

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR 7951

COMPLAINT FILED: Jan. 6, 2022

NOTIFICATION DATE: Jan. 11, 2022

LAST RESPONSE: Jan. 21, 2022

ACTIVATION DATE: Aug. 30, 2022

EARLIEST SOL: Aug. 11, 2025

LATEST SOL: July 6, 2026

ELECTION CYCLES: 2020, 2022

COMPLAINANT:

End Citizens United

MUR 8003

COMPLAINT FILED: June 8, 2022

NOTIFICATION DATE: June 8, 2022

LAST RESPONSE: June 10, 2022

ACTIVATION DATE: Aug. 30, 2022

EARLIEST SOL: Aug. 11, 2025

LATEST SOL: Jan. 3, 2027

ELECTION CYCLES: 2020, 2022

COMPLAINANT:

Tom Painter

RESPONDENTS:

Kistner for Congress and Thomas Datwyler in his
official capacity as treasurer
Tyler Kistner

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(b)(5)(A)

52 U.S.C. § 30114(b)

11 C.F.R. § 104.3(b)(4)(i)

11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaints in these matters allege that 2020 and 2022 Minnesota 2nd Congressional
District candidate Tyler Kistner and Kistner for Congress and Thomas Datwyler in his official

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capacity as treasurer (the “Committee”) converted campaign funds to personal use in violation of 52 U.S.C. § 30114(b) of the Federal Election Campaign Act of 1971, as amended (the “Act”), and 11 C.F.R. § 113.1(g)(1) of the Commission’s regulations, by reimbursing Kistner for travel in his personal vehicle that was in excess of his actual campaign travel. Further, the MUR 8003 Complaint alleges that the Committee violated 52 U.S.C. § 30104(b)(5)(A) and 11 C.F.R. § 104.3(b)(4)(i) by failing to adequately itemize an “Expense Reimbursement” that the Committee made to Kistner.

The Complaints collectively identify \$31,588 in mileage reimbursements disbursed to Kistner between August 11, 2020, to October 1, 2021.¹ Drawing on the Internal Revenue Service (“IRS”) standard mileage reimbursement rate, the Complaints calculate that these reimbursements correspond to 55,649 miles in campaign-related automobile travel.² The Complaints characterize this distance as unrealistically high given the compact size of Minnesota’s 2nd Congressional District and that it was purportedly accrued during one-and-a-half years.³ The MUR 8003 Complaint also notes a dramatic decrease in Kistner’s mileage reimbursements after the publication of a newspaper article questioning whether the reimbursements were excessive. The MUR 8003 Complaint additionally alleges that the

¹ Compl. at 1 (June 8, 2022), MUR 8003 (hereinafter “MUR 8003 Compl.”) (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); Compl. at 3 (Jan. 6, 2022), MUR 7951 (hereinafter “MUR 7951 Compl.”) (identifying \$26,177.65 in mileage reimbursements from the Committee to Kistner between August 11, 2020, and July 6, 2021).

² MUR 8003 Compl. at 2 (alleging that the mileage reimbursements from August 11, 2020, to October 1, 2021, correspond to 55,648.80 miles of travel); MUR 7951 Compl. at 3 (alleging that the mileage reimbursements from August 11, 2020, to July 6, 2021, correspond to 45,840.73 miles of travel).

³ MUR 8003 Compl. at 2; MUR 7951 Compl. at 1-2.

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1 Committee failed to adequately itemize \$1,699.21 in unitemized reimbursements to Kistner,
2 which was reported as an “Expense Reimbursement.”⁴

3 While the Committee’s unsworn response generally asserts that Committee staff are
4 required to submit mileage logs to receive travel reimbursements, neither the Committee nor the
5 candidate provide any substantive response regarding how many miles Kistner actually traveled
6 or mileage logs supporting the reimbursements.⁵ The Committee also argues that it was not
7 legally required to provide a more specific purpose as to the remaining \$1,699.21 in “Expense
8 Reimbursement” because the various individual disbursements that were being reimbursed with
9 that payment do not reach the \$200 itemization threshold.⁶

10 As explained below, due to the small size of the Minnesota’s 2nd Congressional District,
11 the one-and-a-half year period in which the mileage was accrued, and the significant decrease in
12 the amount reimbursed to Kistner after a news article reported that the mileage reimbursements
13 were unusually high, there is a reasonable basis to infer that Kistner was excessively reimbursed
14 for his campaign mileage. However, an investigation is necessary to determine the actual
15 amount Kistner drove for his campaign. While the Committee did not further itemize \$1,699.21
16 in an “Expense Reimbursement” to Kistner, the Committee was required to do so only if it made
17 \$200 or more to an ultimate vendor within an election cycle, which it appears to represent that it
18 did not.

⁴ MUR 8003 Compl. at 4.

⁵ Committee Resp. at 1-2 (Jan. 21, 2022), MUR 7951 (hereinafter “MUR 7951 Resp.”); *see also* Committee Resp. at 1 (June 10, 2022), MUR 8003 (hereinafter “MUR 8003 Resp.”) (incorporating the MUR 7951 Response by reference to the allegations in the MUR 8003 Complaint). Kistner did not submit a response in either matter.

⁶ MUR 8003 Resp. at 1.

Accordingly, we recommend that the Commission: (1) find reason to believe that Kistner and the Committee converted campaign funds to personal use in violation of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g); (2) dismiss the allegation that the Committee failed to itemize a disbursement in violation of 52 U.S.C. § 30104(b)(5)(A) and 11 C.F.R. § 104.3(b)(4)(I); and (3) authorize the use of compulsory process.

II. FACTUAL BACKGROUND

A. Conversion of Mileage Reimbursements to Personal Use

Tyler Kistner was a 2020 and 2022 candidate to represent Minnesota's 2nd Congressional District.⁷ Kistner for Congress is his principal campaign committee,⁸ and Thomas Datwyler is the treasurer.⁹ In 2020, Minnesota's 2nd Congressional District covered 2,438 square miles,¹⁰

⁷ Tyler Kistner, Statement of Candidacy at 1 (Jan. 2, 2020), <https://docquery.fec.gov/pdf/209/202001029166894209/202001029166894209.pdf>; Tyler Kistner, Amended Statement of Candidacy at 1 (Apr. 21, 2022), <https://docquery.fec.gov/pdf/724/202104209443997724/202104209443997724.pdf>. Kistner won the primary to become the Republican candidate but lost the general election in both races. Nicole Gaudiano, Katie Balevic, *Results: Angie Craig defeated Tyler Kistner: Minnesota's 2nd District US House election*, BUSINESS INSIDER, Nov. 9, 2022, <https://www.businessinsider.com/results-angie-craig-tyler-kistner-minnesota-2nd-district-house-election-2022-11> (last visited Nov. 28, 2022).

⁸ Kistner for Congress, Statement of Organization at 2 (Jan. 2, 2020), <https://docquery.fec.gov/pdf/217/202001029166894217/202001029166894217.pdf>.

⁹ Kistner for Congress, Amended Statement of Organization at 3 (Aug. 26, 2022), <https://docquery.fec.gov/pdf/147/202208269528253147/202208269528253147.pdf>.

¹⁰ *Minnesota Congressional Districts by Urban and Rural Population and Land Area*, U.S. CENSUS BUREAU, https://www2.census.gov/geo/relfiles/cdsld18/27/ur_cd_27.txt (last visited Nov. 28, 2022).

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and was 120 miles at its widest point¹¹ and about 60 miles at its longest point.¹² While the district was redrawn in 2022, that new district is smaller and more compact.¹³

The Complaints collectively identify \$31,588 in mileage reimbursements to Kistner dating from August 11, 2020, to October 1, 2021, which correspond to a travel period of one-and-a-half years that spanned the 2020 and 2022 election cycles.¹⁴ Applying the IRS standard mileage reimbursement rates of \$0.575 per mile in 2020 and \$0.560 per mile 2021, the Complaints allege that this would correspond to 55,649¹⁵ miles traveled by automobile: 28,299 miles during the 2020 election cycle and 27,350 miles during the 2022 election cycle. Although the Complaints and Responses are unclear as to the time period covered by the disbursements, and the Committee has not provided that information in either its Responses or disclosure reports, we assess that the mileage was accrued between April 1, 2020, to October 1, 2021, a period of 549 days.¹⁶ As reflected in the chart below, this would equate to 101.36 miles driven

¹¹ Briana Bierschbach & 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/>.

¹² See *Minnesota’s 2nd Congressional District Election, 2022*, BALLOTPEDIA, https://ballotpedia.org/Minnesota%27s_2nd_Congressional_District_election,_2022 (last visited Nov. 28, 2022) (illustrating that the 2020 district’s longest point would be the distance from Saint Paul to Moland); <https://www.google.com/maps> (searching directions from Saint Paul to Moland, which provides a route of 58.5 miles) (Nov. 28, 2022).

¹³ *Minnesota’s 2nd Congressional District Election, 2022*, BALLOTPEDIA, https://ballotpedia.org/Minnesota%27s_2nd_Congressional_District_election,_2022 (last visited Nov. 28, 2022) (illustrating that both districts in 2020 and 2022 are similar in length but the district in 2022 has a significantly smaller width).

¹⁴ See MUR 8003 Compl. at 1; MUR 7951 Compl. at 3. While the Committee also reimbursed Kistner for mileage and fuel on March 31, 2020, April 6, 2022, and May 31, 2022, see *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner (last visited Nov. 28, 2022) (reflecting the Committee’s disbursements to Kistner), these reimbursements are not the subject of either Complaint.

