

# United States Court of Appeals For the First Circuit

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No. 22-1124

DANA CHENG; EPOCH GROUP, INC., d/b/a Epoch Media Group,

Plaintiffs, Appellants,

v.

DAN NEUMANN; MAINE PEOPLE'S ALLIANCE, d/b/a Beacon,

Defendants, Appellees.

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

[Hon. Lance E. Walker, U.S. District Judge]

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Before

Barron, Chief Judge,  
Lynch and Gelpí, Circuit Judges.

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Christopher J. Bakes, with whom Kip Joseph Adams, Bryan Paul Sugar, Lann G. McIntyre, and Lewis Brisbois Bisgaard & Smith LLP were on brief, for appellants.

John-Mark Turner, with whom Christopher Cole, Sheehan, Phinney, Bass & Green, P.A., Tracy D. Hill, and Drummond Woodsum were on brief, for appellees.

Carol J. Garvan, Zachary L. Heiden, Anahita Sotoohi, and Brian Hauss on brief for American Civil Liberties Union and American Civil Liberties Union of Maine, amici curiae.

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October 25, 2022

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**LYNCH, Circuit Judge.** Dana Cheng and Epoch Group sued Maine People's Alliance and Dan Neumann, its reporter, in the U.S. District Court for the District of Maine. The suit asserted that the defendants' coverage of a presentation given by Cheng on a panel at a Windham, Maine forum co-sponsored by the Maine Republican Party and the Christian Civic League was defamatory and constituted false light invasion of privacy and intentional and negligent infliction of emotional distress. The defendants moved to dismiss, asserting First Amendment and various state-law defenses. The district court granted the motion to dismiss in a thoughtful opinion. See Cheng v. Neumann, No. 21-cv-00181, 2022 WL 326785 (D. Me. Feb. 3, 2022). Because the plaintiffs have not plausibly alleged defamation under First Amendment principles, we affirm.

**I.**

We draw the facts from the plaintiffs' complaint, "documents attached to or fairly incorporated into the complaint," "facts susceptible to judicial notice," and "concessions in plaintiff[s'] response to the motion to dismiss." Lemelson v. Bloomberg L.P., 903 F.3d 19, 21 (1st Cir. 2018) (quoting Schatz v. Republican State Leadership Comm., 669 F.3d 50, 55-56 (1st Cir. 2012)).

Dana Cheng, a New York resident, is the vice president and co-founder of The Epoch Times, a print and online newspaper, also in New York.

Maine People's Alliance, a Maine non-profit corporation, publishes an online media outlet named Beacon. On June 16, 2021, Beacon published an article written by Dan Neumann titled "Maine GOP hosts speaker present at Jan. 6 Capitol assault" (the "Article"). The Article stated, in relevant part:

The Maine Republican Party co-sponsored a community forum in Windham on Monday evening that included as a panelist a far-right media personality and conspiracy theorist who has said she was among the supporters of former President Donald Trump who were present at the riot at the U.S. Capitol on Jan. 6.

. . .

Dana Cheng, vice-president of the right-wing multi-language newspaper and media company Epoch Times, was invited by the Gray Republicans to brief their members about the threats posed to Americans by the Chinese government.

. . .

The day after the insurrection that left five people dead, Cheng said on a Denver radio program that she was present at the Capitol when it was breached, but was not at the front of the crowd and did not enter the building.

Cheng alleged during the radio interview that the violence that day was perpetrated by anti-fascist infiltrators -- a false refrain echoed throughout conservative media in the days after the insurrection.

"We have got photos from our readers that there were some antifa people," she said. "They have seen a few people try to push into the building, some got into the building. They were the same people that were in the antifa movement."

Since Trump's loss to President Joe Biden, Cheng's Epoch Times has consistently questioned the election results. The news outlet is partially funded by far-right media financier Robert Mercer and has promoted anti-vaccine misinformation and an array of pro-Trump conspiracy theories such as QAnon, leading the New York Times to call the outlet a "global-scale misinformation machine."

The Article included a link to a recording of Cheng's appearance on The Kim Monson Show, a Denver radio show and podcast. That link provided access to the statements actually made during that show. The Article also referred to statements made by the chair of the Maine Republican Party regarding the Capitol assault. The Article and a transcript of Cheng's radio appearance are attached in their entirety as Exhibits A and B hereto.

On January 7, 2021, the day after the attack on the U.S. Capitol, Cheng had appeared on The Kim Monson Show as a repeat guest. When asked about the events of January 6, Cheng stated:

Yesterday I was at a rally in the morning. I went to a -- a lot of people, people, people were very peaceful relatively and then people were excited and when Trump was speaking. So later on at the Capitol, I was there but I was not on the right front, so I did not see with my own eyes what happened when some people broke into the building. I was -- most people there, to my eyes, had been very peaceful. So those on the front, I -- we have got photos

from our readers that there's a -- there were some antifa people infiltrating in, and they have seen a few people trying to push, push into the building and some got into the building and some photos that they could see they are the same people that were in the antifa movement. We got some photos sent by readers.

