



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC MAIL

Jonathan M. Anderson
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April 12, 2022

RE: MUR 7876

Dear Mr. Anderson:

On February 10, 2021, the Federal Election Commission notified your client, Lauren Boebert for Congress and Mike McCauley in his official capacity as treasurer (the "Committee"), of a complaint indicating violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 5, 2022, the Commission, on the basis of the information provided in the complaint and information provided by your client, dismissed the following allegations and issues as a matter of prosecutorial discretion: (1) the allegation that your client violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.2 by converting campaign funds to personal use; (2) the allegation that your client 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; and (3) the allegation that your client violated 52 U.S.C. § 30104(b)(6) and 11 C.F.R. § 104.3(b) by failing to accurately report the purpose of \$3,919.52 of its November 11, 2020 disbursement to Lauren Boebert. Accordingly, the Commission closed its file in this matter.

Pursuant to 52 U.S.C. § 30104(b)(6) and 11 C.F.R. § 104.3(b), committees are required to accurately report the purposes of their disbursements. The Commission cautions the Committee to take steps to ensure that its conduct is in compliance with the Act and the Commission's regulations. The Commission directs the Committee to work with the Reports Analysis Division to amend its disbursement purpose reported as needed regarding the \$3,919.52 of its November 11, 2020 disbursement to Lauren Boebert that was not for mileage expenses as reported.

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 explains the Commission's findings, is enclosed for your information.

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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 black ink that reads "Mark Allen". The script is cursive and fluid.

Mark Allen
Assistant General Counsel

Enclosure:

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Lauren Boebert for Congress and Mike McCauley **MUR:** 7876
in his official capacity as treasurer
Lauren Boebert

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, the Commission dismisses 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, the Commission exercises its prosecutorial discretion and dismisses 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 directs 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

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

1 March 31, 2020, the Boebert Committee reported reimbursing Boebert \$1,059.03 for mileage for
 2 campaign-related travel using her personal vehicle.² Seven months later, on November 11, 2020,
 3 the Boebert Committee reportedly reimbursed her for \$21,199.52, also reported as for campaign-
 4 related mileage expenses.³ The Complaint alleges that, at the “standard reimbursement rate of
 5 57.5 cents per mile,” the November reimbursement indicates that Boebert drove 36,868 miles for
 6 campaign purposes in the seven months between disbursements.⁴ The Complaint alleges that it
 7 “strains credulity well beyond the breaking point to believe that Lauren Boebert could have
 8 driven 36,868 miles on campaign-related travel in a seven-month period,” and it observes that
 9 the *Denver Post* calculated that, based on analysis performed using, as the article described,
 10 “global positioning software to calculate the distance driven to, from, and between” Boebert’s
 11 publicized campaign events, she would only have driven a maximum of 17,628 miles on
 12 campaign travel for all of 2020.⁵ The Complaint alleges that the reimbursement instead
 13 represents campaign funds converted to Boebert’s personal use,⁶ and further alleges that the
 14 Boebert Committee failed to maintain mileage logs for Boebert’s use of her personal vehicle for
 15 campaign-related purposes.⁷

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).

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.

1 The Boebert Committee’s Response, which is joined by Boebert and the Boebert
 2 Committee’s treasurer,⁸ acknowledges that the Boebert Committee misreported the
 3 November 11, 2020 reimbursement as solely for mileage expenses, stating that the
 4 reimbursement was, in fact, for “various campaign travel expenses, which included hotel,
 5 baggage, Uber fees and private vehicle mileage according to the Committee’s records.”⁹ The
 6 Boebert Committee provided exhibits of what the Response represents are receipts for the non-
 7 mileage expenses, totaling \$3,919.52.¹⁰ The Boebert Committee states that it has “corrected this
 8 [reporting] error by amending the filed report to show reimbursements for both travel expenses
 9 and mileage,” but the most recent amendment of the Boebert Committee’s 2020 Post-General
 10 Report does not reflect this identified correction because it continues to list only a disbursement
 11 of \$21,199.52 to Boebert on November 11, 2020, for “mileage reimbursement.”¹¹

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

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.

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.

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

Commission regulations specify that travel expenses are evaluated on a case-by-case basis.¹⁹ Such expenses are not personal use “[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities.”²⁰ If a committee “uses

¹⁴ *Id.* ¶ 14.

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

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).

1 campaign funds to pay expenses associated with a vehicle that is used for both personal activities
2 beyond a *de minimis* amount and campaign or officer-holder-related activities, the portion of the
3 vehicle expenses associated with the personal activities is personal use.”²¹

4 Here, Respondents assert that Boebert drove 32,000 miles for campaign-related purposes
5 between April 1, 2020, and November 11, 2020, and that expenses associated with this
6 cumulative travel account for \$17,280 of the \$21,199.52 disbursed to her on November 11.²²

7 The Response includes as an exhibit a chart that it describes as a ledger of Boebert’s travel-
8 related expenses over the relevant time period, as well as apparent receipts for the non-mileage-
9 related expenditures,²³ but the ledger itself only contains a single line referring to “2020
10 Campaign Travel,” listing 32,000 miles equating to the reported disbursement of \$17,280.²⁴ As a
11 result of this imprecision, any portion of the disbursement for mileage expenditures over what
12 Boebert actually drove for campaign-related purposes would constitute conversion of campaign
13 funds to personal use.

