



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 ) MURs 7951 & 8003  
Kistner for Congress, *et al.* )  
 )

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

The Complaints alleged that Tyler Kistner and his campaign committee—Kistner for Congress (the “Committee”)—converted campaign funds to personal use by reimbursing Kistner for travel in his personal vehicle that exceeded his actual campaign travel, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

Kistner and the Committee denied the allegations and affirmed that all reimbursed mileage was for Kistner’s campaign-related travel. As explained below, because we concluded that the Complaints failed to meet the evidentiary standard for a finding of reason to believe, we declined to support the Office of General Counsel’s (“OGC”) recommendation to launch an investigation.

**I. Background**

Tyler Kistner ran for the U.S. House of Representatives in Minnesota’s Second Congressional District in 2020 and 2022. As currently drawn, the district includes the south Twin Cities metro area and parts of southeastern Minnesota, including all of Scott, Dakota, and Goodhue counties, part of northern and eastern Rice County, southern Washington County and northern Wabasha County.<sup>1</sup>

The Complaints maintained that, according to reports filed with the Commission, the Committee reimbursed Kistner a total of \$32,944.41 between August 11, 2020, and January 3, 2022 (a period spanning both the 2020 and 2022 election cycles) for campaign-related mileage,<sup>2</sup>

<sup>1</sup> Congressional Maps, Minn. Sec. of State (last accessed Jan. 31, 2023), *available at* <https://www.sos.state.mn.us/election-administration-campaigns/data-maps/congressional-maps>.

<sup>2</sup> Complaint at 1, MUR 8003 (identifying \$31,587.81 in mileage reimbursements from the Committee to Kistner from August 11, 2020, to October 1, 2021, and a \$1,356.60 mileage reimbursement dated January 3, 2022); Complaint at 3, MUR 7951 (identifying \$26,177.65 in mileage reimbursements from the Committee to Kistner between August 11, 2020, and July 6, 2021).

and alleged that Kistner’s claimed mileage for these reimbursements was “unusual”<sup>3</sup> and “dubious,”<sup>4</sup> given the size of the district in which he was running for office. Although neither the Complaints nor the Responses cited specific dates for the time period covered by the disbursements, OGC estimated that the mileage in question was accrued between April 1, 2020 and October 1, 2021.<sup>5</sup> After dividing the total reimbursed amount by the IRS standard mileage reimbursement rates in effect at the relevant times, OGC estimated the average mileage at 101.36 miles per day for the entire time period—124.12 miles per day for the 2020 election cycle, and 85.20 miles per day for the 2022 election cycle.<sup>6</sup>

## II. Applicable Law

Under the Act, funds in a candidate’s campaign account may be used for “any [ ] lawful purpose, unless such use is personal use,”<sup>7</sup> which is prohibited.<sup>8</sup> “Personal use” is defined as using funds “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.”<sup>9</sup> The Act and Commission regulations identify certain expenses as *per se* personal use,<sup>10</sup> and require the Commission to “determine, on a case-by-case basis, whether other uses of funds in a campaign account fulfill a commitment, obligation or expense that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder, and therefore are personal use.”<sup>11</sup> It is the Commission’s “long-standing opinion that candidates have wide discretion over the use of campaign funds. If the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.”<sup>12</sup>

With respect to our enforcement process, the Commission will find reason to believe a violation occurred “only if a complaint sets forth sufficient separate facts, which, if proven true,

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<sup>3</sup> Complaint at 3 (June 8, 2022), MUR 8003 (Kistner for Congress, *et al.*).

<sup>4</sup> Complaint at 6 (Jan. 6, 2022), MUR 7951 (Kistner for Congress, *et al.*).

<sup>5</sup> First General Counsel’s Report at 5 (Nov. 29, 2022), MUR 7951 & 8003 (Kistner for Congress, *et al.*).

<sup>6</sup> *Id.* at 5–6.

<sup>7</sup> 11 C.F.R. § 113.2(e); 52 U.S.C. § 30114(a)(6).

<sup>8</sup> 52 U.S.C. § 30114(b).

<sup>9</sup> 52 U.S.C. § 30114(b); 11 C.F.R. § 113(g).

<sup>10</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

<sup>11</sup> 11 C.F.R. § 113.1(g)(1)(ii); 52 U.S.C. § 30114(b)(2) (“[A] contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.”).

<sup>12</sup> Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,867 (Feb. 9, 1995).

would constitute a violation of the FECA.”<sup>13</sup> Commissioners are not required to accept all the allegations in a complaint as true. If the record contains, or respondents provide, facts or information that credibly contradict an allegation contained in a complaint, the Commission must weigh this information in deciding whether to proceed with enforcement.<sup>14</sup> Moreover, “[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>15</sup> “Statements [in a complaint] which are not based upon personal 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>16</sup>

### III. Legal Analysis

In support of their allegations, both Complaints drew heavily upon the same media report in the local *Star Tribune* characterizing Kistner’s reimbursed mileage as “a whole lot” and “unusually high”<sup>17</sup> vis-à-vis the size of the Second Congressional District. The insinuation, in short, is that the district (which comprises 2,438 square miles<sup>18</sup> and is, respectively, 120 miles and 60 miles at its widest and longest points) is too small for all of Kistner’s reimbursed mileage to have been for campaign travel.<sup>19</sup>

For several reasons, we were unpersuaded by that news report’s inference. Most importantly, it is wrong to assume that all campaign travel must occur within the bounds of a candidate’s district. Commission regulations define a “campaign traveler” as, *inter alia*, any candidate traveling in connection with an election for Federal office, and do not set any geographical limits.<sup>20</sup> In fact, the Commission’s regulations governing campaign travel explicitly recognize the long-distance nature of campaign travel in certain instances.<sup>21</sup> Moreover, as a matter of common sense, candidates will often have legitimate, campaign-connected reasons to travel

<sup>13</sup> Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas at 1 (Dec. 21, 2000), MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.).