So no matter who was involved, to us, we're very fully aware with the communism strategy -- and it happened in China, it happened in Hong Kong. The easiest way to ruin a movement or a protest is to lead a few people to go extreme. That's the fastest way to ruin a protest or movement. So I don't think if it's random and it's like, it's not planned. I think some people planned it. Who was involved and who tried to plot this, it's not clear yet.

Pressed by Monson on whether she could say "for sure" that anti-fascist ("antifa") infiltrators were involved in breaching the Capitol, Cheng replied: "We are in the process of confirming those. And that is a familiar strategy from communists." Cheng also stated that "it [was her] opinion that China has been deeply involved in this election fraud."

Cheng and Epoch Group (publisher of The Epoch Times) sued Neumann and Maine People's Alliance in federal court in Maine under diversity jurisdiction, alleging defamation based on the statements in the Article. Cheng also asserted the other claims previously described.

As relief, the plaintiffs sought a retraction of the Article in its entirety, an injunction enjoining the defendants

"from further publication of any false, malicious, defamatory or materially misleading comments regarding Plaintiff[s]," money damages, punitive damages, and other relief.

The defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6) and New York's anti-SLAPP statute. The district court granted the motion. This timely appeal followed.

## II.

We review a district court's grant of a motion to dismiss a defamation suit de novo. McKee v. Cosby, 874 F.3d 54, 59 (1st Cir. 2017); see also Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 499 (1984) (stating general principle that, in First Amendment cases, appellate courts have "an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression'" (quoting New York Times Co. v. Sullivan, 376 U.S. 254, 284-86 (1964))). We "accept as true the complaint's well-pleaded factual allegations" and "draw all reasonable inferences in favor of the non-moving party." McKee, 874 F.3d at 59. We do not credit legal labels or conclusory statements, but rather focus on the complaint's non-conclusory, non-speculative factual allegations and ask whether they plausibly narrate a claim for relief. Lemelson, 903 F.3d at 23.

**A.**

We first consider the plaintiffs' defamation claims. "Modern defamation law is a complex mixture of common-law rules and constitutional doctrines." McKee, 874 F.3d at 60 (quoting Pan Am Sys., Inc. v. Atl. Ne. Rails & Ports, Inc., 804 F.3d 59, 64 (1st Cir. 2015)). Here, we bypass the parties' choice-of-law disputes as to whether Maine or New York law (including either state's anti-SLAPP statute) applies. Rather, we look to dispositive First Amendment principles. See Lemelson, 903 F.3d at 23 (taking a similar approach); Schatz, 669 F.3d at 56 (same).

We focus on two such principles. We have no need to reach further First Amendment principles concerning public figures and the pleading requirements for actual malice.

As to the first principle, where challenged statements are published by a media defendant and involve matters of public concern, there can be no liability unless the statements are false. See Phila. Newspapers, Inc. v. Hepps, 475 U.S. 767, 776 (1986); see also, e.g., Masson v. New Yorker Mag., Inc., 501 U.S. 496, 517 (1991) (reiterating this principle); Milkovich v. Lorain J. Co., 497 U.S. 1, 19-20 (1990) (same); Veilleux v. Nat'l Broad. Co., 206 F.3d 92, 108 (1st Cir. 2000) (same). The district court correctly held that the Article was published by media defendants and concerned matters of public concern. See Cheng, 2022 WL 326785,

at \*4, \*6.<sup>1</sup> Such a falsity must be material, not merely a minor inaccuracy. See Pan Am, 804 F.3d at 66; Veilleux, 206 F.3d at 108; see also Air Wisc. Airlines Corp. v. Hoeper, 571 U.S. 237, 247 (2014) ("A 'statement is not considered false unless it would have a different effect on the mind of the reader from that which the pleaded truth would have produced.'" (internal quotation marks omitted) (quoting Masson, 501 U.S. at 517)).

As to the other First Amendment principle, "a statement of opinion relating to matters of public concern which does not contain a provably false factual connotation . . . receive[s] full constitutional protection," as does "imaginative expression" and "rhetorical hyperbole." Milkovich, 497 U.S. at 20 (first citing Hepps, 475 U.S. 767; and then citing Hustler Mag., Inc. v. Falwell, 485 U.S. 46, 53-55 (1988)); see also Pan Am, 804 F.3d at 65; Veilleux, 206 F.3d at 108. "[I]f it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable." Gray v. St. Martin's Press, Inc., 221 F.3d 243, 248 (1st Cir. 2000) (alteration in original) (quoting Haynes v. Alfred A. Knopf, Inc., 8 F.3d 1222, 1227 (7th Cir. 1993) (Posner, J.)). "The vaguer a

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<sup>1</sup> The plaintiffs have not developed any contrary argument on this point and so have waived any challenge to this ruling. See United States v. Valdez, 975 F.3d 63, 68 (1st Cir. 2020).



term, or the more meanings it reasonably can convey, the less likely it is to be actionable." Levinsky's, Inc. v. Wal-Mart Stores, Inc., 127 F.3d 122, 129 (1st Cir. 1997).

