



FEDERAL ELECTION COMMISSION

Washington, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 6992
Donald J. Trump)	
Donald J. Trump for President, Inc. and Bradley T.)	
Crate in his official capacity as treasurer)	
The Trump Organization LLC)	

**STATEMENT OF REASONS OF
CHAIR SHANA M. BROUSSARD AND COMMISSIONER ELLEN L. WEINTRAUB**

This matter under review (“MUR”) involves yet another instance of Donald Trump and his 2016 presidential campaign receiving what may have been illegal contributions, this time in the form of high-ranking Trump Organization employees performing campaign activities that appear to have been undertaken at the direction of the candidate himself.¹ Former Trump Organization Executive Vice President and Special Counsel Michael Cohen and General Counsel Alan Garten appear to have performed work on behalf of Donald J. Trump for President, Inc. (the “Trump Committee,” “campaign”) – work that was paid for by the Trump Organization and thus likely constituted impermissible in-kind contributions.

The ban on corporate contributions to federal candidates is one of the foundational principles underpinning the Federal Election Campaign Act (“FECA,” or the “Act”), having been firmly ensconced in federal law for well over a century.² Though the Act includes provisions that permit individuals, including corporate employees, to provide personal volunteer services to campaigns without making a corporate contribution, if the individual is being compensated for his or her services the activity is no longer considered volunteer activity. In that scenario, any payment made by someone other than the campaign itself results in an in-kind contribution from

¹ We previously supported finding reason to believe that Trump or his committee (1) accepted prohibited contributions through Trump’s role in the Stormy Daniels payoff (MURs 7313, 7319, 7379), (2) illegally solicited excessive contributions to a super PAC that supported Trump’s candidacy (MURs 7135), (3) illegally solicited a contribution from Russian nationals (MURs 7265 and 7266), and (4) accepted prohibited contributions when the parent company of the former National Enquirer paid Karen McDougal in order to suppress negative stories about Trump’s relationship with McDougal through “catch and kill” arrangements (MURs 7324, 7332, 7364 and 7366). There were not sufficient votes to approve any of these findings.

² See 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b). Since the FECA was enacted in 1972, the term “contribution” has included “anything of value made by any person for the purpose of influencing an election for Federal office.” 52 U.S.C. § 30101(8)(A)(i). “Anything of value” includes all in-kind contributions – whether by a corporation or other “persons” under the FECA – such as “the provision of any goods or services without charge” or at a charge less than the usual and normal charge. 11 C.F.R. §§ 100.10, 100.52(d).

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the payor, subject to the limits, prohibitions, and reporting requirements of the Act.³ And if the individual is a corporate employee, any use of corporate resources and costs incurred in the provision of such services – including office space, corporate equipment and supplies, and travel costs – are likewise subject to the same requirements.⁴

The Complaint in this matter, received by the Commission in December 2015 – well before the criminal and congressional investigations into Trump and his campaign shed more light on the relevant facts – alleged that the Trump Organization made prohibited in-kind contributions to the Trump Committee when (1) Michael Cohen communicated to the press on behalf of the Committee and (2) Alan Garten provided legal services to it by drafting cease and desist letters.⁵ The record supports these allegations. Cohen and Garten appear to have engaged in campaign-related conduct in their roles as highly compensated employees who reported directly to Trump, thus converting a portion of their salaries and any associated use of corporate resources into prohibited contributions – no different than if the Committee had received checks for these amounts directly from the Trump Organization.⁶ As discussed below, under other circumstances we would have supported an investigation into this matter to determine whether, and to what degree, the alleged activities violated the Act's prohibitions and reporting requirements.

Michael Cohen's Activities on Behalf of the Trump Committee

The Trump Committee did not report any disbursements to Cohen or costs related to his activities; however, the record indicates that he made numerous media appearances and public communications in support of Trump's presidential campaign during the 2016 primary period. Cohen was a guest on several cable news programs to discuss Trump's candidacy.⁷ Cohen also

³ See 52 U.S.C. §§ 30101(8)(B)(i); 30101(8)(A)(ii); 11 C.F.R. § 100.54. The regulations provide an exception for legal and accounting services not applicable to these facts. See 11 C.F.R. §§ 100.85 and 100.86.

