



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 19, 2021

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Brendan M. Fischer
Margaret Christ
Campaign Legal Center
1101 14th Street, NW, Suite 400
Washington, DC 20005

RE: MUR 7578
FAIRPAC, *et al.*

Dear Mr. Fischer and Ms. Christ:

This is in reference to the Complaint you filed with the Federal Election Commission dated March 8, 2019, concerning John Linder and FAIRPAC (f/k/a Linder for Congress) and Matthew John Linder in his official capacity as treasurer (collectively “respondents”). Upon further review of the allegations contained in the complaint, information supplied by respondents, and after considering the circumstances of the matter, the Commission, on September 30, 2021, voted to dismiss the allegations that respondents violated 52 U.S.C. § 30114(b) and closed the file. The Factual and Legal Analysis, which more fully explains the Commission’s decision is enclosed for your information.

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 Federal Election Campaign Act of 1971, as amended, 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 Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Charles Kitcher
General Counsel

Mark Shonkwiler/cg

BY: Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: FAIRPAC (f/k/a John Linder for Congress) **MUR 7578**
and Matthew John Linder in his official capacity as treasurer
John Linder

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission pursuant to 52 U.S.C. § 30109(a)(1) alleging that former Congressman John Linder (“Linder”), who retired in 2011, made impermissible personal use of funds contributed to his principal campaign committee which was converted into the multi-candidate political committee FAIRPAC in 2014. Respondents deny the allegations, and maintain that the challenged disbursements were related to the “ordinary and necessary expenses” of the Committee.

Based on the allegations of the complaint, the response, and the available information, the Commission dismisses the allegations that John Linder and FAIRPAC (f/k/a John Linder for Congress) and Matthew John Linder, in his official capacity as treasurer violated 52 U.S.C. § 30114(b).

II. FACTUAL AND LEGAL ANALYSIS**A. FACTS**

Linder served as a Representative from 1993 to 2011. When he left office, Linder’s former principal campaign committee, Linder for Congress, disclosed \$573,574 cash on hand.¹

In January 2014, Linder for Congress was converted to a multi-candidate committee

¹ Linder for Congress 2010 Amended Year-End Report at 4 (Apr. 14, 2011).

1 named FAIRPAC.² According to Respondents, the Committee’s name “FAIRPAC” is a
2 reference to Linder’s longtime advocacy on behalf of his “fair tax” plan.³ At the time of this
3 conversion, \$430,622 in leftover campaign funds were transferred to FAIRPAC.⁴ FAIRPAC has
4 not raised any additional contributions since 2014.

5 The Complaint generally describes Committee disbursements made after Linder’s
6 retirement as impermissible personal use of campaign funds.⁵ After reciting earlier
7 disbursements, the Complaint alleges that the following 2014-2018 disbursements were for
8 personal use:⁶

- 9 • \$72,015 paid to Linder’s children, Kristine Simpson (2014-15) and Matthew John
10 Linder (2016-18) at a rate of \$1,500 per month for “FR Consulting;”
- 11 • \$6,708 paid to AT&T and \$8,603 to Verizon Wireless (during different time
12 periods) for “internet service;”
- 13 • \$900 to Chowder & Marching for dinner;
- 14 • \$2,666 paid to airlines for travel; and
- 15 • \$1,457 paid to hotels.

16 FAIRPAC contends that the Commission’s prior decisions in this area permit “entities
17 that receive excess funds from a former campaign committee to spend those funds on the entity’s

² 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).

³ 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.

⁴ 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).

⁵ Compl. at 1 (Mar. 8, 2019).

⁶ 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.