We conclude that the plaintiffs have failed to plausibly allege defamation both as to the Article as a whole and as to each of the individual challenged statements.

The plaintiffs have, on appeal, largely focused on the statements in combination to support an allegedly defamatory inference.<sup>2</sup> The plaintiffs argue that all of the challenged statements, taken together, combine to convey a defamatory inference as to the nature of Cheng's conduct. Such an inference, once defined, is treated like a claim for direct defamation and is subject to the same constitutional guardrails. See White v. Fraternal Ord. of Police, 909 F.2d 512, 523 (D.C. Cir. 1990). We conclude that the argued inference is not plausible.

The plaintiffs do not argue that the defamatory inference purportedly at issue is that Cheng was present at the Capitol as a protestor rather than as a journalist. Nor do they argue that the inference reasonably drawn by readers is that Cheng shared similar views as the protestors and that inference is

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<sup>2</sup> The plaintiffs have not challenged the district court's conclusion that a statement regarding The Epoch Times' funding was non-actionable because it was a minor inaccuracy that was subsequently corrected. See Cheng, 2022 WL 326785, at \*8 n.4.

defamatory.<sup>3</sup> Rather, the plaintiffs contend that the defamatory inference at issue is that Cheng was a "full, enthusiastic, and partisan participant in the violence of January 6, 2021" and/or that she "was present as a violent participant in the January 6 violent assault on the Capitol." The defamatory inference on which the plaintiffs stake their claim is that Cheng participated in the violence on January 6.<sup>4</sup>

We reject the argument. The Article states that Cheng was "present at [the] Jan. 6 Capitol assault" and "present at the riot at the U.S. Capitol on Jan. 6." As discussed infra, these statements are substantially true on their face because they accurately place Cheng at the Capitol during the events of January 6. The passive language of these statements suggests mere "presen[ce]" rather than active participation. Indeed, the Article contains the explicit statement that Cheng "was not at the front of the crowd and did not enter the [Capitol] building."

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<sup>3</sup> Cheng professed her belief in "election fraud" during her appearance on The Kim Monson Show, and the plaintiffs have not challenged as defamatory the Article's statement that The Epoch Times "has consistently questioned the [2020] election results."

<sup>4</sup> To the extent the plaintiffs are alleging that the omission of information on Cheng's own past as a "political refugee bound for America, fleeing violence and persecution" contributes to this inference, this argument is misplaced for two reasons. First, this was not a material omission sufficient to make anything else in the Article defamatory. Second, this information was in fact conveyed by the Article, which linked to the radio interview in which Cheng discussed her past.

Further, the photograph of Cheng in the Article shows her dressed in business attire in what appears to be a library. Beyond that, the Article provides a link to Cheng's own statements in the radio appearance. Taking the Article as a whole, the argued inference is implausible.

If considered individually, the challenged statements are not actionable. Three of the challenged statements are not actionable because they are substantially true. These are the Article's headline and the statements that Cheng was "among the supporters of former President Donald Trump who were present at the riot at the U.S. Capitol on Jan. 6" and that she "alleged during [her appearance on The Kim Monson Show] that the violence that day was perpetrated by anti-fascist infiltrators."

A complaint cannot plausibly allege falsity where, as here, materials incorporated into the complaint refute that very assertion. "It is a well-settled rule that when a written instrument contradicts allegations in the complaint to which it is attached, the exhibit trumps the allegations." Clorox Co. P.R. v. Proctor & Gamble Com. Co., 228 F.3d 24, 32 (1st Cir. 2000) (quoting N. Ind. Gun & Outdoor Shows, Inc. v. City of South Bend, 163 F.3d 449, 454 (7th Cir. 1998)); see also Schatz, 669 F.3d at 55 n.3 (similar).

The Article's headline states: "Maine GOP hosts speaker present at Jan. 6 Capitol assault." That statement is factually

true. Cheng made clear in her radio show appearance, a transcript of which is attached to the complaint, that she was present at the Capitol on January 6 when the building was breached. The plaintiffs instead argue that the phrase "present at Jan. 6 Capitol assault" falsely placed Cheng in the middle of the violent breach of the building rather than merely present on the Capitol grounds. The headline merely states that she was "present" and is not defamatory. Indeed, both parties agree that publishers are afforded leeway in crafting attention-grabbing headlines.

