



700 13th Street, NW
Suite 600
Washington, DC 20005-3960

+1.202.654.6200
+1.202.654.6211
perkinscoie.com

November 30, 2020

Marc E. Elias
MElias@perkinscoie.com
D +1.202.434.1609
F +1.202.654.9126

Jeff S. Jordan
Federal Election Commission
Attn: Kathryn Ross, Paralegal
Office of Complaints Examination and Legal Administration
1050 First Street, NE
Washington, DC 20463

Re: MUR 7819

Dear Mr. Jordan:

We write as counsel to Cal Cunningham, Cal for NC, and Steve Mele, Treasurer of Cal for NC (collectively, the “Respondents”), in response to the complaint filed by Caitlin Sutherland on October 13, 2020 (the “Complaint”). The Complaint is entirely without merit. According to Federal Election Commission (“FEC” or “Commission”) precedent, a complaint must be dismissed unless it pleads “sufficient specific facts, which, if proven true, would constitute a violation of the [Act].”¹ This Complaint alleges that “[r]espondents violated 52 U.S.C. § 30114 and 11 C.F.R. § 113.1(g) prohibiting the use of campaign funds for personal use.”² However, it does not allege any facts that establish that such a violation occurred. All expenditures described in the Complaint were unambiguously in furtherance of Cal Cunningham’s campaign for U.S. Senate and in no way resulted in the personal use of campaign funds. Because the Complaint fails to allege any facts which, if proven true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended (“the Act”), or Commission regulations, it must be dismissed.

FACTUAL BACKGROUND

Cal Cunningham was a candidate for United States Senate in North Carolina in the November 3, 2020 general election.³ His principal campaign committee is Cal for NC.⁴ Beginning on March 5, 2020, Mr. Cunningham participated in a five-day campaign trip (the “California trip”), during

¹ Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas, Matter Under Review 4960 (Clinton for U.S. Exploratory Committee) (Dec. 21, 2000).

² Compl. at ¶ 3.

³ See FEC Form 2, Cal Cunningham (amended Oct. 15, 2020) <https://docquery.fec.gov/cgi-bin/forms/S0NC00202/1449527/>.

⁴ See FEC Form 1, Cal for NC (amended Oct. 15, 2020) <https://docquery.fec.gov/cgi-bin/forms/C00709410/1449488/>.

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which he attended over a dozen campaign events. On March 5, he travelled from North Carolina to Dallas, Texas. On Friday, March 6, he attended a fundraising event in Dallas and flew to Los Angeles, California, where he attended an in-person interview for the podcast Pod Save America⁵ and an evening fundraising event.⁶ On March 7, Mr. Cunningham met with multiple campaign supporters and donors in Los Angeles. On March 8 he flew from Los Angeles to New York and attended campaign events in New York City on March 8 and 9. He then travelled to Washington, DC on Tuesday, March 10, and after attending multiple campaign meetings in Washington, DC, returned to Raleigh-Durham the evening of March 10.

The Campaign's Deputy Finance Director flew from Raleigh-Durham to Los Angeles on March 6 to assist with fundraising events on the Los Angeles portion of the California trip.⁷ He returned to Raleigh-Durham on March 8. The Campaign purchased an airplane ticket for the Deputy Finance Director to travel to Los Angeles and reimbursed him for the cost of parking at Raleigh-Durham International Airport from March 6 to March 8.⁸

Each day of both Mr. Cunningham's and the Deputy Finance Director's trips had a specific campaign purpose, and no additional destinations or days were added to either of their travel itineraries for any non-campaign purpose.

LEGAL ANALYSIS

The Complaint's personal use allegation is utterly baseless. Campaign funds can be used for any lawful purpose in connection with a federal election campaign, except that they cannot be converted to personal use of the candidate or any other person.⁹ "Personal use" is any use of campaign funds "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."¹⁰ Commission regulations list certain expenditures that are considered *per se* personal use; for other expenditures, including travel, the Commission determines on a case-by-case basis whether the use of campaign funds fulfills a commitment, obligation or expense that would exist irrespective of the candidate's campaign.¹¹ For travel expenses, Commission regulations specify that if a committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or officeholder-related activities, any *incremental expenses* that

⁵ Compl. at ¶ 9, Exh. A.

