

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR: 7876

DATE COMPLAINT FILED: Feb. 8, 2021

DATE OF NOTIFICATIONS: Feb. 10, 2021

LAST RESPONSE RECEIVED: Mar. 28, 2021

DATE ACTIVATED: Oct. 6, 2021

EXPIRATION OF SOL: Nov. 11, 2025

ELECTION CYCLE: 2020

COMPLAINANT:Michelle Kuppersmith, Campaign for
Accountability**RESPONDENTS:**Lauren Boebert for Congress and Mike McCauley
in his official capacity as treasurer
Lauren Boebert**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30102(c)

52 U.S.C. § 30104(b)(6)

52 U.S.C. § 30114(b)

11 C.F.R. § 102.9

11 C.F.R. § 104.3(b)

11 C.F.R. § 113.1(g)

11 C.F.R. § 113.2

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint in this matter alleges that, during the 2020 election cycle, Lauren Boebert and Lauren Boebert for Congress and Mike McCauley in his official capacity as treasurer (the “Boebert Committee”) converted campaign funds to personal use by obtaining reimbursement for non-campaign-related mileage expenses and that the Boebert Committee failed to keep adequate records of campaign expenditures. Based on the available information, we recommend that the Commission dismiss the following allegations and issues as a matter of prosecutorial

discretion: (1) the allegation that Boebert and the Boebert Committee violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.2 by converting campaign funds to personal use; and (2) the allegation that the Boebert Committee violated 52 U.S.C. § 30102(c) and 11 C.F.R. §§ 102.9 and 113.1(g)(8) by failing to maintain appropriate records. With respect to misreporting identified in the Response, we recommend the Commission exercise its prosecutorial discretion and dismiss with caution the Boebert Committee's apparent violation of 52 U.S.C. § 30104(b)(6) and 11 C.F.R. § 104.3(b) by failing to accurately report the purpose of its disbursement, and direct the Committee to work with the Reports Analysis Division to amend its reports to reflect proper purposes.

II. FACTUAL BACKGROUND

Lauren Boebert was a 2020 candidate for the House of Representatives in Colorado's Third Congressional District, and Lauren Boebert for Congress is her authorized committee.¹ On March 31, 2020, the Boebert Committee reported reimbursing Boebert \$1,059.03 for mileage for campaign-related travel using her personal vehicle.² Seven months later, on November 11, 2020, the Boebert Committee reportedly reimbursed her for \$21,199.52, also reported as for campaign-related mileage expenses.³ The Complaint alleges that, at the "standard reimbursement rate of 57.5 cents per mile," the November reimbursement indicates that Boebert drove 36,868 miles for campaign purposes in the seven months between disbursements.⁴ The Complaint alleges that it "strains credulity well beyond the breaking point to believe that Lauren Boebert could have

¹ Boebert Committee, Amended Statement of Organization at 2 (Dec. 28, 2020).

² Boebert Committee, Amended 2020 April Quarterly Report, Sched. B at 17 (Apr. 15, 2020).

³ Boebert Committee, Amended 2020 Post-General Report, Sched. B at 230 (Sept. 21, 2021).

⁴ Compl. ¶ 9 (Feb. 8, 2021) (referencing the standard rate for mileage reimbursement as laid out by the Internal Revenue Service); see *Standard Mileage Rates*, IRS.GOV, <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last visited Jan. 26, 2022) (listing rate of 57.5 cents per mile for business travel in 2020).

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1 driven 36,868 miles on campaign-related travel in a seven-month period,” and it observes that
 2 the *Denver Post* calculated that, based on analysis performed using, as the article described,
 3 “global positioning software to calculate the distance driven to, from, and between” Boebert’s
 4 publicized campaign events, she would only have driven a maximum of 17,628 miles on
 5 campaign travel for all of 2020.⁵ The Complaint alleges that the reimbursement instead
 6 represents campaign funds converted to Boebert’s personal use,⁶ and further alleges that the
 7 Boebert Committee failed to maintain mileage logs for Boebert’s use of her personal vehicle for
 8 campaign-related purposes.⁷

