FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

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| In the Matters of | ) | |
| | ) | MURs 7324, 7332, 7364 |
| Donald J. Trump for President, Inc. and | ) | & 7366 |
| Bradley T. Crate in his official capacity as treasurer; | ) | |
| Donald J. Trump; American Media, Inc.; | ) | |
| David J. Pecker; Dylan Howard; | ) | |
| Michael D. Cohen; Timothy Jost | ) | |

# STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON AND COMMISSIONERS SEAN J. COOKSEY AND JAMES E. "TREY" TRAINOR, III

The Complaints in these four matters allege that the Respondents violated the Federal Election Campaign Act of 1971, as amended (the "Act"), through a series of payments American Media, Inc. ("AMI") made to purchase the exclusive rights to certain news stories. Specifically, they claim that two of AMI's corporate officers worked with representatives of the Trump campaign to purchase and suppress certain negative stories about then-candidate Donald J. Trump for the purpose of influencing the 2016 election.

Looking to the evidence and the likelihood of success, we voted to proceed with only a limited enforcement action against certain Respondents. This decision was driven by two important factors: the applicable statute of limitations and the disparate levels of evidence against each Respondent. As explained below, rather than sinking significant resources into a likely fruitless investigation, or pursuing a case that was outside the statute of limitations or soon would be, we voted to dismiss the weakest allegations and to focus on the strongest case for enforcement.

## I. Factual Background

The allegations in these Complaints center around the 2016 presidential campaign and two contracts AMI entered into for the purchase of limited life story rights. Specifically, the Complaints in MURs 7324, 7332, and 7366 alleged that AMI, through its corporate officers David J. Pecker and Dylan Howard, negotiated an agreement with Karen McDougal to purchase rights to her story of an alleged personal relationship with Trump, purportedly in an effort to influence the 2016 election.[1] Additionally, the Complaints in MURs 7364 and 7366 averred that AMI

[1] *See* Complaint at 4–10 (Feb. 20, 2018), MUR 7324 (Donald J. Trump for President, Inc., *et al.*); Complaint at 3–4 (Feb. 27, 2018), MUR 7332 (Donald J. Trump for President, Inc., *et al.*); Complaint at 3–7 (April 17, 2018), MUR 7366 (Donald J. Trump for President, Inc., *et al.*).

similarly negotiated a payment to Dino Sajudin, a former doorman at Trump Tower in New York City, to prevent publication of a rumor regarding Trump's alleged personal affairs, also for the purpose of influencing the 2016 election.[2]

The Commission received the four Complaints between February and April 2018, but it would be some time before the Commission could consider the allegations. First, the Office of General Counsel took significant time and resources to evaluate the allegations and prepare a First General Counsel's Report. Indeed, the Report was not circulated to Commissioners' offices until December 4, 2020.[3] This was due in part to the Commission's decision to await the outcome of other publicly known investigations, but was also because of OGC's choice to look beyond the complaints themselves and conduct extensive outside research into news reports, published books, and social media posts.

During this same period, the Commission lacked a quorum for significant stretches of time and was unable to deliberate or vote on pending matters.[4] The Commission regained its quorum in December 2020, and it voted on the matters for the first time in executive session in March 2021.[5] These delays, once again, left the Commission with limited options for handling these matters.

## II. Legal Analysis

The allegations in these Complaints can be most comprehensibly divided between those relating to Dino Sajudin and those relating to Karen McDougal. For each set of allegations, we voted to dismiss against all or some Respondents for distinct but related reasons.

### *A. Dino Sajudin Allegations*

We voted to dismiss all allegations relating to AMI's reported agreement with Dino Sajudin for a simple reason: the statute of limitations had lapsed and barred enforcement against any violation. The alleged agreement was formed in November 2015 and amended in December 2015.[6] But the applicable statute of limitations for any campaign-finance violation is five years.[7] As a

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[2] *See* Complaint at 4–8 (April 12, 2018), MUR 7364 (Donald J. Trump for President, Inc., *et al*.); Complaint at 6–7 (April 17, 2018), MUR 7366 (Donald J. Trump for President, Inc., *et al*.).

