

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR 7578
DATE COMPLAINT FILED: 3/11/19
DATES OF NOTIFICATION: 3/14/19 and 6/12/19
LAST RESPONSE RECEIVED: 6/20/19
DATE ACTIVATED: 5/31/19

EXPIRATION OF SOL:¹ 3/8/16 (earliest)
1/12/24 (latest)
ELECTION CYCLES: 2012, 2014, 2016, and 2018

COMPLAINANTS: Campaign Legal Center
Margaret Christ

RESPONDENTS: FAIRPAC (f/k/a John Linder for Congress)
and Matthew John Linder, in his
official capacity as treasurer
John Linder

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(4)(A)
52 U.S.C. § 30114 (a), (b)
11 C.F.R. § 100.5(e)(3)
11 C.F.R. § 113.1(g)
11 C.F.R. § 113.2

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint alleges former Representative John Linder (“Linder”), who retired in 2011, made personal use of funds contributed to his principal campaign committee, a committee that was

¹ Respondents consented to a 30-day extension of the limitations period. *See* MUR 7578 Consent to Extend the Time to Commence a Civil Law Enforcement Action, Suit, or Proceeding (Mar. 27, 2019). On August 7, 2019, the Office of the General Counsel circulated a First General Counsel’s Report (“FGCR”) recommending that the Commission find reason to believe and authorize pre-probable cause conciliation on activity that occurred between November 2014 and January 2015. This report was pending when the Commission lost its quorum in August 2019. Respondents did not respond to our requests for additional tolling after the Commission lost its quorum.

1 converted to a multi-candidate political committee named FAIRPAC in 2014. Respondents deny the
2 allegations and maintain that the challenged disbursements were related to the “ordinary and
3 necessary expenses” of the Committee.

4 As discussed below, we recommend that the Commission dismiss the allegation that John
5 Linder and FAIRPAC (f/k/a John Linder for Congress) and Matthew John Linder, in his official
6 capacity as treasurer, violated 52 U.S.C. § 30114(b) by expending campaign funds for personal use,
7 and close the file.

8 **II. FACTS**

9 Linder served as a Representative from 1993 to 2011. When he left office, Linder's
10 former principal campaign committee, Linder for Congress, disclosed \$573,574 cash on hand.²

11 In January 2014, Linder for Congress was converted to a multi-candidate committee
12 named FAIRPAC.³ According to Respondents, the Committee's name “FAIRPAC” is a
13 reference to Linder's longtime advocacy on behalf of his “fair tax” plan.⁴ At the time of this
14 conversion, \$430,622 in leftover campaign funds were transferred to FAIRPAC.⁵ FAIRPAC has
15 not raised any additional contributions since 2014.

² Linder for Congress 2010 Amended Year-End Report at 4 (Apr. 14, 2011).

³ Resp. at 1 (April 22, 2019). Counsel for John Linder indicated that FAIRPAC's response addressed all issues, and Linder would not be filing a separate response. *See* John Linder Resp. at 1 (June 19, 2019).

⁴ Linder introduced his “fair tax” proposal in 1999, and re-introduced it in each new Congress until his retirement in 2011. Linder also co-authored books on the proposal that were published in 2005 and 2008. *See* Resp. at 1 note 1.

⁵ Linder for Congress 2013 Year-End Report at 4 (Jan. 30, 2014); FAIRPAC Second Amended 2014 April Quarterly Report at 2 (July 13, 2014). Since the conversion to a multi-candidate committee, FAIRPAC has received a small amount of additional funds in the total amount of \$2,291. *See* FAIRPAC Amended 2018 April Quarterly Report at 6 (Aug. 30, 2018) (disclosing \$717 in other receipts); FAIRPAC 30 Day Post-Gen Report at 6 (Dec. 2, 2014) (disclosing \$1,574 in offsets to operating expenditures).

1 The Complaint generally describes Committee disbursements made after Linder's
2 retirement as impermissible personal use of campaign funds.⁶ After reciting earlier
3 disbursements, the Complaint alleges that the following 2014-2018 disbursements were for
4 personal use:⁷

- 5 • \$72,015 paid to Linder's children, Kristine Simpson (2014-15) and Matthew John
6 Linder (2016-18) at a rate of \$1,500 per month for "FR Consulting;"
- 7 • \$6,708 paid to AT&T and \$8,603 to Verizon Wireless (during different time
8 periods) for "internet service;"
- 9 • \$900 paid to Chowder & Marching for dinner;
- 10 • \$2,666 paid to airlines for travel; and
- 11 • \$1,457 paid to hotels.

