



**FEDERAL ELECTION COMMISSION  
1050 FIRST STREET, N.E.  
WASHINGTON, D.C. 20463**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	
Nebraska Democratic Party and Ted	)	MUR 7907
Kessler in his official capacity as	)	
treasurer	)	
	)	

**STATEMENT OF REASONS OF CHAIRMAN ALLEN J. DICKERSON  
AND COMMISSIONERS SEAN J. COOKSEY AND JAMES E. “TREY” TRAINOR, III**

This Matter arose from a Complaint alleging that the Nebraska Democratic Party (“NDP”) and Ted Kessler in his official capacity as treasurer (together, the “Committee”) used nonfederal funds to pay employee salaries during the 2020 election cycle in violation of the Federal Election Campaign Act of 1971, as amended (“FECA” or the “Act”), and Commission regulations. The relevant provisions require state party committees to pay employees with 100% federal funds<sup>1</sup> when those employees spend more than 25% of their time in a calendar month on federal election activity (“FEA”) or activities in connection with a federal election.<sup>2</sup> The Complaint involves work that named individuals allegedly did relating to Kara Eastman’s 2020 candidacy to represent Nebraska’s Second Congressional District and Joe Biden’s 2020 candidacy for President. According to the Commission’s Office of General Counsel (“OGC”), the Complaint also raises questions regarding whether the Committee failed to report coordinated party expenditures and in-kind contributions to two federal committees, Eastman for Congress and Biden for President.<sup>3</sup>

**I. FACTUAL BACKGROUND**

The Complaint alleges that the Committee used nonfederal funds to pay employees who spent more than 25% of their time on FEA or activities in connection

<sup>1</sup> “Federal funds” are “funds that comply with the limitations, prohibitions, and reporting requirements of the Act.” 11 C.F.R. § 300.2(g).

<sup>2</sup> See 52 U.S.C. § 30101(20); 11 C.F.R. §§ 106.7; 300.33.

<sup>3</sup> See First General Counsel’s Report (“FGCR”) at 2.

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with a federal election.<sup>4</sup> In support, Complainant cites her asserted “firsthand knowledge” as former chair of the Douglas County Democratic Party, and “public information”—specifically, statements on the Committee’s website and on social media, as well as named individuals’ LinkedIn profiles.<sup>5</sup>

In particular, the Complaint and its Supplement attach:

- A post from the Committee website announcing nine new hires “to help us elect Democrats up and down the ballot this November;”<sup>6</sup>
- A page from the Committee website listing some of the same individuals with job titles involving the “coordinated campaign;”<sup>7</sup>
- A website allowing people to sign up for “office hours . . . hosted by Kara Eastman for Congress” with one of the named individuals;<sup>8</sup>
- A Facebook post by Eastman referring to one of the named individuals as “our organizer;”<sup>9</sup>
- A Facebook post by Eastman referring to one of the named individuals as “our very own field director;”<sup>10</sup> and
- LinkedIn profiles for several named individuals, in which:
  - One individual described himself as “Coordinated Campaign Field Organizer” at “Nebraska Democrat” from July–November 2020, with the following description: “Recruited and trained over 75+ volunteers in Douglas County; Lead 50+ OutVote shifts and ThruTalk shifts;”<sup>11</sup>
  - One individual described herself as “Mobilization Director” at “Nebraska Democratic Party” from May–November 2020, stating, “Primary duties included writing digital voter contact scripts, design digital organizing [illegible] and manage corresponding data, work with the field director on sequencing flow [illegible];”<sup>12</sup>
  - One individual described herself as “Regional Field Organizer” at “Nebraska Democratic Party” from June–November 2020, stating: “Recruited and trained over 150 volunteers to call and text voters in the district; Led phonebank sessions while managing Thru Talk system and

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<sup>4</sup> See, e.g., *id.* at 3–4; Compl.

<sup>5</sup> Compl. at 1; Supp’l Compl.

<sup>6</sup> Compl. at Ex. 1.

<sup>7</sup> *Id.* at Ex. 2.

<sup>8</sup> *Id.* at Ex. 3.

<sup>9</sup> *Id.* at Ex. 4.

<sup>10</sup> *Id.* at Ex. 5.

<sup>11</sup> Supp’l Compl. at 2.

<sup>12</sup> *Id.* at 5.