9 The Boebert Committee’s Response, which is joined by Boebert and the Boebert
 10 Committee’s treasurer,⁸ acknowledges that the Boebert Committee misreported the
 11 November 11, 2020 reimbursement as solely for mileage expenses, stating that the
 12 reimbursement was, in fact, for “various campaign travel expenses, which included hotel,
 13 baggage, Uber fees and private vehicle mileage according to the Committee’s records.”⁹ The
 14 Boebert Committee provided exhibits of what the Response represents are receipts for the non-
 15 mileage expenses, totaling \$3,919.52.¹⁰ The Boebert Committee states that it has “corrected this

⁵ Compl. ¶ 10 (quoting Justin Wingerter, *Rep. Lauren Boebert’s Mileage Reimbursement ‘Raises Red Flags,’ Ethics Experts Say*, DENVER POST (Feb. 2, 2021), <https://www.denverpost.com/2021/02/02/lauren-boebert-colorado-congress-campaign-finance/>).

⁶ *Id.* ¶ 11.

⁷ *Id.* ¶ 12.

⁸ Resp. of Lauren Boebert at 1 (Mar. 10, 2021); Resp. of Mike McCauley at 1 (Mar. 28, 2021). McCauley was not named as a respondent in his individual capacity but filed a separate response.

⁹ Resp. of Boebert Committee ¶ 5 (Feb. 23, 2021).

¹⁰ *Id.*, Ex. B. The provided receipts included in Exhibit B to the Response do not exactly match the provided ledger contained in Exhibit A, as the ledger notes a \$70 charge for “Baggage” from United Airlines on September 8, 2020, for which there is no receipt, and Exhibit B includes a receipt for a \$71.95 stay at the Holiday Inn Express Mesa Verde-Cortez on February 27, 2020, for which there is no corresponding line in the ledger. However, because the discrepancy between the amount listed on the ledger and the amount of the provided receipts is \$2.05, we consider it *de minimis* and make no recommendation as to it in this report. See *id.*, Exs. A, B.

[reporting] error by amending the filed report to show reimbursements for both travel expenses and mileage,” but the most recent amendment of the Boebert Committee’s 2020 Post-General Report does not appear to reflect this identified correction because it continues to list only a disbursement of \$21,199.52 to Boebert on November 11, 2020, for “mileage reimbursement.”¹¹

The Boebert Committee also contends that the reimbursement was justified, as Boebert reported to her Committee that she drove 32,000 miles in her personal vehicle for campaign-related events between April and November 2020.¹² The Response also argues that the Boebert Committee was not required to maintain mileage logs in order to comply with its recordkeeping obligations under the Federal Election Campaign Act of 1971, as amended (the “Act”),¹³ and that the Boebert Committee satisfied its recordkeeping obligations when Boebert “assessed her trips from the point of origin to campaign related stops” “[b]ased on campaign travel records” and “provided the [Boebert] Committee with a reasonable and adequate assessment of campaign mileage traveled in her private vehicle, which is within her discretion.”¹⁴

III. LEGAL ANALYSIS

A. The Commission Should Dismiss as a Matter of Prosecutorial Discretion the Allegation that Boebert and the Boebert Committee Converted Campaign Funds to Personal Use

The Act prohibits the conversion of campaign funds by any person to “personal use.”¹⁵ “Personal use” is the use of funds in a campaign account “to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a

¹¹ Boebert Committee, Amended 2020 Post-General Report, Sched. B at 230 (Sept. 21, 2021).

¹² Resp. of Boebert Committee ¶ 6.

¹³ *Id.* ¶¶ 11-14.

¹⁴ *Id.* ¶ 14.

¹⁵ 52 U.S.C. § 30114(b); 11 C.F.R. § 113.2.

1 Federal officeholder.”¹⁶ The Act and Commission regulations list certain uses of campaign
 2 funds that constitute *per se* conversion to personal use including a vacation or other non-
 3 campaign-related trip.¹⁷ For other payments, the “Commission will determine, on a case-by-case
 4 basis, whether other uses” of campaign funds constitute personal use by applying the
 5 “irrespective test,” that is, whether the payment fulfills a commitment, obligation, or expense
 6 that would exist irrespective of the candidate’s campaign or duties as a federal officeholder.¹⁸

7 Commission regulations specify that travel expenses are evaluated on a case-by-case
 8 basis.¹⁹ Such expenses are not personal use “[i]f the candidate can reasonably show that the
 9 expenses at issue resulted from campaign or officeholder activities.”²⁰ If a committee “uses
 10 campaign funds to pay expenses associated with a vehicle that is used for both personal activities
 11 beyond a *de minimis* amount and campaign or officer-holder-related activities, the portion of the
 12 vehicle expenses associated with the personal activities is personal use.”²¹