The second statement -- that Cheng was "among the supporters of former President Donald Trump who were present at the riot at the U.S. Capitol on Jan. 6" -- is non-actionable for the same reasons: Cheng stated as much during the interview.<sup>5</sup>

The third statement -- that Cheng "alleged during [her appearance on The Kim Monson Show] that the violence [on January 6] was perpetrated by anti-fascist infiltrators" -- is also substantially true. The plaintiffs argue that Cheng did not allege antifa involvement in the Capitol assault but rather "merely stated that certain people that submitted information to The Epoch Times made such claims and that the information had not been verified."

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<sup>5</sup> The complaint does not allege that the "Trump supporter" label is itself defamatory. Nor does it allege that Cheng is not a supporter of former President Trump. Rather, the complaint alleges that Cheng was not "'among the supporters of former President Donald Trump' that day." (Emphasis added.)

Cheng's statements during the interview strongly suggest to any reader that individuals associated with antifa were involved in the violence of January 6. Cheng's own statements were that:

[T]hose on the front, I -- we have got photos from our readers that there's a -- there were some antifa people infiltrating in, and they have seen a few people trying to push, push into the building and some got into the building and some photos that they could see they are the same people that were in the antifa movement.

Cheng also stated that this was a "communism strategy" intended to "ruin a movement . . . [by] lead[ing] a few people to go extreme" and later expressed her belief in "election fraud." Pressed on whether she could say definitively that antifa was involved, Cheng responded that The Epoch Times was confirming the photographs and reiterated that this was a "familiar strategy from communists." The challenged statement does not permit an inference of falsity because "it 'would [not] have a different effect on the mind of the reader from that which the pleaded truth [or here, the truth as evident from the source material] would have produced.'" Air Wisc. Airlines Corp., 571 U.S. at 247 (quoting Masson, 501 U.S. at 517). The statement is substantially true.

The remaining statements are not actionable because they are expressions of opinion and are unprovable as false. "Right-wing," "far-right," and "conspiracy theorist" are vague, judgement-based terms that "admit[] of numerous interpretations"

and are not objectively provable as false.<sup>6</sup> Levinsky's, 127 F.3d at 130; see also Pan Am, 804 F.3d at 65 ("[C]ourts are 'likely' to stamp as 'opinion' statements involving 'expressions of personal judgment, especially as the judgments become more vague and subjective in character.'" (quoting Gray, 221 F.3d at 248)). These statements are also the sort of "rhetorical hyperbole," Pan Am, 804 F.3d at 65, common in much political discourse.<sup>7</sup> Further, to the extent these opinions are based on Cheng's statements in the radio interview (e.g., about election fraud), they are not actionable because the Article provides a link to the source material, which, in the context of the Article, enables readers to draw their own conclusions "based on facts accessible to everyone." McKee, 874 F.3d at 63 (quoting Phantom Touring, Inc. v. Affiliated Publ'ns, 953 F.2d 724, 730 (1st Cir. 1992)); see also id. at 61, 63-64 (finding defendant immunized from defamation liability on

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<sup>6</sup> Indeed, the complaint expresses the plaintiffs' opinion that "Beacon, and its readers, are to the extreme political left."

<sup>7</sup> See, e.g., M. Graham, Sununu: Bolduc a 'Conspiracy Theorist Extremist;' Will Make it Harder for GOP to Win, NH Journal, <https://nhjournal.com/sununu-bolduc-a-conspiracy-theorist-extremist-will-make-it-harder-for-gop-to-win> (last accessed Oct. 20, 2022) (reporting that New Hampshire GOP Governor Chris Sununu described GOP Senate candidate Don Bolduc as a "conspiracy-theory extremist"); E. Bradner, G. Krieg & D. Merica, Four Takeaways from New Hampshire and Rhode Island Primaries, CNN, <https://www.cnn.com/2022/09/13/politics/new-hampshire-rhode-island-primary-election-takeaways/index.html> (last accessed Oct. 20, 2022) (reporting that Bolduc called Sununu a "Chinese communist sympathizer").

this basis). Finally, to the extent that the plaintiffs allege that the statement that Cheng is a "far-right media personality" is defamatory based on the "media personality" label, that statement is substantially true. The materials incorporated into the complaint reference a number of media appearances by Cheng.

The plaintiffs argue that the statements that The Epoch Times "has promoted anti-vaccine misinformation and . . . QAnon" are defamatory. The Epoch Times has in fact published articles that include discussions of theories which in the opinions of others could be called "anti-vaccine" and/or favorable to QAnon.<sup>8</sup> The allegedly defamatory statements are opinions which reflect subjective judgments about the nature of The Epoch Times' coverage. See Pan Am, 804 F.3d at 65; Gray, 221 F.3d at 248. Indeed, the subjective nature of these judgments is evident from the face of the complaint. The complaint does not dispute that The Epoch Times covers these two topics. The complaint instead attempts to build a defamation claim on the argument that The Epoch Times "has never promoted anti-vaccine misinformation" and has "reported on QAnon but [has] never promoted the organization or its theories." (Emphasis in original.) The challenged statements are non-actionable opinions.

