



FEDERAL ELECTION COMMISSION
 1050 FIRST STREET, N.E.
 WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MURs 7581/7614
 Li Juan “Cindy” Yang a/k/a)
 Li Juan “Cindy” Gong, *et al.*¹)
)

**STATEMENT OF REASONS OF CHAIRMAN ALLEN DICKERSON
 AND COMMISSIONERS SEAN J. COOKSEY AND JAMES E. “TREY” TRAINOR, III**

These Matters involved serious allegations of illegal conduit contributions and illegal foreign national activity. A combination of factors, however, including our inability to build a record in time to avoid an impending statute of limitations,² led us to conclude that attempting enforcement in these Matters would not be a prudent use of agency resources.³ Because invoking our prosecutorial discretion went against

¹ In all of her correspondence with the Commission, both through attorneys and while she was unrepresented by counsel, the captioned respondent used the surname “Gong.” However, in newspaper articles, and in our Office of General Counsel’s (“OGC”) report to us in these Matters, which heavily relied on media reporting, Ms. Gong is referred to by the surname “Yang,” which appears to be her maiden name. The general counsel’s report therefore errantly refers to her as “Yang f/k/a Gong,” when in practice it seems Ms. Gong has used both names in recent years. Because the respondent went by Li Juan Gong in her communications with the Commission, this Statement of Reasons will refer to her by that name. First Gen’l Counsel’s Report (“FGCR”) at 1, MURs 7581/7614 (Yang/Gong), June 28, 2022.

² The statute of limitations would have swallowed all of the allegations in MUR 7614 on December 2, 2022, and all of MUR 7581 on March 1, 2023. 52 U.S.C. § 30145(a) (“No person shall be...punished for any violation of” the Act “unless...the information is instituted within 5 years after the date of the violation”); 28 U.S.C. § 2462 (“Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon”).

³ *Heckler v. Chaney*, 470 U.S. 821 (1985); Certification at 3-4, MURs 7581/7614 (Yang/Gong), July 28, 2022. The fourth commissioner to vote in favor of invoking the agency’s prosecutorial discretion, Commissioner Steven Walther, retired from service on July 31, 2022.

the recommendation of our Office of General Counsel, we provide this articulation of our reasoning in accordance with governing law.⁴

I. BACKGROUND

The Federal Election Commission shares jurisdiction over the enforcement of the Federal Election Campaign Act (“FECA” or “Act”) of 1971, as amended,⁵ with the U.S. Department of Justice (“DOJ”). The division is simple: the Commission has no capacity to bring criminal charges, but instead is entrusted with the “exclusive civil remedy” for violations of the Act.⁶ Our counterparts at the DOJ, as one might expect, hold the opposite portfolio.

[REDACTED]

[REDACTED]

⁴ See *Dem. Cong. Campaign Comm. v. Fed. Election Comm’n*, 831 F.2d 1131, 1135 (D.C. Cir. 1987) (“DCCC”) (establishing requirement that “[t]he Commission or the individual Commissioners” must provide a statement of reasons why the agency “rejected or failed to follow the General Counsel’s recommendation”); *Common Cause v. Fed. Election Comm’n*, 842 F.2d 436, 453 (D.C. Cir. 1988) (“A statement of reasons...is necessary to allow meaningful judicial review of the Commission’s decision not to proceed”); see also *id.* at 451 (R.B. Ginsburg, J., dissenting in part and concurring in part) (“I concur in part III of the court’s opinion holding the DCCC rule applicable, prospectively, to all Commission dismissal orders based on tie votes when the dismissal is contrary to the recommendation of the FEC General Counsel”); *Nat’l Republican Senatorial Comm. v. Fed. Election Comm’n*, 966 F.2d 1471, 1476 (D.C. Cir. 1992) (“We further held that, to make judicial review a meaningful exercise, the three Commissioners who voted to dismiss must provide a statement of their reasons for so voting. Since those Commissioners constitute a controlling group for purposes of the decision, their rationale necessarily states the agency’s reasons for acting as it did”) (citation omitted); *Campaign Legal Ctr. & Democracy 21 v. Fed. Election Comm’n*, 952 F.3d 352, 355 (D.C. Cir. 2020).