¹⁵ The MUR 7951 Complaint alleges that the mileage reimbursements would correspond to about 150 fewer miles as it uses the 2020 IRS standard mileage reimbursement rate to calculate the mileage corresponding to a February 8, 2021 reimbursement. MUR 7951 Compl. at 3. We instead rely on the number provided by the MUR 8003 Complaint, which uses the 2020 IRS standard mileage rate for the February 8, 2021 mileage reimbursement, as it addresses all of the mileage reimbursements at issue here. MUR 8003 Compl. at 2.

¹⁶ The MUR 8003 Complaint generally assumes that the period covered by a particular mileage reimbursement begins from the first day following the last mileage reimbursement date until the day of the mileage reimbursement in quest. See MUR 8003 Compl. at 2. Following this logic, we determined that the period covered

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per day during the entire time period, 124.12 miles per day during the 2020 election cycle,¹⁷ and 85.20 miles per day during the 2022 election cycle.¹⁸ Noting the compact geography of the district and the fact that Kistner's campaign headquarters was 20 miles from his house, the Complaints allege that the purported miles traveled are "nearly impossible"¹⁹ and "difficult to plausibly explain."²⁰

The MUR 8003 Complaint draws comparisons between the mileage reimbursements to Kistner prior to November 17, 2021, when the *Star Tribune* published a news article indicating that the reimbursements were "unusually high" (the mileage reimbursements reported amounted to traveling an average of 101.36 miles per day), and the reimbursements to Kistner after that date.²¹ Specifically, it identifies a single mileage reimbursement after November 17, 2021, which was a January 3, 2022 disbursement of \$1,356.60 indicating an average mileage of 25.77 miles per day from October 2, 2021, to January 3, 2022.²² The Complaint suggests that it would be unlikely for Kistner to actually travel less between October 2, 2021, to January 3, 2022, than

by the August 11, 2020 mileage reimbursement covered travel between April 1, 2020, to August 11, 2020, because the most recent payment for mileage reimbursements prior to the August 11, 2020 disbursement occurred on March 31, 2020. *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner (last visited Nov. 28, 2022) (reflecting that Kistner was disbursed \$2,766.03 on March 31, 2020, for fuel and meals).

¹⁷ We assume that the November 14, 2020 mileage reimbursement is totally attributable to the 2020 election cycle, which ended less than two weeks prior on November 3, 2020.

¹⁸ We assume that Kistner began driving for his 2022 election campaign on November 15, 2020, because he received a reimbursement on November 14, 2020, which we attribute to his 2020 election campaign. *See id.*

¹⁹ MUR 7951 Compl. at 6.

²⁰ MUR 8003 Compl. at 3 (citing Briana Bierschbach & 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/>).

²¹ MUR 8003 Compl. at 2-4; *see also* Briana Bierschbach & 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/> (cited in the MUR 8003 Compl. at 2-3).

²² *See* MUR 8003 Compl. at 2-4.

1 in earlier periods, as this period is closer in time to the August 9, 2022 primary election.²³ The
 2 Complaint argues that this significant decrease in per day mileage reimbursements to Kistner
 3 after the *Star Tribune* article was published supports the conclusion that Kistner was excessively
 4 reimbursed prior to that point.²⁴

Time Period	Miles Traveled	Date Range	Miles Per Day
2020 Election Cycle	28,299 Miles	April 1, 2020, to November 14, 2020 (228 Days)	124.12 Miles per Day
2022 Election Cycle Pre-Star Tribune Article	27,350 Miles	November 15, 2020, to October 1, 2021 (321 Days)	85.20 Miles per Day
Total Pre-Star Tribune Article	55,649 Miles	April 1, 2020, to October 1, 2021 (549 Days)	101.36 Miles per Day
Post- Star Tribune Article	7,617 Miles	October 2, 2021, to May 31, 2022 (242 Days)	31.48 Miles per Day

5 As reflected in the chart above, when considering the January 3, 2022 disbursement in
 6 addition to the Committee's recent mileage reimbursements of \$1,746.42 and \$1,276.50 to
 7 Kistner on April 6, 2022, and May 31, 2022, Kistner's reported campaign travel significantly
 8 decreased to 31.48 miles per day after the *Star Tribune* article was published.²⁵ Since the
 9 May 31, 2022 reimbursement, the Committee has not reported other mileage reimbursements to

²³ *Id.* at 3-4.

²⁴ *Id.*

²⁵ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner&two_year_transaction_period=2022 (last visited Nov. 28, 2022) (reflecting disbursements to Kistner during the 2022 election cycle). This mileage per day was calculated using the IRS standard mileage reimbursement rates for 2022, which is .585 per mile and assuming that each reimbursement covered the period between its date and the last date of reimbursement. *Standard Mileage Rates*, IRS.GOV, <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last visited Nov. 28, 2022).

1 Kistner.²⁶ The Complaint also argues that the amounts reimbursed to Kistner are significantly
 2 higher than the amounts reimbursed to other Committee staff.²⁷

3 In an unsworn Response to both Complaints, the Committee asserts that Kistner “has
 4 campaigned full time” and was reimbursed “pursuant to federal law.”²⁸ The Response argues
 5 that the MUR 7951 Complaint miscalculated Kistner’s travel period, stating that the mileage
 6 reimbursement on August 11, 2020, was for travel that occurred prior to that date.²⁹ However,
 7 the Response does not explain when that travel occurred.³⁰ The Response represents that
 8 “campaign travelers are required to keep and submit detailed mileage logs, including the starting
 9 point, destination, purpose, and total miles traveled for each trip”³¹ and that these “logs . . . are
 10 retained by the Committee’s treasurer,”³² but does not include any mileage logs or other
 11 documentation to justify the reimbursements. The Response further argues that the mileage is
 12 not excessive because Kistner lives 20 miles from campaign headquarters, resulting in a 40-mile
 13 round trip, and that campaign meetings may occur in St. Paul, Minneapolis, or other towns
 14 outside of the district, which may result in “round trips that can be 100 miles or more.”³³

²⁶ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner&two_year_transaction_period=2022 (last visited Nov. 28, 2022) (reflecting disbursements to Kistner during the 2022 election cycle).

²⁷ MUR 8003 Compl. at 3.

²⁸ MUR 7951 Resp. at 2.

²⁹ *Id.* at 3.

³⁰ *See supra* note 16 (explaining that, for the purposes of this Report, we assume that the August 11, 2020 mileage reimbursement covered the period between April 1, 2020 to August 11, 2020).

³¹ MUR 7951 Resp. at 2.

³² *Id.* at 1.

³³ *Id.* at 3.

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Finally, the Response argues that the Complaints lack the factual specificity required for the Commission to find reason to believe that a violation of the Act occurred.³⁴

B. Inadequate Reporting of an “Expense Reimbursement”

The MUR 8003 Complaint additionally alleges that the Committee failed to itemize \$1,699.21 of a \$1,800.37 reimbursement to Kistner. The Committee disbursed \$1,800.37 to Kistner on December 14, 2020, with the stated purpose of “Expense Reimbursement,” but only itemized \$101.16 of the amount as a payment to Target for “Toys to Donate.”³⁵ In its MUR 8003 Response, the Committee argues that it was not required to further itemize the remaining \$1,699.21 because no single disbursement underlying that reimbursement “exceeded the aggregate reporting threshold for itemization.”³⁶

III. LEGAL ANALYSIS

A. The Commission Should Find Reason to Believe that Kistner and the Committee Converted Campaign Funds to Personal Use

The Act prohibits the conversion of campaign funds by any person to “personal use.”³⁷ “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.”³⁸ 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-

³⁴ *Id.* (citing Statement of Reasons, Comm’rs. Mason, Thomas, & Wold at 2, MUR 4850 (Deloitte & Touche, LLP, *et al.*)).

³⁵ MUR 8003 Compl. at 4.; *see also* Kistner for Congress, 2020 Year-End Report at 35-36 (Jan. 24, 2021), <https://docquery.fec.gov/pdf/793/202101249405391793/202101249405391793.pdf>.

³⁶ MUR 8003 Resp. at 1 (stating that “if anything, [this issue] warrants a Request for Additional Information, not a new Matter Under Review.”).

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

³⁸ 11 C.F.R. § 113.1(g).

1 campaign-related trip.³⁹ For other payments, the “Commission will determine, on a case-by-case
 2 basis, whether other uses” of campaign funds constitute personal use by applying the
 3 “irrespective test,” that is, whether the payment fulfills a commitment, obligation, or expense
 4 that would exist irrespective of the candidate’s campaign or duties as a federal officeholder.⁴⁰

5 Commission regulations specify that travel expenses are evaluated on a case-by-case
 6 basis.⁴¹ Such expenses are not personal use “[i]f the candidate can reasonably show that the
 7 expenses at issue resulted from campaign or officeholder activities.”⁴² If a committee “uses
 8 campaign funds to pay expenses associated with a vehicle that is used for both personal activities
 9 beyond a *de minimis* amount and campaign or officer-holder-related activities, the portion of the
 10 vehicle expenses associated with the personal activities is personal use.”⁴³ In MUR 7876, the
 11 Commission dismissed, pursuant to prosecutorial discretion, the allegation that a candidate
 12 received excessive mileage reimbursements where the candidate campaigned in Colorado’s 3rd
 13 Congressional District during the 2020 election cycle, which covered 49,732 square miles (over
 14 20 times larger than the district in the instant matter).⁴⁴ The candidate received \$17,270 in
 15 mileage reimbursements over the course of around seven months, and represented that she
 16 traveled 32,000 miles during this period, or about 147.46 miles per day.⁴⁵

³⁹ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

⁴⁰ 11 C.F.R. § 113.1(g)(1)(ii).

