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April 23, 2019

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

VIA EMAIL: cela@fec.gov

Re: MUR 7577: Response to Complaint from ANDER PAC and Benjamin Ottenhoff in his official capacity as treasurer, and Ander Crenshaw

Dear Mr. Jordan:

We are writing this letter on behalf of ANDER PAC and Benjamin Ottenhoff in his official capacity as treasurer (the “PAC”) and Ander Crenshaw (collectively, the “Respondents”) in response to the Complaint filed in the above-referenced matter by Campaign Legal Center. The Complaint alleges that Respondents converted campaign funds for personal use, but contains zero supporting evidence for that claim, and instead relies entirely on a facial review of the PAC’s filings without any context. Again, there is not a single shred of evidence in the Complaint to support a reason to believe finding that Respondents converted campaign funds to personal use. These types of conclusory allegations should not provide the basis to initiate a Federal Election Commission (the “Commission”) investigation.

In light of the complete lack of evidence supporting the allegations, compared to the factual explanations for the expenditures contained herein, and the signed and sworn affidavit from Mr. Crenshaw, the Commission must find no reason to believe a violation occurred. The Commission may find “reason to believe” only if a Complaint sets forth sufficient, specific facts, which, if proven true, would constitute a violation of the Act.¹ Unwarranted legal conclusions

¹ See 11 C.F.R. § 111.4(a), (d).

April 23, 2019

Page 2

from asserted facts or mere speculation will not be accepted as true.² Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence.³ Thus, the Commission should either dismiss the Complaint for failing to include any evidence of a violation, or find no reason to believe a violation of the Federal Election Campaign Act of 1971 (the “Act”) or the Commission’s regulations occurred with respect to the Respondents.

Factual Background

Mr. Crenshaw served in Congress from 2001 until 2017, and Crenshaw for Congress was his principal campaign committee. In February 2017, after Mr. Crenshaw left office, Crenshaw for Congress was converted to a nonconnected committee, ANDER PAC, consistent with FEC guidance. The PAC filed its termination report with the Commission on January 14, 2019.

After its conversion to a nonconnected committee, the PAC operated like any other nonconnected committee. It solicited and received donations. It made contributions to candidates. It paid for general PAC operating expenses. It paid for meals, travel, and other costs associated with attending or hosting events.

Additionally, the PAC paid for expenses related to the winding-down of Mr. Crenshaw’s campaign. It hosted thank you events for Crenshaw for Congress supporters, and it paid for expenses, like campaign cell phones and credit card fees, that existed while Mr. Crenshaw was in office, and continued to exist after he left office. Each and every expenditure was either related to winding down Crenshaw for Congress business or carrying on ANDER PAC business.

Legal Standard

A candidate and his or her campaign committee may not convert campaign funds to the personal use of the candidate or any other person.⁴ Commission regulations define personal use as “any use of funds in a campaign account of a present or former candidate 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.”⁵ Several enumerated activities constitute personal use *per se*.⁶ If an expense is not listed as *per se* personal, the Commission must consider, on a case-by-case basis, whether that expense would exist irrespective of a candidate’s campaign or official duties.⁷ These case-by-case expenses include meal and travel expenses.

After a candidate leaves office, their campaign committee may either terminate or convert to a nonconnected committee.⁸ Although it’s reasonably clear that after the campaign

² See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001).

³ See *id.*

⁴ 52 U.S.C. § 30114(b); 11 C.F.R. § 113.1(g); see also Advisory Opinions 2014-10, 2001-10, 2001-03, 2000-40, 2000-37, 2000-12, 1998-1, and 1997-11.

⁵ 11 C.F.R. § 113.1(g).

⁶ 11 C.F.R. § 113.1(g)(1)(i).

⁷ 11 C.F.R. § 113.1(g)(1)(ii).

⁸ See, e.g., AO 2012-06 (RickPerry.org).

April 23, 2019

Page 3

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.

For instance, in AO 2012-06, the Commission explained, while discussing the rules governing a principal committee's conversion to a nonconnected committee, that personal use is "defined as 'any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligations or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder.'" However, just two paragraphs later, when applying that standard, the Commission explicitly stated that "[the committee] may convert to a nonconnected committee by amending its Statement of Organization (FEC Form 1) **and fund the nonconnected committee's activities using its remaining [] election funds.**"⁹ The implication is that expenditures to fund the nonconnected committee activities would not be considered personal use.