⁵ 52 U.S.C. §§ 30101, *et seq.*

⁶ 52 U.S.C. § 30107(e).

⁷ As one of us has noted elsewhere, the Commission is seldom well positioned to handle sensitive matters of state. Supplemental Statement of Vice Chair Dickerson at 10, MURs 7207/7268/7274/7623 (Russian Fed’n), Sept. 16, 2021 (“The Commission should recognize that while we are experts at administering and enforcing federal campaign finance laws, we lack expertise with respect to the international ramifications of our decisions”).

The principal allegations in the complaints all involve Ms. Li Juan “Cindy” Gong, an American citizen who formerly resided in Florida.⁸ Both complaints heavily rely on media reports concerning Ms. Gong, and they each allege two different efforts by Ms. Gong to evade the strictures of the Act.

The first complaint we received⁹ was based almost entirely on a *New York Times* article published two days earlier,¹⁰ and it alleged that Ms. Gong solicited contributions from nine individuals who appear to be family and employees so she could meet a \$50,000 threshold for a donor photo with then-President Donald Trump. The complaint suggested that it was very unlikely that these persons freely gave the funds without reimbursement from Ms. Gong.

The second complaint we received alleged a different scheme, relying on media reporting in the *Miami Herald*, *Mother Jones*, and the *Washington Post*.¹¹ Specifically, it tagged Ms. Gong as one of many U.S. facilitators of efforts to bring Chinese nationals to American political events.¹² In sum, the complaint alleged that it was unlikely that the Americans involved were not acting as conduits for Chinese money to flow into American political campaigns.¹³

Ms. Gong responded through counsel by conceding her attendance at several fundraisers, including a March 2018 event where she was photographed with the President of the United States, and conceded that “nine people in [her] orbit, some of them with modest incomes, made donations at exactly \$5,400”¹⁴ for that event, and furthermore that she “for a short time ran a travel service to the US for Chinese

⁸ Ms. Gong informed the Commission that she currently resides in Mexico. Email from Li Juan Gong to Richard Weiss, May 2, 2022, 12:01 PM; *see also* FGCR at 5, n.11.

⁹ Common Cause Cmplt. at 1. The Commission labeled this complaint MUR 7581.

¹⁰ *Id.* at 3-7.

¹¹ Campaign Legal Ctr. Cmplt. The Commission labeled this complaint MUR 7614.

¹² *Id.* at 20-23, ¶¶ 28-34.

¹³ *Id.* at 20, ¶ 27 (“It is not known whether U.S. nationals are making contributions using their personal funds, and then being reimbursed for those contributions by selling the event tickets and photo opportunities to foreign nationals, or whether the U.S. nationals are first receiving payment from foreign nationals for political tourism packages and using those funds to make contributions; in either case,” it would be a substantial-assistance violation).

¹⁴ 7581 Gong Resp. at 2, ¶ 2 (“The allegations within paragraph [*sic*] 31, 32, 39 are admitted”).

business people, and the only events at Mar-A-Largo to which she brought her clients were club guest [*sic*] and/or local charity events, not political fundraisers.”¹⁵ She then asked “that the Commission find no reason to believe that [she]...committed any violations, and for dismissal of this complaint.”¹⁶ Other responses denied involvement in any alleged scheme.¹⁷

By that time, Ms. Gong was no longer represented by counsel and informed the Commission that she now resided in Mexico, had recently been extremely ill, and that she anticipated that future communication would be difficult.¹⁸

, the Commission was not presented with a First General Counsel’s Report until June 28, 2022. Given the press of the statute of limitations, no time remained in which the Commission could find reason-to-believe (“RTB”) and conduct an investigation. Accordingly, OGC suggested that we engage in pre-probable cause conciliation with Ms. Gong.¹⁹ In other words, OGC’s enforcement strategy relied upon Ms. Gong conceding a violation despite insufficient information to find probable cause, which the Commission is required to do before filing suit, and no prospect of supplementing the record.

II. RELEVANT LAW

OGC recommended RTB findings regarding two sets of violations.

