



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	
Michael D. Cohen; Donald J. Trump;	)	MURs 7313, 7319, and 7379
Donald J. Trump for President, Inc., and	)	
Bradley T. Crate in his official capacity as	)	
treasurer; Trump Organization, LLC;	)	
Trump Tower Commercial, LLC; Timothy	)	
Jost; Essential Consultants, LLC	)	

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

Michael D. Cohen, the former personal attorney of Donald J. Trump, pleaded guilty to making an excessive contribution to the Trump campaign by paying \$130,000 to Stephanie Clifford, a/k/a Stormy Daniels, just days before the 2016 election, to prevent her from disclosing an alleged 2006 sexual relationship with Trump.<sup>1</sup> Under penalty of perjury, Cohen admitted to delivering the payment to Clifford “for the principal purpose of influencing the election.”<sup>2</sup> For this and other charges, he 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.<sup>3</sup>

The Commission received a series of complaints alleging that Cohen, Trump, and others committed various violations of the Federal Election Campaign Act of 1971, as amended (the “Act”) in connection with Cohen’s payment to Clifford.<sup>4</sup> The complaints, along with the government record of Cohen’s criminal prosecution for these allegations and his sworn testimony before Congress, provided the Commission with a robust factual record. In short, the available information indicates that at the direction of Trump, for the purpose of influencing the election, Cohen formed a limited liability corporation he used to route \$130,000 to Clifford in exchange for her nondisclosure agreement. Clifford did not publicize her allegations prior to the 2016 election.

<sup>1</sup> 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> (“Cohen Plea Hearing”).

<sup>2</sup> *Id.* at 23.

<sup>3</sup> See Press Release, U.S. Dep’t of Justice, Michael Cohen Sentenced to 3 Years in Prison (Dec. 12, 2018), <https://www.justice.gov/usao-sdny/pr/michael-cohen-sentenced-3-years-prison>.

<sup>4</sup> See MUR 7313 Compl. (Jan. 23, 2018); MUR 7319 Compl. (Feb. 14, 2018); MUR 7379 Compl. (May 4, 2018).

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Cohen appears to have learned about Clifford's interest in selling her account of the alleged affair on October 8, 2016, the day after the publication of the infamous "Access Hollywood" tape.<sup>5</sup> Cohen testified before Congress that he and "more importantly, Mr. Trump[.]" were concerned about the impact Clifford's allegations might have on the campaign if they were publicized soon after the tape.<sup>6</sup> Shortly after the release of the tape, Cohen entered into negotiations with Clifford's attorney, Keith Davidson, to prevent the publication of Clifford's account.<sup>7</sup> Those negotiations culminated in Cohen forming an LLC and transferring \$130,000 from a home equity line of credit through the LLC to Davidson on October 27, 2016.<sup>8</sup> After the election, he was reportedly reimbursed in installments from either Trump's personal account or the Donald J. Trump Revocable Trust.<sup>9</sup> Cohen testified before Congress that the goal of the payment structure was to keep Trump as "far away from it as possible."<sup>10</sup>

According to Cohen, he regularly apprised Trump about the negotiations with Davidson, and Trump agreed that Clifford should be paid the \$130,000 in exchange for entering into the nondisclosure agreement that would prevent her from discussing the alleged affair.<sup>11</sup> Cohen testified that Trump directed him to make the payment<sup>12</sup> and that Trump asked Cohen and Allen Weisselberg, the Trump Organization, LLC's ("Trump Organization") Chief Financial Officer, to "figure out how" to do so.<sup>13</sup> According to Cohen's testimony before Congress, the proposal to make the payment himself and later be reimbursed, designed to hide the source of the funds, was approved by Trump.<sup>14</sup>

Given these facts, the Commission's Office of the General Counsel ("OGC") recommended finding reason to believe that Cohen and the Trump Organization made, and Trump and Donald J. Trump for President, Inc. (the "Committee") accepted and failed to report, illegal contributions.<sup>15</sup> The Act prohibits making, or knowingly accepting, a campaign contribution in excess of the contribution limits set forth under the Act.<sup>16</sup> In 2016, the inflation-adjusted contribution limit for an

<sup>5</sup> See First Gen. Counsel's Report in MURs 7313, 7319, and 7379 (Michael D. Cohen, et al.) ("FGCR") at 11 and internal citations.

<sup>6</sup> See *id.* at 12 (citing, *inter alia*, *Hearing with Michael Cohen, Former Attorney to President Donald Trump Before the H. Comm. on Oversight and Reform*, 116th Cong. 116-03, 34 (Feb. 27, 2019), <https://docs.house.gov/meetings/GO/GO00/20190227/108969/HHRG-116-GO00-20190227-SD003.pdf> ("House Oversight Testimony")).

<sup>7</sup> See FGCR at 11 and internal citations.

<sup>8</sup> See FGCR at 17 (citing House Oversight Testimony at 135, 13).

<sup>9</sup> See FGCR at 19 (citing House Oversight Testimony at 14, 22, 120-21, 151).

