FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**
**RETURN RECEIPT REQUESTED**

NOV 1 4 2008

Matthew Margolis

Waltham, MA 02451

RE: MUR 5950

Dear Mr. Margolis:

On October 30, 2008, the Federal Election Commission reviewed the allegations in your complaint dated October 31, 2007, and found that on the basis of the information provided in your complaint, information provided by the respondents and publically-available information, there is no reason to believe Hillary Clinton for President and Shelly Moskwa, in her official capacity as Treasurer, violated the Federal Election Campaign Act of 1971, as amended. Also on this date, the Commission dismissed this matter with respect to Hsiao Yen Wang and David Guo. Accordingly, on October 30, 2008, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

Sincerely,

Mark D. Shonkwiler
Assistant General Counsel

Enclosures
Factual and Legal Analyses

28044220060

28044220061

# FEDERAL ELECTION COMMISSION

## FACTUAL AND LEGAL ANALYSIS

**RESPONDENTS:** Hillary Clinton for President and Shelly Moskwa, in her official capacity as treasurer

**MUR:** 5950

## I. INTRODUCTION

The complaint in this matter involves allegations that Hillary Clinton for President and Shelly Moskwa, in her official capacity as Treasurer, ("the Committee") accepted campaign contributions made in the name of another and accepted campaign contributions from foreign nationals without permanent resident status in violation of 2 U.S.C. §§ 441e and 441f. *See* MUR 5950 Complaint.

## II. FACTS

The Complaint in this matter is based entirely on information reported in two news articles, one published in the Los Angeles Times ("the Times") on October 19, 2007, and the other in the New York Post ("the Post") on October 20, 2007.[1] Complainants generally allege that several donors to Hillary Clinton for President were reimbursed by others for contributions, are illegal immigrants, or are non-existent persons. *See* Complaint at 1. Complainants point to several statements from the two articles that they believe substantiate their allegations. For example, the Times reported that it could not find, using property, telephone, or business records, one-third of 150 donors who provided checks to Clinton after fundraising events which appear to have targeted the New York City Chinese community, and that it was only able to reach 24 of 74

[1] *See* Peter Nicholas & Tom Hamburger, *Clinton campaign taps into an unlikely treasure-trove*, LOS ANGELES TIMES, Oct. 19, 2007, *available at* http://www.latimes.com/news/politics/la-na-donors19oct19,0,4231217.story?coll=la-home-center [hereinafter LOS ANGELES TIMES article]; Charles Hurt & Elaine Chan, *Hill's cash eyed as Chinese-laundered*, NEW YORK POST, Oct. 20, 2007, *available at* http://www.nypost.com/seven/10202007/news/nationalnews/hills_cash_eyed_as_chinese_lau.htm [hereinafter NEW YORK POST article].

29044220062

New York resident donors it called or visited for comment. *See* Complaint at 1; LOS ANGELES TIMES article. The Times and Post also reported that the addresses listed for some contributors were business addresses, and that in some cases, neighbors and workers visited at the addresses by newspaper reporters said they had not heard of the individual. *See* Complaint at 1–3; LOS ANGELES TIMES article; NEW YORK POST article. The Times article also stated that the median income for a particular New York City neighborhood, in which many donors who had contributed $1,000 to the Clinton campaign lived, was less than $21,000 and about 45% of the population was living below the poverty line, thus implying that individuals in that neighborhood could not afford contributions they reportedly made. *See* Complaint at 2; LOS ANGELES TIMES article. Complainants argue that this information provides a basis for investigating whether the Clinton campaign accepted donations from non-existent persons and/or foreign nationals.

Second, Complainants allege that the Times article demonstrates specific instances where the Clinton campaign received campaign contributions from illegal immigrants barred from contributing under the Act. *See* Complaint at 1. The basis for this allegation is a report in the Times article that one New York man who said he donated $2,500 to the Committee "said he came to the United States from China about two years ago and didn't have a green card." Complaint at 2 (quoting LOS ANGELES TIMES article). The individual was not identified in the article.