12 FAIRPAC contends that the Commission's prior decisions in this area permit "entities
13 that receive excess funds from a former campaign committee to spend those funds on the entity's
14 'ordinary and necessary' expenses so long as a personal benefit does not accrue to the former
15 candidate/officer."⁸

16 As to the specific expenses, FAIRPAC asserts that consulting fees paid to Linder's
17 daughter and son were for "financial reporting consulting" in connection with serving as the
18 Committee's treasurer and filing disclosure reports.⁹ The Response maintains that the monthly

⁶ Compl. at 1 (Mar. 8, 2019).

⁷ Compl. at 4, 11. The Complaint notes that some disbursements made between 2011 and 2014 are outside the applicable five-year statute of limitations for the purpose of pursuing a civil penalty. *Id.* at note 47.

⁸ Resp. at 3.

⁹ *Id.* at 7-8.

1 \$1,500 payments were “ordinary and necessary” PAC expenses, and that the amounts are
2 consistent with the rates charged by other consultants for such services.¹⁰

3 FAIRPAC asserts that the monthly payments to AT&T and Verizon (at different times)
4 from 2015 to 2018 for internet service were necessary Committee expenses, as political
5 committees are required to file their FEC reports electronically.¹¹

6 With regard to the travel and hotel expenses, FAIRPAC asserts that Linder attended three
7 politically related events, none of which were for vacation or other personal purposes.¹² First,
8 Respondents assert that \$3,413 was disbursed for Linder’s attendance at a 65th anniversary event
9 hosted by the Chowder & Marching Club, a group of current and former House Republicans.¹³
10 Respondents assert that because the Chowder & Marching Club is open only to past and present
11 members of the House, these expenses would not exist irrespective of Linder’s status as a former
12 officeholder.¹⁴ Further, Respondents assert that \$3,182 was disbursed for expenses incurred
13 when Linder attended a speaking engagement in conjunction with Alaska’s 2016 Republican
14 Party convention to discuss the “fair tax” legislation proposal.¹⁵ Third, the \$263 was disbursed

¹⁰ *See id.*

¹¹ *Id.* at 8-9. FAIRPAC’s response makes similar arguments in connection with the cost of procuring a computer and computer software at different times between 2011 and 2014. *Id.*

¹² *Id.* at 9.

¹³ *Id.* at 9-10. The Response indicates that the disbursement to “Chowder & Marching” in late 2014 may include membership dues. *Id.* at 10.

¹⁴ *Id.*

¹⁵ *Id.* at 11.

1 in 2014 for Linder's attendance at speaking engagement in Atlanta also addressing the "fair tax"
2 issue.¹⁶

3 **III. LEGAL ANALYSIS**

4 Under the Act, a contribution accepted by a candidate may be used for, *inter alia*,
5 "otherwise authorized expenditures in connection with the campaign for Federal office of the
6 candidate."¹⁷ However, a contribution to a candidate shall not be converted by any person to
7 "personal use."¹⁸ "Personal use" means any use of funds in a campaign account of a present or
8 former candidate to fulfill a commitment, obligation, or expense of any person that would exist
9 irrespective of the candidate's campaign or duties as a Federal officeholder.¹⁹ The
10 Commission's regulations include a non-exhaustive list of personal uses of campaign funds,
11 including household food items, clothing, mortgage, and utility payments.²⁰ The Commission
12 evaluates other expenses, such as travel, meal, and legal expenses on a case-by-case basis by
13 applying the "irrespective test" to determine whether a personal use violation has occurred.²¹

¹⁶ *Id.* FAIRPAC alleges that the \$3,500 was paid for research services in connection with the "fair tax" legislation proposal, which it alleges was an "ordinary and necessary" PAC expense constituting the financing of activities of a nonconnected committee. *See id.* at 11-12.

¹⁷ 52 U.S.C. § 30114(a).

¹⁸ *Id.* § 30114(b)(1).

¹⁹ *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").

²⁰ 11 C.F.R. § 113.1(g)(1)(i)(A)-(J).

²¹ *See* 11 C.F.R. § 113.1(g)(1)(ii).

