

OFFICE OF
GENERAL COUNSEL

Tom Painter

Apple Valley, MN 55124

2022 JUN -8 PM 1:16

FEDERAL ELECTION COMMISSION

In the matter of:

Tyler Kistner

Kistner For Congress

Thomas Datwyler, Treasurer, Kistner For Congress

MUR 8003COMPLAINT

This complaint is filed with the Federal Election Commission ("FEC") pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Kistner For Congress used campaign funds to reimburse Tyler Kistner for travel unrelated to campaign activities, constituting personal use under the Federal Election Campaign Act ("FECA").

Complainant seeks an immediate investigation and enforcement action against Tyler Kistner, Kistner For Congress, and Thomas Datwyler for violations of FECA.

FACTS

Kistner's committee has reimbursed him \$32,944 for mileage since August 11, 2020

Kistner For Congress's campaign finance reports show that Kistner has been reimbursed seven times for mileage totaling \$32,944.41, starting on August 11, 2020. These amounts were disbursed at irregular intervals and ranged from 1,356.60 to \$9,314.37.

Kistner Mileage Payments

Report	Last Name	First Name	Election	Date	Amount	Purpose
<u>2020 Q3</u> ¹	KISTNER	TYLER	P2020	8/11/2020	\$9,314.37	MILEAGE
<u>2020 12G</u> ²	KISTNER	TYLER	G2020	10/2/2020	\$3,946.90	MILEAGE
<u>2020 30G</u> ³	KISTNER	TYLER	G2020	11/14/2020	\$3,010.41	MILEAGE
<u>2021 Q1</u> ⁴	KISTNER	TYLER	G2020	2/8/2021	\$2,963.99	MILEAGE
<u>2021 Q4</u> ⁵	KISTNER	TYLER	P2022	7/6/2021	\$6,941.98	MILEAGE
<u>2021 YE</u> ⁶	KISTNER	TYLER	P2022	10/1/2021	\$5,410.16	MILEAGE
<u>2022 Q1</u> ⁷	KISTNER	TYLER	P2022	1/3/2022	\$1,356.60	MILEAGE REIMBURSEMENT

¹ <https://docquery.fec.gov/cgi-bin/fecimg/?202010159295389061>

² <https://docquery.fec.gov/cgi-bin/fecimg/?202010229332839227>

³ <https://docquery.fec.gov/cgi-bin/fecimg/?202012029337394834>

⁴ <https://docquery.fec.gov/cgi-bin/fecimg/?202104159443485683>

⁵ <https://docquery.fec.gov/cgi-bin/fecimg/?202110159467463861>

⁶ <https://docquery.fec.gov/cgi-bin/fecimg/?202201319485350449>

⁷ <https://docquery.fec.gov/cgi-bin/fecimg/?202204159496888774>

At the IRS standard mileage reimbursement rate, Kistner's reimbursements would cover 58,000 miles

FEC permits committees to reimburse campaign-related vehicle expenses using the Internal Revenue Service's standard mileage rate in lieu of fixed and variable costs. The IRS standard mileage rate for business use was set at \$0.575 per mile in 2020 and \$0.56 per mile in 2021.⁸⁹ If Kistner's committee used the IRS standard mileage rate, his payments would correspond to 58,071.30 miles traveled, including 16,198.9 miles for his first payment in August 2020.