Third, Complainants allege that the Post article demonstrates specific instances where donors were reimbursed for contributions in violation of the Act. The basis for this allegation is a report in the Post article that Hsiao Yen Wang, reported as contributing $1,000 to the

Committee, told the Post that she had been repaid for the contribution by an individual named David Guo. *See* Complaint at 3; NEW YORK POST article.

Finally, the Complaint alleges that the Committee had "substantial knowledge of and involvement in procuring these donations" because "campaigns routinely stay in close contact with their most prolific fundraisers and encourage them to raise even more money" and because "community organizers even organized a fundraising event for Hillary Clinton that netted $380,000." Complaint at 2. Additionally, the Complaint alleges that "Clinton campaign bundlers" had "placed improper pressure on those who could least afford to donate." Complaint at 2–3. This aspect of the Complaint was based on statements in the Times article that the Committee had enlisted the aid of Chinese neighborhood associations that "exert enormous influence over immigrants" and that in some cases, donors stated they felt pressure to give in order to avoid "los[ing] face." Complaint at 3 (quoting LOS ANGELES TIMES article). The Complainants allege that the Committee took no action either before or after the publication of the news articles to remedy the alleged improper or illegal contributions. *See* Complaint at 3–4.

The Committee's Response describes its contribution review process and states that it noted potential problems with a number of the contributions cited in the newspaper articles in

28044220063

June 2007, prior to publication of the articles in October 2007.[2] *See* MUR 5950 Response at 2. The Committee observed that a number of contributions had been received from individuals whose stated occupation—such as cook, waiter, cashier, and server—may or may not have implied a question as to whether the contributor had the financial resources to make the contribution. *See* Response at 2. The Committee sent seventeen letters to contributors in June 2007 seeking to confirm that each contribution was made by the contributor and was made out of the contributor's personal funds. Eight of the letters were signed and returned to the Committee, which determined after review that it had sufficient information to retain the contributions. One of the nine remaining contribution checks bounced and the Committee refunded the other eight contributions. *See* Response at 3.

The Response further states that after publication of the newspaper articles, the Committee reviewed the specific contributions listed in the published reports and determined either that these contributions appeared compliant or that corrective steps were required. *See* Response at 3. The Committee had collected contributor information on contribution forms that requested detailed identifying information and it appears to have retained copies of checks and credit card information to verify contributions. If the Committee determined that corrective steps

[2] The Committee developed a detailed contributor card stating the relevant prohibitions and rules regarding contributions, including the prohibition on reimbursed contributions and the prohibition against contributions from foreign nationals. The Committee also reviewed all contributions for "issues which, on the face of the contribution, would make the contributions improper or would raise questions as to the propriety of accepting the funds" prior to depositing the contributions. The Committee also routinely reviews its receipts "post-deposit" for "issues or problems that either were not evident on the face of the contributions or became evident through information later developed, such as the receipt of occupation and employer information." Furthermore, part of the Committee's review includes "an examination of occupation and employer information for groups of or related contributions, and a subjective determination by Committee staff as to whether the individual contributor may not have the financial resources commensurate with the size of the contribution made." The Committee also stated that it "monitors external information, such as news reports, for indications of any issues with receipts, and uses such information to augment the compliance review process." Response at 2.

28044220064

28044220065

were required, its Response states that it took such steps. The Response addressed each allegation in the Complaint, including:

- The Times reported that Chang Jian Lin, who gave $1,000, is not a citizen, but does have permanent resident status. Chang Jian Lin contributed by check and indicated that his occupation was owner of a restaurant. The Committee concluded there is nothing to suggest that his contribution was improper, nor does the article indicate a basis to question it since it indicates he has permanent residence status. *See* Response at 3.