14 On balance, the available information is not particularly revealing with respect to the
15 Complaint’s allegation of personal use. The Response does provide some acknowledgement of
16 overstatement of travel and the assertion of exactly 32,000 miles traveled can reasonably be
17 understood to be an estimate.²⁵ At the same time, though unsworn and not accompanied by an

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).

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 Resp. of Boebert Committee ¶ 5.

1 affidavit or declaration attesting to their accuracy and authenticity, the Response does provide
 2 information and specificity about Boebert’s reported travel, including receipts.²⁶ The Complaint
 3 acknowledges that Boebert’s district is “large,” and the calculation by the *Denver Post* that the
 4 most Boebert could have driven is 17,623 miles is based solely on publicly available
 5 information, disputed by the Response as non-comprehensive with respect to total campaign
 6 events, and framed with a description of Boebert as a “prolific, in-person campaigner.”²⁷ Taken
 7 together, this information does not provide a strong basis on which to dispute the Committee’s
 8 assertion that Boebert drove 32,000 miles for campaign-related purposes and, accordingly, to
 9 find reason to believe that a violation occurred. Thus, the Commission exercises its prosecutorial
 10 discretion²⁸ and dismisses the allegation that Boebert and the Boebert Committee violated 52
 11 U.S.C. § 30114(b) and 11 C.F.R. § 113.2 by converting campaign funds to personal use.

12 **B. The Commission Exercises Its Prosecutorial Discretion and Dismisses the**
 13 **Allegation that the Boebert Committee Failed to Keep Adequate Records of**
 14 **Boebert’s Mileage**

15 The Act requires a committee, through its treasurer, to keep an accurate account of
 16 receipts, disbursements, and cash-on-hand balances.²⁹ To accomplish this, the Act imposes on
 17 committees a series of recordkeeping and reporting requirements to be executed by the
 18 committee’s treasurer. The Act provides that committees must record the name and address of
 19 every person to whom a disbursement is made, and the date, amount, and purpose of the
 20 disbursement, and retain records related to each disbursement in excess of \$200.³⁰ As noted

²⁶ *Id.*, Ex. B.

²⁷ Compl. ¶ 10 (citing Wingerter, *supra* note 5).

²⁸ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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

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

1 above, Commission regulations provide that, if a committee “uses campaign funds to pay
 2 expenses associated with a vehicle that is used for both personal activities beyond a *de minimis*
 3 amount and campaign or officer-holder-related activities, the portion of the vehicle expenses
 4 associated with the personal activities is personal use.”³¹ For uses of campaign funds that are
 5 both personal use and campaign or officeholder use, “a contemporaneous log or other record
 6 must be kept to document the dates and expenses related to the personal use.”³²

7 In the Response, the Boebert Committee states that its records of Boebert’s mileage
 8 consist of Boebert’s “assessment of campaign mileage traveled in her private vehicle” “[b]ased
 9 on campaign travel records.”³³ Some “contemporaneous log or other record” is necessary for
 10 compliance with 11 C.F.R. § 113.1(g)(8), and, without more information, it is unclear whether
 11 Boebert’s assessment based on “campaign travel records” satisfies this requirement.

12 However, given the Boebert Committee’s uncontroverted assertion that it maintained
 13 “campaign travel records,”³⁴ and the Commission’s dismissal of the allegation that Boebert and
 14 the Boebert Committee converted campaign funds to personal use, the Commission does not
 15 believe it is worth the use of its limited resources to investigate to determine the adequacy of the
 16 Boebert Committee’s records. Accordingly, the Commission exercises its prosecutorial

³¹ 11 C.F.R. § 113.1(g)(1)(ii)(D).

³² *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)”).

³³ Resp. of Boebert Committee ¶ 14.

³⁴ *See* 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).

discretion to dismiss the allegation that the Boebert Committee failed to keep adequate records of Boebert's use of her personal vehicle for campaign-related purposes.³⁵

C. The Commission Exercises Its Prosecutorial Discretion and Dismisses with Caution the Boebert Committee's Apparent Failure to Accurately Report Its Disbursements

The Act and Commission regulations require political committees to report the name and address of each person to whom they make disbursements aggregating more than \$200 per election cycle for authorized committees, as well as the date, amount, and purpose of such payments.³⁶

The Boebert Committee's Response acknowledges that it misreported the purpose of its November 11, 2020 disbursement to Boebert, stating that only \$17,280 of the \$21,199.52 disbursement was for mileage reimbursement, and that the remaining \$3,919.52 was for various other campaign-related travel expenses.³⁷ Despite the Response's assertion that the Boebert Committee has corrected its reporting error,³⁸ the most recent amended version of the Boebert Committee's 2020 Post-General Report does not.³⁹ 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, the Commission exercises its prosecutorial discretion and dismisses 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

³⁵ See *Heckler*, 470 U.S. 821.

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

³⁷ Resp. of Boebert Committee ¶ 5 ("Inadvertently, the Committee Treasurer reported the purpose of the entire disbursement amount of \$21,199.52 as 'mileage reimbursement' . . .").

³⁸ *Id.* ("The Committee has corrected this error by amending the filed report to show reimbursements for both travel expenses and mileage.").

³⁹ Boebert Committee, Amended 2020 Post-General Report, Sched. B at 230 (Sept. 21, 2021).

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- 1 report the purpose of the \$3,919.52 disbursed to Boebert for non-mileage-related travel
- 2 expenses,⁴⁰ and directs the Committee to work with the Reports Analysis Division to amend its
- 3 reports to reflect proper purposes.⁴¹

⁴⁰ See *Heckler*, 470 U.S. 821.

⁴¹ 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”).