⁴ See, e.g., 11 C.F.R. §§ 114.2(f) and 114.9.

⁵ Comp. and Supp. Compl. The Complaint specifically alleged that Respondents violated 52 U.S.C. §§ 30104(b) (disclosure requirements), 30118(a) (corporate contribution prohibition), and 30125(e) (ban on federal candidates and entities established, maintained, financed or controlled by them from soliciting, receiving, directing, transferring or spending funds in connection with a federal election, unless the funds are subject to the Act's limitations, prohibitions, and reporting requirements). The Trump Organization denied that the company directed or encouraged Cohen's activities in support of Trump's candidacy, contending that Cohen volunteered for the Trump campaign during his spare time and that any related use of corporate resources was incidental and therefore permissible under the Act. Trump Org. Resp. at 10-12. Respondents also denied that the Trump Committee requested or suggested that Garten issue the cease and desist letters, asserting that the company's actions were separate and independent from the campaign. See Trump Org. Resp. at 2; Trump Comm. Resp. at 1-2.

⁶ As noted by the Trump Organization, the Commission's regulations (11 C.F.R. § 110.1(g)) provide that, for purposes of the Act, LLCs will be considered either partnerships or corporations based on the tax treatment they select under the Internal Revenue Code. Trump Org. Resp. at 6, n.3. The Trump Organization did not resolve this factual issue in its response, nor did it challenge the Complaint's reliance on the sections of the Act and regulations pertaining to corporations.

⁷ For example, Cohen was interviewed by CNN's Chris Cuomo, Michael Smerconish, Fox News' Sean Hannity, and appeared as a frequent guest on cable television programs including the Erin Burnett Show, The Situation Room, and CNN's New Day Live. See First Gen. Counsel's Report in MUR 6992 (Donald J. Trump, *et al.*) at 7.

participated in campaign events, including a mid-week campaign rally in Cleveland, Ohio, at which he provided a nine-minute introduction for the candidate.⁸ Throughout this time, Cohen steadfastly maintained that he was not associated with the campaign.⁹

The Complaint alleged that Cohen's interactions with the press constituted substantive campaign work and demonstrate that the Trump Organization and the Trump Committee were "virtually indistinguishable."¹⁰ Cohen reportedly told CNN's Chris Cuomo that the campaign's use of video footage of Morocco instead of Mexico in a Trump television advertisement about open borders was a "mistake" and that he would be contacting the responsible vendor, specifically by "sending him a letter very soon on behalf of Mr. Trump."¹¹ The Complaint also noted that Cohen directly responded to an email inquiry that a *Daily Beast* reporter had sent to Trump Committee spokesperson Hope Hicks regarding allegations against Trump made by his first wife during the campaign; during the course of Cohen's conversation with the reporter, he "repeatedly read from" the reporter's email, which suggested "that it had been forwarded between the Trump campaign and [Trump's] corporate organization."¹²

A July 2015 news article submitted with the Complaint reported that Cohen "has appeared frequently on CNN and Fox News for several weeks talking about Trump's campaign, sometimes more than once a day;" the same article reported that Cohen's Twitter feed became increasingly active after Trump formally entered the race in June 2015 and that, "[s]ince the beginning of the campaign, he's tweeted and retweeted many times per day, with nearly all of the content pertaining to the campaign."¹³ Based on his subsequent tweets and retweets and publicly available media clips, Cohen appears to have continued his feverish pace in vigorously promoting his boss's candidacy throughout the remainder of the 2016 campaign.¹⁴

The Complaint raised serious questions, in light of the frequency of Cohen's media appearances and his unusually detailed knowledge of Committee operations, as to whether his activities constituted "continuous and substantive Campaign work that is subsidized" by the Trump Organization.¹⁵ The key question is whether Cohen participated in these activities (a) as

⁸ *Michael Cohen Introduces Donald Trump, Cleveland, OH, 9/21/2016*, ABC News, YOUTUBE (Sept. 21, 2016), <https://www.youtube.com/watch?v=b3B2QQQHepE>.

