

1 **FEDERAL ELECTION COMMISSION**  
2  
3 **FIRST GENERAL COUNSEL'S REPORT**  
4

5 **MUR 7421**

6 DATE COMPLAINT FILED: June 27, 2018

7 DATE OF NOTIFICATION: June 28, 2018

8 DATE OF LAST RESPONSE: July 19, 2018

9 DATE ACTIVATED: September 12, 2018

10  
11 EXPIRATION OF SOL: April 12, 2023 (earliest)/  
12 April 23, 2023 (latest)

13 ELECTION CYCLE: 2018

14  
15 **COMPLAINANT:**

David C. Thompson

16  
17 **RESPONDENTS:**

Cramer for Senate and Christopher M. Marston in  
his official capacity as treasurer  
Kevin Cramer  
Kris Cramer

18  
19  
20  
21  
22 **RELEVANT STATUTES  
23 AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30114(b)(2)

11 C.F.R. § 104.3(b)

11 C.F.R. § 113.1(g)

11 C.F.R. § 116.5

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28 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

29  
30 **FEDERAL AGENCIES CHECKED:**

None

31  
32 **I. INTRODUCTION**

33 The Complaint alleges that Representative Kevin Cramer, his wife Kris Cramer, and  
34 his principal campaign committee, Cramer for Senate and Christopher M. Marston in his  
35 official capacity as treasurer (the "Committee"), (collectively "Respondents") violated the  
36 Federal Election Campaign Act of 1971, as amended, (the "Act") and Commission  
37 regulations by converting campaign funds to personal use. The Complaint also alleges that  
38 the Committee failed to report advance payments that the Cramers made for travel expenses  
39 and failed to timely reimburse the Cramers for those advance payments. Based on the

1 available information, we recommend that the Commission find no reason to believe that the  
2 Respondents violated 52 U.S.C. § 30114(b)(2) and dismiss the allegation that the Committee  
3 violated 52 U.S.C. § 30104(b).

4 **II. FACTS**

5 Congressman Kevin Cramer was a successful candidate for a U.S. Senate seat in  
6 North Dakota in the November 6, 2018, election. Cramer announced his candidacy on  
7 February 16, 2018,<sup>1</sup> and filed his Statement of Candidacy on March 7, 2018, designating the  
8 Committee as his principal campaign committee.<sup>2</sup>

9 Following his announcement, Cramer traveled to multiple campaign events  
10 throughout North Dakota, including appearing before local Republican Party groups and  
11 making an appearance with Vice President Michael Pence.<sup>3</sup> The Associated Press (“AP”)  
12 reviewed travel records provided to it by Cramer’s campaign and reported that Cramer took  
13 seven trips to attend more than a dozen campaign events between January and March, 2018,  
14 traveling over 2,300 miles, including a 210-mile round trip to attend a Republican Party  
15 event in Dickinson and a 420-mile round trip to appear with Vice President Pence in Fargo.<sup>4</sup>

<sup>1</sup> Cramer for Senate Announcement & Rally, FACEBOOK.COM, <https://www.facebook.com/events/758956704298458/>.

<sup>2</sup> Kevin Cramer, Statement of Candidacy at 1 (Mar. 7, 2018).

<sup>3</sup> Kim Hyatt, *Enthusiasm Surrounds Cramer at Cass County Republican Convention*, WEST FARGO PIONEER, Feb. 22, 2018, <https://www.westfargopioneer.com/news/government-and-politics/4407891-enthusiasm-surrounds-cramer-cass-county-republican-convention>; Jonathan Allen, *Pence Laces into North Dakota Sen. Heitkamp at Private Event*, NBC NEWS, Mar. 27, 2018, <https://www.nbcnews.com/politics/politics-news/pence-laces-north-dakota-sen-heitkamp-private-event-n860586>. Posts from Cramer’s Facebook page show him visiting different parts of North Dakota from February 16 to May 23, 2018, including Mandan, Fargo, Mooreton, Bismarck, and Bottineau. See Kevin Cramer (@votecramer), FACEBOOK, <https://www.facebook.com/pg/votecramer/posts/> (last visited Dec. 13, 2018).

<sup>4</sup> Amanda Seitz, *AP Fact Check: Rep. Kevin Cramer Did Drive 2,300 Miles*, AP NEWS, July 4, 2018, <https://apnews.com/1b3ec6428ec149339fc418a304e379e9> (This news article was cited in the Response.).

