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**BEFORE THE  
FEDERAL ELECTION COMMISSION**

End Citizens United  
Tiffany Muller  
100 M St. SE  
Washington, DC 20003

**MUR 7951**

Complainant,

v.

Tyler Kistner  
14870 Granada Avenue, Suite 1035  
Apple Valley, MN 55124

Kistner for Congress  
14870 Granada Avenue, Suite 1035  
Apple Valley, MN 55124

Thomas Datwyler as Treasurer for Kistner for Congress  
PO Box 183  
Hudson, WI 54016

Respondents.

**COMPLAINT**

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Tyler Kistner, Kistner for Congress (the “Committee”), and Thomas Datwyler in his official capacity as treasurer (collectively, “Respondents”), for apparent violations of the Federal Election Campaign Act of 1971, as amended (the “Act”) and Federal Election Commission (the “FEC” or “Commission”) regulations. According to public records, Kistner received over \$26,000 in mileage reimbursements from the Committee between August 2020 and July 2021. However, the amount of the reimbursements strongly suggest that Kistner was improperly reimbursed. Specifically, in total, based on the Internal Revenue Services’ (“IRS’s”) standard mileage reimbursement rate for 2020 and 2021, Kistner was reimbursed for driving the equivalent of approximately 45,850 miles in his personal vehicle to conduct campaign-related activities in less than a year, in a district that

covers a total of approximately 3,000 square miles and is roughly 120 miles wide at its farthest borders.<sup>1</sup> Such a large reimbursement has been described as “unusually high...for his mostly suburban district.”<sup>2</sup>

These facts “raise questions about” the Committee’s spending and transparency, and strongly suggest that Kistner may have violated the Act’s prohibition on using campaign funds for personal use by receiving impermissible reimbursements to pay for travel that was not associated with his campaign.<sup>3</sup> Consequently, the FEC should immediately investigate the facts and potential violations and take appropriate remedial action against Respondents.

### **FACTUAL BACKGROUND**

Tyler Kistner ran for Minnesota’s second congressional district in 2020 and registered the Committee as his principal campaign committee.<sup>4</sup> After losing the 2020 election, Kistner announced his candidacy again for Minnesota’s second congressional district and registered the Committee as his principal campaign committee for the 2022 election.<sup>5</sup>

Between August 2020 and July 2021, the Committee reimbursed Kistner \$26,177.65 for mileage for campaign-related travel using his personal vehicle. In 2020, the IRS’s standard mileage reimbursement rate was \$.575 per mile, and for 2021, the rate is \$.56 per mile.<sup>6</sup> If Kistner used those rates, it would mean that he had driven approximately 45,850 miles in his

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<sup>1</sup> Briana Bierschbach and Hunter Woodall, “‘That’s a lot’: Watchdogs say Tyler Kistner’s campaign mileage reimbursements raise questions,” STAR TRIBUNE (Nov. 17, 2021), <https://www.startribune.com/thats-a-lot-experts-say-tyler-kistners-campaign-mileage-reimbursements-raise-questions/600117791/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Kistner for Congress, FEC Form 1, Statement of Organization (Jan. 2, 2020), <https://docquery.fec.gov/pdf/209/202001029166894209/202001029166894209.pdf>.

<sup>5</sup> Kistner for Congress, FEC Form 1, Statement of Organization (Apr. 20, 2021), <https://docquery.fec.gov/pdf/724/202104209443997724/202104209443997724.pdf>.

<sup>6</sup> IRS, Standard Mileage Rates (updated Nov. 26, 2021), <https://www.irs.gov/tax-professionals/standard-mileage-rates>.