⁹ *See, e.g.*, Trump Comm. Resp. at 8.

¹⁰ Supp. Compl. at 1-2.

¹¹ *Id.* at 2 (citing Eliza Collins, *Team Trump All Over the Map on Morocco 'Mistake,'* POLITICO, Jan. 5, 2016, attached to the Complaint supplement as Ex. A).

¹² Supp. Compl. at 2 (citing Rosie Gray, *Trump Aide's Outburst Raises Questions About his Ambiguous Role*, BUZZFEED, July 28, 2015, attached to the Complaint supplement as Ex. B).

¹³ *Id.*

¹⁴ In addition to the media appearances cited *supra* in fn. 7, *see, e.g.*, https://archive.org/details/FOXNEWSW_20160409_090000_Hannity/start/180/end/240 (4/09/16 appearance on Fox News); <https://twitter.com/MichaelCohen212> (inserted into Wayback Machine at wayback.archive.org); <http://www.cnn.com/videos/politics/2016/08/19/michael-cohen-brianna-keilar-says-who-all-of-them-moos-pkg-erin.cnn> (8/19/16 appearance on CNN); https://archive.org/details/CNNW_20161018_210000_Situation_Room_With_Wolf_Blitzer/start/2152/end/2212?q=Michael+Cohen (10/18/16 appearance on CNN).

¹⁵ Supp. Compl. at 3.

a volunteer or (b) at the direction of Trump and as part of his employment with the Trump Organization. Cohen himself has definitively answered this, under oath: It's (b).

In August 2018, Cohen entered a guilty plea to, *inter alia*, “caus[ing] \$280,000 in payments to be made to silence two women who otherwise planned to speak publicly about their alleged affairs with a presidential candidate, thereby intending to influence the 2016 election.”¹⁶ Under oath before the judge, and knowing that the acceptance of his plea could result in several years of imprisonment, Cohen admitted to “knowingly and willfully causing an unlawful corporate contribution.”¹⁷ In December 2018, Cohen was sentenced to three years in prison and to pay \$1.39 million in restitution plus \$500,000 in forfeiture for his financial and campaign finance crimes; he told the judge of his “blind loyalty” to Trump and his regret for “not having the strength to question and to refuse his demands.”¹⁸

In February 2019, in sworn testimony before Congress, Cohen made statements directly refuting the Trump Organization's claim that Cohen had a “genuine, heartfelt, personal belief that [Trump] would be an outstanding President.”¹⁹ Cohen testified that he never imagined that Trump “would one day run for President, launch a campaign platform of hate and intolerance, and actually win.”²⁰ He further testified that his illegal conduct was “for the benefit of, at the direction of, and in coordination” with Trump, and that his “job” was to tout the “Trump narrative.”²¹ Cohen provided documentation to back up his claims about Trump's direct involvement in Cohen's campaign finance crimes, and also used the occasion to describe how Trump “tasked” him during the campaign “to handle the negative press,” specifically mentioning questions about Trump's draft deferment.²² Cohen testified that “nothing went on in Trump world, especially the campaign, without Mr. Trump's knowledge and approval.”²³

It strains credulity to conclude that Cohen was acting in a volunteer capacity while publicly promoting Trump's campaign – especially given that the apparent purpose of many of these appearances was to fend off allegations arising during the campaign regarding Trump's

¹⁶ *Michael Cohen Pleads Guilty In Manhattan Federal Court To Eight Counts, Including Criminal Tax Evasion And Campaign Finance Violations*, Department of Justice Release dated Aug. 21, 2018, available at <https://www.justice.gov/usao-sdny/pr/michael-cohen-pleads-guilty-manhattan-federal-court-eight-counts-including-criminal-tax>. Information about the Commission's actions concerning related FEC complaints can be found in the matters cited *supra* in footnote 1, available through the FEC website at <https://www.fec.gov/legal-resources/enforcement/>.