¹⁵ 7614 Gong Resp. at 3, ¶ 6.

¹⁶ 7581 Gong Resp. at 4; 7614 Gong Resp. at 4. The FGCR in these Matters suggests that Ms. Gong sought pre-probable cause conciliation for the allegations. FGCR at 5, n.11. While it is true that the cover page that Ms. Gong’s lawyer appended to her substantive response stated “that Mrs Gong seeks to enter into early conciliation,” given that the same lawyer also signed the response requesting a no-RTB finding, we assume that Ms. Gong—at least while she was still represented by counsel—was merely seeking to resolve these Matters as quickly as possible. 7581 Gong Resp. at 1; 7614 Gong Resp. at 1. In any event, by the time these Matters was considered by the Commission, Ms. Gong was unrepresented by counsel and her communications evidenced a general desire for help, and not a specific desire or willingness to enter into conciliation negotiations. Email from Li Juan Gong to Richard Weiss, May 2, 2022, 12:01 PM.

¹⁷ See Jon Deng Resp. at 1-2; Li Jing Resp.

¹⁸ Email from Li Juan Gong to Richard Weiss, May 2, 2022, 12:01 PM.

¹⁹ OGC recommended that the Commission dismiss the remaining respondents from the case. FGCR at 30-31.

The first was that Ms. Gong reimbursed nine individuals who each gave \$5,400 to the Trump Victory committee and thus violated the Act's prohibitions against making contributions in the name of another²⁰ and, concomitantly, also violated the individual contribution limit.²¹ But aside from mere suspicion based on the fact that those individuals were Gong's friends and employees, OGC had no direct evidence that Ms. Gong had reimbursed any of those nine individuals,²² a number of whom filed explicit denials.²³

The second was that Ms. Gong's political tourism company, GY US, which advertised that it had "successfully planned various high-end business investment plans and international mainstream public relations planning activities for [its] clients," including various opportunities to meet and be photographed with then-President Trump, was actually a scheme to funnel Chinese funds into American campaigns.²⁴ Specifically, OGC argued that she "was being compensated directly and through her tourism company...for those tickets and by foreign nationals and using those funds to offset attendance costs by making contributions."²⁵ But other than reporting that Ms. Gong had attended various Republican events in Florida in the company of some Chinese foreign nationals, OGC had no evidence that Ms. Gong received any money from any Chinese national to attend an American political event.

Unfortunately, as OGC's own recommendation for pre-probable cause conciliation indicated, even if there were evidence of RTB at this stage, the impending statute of limitations provided no time for us to sufficiently investigate and supplement the speculative media reporting and general denials that constitute the record in front of the Commission.

OGC contended that Ms. Gong was likely to conciliate, solving this problem., But we believe that Ms. Gong's relevant communications with the Commission belie that optimistic view.²⁶ A respondent residing in a foreign country claiming an

²⁰ 52 U.S.C. § 30122.

²¹ 52 U.S.C. § 30116(a)(1).

²² Collecting contributions from others and then delivering them to a political committee is colloquially called "bundling," and it is lawful so long as the donations are all properly attributed.

²³ *E.g.* Katrina Eggertsson Resp.; Li Jing Resp.; Gong Haizhen Resp.

²⁴ FGCR at 24.

²⁵ *Id.* at 27, *see also id.* at 24-27.

²⁶ Nor, in our view, should the Commission pursue conciliation where it lacks a record that could support a finding of probable cause and eventual enforcement in court—and where, due to the

inability to communicate, ill health, and a shot memory²⁷ may or may not be telling the truth. But that presentation does not strike us as an offer to confess.²⁸ In such circumstances, conciliation would have likely failed, leaving us to vote on probable cause and rush to file papers in federal court before the expiry of the statute of limitations.

Worse, we would have been on track to do so with a record that, unless backfilled with more evidence at a later date, would not have met the standard to support probable cause (“PC”), and would be unlikely to succeed in federal court.²⁹ Indeed, the main “evidence” supporting this effort would consist of news articles, which are inadmissible hearsay.³⁰ We determined that engaging on this self-defeating path would risk making bad law and wasting the agency’s litigation resources at a time when we are defending an unprecedented number of delay suits

expiration of the statute of limitations, it cannot hope to build one. In such cases, entities represented by sophisticated counsel will understand the situation and decline to confess to an unprovable charge. The same may not be true for individuals with modest resources and political experience.