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<sup>8</sup> There is no challenge to the district court's decision to take judicial notice of articles by The Epoch Times on these topics under Rule 12(b)(6), see Cheng, 2022 WL 326785, at \*7, so we consider them.

**B.**

On appeal, Cheng references in passing her claims for false light invasion of privacy, intentional infliction of emotional distress, and negligent infliction of emotional distress but does not develop any argument as to these claims. Accordingly, any challenge has been waived. See United States v. Valdez, 975 F.3d 63, 68 (1st Cir. 2020). The latter two claims also fail for the independent reason that "a failed defamation claim cannot be recycled as a tort claim for negligent or intentional infliction of emotional distress." Shay v. Walters, 702 F.3d 76, 83 (1st Cir. 2012).

**III.**

For the foregoing reasons, we affirm the dismissal of the plaintiffs' complaint.



EXHIBIT A



📅 June 16, 2021 👤 Dan Neumann

## Maine GOP hosts speaker present at Jan. 6 Capitol assault

The Maine Republican Party co-sponsored a community forum in Windham on Monday evening that included as a panelist a far-right media personality and conspiracy theorist who has said she was among the supporters of former President Donald Trump who were present at the riot at the U.S. Capitol on Jan. 6.

A leader of the Gray Republican Town Committee, the group that hosted the forum, was also apparently present in Washington D.C. during the riot, according to social media posts.

Dana Cheng, vice-president of the right-wing multi-language newspaper and media company *Epoch Times*, was invited by the Gray Republicans to brief their members about the threats posed to Americans by the Chinese government.

The event, titled “Defending America: The Present Threats to Freedom,” was co-sponsored by the Christian Civic League and Maine Republican Party and also featured a speech by Maine GOP chair Demi Kouzounas.

The day after the insurrection that left five people dead, Cheng said on a Denver radio program that she was present at the Capitol when it was breached, but was not at the front of the crowd and did not enter the building.

Cheng alleged during the radio interview that the violence that day was perpetrated by anti-fascist infiltrators — a false refrain echoed throughout conservative media in the days after the insurrection.

"We have got photos from our readers that there were some antifa people," she said. "They have seen a few people try to push into the building, some got into the building. They were the same people that were in the antifa movement."

Since Trump's loss to President Joe Biden, Cheng's *Epoch Times* has consistently questioned the election results. The news outlet is partially funded by far-right media financier Robert Mercer and has promoted anti-vaccine misinformation and an array of pro-Trump conspiracy theories such as QAnon, leading the *New York Times* to call the outlet a "global-scale misinformation machine."

Cheng spoke via livestream to the Gray Republicans at length about the Chinese Communist Party, and in rhetoric reminiscent of the Red Scare, alleged that the highest ranks of U.S. government, academia and media have been influenced by communist plotters.

"Some *New York Times* reporters used to work for Chinese Communist Party media," she told the Maine Republicans. "So, what do we get from mainstream media now? It is being greatly influenced by communist propaganda."

The Maine GOP's co-sponsorship of Monday's event in Windham again suggests that Kouzounas, who was re-elected to her chair in January, is not overly concerned with distancing the state party from the events of Jan. 6. In an April radio interview, she expressed sympathy for the Capitol insurrectionists referring to them as "our people."

"The Capitol riots happened and of course the five people killed were our people, right, were on our side, not the other way around, and only one was really murdered, which was by a Capitol policeman," she said on *WLOB*, referring to the death of Ashli Babbitt, who was shot by a police officer while breaking through a door in the Capitol.

In addition to Cheng, Gray resident Christopher Gamache, who is on the executive committee of the Gray Republicans, was also present in Washington D.C. on Jan. 6. A screenshot shared with *Beacon* of Gamache's social media posts show the Gray Republican communicating with other Maine conservatives about attending the pro-Trump rally prior to the riot. It is unclear if Gamache entered the Capitol.



Gray Republicans executive committee member Christopher Gamache (unmasked, making the "okay" sign) protests at the Lewiston *Sun Journal* in February. Gamache's social media post show that he was in Washington D.C. on Jan. 6.

Gamache, a robotics engineer from Massachusetts, promoted the Gray Republicans' event on social media and solicited co-sponsors, including reaching out to the Maine First Project, a Facebook group and organization run by former Republican state lawmaker Larry Lockman, who has a long history of extreme anti-abortion, anti-LGBTQ and anti-immigrant statements and activism.