- The Times reported that Shu Li lives in a "tenement" and gave $1,000, and that a tenant living in the apartment said through a translator that she had not heard of him. The Committee reviewed Shu Li's contribution. Shu Li gave by credit card and provided an address and employer. *See* Response at 4.

- The Times reported that Liang Zheng contributed $1,000, but that no one by that name could be located at the address given. The Committee reviewed Liang Zheng's contribution. Liang Zheng gave by check and provided an address and occupation as restaurant chef. *See* Response at 4.

- The Times reported that Sang Cheung Lee gave $1,000, but when the reporter visited the reported address, neighbors said they knew of no one with Lee's name there. The Committee reviewed the contribution. Sang Cheung Lee gave by check and provided the address reported. Because the reported occupation was cook/dishwasher, the Committee sent a letter to confirm the contribution was made with the contributor's personal funds. The contributor signed and returned the letter, a copy of which was attached to the Response. Thus, the Committee concluded the contribution was proper. *See* Response at 4.

- The Times reported that salespeople at a store listed as Shih Kan Chang's employer had not heard of him. The Committee reviewed Shih Kan Chang's contribution. Shih Kan Chang gave by credit card and reported the store as his address, but did not list the store as his employer or provide any other information about his employment. Pursuant to 11 C.F.R. § 104.7(b)(2), the Committee asserts it exercised "best efforts" to obtain the contributor's employer information by mailing a follow-up request, but it did not receive a response. *See* Response at 4–5.

- The Times reported that Yi Min Liu said he did not make the $1,000 contribution that was reported in his name, though he said he attended a banquet for Clinton. The Committee reviewed the contribution. Yi Min Liu gave by check and indicated an occupation of self-employed, so no follow-up or letter was necessary. The Committee concluded that the reporter found a different person by the same name and "cannot explain why, if they found the right person, he would say he didn't give since he signed a personal check," a copy of which was attached to the Response. Response at 5.

28044220066

- The Times reported that Cheng Qun Wu claims to only make $500 a week, but gave a $1,000 donation. The Committee reviewed the contribution. Qun Wu gave by credit card. Since the occupation provided was waiter, the Committee issued a letter to confirm the contribution was made with personal funds, which Qun Wu signed and returned, and a copy of which was attached to the Response. *See* Response at 5.

- The Times reported that He Duan Zheng, who gave $1,000, said that the Fujianese community "informed us to go, so I went. Everybody was making a donation, so I did too." The Committee reviewed the contribution. He Duan Zheng's contribution was by check and he provided an address, an occupation of construction, and an employer. The Committee concluded that no follow-up or letter was necessary. *See* Response at 5.

- The Times article cites a contribution allegedly made by an unnamed individual who "came to the United States from China about two years ago and didn't have a green card." The Committee has no information corroborating the quote or any way of identifying the contributor if he or she exists. The Committee's Response states that, "short of asking every contributor with an Asian name to verify citizenship," it has taken the necessary and required steps. Response at 5–6.

- The Post reported that Hsaio Yen Wang gave $1,000 by check, but that it was on behalf of David Guo, who reportedly repaid her. The Committee reviewed the contribution. Because the occupation provided was cook, the Committee sent Wang a letter to confirm the contribution was made with personal funds. It did not receive the letter back, and refunded the contribution in June 2007. The Response also notes that the Committee later discovered that David Guo was Hsaio Yen Wang's husband. Response at 6.

We have no information suggesting the donors named in the Complaint share the same employer, belong to the same community association, or have any other common bond. With the exception of David Guo and Hsaio Yen Wang, we have no information suggesting that any of the other donors are related or live in the same household. The general geographic area in which the donors live appears to be the only commonality.

