

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT****MUR: 7850**

DATE COMPLAINT FILED: Oct. 30, 2020

DATE OF NOTIFICATIONS: Nov. 6, 2020

LAST RESPONSE RECEIVED: Dec. 28, 2020

DATE ACTIVATED: May 25, 2021

EXPIRATION OF SOL: Jan. 6, 2025 – Sept. 17, 2025

ELECTION CYCLE: 2020

COMPLAINANTS:Citizens for Responsibility & Ethics in Washington
Noah Bookbinder**RESPONDENTS:**Freedom First PAC (f/k/a Meadows for Congress) and
Collin McMichael in his official capacity as treasurer
Mark R. Meadows**RELEVANT STATUTES****AND REGULATIONS:**

52 U.S.C. § 30114(b)

11 C.F.R. § 100.4

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 that Mark R. Meadows and Freedom First PAC (f/k/a Meadows for Congress) and Collin McMichael in his official capacity as treasurer (“the Committee”) converted campaign funds to personal use in violation of Federal Election Campaign Act of 1971, as amended (the “Act”). In support of this allegation, the Complaint points to certain expenditures totaling \$19,065 reported by the Committee after Meadows announced his retirement from Congress on December 19, 2019.

1 Respondents contend that the disbursements were for allowable winding-down expenses
2 and submitted a sworn affidavit from Meadows asserting the same. The available information
3 suggests that most of the disbursements identified in the Complaint were for legitimate expenses
4 relating to Meadows's service as a Member of Congress. Although a few of the disbursements
5 for food and beverages described in the Response and affidavit may have been unrelated to
6 Meadows's service as a candidate or Member of Congress and thus could be viewed as a
7 prohibited personal use of campaign funds, the maximum total of these disbursements appears to
8 be \$2,655. For the reasons set forth below, we recommend that the Commission exercise its
9 prosecutorial discretion and dismiss the allegations that Meadows and the Committee violated
10 52 U.S.C. § 30114(b) by converting campaign funds to personal use.¹

11 **II. FACTUAL BACKGROUND**

12 Mark R. Meadows first became a congressman from the 11th District of North Carolina
13 on January 3, 2013.² Meadows for Congress was his principal campaign committee.³ On
14 December 19, 2019, Meadows announced he would not be running for re-election in 2020.⁴ On
15 March 6, 2020, President Trump announced his appointment of Meadows as White House Chief
16 of Staff.⁵ Meadows resigned from Congress on March 30, 2020, and served as Chief of Staff
17 from March 31, 2020, until January 20, 2021.⁶ On July 2, 2020, Meadows for Congress was

¹ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

² *See* Compl. ¶ 10 (Oct. 30, 2020).

³ *See* Meadows for Congress, Statement of Organization (Oct. 4, 2011).

⁴ *See* Compl. ¶ 3.

⁵ *See id.* ¶ 10.

⁶ *See* Mark R. Meadows, Freedom First PAC, Meadows for Congress Joint Resp. at 2 (Dec. 28, 2020) (“Resp.”).

1 converted to a multi-candidate committee, Freedom First PAC.⁷ Freedom First PAC did not
 2 report receiving any contributions for the remainder of 2020.⁸

3 The Complaint alleges that \$19,065 in disbursements beginning in January 2020 were
 4 converted to Meadows's personal use.⁹ The following chart reflects the challenged
 5 disbursements:

Date	Vendor	Amount	Reported Purpose	Committee
<i>Disbursements Prior to Resignation</i>				
1/6/2020-3/30/2020	Henry Mitchell	\$5,882.48	Field Representative Mileage	Meadows for Congress
1/9/2020-3/13/2020	Various	\$5,577.50	Food/Beverage	Meadows for Congress
3/30/2020	Ann Hand LLC	\$2,650	Printed Materials	Meadows for Congress
<i>Pre-Resignation Subtotal</i>		<i>\$14,109.98</i>		
<i>Disbursements After Resignation</i>				
4/16/2020	Capitol Hill Club	\$358.58	Food/Beverage	Meadows for Congress
6/23/2020	Henry Mitchell	\$2,300	Management Consulting	Meadows for Congress
6/30/2020	Safeway Store	\$601.02	Food/Beverage	Meadows for Congress
7/21/2020	Capitol Hill Club	\$992.11	PAC food/beverage	Freedom First
8/26/2020	Costco	\$241.11	PAC food/beverage	Freedom First
9/8/2020	Lavender Moon Cupcakery	\$33	PAC food/beverage	Freedom First
9/15/2020	Trump International Hotel	\$393.10	PAC lodging	Freedom First
9/17/2020	Lavender Moon Cupcakery	\$36	PAC food/beverage	Freedom First
<i>Post-Resignation Subtotal</i>		<i>\$4,954.92</i>		