[3] First General Counsel's Report (December 4, 2020), MURs 7324, 7332, 7364, and 7366 (Donald J. Trump for President, Inc., *et al*.).

[4] *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.

[5] *Id*.

[6] First General Counsel's Report at 22 (December 4, 2020), MURs 7324, 7332, 7364, and 7366 (Donald J. Trump for President, Inc., *et al*.).

[7] 18 U.S.C. § 2462.

result, when the Commission first considered the merits of these allegations in March 2021, all of the relevant conduct fell outside the limitations period, and the Commission could not press any enforcement case based on this conduct.[8] The only appropriate disposition, then, was to dismiss these allegations as time-barred.

*B. Karen McDougal Allegations*

Though not entirely time-barred like the Sajudin allegations, the Complaints' allegations related to Karen McDougal faced similar and likely insurmountable problems with pursuing enforcement—with one exception.

While it did not bar enforcement entirely, the impending statute of limitations severely limited the likelihood of a successful investigation. The bulk of the relevant conduct relating to McDougal took place in August 2016, when AMI purchased the rights to McDougal's story for $150,000.[9] This meant that the Commission had merely five months to complete a lengthy and complicated investigation to establish what happened, who was involved, who knew or said what, and when. The Commission would then need to bring the matter through probable-cause proceedings, and if unable to settle the matter, would need to file an enforcement action in federal court. Completing this entire investigative process to support an enforcement suit on such a truncated timeline would be uncertain to say the least.[10]

The Commission's likelihood of success was dimmed further by the lack of credible or admissible evidence available at the initial stage of enforcement. Despite months wasted conducting outside research—combing through dozens of media reports, articles, and published books not contained in the record before the Commission—large swaths of evidence collected and cited in the First General Counsel's Report were unreliable.[11] Much of it was based on second-hand knowledge, unsourced or anonymous claims, unreliable accounts, and assertions that fail to meet acceptable standards for evidentiary trustworthiness, even at the initial stage of enforcement.

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8 *See* Supplemental Statement of Reasons of Commissioner Sean J. Cooksey at 2–3 (April 29, 2021), MURs 6917 and 6929 (Scott Walker *et al*.) and MURs 6955 and 6983 (John R. Kasich *et al*.) (discussing, among other things, the bar on enforcement actions seeking penalties outside of the statute of limitations).

9 First General Counsel's Report at 14 (December 4, 2020), MURs 7324, 7332, 7364, and 7366 (Donald J. Trump for President, Inc., *et al*.).

10 *See* Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III at 2 n.7 (May 10, 2021), MURs 7265 and 7266 (Donald J. Trump for President, Inc., *et al*.).

11 *See*, *e.g.*, Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter at 11 n.33 (July 25, 2013), MUR 6540 (Rick Santorum for President, *et al*.) ("[T]he Commission has already determined that news articles standing alone are insufficiently reliable to support a reason to believe finding."); Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 5–6 n.20 (May 1, 2009), MURs 5977 and 6005 (American Leadership Project, *et al*.) ("[A]dherence to the Commission's regulations regarding sources of information contained in complaints cautions against accepting as true the statements of anonymous sources.").

In order to build a persuasive case, then, the news reports accepted at face value by the First General Counsel's Report would need to be investigated and proved with more rigorous forms of evidence. This would have consumed significant Commission resources.[12] Indeed, there have been occasions where the Commission has opened similar investigations predicated on unverified news reports, and ultimately wasted enormous amounts of time and money only to discover that the press accounts were wrong.[13] Facing this shaky evidence, the long odds of success, a dwindling limitations period, and the difficult choices of efficiently allocating our limited agency resources, we voted to dismiss the allegations related to Karen McDougal under *Heckler v. Chaney*[14] against most Respondents.

