses for travel were “related to the
 13 attendance at Rep. Jerry Moran and Rep. Patrick McHenry events, and ANDER PAC
 14 made contributions at both events.”¹¹ Likewise, the October 15, 2018, expenses for
 15 travel were for “attendance at a Rep. Kay Granger event, and ANDER PAC made a
 16 contribution at the event.”¹²

17 In addition, Crenshaw submitted an affidavit declaring that he had reviewed the alleged improper
 18 disbursements and “based on my personal knowledge of the expenditures, believe each
 19 expenditure was related to Crenshaw for Congress and/or ANDER PAC activities and was

⁷ Resp. at 3-4.

⁸ *Id.* at 2.

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

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1 permissible under the Act.”¹³ The Response does not specifically address the Complaint’s
 2 allegation regarding the expenditures made while Crenshaw was still in office.

3 **III. LEGAL ANALYSIS**

4 **A. Legal Standard**

5 Under the Federal Election Campaign Act of 1971, as amended (the “Act”), a
 6 contribution accepted by a candidate may be used for, *inter alia*, “otherwise authorized
 7 expenditures in connection with the campaign for Federal office of the candidate.”¹⁴ However, a
 8 contribution to a candidate shall not be converted by any person to “personal use.”¹⁵ “Personal
 9 use” means any use of funds in a campaign account of a present or former candidate to fulfill a
 10 commitment, obligation, or expense of any person that would exist irrespective of the
 11 candidate’s campaign or duties as a Federal officeholder.¹⁶ The Commission’s regulations
 12 include a non-exhaustive list of personal uses of campaign funds, including household food
 13 items, clothing, mortgage, and utility payments.¹⁷ The Commission evaluates other expenses,
 14 such as travel, meal, and legal expenses on a case-by-case basis by applying the “irrespective
 15 test” to determine whether a personal use violation has occurred.¹⁸

16 In addition, the Commission’s regulations include a list of permissible non-campaign
 17 related expenses, including ordinary and necessary expenses incurred in connection with the

¹³ *Id.* Attach. ¶¶ 5-12.

¹⁴ 52 U.S.C. § 30114(a).

¹⁵ *Id.* § 30114(b)(1).

¹⁶ *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g); Explanation and Justification for Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,863 (Feb. 9, 1995) (“Personal Use E&J”).

¹⁷ 11 C.F.R. § 113.1(g)(1)(i)(A)-(J).

¹⁸ 11 C.F.R. § 113.1(g)(1)(ii).

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1 recipient's duties as a federal officeholder, travel costs associated with *bona fide* official duties
 2 such as speaking engagements, the cost of winding down an office for a period of six months
 3 after leaving office, and for any other lawful purpose, unless such use is "personal use."¹⁹

4 In Advisory Opinion 2004-03 (Dooley for the Valley), the Commission concluded that a
 5 former officeholder may convert a principal campaign committee to a multicandidate committee,
 6 but "[t]he funds received by the Committee when it was a principal campaign committee . . .
 7 must not be converted to the personal use of any individual."²⁰ Likewise, in Advisory Opinion
 8 2012-06 (RickPerry.org), the Commission permitted then-Governor Perry's principal campaign
 9 committee for the 2012 presidential election to convert to a nonconnected committee and to fund
 10 the nonconnected committee's activities using its remaining primary election funds, to the extent
 11 the funds were not used for personal use.²¹ In Advisory Opinion 1983-27 (McDaniel), the
 12 Commission concluded that excess campaign funds may be used for a variety of specific
 13 purposes, and that such funds donated to a tax-exempt charitable organization could be used to
 14 defray "ordinary and necessary" expenses incurred by the former candidate in connection with
 15 his position on the board of that organization, so long as they were not for personal use.²²

¹⁹ 11 C.F.R. § 113.2(a)-(e); Explanation and Justification for Final Rules on Use of Campaign Funds for Donations to Non-Federal Candidates and Any Other Lawful Purpose Other than Personal Use, 72 Fed. Reg. 56,245, 56,246 (Oct. 3, 2007) ("Use of Campaign Funds for Donations and Other Lawful Purpose E&J").