1 ‘ordinary and necessary’ expenses so long as a personal benefit does not accrue to the former
2 candidate/officer.”⁷

3 As to the specific expenses, FAIRPAC asserts that consulting fees paid to Linder’s
4 daughter and son were for “financial reporting consulting” in connection with serving as the
5 Committee’s treasurer and filing disclosure reports.⁸ The Response maintains that the monthly
6 \$1,500 payments were “ordinary and necessary” PAC expenses, and that the amounts are
7 consistent with the rates charged by other consultants for such services.⁹

8 FAIRPAC asserts that the monthly payments to AT&T and Verizon (at different times)
9 from 2015 to 2018 for internet service were necessary Committee expenses, as political
10 committees are required to file their FEC reports electronically.¹⁰

11 With regard to the travel and hotel expenses, FAIRPAC asserts that Linder attended three
12 politically related events, none of which were for vacation or other personal purposes.¹¹ First,
13 Respondents assert that \$3,413 was disbursed for Linder’s attendance at a 65th anniversary event
14 hosted by the Chowder & Marching Club, a group of current and former House Republicans.¹²
15 Respondents assert that because the Chowder & Marching Club is open only to past and present
16 members of the House, these expenses would not exist irrespective of Linder’s status as a former

⁷ Resp. at 3.

⁸ *Id.* at 7-8.

⁹ *See id.*

¹⁰ *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.*

¹¹ *Id.* at 9.

¹² *Id.* at 9-10. The Response indicates that the disbursement to “Chowder & Marching” in late 2014 may include membership dues. *Id.* at 10.

1 officeholder.¹³ Further, Respondents assert that \$3,182 was disbursed for expenses incurred
2 when Linder attended a speaking engagement in conjunction with Alaska’s 2016 Republican
3 Party convention to discuss the “fair tax” legislation proposal.¹⁴ Third, the \$263 was disbursed
4 in 2014 for Linder’s attendance at speaking engagement in Atlanta also addressing the “fair tax”
5 issue.¹⁵

6 **B. LEGAL ANALYSIS**

7 Under the Act, a contribution accepted by a candidate may be used for, *inter alia*,
8 “otherwise authorized expenditures in connection with the campaign for Federal office of the
9 candidate.”¹⁶ However, a contribution to a candidate shall not be converted by any person to
10 “personal use.”¹⁷ “Personal use” means any use of funds in a campaign account of a present or
11 former candidate 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.¹⁸ The
13 Commission’s regulations include a non-exhaustive list of personal uses of campaign funds,
14 including household food items, clothing, mortgage, and utility payments.¹⁹ The Commission

¹³ *Id.*

¹⁴ *Id.* at 11.

¹⁵ *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.

¹⁶ 52 U.S.C. § 30114(a).

¹⁷ *Id.* § 30114(b)(1).

¹⁸ *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”).

¹⁹ 11 C.F.R. § 113.1(g)(1)(i)(A)-(J).

1 evaluates other expenses, such as travel, meal, and legal expenses on a case-by-case basis by
2 applying the “irrespective test” to determine whether a personal use violation has occurred.²⁰

3 In addition, the Commission’s regulations include a list of permissible non-campaign
4 related expenses, including ordinary and necessary expenses incurred in connection with the
5 recipient’s duties as a federal officeholder, travel costs associated with *bona fide* official duties
6 such as speaking engagements, the cost of winding down an office for a period of six months
7 after leaving office, and for any other lawful purpose, unless such use is “personal use.”²¹

8 The Commission has concluded that principal campaign committees can be converted to
9 multi-candidate committees, but contributions received when a committee was still a principal
10 campaign committee remain subject to the personal use prohibition.²² In Advisory Opinion
11 2012-06 (RickPerry.org), the Commission permitted then-Governor Perry’s principal campaign
12 committee for the 2012 presidential election to convert to a nonconnected committee and to fund
13 the nonconnected committee’s activities using its remaining primary election funds, to the extent

²⁰ See 11 C.F.R. § 113.1(g)(1)(ii).

²¹ 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”).

²² 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).

1 the funds were not used for personal use.²³ In Advisory Opinion 1983-27 (McDaniel), the
2 Commission concluded that excess campaign funds may be used for a variety of specific
3 purposes, and that such funds donated to a tax-exempt charitable organization could be used to
4 defray “ordinary and necessary” expenses incurred by the former candidate in connection with
5 his position on the board of that organization, so long as they were not for personal use.²⁴

6 Candidates or federal officeholders may pay membership dues in an organization that
7 may have political interests “in order to maintain political contacts with constituents or the
8 business community.”²⁵ The Commission, however, has found that a former congressman, who
9 was neither a candidate nor a current officeholder at the time of the challenged disbursements,
10 violated the personal use provision in connection with social club membership dues and fees, as
11 well as lodging and meal expenses at a conference, because such expenses would have existed
12 irrespective of his former duties as a federal officeholder.²⁶