Importantly, the Complainant agrees that the Commission has not provided sufficient guidance on what is considered personal use after a campaign committee converts to a nonconnected committee. On February 5, 2018, Complainant petitioned the Commission "to conduct a rulemaking to revise and amend ... the regulations pertaining to the personal use of campaign funds, to clarify the application of those rules to former candidates and officeholders."¹⁰ In the petition, Complaint explained that past investigations "suggest that the Commission's personal use regulations are not sufficiently clear with respect to former officeholders."¹¹

Discussion and Analysis

As discussed in more detail below, every expenditure the Complaint alleges may have been personal use was related to Crenshaw for Congress or ANDER PAC events, uses that are consistent with and permitted by Commission rules and guidance. We have attached a signed and sworn affidavit from Mr. Crenshaw supporting the valid purposes of these expenditures.¹²

Meal Expenses

The Complaint alleges that a variety of meal expenses may have been personal use. As discussed, meal expenses are considered on a case-by-case basis. Here, each and every meal-related expense was for official Crenshaw for Congress or ANDER PAC purposes. For instance,

⁹ *Id.* at 3 (emphasis added). "The Commission has long interpreted these provisions of the Act and Commission regulations as permitting candidates to convert their authorized committees to nonconnected political committees, and to finance the activities of the nonconnected committees with contributions received by the candidates for elections in which the candidates had participated." *Id.*

¹⁰ *Campaign Legal Center letter to the Federal Election Commission dated Feb. 5, 2018.* The petition raised important questions the Commission has never addressed. For instance, "is there a point at which a former candidate or officeholder's continued spending of leftover campaign funds becomes so attenuated from his or her candidate or officeholder status that the spending is presumptively personal use?" If the Commission decides to address this important question, it should do so through the formal rulemaking process, not in this enforcement matter.

¹¹ *Id.*

¹² Attachment 1, Affidavit of Ander Crenshaw.

April 23, 2019
Page 4

the \$412 expense to the Capitol Hill Club on June 27, 2017, was a lunch at which ANDER PAC business was discussed. Likewise, the food/beverage expenditures reported on January 19, 2017 (just three weeks after Mr. Crenshaw left office), were for thank you events for campaign supporters. The reimbursement to Erica Striebel for food/beverage at the Capitol Hill club on February 10, 2018, paid for a meal at which ANDER PAC business was discussed. The River & Post expenditure on January 22, 2019, was for a meal at which committee business was discussed. The same is true for the meal expenses reported in ANDER PAC's 2018 post-general and termination reports. Again, all meal expenses, alleged in the Complaint or otherwise, were for official purposes, and there is no evidence on the record to the contrary.

Travel and Hotels

The Complaint next alleges, without evidence, that Respondents may have violated the Act's personal use prohibition by paying for hotels and travel expenses. These allegations, like the entire Complaint, are merely speculative and should not be accepted as true.

In actuality, all expenditures for travel and hotels were related to official Crenshaw for Congress or ANDER PAC activities. For instance, the expenditures reported on January 18, 2017, were for staff to travel to Mr. Crenshaw's congressional district and wind down the campaign. The travel and hotel expenses contained in the 2018 October quarterly report (Compl. at para. 10) were related to the attendance at Rep. Jerry Moran and Rep. Patrick McHenry events, and ANDER PAC made contributions at both events. The travel and hotel expenses contained in the 2018 post-general report (Compl. at para. 11) were for attendance at a Rep. Kay Granger event, and ANDER PAC made a contribution at the event. The attached, sworn affidavit supports that all expenses paid by the Committee related to hotels and travel were for official Crenshaw for Congress or ANDER PAC purposes, consistent with Commission rules and guidance.¹³

Miscellaneous Expenses

The Complaint also alleges that various miscellaneous expenses, including annual credit card fees, phone service payments, and Apple Store payments, may have been for personal use. Again, there is nothing in the Complaint to support these allegations, and, instead, the evidence demonstrates that they were to support legitimate committee activities. The expenditures for phone services were to cover the costs of phone plans for phones that were used to conduct Crenshaw for Congress and ANDER PAC activities. Likewise, the payments to Apple Store were for phone equipment that were used for Crenshaw for Congress and ANDER PAC activities. The dues paid to the Capitol Hill Club and credit card fees were, again, for Crenshaw for Congress and ANDER PAC activities.¹⁴

¹³ To the extent the Complainant is alleging that the expenditures contained in footnote 1 of the Complaint were unlawful, again it has not provided any evidence to support that allegation. Each of those expenditures were made while Mr. Crenshaw was in office and were related to his campaign or duties as an officeholder. The disbursements in question were to attend annual events that were attended by numerous other Members of Congress.

¹⁴ The club membership fee provision at 11 C.F.R. 113.1(g)(1)(i)(G) does not "limit legitimate campaign related or officeholder related activity" and "allows a candidate or officeholder to use campaign funds to pay membership dues in an organizations that may have political interests." 60 Fed. Reg. 7866 (Feb. 9, 1995). The same rule should hold true after a campaign committee converts to a nonconnected committee.