⁴¹ *Id.* § 113.1(g)(1)(ii)(C)-(D).

⁴² Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) (“Personal Use E&J”).

⁴³ 11 C.F.R. § 113.1(g)(1)(ii)(D).

⁴⁴ Factual and Legal Analysis (“F&LA”) at 5, MUR 7876 (Lauren Boebert for Congress, *et al.*); *see also Colorado Congressional Districts by Urban and Rural Population and Land Area*, U.S. CENSUS BUREAU, https://www2.census.gov/geo/relfiles/cdsld18/08/ur_cd_08.txt (last visited Nov. 28, 2022) (providing that Colorado’s 3rd Congressional District in the 116th Congress covered 49,731.77 square miles).

⁴⁵ F&LA at 3, MUR 7876 (assuming the candidate began driving April 1, 2020, and stopped driving on November 3, 2020, the day of the election).

Here, it appears that the mileage reimbursements to Kistner exceed the amount that one would reasonably expect to result from campaign activities in Minnesota's 2nd Congressional District, which only covers 2,438 square miles and is 120 miles and 60 miles at its widest and longest points.⁴⁶ Using the IRS standard mileage reimbursement rates, these reimbursements correspond to traveling 101.36 miles per day prior to November 17, 2021: 28,299 miles in the 2020 election cycle (124.12 miles per day),⁴⁷ and 27,350 miles in the 2022 election cycle (85.20 miles per day).⁴⁸ However, after the *Star Tribune* published an article on November 17, 2021, reporting that the mileage reimbursements were "unusually high,"⁴⁹ the mileage reimbursements to Kistner dropped by nearly 70% – now corresponding to an average distance of 31.48 miles of travel per day from October 2, 2021, to May 31, 2022, after which Kistner stopped reporting any travel in his personal vehicle.⁵⁰

⁴⁶ As noted above, Minnesota redrew its 2nd Congressional District for the 2022 election cycle, but that new district is smaller and more compact. *Minnesota's 2nd Congressional District Election, 2022*, BALLOTPEdia, https://ballotpedia.org/Minnesota%27s_2nd_Congressional_District_election,_2022 (last visited Nov. 28, 2022) (illustrating that both districts in 2020 and 2022 are similar in height but the district in 2022 has a significantly smaller width).

⁴⁷ This was calculated by assuming that the August 11, 2020, mileage disbursement was for travel that occurred between April 1, 2020, and August 11, 2020, as the Committee's disclosure reports provide that the most recent payment for mileage reimbursements prior to the August 11, 2020, payment occurred on March 31, 2020. *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner (last visited Nov. 28, 2022) (reflecting that Kistner was reimbursed \$2,766.03 on March 31, 2020, for fuel and meals). The Committee does not provide information as to the period covered by the August 11, 2020 payment, other than that it covered a period prior to August 11, 2020. See MUR 7951 Resp. at 3.

⁴⁸ See MUR 8003 Compl. at 2.

⁴⁹ Briana Bierschbach & 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/>.

⁵⁰ See MUR 8003 Compl. at 2; *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner&two_year_transaction_period=2022 (last visited Nov. 28, 2022) (reflecting mileage reimbursements of \$1,746.42 and \$1,276.50 to Kistner on April 6, 2022, and May 31, 2022).

1 Although the Commission recently dismissed an allegation in MUR 7876 that the
 2 candidate was excessively reimbursed for travel in her personal vehicle, the candidate in that
 3 matter campaigned in a congressional district that covered more than 20 times the size of
 4 Minnesota's 2nd Congressional District,⁵¹ but was reimbursed nearly the same amount as
 5 Kistner (\$17,270 versus \$16,272 for Kistner) over the same period of about seven months.⁵²
 6 Further, the respondent in MUR 7876 provided the amount of campaign travel reimbursed by the
 7 committee,⁵³ but, here, the Committee only states that the candidate sometimes traveled long
 8 distances and make no affirmative representation that all reported mileage was indeed for
 9 campaign travel.⁵⁴ Thus, the Complaints credibly allege that the mileage reimbursements to
 10 Kistner are excessive on their face given the amount purportedly traveled by Kistner and the size
 11 of his district.⁵⁵

12 In its Response, the Committee does not credibly explain as to why the reimbursements
 13 correspond to traveling 101.36 miles per day prior to November 17, 2021, given the compact size
 14 of the district and the extended period of time (one-and-a-half years) that this travel occurred.
 15 The Response also provides no explanation as to why the reimbursements correspond to

⁵¹ *Compare Colorado Congressional Districts by Urban and Rural Population and Land Area*, U.S. CENSUS BUREAU, https://www2.census.gov/geo/relfiles/cdsld18/08/ur_cd_08.txt (last visited Nov. 28, 2022) (providing that Colorado's Third Congressional District in the 116th Congress covered 49,731.77 square miles) *with Minnesota Congressional Districts by Urban and Rural Population and Land Area*, U.S. CENSUS BUREAU, https://www2.census.gov/geo/relfiles/cdsld18/27/ur_cd_27.txt (last visited Nov. 28, 2022) (providing that Minnesota's Second Congressional District in the 116th Congress covered 2,437.91 square miles).

⁵² *See* F&LA at 3, 5, MUR 7876 (providing that the candidate drove 32,000 miles between April 2020 and November 2020). Subsequently, during the 2022 election cycle, Kistner was similarly reimbursed \$15,316.13 for travel (although this was accrued over a period of about eleven months). MUR 8003 Compl. at 2.

⁵³ F&LA at 3, MUR 7876.

⁵⁴ *See generally* MUR 7951 Resp.

⁵⁵ While the MUR 8003 Complaint additionally argues that the rates reimbursed to Kistner are excessive compared to the rates reimbursed to other Committee staff, the Complaint does not describe the roles of those staff or otherwise why it would be expected for the Committee staff to travel at the same rate as Kistner. *See* MUR 8003 Compl. at 3.

1 traveling only 31.48 miles per day, a decrease of nearly 70%, after November 17, 2021, when the
 2 *Star Tribune* published an article questioning Kistner's mileage reimbursements as excessive,
 3 even though this period was closer in time to the upcoming primary and general elections. While
 4 the Committee states that Kistner was traveling 100-mile round trips due to "campaign events
 5 and meetings [which] may occur in St. Paul, Minneapolis, or other towns in the state but outside
 6 the Second District,"⁵⁶ the Committee does not suggest that Kistner was making such roundtrips
 7 almost every day from April 1, 2020, to October 1, 2021, which would be required for him to be
 8 properly reimbursed at these amounts, or why those trips suddenly stopped as the primary and
 9 general elections became closer. The Committee also declined to provide any evidence as to
 10 Kistner's travels, such as a report of the miles purportedly traveled, the reimbursement rate, or
 11 copies of the logs the Committee claims to have maintained in connection with its
 12 reimbursements.

13 As such, we recommend the Commission find reason to believe that Kistner and the
 14 Committee converted campaign funds to personal use in violation of 52 U.S.C. § 30114(b) and
 15 11 C.F.R. § 113.1(g) and authorize an investigation to complete the record.⁵⁷

16 **B. The Commission Should Dismiss the Allegation that the Committee Failed to**
 17 **Itemize Its Disbursements**

18 Principal campaign committees must file regular reports with the Commission disclosing
 19 receipts and disbursements.⁵⁸ In each report, the committee must provide the name and address

⁵⁶ MUR 7951 Resp. at 3.

⁵⁷ While it is likely that only a portion of the \$32,944 in mileage reimbursements identified in the Complaints were converted to personal use, the Commission has found reason to believe a personal use violation occurred involving similar amounts in violation. *See* F&LA 10-14, MUR 7577 (Ander PAC, *et al.*) (finding reason to believe that a personal use violation occurred where \$13,196.08 were used to pay for a former congressman's vacations, food, and club dues).

⁵⁸ 52 U.S.C. § 30104(a), (b).

of “[e]ach person to whom an expenditure in an aggregate amount or value in excess of \$200 within the election cycle is made by the reporting authorized committee to meet the authorized committee’s operating expenses, together with the date, amount and purpose of each expenditure.”⁵⁹

Here, the available information indicates that the Committee made a disbursement of \$1,800.37 to Kistner but did not further itemize \$1,699.21 of that disbursement. The Committee states that the individual payments for which Kistner was being reimbursed are less than \$200 each but does not provide proof of these payments.⁶⁰ Because further itemization is only required when the ultimate payee is paid \$200 or more within an election cycle and given the amount at issue, we recommend the Commission dismiss the allegation that the Committee violated 52 U.S.C. § 30104(b)(5)(A) and 11 C.F.R. § 104.3(b)(4)(i).

IV. INVESTIGATION

An investigation is needed to complete the record in this matter. Although the Complaints collectively identify \$32,944 in mileage reimbursements, part of this amount was likely related to actual campaigning. In its Response, the Committee represented that “campaign travelers are required to keep and submit detailed mileage logs, including the starting point, destination, purpose, and total miles traveled for each trip”⁶¹ to receive any reimbursements, and

⁵⁹ 11 C.F.R. § 104.3(b)(4)(i); *see also* 52 U.S.C. § 30104(b)(5)(A) (requiring a committee to report the name of each person who receives in aggregate \$200 or more within a calendar year, along with the purpose of such operating expenditure). The mileage reimbursements here would be considered operating expenditures. *Day-to-day operating expenditures*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/making-disbursements/operating-expenditures-candidate/> (last visited Nov. 28, 2022) (“[I]f a campaign pays for the candidate’s travel and subsistence in connection with his or her campaign activities, those payments are also considered operating expenditures.”).

