

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 MUR: 7293
6 DATE COMPLAINT FILED: October 30, 2017
7 DATE OF NOTIFICATION: November 6, 2017
8 LAST RESPONSE RECEIVED: December 4, 2017
9 DATE ACTIVATED: December 28, 2017

10
11 EXPIRATION OF SOL: April 6, 2021 (earliest) /
12 June 19, 2022 (latest)
13 ELECTION CYCLE: 2016

14
15 **COMPLAINANTS:** Brendan M. Fischer, Campaign Legal Center
16 Catherine Hinckley Kelley, Campaign Legal Center

17
18 **RESPONDENTS:** Ryan Zinke
19 Zinke for Congress and Lorna Kuney in her official
20 capacity as treasurer
21 Zinke Victory Fund and Paul Kilgore in his official
22 capacity as treasurer
23 Lolita C. Zinke
24 Frank Haughton, Jr.
25 F. Edward Buttrey

26
27 **RELEVANT STATUTES AND**
28 **REGULATIONS:** 52 U.S.C. § 30104(b)
29 52 U.S.C. § 30114(b)
30 52 U.S.C. § 30116(a) and (f)
31 11 C.F.R. § 102.17
32 11 C.F.R. § 104.3
33 11 C.F.R. § 110.1(h)
34 11 C.F.R. § 113.1(g)
35 11 C.F.R. § 113.2(a)(2)

36
37 **INTERNAL REPORTS CHECKED:** FEC Disclosure Reports

38
39 **FEDERAL AGENCIES CHECKED:** None

40
41 **I. INTRODUCTION**

42 The Complaint alleges violations of the reporting, contribution limit, and personal use
43 provisions of the Federal Election Campaign Act of 1971, as amended (the "Act") in connection

1004544001

1 with activity by Ryan Zinke's congressional campaign while he was a candidate and after he was
2 nominated, and later confirmed, as Secretary of the Interior. The Complaint alleges that Zinke
3 for Congress (the "Committee") reported funds it received from the Zinke Victory Fund
4 ("ZVF"), a joint fundraising committee, three months late, and its disclosure reports failed to
5 itemize individual contributions received via the transfers from ZVF. The Complaint also alleges
6 that the Committee received an excessive contribution from Frank Haughton, Jr., through ZVF.
7 Finally, the Complaint alleges that Zinke violated the personal use prohibition in connection with
8 the purchase and sale of a recreational vehicle ("RV"), and through disbursements the Committee
9 made after Zinke resigned from Congress and was confirmed as Interior Secretary.

10 The Committee and ZVF argue that any reporting violations were inadvertent, and the
11 Committee denies receiving an excessive contribution. The Committee maintains that it bought
12 and sold the RV at fair market value, based on the RV's condition and appraisals it obtained.
13 Finally, the Committee contends that all of the post-election disbursements were proper winding-
14 down expenses, were incurred before the election, or were permissible expenses made in
15 connection with Zinke's officeholder duties.

16 As discussed below, we recommend that the Commission find no reason to believe that
17 the Committee filed late reports of transfers from ZVF, or that Haughton made or the Committee
18 accepted an excessive contribution. We further recommend that the Commission find no reason
19 to believe that Ryan Zinke, the Committee, Lolita Zinke, or Edward Buttrey violated the personal
20 use provisions of the Act in connection with the RV's purchase and sale. Finally, we recommend
21 that the Commission dismiss, as a matter of prosecutorial discretion, possible reporting violations
22 by ZVF, which has terminated, dismiss reporting violations regarding the Committee's failure to

19044472775

1 April Quarterly Report, listing February 17, 2017, as the date of receipt.⁶ The Complaint also
2 alleges that the Committee failed to itemize individual contributions obtained through ZVF.⁷

3 The Complaint also identifies a possible excessive contribution from Haughton, who
4 contributed \$5,400 to ZVF on December 9, 2016.⁸ The Complaint alleges that ZVF transferred
5 the entire \$5,400 to the Committee, and because it appeared that Haughton had also contributed
6 \$2,700 to the Committee on February 17, 2017, the \$5,400 contribution was excessive.⁹

