



FEDERAL ELECTION COMMISSION  
 WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	
	)	MURs 7581 and 7614
Li Juan “Cindy” Yang a/k/a	)	
Li Juan “Cindy” Gong, <i>et al.</i>	)	
	)	

**SUPPLEMENTAL STATEMENT OF REASONS OF  
 CHAIRMAN ALLEN DICKERSON AND COMMISSIONER SEAN J. COOKSEY**

We voted to dismiss the allegations in these matters as an exercise of prosecutorial discretion for the reasons articulated in the principal Statement of Reasons. We write separately to observe that there are also reasons to doubt the Commission’s legal authority to pursue violations in this matter for providing “substantial assistance” in the making of foreign national contributions under the Federal Election Campaign Act of 1971 (“the Act”), as the Office of General Counsel recommended.<sup>1</sup>

The Act forbids any person from soliciting, accepting, or receiving contributions or donations from foreign nationals.<sup>2</sup> The Commission’s regulations reiterate that prohibition, but then go beyond it by broadening the scope of prohibited conduct,<sup>3</sup> and also creating secondary liability for anyone who provides “substantial assistance” to such a violation.<sup>4</sup> Yet the statutory text itself provides no separate aiding-and-abetting violations, and that calls into question whether the Commission has sufficient statutory backing to do so through a regulation.

The shaky legal grounding for the “substantial assistance” prohibition is made starker when compared to similar regulations that federal courts have held exceed the Commission’s authority. In *FEC v. Swallow*, the U.S. District Court for the District of Utah struck down a Commission regulation that prohibited anyone from “[k]nowingly help[ing] or assist[ing] any person in making

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<sup>1</sup> See First General Counsel’s Report at 30 (June 28, 2022), MURs 7581 and 7614 (Yang); 11 C.F.R. § 110.20(h).

<sup>2</sup> See 52 U.S.C. § 30121(a)(2). (“It shall be unlawful for ... a person to solicit, accept, or receive a contribution or donation ... from a foreign national.”).

<sup>3</sup> See 11 C.F.R. § 110.2(f) (prohibiting foreign nationals from directly or indirectly making any expenditure, independent expenditure, or disbursement).

<sup>4</sup> 11 C.F.R. § 110.20(h).

a contribution in the name of another,” and enjoined the Commission from enforcing it.<sup>5</sup> The court observed that the relevant language in the Act was “unambiguous” and “clearly focuses on principals, not the secondary actors who do not make a monetary contribution of their own but only perform a supporting role.”<sup>6</sup> The Commission’s regulation added another “category” of violations for secondary actors “that went beyond the Act itself.”<sup>7</sup>

The parallels between the regulation at issue in *Swallow* and the “substantial assistance” prohibition at 11 C.F.R. § 110.20(h) are unmistakable. Both regulations impose legal liability on persons who are not the principal offenders, and both extend the Commission’s enforcement to activities beyond the explicit text of the Act. There is therefore substantial risk that a reviewing court would similarly conclude that § 110.20(h) “intrud[es] into the realm of law-making that is the exclusive province of Congress.”<sup>8</sup> Consequently, there may be cases in which the Commission determines it is imprudent to pursue such violations because of the risk of legal challenge.

To effectively enforce the foreign national prohibition and similar statutes, we believe the Commission would be well advised, in light of *Swallow*, to revisit 11 C.F.R. § 110.20(h) and all other regulations that impose liability on secondary actors.



Allen Dickerson  
Chairman

August 30, 2022

Date



Sean J. Cooksey  
Commissioner

August 30, 2022

Date

<sup>5</sup> *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1118–19 (D. Utah 2018).

<sup>6</sup> *Id.* at 1115, 1117.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 1118.