⁶⁰ MUR 8003 Resp. at 1.

⁶¹ MUR 7951 Resp. at 2.

1 that the “logs . . . are retained by the Committee’s treasurer.”⁶² These mileage logs would
2 provide sufficient information to complete the factual record. While the Office of General
3 Counsel will seek to obtain and review the Committee’s expense and reimbursement records via
4 informal means, we also recommend that the Commission authorize the use of compulsory
5 process should that become necessary.

6 **V. RECOMMENDATIONS**

- 7 1. Find reason to believe that Tyler Kistner and Kistner for Congress and Thomas
8 Datwyler in his official capacity as treasurer violated 52 U.S.C. § 30114(b) and
9 11 C.F.R. § 113.1(g) by converting campaign funds to personal use;
- 10 2. Dismiss the allegation that Kistner for Congress and Thomas Datwyler in his
11 official capacity as treasurer violated 52 U.S.C. § 30104(b)(5)(A) and 11 C.F.R.
12 § 104.3(b)(4)(i) by failing to provide an adequate purpose for the disbursements;
- 13 3. Approve the attached Factual and Legal Analyses;
- 14 4. Authorize the use of compulsory process; and

⁶² *Id.* at 1.

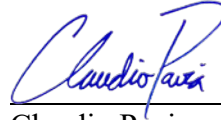
5. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for Enforcement

November 29, 2022

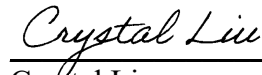
Date



Claudio Pavia
Deputy Associate General Counsel for Enforcement

Mark Shonkwiler

Mark Shonkwiler
Assistant General Counsel



Crystal Liu
Attorney

Attachments

1. Factual and Legal Analysis — Kistner for Congress and Thomas Datwyler in his official capacity as treasurer
2. Factual and Legal Analysis — Tyler Kistner

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Kistner for Congress and Thomas Datwyler **MURs 7951 8003**
in his official capacity as treasurer

I. INTRODUCTION

The Complaints in these matters allege that Kistner for Congress and Thomas Datwyler in his official capacity as treasurer (the “Committee”), the principal campaign committee of 2020 and 2022 Minnesota 2nd Congressional District candidate Tyler Kistner, converted campaign funds to personal use in violation of 52 U.S.C. § 30114(b) of the Federal Election Campaign Act of 1971, as amended (the “Act”), and 11 C.F.R. § 113.1(g)(1) of the Commission’s regulations, by reimbursing Kistner for travel in his personal vehicle that was in excess of his actual campaign travel. Further, the MUR 8003 Complaint alleges that the Committee violated 52 U.S.C. § 30104(b)(5)(A) and 11 C.F.R. § 104.3(b)(4)(i) by failing to adequately itemize an “Expense Reimbursement” that the Committee made to Kistner.

The Complaints collectively identify \$31,588 in mileage reimbursements disbursed to Kistner between August 11, 2020, to October 1, 2021.¹ Drawing on the Internal Revenue Service (“IRS”) standard mileage reimbursement rate, the Complaints calculate that these reimbursements correspond to 55,649 miles in campaign-related automobile travel.² The Complaints characterize this distance as unrealistically high given the compact size of

¹ Compl. at 1 (June 8, 2022), MUR 8003 (hereinafter “MUR 8003 Compl.”) (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); Compl. at 3 (Jan. 6, 2022), MUR 7951 (hereinafter “MUR 7951 Compl.”) (identifying \$26,177.65 in mileage reimbursements from the Committee to Kistner between August 11, 2020, and July 6, 2021).

² MUR 8003 Compl. at 2 (alleging that the mileage reimbursements from August 11, 2020, to October 1, 2021, correspond to 55,648.80 miles of travel); MUR 7951 Compl. at 3 (alleging that the mileage reimbursements from August 11, 2020, to July 6, 2021, correspond to 45,840.73 miles of travel).

1 Minnesota's 2nd Congressional District and that it was purportedly accrued during one-and-a-
2 half years.³ The MUR 8003 Complaint also notes a dramatic decrease in Kistner's mileage
3 reimbursements after the publication of a newspaper article questioning whether the
4 reimbursements were excessive. The MUR 8003 Complaint additionally alleges that the
5 Committee failed to adequately itemize \$1,699.21 in unitemized reimbursements to Kistner,
6 which was reported as an "Expense Reimbursement."⁴

7 While the Committee's unsworn response generally asserts that Committee staff are
8 required to submit mileage logs to receive travel reimbursements, neither the Committee nor the
9 candidate provide any substantive response regarding how many miles Kistner actually traveled
10 or mileage logs supporting the reimbursements.⁵ The Committee also argues that it was not
11 legally required to provide a more specific purpose as to the remaining \$1,699.21 in "Expense
12 Reimbursement" because the various individual disbursements that were being reimbursed with
13 that payment do not reach the \$200 itemization threshold.⁶

14 As explained below, due to the small size of the Minnesota's 2nd Congressional District,
15 the one-and-a-half year period in which the mileage was accrued, and the significant decrease in
16 the amount reimbursed to Kistner after a news article reported that the mileage reimbursements
17 were unusually high, there is a reasonable basis to infer that Kistner was excessively reimbursed
18 for his campaign mileage. While the Committee did not further itemize \$1,699.21 in an
19 "Expense Reimbursement" to Kistner, the Committee was required to do so only if it made \$200

³ MUR 8003 Compl. at 2; MUR 7951 Compl. at 1-2.

⁴ MUR 8003 Compl. at 4.

⁵ Committee Resp. at 1-2 (Jan. 21, 2022), MUR 7951 (hereinafter "MUR 7951 Resp."); *see also* Committee Resp. at 1 (June 10, 2022), MUR 8003 (hereinafter "MUR 8003 Resp.") (incorporating the MUR 7951 Response by reference to the allegations in the MUR 8003 Complaint).

⁶ MUR 8003 Resp. at 1.

or more to an ultimate vendor within an election cycle, which it appears to represent that it did not.

Accordingly, the Commission (1) finds reason to believe that the Committee converted campaign funds to personal use in violation of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g); and (2) dismisses the allegation that the Committee failed to itemize a disbursement in violation of 52 U.S.C. § 30104(b)(5)(A) and 11 C.F.R. § 104.3(b)(4)(I).

II. FACTUAL BACKGROUND

A. Conversion of Mileage Reimbursements to Personal Use

Tyler Kistner was a 2020 and 2022 candidate to represent Minnesota's 2nd Congressional District.⁷ Kistner for Congress is his principal campaign committee,⁸ and Thomas Datwyler is the treasurer.⁹ In 2020, Minnesota's 2nd Congressional District covered 2,438 square miles,¹⁰ and was 120 miles at its widest point¹¹ and about 60 miles at its longest point.¹² While the

⁷ Tyler Kistner, Statement of Candidacy at 1 (Jan. 2, 2020), <https://docquery.fec.gov/pdf/209/202001029166894209/202001029166894209.pdf>; Tyler Kistner, Amended Statement of Candidacy at 1 (Apr. 21, 2022), <https://docquery.fec.gov/pdf/724/202104209443997724/202104209443997724.pdf>. Kistner won the primary to become the Republican candidate but lost the general election in both races. Nicole Gaudiano, Katie Balevic, *Results: Angie Craig defeated Tyler Kistner: Minnesota's 2nd District US House election*, BUSINESS INSIDER, Nov. 9, 2022, <https://www.businessinsider.com/results-angie-craig-tyler-kistner-minnesota-2nd-district-house-election-2022-11> (last visited Nov. 28, 2022).

⁸ Kistner for Congress, Statement of Organization at 2 (Jan. 2, 2020), <https://docquery.fec.gov/pdf/217/202001029166894217/202001029166894217.pdf>.

⁹ Kistner for Congress, Amended Statement of Organization at 3 (Aug. 26, 2022), <https://docquery.fec.gov/pdf/147/202208269528253147/202208269528253147.pdf>.

¹⁰ *Minnesota Congressional Districts by Urban and Rural Population and Land Area*, U.S. CENSUS BUREAU, https://www2.census.gov/geo/relfiles/cdsld18/27/ur_cd_27.txt (last visited Nov. 28, 2022).

¹¹ Briana Bierschbach & 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/>.

¹² *See Minnesota’s 2nd Congressional District Election, 2022*, BALLOT PEDIA, https://ballotpedia.org/Minnesota%27s_2nd_Congressional_District_election_2022 (last visited Nov. 28, 2022) (illustrating that the 2020 district’s longest point would be the distance from Saint Paul to Moland); <https://www.google.com/maps> (searching directions from Saint Paul to Moland, which provides a route of 58.5 miles) (Nov. 28, 2022).

district was redrawn in 2022, that new district is smaller and more compact.¹³

The Complaints collectively identify \$31,588 in mileage reimbursements to Kistner dating from August 11, 2020, to October 1, 2021, which correspond to a travel period of one-and-a-half years that spanned the 2020 and 2022 election cycles.¹⁴ Applying the IRS standard mileage reimbursement rates of \$0.575 per mile in 2020 and \$0.560 per mile 2021, the Complaints allege that this would correspond to 55,649¹⁵ miles traveled by automobile: 28,299 miles during the 2020 election cycle and 27,350 miles during the 2022 election cycle. Although the Complaints and Responses are unclear as to the time period covered by the disbursements, and the Committee has not provided that information in either its Responses or disclosure reports, we assess that the mileage was accrued between April 1, 2020, to October 1, 2021, a period of 549 days.¹⁶ As reflected in the chart below, this would equate to 101.36 miles driven per day during the entire time period, 124.12 miles per day during the 2020 election cycle,¹⁷ and

¹³ *Minnesota's 2nd Congressional District Election, 2022*, BALLOTPEdia, https://ballotpedia.org/Minnesota%27s_2nd_Congressional_District_election,_2022 (last visited Nov. 28, 2022) (illustrating that both districts in 2020 and 2022 are similar in length but the district in 2022 has a significantly smaller width).

