FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Michael Cohen, et. al.	)	MURs 7313, 7319, and 7379

STATEMENT OF REASONS OF
COMMISSIONERS SEAN J. COOKSEY AND JAMES E. "TREY" TRAINOR III

These matters arose from a payment made to Stephanie Clifford shortly before the 2016 presidential election as part of a non-disclosure agreement to prevent Clifford from speaking publicly about her claim that she and 2016 presidential candidate Donald J. Trump had a relationship in 2006. The complaints allege the payment violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Between the time that these complaints were filed and when these matters came before us at the initial stage of the enforcement process, Michael Cohen, Mr. Trump's lawyer, pleaded guilty to violating federal campaign finance law in connection with the payment. Moreover, at the same time, the Federal Election Commission's ("FEC") loss of a quorum led to an extensive enforcement backlog, including numerous statute-of-limitations imperiled matters such as these. As explained in further detail below, based on these factors we voted to dismiss these matters as an exercise of prosecutorial discretion.

The complaints in these matters, filed in 2018 and 2019, cite a series of publicly reported facts about the payment made to Ms. Clifford. In short, Michael Cohen established Essential Consultants, LLC on October 17, 2016, and later that month, Essential Consultants, LLC made a payment in the amount of $130,000 to Ms. Clifford as part of a non-disclosure agreement pursuant to which Ms. Clifford would be precluded from publicly discussing her relationship with Mr. Trump. Based on these facts, the complainants assert various violations of the Act.[1]

Before the Commission could consider the Office of General Counsel's ("OGC") recommendations in these matters, Mr. Cohen pleaded guilty to an eight-count criminal

[1] Specifically, the complaints allege that the payment to Ms. Clifford violated the Act either as an illegal in-kind contribution from the Trump Organization, LLC to Mr. Trump's presidential campaign committee, MUR 7313 Compl. (Jan. 23, 2018); MUR 7319 Compl. (Feb. 14, 2018); *see also* MUR 7637 Compl. (Aug. 16, 2019), or that it was a conversion of campaign funds to personal use when the Trump campaign committee paid Mr. Cohen's legal fees in connection with the Department of Justice's ultimately successful prosecution of Mr. Cohen for his role in making the payment, MUR 7379 Compl. (May 4, 2018).

information,[2] and in connection thereto admitted, among other things, to making an excessive contribution in violation of the Act by making the Clifford payment from his personal funds.[3] The plea hearing transcript includes a step by step review of how U.S. District Judge William Pauley verified the plea, confirming that a federal judge was sufficiently satisfied with the circumstances surrounding the plea deal and the responses given by Cohen at the hearing, including the explanations given by Cohen, count by count, during his allocution.[4] Ultimately Mr. Cohen was sentenced to three years in prison and ordered to pay $1.39 million in restitution, $500,000 in forfeiture, and $100,000 in fines for two campaign finance violations (including the payment at issue in these matters) and other charges. In sum, the public record is complete with respect to the conduct at issue in these complaints, and Mr. Cohen has been punished by the government of the United States for the conduct at issue in these matters.

Thus, we concluded that pursuing these matters further was not the best use of agency resources.[5] The Commission regularly dismisses matters where other government agencies have already adequately enforced and vindicated the Commission's interests.[6] Furthermore, by the time OGC's recommendations came before us, the Commission was facing an extensive enforcement docket backlog resulting from a prolonged lack of a quorum,[7] and these matters

[2] *See* Trans. of Proceedings before Hon. William H. Pauley III at 27–28, No. 1:18-cr-00602-WHP, 18-CR602 (S.D.N.Y. Aug. 21, 2018), https://assets.documentcloud.org/documents/4780185/Cohen-Court-ProceedingTranscript.pdf ("Cohen Plea Hearing") (pleading guilty to eight counts, including one count of making excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A) in relation to Clifford payment); *see also* Information ¶¶ 32–36, United States v. Cohen, No. 1:18-cr-00602-WHP, 18-CRIM-602 (S.D.N.Y. Aug. 21, 2018), https://www. justice.gov/usao-sdny/press-release/file/1088966/download.

[3] During his sworn allocution in federal court, Mr. Cohen acknowledged that he made the $130,000 Clifford payment for the "primary purpose of influencing the [2016] election." Cohen Plea Hearing at 23. Taking that admission as true, OGC reasoned that the payment was an excessive contribution because under the Act, a "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office," 52 U.S.C. § 30101(8)(A), and the applicable contribution limit was $2,700 per election, 52 U.S.C. § 30116(a)(1)(A), (f); 11 C.F.R. §§ 110.1(b), 110.9; *see* Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5750, 5752 (Feb. 3, 2015).

[4] Although Mr. Cohen initially denied any wrongdoing in connection with the payment, MUR 7313 Resp. (Cohen) (Feb. 8, 2018), there is nothing in the record to contradict or call into question Cohen's subsequent allocution.

[5] For the reasons set forth in the First General Counsel's Report, we concurred with OGC's recommendations to dismiss the allegation that Trump Tower Commercial, LLC, violated the Act by paying Clifford through disbursements disguised as rent payments on the Trump Committee's reports, and to dismiss the allegation that Cohen, Trump, and the Trump Committee violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use.

[6] *See* MUR 7479 (Keeping America in Republican Control PAC), Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III (Apr. 30, 2021) at 2, n.9.

[7] The Commission lost a quorum when Commissioner Petersen resigned on September 1, 2019, then temporarily regained a quorum when Commissioner Trainor joined the Commission on June 5, 2020, but lost a quorum upon the resignation of Commissioner Hunter on July 3, 2020, and did not regain a quorum again until December 2020, when Commissioners Broussard, Cooksey, and Dickerson joined the Commission. *See* Statement of Commissioner Ellen L. Weintraub On the Senate's Votes to Restore the Federal Election Commission to Full Strength (Dec. 9, 2020), available at https://www.fec.gov/resources/cms-content/documents/2020-12-Quorum-Restoration-Statement.pdf (as

were already statute-of-limitations imperiled.[8] These are precisely the prudential factors cited by the U.S. Supreme Court in *Heckler v. Chaney*, and why we voted to dismiss these matters as an exercise of our prosecutorial discretion.[9]

Sean J. Cooksey — April 26, 2021

Commissioner Sean J. Cooksey — Date

J.E. Trainor, III — April 26. 2021

Commissioner James E. "Trey" Trainor III — Date

of Dec. 9, 2020, there were 446 matters before the agency, of which 275 were awaiting Commission action, of which at least 35 were statute-of-limitations imperiled).

[8] Part of the delay in the Commission's action on these matters is attributable to the Commission's acquiescence to a request from the U.S. Department of Justice to hold these matters in abeyance. The abatement period ended in September 2019, at which point the Commission was without a quorum. *See* MURs 7313, 7319, and 7379, FGCR at 1, n.2.

[9] 470 U.S. 821, 831 (1985). *See also CREW v. FEC*, 475 F.3d 337, 340 (D.C. Cir. 2007) ("The Supreme Court in *Akins* recognized that the Commission, like other Executive agencies, retains prosecutorial discretion.").