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motivating volunteers [illegible] shifts; Cut turfs lists and created maps for literature drops; Created a neighborhood leaders' program with 28 precinct leaders that organized [illegible] greet events, yard sign deliveries, and other campaign outreach events;"<sup>13</sup>

- One individual described herself as "Coordinated Campaign Field Director" at "Nebraska Democratic Party" from June–November 2020 listing "Key Outcomes" as "Played Key Role in Biden/Harris Winning CD-2; Kara Eastman won more votes (155,171) than any Democrat in Nebraska Congressional history; Direct Supervision of 60 Organizers and Super Volunteers; Oversaw training and coordination of hundreds of volunteers" and listing additional "Overall Outcomes;"<sup>14</sup>
- One individual described herself as "Field Organizer" at "Nebraska Democratic Party" from August–November 2020;<sup>15</sup>
- One individual described himself as "Operations Director" at "Nebraska for Biden Coordinated Campaign" from August–November 2020; and<sup>16</sup>
- One individual described herself as "Digital Organizer" at "Joe Biden for President – Nebraska Coordinated Campaign" from September–December 2020.<sup>17</sup>

OGC also identified the following instances where named individuals' work relating to Eastman for Congress was highlighted:

- One individual described herself on Twitter as "NE-02 Mobilization Director," and, in August 2020, tweeted "Eastman team's FIRST night of our #weekendofaction ... THANK YOU to each and everyone one [sic] of you who works so hard for this campaign;"<sup>18</sup>
- In October 2020:
  - One individual tweeted "being a part of @karaforcongress journey has been the most enriching experience of my life. We have built such an incredible team & I am honored to be the Field Director. We will continue to give the next 31+ days our everything;"<sup>19</sup>

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<sup>13</sup> *Id.* at 7.

<sup>14</sup> *Id.* at 9.

<sup>15</sup> *Id.* at 10.

<sup>16</sup> *Id.* at 11.

<sup>17</sup> *Id.* at 12.

<sup>18</sup> FGCR at 6.

<sup>19</sup> *Id.* at 5–6.

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- The *New York Times* described one named individual as “working on behalf of Kara Eastman, the Democratic candidate in Nebraska’s Second Congressional District;”<sup>20</sup> and,
- Eastman’s campaign manager tweeted “[t]he amazing turnout for Dems in #ne02 is being led by super-field champions from @karaforcongress,” followed by a list of Twitter handles that “appear to be associated with employees named in the Complaint and Supplemental Complaint.”<sup>21</sup>

Finally, OGC identified the following statements by two named individuals relating to Biden for President:

- One individual referred to herself in an Instagram broadcast after the 2020 election as a member of “the Biden team,” stating, “my team was just focused on Biden,”<sup>22</sup> and,
- In June 2020, one individual stated, in a video posted on YouTube, that Biden organizing staff were “going to be transitioned into state parties,” and that “now it just looks different in something called the coordinated campaign; so you can kind of think of these state parties as extensions of the Biden campaign.”<sup>23</sup>

The Committee’s response states that its staff “oversaw volunteer efforts across the state for all elections, both federal and nonfederal.”<sup>24</sup> The Committee acknowledges paying the named employees an allocation of nonfederal and federal funds (consistent with its reports to the Commission, which also reflect that the Committee paid other employees not named in the Complaint with exclusively federal funds).<sup>25</sup> The Committee states that, while employed by NDP, the named individuals worked on both federal and nonfederal races, and disputes that any such individual exceeded the 25% threshold such that they had to be paid with exclusively federal funds.<sup>26</sup>

In support, the Committee provided a declaration from its Executive Director, Jim Rogers, attesting that, “[b]ased on my recollection, and NDP’s monthly payroll logs, the listed employees did not spend more than 25% of any time during those months

<sup>20</sup> *Id.* at 7.

<sup>21</sup> *Id.* at 7

<sup>22</sup> *Id.* at 8.

<sup>23</sup> *Id.* at 9.

<sup>24</sup> Resp. at 2.

<sup>25</sup> See, e.g., FGCR at nn.14, 16–17, 20–21, 23, 26–28, 32, 36–37; Resp. at 3 & n.9.

<sup>26</sup> See, e.g., Resp. at 3.