13 Here, Respondents assert that Boebert drove 32,000 miles for campaign-related purposes
 14 between April 1, 2020, and November 11, 2020, and that expenses associated with this
 15 cumulative travel account for \$17,280 of the \$21,199.52 disbursed to her on November 11.²²
 16 The Response includes as an exhibit a chart that it describes as a ledger of Boebert’s travel-
 17 related expenses over the relevant time period, as well as apparent receipts for the non-mileage-

¹⁶ 11 C.F.R. § 113.1(g).

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

¹⁸ 11 C.F.R. § 113.1(g)(1)(ii).

¹⁹ *Id.* § 113.1(g)(1)(ii)(C)-(D).

²⁰ Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995).

²¹ 11 C.F.R. § 113.1(g)(1)(ii)(D).

²² Resp. of Boebert Committee, Ex. A (providing ledger for reimbursement to Boebert of travel-related expenses incurred between January 24, 2020, and November 7, 2020).

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1 related expenditures,²³ but the ledger itself only contains a single line referring to “2020
2 Campaign Travel,” listing 32,000 miles equating to the reported disbursement of \$17,280.²⁴
3 That Boebert’s “assess[ment of] her trips from the point of origin to campaign related stops”
4 appears to have produced a round figure of 32,000 miles driven for campaign-related purposes
5 suggests that the assessment is a general estimate rather than one founded on the kind of
6 contemporaneous log contemplated in the Commission’s regulations, discussed below.²⁵ As a
7 result of this imprecision, any portion of the disbursement for mileage expenditures over what
8 Boebert actually drove for campaign-related purposes would constitute conversion of campaign
9 funds to personal use.

10 On balance, the available information is not particularly revealing with respect to the
11 Complaint’s allegation of personal use. The Response does provide some acknowledgement of
12 overstatement of travel and the assertion of exactly 32,000 miles traveled can reasonably be
13 understood to be an estimate given the roundness of that figure and the explanation of how it was
14 determined.²⁶ At the same time, though unsworn and not accompanied by an affidavit or
15 declaration attesting to their accuracy and authenticity, the Response does provide some
16 information and specificity about Boebert’s reported travel, including receipts.²⁷ The Complaint
17 acknowledges that Boebert’s district is “large,” and the calculation by the *Denver Post* that the

²³ *Id.*, Ex. A; *id.*, Ex. B (providing hotel, Uber, and airline receipts).

²⁴ *Id.*, Ex. A. In addition to the ledger, the Response cites to press articles analogous to those cited in the Complaint in support of its assertion that Boebert drove 32,000 miles for campaign-related purposes. *Id.* ¶ 8 (citing Andrew Kenney & Caitlyn Kim, *What We Know About Lauren Boebert’s Campaign Payments to Herself for Driving 38,000 Miles*, COLO. PUB. RADIO (Feb. 7, 2021), <https://www.cpr.org/2021/02/07/what-we-know-about-lauren-boeberts-campaign-payments-to-herself-for-driving-38000-miles/>).

²⁵ *See* Part III.B, *infra*.

²⁶ Resp. of Boebert Committee ¶ 5.

²⁷ *Id.*, Ex. B.

1 most Boebert could have driven is 17,623 miles is based solely on publicly available
 2 information, disputed by the Response as non-comprehensive with respect to total campaign
 3 events, and framed with a description of Boebert as a “prolific, in-person campaigner.”²⁸ Taken
 4 together, this information does not provide a strong basis on which to dispute the Committee’s
 5 assertion that Boebert drove 32,000 miles for campaign-related purposes and, accordingly, to
 6 find reason to believe that a violation occurred. While an investigation could be undertaken in
 7 an effort to confirm that 32,000 miles is an inexact estimate that is either overstated or
 8 understated, we recommend that the Commission exercise its prosecutorial discretion²⁹ and
 9 dismiss the allegation that Boebert and the Boebert Committee violated 52 U.S.C. § 30114(b)
 10 and 11 C.F.R. § 113.2 by converting campaign funds to personal use.³⁰

11 **B. The Commission Should Exercise Its Prosecutorial Discretion and Dismiss**
 12 **the Allegation that the Boebert Committee Failed to Keep Adequate Records**
 13 **of Boebert’s Mileage**

14 The Act requires a committee, through its treasurer, to keep an accurate account of
 15 receipts, disbursements, and cash-on-hand balances.³¹ To accomplish this, the Act imposes on
 16 committees a series of recordkeeping and reporting requirements to be executed by the
 17 committee’s treasurer. The Act provides that committees must record the name and address of
 18 every person to whom a disbursement is made, and the date, amount, and purpose of the

²⁸ Compl. ¶ 10 (citing Wingerter, *supra* note 5).

