

1 **FEDERAL ELECTION COMMISSION**  
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3 **FIRST GENERAL COUNSEL'S REPORT**  
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5 **MUR: 7819**

6 DATE COMPLAINT FILED: Oct. 14, 2020

7 DATE OF NOTIFICATIONS: Oct. 16, 2020

8 LAST RESPONSE RECEIVED: Dec. 1, 2020

9 DATE ACTIVATED: July 8, 2021

10 EXPIRATION OF SOL: Mar. 5-8, 2025

11 ELECTION CYCLE: 2020

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14 **COMPLAINANT:** Caitlin Sutherland, Americans for Public Trust

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16 **RESPONDENTS:** Cal for NC and Steven Mele in his official capacity  
17 as treasurer  
18 Cal Cunningham  
19

20 **RELEVANT STATUTE**  
21 **AND REGULATION:**

22 52 U.S.C. § 30114(b)

23 11 C.F.R. § 113.1(g)

24 **INTERNAL REPORTS CHECKED:** Disclosure Reports

25  
26 **FEDERAL AGENCIES CHECKED:** None

27 **I. INTRODUCTION**

28 The Complaint alleges that 2020 Senate candidate Cal Cunningham and his authorized  
29 committee, Cal for NC and Steven Mele in his official capacity as treasurer (the “Cunningham  
30 Committee”), violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by  
31 converting \$593.40 in campaign funds to personal use by paying for the candidate’s non-  
32 campaign-related travel to California. Because the available information indicates that the  
33 disbursements at issue were made in connection with travel for campaign events, we recommend  
34 that the Commission dismiss the allegation that Cal Cunningham and the Cunningham  
35 Committee violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign  
36 funds to personal use.

## 1 II. FACTUAL BACKGROUND

2 Cal Cunningham was the 2020 Democratic candidate for Senate in North Carolina, and  
3 Cal for NC is his principal campaign committee.<sup>1</sup> On its 2020 April Quarterly Report, the  
4 Cunningham Committee reported a disbursement of \$548.40 to Delta Airlines on March 5, 2020,  
5 for “Travel,” and a disbursement of \$45.00 to “RDU Parking” on March 8, 2020, also for  
6 “Travel.”<sup>2</sup> RDU is the International Air Transport Association code for Raleigh-Durham Airport  
7 in North Carolina.<sup>3</sup>

8 The Complaint alleges that Cunningham made the two disbursements during a trip to  
9 California, the primary purpose of which was personal rather than campaign-related.<sup>4</sup> According  
10 to the Complaint, which cites to a local press report, Cunningham admitted to engaging in an  
11 extramarital affair with Arlene Guzman Todd, and Todd, in turn, stated that one of the  
12 encounters occurred in March 2020 in Los Angeles.<sup>5</sup> The Complaint alleges that there is public  
13 evidence of only one campaign event during Cunningham’s trip and surmises that he spent the  
14 remainder of the visit on personal activities involving Todd.<sup>6</sup>

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<sup>1</sup> Cal Cunningham, Amended Statement of Candidacy (Oct. 15, 2020). Cunningham lost the general election on November 3, 2020. Gary D. Robertson, *Cunningham Concedes to US Sen. Tillis in North Carolina*, ASSOC. PRESS (Nov. 10, 2020), <https://apnews.com/article/election-2020-senate-elections-sex-scandals-north-carolina-general-elections-a73f0f6fb024d9a105640a0a3839a54f>.

<sup>2</sup> Cal for NC, Amended 2020 April Quarterly Report, Sched. B at 3094, 3123 (Dec. 1, 2020).

<sup>3</sup> See RALEIGH-DURHAM AIRPORT (RDU), <https://www.raleigh-durham-airport.com/> (last visited July 12, 2021).

<sup>4</sup> Compl. ¶ 13 (Oct. 14, 2020).

<sup>5</sup> *Id.* ¶ 11 (citing Paul Specht, *Cunningham Publicly Apologies for Affair*, WRAL (Oct. 6, 2020), <https://www.wral.com/cunningham-publicly-apologizes-for-affair/19323479>).

<sup>6</sup> *Id.* ¶ 13 (“To date, only one campaign-related event is determinable within the three-day time frame which Mr. Cunningham spent in California.”). The Complaint attaches a Facebook post from an individual who states that she met Cunningham at an event held on March 6, 2020, apparently hosted by a joint fundraising committee, and asserts that there are no other “determinable” campaign-related events that Cunningham attended during his trip. *Id.* ¶¶ 9, 13; *id.*, Ex. A (Mabelle Drake Hueston, FACEBOOK (Mar. 7, 2020), <https://www.facebook.com/mabelle.drake.hueston/posts/10158126514373328>).