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working on activity directly in connection with a federal election or federal election activities as defined by 52 U.S.C. § 30101(20) and 11 C.F.R. § 303.33(d)(1).”<sup>27</sup>

The Response attaches job descriptions for the named individuals,<sup>28</sup> and Rogers states that “most of the LinkedIn job titles and descriptions” the Complainant submitted “are accurate.”<sup>29</sup> Although “[t]hree of these profiles incorrectly describe the employee’s respective title or their activities,” Rogers states that “NDP has no control over the social media of former staff.”<sup>30</sup> Rogers further attests, with respect to specific attachments to the Complaint, that:

- The individual who Eastman referred to as “our organizer” in a June 2, 2020 Facebook post<sup>31</sup> did not begin working for the Committee until June 15, 2020; and,<sup>32</sup>
- Eastman’s post referring to one individual as “our very own field director”<sup>33</sup> was made on June 18, 2020, several days after that individual left employment with Eastman for Congress and joined the Committee’s staff, and the Committee contacted Eastman for Congress and requested that it cease referring to former staff as campaign staff.<sup>34</sup>

Finally, the Committee notes that the Complainant “was not involved in the NDP’s day-to-day operations.”<sup>35</sup> According to Rogers’s declaration, Complainant “was a nonfederal candidate for local office,” and consequently “her only involvement with any of the staff named in the Complaint or Supplement would have been limited to her role as a nonfederal candidate.”<sup>36</sup>

Based on the foregoing, OGC recommended that the Commission find reason to believe that the Committee violated 11 C.F.R. § 300.33(d)(2) by using nonfederal funds to pay employees who spent more than 25% of their compensated time on FEA

<sup>27</sup> Resp. at Ex. C, Declaration of Jim Rogers (“Rogers Decl.”) ¶ 5; *see also id.* ¶ 11.

<sup>28</sup> Resp. at Ex. B.

<sup>29</sup> Rogers Decl. ¶ 10.

<sup>30</sup> *Id.*

<sup>31</sup> Compl. at Ex. 4.

<sup>32</sup> Rogers Decl. ¶ 8.

<sup>33</sup> Compl. at Ex. 5.

<sup>34</sup> Rogers Decl. ¶ 9.

<sup>35</sup> Resp. at 1.

<sup>36</sup> Rogers Decl. ¶ 3.

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or activities in connection with a federal election.<sup>37</sup> OGC also concluded that “at least some of the named employees were paid salaries by the Committee while they effectively worked as employees of the Eastman campaign,” or “while they worked on behalf of the Biden campaign.”<sup>38</sup> On this basis, OGC recommended finding reason to believe that the Committee violated 52 U.S.C. § 30104(b) by failing to disclose in-kind contributions and coordinated party expenditures.<sup>39</sup>

## II. LEGAL FRAMEWORK

### a. Salary Payments

Under FECA, when state committees of political parties make expenditures or disbursements for FEA, they must do so using funds subject to the Act’s limitations, prohibitions, and reporting requirements.<sup>40</sup> The Act defines four types of FEA, including “services provided during any month by an employee of a State . . . committee of a political party who spends more than 25 percent of that individual’s compensated time during that month on activities in connection with a Federal election.”<sup>41</sup>

To give effect to this statutory provision, Commission regulations provide that state party committees must pay staff salaries with 100% federal funds when staff spend over 25% of their time on FEA or activities in connection with a federal election.<sup>42</sup> When staff spend less than 25% of their time on FEA or activities in connection with a federal election, state party committees may pay them with a combination of federal and nonfederal funds based on the administrative-expense allocation ratio.<sup>43</sup> If staff spend no time on FEA or activities in connection with a federal election, their salaries may be paid using exclusively nonfederal funds.<sup>44</sup> Additionally, state parties “must keep a monthly log of the percentage of time each employee spends in connection with a Federal election.”<sup>45</sup>

<sup>37</sup> FGCR at 21.

<sup>38</sup> *Id.* at 19.

<sup>39</sup> FGCR at 19–20, 21.

<sup>40</sup> 52 U.S.C. § 30125(b)(1).

<sup>41</sup> *Id.* § 30101(20)(A)(iv).

<sup>42</sup> 11 C.F.R. §§ 106.7(d)(1)(ii), 300.33(d)(2).

<sup>43</sup> *Id.* §§ 106.7(d)(1)(i), 300.33(d)(1).

<sup>44</sup> *Id.* §§ 106.7(d)(1)(iii), 300.33(d)(3).

<sup>45</sup> *Id.* § 106.7(d)(1).

