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**BEFORE THE
FEDERAL ELECTION COMMISSION**

DEVIN REMIKER

REEDSBURG WI 53959

MUR 7917

Complainant,

v.

Derrick F. Van Orden
P.O. Box 565
Prairie du Chien, WI 53821

Van Orden for Congress and Mary Clancy, in her official capacity as Treasurer
P.O. Box 565
Prairie du Chien, WI 53821

Respondents:

COMPLAINT

This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) against Derrick Van Orden and his principal campaign committee, Van Orden for Congress, and its Treasurer, Mary Clancy, in her official capacity, for apparently violating the Federal Election Campaign Act of 1971, as amended, (the “Act”) and Federal Election Commission (the “Commission”) regulations for appearing to use campaign funds for personal use, including travel to and lodging in Washington, DC at the time of the “Save America Rally” and subsequent storming of the U.S. Capitol on January 6 (the “January 6 insurrection”), while Van Orden was no longer a candidate for federal office. Van Orden was and is free to use his *personal* bank account to travel around the country for any causes he deems worthy of his time. But, he is prohibited by the Act from using his campaign funds for such personal activity. His campaign account is not his personal travel slush

fund. The Commission should immediately investigate and take appropriate remedial action against Respondents for these apparent violations of law.

FACTUAL BACKGROUND

Inspired by the first impeachment of former President Donald Trump, Derrick Van Orden sought to represent Wisconsin's Third Congressional District.¹ Although he won the 2020 Republican primary by over 30 percentage points,² Van Orden lost to Democratic incumbent Ron Kind by about 3 percentage points in the general election.³ Van Orden's last amended Statement of Candidacy prior to the 2020 general election listed Van Orden for Congress as his principal campaign committee, and Van Orden for WI-03 and Take Back the House 2020 as other authorized committees.⁴ In April 2021, approximately five months after losing the 2020 election, Van Orden filed a Statement of Candidacy for the 2022 congressional election.⁵ Van Orden for Congress is listed as his principal campaign committee.⁶

According to the yearend report filed for Van Orden for Congress, the committee had \$12,507.44 in cash on hand at the end of 2020.⁷ From January 1, 2021 until the date Van Orden filed his 2022 Statement of Candidacy, Van Orden for Congress spent \$9,933.87.⁸ Of these

¹ Van Orden for U.S. Congress, *About*, <https://www.vanordenforcongress.com/about/>.

² Wisconsin Elections Commission, *Canvass Results for 2020 Partisan Primary*, <https://elections.wi.gov/sites/elections.wi.gov/files/2020-08/Statewide%20Percentage%20Results.pdf>.

³ Wisconsin Elections Commission, *Canvass Results for 2020 General Election*, <https://elections.wi.gov/sites/elections.wi.gov/files/Statewide%20Results%20All%20Offices%20%28pre-Presidential%20recount%29.pdf>.

⁴ Derrick Van Orden, Statement of Candidacy (filed Aug. 28, 2020), <https://docquery.fec.gov/pdf/961/202104089443136961/202104089443136961.pdf>.

⁵ Derrick Van Orden, Statement of Candidacy (filed Apr. 8, 2021), <https://docquery.fec.gov/pdf/965/202104089443136965/202104089443136965.pdf>.

⁶ *Id.*; Van Orden for Congress, Statement of Organization (filed Apr. 8, 2021), <https://docquery.fec.gov/pdf/961/202104089443136961/202104089443136961.pdf>.

⁷ Van Orden for Congress, Yearend Report 2020 (filed Jan. 31, 2021), <https://docquery.fec.gov/pdf/047/202101319423680047/202101319423680047.pdf>.

⁸ FEC Disbursements 2021-2022, Van Orden for Congress, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00742007&two_year_transaction_period=2022&min_date=01%2F01%2F2021&max_date=04%2F07%2F2021.

expenditures, \$4,178.30 was spent on disbursements described as “travel.”⁹ These include \$1,125.22 spent at “Hampton Inn,”¹⁰ apparently the Hampton Inn & Suites Washington DC-Navy Yard, approximately one mile from the National Mall and the United States Capitol.¹¹

Van Orden claims to have traveled to Washington, DC “for meetings and to stand for the integrity of our electoral system *as a citizen* and at the behest of my neighbors here in Western Wisconsin.”¹² He further admits to joining the crowd at the National Mall and marching to the Capitol during the January 6 insurrection related to the 2020 general election results.¹³ According to Van Orden, “[w]hen it became clear that a protest had become a mob, I left the area as to remain there could be construed as tacitly approving this unlawful conduct. At no time did I enter the grounds, let alone the building.”¹⁴ However, in a picture posted on January 6, Van Orden clearly appears to be on Capitol grounds during the daytime.¹⁵

LEGAL STANDARDS

⁹ FEC Disbursements 2021-2022, Van Orden for Congress, “Travel,”

https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00742007&two_year_transaction_period=2022&min_date=01%2F01%2F2021&max_date=01%2F08%2F2021&disbursement_description=TRAVEL.