¹⁴ See MUR 8003 Compl. at 1; MUR 7951 Compl. at 3. While the Committee also reimbursed Kistner for mileage and fuel on March 31, 2020, April 6, 2022, and May 31, 2022, see *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner (last visited Nov. 28, 2022) (reflecting the Committee's disbursements to Kistner), these reimbursements are not the subject of either Complaint.

¹⁵ The MUR 7951 Complaint alleges that the mileage reimbursements would correspond to about 150 fewer miles as it uses the 2020 IRS standard mileage reimbursement rate to calculate the mileage corresponding to a February 8, 2021 reimbursement. MUR 7951 Compl. at 3. We instead rely on the number provided by the MUR 8003 Complaint, which uses the 2020 IRS standard mileage rate for the February 8, 2021 mileage reimbursement, as it addresses all of the mileage reimbursements at issue here. MUR 8003 Compl. at 2.

¹⁶ The MUR 8003 Complaint generally assumes that the period covered by a particular mileage reimbursement begins from the first day following the last mileage reimbursement date until the day of the mileage reimbursement in quest. See MUR 8003 Compl. at 2. Following this logic, we determined that the period covered by the August 11, 2020 mileage reimbursement covered travel between April 1, 2020, to August 11, 2020, because the most recent payment for mileage reimbursements prior to the August 11, 2020 disbursement occurred on March 31, 2020. *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner (last visited Nov. 28, 2022) (reflecting that Kistner was disbursed \$2,766.03 on March 31, 2020, for fuel and meals).

¹⁷ We assume that the November 14, 2020 mileage reimbursement is totally attributable to the 2020 election

85.20 miles per day during the 2022 election cycle.¹⁸ Noting the compact geography of the district and the fact that Kistner’s campaign headquarters was 20 miles from his house, the Complaints allege that the purported miles traveled are “nearly impossible”¹⁹ and “difficult to plausibly explain.”²⁰

The MUR 8003 Complaint draws comparisons between the mileage reimbursements to Kistner prior to November 17, 2021, when the *Star Tribune* published a news article indicating that the reimbursements were “unusually high” (the mileage reimbursements reported amounted to traveling an average of 101.36 miles per day), and the reimbursements to Kistner after that date.²¹ Specifically, it identifies a single mileage reimbursement after November 17, 2021, which was a January 3, 2022 disbursement of \$1,356.60 indicating an average mileage of 25.77 miles per day from October 2, 2021, to January 3, 2022.²² The Complaint suggests that it would be unlikely for Kistner to actually travel less between October 2, 2021, to January 3, 2022, than in earlier periods, as this period is closer in time to the August 9, 2022 primary election.²³ The Complaint argues that this significant decrease in per day mileage reimbursements to Kistner after the *Star Tribune* article was published supports the conclusion that Kistner was excessively

cycle, which ended less than two weeks prior on November 3, 2020.

¹⁸ We assume that Kistner began driving for his 2022 election campaign on November 15, 2020, because he received a reimbursement on November 14, 2020, which we attribute to his 2020 election campaign. *See id.*

¹⁹ MUR 7951 Compl. at 6.

²⁰ MUR 8003 Compl. at 3 (citing Briana Bierschbach & 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/>).

²¹ MUR 8003 Compl. at 2-4; *see also* Briana Bierschbach & 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/> (cited in the MUR 8003 Compl. at 2-3).

²² *See* MUR 8003 Compl. at 2-4.

²³ *Id.* at 3-4.

1 reimbursed prior to that point.²⁴

Time Period	Miles Traveled	Date Range	Miles Per Day
2020 Election Cycle	28,299 Miles	April 1, 2020, to November 14, 2020 (228 Days)	124.12 Miles per Day
2022 Election Cycle Pre-Star Tribune Article	27,350 Miles	November 15, 2020, to October 1, 2021 (321 Days)	85.20 Miles per Day
Total Pre-Star Tribune Article	55,649 Miles	April 1, 2020, to October 1, 2021 (549 Days)	101.36 Miles per Day
Post- Star Tribune Article	7,617 Miles	October 2, 2021, to May 31, 2022 (242 Days)	31.48 Miles per Day

2 As reflected in the chart above, when considering the January 3, 2022 disbursement in
3 addition to the Committee's recent mileage reimbursements of \$1,746.42 and \$1,276.50 to
4 Kistner on April 6, 2022, and May 31, 2022, Kistner's reported campaign travel significantly
5 decreased to 31.48 miles per day after the *Star Tribune* article was published.²⁵ Since the
6 May 31, 2022 reimbursement, the Committee has not reported other mileage reimbursements to
7 Kistner.²⁶ The Complaint also argues that the amounts reimbursed to Kistner are significantly

²⁴ *Id.*

²⁵ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner&two_year_transaction_period=2022 (last visited Nov. 28, 2022) (reflecting disbursements to Kistner during the 2022 election cycle). This mileage per day was calculated using the IRS standard mileage reimbursement rates for 2022, which is .585 per mile and assuming that each reimbursement covered the period between its date and the last date of reimbursement. *Standard Mileage Rates*, IRS.GOV, <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last visited Nov. 28, 2022).

²⁶ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner&two_year_transaction_period=2022 (last visited Nov. 28, 2022) (reflecting disbursements to Kistner during the 2022 election cycle).

higher than the amounts reimbursed to other Committee staff.²⁷

In an unsworn Response to both Complaints, the Committee asserts that Kistner “has campaigned full time” and was reimbursed “pursuant to federal law.”²⁸ The Response argues that the MUR 7951 Complaint miscalculated Kistner’s travel period, stating that the mileage reimbursement on August 11, 2020, was for travel that occurred prior to that date.²⁹ However, the Response does not explain when that travel occurred.³⁰ The Response represents that “campaign travelers are required to keep and submit detailed mileage logs, including the starting point, destination, purpose, and total miles traveled for each trip”³¹ and that these “logs . . . are retained by the Committee’s treasurer,”³² but does not include any mileage logs or other documentation to justify the reimbursements. The Response further argues that the mileage is not excessive because Kistner lives 20 miles from campaign headquarters, resulting in a 40-mile round trip, and that campaign meetings may occur in St. Paul, Minneapolis, or other towns outside of the district, which may result in “round trips that can be 100 miles or more.”³³ Finally, the Response argues that the Complaints lack the factual specificity required for the Commission to find reason to believe that a violation of the Act occurred.³⁴

²⁷ MUR 8003 Compl. at 3.

²⁸ MUR 7951 Resp. at 2.

²⁹ *Id.* at 3.

³⁰ *See supra* note 16 (explaining that, for the purposes of this Report, we assume that the August 11, 2020 mileage reimbursement covered the period between April 1, 2020 to August 11, 2020).

³¹ MUR 7951 Resp. at 2.

³² *Id.* at 1.

³³ *Id.* at 3.

³⁴ *Id.* (citing Statement of Reasons, Comm’rs. Mason, Thomas, & Wold at 2, MUR 4850 (Deloitte & Touche, LLP, *et al.*)).

B. Inadequate Reporting of an “Expense Reimbursement”

The MUR 8003 Complaint additionally alleges that the Committee failed to itemize \$1,699.21 of a \$1,800.37 reimbursement to Kistner. The Committee disbursed \$1,800.37 to Kistner on December 14, 2020, with the stated purpose of “Expense Reimbursement,” but only itemized \$101.16 of the amount as a payment to Target for “Toys to Donate.”³⁵ In its MUR 8003 Response, the Committee argues that it was not required to further itemize the remaining \$1,699.21 because no single disbursement underlying that reimbursement “exceeded the aggregate reporting threshold for itemization.”³⁶

III. LEGAL ANALYSIS

A. The Commission Finds Reason to Believe that Kistner and the Committee Converted Campaign Funds to Personal Use

The Act prohibits the conversion of campaign funds by any person to “personal use.”³⁷ “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.”³⁸ 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.³⁹ 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

³⁵ MUR 8003 Compl. at 4.; *see also* Kistner for Congress, 2020 Year-End Report at 35-36 (Jan. 24, 2021), <https://docquery.fec.gov/pdf/793/202101249405391793/202101249405391793.pdf>.

³⁶ MUR 8003 Resp. at 1 (stating that “if anything, [this issue] warrants a Request for Additional Information, not a new Matter Under Review.”).

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

³⁸ 11 C.F.R. § 113.1(g).