²⁰ Advisory Op. 2004-03 has been superseded "to the extent that [it] placed certain limitations on an authorized committee that had converted into a multicandidate committee and its use . . . of funds that had been received when the committee was an authorized committee." *See Use of Campaign Funds for Donations and Other Lawful Purpose E&J* at 56,246.

²¹ Advisory Op. 2012-06 at 2-4.

²² Advisory Op. 1983-27 at 2.

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1 Respondents do not contest that they were barred from converting Ander PAC's funds to
 2 personal use.²³ Instead, they argue that "every expenditure the Complaint alleges may have been
 3 personal use was related to Crenshaw for Congress or ANDER PAC events."²⁴

4 **B. There is Reason to Believe that Respondents Improperly Converted
 5 Campaign Funds to Personal Use**

6 Despite Ander PAC's contention that it "solicited and received donations,"²⁵ the
 7 committee's reports show contributions of only \$450 across the entire period in question.²⁶
 9 Meanwhile, Ander PAC spent more than one hundred times that amount on disbursements,
 10 which totaled over \$62,000 from January 2017 through its termination in January 2019. Of that
 11 \$62,000, Ander PAC categorized only \$8,000 as contributions to other committees, leaving more
 12 than \$50,000 of the committee's spending on other items. Based on a review of these expenses
 13 and the Response, the Commission concludes there is reason to believe that the disbursements
 14 specifically described below were made for personal use.

15 First, the travel expenses related to "attendance at Rep. Jerry Moran and Rep. Patrick
 16 McHenry events" and "attendance at a Rep. Kay Granger event" likely constituted personal use.
 17 The Response attempts to justify these trips by noting that Ander PAC made contributions to all
 18 three candidates. However, as noted above, the Commission has permitted former candidates to

²³ Resp. at 2-3 ("Although it's reasonably clear that after the campaign committee converts to a nonconnected committee, the funds on hand cannot be converted to personal use, the Commission has provided scant guidance on what nonconnected committee activities would be considered personal use."). In 2018, the Commission sought comments on a rulemaking petition to revise and amend 11 C.F.R. §§ 113.1(g) and 113.2 to clarify the permissible use of campaign funds for former candidates and officeholders. Rulemaking Petition: Former Candidates' Personal Use, 83 Fed. Reg. 12,283 (Mar. 21, 2018); Rulemaking Petitions: Former Candidates' Personal Use: Correction, 83 Fed. Reg. 17,509 (Apr. 20, 2018).

²⁴ Resp. at 3.

²⁵ *Id.* at 2.

²⁶ Ander PAC, Mid-Year Report 2016, at 3.

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1 use former campaign funds to cover their own expenses only where such expenses are “ordinary
 2 and necessary.”²⁷ In MUR 7292 (Stearns), the Commission drew a distinction between the
 3 permissible purpose of donating money to an organization and the impermissible purpose of
 4 traveling to a specific location for the purpose of making that donation.²⁸ In this case, it appears
 5 Crenshaw spent over \$8,000 traveling to the Four Seasons at Disney World, the Broadmoor
 6 Destination Resort in Colorado Springs, and the Biltmore Estate in North Carolina—travel that
 7 does not appear necessary to Ander PAC making contributions to these candidates. Similarly,
 8 \$440 in disbursements made for airport shuttle transportation and \$392 to a Florida resort do not
 9 appear to have any purpose related to the functioning of Ander PAC. The Response does not
 10 offer an explanation for these charges, and given Crenshaw’s status as a retired Congressman,
 11 the facts support a reasonable inference that the travel disbursements described here appear to
 12 fulfill a comment, obligation, or expense that would exist irrespective of Crenshaw’s campaign
 13 or duties as a federal officeholder.

14 Second, Ander PAC’s payment of \$450 for membership dues at Capitol Hill Club appear
 15 to constitute personal use. Generally speaking, candidates or federal officeholders may pay
 16 membership dues in an organization that may have political interests “in order to maintain
 17 political contacts with constituents or the business community.”²⁹ The Commission, however,
 18 has found that a former congressman, who was neither a candidate nor a current officeholder at
 19 the time of the challenged disbursements, violated the personal use provision in connection with

²⁷ Advisory Opinion 1983-27 at 2.