²⁷ Email from Li Juan Gong to Richard Weiss, May 2, 2022, 12:01 PM.

²⁸ See Statement of Reasons of Chairman Dickerson and Comm’rs Cooksey and Trainor at 3, MUR 7425 (Trump Found.), Feb. 22, 2022 (“Even if the Commission had chosen not to investigate and instead moved to pre-probable cause conciliation, there would be little chance the Commission could successfully find probable cause and file an enforcement action before the total lapse of the statute of limitations at the end of May – and correspondingly little incentive for respondents to agree to a conciliation agreement”).

²⁹ 52 U.S.C. § 30109(6)(A) (“If the Commission is unable to correct or prevent any violation of this Act or of chapter 95 or chapter 96 of Title 26, by the methods specified in paragraph (4), the Commission may, upon an affirmative vote of 4 of its members, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order (including an order for a civil penalty which does not exceed the greater of \$5,000 or an amount equal to any contribution or expenditure involved in such violation) in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business”).

³⁰ *Metro. Council of NAACP Branches v. Fed. Communications Comm’n.*, 46 F.3d 1154, 1165 (D.C. Cir. 1995) (“We seriously question whether a *New York Times* article is admissible evidence of the truthfulness of its contents”) (see citing Fed. R. Evid. 801(c) and 802); *Spotts v. United States*, 562 F.Supp.2d 46, 54 (D.D.C. 2008) (“[N]ewspaper articles constitute inadmissible hearsay, which cannot serve as evidence of the truth of the matter asserted, because they ‘provide no evidence of the reporter’s perception, memory or sincerity and, therefore, lack circumstantial guarantees of trustworthiness.’”) (quoting *Hutira v. Islamic Republic of Iran*, 211 F. Supp. 115, 123 (D.D.C. 2002)); *Konah v. District of Columbia*, 971 F. Supp. 2d 74, 80 (D.D.C. 2013) (“The Court does not rely on other materials submitted by Ms. Konah because tenuous relevance is the least severe of their infirmities. For example, she has offered two newspaper articles from the *Washington City Paper* describing assaults on inmates by other inmates, which are inadmissible hearsay”).

and Freedom of Information Act requests. In such circumstances, invoking our discretion was the proper course of action.³¹

It is possible that evidence exists that might have persuaded us otherwise. [REDACTED]

[REDACTED]³² It would be improper and irresponsible for us to speculate [REDACTED] and to embrace an RTB-of-the-gaps approach to enforcement—especially in the event that [REDACTED] would demonstrate that OGC’s case was off-the-mark.³³

³¹ *Heckler*, 470 U.S. at 831 (“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, and, indeed, whether the agency has enough resources to undertake the action at all”).

³² It is also possible that evidence *disproving* the alleged conspiracy exists. We simply do not know, and at this late juncture, the press of the statute of limitations prevents us from being able to use Commission resources to find out. *Cf.* Statement of Reasons of Vice Chair Dickerson and Comm’rs Cooksey and Trainor at 2, MURs 7207/7268/7274/7623 (Russian Fed’n), Nov. 22, 2021 (“With the case so severely imperiled by the waning limitations period—and by this point, having fully lapsed—there was no reasonable chance for the Commission to bring an investigation and enforcement action to fruition in the time remaining”).

³³ Our decision to exercise our prosecutorial discretion has the additional virtue of non-interference in whatever related efforts the Department may choose, or has chosen, to pursue.

CONCLUSION

For the foregoing reasons, we voted to exercise our prosecutorial discretion pursuant to *Heckler v. Chaney*.³⁴



Allen Dickerson
Chairman

September 6, 2022

Date



Sean J. Cooksey
Commissioner

September 6, 2022

Date



James E. "Trey" Trainor, III
Commissioner

September 6, 2022

Date

³⁴ 470 U.S. at 831-835.