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**b. In-kind Contributions and Coordinated Party Expenditures**

A state party committee may contribute up to \$5,000 per election to a candidate committee.<sup>46</sup> State party committees may also “make expenditures in connection with the general election campaign of candidates for Federal office” in coordination with the candidates, subject to additional contribution limits.<sup>47</sup> Only the national committee of a political party may make coordinated party expenditures in connection with a presidential campaign, unless it assigns its authority to do so.<sup>48</sup> Both national and state party committees may make coordinated party expenditures in connection with other federal elections.<sup>49</sup>

Any expenditure made by the Committee in “cooperation, consultation, or concert, with, or at the request or suggestion of” Eastman, Biden, their authorized political committees, or their agents count against the Committee’s contribution or coordinated party expenditure limits as to those committees.<sup>50</sup> Under Commission regulations, expenditures for rent, personnel, and other “day-to-day costs of political committees” need not be attributed to individual candidates “unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.”<sup>51</sup>

**c. Requisites of Complaints**

In addition to the provisions above, it is also helpful for purposes of our votes in this Matter to highlight the requisites of complaints filed with the Commission. In particular, “[a]ll statements made in a complaint are subject to the statutes governing perjury and to 18 U.S.C. § 1001,” and “[t]he complaint should differentiate between statements based upon personal knowledge and statements based upon information and belief.”<sup>52</sup> “Statements [in a complaint] which are not based upon personal

<sup>46</sup> 52 U.S.C. § 30116(a)(2)(A); *Archive of Contribution Limits*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/archived-contribution-limits/> (visited July 28, 2022).

<sup>47</sup> 52 U.S.C. § 30116(d); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 443 (Jan. 3, 2003).

<sup>48</sup> 11 C.F.R. §§ 109.32(a)(1); 109.33(a).

<sup>49</sup> *See id.* § 109.32(b).

<sup>50</sup> See 52 U.S.C. § 30116(a)(7)(B)(i) (“expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate.”).

<sup>51</sup> 11 C.F.R. § 106.1(c)(1).

<sup>52</sup> *Id.* § 111.4(c).

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knowledge should be accompanied by an identification of the source of information which gives rise to the complainants belief in the truth of such statements.”<sup>53</sup>

### **III. ANALYSIS**

The record before the Commission does not persuade us that there is reason to believe that the Committee violated the Act.

#### **a. Salary Payments**

Rogers’s declaration refutes the alleged violation of 11 C.F.R. § 300.33(d)(2). Indeed, it attaches a list of the employees named in the Complaint, states “the months in 2020 that the payroll of those employees was paid with an allocated combination of federal and non-federal dollars,” and attests that such employees “did not spend more than 25% of any time during those months working on activity directly in connection with a federal election or federal election activities as defined by 52 U.S.C. § 30101(20) and 11 C.F.R. § 303.33(d)(1).”<sup>54</sup> For avoidance of doubt, Rogers further attests that each named employee “worked on both federal and nonfederal activity and were paid accordingly,” that is, “using allocated funds from the time of hiring through the end of the election cycle.”<sup>55</sup>

We find this credible. In addition to being a sworn statement subject to penalty of perjury, the affiant—as the Committee’s Executive Director, who “oversee[s] all political and administrative operations of the NDP, including those that took place during the 2020 election”<sup>56</sup>—is in a position to have the knowledge asserted. The declaration also identifies the source of this information, as Commission regulations require:<sup>57</sup> “my recollection, and NDP’s monthly payroll logs.”<sup>58</sup>

We have not been presented with compelling information (in the Complaint or elsewhere in the record) that contradicts Rogers’s declaration. The Complainant claims “personal knowledge” that named individuals exceeded the 25% threshold while employed by NDP based on her status as the former chair of the Douglas County Democratic Party. But this former county-party office would not impart the Complainant with knowledge of how NDP employees apportioned their time among

<sup>53</sup> *Id.* § 111.4(d)(2).

<sup>54</sup> Rogers Decl. ¶¶ 4, 5.

<sup>55</sup> *Id.* ¶¶ 6, 4.

<sup>56</sup> *Id.* ¶ 1.

<sup>57</sup> See 11 C.F.R. § 111.4(c), (d)(2).

<sup>58</sup> Rogers Decl. ¶ 5.

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various activities during the 2020 election cycle.<sup>59</sup> Rogers's declaration underscores this, attesting that the Complainant's "only involvement with any of the staff named in the Complaint or Supplement would have been limited to her role as a nonfederal candidate."<sup>60</sup>

The remainder of the record contains information that OGC and the Complainant gleaned from the internet, primarily social media. It does not undermine our determination that Rogers's declaration is credible, for at least two reasons.