⁷ See Compl. ¶ 4; Freedom First PAC, Statement of Organization at 2 (July 2, 2020).

⁸ See Freedom First PAC, 2020 October Quarterly Report at 3 (Oct. 14, 2020) (reporting \$0 in contributions); Freedom First PAC, 2020 Pre-General Report at 3 (Oct. 22, 2020) (same); Freedom First PAC, 2020 Amended Post-General Report at 3 (Apr. 30, 2021) (same); Freedom First PAC, 2020 Year-End Report at 3 (Jan. 30, 2021) (same); Freedom First PAC, 2021 Mid-Year Report at 3, 6-7 (July 30, 2021) (reporting \$14,060.50 in contributions and itemizing \$6,500 received from April 19 to May 12, 2021).

⁹ See Compl. ¶¶ 17-29.

1 The Complaint relies primarily on Meadows's announced retirement in December 2019,
2 his subsequent resignation in March 2020, and limited fundraising by the Committee to suggest
3 that the listed expenditures were likely for personal use. As to the disbursements prior to
4 Meadows's resignation, the Complaint notes that Ann Hand LLC is a jewelry store that "does not
5 advertise stationery or other 'printed materials' on its website."¹⁰ The Complaint suggests that
6 the five disbursements to Henry Mitchell for "Field Representative Mileage" are questionable
7 "[g]iven that Meadows was no longer campaigning for Congress."¹¹ Similarly, noting Meadows
8 for Congress's limited fundraising in the first quarter of 2020, the Complaint suggests that the
9 \$5,578 in expenditures for "food/beverage" prior to Meadows's resignation "raise[s] questions
10 about unlawful conversion of campaign funds for personal use."¹²

11 Again relying on Meadows's resignation and noting that Freedom First PAC did not
12 report raising any funds in 2020 after it converted to a multi-candidate committee, the Complaint
13 questions all of the Committee's expenditures since March 30, 2020.¹³ The Complaint first
14 points to a final disbursement to Mitchell for "Management Consulting" on June 23, 2020, nearly
15 three months after Meadows's resignation.¹⁴ It next challenges \$2,226 in disbursements for
16 "food/beverage" since March 30, 2020, by the Committee.¹⁵ Lastly, the Complaint questions
17 \$393 spent on "PAC lodging" at the Trump International Hotel on September 15, 2020.¹⁶

¹⁰ *Id.* ¶ 18 (omitting citations).

¹¹ *Id.* ¶¶ 19-20.

¹² *Id.* ¶¶ 22-23, 36.

¹³ *Id.* ¶¶ 28-29.

¹⁴ *Id.* ¶ 21.

¹⁵ *Id.* ¶¶ 24, 29.

¹⁶ *Id.* ¶ 29.

1 Respondents address each of the challenged expenditures. First, they assert that the Ann
2 Hand expense was for lapel pins distributed to members of the House Freedom Caucus, of which
3 Meadows had previously served as chair.¹⁷ An affidavit signed by Meadows attesting to the
4 same was attached to the Response, as was a picture of one of the pins.¹⁸ As to the
5 disbursements to Mitchell, Respondents note that he was a paid staff member: the mileage
6 reimbursements were for winding down the campaign while Meadows was still a member of
7 Congress, and the \$2,300 disbursement to Mitchell was for “his time and services during the
8 early part of 2020.”¹⁹ Respondents further contend that the disbursements for food and beverage
9 while Meadows was still in Congress were “to defray expenses of his congressional service
10 through the first quarter 2020.”²⁰ As to the disbursements after Meadows’s resignation, the
11 Response states they “were solely related to meetings with government officials, past
12 donors/supporters, and/or food/beverage for government staff working on weekends at the White
13 House.”²¹ The Response also states that the “lodging” disbursement at Trump International
14 Hotel was misreported; it was “for a dinner with donors / supporters.”²²

15 III. LEGAL ANALYSIS

16 A. Legal Background

17 Under the Act, a contribution accepted by a candidate may be used for, *inter alia*,
18 “otherwise authorized expenditures in connection with the campaign for Federal office of the

¹⁷ Resp. at 2.

