



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	
Russian Federation, <i>et al.</i>	)	MURs 7207, 7268,
	)	7274 & 7623

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

These four Complaints alleged violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), arising from several much-publicized controversies in the 2016 presidential election. Specifically, they claimed that the Russian Federation engaged in a series of covert actions—including a social-media campaign and the hacking and releasing of campaign emails—in order to influence that election.<sup>1</sup> They further claimed that then-candidate Donald Trump’s presidential campaign committee (the “Trump Committee”), along with other individuals and organizations, solicited or cooperated in this interference in various ways.<sup>2</sup>

After significant delay due to ongoing investigations by Congress and the Department of Justice, the Commission considered the Office of General Counsel’s (“OGC”) 96-page report on these matters in April and June 2021.<sup>3</sup> After deliberation, the Commission agreed to pursue enforcement against a then-unknown congressional candidate, H. Russell Taub, to dismiss the foreign Respondents as a matter of prosecutorial discretion, and to dismiss Cambridge Analytica.<sup>4</sup> The Commission could not agree by the required four votes, however, on how to proceed with regard to Trump, the Trump Committee, and former Trump campaign manager Paul Manafort.<sup>5</sup> We therefore write to explain the reasons for our votes.<sup>6</sup>

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<sup>1</sup> See, e.g., Complaint at 5–9 (Dec. 19, 2016), MUR 7207 (Russian Federation, *et al.*).

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

<sup>3</sup> First General Counsel’s Report at 1–3 (Feb. 23, 2021), MURs 7207, 7268, 7274 & 7623 (Russian Federation, *et al.*).

<sup>4</sup> Certification (April 22, 2021), MURs 7207, 7268, 7274 & 7623 (Russian Federation, *et al.*).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* See also *Dem. Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1135 (D.C. Cir. 1987) (establishing the 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”).

We voted to dismiss these Respondents as an exercise of prosecutorial discretion for two principal reasons. First, the Commission’s decision to await the completion of other ongoing investigations into these same events—including by the Department of Justice’s Special Counsel Robert Mueller—undermined the Commission’s ability to resolve these matters within the statute of limitations. The relevant statute of limitations on violations of the Act is only five years, but OGC’s First General Counsel’s Report was not completed until more than four years after the initial Complaint was filed.<sup>7</sup> As a result, mere months remained on the statute of limitations for the latest conduct once the Commission had considered the matters, while other conduct was already outside of the five-year window. 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.<sup>8</sup> The Commission was likely to face multifarious legal obstacles, including issues of privilege and sovereign immunity, that would have further delayed action.<sup>9</sup> And attempting to undertake such an investigation would have required expending significant resources and likely limiting the Commission’s opportunities to deliberate further. Considering the vanishing odds of successful enforcement and the enormous costs to the agency, we concluded the better course was dismissal.<sup>10</sup>

Second, we believe that the Commission’s interests have already been vindicated by the investigations conducted by other parts of the federal government. In addition to the Special Counsel—who ultimately issued a thorough report on the relevant facts and criminally convicted Paul Manafort, among others, as part of his work—thorough investigations were undertaken by relevant committees of the U.S. Senate and U.S. House of Representatives, as well as the Office of the Director of National Intelligence.<sup>11</sup> Indeed, the First General Counsel’s Report is largely derivative of these other reports. Where appropriate, these and other federal bodies have pursued criminal prosecution or other sanctions against relevant parties. The Commission has long taken

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<sup>7</sup> 28 U.S.C. § 2462; First General Counsel’s Report at 1 (Feb. 23, 2021), MURs 7207, 7268, 7274 & 7623 (Russian Federation, *et al.*).

<sup>8</sup> After finding reason to believe a violation has occurred, the Commission must undertake additional investigatory and deliberative steps before it can bring an enforcement action in federal court in a matter. After any attempt to conciliate with Respondents fails, OGC would then need to draft probable-cause briefs recommending that the Commission pursue enforcement. Respondents would be given fifteen days to respond to those briefs, as well as the right to request a probable-cause hearing. Following any hearing, the Commission would need to deliberate again over whether to find probable cause to believe Respondents violated the law. If the Commission found probable cause, under the Federal Election Campaign Act, it must then attempt to conciliate with respondents again for no less than thirty days. *See* 52 U.S.C. § 30109(a)(4). Only after that effort would the Commission consider whether to file a civil enforcement suit.

<sup>9</sup> *See* First General Counsel’s Report at 21–24 (Feb. 23, 2021), MURs 7207, 7268, 7274 & 7623 (Russian Federation, *et al.*).

<sup>10</sup> Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 1–2 (May 10, 2021), MURs 7265 and 7266 (Donald J. Trump for President, Inc., *et al.*) (voting to dismiss in light of the impending statute of limitations after abating a matter subject to other government investigations); Statement of Reasons of Chair Broussard and Commissioner Weintraub at 2 (May 7, 2021), MUR 7395 (Heller for Senate, *et al.*) (“[I]n light of the imminent statute of limitations and other priorities on the Commission’s docket, we voted to dismiss the allegations.”).

<sup>11</sup> *See* First General Counsel’s Report at 1 & n.5 (Feb. 23, 2021), MURs 7207, 7268, 7274 & 7623 (Russian Federation, *et al.*) (discussing the Complaints’ reliance on other federal investigatory reports).

the view that it is an imprudent use of resources to duplicate other agencies' work.<sup>12</sup> Those reports and subsequent actions, along with our own First General Counsel's Report, stand for themselves as a record for these matters, and the public would be unlikely to benefit from another investigation five years after the fact.

In light of these considerations, the impending statute of limitations, and the press of other cases, we voted to dismiss these matters as an exercise of prosecutorial discretion.<sup>13</sup>




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Allen Dickerson  
Vice Chair

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November 22, 2021

Date




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Sean J. Cooksey  
Commissioner

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November 22, 2021

Date




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James E. "Trey" Trainor, III  
Commissioner

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November 22, 2021

Date

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<sup>12</sup> See Statement of Reasons of Chairman McDonald, Vice Chairman Mason, and Commissioners Sandstrom, Smith, Thomas, and Wold at 1 (May 7, 2001), Pre-MUR 385 (Phillip R. Davis) ("Because the violations at issue have been addressed by the Justice Department in a criminal prosecution and a further expenditure of resources is not warranted relative to other matters pending before the Commission, we exercised our prosecutorial discretion by not taking further action.").

<sup>13</sup> *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).