¹⁷ See Trans. of Proceedings before Hon. William H. Pauley III at 11-12, 23, 27-28, No. 1:18-cr-00602-WHP, 18-CR-602 (S.D.N.Y. Aug. 21, 2018), <https://assets.documentcloud.org/documents/4780185/Cohen-Court-Proceeding-Transcript.pdf>.

¹⁸ Michael Cohen's Statement in Court, Dec. 12, 2018, available at <https://www.cnn.com/2018/12/12/politics/cohen-court-statement-doc/index.html>.

¹⁹ Trump Org. Resp. at 11.

²⁰ Michael Cohen Testimony Before House Oversight Committee, Feb. 27, 2019, available at <https://www.c-span.org/video/transcript/?id=57772>. In stark contrast with the Trump Organization's characterization of his “personal belief,” Cohen opined that Trump “ran for office to make his brand great, not to make our country great. He had no desire or intention to lead this nation – only to market himself and to build his wealth and power.” *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

personal conduct. When the candidate-boss “tasks” his or her corporate employee with handling negative campaign press, it is difficult to draw any conclusion other than that “task” is part of the employee’s compensable job duties.

Relevant statements made by Cohen following his court appearances, although unsworn, are entirely consistent with his testimony under oath in court and before Congress. For example, he is quoted as follows in *Vanity Fair* in response to a general question about actions he took “at the direction” of Trump: “*Everything that I did, I did at the direction of, and for the benefit of, Donald J. Trump.*”²⁴ And a book he published in 2020 contains statements specifically tied to his media appearances, such as “[I] regularly show[ed] up on CNN and Fox *to shill for the Boss*. I was the only person Trump *allowed* to speak on TV without his prior notice and permission”²⁵ Cohen wrote that as Trump traveled to early-primary states, “I remained in New York, *working as [Trump’s] personal attorney and frequent surrogate on TV*, with my ability to channel the Boss and his views with great impact. At least, *that was how Trump and I saw my role.*”²⁶ Cohen further explained that “I was more useful to Trump as a resource *he could use quietly, without having to tell the campaign staff.*”²⁷

While Respondents deny the allegations, we find that Cohen’s statements after being criminally charged with campaign finance violations – particularly those made against his interest, under penalty of perjury, and under threat of imprisonment and severe monetary sanction – carry sufficient indicia of reliability so as to easily satisfy the Act’s low reason-to-believe threshold.²⁸ The record supports the conclusion that *none* of Cohen’s conduct as alleged in the Complaint was performed as a volunteer; it was all part and parcel of his salaried employment with the Trump Organization.

The value of the apparent contributions under the Act should take into account the portion of Cohen’s work hours allocated to providing services to the Committee, which appear to have consumed much of his time over the year and a half that Trump was actively campaigning. In addition, any corporate resources used in connection with those services (e.g., use of Cohen’s corporate office while preparing for interviews or sending campaign tweets) similarly constitute prohibited contributions. The hours that it took Cohen to prepare for, travel to, and participate in numerous media appearances likely extended beyond his personal time, and his use of corporate resources may have been more than the incidental amount claimed in the response.²⁹ In sum,

²⁴ Emily Jane Fox, “*Hand Them a S--t Pie So Gross They Will Choke On It*”: Michael Cohen Predicts Trump’s Post-Presidency Legal Drama, VANITY FAIR, Dec. 21, 2020 (emphasis added), available at <https://www.vanityfair.com/news/2020/12/michael-cohen-predicts-trumps-post-presidency-legal-drama>.

²⁵ Michael Cohen, DISLOYAL – A MEMOIR: THE TRUE STORY OF THE FORMER PERSONAL ATTORNEY TO THE PRESIDENT OF THE UNITED STATES (2020), at 216 (emphasis added).

²⁶ *Id.* at 229-230 (emphasis added).