¹⁸ Resp., Aff. of Mark Meadows ¶ 6 (“Meadows Aff.”).

¹⁹ Resp. at 2; *see* Meadows Aff. ¶ 3.

²⁰ Resp. at 2; *see* Meadows Aff. ¶ 2.

²¹ Resp. at 2; *see* Meadows Aff. ¶ 5.

²² Resp. at 3 n.1. As of this writing, the Committee has not amended its report to correct the description.

1 candidate.”²³ The Act and Commission regulations give candidates wide discretion over the use
2 of campaign funds, but it is not limitless.²⁴ Specifically, a contribution to a candidate shall not
3 be converted by any person to “personal use.”²⁵ “Personal use” means any use of funds in a
4 campaign account of a current or former candidate “to fulfill a commitment, obligation, or
5 expense of any person that would exist irrespective of the candidate’s campaign or duties as a
6 Federal officeholder.”²⁶ For purposes of the Act, “Federal office” is defined as “the office of
7 President or Vice President, or of Senator or Representative in, or Delegate or Resident
8 Commissioner to, the Congress.”²⁷ Thus, cabinet secretaries and unelected White House staff
9 are not considered to hold “Federal office” for purposes of 52 U.S.C. § 30114.²⁸

10 The Commission’s regulations include a list of permissible non-campaign related
11 expenses, including ordinary and necessary expenses incurred in connection with the recipient’s
12 duties as a federal officeholder, travel costs associated with *bona fide* official duties such as
13 speaking engagements, the cost of winding down an office for a period of six months after
14 leaving office, and for any other lawful purpose, unless such use is “personal use.”²⁹ For
15 example, the Commission has previously approved the use of campaign funds to purchase gifts
16 that “are low in cost and have little monetary value” for constituents, noting that paying for such

²³ 52 U.S.C. § 30114(a).

²⁴ 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”).

²⁵ 52 U.S.C. § 30114(b)(1).

²⁶ *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g); Personal Use E&J, 60 Fed. Reg. at 7,863.

²⁷ 52 U.S.C. § 30101(3); 11 C.F.R. § 100.4.

²⁸ *See* Advisory Op. 1993-06 (Panetta) at 3; Factual & Legal Analysis (“F&LA”) at 16, MUR 7293 (Zinke for Congress, *et al.*).

²⁹ *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).

1 gifts with campaign funds would be problematic only if the gift went “beyond an honorific
2 purpose” and “confer[red] a significant personal benefit on the recipient.”³⁰ In addition, the
3 Commission’s regulations include a non-exhaustive list of *per se* personal uses of campaign
4 funds.³¹ The Commission evaluates other expenses, such as travel, meal, and legal expenses, on
5 a case-by-case basis by applying the “irrespective test” to determine whether a personal use
6 violation has occurred.³² The Commission has also concluded that principal campaign
7 committees can be converted to multi-candidate committees, but contributions received when a
8 committee was still a principal campaign committee remain subject to the personal use
9 prohibition.³³

10 **B. Disbursements for Obligations Before Meadows Resigned from Congress**

11 The available information does not support a finding of reason to believe that Meadows
12 or the Committee converted campaign funds to personal use prior to Meadows’s resignation.
13 According to the information provided in the Response, the Ann Hand LLC disbursement was
14 for the purchase of pins to be provided to members of the House Freedom Caucus, of which

³⁰ 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”).

³¹ 11 C.F.R. § 113.1(g)(1)(i)(A)-(J).

³² *See id.* § 113.1(g)(1)(ii).

³³ *See* Advisory Op. 2012-06 at 2-4 (RickPerry.org) (permitting a 2012 presidential candidate’s principal campaign committee to convert to a nonconnected committee and to fund the nonconnected committee’s activities using its remaining primary election funds, to the extent the funds were not used for personal use); *see also* 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 Petition: Former Candidates’ Personal Use: Correction, 83 Fed. Reg. 17,509 (Apr. 20, 2018).