<sup>10</sup> See FGCR at 17 (citing House Oversight Testimony at 135).

<sup>11</sup> See FGCR at 13 (citing, *inter alia*, House Oversight Testimony at 22).

<sup>12</sup> See FGCR at 13 (citing Cohen Plea Hearing at 23; House Oversight Testimony at 13 ("Mr. Trump directed me to use my own personal funds from a home equity line of credit to avoid any money being traced back to him that could negatively impact his campaign.")).

<sup>13</sup> See FGCR at 14 (citing House Oversight Testimony at 22).

<sup>14</sup> See FGCR at 14 (citing House Oversight Testimony at 135-36) ("Ms. KELLY. Did Mr. Trump know you were going through this process to hide the payment? Mr. COHEN. Yes. . . . Ms. KELLY. And did Mr. Trump know about this reimbursement method? Mr. COHEN. Oh, he knew about everything, yes. Ms. KELLY. Well, thank you, Mr. Cohen. So the President not only knew about the payments, he knew and helped to hide the payments and the reimbursements to you. Mr. COHEN. We discussed it. Everything had to go through Mr. Trump, and it had to be approved by Mr. Trump.").

<sup>15</sup> See FGCR at 27-28.

<sup>16</sup> 52 U.S.C. § 30116(a)(1)(A), (f). The Act also prohibits corporate contributions. 52 U.S.C. § 30118(a). It is unclear if the Trump Organization is taxed as a corporation or an LLC. See FGCR at 53-54.

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individual was \$2,700 per election.<sup>17</sup> The Act defines a “contribution” as, in relevant part, anything of value made “for the purpose of influencing any election for Federal office[.]”<sup>18</sup> Under oath, Cohen admitted to making the payment for just that purpose.<sup>19</sup> It appears clear that he made an illegal contribution. However, because he was criminally prosecuted for the same conduct at issue in these matters, we did not support authorizing an investigation into the allegations against Cohen. We agreed with our colleagues who wrote that the Commission’s interests were vindicated as to Cohen,<sup>20</sup> and therefore did not move to support a reason to believe finding for Cohen.

Where we disagreed with those colleagues was in their decision to dismiss the remaining allegations.<sup>21</sup> Their Statement of Reasons is notably devoid of *any* explanation that specifically addresses their votes to dismiss the allegations against Trump, the Committee, and the Trump Organization. We voted to support OGC’s recommendations to find reason to believe that Trump and the Committee knowingly and willfully accepted an excessive contribution from Cohen and a prohibited corporate or excessive contribution from the Trump Organization, that the Committee knowingly and willfully filed false disclosure reports, and that the Trump Organization knowingly and willfully made a corporate or excessive contribution through its reimbursements to Cohen. There is ample evidence in the record to support the finding that Trump and the Committee knew of, and nonetheless accepted, the illegal contributions at issue here. Indeed, Cohen provided testimony under penalty of perjury that Trump not only knew about the payment but himself directed Cohen to orchestrate the scheme. And the Commission’s interests in seeing the law enforced with respect to Trump, the Committee, and the Trump Organization have in no way been vindicated.

Despite Trump’s apparent role in the transaction, the Trump Committee argues in its response to the complaints that there was no violation because the payment to Clifford alleged in the complaints was not campaign-related and therefore not an impermissible contribution.<sup>22</sup> To conclude that a payment, made 13 days before Election Day to hush up a suddenly newsworthy 10-year-old story, was not campaign-related, without so much as conducting an investigation, defies reality. But putting that aside, *Cohen testified under oath that he made the payment for the principal purpose of influencing the election*. This more than satisfies the Commission’s “reason to believe” standard to authorize an investigation.<sup>23</sup>

Because of Trump’s apparent role in orchestrating the transaction, we supported OGC’s recommendations to find reason to believe that he and the Committee accepted, and the Committee did not report, illegal contributions. Several of our colleagues instead voted to dismiss the allegations. The Commission therefore did not have enough votes to pursue well-grounded charges

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<sup>17</sup> See 52 U.S.C. § 30116(a)(1)(A), Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5750, 5752 (Feb. 3, 2015).

<sup>18</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>19</sup> See Cohen Plea Hearing at 11-12, 23.

<sup>20</sup> See Statement of Reasons of Commissioners Sean J. Cooksey and James E. “Trey” Trainor III in MURs 7313, 7319, and 7379 (Michael D. Cohen, et al.) (April 26, 2021).

<sup>21</sup> See Certification in MURs 7313, 7319, and 7379 (Michael D. Cohen, et al.), dated Feb. 23, 2021.

<sup>22</sup> See Trump Committee Response at 2, MURs 7313 and 7319 (April 12, 2018).

<sup>23</sup> 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).


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that the former President of the United States knowingly and willfully accepted contributions nearly 5,000% over the legal limit to suppress a negative story mere days before Election Day.

May 6, 2021  
Date

  
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Shana M. Broussard  
Chair

May 6, 2021  
Date

  
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Ellen L. Weintraub  
Commissioner