²⁹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

³⁰ See Factual & Legal Analysis at 4-6, MUR 7421 (Cramer for Senate, *et al.*). In MUR 7421, the Commission found no reason to believe that a violation occurred where the complaint alleged that it was impossible for the candidate to have traveled the number of miles for which he had been reimbursed, but the distance traveled was significantly less than here (approximately 3,000 miles between the candidate and his wife), and other information in the record confirmed that the candidate could have traveled the reported distance. Here, where the reported number of miles appears to be an estimate and not simply higher than the complaint alleged was plausible, we recommend the Commission dismiss the matter as an exercise of prosecutorial discretion.

³¹ 52 U.S.C. §§ 30102(c), 30104(b); 11 C.F.R. §§ 104.3, 104.14(d).

disbursement, and retain records related to each disbursement in excess of \$200.³² As noted above, Commission regulations provide that, if a committee “uses campaign funds to pay expenses associated with a vehicle that is used for both personal activities beyond a *de minimis* amount and campaign or officer-holder-related activities, the portion of the vehicle expenses associated with the personal activities is personal use.”³³ For uses of campaign funds that are both personal use and campaign or officeholder use, “a contemporaneous log or other record must be kept to document the dates and expenses related to the personal use.”³⁴

In the Response, the Boebert Committee states that its records of Boebert’s mileage consist of Boebert’s “assessment of campaign mileage traveled in her private vehicle” “[b]ased on campaign travel records.”³⁵ Some “contemporaneous log or other record” is necessary for compliance with 11 C.F.R. § 113.1(g)(8), and, without more information, it is unclear whether Boebert’s assessment based on “campaign travel records” satisfies this requirement. As discussed above, the fact that the mileage total Boebert provided to the Boebert Committee was the round figure of 32,000 miles raises questions regarding whether Boebert’s assessment of her campaign-related travel involved the degree of specificity the Commission’s recordkeeping regulations require.³⁶

³² 52 U.S.C. § 30102(c)(5); 11 C.F.R. § 102.9(b)(1)-(2).

³³ 11 C.F.R. § 113.1(g)(1)(ii)(D).

³⁴ *Id.* § 113.1(g)(8). The Commission has stated in the context of candidate use of a committee-owned vehicle that a regularly updated mileage log would satisfy these recordkeeping requirements. *See* Advisory Opinion 2001-03 (Meeks); Conciliation Agreement ¶ IV.9, MUR 6585 (Edolphus Towns, *et al.*) (noting that the Townses “did not keep a mileage log or other record to document the use of their committee-owned vehicle for campaign and non-campaign activities, as required by 11 C.F.R. § 113.1(g)(8)”).

³⁵ Resp. of Boebert Committee ¶ 14.

³⁶ The Boebert Committee’s Response appears to conflate an authorized committee’s “wide discretion in *making expenditures* to influence the candidate’s election” with its obligations to maintain adequate records with respect to the expenditures it chooses to make. *Id.* (emphasis added) (quoting Advisory Opinion 2002-05 (Gregory

1 However, given the Boebert Committee's uncontroverted assertion that it maintained
 2 "campaign travel records,"³⁷ and the recommendation that the Commission dismiss the allegation
 3 that Boebert and the Boebert Committee converted campaign funds to personal use, we do not
 4 believe it is worth the use of the Commission's limited resources to investigate to determine the
 5 adequacy of the Boebert Committee's records. Accordingly, we recommend that the
 6 Commission exercise its prosecutorial discretion to dismiss the allegation that the Boebert
 7 Committee failed to keep adequate records of Boebert's use of her personal vehicle for
 8 campaign-related purposes.³⁸

9 **C. The Commission Should Exercise Its Prosecutorial Discretion and Dismiss**
 10 **with Caution the Boebert Committee's Apparent Failure to Accurately**
 11 **Report Its Disbursements**