1 Meadows previously served as chairman.³⁴ Under the circumstances of this case, this gift
 2 expense appears to be a permissible use under the Act and Commission regulations.³⁵

3 Similarly, disbursements to defray the costs of serving as a member of Congress are
 4 permissible.³⁶ As to the challenged “food/beverage” disbursements, the information provided in
 5 the Complaint and Response does not suggest that they were for reasons unrelated to Meadows’s
 6 service as a Member of Congress.³⁷ Relatedly, Respondents assert that the disbursements to
 7 Mitchell for “field representative mileage” were for permissible winding-down expenses, and
 8 there is no available information to suggest that the disbursements were for personal use.³⁸

9 C. Disbursements for Obligations After Meadows Resigned from Congress

10 The personal use prohibition attaches to any funds raised by a principal campaign
 11 committee, even if the committee is later converted to a multi-candidate committee.³⁹ For the
 12 reporting period ending March 31, 2020 (one day after Meadows’s resignation), the Committee

³⁴ Resp. at 2; Meadows Aff. ¶ 6.

³⁵ 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”). The Response does not mention the number of pins purchased, but reporting from Meadows’s time as chair suggests there were “roughly three dozen members” of the House Freedom Caucus as of March 2017. See Emmarie Huetteman, *On Health Law, G.O.P Faces Formidable Policy Foe: House Republicans*, N.Y. TIMES, Mar. 20, 2017, <https://www.nytimes.com/2017/03/20/us/politics/on-health-law-gop-faces-a-formidable-policy-foe-house-republicans.html>. If Meadows purchased 36 pins, the per unit cost would have been \$73.61.

³⁶ 11 C.F.R. § 113.2(a).

³⁷ Although not explicitly referenced in the Complaint, two of the challenged expenditures for “food/beverage” totaling \$1,117.72 were made in North Carolina on January 21 and 22, 2020. See Meadows for Congress, 2020 April Quarterly Report at 39 (Apr. 13, 2020) (“2020 April Quarterly Report”). President Trump’s first impeachment trial in the Senate was that week, and Meadows was in D.C. for it. See *Representative Meadows Speaks to the Press on Day Two of Impeachment Trial*, C-SPAN (Jan. 21, 2020), <https://www.c-span.org/video/?468328-101/representative-meadows-speaks-press-day-impeachment-trial&event=468328&playEvent>.

³⁸ We note that the amount disbursed to Mitchell for mileage in the first quarter of 2020 is consistent with amounts and frequency he received previously. See *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00503094&recipient_name=Henry+Mitchell (last visited Aug. 4, 2021) (showing disbursements to Henry Mitchell dating back to July 18, 2016).

³⁹ See *supra* note 33.

1 reported \$218.86 in itemized contributions – the last of which was received on February 12 – and
2 \$567.14 in unitemized contributions;⁴⁰ it did not report any contributions for the rest of 2020.⁴¹
3 Therefore, all of the Committee's funds were raised while Meadows was a Member of Congress
4 and remained subject to the personal use prohibition in 2020 when the challenged disbursements
5 occurred.⁴²

6 The challenged disbursements after Meadows's resignation fall into two categories:
7 (1) \$2,300 to Mitchell for "management consulting" and (2) seven disbursements totaling \$2,655
8 for "food/beverage."⁴³ The Commission has previously identified "payments to committee staff"
9 as a permissible winding-down cost.⁴⁴ In his affidavit submitted with the Response, Meadows
10 avers that the management consulting payment to Mitchell was for "his time spent on winding
11 down the campaign during 2020."⁴⁵ Thus, the available information suggests that the post-
12 resignation payment to Mitchell was permissible.

13 The information provided in the Response suggests that at least some portion of the post-
14 resignation "food/beverage" disbursements may have been impermissible.⁴⁶ The Response
15 states that these disbursements "were solely related to [1] meetings with government officials,
16 [2] past donors/supporters, and/or [3] food/beverage for government staff working on weekends

⁴⁰ 2020 April Quarterly Report at 3.

⁴¹ *See supra* note 8. Meadows for Congress reported two receipts totaling \$1,195.45 as "expenditure refund[s]." Meadows for Congress, 2020 July Quarterly Report at 5 (July 1, 2020).