Gamache's recent social media posts are almost all related to COVID-19 vaccine conspiracies, cryptocurrency and allegations of election fraud. In one post he linked to a news story about evidently random robberies that included white victims, describing the assaults as "anti-white hate crimes."

In February, Gamache attended a small protest at the *Lewiston Sun Journal*, accusing the newspaper of doxing residents who displayed anti-Biden flags on their homes. In one photo taken outside the newspaper office, Gamache is seen making the "okay" sign, the seemingly innocuous hand gesture used ironically by white supremacists.

*This article has been corrected to say Monday's event took place in Windham, not Gray.*

*Top photo: Epoch Times vice-president Dana Cheng speaks via livestream to Gray Republicans on Monday.*

Category ◀ Demi Kouzounas ◀ democracy ◀ Maine Republican Party ◀ media ◀ racial justice

## ABOUT AUTHOR



**Dan Neumann** 474 posts

Dan studied journalism at Colorado State University before beginning his career as a community newspaper reporter in Denver. He reported on the Global North's interventions in Africa, including documentaries on climate change, international asylum policy and U.S. militarization on the continent before returning to his home state of Illinois to teach community journalism on Chicago's West Side. He now lives in Portland. Dan can be reached at dan(at)mainebeacon.com.

## COMMENTS

**EXHIBIT B**

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**RECORDING OF KIM MONSON/DANA CHENG PODCAST**

*This transcription was completed on June 28, 2021, by internal staff at Lewis Brisbois Bisgaard & Smith LLP, using the actual podcast maintained by The Kim Monson Show. It is not, however, a certified transcription. Non-verbal pauses are denoted by \*.*

*[Music playing...]*

- Monson: Welcome back to the Kim Monson Show, I am Kim Monson, be sure to check out our website, that's Kimmonson – M-O-N-S-O-N.com. sign up for our weekly newsletter there and you can email me at kim@kimmonson.com as well. Thank you to my friend and patriot, Helen Jean Mitchell, for sponsoring this show and on the line with me is Dr. Dana Cheng. She is one of the co-founders. She is the senior editor with the *Epoch Times*. Dr. Cheng, welcome to the show.
- Cheng: Well thank you for inviting me again.
- Monson: Dr. Cheng, my understanding is you're in Washington, D.C. Am I correct on that today?
- Cheng: Yes I am, yes.
- Monson: Okay, what is your thoughts about what happened yesterday?
- Cheng: Oh, yesterday I was at a rally in the morning in the morning, I went to a, and a lot of people, people, people were very peaceful relatively and then people were excited and when Trump was speaking. So later on at the capitol, oh, I was there but I was not on the right front, so I did not see with my own eyes what happened when some people broke into the building. I was, most people there, to my eyes, had been very peaceful. So those on the front, I, we have got photos from our readers that\* there's a, there were some ANTIFA people, and they have seen a few people trying to push, push into the building and some got into the building and some photos that they could see they're the same people that were in the ANTIFA movement, we got some photos, \*, sent by readers. So no matter who was involved to us, we're very fully aware with the Communists and strategy and it happened in China, it happened in Hong Kong, \*, the easiest way to ruin a moment or a protest is to lead a few people to go extreme. That's the fastest to ruin a protest or movement. So, I don't think, if it's random and it's like\*, it's not planned I think, some people planned it or involved the whole, try to pull others, \*, it's not clear yet.
- Monson: Now you said that you've received photos from your readers, I saw some things on Facebook and so, I know that you source things and wanna make sure that they are authentic, it looked authentic when I was looking at Facebook but anything could happen there but, are, do you feel confident, Dr. Dana Cheng, that these photographs that you received from some of your readers, you've been able to corroborate and, and actually know for sure that some of these people that pushed into the capitol are ANTIFA, can you, can you say for sure that you think that's true?

Epoch Times v. Politico

Transcript of Kim Monson/Dana Cheng Podcast

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Cheng: Um, we are in the process of confirming those. And that, it is familiar strategy from Communists.

Monson: Okay Dr. Cheng, and you came from Communist China, so you're familiar with that, you've been super concerned about the influence of the Chinese Communist Party, we had Josh Phillip on, on Monday who is an award winning investigative reporter with\* the *Epoch Times* also the host of the *China Report* and a \*, Trump administration has really been successful in\* standing up against the\* continued growth of the Chinese Communist Party. What do you think is going to happen to America now with a Biden/Harris administration?