1 The article also reported that Mrs. Cramer traveled 975 miles to attend campaign events,  
2 including the Pence event in Fargo and a state GOP convention in Grand Forks.<sup>5</sup>

3 In its Pre-Primary Report covering the period from April 1 to May 23, 2018, the  
4 Committee reported disbursements of \$1,152.75 and \$531.38 to Cramer and Mrs. Cramer,  
5 respectively, as reimbursements for "mileage" for travel that occurred during the first quarter  
6 of 2018, and a disbursement of \$253 to Cramer as a "per diem" for sixteen meals.<sup>6</sup>

7 The Complaint alleges that Cramer and Mrs. Cramer impermissibly converted  
8 campaign funds to personal use because the reimbursements for travel expenses and meals  
9 were not related to Cramer's Senate campaign.<sup>7</sup> Based on the Committee's mileage  
10 reimbursements of \$1,152.75 to Cramer and \$531.38 to Mrs. Cramer, the Complaint suggests  
11 that the reimbursements were permissible only if Cramer drove approximately 2,115 miles  
12 and Mrs. Cramer almost 1,000 miles during the first three months of 2018.<sup>8</sup> The Complaint  
13 argues this amount of travel is "suspect and highly unusual," stating that it would have been  
14 impossible for the Cramers to travel enough during the first quarter of 2018 to justify the  
15 amounts reimbursed.<sup>9</sup> The Complaint also alleges that the Committee impermissibly paid  
16 Cramer a salary or stipend when it reimbursed him \$253 for "per diem," arguing that the  
17 reimbursement was not for any actual costs for meals incurred by Cramer.<sup>10</sup>

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<sup>5</sup> Resp. at 2 (July 19, 2018); Seitz, *supra* note 4 (noting that the Cramer campaign provided Mrs. Cramer's event schedule).

<sup>6</sup> Pre-Primary Report of Receipts and Disbursements at 153; 156 (May 31, 2018).

<sup>7</sup> Compl. at 1-2.

<sup>8</sup> *Id.* (using the Internal Revenue Service reimbursement rate of 54.5 cents per mile to calculate distances).

<sup>9</sup> *Id.* at 1-2.

<sup>10</sup> *Id.* at 5.

1 In addition, the Complaint alleges that the Committee was prohibited from  
2 reimbursing Cramer for the travel and meal expenses, arguing that some of the expenses  
3 were not reimbursable because they were not made within the time frame required under  
4 Commission regulations and therefore should have been treated instead as in-kind  
5 contributions from Cramer.<sup>11</sup> The Complaint also argues that Cramer's advance payments  
6 should have been reported as contributions until the Committee made reimbursements.<sup>12</sup>

7 Respondents submitted a joint response denying the personal use allegations, stating  
8 that Cramer and Mrs. Cramer were reimbursed for driving to campaign events and that the  
9 Committee paid Cramer a reasonable per diem for meals that followed Commission  
10 guidelines.<sup>13</sup> To support its response, the Committee cites to the AP article which concluded  
11 that the Cramer's campaign schedule was consistent with the amount reimbursed for  
12 mileage.<sup>14</sup> Respondents also state that the Committee provided a per diem for travel-related  
13 meals in lieu of exact reimbursements.<sup>15</sup>

### 14 III. LEGAL ANALYSIS

#### 15 A. There is No Reason to Believe that the Respondents Converted Campaign 16 Funds to Personal Use

17 The Act prohibits any person from converting campaign funds to personal use,  
18 defining "personal use" as using funds "to fulfill any commitment, obligation, or expense of  
19 a person that would exist irrespective of the candidate's election campaign or individual's

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<sup>11</sup> Compl. at 5-6.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> Resp. at 2.

<sup>14</sup> *Id.*; see also Seitz, *supra* note 4.

<sup>15</sup> Resp. at 2.