²⁷ *Id.* at 282 (emphasis added).

²⁸ The Commission has stated that it will find reason to believe “in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation.” Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007).

²⁹ Trump Org. Resp. at 9-11.

there was sufficient information for the Commission to find reason to believe that Trump, the Trump Organization, and the Trump Committee violated the Act's prohibitions in connection with the campaign services provided by the Trump Organization through Cohen, and that the Committee further violated the Act by failing to report the costs.

Cease and Desist Letters

During Trump's primary campaign, Trump Organization General Counsel Alan Garten issued two cease and desist letters on company letterhead in an effort to stop or pre-empt the dissemination of communications opposing Trump's candidacy.³⁰ The Complaint alleges that these letters resulted in the use of Trump Organization resources to defend Trump's presidential candidacy and promote Trump's campaign during the 2016 Republican primary election.³¹ The Complaint states that the provision of these legal services are evidence that Trump misused corporate resources to benefit his presidential campaign and constituted prohibited and unreported in-kind contributions to the Trump Committee in violation of the Act.³² Respondents argue that federal candidates are lawfully permitted to wear multiple hats, and that Trump was entitled to be a presidential candidate as well as a business executive without triggering the Act and converting business activities into in-kind contributions."³³

The Commission has previously found that legal services are contributions subject to the Act when the underlying dispute arises out of an election, or if a candidate or political committee is the intended beneficiary of the legal service.³⁴ The available information supports the conclusion that the Trump Organization, through its General Counsel Alan Garten, rendered legal services to the Trump Committee in connection with the two cease and desist letters demanding that the recipients stop running ads attacking Trump's candidacy, and did so at Trump's direction. The payment of Garten for his services thus appears to have constituted in-kind contributions to the Trump Committee that the Trump Committee failed to report.³⁵

While the amount in violation concerning the Garten allegations may pale in comparison to Michael Cohen's activities, under different circumstances we would have supported finding reason to believe so that Garten's activities could be examined during the same investigation.

³⁰ See Compl., Cease & Desist Demand from Alan Garten, General Counsel, The Trump Organization to David McIntosh, Club for Growth, Sept. 21, 2015, attached to the Complaint as Ex. A; Letter from Alan Garten, General Counsel, The Trump Organization to Michael Fernandez, MBF Healthcare Partners, and James P. Robinson, Right to Rise PAC, Inc., Dec. 4, 2015, attached to the Complaint as Ex. B.

³¹ *Id.* at 1-2; Supp. Compl. at 1-2.

³² See 52 U.S.C. §§ 30118(a) and 30125(e) (Compl. at 1-2; Supp. Compl. at 1-2).

³³ Trump Org. Resp. at 6-9; Trump Comm. Resp. at 7-8.

³⁴ See Commission Certification, at ¶ 3 c.-d., MUR 6494 (Rep. Jeannette H. Schmidt, *et al.*) (Jan. 14, 2015).

³⁵ 52 U.S.C. §§ 30104(b), 30118(a), 30125(e).

* * *

The Commission found itself in the middle of a perfect storm of unique and unfortunate circumstances that prevented it from moving forward in this case. Many of the Trump-related matters before the Commission involved legal and factual issues that potentially overlapped with pending criminal and congressional investigations, hindering our enforcement efforts and complicating decisions concerning our priorities. And just as some of those external proceedings were being resolved in some fashion, the Commission lost the quorum necessary to take substantive action on *any* enforcement matters – an occurrence that lasted from August 2019 through most of 2020.

During this time when the Commission could not act, new facts surfaced that called into question the veracity of the responses. However, since the allegations in the Complaint were well over five years old – the relevant statute of limitations – at the time the Commission was finally able to consider and vote on this matter, we were ultimately left with no meaningful enforcement options. We write this statement to clarify the public record and record our view of the merits of these serious allegations.

August 25, 2021

Date



Shana M. Broussard
Chair

August 25, 2021

Date



Ellen L. Weintraub
Commissioner