Cheng: I think American people, \*, a lot of American people now realize that Communist Party is a threat. I don't think Biden administration can go back to the Obama strategy. I think he will have to make some changes. Whether he will stand as strong as Trump in opposing the CCP, I don't know, but Communist China is the biggest threat to America and we, as a publication, have been explain – explaining this for past 20 years. And I think, it is my opinion that\* China has been deeply involved in the election fraud and, first of all, the machines, actually more than a year ago, *Wall Street Journal* published an article, 20% of the parts of the voting machines are made in China. I think it's 20 parts, actually parts. And plus, one month before the election, \*, UBS Securities invested 400 million into Dominion, and UBS Securities, there were four board members, three of the four board members are Chinese.

Monson: I'm sorry, which company did you say? U –

Cheng: UBS Securities, which is a company.

Monson: U –

Cheng: Invested the 400 million into Dominion voting machine company, one month before the election. Three of the four board members are Chinese.

Monson: Wow that's\* some pretty amazing dot connecting. Going back to yesterday then, my understanding, and Josh, on Monday, had, had walked us through this, that the hope was, or the plan was, that for every senator that challenged the electoral results and if you had a matching House of Representatives, that there would be two hours of testimony for each one of those that did that and at the point, at that point, we thought there were 12 senators and so that meant that there would be 24 hours of, of\* testimony if I'm calling that, that correctly, that I think Trump was really betting on that would bring forth\* and show the American people what had happened with the election and then with the storming of the capitol by, I know you're working to verify who that is, and I know that you will, you'll figure that out, and, but the storming of the capitol, then all the sudden we saw courage kinda go out the door by a lot of people and then we never saw that, that proof. \*, I find that all really curious Dr. Cheng.

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Cheng: Um right, \*, what happened yesterday, basically, \*, derailed the original plan. \*, but no matter who got into the office, the most important thing is for each individual, to face a decision or choice, which, which side do you want to go on, the socialist part or you want to go around the universal writings, I think, each citizen has a responsibility and to position himself right.

Monson: Okay it, it, this is something in conversations that I had yesterday and then we had Dr. Joe Veccio on in the second segment, and I hear you saying this, each citizen, and that the American people are waking up. It seems somewhat daunting to me, Dr. Cheng, how we stand against – first of all we have Republicans that are not standing for the values of limited government and standing for private property rights. \*, we know that the Democrats, the Democrat party's been taken over by these radical activists leftists that don't stand for that, we, you just mentioned \$400 million was put into the Dominion machines, \*, you said some of them are made in China, how, how do we get election integ – integrity back Dr. Cheng – this seems pretty daunting for the everyday person that just wants to live their life and have government get out of their way.

Cheng: Well, I think, if each of us, if Americans are waking up and understand the Communist and understand that the socialist system, is actually one step away from Communist and if more people waking up to that, \*, our country will move to a better direction because after all, in this country, people's voice has big impact.

Monson: Man, it has been impacted big time. Dr. Dana Cheng with the *Epoch Times*, we're gonna go to break and when we come back, we'll continue this conversation, \*, what you have accomplished with the *Epoch Times* in the last 20 years is monumental, but it is a very well respected\* publication now where people go for real journalistic truth. We will be right back with Dr. Dana Cheng. *[recording cuts out briefly]*

Monson: On the line with me is Dr. Dana Cheng, she's one of the co-founders, senior editor with the *Epoch Times*, Dr. Cheng, I was just thinking about it as we were going through break, or going\* through the break, that\*, that you, the *Epoch Times* started in 2000 right, so about 20 years ago, I'm really interested in your story\* and how that happened. Before I do that though, I wanna say thank you to\* Helen Jean Mitchell, my friend and patriot, who is sponsoring this show to make sure that these voices come to the airwaves, but Dr. Dana Cheng, you grew up in China, you've seen communism firsthand, what's your story? How did you get to the United States?

Cheng: Grew up in China, when I was in school, we were not allowed to read any books\*, any book translated, or any book published\* before Communists took over. Meaning, 5,000 years of Chinese [inaudible] literature and, and the western civilization, we had no chance to read. Libraries were shut down. So the only thing we were exposed to were Communist propaganda and we did not know that those were propaganda. So we were told that only Communists could lead people, could leave people a good life, people in America, \*, suffering, people in Taiwan is dead on the street, and that's all we knew. So, \*, as I got older, as I listened to what people, pre-Communist times, \*, they were agitated before Communists took over, I realized were a lot of lies. So, I came to America on full scholarship for PhD

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program. I got my doctorate and I started to work in insurance company, while\*, I'm very, very grateful to the education I got here and it's\*, it's a normal human society, put it this way, it's such a contrast to a Communist regime, and it doesn't take a good life to make that a contrast. Just the way people are thinking, the way people treat each other, and be kind to each other, and not always cause trouble, but in, in China, the most important thing is you take the right lines, doing the class struggle, it's crazy. It's like one group against another group. It's so much hatred there, including like, the Communist encourage the sons to fight with fathers and neighbors report on neighbors, you know, everyone was so tense.