1 duties as a holder of Federal office.”<sup>16</sup> The Commission’s implementing regulation  
2 enumerates types of disbursements that qualify as *per se* personal use and others that are  
3 determined on a case-by-case basis.<sup>17</sup> Travel and travel-related meals are evaluated on a  
4 case-by-case basis.<sup>18</sup> The Commission has stated that it will not find a personal use violation  
5 “[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or  
6 officeholder activities.”<sup>19</sup> Accordingly, a campaign committee’s payment of a per diem for  
7 travel and travel-related subsistence expenses are permissible under the Act and Commission  
8 regulations and the Commission has found per diems paid to family members permissible  
9 when their travel is connected to campaign activities or official events.<sup>20</sup>

10 The Committee’s reimbursements to Cramer and Mrs. Cramer, and the per diem to  
11 Cramer, do not appear to violate the personal use regulations. A review of the available  
12 record, including the AP article cited by Respondents, supports the conclusion that Cramer  
13 and Mrs. Cramer made multiple appearances at campaign events throughout North Dakota.<sup>21</sup>  
14 While we do not have access to the records reviewed by the AP to support its conclusion that  
15 the reimbursements reported by the Committee reflected actual travel undertaken by the

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<sup>16</sup> 52 U.S.C. § 30114(b); *see also* 11 C.F.R. § 113(g).

<sup>17</sup> 11 C.F.R. § 113.1(g)(1)(ii).

<sup>18</sup> *Id.*

<sup>19</sup> Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7866-67 (Feb. 9, 1995).

<sup>20</sup> *See id.*; *see also* Advisory Op. 1996-34 (Thornberry) at 3 (Sept. 12, 1996) (allowing a committee to pay for the travel expenses of a candidate’s wife when the travel was part of a campaign trip); Factual & Legal Analysis at 3-4, MUR 7100 (Donald J. Trump for President, *et al.*) (finding no reason to believe that a personal use violation occurred when a committee paid for campaign-related travel expenses incurred by a candidate’s family members).

<sup>21</sup> *See* Seitz, *supra* note 4; *see also* Hyatt, *supra* note 3; Allen, *supra* note 3; Kevin Cramer (@votecramer), FACEBOOK, <https://www.facebook.com/pg/votecramer/posts/> (containing posts from February 16 to May 23, 2018, showing Cramer visiting different parts of North Dakota).

1 Cramers, publicly available information indicates the Cramers traveled to multiple events  
2 across the state during the time period for which their mileage was reimbursed. News reports  
3 and campaign posts on social media show that after Cramer decided to become a candidate in  
4 February 2018, he and Mrs. Cramer traveled throughout North Dakota, a large state where  
5 round trips of 200 to 500 miles each were consistent with the Cramers' reported campaign  
6 schedules.<sup>22</sup> And the Complaint does not point to any specific information to support its  
7 allegation, instead relying on an assertion that the amount of the reimbursements seemed  
8 excessive compared to a general impression of how much the Cramers could have reasonably  
9 traveled for the campaign during the relevant time period.<sup>23</sup>

10 The Complaint likewise fails to provide any information substantiating the allegation  
11 that the \$253 reimbursement for Cramer's meals was not a permissible campaign-related  
12 expense because it did not reflect the "actual cost" incurred.<sup>24</sup> The Commission has  
13 previously approved the use of per diems to pay for campaign-related travel and meals in lieu  
14 of recording the actual costs for mileage, lodging, and meals.<sup>25</sup> In this matter, the payment to  
15 Cramer of \$15.81 per meal was in line with the then-applicable GSA reimbursement rates for  
16 meals and incidentals in North Dakota.<sup>26</sup> The Complaint does not provide any other basis to  
17 suggest that the reimbursement was not permissible.

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<sup>22</sup> See Seitz, *supra* note 4; Kevin Cramer (@votecramer), FACEBOOK, <https://www.facebook.com/pg/votecramer/posts/> (containing posts from February 16 to May 23, 2018, showing Cramer visiting different parts of North Dakota).

<sup>23</sup> See Compl. at 4-5 (citing the distance traveled and the number of days that Congress was in session to suggest that Representative Cramer's official duties should have prevented some campaign travel).

<sup>24</sup> See *id.* at 4-6.

<sup>25</sup> Resp. at 2 (citing Advisory Op. 1984-08 (Duncan) at 1 ("AO 1984-08")).

<sup>26</sup> See Pre-Primary Report at 153 (noting that the \$253 per diem covered 16 meals). The then-applicable GSA standard rates for meals and incidental expenses incurred in North Dakota allow \$11 for breakfast, \$12 for lunch, \$23 for dinner, and \$5 for incidental expenses. GENERAL SERVICES ADMINISTRATION, Per Diem Rates

1           Because the Complaint failed to provide any support for the personal use allegations,  
2 we recommend that the Commission find no reason to believe that the Committee, Kevin  
3 Cramer, or Kris Cramer violated 52 U.S.C. § 30114(b)(2).