1 In addition, the Commission's regulations include a list of permissible non-campaign
2 related expenses, including ordinary and necessary expenses incurred in connection with the
3 recipient's duties as a federal officeholder, travel costs associated with *bona fide* official duties
4 such as speaking engagements, the cost of winding down an office for a period of six months
5 after leaving office, and for any other lawful purpose, unless such use is "personal use."²²

6 The Commission has concluded that principal campaign committees can be converted to
7 multi-candidate committees, but contributions received when a committee was still a principal
8 campaign committee remain subject to the personal use prohibition.²³ In Advisory Opinion
9 2012-06 (RickPerry.org), the Commission permitted then-Governor Perry's principal campaign
10 committee for the 2012 presidential election to convert to a nonconnected committee and to fund
11 the nonconnected committee's activities using its remaining primary election funds, to the extent
12 the funds were not used for personal use.²⁴ In Advisory Opinion 1983-27 (McDaniel), the
13 Commission concluded that excess campaign funds may be used for a variety of specific
14 purposes, and that such funds donated to a tax-exempt charitable organization could be used to

²² See 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").

²³ See, e.g., Advisory Op. 2012-06 (RickPerry.org) (concluding that funding activities of a converted nonconnected committee with remaining primary election funds is permissible); Advisory Op. 2004-03 (Dooley for the Valley) (concluding that former officeholder may convert a principal campaign committee to a multicandidate committee and that the funds received by the committee when it was a principal campaign committee must be spent for the permissible uses enumerated under the Act) (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); Advisory Op. 1994-31 (Gallo) (concluding that a former candidate may use remaining general election contributions to create a multicandidate committee). 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 See Advisory Op. 2012-06 at 2-4.

1 defray “ordinary and necessary” expenses incurred by the former candidate in connection with
2 his position on the board of that organization, so long as they were not for personal use.²⁵

3 Candidates or federal officeholders may pay membership dues in an organization that
4 may have political interests “in order to maintain political contacts with constituents or the
5 business community.”²⁶ The Commission, however, has found that a former congressman, who
6 was neither a candidate nor a current officeholder at the time of the challenged disbursements,
7 violated the personal use provision in connection with social club membership dues and fees, as
8 well as lodging and meal expenses at a conference, because such expenses would have existed
9 irrespective of his former duties as a federal officeholder.²⁷

10 The majority of the payments at issue relate to FAIRPAC’s monthly expenses for
11 consulting fees paid to Linder’s daughter and son as the Committee’s treasurer and monthly fees
12 paid to vendors for internet service. Salary payments to a candidate’s family members are
13 personal use, unless the family member is providing *bona fide* services to the campaign; any
14 salary payment in excess of the fair market value of the services provided is personal use.²⁸
15 Respondents dispute the allegation that the \$1,500 monthly payments to Linder’s children were
16 not *bona fide*, arguing that they were for bookkeeping and reporting services, and not
17 fundraising. Here, FAIRPAC’s disclosure reports are signed by his daughter from 2014 through

²⁵ See Advisory Op. 1983-27 at 2.

²⁶ See 11 C.F.R. § 113.1(g)(1)(i)(G); Personal Use E&J, 60 Fed. Reg. at 7,866.

²⁷ Factual & Legal Analysis at 9-11, MUR 7292 (Stearns) (“Stearns F&LA”).

²⁸ 11 C.F.R. § 113.1(g)(1)(H); Personal Use E&J, 60 Fed. Reg. at 7,866. See also Advisory Op. 2001-10 at 3 (Jesse L. Jackson, Jr. for Congress) (concluding payments to wife for consulting services would not violate the personal use prohibition but that contract must contain customary terms and “conform to the standard industry practice”).

1 2015, and by his son from 2016 to the present in their capacities as treasurer. FAIRPAC's
2 disclosure reports do not reveal payments to any other vendors to perform these services.²⁹
3 Thus, there is a reasonable basis on which to conclude that Linder's children provided *bona fide*
4 services as the committee's treasurer.

5 The Response alleges that the \$1,500 monthly fee "reflects the ordinary market rate for
6 such services and is consistent with the amounts charged by consultants across the country."³⁰
7 Although the Response does not provide specific information to support the \$1,500 monthly fee,
8 the record contains no information to suggest that it was excessive. In two recent matters, the
9 Commission considered the reasonableness of amounts paid by dormant committees to vendors
10 for treasurer services in the context of the personal use prohibition. In one matter, the
11 Commission did not find that \$1,000 per month paid to a former candidate's wife for treasurer
12 services to a committee with no fundraising and few disbursements constituted personal use.³¹
13 In another matter, the Commission found, *inter alia*, reason to believe that the committee and its
14 treasurer in his personal capacity had converted campaign funds to personal use by paying the
15 treasurer \$5,759.16 a month after the candidate had died, even though there was information
16 showing that the committee also paid other vendors to perform compliance services. Here, the

²⁹ FAIRPAC discloses yearly payments to Aristotle Industries for computer services and software maintenance, which would be used by a treasurer to electronically file reports. *See* Amended 2014 July Quarterly Report at 6 (Aug. 20, 2014); 2015 Mid-Year Report at 7 (July 30, 2015); 2016 April Quarterly Report at 7 (March 31, 2016); Amended 2017 Mid-Year Report at 7 (July 31, 2017); Amended 2018 April Quarterly Report at 8 (Aug. 30, 2018).