1 Respondents deny the allegations. In a joint Response, Cunningham and the  
2 Cunningham Committee state that Cunningham participated in a five-day trip to Texas and  
3 California during which he attended “over a dozen campaign events,” and was accompanied, for  
4 part of the trip, by the Committee’s Deputy Finance Director.<sup>7</sup> Respondents state that  
5 Cunningham was in California from March 6 to March 8, during which time he attended multiple  
6 campaign events including participating in a podcast interview, an evening fundraiser, and a  
7 meeting with supporters and donors in Los Angeles.<sup>8</sup> Respondents state that the disbursements  
8 identified in the Complaint were made for the Deputy Finance Director to travel to California to  
9 assist Cunningham with fundraising events.<sup>9</sup> The Response states that neither Cunningham nor  
10 the Deputy Finance Director expended any campaign resources for non-campaign purposes  
11 during the trip.<sup>10</sup>

### 12 III. LEGAL ANALYSIS

13 The Act prohibits the conversion of campaign funds by any person to “personal use.”<sup>11</sup>  
14 “Personal use” is the use of funds in a campaign account “to fulfill a commitment, obligation or  
15 expense of any person that would exist irrespective of the candidate’s campaign or duties as a  
16 Federal officeholder.”<sup>12</sup> The Act and Commission regulations list certain uses of campaign  
17 funds that constitute *per se* conversion to personal use, including a vacation or other non-

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<sup>7</sup> Resp. at 2 (Dec. 1, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2, 3 (“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.”).

<sup>11</sup> 52 U.S.C. § 30114(b).

<sup>12</sup> 11 C.F.R. § 113.1(g).

1 campaign-related trip.<sup>13</sup> For other payments, the “Commission will determine, on a case-by-case  
2 basis, whether other uses” of campaign funds constitute personal use by applying the  
3 “irrespective test,” that is, whether the payment fulfills a commitment, obligation, or expense  
4 that would exist irrespective of the candidate’s campaign or duties as a federal officeholder.<sup>14</sup>  
5 Commission regulations specify that travel expenses are evaluated on a case-by-case basis.<sup>15</sup>  
6 Such expenses are not personal use “[i]f the candidate can reasonably show that the expenses at  
7 issue resulted from campaign or officeholder activities.”<sup>16</sup> If a committee uses campaign funds  
8 to pay for travel with a mixed purpose, that is, travel that involves both personal and campaign  
9 activities, “the incremental expenses that result from the personal activities are personal use”  
10 unless the person benefiting from the personal use reimburses the committee within 30 days.<sup>17</sup>

11 Here, the Complaint alleges that Cunningham and the Committee converted \$593.40 in  
12 campaign funds to personal use by paying for the candidate’s non-campaign related expenses  
13 during a March 2020 trip to California.<sup>18</sup> Respondents state that the disbursements at issue  
14 “were made to cover campaign expenses and were legitimate uses of campaign funds,” namely,  
15 travel for the Cunningham Committee’s Deputy Finance Director “to assist Mr. Cunningham  
16 while he attended campaign fundraising events.”<sup>19</sup> Though the Complaint speculates that  
17 Cunningham engaged in personal, non-campaign-related activity during the California trip,<sup>20</sup> it

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<sup>13</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

<sup>14</sup> 11 C.F.R. § 113.1(g)(1)(ii).

<sup>15</sup> *Id.* § 113.1(g)(1)(ii)(C).

<sup>16</sup> Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995).

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

<sup>18</sup> Compl. ¶ 13.

<sup>19</sup> Resp. at 3.

<sup>20</sup> Compl. ¶ 13.

1 provides no information indicating that the Cunningham Committee made disbursements for  
2 expenses that would have existed irrespective of Cunningham's campaign, nor any incremental  
3 expenses resulting from Cunningham's personal activities. The Complaint also provides no  
4 information contradicting the Respondents' assertion that the trip and the associated expenditures  
5 were made for campaign purposes, nor are we aware of such information. Indeed, the Complaint  
6 acknowledges that Cunningham likely attended at least one campaign-related event while on the  
7 trip, apparently hosted by Senate 2020, a joint fundraising committee,<sup>21</sup> and attaches a Facebook  
8 post from a "prominent California political donor" who confirms that she met Cunningham along  
9 with other candidates at a dinner on March 6, 2020.<sup>22</sup> In sum, the available information indicates  
10 that the purpose of Cunningham's travel was campaign-related, and there is nothing to show that  
11 he made any incremental expenses while on the trip.

12           Given the lack of specific information suggesting that Cunningham or the Cunningham  
13 Committee paid for expenses relating to personal activity during the March 2020 California trip,  
14 as alleged, we recommend the Commission dismiss the allegation that Respondents violated  
15 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign funds to personal use.

## 16 **V. RECOMMENDATIONS**

- 17           1. Dismiss the allegation that Cal Cunningham and Cal for NC and Steven Mele in  
18           his official capacity as treasurer violated 52 U.S.C. § 30114(b) and 11 C.F.R.  
19           § 113.1(g) by converting campaign funds to personal use;
- 20           2. Approve the attached Factual and Legal Analysis;
- 21           3. Send the appropriate letters; and

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<sup>21</sup> *Supra* note 6 and accompanying text.

<sup>22</sup> *Id.*

1           4.     Close the file.


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