## III. ANALYSIS

Given the facts presented in this matter, there is no reason to believe that the Committee violated the Act with respect to the allegations made in the Complaint. The Act prohibits a person from making or "knowingly accepting" a "contribution made by one person in the name

of another person." 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b). The Act also prohibits a foreign national from making, directly or indirectly, a contribution in connection with a Federal election, and prohibits a person from soliciting, accepting, or receiving a contribution or donation from a foreign national. 2 U.S.C. § 441e(a); 11 C.F.R. § 110.20. A "foreign national" is defined as a "foreign principal," but does not include a person who is a citizen or national of the United States or who is admitted as a lawful permanent resident of the United States. 2 U.S.C. § 441e(b).

28044220067

The Commission's regulations hold the Committee treasurer "responsible for examining all contributions received for evidence of illegality." 11 C.F.R. § 103.3(b). Contributions that "present genuine questions as to whether they were made by ... foreign nationals" or other parties prohibited from contributing under the Act may be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(1). If deposited, the treasurer "shall make his or her best efforts to determine the legality of the contributions. The treasurer shall make at least one written or oral request for evidence of the legality of the contribution. Such evidence includes, but is not limited to, a written statement from the contributor explaining why the contribution is legal, or a written statement by the treasurer memorializing an oral communication..." *Id.* If the contribution cannot be determined to be legal, the treasurer must refund the contribution within thirty days. *Id.* If the treasurer determined that a contribution "did not appear to be" illegal at the time it was received, but later discovers that it is illegal based on new evidence, the treasurer must refund the contribution within thirty days of the date on which the illegality is discovered. 11 C.F.R. § 103.3(b)(2).

It appears from the Response to the Complaint that the Committee took appropriate steps to identify and correct any potential violations of the Act at the time it received contributions that

28044220068

may have raised concerns. As described above, the Committee states that it examined contribution records upon receipt and sought additional documentation from contributors listing occupations that might not provide sufficient resources to make large political donations. The Committee returned contributions from contributors falling into these employment categories who did not return signed letters stating that the contributions had been made from their personal funds. *See* Response at 2–3.

After the Times and Post articles were published, the Committee reexamined the specific contributions listed in the articles and determined either that no genuine question existed as to the contributions' legality or that the potential violation had been remedied, such as in the cases in which contributions had already been refunded. *See* Response at 3–6. Accordingly, the Committee appears to have met the requirements of 11 C.F.R. § 103.3(b) with respect to contributions that may have been made in the name of another.[3] In addition, the Committee's contribution form, a copy of which is attached to the Response, requires contributors to sign below language stating: "I am making this contribution with my own personal funds and not with funds provided by any other person." MUR 5950 Response Attachment A.

Hsaio Yen Wang's contribution—which the Complaint alleges was reimbursed by David Guo—does not present an issue because the Committee reviewed and returned Wang's

[3] Although the Commission has not determined whether general allegations in a newspaper article that contributions to a committee were unlawful would "provide a sufficient basis to question the lawfulness of a contribution," it has concluded that allegations of sufficient specificity would "present a sufficient basis" for a committee to question the legality of the contribution(s) and "take steps that would constitute best efforts to determine the legality of those contributions." AO 1995-19 (Indian-American Leadership Investment Fund). In AO 1995-19, the Commission determined that a news article that contained "specific assertions by some contributors ... that they were reimbursed for their donations" and "specific information as to the conduct of the alleged original contributor and other circumstances surrounding some of the donations" to the Indian-American Leadership Investment Fund provided a sufficient basis for the Fund to question the lawfulness of some of the contributions.

contribution pursuant to its review in June 2007, four months prior to publication of the articles. *See* Response at 6.

With regard to contributions made by foreign nationals, the Committee's contribution form similarly includes a notice that contributions from foreign nationals are prohibited. *See* Response Attachment A. The articles mentioned only one potential instance of a contribution by a foreign national, and did not provide any identifying information for that one person who stated that he or she had contributed money despite not having a green card. As the Committee points out, it would not be able ascertain the identity of this contributor short of asking every contributor in New York City's Chinatown neighborhood to verify his or her citizenship. The information presented by the Complaint to support this allegation is accordingly "so vague that an [FEC] investigation would be effectively impossible."[4] The Complaint's allegations that some contributors may have felt pressure to give in order to avoid "losing face" in the community are speculative.