April 23, 2019
Page 5

Analysis

Although the personal use rules regarding former officer holders, in Complainant's own words, may not be "sufficiently clear," in AO 2012-06, the Commission sufficiently and clearly stated that funds on hand when a campaign committee converts to a nonconnected committee can be used to fund the nonconnected committee's activities. That is exactly for what the funds on hand when Crenshaw for Congress converted to ANDER PAC were used. As discussed numerous times, each and every expenditure reported by ANDER PAC, whether in the Complaint or otherwise, was for Crenshaw for Congress or ANDER PAC activities, which is legally permissible under FEC statutes, regulations, and guidance. If the Commission wishes to change these rules, it should petition Congress to amend the statutes and/or do so through a formal rulemaking. In this case, however, it would be inappropriate to find reason to believe a violation occurred, in light of the specific guidance in AO 2012-06. The Commission should decline to rule-make through its enforcement process, and find no reason to believe a violation occurred.

Conclusion

In attenuated and unsubstantiated arguments, Complainant failed to demonstrate that any of the alleged expenditures violated the Act's ban on personal use. Respondents have submitted a sworn affidavit attesting that all expenditures were lawful and made for committee activities, consistent with all current Commission guidance. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint and find no reason to believe a violation occurred.

Thank you for your prompt consideration of this matter, and please do not hesitate to contact us directly at (202) 572-8663 with any questions.

Respectfully submitted,



Charles R. Spies
Derek H. Ross
*Counsel to ANDER PAC and Benjamin Ottenhoff in
his official capacity as treasurer and Ander
Crenshaw*

AFFIDAVIT OF ANDER CRENSHAW

My name is ANDER CRENSHAW. I have personal knowledge of the facts set forth herein, and state as follows:

1. I have personally reviewed the Complaint in MUR 7577 (the "Complaint") and the allegations therein.
2. I was a United States Congressman representing Florida's Fourth Congressional District from 2001 to 2017, and Crenshaw for Congress was my principal campaign committee.
3. After I left office, Crenshaw for Congress was converted to ANDER PAC, a nonconnected political committee.
4. ANDER PAC terminated in January 2019 and filed the appropriate termination report with the Federal Election Commission.
5. I have reviewed the expenditures reported in ANDER PAC's 2017 Mid-Year Report alleged in the Complaint to have violated the Federal Election Campaign Act's (the "Act") ban on personal use, and based on my personal knowledge of the expenditures, believe each expenditure was related to Crenshaw for Congress and/or ANDER PAC activities and was permissible under the Act.
6. I have reviewed the expenditures reported in ANDER PAC's 2017 Year-End Report alleged in the Complaint to have violated the Act's ban on personal use, and based on my personal knowledge of the expenditures, believe each expenditure was related to Crenshaw for Congress and/or ANDER PAC activities and was permissible under the Act.
7. I have reviewed the expenditures reported in ANDER PAC's 2018 April Quarterly Report alleged in the Complaint to have violated the Act's ban on personal use, and based on my personal knowledge of the expenditures, believe each expenditure was related to Crenshaw for Congress and/or ANDER PAC activities and was permissible under the Act.
8. I have reviewed the expenditures reported in ANDER PAC's 2018 July Quarterly Report alleged in the Complaint to have violated the Act's ban on personal use, and based on my personal knowledge of the expenditures, believe each expenditure was related to Crenshaw for Congress and/or ANDER PAC activities and was permissible under the Act.
9. I have reviewed the expenditures reported in ANDER PAC's 2018 October Quarterly Report alleged in the Complaint to have violated the Act's ban on personal use, and based on my personal knowledge of the expenditures, believe each expenditure was related to Crenshaw for Congress and/or ANDER PAC activities and was permissible under the Act.
10. I have reviewed the expenditures reported in ANDER PAC's 2018 Post General Report alleged in the Complaint to have violated the Act's ban on personal use, and based on my

ANDER CRENSHAW AFFIDAVIT PAGE 2

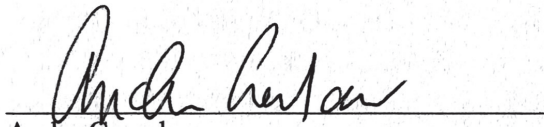
personal knowledge of the expenditures, believe each expenditure was related to Crenshaw for Congress and/or ANDER PAC activities and was permissible under the Act.

11. I have reviewed the expenditures reported in ANDER PAC's 2018 Termination Report alleged in the Complaint to have violated the Act's ban on personal use, and based on my personal knowledge of the expenditures, believe each expenditure was related to Crenshaw for Congress and/or ANDER PAC activities and was permissible under the Act.

12. To the best of my knowledge, all Crenshaw for Congress and ANDER PAC expenditures, including but not limited to payments for meals, travel, hotels, credit card fees, dues, and phone expenses were connected to official Crenshaw for Congress and/or ANDER PAC activities.

13. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 22nd day of April, 2019.


Ander Crenshaw

The foregoing instrument was sworn to me this 22 day of April 2019, by Ander Crenshaw.

State of FL

County of Duval

On this 22 day of April, 2019.


Notary Public