7 Finally, the Complaint alleges that Zinke and the Committee violated the personal use
8 provisions of the Act in connection with the purchase and sale of an RV, and with regard to
9 miscellaneous disbursements the Committee made after Zinke was nominated as Interior
10 Secretary.¹⁰ The Complaint states that the Committee purchased an RV from Zinke's wife,
11 Lolita Zinke, for \$59,100 on April 6, 2016, and sold the RV to "an old friend of Zinke, Ed
12 Buttrey" for \$25,000 on June 9, 2017.¹¹ The Complaint alleges that the Committee either paid
13 more than fair market value to Ms. Zinke, or sold the RV at below fair market value to Buttrey,
14 and either scenario would constitute personal use.¹² Additionally, the Complaint alleges that

⁶ Compl. at 2-4.

⁷ *Id.* at 3-4, 13-14.

⁸ *Id.* at 4.

⁹ *Id.* at 4, 14-15.

¹⁰ *Id.* 4-8, 15-18. The Complaint also alleges Hatch Act violations in connection with Zinke's disbursements for campaign related activity once he was nominated and confirmed as Interior Secretary. However, because the Hatch Act is not within the Commission's jurisdiction, we do not discuss any potential violations of 5 U.S.C. § 7323. *Id.* at 17.

¹¹ *Id.* at 16.

¹² *Id.*

100474277

1 various disbursements the Committee made after Zinke was nominated as Interior Secretary may
2 constitute personal use.¹³

3 The Committee and ZVF filed a joint response contending that any reporting violations
4 were inadvertent, and denying the other allegations.¹⁴ These Respondents maintain that the ZVF
5 treasurer's receipt of contribution checks was delayed because checks made out to ZVF and
6 collected at various campaign events before Election Day had to be mailed from campaign
7 offices in Montana to ZVF's treasurer in Georgia.¹⁵ The response asserts that ZVF actually
8 issued the \$14,921.26 distribution check—which ZVF previously reported as having been
9 disbursed on November 28, 2016—to the Committee on February 14, 2017, and that the
10 Committee received and deposited the check around February 17, 2017.¹⁶ The joint response
11 attributes the Committee's failure to properly itemize contributions to its mistaken selection of
12 the "Contribution Memo" instead of the "Transfer Memo" option in its reporting software.¹⁷ The
13 response included screenshots of its reporting software showing the date of receipt as
14 February 17, 2017, the date it received the joint fundraising proceeds, instead of the date ZVF
15 received each individual contribution.¹⁸

16 ZVF's reports filed with the Commission reflect that ZVF made the transfer cited in the
17

¹³ *Id.* at 17.

¹⁴ *See* Zinke for Congress/ZVF Resp. ("Joint Resp.") at 8-9. Ryan and Lolita Zinke did not file responses to the Complaint, but the joint response does address the allegations made against them in their individual capacities. The response also attached a letter from Edward Buttrey responding to the personal allegations against him. *Id.* at Ex. 3.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 10-11, 12-14, Ex. 17, and Ex. 19.

1 Complaint to three of its participant committees on November 28, 2016, but the Committee and
2 the MRSCC disclosed receiving those transfers in February 2017.¹⁹ SEAL PAC has not
3 disclosed any transfers from ZVF.²⁰ The Committee amended its 2017 April Quarterly Report to
4 itemize the individual contributions underlying the ZVF transfer and to show the actual dates of
5 receipt of the contributions, not the date that ZVF transferred the funds.²¹

6 The response also details how ZVF allocated Haughton's \$5,400 contribution. It explains
7 that it designated \$2,700 to Zinke's 2018 primary election and \$2,700 to the 2018 general
8 election, and it asserts that the Committee did not have to refund or redesignate those

¹⁹ See 2016 30-day Post General at 10 (Dec. 6, 2016), Zinke Victory Fund, <http://docquery.fec.gov/pdf/199/201612069037662199/201612069037662199.pdf>; Original 2017 April Quarterly Rpt. at 7 (Apr. 14, 2017), Zinke for Congress, <http://docquery.fec.gov/pdf/721/201704149052158721/201704149052158721.pdf>; 2017 March Monthly Rpt. at 14 (Mar. 15, 2017), MSRCC, <http://docquery.fec.gov/pdf/602/201703159050838602/201703159050838602.pdf>.