With regard to the allegations that contributions were made by non-existent persons, the Committee demonstrated in its Response that it checked the names listed in the news articles against its records and had contributor information for each contribution. *See* Response. Furthermore, the authors of the news articles might have had difficulty locating individuals due to a reluctance of people to talk to or provide information to news reporters, or for a variety of reasons other than that the person does not exist. The Complaint provides no other basis for its allegation than that the reporters who wrote the news articles could not locate certain individuals.

[4] *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process,* 72 Fed. Reg. 12545, 12546 (July 6, 2007).

28044220069

The allegation that there were non-existent contributors is, thus, too speculative to provide the basis for an investigation.

Accordingly, the Commission finds no reason to believe that Hillary Clinton for President and Shelly Moskwa, in her official capacity as Treasurer, violated the Act with respect to this matter.

28044220070

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Hsiao Yen Wang and David Guo **MUR:** 5950

## I. INTRODUCTION

The Complaint in this matter alleges, relying on a news article, that Hsiao Yen Wang was reimbursed by David Guo for a $1,000 contribution to Hillary Clinton for President in violation of 2 U.S.C. § 441f.

## II. FACTS

The Complaint in this matter is based entirely on information reported in two news articles, one published in the Los Angeles Times ("the Times") on October 19, 2007, and the other in the New York Post ("the Post") on October 20, 2007.[1] Complainants allege that the Post article demonstrates specific instances where donors were reimbursed for contributions in violation of the Act. The basis for this allegation is a report in the Post article that Hsiao Yen Wang, reported as contributing $1,000 to Hillary Clinton for President, told the Post that she had been repaid for the contribution by an individual named David Guo. *See* Complaint at 3; NEW YORK POST article. The contribution was refunded by the Hillary Clinton for President committee in June 2007.

## III. ANALYSIS

The Act prohibits a person from making or "knowingly accepting" a "contribution made by one person in the name of another person." 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b). As

[1] *See* Peter Nicholas & Tom Hamburger, *Clinton campaign taps into an unlikely treasure-trove*, LOS ANGELES TIMES, Oct. 19, 2007, *available at* http://www.latimes.com/news/politics/la-na-donors19oct19,0,4231217.story?coll=la-home-center [hereinafter LOS ANGELES TIMES article]; Charles Hurt & Elaine Chan, *Hill's cash eyed as Chinese-laundered*, NEW YORK POST, Oct. 20, 2007, *available at* http://www.nypost.com/seven/10202007/news/nationalnews/hills_cash_eyed_as_chinese_lau.htm [hereinafter NEW YORK POST article].

28044220071

28044220072

previously stated, the Post article indicates that Hsiao Yen Wang stated that she had been reimbursed by David Guo for a $1,000 contribution made to the Clinton campaign.

Efforts to notify Wang and Guo of the complaint in this matter were unsuccessful. Information found through an online person locator service indicates that Wang and Guo were married at the time the contribution was made; thus, it is possible the contribution was made from a joint checking account. There is no information indicating that either individual has ever made any other contributions to a federal candidate or committee.[2] Furthermore, as previously stated, Hillary Clinton for President refunded the $1,000 contribution made by Wang.

Because it would not be worth the Commission's resources to open an investigation of this single $1,000 contribution, which was refunded, and without further information indicating that the contribution was actually reimbursed, we recommend that the Commission dismiss this matter with respect to Hsiao Yen Wang and David Guo. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

[2] A David Guo is listed in the Commission's database as having contributed $500 to Al Green for Congress on October 15, 2004. Al Green for Congress is the campaign committee of Congressman Al Green who represents the Ninth Congressional District of Texas. The David Guo who contributed to Al Green for Congress listed an address in Houston, Texas rather than New York and listed his occupation as "self-employed/investor." We have no information that indicates this is the same person.