12 The Act and Commission regulations require political committees to report the name and
 13 address of each person to whom they make disbursements aggregating more than \$200 per
 14 election cycle for authorized committees, as well as the date, amount, and purpose of such
 15 payments.³⁹

16 The Boebert Committee's Response acknowledges that it misreported the purpose of its
 17 November 11, 2020 disbursement to Boebert, stating that only \$17,280 of the \$21,199.52
 18 disbursement was for mileage reimbursement, and that the remaining \$3,919.52 was for various

S. Jager)). While an authorized committee may reimburse a wide variety of campaign-related expenditures, committees do not have the same latitude with respect to satisfying their recordkeeping obligations.

³⁷ By contrast,

See also Second Gen.

Counsel's Rpt. at 10-11, MUR 6498 (Lynch for Congress) (recommending conciliation regarding personal use where candidate made expenditures for gasoline, tolls, and parking for a vehicle driven for mixed purposes but did not maintain records of the use); Certification ¶ 2 (Aug. 27, 2014), MUR 6498 (approving conciliation).

³⁸ *See Heckler*, 470 U.S. 821.

³⁹ 52 U.S.C. § 30104(b)(6); 11 C.F.R. § 104.3(b).

other campaign-related travel expenses.⁴⁰ Despite the Response's assertion that the Boebert Committee has corrected its reporting error,⁴¹ the most recent amended version of the Boebert Committee's 2020 Post-General Report does not.⁴² Nonetheless, due to the fact that the error did not result in any apparent under-reporting of the Boebert Committee's expenditures, as well as the low proportion and amount of the disbursement that was misreported, we recommend that the Commission exercise its prosecutorial discretion and dismiss with caution the Boebert Committee's apparent violation of 52 U.S.C. § 30104(b)(6) and 11 C.F.R. § 104.3(b) by failing to accurately report the purpose of the \$3,919.52 disbursed to Boebert for non-mileage-related travel expenses,⁴³ and direct the Committee to work with the Reports Analysis Division to amend its reports to reflect proper purposes.⁴⁴

IV. RECOMMENDATIONS

1. Dismiss pursuant to *Heckler v. Chaney* the allegation that Lauren Boebert and Lauren Boebert for Congress and Mike McCauley in his official capacity as treasurer violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.2 by converting campaign funds to personal use;
2. Dismiss pursuant to *Heckler v. Chaney* the allegation that Lauren Boebert for Congress and Mike McCauley in his official capacity as treasurer violated 52 U.S.C. § 30102(c) and 11 C.F.R. §§ 102.9 and 113.1(g)(8) by failing to maintain appropriate records;
3. Dismiss with caution pursuant to *Heckler v. Chaney* the allegation that Lauren Boebert for Congress and Mike McCauley in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(6) and 11 C.F.R. § 104.3(b) by failing to accurately

⁴⁰ Resp. of Boebert Committee ¶ 5 ("Inadvertently, the Committee Treasurer reported the purpose of the entire disbursement amount of \$21,199.52 as 'mileage reimbursement' . . .").

⁴¹ *Id.* ("The Committee has corrected this error by amending the filed report to show reimbursements for both travel expenses and mileage.").

⁴² Boebert Committee, Amended 2020 Post-General Report, Sched. B at 230 (Sept. 21, 2021).

⁴³ *See Heckler*, 470 U.S. 821.

⁴⁴ *See, e.g.*, Factual & Legal Analysis at 15, MUR 7639 (Ilhan for Congress, *et al.*) (showing Commission exercising its prosecutorial discretion and dismissing alleged reporting violations and "direct[ing] the Committee to work with RAD to amend its reports, if necessary, to reflect proper purposes").

report the purpose of \$3,919.52 of its November 11, 2020 disbursement to Lauren Boebert;

4. Direct Lauren Boebert for Congress and Mike McCauley in his official capacity as treasurer to work with the Reports Analysis Division to amend their disbursement purpose reporting as needed;

5. Approve the attached Factual and Legal Analysis;

6. Send the appropriate letters; and

7. Close the file.

Lisa J. Stevenson
Acting General Counsel

January 31, 2022

Date

Charles Kitcher

Charles Kitcher
Associate General Counsel for
Enforcement

Mark Allen

Mark Allen
Assistant General Counsel

Justine A. di Giovanni

Justine A. di Giovanni
Attorney