¹⁰ *Id.*

¹¹ Based on the Zip Code provided in the disclosure to the Commission (20003), the payments appear to have been made to the Hampton Inn in the Navy Yard neighborhood of Washington, DC. This hotel is located approximately one mile from the Capitol Building. See Google Maps,

<https://www.google.com/maps/dir/Hampton+Inn+%26+Suites+Washington+DC-Navy+Yard,+1265+First+St+SE,+Washington,+DC+20003/United+States+Capitol,+First+Street+Southeast,+Washington,+DC/@38.8824607,-77.0166938,15z/data=!3m1!4b1!4m1!4m1!3m1!5m1!1s0x89b7b9d6e732a1b3:0xea946c563d6e1c9d!2m2!1d-77.0060827!2d38.8749559!1m5!1m1!1s0x89b7b82921a2cf17:0x482a3f7c10cf8c4!2m2!1d-77.0090505!2d38.8899389!3e2>.

¹² “Derrick Van Orden: We need Abraham Lincoln now more than ever,” La Crosse Tribune (Jan. 13, 2021), https://lacrossetribune.com/news/local/derrick-van-orden-we-need-abraham-lincoln-now-more-than-ever/article_f29c4153-a584-54df-9d07-b6092ab38d57.html (emphasis added).

¹³ *Id.*

¹⁴ *Id.*; see also Facebook, Derrick Van Orden (May 15, 2021),

<https://www.facebook.com/derrickvanorden/posts/315370226698515> (“Clearly I am not [in the footage of the storming of the Capitol] because I did not step foot on the Capitol grounds let alone into the Capitol building because, I don’t break the law.”).

¹⁵ Facebook, Ann Shawn Tschanz (Jan. 6, 2021),

<https://www.facebook.com/ann.tschanz.7/posts/10222944629179867>. According to the *Daily Beast*, Van Orden “would have had to cross police barricades to reach that area.” “GOP Candidate Bankrolled Jan. 6 Riot Trip With Campaign Cash,” *Daily Beast* (June 26, 2021), <https://www.thedailybeast.com/gop-candidate-bankrolled-jan-6-riot-trip-with-campaign-cash>.

Under the Act, a candidate is “an individual who seeks nomination for election, or election, to Federal office” and has raised or disbursed, directly or indirectly, over \$5,000 in connection with their election.¹⁶ Once an individual ceases to be a federal candidate, there are only a few permissible uses for surplus campaign funds. For example, surplus funds may be: used to cover the “costs of winding down the office of a former Federal officeholder”;¹⁷ “transferred without limitation to any national, State, or local committee of any political party”;¹⁸ “used to repay outstanding loans;”¹⁹ used to make gifts of nominal value;²⁰ and, “used for any other lawful purpose, unless such use is personal use.”²¹

Personal use means any use of funds in a campaign account “to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder.”²² The Act separately prohibits a candidate or any other person from converting “[a] contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office,” for “personal use.”²³ Commission regulations include a list of expenses which are considered to be *per se* personal use.²⁴ For expenses other than those defined as *per se* personal use, the Commission evaluates on a case-by-case basis whether the expense would have existed irrespective of the

¹⁶ 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

¹⁷ 11 C.F.R. § 113.2(a)(2).

¹⁸ *Id.* § 113.2(c).

¹⁹ *See* 11 C.F.R. § 116.2(a); *see also id.* § 116.2(b) (requiring that ongoing committees “not settle any outstanding debts for less than the entire amount owed”); *id.* § 116.11 (limiting the repayment of candidate personal loans that aggregate in excess of \$250,000 in connection with any one election).

²⁰ 11 C.F.R. § 113.1(g)(4).

²¹ 11 C.F.R. § 113.2(e).

²² 11 C.F.R. § 113.1(g).

²³ 52 U.S.C. § 30114(a), (b)(1); 11 C.F.R. § 113.2.