Kistner Mileage Payments and Corresponding Miles

Election	Date	Mileage	IRS Rate	Miles	Days Since Previous Payment	Avg./Day
P2020	8/11/2020	\$9,314.37	\$0.575	16,198.90	-	-
G2020	10/2/2020	\$3,946.90	\$0.575	6,864.17	52	132.00 mi
G2020	11/14/2020	\$3,010.41	\$0.575	5,235.50	43	121.76 mi
G2020	2/8/2021	\$2,963.99	\$0.560	5,292.84	86	61.54 mi
P2022	7/6/2021	\$6,941.98	\$0.560	12,396.39	148	83.76 mi
P2022	10/1/2021	\$5,410.16	\$0.560	9,661.00	87	111.05 mi
P2022	1/3/2022	\$1,356.60	\$0.560	2,422.50	94	25.77 mi

Public reports suggest Kistner's mileage is excessive for his district size and short timeframe

In November 2021, the Star Tribune reported on Kistner's mileage reimbursements and how they appeared to be "unusually high" relative to the size of the district and the amount Kistner would be expected to travel. As reported, "Minnesota's Second District covers 3,000 square miles of the southern Twin Cities metro and some rural communities, spanning roughly 120 miles across from its farthest edges."¹⁰

One interviewee affiliated with watchdog group Public Citizen said that Kistner's mileage "appears excessive" given the size of the district.¹¹

"That is a whole lot of miles for any campaign, especially for a campaign in a fairly small suburban district," Craig Holman, a Capitol Hill lobbyist who focuses on ethics for the watchdog group Public Citizen, said in an e-mail. He questioned whether Kistner is using his campaign funds for personal benefit and said Kistner's "mileage reimbursement certainly appears excessive."

⁸ "IRS issues standard mileage rates for 2020," IR-2019-215, Internal Revenue Service, 12/31/2019

⁹ "IRS issues standard mileage rates for 2021," IR-2020-279, Internal Revenue Service, 12/22/2020

¹⁰ "That's a lot': Watchdogs say Tyler Kistner's campaign mileage reimbursements raise questions," Briana Bierschbach and Hunter Woodall, Star Tribune, 11/17/2021

¹¹ "That's a lot': Watchdogs say Tyler Kistner's campaign mileage reimbursements raise questions," Briana Bierschbach and Hunter Woodall, Star Tribune, 11/17/2021

Another interviewee, an "FEC expert," said that the purported miles traveled (as extrapolated from the mileage payments) seemed "extremely high" and were difficult to plausibly explain.¹²

"Forty-six thousand miles is an awfully high number. Even if you've included driving out of state for things, that's a lot," said Brett Kappel, a campaign finance lawyer and FEC expert at Washington, D.C., firm Harmon Curran. "There are plausible explanations for a high mileage reimbursement rate, but 46,000 is extremely high."

[...]

"I'm trying to think of a plausible explanation it would be so high," said Kappel of Kistner's nearly 46,000 miles over his two campaigns. "I'm having a hard time coming up with something."

After that report was published, Kistner disclosed an additional \$5,410.16 mileage payment in October 2021 (corresponding to 9,661 miles traveled under the IRS standard mileage rate).

Committee mileage payments to others further illustrates that Kistner's payments were unusual

Aside from Kistner himself, only one payee received regular mileage payments from the committee: Steven Craven, who was also paid for Campaign Consulting. Unlike Kistner, Craven was paid mileage at very regular intervals (every 29-32 days) and corresponding to much lower average travel per day.

Mileage Payments to Steven Craven

Payee	Election	Date	Amount	Miles	Days Since Previous Payment	Avg./Day
CRAVEN, STEVEN	P2020	6/30/2020	\$204.00	354.78	-	-
CRAVEN, STEVEN	P2020	7/31/2020	\$166.20	289.04	31	9.32 mi
CRAVEN, STEVEN	G2020	9/1/2020	\$310.50	540.00	32	16.88 mi
CRAVEN, STEVEN	G2020	9/30/2020	\$544.80	947.48	29	32.67 mi
CRAVEN, STEVEN	G2020	10/31/2020	\$255.60	444.52	31	14.34 mi

Besides Craven, other individuals also received mileage, but in single installments and for far less than Kistner received.