²⁸ See *id.* at 10 (“While the Committee could permissibly make charitable donations to a group such as Awakening, Inc., which appears to be a section 501(c)(3) organization, at least some portion of these payments appear to be in exchange for Stearns to attend and eat meals at Awakening’s annual conferences and thus were not donations within the scope of 11 C.F.R. § 113.1(g)(2).”).

²⁹ See 11 C.F.R. § 113.1(g)(1)(i)(G); Personal Use E&J, 60 Fed. Reg. at 7,866.

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1 social club membership dues and fees, as well as lodging and meal expenses at a conference,
 2 because such expenses would have existed irrespective of his former duties as a federal
 3 officeholder.³⁰

4 Finally, the meal expenses Ander PAC incurred after January 2017 appear to have been
 5 made for personal use. Meals, like travel, fall into the category of expenditures that are not *per*
 6 *se* personal use, and instead require inquiry into whether they “would exist irrespective of the
 7 candidate’s election campaign or individual’s duties as a holder of Federal office.”³¹ In this
 8 case, for meal expenses in January 2017, the time during which the committee was winding
 9 down the campaign, the Response is able to articulate a specific purpose for those expenses,
 10 stating that they were made for “thank you events for campaign supporters.”³² In contrast, for
 11 meal expenses after that time, the Response generally states that such expenses were to
 12 discuss “Ander PAC purposes” or “Ander PAC business,”³³ without more. Given that Ander
 13 PAC received only two contributions totaling \$450 and made only three contributions totaling
 14 \$8,000 over its entire existence, it is difficult to determine whether Ander PAC’s more than
 15 \$3,000 in spending on food and beverages were related to ordinary and necessary expenses of the
 16 committee.

17 In sum, the record suggests that the following expenses were personal use:

³⁰ Factual & Legal Analysis at 9-11, MUR 7292 (Stearns).

³¹ 52 U.S.C. § 30114(b).

³² Resp. at 4.

³³ *Id.* at 3-4.

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1

Date	Recipient	Purpose	Amount
6/27/2017	CAPITOL HILL CLUB	FOOD/BEVERAGE	\$412.00
9/26/2017	EZ AIRPORT SHUTTLE	TRAVEL	\$55.00
12/12/2017	EZ AIRPORT SHUTTLE	TRAVEL	\$55.00
1/22/2018	RIVER & POST	FOOD/BEVERAGE	\$452.67
2/10/2018	CAPITOL HILL CLUB	FOOD/BEVERAGE	\$251.12
2/20/2018	EZ AIRPORT SHUTTLE	TRAVEL	\$220.00
3/22/2018	EZ AIRPORT SHUTTLE	TRAVEL	\$110.00
6/24/2018	CAPITOL HILL CLUB	DUES	\$450.00
8/30/2018	FOUR SEASONS	TRAVEL	\$556.88
8/30/2018	AMERICAN AIRLINES	TRAVEL	\$923.35
8/30/2018	VILLAGE HOTEL	TRAVEL	\$1,010.89
9/11/2018	BROADMOOR HOTEL	TRAVEL	\$1,091.90
10/15/2018	FOUR SEASONS	TRAVEL	\$2,770.26
10/15/2018	WALT DISNEY WORLD SERVICES	TRAVEL	\$2,440.00
11/22/2018	GATE HOSPITALITY GROUP	TRAVEL	\$391.61
11/22/2018	SAN LORENZO	FOOD/BEVERAGE	\$233.60
11/22/2018	THE LINE	FOOD/BEVERAGE	\$350.40
12/6/2018	CAPITOL HILL CLUB	TRAVEL	\$25.00
12/6/2018	BISTRO BIS	CATERING/FACILITY RENTAL	\$1,396.40
Total			\$13,196.08

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- 1 The Commission therefore finds reason to believe that Ander PAC violated 52 U.S.C. §
- 2 30114(b) by converting campaign funds to personal use.³⁴

³⁴ With respect to the remaining disbursements identified by the Complaint, there is insufficient information to find reason to believe that they were for personal use. The Complaint does not provide support, beyond a lack of fundraising, for its allegation that travel and meal expenses constituted personal use while Crenshaw was still in office. Moreover, the Response claims that a number of January 2017 expenses were made for the purpose of winding up Crenshaw for Congress, which would be appropriate spending for a committee to make. There is no supporting evidence in the Complaint that the remaining expenses were personal use.