<sup>14</sup> See, e.g., First General Counsel’s Report at 5 (July 23, 2004), MUR 5467 (Michael Moore) (“Purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the [Act] has occurred.”). See also Statement of Reasons of Vice Chairman Cooksey and Commissioners Dickerson and Trainor at 5 (Jan. 18, 2023), MUR 7901 (Ethan Owens, *et al.*) (citing same).

<sup>15</sup> 11 C.F.R. § 111.4(c).

<sup>16</sup> 11 C.F.R. § 111.4(d)(2).

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

<sup>18</sup> *Minnesota Congressional Districts by Urban and Rural Population and Land Area*, U.S. CENSUS BUREAU, available at [https://www2.census.gov/geo/relfiles/cd18/27/ur\\_cd\\_27.txt](https://www2.census.gov/geo/relfiles/cd18/27/ur_cd_27.txt).

<sup>19</sup> See First General Counsel’s Report at 5 n.11–12 (Nov. 29, 2022), MUR 7951 & 8003 (Kistner for Congress, *et al.*).

<sup>20</sup> 11 C.F.R. § 100.93(a)(3)(i).

<sup>21</sup> See, e.g., 11 C.F.R. § 100.93(c) (Commission regulations governing campaign travel on aircraft).

outside of their district—to fundraise, to deliver and receive supplies, to meet supporters, and the like. Respondents specifically addressed this point, noting that “[c]ampaign events and meetings may occur in St. Paul, Minneapolis, or other towns in the state but outside the Second District, round trips that can be 100 miles or more.”<sup>22</sup> We find this explanation credible, and we are unpersuaded by the speculative assertion that whether campaign travel is “reasonable” can be determined solely based on the size of the candidate’s district.<sup>23</sup>

As further evidence supporting the allegations, one Complaint and OGC pointed to a supposed drop in Kistner’s mileage reimbursement after November 17, 2021, when the *Star Tribune* published its article.<sup>24</sup> As the argument goes, the significant decrease in per-day mileage reimbursements to Kistner after the article demonstrates some consciousness of guilt and a point at which Kistner stopped seeking excessive mileage reimbursements. But once again, this argument is pure conjecture unsupported by any additional facts or personal knowledge. For that reason, absent other facts supporting the Complaints’ contentions, we are disinclined to infer a violation from this later change in reimbursement patterns.<sup>25</sup>

Finally, OGC argued that Respondents’ declining to provide the mileage logs required under our regulations in their response to the Complaints further counsels in favor of a reason-to-believe finding.<sup>26</sup> But that is not affirmative evidence of a violation, and it unduly puts the burden on Respondents to prove their innocence, rather than properly on the Complaints to establish a violation. Respondents asserted that the Committee follows all rules for recordkeeping and that all campaign staffers seeking reimbursement for campaign travel keep mileage logs that are retained by the Committee’s treasurer.<sup>27</sup> We had no evidence leading us to doubt that assertion, and we declined OGC’s invitation to take the absence of evidence as evidence of absence.

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<sup>22</sup> Response at 3 (Jan. 21, 2022), MUR 7951 (Kistner for Congress, *et al.*).

<sup>23</sup> Such a legal rule would, in practice, prejudice active campaigners and those seeking office in smaller or more compact states or districts.

<sup>24</sup> Complaint at 4 (June 8, 2022), MUR 8003 (Kistner for Congress, *et al.*); First General Counsel’s Report at 12–13 (Nov. 29, 2022), MUR 7951 & 8003 (Kistner for Congress, *et al.*).


<sup>25</sup> See Statement of Reasons of Chairman Dickerson and Commissioners Cooksey and Trainor at 6–7 (July 5, 2022), MUR 7310 (Mark Takai, *et al.*) (refusing to infer personal use in an earlier period based on vendor contract that was subsequently renegotiated to a lower rate). *Cf.* Factual & Legal Analysis at 6 (April 12, 2022), MUR 7876 (Lauren Boebert for Congress, *et al.*) (dismissing allegation that candidate’s reimbursed mileage was partially for personal use where complaint relied primarily on characterizations in a newspaper article, rather than personal knowledge).

<sup>26</sup> First General Counsel’s Report at 13 (Nov. 29, 2022), MUR 7951 & 8003 (Kistner for Congress, *et al.*).

<sup>27</sup> Response at 2 (Jan. 21, 2022), MUR 7951 (Kistner for Congress, *et al.*).

#### IV. Conclusion


For the reasons set forth above, we found that the Complaints' allegations failed to clear the evidentiary bar for a finding of reason to believe. We voted accordingly, and the Commission closed the file.<sup>28</sup>

  
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 Sean J. Cooksey  
 Vice Chairman

February 27, 2023  
 Date

  
 \_\_\_\_\_  
 Allen Dickerson  
 Commissioner

February 27, 2023  
 Date

  
 \_\_\_\_\_  
 James E. "Trey" Trainor, III  
 Commissioner

February 27, 2023  
 Date

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<sup>28</sup> Certification (Jan. 24, 2023), MUR 7951 & 8003 (Kistner for Congress, *et al.*).