⁶ Crooked Media, "The Race That Could Flip the Senate | Cal Cunningham Pod Save America Interview," YouTube, <https://www.youtube.com/watch?v=3gWP23RZfmk>. Although it was aired on March 10, the interview was filmed several days earlier, on March 6, 2020.

⁷ See Exhibit A.

⁸ Exhibit A; Exhibit B; FEC.gov, Cal for NC, Form 3 April 2020 Quarterly Report at 3072, 3122-3123.

⁹ 52 U.S.C. § 30114(a); 11 CFR § 113.2.

¹⁰ 11 CFR § 113.1(g).

¹¹ *Id.* § 113.1(g)(1)(ii).

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result from the personal activities are personal use unless they are reimbursed by the person who benefits within thirty days.¹² Only the incremental expenses that are directly attributable to personal activities and paid for by the candidate's campaign must be reimbursed - engaging in personal activities on a campaign trip does not render the entire cost of the trip personal use. Rather, only costs that would not have been incurred but for the personal activities must be reimbursed.¹³

The Complaint alleges no facts that would establish that any expenditures by Cal for NC in connection with the California trip were attributable to personal activities conducted on the trip. In fact, each day and destination of the California trip had a specific campaign purpose, and no additional destinations or days were added to the trip for any personal purpose. The Complaint cites two expenditures that it alleges were for personal use: (1) a \$548.40 disbursement to Delta Airlines on March 5, and (2) a \$45 disbursement to RDU Parking on March 8.¹⁴ Both expenses were made to facilitate the travel of the Campaign's Deputy Finance Director to Los Angeles to assist in campaign fundraising activities. The Delta Airlines disbursement was for a one-way flight to Los Angeles for the Deputy Finance Director on March 6.¹⁵ The RDU Parking expenditure was a reimbursement to the Deputy Finance Director for parking at Raleigh-Durham International Airport for the three days he was in Los Angeles.¹⁶ Both expenditures have a clear campaign purpose - to assist Mr. Cunningham while he attended campaign fundraising events.

The Complaint's allegation that "only one campaign-related event is determinable"¹⁷ during the California trip does not constitute a specific fact indicating that the Campaign paid for incremental expenses that resulted from personal activities. In reality, the California trip involved numerous campaign events. In fact, every stop and day of the California trip was for a specific campaign purpose. All costs associated with the trip paid for by Cal for NC, including the two expenditures described in the Complaint, were made to cover campaign expenses and were legitimate uses of campaign funds.

¹² *Id.* § 113.1(g)(1)(ii)(C).

¹³ Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7869 (Feb. 9, 1995) ("Of course, the reimbursement need only cover the incremental costs of the personal activities, that is the increase in the total cost of the trip that is attributable to the extra week of vacation. Thus, if the vacation and the speech take place in the same location, the Member is not required to reimburse the committee for any portion of the airfare, since that expense would have been incurred even if the trip had not been extended. See Advisory Opinion 1993-6.")

¹⁴ Compl. at ¶ 8, 10.

¹⁵ Exhibit A.

¹⁶ Exhibit B; FEC.gov, Cal for NC, Form 3 April 2020 Quarterly Report at 3122-3123.

¹⁷ Compl. at ¶ 13.

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CONCLUSION

The facts in the Complaint do not support a finding of any violation of the Act or Commission regulations. The Campaign made valid expenditures for campaign-related travel and properly reported those expenditures in accordance with federal law and Commission regulations. Accordingly, the Commission should find no reason to believe that a violation has occurred, and immediately dismiss this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Marc E. Elias", is positioned above the printed names.