²⁰ According to ZVF's reports, it made three transfers of net joint fundraising committee funds to SEAL PAC on March 31, 2015, September 22, 2016, and November 28, 2016, in the amounts of \$4,131.03, \$32,580.87, and \$10,300.87, respectively, but SEAL PAC has not reported receipt of those funds. The Complaint did not name SEAL PAC as a Respondent in this matter, and it is not currently a Respondent. SEAL PAC, however, recently changed treasurers, and the new treasurer advised RAD that he is reviewing and correcting past disclosure reports. See Amended Statement of Organization (Feb. 2, 2018), SEAL PAC, <http://docquery.fec.gov/pdf/223/201802029094237223/201802029094237223.pdf>. On its most recent amendment, SEAL PAC disclosed increased activity in the amount of \$600,000. See Amended 2017 Mid-Year Rpt., (Jan. 31, 2018), <http://docquery.fec.gov/pdf/223/201802029094237223/201802029094237223.pdf>. RAD will be sending an RFAI regarding that amendment, and amendments to SEAL PAC's other reports may be forthcoming. Because SEAL PAC's failure to report the transfers it received from ZVF will likely be addressed in a forthcoming amendment and may become part of a RAD referral addressing its reporting issues, we do not make any recommendations as to SEAL PAC. However, consistent with prior matters, once this case is closed, we plan to contact SEAL PAC's treasurer to advise him that SEAL PAC has not reported three receipts from ZVF. See, e.g., First General Counsel's Rpt. at 12 n. 4, MUR 6472 (Gooch for Congress); First General Counsel's Rpt. at 22 n. 7, MUR 6403 (Alaskans Standing Together).

²¹ See Amended 2017 April Quarterly Rpt. at 5, 15-23 (Dec. 28, 2017) (including miscellaneous text stating that this amendment "correct[s] clerical errors on memo entry dates for Zinke Victory Fund Contributions"), <http://docquery.fec.gov/pdf/150/201712289090337150/201712289090337150.pdf>.

1 contributions until it was clear that Zinke would not be a candidate in 2018.²² Respondents
2 argue that the redesignation or refund requirements would not apply until 60 days after the
3 primary election.²³ Haughton's response states that he and his wife made a contribution to ZVF
4 using one \$5,400 check,²⁴ but the Committee explains that because Haughton's contribution was
5 not issued from a joint account, it was all attributed to him.²⁵ On December 4, 2017, the
6 Committee refunded \$2,700 to Haughton.²⁶

7 Respondents also deny the personal use allegations. The Committee contends that it
8 bought a 2004 Newmar Kountry Star, Model M-3705-Freightliner 300 RV from Ms. Zinke in
9 April 2016 for fair market value.²⁷ The response indicates that the sales price of \$59,100, was
10 based on estimates obtained from two sources.²⁸ Likewise, Respondents contend that the
11 Committee sold the RV to Buttrey in June 2017 for a fair market value of \$25,000, a figure that
12 was based on the RV's deteriorating condition, and the costs to repair damage to the RV and

²² The response notes that due to the joint fundraising agreement's allocation formula the bulk of the contributions included in the February 2017 transfers were properly allocated to the Committee since they consisted mostly of contributions of \$2,700 or less. Joint Resp. at 8-9, Ex. 16 (Joint Fundraising Agreement) (explaining that the allocation formula called for the first \$2,700 contributed to be allocated to the Zinke Primary Election, the next to the Zinke General Election and then after \$5,400 the contributions would be allocated to the SEAL PAC, NRCC and MRSCC). The response includes screenshots of spreadsheets that show the allocation between the participant committees for individual contributions that ZVF received. *Id.* at Exs.

²³ *Id.* at 11, n. 4.

²⁴ Haughton Resp. at 1.

²⁵ Joint Resp. at 11.

²⁶ See 2017 Year-End Rpt. at 8 (Jan. 19, 2018) (noting a refund to Haughton because "no General 2018 for this candidate"), <http://docquery.fec.gov/pdf/251/201801199090471251/201801199090471251.pdf>.

²⁷ Joint Resp. at 3.