Mileage Payments to Other Staffers

Payee	Election	Purpose	Date	Amount	IRS Rate	Miles
ANDERSON, GALE	P2020	MILEAGE	5/15/2020	\$864.77	\$0.575	1,503.95 mi
PRONSCHINSKE, LINDA	G2020	MILEAGE	9/22/2020	\$944.92	\$0.575	1,643.34 mi
GOOD, JOLYNN	G2020	MILEAGE	9/30/2020	\$440.77	\$0.575	766.56 mi
GOOD, JOLYNN	P2022	MILEAGE	4/14/2021	\$27.00	\$0.560	48.21 mi

Kistner's mileage decreased conspicuously after attention, despite getting closer to election

¹² "That's a lot': Watchdogs say Tyler Kistner's campaign mileage reimbursements raise questions," Briana Bierschbach and Hunter Woodall, Star Tribune, 11/17/2021

In January 2022, Kistner was paid \$1,356.60 for mileage, well below what he had received in previous quarters – including what he had been reimbursed a year earlier, in February 2021. The January 2022 payment was also the first to occur after press coverage of his allegedly excessive mileage reimbursements.¹³ Taken with everything else, that Kistner's election-related mileage decreased in an election year suggests that his earlier payments may not have reflected the actual travel needs of his campaign.

Kistner has other reimbursement issues outside of his mileage payments

On December 14, 2020, Kistner For Congress paid Kistner \$1,800.37 for the purpose of "Expense Reimbursement."¹⁴ Of that amount, \$101.16 was itemized as a payment to Target for "Toys To Donate."¹⁵ The remaining \$1,699.21 in reimbursed expenses was not itemized.

SUMMARY OF LAW

Reimbursing for non-campaign travel constitutes personal use

Given the amounts paid to Kistner for mileage expenses, the amounts paid to his staff for mileage expenses, and the geography of the district, Complainant believes that Kistner's mileage payments do not accurately reflect campaign-related travel expenses. If Kistner for Congress is paying vehicle expenses for activities that are not campaign-related and he does not reimburse the campaign within 30 days, those payments constitute personal use.

11 CFR § 113.1(g) Personal use. Personal use means any use of funds in a campaign account of a present or former candidate 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.

...

ii. The Commission will 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. Examples of such other uses include:

...

D. Vehicle expenses, unless they are a de minimis amount. 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 officeholder-related activities, the portion of the vehicle expenses associated with the personal activities is personal use, unless the person(s) using the vehicle for personal activities reimburse(s) the campaign account within thirty days for the expenses associated with the personal activities.

¹³ "That's a lot': Watchdogs say Tyler Kistner's campaign mileage reimbursements raise questions," Briana Bierschbach and Hunter Woodall, *Star Tribune*, 11/17/2021


¹⁴ <https://docquery.fec.gov/cgi-bin/fecimg/?202101249405391827>

¹⁵ <https://docquery.fec.gov/cgi-bin/fecimg/?202101249405391828>

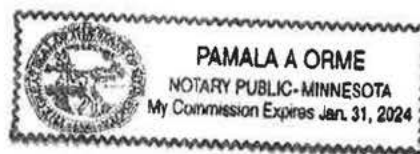
PRAYER FOR RELIEF

Wherefore, Complainant requests that the FEC conduct an investigation into these allegations; declare the respondents to have violated the FECA and applicable FEC regulations; and order respondents to correct these violations. In addition, Complainant requests that the FEC impose sanctions appropriate to these violations and take such further action as may be appropriate.

Respectfully Submitted,



Thomas Painter



*Notary is for Thomas Painter
signature only.*

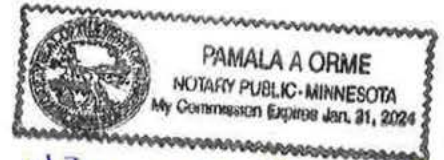
*Pamala A Orme
5-27-2022*

VERIFICATION

The complainant listed below hereby verifies that the statements made in the attached Complaint are, upon information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.


Thomas Painter



*Notary is for Thomas Painter
signature only.
Pamala A Orme
5.27.2022*