Marc E. Elias
Jacquelyn K. Lopez
Elizabeth P. Poston

EXHIBIT A

**Your Flight Receipt - [REDACTED] 06MAR20**

3 messages

Delta Air Lines <DeltaAirLines@t.delta.com>

Wed, Mar 4, 2020 at 10:14 PM

Reply-To: Transactional Email Reply Inbox <reply-115759-14_HTML-50906149-10982494-1248078@t.delta.com>

To: [REDACTED]



Hello, [REDACTED]

[REDACTED] | SkyMiles® Member

Your Trip Confirmation #: HXXOPN

You're all set. If you need to adjust your itinerary, you can make standard changes to your flight on delta.com including time, date and destination. Explore all of your options [here](#).

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Have a great trip, and thank you for choosing Delta.

Fri, 06MAR	DEPART	ARRIVE
DELTA 1455 Main Cabin (M)	RALEIGH-DURHAM, NC 6:10am	LOS ANGELES, CA 9:01am

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REAL ID REMINDER

Effective, October 1, 2020, every air traveler 18 years of age and older will need a REAL ID-compliant driver's license or another acceptable form of ID. Please visit the [TSA REAL ID](#) website for more information.

Passenger Info

Name: [REDACTED]
SkyMiles [REDACTED]

FLIGHT	SEAT
DELTA 1455	18F

Visit [delta.com](#) or use the [Fly Delta app](#) to view, select or change your seat. If you purchased a Delta Comfort+™ seat or a Trip Extra, please visit [My Trips](#) to access a receipt of your purchase.

Flight Receipt

Ticket #:
Place of Issue: Delta.com
Issue Date: 04MAR20
Expiration Date: 04MAR21

METHOD OF PAYMENT	
	\$548.40 USD

CHARGES	
Air Transportation Charges	
Base Fare	\$496.74 USD
Taxes, Fees and Charges	
United States - September 11th Security Fee(Passenger Civil Aviation Security Service Fee) (AY)	\$5.60 USD
United States - Transportation Tax (US)	\$37.26 USD
United States - Passenger Facility Charge (XF)	\$4.50 USD
United States - Flight Segment Tax (ZP)	\$4.30 USD
TICKET AMOUNT	\$548.40 USD

NONREF/PENALTY APPLIES

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Note: When using certain vouchers to purchase tickets, remaining credits may not be refunded. Additional charges and/or credits may apply.

Fare Details: RDU DL LAX496.74MA0QA0MQ USD496.74END ZP RDU XF RDU4.5

Checked Bag Allowance

The fees below are based on your original ticket purchase. **If you qualify for free or discounted checked baggage**, this will be taken into account when you check in.

Fri 06 Mar 2020

DELTA: RDU LAX

CARRY ON	FIRST	SECOND
FREE	\$30 ^{USD}	\$40 ^{USD}

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Wed, Mar 4, 2020 at 10:15 PM

Reply-To: Transactional Email Reply Inbox <reply-115759-14_HTML-50906149-10982494-1248122@t.delta.com>

To: [REDACTED]

[Quoted text hidden]

Delta Air Lines <DeltaAirLines@t.delta.com>

Wed, Mar 4, 2020 at 10:15 PM

Reply-To: Transactional Email Reply Inbox <reply-115759-14_HTML-50906149-10982494-1248125@t.delta.com>

To: [REDACTED]

[Quoted text hidden]

EXHIBIT B

RDU Raleigh-Durham International Airport

RDU

MAIN EX 7 03/03/20 17:55

Receipt: 092090

Short-term parking ticket

PC - No. 001812

03/06/20 05:04

03/08/20 17:55

Period 2d12h52'

(Ust.)

\$ 45.00

Sub Total

\$ 45.00

Ust.

\$ 0.00

Total

\$ 45.00

Payment Received

RID

A000000025

PIX

010801

CARD

AUTHORIZATION

827435

PURCHASE

USD 45.00

APPROVED