²⁸ The response includes copies of two written estimates for the value of the RV in April 2016: a printout dated April 8, 2016, from the National Automobile Dealers Association (NADA) value guide for \$56,700 and a handwritten estimate from Gardner's RV and Trailer Center for \$59,100. *Id.* at Exs. 1-2. However, the latter estimate referenced a different model number for the RV — model number 3809.

1 remove the Zinke for Congress logo that was wrapped around it.²⁹ Buttrey's response explains
2 that the RV was "in marginal shape, with engine problems, system wide problems, and a custom
3 wrap for the Zinke for Congress campaign that needed to be removed and replaced."³⁰ In
4 support, the response includes invoices listing the specific repairs completed, along with written
5 appraisals stating that "[t]he overall condition of the coach is seen to be marginal and needs
6 extensive reconditioning" and noting the mechanical issues and required repairs.³¹ According to
7 the documents, the RV would be worth \$48,450 if it had a "working engine, working systems,
8 and non-custom wrap," but even after the engine was repaired, a June 2017 appraisal valued the
9 RV at \$24,000.³²

10 The Committee additionally denies that any of the disbursements it made after the
11 November 2016 election were impermissible, arguing that the disbursements were related to a
12 "valid campaign purpose or to then-Congressman Zinke's official responsibilities as a Federal
13 officeholder."³³ The response explains that the Committee's various disbursements after the
14 election were for campaign-related expenses, including a campaign victory celebration, expenses
15 relating to events that Zinke attended as a member of Congress, and reimbursements to staff.³⁴

²⁹ *Id.* at 3-4.

³⁰ *Id.* at Ex. 3 (Buttrey Ltr. at 1). In his letter, Buttrey notes that he expected to spend more than \$17,000 for additional repairs, in addition to the \$30,450 in costs he had already spent for the purchase and initial repairs. Buttrey's letter references a different model number for the RV — model number 3706, but according to the NADA value guide, this model was similar to the two others referenced in the Joint Response. The NADA printout, dated June 2017 and provided with the response, values model 3706 at a used wholesale amount of \$34,500 and a used retail amount of \$48,450.

³¹ *Id.* It appears the repairs needed included engine problems, broken parts such as the power awning, closet doors, windows, air conditioners, televisions, stereos and speakers, door locks, among others. *Id.* at 4 and Ex. 3.

³² *Id.* at Ex. 3 (Buttrey Ltr. at 1 and Craig Painter Appraisal).

³³ *Id.* at 4.

³⁴ *Id.* at 4-8, Exs. 5-7.

1 With regard to "Senate Catering" disbursements of \$2,691.99, made between December 2016
2 and June 2017, and dues and catering expenses of \$2,315.52 paid to the Capitol Hill Club until
3 February 2017, the Respondents state that portions of the expenses related to political and
4 fundraising activities, and the remainder were in connection with Zinke's duties as a member of
5 Congress or were the Committee's winding-down costs.³⁵ The Committee explains that it
6 inadvertently reported some disbursements as occurring on the dates it paid its credit card bills,
7 not the dates of the underlying transactions, which were before the general election, and the
8 Committee corrected those entries on its 2016 Year-End and 2017 April Quarterly reports.³⁶

9 III. LEGAL ANALYSIS

10 A. Reporting Violations

11 The Act requires political committees to file reports of receipts and disbursements in
12 accordance with 52 U.S.C. § 30104.³⁷ These reports must include the amount and nature of these
13 receipts and disbursements.³⁸ Commission regulations permit the establishment of joint
14 fundraising committees, such as ZVF, that disburse net proceeds to each participant.³⁹ The joint
15 fundraising committee is required to report all disbursements in the reporting period in which

³⁵ Respondents explain that the "Senate Catering" expenses were for "one-third of the costs of the longstanding weekly bi-partisan Montana Congressional delegation coffee" that Zinke continued to attend and pay for until his successor was sworn into office in June 2017. *Id.* at 7 and Ex. 9 (attaching invoices listing an event named "Montana Coffee (Senators Tester and Da[i]nes, Congressman Zinke)" and noting a payment history for each member for one-third of the charges). Respondents also explain that the payments to the Capitol Hill Club were for membership dues and "dining expense relating to political and fundraising activities." *Id.* at 7 and Ex. 8.

³⁶ *Id.* at 8.

