



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA CERTIFIED AND ELECTRONIC MAIL
RETURN RECEIPT REQUESTED

April 11, 2022

Caitlin Sutherland
Americans for Public Trust
107 South West Street, Suite 442
Alexandria, VA 22314
csutherland@americansforpublictrust.org

RE: MUR 7819

Dear Ms. Sutherland:

On April 5, 2022, the Federal Election Commission reviewed the allegations in your complaint dated October 14, 2020, and on the basis of the information provided in your complaint and information provided by the respondents, found no reason to believe that Cal Cunningham and Cal for NC and Steven Mele in his official capacity as treasurer violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign funds to personal use. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See Disclosure of Certain Documents in Enforcement and Other Matters*, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed for your information.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574 or jdigiovanni@fec.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Claudio J. Pavia".

Claudio J. Pavia
Deputy Associate General Counsel

Enclosure:
Factual and Legal Analysis

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FACTUAL AND LEGAL ANALYSIS

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission
alleging that 2020 Senate candidate Cal Cunningham and his authorized committee, Cal for NC
and Steven Mele in his official capacity as treasurer (the “Cunningham Committee”), violated
the Federal Election Campaign Act of 1971, as amended (the “Act”), by converting \$593.40 in
campaign funds to personal use by paying for the candidate’s non-campaign-related travel to
California. Because the available information indicates that the disbursements at issue were
made in connection with travel for campaign events, the Commission finds no reason to believe
that Cal Cunningham and the Cunningham Committee violated 52 U.S.C. § 30114(b) and
11 C.F.R. § 113.1(g) by converting campaign funds to personal use.

19 II. FACTUAL BACKGROUND

20 Cal Cunningham was the 2020 Democratic candidate for Senate in North Carolina, and
21 Cal for NC is his principal campaign committee.¹ On its 2020 April Quarterly Report, the
22 Cunningham Committee reported a disbursement of \$548.40 to Delta Airlines on March 5, 2020,
23 for “Travel,” and a disbursement of \$45.00 to “RDU Parking” on March 8, 2020, also for

¹ Cal Cunningham, Amended Statement of Candidacy (Oct. 15, 2020).

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1 “Travel.”² RDU is the International Air Transport Association code for Raleigh-Durham Airport
2 in North Carolina.³

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

10 Respondents deny the allegations. In a joint Response, Cunningham and the
11 Cunningham Committee state that Cunningham participated in a five-day trip to Texas and
12 California during which he attended “over a dozen campaign events,” and was accompanied, for
13 part of the trip, by the Committee’s Deputy Finance Director.⁷ Respondents state that
14 Cunningham was in California from March 6 to March 8, during which time he attended multiple
15 campaign events including participating in a podcast interview, an evening fundraiser, and a

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

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

⁴ Compl. ¶ 13 (Oct. 14, 2020).

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

⁶ 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>).

⁷ Resp. at 2 (Dec. 1, 2020).

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1 meeting with supporters and donors in Los Angeles.⁸ Respondents state that the disbursements
 2 identified in the Complaint were made for the Deputy Finance Director to travel to California to
 3 assist Cunningham with fundraising events.⁹ The Response states that neither Cunningham nor
 4 the Deputy Finance Director expended any campaign resources for non-campaign purposes
 5 during the trip.¹⁰

6 **III. LEGAL ANALYSIS**

7 The Act prohibits the conversion of campaign funds by any person to “personal use.”¹¹
 8 “Personal use” is the use of funds in a campaign account “to fulfill a commitment, obligation or
 9 expense of any person that would exist irrespective of the candidate’s campaign or duties as a
 10 Federal officeholder.”¹² The Act and Commission regulations list certain uses of campaign
 11 funds that constitute *per se* conversion to personal use, including a vacation or other non-
 12 campaign-related trip.¹³ For other payments, the “Commission will determine, on a case-by-case
 13 basis, whether other uses” of campaign funds constitute personal use by applying the
 14 “irrespective test,” that is, whether the payment fulfills a commitment, obligation, or expense
 15 that would exist irrespective of the candidate’s campaign or duties as a federal officeholder.¹⁴
 16 Commission regulations specify that travel expenses are evaluated on a case-by-case basis.¹⁵

⁸ *Id.*

⁹ *Id.*

¹⁰ *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.”).

¹¹ 52 U.S.C. § 30114(b).

¹² 11 C.F.R. § 113.1(g).

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

¹⁴ 11 C.F.R. § 113.1(g)(1)(ii).

¹⁵ *Id.* § 113.1(g)(1)(ii)(C).

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1 Such expenses are not personal use “[i]f the candidate can reasonably show that the expenses at
 2 issue resulted from campaign or officeholder activities.”¹⁶ If a committee uses campaign funds
 3 to pay for travel with a mixed purpose, that is, travel that involves both personal and campaign
 4 activities, “the incremental expenses that result from the personal activities are personal use”
 5 unless the person benefiting from the personal use reimburses the committee within 30 days.¹⁷

6 Here, the Complaint alleges that Cunningham and the Committee converted \$593.40 in
 7 campaign funds to personal use by paying for the candidate’s non-campaign related expenses
 8 during a March 2020 trip to California.¹⁸ Respondents state that the disbursements at issue
 9 “were made to cover campaign expenses and were legitimate uses of campaign funds,” namely,
 10 travel for the Cunningham Committee’s Deputy Finance Director “to assist Mr. Cunningham
 11 while he attended campaign fundraising events.”¹⁹ Though the Complaint speculates that
 12 Cunningham engaged in personal, non-campaign-related activity during the California trip,²⁰ it
 13 provides no information indicating that the Cunningham Committee made disbursements for
 14 expenses that would have existed irrespective of Cunningham’s campaign, nor any incremental
 15 expenses resulting from Cunningham’s personal activities. The Complaint also provides no
 16 information contradicting the Respondents’ assertion that the trip and the associated expenditures
 17 were made for campaign purposes, nor is the Commission aware of such information. Indeed,
 18 the Complaint acknowledges that Cunningham likely attended at least one campaign-related

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

¹⁷ 11 C.F.R. § 113.1(g)(1)(ii)(C).

¹⁸ Compl. ¶ 13.

¹⁹ Resp. at 3.

²⁰ Compl. ¶ 13.

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1 event while on the trip, apparently hosted by Senate 2020, a joint fundraising committee,²¹ and
2 attaches a Facebook post from a “prominent California political donor” who confirms that she
3 met Cunningham along with other candidates at a dinner on March 6, 2020.²² In sum, the
4 available information indicates that the purpose of Cunningham’s travel was campaign-related,
5 and there is nothing to show that the campaign paid for any incremental expenses while on the
6 trip.

7 Given the lack of specific information suggesting that Cunningham or the Cunningham
8 Committee paid for expenses relating to personal activity during the March 2020 California trip,
9 as alleged, the Commission finds no reason to believe that Respondents violated 52 U.S.C.
10 § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign funds to personal use.

²¹ *Supra* note 6 and accompanying text.

²² *Id.*