First, this external information is not inconsistent with Rogers's declaration. Although the record reflects that named individuals highlighted or emphasized their work's potential to impact Eastman for Congress or Biden for President, this is consistent with their jobs on a so-called coordinated campaign: "to help [] elect Democrats up and down the ballot."<sup>61</sup> It is also understandable that, in the context of such work, a Committee employee might engage with volunteers regarding what were, apparently, two of the most prominent races on that ballot: Nebraska's Second Congressional District and President of the United States. Such emphasis reveals nothing about the percentage of time any employee actually spent on any particular activities. Moreover, Rogers's declaration offers additional context, explaining that the two individuals mentioned by Eastman for Congress as having roles with that committee were, in fact, employed by that committee shortly before beginning employment at NDP.<sup>62</sup>

Second, professionals commonly emphasize certain aspects of their work experience (particularly when trumpeting such experience on social media). Many in the workforce engage in resumé puffery, or simply highlight the most high-profile matters that their work has touched. Thus, it is unremarkable if Committee employees did so here by emphasizing the fact that Eastman and Biden were among those candidates they worked to help elect in the 2020 election cycle. We do not find an individual's self-promotion on the internet to be determinative as to the percentage of compensated time that individual spent on particular activities. Indeed, even taking the apparent resumé puffery seen here at face value, these vague representations do not overcome Rogers's sworn declaration—based on substantiated personal knowledge—that each of the named individuals stayed below the 25% threshold while employed by the Committee.

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<sup>59</sup> Cf. 11 C.F.R. § 111.4(c), (d)(2).

<sup>60</sup> Rogers Decl. ¶ 3.

<sup>61</sup> Compl. at Ex. 1.

<sup>62</sup> See, e.g., Rogers Decl. ¶¶ 8, 9.

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Accordingly, we declined to find reason to believe that the Committee violated 11 C.F.R. § 300.33(d)(2) by using nonfederal funds to pay employees who spent more than 25% of their compensated time on FEA or activities in connection with a federal election.

### **b. In-kind Contributions and Coordinated Party Expenditures**

For many of the same reasons, we declined to find reason to believe that the Committee violated 52 U.S.C. § 30104(b) by failing to disclose in-kind contributions and coordinated party expenditures.

OGC's recommendation in this regard rests on its conclusion that "some of the named employees were paid salaries by the Committee while they effectively worked as employees of the Eastman campaign," or "while they worked on behalf of the Biden campaign."<sup>63</sup> OGC cites three datapoints in support of that contention: (1) a tweet where the Eastman campaign's *actual former field* director identified herself as Eastman's field director after leaving the Eastman campaign for NDP; (2) another individual identifying herself online as part of the "Eastman team;" and (3) a third individual identifying of herself on Instagram as part of the "Biden team."<sup>64</sup>

This is insufficient on its face to find reason to believe that any of the named individuals "effectively worked as employees" of Eastman for Congress or Biden for President—particularly in the face of Rogers's sworn statement that "the named employees did not spend over 25% of their time on activities in connection with a federal election or federal election activities" while employed by NDP.<sup>65</sup> After all, "effectively working as an employee" would certainly amount to something closer to 100% of an individual's compensated time. Moreover, there is no indication that NDP made any salary payments to any named individual in "cooperation, consultation, or concert, with, or at the request or suggestion of" Eastman for Congress or Biden for President.<sup>66</sup> The record is similarly bereft of any indication that any salary payment was "made on behalf of a clearly identified candidate and . . . can be directly attributed to that candidate."<sup>67</sup>

Accordingly, we declined to find reason to believe that the Committee violated 52 U.S.C. § 30104(b) by failing to disclose in-kind contributions or coordinated party expenditures.

<sup>63</sup> FGCR at 19.

<sup>64</sup> *Id.*

<sup>65</sup> Rogers Decl. ¶ 11.

<sup>66</sup> 52 U.S.C. § 30116(a)(7)(B)(i).

<sup>67</sup> 11 C.F.R. § 106.1(c)(1).

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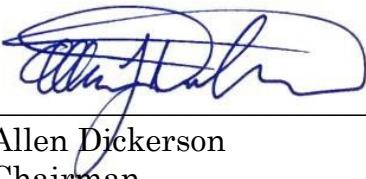
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#### IV. CONCLUSION

In light of the foregoing, we declined to find reason to believe that the Committee violated the Act, and instead voted to dismiss the allegations in this Matter.<sup>68</sup>

July 28, 2022

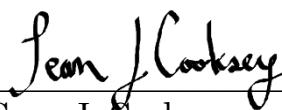
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Allen Dickerson  
Chairman

July 28, 2022

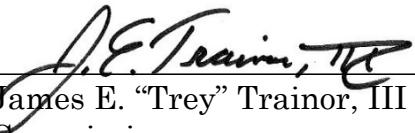
Date



Sean J. Cooksey  
Commissioner

July 28, 2022

Date



James E. "Trey" Trainor, III  
Commissioner

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<sup>68</sup> Amended Certification, MUR 7907 (Nebraska Democratic Party, *et al.*) (June 22, 2022).