³⁷ See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

³⁸ See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

³⁹ 11 C.F.R. § 102.17(b)(1). These committees are required to enter into a written agreement with the participating committees that sets forth an allocation formula for the disbursement of the net proceeds (*i.e.*, the distribution of funds raised after all of the joint fundraising committee's expenses have been paid). *Id.* § 102.17(c)(1).

1 they are made.⁴⁰ A committee receiving transfers of receipts from a joint fundraising committee
2 must report the total amount transferred as well as itemize the receipts from the original
3 contributors.⁴¹

4 Based on the information Respondents provided, it appears that the Committee timely
5 reported its receipt of the transfers from ZVF in February 2017. Respondents admit that some
6 contributions to ZVF were made before the November General Election, but explain there were
7 delays in processing receipts and transferring funds to the participating committees because
8 ZVF's treasurer was in Georgia, not Montana. Regardless, the response acknowledges that ZVF
9 transferred net proceeds to its participant committees in February 2017, not on
10 November 28, 2016, as ZVF reported.⁴² Therefore, ZVF inaccurately reported the date of the
11 disbursements it made to the participating committees in its reports filed with the Commission.
12 However, the Commission approved ZVF's termination in May 2017, and in light of the
13 Committee's and the MSRCC's accurate reporting of the actual dates of the transfers, we
14 recommend that the Commission dismiss the allegation as to ZVF as a matter of prosecutorial
15 discretion.⁴³

16 The Committee has acknowledged its failure to properly itemize 17 individual
17 contributions included in the two transfers (\$13,997.65 and \$14,921.26) from ZVF, in violation

⁴⁰ *Id.* § 102.17(c)(8)(ii).

⁴¹ *Id.* §§ 102.17(c)(8)(i)(B), 104.3(a).

⁴² As discussed *supra*, the MRSCC's reports corroborate this information; ZVF had also reported a transfer of joint fundraising proceeds to the MRSCC on November 28, 2016, but the MRSCC reported having received that transfer on February 16, 2017. *Supra* at 6 and note 19.

⁴³ *See Heckler*, 470 U.S. 821; *see also* MUR 6803 (Brown) (Commission did not proceed in matter where the committee was terminated); First Gen. Counsel's Rpt. at 7 n. 4, MUR 6790 (Coakley for Senate) (explaining that termination "merely refers to cessation of a registered political committee's ongoing reporting obligations" and that it has typically been a factor, but not the sole basis, for a dismissal).

1 of section 30104(b). However, because the amounts in violation would not meet RAD's referral
2 thresholds, and the Committee has corrected the errors on its Amended 2017 April Quarterly
3 Report, we recommend that the Commission dismiss these violations.⁴⁴

4 **B. Excessive Contributions**

5 The Act prohibits contributions to any candidate or committee in excess of the Act's
6 limits, and prohibits political committees from knowingly accepting excessive contributions.⁴⁵
7 In 2016, the individual contribution limit to a federal candidate was \$2,700 per election.⁴⁶ Any
8 contributions that exceed the limits would need to be redesignated, reattributed, or refunded.⁴⁷

9 The Complaint alleges that the Committee accepted an excessive contribution from
10 Haughton when he contributed \$5,400 to ZVF in December 2016 and then appeared to make an
11 additional \$2,700 contribution directly to the Committee in February 2017.⁴⁸ However,
12 Respondents state that the \$5,400 they received through ZVF was all they received from
13 Haughton for the 2016 and 2018 election cycles, and the Committee allocated that amount
14 between the 2018 Primary and General Elections.⁴⁹ In December 2017, the Committee refunded

⁴⁴ *Heckler*, 470 U.S. 821.

⁴⁵ 52 U.S.C. §§ 30116(a)(1)(A), (B), (D), 30116(f).

⁴⁶ *Id.* § 30116(a)(1)(A), (B), and (D); see *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 80 Fed. Reg. 5750, 5752 (Feb. 3, 2015).

⁴⁷ 11 C.F.R. §110.1(b)(3).

⁴⁸ In the case of joint fundraisers, contributions made to a joint fundraising committee must be examined to determine if a contributor previously contributed to one of the participants. 11 C.F.R. § 102.17(c)(4)-(5). Here, however, the facts are reversed. Because Haughton contributed to ZVF first, ZVF would not have been aware of contributions that Haughton may have made to the Committee months later.