³⁹ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

that would exist irrespective of the candidate’s campaign or duties as a federal officeholder.⁴⁰

Commission regulations specify that travel expenses are evaluated on a case-by-case basis.⁴¹ Such expenses are not personal use “[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities.”⁴² 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 officer-holder-related activities, the portion of the vehicle expenses associated with the personal activities is personal use.”⁴³ In MUR 7876, the Commission dismissed, pursuant to prosecutorial discretion, the allegation that a candidate received excessive mileage reimbursements where the candidate campaigned in Colorado’s 3rd Congressional District during the 2020 election cycle, which covered 49,732 square miles (over 20 times larger than the district in the instant matter).⁴⁴ The candidate received \$17,270 in mileage reimbursements over the course of around seven months, and represented that she traveled 32,000 miles during this period, or about 147.46 miles per day.⁴⁵

Here, it appears that the mileage reimbursements to Kistner exceed the amount that one would reasonably expect to result from campaign activities in Minnesota’s 2nd Congressional District, which only covers 2,438 square miles and is 120 miles and 60 miles at its widest and

⁴⁰ 11 C.F.R. § 113.1(g)(1)(ii).

⁴¹ *Id.* § 113.1(g)(1)(ii)(C)-(D).

⁴² Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) (“Personal Use E&J”).

⁴³ 11 C.F.R. § 113.1(g)(1)(ii)(D).

⁴⁴ Factual and Legal Analysis (“F&LA”) at 5, MUR 7876 (Lauren Boebert for Congress, *et al.*); *see also Colorado Congressional Districts by Urban and Rural Population and Land Area*, U.S. CENSUS BUREAU, https://www2.census.gov/geo/refiles/cdsl18/08/ur_cd_08.txt (last visited Nov. 28, 2022) (providing that Colorado’s 3rd Congressional District in the 116th Congress covered 49,731.77 square miles).

⁴⁵ F&LA at 3, MUR 7876 (assuming the candidate began driving April 1, 2020, and stopped driving on November 3, 2020, the day of the election).

1 longest points.⁴⁶ Using the IRS standard mileage reimbursement rates, these reimbursements
 2 correspond to traveling 101.36 miles per day prior to November 17, 2021: 28,299 miles in the
 3 2020 election cycle (124.12 miles per day),⁴⁷ and 27,350 miles in the 2022 election cycle (85.20
 4 miles per day).⁴⁸ However, after the *Star Tribune* published an article on November 17, 2021,
 5 reporting that the mileage reimbursements were “unusually high,”⁴⁹ the mileage reimbursements
 6 to Kistner dropped by nearly 70% – now corresponding to an average distance of 31.48 miles of
 7 travel per day from October 2, 2021, to May 31, 2022, after which Kistner stopped reporting any
 8 travel in his personal vehicle.⁵⁰

9 Although the Commission recently dismissed an allegation in MUR 7876 that the
 10 candidate was excessively reimbursed for travel in her personal vehicle, the candidate in that
 11 matter campaigned in a congressional district that covered more than 20 times the size of
 12 Minnesota’s 2nd Congressional District,⁵¹ but was reimbursed nearly the same amount as

⁴⁶ As noted above, Minnesota redrew its 2nd Congressional District for the 2022 election cycle, but that new district is smaller and more compact. *Minnesota’s 2nd Congressional District Election, 2022*, BALLOTEDIA, https://ballotpedia.org/Minnesota%27s_2nd_Congressional_District_election,_2022 (last visited Nov. 28, 2022) (illustrating that both districts in 2020 and 2022 are similar in height but the district in 2022 has a significantly smaller width).

⁴⁷ This was calculated by assuming that the August 11, 2020, mileage disbursement was for travel that occurred between April 1, 2020, and August 11, 2020, as the Committee’s disclosure reports provide that the most recent payment for mileage reimbursements prior to the August 11, 2020, payment occurred on March 31, 2020. *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner (last visited Nov. 28, 2022) (reflecting that Kistner was reimbursed \$2,766.03 on March 31, 2020, for fuel and meals). The Committee does not provide information as to the period covered by the August 11, 2020 payment, other than that it covered a period prior to August 11, 2020. See MUR 7951 Resp. at 3.

⁴⁸ See MUR 8003 Compl. at 2.

⁴⁹ Briana Bierschbach & 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/>.

⁵⁰ See MUR 8003 Compl. at 2; *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner&two_year_transaction_period=2022 (last visited Nov. 28, 2022) (reflecting mileage reimbursements of \$1,746.42 and \$1,276.50 to Kistner on April 6, 2022, and May 31, 2022).

⁵¹ *Compare Colorado Congressional Districts by Urban and Rural Population and Land Area*, U.S. CENSUS

1 Kistner (\$17,270 versus \$16,272 for Kistner) over the same period of about seven months.⁵²
 2 Further, the respondent in MUR 7876 provided the amount of campaign travel reimbursed by the
 3 committee,⁵³ but, here, the Committee only states that the candidate sometimes traveled long
 4 distances and make no affirmative representation that all reported mileage was indeed for
 5 campaign travel.⁵⁴ Thus, the Complaints credibly allege that the mileage reimbursements to
 6 Kistner are excessive on their face given the amount purportedly traveled by Kistner and the size
 7 of his district.⁵⁵

8 In its Response, the Committee does not credibly explain as to why the reimbursements
 9 correspond to traveling 101.36 miles per day prior to November 17, 2021, given the compact size
 10 of the district and the extended period of time (one-and-a-half years) that this travel occurred.
 11 The Response also provides no explanation as to why the reimbursements correspond to
 12 traveling only 31.48 miles per day, a decrease of nearly 70%, after November 17, 2021, when the
 13 *Star Tribune* published an article questioning Kistner’s mileage reimbursements as excessive,
 14 even though this period was closer in time to the upcoming primary and general elections. While
 15 the Committee states that Kistner was traveling 100-mile round trips due to “campaign events

BUREAU, https://www2.census.gov/geo/relfiles/cdslld18/08/ur_cd_08.txt (last visited Nov. 28, 2022) (providing that Colorado’s Third Congressional District in the 116th Congress covered 49,731.77 square miles) *with Minnesota Congressional Districts by Urban and Rural Population and Land Area*, U.S. CENSUS BUREAU, https://www2.census.gov/geo/relfiles/cdslld18/27/ur_cd_27.txt (last visited Nov. 28, 2022) (providing that Minnesota’s Second Congressional District in the 116th Congress covered 2,437.91 square miles).

⁵² See F&LA at 3, 5, MUR 7876 (providing that the candidate drove 32,000 miles between April 2020 and November 2020). Subsequently, during the 2022 election cycle, Kistner was similarly reimbursed \$15,316.13 for travel (although this was accrued over a period of about eleven months). MUR 8003 Compl. at 2.

⁵³ F&LA at 3, MUR 7876.

⁵⁴ See generally MUR 7951 Resp.

⁵⁵ While the MUR 8003 Complaint additionally argues that the rates reimbursed to Kistner are excessive compared to the rates reimbursed to other Committee staff, the Complaint does not describe the roles of those staff or otherwise why it would be expected for the Committee staff to travel at the same rate as Kistner. See MUR 8003 Compl. at 3.

1 and meetings [which] may occur in St. Paul, Minneapolis, or other towns in the state but outside
 2 the Second District,”⁵⁶ the Committee does not suggest that Kistner was making such roundtrips
 3 almost every day from April 1, 2020, to October 1, 2021, which would be required for him to be
 4 properly reimbursed at these amounts, or why those trips suddenly stopped as the primary and
 5 general elections became closer. The Committee also declined to provide any evidence as to
 6 Kistner’s travels, such as a report of the miles purportedly traveled, the reimbursement rate, or
 7 copies of the logs the Committee claimed to have maintained in connection with its
 8 reimbursements.

9 As such, the Commission finds reason to believe that the Committee converted campaign
 10 funds to personal use in violation of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g).⁵⁷

11 **B. The Commission Dismisses the Allegation that the Committee Failed to**
 12 **Itemize Its Disbursements**

13 Principal campaign committees must file regular reports with the Commission disclosing
 14 receipts and disbursements.⁵⁸ In each report, the committee must provide the name and address
 15 of “[e]ach person to whom an expenditure in an aggregate amount or value in excess of \$200
 16 within the election cycle is made by the reporting authorized committee to meet the authorized
 17 committee’s operating expenses, together with the date, amount and purpose of each
 18 expenditure.”⁵⁹

⁵⁶ MUR 7951 Resp. at 3.

⁵⁷ While it is likely that only a portion of the \$32,944 in mileage reimbursements identified in the Complaints were converted to personal use, the Commission has found reason to believe a personal use violation occurred involving similar amounts in violation. *See* F&LA 10-14, MUR 7577 (Ander PAC, *et al.*) (finding reason to believe that a personal use violation occurred where \$13,196.08 were used to pay for a former congressman’s vacations, food, and club dues).

⁵⁸ 52 U.S.C. § 30104(a), (b).

⁵⁹ 11 C.F.R. § 104.3(b)(4)(i); *see also* 52 U.S.C. § 30104(b)(5)(A) (requiring a committee to report the name of each person who receives in aggregate \$200 or more within a calendar year, along with the purpose of such operating expenditure). The mileage reimbursements here would be considered operating expenditures. *Day-to-day*

1 Here, the available information indicates that the Committee made a disbursement of
2 \$1,800.37 to Kistner but did not further itemize \$1,699.21 of that disbursement. The Committee
3 states that the individual payments for which Kistner was being reimbursed are less than \$200
4 each but does not provide proof of these payments.⁶⁰ Because further itemization is only
5 required when the ultimate payee is paid \$200 or more within an election cycle and given the
6 amount at issue, the Commission dismisses the allegation that the Committee violated 52 U.S.C.
7 § 30104(b)(5)(A) and 11 C.F.R. § 104.3(b)(4)(i).

operating expenditures, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/making-disbursements/operating-expenditures-candidate/> (last visited Nov. 28, 2022) (“[I]f a campaign pays for the candidate’s travel and subsistence in connection with his or her campaign activities, those payments are also considered operating expenditures.”).