Monson: Yes,\* –

Cheng: It's like you had to guard yourself. Yes. So -

Monson: Okay –

Cheng: Yeah.

Monson: Well okay, Dr. Dana Cheng, this\*, what you just mentioned, reporting neighbors on neighbors, that happened in Nazi, Germany, \*, happening in China, we've got it happening right here in Colorado. \*, our restaurants and our bars and our taverns and our gyms, \*, these are small business owners and they are desperate, they're on the ropes. Many of them have closed. I cannot tell you, when I drive around and I see a restaurant that I have loved and they're no longer there, it makes me mad because it is because of public policy, but those that are trying to survive, they just want to get open, and so the, the\*, the governor's come up with this five-star state certification program and we see Republicans then that have taken it and morphed that, but one of the things for these restaurants to get open is they have to have prominently displayed a sign for patrons to be able to call the Colorado Department of Public Health and Environment and report that restaurant if they see something that they think isn't right. This is, this is beyond belief, Dr. Dana Cheng, right here in the United States of America and here in Colorado.

Cheng: Well\*, I have to say that the west, including America, has not learned from their Soviet – fighting with Soviet Union. They haven't learned what is a Communist, so more and more, the Communists ideology influence in these countries and I'm very shocked. The way mainstream media runs and the way people talk about so-called political correctness, that's like a censorship. That's like a censorship. So -

Monson: It is absolutely – yes, go ahead.

Cheng: - so, what you just mentioned, more and more I see these Communist ideology creep into these countries and people are not aware of it.

Monson: Well, now are you based in New York?

Cheng: Yes.

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Monson: Is\* the *Epoch Times* out in New York?

Cheng: Yes.

Monson: So you, and maybe it was\*, from the *Epoch Times* that we saw this but,\* Governor Cuomo, \*, no, actually New York is putting through legislation that would give Governor Cuomo the power to take people out of their homes if they deem that they have come in contact with a dangerous virus. That is astonishing to me Dr. Dana Cheng.

Cheng: Well, when the virus broke out in China, other countries, countless other countries, have been trying to copy their model, I think it's very unfortunate, \*, for us, you know, \*, I'm from a country with 5,000 year civilization, if I, you know, I had to chance to learn the old wisdom, the best way to counter the spreading of the virus, or protect "ourself", is to keep righteous thought, to choose, you know, good, between good and evil, you have to be on the right line. So between the universal value and Communist, you have to choose the right line. If you go with, with the bad force, then mind and body are connected and it's easier to get sick. That's the ancient wisdom.

Monson: Interesting and that is\*, as you mentioned that, how I first got connected with the *Epoch Times* and another one of my sponsors was subscribing to your paper and you always have a health and wellness component in the paper, I subscribe now as well and I'm realizing, as you're mentioning that, that's probably not by accident Dr. Dana Cheng.

Cheng: It's very, very important we choose good and stay away from evil and we choose our traditional values and not accepting the Communist value. So understanding Communist, the evil of a Communist is very important. The Communist has infiltrated this country, influenced the ideology of this country in the last few decades. People are not realizing that and it is important to know.

Monson: I think I heard you say this and Jill said this, I was talking to people yesterday, young people, they're saying that Americans are waking up. You think about what 75 million people voted for Donald Trump,\* –

Cheng: Right.

Monson: I think, in a way, it's like we have a real responsibility. We do this show to help people get their brains around these ideas so that they can converse with their friends and their family and their colleagues. It is now more important than ever. Dr. Dana Cheng, we have just a couple of minutes left, what's your final thoughts, what do you wanna leave with our listeners this morning?

Cheng: Well\*, be prepared because\* the virus is coming on strong and very quickly and it's important that we choose the right side. It's not about Trump and Biden, it's the choice of the ideology. So it doesn't matter what's the outcome, we need to pick the right side.



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Monson: And that right side Dr. Dana Cheng is really the American idea. This –

Cheng: Yes, American value, American traditional value.

Monson: The idea that all men are created equal with these rights of life, liberty and pursuit of happiness, that was so radical when you look at the history of the world, \*, this whole American idea. It's worth preserving, so what's next for the *Epoch Times*, we've got a minute left.

Cheng: Uh, we will continue to\* report whatever happened, we are independently here, we are, we have been expanding to 24 languages, 33 countries and we want to serve our readers and that's the only goal.

Monson: Well Dr. Dana Cheng, I so appreciate\* you joining us this morning. You were there in Washington D.C. yesterday, you've seen what communism does to people and\* I commend you to continue to search for truth and clarity and bring that forward and people can subscribe at the *Epoch Times*, Dr. Dana Chang, thank you so much.  
*[Recording cuts out]*

Female: I was told two weeks ago, at this very meeting spot, no politics in school. I believe what you said at this meeting, so – *[possibly from a different recording]*

*[END OF RECORDING]*