⁴⁹ It appears that Complainant may have been confused by the Respondents' reporting. This \$2,700 contribution was half of the \$5,400 Haughton contributed to ZVF, not a separate contribution directly to the Committee. As alluded to above, the Committee's disclosure reports showed a contribution from Haughton on February 17, 2017, because the Committee initially failed to properly itemize the individual contributions it received from ZVF and instead, listed the receipt date as the date of the joint fundraising transfer from ZVF (*i.e.*, February 17, 2017).

1 \$2,700 to Haughton because Zinke was not going to be a candidate in the general election.⁵⁰
2 Therefore, Haughton's contribution does not appear to be excessive. Accordingly, we
3 recommend that the Commission find no reason to believe that Haughton violated 52 U.S.C.
4 § 30116(a) by making an excessive contribution and no reason to believe that the Committee
5 violated 52 U.S.C. § 30116(f) by accepting an excessive contribution.

6 **C. Personal Use Violations**
7

8 The Act affords federal candidates and their campaign committees wide discretion in the
9 disposition of their campaign funds and provides that contributions accepted by a candidate may
10 be used by the candidate "for otherwise authorized expenditures in connection with the campaign
11 for Federal office of the candidate" and "for ordinary and necessary expenses incurred in
12 connection with duties of the individual as a holder of Federal office."⁵¹ Nonetheless, campaign
13 funds cannot be converted to "personal use" by "any person."⁵² Conversion to personal use
14 occurs when funds in a campaign account are used "to fulfill any commitment, obligation, or

⁵⁰ Although the information does not conclusively indicate when Zinke decided not to run again for Congress in 2018, the Committee refunded Haughton's General Election contribution six months before the 2018 primary, which is scheduled for June 5, 2018. *See* 2018 Election Calendar, MONT. SEC. OF STATE, <http://sos.mt.gov/elections/calendar>; *see also* 11 C.F.R. §102.9(e)(3) (requiring refund, resignation, or reattribution of a contribution within 60 days of the date that the committee has actual notice that an individual will not be a candidate for the general election); Advisory Op. 1992-15 (Russo for Congress) at 2 (concluding that resignation of general election contributions within 60 days of the primary election date, instead of 60 days from the treasurer's receipt of the contributions, is permissible); Advisory Op. 2007-03 (Obama for America) at 3 (stating that "[i]f a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA's contribution limits."); Advisory Op. 2008-04 (Dodd for President) at 4 (concluding that 60-day period for obtaining resignations and making refunds began to run when the Senator withdrew from presidential race).

⁵¹ 52 U.S.C. § 30114(a)(1). *See* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7866-67 (Feb. 9, 1995) ("Personal Use E&J") (explaining that the personal use prohibition is "not so broad as to limit legitimate campaign related or officeholder related activity," and that "candidates have wide discretion over the use of campaign funds").

⁵² 52 U.S.C. § 30114(b)(1).

1 expense of a person that would exist irrespective of the candidate's election campaign or
2 individual's duties as a holder of Federal office."⁵³

3 The Act and Commission regulations set forth certain uses of campaign funds that
4 constitute conversion to personal use *per se*, including utility payments, noncampaign-related
5 automobile expenses, and dues and fees for health clubs, recreational facilities or other
6 nonpolitical organizations unless they are part of the costs of a specific fundraising event taking
7 place on those premises.⁵⁴ For all other disbursements, the regulation provides that the
8 Commission shall determine on a case-by-case basis whether a given disbursement is personal
9 use by applying the "irrespective test" formulated in the statute.⁵⁵ Meal, travel, and vehicle
10 expenses are examples of disbursements that may be determined to be personal use after applying
11 the irrespective test.⁵⁶ The Commission has stated, however, that "[i]f the candidate can
12 reasonably show that the expenses at issue resulted from campaign or officeholder activities, the
13 Commission will not consider the use to be personal use."⁵⁷

14 The transfer of campaign assets is not considered personal use as long as the transfer is
15 made at fair market value.⁵⁸ The regulations further state that any depreciation of an asset being
16 sold by a committee would be allocated between the committee and the purchaser "based on the

⁵³ *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g).