As to the allegations related to AMI and its officers, the evidence available at the initial stage of enforcement was much stronger. As part of its own investigation, the U.S. Attorney's Office for the Southern District of New York entered into a non-prosecution agreement ("NPA") with AMI concerning the McDougal payments.[15] The NPA set out the facts and circumstances surrounding the McDougal contract, which included AMI's admissions that its "principal purpose in entering into the agreement was to suppress [McDougal's] story so as to prevent it from influencing the election" and that "[a]t no time during the negotiation for or acquisition of [McDougal's] story did AMI intend to publish the story or disseminate information about it publicly."[16]

As a sworn statement admitting the elements of a campaign-finance violation, the NPA obviated the need for further investigation.[17] The NPA was direct, reliable evidence that empowered the Commission to pursue enforcement within the remaining statute of limitations. We therefore voted to find reason to believe that AMI and David J. Pecker knowingly and willfully violated 52 U.S.C. § 30118(a) by making and consenting to prohibited corporate in-kind

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12 *See Heckler v. Chaney*, 470 U.S. 821, 832 (1985) ("[A]n agency's decision not to prosecute or enforce ... is a decision generally committed to an agency's absolute discretion ... [and] often involves a complicated balancing of a number of factors which are peculiarly within its expertise. Thus, the agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, ...").

13 *See* Second General Counsel's Report at 24 (Jan. 13, 2021), MUR 7271 (Democratic National Committee, *et al*.) (concluding, after a one and a half years of investigation, that a complaint based entirely on news reports could not be substantiated to support a finding of probable cause).

14 470 U.S. 821 (1985).

15 U.S. Department of Justice Letter (September 20, 2018), *available at* https://www.justice.gov/usao-sdny/press-release/file/1119501/download (last visited June 21, 2021) ("AMI Non-Prosecution Agreement").

16 AMI Non-Prosecution Agreement, Ex. A ¶ 5.

17 The Non-Prosecution Agreement with the Department of Justice that AMI signed through its representatives in September 2018 is credible and direct evidence of a civil violation. *See* AMI Non-Prosecution Agreement at 2. As the statement of a party-opponent, it falls outside the definition of hearsay and would be admissible as evidence in a civil proceeding against AMI but would not be against other Respondents. *See* Fed. R. Evid. 801(d)(2); *accord United States v. Morgan*, 376 F.3d 1002, 1007 (9th Cir. 2004) (sworn statements from prior bankruptcy filing held admissible, among other reasons, as a statement of a party opponent).

contributions with regard to payments related to Karen McDougal.[18] We conciliated with AMI on this violation, and AMI ultimately agreed to pay a substantial fine.[19]

## III. Conclusion

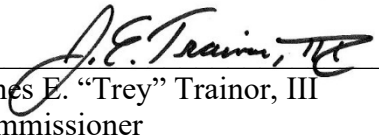
These matters, yet again, presented the current Commission with no good options. As has been the case for other matters coming out of our enforcement backlog, the Commission has been left with matters previously abated or undeveloped, with little time left on the statute of limitations, and with much work remaining.[20] In choosing how to allocate the Commission's limited enforcement resources, we opted against pursuing the long odds of a successful enforcement in these matters and, with a noted exception, instead voted to dismiss as an exercise of prosecutorial discretion.

Allen Dickerson
Vice Chair

June 28, 2021
Date

Sean J. Cooksey
Commissioner

June 28, 2021
Date



James E. "Trey" Trainor, III
Commissioner

June 28, 2021
Date

[18] Certification (March 17, 2021), MURs 7324, 7332, 7364, and 7366 (Donald J. Trump for President, Inc., *et al.*).

[19] Conciliation Agreement (May 18, 2021), MURs 7324, 7332, 7366 (Donald J. Trump for President, Inc., *et al.*) (imposing a civil penalty against AMI of $187,500).

[20] *See* Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III at 2–3 (May 10, 2021), MURs 7265 and 7266 (Donald J. Trump for President, Inc., *et al.*).