⁶⁰ MUR 8003 Resp. at 1.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Tyler Kistner

MURs 7951 8003

I. INTRODUCTION

The Complaints in these matters allege that 2020 and 2022 Minnesota 2nd Congressional District candidate Tyler Kistner converted campaign funds to personal use in violation of 52 U.S.C. § 30114(b) of the Federal Election Campaign Act of 1971, as amended (the “Act”), and 11 C.F.R. § 113.1(g)(1) of the Commission’s regulations, when his principal campaign committee, Kistner for Congress (the “Committee”), reimbursed him for travel in his personal vehicle that was in excess of his actual campaign travel.

The Complaints collectively identify \$31,588 in mileage reimbursements disbursed to Kistner between August 11, 2020, to October 1, 2021.¹ Drawing on the Internal Revenue Service (“IRS”) standard mileage reimbursement rate, the Complaints calculate that these reimbursements correspond to 55,649 miles in campaign-related automobile travel.² The Complaints characterize this distance as unrealistically high given the compact size of Minnesota’s 2nd Congressional District and that it was purportedly accrued during one-and-a-half years.³ The MUR 8003 Complaint also notes a dramatic decrease in Kistner’s mileage reimbursements after the publication of a newspaper article questioning whether the

¹ Compl. at 1 (June 8, 2022), MUR 8003 (hereinafter “MUR 8003 Compl.”) (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); Compl. at 3 (Jan. 6, 2022), MUR 7951 (hereinafter “MUR 7951 Compl.”) (identifying \$26,177.65 in mileage reimbursements from the Committee to Kistner between August 11, 2020, and July 6, 2021).

² MUR 8003 Compl. at 2 (alleging that the mileage reimbursements from August 11, 2020, to October 1, 2021, correspond to 55,648.80 miles of travel); MUR 7951 Compl. at 3 (alleging that the mileage reimbursements from August 11, 2020, to July 6, 2021, correspond to 45,840.73 miles of travel).

³ MUR 8003 Compl. at 2; MUR 7951 Compl. at 1-2.

reimbursements were excessive.

As explained below, due to the small size of the Minnesota's 2nd Congressional District, the one-and-a-half year period in which the mileage was accrued, and the significant decrease in the amount reimbursed to Kistner after a news article reported that the mileage reimbursements were unusually high, there is a reasonable basis to infer that Kistner was excessively reimbursed for his campaign mileage.

Accordingly, the Commission finds reason to believe that the Kistner converted campaign funds to personal use in violation of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g).

II. FACTUAL BACKGROUND

Tyler Kistner was a 2020 and 2022 candidate to represent Minnesota's 2nd Congressional District.⁴ Kistner for Congress is his principal campaign committee,⁵ and Thomas Datwyler is the treasurer.⁶ In 2020, Minnesota's 2nd Congressional District covered 2,438 square miles,⁷

⁴ Tyler Kistner, Statement of Candidacy at 1 (Jan. 2, 2020), <https://docquery.fec.gov/pdf/209/202001029166894209/202001029166894209.pdf>; Tyler Kistner, Amended Statement of Candidacy at 1 (Apr. 21, 2022), <https://docquery.fec.gov/pdf/724/202104209443997724/202104209443997724.pdf>. Kistner won the primary to become the Republican candidate but lost the general election in both races. Nicole Gaudiano, Katie Balevic, *Results: Angie Craig defeated Tyler Kistner: Minnesota's 2nd District US House election*, BUSINESS INSIDER, Nov. 9, 2022, <https://www.businessinsider.com/results-angie-craig-tyler-kistner-minnesota-2nd-district-house-election-2022-11> (last visited Nov. 28, 2022).

⁵ Kistner for Congress, Statement of Organization at 2 (Jan. 2, 2020), <https://docquery.fec.gov/pdf/217/202001029166894217/202001029166894217.pdf>.

⁶ Kistner for Congress, Amended Statement of Organization at 3 (Aug. 26, 2022), <https://docquery.fec.gov/pdf/147/202208269528253147/202208269528253147.pdf>.

⁷ *Minnesota Congressional Districts by Urban and Rural Population and Land Area*, U.S. CENSUS BUREAU, https://www2.census.gov/geo/relfiles/cdsld18/27/ur_cd_27.txt (last visited Nov. 28, 2022).

and was 120 miles at its widest point⁸ and about 60 miles at its longest point.⁹ While the district was redrawn in 2022, that new district is smaller and more compact.¹⁰

The Complaints collectively identify \$31,588 in mileage reimbursements to Kistner dating from August 11, 2020, to October 1, 2021, which correspond to a travel period of one-and-a-half years that spanned the 2020 and 2022 election cycles.¹¹ Applying the IRS standard mileage reimbursement rates of \$0.575 per mile in 2020 and \$0.560 per mile 2021, the Complaints allege that this would correspond to 55,649¹² miles traveled by automobile: 28,299 miles during the 2020 election cycle and 27,350 miles during the 2022 election cycle. Although the Complaints and Responses are unclear as to the time period covered by the disbursements, and the Committee has not provided that information in either its Responses or disclosure reports, we assess that the mileage was accrued between April 1, 2020, to October 1, 2021, a period of 549 days.¹³ As reflected in the chart below, this would equate to 101.36 miles driven

⁸ Briana Bierschbach & 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/>.

⁹ See *Minnesota’s 2nd Congressional District Election, 2022*, BALLOTEDIA, https://ballotpedia.org/Minnesota%27s_2nd_Congressional_District_election,_2022 (last visited Nov. 28, 2022) (illustrating that the 2020 district’s longest point would be the distance from Saint Paul to Moland); <https://www.google.com/maps> (searching directions from Saint Paul to Moland, which provides a route of 58.5 miles) (Nov. 28, 2022).

¹⁰ *Minnesota’s 2nd Congressional District Election, 2022*, BALLOTEDIA, https://ballotpedia.org/Minnesota%27s_2nd_Congressional_District_election,_2022 (last visited Nov. 28, 2022) (illustrating that both districts in 2020 and 2022 are similar in length but the district in 2022 has a significantly smaller width).

¹¹ See MUR 8003 Compl. at 1; MUR 7951 Compl. at 3. While the Committee also reimbursed Kistner for mileage and fuel on March 31, 2020, April 6, 2022, and May 31, 2022, see *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner (last visited Nov. 28, 2022) (reflecting the Committee’s disbursements to Kistner), these reimbursements are not the subject of either Complaint.

¹² The MUR 7951 Complaint alleges that the mileage reimbursements would correspond to about 150 fewer miles as it uses the 2020 IRS standard mileage reimbursement rate to calculate the mileage corresponding to a February 8, 2021 reimbursement. MUR 7951 Compl. at 3. We instead rely on the number provided by the MUR 8003 Complaint, which uses the 2020 IRS standard mileage rate for the February 8, 2021 mileage reimbursement, as it addresses all of the mileage reimbursements at issue here. MUR 8003 Compl. at 2.

¹³ The MUR 8003 Complaint generally assumes that the period covered by a particular mileage

per day during the entire time period, 124.12 miles per day during the 2020 election cycle,¹⁴ and 85.20 miles per day during the 2022 election cycle.¹⁵ Noting the compact geography of the district and the fact that Kistner's campaign headquarters was 20 miles from his house, the Complaints allege that the purported miles traveled are "nearly impossible"¹⁶ and "difficult to plausibly explain."¹⁷

The MUR 8003 Complaint draws comparisons between the mileage reimbursements to Kistner prior to November 17, 2021, when the *Star Tribune* published a news article indicating that the reimbursements were "unusually high" (the mileage reimbursements reported amounted to traveling an average of 101.36 miles per day), and the reimbursements to Kistner after that date.¹⁸ Specifically, it identifies a single mileage reimbursement after November 17, 2021, which was a January 3, 2022 disbursement of \$1,356.60 indicating an average mileage of 25.77 miles per day from October 2, 2021, to January 3, 2022.¹⁹ The Complaint suggests that it would

reimbursement begins from the first day following the last mileage reimbursement date until the day of the mileage reimbursement in quest. *See* MUR 8003 Compl. at 2. Following this logic, we determined that the period covered by the August 11, 2020 mileage reimbursement covered travel between April 1, 2020, to August 11, 2020, because the most recent payment for mileage reimbursements prior to the August 11, 2020 disbursement occurred on March 31, 2020. *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner (last visited Nov. 28, 2022) (reflecting that Kistner was disbursed \$2,766.03 on March 31, 2020, for fuel and meals).

¹⁴ We assume that the November 14, 2020 mileage reimbursement is totally attributable to the 2020 election cycle, which ended less than two weeks prior on November 3, 2020.

¹⁵ We assume that Kistner began driving for his 2022 election campaign on November 15, 2020, because he received a reimbursement on November 14, 2020, which we attribute to his 2020 election campaign. *See id.*

¹⁶ MUR 7951 Compl. at 6.

¹⁷ MUR 8003 Compl. at 3 (citing Briana Bierschbach & 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/>).

¹⁸ MUR 8003 Compl. at 2-4; *see also* Briana Bierschbach & 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/> (cited in the MUR 8003 Compl. at 2-3).

¹⁹ *See* MUR 8003 Compl. at 2-4.