⁵⁴ 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g).

⁵⁵ 11 C.F.R. § 113.1(g)(1)(ii).

⁵⁶ *Id.*

⁵⁷ *See Personal Use E&J* at 7863-64.

⁵⁸ 11 C.F.R. § 113.1(g)(3).

1003414-0000

1 useful life of the asset.”⁵⁹ Winding-down costs are also considered permissible expenses for
2 candidates for a period of six months after leaving office and include moving expenses, payments
3 to committee staff, charitable donations, transfers to national, state, or local party committees, or
4 other “lawful purpose,” unless such use is considered personal use.⁶⁰

5 1. Purchase and Sale of the RV

6 The Complaint alleges that either the campaign’s purchase of the RV for \$59,100, or its
7 sale a year later for the significantly lower amount of \$25,000, constituted conversion of
8 campaign funds to personal use. Respondents submitted two appraisals, although the one that
9 matched the purchase amount (\$59,100) was for an RV with a different model number. They
10 did, however, also submit an appraisal of \$56,700 for the correct model number, which was only
11 about 5% less than the actual purchase price. Because the difference between the sale and
12 appraisal prices is not substantial, we conclude there is an insufficient factual basis to find a
13 violation in connection with the Committee’s purchase of the RV.

14 Respondents also submitted documentation as to the deteriorated condition and resulting
15 depreciation of the RV to support the substantially lower sale price (\$25,000) after the campaign
16 had ended. The documents included invoices for repairs already completed as well as
17 professional appraisals based on a physical inspection of the vehicle. Therefore, we recommend
18

⁵⁹ *Id.*

⁶⁰ See 11 C.F.R. § 113.2(a)(2), (b)-(f)(listing permissible non-campaign use of funds); see also Advisory Op. 2013- 05 (Gallegly) (concluding that candidate could use campaign funds to pay for temporary storage of officeholder and campaign materials upon retirement from federal office); Advisory Op. 1997-14 (de la Garza) (explaining that the use of campaign funds for shipping costs to send items from former Congressman’s Washington, D.C. office to his home state would be permissible winding down costs). The Commission has explained that the winding down costs provision acts as a safe harbor and “does not preclude a former officeholder who can demonstrate that he or she has incurred ordinary and necessary winding down expenses more than six months after leaving office from using campaign funds to pay those expenses.” See Personal Use E& J at 7873.

1 that the Commission find no reason to believe that Ryan Zinke, Lolita Zinke, the Committee, or
2 F. Edward Buttrey violated 52 U.S.C. § 30114(b) in connection with the campaign's purchase
3 and resale of the RV.

4 2. Disbursements Made by Zinke for Congress

5 The Complaint also alleges that Zinke and his campaign converted funds to personal use
6 when the Committee continued to make disbursements after he was nominated for Interior
7 Secretary in December 2016 and confirmed in March 2017. The available information indicates
8 that those disbursements were made either in connection with Zinke's campaign expenses,
9 Zinke's officeholder duties as a member of Congress, or for winding-down costs.⁶¹ According to
10 the response, a number of the disbursements were actually campaign-related expenses incurred
11 before Election Day, but the Committee mistakenly reported them as post-election disbursements
12 because it failed to itemize them properly.⁶² Further, the Committee's post-election expenses
13 also appeared to be permissible campaign expenses or expenses related to officeholder duties;
14 those expenses included the costs of an election-day party, travel and meals for Zinke and his
15 campaign staff, and expenses related to Zinke's officeholder duties as a member of Congress

⁶¹ *Supra* at 8-9.

⁶² Joint Resp. at 8 and Ex. 5 (explaining that initially the Committee had listed the dates of the payments made to credit cards rather than the date the expense was incurred and providing copies of receipts and relevant portions of credit card statements).