4           **B.     The Commission Should Dismiss the Allegations Regarding the**  
5           **Misreported In-Kind Contributions**

6           A political committee must report each person who makes a contribution aggregating  
7 in excess of \$200 per election cycle.<sup>27</sup> The payment by an individual from personal funds for  
8 costs incurred in providing goods or services to a candidate or political committee is a  
9 contribution unless specifically exempted under the Act and Commission regulations.<sup>28</sup> The  
10 regulations provide that the payment for an individual's transportation and subsistence  
11 expenses incurred while traveling on behalf of a candidate or political committee are not  
12 reportable contributions provided the individual is reimbursed within specified time periods.  
13 Specifically, if the expenses were not paid for with a personal credit card, the reimbursement  
14 must occur within thirty days of the date on which the expenses were incurred; if the  
15 expenses were paid for with a personal credit card, the reimbursement must be made within  
16 60 days of the closing date of the billing statement on which the charges appear.<sup>29</sup>  
17 Additionally, political committees must treat an obligation arising from advance payments  
18 for travel expenses as an outstanding debt until reimbursed.<sup>30</sup>

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Look-Up, [https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems\\_report&state=ND&fiscal\\_year=2018](https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems_report&state=ND&fiscal_year=2018) (last visited Jan. 31, 2019).

<sup>27</sup> 52 U.S.C. § 30104(b)(3).

<sup>28</sup> 11 C.F.R. § 116.5(b).

<sup>29</sup> 11 C.F.R. § 116.5(b)(2).

<sup>30</sup> 11 C.F.R. § 116.5(c).

1           There is insufficient information in the record to determine the extent to which the  
2 Cramers advanced personal funds for travel and travel-related subsistence expenses that were  
3 not timely reimbursed and therefore resulted in reportable contributions to the Committee.  
4 The travel expenses at issue were incurred in the first quarter and early April of 2018 and not  
5 reimbursed until April 2018, which suggests that some of the expenses may have exceeded  
6 the 30- or 60-day windows provided in the regulations if the expenses were incurred early in  
7 the quarter. We do not have information, however, about when the Cramers incurred the  
8 expenses or how they paid for these expenses, and there is information to indicate that some  
9 of the travel was reimbursed within 30 days. For example, both Cramer and Mrs. Cramer  
10 submitted reimbursements for mileage to attend a fundraising event with Vice President  
11 Pence on March 27, 2018, and the Committee reported reimbursements to the Cramers on  
12 April 12 and 23, 2018.<sup>31</sup> The Committee also reportedly reimbursed Mrs. Cramer for travel  
13 to attend the state GOP convention in Grand Forks, which was held in early April.<sup>32</sup>

14           To the extent that the Committee did not reimburse the Cramers for travel-related  
15 advance payments, the available record suggests that the amount of any advance payments  
16 that were not reimbursed in the required time frame are likely to be *de minimis*. Accordingly,  
17 we recommend that the Commission dismiss the allegation that the Committee violated 52  
18 U.S.C. § 30104(b) in connection with reporting payments for travel expenses by the Cramers  
19 pursuant to *Heckler v. Chaney*.<sup>33</sup>

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<sup>31</sup> Pre-Primary Report at 153, 156 (reporting a reimbursement to Mrs. Cramer on April 12, 2018, and to Cramer on April 23, 2018).

<sup>32</sup> Seitz, *supra* note 4.

<sup>33</sup> 470 U.S. 821 (1985).



1 **III. RECOMMENDATIONS**

- 2 1. Find no reason to believe that Cramer for Senate and Christopher M. Marston in  
3 his official capacity as treasurer, Kevin Cramer, and Kris Cramer violated 52  
4 U.S.C. § 30114(b);
- 5 2. Dismiss the allegation that Cramer for Senate and Christopher M. Marston in his  
6 official capacity as treasurer violated 52 U.S.C. § 30104(b);
- 7 3. Approve the attached Factual and Legal Analysis;
- 8 4. Approve the appropriate letters; and
- 9 5. Close the file.

10  
11  
12 Lisa J. Stevenson  
13 Acting General Counsel

14  
15  
16 2/6/19

17 Date

18 Kathleen M. Guith  
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