1 be unlikely for Kistner to actually travel less between October 2, 2021, to January 3, 2022, than
 2 in earlier periods, as this period is closer in time to the August 9, 2022 primary election.²⁰ The
 3 Complaint argues that this significant decrease in per day mileage reimbursements to Kistner
 4 after the *Star Tribune* article was published supports the conclusion that Kistner was excessively
 5 reimbursed prior to that point.²¹

Time Period	Miles Traveled	Date Range	Miles Per Day
2020 Election Cycle	28,299 Miles	April 1, 2020, to November 14, 2020 (228 Days)	124.12 Miles per Day
2022 Election Cycle Pre-Star Tribune Article	27,350 Miles	November 15, 2020, to October 1, 2021 (321 Days)	85.20 Miles per Day
Total Pre-Star Tribune Article	55,649 Miles	April 1, 2020, to October 1, 2021 (549 Days)	101.36 Miles per Day
Post- Star Tribune Article	7,617 Miles	October 2, 2021, to May 31, 2022 (242 Days)	31.48 Miles per Day

6 As reflected in the chart above, when considering the January 3, 2022 disbursement in
 7 addition to the Committee's recent mileage reimbursements of \$1,746.42 and \$1,276.50 to
 8 Kistner on April 6, 2022, and May 31, 2022, Kistner's reported campaign travel significantly
 9 decreased to 31.48 miles per day after the *Star Tribune* article was published.²² Since the

²⁰ *Id.* at 3-4.

²¹ *Id.*

²² *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner&two_year_transaction_period=2022 (last visited Nov. 28, 2022) (reflecting disbursements to Kistner during the 2022 election cycle). This mileage per day was calculated using the IRS standard mileage reimbursement rates for 2022, which is .585 per mile and assuming that each reimbursement covered the period between its date and the last date of reimbursement. *Standard Mileage Rates*, IRS.GOV, <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last visited Nov. 28, 2022).

May 31, 2022 reimbursement, the Committee has not reported other mileage reimbursements to Kistner.²³ The Complaint also argues that the amounts reimbursed to Kistner are significantly higher than the amounts reimbursed to other Committee staff.²⁴

III. LEGAL ANALYSIS

The Act prohibits the conversion of campaign funds by any person to “personal use.”²⁵ “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.”²⁶ 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.²⁷ 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.²⁸

Commission regulations specify that travel expenses are evaluated on a case-by-case basis.²⁹ Such expenses are not personal use “[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities.”³⁰ If a committee “uses

²³ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner&two_year_transaction_period=2022 (last visited Nov. 28, 2022) (reflecting disbursements to Kistner during the 2022 election cycle).

²⁴ MUR 8003 Compl. at 3.

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

²⁶ 11 C.F.R. § 113.1(g).

²⁷ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

²⁸ 11 C.F.R. § 113.1(g)(1)(ii).

²⁹ *Id.* § 113.1(g)(1)(ii)(C)-(D).

³⁰ Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) (“Personal Use E&J”).

campaign funds to pay expenses associated with a vehicle that is used for both personal activities beyond a *de minimis* amount and campaign or officer-holder-related activities, the portion of the vehicle expenses associated with the personal activities is personal use.”³¹ In MUR 7876, the Commission dismissed, pursuant to prosecutorial discretion, the allegation that a candidate received excessive mileage reimbursements where the candidate campaigned in Colorado’s 3rd Congressional District during the 2020 election cycle, which covered 49,732 square miles (over 20 times larger than the district in the instant matter).³² The candidate received \$17,270 in mileage reimbursements over the course of around seven months, and represented that she traveled 32,000 miles during this period, or about 147.46 miles per day.³³

Here, it appears that the mileage reimbursements to Kistner exceed the amount that one would reasonably expect to result from campaign activities in Minnesota’s 2nd Congressional District, which only covers 2,438 square miles and is 120 miles and 60 miles at its widest and longest points.³⁴ Using the IRS standard mileage reimbursement rates, these reimbursements correspond to traveling 101.36 miles per day prior to November 17, 2021: 28,299 miles in the 2020 election cycle (124.12 miles per day),³⁵ and 27,350 miles in the 2022 election cycle (85.20

³¹ 11 C.F.R. § 113.1(g)(1)(ii)(D).

³² Factual and Legal Analysis (“F&LA”) at 5, MUR 7876 (Lauren Boebert for Congress, *et al.*); *see also Colorado Congressional Districts by Urban and Rural Population and Land Area*, U.S. CENSUS BUREAU, https://www2.census.gov/geo/relfiles/cdsld18/08/ur_cd_08.txt (last visited Nov. 28, 2022) (providing that Colorado’s 3rd Congressional District in the 116th Congress covered 49,731.77 square miles).

³³ F&LA at 3, MUR 7876 (assuming the candidate began driving April 1, 2020, and stopped driving on November 3, 2020, the day of the election).

³⁴ As noted above, Minnesota redrew its 2nd Congressional District for the 2022 election cycle, but that new district is smaller and more compact. *Minnesota’s 2nd Congressional District Election, 2022*, BALLOTPEdia, https://ballotpedia.org/Minnesota%27s_2nd_Congressional_District_election,_2022 (last visited Nov. 28, 2022) (illustrating that both districts in 2020 and 2022 are similar in height but the district in 2022 has a significantly smaller width).

³⁵ This was calculated by assuming that the August 11, 2020, mileage disbursement was for travel that occurred between April 1, 2020, and August 11, 2020, as the Committee’s disclosure reports provide that the most

miles per day).³⁶ However, after the *Star Tribune* published an article on November 17, 2021, reporting that the mileage reimbursements were “unusually high,”³⁷ the mileage reimbursements to Kistner dropped by nearly 70% – now corresponding to an average distance of 31.48 miles of travel per day from October 2, 2021, to May 31, 2022, after which Kistner stopped reporting any travel in his personal vehicle.³⁸

Although the Commission recently dismissed an allegation in MUR 7876 that the candidate was excessively reimbursed for travel in her personal vehicle, the candidate in that matter campaigned in a congressional district that covered more than 20 times the size of Minnesota’s 2nd Congressional District,³⁹ but was reimbursed nearly the same amount as Kistner (\$17,270 versus \$16,272 for Kistner) over the same period of about seven months.⁴⁰ Further, the respondent in MUR 7876 provided the amount of campaign travel reimbursed by the

recent payment for mileage reimbursements prior to the August 11, 2020, payment occurred on March 31, 2020. *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner (last visited Nov. 28, 2022) (reflecting that Kistner was reimbursed \$2,766.03 on March 31, 2020, for fuel and meals).

³⁶ See MUR 8003 Compl. at 2.

³⁷ Briana Bierschbach & 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/>.

³⁸ See MUR 8003 Compl. at 2; *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00732925&recipient_name=kistner&two_year_transaction_period=2022 (last visited Nov. 28, 2022) (reflecting mileage reimbursements of \$1,746.42 and \$1,276.50 to Kistner on April 6, 2022, and May 31, 2022).

³⁹ *Compare Colorado Congressional Districts by Urban and Rural Population and Land Area*, U.S. CENSUS BUREAU, https://www2.census.gov/geo/relfiles/cd18/08/ur_cd_08.txt (last visited Nov. 28, 2022) (providing that Colorado’s Third Congressional District in the 116th Congress covered 49,731.77 square miles) *with Minnesota Congressional Districts by Urban and Rural Population and Land Area*, U.S. CENSUS BUREAU, https://www2.census.gov/geo/relfiles/cd18/27/ur_cd_27.txt (last visited Nov. 28, 2022) (providing that Minnesota’s Second Congressional District in the 116th Congress covered 2,437.91 square miles).

⁴⁰ See F&LA at 3, 5, MUR 7876 (providing that the candidate drove 32,000 miles between April 2020 and November 2020). Subsequently, during the 2022 election cycle, Kistner was similarly reimbursed \$15,316.13 for travel (although this was accrued over a period of about eleven months). MUR 8003 Compl. at 2.

1 committee,⁴¹ but, here, Kistner makes no affirmative representation as to how much he traveled
2 while campaigning. Thus, the Complaints credibly allege that the mileage reimbursements to
3 Kistner are excessive on their face given the amount purportedly traveled by Kistner and the size
4 of his district.⁴²

5 The available information does not explain as to why the reimbursements correspond to
6 traveling 101.36 miles per day prior to November 17, 2021, given the compact size of the district
7 and the extended period of time (one-and-a-half years) that this travel occurred. There is also no
8 explanation as to why the reimbursements correspond to traveling only 31.48 miles per day, a
9 decrease of nearly 70%, after November 17, 2021, when the *Star Tribune* published an article
10 questioning Kistner's mileage reimbursements as excessive, even though this period was closer
11 in time to the upcoming primary and general elections.

12 As such, the Commission finds reason to believe that Tyler Kistner converted campaign
13 funds to personal use in violation of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g).⁴³

⁴¹ F&LA at 3, MUR 7876.

⁴² While the MUR 8003 Complaint additionally argues that the rates reimbursed to Kistner are excessive compared to the rates reimbursed to other Committee staff, the Complaint does not describe the roles of those staff or otherwise why it would be expected for the Committee staff to travel at the same rate as Kistner. *See* MUR 8003 Compl. at 3.

⁴³ While it is likely that only a portion of the \$32,944 in mileage reimbursements identified in the Complaints were converted to personal use, the Commission has found reason to believe a personal use violation occurred involving similar amounts in violation. *See* F&LA 10-14, MUR 7577 (Ander PAC, *et al.*) (finding reason to believe that a personal use violation occurred where \$13,196.08 were used to pay for a former congressman's vacations, food, and club dues).