personal vehicle to conduct campaign-related activities in less than a year.<sup>7</sup> The Committee reimbursed Kistner the total \$26,177.65 in five separate payments:

|    | <b>Mileage Reimbursement Amount</b> | <b>Total Miles at IRS Rate</b> | <b>Payment Date</b> |
|----|-------------------------------------|--------------------------------|---------------------|
| 1. | \$9,314.37                          | 16,198.9                       | Aug. 11, 2020       |
| 2. | \$3,946.90                          | 6,864.17                       | Oct. 2, 2020        |
| 3. | \$3,010.41                          | 5,235.5                        | Nov. 14, 2020       |
| 4. | \$2,963.99                          | 5,154.77                       | Feb. 8, 2021        |
| 5. | \$6,941.98                          | 12,396.39                      | July 6, 2021        |
|    | <b>TOTAL: \$26,177.65</b>           | <b>TOTAL: 45,840.73 miles</b>  |                     |

As the chart above indicates, the Committee's first payment to Kistner was on August 11, 2020 for \$9,314.37.<sup>8</sup> This payment would have covered Kistner driving approximately 16,199 miles using the IRS's 2020 reimbursement rate. Just two months later, on October 2, 2020, the Committee paid Kistner \$3,946.90, suggesting Kistner drove another 6,865 miles using the IRS's 2020 reimbursement rate.<sup>9</sup> A little over one month later on November 14, 2020, the Committee paid Kistner another \$3,010.41, which comes out to 5,235 miles using the IRS's 2020 reimbursement rate.<sup>10</sup> Then, three months after losing the 2020 election but two months prior to announcing his candidacy for 2022, Kistner was paid \$2,963.99 by the Committee on February

<sup>7</sup> IRS, Standard Mileage Rates (updated Nov. 26, 2021), <https://www.irs.gov/tax-professionals/standard-mileage-rates>.

<sup>8</sup> Kistner for Congress, October Quarterly Report at 550 (Oct. 15, 2020), <https://docquery.fec.gov/pdf/512/202010159295388512/202010159295388512.pdf>.

<sup>9</sup> Kistner for Congress, Pre-General Election Report at 224 (Oct. 22, 2020), <https://docquery.fec.gov/pdf/004/202010229332839004/202010229332839004.pdf>.

<sup>10</sup> Kistner for Congress, Post-General Election Report at 430 (Dec. 2, 2020), <https://docquery.fec.gov/pdf/405/202012029337394405/202012029337394405.pdf>.

8, 2021.<sup>11</sup> This payment would mean Kistner drove approximately 5,155 miles using the IRS's 2021 reimbursement rate. Most recently, on July 6, 2021, the Committee paid Kistner \$6,941.98, which would mean Kistner drove nearly 12,397 miles using the IRS's 2021 reimbursement rate since the Committee's last reimbursement.<sup>12</sup> The sum of all five payments from the Committee indicates that Kistner drove approximately 45,840 miles using the applicable IRS reimbursement rates.

Minnesota's second congressional district covers a total of approximately 3,000 square miles and is roughly 120 miles wide at its farthest borders.<sup>13</sup>

### LEGAL ANALYSIS

The Act prohibits the conversion of campaign funds to personal use.<sup>14</sup> The prohibition includes using campaign funds "to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign... including... a noncampaign-related automobile expense."<sup>15</sup> In other words, if a candidate would incur the expense regardless of whether they are a candidate, campaign funds may not be used to pay for the expense.

The Commission determines, on a case-by-case basis, whether the use of campaign funds to pay for travel or vehicle expenses that would exist irrespective of a candidate's campaign and, therefore, are for personal use.<sup>16</sup> Commission regulations specify that "the portion of the vehicle expenses associated with the [candidate's] personal activities is personal use where the candidate

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<sup>11</sup> Kistner for Congress, April Quarterly Report at 84 (Apr. 15, 2021), <https://docquery.fec.gov/pdf/600/202104159443485600/202104159443485600.pdf>.

<sup>12</sup> Kistner for Congress, October Quarterly Report at 181 (Oct. 15, 2021), <https://docquery.fec.gov/pdf/681/202110159467463681/202110159467463681.pdf>.

<sup>13</sup> Briana Bierschbach and Hunter Woodall, "That's a lot": Watchdogs say Tyler Kistner's campaign mileage reimbursements raise questions," STAR TRIBUNE (Nov. 17, 2021), <https://www.startribune.com/thats-a-lot-experts-say-tyler-kistners-campaign-mileage-reimbursements-raise-questions/600117791/>.