²⁴ *Id.* § 113.1(g)(1)(i).

candidate's campaign.²⁵ Among such case-by-case expenses are travel expenses "including subsistence expenses incurred during travel."²⁶

LEGAL ANALYSIS

After losing the November 3, 2020 general election and until he filed his statement of candidacy for the 2022 election, Van Orden was no longer a candidate for federal office.²⁷ Thus, from November 4, 2020 to April 8, 2021, Van Orden was not a federal candidate. In early January 2021, Van Orden traveled to Washington, DC "as a citizen," not as a candidate for federal office in 2022.²⁸ He appears to have paid for this trip using funds in his campaign committee left over from his 2020 election. However, as noted above, those excess campaign funds, may only be used for certain permissible uses. Travel is not one of the expressly enumerated permissible uses of excess campaign funds. And, although the law allows excess campaign funds to be "used for any other lawful purpose" such use may not be "personal use."²⁹ As noted above, use of campaign funds for travel is not *per se* personal use but is evaluated on a case-by-case basis. Here, Van Orden was not a candidate at the time of his trip, and the trip to Washington, DC seems to be an expense for a trip that existed irrespective of the any federal campaign.³⁰ He joined the crowd at the National Mall and marching to the Capitol during the January 6 insurrection related to the 2020 presidential general election results. Thus, the travel

²⁵ *Id.* § 113.1(g)(1)(ii).

²⁶ *Id.* § 113.1(g)(1)(ii)(C). "If a committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or officeholder-related activities, the incremental expenses that result from the personal activities are personal use, unless the person(s) benefiting from this use reimburse(s) the campaign account within thirty days for the amount of the incremental expenses." *Id.*

²⁷ *See* 11 C.F.R. § 100.3(b).

²⁸ "Derrick Van Orden: We need Abraham Lincoln now more than ever," La Crosse Tribune (Jan. 13, 2021), https://lacrossetribune.com/news/local/derrick-van-orden-we-need-abraham-lincoln-now-more-than-ever/article_f29c4153-a584-54df-9d07-b6092ab38d57.html.

²⁹ 11 C.F.R. § 113.2(e).

³⁰ 11 C.F.R. § 113.1(g).

appears to have been for personal reasons that would have existed regardless of whether he was a federal House candidate.

Further, even if Van Orden was a federal candidate for the 2022 election who had failed to timely file a Statement of Candidacy with the FEC for that election, this trip, and the expenses related to it, would also have existed irrespective of his 2022 campaign as the January 6 insurrection was related to the 2020 election for President.³¹ Van Orden's self-declared need to "stand[] for the integrity of our electoral system as a citizen" in Washington, DC and any expenses associated with that need in January 2021 would have existed irrespective of any 2022 congressional campaign.³²

Because Van Orden appears to have used his excess 2020 campaign funds to travel to Washington, DC so he could engage in a personal trip for the January 6 insurrection, Van Orden appears to have converted those surplus campaign funds to personal use in violation of the Act and the Commission's regulations. And, even if he was a federal candidate for 2022 at the time of such travel, who failed to timely file his Statement of Candidacy with the FEC, use of campaign funds for such travel expenses would still appear to be personal use of campaign funds because the travel appears to have been related to the January 6 insurrection, which was related to the 2020 election for President, not a future 2022 House campaign.

REQUESTED ACTION

³¹ See "Pro-Trump Rioters Clash With Cops at the Capitol," Daily Beast (Jan. 6, 2021), <https://www.thedailybeast.com/trump-supporters-clash-with-police-at-capitol-over-electoral-count>.

³² Notably, Van Orden conceded defeat in the 2020 election on November 4, 2020. See "Rep. Ron Kind reelected to 3rd Congressional seat," NBC15 (Nov. 4, 2020), <https://www.nbc15.com/2020/11/04/rep-ron-kind-reelected-to-3rd-congressional-seat/>. Van Orden also disclaimed involvement as a plaintiff in a lawsuit brought by attorney Sidney Powell following the 2020 presidential election. See "GOP Lawsuit to Overturn Election Included My Name as Plaintiff Without Permission, Wisconsin Ex-Candidate Says," Newsweek (Dec. 1, 2020), <https://www.newsweek.com/gop-lawsuit-overturn-election-included-my-name-plaintiff-without-permission-wisconsin-1551615>.

Public records, reporting, and social media posts strongly indicate that Respondents may have violated the Act and Commission regulations by using campaign funds for Derrick Van Orden's personal travel to Washington, DC for the January 6 insurrection. As such, we respectfully request that the Commission immediately investigate these violations and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,

Devin Remiker
DEVIN REMIKER

REEDSBURG WI 53959

State of Texas, County of Bexar

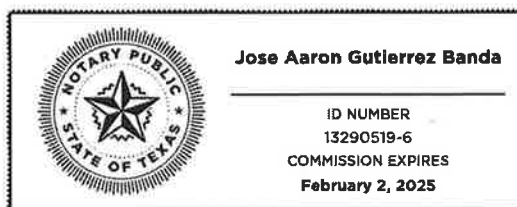
SUBSCRIBED AND SWORN to before me this 8th day of July 2021.

Jose Aaron Gutierrez Banda

Notary Public

My Commission Expires:

02/02/2025



Notarized online using audio-video communication