⁴² We note that if the reported \$567.14 in unitemized contributions were all received on March 31, 2020 — the only day in the reporting period when Meadows was not a Member of Congress — then those funds would not be subject to the personal use prohibition. *See supra* note 40 and accompanying text.

⁴³ This total includes the \$393 disbursement to Trump International Hotel on September 15, 2020. *See supra* note 22 and accompanying text.

⁴⁴ F&LA at 13, MUR 7293 (Zinke for Congress, *et al.*)

⁴⁵ Meadows Aff. ¶ 3.

⁴⁶ *See id.* ¶ 7 ("There have been no disbursements . . . for any personal expenses not attendant to my official duties as either a member of Congress and/or a White House official . . .").

1 at the White House.”⁴⁷ However, White House Chief of Staff is not a “Federal office” for
2 purposes of the Act,⁴⁸ and therefore, the provision in Commission regulations that allows for
3 campaign funds to “be used to defray any ordinary and necessary expenses incurred in
4 connection with the recipient’s duties *as a holder of Federal office*” was unavailable to Meadows
5 and the Committee in his new role.⁴⁹ Thus, to the extent that “meetings with government
6 officials” and costs for meals for White House staff were related to Meadows’s service as Chief
7 of Staff, those disbursements were not permissible under the Act and Commission regulations.⁵⁰

8 The disbursements for “meetings with . . . past donors/supporters” similarly raise
9 questions. Meadows avers that the funds purchased “food for . . . former and prospective
10 donors,”⁵¹ yet the Committee does not appear to have engaged in any fundraising from
11 Meadows’s resignation from Congress through the remainder of 2020.⁵² Nevertheless, the food
12 and beverage disbursements after Meadows’s resignation identified in the Complaint totaled
13 \$2,655, and the Commission has previously exercised its prosecutorial discretion when a
14 member of Congress spent a similar amount on food and beverage with government officials
15 after becoming a Cabinet secretary.⁵³ Accordingly, we recommend that the Commission

⁴⁷ Resp. at 2.

⁴⁸ *See supra* notes 27-28 and accompanying text.

⁴⁹ 11 C.F.R. § 113.2(a) (emphasis added).

⁵⁰ We note that the seven challenged “food/beverage” disbursements were all reported as occurring on Tuesday (4), Wednesday (1), or Thursday (2); thus, the available information does not allow for inferences as to the monetary total of the disbursements made for White House staff weekend meals.

⁵¹ Meadows Aff. ¶ 5.

⁵² *See supra* notes 40-41 and accompanying text. After the Complaint was filed, Freedom First PAC reported two other instances in 2020 of paying for food and beverages totaling \$694.05. On Thursday, November 5, 2020, the committee spent \$223.31 for “PAC THANK YOU/PIZZA.” On Monday, December 7, 2020, the committee spent \$470.74 for “FOOD/BEVERAGE FOR PAC RECEPTION HONORING SECRET SERVICE MEMBERS.”

⁵³ F&LA at 16, MUR 7293 (Zinke for Congress, *et al.*) (exercising prosecutorial discretion to dismiss personal use allegation where congressman-turned-cabinet-secretary’s principal campaign committee spent \$1,250 after he was no longer in Congress and the disbursements stopped once his replacement was sworn into Congress).

1 exercise its prosecutorial discretion and dismiss the allegations that Mark R. Meadows and
 2 Freedom First PAC (f/k/a Meadows for Congress) and Collin McMichael in his official capacity
 3 as treasurer violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use.⁵⁴

4 **IV. RECOMMENDATIONS**

- 5 1. Dismiss the allegation that Mark R. Meadows and Freedom First PAC (f/k/a
 6 Meadows for Congress) and Collin McMichael in his official capacity as treasurer
 7 violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use;
- 8 2. Approve the attached Factual and Legal Analysis;
- 9 3. Approve the appropriate letters; and
- 10 4. Close the file.

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 13 Lisa J. Stevenson
 14 Acting General Counsel

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 16 Charles Kitcher
 17 Associate General Counsel for Enforcement

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 44 Attachment
 45 Factual and Legal Analysis

⁵⁴ *Heckler*, 470 U.S. at 831-32.