<sup>14</sup> 52 U.S.C. § 30114(b)(1).

<sup>15</sup> *Id.* § 30114(b)(2)(C).

<sup>16</sup> 11 C.F.R. § 113.1(g)(1)(ii).

uses campaign funds “to pay expenses associated with a vehicle that is used for both personal activities beyond a *de minimis* amount and campaign [activities]” unless the campaign is reimbursed within 30 days of the expenses associated with personal activities.<sup>17</sup> Further, the use of campaign funds “to pay expenses associated with travel that involves both personal activities and campaign [activities]” where “the incremental expenses that result from the personal activities are personal use” unless the campaign is reimbursed within 30 days of the expenses associated with the personal activities.<sup>18</sup> The FEC has approved the use of the IRS reimbursement rate to calculate the mileage cost.<sup>19</sup>

The Act also imposes robust record-keeping and reporting requirements on the Committee. Each treasurer is required to keep an account of “the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement... including a receipt, invoice, or canceled check for each disbursement in excess of \$200.”<sup>20</sup> The Committee must also keep records “including vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness” for matters required to be reported, such as disbursements for more than \$200.<sup>21</sup> The Commission has opined that to satisfy the recordkeeping requirement, a candidate using their personal vehicle for campaign and personal activities should use a “mileage log” as part of their campaign committee’s accounting records.<sup>22</sup>

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<sup>17</sup> *Id.* § 113.1(g)(1)(ii)(D).

<sup>18</sup> *Id.* § 113.1(g)(1)(ii)(C).

<sup>19</sup> *See* Advisory Op. 2001-03 (Meeks) at 3.

<sup>20</sup> 52 U.S.C. § 30102(c)(5).

<sup>21</sup> 11 C.F.R. § 104.14(b)(1).

<sup>22</sup> Advisory Op. 2001-03 (Meeks).

It appears Kistner violated the Act and Commission regulations by having the Committee reimburse him for personal use of his vehicle during his 2020 and 2022 campaigns. As noted above, Kistner was reimbursed for mileage on five separate occasions totaling \$26,177.65 in nearly a one-year period. Using the IRS reimbursement rate, that would be the equivalent to driving approximately 45,840 miles. However, given the size of the district (3,000 square miles and approximately 120 miles wide), it is highly unlikely that Kistner drove over 45,000 miles for campaign-related travel during that one year. It seems equally dubious that Kistner drove even 6,865 miles in only two months between August and October 2020 or 5,235 miles between October 2020 and mid-November 2020. Those distances seem nearly impossible given, for example, the Committee's headquarters was only 20 miles from Kistner's hometown of Prior Lake.<sup>23</sup> In fact, the total 45,850 miles for which the Committee paid Kistner equates to "driving the width of the United States more than 16 times."<sup>24</sup>

To date, there is no evidence that Kistner reimbursed the Committee for any vehicle expenses associated with his personal activities. A spokesperson for the Committee has indicated that all Committee expenses are thoroughly logged and reviewed.<sup>25</sup> What those logs contain and the validity of them is of utmost importance given the law's strict prohibition on personal use of campaign funds.

### **REQUESTED ACTION**

As shown, Respondents appear to have violated the Act and Commission regulations by converting campaign funds to personal use through the payment of vehicle expenses that do not

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<sup>23</sup> Briana Bierschbach and Hunter Woodall, "That's a lot': Watchdogs say Tyler Kistner's campaign mileage reimbursements raise questions," Star Tribune (Nov. 17, 2021), <https://www.startribune.com/thats-a-lot-experts-say-tyler-kistners-campaign-mileage-reimbursements-raise-questions/600117791/>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

appear to be for campaign-related activities. As such, we respectfully request that the Commission immediately investigate these violations, take all appropriate remedial measures, and enjoin Respondents from further violations of the law.

Sincerely



End Citizens United  
Tiffany Muller  
100 M St. SE  
Washington, DC 20003

SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of December 2021.

Mark Andrews

Notary Public

My Commission Expires:

MARK ANDREWS  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires July 14, 2024