13 Linder has not been a candidate or an officeholder since 2011, and the Commission
14 recently concluded that a long-retired former congressman could not use leftover campaign funds
15 to pay similar membership fees at the Capitol Hill Club.²⁷ Because Linder’s attendance at the
16 Chowder & Marching Club social event is not related to the Committee’s ordinary expenses in
17 advocating on behalf of a “fair tax,” it appears to be an impermissible personal expense.

18 The majority of the payments at issue, however, relate to FAIRPAC’s monthly expenses

²³ See Advisory Op. 2012-06 at 2-4.

²⁴ See Advisory Op. 1983-27 at 2.

²⁵ See 11 C.F.R. § 113.1(g)(1)(i)(G); Personal Use E&J, 60 Fed. Reg. at 7,866.

²⁶ Factual & Legal Analysis at 9-11, MUR 7292 (Stearns) (“Stearns F&LA”).

²⁷ *Id.* at 10-11.

1 for consulting fees paid to Linder’s daughter and son as the Committee’s treasurer and monthly
2 fees paid to vendors for internet service. Salary payments to a candidate’s family members are
3 personal use, unless the family member is providing *bona fide* services to the campaign; any
4 salary payment in excess of the fair market value of the services provided is personal use.²⁸
5 Respondents dispute the allegation that the \$1,500 monthly payments to Linder’s children were
6 not *bona fide*, arguing that they were for bookkeeping and reporting services, and not
7 fundraising. Here, FAIRPAC’s disclosure reports are signed by his daughter from 2014 through
8 2015, and by his son from 2016 to the present in their capacities as treasurer. FAIRPAC’s
9 disclosure reports do not reveal payments to any other vendors to perform these services.²⁹
10 Thus, there is a reasonable basis on which to conclude that Linder’s children provided *bona fide*
11 services as the committee’s treasurer.

12 The Response alleges that the \$1,500 monthly fee “reflects the ordinary market rate for
13 such services and is consistent with the amounts charged by consultants across the country.”³⁰
14 Although the Response does not provide specific information to support the \$1,500 monthly fee,
15 the record contains no information to suggest that it was excessive.³¹

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

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 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

1 The Committee’s payments for internet services, as well as other expenses recited in the
2 Complaint, such as the costs of the computer, computer software, and a newspaper subscription,
3 appear to be permissible as ordinary and necessary expenses related to FAIRPAC activities.³²

4 Linder’s travel and lodging expenses related to his speaking engagements on the “fair
5 tax” legislative proposal at the April 2016 Alaska Republican Party convention, and in 2014 at
6 an organization in Atlanta, appear to be permissible as related to the PAC’s activities.³³ There is
7 no available information that Linder took these trips for his personal benefit. The \$3,500
8 disbursement in November 2015 to conduct research on issues related to the “fair tax” legislation
9 bill also appears permissible as ordinary and necessary PAC activities because advancing fair tax
10 legislation is the PAC’s stated goal.³⁴

11 Based on the foregoing, it appears that the November and December 2014 and January
12 2015 payments of \$3,413 for Linder’s attendance at the Chowder & Marching Club are
13 impermissible personal expenses that would exist irrespective of Linder’s former campaign or
14 duties as a former federal officeholder.³⁵ However, the payments for those impermissible
15 expenses occurred outside of the applicable statute of limitations period.

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).

³² *See* Advisory Op. 2012-06 at 3; Advisory Op. 1983-27 at 2.

³³ *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).

³⁴ *See* Advisory Op. 2012-06 at 3; Advisory Op. 1983-27 at 2; Advisory Op. 1993-06 at 3-5.

³⁵ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(ii).

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Factual and Legal Analysis

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1 Therefore, the Commission determines to dismiss the allegation that John Linder and
2 FAIRPAC (f/k/a John Linder for Congress) and Matthew John Linder in his official capacity as
3 treasurer violated 52 U.S.C. § 30114(b).