1 until he resigned and was sworn in as Interior Secretary.⁶³ Additionally, because Zinke was
2 confirmed in March 2017, his campaign was permitted make winding-down disbursements
3 through September 2017.⁶⁴ Indeed, most of the expenses the Committee incurred after March
4 2017 appear to have been for administrative costs, such as bookkeeping, compliance, and legal
5 fees, and a number seem to be related to moving expenses, including payment for storage units, a
6 moving truck rental, and fuel costs.⁶⁵

7 There were also five disbursements totaling \$12,809.15 made between October and
8 December 2017, after the prescribed winding-down period. But these payments were for legal
9 and compliance fees incurred during the campaign, all of which are permissible under
10 Commission regulations. Therefore, these five disbursements do not appear to have been
11 personal expenses and would not have violated the Act.⁶⁶

12 However, it is unclear how ten disbursements made from March through June 2017 to
13 "Senate Catering," with "Fundraising" listed as their purpose, would qualify as expenses relating
14 to winding down the Committee or Zinke's duties as a Representative. The Committee contends
15 that those expenses were related to Zinke's officeholder duties in connection with a longstanding

⁶³ *Supra* at 8-9; Joint Resp. at 5-7, Ex. 5 -9 (describing nature of the various expenses questioned in the Complaint and attaching invoices, spreadsheets, and credit card receipts). The Committee's payments for meals and dues to the Capitol Hill Club, a political organization, also appear to be permissible; according to documentation the Committee provided, those payments were in connection to "Zinke's Federal officeholder status and for Campaign-related fundraising purposes," and they ceased in February 2017, before Zinke was sworn in as Interior Secretary. See Joint Resp. at 7 and Ex. 8; see also 11 C.F.R. § 113.1(g)(1)(i)(G) (listing dues at a "nonpolitical organization" as *per se* personal use); History, CAPITOL HILL CLUB WEBSITE, <http://www.capitolhillclub.org/Default.aspx?p=DynamicModule&pageid=345403&ssid=247807&vnf=1> (describing itself as a "national social club for Republicans" with members that have included "Presidents and Vice Presidents, GOP Members of Congress, Governors, state party leaders and influential Republicans everywhere").

⁶⁴ *Supra* at 14.

⁶⁵ *Supra* at note 60.

⁶⁶ *Id.*

1 bi-partisan meeting between Senators and Members of Congress from Montana that Zinke
2 apparently continued to attend after being sworn in as Interior Secretary.⁶⁷ Setting aside that
3 Zinke was no longer in Congress, these post-confirmation disbursements totaled only \$1,250, and
4 they stopped once Zinke's replacement was sworn into Congress in June 2017.⁶⁸ Accordingly,
5 we recommend that the Commission dismiss the personal use allegations relating to these
6 disbursements.

7 **III. RECOMMENDATIONS**

- 8 1. Find no reason to believe that Zinke for Congress and Lorna Kuney in her official
9 capacity as treasurer violated 52 U.S.C. § 30116(f).
10
11 2. Find no reason to believe that Frank Haughton, Jr., violated 52 U.S.C. § 30116(a).
12
13 3. Find no reason to believe that Ryan Zinke, Lolita Zinke, Zinke for Congress and
14 Lorna Kuney in her official capacity as treasurer, or F. Edward Buttrey violated
15 52 U.S.C. § 30114(b) in connection with the purchase and resale of a recreational
16 vehicle.
17
18 4. Dismiss the allegation that Zinke for Congress and Lorna Kuney in her official
19 capacity as treasurer violated 52 U.S.C. § 30104(b).
20
21 5. Dismiss the allegation that Zinke Victory Fund and Paul Kilgore in his official
22 capacity as treasurer violated 52 U.S.C. § 30104(b).
23
24 6. Dismiss the allegation that Ryan Zinke and Zinke for Congress and Lorna Kuney
25 in her official capacity as treasurer violated 52 U.S.C. § 30114(b) in connection
26 with post-election disbursements.
27
28 7. Approve the attached Factual and Legal Analysis.
29
30 8. Approve the appropriate letters.
31

⁶⁷ See Joint Resp. at 7.

⁶⁸ *Supra* at note 35; 2017 Amended July Quarterly at 12-15, 21 (Dec. 29, 2017), <http://docquery.fec.gov/cgi-bin/forms/C00550871/1195464/>.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

9. Close the file.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel

3.23.18
Date

BY: Stephen Gura
Stephen Gura
Deputy Associate General Counsel

Mark Shonkwiler
Mark Shonkwiler
Assistant General Counsel

AJW
Ana J. Peña-Wallace
Attorney

100-111111-1001