³⁰ Resp. at 7.

³¹ *See* Stearns F&LA at 4-11; Cert. at 2, MUR 7292 (Mar. 20, 2019).

1 monthly amount paid to Linder's children seems more comparable to the \$1,000 monthly fee
2 paid to the candidate's wife who was filing disclosure reports than the \$5,759.16 fee paid to the
3 treasurer of the Committee that also paid a separate firm for compliance services. Under these
4 circumstances, investigating to determine if a \$1,500 per month treasurer fee represents fair
5 market value would not be a prudent use of the Commission's resources.³³

6 The Committee's payments for internet services, as well as other expenses recited in the
7 Complaint, such as the costs of the computer, computer software, and a newspaper subscription,
8 appear to be permissible as ordinary and necessary expenses related to FAIRPAC activities.³⁴

9 Linder's travel and lodging expenses related to his speaking engagements on the "fair
10 tax" legislative proposal at the April 2016 Alaska Republican Party convention, and in 2014 at
11 an organization in Atlanta, appear to be permissible as related to the PAC's activities.³⁵ We have
12 no information that Linder took these trips for his personal benefit. The \$3,500 disbursement in
13 November 2015 to conduct research on issues related to the "fair tax" legislation bill also

³³ See *Heckler v. Chaney*, 470 U.S. 821 (1985). See, e.g., Factual & Legal Analysis at 4-6, MUR 6864 (Ruiz) (\$300 to \$500 a month paid to candidate's wife from 2011 through 2014 for treasurer and campaign manager duties did not constitute personal use, and respondent's assessment that she was paid below fair market value was reasonable); Factual & Legal Analysis at 5, 8-9, MUR 6631 (Berman) (the Commission dismissed the allegations that \$80,000 and \$90,000 payments to candidate's brother's political consulting firm were personal use, noting that the Complainant's assertion that the services provided were limited to "voter persuasion" efforts was unsupported, and the candidate represented that his brother provided "general strategic consulting advice on a wide range of political matters," and there was information that he was a highly regarded consultant and had received substantial payments for consulting services from other candidates); First Gen. Counsel's Rpt. at 9, MUR 6631 (Berman) (noting that there was no specific evidence that the amounts paid to candidate's brother's political consulting firm were fair market value).

³⁴ See Advisory Op. 2012-06 at 3; Advisory Op. 1983-27 at 2.

³⁵ See Advisory Op. 1993-06 (Citizens for Congressman Panetta) at 4-5 (concluding that former officeholder may use campaign funds to pay for lodging and travel costs related to his attendance to and from political party events, to the extent the expenses are not for personal activity).

1 appears permissible as ordinary and necessary PAC activities because advancing fair tax
2 legislation is the PAC's stated goal.³⁶

3 With regard to payments to the Chowder and Marching Club, Linder has not been a
4 candidate or an officeholder since 2011, and the Commission has concluded that a long-retired
5 former congressman could not use leftover campaign funds to pay similar membership fees at the
6 Capitol Hill Club.³⁷ These payments, however, were made more than five years ago, and the
7 applicable statute of limitations for the payment of civil monetary penalties has expired.
8 Therefore, we recommend that the Commission dismiss these allegations.

9 Based on the foregoing, we recommend that the Commission dismiss the allegation that
10 John Linder and FAIRPAC (f/k/a John Linder for Congress) and Matthew John Linder in his
11 official capacity as treasurer violated 52 U.S.C. § 30114(b) and close the file.

12 **IV. RECOMMENDATIONS**

- 13 1. Dismiss the allegation that John Linder and FAIRPAC (f/k/a John Linder for Congress)
14 and Matthew John Linder in his official capacity as treasurer violated 52 U.S.C.
15 § 30114(b);
- 16 2. Approve the attached Factual and Legal Analysis;
- 17 3. Approve the appropriate letter; and

³⁶ See Advisory Op. 2012-06 at 3; Advisory Op. 1983-27 at 2; Advisory Op. 1993-06 at 3-5.

³⁷ *Id.* at 10-11.

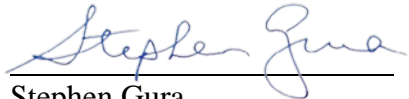
1 4. Close the file.


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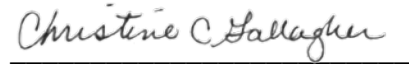
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